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## **REPORT**

on the proposal for a Council regulation amending Regulation (EC) No 1104/2008 on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II) (COM(2009)0508 – C7-0244/2009 – 2009/0136(NLE))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Carlos Coelho

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

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

In amendments by Parliament, amendments to the draft act are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a Council regulation amending Regulation (EC) No 1104/2008 on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II)  
(COM(2009)0508 – C7-0244/2009 – 2009/0136(NLE))**

**(Consultation procedure)**

*The European Parliament,*

- having regard to the Commission proposal (COM(2009)0508),
  - having regard to Articles 66 and 67 of the EC Treaty, pursuant to which the Council consulted Parliament (C7-0244/2009),
  - having regard to the Commission Communication to Parliament and the Council entitled "Consequences of the entry into force of the Treaty of Lisbon for ongoing inter-institutional decision-making procedures" (COM(2009)0665),
  - having regard to Article 74 of the Treaty on the Functioning of the European Union (TFEU),
  - having regard to Rule 55 of its Rules of Procedure,
  - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinion of the Committee on Budgets (A7-0126/2010),
1. Approves the Commission proposal as amended;
  2. Notwithstanding the fact that Council is treating SIS 1+ RE as a contingency plan in the event of a failure of SIS II, the European Parliament, as co-legislator for the establishment of the second generation Schengen Information System (SIS II) (Regulation (EC) No 1987/2006<sup>1</sup>) and budgetary authority, reserves its right to hold in reserve the funds to be allocated for the development of the SIS II in the 2011 annual budget, in order to ensure full parliamentary scrutiny and oversight of the process;
  3. Calls on the Commission to alter its proposal accordingly, pursuant to Article 293(2) TFEU;
  4. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
  5. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;
  6. Instructs its President to forward its position to the Council and the Commission.

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<sup>1</sup> OJ L 381, 28.12.2006, p. 4.

## Amendment 1

### Proposal for a regulation – amending act Recital 3

*Text proposed by the Commission*

(3) The preconditions for migration will not be met by 30 June 2010. In order for SIS II to become operational as required by Regulation (EC) 1987/2006 and Decision 2007/533/JHA, Regulation (EC) No 1104/2008 and Decision 2008/839/JHA should therefore continue to apply until migration has been completed.

*Amendment*

(3) The preconditions for migration will not be met by 30 June 2010. In order for SIS II to become operational as required by Regulation (EC) 1987/2006 and Decision 2007/533/JHA, Regulation (EC) No 1104/2008 and Decision 2008/839/JHA should therefore continue to apply until migration has been completed. ***In the event of a failure of the current SIS II project, after testing, an alternative technical solution should be devised and its full financial implications should be disclosed to all parties concerned.***

## Amendment 2

### Proposal for a regulation – amending act Recital 4

*Text proposed by the Commission*

(4) The Commission and the Member States should continue to cooperate closely during all steps of the migration in order to complete the process. A group of experts should be established to complement the current organisational structure.

*Amendment*

(4) The Commission and the Member States should continue to cooperate closely during all steps of the migration in order to complete the process. ***In the Council conclusions on SIS II of 26 to 27 February 2009 and 4 to 5 June 2009, an informal body consisting of experts of the Member States and designated as the 'Global Programme Management Board' was established to enhance cooperation and provide direct support from the Member States to Central SIS II. A group of experts, called the Global Programme Management Board (GPMB), should therefore be formally established under this Regulation to complement the current organisational structure. In order to ensure***

***efficiency and cost-effectiveness, the members of the GPMB should be appointed on a permanent basis and their number should be limited.***

*Justification*

*The GPMB should be formally provided for in the legal basis. It should have a clear remit and, to enable it to operate efficiently and cost-effectively, it should be staffed by a limited number of permanent experts.*

**Amendment 3**

**Proposal for a regulation – amending act  
Recital 6**

*Text proposed by the Commission*

***(6) A technical contingency plan for attaining SIS II functionalities should be foreseen.*** The description of the technical components of the migration architecture ***therefore*** should be adapted to allow for another technical solution regarding the development of Central SIS II.

*Amendment*

***(6) It is necessary to adapt the legal framework to allow for migration to a possible alternative technical solution if tests show that SIS II cannot be implemented successfully.*** The description of the technical components of the migration architecture should be adapted to allow for another technical solution regarding the development of Central SIS II. ***Any alternative technical solution should be based on the best available technology and should be cost-effective and implemented in accordance with a precise and reasonable timetable. The Commission should present a thorough budgetary assessment of the costs associated with such an alternative technical solution in a timely fashion. It should be explicitly stated that the legal framework established by Regulation (EC) No 1987/2006 applies to every solution, regardless of its technical nature.***

## Amendment 4

### Proposal for a regulation – amending act Recital 16 a (new)

*Text proposed by the Commission*

*Amendment*

***(16a) As the European Parliament is responsible, as co-legislator, for the establishment, operation, and use of SIS II as laid down in Regulation (EC) No 1987/2006, and as the migration is financed from the Union budget, for which the European Parliament is also co-responsible, the European Parliament should be integrated in the decision-making process concerning migration. A favourable opinion from the European Parliament, on the basis of information provided by the Commission on the test results, should be required before the switch-over to a new Schengen Information System.***

#### *Justification*

*Matters relating to SIS II have fallen under the codecision procedure since 1 January 2005. The migration process is being financed from the EU budget, for which Parliament shares the responsibility. It follows that decisions concerning the migration should no longer be taken by the Commission and/or Council alone; on the contrary, Parliament should participate in the decision-making.*

## Amendment 5

### Proposal for a regulation – amending act Article 1 – point -1 (new) Regulation (EC) No 1104/2008 Article 1 – paragraph 1

*Text proposed by the Commission*

*Amendment*

***(-1) Article 1(1) is replaced by the following:***

***“1. The Schengen Information System (SIS), set up pursuant to the provisions of Title IV of the 1990 Schengen Convention (SIS 1+), shall be replaced***



**by a new system, the Schengen Information System II (SIS II) or any alternative technical solution which is based on the best available technology, complies with a precise and reasonable implementation timetable, and is highly cost-effective. The establishment, operation and use of the new system is regulated by Regulation (EC) No 1987/2006.”**

*Justification*

*If the results of the current SIS II tests were to prove unsatisfactory, a change to an alternative scenario would be a realistic option. The legal text now under consideration has to take this into account. Given the experiences so far with the development of SIS II, it must be made clear that solutions will be acceptable if, and only if, they are cost-effective and follow a precise timetable. Regulation (EC) No 1987/2006 provides for a comprehensive framework, especially as regards data protection. That framework – adopted under the codecision procedure – should invariably apply to every technical solution.*

**Amendment 6**

**Proposal for a regulation – amending act**

**Article 1 – point -1 a (new)**

Regulation (EC) No 1104/2008

Article 1 – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***(-1a) In Article 1, the following paragraph is inserted:***

***“1a. If the current SIS II project is discontinued and an alternative technical solution is implemented, references to SIS II in this Regulation shall be read as references to that alternative technical solution.”***

*Justification*

*The current revision of the migration instruments should allow for the fact that SIS II has not yet been tested successfully and that the Council is treating SIS I+ RE as a contingency plan that will remain in existence until such time as the projected milestone tests have been completed. Should the milestone tests fail, it has to be possible to switch quickly to an alternative solution, without the delays caused by another revision of the legal framework.*

*This proposal must therefore make the legal text flexible enough to be adapted to any technical solution, not just to SIS II.*

## **Amendment 7**

### **Proposal for a regulation – amending act**

#### **Article 1 – point 3**

Regulation (EC) No 1104/2008

Article 11 – paragraph 2

#### *Text proposed by the Commission*

2. The Member States participating in SIS 1+ shall migrate from N.SIS to N.SIS II using the interim migration architecture, with the support of France and of the Commission.

#### *Amendment*

2. The Member States participating in SIS 1+ shall migrate from N.SIS to N.SIS II using the interim migration architecture, with the support of France and of the Commission **by 31 December 2011. If an alternative technical solution as referred to in Article 11(5a) is implemented, that date may be changed in accordance with the procedure specified in Article 17(2).**

#### *Justification*

*Under the current legislation the migration was to have been completed by 30 September 2009 or, subject to the extension available through comitology, by 30 June 2010 at the latest. The Commission has invoked this provision and put back the date to 20 June 2010. The sunset clause should be respected. The new date should be in line with the current forecasts that SIS II will become operational by the end of 2011. The Commission should be accorded the degree of flexibility required to enable it to set a later date under a comitology procedure and hence cover the possible need to switch from SIS II to an alternative scenario if the test results are unsatisfactory.*

## **Amendment 8**

### **Proposal for a regulation – amending act**

#### **Article 1 – point 3 a (new)**

Regulation (EC) No 1104/2008

Article 11 – paragraph 5

#### *Text proposed by the Commission*

#### *Amendment*

**(3a) Article 11(5) is replaced by the following:**

**“5. The switchover foreseen in the migration process shall be carried out**

**after the validation mentioned in Article 8(7) and after the European Parliament has delivered a favourable opinion on the basis of the information on the test results provided by the Commission in accordance with Article 55(4) of Regulation (EC) No 1987/2006.”**

*Justification*

*Matters relating to SIS II have fallen under the codecision procedure since 1 January 2005. The migration process is being financed from the EU budget, for which Parliament shares the responsibility. It follows that decisions concerning the migration should no longer be taken by the Commission and/or Council alone; on the contrary, Parliament should participate in the decision-making.*

**Amendment 9**

**Proposal for a regulation – amending act**

**Article 1 – point 3 b (new)**

Regulation (EC) No 1104/2008

Article 11 – paragraph 6 (new)

*Text proposed by the Commission*

*Amendment*

***(3b) In Article 11, the following paragraph is added:***

***“6. The development of SIS II may be achieved by implementing an alternative technical solution.”***

*Justification*

*Article 11, which describes the different stages of the migration, should contain a reference to a possible alternative scenario, in case the SIS II project proves not to be feasible.*

**Amendment 10**

**Proposal for a regulation – amending act**

**Article 1 – point 3 c (new)**

Regulation (EC) No 1104/2008

Article 14 – paragraph 6 (new)

*Text proposed by the Commission*

*Amendment*

***(3c) In Article 14, the following***

*paragraph is added:*

***"6. The Commission shall develop and implement a package with additional measures in order to prevent the leakage of personal data information from the database and to assure the protection of personal data for the entire duration of testing and migration from SIS I to the second generation Schengen Information System (SIS II)."***

## **Amendment 11**

### **Proposal for a Regulation - amending act**

#### **Article 1 – point 4**

Regulation (EC) No 1104/2008

Article 17 a – paragraph 1

#### *Text proposed by the Commission*

1. Without prejudice to the respective responsibilities and activities of the Commission, France and the Member States participating in SIS 1+, a group of technical experts, called the Global Programme Management Board (hereinafter the “GPMB”), is hereby set up. The GPMB shall provide a forum for coordination of the central and national SIS II projects.

#### *Amendment*

1. Without prejudice to the respective responsibilities and activities of the Commission, France and the Member States participating in SIS 1+, a group of technical experts, called the Global Programme Management Board (hereinafter the “GPMB”), is hereby set up. The GPMB shall provide a forum for ***assistance to the development of Central SIS II. It shall facilitate consistency and provide for*** coordination of the central and national SIS II projects.

#### *Justification*

*The GPMB should have a more clearly defined remit, to enable it to play an active role in managing the development of the second-generation SIS and the migration process.*

## **Amendment 12**

### **Proposal for a regulation – amending act**

#### **Article 1 – point 4**

Regulation (EC) No 1104/2008

Article 17 a – paragraph 2

*Text proposed by the Commission*

2. The GPMB shall be composed of a maximum of 10 *experts*. A maximum of eight *experts* and an equal number of alternates shall be designated by the Member States acting within the Council. Two *experts* and two alternates shall be designated by the Director General of the *responsible Directorate-General of the Commission* from among Commission officials. **Other** Commission officials **with an interest in the proceedings may attend meetings of the GPMB.**

*Amendment*

2. The GPMB shall be composed of a maximum of 10 **members who shall be qualified to contribute actively to the development of SIS II and who shall meet on a regular basis**. A maximum of eight **members** and an equal number of alternates shall be designated by the Member States acting within the Council. **A maximum of two members** and two alternates shall be designated by the Director General of the *Commission Directorate-General* responsible from among Commission officials. **Interested Members or relevant staff of the European Parliament, experts from Member States and Commission officials directly involved in the development of the SIS II projects may attend GPMB meetings at the expense of their respective administration or institution.**

**The GPMB may invite other experts to participate in GPMB meetings as defined in the terms of reference, at the expense of their respective administration, institution or company.**

**Amendment 13**

**Proposal for a regulation – amending act**

**Article 1 – point 4**

Regulation (EC) No 1104/2008

Article 17 a – paragraph 5

*Text proposed by the Commission*

5. The GPMB shall draw up its own terms of reference. They shall take effect after a favourable opinion has been given by the Director General of the responsible Directorate-General of the Commission.

*Amendment*

5. The GPMB shall draw up its own terms of reference. They shall take effect after a favourable opinion has been given by the Director General of the responsible Directorate-General of the Commission. **The terms of reference of the GPMB shall include a requirement to publish regular reports and to make those reports**

*available to the European Parliament in order to ensure full parliamentary scrutiny and oversight.*

#### **Amendment 14**

##### **Proposal for a regulation – amending act**

##### **Article 1 – point 4**

Regulation (EC) No 1104/2008

Article 17 a – paragraph 6

##### *Text proposed by the Commission*

6. Without prejudice to Article 15(2), the administrative costs and travel expenses arising from the activities of the GPMB shall be borne by the general budget of the European Union, to the extent that they are not reimbursed from other sources. As regards travel expenses of the experts in the GPMB designated by the Member States acting within the Council and experts invited pursuant to paragraph 3 of this Article which arise in connection with the work of the GPMB, the Commission's 'Rules on the reimbursement of expenses incurred by people from outside the Commission invited to attend meetings in an expert capacity' shall apply.

##### *Amendment*

6. Without prejudice to Article 15(2), the administrative costs and travel expenses arising from the activities of the GPMB shall be borne by the general budget of the European Union, to the extent that they are not reimbursed from other sources. As regards travel expenses of the experts in the GPMB designated by the Member States acting within the Council and experts invited pursuant to paragraph 3 of this Article which arise in connection with the work of the GPMB, the Commission's 'Rules on the reimbursement of expenses incurred by people from outside the Commission invited to attend meetings in an expert capacity' shall apply. ***The necessary appropriations to cover the cost arising from the meetings of the GPMB shall come from the appropriations currently provided for in the Financial Programming 2010-2013 for the second generation Schengen Information System (SIS II).***

#### **Amendment 15**

##### **Proposal for a regulation - amending act**

##### **Article 1 – point 5**

Regulation (EC) No 1104/2008

Article 19

*Text proposed by the Commission*

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 a date to be fixed by the Council, acting in accordance with Article 55(2) of Regulation (EC) No 1987/2006.

*Amendment*

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 a date to be fixed by the Council, acting in accordance with Article 55(2) of Regulation (EC) No 1987/2006, **and in any event no later than 31 December 2013.**

*Justification*

*Under the current legislation the migration was to have been completed by 30 September 2009 or, subject to the extension available through comitology, by 30 June 2010 at the latest. The Commission has invoked this provision and put back the date to 20 June 2010. The sunset clause should be respected. The new date should be in line with the current forecasts that SIS II will become operational by the end of 2011. The Commission should be accorded the degree of flexibility required to enable it to set a later date under a comitology procedure and hence cover the possible need to switch from SIS II to an alternative scenario if the test results are unsatisfactory.*

## EXPLANATORY STATEMENT

### Introduction

Provisions on the establishment, operation and use of the SIS II were agreed in 2006, between the Council and the European Parliament, under co-decision, on a first reading in order to avoid anymore delays.

On these legal instruments is foreseen that they will start applying to the Member States participating in the SIS I+ only as of the date to be fixed by the Council acting by the unanimity of its members representing the governments of the Member States participating in SIS I+. Before this can happen and the system starts operating, it must be fully tested, with a view to assessing whether SIS II can work in accordance with the technical and functional requirements such as robustness, availability and performance.

Only after the successful completion of all SIS II tests we can go for the next step: the migration of the SIS I+ users to the SIS II environment, where the switch-over should take place on the same date for all Member States - "one-shoot migration".

The initial plan was to have a migration of 15 Member States (the number at that time), during a process that should take around 8 hours. Unfortunately, with all the delays and the fact that the number of countries participating almost duplicate, the migration process become much more complex, difficult and requiring more time to load the network.

In order to provide the necessary tools to be able to deal with the high risks of a service disruption during the common switch-over, it were approved in 2008 two legal instruments aiming to establish the legal framework governing the migration, where the two systems will co-exist on that provisory period of time.

It was decided to create an interim technical architecture allowing that the SIS I+ and certain technical parts of the architecture of SIS II to be able to operate in parallel for a limited transitional period, and at the same time they tried to clarify conditions, procedures, responsibilities, the financing of the migration process and the substantive legal framework applicable during migration.

A new technical tool was introduced - a "converter" - allowing for the successful conversion and synchronisation of data between SIS I+ and SIS II. In fact, the SIS I central system and the SIS II central system will be connect through the converter enabling them to process the same information and ensuring that the Member States already successful connected to the SIS II stay on the same level as the others that are still connected to the SIS I+.

A new function - "the reverse mode" - has also been added in order to allow this interim technical architecture to work.

The operational start of SIS II will close the development phase and the beginning of the SIS II legal basis applicability. According to this logic, than the migration phase has to be the final task under the development mandate for SIS II, implying the need to have a SIS II



development mandate valid, for the Commission, until the operational start of SIS II, in order to allow them to carry out all the tasks defined as preconditions in the SIS II legal instruments, including the correction of any bugs identified during the test phases and to provide all necessary tools such as test platforms and resources, with the aim of delivering a system perfectly working.

### **Migration proposals**

The first legislative package by which the Commission was entrusted with the development of the second generation SIS was valid until 31 December 2006 and was later extended to 31 December 2008. The actual migration instruments, Council Regulation (EC) 1140/2008 and Council Decision 2008/839/JHA state that migration should be completed by 30 September 2009 at the latest. If necessary, the Commission could extend this date through comitology until the expiry of the migration instruments. The sunset clause sets the date for expiry at 30 June 2010.

The Commission made use of the option to postpone the date for completion of the migration via comitology until 30 June 2010. However, current forecasts say that migration will not be completed by mid-2010. Therefore, the Commission proposes to amend the migration instruments again before they expire.

The latest forecasts indicate that the migration could be completed by the end of 2011. The progress report on the development of SIS II, published by the Commission in October 2009, states that the two so-called milestone tests for SIS II are foreseen for the fourth quarter of 2009 and summer 2010 respectively. According to the Council conclusions of 4/5 June 2009 the current SIS II project is being continued, but a contingency plan (SIS 1+RE) is kept in reserve for the period necessary to test SIS II.

For those reasons the Commission presented a new package of proposals (COM(2009) 508 and 509) amending the two legal instruments on migration from the SIS I + to the second-generation SIS.

### **Entry into force of the Treaty of Lisbon**

The effect of the entry into force of the new Treaty on 1 December 2010 on this package was as follows: The first part of the package, COM(2009)508, remained pending. It was listed in annex 4 of the "omnibus" Communication of the Commission on "Consequences of the entry into force of the Treaty of Lisbon for ongoing inter-institutional decision-making procedures". The new legal basis under the Treaty of Lisbon is Article 74 TFEU. The procedure remained consultation. The second part of the package, COM(2009)509, lapsed with the entry into force of the new Treaty. The Commission replaced it by a new proposal, COM(2010)15. The legal basis is also Article 74 TFEU, and the procedure consultation.

### **Scope of the proposals**

#### **1. Deleting the sunset clauses**

The conditions for migration will not be met by 30 June 2010. The last sentence in Article 19 of both instruments currently states that they shall expire no later than on 30 June 2010. Therefore, the proposals aim first of all at modifying the sunset clauses of the instruments in order to prevent their expiry. The Commission proposes to delete the sunset clause completely, i.e. not to set date for the expiry of the instruments any more. The fact that the Commission is not able to propose a possible date for the start of operations of the SIS II is inconceivable and raises enormous doubts in the way the project is being managed.

## **2. Introducing flexibility for developing SIS II via alternative technical solutions**

According to the Commission proposal the modifications proposed would also cover the case of a switchover from the SIS II project, should it not be completed successfully, to an alternative scenario such as SIS1+ RE.

To this end the Commission suggests to modify Article 4 and Article 10 paragraph 3 of the instruments and to introduce the formula "to the extent necessary". These modifications would imply that the so-called converter, a technical element which is exclusively linked to the SIS II project, is no longer considered as a compulsory technical component of the migration architecture.

## **3. Introducing the Global Programme Management Board (GPMB)**

Furthermore, the Commission suggests to insert the Global Programme Management Board (GPMB) in the legal instruments, via a new Article 17a. The GPMB is a group of 10 technical experts - 8 from the Member States and 2 Commission officials. It was created in order to better coordinate Commission's and Member States works during the migration process. In its conclusions on the further direction of SIS II of 4/5 June 2009 the Council had asked the Commission to enhance the IT management structure and to further integrate the GPMB in the management structure. Its integration in the legal basis would also allow for its administrative costs and travel expenses to be financed from the Community budget.

## **Position of the rapporteur**

The rapporteur would like to recall that the European Parliament already regretted on several occasions all the delays on the SIS II project. The latest occasion was on the 22nd October 2009, with the approval of a Resolution on the progress of the Schengen Information II and the Visa Information System. Once more, the European Parliament expressed deep concern with the delays on the start of operations of the SIS II. It asked, also, to be informed by the Commission and the Council on the test results and future steps, immediately after the completion of the milestone 1 test, which was originally planned for December 2009. Parliament also called for full transparency as regards the implementation process of SIS II.

In the meantime the milestone 1 test was postponed from December 2009 to the end of January 2010. The tests in January 2010 were not very successful; the evaluation of the test results is still ongoing. Possibly the milestone 1 test will have to be repeated before final conclusions can be drawn.

The rapporteur makes the following recommendations:

- Given the serious time delays and cost-overruns in the SIS II project the legal basis should state that any technical solution must be based on the best available technology and comply with the criteria of a clear timetable and cost-effectiveness.
- The sunset clause should remain. The Commission should be granted some flexibility to adapt the dates through comitology, in order to adapt the legal framework to an alternative scenario if the SIS II project is not successful.
- It is essential to keep the migration process under parliamentary scrutiny: Parliament is the co-legislator for the SIS II legal basis; Parliament also forms part of the budgetary authority, which supervises the migration, financed from the Community budget.
- For the same reasons Parliament should no longer be excluded from the decision-making as regards migration; before switching over to the new system Parliament should be fully informed on the test results and issue a favourable opinion.
- As the date of completion of the migration process and the technical solution are not yet certain, the legislator must ensure that the legal framework intended for SIS II applies, regardless of potential technical problems that will determine the choice of the final technical solution.

The creation of the GPMB and its formal integration into the SIS II management structure, can be seen as a positive step in order to enhance the cooperation between the Member States and the Commission and, also, to provide direct Member States support to the central SIS II project. It is also important to limit the number of experts in order to ensure efficiency as well as cost effectiveness.

In case the SIS II project fails Parliament reserves, itself, the right to invite the European Court of Auditors to carry out an in-depth audit on how the SIS II project was managed and on the financial implications for the Community budget.



17.3.2010

## **OPINION OF THE COMMITTEE ON BUDGETS**

for the Committee on Civil Liberties, Justice and Home Affairs

on the proposal for a Council regulation amending Regulation (EC) N° 1104/2008 on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II)  
(COM(2009)0508 – C7-0244/2009 – 2009/0136(NLE))

Rapporteur: Alexander Alvaro

### **SHORT JUSTIFICATION**

Parliament has repeatedly deplored the delays in the development of the SIS II project. It did so, for example, on 22 October 2009, when it adopted a resolution on the progress of the Schengen Information System II and the Visa Information System.

The progress report on the development of SIS II, published by the Commission in October 2009, states that the two SIS II ‘milestone’ tests are to be carried out in the fourth quarter of 2009 and in summer 2010. As called for in the Council conclusions of 4/5 June 2009, the current SIS II project is being continued as a matter of priority, but a contingency plan (SIS 1+RE) is being held in reserve: If either of the milestone tests were to fail, the Council calls upon the COM to stop the project (guillotine-clause) and to switch to the technical alternative solution SIS 1+RE unless the Council decides with a qualified majority against this course of action. At this Council meeting, the technical feasibility of the alternative SIS 1+RE system is confirmed. That is why the Commission has submitted the new package of proposals (COM(2009)0508 and COM(2010)15) amending the two legal instruments relating to the migration from SIS I + to the second-generation SIS.

The preconditions for migration will not be met by 30 June 2010, nor will the migration be completed by the 4th quarter of 2011. In order for SIS II to become operational as required by Regulation (EC) 1987/2006 and Decision 2007/533/JHA and in case of its failure after testing, an alternative scenario should be envisaged and full financial implications made available to all parties concerned as soon as possible.

Costs for the development of the second generation Schengen Information System as well as costs of setting up, testing, migrating, 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 developing, setting up, testing, migrating, operating and maintaining for the national systems are borne by the Member State concerned. The costs for the Global Programme Management Board (GPMB) shall be covered by the funds already allocated until 2013.

Since 2002 EUR 48.5 Mio have been spent on the development of the migration instrument alone, whereas operational costs amount to a further EUR 33 Mio. During this period, the contractor has repeatedly violated contractual obligations and tests have not proven the platform to function properly, putting the general technical feasibility of the SIS II into question. Furthermore, the contractor has received EUR 1.93 Mio for system tests in 2009 while the fines to the consortium amounting to 390 000 Euro at the end of the contractual phase of the operation tests in September 2009 have been offset against invoices. A further EUR 1.26 Mio has been paid for the first milestone test in January 2010. These additional expenses as well as a probable further investment necessary, should a migration to SIS II fail and an alternative solution be recommended, call for much tighter budgetary scrutiny.

Furthermore, in view of extreme budgetary constraints because of the economic crisis, both for Member States and for the Union itself, and so as not to continue to throw good money after bad, particular rigour is called for in using appropriations for a system which has so far failed to reach the required standard. Your rapporteur recommends Parliament uses its right to hold funds allocated to the migration to the SIS II in reserve pending successful testing and a comprehensive audit so as to ensure and maintain a high level of security within the area of justice, freedom and security. Hence the proposed amendments.

## AMENDMENTS

The Committee on Budgets calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

### Amendment 1

#### Draft Legislative Resolution Paragraph 1a (new)

*Draft Legislative Resolution*

*Amendment*

***1a. Notwithstanding the fact that Council is treating SIS 1+ RE as a contingency plan in the event of a failure of SIS II, the European Parliament, as co-legislator for the establishment of the second generation Schengen Information System (SIS II) (Regulation (EC) No 1987/2006<sup>1</sup>) and budgetary authority, reserves its right***

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<sup>1</sup> OJ L 381, 28.12.2006, p. 4.

*to hold in reserve the funds to be allocated for the development of the SIS II in the 2011 annual budget, in order to ensure full parliamentary scrutiny and oversight of the process.*

## Amendment 2

### Proposal for a regulation – amending act Recital 3

*Text proposed by the Commission*

(3) The preconditions for migration will not be met by 30 June 2010. In order for SIS II to become operational as required by Regulation (EC) 1987/2006 and Decision 2007/533/JHA, Regulation (EC) No 1104/2008 and Decision 2008/839/JHA should therefore continue to apply until migration has been completed.

*Amendment*

(3) The preconditions for migration will not be met by 30 June 2010. In order for SIS II to become operational as required by Regulation (EC) 1987/2006 and Decision 2007/533/JHA, Regulation (EC) No 1104/2008 and Decision 2008/839/JHA should therefore continue to apply until migration has been completed. ***In the event of a failure of the current SIS II project, after testing, an alternative technical solution should be devised and its full financial implications should be disclosed to all parties concerned.***

## Amendment 3

### Proposal for a regulation – amending act Recital 6

*Text proposed by the Commission*

(6) ***A technical contingency plan for attaining SIS II functionalities should be foreseen.*** The description of the technical components of the migration architecture therefore should be adapted to allow for ***another*** technical solution regarding the development of Central SIS II.

*Amendment*

(6) ***This Regulation should allow for migration to possible alternative technical solutions in the event that the current SIS II project cannot be successfully implemented.*** The description of the technical components of the migration architecture should be adapted to allow for ***an alternative*** technical solution regarding the development of Central SIS II. ***Any such alternative technical solution should be cost-effective and implemented in accordance with a precise and reasonable***

***timetable. The Commission should present a thorough budgetary assessment of the costs associated with such an alternative technical solution in a timely fashion.***

*Justification*

*The current revision of the migration instruments should allow for the fact that SIS II has not yet been tested successfully and that the Council is treating SIS I+ RE as a contingency plan. Should the milestone tests fail, it has to be possible to switch quickly to an alternative solution proven cost-effective, without the delays caused by another revision of the legal framework.*

**Amendment 4**

**Proposal for a regulation – amending act**

**Article 1 – point 4**

Regulation (EC) No 114/2008

Article 17a - paragraph 2

*Text proposed by the Commission*

2. The GPMB shall be composed of a maximum of 10 experts. A maximum of eight experts and an equal number of alternates shall be designated by the Member States acting within the Council. Two experts and two alternates shall be designated by the Director General of the responsible Directorate-General of the Commission from among Commission officials. Other Commission officials with an interest in the proceedings may attend meetings of the GPMB.

*Amendment*

2. The GPMB shall be composed of a maximum of 10 experts. A maximum of eight experts and an equal number of alternates shall be designated by the Member States acting within the Council. Two experts and two alternates shall be designated by the Director General of the responsible Directorate-General of the Commission from among Commission officials. Other Commission officials with an interest in the proceedings may attend meetings of the GPMB. ***Interested Members of the European Parliament or officials from relevant policy departments in the European Parliament may attend GPMB meetings.***



## Amendment 5

### Proposal for a regulation – amending act

#### Article 1 – point 4

Regulation (EC) No 114/2008

Article 17a - paragraph 5

#### *Text proposed by the Commission*

5. The GPMB shall draw up its own terms of reference. They shall take effect after a favourable opinion has been given by the Director General of the responsible Directorate-General of the Commission.

#### *Amendment*

5. The GPMB shall draw up its own terms of reference. They shall take effect after a favourable opinion has been given by the Director General of the responsible Directorate-General of the Commission. ***The terms of reference of the GPMB shall include a requirement to publish regular reports and that those reports be made available to the European Parliament in order to ensure full parliamentary scrutiny and oversight.***

## Amendment 6

### Proposal for a regulation – amending act

#### Article 1 – point 4

Regulation (EC) No 114/2008

Article 17a - paragraph 6

#### *Text proposed by the Commission*

6. Without prejudice to Article 15(2), the administrative costs and travel expenses arising from the activities of the GPMB shall be borne by the general budget of the European Union, to the extent that they are not reimbursed from other sources. As regards travel expenses of the experts in the GPMB designated by the Member States acting within the Council and experts invited pursuant to paragraph 3 of this Article which arise in connection with the work of the GPMB, the Commission's 'Rules on the reimbursement of expenses incurred by people from outside the Commission invited to attend meetings in an expert capacity' shall apply.

#### *Amendment*

6. Without prejudice to Article 15(2), the administrative costs and travel expenses arising from the activities of the GPMB shall be borne by the general budget of the European Union, to the extent that they are not reimbursed from other sources. As regards travel expenses of the experts in the GPMB designated by the Member States acting within the Council and experts invited pursuant to paragraph 3 of this Article which arise in connection with the work of the GPMB, the Commission's 'Rules on the reimbursement of expenses incurred by people from outside the Commission invited to attend meetings in an expert capacity' shall apply. ***The necessary appropriations to cover the cost***

*arising from the meetings of the GPMB shall come from the appropriations currently foreseen in the Financial Programming 2010-2013 for the second generation Schengen Information System (SIS II).*

## RESULT OF FINAL VOTE IN COMMITTEE

|   |  |
|---|--|
| <b>Date adopted</b>   | 17.3.2010  |
| <b>Result of final vote</b>                                       | + : 32<br>- : 0<br>0 : 0   |
| <b>Members present for the final vote</b>                         | Damien Abad, Alexander Alvaro, Francesca Balzani, Reimer Böge, Andrea Cozzolino, Jean-Luc Dehaene, Göran Färm, José Manuel Fernandes, Eider Gardiazábal Rubial, Salvador Garriga Polledo, Jens Geier, Ivars Godmanis, Ingeborg Gräßle, Carl Haglund, Jutta Haug, Anne E. Jensen, Ivailo Kalfin, Alain Lamassoure, Vladimír Maňka, Barbara Matera, Nadezhda Neynsky, Miguel Portas, Vladimír Remek, Dominique Riquet, László Surján, Daniël van der Stoep, Derek Vaughan, Angelika Werthmann, Jacek Włosowicz |
| <b>Substitute(s) present for the final vote</b>                   | Paul Rübig, Georgios Stavrakakis   |
| <b>Substitute(s) under Rule 187(2) present for the final vote</b> | Jan Kozłowski  |

## RESULT OF FINAL VOTE IN COMMITTEE

|   |  |
|---|--|
| <b>Date adopted</b>                             | 27.4.2010  |
| <b>Result of final vote</b>                     | + : 33<br>- : 0<br>0 : 1   |
| <b>Members present for the final vote</b>       | Emine Bozkurt, Simon Busuttil, Philip Claeys, Carlos Coelho, Cornelis de Jong, Agustín Díaz de Mera García Consuegra, Cornelia Ernst, Hélène Flautre, Kinga Gál, Kinga Göncz, Sylvie Guillaume, Ágnes Hankiss, Anna Hedh, Sophia in 't Veld, Teresa Jiménez-Becerril Barrio, Clemente Mastella, Claude Moraes, Antigoni Papadopoulou, Carmen Romero López, Judith Sargentini, Birgit Sippel, Csaba Sógor, Renate Sommer, Rui Tavares, Axel Voss, Tatjana Ždanoka |
| <b>Substitute(s) present for the final vote</b> | Alexander Alvaro, Edit Bauer, Anna Maria Corazza Bildt, Ana Gomes, Nadja Hirsch, Franziska Keller, Mariya Nedelcheva, Cecilia Wikström   |