



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 21 December 2011

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LIMITE

**CATS 133
SIRIS 138
SIS-TECH 145
COMIX 864**

NOTE

from : Austrian and German delegations
to : CATS/Mixed Committee (EU/Iceland, Norway and Switzerland, Liechtenstein)

No. prev. doc.: 8932/1/10 REV 1 JAI 338 SIRIS 68 COMIX 314
8801/10 JAI 319 SIRIS 67 SIS-TECH 59 COMIX 308
10833/10 CATS 50 SIRIS 91 SIS-TECH 74 COMIX 421
13684/10 CATS 73 SIRIS 127 SIS-TECH 99 COMIX 590
16670/09 JAI 877 SIRIS 169 SCHENGEN 63 COMIX 893
16621/11 CATS 108 SIRIS 110 SIS-TECH 123 COMIX 708

Subject: Questions regarding SIS II which shall be taken into account by the European Commission in its written report to the JHA Council in December 2011
– Follow-up

The European Commission was requested by the Presidency to present a detailed written report about the status of the project SIS II to the JHA Council in December 2011.

In order to give a comprehensive and complete picture to the Ministers, Germany and Austria requested the European Commission for this written report to take into account several questions. Instead of the requested report the European Commission provided on 22nd November 2011 an input document on SIS II for the CATS meeting of 24-25 November 2011 (please refer to Annex), where several aspects of the Austrian and German questions were superficially touched. Germany and Austria therefore kindly ask the European Commission to clarify in writing and **in detail** the still open questions summarised below.

Qualification test of the Central System (so called CSQT)

The *Detailed Technical Specifications DTS 1.30* as well as the original SIS II call for tender specifications foresee a switch over time of 4 minutes. That means that in case of total failure of the Central Unit (CU), the Back-Up Central Unit (BCU) will be up and running with the complete set of actual alerts within four minutes for CUDs (create, update and deletion of alerts) and retrieval.

- Is this required switch-over time still guaranteed by the European Commission?

Only if this will be formally committed by the European Commission, the analysis of the European Commission can be accepted that a formal decision by the SIS/VIS Committee is not required.

Besides that Austria and Germany again kindly invite the European Commission to inform

- the Member States about the **amount of penalties** imposed on the main development contractor due to this delay under his responsibility;
- **when and how** these **penalties** will be **executed**;
- how and when **the European Commission intends to compensate the financial loss of the Member States'** national projects following from the repeated change of the planning.

Reverse the order of tests within the M2/PSAT test phase

Austria and Germany kindly invite the European Commission

- to **hand over the contract including all amendments to dedicated delegates of all Member States** for the sake of utmost transparency as announced by the European Commission in the input document from 22nd November 2011.

The simple declaration by the European Commission, that there will be no impact on the contract by switching two test phases is insufficient from AT and DE point of view:

We therefore ask the European Commission

- to provide a **detailed legal assessment and explanation about the legal and contractual implications** of such a change especially in relation to the guillotine clause, the potential penalties in case of underperformance and the legal and/or contractual consequences for the liability of the main development contractor in case of successful accomplishment of PSAT;

- to explain **on basis of which contractual agreement the main development contractor (HPS) would not be entitled to claim the payments linked to the PSAT**, should it pass PSAT and then fail Milestone 2. Please provide the respective paragraph(s) of the contract and elaborate on its/their legal interpretation;
- to explain **how to justify the continuation of the test campaign (Comprehensive Test) while the evaluation of the M2 test result is still ongoing;**
- to elaborate, **when and on which basis payments** will be **executed** to the main development contractor;
- to **list and explain the contractual milestones** of the new contract amendment.

GPMB

The European Commission will spend around 100.000 €for the GPMB in the year 2011.

Austria and Germany kindly invite the European Commission

- to explain in detail the **basis** for this disbursement;
- for sake of full transparency towards the Member States to disclose the documents or other directly measurable value **justifying these payments.**

Payments for the main development contractor

Austria and Germany kindly invite the European Commission

- to **list all payments** to the main development contractor foreseen in the year **2011** including the **contractual milestones/justifications** for these payments.
- to **disclose the details of payments executed in 2011 to all MS.**
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Necessity of technological evolution of the SIS II

Austria and Germany kindly invite the European Commission

- to explain which measures will be taken preventing that **obsolete technology will enter into operation in 2013** and how the demanded changes of the hardware and software can be implemented without interfering with the national projects in the Member States.



EUROPEAN COMMISSION
DIRECTORATE-GENERAL HOME AFFAIRS

Directorate C: Migration and borders
Director

Brussels, 22.11.2011
home.c.2(2011)1366326/RC/mb

Mr. Piotr RAKOWSKI
Chairman of the CATS
Permanent Representation
of Poland to the EU
Rue Stevin 139
B-1000 Brussels

Subject: Input on SIS II for the CATS meeting of 24-25 November 2011

Dear Piotr,

I am sorry that I will not be able to take part in Thursday's CATS meeting for the SIS II item as I will be at a meeting in The Hague which was fixed some time ago. I have therefore set out below the information that I would have provided orally at the meeting as a complement to the report of the SIS II Task Force.

1. CONTEXT

The 2010 October JHA Council took note of the new global schedule and budget for the entry into operation of the second generation Schengen Information System (SIS II) and called upon all stakeholders to do the utmost to ensure that the project is fully implemented within the time schedule and financial planning. The Council also called upon the Commission to keep the Council and the European Parliament informed on a regular basis on the implementation of the Global Schedule. The Commission accordingly provides a state of play on SIS II at each JHA Council and CATS meeting. This is in addition to the formal reporting laid down in the governance mechanisms provided for the management of the SIS II project (see section 4).

Currently, the most relevant elements of the schedule are:

- Central System Qualification Tests (CSQT);
- National Compliance Tests Extended (CTE);
- Provisional System Acceptance Tests (PSAT), including the Milestone 2 test;
- The migration of SIS I to SIS II;
- Go-live of SIS II, foreseen for Q1 2013.

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2. STATE OF PLAY

2.1. At central level

The **Central System Qualification Test without Member States (CSQT_w/o_MS)** is ongoing. According to the SIS II Global Schedule, this test campaign was due to be completed by 30 September 2011. However, as reported to the September Council and the October CATS, a delay has been incurred. As a result, the test campaign is now due to be completed by 14 December 2011.

The delay was caused by a problem with the link between the Central Unit (CU) and the Back-up Central Unit (BCU), which was slowing down the synchronisation and exchange between the two units, thus deteriorating performance.

Technical adaptations were necessary in order to overcome this difficulty. They consist of:

- (a) an asynchronous replication of the BCU, in order to maintain the synchronization of the SIS II database between CU and BCU without creating delay in the reply to Member State messages; and
- (b) in case of a failure of the CU, a mechanism for re-synchronization of the BCU SIS II database with the messages synchronously replicated at the BCU.

The adaptations guarantee that the BCU would contain the same data as the CU, in case of a failure of CU.

The nature of these adaptations:

- was not of a regulatory nature, and thus no formal decision at SIS/VIS Committee level was required;
- did not change any of the system's technical requirements, including those related to availability, resilience, and performance of the system;
- did not have any impact on national systems.

The Commission took the appropriate action towards its contractor. A remediation period was fixed and liquidated damages (i.e. contractual penalties) will be applied according to the contract's provisions. These damages are calculated at a daily rate and will accumulate until the day when the CSQT_w/o_MS campaign is finally completed (foreseen for 14 December 2011).

2.2. At national level

The majority of Member States have not yet finalised their CTE campaigns. According to the Global Schedule the CTE tests were due to finish by 22 December 2011 but this is no longer feasible. Moreover, one Member State cannot yet indicate when it will be able to start its CTE tests.

Eight Member States will participate (six as participants and two as back-up) in the Central System Qualification Test with Member States (CSQT with MS) once they have successfully complete their CTE tests.

The table below shows the situation per Member State, with regard to both the status of the CTE as well as the participation in the CSQT with MS:

	Country	CTE ⁽¹⁾	CSQT with MS ⁽²⁾
Group 1	Cyprus	Ongoing	Volunteer
	France	Ongoing	
	Lithuania	Ongoing	Volunteer
	Netherlands	Ongoing	Volunteer
	Portugal	Completed	Volunteer
Group 2	Hungary	Ongoing	Volunteer
	Italy	Ongoing	Volunteer
	Luxembourg	Ongoing	
	Poland	Ongoing	
	United Kingdom	Ongoing	
Group 3	Bulgaria	Ongoing	
	Denmark	Ongoing	Volunteer
	Iceland	Ongoing	
	Malta	Ongoing	
	Norway	Ongoing	Volunteer
	Romania	Ongoing	
	Slovenia	Ongoing	
	Spain	Ongoing	

⁽¹⁾ Status as of 18 November 2011.

⁽²⁾ Status as of 18 November 2011.

Group 4	Austria	Ongoing	
	Belgium	Ongoing	
	Czech Republic	Ongoing	
	Estonia	Ongoing	
	Germany	Ongoing	
	Greece	Ongoing	
	Latvia	Ongoing	
	Liechtenstein	Ongoing	
	Slovakia	Ongoing	
	Sweden	Ongoing	
	Switzerland	Ongoing	
	Finland	(3)	

2.3. Milestone 2

Substantial preparatory work for Milestone 2 has been done on several streams. In particular, the reference document detailing the relevant test cases (Provisional System Acceptance Tests / Milestone 2 Test Design Description - PSAT/M2 TDD) is now about to be finalised.

With regard to the validation of the test results, and pursuant to the June 2009 Council Conclusions, the SIS-TECH mandated in May 2011 the SIS 1+ contractors and the French authorities to undertake the necessary work towards ensuring the validation and availability of the C.SIS measurement tool (known as "SFR/PAN tool") for Milestone 2⁴.

In the course of September 2011, France (C.SIS) and the SIS 1 + contractors announced in SIS-TECH that they would not be able to validate or operate the SFR/PAN tool for the Milestone 2 test within the scope and timeline provided for in the Global Schedule. The Presidency and the Commission organised several technical meetings with C.SIS and SIS1+ contractors to work out concrete solutions, and the matter was also discussed at SIS-TECH level. On 14 November, the Commission wrote to France asking for confirmation on the availability of the SFR/PAN tool for the Milestone 2 test.

It should be noted that given that most Member States have recently upgraded a software at the level of their national SIS 1+ applications, the SFR/PAN tool may only be capable to capture the traffic of three Member States - Portugal, Hungary and the Slovak Republic.

(3) Finland has not yet confirmed any dates for CTE.

(4) See document SIS-TECH 61 / COMIX 345, "SIS II – M2 Test Analysis Tools (Version 1.0)".

2.4. Migration of SIS 1 to SIS II

The SIS II project entails several activities related to the migration from the old system to the new one. The following points have a potential impact on the Global Schedule:

- The data present in the current SIS 1+ should be cleaned to make it fully compliant to the existing, documented SIS 1+ specifications. Non-compliant data cannot be converted automatically and risks being lost or delayed. Supported by the Presidency, Member States are already undertaking so-called data cleansing activities on the SIS 1 database, but these will need to be stepped up.
- The migration from SIS 1+ to SIS II requires close and flexible cooperation between the technical teams of both projects. Working arrangements should be reinforced, with a view to better managing the dependencies and resolving potential issues that may arise.
- The connection between the two systems during migration is done via a software called N.COM, which is the main building block of the migration architecture and which must be taken over from SIS 1+. Therefore, every change made within the SIS 1 intergovernmental governance structure that affects the N.COMs and / or the connectivity to the SIS 1 system will have a direct impact on the SIS II project.

Such changes are already occurring: a planned upgrade of a COTS component (WMQ v6) to a newer version (v7) will affect the installation and qualification of both the N.COMs and the migration converter software. Moreover, a connectivity change (firewall setup) on the SIS 1 side is creating a risk of delay of SIS II migration activities as the implementation on the SIS II side needs to be done before the start of the qualification of the SIS II Converter (January 2012).

In parallel, the Commission is currently preparing an amendment to the migration legal framework with a view to aligning the legal provisions with the technical approach of the SIS II Migration Plan as endorsed by the SIS/VIS Committee earlier this year. The corresponding proposal is scheduled to be tabled at the beginning of the forthcoming Danish Presidency.

2.5. Budgetary aspects

Considering the budgetary consequences of the revised schedule, the October 2010 Council urged the Commission to make the necessary arrangements to make the European External Borders Fund (EBF) available to the Member States to support the completion of the national system developments.

Accordingly, a significant reallocation of resources towards SIS II national projects was undertaken within the framework of the 2011 programming for the EBF. In most cases, it was possible to accommodate the extra financial needs related to SIS II in the annual programmes for 2011. However, this was not possible for eight Member States either because of the limited size of their EBF allocations and/or by the need to cover other pressing, and equally strategic, priorities in their annual programmes. As reported to the last CATS meeting, it was therefore decided to meet these needs from the Community Actions part of the EBF. The corresponding amounts per Member State are shown in the table below:

Country	Community Actions (€)
Cyprus	471.780
Netherlands	2.250.000
Portugal	788.400
Luxembourg	600.000
Malta	520.710
Czech Republic	732.696
Estonia	116.762
Slovakia	2.056.880
TOTAL	7.537.228

The Commission has finalised the relevant award procedure and the corresponding grant agreements have been sent for signature to the Member States concerned. An advance payment of 75% of the grant will be made within 45 days of the date when the last of the two parties (i.e. the Commission) signs the agreement.

3. IMPACT ON THE GLOBAL SCHEDULE AND SCENARIOS

As can be seen from section 2, a number of delays have arisen which could have an impact on the SIS II Global Schedule. However these delays do not necessarily need to result in a delay in the go-live date for SIS II. The Commission, with the active help of the Presidency and the Global Programme Management Board (GPMB), has already identified modalities to mitigate, absorb or compensate the delays. This would entail:

- Finalisation by Member States of their CTE campaigns: this testing phase was due to end on 22 December 2011. On the basis of the current rhythm of activities, it is estimated that CTEs will have to run until 24 May 2012. This delay should not affect the rest of the activities in the SIS II Global Schedule, as long as all stakeholders involved maintain a good testing rhythm and provided that Finland is able to start and complete its CTE tests within this time scale.
- Conclusion of the CSQT w/o MS and performance of CSQT with MS: CSQT with MS is now scheduled to start on 16 December 2011, provided that at least 6 of the 8 volunteer Member States finalise their CTE tests by 15 December 2011, as it is currently estimated. On this basis, the CSQT with MS will run until 8 March 2012.

On this basis, two broad scenarios can be identified for the performance of Milestone 2:

3.1. Scenario 1

This scenario represents the current project baseline, including the use of the SFR/PAN tool for Milestone 2. This scenario has the advantage of not departing from the technical description of the Milestone 2, as laid down in the annex of the June 2009 Council Conclusions. The Commission would have a preference for this scenario, provided that France confirms the availability of C.SIS and its contractors to validate the tool, operate it within the foreseen timetable for Milestone 2 and ensure that it is technically suited to measure the Milestone 2 traffic.

Should France, however, not be in a position to confirm these elements, a delay in the go-live date will become inevitable. At technical level, such a delay would entail a shift in the Global Schedule, requiring a rescheduling of various activities which are partly interlinked. Hence, the impact on the Global Schedule would not necessarily be identical to the delay in the provision of the SFR/PAN tool. From a contractual point of view, a contract amendment would be required in order to take into account this delay in the Global Schedule (which is an annex to the contract) so as to adapt the contractual delivery date for the remaining deliverables.

3.2. Scenario 2

This scenario would maintain the go-live date by adjusting the sequencing of the various steps and seeking an alternative testing tool, namely by:

- (a) Inverting the order of the Milestone 2 test and the Provisional System Acceptance Tests (PSAT), a contractual test campaign;
- (b) Replacing the SFR/PAN tool by alternative tools. These tools should provide the same functionalities as the SFR/Pan tool. As a means to ensure that they provide an effective and independent measurement instrument for assessing Milestone 2 results, the Commission would propose to implement stringent supervision measures for the qualification of these alternative tools (via active and direct involvement of Member States in the validation process).

These mitigation actions received the support of a wide majority of Member States experts during the extraordinary SIS/VIS Committee meeting of 7 November 2011.

From a contractual standpoint, this scenario would need to be reflected in a formal adaptation of the Global Schedule by means of a contract amendment. The latter would have no impact on the Commission's right to terminate the contract in case of failure of the Milestone 2 test. Furthermore, it would not entitle the Main Development Contractor (HPS) to claim the payments linked to the PSAT contractual phase, should it pass PSAT and then fail Milestone 2.

Both scenarios above are based on the assumption that technical upgrades in the SIS I environment are managed in such a way that they will not have an impact on the SIS II Global Schedule. Particularly, as regards the preparation of the migration process and the risks described under section 2.4 above, it is important that the planned upgrades of the WMQ software takes due account of the SIS II activities. At the very least, it should be ensured that during the Live Data Migration (due to take 1 month) both WMQ versions (6 & 7) are supported technically and contractually.

4. GOVERNANCE

As a result of the difficulties encountered by the project over time and as noted in the introduction, a political reporting line has been established, whereby the Commission provides regular updates on the project's state of play at CATS and the JHA Council.

As far as CATS is concerned, the reporting arrangements rely on a written report prepared by the SIS II Task Force, which is prepared and coordinated by the Presidency and to which the Commission, as a member in the Task Force, also contributes. This report provides an overview of the main technical developments in the project, as well as an outlook of the main risks and areas of concern for the immediate reporting period. It represents an exhaustive state of play and, when needed, it is complemented by the Commission in its oral presentations at CATS meetings.

These reporting arrangements are distinct from the project's formal governance which is summarised below:

In line with the SIS II legal basis, the project governance is ensured via the **SIS/VIS Committee**. It is in this framework that the Commission consults with the Member States and, on matters specifically laid down in the legal instruments, requests their formal opinion before deciding on a particular course of action in the implementation of the project. It is within this governance framework that the project's management is ensured and where regular reporting and consultation mechanisms are employed. Furthermore, the Committee is the sole body that can and must address all matters that pertain to the development of the SIS II central system.

The JHA Council in June 2009 added the **Global Project Management Board (GPMB)** to the project's governance and its status was formalised by article 17(a) of Council Regulation (EU) No 541/2010. Its mandate is to act as 'an advisory body for assistance to the central SIS II project and shall facilitate consistency between central and national SIS II projects'. Besides the two Commission representatives, there are eight technical experts (with eight alternates) nominated by the Member States. GPMB members are entitled to the reimbursement of travel costs in accordance with the Regulation.

The GPMB meets on a weekly basis and information on its work is available to all Member States via a dedicated online database (on CIRCA). The Presidency, as co-chair of the GPMB, reports to each SIS/VIS Committee meeting on activities carried out within the GPMB.

5. FINANCIAL AND CONTRACTUAL INFORMATION

Since 2009, the Commission granted access to the SIS II main development contract to the Member States experts present at that time in the GPMB. This was repeated in 2010, when GPMB experts were also presented with the contract amendment for ICD 3.0.

Moreover, following a request of the European Parliament, the Commission extended the same arrangements for access to the contract to interested Members of the European Parliament (to date, one MEP already received a complete version of the contract). This access can be given to Member States representatives other than the GPMB experts should they wish.

With regard to financial information (execution of the SIS II budget), the Commission includes this in its biannual reports to the Council and European Parliament. In the course of 2011, as part of the arrangements for lift the reserve on part of the SIS II budget for 2011 introduced by the European Parliament, the Commission also provided detailed payment plans to key MEPs in January, May and October 2011. This information as well as details of the payments executed in 2011 have been supplied separately to the CATS Chairman.

I am happy for you to circulate this letter to CATS delegates. I will provide you with detailed information on the budget execution prior to the meeting.

Yours sincerely,



Belinda Pyke