Schengen: migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II)

2009/0137(CNS) - 29/09/2009 - Legislative proposal

PURPOSE: to amend Decision 2008/839/JHA on migration from the Schengen Information System

(SIS 1+) to the second generation Schengen Information System (SIS II).

PROPOSED ACT: Council Decision.

BACKGROUND: the Schengen Information System (SIS) was established in 1985 between the governments of the States of the Benelux Economic Union, Germany and France on the gradual abolition of checks at their common borders (the Schengen Convention), and its development, SIS 1+, constitute an essential tool for the application of the provisions of the Schengen acquis as integrated into the framework of the European Union.

The development of the second generation of SIS (SIS II) has been entrusted to the Commission pursuant to Council Regulation (EC) No 2424/2001 and Council Decision 2001/886/JHA

on the development of the second generation Schengen Information System (SIS II). SIS II will replace SIS 1+. SIS II development takes into account the latest evolutions in the field of information technology and allows the introduction of added functionalities.

Provisions on the establishment, operation and use of SIS II are laid down in Regulation (EC) No. 1987 /2006 of the European Parliament and of the Council and Council Decision 2007/533/JHA. These instruments foresee that they will apply to the Member States participating in SIS 1+ only as of dates to be fixed by the Council, acting by the unanimity of its Members representing the governments of the Member States participating in SIS 1+. They will then replace the provisions of the Schengen *acquis* governing SIS 1+, in particular the relevant provisions in the Schengen Convention.

Before this can happen, **the users of the SIS 1+ will have to migrate to the SIS II environment**. A legal framework for the migration from SIS 1+ to the SIS II environment was therefore designed. In order to reduce the risks of service disruption during migration an interim technical architecture for the operations of SIS 1+ will allow SIS 1+ and certain technical parts of the architecture of SIS II to operate in parallel for a transitional period.

The time-frame of the current migration instruments (CNS/2008/0077 and CNS/2008/0078), and in particular their date of expiry which is currently set to be **30 June 2010** at the latest, **appears no longer realistic**. This proposal therefore aims at preventing expiry of Decision 2008/839/JHA before migration takes place.

CONTENT: the specific objectives of the present proposal are to:

- prevent expiry of Regulation (EC) No 1104/2008 before migration from SIS 1+ to SIS II;
- ensure legal flexibility for an alternative technical scenario to attain SIS II functionalities based on SIS 1+, in case a switchover to this scenario should take place;

- render management of SIS II development and migration, in particular regarding coordination of Commission and Member State projects, as efficient as possible. In order to achieve the latter objective, a Global Programme Management Board (the "**GPMB**") is being set up as a group of experts for enhanced management and coordination of the global SIS II programme and related activities as a whole, as well as consistency between the central and national systems' developments. The GPMB shall be composed of a maximum of 10 experts. The administrative costs and travel expenses arising from the activities of the GPMB shall be borne by the general budget of the European Union. Transparency of the SIS II development process for the European Parliament is maintained through the existing reporting obligation.

Legal specification: the legislative package consists of two distinct proposals:

- this Decision;
- a proposal for a parallel Regulation (first pillar).

Territorial application: due to reasons of a legal nature laid down in the Treaty, the United Kingdom and Ireland will be associated in the implementation and the application of the present text (application of the "variable geometry" system). The association of these Member States will be limited to certain areas set out in the Schengen acquis to which they already participate. Lastly, Norway, Iceland, Switzerland and Liechtenstein will be associated with the implementation of the present text in accordance with the bilateral agreements concluded with the EU on the Schengen acquis.

IMPACT ASSESSMENT: non applicable.

BUDGETARY IMPLICATIONS: the costs of setting up, operating and maintaining Central SIS II and the communication infrastructure are to be borne by the general budget of the European Union. The costs of setting up, operating and maintaining each N.SIS II shall be borne by the Member State concerned.

Under Article 15 of Regulation (EC) No 1104/2008 and Council Decision 2008/839/JHA as they have been phrased heretofore, additional costs for migration, testing, maintenance and development measures at the central level (Central SIS II and Communication Infrastructure) had been allocated to the general budget of the European Union as well. Testing, migration, maintenance and development costs for the national systems, including N.SIS II, have continued to be borne by each Member State concerned.

The present proposal does not modify this basic structure. It will, however, extend the existing legal basis to cover the **post-30 June 2010 period until migration**.

In addition, the cost arising from the meetings of the GPMB which is being set up by this proposal, including expenses for members and experts attending, would be borne by the general budget of the European Union. The necessary appropriations to cover the cost arising from the meetings of the GPMB will come from the appropriations currently foreseen in the Financial Programming 2010-2013 for the Schengen Information System (SIS II).

The Commission has prepared a financial statement annexed to this proposal which provides a budget of **EUR 12.850 million** in operational expenditure until 2012 (only costs caused by prolongation of the development and migration phase beyond 30 June 2010, will be taken into account. This excludes costs to be committed until 30 June 2010).