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4 December 2002

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## **REPORT**

1. on the initiative by the Kingdom of Spain with a view to adopting a Council Decision concerning the introduction of some new functions for the Schengen Information System, in particular in the fight against terrorism (9408/2002 – C5-0317/2002 – 2002/0813(CNS))

2. on the initiative by the Kingdom of Spain with a view to adopting a Council Regulation concerning the introduction of some new functions for the Schengen Information System, in particular in the fight against terrorism (9407/2002 – C5-0316/2002 – 2002/0812(CNS))

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

Rapporteur: Carlos Coelho

### ***Symbols for procedures***

- \* Consultation procedure  
*majority of the votes cast*
- \*\*I Cooperation procedure (first reading)  
*majority of the votes cast*
- \*\*II Cooperation procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\* Assent procedure  
*majority of Parliament's component Members except in cases  
covered by Articles 105, 107, 161 and 300 of the EC Treaty and  
Article 7 of the EU Treaty*
- \*\*\*I Codecision procedure (first reading)  
*majority of the votes cast*
- \*\*\*II Codecision procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\*III Codecision procedure (third reading)  
*majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission)

### ***Amendments to a legislative text***

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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## PROCEDURAL PAGE

1. By letter of 28 June 2002 the Council consulted Parliament, pursuant to Article 39(1) of the EU Treaty, on the initiative by the Kingdom of Spain with a view to adopting a Council Decision concerning the introduction of some new functions for the Schengen Information System, in particular in the fight against terrorism (9408/2002 – 2002/0813(CNS)).

At the sitting of 4 July 2002 the President of Parliament announced that he had referred the initiative to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible.

2. By letter of 28 June 2002 the Council consulted Parliament, pursuant to Article 39(1) of the EU Treaty, on the initiative by the Kingdom of Spain with a view to adopting a Council Regulation concerning the introduction of some new functions for the Schengen Information System, in particular in the fight against terrorism (9407/2002 – 2002/0812(CNS)).

At the sitting of 4 July 2002 the President of Parliament announced that he had referred the initiative to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible.

At its meeting of 3 September 2002 the Committee decided to include in its report the following Commission report (COM(2001) 720). This decision was confirmed at its meeting of 11 September 2002.

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs appointed Carlos Coelho rapporteur at its meeting of 9 July 2002.

It considered the initiatives by the Kingdom of Spain and the draft report at its meetings of 8 October 2002, 5 November 2002 and 3 December 2002.

At the last appointed meeting it adopted:

1. the draft legislative resolution on the initiative by the Kingdom of Spain with a view to adopting a Council Decision concerning the introduction of some new functions for the Schengen Information System, in particular in the fight against terrorism by 24 votes to 9, with 2 abstentions,
2. the draft legislative resolution on the initiative by the Kingdom of Spain with a view to adopting a Council Regulation concerning the introduction of some new functions for the Schengen Information System, in particular in the fight against terrorism by 29 votes to 6, with 1 abstention.

The following were present for the vote: Jorge Salvador Hernández Mollar, chairman; Robert J.E. Evans and Lousewies van der Laan, vice-chairmen; Carlos Coelho, rapporteur; Generoso Andria (for Giacomo Santini, pursuant to Rule 153(2)), Mario Borghezio, Alima Boumediene-Thiery, Giuseppe Brienza, Kathalijne Maria Buitenweg (for Heide Rühle), Marco Cappato (for Frank Vanhecke), Michael Cashman, Chantal Cauquil (for Giuseppe Di Lello Finuoli, pursuant to Rule 153(2)), Charlotte Cederschiöld, Ozan Ceyhun, Thierry Cornillet, Gérard M.J. Deprez, Marianne Eriksson (for Ilka Schröder, pursuant to Rule 153(2)), Evelyne Gebhardt (for Margot

Keßler), Pierre Jonckheer, Anna Karamanou (for Adeline Hazan), Timothy Kirkhope, Ole Krarup, Alain Krivine (for Fodé Sylla), Giorgio Lisi (for Bernd Posselt, pursuant to Rule 153(2)), Manuel Medina Ortega (for Carmen Cerdeira Morterero), Pasqualina Napoletano (for Elena Ornella Paciotti, pursuant to Rule 153(2)), Hartmut Nassauer, Bill Newton Dunn, Marcelino Oreja Arburúa, Hubert Pirker, José Ribeiro e Castro, Olle Schmidt (for Baroness Sarah Ludford), Ole Sørensen (for Francesco Rutelli), Patsy Sørensen, Sérgio Sousa Pinto, Joke Swiebel, Anna Terrón i Cusí, Maurizio Turco and Sabine Zissener (for Eva Klamt, pursuant to Rule 153(2)).

The report was tabled on 4 December 2002.

## DRAFT LEGISLATIVE RESOLUTION

### **1. European Parliament legislative resolution on the initiative by the Kingdom of Spain with a view to adopting a Council Decision concerning the introduction of some new functions for the Schengen Information System, in particular in the fight against terrorism (9408/2002 – C5-0317/2002 – 2002/0813(CNS))**

#### **(Consultation procedure)**

*The European Parliament,*

- having regard to the initiative by the Kingdom of Spain (9408/2002<sup>1</sup>),
  - having regard to Article 30(1)(a) and (b), Article 31(a) and (b) and Article 34(2)(c) of the EU Treaty,
  - having been consulted by the Council pursuant to Article 39(1) of the EU Treaty (C5-0317/2002),
  - having been consulted by the Council pursuant to the Protocol to the EC Treaty integrating the Schengen acquis into the framework of the European Union,
  - having been informed by the Council that the United Kingdom and Ireland intend to participate in adopting and applying the measure concerned in the initiative by the Kingdom of Spain,
  - having regard to the Communication from the Commission to the Council and the European Parliament on the development of the Schengen Information System II (COM(2001) 720),
  - having regard to Rules 106 and 67 of its Rules of Procedure,
  - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (A5-0436/2002),
1. Approves the initiative by the Kingdom of Spain as amended;
  2. Calls on the Council to alter the text accordingly, pursuant to Article 250(2) of the EC Treaty;
  3. Calls on the Council to notify Parliament should it intend to depart from the text approved by Parliament;
  4. Asks to be consulted again if the Council intends to amend the initiative by the Kingdom of Spain substantially;
  5. Instructs its President to forward its position to the Council and Commission, and the government of the Kingdom of Spain.

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<sup>1</sup> OJ C 160, 4.7.2002, p. 7.

Amendment 1  
Recital 3a (new)

***The introduction of certain new functions into the current version of the SIS shall not reduce the safeguards on accuracy, the use or the level of protection on personal data.***

*Justification*

*New functions can only be introduced if they do not reduce the level of protection for citizens. In the SIS II additional safeguards should be included to improve the protection of citizens, particularly those whose identity is misused or whose data are incorrectly included in the SIS.*

Amendment 2  
ARTICLE POINT - 1 (new)  
Article 94(2)(b)

***-1. Article 94 (2) (b) shall read as follows:  
"objects referred to in Articles 99 and 100"***

*Justification*

*This amendment is a logical consequence to the amendment to Article 99.*

Amendment 3  
ARTICLE 1, POINT 1  
Article 94(3)(k)

The provisions of the 1990 Schengen Convention shall be amended as follows:

1) The following points shall be added to Article 94(3):

***"(k) in cases of alerts under Article 95: the type of offence(s);***

The provisions of the 1990 Schengen Convention shall be amended as follows:

1) The following points shall be added to Article 94(3):

***delete***

### *Justification*

*The inclusion of 'the type of offence' is not justified. Article 94(3) already includes whether the person is armed (para. g) and whether the person is violent (para. h). In the SIS II, the information required for each type of alert could be reassessed, for example, on persons wanted for extradition purposes (under Article 95) in the light of the European Arrest Warrant.*

#### Amendment 4 ARTICLE 1, POINT 2 Article 99(1)

2) Article 99(1) shall read as follows:

"1. Data on persons or vehicles, **ships**, aircraft and containers shall be entered in accordance with the national law of the Member State issuing the alert, for the purposes of discreet surveillance or of specific checks in accordance with paragraph 5."

2) Article 99(1) shall read as follows:

"1. Data on persons or vehicles, **boats**, aircraft and containers shall be entered in accordance with the national law of the Member State issuing the alert, for the purposes of discreet surveillance or of specific checks in accordance with paragraph 5."

### *Justification*

*This amendment would mean that boats smaller than ships, such as yachts, could be included.*

#### Amendment 5 ARTICLE 1, POINT 3 Article 99(3)

3) The last sentence of Article 99(3) shall read as follows:

"The Member State issuing the alert pursuant to this paragraph shall be obliged **duly to inform** the other Member States **thereof**".

3) The last sentence of Article 99(3) shall read as follows:

"The Member State issuing the alert pursuant to this paragraph shall be obliged **to consult** the other Member States **beforehand**.

***The other Member States shall have eight working days to respond to the Member State issuing the alert.***

*(See original Article 99(3) in the Schengen Convention)*

### *Justification*

*The promotion of the use of these alerts is not a reason to ignore safeguards for accuracy and*



*reliability of data. Therefore, the obligation to consult beforehand should be maintained as it could limit the likelihood of persons incorrectly included as suspects under Article 99(3). However, the Member States should be given a time limit in which they should react.*

Amendment 6  
ARTICLE 1, POINT 5  
Article 101(1)(b)

5) The following shall be added at the end of Article 101(1)(b):

***"and the judicial supervision thereof"***

5) The following shall be added at the end of Article 101(1)(b):

***"the initiation of public prosecutions in criminal proceedings and judicial inquiries prior to indictment"***

*Justification*

*The term 'judicial supervision' is unclear and it should be stated more precisely which authorities would have access to the data in the SIS.*

Amendment 7  
ARTICLE 1, POINT 6  
Article 101A

6) The following Articles shall be inserted:

1. The European Police Office (Europol) shall have the right to ***have access to***, and search, data entered into the Schengen Information System in accordance with Articles 95, 99 and 100.

***2. Europol may search only data*** which it requires for the performance of its tasks.

***3. The Council shall ensure that Europol is committed:***

(a) ***to record*** every search made by it and

6) The following Articles shall be inserted:

1. The European Police Office (Europol) shall have the right to search, ***and to view***, data entered into the Schengen Information System in accordance with Articles 95, 99 and 100 ***provided that Europol complies with the following conditions:***

***(- a) only search data for the purpose for which it was provided and*** which it requires for the performance of its tasks;

***(-b) comply with the data protection requirements in Article 117;***

***(-c) only have access to data entered in accordance with Articles 95, 99 and 100;***

(a) ***for*** every search made by it, ***record the***

to register **every** use made by it of data to which it has acceded;

(b) not **to** connect the parts of the Schengen Information System to which it has access to any computer system for data collection and processing in operation by or at Europol or to download any parts of the System;

(c) **to** limit the access to data entered into the Schengen Information System to specifically authorised staff of Europol;

(d) not **to** transfer any data to which Europol has access to any third State or third body **without the express prior authorisation of the Member State which has entered such data into the System;**

(e) **to adopt** measures **as** envisaged in Article 118;

**information required in Article 103** and register **any** use made by it of data to which it has acceded;

(b) not **copy data nor** connect the parts of the Schengen Information System to which it has access to any computer system for data collection and processing in operation by or at Europol or to download any parts of the System;

(c) limit the access to data entered into the Schengen Information System to specifically authorised staff of Europol;

(d) not transfer any data to which Europol has access to any third State or third body;

(e) **apply the** measures envisaged in Article 118;

#### *Justification*

*In principle, access can be granted to Europol provided that certain safeguards are satisfied prior to access being granted.*

#### Amendment 8 ARTICLE 1, POINT 6 Article 101A (1) (f)

f) to **allow** the Joint Supervisory Body, set up under Article 24 of the Europol Convention, **to review** the activities of Europol in the exercise of its right to accede to and to search data entered into the Schengen Information System.

f) to **guarantee that** the Joint Supervisory Body, set up under Article 24 of the Europol Convention, **verifies the legitimacy of** the activities of Europol in the exercise of its right to accede to and to search data entered into the Schengen Information System.

#### *Justification*

*The Joint Supervisory Authority must be requested to evaluate whether safeguards are satisfied before access is granted.*

Amendment 9  
ARTICLE 1, POINT 6  
Article 101A (1) (g) (new)

***(g) an assessment report on the respect by Europol of the above-mentioned conditions is established each year by the Joint Supervisory Body under the control of the Council and submitted to the European Parliament.***

*Justification*

*There is a need for democratic scrutiny.*

Amendment 10  
ARTICLE 1, POINT 6  
Article 101B

1. The national members of Eurojust shall have the right to ***have access to***, and search, data entered in accordance with Articles 95 and 98 into the Schengen Information System.
2. They shall have this right only for the purpose of performing their tasks as national members of Eurojust.

1. The national members of Eurojust shall have the right to search, ***and view***, data entered in accordance with Articles 95 and 98 into the Schengen Information System:

2. They shall have this right only for the purpose of performing their tasks as national members of Eurojust ***where this is consistent with the purpose for which the data was provided***;

***2a. They shall also:***

***(a) for every search made, record the information required in Article 103 and register any use made of data to which they have acceded;***

***(b) not copy data contrary to Article 102(2);***

***(c) not transfer any data to which Eurojust has access to any third State or third body.***

*Justification*

*In principle, access can be granted to Eurojust provided that certain conditions are satisfied. As access is granted via the national system, verification should be carried out by the national supervisory authorities. However, the conditions should be specified in the Decision.*

Amendment 11  
ARTICLE 1, POINT 7  
Article 103

Article 103 shall read as follows :

Each Member State shall ensure that every transmission of personal data is recorded in the national section of the Schengen Information System by the data file management authority for the purpose of checking whether the search is admissible or not. The record may be used only for this purpose and shall be deleted at the latest one year after it has been recorded"

Article 103 shall read as follows :

***1.*** Each Member State shall ensure that every transmission of personal data is recorded in the national section of the Schengen Information System by the data file management authority for the purpose of checking whether the search is admissible or not.

***2.*** ***The record should include the person or object on whom the search is run, the terminal or user carrying out the search, the place, date and time of the search, the grounds for consultation and the result of the search.***

***3.*** The record may be used only for this purpose and shall be deleted at the latest one year after it has been recorded."

*Justification*

*In order to ensure that the recording of transmissions is properly carried out, this article should specify the information which must be recorded.*

Amendment 12  
ARTICLE 1, POINT 8  
Article 108A

8) The following *paragraph* shall be added *to Article 108*:

"5. Member States shall exchange through the authorities designated for that purpose (known as SIRENE), all information necessary in connection with the entry of alerts and for allowing the appropriate action to be taken in cases where persons in respect of whom, and objects in respect of which, data have been entered in the Schengen Information System, are found as a result of searches made in the System."

8) The following *new article* shall be added:

**" Article 108A**

**1.** Member States shall exchange through the authorities designated for that purpose (known as SIRENE), all information necessary in connection with the entry of alerts and for allowing the appropriate action to be taken in cases where persons in respect of whom, and objects in respect of which, data have been entered in the Schengen Information System, are found as a result of searches made in the System.

**2. Information received from another SIRENE bureau shall only be used for the purpose for which it was transmitted and the rules in Article 118 shall apply to such information.**

**3. Personal data held in files by the authorities referred to in Article 108(5) as a result of information exchange pursuant to that paragraph shall be kept only for such time as may be required to achieve the purposes for which they were supplied. They shall in any event be deleted within eight working days after the alert or alerts concerning the person or object concerned have been deleted from the Schengen Information System."**

*(For paragraph 3, see Article 1, point 9 of the draft Council decision)*

*Justification*

*The inclusion of a legal basis for the SIRENE offices is welcomed but these offices should have the same rules on the processing and handling of data. It is not justified that the SIRENE office should be able to keep data for one year after the deletion of the data from the SIS.*

Amendment 13  
ARTICLE 1, POINT 9

## Article 113

9) Article 113 shall be amended as follows:

– the following sentence shall be added to paragraph 1:

"Data on containers, registered *ships* and aircraft shall also be kept for a maximum of three years".

9) Article 113 shall be amended as follows:

– the following sentence shall be added to paragraph 1:

"Data on containers, registered *boats* and aircraft shall also be kept for a maximum of three years".

### *Justification*

*This change has been discussed in the Council and would include smaller boats than ships, such as yachts.*

## Amendment 14 ARTICLE 1, POINT 9 Article 113

*–the following paragraph shall be added:* **deleted**

***"3. Personal data held in files by the authorities referred to in Article 108(5) as a result of information exchange pursuant to that paragraph, shall be kept only for such time as may be required to achieve the purposes for which they were supplied. They shall in any event be deleted at the latest one year after the alert or alerts concerning the person concerned have been deleted from the Schengen Information System."***

### *Justification*

*This text has been moved to a new Article 108A.*

## DRAFT LEGISLATIVE RESOLUTION

### **2. European Parliament legislative resolution on the initiative by the Kingdom of Spain with a view to adopting a Council Regulation concerning the introduction of some new functions for the Schengen Information System, in particular in the fight against terrorism (9407/2002 – C5-0316/2002 – 2002/0812(CNS))**

#### **(Consultation procedure)**

*The European Parliament,*

- having regard to the initiative by the Kingdom of Spain (9407/2002<sup>1</sup>),
  - having regard to Articles 62, 63 and 66 of the EC Treaty,
  - having been consulted by the Council pursuant to Article 67 of the EC Treaty (C5-0316/2002),
  - having been consulted by the Council pursuant to the Protocol to the EC Treaty integrating the Schengen acquis into the framework of the European Union,
  - having regard to the Communication from the Commission to the Council and the European Parliament on the development of the Schengen Information System II (COM(2001) 720),
  - having regard to Rules 106 and 67 of its Rules of Procedure,
  - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (A5-0436/2002),
1. Approves the initiative by the Kingdom of Spain as amended;
  2. Calls on the Council to alter the text accordingly, pursuant to Article 250(2) of the EC Treaty;
  3. Calls on the Council to notify Parliament should it intend to depart from the text approved by Parliament;
  4. Asks to be consulted again if the Council intends to amend the initiative by the Kingdom of Spain substantially;
  5. Instructs its President to forward its position to the Council and Commission, and the government of the Kingdom of Spain.

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<sup>1</sup> OJ C 160 E 4.7.2002, p. 7.

Amendment 15  
Recital 3 a (new)

***The introduction of certain new functions into the current version of the SIS shall not reduce the safeguards on accuracy, the use or the level of protection on personal data.***

*Justification*

*New functions can only be introduced if they do not reduce the level of protection for citizens. In the SIS II additional should be included to improve the protection of citizens, particularly those whose identity is misused or whose data are incorrectly included in the SIS.*

Amendment 16  
ARTICLE 1, POINT 1  
Article 101 (1)(b)

The provisions of the 1990 Schengen Convention shall be amended as follows:

1) the following shall be added at the end of Article 101(1)(b):

***"and the judicial supervision thereof";***

The provisions of the 1990 Schengen Convention shall be amended as follows:

1) the following shall be added at the end of Article 101(1)(b):

***" the initiation of public prosecutions in criminal proceedings and judicial inquiries prior to indictment"***

*Justification*

*The term "judicial supervision" is unclear and it should be stated more precisely which authorities would have access to the data in the SIS.*

Amendment 17  
ARTICLE 1, POINT 2



Article 101(2)

2) *Article 101(2) shall be replaced by* **deleted**  
*the following:*

**"2. In addition, access to data entered in accordance with Article 96 and data concerning identity documents entered in accordance with Article 100(3)(d) and (e) and the right to search such data directly may be exercised by the authorities responsible for issuing visas, the central authorities responsible for examining visa applications and the authorities responsible for issuing residence permits and for the administration of legislation on aliens in the context of the application of the provisions of this Convention relating to the movement of persons. Access to data by these authorities shall be governed by the national law of each Member State.";**

*Justification*

*Currently many problems exist where the identity of a person is used by another person. The JSA has made recommendations for measures to better protect citizens and it is planned that the new SIS II will ensure sufficient safeguards. In the absence of improved safeguards for citizens, it is not possible to approve this proposal which risks to increase the problems of citizens whose identity and documents are being misused.*

Amendment 18  
ARTICLE 1, POINT 3  
Article 102(4)

3) *the following words shall be added* **deleted**  
*to the second sentence of Article 102(4):*

**"and data concerning *identity* documents entered under Article 100(3)(d) and (e) may also be used for those purposes.";**

*Justification*

*Same as for amendment 17 above.*

Amendment 19  
ARTICLE 1, POINT 4  
Article 103

4) Article 103 shall be replaced by the following:

"Article 103

Each Member State shall ensure that every transmission of personal data is recorded in the national section of the Schengen Information System by the data file management authority for the purpose of checking whether the search is admissible or not. The record may be used only for this purpose and shall be deleted at the latest one year after it has been recorded.";

4) Article 103 shall be replaced by the following:

"Article 103

Each Member State shall ensure that every transmission of personal data is recorded in the national section of the Schengen Information System by the data file management authority for the purpose of checking whether the search is admissible or not.

***The record should include the person or object on whom the search is run, the terminal or user carrying out the search, the place, date and time of the search and the grounds for consultation.***

The record may be used only for this purpose and shall be deleted at the latest one year after it has been recorded.";

*Justification*

*In order to ensure that the recording of transmissions is properly carried out, this article should specify the information which must be recorded*

Amendment 20  
ARTICLE 1, POINT 5  
Article 108

5) The following **paragraph** shall be added **to Article 108**:

**"5.** Member States shall exchange through the authorities designated for that purpose (known as SIRENE), all information

5) The following **new article** shall be added:

**"Article 108A**

**1.** Member States shall exchange through the authorities designated for that purpose (known as SIRENE), all information

necessary in connection with the entry of alerts and for allowing the appropriate action to be taken in cases where persons in respect of whom, and objects in respect of which, data have been entered in the Schengen Information System, are found as a result of searches made in the System."

necessary in connection with the entry of alerts and for allowing the appropriate action to be taken in cases where persons in respect of whom, and objects in respect of which, data have been entered in the Schengen Information System, are found as a result of searches made in the System.

***2. Information received from another SIRENE bureau shall only be used for the purpose for which it was transmitted and the rules in Article 118 shall apply to such information.***

***3. Personal data held in files by the authorities referred to in Article 108(5) as a result of information exchange pursuant to that paragraph shall be kept only for such time as may be required to achieve the purposes for which they were supplied. They shall in any event be deleted within eight working days after the alert or alerts concerning the person or object concerned have been deleted from the Schengen Information System."***

*(For paragraph 3, see Article 1, point 6 of the draft Council regulation)*

#### *Justification*

*The inclusion of a legal basis for the SIRENE offices is welcomed but these offices should have the same rules on the processing and handling of data. It is not justified that the SIRENE office should be able to keep data for one year after the deletion of the data from the SIS.*

#### Amendment 21 ARTICLE 1, POINT 6 Article 113

***6) the following paragraph shall be added to Article 113:*** ***deleted***

***"3. Personal data held in files by the authorities referred to in Article 108(5) as a result of information exchange pursuant to that paragraph, shall be kept only for such time as may be required to achieve the purposes for which they were supplied. They shall in any event be***

*deleted at the latest one year after the alert or alerts concerning the person concerned have been deleted from the Schengen Information System."*

*Justification*

*This text has been moved to a new Article 108A*

## EXPLANATORY STATEMENT

### Introduction

This report examines the Spanish initiatives which establish a legal basis for certain improvements to the existing SIS. These initiatives must be seen in the light of the Council conclusions adopted in June 2002 on the requirements for the SIS II<sup>1</sup> and the conclusions of the JHA Council of 20 September on the improvements to the SIS to assist in combating terrorism.<sup>2</sup> In the opinion of the rapporteur, the improvements which can be included in the current version of the SIS should be based on the objectives of the SIS II and should therefore be viewed as part of the transition to SIS II. (For the background to the SIS, the rapporteur refers to his working document of 23 January 2001.<sup>3</sup>)

The rapporteur has examined closely the Spanish initiatives and, although he is not strongly in favour of them, he believes that they can be accepted subject to certain amendments to ensure that the safeguards for to protect the rights of citizens are not undermined. In reaching this opinion, he has examined closely the opinions of the Schengen Joint Supervisory Authority.<sup>4</sup> Certain proposals in the Spanish initiatives can be accepted with additional safeguards (e.g. for Europol), but others should wait until the development of SIS II when appropriate safeguards will be introduced (e.g. the proposal to extend access to stolen identity documents).

### SIS II

It is hoped that the SIS II will be developed by 2006 and it is not clear whether the proposals in the Spanish initiatives can be implemented within a reasonably short period, such as two years. However, given the risk that the development of SIS II will take longer than planned, the rapporteur agrees that it is appropriate to introduce some improvements to the existing SIS.

Before examining the proposals and the amendments, it should be recalled that the legal basis for the development and the budget of the SIS II have been determined in a Council Decision and Council Regulation.<sup>5</sup> The Commission has commissioned a feasibility study which should be available in March 2003 and has presented a communication<sup>6</sup> on the development of the SIS II to the Council and the European Parliament.

It is the view of the Rapporteur (and the Parliament<sup>7</sup>) that the Schengen, Europol, customs (and possibly Eurojust) databases should be combined into one database, with the aim of eliminating duplication, rationalising resources, and improving accuracy. This combined database would

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<sup>1</sup> Council document 9773/02 (available on the Council website <http://register.consilium.eu.int>).

<sup>2</sup> Council document 5969/1/02.

<sup>3</sup> Working document on crossing external borders and development of Schengen cooperation (Schengen Information System and the protection of personnel data) DT428474 - PE 294.303.

<sup>4</sup> These opinions are dated 13 June 2002 and 1 October 2002.

<sup>5</sup> Council Decision 2001/886/JHA of 6 December 2001, OJ 13.12.2001 L328/1.

Council Regulation (EC) No 2424/2001 of 6 December 2001, OJ 13.12.2001 L 328/4.

<sup>6</sup> COM(2001) 720.

<sup>7</sup> see Resolution A5-0233/2001 of 20 September 2001 and Report A5-0333/2001.

have different users with access to different parts of the database.<sup>1</sup> The rapporteur regrets that the current feasibility study will not examine the possibility of such a solution.

It should also be noted that the future management and legal basis of the SIS, which will be determined in a future legal instrument. In this context, the rapporteur recalls that it is the view of the European Parliament that the SIS should be managed by the Commission.

## **A. Access to new categories of users**

### **1. Access to Europol**

Europol has explained<sup>2</sup> that the main added value of access to SIS is the possibility to cross check data obtained by Europol. Europol would not be able to execute the requested action but may request additional information from the national SIRENE office.

The rapporteur is essentially in favour of access by Europol to the SIS where it is necessary for the attainment of the objectives of Europol. However, it is necessary that the need for Europol to have access to SIS data is more closely examined and justified and that adequate safeguards are in place to ensure that any use of the data is legitimate and lawful. As is the case when access is given to a State, the Schengen Joint Supervisory Authority should be given an opportunity to evaluate whether adequate safeguards in place and give a non-binding opinion prior to access being granted. For some aspects the evaluation of the Schengen JSA may be a formality such as in the security measures and the data protection standards to be applied, but nonetheless the Schengen JSA should be requested to verify Europol's compliance with the Schengen Convention.

### **2. Access for the national judicial authorities;**

Some Member States give access to the SIS to public prosecutors on the basis of Article 101(1) of the Convention.<sup>3</sup> The Spanish proposal seeks to clarify that the national judicial authorities can have access but to leave it for the individual Member States to decide on the access that is necessary for these authorities to fulfil their functions.

### **3. Access for the national members of Eurojust**

Although a statement was included in the minutes of the Council when adopting the Eurojust Decision of 28 February 2002<sup>4</sup>, there has been no justification of the need of access by Eurojust. The Spanish initiative proposes to give the national members of Eurojust access to Article 95 (persons wanted for arrest) and article 98 (witnesses) via the national authorities and it is therefore for the national supervisors to check that the relevant conditions are satisfied, but they should nonetheless be stated in the Convention.

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<sup>1</sup> It is clear that the Europol Convention would also have to be changed to remove the prohibition on links to other databases (Article 6(2) of the Europol Convention).

<sup>2</sup> Council Document 9323/02.

<sup>3</sup> Council Document 5968/1/02.

<sup>4</sup> Council document 14766/1/01

#### **4. Extended access for authorities issuing residence permits to alerts on documents;**

proposal is to give access to the authorities in Article 100(2) to alerts on documents which are reported as missing, stolen or lost. A consistent concern of the European Parliament and of the JSA has been the respect of the rights of persons.

Although the rapporteur has no objections in principle, he considers that in the absence of additional measures to safeguard the rights of persons whose documents are reported as missing stolen or lost, the EP cannot at this stage approve this proposal. The SIS II must be designed in a manner which enables the Member States to implement the recommendations of the JSA in this regard.

#### **B. New categories of data**

The proposed new categories of data for purposes of discreet surveillance or specific checks and for seizure or use as evidence in criminal proceedings, are, as regards Article 99, to include ships, aircraft and containers and as regards Article 100 to include ships, aircraft, containers, additional issued documents (such as residency permits and vehicle registration certificates), and credit documents. The Rapporteur has no objection to the inclusion of these additional categories of data.

It is recalled that the JHA Council of 20 September 2001<sup>1</sup> called for the establishment of a network for exchanging information on visas issued (and refused) for the purpose of combating terrorism. The Commission intends to study this question in connection with the development of SIS II. Although a visa function of this kind could be useful, care should be taken to ensure that it is not prejudicial, for example, to applicants who are refused for technical reasons.

It should be noted that in the SIS II it is proposed to add additional data on wanted persons and to incorporate identification material in alerts on persons, notably photographs and fingerprints. The rapporteur would be in favour of such a proposal provided that adequate safeguards are included.

#### **C. Improvements to the SIS**

The proposal in the Spanish initiative for the full recording of searches is to be welcomed, but as suggested by the JSA it seems appropriate to specify in the Article the information which must be recorded.

The proposal to provide a legal basis for the operation of the Sirene bureau as well as the proposal on the deletion of data by the Sirene bureau is also welcomed. The absence of a legal basis for the SIRENE bureau has previously been criticised by the rapporteur.

#### **D. Additional issues for the SIS II**

It is also proposed, for example, that the SIS II should include and the possibility of interlinking alerts, would allow for an improved search capability in respect of wanted persons by the

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<sup>1</sup> Point 26 of the conclusions of 20 September 2001.

introduction of alerts for the purposes of discreet surveillance or specific checks on objects owned and/or used by wanted persons and the possibility of running searches on the basis of incomplete data. These improved functions including the interlinking of types of alert could be approved by the rapporteur provided that this does not change the existing access rights to the different categories of alerts or undermine the data protection rules.



## MINORITY OPINION

Rule 161(3) of the Rules of Procedure  
Ilka Schröder, Ole Krarup and Alain Krivine

1. on the initiative by the Kingdom of Spain with a view to adopting a Council Decision concerning the introduction of some new functions for the Schengen Information System, in particular in the fight against terrorism, (9408/2002 – C5-0317/2002 – 2002/0813(CNS))
2. on the initiative by the Kingdom of Spain with a view to adopting a Council Regulation concerning the introduction of some new functions for the Schengen Information System, in particular in the fight against terrorism, (9407/2002 – C5-0316/2002 – 2002/0812(CNS))

Efforts to develop a new generation of the Schengen Information System (SIS) have been on the top of the agendas of police chiefs and surveillance fanatics for years. SIS is the perfect example of the control and surveillance of people by state authorities. The proposals gradually change the character of SIS, transforming it from a hit-no-hit system for border guards to an information system that will be used for investigative and police purposes.

New data categories, Europol access, interlinking of data and investigative searches of the database make SIS a powerful tool for police investigations - and mostly for targeting foreigners.

While the report includes some faint reference to data protection principles it fails to attack the underlying problem of the SIS: its characteristic of increasing state control and the hidden racist character of the SIS entries on foreigners. SIS reports people for arrest, for extradition, for discreet surveillance. Accuracy and reliability of data, effective democratic control or the right of individuals to have their personal data corrected or deleted has never existed.

SIS is in itself the problem!

Therefore, the SIS and related structures such as the SIRENE bureaux should be shut down completely.

No borders!

No electronic substitutes!

Shut down SIS!

## MINORITY OPINION

Rule 161(3) of the Rules of Procedure  
Maurizio Turco and Marco Cappato

1. on the initiative by the Kingdom of Spain with a view to adopting a Council Decision concerning the introduction of some new functions for the Schengen Information System, in particular in the fight against terrorism (9408/2002 – C5-0317/2002 – 2002/0813(CNS))
2. on the initiative by the Kingdom of Spain with a view to adopting a Council Regulation concerning the introduction of some new functions for the Schengen Information System, in particular in the fight against terrorism (9407/2002 – C5-0316/2002 – 2002/0812(CNS))

The ‘new functions for the Schengen Information System’ which the Kingdom of Spain proposes should be introduced, like the ‘fight against terrorism’ adopted for such measures, are actually being used as a pretext for both the extension of access to the SIS (and its successor, SIS II) for Europol, Eurojust and the authorities dealing with residence permits, and the erosion of citizens’ guarantees regarding the processing of their personal data and the exchange of such data with third countries. Although the rapporteur has markedly improved the original text, a clear political signal should be sent to the Council, which normally does not devote due attention to the amendments adopted by Parliament and the opinions and recommendations of the Schengen Joint Supervisory Authority. The proposal should therefore be rejected and the Council should be called upon to make the SIS more reliable by harmonising and improving the quality of the data entered at national level by the SIRENE offices (the data are often incorrect or inaccurate and in any case are entered on the basis of the different national legal systems, thereby jeopardising the rights of both European and third-country citizens) and providing binding guarantees regarding the processing of personal data under the third pillar.