

Area of freedom, security and justice: operational management of SIS II and VIS

2009/0090(CNS) - 24/06/2009 - Legislative proposal

PURPOSE: to confer upon the future Agency for the operational management of large-scale IT systems in the area of freedom, security and justice, tasks regarding the operational management of SIS II and VIS in application of Title VI of the EU Treaty.

PROPOSED ACT: Council Decision.

BACKGROUND: in order to ensure the free movement of persons, the Schengen Convention (1985) established a Schengen Information System (SIS) designed to compensate for the abolition of internal border controls between the participating countries by reinforcing security at the Union's external borders. This system, which was also established to maintain public policy and public security including national security, has since been greatly improved and extended, leading to the second-generation Schengen Information System (SIS II), established by [Council Decision 2007/533/JHA](#) and [Regulation \(EC\) No 1987/2006](#) of the European Parliament and of the Council.

At the same time, the Visa Information System (VIS) was established by [Regulation \(EC\) No 767/2008](#) of the European Parliament and of the Council enabling consulates and other competent authorities of the Member States to exchange visa information for the purposes of facilitating the visa application procedure, preventing 'visa shopping' and facilitating checks at external border crossing points and within the Member States, contributing to the prevention of threats to the internal security of any of the Member States. [Council Decision 2008/633/JHA](#) complements the VIS Regulation as regards access for consultation of VIS by designated authorities of Member States and by Europol for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences.

In accordance with the relevant provisions of that Decision and the VIS Regulation, the Commission is entrusted with the operational management of Central SIS II and VIS as well as parts of the communication infrastructure during the transitional period. In joint statements accompanying the SIS II and VIS legal instruments, the Council and the European Parliament invited the Commission, following an Impact Assessment containing a substantive analysis of alternatives, from the financial, operational and organisational perspective, to present the necessary legislative proposals **entrusting an agency with the long term operational management of SIS II and VIS**. After the analysis of different options, a new Regulatory Agency was found to be the most feasible alternative for carrying out the tasks of a "Management Authority" for these systems in the long term. That is why the Commission is now proposing the current legal framework, including this Decision and a [Regulation establishing the Agency](#) (see below).

IMPACT ASSESSMENT: the Commission carried out an impact assessment. Following a prescreening process, five possible options to achieve the objective of long-term operational management of SIS II, VIS and EURODAC were retained and further analysed:

- **Option 1: baseline:** the operational management solution for SIS II and VIS (namely, entrusting management tasks to Member States' authorities). Currently, the Commission manages EURODAC and this solution would also be maintained;
- **Option 2: Baseline+:** the Commission would entrust the operational management tasks related to SIS II, VIS and EURODAC to Member States' authorities;

- **Option 3: a new Regulatory Agency:** a new Regulatory Agency would assume responsibility for the long-term operational management of SIS II, VIS and EURODAC;
- **Option 4: FRONTEX:** this Agency would manage the three systems, which would entail changes to both its basic act and its operational management structure;
- **Option 5: EUROPOL:** EUROPOL would manage SIS II, whereas the Commission would manage VIS and EURODAC. This option was considered while negotiations on the conversion of the current Europol Convention into a Community act were still ongoing ([CNS/2006/0310](#)).

As a result of a comparative analysis, the new Regulatory Agency option (**option 3**), which aims to create a joint management structure for SIS II, VIS and EURODAC, scored highest.

CONTENT: in the framework of the establishment of the future Agency for the operational management of large-scale IT systems in the area of freedom, security and justice created by the [proposal for a Regulation](#) of the European Parliament and of the Council, this proposal complements the required legal framework to confer on the Agency tasks regarding the operational management of SIS II and VIS in application of Title VI of the EU Treaty, namely the tasks assigned to the Management Authority by Council Decisions 2007/533/JHA and 2008/633/JHA.

Legal particularity of the proposed plan: this legislative package contains two distinct proposals:

- a [proposal for a Regulation](#) covering the first pillar scope of SIS II, VIS and EURODAC; and
- this proposal for a Council Decision entrusting the Agency created by the Regulation with tasks related to the operation management of the SIS II and VIS systems in application of Title IV of the EC Treaty, and under the third pillar.

This established method for a legislative package of this nature is also applied in the entire legal instrument related to the SIS, in accordance with the relevant provisions of the Treaty.

Status of Europol and Eurojust within the governance structure of the Agency: in relation to the governance structured provided for the Agency, members of Europol and Eurojust should have observer status at the meetings of the Management Board when a question to SIS II in relation to the application of Decision 2007/533/JHA or Decision 2008/633/JHA is on the agenda.

Rules on security and data protection: entrusting an Agency with the operational management of large-scale IT systems in the area of freedom, security and justice does not affect the specific rules governing the purpose, access rights, security measures and further data protection requirements applicable to those systems.

Territorial provisions: the legal frameworks of SIS II and VIS are characterised by **variable geometry**. To the extent that it applies to VIS, the proposal shall not apply to Ireland or the United Kingdom, in accordance with the relevant provisions of the Treaty and other relevant legal provisions. However, the legal framework shall apply to Ireland and the United Kingdom insofar as its provisions relate to SIS II, in which the two countries take part. Moreover, a number of third countries, namely Iceland, Norway, Switzerland and Liechtenstein are or will be associated with the implementation, application and development of the Schengen acquis, and therefore participate both in SIS II and VIS.

BUDGETARY IMPLICATIONS: the proposal does not impact on the financial framework for 2007/2013. The financial statement annexed to the proposal for a Regulation establishing the Agency is based on the assumption that it will be adopted in 2010 in order for the Agency to be legally established in 2011 and become a fully fledged Agency in **2012**.

Overall, the preparatory and start-up phase of the Agency between 2010 and 2013 is estimated at **EUR 113 million**, which will be covered by the 2007/2013 financial framework.

