



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

COUNCIL REGULATION

**on migration from the Schengen Information System (SIS 1+) to the second generation
Schengen Information System (SIS II)**

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. Context of the proposal

• Grounds for and objectives of the proposal

The objective of this proposal, and a proposal for a Council Decision on the same subject, is to establish the legal framework governing the migration from the Schengen Information System in its current form SIS 1+ to the second generation Schengen Information System (SIS II).

• General context

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 1985 between the governments of the States of the Benelux Economic Union, the Federal Republic of Germany and France on the gradual abolition of checks at their common borders (the Schengen Convention), 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 of 6 December 2001 on the development of the second generation Schengen Information System (SIS II). SIS II will replace SIS 1+. The SIS II development takes into account the latest developments 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 Council¹ of 20 December 2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II) and Council Decision 2007/533/JHA² of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II). These instruments 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 happen, the users of the SIS 1+ will have to migrate to the SIS II environment. It is therefore necessary to define a legal framework for the migration from SIS 1+ to the SIS II environment. In order to reduce the risks of service disruption during migration an interim technical architecture for the operations of SIS 1+ will allow SIS 1+ and certain technical parts of the architecture of SIS II to operate in parallel for a transitional period. The migration period should be kept very limited.

• Existing provisions in the area covered by the proposal

¹ OJ L 381, 28.12.2006, p. 4.

² OJ L 205, 7.8.2007, p. 63.

- Convention of 19 June 1990 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 France on the gradual abolition of checks at their common borders³ (the Schengen Convention);
- Council Regulation (EC) No 2424/2001 of 6 December 2001 on the development of the second generation Schengen Information System (SIS II)⁴ as amended by Council Regulation (EC) 1988/2006 of 21 December 2006⁵;
- Council Decision 2001/886/JHA of 6 December 2001⁶ on the development of the second generation Schengen Information System (SIS II) as amended by Council Decision 2006/1007/JHA of 21 December 2006⁷;
- Regulation (EC) No 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II) ;
- Council Decision No 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II) ;
- Regulation (EC) No 1986/2006 of the European Parliament and of the Council of 20 December 2006 regarding access to the Second Generation Schengen Information System (SIS II) by the services in the Member States responsible for issuing vehicle registration certificates⁸;
- Commission Decisions 2007/170/EC and 2007/171/EC of 16 March 2007 laying down the network requirements for the Schengen Information System II⁹;
- Council Regulation (EC) No 189/2008 of 18 February 2008 on the tests of the second generation Schengen Information System (SIS II)¹⁰;
- Council Decision 2008/173/EC of 18 February 2008 on the tests of the second generation Schengen Information System (SIS II)¹¹.

● **Consistency with other policies and objectives of the Union**

Not applicable.

³ OJ L 239, 22.9.2000, p. 19. Convention, as last amended by Council Decision 2007/533/JHA of 12 June 2007 (OJ L 205, 7.7.2007, p. 63).

⁴ OJ L 328, 13.12.2001, p. 4.

⁵ OJ L 411, 30.12.2006, p. 1.

⁶ OJ L 328, 13.12.2001, p. 1.

⁷ OJ L 411, 30.12.2006, p. 78.

⁸ OJ L 381, 28.12.2006, p. 1.

⁹ OJ L 79, 20.3.2007, p. 20 and OJ L 79, 20.3.2007, p. 29.

¹⁰ OJ L 57, 1.3.2008, p. 1.

¹¹ OJ L 57, 1.3.2008, p. 14.

2. Consultation of interested parties and impact assessment

• Consultation of interested parties

Consultation methods, main sectors targeted and general profile of respondents

Member States' experts are closely involved in the development of SIS II, in particular in the framework of the SIS II Committee. On 13 September 2007 an advisory working group (the Migration Working Group) was established by the SIS II Committee to examine specific issues regarding the SIS II migration. The issues identified for the different migration scenarios were studied with input and participation from all involved parties. The resulting evaluation therefore comprehensively described the strategy, planning and task distribution for the SIS 1+ to SIS II migration.

In addition, at its meeting of 28 February 2008, the Council invited the Commission to present, without delay, the legal proposals to allow for the inclusion in the budget of the European Union all activities in 2009 for the SIS II, including, if necessary, further development activities and to govern the SIS II activities foreseen up to the start of its operations. The Commission was also invited to provide a converter, to be used for a very limited period of time, linking SIS 1+ and SIS II to ensure that SIS can continue functioning in any scenario.

Summary of responses and how they have been taken into account

The present proposal takes into account the result of extensive discussions with Member States, especially in the framework of the SIS II Committee.

• Collection and use of expertise

External expertise was not used to prepare this proposal.

• Impact assessment

No Impact Assessment is required for this proposal for a Council Regulation which is not included in the Commission's Annual Legislative and Work Programme (CLWP).

3. Legal elements of the proposal

• Summary of the proposed action

The objective of the present proposal is to establish the legal framework governing the migration from SIS 1+ to SIS II, including a comprehensive test, with a view to demonstrating, in particular, that the level of performance of SIS II is at least equivalent to that achieved with SIS 1+. Furthermore, it intends to regulate the test on exchange of supplementary information.

The proposal also amends the Schengen Convention by setting up an interim migration architecture for the operations of SIS 1+ during a transitional period until the migration process is completed.

To this end, the proposal defines an interim Schengen Information System architecture and lays down the tasks and responsibilities for its development as well as the tasks and responsibilities during the migration process.

The technical architecture will allow the current central system of SIS 1+ (C.SIS), as referred to in Article 92 of the Schengen Convention, to remain in operation during a transitional period.

Beyond the availability of SIS 1+ and of the Central SIS II, a technical tool (a 'converter') allowing for the successful exchange of SIS data between SIS 1+ and SIS II will be made available during the interim period, to be used for a very limited period of time.

Some elements of the interim architecture will be made available by the Member States, some by France acting on behalf of the Member States, and others by the Commission. The Commission has the possibility to contract the execution of certain tasks to, amongst others, national public bodies. The Commission and the Member States must closely collaborate in the development and operation of the technical elements for the SIS interim architecture.

Finally, the present proposal covers all maintenance and further development activities of the Central SIS II, the communication infrastructure and the national systems (N.SIS II) that will prove necessary during the period of its application.

- **Legal basis**

The legal basis for this Regulation is Article 66 of the EC Treaty as it concerns measures to ensure cooperation between the relevant departments of the administrations of the Member States, as well as between those departments and the Commission for policies related to the free movement of persons.

- **Subsidiarity principle**

In accordance with the principle of subsidiarity, as set out in Article 5 of the EC Treaty, the main objective of the proposed action, namely the migration from SIS 1+ to SIS II, cannot be achieved by the Member States individually.

- **Proportionality principle**

The present proposal does not go beyond what is necessary to achieve its objective. It complies with the proportionality principle in that the activities of the Commission are limited to Central SIS II, coordination activities and the provision of a technical tool allowing for the successful exchange of SIS 1+ data between SIS 1+ and SIS II ('converter'). The Member States remain competent as regards the migration of the actual data and retain responsibility for the national systems.

- **Choice of instruments**

A Council Regulation based on Article 66 of the EC Treaty is the most appropriate instrument for the proposed action in view of the need to apply fully-harmonised rules for the migration process. The provisions set out in this Regulation must be a set of precise and unconditional provisions, directly and uniformly applicable in a mandatory way and, by their very nature, require no action by Member States to transpose them into national law.

Owing to the two-pillar nature of SIS II a Council Decision based on Articles 30(1) (a) and (b), 34(2) (c) of the Treaty on European Union will complement the hereby proposed Council Regulation.

4. Budgetary implications

Council Regulation (EC) No 2424/2001 and Council Decision 2001/886/JHA on the development of the second generation Schengen Information System laid down that the expenditure involved in the development of the SIS II is to be charged to the general budget of the European Union.

Likewise, under Article 5 of Regulation (EC) No 1987/2006 of the European Parliament and of the Council of 20 December 2006 and under Article 5 of Council Decision No 533/2007 of 12 June 2007 the costs of setting up, operating and maintaining Central SIS II and the communication infrastructure are to be borne by the general budget of the European Union. The costs of setting up, operating and maintaining each N.SIS II shall be borne by the Member State concerned.

In line with this legal framework, the present proposal lays down that the costs arising from migration, the comprehensive test, the maintenance and development measures at the central level (Central SIS II and Communication Infrastructure) are to be borne by the general budget of the European Union. Testing, migration, maintenance and development costs for the national systems, including N.SIS II, are to be borne by each Member State concerned.

The costs arising from activities at SIS 1+ level, including supplementary activities of France, acting on behalf of the Member States (of SIS 1+), shall 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.

The Commission has prepared a financial statement annexed to this proposal.

5. Additional information

- **Amendment of existing legislation**

The adoption of the proposal will entail the amendment of the Schengen Convention.

- **Review/revision/sunset clause**

The proposal contains a sunset clause. It will expire on the date to be fixed by the Council, acting in accordance with Article 55(2) of Regulation (EC) No 1987/2006.

- **Timetable**

The present Regulation needs to be adopted in October 2008 *at the latest* in order to ensure the continuity of the preparations and the timely execution of activities covered.

Proposal for a

COUNCIL REGULATION

on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 66 thereof,

Having regard to the proposal from the Commission¹²,

Having regard to the opinion of the European Parliament¹³,

Whereas:

- (1) 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 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 borders¹⁴ (hereinafter the 'Schengen Convention'), and its further 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.
- (2) The development of the second generation Schengen Information System (SIS II) has been entrusted to the Commission pursuant to Council Regulation (EC) No 2424/2001¹⁵ of 6 December 2001 on the development of the second generation Schengen Information System (SIS II) and Council Decision 2001/886/JHA¹⁶ on the development of the second generation Schengen Information System (SIS II). Both legal instruments expire on 31 December 2008. This Regulation supplements these instruments and should expire at the date fixed by the Council acting in accordance with Article 55(2) of Regulation (EC) No 1987/2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II)¹⁷.

¹² OJ C [...], [...], p. [...].

¹³ OJ C [...], [...], p. [...].

¹⁴ OJ L 239, 22.9.2000, p. 19. Convention as last amended by Council Decision 2007/533/JHA of 12 June 2007 (OJ L 205, 7.7.2007, p. 63).

¹⁵ OJ L 328, 13.12.2001, p.4. Regulation as amended by Council Regulation (EC) No 1988/2006 (OJ L 411, 30.12.2006, p. 1).

¹⁶ OJ L 328, 13.12.2001, p. 1. Decision as amended by Council Decision 2006/1007/JHA (OJ L 411, 30.12.2006, p. 78).

¹⁷ OJ L 381, 28.12.2006, p. 4.

- (3) SIS II was established by Regulation (EC) No 1987/2006 and by Council Decision 2007/533/JHA of 12 June 2007¹⁸.
- (4) This Regulation should be without prejudice to Regulation (EC) No 1987/2006 and Decision 2007/533/JHA and, in particular, to the tasks and responsibilities of the regulatory committee established by Article 51(2) and by Article 67 thereof, respectively. The regulatory committee established under these instruments is, among other matters, competent regarding the set up of protocols and technical procedures to ensure the compatibility of national systems with the SIS II technical support function.
- (5) It is necessary to establish the conditions, procedures and responsibilities under which the migration from SIS 1+ to SIS II should take place.
- (6) A SIS II comprehensive test should be conducted in full cooperation between the Member States and the Commission. Member States should perform a test on the exchange of supplementary information.
- (7) The participation of Member States not connected to SIS 1+ in the SIS II comprehensive test and the test on the exchange of supplementary information should have no influence on the successful completion of these tests.
- (8) The Commission and Member States should cooperate closely during all steps of the migration in order to complete the process.
- (9) As regards SIS 1+, Article 92 of the Schengen Convention provides for a technical support function (C.SIS). As regards SIS II, Regulation (EC) No 1987/2006 and Decision 2007/533/JHA provide for a Central SIS II composed of a technical support function and a uniform national interface (NI-SIS). The technical support function of Central SIS II shall be located in Strasbourg (France) and a back-up in St. Johann im Pongau (Austria).
- (10) In order to facilitate the migration from SIS 1+ to SIS II an interim migration architecture for the Schengen Information System should be established and tested. The interim migration architecture should have no impact on the operational availability of SIS 1+. The technical tools that allow the interim architecture to be set up should be provided by the Member States participating in SIS 1+ and by the Commission.
- (11) The Member State issuing an alert should be responsible for ensuring that the data entered into the Schengen Information System is accurate, up-to-date and lawful.
- (12) The Member States participating in SIS 1+ should migrate from SIS 1+ to SIS II using the interim migration architecture, with the support of the France, acting on behalf of the Member States, and the Commission.
- (13) The Commission is and should remain responsible for the Central SIS II and its communication infrastructure. It is necessary to maintain and, where appropriate, further develop the Central SIS II and its communication infrastructure. Additional

¹⁸ OJ L 205, 7.8.2007, p. 63.

development of the Central SIS II should at all times include the correction of errors. The Commission should provide coordination and support for the joint activities.

- (14) The Member States are and should remain responsible for their national systems (N.SIS II). It is necessary to maintain and, where appropriate, further develop the N.SIS II.
- (15) France is and should remain responsible for C.SIS.
- (16) The Commission has the possibility to contract out to third parties, including national public bodies, tasks conferred upon it by this Regulation and tasks relating to the implementation of the budget, in accordance with Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities¹⁹.
- (17) Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data²⁰ applies to the processing of personal data by the Commission.
- (18) The European Data Protection Supervisor, appointed pursuant to Decision 2004/55/EC of the European Parliament and of the Council of 22 December 2003 appointing the independent supervisory body provided for in Article 286 of the EC Treaty²¹, is competent to monitor the activities of the Community institutions and bodies in relation to the processing of personal data. Articles 126 to 130 of the Schengen Convention contain specific provisions on the protection of personal data. Article 118 of the Schengen Convention contains specific provisions on the security of personal data.
- (19) Since the objectives of the action to be taken, namely setting up the interim migration architecture and the migrating the data from SIS 1+ to SIS II, cannot be sufficiently achieved by the Member States and can, therefore, by reason of the scale and effects of the action, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity, as set out in Article 5 of the EC Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary to achieve those objectives.
- (20) This Regulation respects the fundamental rights and observes the principles recognized in particular by the Charter of Fundamental Rights of the European Union.
- (21) The Schengen Convention should be amended to allow the integration of SIS 1+ into the interim migration architecture.
- (22) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European

¹⁹ OJ L 248, 16.9.2002, p. 1. Regulation as last amended by Regulation (EC) No 1525/2007 (OJ L 343, 27.12.2007, p. 9).

²⁰ OJ L 8, 12.1.2001, p. 1.

²¹ OJ L 12, 17.1.2004, p. 47.

Community, Denmark does not take part in the adoption of this Regulation and is therefore not bound by it or subject to its application. Given that this Regulation builds upon the Schengen *acquis* under the provisions of Title IV of Part Three of the EC Treaty, Denmark should, in accordance with Article 5 of the said Protocol, decide within a period of six months after the adoption of this Regulation whether it will implement it in its national law.

- (23) This Regulation constitutes a development of provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis*²²; the United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.
- (24) This Regulation constitutes a development of provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis*²³; Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.
- (25) This Regulation is without prejudice to the arrangements for the United Kingdom's and Ireland's partial participation in the Schengen *acquis* as determined by Decision 2000/365/EC and Decision 2002/192/EC respectively.
- (26) As regards Iceland and Norway, this Regulation constitutes a development of provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen *acquis*²⁴, which fall within the area referred to in Article 1, point G of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of that Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis*²⁵.
- (27) As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*²⁶, which fall within the area referred to in Article 1, point G of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC²⁷ on the conclusion, on behalf of the European Community, of the Agreement.

²² OJ L 131, 1.6.2000, p. 43.

²³ OJ L 64, 7.3.2002, p. 20.

²⁴ OJ L 176, 10.7.1999, p.36.

²⁵ OJ L 176, 10.7.1999, p.31.

²⁶ OJ L 53, 27.2.2008, p. 52.

²⁷ OJ L 53, 27.2.2008, p.1.

- (28) As regards Liechtenstein, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* which fall within the area referred to in Article 1, point G of Council Decision 1999/437/EC of 17 May 1999 read in conjunction with Article 3 of Council Decision 2008/261/EC of 28 February 2008 on the signature, on behalf of the European Community, and on the provisional application of certain provisions of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*²⁸.
- (29) This Regulation should apply to the United Kingdom and Ireland on dates determined in accordance with the procedures set out in relevant instruments concerning the application of the Schengen *acquis* to those States.

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter and scope

This Regulation establishes tasks and responsibilities for the migration from SIS 1+ to SIS II, including the final SIS II tests.

Article 2

Definitions

For the purposes of this Regulation, the following definitions shall apply:

- (a) 'Central SIS II' means the technical support function of SIS II containing a database, the 'SIS II database', and a uniform national interface (NI-SIS).
- (b) 'C.SIS' means the technical support function of SIS 1+.
- (c) 'N-SIS' means the national system of SIS 1+, consisting of the national data systems which communicate with C.SIS.
- (d) 'N.SIS II' means the national system of SIS II, consisting of the national data systems which communicate with Central SIS II.

²⁸ OJ L 83, 26.3.2008, p. 3.

- (e) 'converter' means a technical tool to allow the C.SIS to communicate with Central SIS II.

Article 3

Comprehensive test

1. The Member States participating in SIS 1+, together with the Commission, shall conduct a comprehensive test.
2. The comprehensive test shall facilitate, in particular, the completion by the Member States of the necessary technical arrangements to process SIS II data and the demonstration that the level of performance of SIS II is at least equivalent to that achieved with SIS 1+.
3. The comprehensive test shall follow a schedule and shall be based on the technical specifications defined by the Member States, acting within the Council, in cooperation with the Commission.
4. The test results shall be analysed by the Member States, acting within the Council, and the Commission.
5. Member States not participating in SIS 1+ may participate in the comprehensive test.

Article 4

Test on supplementary information

1. The Member States participating in SIS 1+ shall conduct a test on the exchange of supplementary information.
2. The test on supplementary information shall follow a schedule and shall be based on the technical specifications defined by the Member States, acting within the Council, in cooperation with the Commission.
3. The test results shall be analysed by the Member States, acting within the Council.
4. Member States not participating in SIS 1+ may participate in the test on supplementary information.

Article 5

Interim migration architecture

1. An interim SIS migration architecture shall be set up, connecting Central SIS II, C.SIS, N.SIS II and N-SIS for a transitional period.
2. The Commission shall provide a converter as part of Central SIS II. France, acting on behalf of the Member States participating in SIS 1+, shall connect C.SIS to Central SIS II, in cooperation with the Commission. France, acting on behalf of the Member

States, shall make available data, if necessary, to test the interim migration architecture.

3. France, acting on behalf of the Member States, together with the Member States and the Commission shall test the interim migration architecture.

Article 6

Migration to SIS II

1. The Member States participating in SIS 1+ shall migrate from SIS 1+ to SIS II using the interim migration architecture, with the support of France, acting on behalf of the Member States, and of the Commission.
2. The migration shall follow a schedule defined by the Member States, acting within the Council.
3. France, acting on behalf of the Member States, shall make available the SIS 1+ database.
4. The Commission shall introduce the SIS 1+ database into Central SIS II.

Article 7

Maintenance and development

1. The Commission shall maintain and, where necessary, further develop the Central SIS II and the communication infrastructure, including the correction of errors.
2. The Member States shall maintain and, where necessary, further develop their N.SIS II.

Article 8

Cooperation

The Member States and the Commission shall cooperate, at all stages of the migration, in order to complete the process.

Article 9

Keeping of records in Central SIS II

1. Without prejudice to the relevant provisions of Title IV and Title VI of the Schengen Convention, the Commission shall ensure that every access to and all exchanges of personal data within Central SIS II are recorded for the purposes of checking whether or not the search is lawful, monitoring the lawfulness of data processing and ensuring the proper functioning of Central SIS II and of national systems, data integrity and security.

2. The records shall show, in particular, the date and time at which the data were transmitted, the criteria used to perform searches, the reference to the data transmitted and the name of the competent authority responsible for processing the data.
3. The records may only be used for the purposes referred to in paragraph 1 and shall be deleted three years after their creation.
4. Records may be kept longer if they are required for monitoring procedures that are already underway.
5. The competent authorities for checking whether or not a search is lawful, monitoring the lawfulness of data processing and ensuring the proper functioning of Central SIS II, data integrity and security, shall have access, within the limits of their competence and at their request, to those records for the purpose of fulfilling their tasks.

Article 10

Costs

1. The costs arising from migration, the comprehensive test, the test on supplementary information, maintenance and development measures at Central SIS II level or concerning the communication infrastructure shall be borne by the general budget of the European Union.
2. The costs arising from migration, testing, maintenance and development of the national systems shall be borne by each Member State concerned.
3. 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 be borne in accordance with Article 119 of the Schengen Convention.

Article 11

Amendment of the Schengen Convention

The Schengen Convention is amended as follows.

1. The following Article is inserted:

"Article 92 A

1. As from the entry into force of Council Regulation (EC) No .../2008 and Council Decision No .../2008/JHA the technical architecture of the Schengen Information System may be supplemented by:
 - (a) a Central SIS II including a converter;
 - (b) a technical connection between the technical support function and Central SIS II;
 - (c) a national system of the second generation Schengen Information System (N.SIS II);

- (d) an infrastructure for communication between Central SIS II and the national systems.
2. The N.SIS II may replace the national section referred to in this Convention in which case the Member States need not hold a national data file.
 3. In case any of the Member States replace their national section by N.SIS II, the obligations for the technical support function towards the national sections as mentioned in Article 92(2) and (3) become obligations towards Central SIS II. The Central SIS II shall provide the services necessary for the entry and processing of SIS data.
 4. France, acting on behalf of the Member States, the Member States and the Commission shall cooperate to ensure that a search in the data files of N.SIS II or in the SIS II database produces a result equivalent to that of a search in the data file of the national sections referred to in Article 92 (2)."

2. In Article 119 first paragraph, the first sentence is replaced by the following:

"The costs of installing and operating the technical support function referred to in Article 92(3), including the cost of lines connecting the national sections of the Schengen Information System to the technical support function, and of activities performed in conjunction with tasks conferred upon France, acting on behalf of Member States participating in SIS 1+ in application of Council Decision (JHA) No .../2008/JHA, by Council Regulation (EC) No .../2008 and Council Decision (JHA) No .../2008/JHA shall be borne jointly by the Member States."

3. In Article 119, the second paragraph is replaced by the following:

"The costs of installing and operating the national section of the Schengen Information System and of tasks conferred upon national systems under Council Regulation (EC) No .../2008 and Council Decision No .../2008/JHA shall be borne by each Member State individually."

Article 12

Entry into force and applicability

This Regulation shall enter into force on the third day following its publication in the *Official Journal of the European Union*. It shall expire on the date to be fixed by the Council, acting in accordance with Article 55(2) of Regulation (EC) No 1987/2006.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaty establishing the European Community.

Done at Brussels, [...]

For the Council
The President
[...]

LEGISLATIVE FINANCIAL STATEMENT

1. NAME OF THE PROPOSAL

This statement accompanies two legislative proposals:

Proposal for a Council Regulation on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II)

Proposal for a Council Decision on migration from the Schengen Information System (SIS1+) to the second generation Schengen Information System (SIS II)

2. ABM / ABB FRAMEWORK

Policy Area(s) concerned and associated Activity/Activities:

Title 18: Area of freedom, security and justice

Chapter 18 02: Solidarity — External borders, visa policy and free movement of people

3. BUDGET LINES

3.1. Budget lines (operational lines and related technical and administrative assistance lines (ex- B.A lines)) including headings :

18.02.04 01 – Schengen Information System (SIS II)

3.2. Duration of the action and of the financial impact:

The commitment appropriations are foreseen for 2009 within the envelope programmed to cover the funding of large-scale IT systems. The development activities related to migration of data from SIS 1+ to SIS II will be undertaken to a large extent in 2008. The execution activities within the scope of this Regulation are scheduled primarily for 2009. The payments are expected to be executed in 2009.

3.3. Budgetary characteristics (*add rows if necessary*) :

Budget line	Type of expenditure		New	EFTA contribution	Contributions from applicant countries	Heading in financial perspective
18 02 04 01	Non-comp	Diff ^{29/30}	NO	NO	NO	3a

²⁹ Differentiated appropriations.

³⁰ Non-differentiated appropriations hereafter referred to as NDA.

4. SUMMARY OF RESOURCES

4.1. Financial Resources

4.1.1. Summary of commitment appropriations (CA) and payment appropriations (PA)

EUR million (to 3 decimal places)

Expenditure type	Section no.		2008	2009	2010	Total
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Operational expenditure

Commitment Appropriations (CA)	8.1	a		9,350		9,350
Payment Appropriations (PA)		b		9,350		9,350

Administrative expenditure within reference amount

Technical & administrative assistance (NDA)	8.2.4	c				
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TOTAL REFERENCE AMOUNT

Commitment Appropriations		a+c		9,350		9,350
Payment Appropriations		b+c		9,350		9,350

Human resources and associated expenditure (NDA)	8.2.5	d		4,245		4,245
Administrative costs, other than human resources and associated costs, not included in reference amount (NDA)	8.2.6	e		0,321		0,321

Total indicative financial cost of intervention

TOTAL CA including cost of human resources		a+c +d+ e		13,916		13,916
TOTAL PA including cost of human resources		b+c +d+ e		13,916		13,916

Co-financing details

If the proposal involves co-financing by Member States, or other bodies (please specify which), an estimate of the level of this co-financing should be indicated in the table below (additional lines may be added if different bodies are foreseen for the provision of the co-financing): N/A

4.1.2. Compatibility with Financial Programming

- Proposal is compatible with existing financial programming.
- Proposal will entail reprogramming of the relevant heading in the financial perspective.
- Proposal may require application of the provisions of the Interinstitutional Agreement³¹ (i.e. flexibility instrument or revision of the financial perspective).

4.1.3. Financial impact on Revenue

- Proposal has no financial implications on revenue
- Proposal has financial impact – the effect on revenue is as follows:
- Contribution from Norway 2,219512 % and from Iceland: 0,107994 % (2006 figures) for operational costs, based on Art 12 (1) 2nd paragraph of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen *acquis* (OJ L 176, 10.7.1999, p. 36).
 - Contribution from Switzerland: 2,57 % (2006 figures), for operational costs, based on Art 11 (3) 2nd paragraph of Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen (OJ L 53, 27.2.2008, p. 52).

EUR million (to one decimal place)

Budget line	Revenue	Prior to action [Year n-1]	Situation following action					
			2008	2009	2010	[n+3]	[n+4]	[n+5] ³²

³¹ See points 19 and 24 of the Interinstitutional Agreement.

³² Additional columns should be added if necessary i.e. if the duration of the action exceeds 6 years.

	a) Revenue in absolute terms		0,458				
	NO+IS+CH						
	b) Change in revenue	Δ					

The present proposals build upon the Schengen *acquis*, as defined in Annex A of the agreement signed on 18 May 1999 between the Council and the Republic of Iceland and the Kingdom of Norway concerning the association of both these States with the implementation, application and development of the Schengen *acquis*. Article 12(1) last paragraph lays down: “In cases where operational costs are attributed to the general budget of the European Community, Iceland and Norway shall share in these costs by contributing to the said budget an annual sum in accordance with the percentage of the gross national product of their countries in relation with the gross national product of all participating States”.

- 4.2. Human Resources FTE (including officials, temporary and external staff) – see detail under point 8.2.1.

Annual requirements	2008	2009	n + 2	n + 3	n + 4	n + 5 and later
Total number of human resources		45				

41 staff are currently working on the development activities entrusted to the Commission pursuant to Council Regulation (EC) No 2424/2001. The 41 plus 4 additional staff will continue working on the activities within the scope of this Regulation. The related costs will be covered accordingly, as of 2009.

5. CHARACTERISTICS AND OBJECTIVES

For the details of the context of the proposal see the Explanatory Memorandum. Need to be met in the short or long term

The proposal aims to provide the legal framework for the incremental and smooth migration from SIS 1+ to SIS II in order to allow the Member States to prepare for this operation and, in anticipation such action, to provide the legal framework for final comprehensive (global) tests. A comprehensive test of SIS

II will be conducted in 2008 and 2009 by the Commission with the support of external contractors. For the purposes of migration, an interim technical architecture of the systems is also needed where SIS 1+ runs in parallel with SIS II at the central level.

- 5.1. Value-added of Community involvement and coherence of the proposal with other financial instruments and possible synergy

This proposal supplements and facilitates the development of the new generation of Schengen Information System and creates synergies between SIS 1 + and SIS II.

- 5.2. Objectives, expected results and related indicators of the proposal in the context of the ABM framework

The main objective of the proposal is to ensure that SIS II starts operating successfully. The expected result of this proposal is to ensure a smooth migration of data from SIS 1 + to SIS II and the complete switchover to SIS II. The indicator is that all Member States should successfully migrate their data and systems.

- 5.3. Method of Implementation (indicative)

Show below the methods chosen for the implementation of the action.

Centralised Management

Directly by the Commission

Indirectly by delegation to:

Executive Agencies

Bodies set up by the Communities as referred to in art. 185 of the Financial Regulation

National public-sector bodies/bodies with public-service mission

Shared or decentralised management

With Member States

With third countries

Joint management with international organisations (please specify)

Relevant comments:

6. MONITORING AND EVALUATION

6.1. Monitoring system

Progress will be assessed at regular points and performance measured against required standards and pre-set criteria. This should demonstrate that the investment delivers the required result.

The monitoring will be carried out via an external support contractor for quality assurance.

6.2. Evaluation

6.2.1. Ex-ante evaluation

Conclusions of the SIS II Committee on 19 December 2007, drawn up on the basis of the impact assessment report prepared by the Migration Working Group.

6.2.2. Measures taken following an intermediate/ex-post evaluation (lessons learned from similar experiences in the past)

NA

6.2.3. Terms and frequency of future evaluation

The future evaluation will take place after the comprehensive test (first evaluation) and after migration has taken place (second evaluation). Each evaluation must measure the effectiveness of the actions and shall indicate if the test and whether migration have been executed properly.

7. Anti-fraud measures

The Commission procedures for the award of contracts will be applied, ensuring compliance with Community law on public contracts.

8. DETAILS OF RESOURCES

8.1. Objectives of the proposal in terms of their financial cost

Commitment appropriations in EUR million (to 3 decimal places)

(Headings of Objectives, actions and outputs should be provided)	Type of output	Av. cost	2009		TOTAL	
			No. outputs	Total cost	No. outputs	Total cost
OPERATIONAL OBJECTIVE No.1 ³³						
Successful migration and start of operation of SIS II						
- Output 1	Monitoring and test tools			0,500		0,500
- Output 2	Quality assurance			1,250		1,250
- Output 3	Studies			1,500		1,500
- Output 4	Change requests			2,000		2,000
- Output 5	Coaching			0,500		0,500
- Output 6	Tests related maintenance and analysis			1,000		1,000
- Output 7	Additional support at around go live			2,100		2,100
- Output 8	sTESTA contingencies			0,500		0,500
TOTAL COST				9,350		9,350

³³ As described under Section 5.3.

8.2. Administrative Expenditure

8.2.1. Number and type of human resources

Types of post		Staff to be assigned to management of the action using existing and/or additional resources (number of posts/FTEs)					
		2008	2009	2010	2011	2012	2013
Officials or temporary staff ³⁴ financed by art. 18 01 01 01 01	A*/AD		21				
	B*, C*/AST		8				
Staff financed ³⁵ by art. 18 01 02 01 and 18 01 02 01 03			16				
Other staff ³⁶ financed by art. XX 01 04/05							
TOTAL			45				

The human resources needed for the action and indicated in the table above will be allocated by internal redeployment only.

8.2.2. Description of tasks deriving from the action

Project management;

Technical management;

Evaluation and reporting;

Public procurement, contract and financial management

³⁴ Cost of which is NOT covered by the reference amount.

³⁵ Cost of which is NOT covered by the reference amount.

³⁶ Cost of which is included within the reference amount.

8.2.3. Sources of human resources (statutory)

X Posts currently allocated to the management of the programme to be replaced or extended

Posts pre-allocated within the APS/PDB exercise for year n

Posts to be requested in the next APS/PDB procedure

Posts to be redeployed using existing resources within the managing service (internal redeployment)

Posts required for year n although not foreseen in the APS/PDB exercise of the year in question

8.2.4. Other Administrative expenditure included in reference amount (XX 01 04/05 – Expenditure on administrative management)

N/A

8.2.5. Financial cost of human resources and associated costs not included in the reference amount

EUR million (to 3 decimal places)

Type of human resources	2008	2009	2010	Year n+3	Year n+4	Year n+5 and later
Officials and temporary staff (art. 18 01 01 01 01)		3,393				
Staff financed by art. 18 01 02 01 and 18 01 02 01 03 (auxiliary, national experts, contract staff, etc.)		0,852				
Total cost of Human Resources and associated costs (NOT in reference amount)		4,245				

Calculation– ***Officials and Temporary agents financed art. 18 01 01 01***

Reference should be made to Point 8.2.1, if applicable

AD/AST – 117.000 EUR per year * 29 persons = 3,393 mEUR

Calculation– ***Staff financed under art. 18 01 02 01***

Reference should be made to Point 8.2.1, if applicable

Contractual staff (art 18 01 02 01 01) – an average of 55,874 EUR per year * 8 persons = 0,447 mEUR

National experts (art 18 01 02 01 03) – 50,578 EUR per year * 8 persons = 0,405 mEUR

Source: European Commission, PMO note, 19.01.2007, estimations for year 2007

8.2.6 Other administrative expenditure not included in reference amount

EUR million (to 3 decimal places)

	Year n	Year n+1	Year n+2	Year n+3	Year n+4	Year n+5 and later	TOTAL
18 01 02 11 01– Missions		0,131					0,131
18 01 02 11 02– Meetings & Conferences		0,190					0,190
2 Total Other Management Expenditure (XX 01 02 11)							
3 Other expenditure of an administrative nature (specify including reference to budget line)							
Total Administrative expenditure, other than human resources and associated costs (NOT included in reference amount)		0,321					0,321

Missions include visits to all 27 Member States in SIS 1+ for 2 persons (0,131 mEUR).

Calculation - *Other administrative expenditure not included in reference amount*

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