



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 31.05.2005
COM(2005)237 final

2005/0104(COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

regarding access to the Second Generation Schengen Information System (SIS II) by the services in the Member States responsible for issuing vehicle registration certificates

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

1.1. Objective

On 21 August 2003, the Commission submitted a Proposal for a Regulation amending the Convention implementing the Schengen Agreement (hereinafter referred to as “the Schengen Convention”) as regards access to the Schengen Information System (hereinafter referred to as the “SIS”) by the services in the Member States responsible for issuing registration certificates for vehicles¹. This proposal has been submitted to the European Parliament for second reading.

The main objective of the current proposal is the same as that tabled in August 2003 i.e. to reinforce cooperation between Member States, based on an effective exchange of information to combat fraud and illegal trade in stolen vehicles in the context of the common transport policy, provided for in Title V of the Treaty establishing the European Community (hereinafter referred to as “EC Treaty”) and, more particularly, in the interest of the functioning of the internal market. The concrete measure proposed also remains the same, i.e. giving vehicle registration services of the Member States the right to consult certain categories of data contained in the SIS.

The Commission has fully followed the line of the aforementioned proposal and has only made formal amendments to it so as to ensure coherence with the new legal instruments for the establishment, operation and use of the second generation of the Schengen Information System (hereinafter referred to as the “SIS II”). The references to the Schengen Convention contained in the former proposal are amended in order to fit into the SIS II legal framework. The purpose is to guarantee that the services responsible for issuing registration certificates for vehicles shall have access to the same SIS data under the new legal framework for SIS II as they will have when the 2003 proposed Regulation enters into force.²

1.2. General context

The SIS

The SIS is an information system set up under the Schengen Convention allowing the Member States’ competent authorities to cooperate, by exchanging information for the implementation of various policies required, in order to establish an area without internal border controls without jeopardising the level of security in this area. It allows these authorities, through an automatic query procedure, to obtain information related to alerts on persons and objects. The information is exchanged for police and judicial cooperation in criminal matters, in order to carry out controls on persons at the external borders or on national territory, and for the issuance of visas and residence permits. In 2001, in the context of the enlargement process, the Council decided to develop the SIS II and entrusted the Commission with this task. This system should benefit from the latest technological

¹ COM(2003) 510 final - 2003/0198 (COD)

² Text to be revised in case the Proposal from August 2003 is adopted

developments and allow for the easy technical integration of the new Member States and of some new functionalities.

Existing provisions and related proposals

Articles 92 – 119 of the Schengen Convention are the basic legal provisions governing the SIS. Adopted in an inter-governmental framework, they were incorporated in the institutional and legal framework of the European Union following the entry into force of the Treaty of Amsterdam³. However, they differ from Community law in some aspects. First of all, since they do not take the form of classic EC instruments, such as regulations and directives, some ambiguity about their legal value could arise. In addition, they were obviously adopted without the participation of the Community Institutions⁴, in particular the European Parliament.

The Commission has, therefore, decided to submit two proposals given the cross-pillar nature of the SIS: a Regulation based on Title IV of the EC Treaty and a Decision based on Title VI of the Treaty on the European Union (hereinafter referred to as the “EU Treaty”), for the establishment, operation and use of the SIS II. These two instruments, which are intended to replace Article 92 to 119 of the Schengen Convention, needed to be completed by an instrument allowing the access to the SIS II by vehicle registration services. This latter, based on Title V of the Treaty will thus complete the SIS II legal framework and will replace Article 102a to be inserted in the Schengen Convention following the adoption of the Commission’s proposal of August 2003.

The present proposal, although providing for access to the SIS II, refers only to the Decision on the establishment, operation and use of the SIS II in the framework of judicial and police cooperation, since that instrument, establishes the alerts on stolen, misappropriated or lost objects, including the rules governing the purpose of the alerts and identification of the authorities with right of access to these alerts. The references of the current proposal to this Decision are coherent with the position of the United Kingdom and Ireland which participate in both legal instruments.

Calendar

The legal instruments regulating the SIS II should be adopted in due time for allowing the necessary preparations for this new system and, in particular, the migration from the current system to the SIS II.

2. LEGAL ASPECTS

2.1. Legal basis

The legal basis for the proposal is Article 71(1)(d) EC Treaty. This article stipulates that for the purpose of implementing the common transport policy, the Council shall adopt “any other appropriate provisions”, in accordance with the procedure referred to in article 251 EC Treaty and after consultation of the European Economic and Social Committee and the Committee of

³ See the Protocol integrating the Schengen acquis into the framework of the European Union, annexed to the EC and EU Treaties by the Treaty of Amsterdam.

⁴ The Commission did, however, have observer status in the Schengen bodies.

the Regions. The access of vehicle registration services to the SIS II is to be considered as an appropriate provision to further implement the common transport policy, more specifically by allowing these services to check the status of a vehicle before registering it.

The same legal basis was chosen for the August 2003 Proposal for a Regulation amending the Schengen Convention as regards access to the SIS by the services in the Member States responsible for issuing registration certificates for vehicles.

According to Article 5(1) of the Protocol integrating the Schengen acquis into the framework of the European Union, proposals and initiatives building upon the Schengen acquis shall be subject to the relevant provisions of the Treaties, even if, according to paragraph 2 of the same article, the Council has not adopted the measures referred to in Article 2(1), second subparagraph of that Protocol. This is currently the case for Articles 92 to 119 of the Schengen Convention. The choice of Article 71 EC Treaty as a legal basis for this proposal signifies that access to the SIS by vehicle registration services has a basis in the EC Treaty.

2.2. Subsidiarity and proportionality

In accordance with the principle of subsidiarity, the objective of the proposed action, namely providing for access by the services responsible for issuing registration certificates for vehicles to SIS II, could only be achieved by measures at Community level. Common rules are necessary for governing the right of access to a system where Member States put in common information on persons and objects that supports the implementation of several policies in the context of police and judicial cooperation as well as external borders, visas and other policies linked to the movement of persons.

Consultation of the SIS II data is restricted to competent services in each Member State on the basis of the purposes as defined in this Regulation and limited to the extent the data is required for the performance of the tasks in accordance with these purposes.

2.3. Choice of the legal instrument

The Regulation instrument is warranted in view of the need to apply uniform and directly applicable rules, in particular in relation to the access to data in the system. The provisions set out in this Regulation must constitute a set of precise, unconditional provisions that are directly and uniformly applicable in a mandatory way and, by their very nature, require no action by Member States to transpose them into national law.

2.4. Participation of Norway, Iceland and Switzerland

With regard to the position of Norway and Iceland, Article 1 point G of the Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union, the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen acquis⁵ determines that the SIS, including the relevant provisions on protection and security of data, the provisions on the operation of the national sections of the SIS and the exchange of information between those national sections (SIRENE), and the effect of the alerts in the SIS for persons wanted for arrest for extradition purposes, is one of the areas of the Schengen acquis in which these two countries participate.

⁵ OJ L 176, 10.7.1999, p. 31

Notwithstanding its double legal basis, it would be inconceivable to exclude Norway and Iceland from one of the aspects of the development of the SIS that is, after all, a single information and query system. Hence, Norway and Iceland are fully associated to its development, including the access of vehicle registration services.

As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen acquis within the meaning of the Agreement signed between the European Union, the European Community and the Swiss Confederation on the association of the Swiss Confederation with the implementation, application and development of the Schengen acquis, which fall within the area referred to in Article 1, point G of Council Decision 1999/437/EC read in conjunction with Article 4 (1) of Council Decision 2004/860/EC on the signing, on behalf of the European Community, and on the provisional application of certain provisions of this Agreement⁶ and with Article 4 (1) of Council Decision 2004/849/EC on the signing, on behalf of the European Union, and on the provisional application of certain provisions of this Agreement⁷.

3. FINANCIAL CONSEQUENCES

The Member States must create a connection between the national vehicle registration services and the SIS II under the responsibility of the SIS II national office to be designated in accordance with the proposed Decision on the establishment, operation and use of the SIS II.

The Commission outlined the main budgetary implication and prepared a common financial statement attached to its proposal for a Regulation of the European Parliament and of the Council on the establishment, operation and use of SIS II.

⁶ OJ L 370, 17.12.2004, p.78

⁷ OJ L 368, 15.12.2004 p. 26

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

regarding the access to the Second Generation Schengen Information System (SIS II) by the services in the Member States responsible for issuing registration certificates for vehicles

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 71 thereof,

Having regard to the proposal from the Commission⁸,

Having regard to the opinion of the European Economic and Social Committee⁹,

Having regard to the opinion of the Committee of the Regions¹⁰,

Acting in accordance with the procedure laid down in Article 251 of the Treaty¹¹,

Whereas:

- (1) Article 9 of Council Directive 1999/37/EC of 29 April 1999 on the registration documents for vehicles¹² provides that Member States are to assist one another in the implementation of that Directive and may exchange information at bilateral or multilateral level, in particular, so as to check, before any registration of a vehicle, the latter's legal status, in the Member State in which it was previously registered. Such checking may involve the use of an electronic network.
- (2) Regulation XX/2006/EC of the European Parliament and of the Council¹³ and Council Decision 2006/XX/JHA¹⁴ on the establishment, operation and use of the second generation of the Schengen Information System (hereinafter "SIS II") constitute the legislative basis for governing the SIS II, which constitutes a shared database between Member States containing, inter alia, data on motor vehicles with a cylinder capacity exceeding 50 cc which have been stolen, misappropriated or lost.

⁸ OJ C , , p. .

⁹ OJ C , , p. .

¹⁰ OJ C , , p. .

¹¹ OJ C , , p. .

¹² OJ L 138, 1.6.1999, p. 57. Directive as last amended by Commission Directive 2003/127/EC (OJ L 10, 16.1.2004, p.29).

¹³ OJ L...

¹⁴ OJ L...

- (3) Regulation XX/2006/EC and Decision 2006/XX/JHA replaced Articles 92 to 119 of the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 between the governments of the States of the Benelux economic union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders on the gradual abolition of checks at common borders¹⁵ (hereinafter referred to as “the Schengen Convention”) with the exception of Article 102a thereof. That article concerns access to the Schengen Information System by the authorities and services in the Member States responsible for issuing registration certificates for vehicles.
- (4) It is now necessary to adopt a third instrument, based on Title V of the EC Treaty and complementing Regulation XX/2006/EC and Decision 2006/XX/JHA in order to allow access to the SIS II by the services in the Member States responsible for issuing registration certificates for vehicles, and to replace Article 102a of the Schengen Convention.
- (5) Alerts on objects including motor vehicles are entered in the SIS II for the purposes of seizure or use as evidence in criminal proceedings, pursuant to Decision 2006/XX/JHA.
- (6) According to Decision 2006/XX/JHA, access to alerts on objects entered in the SIS II is reserved exclusively to the authorities responsible for police, border and custom authorities, as well as judicial authorities and Europol.
- (7) Government or non-government services clearly identified for this purpose and responsible in the Member States for issuing registration certificates for vehicles should have access to data included in the SIS II concerning motor vehicles with a cylinder capacity exceeding 50cc, trailers and caravans with an unladen weight exceeding 750 kg and vehicle registration certificates and vehicle number plates which have been stolen, misappropriated, lost or invalidated in order to enable them to check whether the vehicles presented to them for registration have been stolen, misappropriated or lost.
- (8) To that end it is necessary to grant those services access to that data, and to allow them to use the data for the administrative purposes of properly issuing vehicle registration certificates.
- (9) To the extent that services in the Member States responsible for issuing registration certificates for vehicles are non-government bodies, such access should be granted indirectly, that is to say through the intermediary of an authority granted access in accordance with Decision 2006/XX/JHA, responsible for ensuring compliance with the security and confidentiality rules of the Member States.
- (10) Decision 2006/XX/JHA defines the action to be taken if an access to SIS II brings to light an alert for an object entered in the System.
- (11) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on

¹⁵ OJ L 239, 22.9.2000, p. 19. Convention as last amended by Regulation (EC) No 871/2004 (OJ L 162, 30.4.2004, p. 29) and Decision 2005/211/JHA (OJ L 68, 15.3.2005, p. 44).

the free movement of such data¹⁶ applies to the processing of personal data by the services in the Member States responsible for issuing registration certificates for vehicles. The specific provisions on the protection of personal data on security, confidentiality and keeping of log files contained in Decision 2006/XX/JHA supplement or clarify the principles set out in that Directive when personal data is processed by those services in the context of SIS II.

- (12) Since the objective of the action to be taken, namely to grant access to the SIS II for services in the Member States responsible for issuing registration certificates, in order to facilitate their tasks under Directive 1999/37/EC, cannot be sufficiently achieved by the Member States and can therefore, by reason of the very nature of the SIS as a joint information system, only be achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (13) As regards Iceland and Norway, this Regulation constitutes a development of provisions of the Schengen acquis which fall within the area referred to in Article 1, point G of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen acquis.¹⁷
- (14) As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen acquis within the meaning of the Agreement signed between the European Union, the European Community and the Swiss Confederation on the association of the Swiss Confederation with the implementation, application and development of the Schengen acquis, which fall within the area referred to in Article 1, point G of Council Decision 1999/437/EC read in conjunction with Article 4 (1) of Council Decision 2004/860/EC on the signing, on behalf of the European Community, and on the provisional application of certain provisions of this Agreement¹⁸ and with Article 4 (1) of Council Decision 2004/849/EC on the signing, on behalf of the European Union, and on the provisional application of certain provisions of this Agreement¹⁹.
- (15) This Regulation constitutes an act building on the Schengen acquis or otherwise related to it within the meaning of Article 3 (2) of the 2003 Act of Accession,

¹⁶ OJ L 281, 23.11.1995, p. 31. Directive as amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p.1).

¹⁷ OJ L 176, 10.7.1999, p. 31.

¹⁸ OJ L 370, 17.12.2004, p.78

¹⁹ OJ L 368, 15.12.2004 p. 26

HAVE ADOPTED THIS REGULATION:

Article 1

1. Notwithstanding Articles 35, 37 and 40 (1) of Decision 2006/XX/JHA, the services in the Member States responsible for issuing registration certificates for vehicles as referred to in Directive 1999/37/EC, shall have access to the data entered into the SIS II in accordance with Article 35 (a) (b) and (f) of that Decision for the sole purpose of checking whether vehicles presented to them for registration have been stolen, misappropriated or lost.

Subject to paragraph 2, the national law of each Member State shall govern access to that data by those services in that Member State.

2. Services referred to in paragraph 1 that are government services shall have the right to access directly the data entered in the SIS II.
3. Services referred to in paragraph 1 that are non-government services shall have access to data entered in the SIS II only through the intermediary of an authority referred to in Article 37 of that Decision. That authority shall have the right to access the data directly and to pass it on to the service. The Member State concerned shall ensure that the service and its employees are required to respect any limitations on the permissible use of data conveyed to them by the public authority.
4. Article 36 of Decision 2006/XX/JHA shall not apply to access made in accordance with this Article. The communication to the police or judicial authorities by services referred to in paragraph 1 of any information brought to light by access to the SIS II which gives rise to suspicion of a criminal offence shall be governed by national law.

Article 2

This Regulation replaces Article 102a of the Convention Implementing the Schengen Agreement.

Article 3

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from the date set in accordance with Article 65 (3) of Decision 2006/XX/JHA.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President