COMMISSION OF THE EUROPEAN COMMUNITIES

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COMMISSION STAFF WORKING DOCUMENT

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

SUMMARY OF THE IMPACT ASSESSMENT

{COM(2007) 306 final}
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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

Executive Summary

1. Defining the problem

The SIS 1+ and SIRENE systems operate at present on the SISNET communications network. The current contract for this SISNET network services is managed on behalf of the Member States by the Deputy Secretary-General of the Council and is funded jointly by the Member States. The Commission has been informed that the SISNET contract is due to expire in 13 November 2008.

On the other hand SIS II, developed as a replacement for SIS 1+, is scheduled to become operational for the Member States using the SIS 1+ on 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). 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.

In February 2007, the Council decided that the Deputy Secretary-General of the Council should again act on behalf of the relevant Member States to issue a call for tender to renew the SISNET contract in order to ensure that the service will be available after November 2008. However, given the Council's analysis of the risks inherent with any procurement process, the Council has requested the Commission to make the necessary legal proposals in order to have an alternative network solution available for the Schengen systems.

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

2. The objectives

Given the problem context, the general objective of the Commission proposal is to provide a temporary, fall-back solution for the continuity of operations of the SIS when the current SISNET contract expires and until the migration to SIS II is completed, in the event that the Council tendering procedure has not resulted in the conclusion of any agreement or contract for the provision of the services required for the SIS environment.

This Commission proposal should provide a legal framework for the fall-back solution to ensure its funding and management, especially in case it is to be funded by the general budget of the European Union and to be managed by the Commission, and should further define the responsibilities of the Commission, the Council, the Member States and any other party acting on their behalf in terms of costs and management of the installation and the operation of the fall-back solution.

Moreover, given the crucial nature of the SIS for the Schengen area without internal border controls, the fall-back solution should be implemented and be operational at the latest on 13

November 2008, date of expiry of the current SISNET contract.

Finally, the fall-back solution should not modify political priorities for SIS II and should therefore minimise interference with SIS II to avoid delaying the migration to SIS II or divert resources from the SIS II project

3. The policy options

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

Option 2: The Council installs, operates and manages a new communication infrastructure for SIS 1+ via a specific contract with the s-TESTA provider, to be funded by the Member States jointly. 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+.

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. To install a new communication infrastructure for SIS 1+, the Commission concludes a specific contract under the s-TESTA framework contract that provides a secured trans-European communication platform as a horizontal measure in IDABC (interoperable delivery of pan-European eGovernment services to public administrations, businesses and citizens). As a result, the installation, operation and management of the communication infrastructure are the responsibility of the Commission and are funded by the general budget of the EU. This new s-TESTA communication infrastructure for SIS 1+ would not interfere with the s-TESTA communication infrastructure for SIS II.

4. Impact assessment and risk analysis

Status Quo (Option 1) is the preferred solution in all respects. This solution is a proven, cost-effective solution with a clear legal framework and a clear governance structure. The risk level of this solution is 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 using an intergovernmental budget. 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 risks of Option 3 below.

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.

5. 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. It would indeed be very difficult to maintain an area without internal border controls for any length of time without the operation of the SIS and related SIRENE exchange. 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.