

# Schengen area: migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II) - without the participation of United Kingdom and Ireland. Recast

2012/0033B(NLE) - 30/04/2012 - Initial legislative proposal

PURPOSE: further to the entry into force of the Lisbon Treaty, to merge the migration legal framework into a single legal act which was previously split between two legislative instruments according to the pillar structure of the previous Treaties ([Regulation \(EC\) No 1104/2008](#) and [Council Decision 2008/839/JHA](#) on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II)) and to include in the legal framework a few further elements of flexibility.

PROPOSED ACT: Council Regulation.

BACKGROUND: the Schengen Information System (SIS) set up pursuant to the provisions of Title IV of the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June, 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 on the establishment, operation and use of the second generation Schengen Information System (SIS II);
- [Council Decision 2007/533/JHA](#) on the establishment, operation and use of the second generation Schengen Information System (SIS II).

These legal acts 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 take place, 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 was therefore designed in [Council Regulation \(EC\) No 1104/2008](#) and [Council Decision 2008/839/JHA](#) of on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II) (together "migration instruments").

The objective of this proposal is to **recast in a single legal instrument Regulation (EC) No 1104/2008 and Council Decision 2008/839/JHA**, by providing for a revised legal regime for the migration from SIS

1+ to SIS II which enables the Member States to use SIS II with all its functionalities from the moment of the switchover from SIS 1+ to SIS II.

**IMPACT ASSESSMENT:** no impact assessment is required for this proposal as it is the continuation of a technical project without clearly identifiable economic, social and environmental impacts.

**LEGAL BASIS:** Article 74 of the Treaty on the Functioning of the European Union (TFEU).

**CONTENT:** the proposal recasts Regulation (EC) No 1104/2008 and Decision 2008/839/JHA into a single legal act as a regulation.

This proposal contains entirely or partially new provisions on the following:

**(1) Recast:** the most appropriate mean to reflect the principles of better regulation is to apply to the recast legislative technique as (a) a number of substantive amendments are to be made to the migrations instruments and (b) the pillar structure, which led to the existence of two legal instruments with an essentially identical content, is no longer relevant following the entry into force of the Treaty of Lisbon. Under the Treaty on the Functioning of the European Union, it would not be possible to modify a former third pillar instrument. Therefore, the only one correct legal technique is to incorporate Regulation (EC) No 1104/2008 and Decision 2008/839/JHA in a **single legal act under the same legal base**.

This proposal indicates clearly the new and the adapted provisions. It contains a repeal clause as well as a correlation table.

**(2) Legal regimes for the migration:** this proposal applies a differentiated legal approach for the two phases of the migration from SIS 1+ to SIS II. The migration consists of two steps:

- **a data loading of N.SIS II:** the phase of data loading of N.SIS II continues to be governed by the Schengen Convention ;
- **a switchover from N.SIS to N.SIS II:** this differentiated approach enables Member States to use SIS II with all its functionalities from the moment of the switchover from SIS 1+ to SIS II by providing for the application of Regulation (EC) No 1987/2006 and Decision 2007/533/JHA.

In accordance with Article 12 of the migration instruments as worded until now, the migration from SIS 1+ into SIS II is to take place pursuant to Title IV of the Schengen Convention. This rule, however, prevents Member States from using SIS II with its full functionalities from the moment that a Member State successfully switches from SIS 1+ into SIS II. As a consequence, the Member States have to disable all SIS II features that are not in SIS 1+ until the Council decides on the date of application of Regulation (EC) No 1987/2006 and Decision 2007/533/JHA.

On 23 February 2011, the Member States in the SIS-VIS Committee invited the Commission to initiate without delay the process of adapting the migration legal framework to reflect the technical migration approach outlined in the Migration Plan. The Migration Plan describes that, within one shot switchover period, all Member States will perform the individual switchovers of their national application from SIS I into SIS II one after the other. It is desirable that a Member State that has switched over should be able to use SIS II fully as from the time of the switchover and it does not have to wait until other Member States have also switched over. Therefore, it is necessary to apply Regulation (EC) No 1987/2006 and Decision 2007/533/JHA from the time of the initiation of the switchover by the first Member State. The period of migration should be kept as short as possible. The application of Regulation (EC) No 1987/2006 and Decision 2007/533/JHA does not prevent Member States which have not switched over yet or which have a fallback during the intensive monitoring period from using SIS II in functionalities limited to SIS 1+.

The proposal not only enables Member States to take full advantage of all the advanced applications available by SIS II but also represents considerable savings for the Member States.

**(3) Interim migration architecture:** the application of Regulation (EC) No 1987/2006 and Decision 2007/533/JHA will replace Article 64 and Articles 92 to 119 of the Schengen Convention, with the exception of Article 102a thereof, as it is laid down in Article 52 paragraph 1 and Article 68 paragraph 1 respectively of the said legal acts. As article 92a of the Schengen Convention contains detailed rules on the interim migration architecture, **it is desirable to keep it in force during the entire duration of the migration process.**

The interim migration architecture for the operations of SIS 1+ allows that SIS 1+ and certain technical parts of the architecture of SIS II, which need to be in use to make possible an incremental migration from one system to another, **operate in parallel during a limited transitional period.** It is therefore necessary to incorporate the relevant provisions of Article 92a of the Schengen Convention into the migration legal framework.

**Timetable and the expiry date:** given the complexity of the migration process which, despite extensive preparation by all stakeholders, entails significant technical risks, this proposal provides for the necessary flexibility to respond to unexpected difficulties that the central system or one or several national systems could face with during the migration process; therefore no longer contains an expiry date.

It should be noted that in order to ensure the continuity of the preparations and the timely execution of the migration, this proposal should be adopted at the **latest in the second quarter of 2012.**

**BUDGETARY IMPLICATIONS:** the expenditure involved in the development of the SIS II is to be charged to the general budget of the Union. However, a new category of costs was introduced, namely those related to the migration from SIS 1 to SIS II. With regard to the migration process, the evolution in requirements and the advances made in the completion of the project led to a redefinition of the migration architecture, of the migration calendar and of the testing requirements. An important part of the activities that would now be required at Member State level for the migration to SIS II were not anticipated at the time when Regulation (EC) No 1104/2008 and Council Decision 2008/839/JHA were adopted or at the time when the financial package and the multiannual programmes under the EBF were drawn up.

It is therefore necessary to partly realign the cost distribution principles insofar as the migration from SIS 1 to SIS II is concerned.

As the setting up of the national systems is the primary obligation of Member States, the **Union contribution remains optional** and this proposal does not intend to create any obligation for the Union. It is also necessary to determine the ceiling of the Union contribution in relation to each Member State. **This proposal does not require any additional appropriations** as the appropriations still available in 2011 will be used to cover the difference between the total costs in 2012 and the appropriations entered in SIS II budget line for 2012.

The costs arising from activities at SIS 1+ level, including supplementary activities of France, acting on behalf of the Member States participating in SIS 1+, shall continue to be borne in line with Article 119 of the Schengen Convention. This article provides that the costs of installing and operating the technical support function of SIS 1+, as referred to in Article 92 (3) of the Convention, including the cost of lines connecting the national sections of the Schengen Information System to the technical support function, are borne jointly by the Member States, while the costs of installing and operating the national section of the Schengen Information System are borne by each Member State individually.

More specifically, for the period that ends the current financial framework (2012-2013), the financial statement envisages an overall budget of **EUR 35.24 million** in operational appropriations only. The total (including administrative appropriations and human resources) provides a total of EUR 40.658 million by 2013.