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

2005/0106(COD) - 31/05/2005 - Legislative proposal

PURPOSE: To establish a legal framework for governing the SIS II and to lay down specific provisions for supporting the implementation of policies linked to the movement of persons which are part of the Schengen *acquis* within the context of visas and external borders.

PROPOSED ACT : Regulation of the European Parliament and of the Council

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 and 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 is based on Title IV of the EU Treaty, whereas the Decision (2005/0103 CNS) 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 Regulation 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 to 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*. The Commission is of the opinion that a Regulation is warranted given that there will be a need to apply uniform and directly applicable rules, particularly as regards access to the data available on the SIS II system. Such an approach also has the advantage that by their very nature Member States will not be required to transpose the provisions into national law. Finally, when agreed upon, the proposed Regulation will repeal Regulation 378/2004 on procedures for amending the SIRENE manual. One additional, significant, revision is the incorporation of the Regulation into the framework of EU law. Under the current SIS system, provisions are adopted in an inter-governmental framework. Since they do not take the form of classic EU instruments this could give rise to legal ambiguity. Further, when provisions are being adopted for the current SIS there is little or no input from the other EU institutions, in particular from the European Parliament. The new proposals will rectify this situation.

The Regulation will align the SIS legal framework with EU law and enlarge the use of the SIS II in the following manner:

- Current rules governing alerts issued to third country national for the purpose of refusing entry have been revised to allow for greater harmonisation of when, where and how alerts can be issued under SIS II. This approach is expected to reduce the current system of divergent alert warning, which generates considerable inefficiency within the system.

- The scope of those issuing SIS alerts to third country national is enlarged to allow asylum and immigration authorities the possibility (in certain cases only) to issue an alert. The new uses are foreseen in the context of the fight against illegal immigration and for the return of illegal third country nationals. The provisions are also being proposed within the context of public order matters and security issues vis-à-vis the responsibility of the Member States for asylum applications.

- The Regulation proposes that the quality of data be improved, alongside enhanced identification procedures. Within this context, the proposal includes the possibility of entering individuals on to the SIS II data base, (subject to their consent) in cases where their identity has been abused. Such provisions should, in future, avoid further inconveniences caused by misidentifications. This Regulation also allows for the processing of biometrics, the results of which will be more accurate identifications and improved quality of the personal data entered in the system.

- The Regulation confirms that the European Data Protection Supervisor will be responsible for monitoring the Commission when it processes SIS II data.

- 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.

- As far as the operational management of SIS II is concerned the Regulation proposes entrusting the operational management of the system to the Commission. At present, the operational management of the Central part of the SIS is managed by one Member State.

Under provisions spelt out in the proposed Regulation – and taken within the context of the Protocols attached to the Schengen Agreement vis-à-vis Member States' participation thereof – the United Kingdom and Ireland will not be parties to the adoption of the Regulation. The Regulation will, therefore neither bind nor apply to them. As far as Denmark is concerned it must decide within six months whether or not it wishes to participate in the provisions of this Regulation. Norway and Iceland, in accordance with the Protocol integrating them into the Schengen acquis will implement and apply the provisions of this Regulation. The new Member States shall only apply the Regulation 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 s the Visa Information System (VIS).

FINANCIAL IMPLICATIONS:

This 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 totalling 2.128% of the total cost is foreseen.