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Accompanying document to the

Proposal for a
COUNCIL DECISION

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

Proposal for a
COUNCIL REGULATION

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

IMPACT ASSESSMENT

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Glossary and abbreviations

- **Member States**: refers to the Schengen states that participate in SIS 1+, unless otherwise specified
- **SIS**: Schengen Information System
- **SIS 1+**: current version of the Schengen Information System
- **SIS II**: second generation Schengen Information System
- **SISNET**: current Communication Infrastructure of the Schengen environment
- **s-TESTA**: Secured Trans-European Services for Telematics between Administrations - Delivery of a managed secured private communications infrastructure provided under a Framework Contract concluded by the Commission on its own behalf and on behalf of the Council, EUROPOL and the European Railway Agency.
- **C.SIS**: SIS Technical Support Function
- **SIRENE**: the bilateral or multilateral exchange of supplementary information required for the implementation of certain provisions of the Schengen Convention
- **VISION:** Visa Inquiry Open Border Network (network supporting visa consultation procedures between the central authorities of Member States according to Article 17(2) of the Schengen Convention)

1. Procedural issues and consultation of interested parties

1.1. Scope of the impact assessment

This document is an impact assessment analysing the policy options for a Commission proposal relating to the installation and the operation of a communication infrastructure that shall provide networking and security services for the exchange of data between the Technical Support Function (C.SIS) and the national sections (N.SIS) of the Schengen Information System (SIS) and for the exchange of information between the SIRENE Bureaux laid down in Article 92 of the Convention Implementing the Schengen Agreement (Schengen Convention)[1].

This Commission proposal is placed in the context of the SIS 1+, updated version of the SIS laid down in the Schengen Convention and the SIS II laid down in Council Regulation (EC) No 1988/2006 of 30.12.2006 on the development of the second generation Schengen Information System (SIS II) and Regulation (EC) 1987/2006 of the Council and the European Parliament on the establishment, operation and use of the second generation Schengen Information System. The communication infrastructure for VISION is out of scope of the Commission proposal and the impact assessment.

Although this Commission proposal was not planned in the Commission's Work Programme for 2007, arising from an agreement at the meeting of COREPER II on 7 February 2007 and endorsed by the JHA Council on 15 February 2007 the Council has invited the Commission to make available an alternative network solution for the Schengen systems. It has, therefore, invited the Commission to make proposals as soon as possible to provide for the possibility of migrating the SIS 1+ onto the s-TESTA network. These Commission proposals would be adopted by the Council at the latest in December 2007.

Given the context and the urgency, this impact assessment will mainly concentrate on the risk assessment and on the roles and responsibilities for the installation and management of the Communication Infrastructure. It will also include an ex-ante evaluation.

This impact assessment does not assess the SIS as a system supporting several EU policies.

1.2. Inter-service steering group

Given the urgency of this impact assessment it was not feasible to set up an inter-service steering group.

1.3. Consultation of interested parties

Consultation of interested parties focussed on information-gathering for the analysis of the cost and of the roles and responsibilities in each of the policy options. Opinions expressed by Member States experts in the different Council and Commission working groups were also taken into account.

[1] OJ L 239, 22.9.2000; OJ L 162, 30.4.2004 as last amended by Regulation (EC) No 1160/2005

Parties that were consulted

(1) *Council Secretariat General*

Elements for consultation:

- SISNET contract
- SISNET expenditure
- Responsibilities in SIS

(2) S-TESTA network provider through DIGIT/01

Elements for consultation:

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

2. Problem definition and needs assessment

The extent of the problem

The SIS 1+ and SIRENE systems operate at present on the SISNET communications network. The current contract for the 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 (in accordance with the Schengen Convention and a Council Decision establishing a regulation for this purpose[2]). This SISNET contract is due to expire on 13 November 2008.

The Council Secretariat General has indicated that the only means of continuing to use the current SISNET is to launch a call for tender for a new contract as it is not possible to further prolong the existing contract.

Following a delay announced in the development of SIS II, the Council proposes to connect temporarily the Member States that joined the EU in May 2004 to the existing system in order to facilitate the lifting of internal border controls with the Member States involved (between December 2007 and March 2008), subject to satisfactory Schengen evaluations.

The implementation of this temporary solution carries with it a further delay in the implementation of SIS II. This additional delay means that SIS II 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 the SIS II becoming operational (17 December 2008).

The needs and affected parties:

The Schengen area of free movement without border controls is dependent on the guaranteed continuous and secure operation of a communications network for the Schengen Information System and related SIRENE exchange. The requirements of the Member States for the proper functioning of free movement necessitate the SIS being available 24 hours a day, seven days a

[2] Council Decision 2000/265/ EC

week. Furthermore, given the sensitive nature of the information exchanged, it is imperative that transfer of information complies with security requirements.

It would 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. Their prolonged unavailability, which would arise were no communications network available, would result in the reintroduction of internal border controls.

The causes

Arising from the agreement at the JHA Council on 15 February 2007, the Council has decided 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 conclude a new SISNET contract in order to ensure that the service will be available after November 2008.

However, given the Council's analysis of the risks associated with a procurement process, the Council has decided that it must have available an alternative network solution for SIS and related SIRENE exchange. The preferred solution of the Member States for an alternative is the s-TESTA network. The Council has, therefore, invited the Commission to make proposals as soon as possible to provide for the possibility of migrating the SIS 1+ onto the s-TESTA network[3].

At the latest in December 2007, the Council will assess progress made on the basis of reports of the General Secretariat of the Council and the Commission.

European Union's remit to act

The progressive establishment of an area of freedom, security and justice involves creating an area without internal borders controls. The SIS is a common information system allowing the competent authorities in the Member States to cooperate, by exchanging information for the implementation of various policies required, in order to establish an area without internal border controls. It allows these authorities, through an automatic query procedure, to obtain information related to alerts on persons and objects. The information obtained is used, in particular, for police and judicial cooperation in criminal matters, as well as for controls of persons at the external borders or on national territory and for issuing visas and residence permits. The SIS, therefore, is an indispensable component of the Schengen Acquis, which has been integrated into the framework of the EU by virtue of the Amsterdam Treaty, necessary for applying the Schengen provisions on the movement of persons and in ensuring a high level of security in this area.

The availability of the SIS is, therefore, crucial so that EU citizens can benefit from all the advantages of an area of free movement.

These proposals are 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

[3] Council document 5794/1/07 REV 1 SIRIS 19

substantial benefits for public administrations, businesses and citizens.

3. Objective setting and related indicators

3.1. General objective:

3.1.1. Provide a temporary solution for the continuity of operations of the Schengen Information System when the current SISNET contract expires and until the migration to SIS II is completed.

This solution will need to be implemented as a fall-back if the Council tendering procedure has not resulted in the conclusion of any agreement or contract for SISNET services beyond 13 November 2008 and if the Member States are not ready to migrate to SIS II by the end of October 2008.

This solution shall be temporary. In the current SIS II planning, the migration to SIS II will be completed by 17 December 2008. Therefore, this solution should be implemented for a short period.

3.2. Specific objectives:

3.2.1. Provide a legal framework for the fall-back solution in case it is to be funded by Community funding and to be managed by the Commission

The possibility for the Commission to fund and manage the communication infrastructure for SIS 1+ must be legally established. The current operation of SIS 1+ is governed by the provisions of Title IV of the Schengen Convention as integrated into the framework of the European Union, and is funded by an intergovernmental budget.

Moreover, the conclusions of the JHA Council of 5 December 2006 state that the decision to extend the current SIS 1+ to the new Member States will carry with it financial implications for all States participating to the SIS 1+ arising from the extra costs derived from the extension of the network to the new Member States[4]. These extra costs will not apply to the Member States which currently contribute to the SIS I+ but do not intend to be connected to it – Ireland and the UK.

The position of these Member States with respect to the funding by general budget of the European Union of the SIS 1+ communication infrastructure for all Member States is not known.

3.2.2. Define the tasks and responsibilities of the actors involved in the (1) setting up and (2) operation of the fallback solution

The responsibilities of the Commission, the Council, the Member States and any other party acting on their behalf need to be clearly defined in terms of costs and management of the installation and the operation of the fall-back solution. The responsibilities for costs and management shall be in line with the rules of Community funding and with the liability of the

[4] Council document 16391/1/06 REV 1

parties involved.

3.2.3. Minimise interference with the SIS II project

A rapid migration to SIS II is the first political priority of the Council, the Member States and the Commission, with regard to the SIS. Therefore, this temporary solution cannot under any circumstances delay or interfere with the migration to SIS II; nor can it divert human and financial resources from the SIS II project, irrespective of whether these resources belong to the Commission or the Member States.

3.3. Operational objectives

3.3.1. No interruption of SIS operation, the solution to be implemented must be operational at the latest on 13 November 2008

Given the crucial nature of the SIS for the Schengen area of free movement, the solution must be implemented and operational at the latest on 13 November 2008, date of expiry of the current SISNET contract.

Moreover, continuity of operations of the SIS must be guaranteed throughout the transition to the temporary solution.

3.3.2. Performance and security of the communication infrastructure

The maintenance of the Schengen area of free movement is dependent on the guaranteed continuous and secure operation of a communications network for the systems in the Schengen environment. The proper functioning of the SIS necessitates the systems being available 24 hours a day, seven days a week. Furthermore, given the sensitive nature of the information exchanged over the systems, it is imperative that transfer of information complies with security requirements. This objective is considered as a pre-requisite to any option to be considered, as it is not in the scope of this impact assessment to evaluate the appropriateness of the SIS and its communication infrastructure.

4. Policy options

This section describes three policy options.

4.1. Option 1: Status quo. The Commission does not present a legal proposal

The option 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 tender, in the form of an open, restricted or negotiated procedure.

The Council is currently pursuing this option and is, therefore, preparing two Council Decisions

- 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.

- amending 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 Commission has no role in or responsibility for this option.

Legal framework: Schengen convention, SISNET Decisions (under preparation)

Governance:

Task	**Responsibility**	**Funding**
Network (installation and operation)	Council Deputy Secretary-General on behalf of Member States	Member States (jointly)
Encryption Key management	France (C.SIS) on behalf of Member States	Member States (jointly)
Installation and operation of national infrastructure	Member States	Member States (individually)
SIS 1+ Management	Council	
SIS 1+ Operational management	France (C.SIS) on behalf of Member States	Member States (jointly)

Expected timetable:

- MARCH 07: Adoption of the two Council Decisions described above.

- MARCH 07: Launch of call for tenders procedure

- AUTUMN 07: Contract award: (assuming a maximum tendering procedure timeframe of 6-9 months for a contract of that nature)

- NOVEMBER 08: Contract handover

Council budget for SISNET expenditure:

The SISNET budget is an intergovernmental budget in which all Member States participating

in SIS 1+ do contribute.

- 2007: 4 099 000 EUR (includes installations and operations for new Member States being connected to SIS 1+)
- 2006: 2 068 000 EUR
- 2005: 2 182 000 EUR

The budget has sufficient margin to ensure coverage of the real yearly costs.

The budget for 2008 has not been established officially. From the previous budgets, one can infer that for 2008, the budget would be in the order of 2 100 000 EUR, covering essentially operational costs for all SIS1+ users.

For 2009, with a new SISNET contract the prices for the SISNET services may be higher, but should not exceed 2 500 000 EUR.

4.2. 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 jointly by the Member States

The Council, in order to establish and manage the new communication infrastructure shall take into account the 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)[5] and make use of s-TESTA as a horizontal measure provided for in IDABC.

The s-TESTA framework contract states that the conclusion of the s-TESTA framework contract was the result of an inter-institutional call for tenders, launched by the Commission acting on its own behalf and on behalf of the Council, EUROPOL and the European Railway Agency. The framework contract is "applicable" to the Commission of the European Communities whereas the Council, EUROPOL, and the European Railway Agency may "join" it.

In this option, the Council concludes a specific contract under the s-TESTA framework contract for the purpose of SIS 1+ with the Member States financing this specific contract. The specific contract would be concluded by the Council on behalf of the Community, for the account of the Member States participating in SIS 1+.

Legal framework:

A decision should be adopted by the Council, which provides for the conclusion of a specific s-TESTA contract for the purpose of SIS 1+ and for the financing of this specific contract by an intergovernmental budget, and further designates the Council as the institution to conclude the contract.

[5] OJ L 1818, 18.5.2004

The legal basis of the decision would be the first sentence of the second subparagraph of Article 2(1) of the Schengen Protocol. The decision should lay down the modalities according to which it is to be implemented.

Governance:

The repartition of tasks and responsibilities would be similar to the current SISNET operation (mutatis mutandis). It would be advisable for the Council to delegate the execution of its task to a national body. The Commission has no responsibilities in this solution.

Task	**Responsibility**	**Funding**
Network installation	Council	Member States (jointly)
Network operation	Council	Member States (jointly)
Encryption Key management	Council	Member States (jointly)
SIS 1+ and SIRENE tests on the new network before switchover	C.SIS and Member States Management: Council	Member States (jointly)
Migration	C.SIS and Member States Management: Council with support of COM for network issues	Member States (jointly)
Installation and operation of national infrastructure	Member States	Member States (individually)
SIS 1+ Management	Council	
SIS 1+ Operational management	France (C.SIS) on behalf of Member States	Member States (jointly)

Expected timetable:

The legal instrument would have to be adopted by the Council as a temporary solution at the latest in December 2007, 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, on the basis of progress reports from the Deputy Council Secretary-General and from the Commission.

The preparation and adoption of the Council Decision would be similar to the SISNET decisions of Option 1.

An indicative timeframe would be

- Signature of specific s-TESTA contract: JANUARY 08
- Network deployment (47 SIS 1+ sites) (4 months): APRIL 08
- Local equipment installation (2 months): JUNE 08
- Testing of the new communication infrastructure (2 months): AUGUST 08
- Testing of SIS 1+ and SIRENE on the new communication infrastructure and switchover (2 months): OCTOBER 08

This timeframe is very tight and requires careful coordination of all Member States.

Resources and costs for the installation and operation of the SIS 1+ communication infrastructure on s-TESTA:

The installation, operation and management costs of this new network would be borne entirely by an Intergovernmental Member State budget.

The actual implementation of this solution would cause delays in the migration to SIS II, as the human and financial resources from the Member States will be diverted from the SIS II work to be concentrated on this new network installation and migration. The expected delay would be 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 November 2008 and ending end of 2009.

Costs of installation and operation of SIS 1+ per year	**Year 2008**	**Year 2009**	
Installation and testing of the s-TESTA network for SIS 1+	1.850		
Migration of the SISNET network to the new network on s- TESTA	0.720		
Network operations	2.500	2.550	
TOTAL costs *including administrative costs*	**5.888**	**2.784**	**8.672**

Costs in million Euros

4.3. 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 of the responsibility of the Commission and are funded by the general budget of the EU.

This new SIS 1+ s-TESTA communication infrastructure does not interfere with the SIS II s-TESTA communication infrastructure.

Legal framework:

The Commission needs to propose a new legal instrument, which allows the Commission to fund and manage the installation and operation of the communication infrastructure for SIS 1+.

This Commission proposal would be adopted by the Council with consultation of the European Parliament.

Governance:

This solution would give rise to a double management structure involving the Council and Commission. All decisions related to the Commission's responsibility will be taken solely by the Commission.

Task	**Responsibility**	**Funding**
Network installation	Commission	General budget of the European Union
Network operation	Commission	General budget of the European Union

Encryption Key management	Commission	General budget of the European Union
SIS 1+ and SIRENE tests on the new network before switchover	C.SIS and Member States Management: Council	Member States (jointly)
Migration	C.SIS and Member States Management: Council with support of COM for network issues	Member States (jointly)
Installation and operation of national infrastructure	Member States	Member States (individually)
SIS 1+ Management	Council	
SIS 1+ Operational management	France (C.SIS) on behalf of Member States	Member States (jointly)

Expected timetable:

The legal instrument would have to be adopted by the Council as a temporary solution at the latest in December 2007, 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, on the basis of progress reports from the Deputy Council Secretary-General and from the Commission.

Once the Council Regulation has been published, a reasonably optimistic timetable up to network switchover is the following:

- Financing decision (6 weeks): 31 JAN 08
- Signature of specific s-TESTA contract (4 weeks): 28 FEB 08
- Network deployment (47 SIS 1+ sites) (4 months): 30 JUNE 08
- Local equipment installation (2 months): 31 AUGUST 08
- Testing of the new communication infrastructure (2 months): 31 OCT 08

- Testing of SIS 1+ and SIRENE on the new communication infrastructure and switchover (2 weeks): 13 NOV 08

It is clear that the necessary installation and testing phases for such a large-scale and technically risky project (no service interruption), require more time than will actually be available to the Commission and Member States for implementing it.

The above timeframe has been constrained by reducing the test phases to a minimum with a commensurate increase in risk of service degradation and service interruptions.

Resources and costs for the installation and operation of the SIS 1+ communication infrastructure on s-TESTA:

General budget of the European Union: Network installation, operation and management

The actual implementation of this solution would cause delays in the migration to SIS II, as the human and financial resources, especially from the Member States will be diverted from the SIS II work to be concentrated on this new network installation and migration. The expected delay would be 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 November 2008 and ending end of 2009.

Costs of installation and operation of SIS 1+ per year	**Year 2008**	**Year 2009**	
Installation and testing of the s-TESTA network for SIS 1+	1.850		
Migration of the SISNET network to the new network on s- TESTA	0.720		
Network operations	2.500	2.550	
TOTAL costs *including administrative costs*	**5.888**	**2.784**	**8.672**

Costs in million Euros

Member States' joint budget:

C.SIS budget: integration of the monitoring of the s-TESTA network in C.SIS and SIS 1+ and SIRENE tests over the new Communication network. A rough estimate of these costs amounts to 500 000 EUR.

5. Impact Assessment and risk analysis

This section presents the analysis of each option against a set of impacts developed on the basis

of the objectives. One can distinguish three types of impacts:

economic impact = investments and operations costs;

technical/process-related impacts: continuity of SIS operations, interference with SIS II;

policy/legal/political impacts: legal impacts, impact on SIS governance/distribution of roles, impact on political priorities for SIS.

The needs of the SIS communication infrastructure in terms of performance and security are part of the problem background and the fulfilment of these are considered as a pre-requisite to all options. Therefore, this impact assessment will not consider the performance as criteria for evaluation and differentiation of the options.

5.1. Option 1: Status quo – the Commission does not present a new proposal

5.1.1. Economic impact

The economic impact of the status quo option on the General budget of the European Union is nil, as all costs are supported by the Member States, jointly and individually. The cost for the Member States would amount to an estimated total of 4 600 000 EUR for 2008 and 2009, covering essentially the operation costs, as the winning tender can re-use the already deployed SISNET infrastructure.

This solution is cost-effective for the Intergovernmental budget of the Member States.

5.1.2. Technical/process-related impacts

If the Deputy Secretary-General of the Council completes the new SISNET tendering procedure in good time and if there is at least one tender that fulfils the requirements, there is sufficient time to sign the contract and ensure a smooth transition between the two periods.

Moreover, the winning tender may make use of the existing SISNET installation, as the Deputy Secretary-General (for the Member States) is in possession of all rights conferred upon him by the existing SISNET contract.

The interference with SIS II is minimal.

5.1.3. Policy/legal/political impacts

The responsibilities for the SIS are taken by the Member States and by the Council, which does not modify the current legal framework, especially the Schengen convention.

This option does not modify the overriding political priority of rapid migration to SIS II.

5.2. 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 jointly by the Member States

5.2.1. Economic impact

The economic impact of the installation of a new communication infrastructure for SIS 1+ on the general budget of the European Union is nil, as all costs are supported by the Member

States, jointly and individually.

The costs for the Member States would amount to an estimated total of 8 700 000 EUR.

5.2.2. Technical/process-related impacts

The proposed timeframe for the installation and testing of the new network is extremely tight. It presupposes that the test phase can be reduced to a minimum. It further relies heavily on swift and smooth collaboration of all SIS 1+ users, as for example it is necessary that the installation is continuous during the summer break. Moreover, the migration is a highly difficult technical operation, mainly because continuity of operation of SIS 1+ must be maintained during the whole migration. The proposed timeframe will slip in case of technical flaws or delays in implementation.

Therefore, the continuity of operations of SIS 1+ after 13 November 2008 cannot be guaranteed with this solution.

This option will probably delay the migration to SIS II with respect to the current plan of at least six months, as it and will divert human and financial resources of the Member States from the preparations for the SIS 1+ to SIS II migration to be concentrated on a supplementary step namely a network migration. Indeed not all Member States have different teams for the SIS 1+ and for the SIS II, and one Member State delayed will delay all as migration to SIS II requires that all Member States be ready.

5.2.3. Policy/legal/political impacts

The responsibilities for the SIS are taken by the Member States and by the Council, which does not modify the current legal framework, especially the Schengen convention.

It is advisable that the decision that should be adopted by the Council, which provides for the conclusion of a specific s-TESTA contract for the purpose of SIS 1+ and for the financing of this specific contract by an intergovernmental budget and further designates the Council as the institution to conclude the contract, allows the Council to delegate the execution of the tasks related to the installation and operation of the communication infrastructure.

In principle the legal procedure for preparation and adoption of this decision is rather short compared to Option 3, however the Legal Service of the Council contests the legality of this option and it has therefore been ruled out by the Council. As a result this option is, in practice, difficult to pursue.

5.3. 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

5.3.1. Economic impact

The economic impact of the installation of a new communication infrastructure for SIS 1+ on the general budget of the European Union is very high, about 8 700 000 EUR. Given that this solution is temporary, the costs of the proposed action are disproportionately high with regard to the objective of this action.

Provision will need to be made for the contributions to this budget line of SIS 1+ users that do not contribute to the EU budget (Norway and Iceland) and it may be necessary to provide for reimbursement of Member States that are not connected to SIS 1+ (Cyprus, Ireland and the UK).

Given that the financial and human resources required for this action are disproportionate, the implementation of Option 3 by the Commission and the Member States will divert financial and human resources from higher priority projects such as the SIS II, the Visa Information System and the technical evolution of EURODAC.

5.3.2. Technical/process-related impacts

The proposed timeframe for the installation and testing of the new network is extremely tight. It presupposes that the test phase can be reduced to a minimum. It further relies heavily on swift and smooth collaboration of all SIS 1+ users, as for example it is necessary that the installation continuous during the summer break. Moreover, the migration is a highly difficult technical operation, mainly because continuity of operation of SIS 1+ must be maintained during the whole migration. The proposed timeframe will slip in case of technical flaws or delays in implementation.

Therefore, the continuity of operations of SIS 1+ after 13 November 2008 cannot be guaranteed with this solution.

This option will delay the migration to SIS II with respect to the current plan of at least six months, as it and will divert human and financial resources from the preparations for the SIS 1+ to SIS II migration to be concentrated on a supplementary step namely a network migration

5.3.3. Policy/legal/political impacts

The tasks and responsibilities of the Commission are in relation to the use of Community funding. The Commission may envisage delegating parts of the management of the network installation and operation, as well as the key management if this proves to be more efficient.

In this option the Commission makes use of instruments and tools (SIS, IDABC, s-TESTA infrastructure) for which the Community added-value has already been demonstrated.

The double management structure (Council/Commission) for the SIS resulting from this solution complicates decision making. In addition, the very tight timeframe involved does not give sufficient time for decisions to be taken through comitology.

It is not clear whether requirements for the SIS communication infrastructure on s-TESTA will be decided solely by the Commission. The options are:

– Commission is solely responsible: risk that the Member States do not agree with the choices made by the Commission;

– Commission and Council are responsible: the decision making process will be much longer and as a result the solution cannot be implemented in time;

– Council is solely responsible: this is in contradiction with the use of Community funding for the communication infrastructure and cannot apply.

Given that the SIS constitutes one single integrated information system, the funding and the management of the SIS communication infrastructure should not be dissociated from the system itself.

This option does not *a priori* modify the political priority of rapid migration to SIS II. However, the implementation of this solution will divert financial and human resources from the SIS II project and will have a negative impact on the migration to SIS II.

As a result, the migration to SIS II will be delayed, of probably at least 6 months, bringing us in 2009, whereas the SIS II development mandate of the Commission expires at the end of 2008. Therefore, if Option 3 is implemented the Commission will need to propose a new mandate for the migration to SIS II covering 2009.

5.4. Risk analysis

5.4.1. Tendering for the renewal of the SISNET contract fails

This risk affects the Status Quo option. The risk is low, but the political impact is high, namely that there is no network for the SIS, which if it continues for any length of time may lead to the re-establishment of internal border controls in the Schengen area.

Option 1 – status quo – presents a risk if the call for tenders is in the form of an open or restricted procedure. However, the resort to a negotiated procedure remains a fallback solution for replacing the current SISNET contract.

RISK = tendering fails	**Probability**	**Impact**	**Avoidance/ contingency**
Council renews SISNET contract	Low	High	Council replaces the current SISNET contract via a negotiated procedure.
Council installs SIS 1+ network on s-TESTA	Not applicable		
Commission installs SIS 1+ network on s-TESTA	Not applicable		

5.4.2. Delay in the adoption of the legal instrument

This risk affects Option 2 – the Council installs a new Communication infrastructure for SIS 1+ on s-TESTA and Option 3 – the Commission installs a new communication infrastructure for SIS 1+ on s-TESTA.

For Option 3, the probability of delay in the adoption of the legal instrument is medium: the timeframe for the preparation is very tight. The final decision depends on the Council after consultation of the European Parliament.

The impact of delay in the adoption of the legal instrument is very high: as long as the legal instrument is not adopted, the Commission cannot adopt the relevant financing decision and all consequent actions are delayed. Given the very tight timeframe for the technical implementation, this may imply interruption of SIS services in November 2008.

The only way to try avoiding the delay is for all parties involved in the decision making to speed up their preparatory and decision process as much as possible, in order to ensure that the decision can be adopted by the Council in December 2007, 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.

For Option 2, the probability of delay in the adoption of the legal instrument is very high given that the Council has ruled out this option on the basis of the negative advice of the Council Legal Service. The risk for this option is that the legal instrument may never be adopted.

RISK = delay in legal instrument	**Probability**	**Impact**	**Avoidance/ contingency**
Council renews SISNET contract	Not applicable		
Council installs SIS 1+ network on s-TESTA	High	High	No contingency
Commission installs SIS 1+ network on s-TESTA	Medium	High	All decision makers speed up their decision process

5.4.3. Conditional budget

This risk essentially affects Option 3 – the Commission installs a new communication infrastructure for SIS 1+ on s-TESTA. The risk is that the European Parliament sets additional conditions on the use of the General budget of the European Union for the SIS 1+ communication infrastructure, such as linking to other files (SIS II, Visa Information System), affecting the management or organisation of this expenditure. The impacts are increased complexity and delays in the implementation of solutions.

The probability of additional conditions in the budget implementation for Option 3 is medium to high, especially given the strong negative interference of this option with SIS II. Given the already very tight timeframe for implementing this option, any additional complexity or delay will necessarily have a high impact.

RISK = conditional budget	**Probability**	**Impact**	**Avoidance/ contingency**
Council renews SISNET contract	Not applicable		
Council installs SIS 1+ network on s-TESTA	Not applicable		
Commission installs SIS 1+ network on s-TESTA	Medium/high	High	No contingency

5.4.4. Negative interference with SIS II

This risk of interference with SIS II affects all options. The impact of this risk is that the start of operation of SIS II is further delayed, with major consequences on EU political priorities and significant Community investments already made in SIS II, as well as major contractual implications for the Commission.

For option 3 – the Commission installs a new s-TESTA network for SIS 1+ – the interference with SIS II is high:

- important financial and human resources would be diverted from SIS II to implement this solution;
- network migration would delay the SIS 1+ to SIS II migration, as Member States would have difficulties in running two migration projects in parallel.

A counter-measure would be to increase the human and financial resources for implementing this solution, but the acceptability of this is open to question given the very high cost of such a temporary solution and the significant investments already made in SIS II, both by the Commission and by the Member States.

For Option 2– the Council installs a new s-TESTA network for SIS 1+ – the interference with SIS II is medium to high. The interference with SIS II will affect the Member States, whereas the SIS II work of the Commission is not affected. Nevertheless the migration to SIS II requires readiness of all Member States in SIS 1+, and therefore delay in one Member State will delay the migration of all.

RISK = interference with SIS II	**Probability**	**Impact**	**Avoidance/contingency**
Council renews SISNET contract	Low	low	

Council installs SIS 1+ network on s-TESTA	High	High	No contingency
Commission installs SIS 1+ network on s-TESTA	High	High	No contingency

Appropriation of the SIS II network for SIS 1+

Another course of action which seems, on the face of it, to resolve the issues of the technical implementation of the s-TESTA network for SIS 1+, would be to re-use the communication infrastructure that has been installed and tested for SIS II, to be used for SIS 1+. This means appropriating part of or the entire SIS II network.

This solution is legally unacceptable as it would breach the Financial Regulation. The principles of budget appropriation, expenditure cycles and procurement procedures argue strongly against any scheme to use resources that were allocated and financed for a specific purpose to an end that contradicts that original purpose.

Two steps should be envisaged when implementing this solution.

Step 1: appropriation of the SIS II communication infrastructure for SIS 1+. Diversion or deviation of the Commission's legal mandate and related expenditure cycle for SIS II:

As long as the development of SIS II is being pursued, the aim and requirement to create a network for SIS II are still valid. Any new use of what has been elaborated under SIS II development would need to be justified against the still valid SIS II design. The appropriation of the SIS II network for SIS 1+ would amount to a diversion or deviation from the Commission's legal mandate and the related expenditure cycle.

Such deviation cannot be justified on the grounds that there would be a new legal instrument mandating the Commission with the establishment of a SIS 1+ network, since such an act does not cancel the mandate/commitment of the Commission concerning the development of SIS II.

Step 2: Renewal of SIS II communication infrastructure after the appropriation.

The takeover of the SIS II communication infrastructure for the SIS 1+ would halt all further use of this communication infrastructure for SIS II (testing, migration, operation) and cannot be reversed given the requirement for continuous operation of the SIS. As a result the migration to SIS II would be stalled until a new communication infrastructure for SIS II is deployed.

Therefore the Commission and the Member States will need to re-install the SIS II network after November 2008. The completion of it requires:

- A new network budget for SIS II: 7. 000.000 €
- A new development mandate for the Commission beyond 2008
- Commitment of financial and human resources from the Member States to install another communication infrastructure

This second step may be very difficult to defend in front of EU and national legislators and budgetary authorities, and may be the source of various contractual issues.

Thus, the steps that will need to be taken to implement this solution negate the absolute political priority given to SIS II, contradict the legal mandate and related expenditure cycle for SIS II, and will inevitably endanger the SIS II project. Therefore, this course of action cannot be considered as a viable option

5.4.5. Ambiguity in responsibilities and decision making

This risk of ambiguity in responsibilities and decision making essentially affects Option 3 – the Commission installs a new communication infrastructure for the SIS 1+ via a specific contract with the s-TESTA provider. The main impacts of this risk are delays in the implementation of the solution and wrong decisions (financial, legal or technical).

As pointed out in the impact assessment of Option 3, the consequence of transferring the SIS network to the s-TESTA funded by the general budget of the EU will create a double management structure involving the Council and the Commission for SIS. Therefore, the risk of ambiguity in responsibilities and decision making is high.

The contingency plan is Option 2 that the Council keeps the responsibility for the communication infrastructure and signs specific contract for SIS 1+ network on s-TESTA funded by the Member States.

Option 2, however, may also present legal difficulties with regard to the responsibilities of the Council in its execution of the tasks related to the installation and operation of the network, given that the Council acts on behalf of the Communities and not on behalf of the Member States.

RISK = ambiguity in decision making	**Probability**	**Impact**	**Avoidance/contingency**
Council renews SISNET contract	Not applicable		
Council installs SIS 1+ network on s-TESTA	low	low	

Commission installs SIS 1+ network on s-TESTA	High	High	Council signs specific contract for SIS 1+ network on s-TESTA, to be funded the Member States.

5.4.6. Delay or failure of the technical implementation

This risk of delay or failure of the technical implementation affects all options. The impact is that the solution to be implemented is delayed and possibly is not operational for 13 November 2008.

In option 1 - status quo - the probability is low in the event that the contract is signed with the current provider and medium in the event that the winning tender is different. In both cases the impact will be low given that there is sufficient time for the implementation of the solution.

In Options 2 and 3 - Installation by the Council or by the Commission of a new communication infrastructure for the SIS I via a specific contract with the s-TESTA provider - the probability of delay of the technical implementation is high and the impact is very high. Even under optimal conditions, it is doubtful whether these solutions can be implemented in time, although in Option 2 the timeframe is slightly more favourable. There is no viable contingency for this risk.

RISK = delay in technical implementation	**Probability**	**Impact**	**Avoidance/contingency**
Council renews SISNET contract	Low/medium	Low	
Council installs SIS 1+ network on s-TESTA	Medium/High	High	No contingency
Commission installs SIS 1+ network on s-TESTA	High	High	No contingency

5.1.7. Summary of risks for all options

OPTION / RISK	Status Quo – Council renews SISNET contract	Council installs SIS 1+ network on s-TESTA	Commission installs SIS 1+ network on s-TESTA
Tendering fails	Low	N/A	N/A
Delay in legal instrument	N/A	High	Medium
Conditional budget	N/A	N/A	Medium/high
Ambiguity in decision making	N/A	low	High
Interference with SIS II	Low	High	High
Delay in technical implementation	Low/medium	Medium/High	High

6. Comparing the options

OPTION / Impacts	Option 1 Status Quo – Council renews SISNET contract	Option 2 Council installs SIS 1+ network on s-TESTA	Option 3 Commission installs SIS 1+ network on s-TESTA
Cost-effectiveness	Neutral for EU budget Positive for IG budget	Neutral for EU budget Negative for IG budget	negative
Technical process and timing	positive	negative	negative
SIS policy and priorities	neutral	negative	negative
Legal framework	positive	neutral	neutral
Governance	positive	positive	negative
Risk level	low/medium	high	very high
Global appreciation	**Very Positive**	**Negative**	**Very Negative**

Status Quo (Option 1) is the preferred solution in all aspects. 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 tender, in the form of an open, restricted or negotiated procedure.

This solution is a proven, cost-effective solution with a clear legal framework and a clear governance structure. The risks associated to this solution are low.

In **Option 2** the Council installs, operates and manages a new communication infrastructure for SIS 1+ via a specific contract under the s-TESTA framework contract for the purpose of SIS 1+ with the Member States jointly financing this specific contract with an intergovernmental budget. The specific contract would be concluded by the Council on behalf of the Community but for the account of the Member States participating in SIS 1+. The Commission has no responsibilities in this solution and the impact on the general budget of the European Union is nil.

This solution presents risks in terms of delay in the technical implementation, which are similar to the technical risks in Option 3.

Moreover, there is a very high risk that the legal instrument that is needed for Option 2 may never be adopted, given that the Legal Service of the Council contests the legality of this option, and that the Council has thereby ruled it out. As a result this option is, in practice, difficult to pursue.

Option 3 - Installation by the Commission of 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 presents very high risks in terms of delays on the legal and technical front and in terms of ambiguity of decision making.

This option also has a negative impact on the migration to SIS II. Its implementation will divert human and financial resources from the SIS II project in the Commission and in the Member States, and will delay the start of SIS II, thereby contradicting the absolute political priority given to SIS II and disregarding the already huge human and financial investment in SIS II. The resulting delay for migration to SIS II may amount to at least 6 months, and as a result the Commission will have to propose a new mandate for the migration to SIS II covering 2009.

Moreover, the cost of the solution for the general budget of the European Union is disproportionate with respect to the objectives.

The very high risks entailed in Option 3 make failure to deliver highly probable, which would be very damaging for all parties involved.

6.1. Recommendation

Although Option 1 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 recognises that it is necessary to have a fallback solution. Indeed, the Schengen area of free movement without border controls is dependent on the guaranteed continuous and secure operation of a communications network for the Schengen Information System and related SIRENE exchange. It would 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. Their prolonged unavailability, which would arise were no communications network available, would result in the reintroduction of internal border controls.

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 Option 3, given that Option 2 has been ruled out by the Council and will therefore be very difficult to pursue.

The recommendation is that the Commission undertakes all necessary preparations for Option 3, even if the impact assessment is not favourable, but that the implementation of the solution proposed in Option 3 is only triggered by the failure of Option 1, and is conditional on the prior exhaustion of all possible means to prolong the SISNET contract.

7. Detailed cost analysis of Option 3: the Commission installs a new SIS 1+ communication infrastructure on s-TESTA

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 November 2008 and ending end of 2009.

The table below shows a detailed repartition of costs over 2008 and 2009 with regard to the different actions needed to complete the objective. Note however that in terms of budget, the commitment will have to be done in 2008 for the whole action.

		Type of output	2008	2009
		Total cost	Total cost	Total cost
OPERATIONAL OBJECTIVE: ***The Commission funds and manages the communication infrastructure for SIS 1+ as a temporary solution***				
Action 1: Installation and testing of the s-TESTA 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 s-TESTA	Network migration	**0.520**		**0.520**
	External expertise and quality assurance	**0.200**		**0.200**
Action 3 SIS 1+ s-TESTA Network operations	Network costs	**2.450**	**2.450**	**4.900**
	External monitoring and quality assurance	**0.050**	**0.100**	**0.150**
TOTAL COST		**5.070**	**2.550**	**7.620**

Costs in million EUR

Commission human resources

	2008	2009	2010	2011	2012	2013
TOTAL person year	5	2				

The tasks that will need to be performed are project management; technical management; coordination of Member States; evaluation and reporting; public procurement, contract and financial management.

Part of the budget may be attributed to Member States or national public sector bodies, either by sub-delegation or as subvention, in order to finance the operations of the network.

The economic impact of the installation of a new communication infrastructure for SIS 1+ on the general budget of the European Union is very high, about 8 500 000 EUR. Given that this solution is temporary, the costs of the proposed action are disproportionately high with regard to the objective of this action.

The re-use of some existing SISNET devices may be investigated but will not have a significant impact on the costs.

It is clear that Option 1- Status Quo - is much more cost-effective as it continues to use the infrastructure that has already been installed by the current SISNET contractor. Therefore, the costs are mostly limited to the operational costs.

8. Evaluation and monitoring

8.1.1. Monitoring

The Commission shall ensure that systems are in place to monitor the functioning of the Communication Infrastructure against objectives relating to output, cost-effectiveness, security and quality of service.

The 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.

Progress monitoring indicators:

- Action 1: Installation and testing of the s-TESTA network for SIS 1+
  - Indicator: network ready for operations by October 2008
- Action 2: Migration of the SIS 1+ users to the new network on s-TESTA
- Action 3: SIS 1+ s-TESTA Network operations
  - Indicator: network operational with all SIS 1+ Member States by November 2008

8.1.2. Evaluation

The Commission will produce an overall evaluation of the functioning of the SIS 1+ s-TESTA 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 services necessary for the SIS 1+.