

Wednesday 21 November 2012

P7_TA(2012)0441

Migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II) — (without the United Kingdom and Ireland) *

European Parliament legislative resolution of 21 November 2012 on the draft Council regulation on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II) (recast) (11143/1/2012 — C7-0331/2012 — 2012/0033B(NLE))

(Consultation — recast)

(2015/C 419/50)

The European Parliament,

- having regard to the Council draft (11143/1/2012),
 - having regard to Article 74 of the Treaty on the Functioning of the European Union, pursuant to which the Council consulted Parliament (C7-0331/2012),
 - having regard to the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts ⁽¹⁾,
 - having regard to the letter of 12 October 2012 from the Committee on Legal Affairs to the Committee on Civil Liberties, Justice and Home Affairs in accordance with Rule 87(3) of its Rules of Procedure,
 - having regard to Rules 87, 55 and 46 (2) of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A7-0370/2012),
- A. whereas, according to the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission, the proposal in question does not include any substantive amendments other than those identified as such in the proposal and whereas, as regards the codification of the unchanged provisions of the earlier acts together with those amendments, the proposal contains a straightforward codification of the existing texts, without any change in their substance;
1. Approves the Council draft as adapted to the recommendations of the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission and as amended below
 2. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
 3. Asks the Council to consult Parliament again if it intends to substantially amend its draft;
 4. Instructs its President to forward its position to the Council and the Commission.

⁽¹⁾ OJ C 77, 28.3.2002, p. 1.

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Amendment 1
Draft regulation
Recital 6

Council draft

- (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 adopted in the JHA Council of 4 June 2009. The present version of the SIS II global schedule was presented by the Commission to the Council and the European Parliament in October 2010.***

Amendment

- (6) The development of SIS II should be continued and should be finalised ***at the latest by 30 June 2013.***

Amendment 2
Draft regulation
Recital 16

Council draft

- (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.***

Amendment

deleted

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Amendment 3
Draft regulation
Recital 17

Council draft

- (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 1+ 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, **namely Regulation (EC) No 1987/2006 and Decision 2007/533/JHA** to the SIS operational activities of the Member States which did not switch over yet.

Amendment

- (17) **It is envisaged** that within the switchover period all Member States, consecutively, will perform their individual switchover of the national application from SIS 1+ 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.

Amendment 4
Draft regulation
Recital 19

Council draft

- (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.

Amendment

- (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. **In such a case the Commission should present a proposal to revise this Regulation.**

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Amendment 5
Draft regulation
Recital 31

Council draft

- (31) The European Data Protection Supervisor is responsible for monitoring and ensuring the application of Regulation (EC) No 45/2001 and it is competent to monitor the activities of the Union institutions and bodies in relation to the processing of personal data. 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.

Amendment

- (31) The European Data Protection Supervisor is responsible for monitoring and ensuring the application of Regulation (EC) No 45/2001 and it is competent to monitor the activities of the 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.**

Amendment 6
Draft regulation
Recital 43 a (new)

Council draft

Amendment

- (43a) **This Regulation constitutes a development of provisions of the Schengen acquis, in which Bulgaria and Romania are participating in accordance with Article 4(2) of the 2005 Act of Accession and with Council Decision 2010/365/EU of 29 June 2010 on the application of the provisions of the Schengen acquis relating to the Schengen Information System in the Republic of Bulgaria and Romania ⁽¹⁾,**

⁽¹⁾ OJ L 166, 1.7.2010, p. 17.

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Amendment 7

Draft regulation

Article 7 — paragraph 6

Council draft

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.

Amendment

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. **The European Parliament shall be informed on a regular basis about these activities.**

Amendment 8

Draft regulation

Article 11 — paragraph - 1 (new)

Council draft

Amendment

-1. Prior to the start of the migration, Member States shall verify that all the personal data to be migrated to SIS II are accurate, up-to-date and lawful in accordance with Regulation (EC) No 1987/2006.

Any data that cannot be verified before the start of the migration shall be verified within a maximum period of six months following the start of the migration.

Amendment 9

Draft regulation

Article 11 — paragraph 1

Council draft

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.

Amendment

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. **These data shall be deleted at the latest one month after the end of the intensive monitoring period.**

Amendment 10

Draft regulation

Article 11 — paragraph 3 — subparagraph 1

Council draft

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.

Amendment

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. **Member States shall ensure that all personal data loaded into N.SIS II are accurate, up-to-date and lawful in accordance with Regulation (EC) No 1987/2006.**

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Amendment 11**Draft regulation****Article 11 — paragraph 4 a (new)**

Council draft

Amendment

4a. On the basis of information provided by the Member States and the responsible supervisory authorities, the Commission shall report to the European Parliament and the Council on the completion of the migration, in particular on the switchover of the Member States to SIS II. This report shall confirm whether the migration and in particular the switchover have been carried out in full compliance with this Regulation at central as well as at national level, and that the processing of personal data during the entire migration was in accordance with Regulation (EC) No 45/2001 and Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ⁽¹⁾.

⁽¹⁾ OJ L 281, 23.11.1995, p. 31.

Amendment 12**Draft regulation****Article 11 — paragraph 4 b (new)**

Council draft

Amendment

4b. One month after the end of the intensive monitoring period, the SIS 1+ database, all the data in the SIS 1+ database, irrespective of its medium or location, C.SIS, Member States' N.SIS and any copies thereof, shall be definitively deleted.

Amendment 13**Draft regulation****Article 11 a (new)**

Council draft

Amendment

Article 11a**Migration of the SIRENE bureaux**

The migration of the SIRENE bureaux to the S-TESTA network shall take place in parallel with the switchover referred to in Article 11(3) and shall be terminated immediately after the switchover.

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Amendment 14
Draft regulation
Article 12 — paragraph 2

Council draft

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.

Amendment

As from the **successful** 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.

Amendment 15
Draft regulation
Article 15 — paragraph - 1 (new)

Council draft

Amendment

-1. In addition to the recording of automated searches, Member States and the Commission shall ensure that, during the migration in accordance with this Regulation, the applicable data protection rules are fully respected and that the tasks specified in Article 3(f) and Article 11 are appropriately recorded in Central SIS II. The recording of those activities shall, in particular, ensure the integrity and lawfulness of the data during the migration and switchover to SIS II.

Amendment 16
Draft regulation
Article 15 — paragraph 4

Council draft

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.

Amendment

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 **and the name of the end user.**

Amendment 17
Draft regulation
Article 15 — paragraph 5

Council draft

5. The records may only be used for the purposes referred to in **paragraph 1** and shall be deleted at the earliest one year, and at the latest three years after their creation.

Amendment

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.

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Amendment 18
Draft regulation
Article 15 — paragraph 7

Council draft

7. The competent authorities 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 have access, within the limits of their competence and at their request, to those records for the purpose of fulfilling their tasks.

Amendment

7. The competent authorities ***referred to in Article 44(1) and Article 45(1) of Regulation (EC) 1987/2006*** 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 Regulation (EC) 1987/2006***, have access, within the limits of their competence and at their request, to those records for the purpose of fulfilling their tasks.

Amendment 19
Draft regulation
Article 15 — paragraph 7 a (new)

Council draft

Amendment

7a. All data protection authorities with responsibility for either SIS 1+ or SIS II shall be closely involved in all steps of the migration from SIS 1+ to SIS II.

Amendment 20
Draft regulation
Article 19

Council draft

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.

Amendment

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, 9 and 10.***

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Amendment 21

Draft regulation

Article 21

Council draft

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

Amendment

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*. 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 event by 30 June 2013**.