

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) - 20/12/2012 - Final act

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 some additional flexibility to avoid unnecessary costs relating to the migration process.

LEGISLATIVE ACT: Council Regulation (EU) No 1273/2012 on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II) (recast).

BACKGROUND: the Schengen Information System (SIS) set up pursuant to the provisions of Title IV of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, and the further development, thereof, SIS 1+, constitute essential tools for the application of the provisions of the Schengen acquis as integrated into the framework of the European Union.

With rapid technological development and the geographical extension of the SIS, a second generation SIS or SIS II became necessary. The establishment, operation and use of SIS II are laid down in the following two key texts:

- [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).

The migration from the current SIS1+ to SIS II is itself governed by two legal instruments: [Council Regulation \(EC\) No 1104/2008](#) and [Decision 2008/839/JHA](#), in line, from a legal point of view, with pillar structure of the previous TEC and TEU Treaties.

This migration is still under way.

Furthermore, the Regulation contains a series of new provisions designed to take account of the complex migration programme under way.

CONTENT: this Regulation seeks to **recast the two legislative acts into a single legal instrument**, in accordance with the Lisbon Treaty, the previous texts some of which have become obsolete and could not be amended in their previous form.

In addition to the recast of these texts, this Regulation also seeks to integrate changes in form as well as content in order to take into account the complex migration process that is under way:

1. Switchover to the new system: the Migration Plan envisages that within the switchover period all Member States, consecutively, will perform their individual switchover of the national application from SIS 1+ into SIS II. It is desirable from a technical point of view that Member States that have switched over to be able to use the full scope of SIS II from the time of the switchover and not have to wait until other Member States have also switched over, i.e. **once the first Member State has launched the switchover.**

For reasons of legal certainty, the period of switchover **should be kept as short as possible, and should not exceed 12 hours.**

2. Interim migration architecture: in order to better manage the potential difficulties brought about by the migration from SIS 1+ to SIS II, an interim migration architecture for SIS is to be established and tested. The interim migration architecture for the operations of SIS 1+ allows SIS 1+ and certain technical parts of the SIS II architecture to operate **in parallel during a limited transitional period.** It is planned to maintain the application of certain provisions of Title IV of the Schengen Convention on a temporary basis by incorporating those provisions into this Regulation as they provide the legal framework for the converter and the **interim migration architecture during the migration.**

3. Financing and costs arising from migration: with regard to the migration process from SIS 1+ to SIS II, the evolution in requirements and the advances made in the completion of the SIS II 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 Decision 2008/839/JHA were adopted or at the time when the financial package and the multiannual programmes under the External Borders Fund (EBF) were drawn up. It is, therefore, necessary to partly realign the cost distribution principles for the migration from SIS 1+ to SIS II. Certain national activities related to that migration, in particular in connection with the participation of Member States in migration-related testing activities could be **co-financed from the SIS II budget line of the general budget of the Union.** That possibility should cover specific and well-defined activities beyond, and not to coincide with, other SIS II related actions which would continue to be supported under the EBF. The financial assistance thus provided under this Regulation should be complementary to that provided by the EBF.

4. Timetable and expiry date: the migration from SIS 1+ to SIS II is a complex process which, despite extensive preparation by all stakeholders, entails significant technical risks. The legal framework provides for the necessary flexibility to respond to unexpected difficulties which the central system or one or several national systems could face during the migration process. Therefore, while for reasons of legal certainty the switchover phase and the intensive monitoring period during which the interim migration architecture continues to exist should be as short as possible, provision is made for the Council, in case of technical difficulties, to fix the final date for the termination of migration in accordance with Article 55(2) of Regulation (EC) No 1987/2006 and Article 71(2) of Decision 2007/533/JHA.

Territorial provisions: it should be noted that for reasons of legal clarity, two parallel Regulations have been adopted, of which one is applicable in the United Kingdom and Ireland ([2012/0033A\(NLE\)](#)), while the **second one is not** (this Regulation).

ENTRY INTO FORCE: the Regulation enters into force on 30.12.2012. It shall expire upon the termination of the migration. If that date cannot be complied with due to outstanding technical difficulties related to the migration process, it shall expire on a date to be fixed by the Council, acting in accordance with Article 55(2) of Regulation (EC) No 1987/2006.