



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 7 September 2012**

**13463/12**

---

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

---

**SIRIS 72  
SCHENGEN 63  
COMIX 478**

**OPINION**

---

of: Consultative Working Party of the legal services of the European Parliament, the Council and the Commission

on: 3 August 2012

---

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

---

Delegations will find attached the Opinion of the Consultative Working Party consisting of the respective legal services of the European Parliament, the Council and the Commission on the abovementioned proposal.



GROUPE CONSULTATIF  
DES SERVICES JURIDIQUES

Brussels, 03 AOUT 2012

## OPINION

FOR THE ATTENTION OF      THE EUROPEAN PARLIAMENT  
THE COUNCIL  
THE COMMISSION

**Proposal for a Council Regulation on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II) COM(2012) 81 final of 30.4.2012 - 2012/0033 (NLE)**

Having regard to the Inter-institutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts, and in particular to point 9 thereof, the Consultative Working Party consisting of the respective legal services of the European Parliament, the Council and the Commission met on 24 May and 9 July 2012 for the purpose of examining, among others, the aforementioned proposal submitted by the Commission.

At those meetings<sup>1</sup>, an examination of the proposal for a Council Regulation recasting 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) 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) resulted in the Consultative Working Party's establishing, by common accord, as follows.

1) As far as the explanatory memorandum is concerned, in order to be drafted in full compliance with the relevant requirements laid down by the Inter-institutional Agreement such a document should have specified which provisions of the earlier act remain unchanged in the proposal, as is provided for under point 6(a)(iii) of that agreement.

2) In the recast proposal, in the first citation of the preamble the words "*Articles 30(1)(a) and (b), 31(1)(a) and (b)*", appearing in the first citation of the preamble of Decision 2008/839/JHA, should have been present and should have been identified by using the sign composed of a double strikethrough and a grey-shaded type which is

---

<sup>1</sup> The Consultative Working Party had at its disposal the English, French and German language versions of the proposal and worked on the basis of the English version, being the master-copy language version of the text under discussion.

generally used for marking substantive changes consisting of deletions of existing texts.

3) The following parts of the draft recast text should have been marked with the grey-shaded type generally used for identifying substantive changes:

- the entire wordings of recitals 36 and 37;
- both in the first and in the second paragraph of Article 6, the words "*shall be implementing acts*" and the word "*examination*";
- in Article 15(5), the words "*paragraph 1*";
- the entire text of paragraph 2 of Article 17;
- in Article 21, the deletion of the final words "*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*".

4) Article 8(1) contains an erroneous reference to "*Article 1 of Decision 2008/839/JHA*". A correct reference would need to be inserted.

5) The existing wording of both Article 15(3) of Regulation (EC) No 1104/2008 and of Article 15(3) of Decision 2008/839/JHA should have been present in the draft recast text and should have been identified by using the sign composed of a double strikethrough and a grey-shaded type which is generally used for marking substantive changes consisting of deletions of existing texts.

6) In Annex I, the indication "*Council Regulation (EC) No 541/2010*" should be corrected so as to read "*Council Regulation (EU) No 541/2010*", and the indication "*Council Decision 542/2010/JHA*" should be corrected so as to read "*Council Regulation (EU) No 542/2010*".

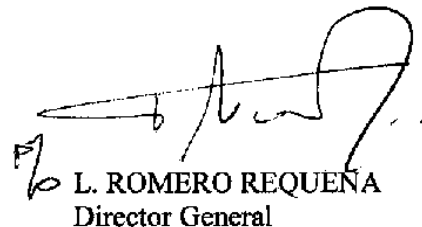
In consequence, examination of the proposal has enabled the Consultative Working Party to conclude, without dissent, that the proposal does not comprise any substantive amendments other than those identified as such. The Working Party also concluded, as regards the codification of the unchanged provisions of the earlier act with those substantive amendments, that the proposal contains a straightforward codification of the existing legal text, without any change in its substance.

Par délégation de  
Jurisconsulte, absent


C. PENNERA  
Jurisconsult



H. LEGAL  
Jurisconsult



L. ROMERO REQUENA  
Director General



M. GÓMEZ-LEAL  
chef d'Unité