



**COUNCIL OF
THE EUROPEAN UNION**

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**SIS 39
SCHENGEN 2
COMIX 369**

LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject : Council Decision concerning the introduction of some new functions for the Schengen Information System, in particular in the fight against terrorism

COUNCIL DECISION 2002/ /JHA

of

concerning the introduction of some new functions for the
Schengen Information System, in particular in the fight against terrorism

THE COUNCIL OF THE EUROPEAN UNION

Having regard to the Treaty on European Union, and in particular Article 30(1)(a) and (b),
Article 31(a) and (b) and Article 34(2)(c) thereof,

Having regard to the initiative of the Kingdom of Spain ¹,

Having regard to the Opinion of the European Parliament ²;

¹ OJ C

² Opinion delivered on (not yet published in the Official Journal).

Whereas:

- (1) The Schengen Information System, hereinafter referred to as "SIS", set up pursuant to the provisions of Title IV of the Convention of 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders, hereinafter referred to as "the 1990 SCHENGEN Convention", constitutes an essential tool for the application of the provisions of the Schengen acquis as integrated into the framework of the European Union.
- (2) The need to develop a new, second generation Schengen Information System, hereinafter referred to as "SIS II", with a view to the enlargement of the European Union and allowing for the introduction of new functions, while benefiting from the latest developments in the field of information technology, has been recognised and the first steps have been taken to develop this new system.
- (3) Certain adaptations of existing provisions and the introduction of certain new functions can already be realised with respect to the current version of the SIS, in particular as far as concerns the provision of access to certain types of data entered in the SIS for authorities the proper performance of whose tasks would be facilitated were they able to search these data, including Europol and the national members of Eurojust, the extension of the categories of missing objects about which alerts may be entered and the recording of transmissions of personal data.

- (4) The conclusions of the Laeken European Council of 14 and 15 December 2001 and in particular conclusions 17 (cooperation between specialised counter-terrorism services), 43 (Eurojust and police cooperation with regard to Europol) and the Action Plan of 21 September 2001 against terrorism refer to the need to enhance the SIS and improve its capabilities.
- (5) Moreover, it is useful to enact provisions with respect to the existence and functioning of the SIRENE ("Supplementary Information Requests at the National Entry") offices in the Member States.
- (6) The modifications to be made to this effect to the provisions of the Schengen acquis dealing with the Schengen Information System consist of two parts: this Decision and a Council Regulation based on Articles 62, 63 and 66 of the Treaty establishing the European Community. The reason for this is that, as set out in Article 93 of the 1990 Schengen Convention, the purpose of the Schengen Information System is to maintain public policy and public security, including national security, in the territories of the Member States and to apply the provisions of the said Convention relating to the movement of persons in those territories, by using information communicated via the SIS in accordance with the provisions of that Convention. Since some of the provisions of the 1990 Schengen Convention are to be applied for both purposes at the same time, it is appropriate to modify such provisions in identical terms through parallel acts based on each of the Treaties. This concerns in particular modifications of the provisions of Articles 101(1), 103 and 108 of the 1990 Schengen Convention.

- (7) This Decision is without prejudice to the adoption in future of the necessary legislation describing in detail the legal architecture, objectives, operation and use of SIS II, such as, but not limited to, rules further defining the categories of data to be entered into the system, the purposes for which they are to be entered and the criteria for their entry, rules concerning the content of SIS records, the interlinking of alerts, compatibility between alerts and further rules on access to SIS data and the protection of personal data and their control.
- (8) As regards Iceland and Norway, this Decision constitutes a development of provisions of the Schengen acquis 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 the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen acquis ¹.
- (9) The United Kingdom is taking part in this Decision, in accordance with Article 5 of the Protocol integrating the Schengen acquis into the framework of the European Union annexed to the Treaty on European Union and to the Treaty establishing the European Community, 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 ².

¹ OJ L 176, 10.7.1999, p. 31.

² OJ L 131, 1.6.2000, p. 43.

- (10) Ireland is taking part in this Decision in accordance with Article 5 of the Protocol integrating the Schengen acquis into the framework of the European Union annexed to the Treaty on European Union and to the Treaty establishing the European Community, 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.
- (11) This Decision is without prejudice to the arrangements for the United Kingdom and Ireland's partial participation in the Schengen acquis as defined in Decision 2000/365/EC and in Decision 2002/192/EC respectively,

HAS DECIDED AS FOLLOWS:

Article 1

The provisions of the 1990 Schengen Convention shall be amended as follows:

- 1) The following points shall be added to Article 94(3):

"(k) in cases of alerts under Article 95: the type of offence(s);

(l) in cases of alerts under Article 95 and 99: whether the person concerned absconded from a place of detention."

¹ OJ L 64, 7.3.2002, p. 20.

2) Article 99(1) shall read as follows:

"1. Data on persons or vehicles, ships, aircraft and containers shall be entered in accordance with the national law of the Member State issuing the alert, for the purposes of discreet surveillance or of specific checks in accordance with paragraph 5."

3) The last sentence of Article 99(3) shall read as follows:

"The Member State issuing the alert pursuant to this paragraph shall be obliged duly to inform the other Member States thereof".

4) Article 100(3) shall read as follows:

"3. The following categories of objects shall be entered:

- (a) motor vehicles with a cylinder capacity exceeding 50 cc, registered ships and aircraft which have been stolen, misappropriated or lost;
- (b) trailers with an unladen weight exceeding 750 kg, caravans and containers which have been stolen, misappropriated or lost;

- (c) firearms which have been stolen, misappropriated or lost;
- (d) blank official documents which have been stolen, misappropriated or lost;
- (e) issued official identity documents, travel documents, residence permits, vehicle registration certificates, vehicle number plates which have been stolen, misappropriated, lost or invalidated;
- (f) banknotes (registered notes);
- (g) credit documents such as cheques, credit cards, bonds, stocks and shares which have been stolen, misappropriated or lost."

5) The following shall be added at the end of Article 101(1)(b):

"and the judicial supervision thereof".

6) The following Articles shall be inserted:

"Article 101A

1. The European Police Office (Europol) shall have the right to have access to, and search, data entered into the Schengen Information System in accordance with Articles 95, 99 and 100.

2. Europol may search only data which it requires for the performance of its tasks.
3. The Council shall ensure that Europol is committed:
 - (a) to record every search made by it and to register every use made by it of data to which it has acceded;
 - (b) not to connect the parts of the Schengen Information System to which it has access to any computer system for data collection and processing in operation by or at Europol or to download any parts of the System;
 - (c) to limit the access to data entered into the Schengen Information System to specifically authorised staff of Europol;
 - (d) not to transfer any data to which Europol has access to any third State or third body without the express prior authorisation of the Member State which has entered such data into the System;
 - (e) to adopt measures as envisaged in Article 118;
 - (f) to allow the Joint Supervisory Body, set up under Article 24 of the Europol Convention, to review the activities of Europol in the exercise of its right to accede to and to search data entered into the Schengen Information System.

Article 101B

1. The national members of Eurojust shall have the right to have access to, and search, data entered in accordance with Articles 95 and 98 into the Schengen Information System .
2. They shall have this right only for the purpose of performing their tasks as national members of Eurojust.
3. They shall exercise this right via a connection with the authority, referred to in Article 108(1), responsible for the national section of the Schengen Information System of their Member State and shall be subject to the laws of that Member State on the protection of personal data and liability for any illicit processing or use of such data.
4. Rights conferred by this Article on national members of Eurojust shall not extend to Eurojust staff."

7) Article 103 shall read as follows:

"Article 103

Each Member State shall ensure that every transmission of personal data is recorded in the national section of the Schengen Information System by the data file management authority for the purpose of checking whether the search is admissible or not. The record may be used only for this purpose and shall be deleted at the latest one year after it has been recorded."

8) The following paragraph shall be added to Article 108:

"5. Member States shall exchange through the authorities designated for that purpose (known as SIRENE), all information necessary in connection with the entry of alerts and for allowing the appropriate action to be taken in cases where persons in respect of whom, and objects in respect of which, data have been entered in the Schengen Information System, are found as a result of searches made in the System."

9) Article 113 shall be amended as follows:

– the following sentence shall be added to paragraph 1:

"Data on containers, registered ships and aircraft shall also be kept for a maximum of three years".

– the following paragraph shall be added:

"3. Personal data held in files by the authorities referred to in Article 108(5) as a result of information exchange pursuant to that paragraph, shall be kept only for such time as may be required to achieve the purposes for which they were supplied. They shall in any event be deleted at the latest one year after the alert or alerts concerning the person concerned have been deleted from the Schengen Information System."

Article 2

1. This Decision shall enter into force 90 days after the date of publication in the Official Journal.

2. However, Article 1(1), (2), (4) and (6) shall be implemented from a date to be fixed by the Council, acting unanimously, after having verified that the necessary preconditions for its application have been fulfilled in the Member States.

The Council may decide to fix different dates with respect of the implementation of:

- Article 1(1), (2) and (4),

- Article 1(6), new Article 101A,

- Article 1(6), new Article 101B.

3. Any decision of the Council in accordance with paragraph 2 shall be published in the Official Journal.

Done at

For the Council
The President

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