COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 11.6.2007
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2007/0108(CNS)

Proposal for a

COUNCIL REGULATION

on the installation, operation and management of a Communication Infrastructure for the Schengen Information System (SIS) environment

(presented by the Commission)

{COM(2007)306 final}
{SEC(2007)809}
{SEC(2007)810}

EXPLANATORY MEMORANDUM

1) Context of the proposal

- **Grounds for and objectives of the proposal**

The objective of this proposal, together with a proposal for a Council decision on the same subject, is to establish the legal framework for installing, operating and managing a specific communication infrastructure that shall provide networking and security services for the exchange of data via the Schengen Information System (SIS) and for the exchange of information linked to the SIS data between the SIRENE Bureaux.

The Commission is putting forward this proposal in order to ensure the continuity of the abovementioned services currently provided by the communication infrastructure for the Schengen environment (SISNET) and which are of crucial importance for keeping an area without internal border controls. However, this proposal for establishing a new communication infrastructure should only be implemented in the event that the public procurement launched by the Deputy Secretary-General of the Council on behalf of the Member States for a new SISNET contract has been unsuccessful. The Commission considers that the Council, which is responsible for the management of the SIS, should, in principle, continue to be responsible for all its components including its communication infrastructure.

The Commission proposes that this new communication infrastructure shall be established by making use of the horizontal measures provided for in the IDABC Programme (Decision 2004/387/EC) in particular of s-TESTA (a secured trans-European communication platform). The s-TESTA platform is also currently being used for developing the communication infrastructure for the Second generation of the SIS (SIS II).

As regards SIS II, the Commission remains committed to its development and to having the system operational as soon as possible given that it remains the absolute priority for the Council. The shared goal of having a new SIS with new and improved functionalities and higher performance standards which will provide a higher level of security, while ensuring protection of personal data, in a European area of Freedom, Security and Justice, remains the priority. For this reason the duration of the proposed communication infrastructure shall be limited in time depending upon the start of operations of the SIS II.

- **General context**

In December 2001 the Council gave a mandate to the Commission to develop the SIS II. One of the objectives of the SIS II was to allow the Member States that joined the European Union in 2004 to fulfil one of the key conditions required for the lifting of internal border controls. However, the development of SIS II has been delayed and in December 2006 the Council prolonged the mandate of the Commission for its development until the end of 2008. In order to ensure that the political objective of lifting internal border controls with the Member States that joined the European Union in 2004 might still be met in 2007, the Council decided in December 2006 to implement a project proposed by Portugal to connect those Member States to the current version of the SIS, the SIS I+. As a consequence of this project the implementation of SIS II has been delayed further and it is now scheduled to be operational in mid-December 2008.

The SISNET Agreement, the contract signed for the provision of the networking and associated security services for the SIS 1+, terminates in November 2008. Given the possibility that the SIS II will not have become operational for all Member States participating in SIS 1+ by that date, it is necessary to cover the gap between November 2008 and the start of operations of the SIS II.

Following the endorsement by the JHA Council of 15 February 2007 of an agreement on actions with regard to the future communication infrastructure for the SIS 1+ and in parallel to the call for tender launched by the Deputy Secretary-General of the Council for the conclusion of a new contract for SISNET, the Commission proposes to establish a specific communication infrastructure which will be funded by the EU budget. It should be recalled that SISNET is not funded by the EU budget and the contract for the provision of the required communication services is managed by the Deputy Secretary-General of the Council on behalf of Member States. The establishment of a new communication infrastructure managed by the Commission represents an important change for the current SIS with its intergovernmental management structures. In this context, the present proposal must establish a clear delimitation of tasks and responsibilities for the Commission, Council and Member States.

In any event, the enlarged SIS 1+ and this new communication infrastructure must remain temporary solutions since the entry into operation of SIS II constitutes the ultimate goal. The Council and Parliament have reached agreement on the SIS II legal framework which will allow the use of an advanced technological approach and the enhanced functionalities offered by the new system. These will be counterbalanced by higher protection standards for individuals and enhanced accountability as regards the management of the system.

This new communication infrastructure will not replace SISNET in its entirety since SISNET also provides communications services for VISION, a network supporting visa consultation procedures between central authorities of Member States according to Article 17 (2) of the Schengen Convention. However, the Commission has not included VISION in the scope of this proposal since the Council has reserved for itself implementing powers in the field of visa policy. The technical functionalities of the VISION consultation mechanism will be replaced by the Visa Information System (VIS), when all those Member States which use VISION are in a position to use the VIS for this purpose.

- **Existing provisions in the area of the proposal**

- Convention Implementing the Schengen Agreement (Articles 92-119).

- Council Regulation (EC) No 871/2004 of 29 April 2004 concerning the introduction of some new functions for the Schengen Information System, including in the fight against terrorism.

- Council Decision 2005/211/JHA of 24 February 2005 concerning the introduction of some new functions for the Schengen Information System, including in the fight against terrorism.

- Regulation (EC) No 1160/2005 of the European Parliament and of the Council of 6 July 2005 amending the Convention implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders, as regards access to the Schengen Information System by the services in the Member States responsible for issuing registration certificates for vehicles.

The Convention and the three legal acts cited above constitute the current legal framework of the SIS which will be replaced by the future SIS II. The SIS II legal framework is composed of:

- Council Regulation (EC) No 2424/2001 of 6 December 2001 on the development of the second generation Schengen Information System (SIS II)

- Council Decision 2001/886/JHA of 6 December 2001 on the development of the second generation Schengen Information System (SIS II)

- Regulation (EC) No 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II).

- Draft Council Decision 2007/…/JHA of …[1] on the establishment, operation and use of the second generation Schengen Information System (SIS II).

- Regulation (EC) No 1986/2006 of the European Parliament and of the Council of 20 December 2006 regarding access to the Second Generation Schengen Information System (SIS II) by the services in the Member States responsible for issuing vehicle registration certificates.

[1] This Decision has yet to be adopted formally by the Council.

- **Consistency with the other policies and objectives of the Union**

This proposal is necessary to keep the SIS in operation. The SIS constitutes an integral part of the compensatory measures necessary for ensuring the free movement of persons and is also consistent with the objectives of the IDABC Programme by making use of the infrastructure services part of the horizontal measures laid down by this Programme. The IDABC Programme's objective is to identify, support and promote the development and establishment of pan-European eGovernment services and the underlying interoperable telematic networks supporting the Member States and the Community in the implementation, within their respective areas of competence, of Community policies and activities, achieving substantial benefits for public administrations, businesses and citizens.

2) Consultation of interested parties and impact assessment

- **Consultation of interested parties**

Consultation methods, main sectors targeted and general profile of respondents

The main consultation method was information gathering from the following parties:

(1) Council Secretariat General.

Elements for consultation:

- SISNET contract
- SISNET expenditure
- Responsibilities in SIS

(2) S-TESTA network provider

Elements for consultation:

- Price-lists for network installation
- Price-lists for network operation

Summary of responses and how they have been taken into account

The information gathered was used for the analysis of the cost and of the roles and responsibilities in each of the policy options. The opinions expressed by the delegations of the Member States in the different Council and Commission working groups were also taken into account.

- **Collection and use of expertise**

Scientific/expertise domains concerned

ICT, public procurement and financial expertise

Methodology used

Face-to-face meetings and collection of written information

Main organisations/experts consulted

Commission internal expertise (DG JLS and DIGIT) and external expertise collected from SIS technical documentation.

Summary of advice received and used

There is a broad consensus on the potential for serious risks being realised and giving rise to significant political consequences.

The risks for each option have been assessed and they are very different in nature: failure in the public procurement procedure, delayed adoption of the legal instruments necessary for the establishment of a new communication infrastructure, lack of funding, ambiguity in governance or decision making, negative interference with the SIS II project, and delay or failure in the technical implementation.

Means used to make the expert advice publicly available

N/A

- **Impact assessment**

The following policy options have been considered:

Option 1: Status quo - the Commission does not present a legal proposal. This solution is a continuation of the current framework in which the Council and the Member States are solely responsible for the SIS. In order to establish a SISNET contract ensuring the availability of SISNET after 13 November 2008, the Deputy Secretary-General of the Council prepares and launches a call for tenders, in the form of an open, restricted or negotiated procedure. The Commission has no role in or responsibility for this option.

Option 2: The Council installs, operates and manages a new communication infrastructure for SIS 1+ via a specific contract with the s-TESTA provider, to be funded by the Member States. In this option, the Council concludes a specific contract under the s-TESTA framework contract for the purposes of SIS 1+ with the Member States financing this specific contract. Option 3: The Commission installs, operates and manages a new communication infrastructure for SIS 1+ via a specific contract with the s-TESTA provider, to be funded by the general budget of the EU. The Commission signs a specific s-TESTA contract to install a new communication infrastructure for SIS 1+. As a result, the installation, operation and management of the communication infrastructure are the responsibility of the Commission and are funded by the general budget of the EU. This new s-TESTA communication infrastructure for the SIS 1+ does not interfere with the s-TESTA communication infrastructure for the SIS II.

The impact assessment concludes that although the status quo option is by far the best option and does not present major difficulties, there are inherent risks with any tender procedure. In agreement with the Council, the Commission recognised that it is necessary to have a fallback solution. It would indeed be very difficult to maintain an area without internal border controls for any length of time without the operation of the SIS and related SIRENE exchange.

Therefore, in the event that the tendering procedure launched by the Deputy Secretary-General of the Council has *not* resulted in the conclusion of any agreement or contract for the provision of the services required for the SIS environment, the only remaining option is the last option, given that the second option has been ruled out by the Legal Service of the Council and will therefore be very difficult to pursue.

The recommendation of the impact assessment is thus that the Commission undertakes all necessary preparations for the last option, even though the impact assessment is not favourable. However, the implementation of this solution should only be triggered if there is a failure of the actions being taken to establish a new contract for SISNET. It is, therefore, conditional on all possible means available to prolong the SISNET service having been applied.

3) Legal elements of the proposal

- **Summary of the proposed action**

The objective of this proposal, together with a proposal for a Council decision on the same subject, is to establish the legal framework for installing, operating and managing a specific communication infrastructure that shall provide networking and security services for the exchange of data via the SIS and for the exchange of information linked to the SIS data between the SIRENE Bureaux laid down in the Schengen Convention.

- **Legal basis**

The regulation has its legal basis in Article 66 of the Treaty Establishing the European Community (TEC).

- **Subsidiarity principle**

The subsidiarity principle applies insofar as the proposal does not fall under the exclusive competence of the Community.

The objectives of the proposal cannot be sufficiently achieved by the Member States for the following reason.

The objective of the proposed action, namely to establish a communication infrastructure linking national SIS systems with the SIS central database for sharing information, can be better achieved by the Community using the existing Community infrastructure (s-TESTA) available for the exchange of data between administrations.

Community action will better achieve the objectives of the proposal for the following reason.

All Member States taking part in the Schengen cooperation need to exchange information for the implementation of common policies. The Community can provide the Europe-wide networking and security services that these Member States require much more efficiently than if each Member State provides them.

The fact that a common platform, such as s-TESTA, has been already been established for such purposes drawing from the experience gained from former projects and generic services provided in the framework of IDA (IDABC Predecessor) demonstrates the viability of relying on the Community for the provision of such services.

The Community action is limited to the shared communication infrastructure while Member States remain responsible for their own national information systems.

The proposal, therefore, complies with the subsidiarity principle.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reasons.

The proposals lay down the obligation for the Commission to establish the common communication infrastructure. However, Member States will be responsible for the execution of the tests ensuring that their national applications (SIS and SIRENE) run properly using the new infrastructure.

The proposals and financial burden will be limited in time bearing in mind that SIS II will replace the current SIS and make this communication infrastructure redundant. The purpose is to provide an essential service as a temporary solution for the current system until the SIS II is operational.

- **Choice of instruments**

Proposed instruments: Regulation and Decision.

A Regulation based on Title IV TEC and a Decision based on Title VI TEU are required due to the dual legal nature of the SIS. Any amendment or further development of the SIS acquis must be based in a first and third pillar legal basis.

4) Budgetary implication

The financial envelope requested for 2008 for the establishment and operation of the new communication infrastructure amounts to 7,6 million EUR. This comprises the following main actions:

- Installation and testing of the s-TESTA network for SIS 1+;

- Migration of the SIS 1+ users to the new network on s-TESTA;

- SIS 1+ s-TESTA network operations.

In addition there will be a financial impact for the intergovernmental budgets laid down in the Schengen acquis for the establishment and management of SISNET and the technical support function (C.SIS - Central SIS) during the testing and migration activities.

5) Additional information

- **Repeal of existing legislation**

The adoption of the proposal will lead to the repeal of existing legislation.

- **Review/revision/sunset clause**

The proposal includes a sunset clause.

- **Detailed explanation of the proposal**

1. Installation, operation and management of the Communication Infrastructure

The Communication Infrastructure to be established is described, on one hand, by making reference to the services that it is going to provide and, on the other hand, by indicating the systems or entities defined in the Schengen Convention that will be linked via this Communication Infrastructure. This infrastructure will not cover the national flow of data including SIRENE information between the competent national authorities and between these authorities and the national SIRENE Bureau, which remains national responsibility.

The Commission, before entering into any contractual arrangement with the service provider for the Communication Infrastructure, needs to establish the technical specifications reflecting the specific requirements for the SIS 1+ and the SIRENE. The Commission will take into account the requirements and tendering specifications drawn up by the Deputy Secretary-General of the Council for the renewal of the SISNET.

Although Member States have a general obligation under Article 10 of the Treaty to facilitate the Commission's tasks, the proposal makes reference to some particular actions that Member States must undertake so that the Commission can effectively install and operate the Communication Infrastructure. The Commission will also inform the Member States when the installation has been completed after having executed the necessary tests that will ensure the availability of the Communication Infrastructure. The reference to the general budget of the European Union for funding this part of the SIS was deemed necessary given that the installation and operation of the other common part of the SIS, the technical support function, i.e. the C.SIS, is funded by an intergovernmental budget laid down in the Schengen Acquis (Decision of the Executive Committee of 15 December 1997 amending the Financial Regulation on the C.SIS).

2. The IDABC Programme

IDABC provides a series of infrastructure services such as s-TESTA for the exchange of data between National and European administrations. The s-TESTA platform is also being used for the development of the SIS II and VIS. Other operational large-scale IT systems in the European area of Freedom, Security and Justice requiring high availability and security requirements such as Eurodac are also making use of the services provided by IDABC.

3. Operational tests

The operational testing activities that shall ensure the proper functioning of the SIS and the SIRENE exchange on the new Communication Infrastructure constitutes a critical task that can only be performed by the Member States under the coordination of the Council. This reflects the current status quo regarding the management of the SIS and its decision making process. France, with its responsibility for the management of the C.SIS, has the expertise required in order to describe the test cases and propose the most appropriate procedure for verifying that SIS and SIRENE run properly over the new infrastructure. The Council Working Groups competent for SIS and SIRENE convening the relevant national experts shall undertake all the preparatory work for the establishment, coordination and validation of the testing activities. The Commission will ensure the availability of the Communication Infrastructure within the s-TESTA framework. Member States shall provide to the Commission, via the Council, information and feedback on the testing activities.

4. Migration

The migration of the SIS and SIRENE to the new Communication Infrastructure can only take place after all the testing activities have been completed and validated. The

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 66 thereof,

Having regard to the proposal from the Commission[2],

Having regard to the opinion of the European Parliament[3],

Whereas:

(1) The Schengen Information System ("SIS") set up pursuant to the provisions of Title IV of the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 between the governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders [4] (the "Schengen Convention"), and its development, SIS 1+, constitute an essential tool for the application of the provisions of the Schengen *acquis* as integrated into the framework of the European Union.

(2) Council Regulation (EC) No 2424/2001[5] and Council Decision 2001/886/JHA[6] provided for the development of SIS II. SIS II will replace the SIS as created pursuant to the Schengen Convention.

(3) Regulation (EC) No 1987/2006[7] of the European Parliament and of the Council of 20 December 2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II) constitutes the necessary legal framework for governing SIS II in respect of matters falling within the scope of the Treaty establishing the European Community (the "EC Treaty").

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2 OJ C , , p. .

3 OJ C , , p. .

4 OJ L 239, 22.9.2000, p. 19. Convention as last amended by Regulation (EC) No 1160/2005 (OJ L 191, 22.7.2005, p. 18).

5 OJ L 328, 13.12.2001 as amended by Council Regulation (EC) No 1988/2006 of 21 December 2006 (OJ L 411 of 30.12.2006)

6 OJ L 328, 13.12.2001 as amended by Council Decision 2006/1007/JHA of 21 December 2006 (OJ L 411 of 30.12.2006)

7 OJ L 381, 28.12.2006

(4) The SIS currently services 15 States, including Iceland and Norway which are associated with the implementation, application and development of the Schengen *acquis*. In December 2006 the Council endorsed the connection of nine of the Member States that joined the European Union on 1st May 2004 to the existing SIS with the aim of allowing them to fully implement the Schengen *acquis* before SIS II becomes operational.

(5) Pursuant to Council Decision 1999/870/EC of 17 December 1999 authorising the Deputy Secretary-General of the Council of the European Union to act as representative of certain Member States for the purpose of concluding contracts relating to the installation and the functioning of the communication infrastructure for the Schengen environment "SISNET" and to manage such contracts[8] and pursuant to the Council Decision 2000/265/EC of 27 March 2000 on the establishment of a financial regulation governing the budgetary aspects of the management by the Deputy Secretary-General of the Council of contracts concluded in his name, on behalf of certain Member States, relating to the installation and the functioning of the communication infrastructure for the Schengen environment "SISNET" the Agreement on the Provision of Wide Area Networking and Associated Security Services for the Schengen Information System of 14 November 2000 (the "SISNET Agreement") was concluded by the Deputy Secretary-General of the Council and private undertakings. The SISNET Agreement provides for the services necessary for the operation of SIS and will terminate in November 2008.

(6) The continuity of the type of services provided by the SISNET Agreement must be guaranteed for the effective exchange of data between the Technical Support Function and the national sections of the SIS and for the exchange of information between the SIRENE laid down in Article 92 of the Schengen Convention. This is essential for the application of the Schengen *acquis* and, therefore, for maintaining a common area without internal border controls.

(7) The SISNET Agreement also provides networking and associated security services for VISION, a network supporting visa consultation procedures between central authorities of Member States according to Article 17 (2) of the Schengen Convention, but it is out of the scope of this proposal since the Council, in accordance with Regulation (EC) No 789/2001 of 24 April 2001 reserving to the Council implementing powers with regard to certain detailed provisions and practical procedures for examining visa applications[9], is the body competent for implementing the amendments necessary for migrating VISION to another communication infrastructure.

(8) The application of this legal instrument should be conditional on the notification by the Deputy Secretary-General of the Council that the public procurement procedure launched pursuant to Council Decision 2007/149/EC of 5 March 2007 authorising the Deputy Secretary-General of the Council of the European Union to act as representative of certain Member States for the purpose of concluding and managing contracts relating to the provision of services concerning a communication infrastructure for the Schengen environment, pending its migration to a communication

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8 OJ L 337 of 30.12.1999

9 OJ L 116, 26.4.2001

infrastructure at the charge of the European Community[10] and pursuant to Council Decision 2000/265/EC has not resulted in the conclusion of any agreement or contract for the provision of the services to be covered by this proposal.

(9) The Council in February 2007 considered the risks of such a tendering procedure and requested the Commission to make proposals to provide for the possibility of migrating the SIS 1+ onto another network.

(10) The Commission retains the right in accordance with Article 250 (2) of the EC Treaty to alter its proposal at any time during the procedures leading to the adoption of a Community act.

(11) The most appropriate solution taking into account the specific security and availability requirements of the SIS is to establish a new communication infrastructure that shall replace SISNET making use of the infrastructure services provided under the framework Service Contract for "Secured Trans-European Services for Telematics between Administrations – Delivery of a managed secured private communications infrastructure" ("S-Testa Framework Contract") in accordance with Decision 2004/387/EC of the European Parliament and of the Council of 21 April 2004 on the interoperable delivery of pan-European eGovernment services to public administrations, businesses and citizens ("IDABC Decision")[11].

(12) The new communication infrastructure should replace SISNET, which should cease to operate from a date to be fixed by the Council; and Decision 1999/870/EC, Decision 2000/265/EC and Decision 2007/155/EC[12], which constitute its legal framework should therefore be repealed.

(13) The establishment of the new communication infrastructure could be accelerated and its financial burden on the European Union reduced by Member States agreeing to the transfer to the Commission of the property rights, including intellectual property rights, derived from the execution of the SISNET agreement.

(14) The expenditure involved in the establishment, operation and management of this communication infrastructure should be charged to the general budget of the European Union. The Commission is responsible for executing the budget and signing the required contracts for the provision of networking and security services within the S-Testa Framework Contract.

This Regulation and the Commission's responsibility for the establishment, operation and management of this communication infrastructure should have no bearing on the responsibility of the Council for the management of the current SIS.

(15) It is therefore appropriate that the Council establishes the test plan on the basis of an initiative to be prepared by France, as the Member State responsible for theTechnical Support Function, ensuring the proper exchange of data for the SIS and SIRENE on the communication infrastructure, coordinates the test activities and validates the test results before fixing the date of migration from SISNET to the new communication

[10] OJ L 66, 6.3.2007
[11] OJ L 181, 18.5.2004
[12] OJ L 181, 18.5.2004

infrastructure.

(16) If the Commission considers it more efficient, it may contract the implementation of specific operational management tasks related to security and supervision of the Communication Infrastructure to national public sector bodies.

(17) This Regulation constitutes the necessary legal framework for installing, operating and managing a communication infrastructure for the SIS environment and amending accordingly the Schengen Convention in respect of matters falling within the scope of the EC Treaty. Council Decision 2007/…/JHA of … on the installation, operation and management of a communication infrastructure for the SIS environment[13] constitutes the necessary legal frameworkin respect of matters falling within the scope of the Treaty on European Union (the "EU Treaty").

(18) Together with Council Decision 2007/…/JHA[14] this Regulation constitutes the basic act in the meaning of Article 49 of the Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities[15], allowing for the inclusion in the general budget of the European Union of the necessary appropriations for installation, operation and management of the communication infrastructure and for the implementation of that part of the budget.

(19) The fact that the legal framework required to allow the installation, operation and management of the SIS environment communication infrastructure to be financed by the general budget of the European Union consists of two separate instruments does not affect the principle that this communication infrastructure constitutes one single infrastructure and should operate us such.

(20) Since the objectives of the action to be taken, namely the establishment, operation and management of a common communication infrastructure for the SIS environment, cannot be sufficiently achieved by the Member States and can, therefore, by reason of the scale and effects of the action, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity, as set out in Article 5 of the EC Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary to achieve those objectives.

(21) As regards Iceland and Norway, this Regulation constitutes a development of provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis*[16], which fall within the area referred to in Article 1, point G, of Council Decision 1999/437/EC of 17 May 1999[17] on certain arrangements for the application of that Agreement.

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13 OJ L , , p. .
14 OJ L , , p. .
15 OJ L 248, 16.09.2002
16 OJ L 176, 10.7.1999
17 OJ L 176, 10.7.1999

(22) As regards Switzerland, this Regulation constitutes a development of provisions of the Schengen acquis within the meaning of the Agreement signed between the European Union, the European Community and the Swiss Confederation concerning the association of the Swiss Confederation with the implementation, application and development of the Schengen acquis, which fall within the area referred to in Article 1, point G, of Decision 1999/437/EC read in conjunction with Article 4(1) of Council Decisions 2004/849/EC[18]and 2004/860/EC[19].

(23) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark does not take part in the adoption of this Regulation and is not bound by it or subject to its application. Given that this Regulation builds upon the Schengen *acquis* under the provisions of Title IV of Part Three of the Treaty, Denmarkshould, in accordance with Article 5 of the said Protocol, decide within a period of six months after date of the adoption of this Regulation whether it will transpose it in its national law.

(24) This Regulation constitutes a development of provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis*[20]. The United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.

(25) This Regulation constitutes a development of provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis*[21]. Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.

(26) As it is essential for the type of services provided by SISNET to be guaranteed beyond November 2008 and for the Commission can conclude the appropriate contracts for this purpose as soon as possible, as a matter of urgency this Regulation should enter into force on the date of its publication.

HAS ADOPTED THIS REGULATION:

Article 1

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[18] Council Decision 2004/849/ECof 25 October 2004 on the signing, on behalf of the European Union, and on the provisional application of certain provisions of the Agreement between the European Union, the European Community and the Swiss Confederation concerning the Swiss Confederation's association with the implementation, application and development of the Schengen acquis (OJ L 368, 15.12.2004, p. 26).

[19] Council Decision 2004/860/EC of 25 October 2004 on the signing, on behalf of the European Community, and on the provisional application of certain provisions of the Agreement between the European Union, the European Community and the Swiss Confederation, concerning the Swiss Confederation's association with the implementation, application and development of the Schengen acquis (OJ L 370, 17.12.2004, p. 78).

[20] OJ L 131, 1.6.2000

[21] OJ L 64, 7.3.2002

Installation, operation and management of the Communication Infrastructure

1. The Commission shall install, operate and manage a communication infrastructure providing networking and security services for the exchange of data between the Technical Support Function and the national sections of the Schengen Information System (SIS) and between the SIRENE laid down in Article 92 of the Schengen Convention (the "Communication Infrastructure").

2. The Commission shall establish the technical specifications for the Communication Infrastructure taking into account the technical specifications established by the Deputy Secretary-General of the Council on behalf of the Member States for the public procurement procedure launched pursuant to Council Decisions 2007/149/EC and 2000/265/EC.

3. The Member States and the Commission shall cooperate in the tasks referred to in paragraphs 1 and 2. In particular, Member States shall provide suitable premises to host the national access points of the Communication Infrastructure and ensure access to these premises when required by the Commission.

4. The Commission shall inform the Council of the date from which the installation of the Communication Infrastructure is completed and available for the execution of the tests referred to in Article 3.

5. The costs of installing, operating and managing the Communication Infrastructure shall be borne by the general budget of the European Union.

Article 2
Use of the IDABC Programme

The Commission shall take into account Decision 2004/387/EC (the IDABC Decision) and make use of the s-TESTA Framework Contract for the purposes of installing, operating and managing the Communication Infrastructure.

Article 3
SIS and SIRENE tests on the Communication Infrastructure

1. Member States shall carry out the tests necessary to ensure the proper exchange of data referred to in Article 1 (1) over the Communication Infrastructure.

2. The Council shall be responsible for establishing the test plan on the basis of an initiative to be prepared by France, in its capacity as the Member State responsible for the C.SIS.

3. The Council shall coordinate Member States' test activities and validate the test results and keep the Commission informed.

Article 4
Migration to the Communication Infrastructure

1. After notification to the Council by all Member States participating in the SIS of the successful completion of the tests referred to in Article 3, the Council shall fix the date of the start of the exchange of data referred to in Article 1 (1) over the Communication Infrastructure.

2. Member States shall undertake all the required actions for the migration from SISNET to the Communication Infrastructure on the date fixed in accordance with paragraph 1.

3. The Council shall coordinate the Member States' actions referred to in paragraph 2.

Article 5
Execution of operational management tasks by national public sector bodies of Member States

1. The Commission, as from the date referred to in Article 1 (4) may contract the execution of specific operational management tasks regarding security and supervision of the Communication Infrastructure to national public sector bodies.

2. The costs incurred by the bodies referred to in paragraph 1 for the execution of the tasks referred to in paragraph 1shall be borne by the general budget of the European Union.

Article 6
Monitoring and evaluation

The Commission shall produce an overall evaluation of the functioning of the Communication Infrastructure once it has ceased operations. The evaluation shall be performed in the framework of the overall evaluation of IDABC horizontal measures under the IDABC Decision. It shall assess in particular the effectiveness and efficiency of the Communication Infrastructure in providing the services referred to in Article 1 (1).

Article 7
Repeal

1. Council Decisions 1999/870/EC, 2000/265/EC and 2007/155/EC are repealed from the date to be defined by the Council. The SISNET communication infrastructure shall cease operations from the date fixed in accordance with Article 4 (1).

2. The remainder of the budget established by Council Decision 2000/265/EC, at the date set in accordance with Article 4 (1), shall be refunded to the Member States. The amounts to be repaid shall be calculated on the basis of the contributions from the Member States as laid down in Article 26 of Council Decision 2000/265/EC.

3. The Member States agree to transfer to the Commission any property rights, including intellectual property rights, derived from the execution of the agreement concluded pursuant to Council Decision 1999/870/EC and Council Decision 2000/265/EC for the provision of wide area networking and associated security services in the framework of SISNET from the date referred to in Article 4 (1).

Article 8
Amendment of the Schengen Convention

From the date fixed in accordance with Article 4 (1), Article 119 (1), first sentence, of the Schengen Convention is replaced by the following:

"The costs of installing and operating the technical support function referred to in Article 92(3), without the cost of lines connecting the national sections of the Schengen Information System to the technical support function, shall be borne jointly by the Contracting Parties."

Article 9
Entry into force and applicability

1. This Regulation shall enter into force on the day of its publication in the Official Journal of the European Union and expire on 1 November 2009 or on the date fixed by the Council in accordance with Article 55 (2) of Regulation No 1987/2006, whichever is earlier.

2. The application of this Regulation is subject to notification of the Deputy Secretary-General of the Council to the Commission that no agreement or contract has been concluded for the provision of networking and security services for the exchange of data referred to in Article 1 (1) pursuant to Council Decision 2007/149/EC and Council Decision 2000/265/EC.

3. The notification referred to in paragraph 2 may take place as from the date of the entry into force of this Regulation and shall be published in the *Official Journal of the European Union.*

This Regulation shall be binding in its entirety and directly applicable in the Member States.

Done at Brussels,

For the Council
The President

LEGISLATIVE FINANCIAL STATEMENT

1. NAME OF THE PROPOSALS:

Proposal for a COUNCIL REGULATION relating to the installation, operation and management of a communication infrastructure for the SIS (Schengen Information system) environment

Proposal for a COUNCIL DECISION relating to the installation, operation and management of a communication infrastructure for the SIS (Schengen Information System) environment

2. ABM / ABB FRAMEWORK

Policy Area(s) and associated Activity/Activities:

Title 18: Area of freedom, security and justice

Chapter 18 02: Solidarity — External borders, visa policy and free movement of people

3. BUDGET LINES

3.1. Budget lines (operational lines and related technical and administrative assistance lines (ex- B.A lines)) including headings:

Item 18 02 04 02: Schengen Information System SIS 1+ *

**Budget line to be created in the PDB 2008*

3.2. Duration of the action and of the financial impact:

2008-2009

It is expected that the proposals will be adopted in December 2007 as a fallback solution if the current contract for the communication infrastructure of the SIS (SISNET) cannot be renewed. This fallback solution shall only be a temporary solution. The action will end when the migration to SIS II is completed.

In the SIS II planning, the migration to SIS II will be completed by the end of December 2008. The actual implementation of this solution would cause delays in the migration to SIS II, of at least six months. Moreover, according to the terms of the s-TESTA contract, services must be contracted for a minimum of one year. Therefore, this solution should be envisaged for a period of operations of about one year, starting operations in November 2008 and ending in 2009.

The proposals will expire on 1 November 2009 or on the date fixed by the Council for the entry into application of SIS II, whichever is earlier.

The duration of the action will be of maximum 1 year and 10 months. Commitments will be made in 2008, whereas the payment period will span from 2008 - 2010.

3.3. Budgetary characteristics :

Budget line	Type of expenditure		New	EFTA contribution	Contributions from applicant countries	Heading in financial perspective
18 02 04 02	Non-comp	Diff	YES	NO	NO	3a

4. SUMMARY OF RESOURCES

4.1. Financial Resources

4.1.1. Summary of commitment appropriations (CA) and payment appropriations (PA)

EUR million (to 3 decimal places)

Expenditure type	Section no.		Year 2008	Year 2009	Year 2010	Total
Operational expenditure[22]						
Commitment Appropriations (CA)	8.1.	A	7.620		0	7.620
Payment Appropriations (PA)		B	2.500	3.750	1.370	7.620
Administrative expenditure within reference amount[23]						
Technical & administrative assistance (NDA)	8.2.4.	C	-	-	-	-
TOTAL REFERENCE AMOUNT						
Commitment Appropriations		a+c	7.620		0	7.620
Payment Appropriations		b+c	2.500	3.750	1.370	7.620
Human resources and associated expenditure (NDA)	8.2.5.	D	0.585	0.234		0.819
Administrative costs, other than human resources and associated costs, not included in reference amount (NDA)	8.2.6.	E	0.233			0.233
TOTAL CA including cost of Human Resources	a+c+d+e	8.438	0.234		8.672	

[22] Expenditure that does not fall under Chapter xx 01 of the Title xx concerned.

[23] Expenditure within article xx 01 04 of Title xx.

TOTAL PA including cost of Human Resources	b+c+ d+e	3.318	3.984	1.370	8.672

4.1.2. Compatibility with Financial Programming

X Proposal is compatible with existing financial programming.

☐ Proposal will entail reprogramming of the relevant heading in the financial perspective.

☐ Proposal may require application of the provisions of the Interinstitutional Agreement[24] (i.e. flexibility instrument or revision of the financial perspective).

4.1.3. Financial impact on Revenue

☐ Proposal has no financial implications on revenue

X Proposal has financial impact – the effect on revenue is as follows:

EUR million (to one decimal place)

Budget line	Revenue	Prior to action [Year n-1]	Situation following action					
			2008	2009	2010	[n+3]	[n+4]	[n+5] [25]
	a) Revenue in absolute terms		0.1	0.1	0.1			
	b) Change in revenue	*Δ*						

The present proposals build upon the Schengen *acquis*, as defined in Annex A of the agreement signed on 18 May 1999 between the Council and the Republic of Iceland and the Kingdom of Norway concerning the association of both these States with the implementation, application and development of the Schengen acquis. Article 12(1) last paragraph lays down: "In cases where operational costs are attributed to the general budget of the European Community, Iceland and Norway shall share in these costs by contributing to the said budget an annual sum in accordance with the percentage of the gross national product of their countries in relation with the gross national product of all participating States".

4.2. Human Resources FTE (including officials, temporary and external staff) – see detail under point 8.2.1.

The need for human and administrative resources shall be covered within the allocation granted to the managing service in the framework of the annual allocation procedure.

Annual requirements	2008	2009				

[24] See points 19 and 24 of the Interinstitutional agreement.

[25] Additional columns should be added if necessary i.e. if the duration of the action exceeds 6 years

Total number of human resources	5	2				

5. CHARACTERISTICS AND OBJECTIVES

5.1. Need to be met in the short or long term

The SIS 1+ and SIRENE systems presently operate on the SISNET communications network. The current contract for this SISNET network services is managed on behalf of the Member States by the Deputy Secretary-General of the Council and is funded jointly by the Member States. This SISNET contract is due to expire on 13 November 2008.

On the other hand SIS II, developed as a replacement for SIS 1+, will not become operational for the Member States using the SIS 1+ until 17 December 2008.

Therefore, action must be taken to guarantee a network service for the SIS 1+ between 13 November 2008 and the date of SIS II becoming operational.

5.2. Value-added of Community involvement and coherence of the proposal with other financial instruments and possible synergy

The maintenance of the Schengen area of free movement without border controls is dependent on the guaranteed continuous and secure operation of a communication network for the systems in the Schengen environment.

It would be very difficult to maintain the area without border controls for any length of time without the operation of the Schengen Information System. In February 2007, the Council has concluded that the Deputy Secretary-General of the Council should again act on behalf of the relevant Member States to issue a call for tenders to renew the SISNET contract in order to ensure that the service will be available after November 2008. However, given the Council's analysis of the risks inherent with any procurement process, the Council has decided that it must have an alternative network solution available for the Schengen systems.

The Council has therefore invited the Commission to make proposals as soon as possible to provide for the possibility of migrating the SIS 1+ to the s-TESTA network, a secure communications network which is provided under a Framework Contract concluded by the Commission.

5.3. Objectives, expected results and related indicators of the proposal in the context of the ABM framework

The overall objective is to establish the possibility for the Commission to fund and manage the communication infrastructure for SIS 1+ as a temporary fallback solution, if SISNET cannot be prolonged.

This fallback solution to be funded by the general budget of the EU must be implemented and be operational at the latest on 13 November 2008, the date of expiry of the current SISNET contract.

Action 1: Installation and testing of the s-TESTA network for SIS 1+

A specific contract will be signed within the s-TESTA framework contract. The new

network will be set up as a separate virtual private network, but will use parts of the SIS II physical network infrastructure where possible. Furthermore, external expertise is necessary, in particular for security and network issues, as well as high quality external assistance for follow up, testing and coordination with Member States.

Indicator: network ready for operations by October 2008

Action 2: Migration of the SIS 1+ users to the new network on s-TESTA

If Member States are not able to migrate on time to SIS II and cannot continue on the existing SISNET, the migration from the SISNET network to the s-TESTA interim network is needed. The date of migration will be decided by the Council.

This action will imply migration costs. Due to the limited internal resources, high quality external assistance will be used for follow up and coordination with Member States.

Indicator: All SIS 1+ users migrated

Action 3: SIS 1+ s-TESTA Network operations

If the alternative interim network solution has to be used, costs for operations are foreseen.

Indicator: network operational with all SIS 1+ Member States by November 2008

5.4. Method of Implementation (indicative)

X ***Centralised Management***

- X directly by the Commission
- ☐ indirectly by delegation to:
  - ☐ executive Agencies
  - ☐ bodies set up by the Communities as referred to in art. 185 of the Financial Regulation
  - ☐ national public-sector bodies/bodies with public-service mission

☐ ***Shared or decentralised management***

- ☐ with Member states
- ☐ with Third countries

☐ ***Joint management with international organisations (please specify)***

Relevant comments:

Part of the budget may be attributed to national public sector bodies through a service contract, in order to finance the operations of the network.

6. MONITORING AND EVALUATION

6.1. Monitoring system

Progress will be assessed at regular points and performance measured against required standards and pre-set criteria. This should demonstrate that the investment is delivering the required result.

The monitoring will be done via an external support contractor for quality assurance.

The Commission will report the results of this monitoring in its Annual Activity Report.

6.2. Evaluation

6.2.1. Ex-ante evaluation

The ex-ante evaluation has been included in the impact assessment

6.2.2. Measures taken following an intermediate/ex-post evaluation (lessons learned from similar experiences in the past)

NA

6.2.3. Terms and frequency of future evaluation

The Commission shall produce an overall evaluation of the functioning of this communication infrastructure once it has ceased operations. This evaluation shall be performed in the framework of the overall evaluation of IDABC horizontal measures and assess in particular the effectiveness and efficiency of this new communication infrastructure in providing the SIS 1+ network services.

7. Anti-fraud measures

The Commission procedures for the award of contracts will be applied, ensuring compliance with Community law on public contracts.

8. DETAILS OF RESOURCES

8.1. Objectives of the proposal in terms of their financial cost

Commitment appropriations in EUR million (to 3 decimal places)

(Headings of Objectives, actions and outputs should be provided)	Type of output	Av. cost	2008		2009		2010		2011 and later		TOTAL	
			No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost
OPERATIONAL OBJECTIVE: *The Commission funds and manages the communication infrastructure for SIS 1+ as a temporary fallback solution*												
Action 1: Installation and testing of the sTesta network for SIS 1+	virtual private network and national access points			1.650								1.650
	External expertise and quality assurance			0.200								0.200
Action 2 Migration of the SIS 1+ users to the new network on sTesta	network migration			0.520								0.520
	External expertise and quality assurance			0.200								0.200
Action 3 SIS 1+ sTesta Network operations	network costs			4.900								4.900
	External monitoring and quality assurance			0.150								0.150
TOTAL COST				7.620								7.620

8.2. Administrative Expenditure

8.2.1. Number and type of human resources

Types of post		Staff to be assigned to management of the action using existing and/or additional resources (**number of posts/FTEs**)					
		2008	2009	2010	2011	2012	2013
Officials or temporary staff[26] (XX 01 01)	A*/AD	5	2				
	B*, C*/AST						
Staff financed[27] by art. XX 01 02							
Other staff[28] financed by art. XX 01 04/05							
TOTAL		5	2				

8.2.2. Description of tasks deriving from the action

Project management;
Technical management;
Evaluation and reporting;
Public procurement, contract and financial management.

8.2.3. Sources of human resources (statutory)

- ☐ Posts currently allocated to the management of the programme to be replaced or extended
- ☐ Posts pre-allocated within the APS/PDB exercise for year n
- ☐ Posts to be requested in the next APS/PDB procedure
- X Posts to be redeployed using existing resources within the managing service (internal redeployment)
- ☐ Posts required for year n although not foreseen in the APS/PDB exercise of the year in question

8.2.4. Other Administrative expenditure included in reference amount (XX 01 04/05 – Expenditure on administrative management)

NA

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26 Cost of which is NOT covered by the reference amount
27 Cost of which is NOT covered by the reference amount
28 Cost of which is included within the reference amount

8.2.5. Financial cost of human resources and associated costs not included in the reference amount

EUR million (to 3 decimal places)

Type of human resources	2008	2009	2010	2011	2012	2013
Officials and temporary staff (XX 01 01)	0.585	0.234				
Staff financed by Art XX 01 02 (auxiliary, END, contract staff, etc.) (specify budget line)						
Total cost of Human Resources and associated costs (NOT in reference amount)	0.585	0.234				

Calculation– ***Officials and Temporary agents***

117.000 (person/year)

Calculation– ***Staff financed under art. XX 01 02***

NA

8.2.6. Other administrative expenditure not included in reference amount

EUR million (to 3 decimal places)

	Year 2008	Year 2009	Year 2010	Year n+3	Year n+4	Year n+5 and later	TOTAL
XX 01 02 11 01 – Missions	0.081						
XX 01 02 11 02 – Meetings & Conferences	0.120						
XX 01 02 11 03 – Committees[29]							
XX 01 02 11 04 – Studies & consultations							
XX 01 02 11 05 - Information systems							
2 Total Other Management Expenditure (XX 01 02 11)							
3 Other expenditure of an administrative nature **Specific training on s-Testa network** **Budget line XX 01 02 11 06**	0.032						
Total Administrative expenditure, other than human resources and associated costs (NOT included in reference amount)	0.233						0.233

[29] Specify the type of committee and the group to which it belongs.

Missions include visits to all 27 Member States in SIS 1+ for 2 persons (0.081 mEUR)

Meetings covers all meetings with Member States and other experts to be organised by the unit on a regular basis during the installation and testing phase of the s-Testa network for SIS 1+ (12 meetings planned). Note that the costs will be higher if travel costs for MS experts need to be reimbursed.

Specific training needs on the s-Testa network for SIS1+ are to be provided by the s-Testa provider for 4 Commission staff (0.032 mEUR).

Calculation - Other administrative expenditure not included in reference amount