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Subject: COUNCIL REGULATION amending Decision 2008/839/JHA on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II)

COUNCIL REGULATION (EU) No .../2010

of

**amending Decision 2008/839/JHA on migration from
the Schengen Information System (SIS 1+) to
the second generation Schengen Information System (SIS II)**

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Parliament¹,

¹ OJ C , , p. .

Whereas:

- (1) The second generation Schengen Information System (SIS II) was established by 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)¹ 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)².
- (2) The conditions, procedures and responsibilities applicable to the migration from SIS 1+ to SIS II are laid down in Council Regulation (EC) No 1104/2008 of 24 October 2008 on migration from the Schengen Information System (SIS1+) to the second generation Schengen Information System (SIS II)³ and Decision 2008/839/JHA of 24 October 2008⁴. However, those instruments will expire at the latest on 30 June 2010.
- (3) The preconditions for migration from SIS 1+ to SIS II will not be met by 30 June 2010. In order for SIS II to become operational as required by Regulation (EC) 1987/2006 and Decision 2007/533/JHA, Regulation (EC) No 1104/2008 and Decision 2008/839/JHA should therefore continue to apply until migration has been completed.

¹ OJ L 381, 28.12.2006, p. 4.

² OJ L 205, 7.8.2007, p. 63.

³ OJ L 299, 8.11.2008, p. 1.

⁴ OJ L 299, 8.11.2008, p. 43.

- (4) 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 the 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 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.
- (5) The Commission should remain responsible for the Central SIS II and its communication infrastructure. It is necessary to maintain and, where appropriate, further develop the Central SIS II and its communication infrastructure. Additional development of the Central SIS II should at all times include the correction of errors. The Commission should provide coordination and support for the joint activities.

- (6) 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 from 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.
- (7) The description of the technical components of the migration architecture therefore should 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.
- (8) The SIS 1+RE is characterized 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.

- (9) 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 Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities¹, the Commission may delegate budget implementation tasks to national public sector bodies. Following the political orientation and subject to the conditions laid down in Regulation (EC, Euratom) No 1605/2002, 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.
- (10) 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.
- (11) The Member States should remain responsible for their national systems (N.SIS II). It is still necessary to maintain and, where appropriate, further develop the N.SIS II.
- (12) France should remain responsible for technical support function (C.SIS).

¹ OJ L 248, 16.9.2002, p. 1.

- (13) Since the objectives of this Regulation, namely setting up the interim migration architecture and migrating the 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 Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on the European Union. 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.
- (14) In accordance with Articles 1 and 2 of the 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 part in the adoption of this Regulation and is not bound by it or subject to its application. Given that this Regulation builds upon the Schengen *acquis*, Denmark shall, in accordance with Article 4 of that Protocol, decide within a period of six months after the Council has decided on this Regulation whether it will implement it in its national law.
- (15) The United Kingdom is taking part in this Regulation, in accordance with Article 5(1) of the Protocol (No 19) on the Schengen *acquis* integrated into the framework of the European Union, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and Article 8(2) of Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis*¹.

¹ OJ L 131, 1.6.2000, p. 43.

- (16) Ireland is taking part in this Regulation in accordance with Article 5(1) of the Protocol (No 19) on the Schengen *acquis* integrated into the framework of the European Union, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and Article 6(2) of Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis*¹.
- (17) 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 the Council Decision 2000/365/EC and Decision 2002/192/EC respectively.
- (18) As regards Iceland and Norway, this Regulation constitutes a development of the 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 latter's association with the implementation, application and development of the Schengen *acquis*², which fall within the area referred to in Article 1, point G of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of that Agreement³.

¹ OJ L 64, 7.3.2002, p. 20.

² OJ L 176, 10.7.1999, p.36.

³ OJ L 176, 10.7.1999, p.31.

- (19) 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*¹ 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 2008/149/JHA².
- (20) As regards Liechtenstein, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Protocol signed 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 Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/262/JHA³,

HAS ADOPTED THIS REGULATION:

¹ OJ L 53, 27.2.2008, p. 52.

² OJ L 53, 27.2.2008, p. 50.

³ OJ L 83, 26.3.2008, p. 5.

Article 1

Decision 2008/839/JHA is hereby amended as follows:

(1) the following paragraph is added to Article 1:

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

(2) in Article 4 the introductory phrase is replaced by the following:

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

(3) Article 10(3) is replaced by the following:

"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.";

(4) Article 11(2) is replaced by the following:

"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.";

(5) the following Article is inserted:

"Article 17a

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 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 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 meeting within the framework of the Committee referred to in Article 17.

6. The Board shall regularly submit written reports about the progress of the project including advice which has been given, and its justification, to the Committee referred to in Article 17 or, as appropriate, to the relevant Council preparatory bodies.
7. Without prejudice to Article 15(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 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.";

(6) in Article 19, the last sentence is replaced by the following:

"It shall expire on a date to be fixed by the Council, acting in accordance with Article 71(2) of Decision 2007/533/JHA, and in any case no later than on 31 December 2012 or on 31 December 2013 in case of a switchover to an alternative technical scenario as referred to in Article 1(3).".

Article 2

This Regulation shall enter into force on the third day following that of its publication in the *Official Journal of the European Union*.

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.

Done at Brussels,

For the Council
The President
