

Second generation Schengen Information System (SIS II): establishment, operation and use

2005/0103(CNS) - 31/05/2005 - Legislative proposal

PURPOSE: To establish a legal framework for governing SIS II and to lay down specific provisions for the processing of data supporting police and judicial co-operation in criminal matters.

PROPOSED ACT : Council Decision

CONTENT: In December 2001 the Council recognised the need to upgrade, modernise and re-organise the existing Schengen Information System (SIS), which acts as a common information system allowing the competent authorities in the Member States to exchange information on persons suspected of criminal activities. Specifically, SIS allows Member States, through an automatic query procedure, to obtain information on a suspected person when an alert has been sent out. Information obtained can be used for police and judicial co-operation in criminal matters as well as for controls on persons both at the external borders of the EU or within a nation state. It can also be used for issuing visas and residence permits. SIS acts as an indispensable component of Schengen by offering those participating in the Schengen Agreement a high level of security. With the enlargement of the EU in 2004 the Council decided to assign the technical development of the second generation SIS to the Commission. The necessary financial resources from the EU's budget for the realisation of this project were allocated accordingly (see 2001/0818 CNS).

In order to enact the legal framework governing SIS II the Commission has presented two legal instruments (a Regulation and a Decision) that will work in tandem with each other. The Regulation (2005/0106 COD) is based on Title IV of the EU Treaty, whereas the Decision is based on Title VI of the EU Treaty. A third proposal is also being presented based on Title V of the EU Treaty relating to Transport, (2005/0104 COD).

The provisions being proposed in the Decision are based largely on the current SIS system, the requirements of which are contained in a 1990 Convention implementing the Schengen Agreement. The differences between the Regulation and the Decision can be explained as follows. The Regulation will focus on the processing of data linked to the *movement of persons*, subject or part of the Schengen *acquis*.

The Decision, on the other hand, will focus on the processing of data *supporting police and judicial co-operation in criminal matters*.

Once approved, this Decision will repeal Council Decision 2004/201/JHA on procedures for amending the SIRENE manual, as well as replacing Article 92-119 of the Schengen Convention. The Commission has chosen to present this as a Decision given that an act is needed to apply common rules relating to the processing of data in the system. One of the main objectives of the proposal is to facilitate co-operation between the judicial authorities of the Member States in relation to criminal proceedings and the enforcement of criminal decisions. The proposal also intends to facilitate extradition and surrender between the Member States.

As such the specific objectives of the proposed Decision are as follows:

- To provide and process data needed for the effective implementation of the European Arrest Warrant. Data on the EAW will thus be stored centrally on the SIS II system thereby improving upon the current situation where information is exchanged on a bilateral basis only.

- To offer greater protection to individuals, subject to their consent, in cases where their identity has been abused. Under this provision the Decision will allow for the processing of biometrics that will result in more accurate identifications and improved quality of the personal data entered in the system.
- To offer a more consistent and homogenous application of the data protection rules provided for in Regulation 45/2001 by entrusting the European Data Protection Supervisor with the monitoring of personal data connected to the use of the SIS II. The approach being proposed allows for just one body being responsible for all of the Commission's data processing activities - under both the first and the third pillar.
- Transfer of personal data to a third party or country subject to the appropriate legal instruments. This possibility will be an exception to the general rule.
- The current inter-governmental nature of the SIS provisions will be brought in to the classic framework of European law instruments. In this way the EU institutions will be associated with the adoption and implementation of these new instruments thus reinforcing the legal value of the rules governing the SIS.
- The Commission will be entrusted with the operational management of the Central Part of SIS II.

The proposal is being presented in compliance with relevant Decisions allowing the United Kingdom and Ireland to take part in some of the provisions of the Schengen *acquis*. As such they will be participating in the provisions of the Decision, as will Norway and Iceland. As far as the new Member States are concerned they will be applying the proposed Decision pursuant to a Council decision in conformity with this provision.

Concerning budgetary implications, it was agreed in 2001 that the Commission should be responsible for the development of the second generation SIS. The finances of this exercise have been charged to the budget of the European Union. The present proposal establishes that the cost incurred for the operation of SIS II shall continue to be covered by the EU's budget. The biggest expenditure will be made during the development phase (design, construction and testing of SIS II). The operational phase, which will commence in 2007, constitutes a long-term budgetary commitment that will need to be examined in light of the new financial perspective. The Commission points out that if it is to be responsible for the operational management of SIS II for a transitional period, then adequate human resources will need to be allocated. For the mid-to long term, the Commission will assess the different externalisation options, taking into account the synergy effects resulting from the operation of several other large scale IT systems such as the Visa Information System (VIS).

FINANCIAL IMPLICATIONS:

The present financial statement covers the expenditure necessary for operating SIS II as from 2007.

- Budget lines and headings: 18 08 02: Schengen Information System, second generation (SIS II)
- Overall figures: For Part B: EUR 132 Million for commitments until 2013. The costs foreseen include the following elements: The upkeep and operating costs of two premises, the updating of computer equipment and consumables, system maintenance, stationary, furniture and work equipment, direct access to point rental of the network, external support for maintaining the IT management systems, the development and operation of a search engine based on biometric identifies, the cost of external human resources including 21 security agents and 21 data input operators.
- Period of application: From 2007 to 2013 (for this statement). Undetermined duration, after 2013.

- Overall financial impact of human resources and other administrative expenditure: EUR 23 807 million.
This will include 23 permanent posts from levels A, B and C.

Lastly, a total contribution from Iceland and Norway totaling 2.128% of the total cost is foreseen.