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Committee on Civil Liberties, Justice and Home Affairs

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DRAFT REPORT

on the proposal for a Council Decision on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II)
(COM(2008)0196 – C6-0188/2008 – 2008/0077(CNS))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Carlos Coelho

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.*** In the case of amending acts, passages in an existing provision that the Commission has left unchanged, but that Parliament wishes to amend, are highlighted in **bold**. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...]. 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). Suggested corrections of this kind are subject to the agreement of the departments concerned.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a Council Decision on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II) (COM(2008)0196 – C6-0188/2008 – 2008/0077(CNS))

(Consultation procedure)

The European Parliament,

– having regard to the Commission proposal (COM(2008)0196),

– having regard to Articles 30(1)(a)(b), 31(1)(a)(b) and 34(2)(c) of the EU Treaty,

– having regard to Article 39(1) of the EU Treaty, pursuant to which the Council consulted Parliament (C6-0188/2008),

– having regard to Rules 93 and 51 of its Rules of Procedure,

– having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinion of the Committee on Budgets (A6-0000/2008),

1. Approves the Commission proposal as amended;

2. Calls on the Commission to alter 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 Commission.

Amendment 1

Proposal for a decision
Title

Text proposed by the Commission	*Amendment*
COUNCIL DECISION	COUNCIL DECISION
on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II)	on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II) ***and amending Council Decision***

2001/886/JHA

Or. en

Justification

It is necessary to have a SIS II development mandate until the operational start of SIS II, the so-called "go live". This mandate must allow to carry out all tasks defined as preconditions in the SIS II Legal Instruments, including the preparation of the operational start.

Amendment 2

Proposal for a decision
Article 1 – subparagraph 1

Text proposed by the Commission	*Amendment*
This Decision establishes tasks and responsibilities for the migration from SIS 1+ to SIS II, including ***the final SIS II*** tests.	***1.*** This Decision establishes tasks and responsibilities for the migration from SIS1+ to SIS II, including ***all the necessary*** tests***, with a precise identification of the sequence of the necessary requirements and procedures***.

Or. en

Justification

Insert justification

Amendment 3

Proposal for a decision
Article 1 – subparagraph 1 a (new)

Text proposed by the Commission	*Amendment*
	1a. This Decision also extends the validity of Council Decision No 2001/886/JHA[1] of 6 December 2001 on the development of the second generation Schengen Information System (SIS II).
	[1] OJ L 328, 13.12.2001, p.1.

Or. en

Justification

It is necessary to have a SIS II development mandate until the operational start of SIS II, the so-called "go live". This mandate must allow to carry out all tasks de fined as preconditions in the SIS II Legal Instruments, including the preparation of the operational start.

Amendment 4

Proposal for a decision
Article 1 – subparagraph 1 b (new)

Text proposed by the Commission	*Amendment*
	1b. SIS II is a single integrated system, that in order to be prepared to start operations needs a clear definition of competences and tasks to be performed either by the Commission or by the Member States, in accordance with their respective responsibilities for testing and migration.

Or. en

Justification

The full implementation of SIS II is in the responsibility of the European Commission and Member States. Before SIS II will "go live", the European Commission has to declare" the successful completion of a comprehensive test of SIS II, which shall be conducted by the Commission together with Member States" as stated in article 71 (3) (c) of Council Decision 2007/533/JHA of 12 June 2007.

Amendment 5

Proposal for a decision
Article 1 – subparagraph 1 c (new)

Text proposed by the Commission	*Amendment*
	1c. The responsibilities of the Commission as project manager, and the work carried out by the contractor, will be completed only after the System is delivered and

ready to go live, in the exact terms laid down in the contract.

Or. en

Justification

Until now the project management has been done by the Commission, as well as the management of the relation with the contractor, who has been paid to deliver a system perfectly working.

Amendment 6

Proposal for a decision
Article 2 – point e a (new)

Text proposed by the Commission	*Amendment*
	(ea) 'comprehensive test' means the test referred to in Article 71(3)(c) of Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and the use of the second generation Schengen Information System (SIS II)[1].
	[1] OJ L 205, 7.8.2007, p.63.

Or. en

Justification

The aim of the Commission proposal is not only to establish the legal framework governing the migration, but also the comprehensive test, with a view to demonstrating, in particular, that the level of performance of SIS II is at least equivalent to that achieved with SIS 1+. Furthermore, it intends to regulate the test on exchange of supplementary information.

Amendment 7

Proposal for a decision
Article 2 – point e b (new)

Text proposed by the Commission	*Amendment*
	(eb) 'test on supplementary information' means tests to assess the functioning of

the SIRENE Bureaux, for the purpose of testing the exchange of supplementary information between them.

Or. en

Justification

The aim of the Commission proposal is not only to establish the legal framework governing the migration, but also the comprehensive test, with a view to demonstrating, in particular, that the level of performance of SIS II is at least equivalent to that achieved with SIS 1+. Furthermore, it intends to regulate the test on exchange of supplementary information.

Amendment 8

Proposal for a decision
Article 6 – paragraph 2

Text proposed by the Commission	*Amendment*
2. The migration shall follow ***a*** schedule defined by the Member States, acting within the Council	2. The migration shall follow ***the*** schedule ***already*** defined by the Member States, acting within the Council ***and shall be completed in order to allow the technical start of the operations of SIS II by 30 September 2009.***

Or. en

Justification

On the basis of a Commission proposal, this calendar has been presented and accepted by the Council, during the JAI Council, on 6 June 2008.

Amendment 9

Proposal for a regulation
Article 7 – paragraph 2

Text proposed by the Commission	*Amendment*
2. The Member States shall maintain and, where necessary, further develop their	2. The Member States shall maintain and, where necessary, further develop their N.SIS II, ***only as far as the correction of***

N.SIS II.	***possible bugs in the implementation of the respective N-SIS II is concerned.***

Or. en

Justification

The SIS II presents more functionalities and new types of alerts in comparison with SIS I. Therefore, some new data stored by a Member State in SIS II might not be included in SIS I. The converter, allowing the C-SIS to communicate with C.SIS II, should ensure the compatibility of data in SIS I and SIS II, It is therefore important to clarify that possible bugs related to the compatibility of the data between SIS I and SIS II have to be corrected through the converter, under the remit of the European Commission.

EXPLANATORY STATEMENT

Background:

The Schengen Information System (SIS) is the central tool for the application of the Schengen principles, in fact is rightly considered as the backbone of a "borderless" Europe and the Area of Freedom, Security and Justice.

Since this System was established its task has gradually changed. In fact, when the SIS was first created, its only purpose was to be a compensatory measure for the opening of the borders. Ever since, especially because the SIS has proved to be a useful and efficient tool, has been decided to maximise its potential, mainly within the frame of police cooperation.

The Schengen Information System is a large-scale database (in fact, the largest common European data base, with a total data volume - in December 2007 - of 22 450 781, from which 1 142 988 is related to persons) which operates as a joint information system enabling the relevant authorities in the Member States to cooperate and exchange the necessary information, something which is essential in order to establish an area without controls at its internal borders.

The system contains information on individuals and objects, which can be used by the relevant authorities, especially within the context of police and judicial cooperation on criminal matters, as well as in the field of checking individuals at external frontiers or on national territory, and for issuing visas and residence permits.

The decision to create a Second Generation of the SIS took account of the need to integrate new data (namely the introduction of biometric data), new types of alerts (ex. introduction of the European Arrest Warrant) and new functionalities needed to be implemented within the system (in order to reinforce security and to make a more efficient use of data, for instance through the interlinking of alerts) and to extend access to alerts by authorities at national or EU level, as well as to give answer to the need to integrate the new Member States, since the central system (C-SIS) could not connect more than 18 countries.

The Commission received the mandate to develop the new system, on 6 December 2001, which was scheduled to begin operating in March 2007. Due to several delays, a new timetable was announced, providing for SIS II to become operational by 17 December 2008 (exactly the same time as the Commission existing mandate ends).

In the meanwhile, a more updated version of the SIS (SIS I+R) was developed in 2006, replacing the C-SIS Machines and implementing a solution more up-to-date in communication terms and including the possibility of connecting new countries to the system.

Given the enormous disappointment for the new Member States that, according to what was promised, wanted to be connected to the SIS still in 2007, the Portuguese Government decided to move forward with a proposal which could serve as a technical transitional solution - the so-called SISone4ALL.

This system is now fully operational and has allowed to connect nine of the new Member States to the SIS. Nevertheless, in this enlarged Schengen area, the reinforcement of security requirements has become even more important and urgent.

This can only be achieved if the next generation of the system, known as SIS II, starts operating.

Establishment of the SIS II

Provisions on the establishment, operation and use of the SIS II were agreed in 2006, between the Council and the European Parliament, under co-decision, on a first reading in order to avoid any more delays. It is foreseen that these instruments will start applying to the Member States participating in the SIS I + only as of the date to be fixed by the Council, acting by the unanimity of its Members representing the governments of the Member States participating in SIS1+ (according to artº 55(2) of Regulation 1987/2006).

Before this can happen and the system starts operating, the system must be closely tested, with a view to assessing whether SIS II meets all the technical and functional requirements as defined in the SIS II legal instruments, as well as the other necessary requirements such as robustness, response capacity and performance.

Only after the successful completion of all SIS II tests we can go for the next step: the migration of the SIS I + users to the SIS II environment, where the switch-over should take place on the same date for all Member States - one-shoot migration.

Current proposals: Migration

The European Parliament has been asked to give its opinion regarding the two instruments aiming to establish the legal framework governing that migration.

This proposal for a Council Regulation aims to regulate the migration from the current Schengen Information System (SIS I +) to the Second Generation Information System (SIS II).
It arises taking into account the need for a change on the migration strategy. The initial plan was to have a migration of 15 Member States (the number at that time), during a process that should take around 8 hours.

In the meanwhile, the number of Member States increased to 25[1], making this migration process much more complex, difficult and requiring more time for the process of transferring all the data to the new network. The risk became too high because if one Member State, during this common switch-over period, fails to have a successful migration, the direct consequence would be to put back immediately its borders (because it wouldn't have access anymore to the SIS). In order to avoid this contingency, it was necessary to create a sort of back-up solution so as to be able to switch back to SIS 1+ if necessary.

[1] The Member states of SIS II are the following: 15 old EU Member states -except UK and IE plus 9 new Member states (the new 10 of 2004 enlargement minus CY) plus Norway and Iceland and CH.

In order to reduce the risks of service disruption during migration an interim technical architecture for the operation of SISI+ will allow SIS I+ and certain technical parts of the architecture of SIS II to operate in parallel for a transitional period, which will be kept very limited.

Beyond that, a technical tool will also be made available - a "converter" - allowing for the successful conversion and synchronisation of data between SIS 1+ and SIS II, to be used for a very limited period of time. The converter connects the SIS 1+ central system with the SIS II central system, enabling both to process the same information and ensuring that the Member States already successful connected to the SIS II stay on the same level as the others that are still connected to the SIS 1+. In order to allow that interim technical architecture to work, a new function that was not previewed in the first contract has been added - the reverse mode.

The current proposal intends not only to establish the legal framework governing the migration, but also the comprehensive test, with a view to demonstrating, in particular, that the level of performance of SIS II is at least equivalent to that achieved with SIS 1+. Furthermore, it intends to regulate the performance of tests on the exchange of supplementary information.

Development and testing phase

The conditions stated in Article 71 of Council Decision 2007/533/JHA of 12 June 2007 should be fulfilled (including the fact that the European Parliament should be informed of all the results) and only after that, the migration of the data should take place, in one-shoot migration. These four conditions are:

- the adoption of the necessary implementing measures;
- the notification about necessary technical and legal arrangements by the Member States;
- the successful completion of a comprehensive test;
- the necessary technical arrangements for connecting the national systems to the central system;

The operational start of SIS II marks the end of the development phase and the beginning of the SIS II legal basis applicability. Following that logic, than the migration phase has to be the final task under the development mandate for SIS II.

Following a request of the European Parliament's Rapporteur, Vice-President Barrot responded with a letter, on 13th June 2008, stating that the testing phase is already taking place and describing the 12 different phases until the start of operations of the SIS II, that is foreseen for 30 September 2009.

Mandate

It is necessary to have a SIS II development mandate until the operational start of SIS II, the so-called "go live".

This mandate must allow to carry out all tasks defined as preconditions in the SIS II Legal

Instruments, including the preparation of the operational start. This means the correction of any bugs identified during the test phases and the provision of all necessary preconditions such as test platforms and resources. The finalisation of all tests should only be considered successful when no more blockings or major bugs are identified.

Until now the project management has been done by the Commission, as well as the management of the relation with the firm contracted for this purpose. If the Commission ends its mandate before the "go live" phase, than the relations with the contractor should also come to an end. Nevertheless, this firm has been paid to deliver a system perfectly working. This being so, how can it be acceptable for its contract to end before we know that the system is fully operational and any eventual problems and bugs (that certainly still will appear) are solved, which should still be done in the framework of that contract? How can this contract finish in December 2008, if only 15 Member States will be tested and not all of them? Can guarantees be given that the performance of the system will be the same if 10 more Member States will be added?

It is expected that for this new phase, a new contractor will have to be found and a new working environment will have to be rebuilt, inside of the Council structures, in order to proceed with the work and carry out the necessary tests until the system is in a position to become operational (which was, in principle, already required from and paid to the previous contractor). In this case, will this option make it necessary to have a new calendar in order to take into account all these new aspects that were not previously foreseen?