



Procedure file

Basic information		
NLE - Non-legislative enactments Regulation	2009/0136(NLE)	Procedure completed
Schengen: migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II)		
Amending Regulation (EC) No 1104/2008 2008/0078(CNS)		
Subject 7.10.02 Schengen area, Schengen acquis		

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	LIBE Civil Liberties, Justice and Home Affairs		06/10/2009
		PPE COELHO Carlos	
	Committee for opinion	Rapporteur for opinion	Appointed
	BUDG Budgets		21/10/2009
		ALDE PICKART ALVARO Alexander Nuno	
Council of the European Union	Council configuration	Meeting	Date
	Justice and Home Affairs (JHA)	3018	03/06/2010
European Commission	Commission DG	Commissioner	
	Justice and Consumers	MALMSTRÖM Cecilia	

Key events			
29/09/2009	Legislative proposal published	COM(2009)0508	Summary
22/10/2009	Committee referral announced in Parliament		
02/12/2009	Additional information		Summary
27/04/2010	Vote in committee		Summary
29/04/2010	Committee report tabled for plenary, 1st reading/single reading	A7-0126/2010	
18/05/2010	Results of vote in Parliament		
18/05/2010	Debate in Parliament		
18/05/2010	Decision by Parliament	T7-0161/2010	Summary
03/06/2010	Act adopted by Council after consultation of Parliament		

03/06/2010	End of procedure in Parliament		
22/06/2010	Final act published in Official Journal		

Technical information

Procedure reference	2009/0136(NLE)
Procedure type	NLE - Non-legislative enactments
Procedure subtype	Consultation of Parliament
Legislative instrument	Regulation
	Amending Regulation (EC) No 1104/2008 2008/0078(CNS)
Legal basis	Treaty on the Functioning of the EU TFEU 074
Other legal basis	Rules of Procedure EP 159
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/7/01135

Documentation gateway

Legislative proposal		COM(2009)0508	29/09/2009	EC	Summary
Committee draft report		PE430.541	07/12/2009	EP	
Committee opinion	BUDG	PE439.250	17/03/2010	EP	
Amendments tabled in committee		PE438.184	19/03/2010	EP	
Committee report tabled for plenary, 1st reading/single reading		A7-0126/2010	29/04/2010	EP	
Text adopted by Parliament, 1st reading/single reading		T7-0161/2010	18/05/2010	EP	Summary
Commission response to text adopted in plenary		SP(2010)3805	24/06/2010	EC	
Follow-up document		SEC(2010)1138	21/09/2010	EC	Summary

Additional information

National parliaments	IPEX
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Final act

Regulation 2010/541 OJ L 155 22.06.2010, p. 0019 Summary

Schengen: migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II)

PURPOSE: to amend Regulation (EC) No 1104/2008 on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II).

PROPOSED ACT: Council Regulation.

BACKGROUND: the Schengen Information System (SIS) was established in 1985 between the governments of the States of the Benelux Economic Union, Germany and France on the gradual abolition of checks at their common borders (the Schengen Convention), and its

development, SIS 1+, constitute an essential tool for the application of the provisions of the Schengen acquis as integrated into the framework of the European Union.

The development of the second generation of SIS (SIS II) has been entrusted to the Commission pursuant to [Council Regulation \(EC\) No 2424/2001](#) and [Council Decision 2001/886/JHA](#)

on the development of the second generation Schengen Information System (SIS II). SIS II will replace SIS 1+. SIS II development takes into account the latest evolutions in the field of information technology and allows the introduction of added functionalities.

Provisions on the establishment, operation and use of SIS II are laid down in [Regulation \(EC\) No. 1987/2006](#) of the European Parliament and of the Council and [Council Decision 2007/533/JHA](#). These instruments foresee that they will apply to the Member States participating in SIS 1+ only as of dates to be fixed by the Council, acting by the unanimity of its Members representing the governments of the Member States participating in SIS 1+. They will then replace the provisions of the Schengen acquis governing SIS 1+, in particular the relevant provisions in the Schengen Convention.

Before this can happen, the users of the SIS 1+ will have to migrate to the SIS II environment. A legal framework for the migration from SIS 1+ to the SIS II environment was therefore designed. In order to reduce the risks of service disruption during migration an interim technical architecture for the operations of SIS 1+ will allow SIS 1+ and certain technical parts of the architecture of SIS II to operate in parallel for a transitional period.

The time-frame of the current migration instruments ([CNS/2008/0077](#) and [CNS/2008/0078](#)), and in particular their date of expiry which is currently set to be 30 June 2010 at the latest, appears no longer realistic. This proposal therefore aims at preventing expiry of Regulation (EC) No 1104/2008 before migration takes place.

CONTENT: the specific objectives of the present proposal are to:

- prevent expiry of Regulation (EC) No 1104/2008 before migration from SIS 1+ to SIS II,
- ensure legal flexibility for an alternative technical scenario to attain SIS II functionalities based on SIS 1+, in case a switchover to this scenario should take place,
- render management of SIS II development and migration, in particular regarding coordination of Commission and Member State projects, as efficient as possible. In order to achieve the latter objective, a Global Programme Management Board (the "GPMB") is being set up as a group of experts for enhanced management and coordination of the global SIS II programme and related activities as a whole, as well as consistency between the central and national systems' developments. The GPMB shall be composed of a maximum of 10 experts. The administrative costs and travel expenses arising from the activities of the GPMB shall be borne by the general budget of the European Union. Transparency of the SIS II development process for the European Parliament is maintained through the existing reporting obligation.

Legal specification: the legislative package consists of two distinct proposals:

The present Regulation:

- A proposal for a [parallel Decision](#) (third pillar). Owing to the two-pillar nature of SIS II, this Council Decision will complement the hereby proposed Council Regulation.
- The provisions set out in this Regulation are precise, unconditional and directly applicable and, by their very nature, do not require action by Member States to transpose them into national law.

Territorial application: due to reasons of a legal nature laid down in the Treaty, the United Kingdom and Ireland will only be associated for part of the implementation and the application of the present text (application of the ?variable geometry? system). It also applies to Denmark, however it may decide, within a period of six months after the adoption of this Regulation, whether it will implement it in its national law.

Liechtenstein will be associated with the implementation of this text in accordance with the bilateral agreements concluded with the EU on the Schengen acquis.

IMPACT ASSESSMENT: non applicable.

BUDGETARY IMPLICATIONS: the costs of setting up, operating and maintaining Central SIS II and the communication infrastructure are to be borne by the general budget of the European Union. The costs of setting up, operating and maintaining each N.SIS II shall be borne by the Member State concerned.

Under Article 15 of Regulation (EC) No 1104/2008 and Council Decision 2008/839/JHA as they have been phrased heretofore, additional costs for migration, testing, maintenance and development measures at the central level (Central SIS II and Communication Infrastructure) had been allocated to the general budget of the European Union as well. Testing, migration, maintenance and development costs for the national systems, including N.SIS II, have continued to be borne by each Member State concerned.

The present proposal does not modify this basic structure. It will, however, extend the existing legal basis to cover the post-30 June 2010 period until migration.

In addition, the cost arising from the meetings of the GPMB which is being set up by this proposal, including expenses for members and experts attending, would be borne by the general budget of the European Union. The necessary appropriations to cover the cost arising from the meetings of the GPMB will come from the appropriations currently foreseen in the Financial Programming 2010-2013 for the Schengen Information System (SIS II).

The Commission has prepared a financial statement annexed to this proposal which provides a budget of EUR 12.850 million in operational expenditure until 2012 (only costs caused by prolongation of the development and migration phase beyond 30 June 2010, will be taken into account. This excludes costs to be committed until 30 June 2010).

Schengen: migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II)

The Lisbon Treaty, which entered into force on 1 December 2009, amended the EU's two core treaties, the Treaty on European Union (TEU) and the Treaty establishing the European Community (EC Treaty). The latter was renamed the Treaty on the Functioning of the European Union (TFEU).

These changes had various consequences for many ongoing procedures. First of all, the articles of the TEU and of the old EC Treaty that constitute the legal basis of all the proposals founded on those Treaties were renumbered in accordance with the table of equivalences mentioned in Article 5 of the Lisbon Treaty.

In addition, some proposals underwent a change to their legal basis going beyond a mere change to their numbering, and this resulted in changes to the type of procedure.

The Lisbon Treaty also introduced new concepts of decision-making procedure. The old "codecision procedure" was extended to new areas and renamed the "ordinary legislative procedure". A new "consent procedure" replaced the old "assent procedure". New interinstitutional procedures were also set up for the adoption of certain non-legislative acts, for example the conclusion of some international agreements.

The ongoing proposals concerned by these changes were formally modified by the Commission in a Communication published on 2 December 2009 ([COM\(2009\)0665](#)).

In the case of the proposal for a Council Regulation amending Regulation (EC) No 1104/2008 on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II), the entry into force of the Lisbon Treaty had the following impacts:

- the old legal basis - Treaty/EC/ Art. 66 - became Article 74 of the TFEU. Please note that the numbering of the old legal basis corresponds to the consolidated version of the Treaty that was applicable immediately before the entry into force of the Lisbon Treaty, and may differ from the references in the original Commission proposal;
- the proposal, which had previously fallen under the old consultation procedure (CNS), was classified as an interinstitutional non-legislative procedure (NLE).

Schengen: migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II)

The Committee on Civil Liberties, Justice and Home Affairs adopted the report by Carlos COELHO (EPP, PT) amending the proposal for a Council regulation amending Regulation (EC) No 1104/2008 on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II).

The main amendments were as follows:

Towards a technical solution in the case of a failure of the SIS II: it is necessary to adapt the legal framework to allow for migration to a possible alternative technical solution if tests show that SIS II cannot be implemented successfully. Members propose that in the event of a failure of the current SIS II project, after testing, an alternative technical solution should be devised and its full financial implications should be disclosed to all parties concerned. This solution should be based on the best available technology and should be cost-effective and implemented in accordance with a precise and reasonable timetable. The Commission should present a thorough budgetary assessment of the costs associated with such an alternative technical solution in a timely fashion. It should be explicitly stated that the legal framework established by Regulation (EC) No 1987/2006 applies to every solution, regardless of its technical nature.

Similarly, if the current SIS II project is discontinued and an alternative technical solution is implemented, references to SIS II in this Decision shall be read as references to that alternative technical solution.

Maintaining the sunset clause: the current legislation sets the date for the completion of the migration at 30 September 2009, with the possibility for extension, through comitology, until 30 June 2010 at the latest. The Commission did use this and extended the date until 30 June 2010. On the contrary, Members consider that the sunset clause should be kept. The new date should be in line with the current forecasts that SIS II will become operational by the end of 2011. The Commission should be granted some flexibility again to extend the date through comitology, in order to cover the possible need to switch from SIS II to an alternative scenario in case the tests fail. It should also be noted that this Regulation shall expire no later than on 31 December 2013.

Full association of the European Parliament as co-legislator: as the European Parliament is responsible as a co-legislator for the establishment, operation and use of SIS II as laid down in Regulation (EC) No 1987/2006, and as the migration is financed from the Union budget, for which the European Parliament is also co-responsible, the European Parliament should be integrated in the decision making process concerning migration. A favourable opinion from the European Parliament, on the basis of information provided by the Commission on the test results, should be required before the switchover to a new Schengen Information System.

Moreover, Members state that the European Parliament, as co-legislator for the establishment of the second generation Schengen Information System (SIS II) (Regulation (EC) No 1987/2006) and budgetary authority, reserves its right to hold in reserve the funds to be allocated for the development of the SIS II in the 2011 annual budget, in order to ensure full parliamentary scrutiny and oversight of the process.

Global Programme Management Board (GPMB): the GPMB shall be composed of a maximum of 10 members who shall be qualified contribute actively to the development of the SIS II and who shall meet on a regular basis. Members stipulate that interested Members or relevant staff of the European Parliament, experts from Member States and Commission officials directly involved in the development of the SIS II projects may attend GPMB meetings at the expense of their respective administration or institution. The GPMB may invite other experts to participate in GPMB meetings as defined in the terms of reference at the expense of their respective administration, institution or company. The necessary appropriations to cover the cost arising from the meetings of the GPMB shall come from the appropriations currently provided for in the Financial Programming 2010-2013 for the second generation Schengen Information System (SIS II).

The mandate of the GPMB should be more clearly defined, in order to enable it to contribute actively to the management of the development of the second-generation SIS and the migration process. The GPMB shall provide a forum for assistance to the development of Central SIS II.

It should facilitate consistency and provide for coordination of the central and national SIS II projects. The terms of reference of the GPMB shall include a requirement to publish regular reports and to make those reports available to the European Parliament in order to ensure full parliamentary scrutiny and oversight.

Schengen: migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II)

The European Parliament adopted by 537 votes to 35 with 44 abstentions a resolution on the proposal for a Council regulation amending Regulation (EC) No 1104/2008 on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II). It amended the Commission proposal as follows:

Towards a technical solution in the case of a failure of the SIS II: it is necessary to adapt the legal framework to allow for migration to a possible alternative technical solution if tests show that SIS II cannot be implemented successfully. Members propose that in the event of a failure of the current SIS II project, after testing, an alternative technical solution should be devised and its full financial implications should be disclosed to all parties concerned. This solution should be based on the best available technology and should be cost-effective and implemented in accordance with a precise and reasonable timetable. The Commission should present a thorough budgetary assessment of the costs associated with such an alternative technical solution in a timely fashion. It should be explicitly stated that the legal framework established by Regulation (EC) No 1987/2006 applies to every solution, regardless of its technical nature.

Similarly, if the current SIS II project is discontinued and an alternative technical solution is implemented, references to SIS II in this Decision shall be read as references to that alternative technical solution.

Maintaining the sunset clause: the current legislation sets the date for the completion of the migration at 30 September 2009, with the possibility for extension, through comitology, until 30 June 2010 at the latest. The Commission did use this and extended the date until 30 June 2010. However, Members consider that the sunset clause should be kept. The new date should be in line with the current forecasts that SIS II will become operational by the end of 2011. The Commission should be granted some flexibility again to extend the date through comitology, in order to cover the possible need to switch from SIS II to an alternative scenario in case the tests fail. Accordingly, the text now provides that 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 by 31 December 2011 at the latest. If an alternative technical solution is implemented, that date may be changed in accordance with the comitology procedure specified in the text. It should also be noted that this Regulation shall expire no later than on 31 December 2013.

Full association of the European Parliament as co-legislator: as the European Parliament is responsible as a co-legislator for the establishment, operation and use of SIS II as laid down in Regulation (EC) No 1987/2006, and as the migration is financed from the Union budget, for which the European Parliament is also co-responsible, the European Parliament should be integrated in the decision making process concerning migration. A favourable opinion from the European Parliament, on the basis of information provided by the Commission on the test results, should be required before the switchover to a new Schengen Information System.

Global Programme Management Board (GPMB): the GPMB shall be composed of a maximum of 10 members who shall be qualified to contribute actively to the development of the SIS II and who shall meet on a regular basis. Members stipulate that interested Members or relevant staff of the European Parliament, experts from Member States and Commission officials directly involved in the development of the SIS II projects may attend GPMB meetings at the expense of their respective administration or institution. The GPMB may invite other experts to participate in GPMB meetings as defined in the terms of reference at the expense of their respective administration, institution or company. The necessary appropriations to cover the cost arising from the meetings of the GPMB shall come from the appropriations currently provided for in the Financial Programming 2010-2013 for the second generation Schengen Information System (SIS II).

The mandate of the GPMB: Parliament added that the GPMB shall provide a forum for assistance to the development of Central SIS II. It should facilitate consistency and provide for coordination of the central and national SIS II projects. The terms of reference of the GPMB shall include a requirement to publish regular reports and to make those reports available to the European Parliament in order to ensure full parliamentary scrutiny and oversight.

Personal data: Parliament added that the Commission shall develop and implement a package with additional measures in order to prevent the leakage of personal data information from the database and to ensure the protection of personal data for the entire duration of testing and migration from SIS I to the second generation Schengen Information System (SIS II).

Schengen: migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II)

PURPOSE: to amend [Regulation \(EC\) No 1104/2008](#) on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II).

LEGISLATIVE ACT: Council Regulation (EU) No 541/2010 amending Regulation (EC) No 1104/2008 on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II).

BACKGROUND: the Schengen Information System (SIS) was established in 1985 between the governments of the States of the Benelux Economic Union, Germany and France on the gradual abolition of checks at their common borders (the Schengen Convention), and its development, SIS 1+, constitute an essential tool for the application of the provisions of the Schengen acquis as integrated into the framework of the European Union.

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

Provisions on the establishment, operation and use of SIS II are laid down in [Regulation \(EC\) No. 1987/2006](#) of the European Parliament and of the Council and [Council Decision 2007/533/JHA](#). These instruments foresee that they will apply to the Member States participating in SIS 1+ only as of dates to be fixed by the Council, acting by the unanimity of its Members representing the governments of the Member States participating in SIS 1+. They will then replace the provisions of the Schengen acquis governing SIS 1+, in particular the relevant provisions in the Schengen Convention.

Before this can happen, the users of the SIS 1+ will have to migrate to the SIS II environment. A legal framework for the migration from SIS 1+ to the SIS II environment was therefore designed. In order to reduce the risks of service disruption during migration an interim technical architecture for the operations of SIS 1+ will allow SIS 1+ and certain technical parts of the architecture of SIS II to operate in parallel for a transitional period.

The time-frame of the current migration instruments ([Council Decision 2008/839/JHA](#) and [Council Regulation \(EC\) No 1104/2008](#)), and in particular their date of expiry which is currently set to be 30 June 2010 at the latest, appears no longer realistic. This Regulation therefore aims to amend the expiry date of Regulation 1104/2008 and to provide an alternative technical solution if migration fails.

CONTENT: Regulation (EC) No 1104/2008 is amended as follows:

Extending the expiry date of Regulation 1104/2008/EC: the Regulation extends until 31 March 2013 the preconditions for migration from SIS 1 to SIS II.

Global Programme Management Board: the Regulation establishes a group of technical experts, called the Global Programme Management Board. 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. It 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 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 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 shall regularly submit written reports about the progress of the project. The administrative costs and travel expenses arising from the activities of the Board shall be borne by the general budget of the Union.

Towards an alternative technical scenario in case migration fails: the Regulation states 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. SIS 1+ RE could be 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.

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.

In case of a switchover to an alternative technical scenario, the date to be noted for the expiration of Regulation 1108/2008/EC shall be 31 December 2013.

Territorial application: Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application. It may decide within a period of six months after the Council has decided on this Regulation whether it will implement it in its national law. The United Kingdom and Ireland will not participate. Lastly, Iceland, Norway, Switzerland and Liechtenstein will be associated in the implementation of this Regulation.

ENTRY INTO FORCE: 25 June 2010.