Basic information

2012/0033B(NLE) NLE - Non-legislative enactments Regulation	Procedure completed
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 Repealing Regulation (EC) No 1104/2008 2008/0078(CNS) **Subject** 7.10.02 Schengen area, Schengen acquis	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
LIBE Civil Liberties, Justice and Home Affairs	COELHO Carlos (PPE)	16/05/2012

Committee for opinion	Rapporteur for opinion	Appointed
JURI Legal Affairs	SPERONI Francesco Enrico (EFD)	03/05/2012

Council of the European Union

Council configuration	Meetings	Date
Transport, Telecommunications and Energy	3213	2012-12-20

European Commission

Commission DG	Commissioner
Migration and Home Affairs	MALMSTRÖM Cecilia

Key events

Date	Event	Reference	Summary
30/04/2012	Initial legislative proposal published	COM(2012)0081	Summary
13/07/2012	Legislative proposal published	11143/1/2012	Summary
25/10/2012	Committee referral announced in Parliament		
05/11/2012	Vote in committee		
13/11/2012	Committee report tabled for plenary, 1st reading/single reading	A7-0370/2012	Summary

21/11/2012	Decision by Parliament	T7-0441/2012	Summary
21/11/2012	Results of vote in Parliament		
20/12/2012	Act adopted by Council after consultation of Parliament		
20/12/2012	End of procedure in Parliament		
29/12/2012	Final act published in Official Journal		

Technical information

Procedure reference	2012/0033B(NLE)
Procedure type	NLE - Non-legislative enactments
Procedure subtype	Consultation of Parliament
Legislative instrument	Regulation
Amendments and repeals	Repealing Regulation (EC) No 1104/2008 2008/0078(CNS)
Legal basis	Treaty on the Functioning of the European Union TFEU 074
Other legal basis	Rules of Procedure EP 165
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/7/10986

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE498.031	29/10/2012	
Committee report tabled for plenary, 1st reading/single reading		A7-0370/2012	13/11/2012	Summary
Text adopted by Parliament, 1st reading/single reading		T7-0441/2012	21/11/2012	Summary

Council of the EU

Document type	Reference	Date	Summary
Legislative proposal	11143/1/2012	13/07/2012	Summary

European Commission

Document type	Reference	Date	Summary
Initial legislative proposal	COM(2012)0081	30/04/2012	Summary
Commission response to text adopted in plenary	SP(2013)73	23/01/2013	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary

EDPS	Document attached to the procedure	N7-0124/2012 OJ C 336 06.11.2012, p. 0010	09/07/2012	Summary

Additional information		
Source	**Document**	**Date**
National parliaments	IPEX	
European Commission	EUR-Lex	

Final act	
Regulation 2012/1273 OJ L 359 29.12.2012, p. 0045	Summary

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) - 13/07/2012 - Legislative proposal

PURPOSE: to recast the Council Regulation on the migration from the Schengen Information System (SIS I+) to the second generation Schengen Information System (SIS II) and to supplement the existing legal framework with additional flexibility to avoid unnecessary costs relating to the migration process.

PROPOSED ACT: Council Regulation.

BACKGROUND: on 30 April 2012, the Commission presented a proposal for a Council Regulation on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II) (recast) (please refer to the summary dated 30 April 2012).

This proposal was examined by the competent bodies within the Council. Following their discussions, it emerged that **the initial proposal should be divided into two identical and parallel texts in order to reflect the particular positions of Ireland and the United Kingdom**.

The other parallel proposal is the subject of a separate procedure file 2012/0033A(NLE).

For further background information, please refer to the summary dated 30 April 2012.

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

CONTENT: as was the case of the Commission's initial proposal, this draft Council Regulation seeks to recast Regulation (EC) No 1104/2008 and Council Decision 2008/839/JHA in a legal act in the form of a single regulation.

For the most part, the Council's new draft text **retains the Commission's proposals** concerning:

- the recasting of the text in a single legal act subject to the same legal basis;
- the legal regimes for the migration from SIS I to SIS II;
- the technical aspects of the switchover from one system to the other;
- the creation of an interim migration architecture for the operations permitting SIS 1+ to function in parallel during a limited transitional migration period towards the SIS II;
- the removal of the Regulation's expiry date in order to deal with any unexpected difficulties that the central system or one or several national systems could face during the migration process;
- the allocation of EUR 35.24 million in operational appropriations to fund costs relating to the Member States' participation in the preparations for the migration, and in particular in regard to the coordination of tests.

The main **new aspects introduced by the Council** may be summarised as follows:

- **switchover:** for reasons of legal certainty, the period of switchover should be kept as short as possible, and **should not exceed 12 hours**;

- **monitoring period:** the migration should be achieved following an intensive monitoring period. This intensive monitoring period should be limited in time and **should not exceed 30 days from the date of the switchover** from one system to the other of the first Member State;
- **non-participation in this text of the UK and Ireland:** this draft regulation revised by the Council and its *raison d'être* are linked to new territorial provisions. It is stipulated that this text will constitute a development of the provisions of the Schengen *acquis* in which Ireland and the UK do not take part. These two Member States shall therefore not be concerned by this draft text;
- **entry into force and application:** this draft Regulation should enter into force as rapidly as possible and should expire on the date when the migration is completed. If that date is not respected due to technical difficulties relating to the migration process, the Regulation will expire on another date to be agreed by the Council.

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 r**ecast 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.

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) - 13/11/2012 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Civil Liberties, Justice and Home Affairs adopted the report by Carlos COELHO (EPP, PT) on the draft Council Regulation on migration from the Schengen Information System (SIS I+) to the second generation Schengen Information System (SIS II) as amended by the Council and as adapted to the recommendations of Consultative Working Party of the Legal Services of the European Parliament, the Council and the Commission.

In accordance with Parliament's Rules of Procedure, and in particular Rule 87(3), 3rd subparagraph, the committee is required to notify its intention to submit amendments to the codified parts of the proposal to the Council and the Commission and refer to point 8 of the interinstitutional agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts. In view of the fact that in the latest version of the text examined, the Council also introduced amendments in the codified part, Members also propose new amendments to these parts of the text.

The main amendments may be summarised as follows:

Division of the original text: Members agree with the splitting of the original text into two parts: **one applicable to the UK and Ireland** (this proposal) and the other not applicable to these two Member States (NLE/2012/0033A) for reasons of legal clarity that these two new texts provide.

Entry into force of the text: Members favour the insertion of a formal date for the entry into force of the future Regulation. They consider that the development of SIS II should be continued and should be finalised **at the latest by 30 June 2013**. Members think it is necessary to set a date for the finalisation of the migration and for the expiry of the Regulation. Otherwise, they fear that it will be further delayed.

Supervision of data protection: Members call for efficient supervision of the complex migration. This should be achieved through an effective cooperation between the current and future supervisory authorities. The SIS 1+ was covered by a Convention, while SIS II relies on Member States' authorities for national supervision and on the EDPS for the central unit, requiring a close cooperation between them, in order to ensure a smooth transition. They call for the **Joint Supervisory Authority** to be responsible for supervising the technical support function of the current SIS 1+ until the entry into force of the SIS II legal framework. **National Supervisory Authorities** would be responsible for the supervision of SIS 1+ data processing on the territory of their respective Member States and would remain responsible for monitoring the lawfulness of the processing of SIS II personal data on the territory of the Member States. They also suggest that the National Supervisory Authorities and the **European Data Protection Supervisor** should ensure the coordinated supervision of SIS II.

Quality of data: Members consider it of the utmost importance to ensure the quality of the data which eventually will be used by SIS II users. Personal data are particularly sensitive in this regard as errors can have extremely negative consequences for persons, for example unjustified arrests or refusals at the border. It is therefore necessary to check the correctness of data, through the identification of any errors of discrepancies in the data migrated from one system to the other.

Deletion of data: Members believe that once the SIS II is fully operational, none of the current SIS data should be available outside the SIS II. It is necessary for reasons of proper data management and control to avoid that SIS data is kept elsewhere. It should therefore be clarified that this data will be deleted. These data shall be deleted **at the latest one month after** the end of the intensive monitoring period.

Completion of the switchover process: at the end of the complex migration process, there should be a validation to determine if the migration and the following switchover were successful. As a result, on the basis of information provided by the Member States and the responsible supervisory authorities, the Commission shall **report to the European Parliament and the Council on the completion of the migration, in particular on the switchover of the Member States to SIS II**. This report shall confirm whether the migration and in particular the switchover have been carried out in full compliance with this Regulation at central as well as at national level, and that the processing of personal data during the entire migration was in accordance with Regulation (EC) No 45/2001 and Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

Migration of the SIRENE bureaux: Members recall that the SIS 1+ and the SIRENE systems operate at the moment on the SISNET communications network. The launch of SIS II operations requires also the migration of the SIRENE bureaux to the S-TESTA network for the exchange of supplementary information.

Information to the European Parliament: lastly, Members consider that the sis-monthly report prepared by the Commission on the progress of the development of SIS II and the migration from SIS I+ to SIS II should also include information of the results of the migration tests.

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) - 09/07/2012 - Document attached to the procedure

Executive summary of the Opinion of the European Data Protection Supervisor on the proposal for a Council regulation on migration from the Schengen Information System (SIS) to the second generation Schengen Information System (SIS II) (recast)

Consultation of the EDPS: the EDPS already issued an Opinion on the three proposals setting up the second generation Schengen Information System on 19 October 2005. At that time, the EDPS focused his analysis on the need to limit access rights and retention periods, as well as the need to supply information to data subjects. He also pointed out that the new functionality of links between records must not lead to an extension of access rights. On the technical design of SIS II, he recommended improvements of the security measures and cautioned against the use of national copies.

The EDPS takes note of the **Council conclusions of 13 December 2011** on migration to SIS II where Member States were invited to:

- implement, as soon as possible, the corrective and preventive mechanisms (for current SIS 1+ alerts and new SIS 1+ alerts respectively), so that they can be adapted to the data quality requirements laid down for SIS II alerts;

- prior to the launch of the migration of SIS 1+ data to SIS II, once again review the conformity of current alerts with SIS II dictionaries, ensuring that they comply with the final version of those dictionaries;

- via the competent national authorities responsible for the quality of SIS data, systematically monitor the accuracy of the alerts entered in the national system of SIS 1+, this being essential for ensuring the trouble-free use of the mapping/dictionary mapping mechanism.

In his informal comments on the Commission's draft proposal, the EDPS expressed concerns on different aspects of the migration that in his view should be clarified. Unfortunately, the **text adopted did not take into account the comments made during the informal stage** and has therefore not provided the required clarifications. Accordingly, the EDPS concludes as follows:

Coordinated supervision mechanism: migration of the data contained in SIS to SIS II is an operation likely to involve specific risks from the point of view of data protection. The EDPS welcomes the fact that under the new provisions, the legal framework for SIS II enters into force once the first Member State has successfully completed the switchover. This is relevant as under the old legislation, the SIS II legal framework would only have come into force once all Member States have completed the migration to SIS II, which would have created legal ambiguity particularly with regard to new functions. This approach has to be also assessed from the point of view of supervision. In the view of the EDPS, it will result in a transfer of responsibilities during the migration that could have negative effects and impinge on the safeguards that supervision provides at the moment when it is needed most. Therefore, the EDPS recommends that **the coordinated supervision mechanism should be applicable from the start of the migration.** The recast should provide for this approach.

Clarifications required: the EDPS is of the opinion that essential aspects of the migration should be further clarified in the text of the Regulation and not left for other instruments such as the migration plan. In particular, this concerns:

(i) **the scope of the migration**: it should be absolutely clear which data categories migrate and which do not, and also if the migration involves any transformation of the data, and if so, which are those alterations;

(ii) **the need for risk assessment**: it is important to carry out a risk assessment for the migration, with the results feeding into a specific security plan;

(iii) **the logging of the data:** although the proposed text contains a specific article, the focus of this article refers mainly to the regular processing activities of SIS II rather than to the specific data processing activities of the migration, and the text presents a similar provision to the one in the main SIS II Regulation. In the view of the EDPS, the Regulation should have a specific clause determining what should be recorded, for how long, and with which purpose focused on the activities of the migration.

Strengthen testing obligations: the EDPS recommends that the Regulation should strengthen the testing obligations by clarifying certain matters.

(i) **Pre-migration tests**, which should also include the following elements:

- all functional aspects associated to the migration process as referred to in Article 11 of the proposal and other issues such as the quality of the data to be transferred;

- non-functional elements such as security;

- any specific measures and controls adopted to reduce the risks of the migration.

(ii) **Comprehensive tests**: the EDPS recommends that the proposal should provide clearer criteria to define if those tests have resulted in a success or in a failure.

(iii) **Validation of results**: after the switchover of a Member State has been completed, it should be possible to validate the results. The Regulation should also require that these validation tests are successful in order to consider a Member State 's switchover to SIS II successful. Hence, these tests should be carried out as a precondition to enable the use of full SIS II functionality by that Member State .

(iv) **Use of test data**: as regards using test data during migration, the EDPS would like to stress that if 'test data' are to be based on 'scrambled' real data from SIS, all necessary measures would have to be taken to ensure that it will be impossible to reconstruct real data from this test data.

Security: preventive security measures are especially welcomed, and the EDPS recommends introducing in the text of the recast a specific provision requiring the Commission and the Member States to implement appropriate technical and organisational measures to ensure a level of security appropriate to the risks represented by the migration and also by the specific nature of the personal data to be processed, based on the requirements of Article 22 of Regulation (EC) No 45/2001.The EDPS makes certain recommendations.

(i) Take into consideration general security aspects through:

- recognising the specific nature of the data processing activities associated to the migration;

- establishing some general guidelines concerning the measures to be taken (for instance that the data should only be transferred between two systems if adequately encrypted);

- establishing that the Commission together with the Member States, and in particular with France, shall develop a specific security plan, after the evaluation of the possible risks associated to the migration, in due time before the migration.

(ii) Specific clauses to protect data integrity: the EDPS recommends including in the Regulation or in a specific Commission decision the following measures:

- an annex with the mapping and validation rules applicable in the conversion, making it easy to verify whether the relaxation of SIS II rules is compliant with the SIS II Regulation;
- a provision defining the responsibility of the different actors in the identification and correction of anomalous data;
- a requirement to fully test, before the migration, the compliance of the data to be migrated with SIS II integrity rules.

(iii) The disposal of the old system: after the migration, the question of what will happen to the technical equipment of SIS 1+ becomes urgent. The EDPS therefore recommends that the proposal or a specific Commission decision should establish a precise time limit for this retention together with an obligation to take appropriate technical measures to ensure a secure deletion of the data after finishing the migration and the intensive monitoring period.

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) - 21/11/2012 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 604 votes to 53, with 35 abstentions, a legislative resolution on the draft Council Regulation on migration from the Schengen Information System (SIS I+) to the second generation Schengen Information System (SIS II) (recast).

Parliament adopted the Council's draft, as adapted to the recommendations of Consultative Working Party of the Legal Services of the European Parliament, the Council and the Commission, and amended as follows:

Division of the original text: Parliament agrees with the splitting of the original text into two parts: one applicable to the UK and Ireland (NLE/2012/0033A) and the other **not applicable to these two Member States** (this proposal) for reasons of legal clarity that these two new texts provide.

Entry into force of the text: Parliament favours the insertion of a formal date for the entry into force of the future Regulation. It considers that the development of SIS II should be continued and finalised **at the latest by 30 June 2013**. It also considers it is necessary to set a date for the finalisation of the migration and for the expiry of the Regulation. Otherwise, it fears that it will be further delayed.

Revision of the Regulation: Parliament calls for the elaboration of an alternative technical scenario for developing SIS II based on SIS 1+ evolution (SIS 1+ RE) as the contingency plan, in case the tests demonstrate non-compliance with the milestone requirements. In this case, the Commission should present a proposal to revise this Regulation.

Supervision of data protection: Parliament calls for efficient supervision of the complex migration. This should be achieved through an effective cooperation between the current and future supervisory authorities. The SIS 1+ was covered by a Convention, while SIS II relies on Member States' authorities for national supervision and on the EDPS for the central unit, requiring a close cooperation between them, in order to ensure a smooth transition. It calls for the **Joint Supervisory Authority** to be responsible for supervising the technical support function of the current SIS 1+ until the entry into force of the SIS II legal framework. **National Supervisory Authorities** would be responsible for the supervision of SIS 1+ data processing on the territory of their respective Member States and would remain responsible for monitoring the lawfulness of the processing of SIS II personal data on the territory of the Member States. It also suggests that the National Supervisory Authorities and the **European Data Protection Supervisor** should ensure the coordinated supervision of SIS II.

Quality of data: Parliament considers it of the utmost importance to ensure the quality of the data which eventually will be used by SIS II users. Personal data are particularly sensitive in this regard as errors can have extremely negative consequences for persons, for example unjustified arrests or refusals at the border. It is therefore necessary to check **the correctness of data**, through the identification of any errors of discrepancies in the data migrated from one system to the other.

Deletion of data: Parliament believes that once the SIS II is fully operational, none of the current SIS data should be available outside the SIS II. It is necessary for reasons of proper data management and control to avoid that SIS data is kept elsewhere. It should therefore be clarified that this data will be deleted. These data shall be deleted **at the latest one month** after the end of the intensive monitoring period.

Completion of the switchover process: at the end of the complex migration process, there should be a validation to determine if the migration and the following switchover were successful. As a result, on the basis of information provided by the Member States and the responsible supervisory authorities, the Commission shall **report to the European Parliament and the Council on the completion of the migration, in particular on the switchover of the Member States to SIS II**. This report shall confirm whether the migration and in particular the switchover have been carried out in full compliance with this Regulation at central as well as at national level, and that the processing of personal data during the entire migration was in accordance with Regulation (EC) No 45/2001 and Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

Migration of the SIRENE bureaux: Parliament recalls that the SIS 1+ and the SIRENE systems operate at the moment on the SISNET communications network. The launch of SIS II operations requires also the migration of the SIRENE bureaux to the S-TESTA network for the exchange of supplementary information.

Information to the European Parliament: Parliament considers that the sis-monthly report prepared by the Commission on the progress of the development of SIS II and the migration from SIS I+ to SIS II should also include information of the results of the migration tests.

Other territorial provisions: lastly, Parliament stipulates that the Regulation constitutes a development of provisions of the Schengen acquis, in which Bulgaria and Romania are participating in accordance with the 2005 Act of Accession.

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 for 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.