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DRAFT REPORT

on the proposal for a Council regulation on the installation, operation and management of a Communication Infrastructure for the Schengen Information System (SIS) environment
(COM(2007)0311 – C6-0216/2007 – 2007/0108(CNS))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Carlos Coelho

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Symbols for procedures

*	Consultation procedure *majority of the votes cast*
**I	Cooperation procedure (first reading) *majority of the votes cast*
**II	Cooperation procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***	Assent procedure *majority of Parliament's component Members except in cases covered by Articles 105, 107, 161 and 300 of the EC Treaty and Article 7 of the EU Treaty*
***I	Codecision procedure (first reading) *majority of the votes cast*
***II	Codecision procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***III	Codecision procedure (third reading) *majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission.)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a Council regulation on the installation, operation and management of a Communication Infrastructure for the Schengen Information System (SIS) environment
(COM(2007)0311 – C6-0216/2007 – 2007/0108(CNS))

(Consultation procedure)

The European Parliament,

– having regard to the Commission proposal (COM(2007)0311)[1],

– having regard to Article 66 of the EC Treaty,

– having regard to Article 67 of the EC Treaty, pursuant to which the Council consulted Parliament (C6-0216/2007),

– having regard to Rule 51 of its Rules of Procedure,

– having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A6-0000/2007),

1. Approves the Commission proposal as amended;

2. Calls on the Commission to amend its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;

3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;

4. Calls on the Council to consult Parliament again if it intends to amend the Commission proposal substantially;

5. Instructs its President to forward its position to the Council and the Commission.

Text proposed by the Commission	Amendments by Parliament
	Amendment 1 Recital 7
(7) The SISNET Agreement also provides networking and associated security services for VISION, a network supporting visa consultation procedures between	(7) The SISNET Agreement also provides networking and associated security services for VISION, a network supporting visa consultation procedures between

[1] Not yet published in OJ.

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[1], is the body competent for implementing the amendments necessary for migrating VISION to another communication infrastructure.	central authorities of Member States according to Article 17 (2) of the Schengen Convention***. In actual fact, VISION*** is ***in principle*** 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[2], is the body competent for implementing the amendments necessary for migrating VISION to another communication infrastructure. ***Notwithstanding Regulation (EC) No 789/2001 and in order to preserve the coherence and consistency of SIS1+, the Commission should integrate VISION into the new communication network s-Testa and exercise implementing powers.***

Amendment 2
Article 1, paragraph 5a (new)

	(5a.) The SIS was set up under Title IV of the Convention implementing the Schengen Agreement. However, following the integration of the Schengen acquis into the Treaties and the allocation of its legal basis, any modification will require a new legal instrument which will have to be adopted in accordance with Article 67(2), indent 2, of the EC Treaty.

Amendment 3
Article 3, paragraph 3

3. The Council shall coordinate Member States' test activities and validate the test results and keep the Commission informed.	3. The Council shall coordinate Member States' test activities and validate the test results***, keeping*** the Commission ***and the European Parliament*** informed.

[1] OJ L 116, 26.4.2001
[2] OJ L 116, 26.4.2001

Amendment 4
Article 5, paragraph 2

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

Amendment 5
Article 5, paragraph 2a (new)

	2a. The Commission shall inform the European Parliament and the Council regarding the terms and conditions under which delegation will take place, the precise scope of such delegation and the bodies to which the tasks referred to in paragraph 1 are delegated.

Amendment 6
Article 5 a (new)

	Article 5a
	Security
	The Commission shall adopt the necessary measures (including the adoption of a security plan) relating to the Communication Infrastructure.

Amendment 7
Article 9, paragraph 2

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	2. ***This Regulation shall be applicable from the date of its publication and after*** notification of the Deputy Secretary-General of the Council to the Commission

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.

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.

EXPLANATORY STATEMENT

CONTEXT

The SIS 1+ and SIRENE systems operate at present on the SISNET communications network. The current contract for 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.

SIS II has been developed as a replacement for SIS 1+ and, unlike the latter, it should be funded out of the EU budget and operate within the s-TESTA network. The target date set for the delivery of the new system was March 2007. Owing to a variety of problems the project has suffered a number of delays and the latest forecast is that SIS II will become operational for the Member States using SIS 1+ on 17 December 2008.

However, the SISNET contract is due to expire on 13 November 2008. This creates a very difficult situation, since there will be no network-service provision between 13 November 2008 and 17 December 2008, which will seriously jeopardise free movement within the Schengen area. This area without internal border controls can only exist if a communications network for the Schengen Information System and SIRENE additional information exchanges operate continuously and in accordance with the highest security standards.

Hence the Council has decided to take the necessary action in order to guarantee the existence of a network for SIS 1+ (according to the current timetable, SISone4all should already be operational) for the period from 13 November to 17 December 2008 (if there are no further delays relating to SIS II). The following two parallel actions are envisaged:

1 - Extension of the service provided by the SISNET network

In February 2007 it was decided that the Deputy Secretary-General of the Council (again acting on behalf of the relevant Member States) should issue a call for tender for the renewal of the SISNET contract with a view to ensuring that the service will be available after November 2008.

2. Creation of a fall-back solution with the s-TESTA network

Taking in account the risks inherent in any procurement process, the Council has decided to ask the Commission to put forward whatever legal proposals are called for in order to enable SIS 1+ to migrate from SISNET into the s-TESTA network (Secured Trans-European Services for Telematics between Administrations, which should be provided under SIS II), as an alternative network solution enabling the Schengen systems to continue functioning.

THE CURRENT LEGISLATIVE PROPOSALS

On 11 June 2007 the Commission submitted two proposals: one for a Council Decision and one for a Council Regulation on the installation, operation and management of a Communication Infrastructure for the Schengen Information System (SIS) environment, on which the European Parliament is now being consulted.

The general objective of the Commission proposals is to provide a temporary fall-back solution enabling SIS operations to continue when the current SISNET contract expires and until the migration to SIS II is completed, should the Council tendering procedure not result in the conclusion of any agreement or contract for the provision of the services required for the SIS environment.

This proposal is intended to create the necessary legal framework for this temporary solution, which should be implemented and become operational at the latest on the date upon which the current SISNET contract expires. It also sets out the responsibilities of the Commission, the Council and the Member States as regards the costs and management of the installation and the operation thereof.

RAPPORTEUR'S OPINION

The rapporteur regrets, once more, all the delays to the start of SIS II operations which continue to cause problems. Nevertheless, he is well aware of the need to find a solution to this problem, which may jeopardise the very existence of the Schengen area.

The current SIS I+ framework (or even the SISone4all framework) is something for which the Council and the Member States have sole responsibility. Since what is involved is a purely intergovernmental system, the rapporteur considers that the most cost-effective solution would be to establish a new SISNET contract ensuring that the network is available after 13 November 2008. This has also the advantage of maintaining a clear legal framework and a clear governance structure.

Hence he hopes that the call for tender launched by the Deputy Secretary-General of the Council will bring about the most desirable result, with the conclusion in good time of a contract funded jointly by the Member States participating in the SIS 1+ and later in SISone4all.

The fall-back solution envisaged in these proposals - the installation by the Commission of a new communication infrastructure for SIS 1+ via a specific contract with the s-TESTA provider, to be funded out of the EU general budget - presents very high risks in terms of delays on the legal and technical front and in terms of ambiguity in decision-making.

The European Parliament has always made it clear that the launch of SIS II operations within the Community framework is an absolute priority. Hence it is highly regrettable that the creation and implementation of the new network will ultimately divert human and financial resources from SIS II, both at European level and in the Member States. In fact, resources will be needed for the purpose of managing three different projects simultaneously:

- SIS II

- SISone4all

- the installation, operation and management of a new Communication Infrastructure.

This will have a detrimental effect on the migration to SIS II and result in more delays in the implementation of the SIS II project.

Furthermore, the economic impact is also extremely serious, since the costs are too high for the temporary solution (one year) presented to us in the legislative proposals. The costs of the new network will be met out of the EU general budget and they are clearly disproportionate to the objectives.

Nor is there a clear definition of responsibilities (basically, which responsibilities lie with the Council and which with the Member States, and to what extent the Commission is taking responsibility in the matter).

The rapporteur considers the option of creating a new network to be a bad one on account of the very damaging effects explained above. Nevertheless, as things stand at present, it is important to note that if the tender procedure fails, the Commission's proposal seems to be the only remaining solution to the problem of the possible unavailability of the communications network for SIS operations and related SIRENE additional information exchanges, which would necessarily result in the reintroduction of internal border controls.

The current SISNET network also includes the VISION network, i.e. the network supporting the consultation procedures between the Member States' central authorities for the granting of visas. If the final decision taken is to renew the SISNET contract, the VISION network should continue to operate in its field for at least another year. On the other hand, if the final decision is to create a new network then the problem already arises, since there will be a gap in the system with the absence of VISION. It is expected that, in 2012, VISION will be incorporated into VIS (the implementation of the Visa Information System which will replace all Schengen consultation on visas). By then, however, a solution will have to be found, involving the incorporation of VISION into the s-TESTA network and the assumption by the Commission of implementing powers in this area (powers which currently lie with the Council). The problem has to be solved now, since it is clear that Schengen cannot exist without the VISION network and we cannot afford to wait for a new legal instrument which will solve this problem. This will undoubtedly have a huge impact in budget terms.

Lastly, the rapporteur has also decided to table some amendments with a view to strengthening the role of the European Parliament in the whole process.