



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 28 November 2012

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

**11143/2/12
REV 2**

**SIRIS 45
SCHENGEN 46
COMIX 372**

NOTE

from: Presidency

to: COREPER (Mixed Committee)

No. prev. doc.: 10201/12 SIRIS 36 SCHENGEN 37 COMIX 321

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

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,

↓ 1104/2008

⇒ new

Having regard to the Treaty on the Functioning of the European Union~~establishing the European
Community~~, and in particular Article 74~~66~~ thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament¹,

⇒ Having consulted the European Data Protection Supervisor, ⇐

Whereas:

¹ OJ C ...

↓ 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)² 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)³ have been substantially amended. Since further amendments are to be made, they should be recast in the interest of clarity.
-

↓ 1104/2008 (adapted)

⇒ new

⇒ Council

- (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 Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders⁴ (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.

² OJ L 299, 8.11.2008, p.1.

³ OJ L 299, 8.11.2008, p. 43.

⁴ OJ L 239, 22.9.2000, p. 19.

- (3) The development of the second generation Schengen Information System (SIS II) was entrusted to the Commission pursuant to Council Regulation (EC) No 2424/2001⁵ and Council Decision 2001/886/JHA⁶ 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 ➔ **at the latest until the termination of the migration or** ⌚ 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)⁷ ⇐ 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)⁸.
- (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)~~⁹. 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 189/2008¹⁰ and in Council Decision 2008/173/JHA¹¹ on the tests of the second generation Schengen Information System (SIS II).

⁵ OJ L 328, 13.12.2001, p. 4.

⁶ OJ L 328, 13.12.2001, p. 1.

⁷ OJ L 381, 28.12.2006, p. 4.

⁸ OJ L 205, 7.8.2007, p. 63.

⁹ ~~OJ L 205, 7.8.2007, p. 63.~~

¹⁰ OJ L 57, 1.3.2008, p. 1.

¹¹ OJ L 57, 1.3.2008, p. 14.

- (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 and subsequently amended in October 2009 following the orientations in the JHA Council of 4 June 2009. The present version of the SIS II global schedule was** ~~↻ endorsed by the Council on 6 June 2008~~ ⇒ presented by the Commission **⇒ to the Council and the European Parliament** ~~↻~~ 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 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.
-

↓ new

→ Council

- (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) → [...] → **adopted by the Commission after a positive vote by the SIS-VIS Committee** → 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 [...] 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.
- For reasons of legal certainty, the period of [...] switchover should be kept as short as possible, and should not exceed 12 hours.** 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 had to fall back for technical reasons to use SIS II limited to SIS 1+ functionalities during the intensive monitoring period.
- In order to apply the same standards and conditions to alerts, data processing and data protection in all Member States, it is necessary to apply the SIS II legal framework to the SIS operational activities of the Member States which did not switch over yet.**
- (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.

- (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.

↓ 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. ⇐
-

↓ 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 Communities¹² ("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.

¹² OJ L 248, 16.9.2002, p. 1.

↓ 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

→ Council

- (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 Flows¹³ 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 2013¹⁴ 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.

¹³ OJ L 144, 6.6.2007, p. 22.

¹⁴ OJ L 233, 5.9.2007, p. 3.

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 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 ➔ [...] ➔

➔ **complimentary for** ➔ 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 interests¹⁵, 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 irregularities¹⁶, 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)¹⁷.
- (28) In order to ensure uniform conditions for the implementation of this Regulation, ➡ **taking into consideration the financial impacts of the decision to Member States who should remain fully involved when the Commission exercises its implementing powers,** Ⓒ 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 powers¹⁸. ➡ **[This Regulation should exclude the possibility to adopt an implementing measure by the Commission in case the committee delivers no opinion.]** Ⓒ

¹⁵ OJ L 312, 23.12.1995, p. 1.

¹⁶ OJ L 292, 15.11.1996, p. 2.

¹⁷ OJ L 136, 31.5.1999, p. 1.

¹⁸ OJ L 55, 28.2.2011, p. 13.

↓ 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 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.

↓ 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 data¹⁹ applies to the processing of personal data by the Commission.

¹⁹ OJ L 8, 12.1.2001, p. 1.

↓ 1104/2008 (adapted)

⇒ new

⇒ Council

(31) The European Data Protection Supervisor, ~~appointed pursuant to~~ ⇒ is responsible for monitoring and ensuring the application of Regulation (EC) No 45/2001 and it ~~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~~²⁰, is competent to monitor the activities of the ~~Community~~ ☒ Union ☒ institutions and bodies in relation to the processing of personal data. ⇒ **The Joint Supervisory Authority is responsible for supervising the technical support function of the current SIS 1+ until the entry into force of the SIS II legal framework. National Supervisory Authorities are responsible for the supervision of SIS 1+ data processing on the territory of their respective Member States and will remain responsible for monitoring the lawfulness of the processing of SIS II personal data on the territory of the Member States.** ☺ ⇒ 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. ⇐ ⇒ **This SIS II legal framework provides that the National Supervisory Authorities and the European Data Protection Supervisor ensure the coordinated supervision of SIS II.** ☺

²⁰ ~~OJL 12, 17.1.2004, p. 47.~~

↓ new

➔ Council

- (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.
- ➔ [...] ➔ **Therefore, while for the reasons of legal certainty the switchover phase and the intensive monitoring period during which the interim migration architecture continues to exist should be as short as possible, and, as specified in this Regulation, a possibility should be given to the Council in case of technical difficulties to fix the final date for the termination of migration in accordance** ➔ with Article 55 (2) of Regulation (EC) No 1987/2006 and Article 71 (2) of Decision 2007/533/JHA.
-

↓ 1104/2008 (adapted)

➔ Council

- (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 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 Union~~establishing 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.

⇒ **(35) In order to give effect in 2012 to the financial facility which could be provided to Member States from the general budget of the European Union in accordance with Article 16 (3) of this Regulation, entry into force of this Regulation should be expedited following its publication in the *Official Journal of the European Union*.** ☹

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

⇒ **(36)** ☹ ⇒ **[...]** ☹ 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 ~~that the 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

⇒ Council

⇒ **[...]** ☹

⇒ **(37) This Regulation constitutes a development of the provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with 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*²¹; the United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.**

²¹ OJ L 131, 1.6.2000, p. 43.

(38) This Regulation constitutes a development of the provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with 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*²²; Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.

➔ **(39)** ➔ **[...]** ➔ 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.

➔ **(40)** ➔ **[...]** ➔ As regards Iceland and Norway, this Regulation constitutes a development of provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latters' association ~~of those two States~~ with the implementation, application and development of the Schengen *acquis*²³, which fall within the area referred to in Article 1, point G of Council Decision 1999/437/EC²⁴ on certain arrangements for the application of that Agreement.

²² OJ L 64, 7.3.2002, p. 20.

²³ OJ L 176, 10.7.1999, p. 36.

²⁴ OJ L 176, 10.7.1999, p. 31.

➔ 41 ➔ [...] 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*²⁵, 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/EC²⁶.

➔ 42 ➔ [...] 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/EU²⁷.

↓ new

➔ 43 ➔ [...] 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,

²⁵ OJ L 53, 27.2.2008, p. 52.

²⁶ OJ L 53, 27.2.2008, p. 1.





²⁷ OJ L 160, 18.5.2011, p. 19.

↓ 1104/2008 (adapted) ↻ Council

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   1...   .

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.

↓ 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.

↓ 1104/2008 (adapted)

⇒ new

↻ Council

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 ☒ ↻ [...] ☒ ;
- (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 **an interim** migration architecture;
- (f) the migration from SIS 1+ to SIS II.

Article 4

Technical components of the **an interim** migration architecture

↓ 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:

- (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.
-

↓ 1104/2008 (adapted)

→ Council

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   [...]  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 ☒ ➡ [...] Ⓞ ☒.

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. ➡ **Member States participating in SIS 1+ shall ensure that the global test result is transmitted to the European Parliament.** Ⓞ
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 ➡ **consisting of the components as referred to in Article 4 (a)-(f)** ☺. 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.
-

↓ 541/2010 Art. 1.3

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.
-

↓ 1104/2008

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.
-

↓ 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 ⇐.
-

↓ 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.

↓ 1104/2008 (adapted)

↻ Council

⊗ 3. The migration of the national system from SIS 1+ to SIS II ↻ [...] ↻ shall start ↻ 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 switchover shall start on the date to be fixed by the Council in accordance with Article 55(2) of Regulation (EC) 1987/2006, after the conditions of Article 55(3) Regulation (EC) 1987/2006 are met. The switchover from N.SIS to N.SIS II for all Member States shall be completed within no more than 12 hours. The national applications for the exchange of supplementary information shall migrate to s TESTA network in parallel with the switchover.**

The migration shall be terminated following an intensive monitoring period. The said intensive monitoring period shall be limited in time, and shall not exceed 30 days from the date of the switchover of the first 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. ⊗

↓ 1104/2008

↻ Council

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

↻ [...] ↻

↓ 1104/2008

Article 12

Substantive legal framework

↓ new
➔ Council

➔ [...] ➔ For the data loading ➔ **phase of the migration** ➔ 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 ➔ [...] ➔ shall apply.

➔ **This Regulation shall continue to apply to the interim migration architecture during the entire migration as referred to in Article 11(3).** ➔

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.
-

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.

↓ 1104/2008

Article 15

↓ 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.
-

↓ 1104/2008

→ Council

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 3 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 referred to in Article 60(1) and Article 61(1) of Decision 2007/533/JHA 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, in accordance with the provisions of Decision 2007/533/JHA, have access, within the limits of their competence and at their request, to those records for the purpose of fulfilling their tasks.

↓ 1104/2008

⇒ new

⇒ Council

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 ⇒ **as it is provided for by Article 119 (2) of the Schengen Convention** ☹.

↓ new

⇒ Council

3. ⇒ **Complementary to the financial assistance provided by the External Borders Fund,** ☹ the Union may provide a financial contribution to the expenditures of the Member States for their migration and migration related testing activities performed under ⇒ **Articles 8, 9, 10 (8) and 11 of** ☹ this Regulation ⇒ **to cover specific and well-defined activities** ☹ ⇒ **[...]** ☹.

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 ⇒ **of switchover** ☹ fixed by the Council in accordance with Article 55 (2) of Regulation (EC) No 1987/2006 ⇒ **[...]** ☹.

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 ~~☞~~ **as it is provided for by Article 119 (1) of the Schengen Convention.** ☞.

~~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 1104/2008²⁸ and Council Decision 2008/839/JHA²⁹ 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.~~

~~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.~~

²⁸ OJ L 299, 8.11.2008, p. 1.

²⁹ OJ L 299, 8.11.2008, p. 43.

~~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)

⇒ Council

Article 17~~4~~

Committee

⊗ 1. The Commission shall be assisted by the Committee established by Article 51 of Regulation (EC) No 1987/2006 ⇒ [...] ☹. 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. <⊗

⇒ **[3. Where the eCommittee delivers no opinion the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.]** ☹

~~The period provided for in Article 5(6) of Decision 1999/468/EC shall be three months.~~

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~~
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.

↓ 1104/2008

⇒ Council

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. ⇒ **The Commission shall inform the European Parliament of the results of the tests referred to in Articles 8 and 10.** ⇐

↓ new

⇒ Council

Article 20

Repeal

Regulation (EC) No 1104/2008 ⇒ [...] ⇐ is repealed.

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

↓ 1104/2008 (adapted)
→ ₁ 541/2010 Art. 1.6 (adapted)
↻ Council

Article 21

Entry into force and applicability

⊗ This Regulation shall enter into force on the ↻ [...] ↻ day following that of its publication in the *Official Journal of the European Union*. ⊗ →₁ It shall expire ↻ [...] ↻ **upon the termination of the migration as referred to in Article 11 (3), third subparagraph. If this date cannot be complied with due to outstanding technical difficulties related to the migration process, 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 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



⤵ Council

⤴ Council

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)

⤴ [...] ⤵

ANNEX II

Correlation table

Council Regulation (EC) No 1104/2008	☞ [...] ☞	This Regulation
Article 1	☞ [...] ☞	Article 1
Article 2	☞ [...] ☞	Article 2
Article 3	☞ [...] ☞	Article 3
Article 4	☞ [...] ☞	Article 4
Article 5	☞ [...] ☞	Article 5
Article 6	☞ [...] ☞	Article 6
Article 7	☞ [...] ☞	Article 7
Article 8	☞ [...] ☞	Article 8
Article 9	☞ [...] ☞	Article 9
Article 10	☞ [...] ☞	Article 10
Article 11	☞ [...] ☞	Article 11
Article 12	☞ [...] ☞	Article 12
Article 13	☞ [...] ☞	Article 13
-	-	Article 14
Article 14	☞ [...] ☞	Article 15
-	-	
Article 15	☞ [...] ☞	Article 16
Article 16	☞ [...] ☞	-
Article 17	☞ [...] ☞	Article 17
Article 17a	☞ [...] ☞	Article 18
Article 18	☞ [...] ☞	Article 19
-	-	Article 20
Article 19	☞ [...] ☞	Article 21
-	-	Annex I
-	-	Annex II