

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 28 February 2002

concerning Ireland's request to take part in some of the provisions of the Schengen *acquis*

(2002/192/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to Article 4 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 (hereinafter referred to as 'the Schengen Protocol'),

Having regard to the request by the Government of Ireland, made in its letters to the President of the Council of 16 June 2000 and 1 November 2001, to participate in certain provisions of the Schengen *acquis*, as specified in these letters,

Having regard to the Commission's opinion of 14 September 2000 on the request,

Whereas:

- (1) Ireland has a special position in respect of matters covered by Title IV of Part Three of the Treaty establishing the European Community, as recognised in the Protocol on the position of the United Kingdom and Ireland and in the Protocol on the application of certain aspects of Article 14 of the Treaty establishing the European Community to the United Kingdom and to Ireland, annexed by the Treaty of Amsterdam to the Treaty on European Union and to the Treaty establishing the European Community.
- (2) The Schengen *acquis* was conceived and functions as a coherent ensemble to be fully accepted and applied by all States supporting the principle of the abolition of checks on persons at their common borders.
- (3) The Schengen Protocol provides for the possibility for Ireland to participate in some of the provisions of the Schengen *acquis*, because of the said special position of Ireland.
- (4) Ireland will assume the obligations of a Member State arising from the Articles of the 1990 Schengen Convention listed in this Decision.
- (5) Having regard to the aforementioned special position of Ireland, Ireland will not participate by virtue of this Decision in those provisions of the 1990 Convention implementing the Schengen Agreement of 14 June 1985

(hereinafter referred to as the 'Schengen Convention') which concern borders.

- (6) Taking account of the serious matters addressed by Articles 26 and 27 of the Schengen Convention, Ireland will apply these articles, together with the measures referred to in this Decision which build upon these articles.
- (7) Ireland has requested to participate in the ensemble of the provisions of the Schengen *acquis* concerning the establishment and operation of the Schengen information system (hereinafter referred to as the 'SIS'), except in respect of the provisions concerning the alerts referred to in Article 96 of the Schengen Convention and the other provisions which relate to those alerts.
- (8) It is the view of the Council that any partial participation by Ireland in the Schengen *acquis* must respect the coherence of the subject areas which constitute the ensemble of this *acquis*.
- (9) The Council thus recognises the right of Ireland to make, in accordance with Article 4 of the Schengen Protocol, a request for partial participation, noting at the same time that it is necessary to consider the impact of such participation by Ireland in the provisions concerning the establishment and operation of the SIS on the interpretation of the other relevant provisions of the Schengen *acquis* and on its financial implications.
- (10) The procedure set out in Article 2(1) of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway on the establishment of rights and obligations between Ireland and the United Kingdom of Great Britain and Northern Ireland, on the one hand, and the Republic of Iceland and the Kingdom of Norway, on the other, in areas of the Schengen *acquis* which apply to these States ⁽¹⁾ has been observed,

⁽¹⁾ OJ L 15, 20.1.2000, p. 2.

HAS DECIDED AS FOLLOWS:

Article 1

Ireland shall participate in the following provisions of the Schengen *acquis*:

(a) in respect of the provisions of the Schengen Convention, its related Final Act and Joint Statements:

(i) Articles 26 and 27;

Article 39;

Article 44;

Articles 46 and 47, except for 47(2)(c);

Articles 48 to 51;

Articles 52 and 53;

Articles 54 to 58;

Article 59;

Articles 61 to 66;

Articles 67 to 69;

Articles 71 to 73;

Articles 75 and 76;

Articles 126 to 130 to the extent that they relate to the provisions in which Ireland participates by virtue of this subparagraph;

Joint Declaration 3 to the Final Act on Article 71(2);

(ii) the following provisions concerning the Schengen information system to the extent that they do not relate to Article 96:

Article 92;

Articles 93 to 95;

Articles 97 to 100;

Article 101, except paragraph 2 thereof;

Articles 102 to 108;

Articles 109 to 111, in respect of personal data registered in the national part of the SIS of Ireland;

Articles 112 and 113;

Article 114, in respect of personal data registered in the national part of the SIS of Ireland;

Articles 115 to 118;

(iii) other provisions concerning the Schengen information system:

Article 119;

(b) in respect of the provisions of the Agreements of Accession to the Schengen Convention, their Final Acts and Common Declarations:

(i) the Agreement signed on 27 November 1990 on Accession of the Italian Republic: Article 4;

(ii) the Agreement signed on 25 June 1991 on Accession of the Kingdom of Spain: Article 4 and Final Act, Part III, Declaration 2;

(iii) the Agreement signed on 25 June 1991 on Accession of the Portuguese Republic: Articles 4, 5 and 6;

(iv) the Agreement signed on 6 November 1992 on Accession of the Hellenic Republic: Articles 3, 4 and 5 and Final Act, Part III, Declaration 2;

(v) the Agreement signed on 28 April 1995 on Accession of the Republic of Austria: Article 4;

(vi) the Agreement signed on 19 December 1996 on Accession of the Kingdom of Denmark: Articles 4, and 6 and Final Act, Part II, Joint Declaration 3;

(vii) the Agreement signed on 19 December 1996 on Accession of the Republic of Finland: Articles 4 and 5 and Final Act, Part II, Joint Declaration 3;

(viii) the Agreement signed on 19 December 1996 on Accession of the Kingdom of Sweden: Articles 4 and 5 and Final Act, Part II, Joint Declaration 3;

(c) in respect of the provisions of the following Decisions of the Executive Committee established by the Schengen Convention, to the extent that they relate to the provisions in which Ireland participates by virtue of subparagraph (a):

(i) SCH/Com-ex (93) 14 (improving practical cooperation between the judicial authorities to combat drug trafficking);

SCH/Com-ex (94) 28 rev (certificate provided for in Article 75 for transport of drugs and/or psychotropic substances);

SCH/Com-ex (98) 26 def (setting up the Schengen implementing Convention Standing Committee), subject to an internal arrangement specifying the modalities of participation of Irish experts in missions carried out under the auspices of the relevant Council working party;

SCH/Com-ex (98) 51 rev 3 (cross border police cooperation in the area of crime prevention and detection when requested);

SCH/Com-ex (98) 52 (handbook on cross-border police cooperation);

SCH/Com-ex (99) 1 rev 2 (drugs situation);

SCH/Com-ex (99) 6 (telecommunication);

SCH/Com-ex (99) 8 rev 2 (payment to informers);

SCH/Com-ex (99) 11 rev 2 (agreement on cooperation in proceedings for road traffic offences);

SCH/Com-ex (99) 18 (improvement of police cooperation in preventing and detecting crimes);

(ii) SCH/Com-ex (97) 2 rev 2 (awarding the tender for the SIS II preliminary study);

SCH/Com-ex (97) 18 (contributions from Norway and Iceland to the CCIS operation costs);

SCH/Com-ex (97) 24 (future of SIS);

SCH/Com-ex (97) 35 (CCIS Financial Regulations);

SCH/Com-ex (98) 11 (CCIS with 15/18 connections);

SCH/Com-ex (99) 5 (Sirens Manual);

(d) in respect of the provisions of the following Declarations of the Executive Committee established by the Schengen Convention, to the extent that they relate to the provisions in which Ireland participates by virtue of subparagraph (a):

- (i) SCH/Com-ex (96) decl 6 rev 2 (declaration on extradition);
- (ii) SCH/Com-ex (97) decl 13 rev 2 (abduction of minors);
SCH/Com-ex (99) decl 2 rev (SIS structure).

Article 2

1. The competent Ministry referred to in the provision of Article 65(2) of the Schengen Convention shall be the Department of Justice, Equality and Law Reform.

2. Ireland shall participate in the following Council acts:

- (a) Decision 2000/586/JHA of 28 September 2000 establishing a procedure for amending Articles 40(4) and (5), 41(7) and 65(2) of the Convention implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders ⁽¹⁾ in so far as that Decision relates to Article 65(2) of the 1990 Convention;
- (b) Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals ⁽²⁾;
- (c) Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985 ⁽³⁾.

Article 3

The delegation in the joint supervisory authority, set up under Article 115 of the Schengen Convention, representing the national supervisory authority of Ireland shall not be entitled to take part in voting procedures within the joint supervisory authority on matters relating to the application of provisions of the Schengen *acquis*, or building upon the Schengen *acquis*, in which Ireland does not participate.

Article 4

1. Without prejudice to Article 6(3), the provisions referred to in Article 1 shall be put into effect, between Ireland and the Member States and other States for which these provisions have already been put into effect when the preconditions for the implementation of those provisions have been fulfilled in all of these Member States and other States, by a decision taken

by the Council. The Council may decide to set different dates for the putting into effect of different provisions by subject area.

2. Before the provisions referred to in Article 1 are put into effect in accordance with paragraph 1, the Council shall decide on the detailed legal and technical arrangements, including provisions relating to data protection, concerning the participation of Ireland in the provisions referred to in of Article 1(a)(ii) and (iii), (c)(ii) and (d)(ii).

3. Any decision under paragraphs 1 and 2 shall be taken by the Council, acting with the unanimity of its members referred to in Article 1 of the Schengen Protocol and of the representative of the Government of Ireland. The representative of the Government of the United Kingdom shall also participate in the decisions of the Council under this Article.

Article 5

1. Ireland shall be bound by the following Council acts:

- (a) Decision 1999/323/EC of 3 May 1999 on the establishment of a Financial Regulation governing the budgetary aspects of the management by the 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 'Help Desk Server' of the Management Unit and of the Sirens Network Phase II ⁽⁴⁾, and any amendments thereto;
- (b) Decision 2000/265/EC 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, 'Signet' ⁽⁵⁾, and any amendments thereto;
- (c) Decision 2000/777/EC of 1 December 2000 on the application of the Schengen *acquis* in Denmark, Finland and Sweden, and in Iceland and Norway ⁽⁶⁾;
- (d) Regulation (EC) No 2424/2001 of 6 December 2001 on the development of the second generation Schengen information system (SIS II) ⁽⁷⁾;
- (e) Decision 2001/886/JHA of 6 December 2001 on the development of the second generation Schengen information system (SIS II) ⁽⁸⁾.

2. Ireland shall bear all the costs involved in the technical achievement of its partial participation in the operation of the SIS.

Article 6

1. This Decision shall be published in the *Official Journal of the European Communities*.

It shall take effect on 1 April 2002.

⁽⁴⁾ OJ L 123, 15.5.1999, p. 51.

⁽⁵⁾ OJ L 85, 6.4.2000, p. 12. Decision as last amended by Decision 2000/664/EC (OJ L 278, 31.10.2000, p. 24).

⁽⁶⁾ OJ L 309, 9.12.2000, p. 24.

⁽⁷⁾ OJ L 328, 13.12.2001, p. 4.

⁽⁸⁾ OJ L 328, 13.12.2001, p. 1.

⁽¹⁾ OJ L 248, 3.10.2000, p. 1.

⁽²⁾ OJ L 149, 2.6.2001, p. 34.

⁽³⁾ OJ L 187, 10.7.2001, p. 45.

2. From the date of adoption of this Decision, Ireland shall be deemed irrevocably to have notified the President of the Council under Article 5 of the Schengen Protocol that it wishes to take part in all proposals and initiatives which build upon the Schengen *acquis* referred to in Article 1.
3. Measures building upon the Schengen *acquis* referred to in Article 1 which have been adopted prior to the adoption of the Council Decision referred to in Article 4(1), including the measures referred to in Article 2(2)(a) to (c), shall take effect for Ireland on the date or dates on which the Council decides, under Article 4, to put the *acquis* referred to in Article 1 into effect for Ireland unless the measure itself provides for a later date.

Done at Brussels, 28 February 2002.

For the Council

The President

A. ACEBES PANIAGUA
