



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 11 December 2012**

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**Interinstitutional File:  
2012/0033 (NLE)**

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**17277/12  
ADD 1**

**SIRIS 112  
SCHENGEN 78  
COMIX 711  
OC 716**

**ADDENDUM TO "A" ITEM NOTE**

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from: General Secretariat of the Council

to: Council

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No. prev. doc.: 16960/12 SIRIS 104 SCHENGEN 74 COMIX 670  
11142/2/12 REV 2 SIRIS 44 SCHENGEN 45 COMIX 371  
11143/2/12 REV 2 SIRIS 45 SCHENGEN 46 COMIX 372

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Subject: Council Regulations on migration from the Schengen Information System  
(SIS 1+) to the second generation Schengen Information System (SIS II) (recast)  
**COMMON GUIDELINES**  
**Consultation deadline for Croatia: 19 December 2012**

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**Declaration of the Commission**

The Commission underlines that it is contrary to the letter and to the spirit of Regulation (EU) No 182/2011 (OJ L 55, 28.2.2011, p. 13) to invoke Article 5(4), second subparagraph, point (b) in a systematic manner. Recourse to this provision must respond to a specific need to depart from the rule of principle which is that the Commission may adopt a draft implementing act when no opinion is delivered. Given that it is an exception to the general rule established by Article 5(4) recourse to second subparagraph, (point b) cannot be simply seen as a "discretionary power" of the Legislator, but must be interpreted in a restrictive manner and thus must be justified.