

COUNCIL REGULATION (EU) No 1273/2012

of 20 December 2012

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,

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 Parliament ⁽¹⁾,

Whereas:

- (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.
- (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 borders ⁽⁴⁾ (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.
- (3) The development of the second generation Schengen Information System (SIS II) was entrusted by the Council to the Commission pursuant to Regulation (EC) No 2424/2001 ⁽⁵⁾ and Decision 2001/886/JHA ⁽⁶⁾. Those acts expired on 31 December 2008 prior to the completion of the SIS II developments. They therefore

needed to be supplemented firstly by Regulation (EC) No 1104/2008 and by Decision 2008/839/JHA and subsequently by this Regulation and Council Regulation (EU) No 1272/2012 of 20 December 2012 on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II) ⁽⁷⁾ at the latest until the termination of the migration from SIS 1+ to SIS II 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) ⁽⁸⁾ 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) ⁽⁹⁾.

- (4) SIS II was established by Regulation (EC) No 1987/2006 and by Decision 2007/533/JHA. 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 189/2008 ⁽¹⁰⁾ and in Council Decision 2008/173/JHA ⁽¹¹⁾.
- (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 in the light of orientations given by the Council of 4 June 2009 (Justice and Home Affairs). The new version of the SIS II global schedule was presented by the Commission to the European Parliament and the Council 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, that 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.

⁽¹⁾ Opinion of 21 November 2012 (not yet published in the Official Journal).

⁽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.

⁽⁵⁾ OJ L 328, 13.12.2001, p. 4.

⁽⁶⁾ OJ L 328, 13.12.2001, p. 1.

⁽⁷⁾ See page 21 of this Official Journal.

⁽⁸⁾ OJ L 381, 28.12.2006, p. 4.

⁽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.

- (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 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 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.
- (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 framework for the migration from SIS 1+ to SIS II which better reflects the technical migration approach outlined in the Migration Plan for the SIS Project (the 'Migration Plan') adopted by the Commission after a positive vote by the SIS-VIS Committee on 23 February 2011.
- (17) The Migration Plan envisages 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 the full scope of SIS II from the time of the switchover and 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 should not prevent Member States, which have not switched over yet or which have had to fall back for technical reasons, from using 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 yet switch over.
- (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 from SIS 1+ to SIS II.
- (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 interim 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 that solution, in keeping with the objective to develop Central SIS II.
- (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.
- (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 Communities ⁽¹⁾ (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.
- (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.
- (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 Flows ⁽²⁾, 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 2013 ⁽³⁾ further identified SIS II as one of the five strategic priorities under the EBF, recognising the importance of supporting the coherent and timely development of the national projects alongside the central SIS II.

Since the adoption of 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 '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 SIS II project both at central and national level.

- (26) With regard to the migration process from SIS 1+ to SIS II, the evolution in requirements and the advances made in the completion of the SIS II 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 Decision 2008/839/JHA were adopted or at the time when the financial package and the multi-annual 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 that 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. That 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 Regulation should be complementary to 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 interests ⁽⁴⁾, 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

⁽¹⁾ OJ L 248, 16.9.2002, p. 1.

⁽²⁾ OJ L 144, 6.6.2007, p. 22.

⁽³⁾ OJ L 233, 5.9.2007, p. 3.

⁽⁴⁾ OJ L 312, 23.12.1995, p. 1.

protect the European Communities' financial interests against fraud and other irregularities⁽¹⁾, 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)⁽²⁾.

(28) In order to ensure uniform conditions for the implementation of this Regulation, taking into consideration the financial impacts of the decision upon Member States, which 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 powers⁽³⁾.

(29) The Commission and the Member States should continue to cooperate closely during all steps of the development of the SIS II and the migration from SIS 1+ to SIS II 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 that group of experts and the necessity of further enhancing the cooperation and the transparency of the central SIS II project justify the formal integration of the group of experts 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. The activities of the Global Programme Management Board should be without prejudice to the responsibilities of the Commission and of the Member States.

(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 data⁽⁴⁾ applies to the processing of personal data by the Commission.

(31) The European Data Protection Supervisor is responsible for monitoring and ensuring the application of

Regulation (EC) No 45/2001 and 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 the processing of SIS 1+ personal data on the territory of their respective Member States and remain responsible for monitoring the lawfulness of the processing of SIS II personal data on the territory of their respective 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. That SIS II legal framework provides that the National Supervisory Authorities and the European Data Protection Supervisor ensure the coordinated supervision of SIS II.

(32) The migration from SIS 1+ to SIS II 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 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, the Council should, in case of technical difficulties, be enabled 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.

(33) 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 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.

(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 Union in accordance with this Regulation, this Regulation should enter into force on the day following its publication.

⁽¹⁾ OJ L 292, 15.11.1996, p. 2.

⁽²⁾ OJ L 136, 31.5.1999, p. 1.

⁽³⁾ OJ L 55, 28.2.2011, p. 13.

⁽⁴⁾ OJ L 8, 12.1.2001, p. 1.

- (36) 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* ⁽¹⁾ which fall within the area referred to in Article 1, point G, of Council Decision 1999/437/EC ⁽²⁾ on certain arrangements for the application of that Agreement.
- (37) 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* ⁽³⁾ 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/EC ⁽⁴⁾.
- (38) 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* ⁽⁵⁾ 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 2011/350/EU ⁽⁶⁾.
- (39) 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 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.
- (40) 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* ⁽⁷⁾; the United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.
- (41) 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* ⁽⁸⁾; Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.
- (42) This Regulation is without prejudice to the arrangements for the partial participation of Ireland and the United Kingdom in the Schengen *acquis* as determined by Decisions 2000/365/EC and 2002/192/EC respectively.
- (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.
- (44) The European Data Protection Supervisor was consulted and delivered an opinion on 9 July 2012 ⁽⁹⁾.

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

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);

⁽¹⁾ OJ L 176, 10.7.1999, p. 36.

⁽²⁾ OJ L 176, 10.7.1999, p. 31.

⁽³⁾ OJ L 53, 27.2.2008, p. 52.

⁽⁴⁾ OJ L 53, 27.2.2008, p. 1.

⁽⁵⁾ OJ L 160, 18.6.2011, p. 21.

⁽⁶⁾ OJ L 160, 18.6.2011, p. 19.

⁽⁷⁾ OJ L 131, 1.6.2000, p. 43.

⁽⁸⁾ OJ L 64, 7.3.2002, p. 20.

⁽⁹⁾ OJ C 336, 6.11.2012, p. 10.

- (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) and allowing the conversion and synchronisation of data between C.SIS and 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 interim migration architecture

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.

Article 6

Continuing development

Implementing acts necessary to continue the development of SIS II as referred to in Article 5(1), in particular the measures necessary for the correction of errors, shall be adopted in accordance with the examination procedure defined in Article 17(2).

Implementing acts necessary to continue the development of SIS II as referred to in Article 5(3), in so far as that concerns the uniform national interface ensuring the compatibility of N.SIS II with Central SIS II, shall be adopted in accordance with the examination procedure defined in Article 17(2).

Article 7

Main activities

1. The Commission together with Member States participating in SIS 1+ shall conduct a comprehensive test.

2. An interim 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 referred to in paragraphs 1 to 4.

6. The activities referred to 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 the 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 in paragraph 6 of this Article, by the Commission and the

Member States participating in SIS 1+ acting within the Council. 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 that test.

Article 9

Test on supplementary information

1. The Member States participating in SIS 1+ shall conduct functional 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 the 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. The 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 that test.

Article 10

Interim migration architecture

1. An interim migration architecture shall be set up, consisting of the components as set out in points (a) to (f) of Article 4. 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 migration architecture.

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. 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 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.

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.

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.

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, acting in accordance with Article 55(2) of Regulation (EC) No 1987/2006, after the conditions of Article 55(3) of that Regulation 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. That 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.

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

Article 12

Substantive legal framework

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) No 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 of and migration to 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 architecture.

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.

Article 15

Processing of 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.

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.

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 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.

3. Complementing 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, Article 10(8) and Article 11 of this Regulation to cover specific and well-defined activities.

The Union contribution related to the activities referred to in the first subparagraph shall take the form of grants as provided for by Title VI of the Financial Regulation. That 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 contribution by not later than six months following the date of switchover fixed by the Council, acting 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 the first subparagraph, the Union may reduce its financial contribution.

4. The Court of Auditors 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 17

Committee procedure

1. The Commission shall be assisted by the Committee established by Article 51 of Regulation (EC) No 1987/2006 (the 'Committee'). The 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 Committee 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.

Article 18

Global Programme Management Board

1. Without prejudice to the respective responsibilities and activities of the Commission, the Committee, France and the Member States participating in SIS 1+, a group of technical experts, called the Global Programme Management Board (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 eight 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 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.

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 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.

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.

Article 20

Repeal

Regulation (EC) No 1104/2008 is repealed.

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table set out in Annex II.

*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*.

It shall expire upon the termination of the migration as referred to in the third subparagraph of Article 11(3). If that 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.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels, 20 December 2012.

For the Council
The President
E. FLOURENTZOU

*ANNEX I***REPEALED REGULATION WITH ITS SUCCESSIVE AMENDMENTS**

Council Regulation (EC) No 1104/2008

(OJ L 299, 8.11.2008, p. 1).

Council Regulation (EU) No 541/2010

(OJ L 155, 22.6.2010, p. 19).

ANNEX II

CORRELATION TABLE

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
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Article 14	Article 15
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Article 15	Article 16
Article 16	—
Article 17	Article 17
Article 17a	Article 18
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Article 19	Article 21
—	Annex I
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