



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 12 July 2012**

**12530/12**

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

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**SIRIS 61  
SCHENGEN 58  
COMIX 440**

**COVER NOTE**

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from: Peter Hustinx, European Data Protection Supervisor  
date of receipt: 9 July 2012  
to: President of the Council of the European Union

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Subject: Opinion of the European Data Protection Supervisor on the proposal for a Council Regulation on migration from the Schengen Information System (SIS) to the second generation Schengen Information System (SIS II) (recast)

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Delegations will find annexed the above mentioned opinion of the European Data Protection Supervisor.



PETER HUSTINX  
SUPERVISOR

SECRETARIAT DU CONSEIL DE L'UNION EUROPÉENNE	
00E12/007818	
REQUÊTE:	09 JUL. 2012
DEST. PRIN.	M. FERNANDEZ-PITA
DEST. COP.	M. VAN DAELE
	<i>Hickey</i>

President of the Council of the European  
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Rue de la Loi 175  
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Brussels, 09 July 2012  
PH/GBI/mch/D(2012) 1437 C 2011-1079

**Subject:** Opinion of the European Data Protection Supervisor on the proposal for a Council Regulation on migration from the Schengen Information System (SIS) to the second generation Schengen Information System (SIS II) (recast)

Dear Mr President,

With regard to 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 data by the Community institutions and bodies and on the free movement of such data, and in particular its Article 41, I send you my opinion on the migration from the Schengen Information System (SIS) to the second generation Schengen Information System (SIS II) (recast).

I have sent this opinion to the President of the European Commission and the President of the European Parliament as well.

Yours sincerely,

Peter HUSTINX

*Annex:* Opinion

*Cc:* Mr Uwe CORSEPIUS, Secretary-General  
Mr Jeppe TRANHOLM-MIKKELSEN, Permanent Representative of  
Denmark

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## **Opinion of the European Data Protection Supervisor**

### **on the proposal for a Council Regulation on migration from the Schengen Information System (SIS) to the second generation Schengen Information System (SIS II) (recast)**

THE EUROPEAN DATA PROTECTION SUPERVISOR,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 16 thereof,

Having regard to the Charter of Fundamental Rights of the European Union, and in particular Articles 7 and 8 thereof,

Having regard to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data,<sup>1</sup>

Having regard to 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>2</sup>

Having regard to the request for an opinion in accordance with Article 28(2) of Regulation (EC) No 45/2001,

HAS ADOPTED THE FOLLOWING OPINION:

## **1. INTRODUCTION**

### **1.1. Consultation of the EDPS**

1. On 30 April 2012, the Commission adopted a proposal concerning a recast of Council Regulation 1102/2008 of October 2008 on Migration from the Schengen Information system (SIS) to the second generation Schengen Information System (SIS II)<sup>3</sup> ('the proposal').

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<sup>1</sup> OJ L 281, 23.11.1995, p. 31.

<sup>2</sup> OJ L 8, 12.1.2001, p. 1.

<sup>3</sup> COM(2012) 81 final.

2. The EDPS already issued an Opinion on the three Proposals setting up the Second Generation Schengen Information System on 19 October 2005.<sup>4</sup> At the time, the EDPS focused his analysis on the need to limit access rights and retention periods, as well as the need to supply information to data subjects. He also pointed out that the new functionality of links between records must not lead to an extension of access rights. On the technical design of SIS II, he recommended improvements of the security measures and cautioned against the use of national copies.
3. The EDPS takes note of the Council conclusions on migration to SIS II<sup>5</sup>. The Council invited, *inter alia*, Member States to:
  - implement, as soon as possible, the corrective and preventive mechanisms (for current SIS 1+ alerts and new SIS 1+ alerts respectively), so that they can be adapted to the data quality requirements laid down for SIS II alerts;
  - prior to the launch of the migration of SIS 1+ data to SIS II, once again review the conformity of current alerts with SIS II dictionaries, ensuring that they comply with the final version of those dictionaries;
  - via the competent national authorities responsible for the quality of SIS data, systematically monitor the accuracy of the alerts entered in the national system of SIS 1+, this being essential for ensuring the trouble-free use of the mapping/dictionary mapping mechanism.
4. Before the adoption of the present Commission Proposal, the EDPS was given the possibility to provide informal comments on the draft Proposal. In these comments, the EDPS expressed his concerns on different aspects of the Migration that in his view should be clarified. Unfortunately, the adopted text did not take into account the comments made during the informal stage and has therefore not provided the required clarifications.

## 1.2. Objective of the Proposal

5. According to the Commission, the objective of the 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 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.
6. The proposal is a key element in the transfer from SIS to SIS II and sets out the rules applicable to the switchover. To this end, the proposal defines, among other aspects:
  - the interim migration architecture, which will allow the technical platforms of SIS and SIS II to run in parallel for a limited amount of time, with data being synchronised between the two databases;
  - the tests to be carried out;
  - the management of the process, including the establishment of a global programme management board;
  - the logging requirements.
7. During the switchover period, Member States will move from the technical platform of SIS to SIS II one by one. If a Member States fails to do this, it will fall back to

<sup>4</sup> EDPS Opinion of 19 October 2005 on three Proposals regarding the Second Generation Schengen Information System (SIS II), OJ C 91, 19.04.2006, p. 38.

<sup>5</sup> 3135<sup>th</sup> Justice and Home Affairs Council meeting Brussels, 13 and 14 December 2011, Council Conclusions.

continuing to use SIS, with the option to migrate later. In any case, the migration will be followed by an intensive monitoring period.

8. One crucial element of the proposal is the applicable legislation for the migration:
  - during initial phase of the migration (data loading), 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 SIS to SIS II, Regulation (EC) 1987/2006 and Decision 2007/533/JHA shall apply.

### **1.3. Focus of this Opinion**

9. The present opinion focuses on the specific aspects of the migration from SIS 1+ to SIS II and their practical implementation, as far as relevant from a data protection perspective.
10. The EDPS highlights the elements associated to the migration that could represent important risks and which therefore should be addressed in order to ensure that the migration will work as planned. The main goal is to provide concrete suggestions to improve the text of the Regulation, where necessary.
11. In this assessment, the EDPS does not restrict his comments to the text of the proposal, but will also provide additional input that can help in the execution of the migration. In this respect, the EDPS acknowledges the difficulties of including additional changes in the proposed text, as it was conceived as a recast only with the intention to improve the legal certainty during the migration and adapting to the post-Lisbon framework. However, he is of the opinion that it would be advisable to implement these recommendations in a legally binding form.

## **2. ANALYSIS OF THE PROPOSAL**

### **2.1. Applicable law**

12. The main change in the current proposal compared to the text being recast is the point in time at which the SIS II legal framework<sup>6</sup> becomes applicable. Under the old legislation, the SIS II legal framework would only come into force once all Member States have completed the migration to SIS II. The new proposal foresees<sup>7</sup> that the SIS II legal framework enters into force once the first Member State has successfully completed the switchover.
13. The EDPS welcomes this approach as it will contribute to the legal certainty of the migration. The solution proposed is preferable to the old approach. The reason is that otherwise, functions new to SIS II might already be available to Member States that have completed the migration, while the legal basis for these functions has not yet come into force.
14. This situation would have resulted in unlawful processing if new functions such as storing fingerprints or linking records were used during the switchover period. The EDPS welcomes addressing this legal problem during the migration period.

<sup>6</sup> Regulation (EC) No 1987/2006, OJ L 381, 28.12.2006, p. 4–23 and Council Decision 2007/533/JHA, OJ L 205, 7.8.2007, p. 63.

<sup>7</sup> Article 12 of the Proposal.

## **2.2. Supervision of the data processing activities associated to the migration**

15. The change in the applicable law proposed in the recast has some consequences in terms of supervision:
- in the initial preparatory phases, supervision will be provided by the Joint Supervisory Authority established under the Convention implementing the Schengen Agreement<sup>8</sup>;
  - from the moment the first Member State has switched over to SIS II, the coordinated supervision mechanism as foreseen in the SIS II Regulation will be applicable.
16. This approach is consistent and does not present problems from a legal point of view, since at all times it will now be clear which authority will be in charge of the supervision. In this context, it is good to bear in mind that one of the essential aspects of data protection - as recognised in Article 16 of TFEU and Article 8 of the European Charter of Fundamental Rights - is that data processing operations should be supervised by an independent authority.
17. However, in practical terms, handing over supervision responsibilities during the migration could have negative effects and impinge on the safeguards that supervision provides at the moment when it is needed the most. It is important that the whole migration process be supervised consistently.
18. Therefore, the EDPS recommends that the coordinated supervision mechanism should be applicable from the start of the migration, and that the recast should provide for this approach.

## **2.3. Plan, scope and risks of the migration**

### *Alternative Plan*

19. Article 1(3) of the proposal refers to the possibility that the development of SIS II may be achieved by implementing an alternative technical scenario characterised by its own technical specifications. Also Recital 19 mentions that 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 EDPS notes that it should be assessed if the use of an alternative technical scenario can impact the applicability of the clauses of the present Regulation. In this context, the EDPS recommends that the impact of the use of an alternative technical scenario is clarified. It should in particular be clear to what extent the provisions present in the proposal would still be applicable.

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<sup>8</sup> OJL 239, 22/09/2000 P. 19 - 62.

*Relation between the Migration plan endorsed by Member States and the proposal*

21. Recitals 16 and 17 of the proposed text mention the Migration Plan for the SIS (Migration Plan) endorsed by Member States on 23 February 2011. However, this plan is not further described in the rest of the recast and it is not clear which is the relationship between the provisions of the proposal and the Migration Plan.
22. Articles 10 and 11 provide the outline of the migration by providing details of the migration architecture and the different steps that will be required to complete the migration, but no reference is made to this Migration Plan.
23. It has to be noted that even though the Migration Plan may have been endorsed by the Council, it is not as such legally binding. Consequently, the EDPS is of the opinion that the essential aspects of the migration such as the scope, the need of a specific risk assessment, the testing that systems have to pass before the migration can start, and the tests that should validate whether the migration of a country has been successful, should be part of the proposal.

*Better definition of the scope of the migration within the proposal*

24. Article 11(1) of the proposal states that '[f]or the migration from C.SIS to Central SIS II, France shall make available the SIS database and the Commission shall introduce the SIS database into Central SIS II, only further mentioning that the data referred to in Article 113(2) of the Schengen Convention<sup>9</sup> shall not be introduced in the central unit of SIS II.
25. In the interest of legal certainty and also to have a clear definition of the data processing operations that will take place, the EDPS recommends that the proposal should include in detail the categories of data that will be migrated from SIS1+ to SIS II. In particular, the proposal should clarify which specific data fields in alerts will be transferred, as well as the details of the processing operations that will take place during the transfer, especially the ones that might result in any alteration of the original data.
26. Also, the Proposal does not make any specific reference to the data processing operations records kept in SIS. In the view of the EDPS, these data should be transferred to SIS II. At least a procedure should be established to ensure that these data remain accessible until their required deletion time. This will enable an uninterrupted audit trail that will, among other things, be needed for supervision of the data processing operations in the context of SIS.
27. The Proposal explicitly mentions that the data referred to in Article 113(2) of the Schengen Convention will not be transferred. Unless there are any additional processing activities foreseen for these non transferred data, the Regulation should provide that data not migrated from SIS will be safely deleted after the migration process has finished. Any additional processing activity should explicitly be mentioned in the Regulation, and safeguards should be provided.

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<sup>9</sup> i.e. deleted records, which may only be accessed for checking their accuracy and lawfulness.

28. As a conclusion, the EDPS recommends clearly defining the data categories to be transferred to SIS II. These categories should include the records of data processing operations kept in SIS. This could take the form of an annex to the proposal.

*Requirement for a full risk assessment of the migration*

29. Recital 32 of the Proposal acknowledges that the migration is a complex process entailing certain technical risks. However, the substantive part of the Proposal does not reflect this by, for example, mandating a specific risk assessment.

30. Migrating SIS to SIS II is indeed a complex operation which raises specific risks and challenges from a data protection point of view. Possible problems include data not in compliance with the SIS data model which could become inaccurate when converted to the SIS II data model, as well as data loss or corruption during the transfer.

31. The EDPS therefore recommends that the Regulation requires that the Commission in coordination with Member States carry out a full analysis of the risks involved in the migration and the actions to mitigate such risks.

32. Accordingly, the Regulation should also include a requirement for the Commission in coordination with the Member States to define a plan to tackle the risks identified and to test the controls established in such plan. The results of this risk assessment should also be reflected in the security rules applicable to the migration (see below points 52 and following).

**2.4. Keeping of records in Central SIS II**

33. Article 15 of the Regulation refers to the obligation of the Commission to 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 searches are lawful, monitoring the lawfulness of data processing, and ensuring the proper functioning of Central SIS II and of national systems, data integrity and security.

34. The EDPS notes that this Article seems to simply re-state with some small changes the obligation to keep records of personal data processing operations in Central SIS II provided for in Article 18 of Regulation 1987/2006 and Article 18 of Council Decision 2007/533/JHA.

35. In addition to the considerations expressed in his Opinion of 19 October 2005 with regard to the provisions on record keeping in Regulation 1987/2006 and Council Decision 2007/533/JHA, the EDPS notes that the focus of Article 15 should not be the recording of data processing operations of regular SIS II activity.

36. In consistency with Article 3, the focus should be the recording of the data processing operations associated to the maintenance and continuation of the development of SIS II, the comprehensive test of SIS II, the test on supplementary information, the continuation of the development and testing of a converter, the establishment and testing of a provisional migration architecture and the migration from SIS 1+ to SIS II. As the above-mentioned activities are part of a well-thought-out plan and can be checked *ex-ante*, the lawfulness of the data processing operations should be assessed *ex-ante* and *not ex-post*; records should be kept in order to ensure traceability and to



provide proof that the operations actually carried out were done in accordance with the pre-established plan.

37. The EDPS also notes the legal uncertainty associated to the provisions in Article 15(5) and 15(6). Instead of fixing a justified and reasoned retention period, these provisions refer to a period ranging between 1 year and 3 years with the possibility of extending this period for monitoring procedures that are already under way. In the view of the EDPS, retention times should be fixed and extensions should be duly justified, and in principle there seem to be no reasons that could justify keeping the records associated to the migration activities for a period longer than 6 months.
38. Additionally, the cross-reference in Article 15(5) on the authorised uses for logs in SIS II should refer to Article 15(3), not Article 15(1), because it concerns the use of the audit logs and not the use of the alarms.
39. Finally, Article 15(7) refers to the competent authorities which may - for different reasons - have access to the records. National data protection authorities are among these, as they are the authorities "in charge of [...] monitoring the lawfulness of data processing".<sup>10</sup> For the sake of clarity, the EDPS recommends to explicitly refer to national data protection authorities here. This concerns notably the recording of the activities associated to N.SIS II, while the EDPS should check the recording of the activities in the Central SIS II.
40. Against this background, the EDPS recommends redrafting Article 15 in order to take the above-mentioned comments into consideration.

## **2.5. Testing Provisions**

### *Test Scope*

41. The EDPS welcomes that the proposal, mainly in Articles 8, 9 and 10, emphasises the importance of the tests to be carried out prior to the migration. However, these tests are focused on the performance and functionality of the SIS II system, and only some of the provisions in Article 10 refer to the testing of the migration architecture itself.
42. The EDPS recommends that the Regulation should strengthen the testing obligations by clarifying that the pre-migration tests also include the following elements:
  - all functional aspects associated to the migration process as referred to in Article 11 of the proposal and other issues such as the quality of the data to be transferred;
  - non-functional elements such as security;
  - the specific measures and controls adopted to reduce the risks of the migration (to ensure that they are available and perform as expected).

### *Comprehensive tests*

43. Articles 8(6), 8(7), 9(4) and 9(5) of the proposal provide that tests will be executed according to the technical specifications of the Member States participating in SIS1+ within the Council and in cooperation with the Commission. In particular, under Article 8(6), the Commission and the Member States participating in SIS 1+ acting

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<sup>10</sup> See also Article 18 of Regulation 1987/2006, on which this provision is modelled, in connection with Article 44(1) of the same Regulation.

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+

44. Article 8(7) refers to according Article 55(3)(c) of Regulation (EC) No 1987/2006 and Article 71 (3)(c) of Decision 2007/533/JHA as the criteria to validate the tests:
- the necessary implementing measures have been adopted;
  - all Member States fully participating in SIS 1+ have notified the Commission that they have made the necessary technical and legal arrangements to process SIS II data and exchange supplementary information;
  - the Commission has declared the successful completion of a comprehensive test of SIS II, which shall be conducted by the Commission together with the Member States, and the preparatory bodies of the Council have validated the proposed test result and confirmed that the level of performance of SIS II is at least equivalent to that achieved with SIS 1+;
  - the Commission has made the necessary technical arrangements for allowing Central SIS II to be connected to the N.SIS II of the Member States concerned
45. The EDPS notes that the validation of these tests relies mainly on the concepts of 'necessary implementing measures', 'necessary technical arrangements' and 'equivalent level of performance'. The first two concepts are very wide and lack specificity, and the last one only refers to one single aspect of the technical specification of a system, and for instance does not take into consideration other important elements such as functionality, compliance and security. Consequently, the EDPS would like to point out that the criteria implicit in these concepts can be interpreted in multiple ways, and that their application will therefore largely depend on subjective assessments of the Commission and the preparatory bodies of the Council.
46. The application of objective criteria is particularly important since, according to Recital 19 and Article 1(3) of the proposal, the results of these tests will be used, among other things, to determine if the proposed technical approach will be used or an alternative technical scenario should be applied.
47. Consequently, given the importance of these tests either to determine the start of the migration operations or to decide if an alternative technical scenario is used, the EDPS recommends that the proposal should provide a more comprehensive description of the tests and the criteria of validation (probably in an annex). This approach will contribute to improving legal certainty and will ensure that objective criteria are used instead of subjective ones to take such important decisions.

#### *Validation tests after the Switchover*

48. After the switchover of a Member State has been completed, it should be possible to validate the results. The tests should in particular determine if the switchover has succeeded or failed. Validation tests should at least verify that:
- the whole process has been carried out correctly with no reported errors;
  - no data have been lost or added erroneously;
  - there have not been any alterations of the integrity of the data;
  - data loaded into the system are coherent with the data model in SIS II and can be accessed and modified accordingly.

49. The Regulation should also require that these validation tests are successful before a Member State's switchover to SIS II can be considered successful. Hence, these tests should be carried out as a precondition to enable the use of full SIS II functionality by that Member State. In addition, in case of failing the tests, the Regulation should provide for the existence of a fallback mechanism that will allow the Member State to continue its operations in SIS1+ while the problems detected are resolved.

#### *Test Data*

50. The EDPS also notes that Recital 7 clarifies that only 'test data' will be used for these pre-migration tests. While rigorous tests are essential for ensuring a smooth operation after the migration, the data used for such tests should not be real data taken from SIS.
51. Although he welcomes the addition to Recital 7, the EDPS would therefore like to stress that if these 'test data' are to be based on 'scrambled' real data from SIS, all necessary measures would have to be taken to ensure that it will be impossible to reconstruct real data from this test data.

## **2.6. Security measures**

### *Security Policy specific to the migration data processing activities*

52. The Proposal does not foresee the need of specific security measures associated to the migration itself. However, the migration of data between SIS and SIS II is a specific data processing activity with its own risks, different from those that will be encountered once SIS II has entered normal use.
53. Therefore, the EDPS recommends introducing in the text of the proposal a specific provision requiring the Commission and the Member States to implement appropriate technical and organisational measures to ensure a level of security appropriate to the risks represented by the migration. These organizational measures should reflect the results of the risk assessment recommended previously. This provision should, at a minimum:
- recognise the specific nature of the data processing activities associated to the migration;
  - establish some general guidelines concerning the measures to be taken (for instance, that the data should only be transferred between two systems, if adequately encrypted);
  - establish that the Commission together with the Member States, and in particular with France<sup>11</sup>, shall develop a specific security plan after the evaluation of the possible risks associated to the migration in due time before the migration.

### *Specific clauses to protect data integrity*

54. The data models in SIS and SIS II differ not only in relation to the data fields present, but also as to the specific rules governing the internal structure of the data. Each data model has to be consistent with the manner in which it needs to be maintained and accessed.

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<sup>11</sup> Note that the management and operation of SIS1+ is entrusted to France.

55. The technical migration plan mentioned in Recital 17 of the proposal establishes that in order to facilitate the migration, SIS II validation rules should be relaxed, and also refers to specific cases (where data is not compliant with SIS data dictionaries) in which the converter will reject the data as non-valid.
56. Preservation of data integrity is a crucial aspect of the migration process and therefore the Regulation should explicitly address it instead of just referring to the technical migration plan.
57. In particular, the EDPS would recommend to include in the Regulation:
- an annex with the mapping and validation rules applicable in the conversion, making it easy to verify whether the relaxation of SIS II rules is compliant with the SIS II Regulation;
  - a provision defining the responsibility of the different actors in the identification and correction of anomalous data;
  - a requirement to fully test, before the migration, the compliance of the data to be migrated with SIS II integrity rules.

*Disposal of equipment, documentation, media for SIS 1+*

58. After the migration, the question of what will happen to the technical equipment of SIS 1+ becomes urgent. Given that its legal basis will no longer be in force and that the technical system will be obsolete, there is a need to establish what will happen with equipment and data stored on it.
59. Several aspects should be balanced. In principle, these data should not be kept, if no additional processing is meant to take place. However, as part of the risk assessment mentioned above in section 2.3, it could be identified that it would be advisable to keep the data for a short period to mitigate the problems that could arise from unforeseen problems in the migration.
60. The EDPS recommends that the proposal should therefore establish a specific time limit for this retention together with an obligation to take appropriate technical measures to ensure a secure deletion of the data after finishing the migration and the intensive monitoring period.

### **3. CONCLUSIONS**

61. Migration of the data contained in SIS to SIS II is an operation likely to involve specific risks from the point of view of data protection. While the EDPS welcomes the efforts made to ensure that this migration will happen fully in accordance with the law, he has some recommendations to make to further improve the proposal.
62. The EDPS particularly welcomes that under the new provisions, the legal framework for SIS II enters in to force once the first Member State has successfully completed the switchover. This is relevant as under the old legislation, the SIS II legal framework would only have come into force once all Member States have completed the migration to SIS II, which would have created legal ambiguity particularly with regard to new functions.

63. This approach has to be also assessed from the point of view of supervision. In the view of the EDPS, it will result in a transfer of responsibilities during the migration that could have negative effects and impinge on the safeguards that supervision provides at the moment when it is needed most. Therefore, the EDPS recommends that the coordinated supervision mechanism should be applicable from the start of the migration. The recast should provide for this approach.
64. The EDPS is of the opinion that essential aspects of the migration should be further clarified in the text of the Regulation and not left for other instruments such as the Migration Plan. In particular, this concerns:
- The scope of the migration. It should be absolutely clear which data categories migrate and which not, and also if the migration involves any transformation of the data, and if so, which are those alterations.
  - The need for risk assessment. It is important to carry out a risk assessment for the migration, with the results feeding into a specific security plan.
  - The logging of the data. Although the proposed text contains a specific article, the focus of this article refers mainly to the regular processing activities of SIS II rather than to the specific data processing activities of the migration, and the text presents a similar provision to the one in the main SIS II Regulation. In the view of the EDPS, the Regulation should have a specific clause determining what should be recorded, for how long, and with which purpose focused on the activities of the migration.
65. The EDPS recommends that the Regulation should strengthen the testing obligations by clarifying:
- Pre-migration tests should also include the following elements:
    - (i) all functional aspects associated to the migration process as referred to in Article 11 of the proposal and other issues such as the quality of the data to be transferred;
    - (ii) non-functional elements such as security;
    - (iii) any specific measures and controls adopted to reduce the risks of the migration.
  - As regards comprehensive tests, the EDPS recommends that the proposal should provide clearer criteria to define if those tests have resulted in a success or in a failure.
  - After the switchover of a Member State has been completed, it should be possible to validate the results. The Regulation should also require that these validation tests are successful in order to consider a Member State's switchover to SIS II successful. Hence, these tests should be carried out as a precondition to enable the use of full SIS II functionality by that Member State
  - As regards using test data during migration, the EDPS would like to stress that if 'test data' are to be based on 'scrambled' real data from SIS, all necessary measures would have to be taken to ensure that it will be impossible to reconstruct real data from this test data.

66. Preventive security measures are especially welcomed, and the EDPS recommends introducing in the text of the recast a specific provision requiring the Commission and the Member States to implement appropriate technical and organisational measures to ensure a level of security appropriate to the risks represented by the migration and also by the specific nature of the personal data to be processed, based on the requirements of Article 22 of Regulation (EC) 45/2001.

- Take into consideration general security aspects:
  - (i) recognise the specific nature of the data processing activities associated to the migration;
  - (ii) establish some general guidelines concerning the measures to be taken (for instance that the data should only be transferred between two systems if adequately encrypted);
  - (iii) establish that the Commission together with the Member States, and in particular with France, shall develop a specific security plan, after the evaluation of the possible risks associated to the migration, in due time before the migration.
- Specific clauses to protect data integrity are also needed, and the EDPS would recommend to include in the Regulation or in a specific Commission Decision the following measures:
  - (i) an annex with the mapping and validation rules applicable in the conversion, making it easy to verify whether the relaxation of SIS II rules is compliant with the SIS II Regulation;
  - (ii) a provision defining the responsibility of the different actors in the identification and correction of anomalous data;
  - (iii) a requirement to fully test, before the migration, the compliance of the data to be migrated with SIS II integrity rules.
- Provide for the disposal of the old system. After the migration, the question of what will happen to the technical equipment of SIS 1+ becomes urgent. The EDPS therefore recommends that the proposal or a specific Commission Decision should establish a precise time limit for this retention together with an obligation to take appropriate technical measures to ensure a secure deletion of the data after finishing the migration and the intensive monitoring period.

Done in Brussels, 09 July 2012

**(signed)**

Peter HUSTINX  
European Data Protection Supervisor