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Proposal for a

**COUNCIL REGULATION**

**on migration from the Schengen Information System (SIS 1+) to the second generation  
Schengen Information System (SIS II) (recast)**

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

#### • General context

The Schengen Information System (SIS) set up pursuant to the provisions of Title IV 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 France on the gradual abolition of checks at their common borders (the Schengen Convention)*, and its development, SIS 1+, constitute an essential tool for the application of the provisions of the Schengen *acquis* as integrated into the framework of the European Union.

The development of the second generation of SIS (SIS II) has been entrusted to the Commission pursuant to *Council Regulation (EC) No 2424/2001<sup>1</sup> and Council Decision 2001/886/JHA of 6 December 2001 on the development of the second generation Schengen Information System (SIS II)<sup>2</sup>*. SIS II will replace SIS 1+. SIS II development takes into account the latest evolutions in the field of information technology and allows the introduction of added functionalities.

Provisions on the establishment, operation and use of SIS II are laid down in *Regulation (EC) No 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II)<sup>3</sup> and Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II)<sup>4</sup>*. These legal acts foresee that they will apply to the Member States participating in SIS 1+ only as of dates to be fixed by the Council, acting by the unanimity of its Members representing the governments of the Member States participating in SIS 1+. They will then replace the provisions of the Schengen *acquis* governing SIS 1+, in particular the relevant provisions in the Schengen Convention.

Before this can take place, the users of the SIS 1+ will have to migrate to the SIS II environment. A legal framework for the migration from SIS 1+ to the SIS II was therefore designed in *Council Regulation (EC) No 1104/2008<sup>5</sup> and Council Decision 2008/839/JHA<sup>6</sup> of 24 October 2008 on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II)* (together "migration instruments").

### 2. GROUNDS FOR AND OBJECTIVES OF THIS PROPOSAL

The objective of this proposal is to recast in a single legal instrument *Regulation (EC) No 1104/2008 and Council Decision 2008/839/JHA*. This proposal provides for a revised legal

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<sup>1</sup> OJ L 328, 13.12.2001, p. 4.

<sup>2</sup> OJ L 328, 13.12.2001, p. 1.

<sup>3</sup> OJ L 381, 28.12.2006, p. 4.

<sup>4</sup> OJ L 205, 7.8.2007, p. 63.

<sup>5</sup> OJ L 299, 8.11.2008, p. 1.

<sup>6</sup> OJ L 299, 8.11.2008, p. 43.

regime for the migration from SIS 1+ to SIS II which enables the Member States to use SIS II with all its functionalities from the moment of the switchover from SIS 1+ to SIS II.

Transparency of the SIS II development process for the European Parliament is maintained through the existing reporting obligation.

### **3. LEGAL ELEMENTS OF THIS PROPOSAL**

- **Legal base**

The legal base of this proposal is Article 74 of the Treaty on the Functioning of the European Union as it concerns measures to ensure cooperation between the relevant departments of the Member States, as well as between those departments and the Commission for policies ensuring a high level of security within the area of freedom, security and justice.

- **Subsidiarity principle**

This proposal respects the principle of subsidiarity as the main objective of the proposed action, namely the migration from SIS 1+ to SIS II, cannot be achieved by the Member States individually and it can be better achieved on the Union level.

- **Proportionality principle**

This proposal does not go beyond what is necessary to achieve its objective. It complies with the proportionality principle as its primary impact is the facilitation of migration of the Member States from SIS 1+ to SIS II.

- **Choice of instruments**

A Council Regulation is the most appropriate legal form to recast *Regulation (EC) No 1104/2008 and Decision 2008/839/JHA*, as one of the legal acts involved in the recast is a regulation. In addition, uniform rules and processes are needed for the management of SIS II development and migration. The provisions set out in this proposal for a regulation are precise, unconditional and directly applicable and, by their very nature, do not require action by Member States to transpose them into their national laws.

- **Committee procedure**

As a consequence of the repeal of *Council Decision 486/1999 of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission*<sup>7</sup>, from 1 March 2011, reference has to be made in the provision on committee procedure to the new *Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers*<sup>8</sup>. The regulatory procedure applied under the former committee procedure in this proposal will be replaced by the examination procedure.

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<sup>7</sup> OJ L 184, 17.7.1999, p. 23.

<sup>8</sup> OJ L 55, 28.2.2011, p.13

*Regulation (EC) No 1987/2006* and *Decision 2007/533/JHA* establishing the committee contain rules on the former regulatory procedure. However, according to the transitory measures of *Regulation (EU) No 182/2011*, the existing committees should start to work from 1 March 2011 under the new rules, in the present case under the examination procedure. The formal modification of *Regulation (EC) No 1987/2006* and *Decision 2007/533/JHA* is not required.

#### **4. DETAILED EXPLANATION**

This proposal contains entirely or partially new provisions on the following:

##### **(a) Recast**

The most appropriate mean to reflect the principles of better regulation is to apply to the recast legislative technique as

- a) a number of substantive amendments are to be made to the migrations instruments and
- b) the pillar structure, which led to the existence of two legal instruments with an essentially identical content, is no longer relevant following the entry into force of the Treaty of Lisbon.

Point 2 of the *Interinstitutional Agreement of 28 November 2001 between the European Parliament, Council and Commission on a more structured use of the recasting technique for legal acts*<sup>9</sup> stipulates that where substantive amendments have to be made to an earlier legal act, the recasting technique permits the adoption of a single legislative text which simultaneously makes the desired amendment, codifies that amendment with the unchanged provision of the earlier act, and repeals that act. In the joint declaration to that point the three institutions stated that the recasting may be either "vertical" whereby the new legal act replaces a single earlier act with its subsequent amendments or "horizontal" whereby the new legal act replaces several parallel earlier acts relating to the same subject.

Under the Treaty on the Functioning of the European Union, it would not be possible to modify a former third pillar instrument. Therefore, the only one correct legal technique is to incorporate Regulation (EC) No 1104/2008 and Decision 2008/839/JHA in a single legal act under the same legal base. The recast of the migration instruments therefore combines the elements of a vertical and a horizontal recast.

This proposal indicates clearly the new and the adapted provisions. It contains a repeal clause as well as a correlation table.

##### **(b) Legal regimes for the migration**

This proposal applies a differentiated legal approach for the two phases of the migration from SIS 1+ to SIS II. The migration consists of two steps:

- (1) a data loading of N.SIS II

The phase of data loading of N.SIS II continues to be governed by the Schengen Convention.

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<sup>9</sup> OJ C 77, 28.3.2002, p. 1.

(2) a switchover from N.SIS to N.SIS II

This differentiated approach enables Member States to use SIS II with all its functionalities from the moment of the switchover from SIS 1+ to SIS II by providing for the application of *Regulation (EC) No 1987/2006 and Decision 2007/533/JHA*.

In accordance with Article 12 of the migration instruments as worded until now, the migration from SIS 1+ into SIS II is to take place pursuant to Title IV of the Schengen Convention. This rule, however, prevents Member States from using SIS II with its full functionalities from the moment that a Member State successfully switches from SIS 1+ into SIS II. As a consequence, the Member States have to disable all SIS II features that are not in SIS 1+ until the Council decides on the date of application of Regulation (EC) No 1987/2006 and Decision 2007/533/JHA.

On 23 February 2011 the Member States in the SIS-VIS Committee invited the Commission to initiate without delay the process of adapting the migration legal framework to reflect the technical migration approach outlined in the Migration Plan. The Migration Plan describes that, within one shot switchover period, all Member States will perform the individual switchovers of their national application from SIS I into SIS II one after the other. It is desirable that a Member State that has switched over should be able to use SIS II fully as from the time of the switchover and it does not have to wait until other Member States have also switched over. Therefore, it is necessary to apply Regulation (EC) No 1987/2006 and Decision 2007/533/JHA from the time of the initiation of the switchover by the first Member State. The period of migration should be kept as short as possible. The application of Regulation (EC) No 1987/2006 and Decision 2007/533/JHA does not prevent Member States which have not switched over yet or which have a fallback during the intensive monitoring period from using SIS II in functionalities limited to SIS 1+.

The proposal not only enables Member States to take full advantage of all the advanced applications available by SIS II but also represents considerable savings for the Member States.

**(c) Interim migration architecture**

The application of Regulation (EC) No 1987/2006 and Decision 2007/533/JHA will replace Article 64 and Articles 92 to 119 of the Schengen Convention, with the exception of Article 102a thereof, as it is laid down in Article 52 paragraph 1 and Article 68 paragraph 1 respectively of the said legal acts. As article 92a of the Schengen Convention contains detailed rules on the interim migration architecture, it is desirable to keep it in force during the entire duration of the migration process.

The interim migration architecture for the operations of SIS 1+ allows that SIS 1+ and certain technical parts of the architecture of SIS II, which need to be in use to make possible an incremental migration from one system to another, operate in parallel during a limited transitional period.

It is therefore necessary to incorporate the relevant provisions of Article 92a of the Schengen Convention into the migration legal framework.

- **Existing provisions in the area covered by this proposal**

- 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 France on the gradual abolition of checks at their common borders<sup>10</sup> (the Schengen Convention);
- Council Regulation (EC) No 2424/2001 of 6 December 2001 on the development of the second generation Schengen Information System (SIS II)<sup>11</sup>;
- Council Decision 2001/886/JHA of 6 December 2001<sup>12</sup> on the development of the second generation Schengen Information System (SIS II);
- Regulation (EC) No 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II) ;
- Council Decision No 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II) ;
- Regulation (EC) No 1986/2006 of the European Parliament and of the Council of 20 December 2006 regarding access to the Second Generation Schengen Information System (SIS II) by the services in the Member States responsible for issuing vehicle registration certificates<sup>13</sup>;
- Commission Decisions 2007/170/EC and 2007/171/EC of 16 March 2007 laying down the network requirements for the Schengen Information System II<sup>14</sup>;
- Council Regulation (EC) No 189/2008 of 18 February 2008 on the tests of the second generation Schengen Information System (SIS II)<sup>15</sup>;
- Council Decision 2008/173/EC of 18 February 2008 on the tests of the second generation Schengen Information System (SIS II)<sup>16</sup>;
- Council Regulation (EC) No 1104/2008 of 24 October 2008 on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II)<sup>17</sup>;
- Council Decision 2008/839/JHA of 24 October 2008 on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II)<sup>18</sup>;

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<sup>10</sup> OJ L 239, 22.9.2000, p. 19 (OJ L 299, 8.11.2008, p. 43).

<sup>11</sup> OJ L 328, 13.12.2001, p. 4.

<sup>12</sup> OJ L 328, 13.12.2001, p. 1.

<sup>13</sup> OJ L 381, 28.12.2006, p. 1.

<sup>14</sup> OJ L 79, 20.3.2007, p. 20 and OJ L 79, 20.3.2007, p. 29.

<sup>15</sup> OJ L 57, 1.3.2008, p. 1.

<sup>16</sup> OJ L 57, 1.3.2008, p. 14.

<sup>17</sup> OJ L 299, 8.11.2008, p. 1.

<sup>18</sup> OJ L 299, 8.11.2008, p. 43.

- Commission Decision 2009/724/JHA of 17 September 2009 laying down the date for the completion of migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II)<sup>19</sup>.

## **5. CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT**

### **• Consultation of interested parties**

Member States' experts are closely involved in the continued development of SIS II, in particular in the framework of the SIS-VIS Committee and the Global Programme Management Board. In addition, SIS II developments are continuously discussed in the Council preparatory bodies.

European Data Protection Supervisor is also involved in the consultation given that personal data will also be uploaded in the course of the migration.

### **• Summary of responses and how they have been taken into account**

This proposal takes into account the result of extensive discussions with Member States within the Council, especially within the framework of the SIS-TECH and SIS-SIRENE Council working groups, as well as of the views expressed by the members of the Global Programme Management Board. It, furthermore, responds to an invitation made to the Commission by the Member States to align the legal framework governing the migration with the technical scenario retained by their experts.

### **• Collection and use of expertise**

External expertise was not used to prepare this proposal.

### **• Impact assessment**

No impact assessment is required for this proposal as it is the continuation of a technical project without clearly identifiable economic, social and environmental impacts.

## **6. BUDGETARY IMPLICATIONS**

*Regulation (EC) No 2424/2001* and *Decision 2001/886/JHA* laid down that the expenditure involved in the development of the SIS II is to be charged to the general budget of the Union. Under *Article 5 of Regulation (EC) No 1987/2006* and under *Article 5 of Council Decision 533/2007/JHA* the costs of setting up, operating and maintaining Central SIS II and the communication infrastructure are to be borne by the general budget of the Union. The costs of testing, operating and maintaining each N.SIS II shall be borne by the Member State concerned.

*Regulation (EC) No 1104/2008* and *Council Decision 2008/839/JHA* maintained the same principles of costs distribution as above. However, a new category of costs was introduced, namely those related to the migration from SIS 1 to SIS II. Under *Articles 15* of those legal

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<sup>19</sup> OJ L 257, 30.9.2009, p. 41.

acts the costs for migration at the central level, together with those for testing, maintenance and development measures (Central SIS II and communication infrastructure) had been allocated to the general budget of the Union. The costs associated with the national N.SIS II remained to be borne by the Member States.

*Regulation (EC) No 1987/2006 and Decision 2007/533/JHA as well as Decision No 574/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the External Borders Fund for the period 2007 to 2013 as part of the General Programme Solidarity and Management of Migration Flows*<sup>20</sup>, included SIS II national developments among the eligible actions to be co-financed under the External Borders Fund (EBF). *Commission Decision 2007/599/EC of 27 August 2007 implementing Decision No 574/2007/EC of the European Parliament and of the Council as regards the adoption of strategic guidelines for 2007 to 2013*<sup>21</sup> further identified SIS II as one of the five strategic priorities under the EBF, recognizing the importance of supporting the coherent and timely development of the national projects alongside the central SIS II.

Since the adoption of all legal acts referred above, the SIS II project received a significant reorientation in the course of 2010, after the completion of an important test campaign, the so-called Milestone 1. Furthermore, the evolutions in the use of SIS by its users (Member States) led to a need to update the SIS II technical requirements concerning performance and storage capacity, which increased significantly after the accession of nine new Member States and Switzerland. The upgraded features were reflected in the new version of the Interface Control Document, the ICD 3.0. All these modifications affected the costs of the project both at central and national level.

With regard to the migration process, the evolution in requirements and the advances made in the completion of the project led to a redefinition of the migration architecture, of the migration calendar and of the testing requirements. An important part of the activities that would now be required at Member State level for the migration to SIS II were not anticipated at the time when Regulation (EC) No 1104/2008 and Council Decision 2008/839/JHA were adopted or at the time when the financial package and the multiannual programmes under the EBF were drawn up.

It is therefore necessary to partly realign the cost distribution principles insofar as the migration from SIS I to SIS II is concerned. Certain national activities related to migration, in particular in connection with the participation of Member States in migration-related testing activities could be co-financed from the SISII budget line of the general budget of the Union. This possibility would cover specific and well-defined activities beyond, and not to coincide with, other SIS II related actions which would continue to be supported under the EBF. The financial assistance thus provided under this proposal would therefore be complementary to that provided by the EBF.

As the setting up of the national systems is the primary obligation of Member States, the Union contribution remains optional and this proposal does not intend to create any obligation for the Union. It is also necessary to determine the ceiling of the Union contribution in relation to each Member State. This proposal does not require any additional appropriations as

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<sup>20</sup> OJ L 144, 6.6.2007, p. 22.

<sup>21</sup> OJ L 233, 5.9.2007, p. 3.



the appropriations still available in 2011 will be used to cover the difference between the total costs in 2012 and the appropriations entered in SIS II budget line for 2012.

The Commission will appraise, decide and administer the co-financing operation in accordance with the budgetary and other procedures, in particularly those laid down in the Financial Regulation. Member States must comply with the principles of sound financial management, in particular, value for money and cost-effectiveness. The Commission will be entitled to carry out all the checks and inspections necessary to ensure the proper management of the Union funds and to protect the Union's financial interest against any fraud or irregularity. The Court of Auditors of the European Union will be empowered to carry out the audits required by *Article 287 of the Treaty on the Functioning of the European Union*.

The costs arising from activities at SIS 1+ level, including supplementary activities of France, acting on behalf of the Member States participating in SIS 1+, shall continue to be borne in line with Article 119 of the Schengen Convention. This article provides that the costs of installing and operating the technical support function of SIS 1+, as referred to in Article 92 (3) of the Convention, including the cost of lines connecting the national sections of the Schengen Information System to the technical support function, are borne jointly by the Member States, while the costs of installing and operating the national section of the Schengen Information System are borne by each Member State individually.

The Commission has prepared a financial statement annexed to this proposal.

## **7. ADDITIONAL INFORMATION**

### **• Amendment of existing legislation**

The proposal recasts *Regulation (EC) No 1104/2008* and *Decision 2008/839/JHA* into a single legal act as a regulation.

### **• Deletion of the expiry date**

Given the complexity of the migration process which, despite extensive preparation by all stakeholders, entails significant technical risks, this proposal provides for the necessary flexibility to respond to unexpected difficulties that the central system or one or several national systems could face with during the migration process; therefore no longer contains an expiry date.

In accordance with *Article 55 of Regulation (EC) No 1987/2006* and *Article 71 Decision 2007/533/JHA*, it is for the Council to determine the dates for the applicability of those legal acts as well as for the migration. As following the migration a one-month fall back period is foreseen in the technical documentation the date of applicability of *Regulation (EC) No 1987/2006* and *Decision 2007/533/JHA* should precede the expiry of the migration instruments with at least one month.

### **• Timetable**

In order to ensure the continuity of the preparations and the timely execution of the migration, this proposal should be adopted at the latest in the second quarter of 2012.

Proposal for a

## COUNCIL REGULATION

**on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II) (recast)**

THE COUNCIL OF THE EUROPEAN UNION,

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↓ 1104/2008  
⇒ new

Having regard to the Treaty on the Functioning of the European Union~~establishing the European Community~~, and in particular Article 7466 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament<sup>22</sup>,

⇒ Having consulted the European Data Protection Supervisor, ⇐

Whereas:

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↓ new

(1) Council Regulation (EC) No 1104/2008 of 24 October 2008 on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II)<sup>23</sup> and Council Decision 2008/839/JHA of 24 October 2008 on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II)<sup>24</sup> have been substantially amended. Since further amendments are to be made, they should be recast in the interest of clarity.

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↓ 1104/2008 (adapted)  
⇒ new

(2) The Schengen Information System (SIS) set up pursuant to the provisions of Title IV 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

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<sup>22</sup> OJ C ...

<sup>23</sup> OJ L 299, 8.11.2008, p.1.

<sup>24</sup> OJ L 299, 8.11.2008, p. 43.

Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders<sup>25</sup> (the Schengen Convention), and the further development, thereof, SIS 1+, constitute essential tools for the application of the provisions of the Schengen *acquis* as integrated into the framework of the European Union.

- (3) The development of the second generation Schengen Information System (SIS II) was entrusted to the Commission pursuant to Council Regulation (EC) No 2424/2001<sup>26</sup> and Council Decision 2001/886/JHA<sup>27</sup> of 6 December 2001 on the development of the second generation Schengen Information System (SIS II). ⇒ Those instruments expired on 31 December 2008 prior to the completion of the SIS II developments. Those instruments therefore needed to be supplemented firstly by Regulation (EC) No 1104/2008 and by Decision 2008/839/JHA and subsequently by this Regulation until a date to be fixed by the Council acting in accordance with Regulation (EC) No 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II)<sup>28</sup> ⇐ and Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II)<sup>29</sup>.
- (4) SIS II was established by Regulation (EC) No 1987/2006 and by Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II)<sup>30</sup>. This Regulation should be without prejudice to the provisions of those acts.
- (5) Certain tests of SIS II are provided for in Council Regulation (EC) No 189/2008<sup>31</sup> and in Council Decision 2008/173/JHA~~EC~~<sup>32</sup> on the tests of the second generation Schengen Information System (SIS II).
- (6) The development of SIS II should be continued and should be finalised in the framework of the SIS II global schedule ~~endorsed by the Council on 6 June 2008~~ ⇒ presented by the Commission in October 2010 ⇐ .
- (7) A comprehensive test of SIS II should be conducted in full cooperation between the Member States and the Commission, in accordance with the provisions of this Regulation. As soon as possible after its completion, the test should be validated as provided for by Regulation (EC) No 1987/2006 and Decision 2007/533/JHA. ⇒ Only test data should be used for the purpose of the comprehensive test. ⇐
- (8) Member States should perform a test on the exchange of supplementary information.
- (9) As regards SIS 1+, the Schengen Convention provides for a technical support function (C.SIS). As regards SIS II, Regulation (EC) No 1987/2006 and Decision

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<sup>25</sup> OJ L 239, 22.9.2000, p. 19.

<sup>26</sup> OJ L 328, 13.12.2001, p. 4.

<sup>27</sup> OJ L 328, 13.12.2001, p. 1.

<sup>28</sup> OJ L 381, 28.12.2006, p. 4.

<sup>29</sup> OJ L 205, 7.8.2007, p. 63.

<sup>30</sup> ~~OJ L 205, 7.8.2007, p. 63.~~

<sup>31</sup> OJ L 57, 1.3.2008, p. 1.

<sup>32</sup> OJ L 57, 1.3.2008, p. 14.

2007/533/JHA provide for a Central SIS II composed of a technical support function and a uniform national interface (NI-SIS). The technical support function of Central SIS II should be located in Strasbourg (France) and a backup in St Johann im Pongau (Austria).

- (10) In order to better manage the potential difficulties brought about by the migration from SIS 1+ to SIS II, an interim migration architecture for ~~SIS the Schengen Information System~~ should be established and tested. The interim migration architecture should have no impact on the operational availability of SIS 1+. A converter should be provided by the Commission.
- (11) The Member State issuing an alert should be responsible for ensuring that the data entered into ~~SIS the Schengen Information System~~ is accurate, up to date and lawful.
- (12) The Commission should remain responsible for Central SIS II and its communication infrastructure. This responsibility includes the maintenance and continuation of the development of SIS II and its communication infrastructure, including at all times the correction of errors. The Commission should provide coordination and support for the joint activities. The Commission should provide, in particular, the necessary technical and operational support to the Member States at Central SIS II level including the availability of a helpdesk.
- (13) The Member States are and should remain responsible for the development and maintenance of their national systems (N.SIS II).
- (14) France should remain responsible for the technical support function of SIS 1+, as expressly provided for in the Schengen Convention.
- (15) Representatives of the Member States participating in SIS 1+ should coordinate their actions within the framework of the Council. It is necessary to set out a framework for that organisational action.

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↓ new

- (16) In order to support Member States in opting for the most favourable technical and financial solution the Commission should initiate without delay the process of adapting this Regulation by proposing a legal regime for the migration which better reflects to the technical migration approach outlined in the Migration Plan for the SIS Project (Migration Plan) endorsed by Member States on 23 February 2011.
- (17) The Migration Plan describes that within the switchover period all Member States, consecutively, will perform their individual switchover of the national application from SIS I into SIS II. It is desirable from a technical point of view that Member States that have switched over be able to use SIS II full scope from the time of the switchover and do not have to wait until other Member States have also switched over. Therefore, it is necessary to apply Regulation (EC) No 1987/2006 and Decision 2007/533/JHA from the time of the initiation of the switchover by the first Member State. The period of migration should be kept as short as possible. The application of Regulation (EC) No 1987/2006 and Decision 2007/533/JHA does not prevent Member States which have not switched over yet or which has a fall back to use SIS II limited to SIS 1+ functionalities during the intensive monitoring period.

(18) It is necessary to maintain the application of certain provisions of Title IV of the Schengen Convention on a temporary basis by incorporating those provisions into this Regulation as they provide the legal framework for the converter and the interim migration architecture during the migration. The interim migration architecture for the operations of SIS 1+ allows SIS 1+ and certain technical parts of the SIS II architecture to operate in parallel during a limited transitional period which is needed to make possible an incremental migration.

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↓ 541/2010

(19) Regulation (EC) No 1987/2006 and Decision 2007/533/JHA provide that the best available technology, subject to a cost-benefit analysis, should be used for Central SIS II. The Annex to the Council Conclusions on the further direction of SIS II of 4-5 June 2009 laid down milestones which should be met in order to continue with the current SIS II project. In parallel, a study has been conducted concerning the elaboration of an alternative technical scenario for developing SIS II based on SIS 1+ evolution (SIS 1+ RE) as the contingency plan, in case the tests demonstrate non-compliance with the milestone requirements. Based on these parameters, the Council may decide to invite the Commission to switch to the alternative technical scenario.

(20) The description of the technical components of the migration architecture should therefore be adapted to allow for another technical solution, and in particular the SIS 1+ RE regarding the development of Central SIS II. SIS 1+ RE is a possible technical solution to develop Central SIS II and to achieve the objectives of the SIS II laid down in Regulation (EC) No 1987/2006 and Decision 2007/533/JHA.

(21) The SIS 1+ RE is characterised by uniqueness of means between SIS II development and SIS 1+ . The references in this Regulation to the technical architecture of SIS II and to the migration process should therefore, in case of implementation of an alternative technical scenario, be read as the references to SIS II based on another technical solution, as applied *mutatis mutandis* to the technical specificities of this solutions, in keeping with the objective to develop Central SIS II.

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↓ 541/2010

⇒ new

(22) In any technical scenario, the result of migration at central level should be availability of the SIS 1+ database and new SIS II functionalities, including additional data categories, in the Central SIS II ⇒ . In order to facilitate data loading it should be specified that deleted data as referred to in Article 113 (2) of the Schengen Convention will not be migrated from SIS 1+ to SIS II. ⇐

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↓ 1104/2008

(23) The Commission should be empowered to contract out to third parties, including national public bodies, tasks conferred upon it by this Regulation and tasks relating to

the implementation of the budget, in accordance with Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities<sup>33</sup> ("the Financial Regulation").

Any such contract should respect the rules of data protection and data security and take into account the role of the relevant data protection authorities applicable to the SIS, in particular the provisions of the Schengen Convention and of this Regulation.

↓ 541/2010

- (24) As regards the financing of the development of the Central SIS II based on an alternative technical solution, it should be covered by the general budget of the Union while respecting the principle of sound financial management. In accordance with the Financial Regulation the Commission may delegate budget implementation tasks to national public sector bodies. Following the political orientation and subject to the conditions laid down in the Financial Regulation, the Commission would be invited, in case of switchover to the alternative solution, to delegate the budget implementation tasks related to the development of the SIS II based on SIS 1+ RE to France.

↓ new

- (25) Regulation (EC) No 1987/2006 and Decision 2007/533/JHA as well as Decision No 574/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the External Borders Fund for the period 2007 to 2013 as part of the General Programme Solidarity and Management of Migration Flows<sup>34</sup> included SIS II national developments among the eligible actions to be co-financed under the External Borders Fund (EBF). Commission Decision 2007/599/EC of 27 August 2007 implementing Decision No 574/2007/EC of the European Parliament and of the Council as regards the adoption of strategic guidelines for 2007 to 2013<sup>35</sup> further identified SIS II as one of the five strategic priorities under the EBF, recognizing the importance of supporting the coherent and timely development of the national projects alongside the central SIS II.

Since the adoption of all those legal acts, the SIS II project received a significant reorientation in the course of 2010, after the completion of an important test campaign, the so-called Milestone 1. Furthermore, the evolutions in the use of the SIS by the Member States led to a need to update the SIS II technical requirements concerning performance and storage capacity which affected the costs of the project both at central and national level.

- (26) With regard to the migration process, the evolution in requirements and the advances made in the completion of the project led to a redefinition of the migration architecture, of the migration calendar and of the testing requirements. An important part of the activities that would now be required at Member State level for the

<sup>33</sup> OJ L 248, 16.9.2002, p. 1.

<sup>34</sup> OJ L 144, 6.6.2007, p. 22.

<sup>35</sup> OJ L 233, 5.9.2007, p. 3.

migration to SIS II were not anticipated at the time when Regulation (EC) No 1104/2008 and Council Decision 2008/839/JHA were adopted or at the time when the financial package and the multiannual programmes under the EBF were drawn up.

It is, therefore, necessary to partly realign the cost distribution principles for the migration from SIS 1+ to SIS II. Certain national activities related to migration, in particular in connection with the participation of Member States in migration-related testing activities could be co-financed from the SIS II budget line of the general budget of the Union. This possibility should cover specific and well-defined activities beyond, and not to coincide with, other SIS II related actions which would continue to be supported under the EBF. The financial assistance thus provided under this proposal should be complementary to that provided by the EBF.

(27) In relation to the co-financing provided under this Regulation, appropriate measures should be taken to prevent irregularities and fraud and the necessary steps should be taken to recover funds lost, wrongly paid or incorrectly used in accordance with Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests<sup>36</sup>, Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities<sup>37</sup>, and Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)<sup>38</sup>.

(28) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers<sup>39</sup>.

↓ 541/2010 (adapted)

(29) The Commission and the Member States should continue to cooperate closely during all steps of the development and the migration in order to complete the process. In the Council conclusions on SIS II of 26-27 February 2009 and 4-5 June 2009, an informal body consisting of the experts of the Member States and designated as the Global Programme Management Board, was established to enhance the cooperation and to provide direct Member States support to the central SIS II project. The positive result of the work of the group and the necessity to further enhance the cooperation and the

<sup>36</sup> OJ L 312, 23.12.1995, p. 1.

<sup>37</sup> OJ L 292, 15.11.1996, p. 2.

<sup>38</sup> OJ L 136, 31.5.1999, p. 1.

<sup>39</sup> OJ L 55, 28.2.2011, p. 13.

transparency of the project justify the formal integration of the group into the SIS II management structure. A group of experts, called the Global Programme Management Board should therefore be formally established to complement the current  SIS II  organisational structure. In order to ensure efficiency as well as cost effectiveness the number of experts should be limited. This group of experts should be without prejudice to the responsibilities of the Commission and of the Member States.

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↓ 1104/2008

- (30) Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data<sup>40</sup> applies to the processing of personal data by the Commission.
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↓ 1104/2008 (adapted)  
⇒ new

- (31) ~~The European Data Protection Supervisor, appointed pursuant to Decision 2004/55/EC of the European Parliament and of the Council of 22 December 2003 appointing the independent supervisory body provided for in Article 286 of the EC Treaty<sup>41</sup>, is competent to monitor the activities of the Community  Union  institutions and bodies in relation to the processing of personal data.~~ ⇒ This Regulation should be without prejudice to the specific provisions of the Schengen Convention as well as of Regulation (EC) No 1987/2006 and of Decision 2007/533/JHA on the protection and security of personal data. ⇐
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↓ new

- (32) The migration is a complex process which, despite extensive preparation by all stakeholders, entails significant technical risks. It is desirable for the legal framework to provide for the necessary flexibility to respond to unexpected difficulties which the central system or one or several national systems could face during the migration process. No expiry date should therefore be specified in this Regulation. The final date for the migration is to be set by the Council in accordance with Article 55 (2) of Regulation (EC) No 1987/2006 and Article 71 (2) of Decision 2007/533/JHA.
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↓ 1104/2008 (adapted)

- (33) Since the objectives of this Regulation, namely setting up the interim migration architecture and migrating the data~~the migration of data~~ from SIS 1+ to SIS II, cannot be sufficiently achieved by the Member States and can, therefore, by reason of the

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<sup>40</sup> OJ L 8, 12.1.2001, p. 1.

<sup>41</sup> ~~OJ L 12, 17.1.2004, p. 47.~~



scale and effects of the action, be better achieved at ~~UnionCommunity~~ level, the ~~UnionCommunity~~ may adopt measures in accordance with the principle of subsidiarity, as set out in Article 5 of the Treaty ~~on the European Unionestablishing the European Community~~. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary to achieve those objectives.

(34) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.

~~(21) The Schengen Convention should be amended to allow the integration of SIS 1+ into the interim migration architecture.~~

(35) In accordance with Articles 1 and 2 of Protocol ~~(No 22)~~ on the position of Denmark annexed to the Treaty on European Union and the Treaty ~~on the Functioning of the European Union~~, Denmark ~~is not taking~~~~does not take~~ part in the adoption of this Regulation and is ~~therefore~~ not bound by it or subject to its application. Given that this Regulation builds upon the Schengen *acquis*, ~~under the provisions of Title IV of Part Three of the Treaty establishing the European Community~~, Denmark ~~shall~~~~should~~, in accordance with Article ~~45~~ of ~~thatthe said~~ Protocol, decide within a period of six months after the adoption of this Regulation whether it will implement it in its national law.

↓ 2008/839/JHA  
⇒ new

(36) This Regulation constitutes a development of provisions of the Schengen *acquis* in which the United Kingdom is taking part, in accordance with Article 8 (2) of Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis*<sup>42</sup>, ⇒to the extent that that article refers to the provision of the Schengen Convention establishing the SIS with the exception of Article 96 thereof. ⇐

(37) This Regulation constitutes a development of provisions of the Schengen *acquis* in which Ireland is taking part, in accordance with Article 6 (2) of Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis*<sup>43</sup>, ⇒to the extent that that article refers to the provision of the Schengen Convention establishing the SIS with the exception of Article 96 thereof. ⇐

(38) This Regulation is without prejudice to the arrangements for the United Kingdom's and Ireland's partial participation in the Schengen *acquis* as determined by Council Decisions 2000/365/EC and 2002/192/EC respectively.

(39) As regards Iceland and Norway, this Regulation constitutes a development of provisions of the Schengen *acquis* within the meaning of the Agreement concluded by

<sup>42</sup> OJ L 131, 1.6.2000, p. 43.

<sup>43</sup> OJ L 64, 7.3.2002, p. 20.

the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latters' association ~~of these two States~~ with the implementation, application and development of the Schengen *acquis*<sup>44</sup>, which fall within the area referred to in Article 1, point G of Council Decision 1999/437/EC<sup>45</sup> on certain arrangements for the application of that Agreement.

(40) As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*<sup>46</sup>, which fall within the area referred to in Article 1, point G of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC<sup>47</sup>.

(41) As regards Liechtenstein, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association 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 of 17 May 1999 read in conjunction with Article 3 of Council Decision 2011/350/EU<sup>48</sup>.

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↓ new

(42) As regards Cyprus, this Regulation constitutes an act building upon, or otherwise related to, the Schengen *acquis* within the meaning of Article 3(2) of the 2003 Act of Accession,

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↓ 1104/2008 (adapted)

HAS ADOPTED THIS REGULATION:

### *Article 1*

#### **General purpose**

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), the establishment, operation and use of which is regulated by Regulation (EC) No 1987/2006 ☒ and by Decision 2007/533/JHA ☒ .

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<sup>44</sup> OJ L 176, 10.7.1999, p. 36.

<sup>45</sup> OJ L 176, 10.7.1999, p. 31.

<sup>46</sup> OJ L 53, 27.2.2008, p. 52.

<sup>47</sup> OJ L 53, 27.2.2008, p. 1.

<sup>48</sup> OJ L 160, 18.5.2011, p. 19.

2. In accordance with the procedures and the division of tasks set out in this Regulation, SIS II shall be developed by the Commission and the Member States as a single integrated system and shall be prepared for operations.

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↓ 541/2010 Art. 1.1

3. The development of SIS II may be achieved by implementing an alternative technical scenario characterised by its own technical specifications.

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↓ 1104/2008 (adapted)  
⇒ new

## *Article 2*

### **Definitions**

For the purposes of this Regulation, the following definitions shall apply:

- (a) 'Central SIS II' means the technical support function of SIS II containing a database, the 'SIS II database', and a uniform national interface (NI-SIS);
- (b) 'C.SIS' means the technical support function of SIS 1+, containing the reference database for SIS 1+ and the uniform national interface (N.COM);
- (c) 'N.SIS' means the national system of SIS 1+, consisting of the national data systems which communicate with C.SIS;
- (d) 'N.SIS II' means the national system of SIS II, consisting of the national data systems which communicate with Central SIS II;
- (e) 'converter' means a technical tool to allow consistent and reliable communication between C.SIS and Central SIS II, ensuring the functionalities provided for in Article 10(3) ⇒ allowing the conversion and synchronisation of data between the C.SIS and the Central SIS II; ⇐
- (f) 'comprehensive test' means the test referred to in Article 55(3)(c) of Regulation (EC) No 1987/2006 ☒ and in Article 71 (3)(c) of Decision 2007/533/JHA ☒ ;
- (g) 'test on supplementary information' means functional tests between the Sirene Bureaux.

## *Article 3*

### **Subject matter and scope**

This Regulation defines the tasks and responsibilities of the Commission and the Member States participating in SIS 1+ with respect to the following tasks:

- (a) the maintenance and continuation of the development of SIS II;
- (b) a comprehensive test of SIS II;
- (c) a test on supplementary information;
- (d) the continuation of the development and testing of a converter;
- (e) the establishment and testing of a provisional migration architecture;
- (f) the migration from SIS 1+ to SIS II.

#### *Article 4*

##### **Technical components of the migration architecture**

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↓ 541/2010 Art. 1.2

In order to ensure the migration from SIS 1+ to SIS II, the following components shall be made available to the extent necessary:

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↓ 1104/2008

- (a) the C.SIS and the connection to the converter;
- (b) the communication infrastructure for SIS 1+ allowing the C.SIS to communicate with the N.SIS;
- (c) the N.SIS;
- (d) Central SIS II, NI-SIS and the communication infrastructure for SIS II allowing the Central SIS II to communicate with N.SIS II and the converter;
- (e) the N.SIS II;
- (f) the converter.

#### *Article 5*

##### **Main responsibilities in the development of SIS II**

1. The Commission shall continue to develop the Central SIS II, the communication infrastructure and the converter.

2. France shall make available and operate C.SIS in accordance with the provisions of the Schengen Convention.
  3. The Member States shall continue to develop N.SIS II.
  4. The Member States participating in SIS 1+ shall maintain N.SIS in accordance with the provisions of the Schengen Convention.
  5. The Member States participating in SIS 1+ shall make available and operate the communication infrastructure for SIS 1+.
  6. The Commission shall coordinate the activities and provide the necessary support for the implementation of the tasks and responsibilities referred to in paragraphs 1 to 3.
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↓ 1104/2008 (adapted)

### *Article 6*

#### **Continuing development**

The measures necessary to continue the development of SIS II as referred to in Article 5(1), in particular measures necessary for the correction of errors, shall be implementing acts. Those acts shall be adopted in accordance with the examination procedure defined in Article ~~17~~ 17(2) ~~1~~.

The measures necessary to continue the development of SIS II as referred to in Article 5(3), insofar as it concerns the uniform national interface ensuring the compatibility of N.SIS II with Central SIS II, shall be implementing acts. Those acts shall be adopted in accordance with the examination procedure defined in Article ~~17~~ 17(2) ~~1~~.

### *Article 7*

#### **Main activities**

1. The Commission together with Member States participating in SIS 1+ shall conduct a comprehensive test.
2. An interim ~~SIS~~ migration architecture shall be set up and a test of that architecture shall be performed by the Commission together with France and the other Member States participating in SIS 1+.
3. The Commission and the Member States participating in SIS 1+ shall perform the migration from SIS 1+ to SIS II.
4. The Member States participating in SIS 1+ shall perform a test on the exchange of supplementary information.

5. The Commission shall provide the necessary support at Central SIS II level for the activities in paragraphs 1 to 4.

6. The activities in paragraphs 1 to 3 shall be coordinated by the Commission and the Member States participating in SIS 1+ acting within the Council.

#### *Article 8*

##### **Comprehensive test**

1. The comprehensive test shall not start before the Commission has declared that it considers that the level of success of the tests referred to in Article 1 of Regulation (EC) No 189/2008  and in Article 1 of Decision 2008/839/JHA  is sufficient to begin such a test.

2. A comprehensive test aiming at confirming, in particular, the completion by the Commission and the Member States participating in SIS 1+ of the necessary technical arrangements to process SIS II data and the demonstration that the level of performance of SIS II is at least equivalent to that achieved with SIS 1+ shall be performed.

3. The comprehensive test shall be executed by the Member States participating in SIS 1+ for the N.SIS II and by the Commission for the Central SIS II.

4. The comprehensive test shall follow a detailed schedule defined by Member States participating in SIS 1+ acting within the Council in cooperation with the Commission.

5. The comprehensive test shall be based on the technical specifications defined by the Member States participating in SIS 1+ acting within the Council in cooperation with the Commission.

6. The Commission and the Member States participating in SIS 1+ acting within the Council shall define the criteria for determining whether the necessary technical arrangements to process SIS II data are completed and the level of performance of SIS II is at least equivalent to that achieved with SIS 1+.

7. The test results shall be analysed using the criteria ~~referred to mentioned~~ in paragraph 6 of this Article, by the Member States participating in SIS 1+ acting within the Council and the Commission. The test results shall be validated in accordance with Article 55(3)(c) of Regulation (EC) No 1987/2006  and Article 71 (3)(c) of Decision 2007/533/JHA .

8. Member States not participating in SIS 1+ may participate in the comprehensive test. Their results shall not affect the overall validation of the test.

#### *Article 9*

##### **Test on supplementary information**

1. The Member States participating in SIS 1+ shall conduct functional ~~Sirene~~ SIRENE tests.
2. The Commission shall make available Central SIS II and its communication infrastructure during the execution of the test on supplementary information.
3. The test on supplementary information shall follow a detailed schedule defined by Member States participating in SIS 1+ acting within the Council.
4. The test on supplementary information shall be based on the technical specifications defined by the Member States participating in SIS 1+ acting within the Council.
5. The test results shall be analysed by the Member States participating in SIS 1+ acting within the Council.
6. Member States not participating in SIS 1+ may participate in the test on supplementary information. Their results shall not affect the overall validation of the test.

#### *Article 10*

#### **Interim migration architecture**

1. An interim ~~SIS~~ migration architecture shall be set up. The converter connects Central SIS II and C.SIS for a transitional period. The N.SIS are connected to C.SIS, the N.SIS II to Central SIS II.
2. The Commission shall provide a converter, the Central SIS II and its communication infrastructure as part of the interim ~~SIS~~ migration architecture.

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↓ 541/2010 Art. 1.3
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3. To the extent necessary, the converter shall convert data in two directions between the C.SIS and Central SIS II and keep C.SIS and Central SIS II synchronised.

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↓ 1104/2008
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4. The Commission shall test the communication between Central SIS II and the converter.
5. France shall test the communication between C.SIS and the converter.
6. The Commission and France shall test the communication between Central SIS II and C.SIS via the converter.
7. France, together with the Commission, shall connect C.SIS via the converter to Central SIS II.
8. The Commission, together with France and the other Member States participating in SIS 1+, shall test the interim ~~SIS~~ migration architecture as a whole in accordance with a test plan provided by the Commission.

9. France shall make available data for test purpose, if necessary.

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↓ 1104/2008  
⇒ new

### *Article 11*

#### **Migration from SIS 1+ to SIS II**

1. For the migration from C.SIS to Central SIS II, France shall make available the SIS 1+ database and the Commission shall introduce the SIS 1+ database into Central SIS II. ⇒ Data of SIS 1+ database referred to in Article 113 (2) of the Schengen Convention shall not be introduced into Central SIS II ⇐.

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↓ 541/2010 Art. 1.4

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.

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↓ 1104/2008 (adapted)

⊗ 3. The migration of the national system from SIS 1+ to SIS II starts with the data loading of N.SIS II, when that N.SIS II is to contain a data file, the national copy, containing a complete or partial copy of the SIS II database. ⊗

⊗ The data loading as described in the first subparagraph shall be followed by a switchover from N.SIS to N.SIS II for each Member State. ⊗

⊗ The migration shall follow a detailed schedule provided by the Commission and the Member States participating in SIS 1+ acting within the Council. ⊗

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↓ 1104/2008  
⇒ new

4. The Commission shall assist in coordination and support of the common activities during the migration.

⇒ 5. The switchover shall be carried out after the validation referred to in Article 8(7) on the date fixed by the Council in accordance with Article 55 (2) of Regulation (EC) No 1987/2006 and Article 71 (2) of Decision 2007/533/JHA. ⇐



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↓ 1104/2008

*Article 12*

**Substantive legal framework**

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↓ new

During the migration for the data loading referred to in the first subparagraph of Article 11 (3), the provisions of Title IV of the Schengen Convention shall continue to apply to the SIS 1+.

As from the switchover of the first Member State from N.SIS to N.SIS II, as referred to in the second subparagraph of Article 11 (3) of this Regulation, Regulation (EC) 1987/2006 and Decision 533/2007/JHA shall apply.

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↓ 1104/2008

*Article 13*

**Cooperation**

1. The Member States and the Commission shall cooperate for the execution of all the activities covered by this Regulation in accordance with their respective responsibilities.
  2. The Commission shall in particular provide the necessary support at Central SIS II level for the testing and migration of N.SIS II.
  3. Member States shall in particular provide the necessary support at N.SIS II level for the testing of the interim migration infrastructure.
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↓ new

*Article 14*

**Replacement of the national sections by N.SIS II**

1. The N.SIS II may replace the national section referred to in Article 92 of the Schengen Convention, in which case the Member States need not hold a national data file.

2. If any of the Member States replace their national section by N.SIS II, the compulsory functions of the technical support function towards that national section as referred to in Article 92(2) and (3) of the Schengen Convention shall become compulsory functions towards

Central SIS II, without prejudice to the obligations referred to in Article 5(1) and Article 10(1), (2) and (3) of this Regulation.

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↓ 1104/2008

### *Article 15*

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↓ new

#### **Processing data and keeping of records in Central SIS II**

1. The Central SIS II database shall be available for the purpose of carrying out automated searches in the territory of each Member State.

2. Central SIS II shall provide the services necessary for the entry and processing of SIS 1+ data, the online update of N.SIS II national copies, the synchronisation of and consistency between N.SIS II national copies and the Central SIS II database and provide operations for initialisation and restoration of N.SIS II national copies.

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↓ 1104/2008

3. Without prejudice to the relevant provisions of Title IV of the Schengen Convention, the Commission shall ensure that every access to and all exchanges of personal data within Central SIS II are recorded for the purposes of checking whether or not the search is lawful, monitoring the lawfulness of data processing and ensuring the proper functioning of Central SIS II and of national systems, data integrity and security.

4. The records shall show, in particular, the date and time of the data transmitted, the data used to perform searches, the reference to the data transmitted and the name of the competent authority responsible for processing the data.

5. The records may only be used for the purposes referred to in paragraph 1 and shall be deleted at the earliest one year, and at the latest three years after their creation.

6. Records may be kept longer if they are required for monitoring procedures that are already under way.

7. The competent authorities in charge of checking whether or not a search is lawful, monitoring the lawfulness of data processing, self-monitoring and ensuring the proper functioning of Central SIS II, data integrity and security, shall have access, within the limits of their competence and at their request, to those records for the purpose of fulfilling their tasks.

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↓ 1104/2008

⇒ new

*Article 16*

**Costs**

1. The costs arising from migration, the comprehensive test, the test on supplementary information, maintenance and development measures at Central SIS II level or concerning the communication infrastructure shall be borne by the general budget of the European Union.

2. The costs arising from ⇒ installation ⇐ migration, testing, maintenance and development of the national systems ⇒ as well as from the tasks to be performed by the national systems under this Regulation ⇐ shall be borne by each Member State concerned.

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↓ new

3. The Union may provide a financial contribution to the expenditures of the Member States for their migration and migration related testing activities performed under this Regulation which are not eligible for funding under the External Borders Fund provided that the Member State concerned is able to clearly demonstrate its needs for additional funds.

The Union contribution related to the activities referred to in the first subparagraph will take the form of grants as provided for by Title VI of the Financial Regulation. The Union contribution shall not exceed 75 % of the eligible expenditures of each Member State and it shall not exceed EUR 750 000 per Member State. The Commission shall appraise, decide and administer the co-financing operation in accordance with the budgetary and other procedures, in particularly those laid down in the Financial Regulation.

Each Member State requesting such a financial contribution shall prepare a financial forecast indicating a breakdown of the operational as well as administrative costs of the activities related to the testing and migration. Where Member States use Union funds for their expenditures, those expenditures shall be reasonable and comply with the principles of sound financial management, in particular, value for money and cost-effectiveness. Member States shall present a report to the Commission on their use of the Union's contribution by not later than six months following the date fixed by the Council in accordance with Article 55 (2) of Regulation (EC) No 1987/2006 and Article 71 (2) of Decision 2007/533/JHA.

Where the Union contribution is not implemented or is implemented inadequately, partially or late, the Union may reduce, withhold or terminate its financial contribution. Where the Member States do not contribute or contribute only partially or late to the financing of activities referred to in paragraph 1, the Union may reduce its financial contribution.

4. The Court of Auditors of the European Union shall be entitled to carry out the appropriate audits in liaison with national audit bodies or with the competent national departments. The

Commission shall be empowered to carry out all the checks and inspections necessary to ensure the proper management of the Union funds and to protect the Union's financial interest against any fraud or irregularity. To this end, the Member States shall make available all the relevant documents and records to the Commission and the Court of Auditors.

5. The costs of installing and operating the technical support function referred to in Article 92 (3) of the Schengen Convention, including the cost of lines connecting the national sections of SIS 1+ to the technical support function, and of activities performed in conjunction with tasks conferred upon France for the purpose of this Regulation shall be borne jointly by the Member States.

#### ~~Article 16~~

#### ~~Amendment of the provisions of the Schengen Convention~~

~~The provisions of the Schengen Convention are hereby amended as follows:~~

~~1. The following Article shall be inserted:~~

#### ~~Article 92A~~

~~1. As from the entry into force of Council Regulation (EC) No 1104/2008<sup>49</sup> and Council Decision 2008/839/JHA<sup>50</sup> and relying on the definitions in Article 2 of that Regulation, the technical architecture of the Schengen Information System may be supplemented by:~~

~~(a) an additional central system composed of:~~

~~technical support function (Central SIS II), located in France and backup Central SIS II located in Austria, containing the SIS II database and a uniform national interface (NI-SIS);~~

~~a technical connection between the C.SIS and the Central SIS II via the converter allowing the conversion and synchronisation of data between the C.SIS and the Central SIS II;~~

~~(b) a national system (N.SIS II), consisting of the national data systems, which communicates with the Central SIS II;~~

~~(c) an infrastructure for communication between Central SIS II and the N.SIS II connected to the NI-SIS.~~

<sup>49</sup> OJ L 299, 8.11.2008, p. 1.

<sup>50</sup> OJ L 299, 8.11.2008, p. 43.

~~2. The N.SIS II may replace the national section referred to in Article 92 of this Convention, in which case the Member States need not hold a national data file.~~

~~3. The central SIS II database shall be available for the purpose of carrying out automated searches in the territory of each Member State.~~

~~4. In case any of the Member States replace their national section by N.SIS II, the compulsory functions of the technical support function towards that national section as mentioned in Article 92(2) and (3) become compulsory functions towards Central SIS II, without prejudice to the obligations referred to in Decision 2008/839/JHA and in Articles 5(1), 10(1), (2) and (3) of Regulation (EC) No 1104/2008.~~

~~5. Central SIS II shall provide the services necessary for the entry and processing of SIS data, the online update of N.SIS II national copies, the synchronisation of and consistency between N.SIS II national copies and the Central SIS II database and provide operations for initialisation and restoration of N.SIS II national copies.~~

~~6. France, responsible for the technical support function, the other Member States and the Commission shall cooperate to ensure that a search in the data files of N.SIS II or in the SIS II database produces a result equivalent to that of a search in the data file of the national sections referred to in Article 92(2).»~~

~~2. In Article 119 first paragraph, the first sentence shall be replaced by the following:~~

~~‘The costs of installing and operating the technical support function referred to in Article 92(3), including the cost of lines connecting the national sections of the Schengen Information System to the technical support function, and of activities performed in conjunction with tasks conferred upon France in application of Decision (JHA) 2008/839/JHA and of Regulation (EC) No 1104/2008 shall be borne jointly by the Member States.’~~

~~3. In Article 119, the second paragraph shall be replaced by the following:~~

~~‘The costs of installing and operating the national section of the Schengen Information System and of tasks conferred upon national systems under Decision 2008/839/JHA and Regulation (EC) No 1104/2008 shall be borne by each Member State individually.’»~~

↓ 1104/2008 (adapted)

### *Article 17~~4~~*

#### **Committee**

⊗ 1. The Commission shall be assisted by the Committee established by Article 51 of Regulation (EC) No 1987/2006 and by Article 67 of Decision 2007/533/JHA. That Committee shall be a committee within the meaning of Regulation (EU) No 182/2011. ⊗

⊗ 2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 applies. ⊗

## Article 18

### **Global Programme Management Board**

1. Without prejudice to the respective responsibilities and activities of the Commission, the Committee ~~referred to in Article 17~~, France and the Member States participating in SIS 1+, a group of technical experts, called the Global Programme Management Board (hereinafter the Board), is hereby set up. The Board shall be an advisory body for assistance to the central SIS II project and shall facilitate consistency between central and national SIS II projects. The Board shall have no decision-making power nor any mandate to represent the Commission or Member States.

2. The Board shall be composed of a maximum of 10 members, meeting on a regular basis. A maximum of 8 experts and an equal number of alternates shall be designated by the Member States ⇒ participating in SIS 1+ ⇐ acting within the Council. A maximum of two experts and two alternates shall be designated by the Director-General of the responsible Directorate-General of the Commission from among the Commission officials.

The meetings of the Board may be attended by other experts of Member States' ~~experts~~ and Commission officials directly involved in the development of the SIS II projects, at the expense of their respective administration or institution.

The Board may invite other experts to participate in the Board's meetings as defined in the terms of reference referred to in paragraph 5, at the expense of their respective administration, institution or company.

3. Experts designated by the Member States acting as Presidency and incoming Presidency shall always be invited to participate in the Board's meetings.

4. The Board's secretariat shall be ensured by the Commission.

5. The Board shall draw up its own terms of reference which shall include in particular procedures on:

- alternative chairmanship between the Commission and the Presidency,
- meeting venues,
- preparation of meetings,
- admission of other experts,
- communication plan ensuring full information to non-participating Member States.

The terms of reference shall take effect after a favourable opinion has been given by the Director-General of the responsible Directorate-General of the Commission and by Member

States ⇒ participating in SIS 1+ ⇐ meeting within the framework of the Committee ~~referred to in Article 17.~~

6. The Board shall regularly submit written reports about the progress of the project including advice which has been given, and its justification, to the Committee ~~referred to in Article 17~~ or, as appropriate, to the relevant Council preparatory bodies.

7. Without prejudice to Article 16(2), the administrative costs and travel expenses arising from the activities of the Board shall be borne by the general budget of the Union, to the extent that they are not reimbursed from other sources. As regards travel expenses of the members in the Board designated by the Member States ⇒ participating in SIS 1+ ⇐ acting within the Council and experts invited pursuant to paragraph 3 of this Article which arise in connection with the work of the Board, 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.

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↓ 1104/2008

#### *Article 19*

### **Reporting**

The Commission shall submit by the end of every six month period, and for the first time by the end of the first six month period of 2009, a progress report to the European Parliament and the Council concerning the development of SIS II and the migration from SIS 1+ to SIS II.

---

↓ new

#### *Article 20*

### **Repeal**

Regulation (EC) No 1104/2008 and Decision 2008/839/JHA is repealed.

References to the repealed Regulation (EC) No 1104/2008 and Decision 2008/839/JHA shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex II.

---

↓ 1104/2008 (adapted)  
→<sub>1</sub> 541/2010 Art. 1.6 (adapted)

#### *Article 21*

### **Entry into force and applicability**

⊗ This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*. ⊗ →<sub>1</sub> It shall expire on a date to

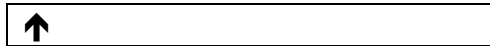
be fixed by the Council, acting in accordance with Article 55(2) of Regulation (EC) No 1987/2006 and Article 71 (2) of Decision 2007/533, ~~and in any case no later than on 31 March 2013 or on 31 December 2013 in case of a switchover to an alternative technical scenario as referred to in Article 1(3) of this Regulation.~~ ←

☒ This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaty on the Functioning of the European Union ~~establishing the European Community~~. ☒

Done at Brussels,

*For the Council  
The President*





## **ANNEX I**

### **Repealed acts with their successive amendments**

Council Regulation (EC) No 1104/2008

(OJ L 299, 8.11.2008, p. 1)

Council Regulation (EC) No 541/2010

(OJ L 155, 22.6.2010, p. 19)

Council Decision 2008/839/JHA

(OJ L 299, 8.11.2008, p. 43)

Council Decision 542/2010/JHA

(OJ L 155, 22.6.2010, p. 23)

## ANNEX II

### Correlation table

<b>Council Regulation (EC) No 1104/2008</b>	<b>Council Decision 2008/839/JHA</b>	<b>This Regulation</b>
Article 1	Article 1	Article 1
Article 2	Article 2	Article 2
Article 3	Article 3	Article 3
Article 4	Article 4	Article 4
Article 5	Article 5	Article 5
Article 6	Article 6	Article 6
Article 7	Article 7	Article 7
Article 8	Article 8	Article 8
Article 9	Article 9	Article 9
Article 10	Article 10	Article 10
Article 11	Article 11	Article 11
Article 12	Article 12	Article 12
Article 13	Article 13	Article 13
-	-	Article 14
Article 14	Article 14	Article 15
-	-	
Article 15	Article 15	Article 16
Article 16	Article 16	-
Article 17	Article 17	Article 17
Article 17a	Article 17a	Article 18
Article 18	Article 18	Article 19
-	-	Article 20
Article 19	Article 19	Article 21
-	-	Annex I
-	-	Annex II



## LEGISLATIVE FINANCIAL STATEMENT

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## LEGISLATIVE FINANCIAL STATEMENT FOR PROPOSALS

### 1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

#### 1.1. Title of the proposal/initiative

Proposal for a Council Regulation on migration from the Schengen Information System (SIS 1+) to the second generation of Schengen Information System (SIS II) (recast)

#### 1.2. Policy area(s) concerned in the ABM/ABB structure<sup>51</sup>

Title 18: Area of freedom, security and justice (Title: 18)

Solidarity – External borders, return, visa policy and free movement of people (Chapter 18 02)

#### 1.3. Nature of the proposal/initiative

The proposal/initiative relates to a **new action**

The proposal/initiative relates to a **new action following a pilot project/preparatory action**<sup>52</sup>

The proposal/initiative relates to **the extension of an existing action**

The proposal/initiative relates to **an action redirected towards a new action**

#### 1.4. Objectives

##### 1.4.1. *The Commission's multiannual strategic objective(s) targeted by the proposal/initiative*

The EU information management strategy included in the Stockholm Programme<sup>53</sup> is one of the priorities set by the European Council in 2010 in the Area of Freedom, Security and Justice. The Schengen Information System is at the heart of the compensatory measures ensuring a high level of security following the lifting of the internal borders.

##### 1.4.2. *Specific objective(s) and ABM/ABB activity(ies) concerned*

Specific objective No.1: To enable persons to cross internal borders without border checks, promote secure borders and prevent irregular migration by developing further an integrated external border management system and high standards of border checks including by the development of SIS II and the financial support from the External Borders Fund.

ABM/ABB activity(ies) concerned

<sup>51</sup> ABM: Activity-Based Management – ABB: Activity-Based Budgeting.

<sup>52</sup> As referred to in Article 49(6)(a) or (b) of the Financial Regulation.

<sup>53</sup> "The Stockholm programme — an open and secure Europe serving and protecting citizens" – OJ C115 of 4.5.2010.

1.4.3. *Expected result(s) and impact*

*Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.*

The migration instruments<sup>54</sup> aim to facilitate the successful migration from SIS 1+ to SIS II by specifying the migration architecture, the technical prerequisites, the phases of the migration itself and the respective responsibilities of the Commission and of the Member States participating in SIS 1+.

The main purpose of the proposal is to align the legal framework governing the migration with the technical scenario retained by Member States experts<sup>55</sup> and to include in the legal framework a few further elements of flexibility (see section 1.5.3 below).

In addition, further to the entry into force of the Lisbon Treaty, the proposal also merges the migration legal framework into a single legal act which was previously split between two legislative instruments according to the pillar structure of the previous Treaties.

1.4.4. *Indicators of results and impact*

*Specify the indicators for monitoring implementation of the proposal/initiative.*

The primary objective of the proposal will be reached with the successful uploading of SIS1+ data to the SIS II central system (and national systems), the successful switchover of national applications and ultimately the full availability for all Member States of SIS II functionalities.

**1.5. Grounds for the proposal/initiative**

1.5.1. *Requirement(s) to be met in the short or long term*

It is necessary for the Member States as well as for the Commission to put in place all technical elements and to execute successfully the tests required for the comprehensive test during the preparatory phase of the migration.

1.5.2. *Added value of EU involvement*

The very nature of SIS II is to share information regarding certain categories of persons and objects between law enforcement authorities, border guards, customs, visa and judicial authorities of Schengen Countries. The Commission is responsible for the technical development of the Central SIS II, the communication infrastructure and the converter. Furthermore, the Commission is to coordinate the activities related to the development of the SIS II and to provide Member States with the necessary support for the implementation of their tasks and responsibilities, thereby ensuring consistency between the central and the national projects.

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<sup>54</sup> Council Regulation (EC) No 1104/2008 of 24 October 2008 on the migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II) (OJ L 299, 8.11.2008, p. 1); Council Decision 2008/839/JHA of 24 October 2008 on the migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II) (OJ L 299, 8.11.2008, p. 43).

<sup>55</sup> This technical scenario ('known as 'Migration Plan') was unanimously endorsed by Member States in the framework of the SISVIS Committee of 23 February 2011.

### 1.5.3. *Lessons learned from similar experiences in the past*

The legal framework must allow for sufficient flexibility in order to avoid unnecessary costs in connection to the migration process. In particular, Member States that have already switched over to SIS II should be allowed to use it with all its functionalities without having to wait for the successful switchover of all remaining Member States.

It is also necessary to provide for the option for co-financing from the general budget of the European Union certain national activities related to the migration (and in particular in connection with the participation of Member States in migration-related testing activities) in order to facilitate a smooth and orderly migration process.

### 1.5.4. *Coherence and possible synergy with other relevant instruments*

The proposal builds upon *Regulation (EC) No 1987/2006*<sup>56</sup> and *Decision No 2007/533/JHA*<sup>57</sup> on the establishment, operation and use of the second generation Schengen Information System (SIS II). The date of expiry of this proposed regulation will be determined by the two aforesaid legal acts. Moreover, this proposal is consistent with other legal acts concerning the testing, the network and the security of SIS II.

## 1.6. **Duration and financial impact**

Proposal/initiative of **limited duration**

–  Proposal/initiative in effect from 1 July 2012<sup>58</sup> until the completion of the migration, foreseeably not later than 30 June 2013.

–  Financial impact in 2012 to 2013

Proposal/initiative of **unlimited duration**

– Implementation with a start-up period from YYYY to YYYY,

– followed by full-scale operation.

### Comment

The expiry date for the migration is not set out in the proposed regulation but will be determined by the Council in line with Article 55 (2) of Regulation (EC) No 1987/2006 and Article 71 (2) of Decision 2007/533/JHA.

<sup>56</sup> Regulation (EC) No 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II) (OJ L 381, 28.12.2006, p. 4)

<sup>57</sup> Council Decision No 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II) (OJ L 205, 7.8.2007, p. 63)

<sup>58</sup> Target date for entry into operation of the amended Council Regulation subject of this proposal.



## 1.7. Management mode(s) envisaged<sup>59</sup>

- Centralised direct management** by the Commission
- Centralised indirect management** with the delegation of implementation tasks to:
  - executive agencies
  - bodies set up by the Communities<sup>60</sup>
  - national public-sector bodies/bodies with public-service mission
  - persons entrusted with the implementation of specific actions pursuant to Title V of the Treaty on European Union and identified in the relevant basic act within the meaning of Article 49 of the Financial Regulation
- Shared management** with the Member States
- Decentralised management** with third countries
- Joint management** with international organisations (*to be specified*)

*If more than one management mode is indicated, please provide details in the "Comments" section.*

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<sup>59</sup> Details of management modes and references to the Financial Regulation may be found on the BudgWeb site: [http://www.cc.cec/budg/man/budgmanag/budgmanag\\_en.html](http://www.cc.cec/budg/man/budgmanag/budgmanag_en.html)

<sup>60</sup> As referred to in Article 185 of the Financial Regulation.

## 2. MANAGEMENT MEASURES

### 2.1. Monitoring and reporting rules

*Specify frequency and conditions.*

The Commission rigorously supervises and monitors the contractor's work on a continuous basis, in close cooperation with its quality assurance contractor and the Global Project Management Board.

In line with the contractual provisions, the Commission assesses progress of the SIS II project at regular points and performance is measured against required standards and pre-set criteria, with the assistance of a quality assurance contractor.

Progress reports describing the work carried out concerning the development of the second generation Schengen Information System (SIS II) and preparations for migration from SIS 1+ to SIS II are presented to the Council and the European Parliament on a six-monthly basis in accordance with Article 18 of the migration instruments. These reports systematically include a section detailing budget execution (commitments and payments) related to the central SIS II project.

### 2.2. Management and control system

#### 2.2.1. Risk(s) identified

1. At central level: risk of a delay in the global schedule due to unscheduled events or underperformance by the main development contractor.

2. At national level: risk of a delay impacting the global schedule due to lack of readiness of one or several Member States with national developments (lack of readiness of certain Member States for participating in the testing phases foreseen in the global schedule either due to delayed procurement, technical difficulties or to a shortage of financial resources to continue the national developments and to complete the migration)

The late readiness of at least one Member State could jeopardise the entry into operation of SIS II because the legal prerequisites for the system to go-live would not be met (i.e.: *the need for all Member States to notify their readiness and the successful completion of a comprehensive test with all Member States*).

#### 2.2.2. Control method(s) envisaged

The Commission rigorously monitors the project's risks, in close cooperation with the Global Project Management Board, the Member States and its quality assurance contractor.

Use of the possible co-financing will be subject of the control exercised by the Commission and the Court of Auditors.

### **2.3. Measures to prevent fraud and irregularities**

*Specify existing or envisaged prevention and protection measures.*

The Commission will appraise, decide and administer the co-financing financing option (via grants) from the general budget of the Union in line with the prescriptions of the Financial Regulation. The Commission may reduce, withhold or terminate its financial contribution. The Commission and the Court of Auditors will be entitled to carry out all the checks and inspections necessary to ensure the proper management of the Union's financial interest against fraud or irregularity.

### 3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

#### 3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

- Existing expenditure budget lines

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number Schengen Information System II	DA <sup>(61)</sup>	from EFTA <sup>62</sup> countries	from candidate countries <sup>63</sup>	from third countries	within the meaning of Article 18(1)(aa) of the Financial Regulation
3A	18 02 04	DA	NO	NO	YES	NO

- New budget lines requested: None

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<sup>61</sup> DA= Differentiated appropriations / DNA= Non-Differentiated Appropriations

<sup>62</sup> EFTA: European Free Trade Association.

<sup>63</sup> Candidate countries and, where applicable, potential candidate countries from the Western Balkans.

### 3.2. Estimated impact on expenditure

#### 3.2.1. Summary of estimated impact on expenditure

EUR million (to 3 decimal places)

<b>Heading of multiannual financial framework:</b>	3 A	Freedom, security and justice
--	-----	-------------------------------

DG: HOME			Year 2012 (pro rata from 1 July)	Year 2013 (pro rata until 30 June)	Year N+3	... enter as many years as necessary to show the duration of the impact (see point 1.6)			TOTAL
• Operational appropriations									
Number of budget line 18.02.04	Commitments	(1)	28.120	7.120					35.240
	Payments	(2)	18.184	17.056					35.240
Number of budget line	Commitments	(1a)							
	Payments	(2a)							
Appropriations of an administrative nature financed from the envelope of specific programs <sup>64</sup>									
Number of budget line		(3)							
<b>TOTAL appropriations for DG HOME</b>	Commitments	=1+1a +3	28.120 <sup>65</sup>	7.120					35.240
	Payments	=2+2a +3	18.184	17.056					35.240

<sup>64</sup> Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former "BA" lines), indirect research, direct research.

<sup>65</sup> Since unspent amounts are still available, these will be used. Therefore no budget modification will be required.

<b>Heading of multiannual financial framework:</b>	<b>5</b>	" Administrative expenditure "
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EUR million (to 3 decimal places)

		Year 2012  (pro rata from 1 July)	Year 2013  (pro rata until 30 June)	Year N+3	... enter as many years as necessary to show the duration of the impact (see point 1.6)			TOTAL
DG: HOME								
• Human resources		2.675	2.439					5.114
• Other administrative expenditure		0.152	0.152					0.304
<b>TOTAL DG HOME</b>	Appropriations	2.827	2.590					5.418

<b>TOTAL appropriations under HEADING 5 of the multiannual financial framework</b>	(Total commitments = Total payments)	2.827	2.590					5.418
--	---	-------	-------	--	--	--	--	-------

EUR million (to 3 decimal places)

		Year 2012	Year 2013	Year N+3	... enter as many years as necessary to show the duration of the impact (see point 1.6)			TOTAL
<b>TOTAL appropriations under HEADINGS 1 to 5 of the multiannual financial framework</b>	Commitments	30.947	9.710					40.658
	Payments	21.011	19.646					40.658

### 3.2.2. Estimated impact on operational appropriations

- The proposal/initiative does not require the use of operational appropriations
- The proposal/initiative requires the use of operational appropriations, as explained below:

Commitment appropriations in EUR million (to 3 decimal places)

Indicate objectives and outputs ↓	Type of output <sup>66</sup>	Average yearly cost of the output	Year 2012 (pro rata from 1 July)		Year 2013 (pro rata until 30 June)		TOTAL	
			Number of outputs	Cost	Number of outputs	Cost	Total number of outputs	Total cost
<b>SPECIFIC OBJECTIVE No 1<sup>67</sup></b>								
<b>Preparation of operations SIS II</b>								
- Output 1	SIS II changes			0		0		0
- Output 2	Quality Assurance			1.250		1.250		2.500
- Output 3	sTESTA (communication infrastructure)			7.500		0		7.500
- Output 4	Security audits			0.500		0		0.500
- Output 5	Option security			0.500		0		0.500
- Output 6	Option MS co-financing <sup>68</sup>			15.750		5.250		21.000

<sup>66</sup> Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.).

<sup>67</sup> As described in Section 1.4.2. "Specific objective(s)..."

<sup>68</sup> Costs linked to Member States participation in the activities for the preparation of the migration, in particular the coordination of tests. According to estimates, the additional costs associated with preparations for migration should be approximately the same for each Member State irrespective of size: 1 project manager at €1.500€

- Output 7	Global Project Management			0.120		0.120		0.240
- Output 8	Studies			2.000		0		2.000
- Output 9	Information Campaign			0.500		0.500		1.000
Sub-total for specific objective N°1				28.120		7.120		35.240
<b>TOTAL COST</b>				<b>28.120</b>		<b>7.120</b>		<b>35.240</b>

---

day, 4 specialists at €1.200 per day (database administrator, systems specialist and application specialists/developers) and 2,5 operators at 700 per day, amounting to a total of 8050 per day for a duration of 120 days = 966 000 €/ Member State participating to SIS1+. It is assumed that 75% of the corresponding appropriations will be committed in 2012 and the rest in 2013.



### 3.2.3. Estimated impact on appropriations of an administrative nature

#### 3.2.3.1. Summary

- The proposal/initiative does not require the use of administrative appropriations
- The proposal/initiative requires the use of administrative appropriations, as explained below:

EUR million (to 3 decimal places)

	Year 2012  (pro rata from 1 July)	Year 2013  (pro rata until 30 June)		Year N+3	... enter as many years as necessary to show the duration of the impact (see point 1.6)	TOTAL
--	--	--	--	----------	---	-------

<b>HEADING 5 of the multiannual financial framework</b>								
Human resources	2.675	2.439						5.114
Other administrative expenditure	0.152	0.152						0.304
<b>Subtotal HEADING 5 of the multiannual financial framework</b>	<b>2.827</b>	<b>2.590</b>						<b>5.418</b>

<b>Outside HEADING 5<sup>69</sup> of the multiannual financial framework</b>								
Human resources								
Other expenditure of an administrative nature								
<b>Subtotal outside HEADING 5 of the multiannual financial framework</b>								

<b>TOTAL</b>	<b>2.827</b>	<b>2.590</b>						<b>5.418</b>
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<sup>69</sup> Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former "BA" lines), indirect research, direct research.

### 3.2.3.2. Estimated requirements of human resources

- The proposal/initiative does not require the use of human resources
- The proposal/initiative requires the use of human resources, as explained below:

*Estimate to be expressed in full amounts (or at most to one decimal place)*

	Year 2012	Year 2013						... enter as many years as necessary to show the duration of the impact (see point 1.6)
<b>• Establishment plan posts (officials and temporary agents)</b>								
XX 01 01 01 (Headquarters and Commission's Representation Offices)	33	32						
XX 01 01 02 (Delegations)								
XX 01 05 01 (Indirect research)								
10 01 05 01 (Direct research)								
<b>• External personnel (in Full Time Equivalent unit: FTE)<sup>70</sup></b>								
XX 01 02 01 (CA, INT, SNE from the "global envelope")	17	12						
XX 01 02 02 (CA, INT, JED, LA and SNE in the delegations)								
<b>XX 01 04 yy<sup>71</sup></b>	- at Headquarters <sup>72</sup>							
	- in delegations							
XX 01 05 02 (CA, INT, SNE - Indirect research)								
10 01 05 02 (CA, INT, SNE - Direct research)								
Other budget lines (specify)								
<b>TOTAL</b>	<b>50</b>	<b>44</b>						

**XX** is the policy area or budget title concerned.

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints. This is without prejudice to the establishment of a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice<sup>73</sup> and the externalisation of tasks to the said Agency, which will have freed 50 FTE (27 posts and 23 FTE of external personnel) working on SIS II, VIS and EURODAC by the end of 2013.

<sup>70</sup> CA= Contract Agent; INT= agency staff ("*Intérimaire*"); JED= "*Jeune Expert en Délégation*" (Young Experts in Delegations); LA= Local Agent; SNE= Seconded National Expert;

<sup>71</sup> Under the ceiling for external personnel from operational appropriations (former "BA" lines).

<sup>72</sup> Essentially for Structural Funds, European Agricultural Fund for Rural Development (EAFRD) and European Fisheries Fund (EFF).

<sup>73</sup> Regulation (EU) No 1077/2011 of the European Parliament and of the Council of 25 October 2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (OJ L 286, 1.11.2011, p. 1).

## 2012

### *Calculation: Officials and Temporary agents*

AD/AST – 127.000 EUR per year \* 33 persons = **4.191 mEUR**

*From 1 July to 31 Dec.: 2.096 mEUR*

### *Calculation: External personnel*

Contractual staff: 64.000 EUR per year \* 9 persons = 0.576 mEUR

National experts: 73.000 EUR per year \* 8 persons = 0.584 mEUR

Total external personnel: **1.160 mEUR**

*From 1 July to 31 Dec.: 0.580 mEUR*

## 2013

### *Calculation: Officials and Temporary agents*

AD/AST – 127.000 EUR per year \* 32 persons = **4.064 mEUR**

*From 1 Jan to 30 June.: 2.032 mEUR*

### *Calculation: External personnel*

Contractual staff: 64.000 EUR per year \* 7 persons = 0.448 mEUR

National experts: 73.000 EUR per year \* 5 persons = 0.365 mEUR

Total external personnel: **0.813 mEUR**

*From 1 Jan to 30 June.: 0.407 mEUR*

Description of tasks to be carried out:

Officials and temporary agents	Programme coordination, project management, evaluation & reporting, public procurement, contract management
External personnel	Technical management, IT and administrative support

3.2.4. *Compatibility with the current multiannual financial framework*

- Proposal/initiative is compatible the current multiannual financial framework.
- Proposal/initiative will entail reprogramming of the relevant heading in the multiannual financial framework.

Explain what reprogramming is required, specifying the budget lines concerned and the corresponding amounts.

- Proposal/initiative requires application of the flexibility instrument or revision of the multiannual financial framework<sup>74</sup>.

Explain what is required, specifying the headings and budget lines concerned and the corresponding amounts.

3.2.5. *Third-party contributions*

- The proposal/initiative does not provide for co-financing by third parties
- The proposal/initiative provides for the co-financing estimated below:

Appropriations in EUR million (to 3 decimal places)

	Year 2012	Year 2013			... enter as many years as necessary to show the duration of the impact (see point 1.6)			Total
<i>Specify the co-financing body</i>								
TOTAL appropriations cofinanced								

<sup>74</sup> See points 19 and 24 of the Interinstitutional Agreement.

### 3.3. Estimated impact on revenue

- Proposal/initiative has no financial impact on revenue.
- Proposal/initiative has the following financial impact:
  - on own resources
  - on miscellaneous revenue

#### Co-financing details

If the proposal involves co-financing by Member States, or other bodies (please specify which) an estimate of the level of this co-financing should be indicated in the table below (additional lines may be added if different bodies are foreseen for the provision of the co-financing): N/A

- Contribution from Norway (2.406882 %) and from Iceland: (0.073102 %) [2010 figures] for operational costs, based on Art 12 (1) 2<sup>nd</sup> paragraph of the *Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen acquis*<sup>75</sup>.
- Contribution from Switzerland (3.043387 %) and from Liechtenstein: (0.026579 %) [2010 figures] for operational costs, based on Art 11 (3) 2<sup>nd</sup> paragraph of *Agreement between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein concerning the latter's association with the implementation, application and development of the Schengen acquis*<sup>76</sup>.

EUR million (to 3 decimal places)

Budget revenue line:	Appropriations available for the ongoing budget exercise	Impact of the proposal/initiative <sup>77</sup>					
		Year 2012	Year 2013			... insert as many columns as necessary in order to reflect the duration of the impact (see point 1.6)	
NO contribution		0.438	0.411				
IS contribution		0.013	0.012				
CH contribution		0.553	0.519				
LIE contribution		0.005	0.004				
<b>TOTAL Article xxxx</b>		<b>1.009</b>	<b>0.947</b>				

For miscellaneous assigned revenue, specify the budget expenditure line(s) affected.

<sup>75</sup> OJ L 176, 10.7.1999, p. 36

<sup>76</sup> OJ L 53, 27.2.2008, p. 52 and OJ L 160, 18.6.2011, p. 84

<sup>77</sup> As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 25% for collection costs.

Specify the method for calculating the impact on revenue.

See above