



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 27 April 2007

9032/07

**SCH-EVAL 90
SIRIS 79
COMIX 427**

NOTE

from : the Presidency
to: the Schengen Evaluation Working Party

Subject : Draft Council Decision on the application of the provisions of the Schengen acquis relating to the Schengen Information System in the Czech Republic, the Republic of Estonia, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic.

1. Article 3(2) of the 2003 Act of Accession provides that the Schengen acquis provisions other than those of Annex 1 shall only apply in a new Member State following a Council Decision, after verification that the necessary conditions have been met.

2. Such verifications were carried out in 2006 and 2007 in the Czech Republic, Estonia, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and the Slovak Republic to ensure that a satisfactory level of data protection existed, allowing the Council to conclude on 4/5 December 2006 and on [12/13 June 2007], that the necessary conditions had been fulfilled by these countries. It is therefore possible to set a date from which the Schengen acquis relating to the SIS may apply in these Member States.

3. The entry into force of the present Decision ¹ should allow for real SIS data to be transferred to the Member States concerned. The concrete use of this data should allow the Council, through the applicable Schengen evaluation procedures as set out in SCH/Com-ex (98) 26 def., to verify the correct application of the provisions of the Schengen acquis relating to the SIS in the Member States concerned. Once these evaluations have been carried out, the Council should decide on the lifting of checks at the internal borders with the Member States concerned.

¹ N.B.: The Member States taking part in the adoption of this instrument are the EU 27 *minus* United Kingdom, Ireland, Cyprus, Bulgaria and Romania.

Draft Council Decision
of XX XXXX 2007

on the application of the provisions of the Schengen acquis relating to the Schengen Information System in the Czech Republic, the Republic of Estonia, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic.

(2007/XXX/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Act concerning the conditions of Accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded, (hereinafter referred to as the 2003 Act of Accession), and in particular Article 3, paragraph 2 thereof,

Having regard to the opinion of the European Parliament,

Whereas:

(1) Article 3(2) of the 2003 Act of Accession provides that the provisions of the Schengen acquis other than those mentioned in Annex 1 to the said Act shall only apply in a new Member State within the meaning of that instrument pursuant to a Council Decision to that effect after verification that the necessary conditions for the application of that acquis have been met.

(2) The Council has verified whether the Czech Republic, the Republic of Estonia, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic (hereinafter referred to as the 'Member States concerned') ensure satisfactory levels of data protection.

(3) The following steps were taken to this end: Firstly, a full questionnaire was forwarded to the Member States concerned, whose replies were recorded. Then, verification and evaluation visits were made to all the Member States concerned, in accordance with the applicable Schengen evaluation procedures as set out in SCH/Com-ex (98) 26 def., in the area of Data Protection.

(4) On 4/5 December 2006, the Council concluded that the conditions in this area had been fulfilled by the Czech Republic, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland and the Republic of Slovenia. On XXXX 07, the Council concluded that the conditions in this area had been fulfilled by the Republic of Estonia and by the Slovak Republic. It is therefore possible to set a date from which the Schengen acquis relating to the SIS may apply in those Member States.

(5) The entry into force of the present Decision ² should allow for real SIS data to be transferred to the Member States concerned. The concrete use of this data should allow the Council, through the applicable Schengen evaluation procedures as set out in SCH/Com-ex (98) 26 def., to verify the correct application of the provisions of the Schengen acquis relating to the SIS in the Member States concerned. Once these evaluations have been carried out, the Council should decide on the lifting of checks at the internal borders with the Member States concerned.

(6) A separate Council Decision should be taken setting a date for the lifting of checks at internal borders. Certain restrictions on the use of the SIS should be imposed pending the date set in that Decision;

² N.B.: The Member States taking part in the adoption of this instrument are the EU 27 *minus* United Kingdom, Ireland, Cyprus, Bulgaria and Romania.

HAS DECIDED AS FOLLOWS:

Article 1

1. The provisions of the Schengen acquis relating to the SIS, as referred to in Annex 1, shall apply to the Czech Republic, the Republic of Estonia, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic amongst themselves and in their relations with the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the Republic of France, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Finland and the Kingdom of Sweden as well as the Republic of Iceland and the Kingdom of Norway from 1 September 2007.

2. The provisions of the Schengen acquis relating to the SIS, as referred to in Annex 2, shall apply to the Czech Republic, the Republic of Estonia, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic amongst themselves and in their relations with the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the Republic of France, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Finland and the Kingdom of Sweden as well as the Republic of Iceland and the Kingdom of Norway from the date foreseen in those instruments.

3. From the date of the entry into force of this Decision, real SIS data may be transferred to the Member States concerned.

From the date referred to in paragraph 1, the Member States concerned, like the Member States in respect of which the Schengen acquis has already been implemented, will be able to enter data into the SIS and use SIS data, subject to the provisions of paragraph 4.

4. Until the date of the lifting of checks at internal borders with the Member States concerned, those Member States:

(a) shall not be obliged to refuse entry to their territory or to expel nationals of third States for whom an SIS alert has been issued by another Member State for the purposes of refusing entry;

(b) shall refrain from entering the data covered by the provisions of Article 96 of the Convention implementing the Schengen Agreement.

Article 2

This Decision shall enter into force on the date of its publication.

Done at [place],

For the Council,

The President,

[name]

List of the provisions of the Schengen acquis relating to the SIS within the meaning of Article 3(2) of the 2003 Act of Accession to be rendered applicable to the Member States concerned by virtue of this Decision

The provisions referred to in Article 1(1) are:

a) In respect of the provisions of the 1990 Convention implementing the Schengen Agreement of 14 June 1985, its related Final Act and Joint Statements:

Article 64;

Articles 92 to 119;

b) other provisions concerning the SIS:

(i) in respect of the provisions of the following Decisions of the Executive Committee established by the 1990 Convention implementing the Schengen Agreement of 14 June 1985:

SCH/Com-ex (97) 35 (C.SIS Financial Regulation), and any subsequent amendments thereto ¹.

(ii) in respect of the provisions of the following Declarations of the Executive Committee established by the 1990 Convention implementing the Schengen Agreement of 14 June 1985:

SCH/Com/Ex (96) decl 5 rev (definition of an alien) ²;

SCH/Com-ex (99) decl 2 rev (SIS structure).

¹ See in particular Council Decision XXX/2007 of XX XXXX 2007 amending the Decision of the Executive Committee, set up by the provisions of Article 132 of the Convention implementing the Schengen Agreement ("1990 Schengen Convention"), of 15 December 1997 amending the Financial Regulation on for the costs of installing and operating the technical support function for the Schengen Information System (C.SIS). OJ L XXXXX

² which has to be applied in accordance with Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside within the territory of the Member States.

(iii) The following instruments shall also apply to the Member States concerned:

Council Decision (2000/265/CE) of 27 March 2000 on the establishment of a financial regulation governing the budgetary aspects of the management by the Deputy Secretary-General of the Council, of contracts concluded in his name, on behalf of certain Member States, relating to the installation and the functioning of the communication infrastructure for the Schengen environment, 'Sisnet'³, and any subsequent amendments thereto⁴;

The SIRENE Manual, as parts of which were published in OJ C 38 17.2.2003, p. 1, and any subsequent amendments thereto⁵;

Council Regulation (EC) No 871/2004 of 29 April 2004 concerning the introduction of some new functions for the Schengen Information System, including in the fight against terrorism⁶, and any subsequent decisions on the date of application of those functions;

Council Decision 2005/211/JHA of 24 February 2005 concerning the introduction of some new functions for the Schengen Information System, including in the fight against terrorism⁷, and any subsequent decisions on the date of application of those functions;

³ OJ L 85 of 6.4.2000, p. 12–20.

⁴ See in particular Council Decision 2000/664/EC of 23 October 2000 amending Decision 2000/265/EC on the establishment of a financial regulation governing the budgetary aspects of the management by the Deputy Secretary-General of the Council of contracts concluded in his name, on behalf of certain Member States, relating to the installation and the functioning of the communication infrastructure for the Schengen environment "SISNET", *OJ L 278*, 31.10.2000, p. 24; Council Decision 2003/171/EC of 27 February 2003 amending Decision 2000/265/EC on the establishment of a financial regulation governing the budgetary aspects of the management by the Deputy Secretary-General of the Council, of contracts concluded in his name, on behalf of certain Member States, relating to the installation and the functioning of the communication infrastructure for the Schengen environment, "SISNET", *OJ L 69*, 13.3.2003, p. 25–26; Council Decision 155/2007 of 5 March 2007 amending Decision 2000/265/EC on the establishment of a financial regulation governing the budgetary aspects of the management by the Deputy Secretary-General of the Council, of contracts concluded in his name, on behalf of certain Member States, relating to the installation and the functioning of the communication infrastructure or the Schengen environment (SISNET), *OJ L 68*, 8.3.2007, p. 5–6.

⁵ See Commission Decision 2006/757/EC of 22 September 2006 on amending the Sirene Manual *OJ L 317*, 16.11.2006, p. 1–40 ; Commission Decision 2006/758/EC of 22 September 2006 on amending the Sirene Manual, *OJ L 317*, 16.11.2006, p. 41–80.

⁶ *OJ L 162*, 30.4.2004, p. 29–31.

⁷ *OJ L 68*, 15.3.2005, p. 44–48.

Regulation (EC) No 1160/2005 of the European Parliament and of the Council of 6 July 2005 amending the Convention implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders, as regards access to the Schengen Information System by the services in the Member States responsible for issuing registration certificates for vehicles ⁸;

Article 5(4)(a) and the provisions of Title II and the annexes thereto referring to the Schengen Information System (SIS) of Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) ⁹.

⁸ OJ L 191, 22.7.2005, p. 18-21.

⁹ OJ L 105, 13.4.2006, p. 1-32

List of the provisions of the Schengen acquis relating to the SIS within the meaning of Article 3(2) of the 2003 Act of Accession to be rendered applicable to the Member States concerned from the date foreseen in the instruments themselves

Regulation (EC) No 1986/2006 of the European Parliament and of the Council of 20 December 2006 regarding access to the Second Generation Schengen Information System (SIS II) by the services in the Member States responsible for issuing vehicle registration certificates ¹;

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) ²;

Decision xxx xxxxxxxx of the Council of XXX XXX 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II) ³.

¹ OJ L 381, 28.12.2006, p. 1–3.

² OJ L 381, 28.12.2006, p. 4–23.

³ REFERENCE