



**COUNCIL OF
THE EUROPEAN UNION**

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LIMITE

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SIRIS 91
SIS-TECH 74
COMIX 421**

NOTE

from : Austrian and German delegations
to : CATS

No. prev. doc.: 8932/1/10 REV 1 JAI 338 SIRIS 68 COMIX 314
8801/10 JAI 319 SIRIS 67 SIS-TECH 59 COMIX 308
DS 1256/10

Subject: Further direction of SIS II

I. Following the conclusions of the European Commission after re-run of the first milestone test to regard the first milestone test as passed the JHA Council in April 2010 concluded by majority to continue the development of SIS II on the basis of the current project. Therefore the European Commission organized a workshop with MS to discuss changes to the requirements for SIS II. Afterwards the European Commission presented with the reservation of three Member States (DE, AT, FR) as an outcome of these deliberations to the SIS/VIS Committee to reduce the requirements for the Central System significantly: The SLA for CUDs (Create Update Delete), Queries and for the switch-over from the Central System to the Back-up Central Unit in case of emergency will be reduced so that SIS II will be at least with respect to the CUDs less performant than SIS1+. We kindly ask the European Commission to explain in writing

1. why after five years of development and a budget increase by 1000% (from originally 15 million € [Council Decision of 6 December 2001 on the development of SIS II, 2001/886/JHA; Council Regulation (EC) No 2424/2001 of 6 December 2001 on the development of SIS II] to 143 million € [Community Budget Plan]) the European Commission reopens a discussion on the basic and crucial requirements of the system jointly agreed by all MS while performing the call for tender?
2. why the new requirements should be far beneath the capacities of what SIS1+ is able to perform successfully, especially against the background that the reason for the decision for a new SIS II was to implement a system, which is scalable and flexible and technically more performant than the existing one?
3. how the European Commission will justify the obvious contradiction to the SIS II legal base stating in article 55 (3), (c) of the regulation: “**that the level of performance of SIS II is at least equivalent to that achieved with SIS 1+**”?
4. why it deems necessary from the perspective of the European Commission to reduce the requirements (for instance 5 or 10 minutes response times for CUDs instead of 3 minutes) while the Milestone 1 test was regarded successful?
5. why the European Commission considers such a decision as legally and contractually feasible with respect to the Community Budget Law and the Community Tendering Rules as this would mean a competitive advantage vis a vis former tenderers? Does the European Commission identify a risk of a potential court case which as a consequence could freeze the development budget for the SIS II?
6. why the European Commission does not feel to be bound to the jointly agreed features of the Central System such as versioning and the switch-over to the disaster recovery IT-center within the defined availability requirements (newly foreseen requirement for CUDs: 30 minutes, instead of 4 minutes jointly agreed upon)?
7. why the European Commission considers the implementation of an expensive disaster recovery IT-center as useful, when the technical switch-over is allowed to take more than half an hour in case of disaster or a terroristic attack? Won't this foil the purpose of the system at a time where it might especially urgently be needed to avoid further damages to European citizens?

II. The Council Conclusions of April 2010 (8932/1/10 REV 1 JAI 338 SIRIS 68 COMIX 314) request the European Commission *to take fully account of national investments, in order to safeguard them, during the further development of the system (new ICD – version 3.0 or any other further version prior to the migration)*. We kindly ask the European Commission to explain in writing

8. which measures have been taken by the European Commission in this regard?
9. as there is up to now (7 June 2010) no detailed description regarding the content of ICD 3.0 MS are not in the position to estimate the impact on their national developments. How does the European Commission intend to solve this conflict? Which date is foreseen by the European Commission to present the detailed specifications?

III. The European Commission announced on 26 May 2010 in the SIS/VIS Committee an update of several components-of-the-shelf (COTS) of the system (Oracle, JMS, JAVA) which will affect the interface between the Central and the National Systems. We kindly ask the European Commission to explain in writing

10. how this “project within a project” will be planned and organized and to what extent MS will be involved in this activity as this update will have a severe financial and organizational impact on the national developments of MS?

IV. The Council Conclusions of April 2010 (8932/1/10 REV 1 JAI 338 SIRIS 68 COMIX 314) recall *“that the contingency plan based on the further development of C.SIS I+ as set out in paragraph 9 of the abovementioned Council Conclusions is retained for a period necessary to back the project until the tests defined in the second milestone are accomplished. The Council takes note of the information by France that the contingency plan «SIS I+ RE» could no longer be implemented after September 2010 on the basis of the current contract”*.

A general survey of some further project steps presented by the European Commission (doc. DS 1256/10) indicates that the second Milestone test is foreseen at the end of fourth quarter 2011. At that time the contractual option for the contingency plan will be expired since more than one year. We kindly ask the European Commission to explain in writing

11. which measures have been taken already and which steps are foreseen by the European Commission to maintain the SIS1+RE until the Milestone 2 tests are accomplished?

V. The serious security gap concerning the Network (the network provider Orange has in principle access to the clear data of the SIS II, including alerts following article 99 CISA) is after two years of discussions still not closed. In the beginning of the year 2010 European Commission launched a questionnaire to investigate several technical solutions. We kindly ask the European Commission

12. to present in writing the consolidated results of that questionnaire and the European Commission's intentions to address this issue further.
13. to explain in writing why neither in the discussions on a schedule nor in first rough budgetary estimates this serious and blocking problem is reflected.

VI. The Council Conclusions of April 2010 (8932/1/10 REV 1 JAI 338 SIRIS 68 COMIX 314) *"called upon the Commission to present a comprehensive global schedule and budgetary estimate to the Council at its meeting on 3-4 June 2010."* The European Commission informed the Council on 3th June orally about some intended next steps and the expected entry into operation of the SIS II in the first quarter 2013. The Presidency presented a power point chart (doc. DS 1256/10) with some project working packages. We kindly ask the European Commission to explain in writing

14. at which date the European Commission intends to present a comprehensive professional project plan (including detailed working packages and dependencies as well as the critical path of the project)?
15. at which date the European Commission intends to present a detailed budgetary estimate?
16. how it is possible to fix a date for the entry into operation of the SIS II for the first quarter 2013 while most of the basic assumptions (e.g. test plan, test specifications, number of environments) are not yet defined?
17. why those above mentioned basic documentations are still not available?
