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*****I** **REPORT**

on the proposal for a European Parliament and Council regulation 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
(COM(2003) 510 – C5-0412/2003 – 2003/0198(COD))

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

Rapporteur: Carlos Coelho

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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PROCEDURAL PAGE

By letter of 21 August 2003 the Commission submitted to Parliament, pursuant to Articles 251(2) and 71 of the EC Treaty, the proposal for a European Parliament and Council regulation 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 (COM(2003) 510 – 2003/0198(COD)).

At the sitting of 4 September 2003 the President of Parliament announced that he had referred the proposal to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible and the Committee on Regional Policy, Transport and Tourism for its opinion (C5-0412/2003).

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs appointed Carlos Coelho rapporteur at its meeting of 22 September 2003.

The committee considered the Commission proposal and draft report at its meetings of 4 November 2003, 18 February 2004 and 18 March 2004.

At the last meeting it adopted the draft legislative resolution by 23 votes to 0, with 2 abstentions.

The following were present for the vote: Jorge Salvador Hernández Mollar (chairman), Robert J.E. Evans (vice-chairman), Giacomo Santini (vice-chairman), Regina Bastos (for Mary Elizabeth Banotti pursuant to Rule 153(2)), María Luisa Bergaz Conesa (for Ilka Schröder pursuant to Rule 153(2)), Christian Ulrik von Boetticher, Alima Boumediene-Thiery, Kathalijne Maria Buitenweg (for Heide Rühle), Giorgio Calò (for Baroness Ludford pursuant to Rule 153(2)), Charlotte Cederschiöld, Antonio Di Pietro (for Francesco Rutelli), Timothy Kirkhope, Helmuth Markov (for Fodé Sylla pursuant to Rule 153(2)), Pasqualina Napoletano (for Adeline Hazan pursuant to Rule 153(2)), Marcelino Oreja Arburúa, Josu Ortuondo Larrea (for Pierre Jonckheer pursuant to Rule 153(2)), Elena Ornella Paciotti, Fernando Pérez Royo (for Margot Keßler pursuant to Rule 153(2)), Martine Roure, Olle Schmidt (for Johanna L.A. Boogerd-Quaak), Ole Sørensen (for Bill Newton Dunn), Patsy Sørensen, The Earl of Stockton (for Eva Klamt), Joke Swiebel and Anna Terrón i Cusí.

The Committee on Regional Policy, Transport and Tourism decided on 10 September 2003 not to deliver an opinion.

The report was tabled on 19 March 2004.

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a European Parliament and Council regulation 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

(COM(2003) 510 – C5-0412/2003 – 2003/0198(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2003) 510)¹,
 - having regard to Articles 251(2) and 71 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C5-0412/2003),
 - having regard to Rule 67 of its Rules of Procedure,
 - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (A5-0205/2004),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission

Amendments by Parliament

Amendment 1
RECITAL 2 A (new)

(2a) The Council Decision of ... [on tackling vehicle crime with cross border implications]¹ includes the use of the SIS as an integral part of the law enforcement strategy against vehicle crime.

¹ OJ L....

¹ Not yet published in OJ.

Justification

Article 6 of Netherlands Initiative CSL 5450/2004 refers to the entry of stolen vehicle alerts and blank registration documents into the SIS as part of a broader strategy to combat cross border vehicle crime. It should be noted, given its relevance to this proposal.

Amendment 2

RECITAL 6

(6) Authorities or services responsible in the Member States for issuing registration certificates for vehicles should have access to *these* data, *as well as to data included in the SIS pertaining to blank or issued registration or identity documents* which have been stolen, misappropriated or lost *insofar as they require these data for the performance of their tasks.*

(6) Authorities or services ***clearly identified for this purpose and*** responsible in the Member States for issuing registration certificates for vehicles should have access to data ***concerning motor vehicles with a cylinder capacity exceeding 50 cc, data concerning trailers and caravans with an unladen weight exceeding 750 kg and data concerning registration certificates and number plates*** which have been stolen, misappropriated or lost ***in order to enable them to check whether the vehicles presented to them for registration have not been stolen, misappropriated or lost.***

Justification

The bodies entitled to have access to the data concerned should be defined more precisely.

Amendment 3

RECITAL 7 A (new)

(7a) The European Parliament recommendation to the Council of 20 November 2003 on the second-generation Schengen information system (SIS II)¹ outlines a number of important concerns and considerations in relation to the development of the SIS, with particular regard to access to the SIS by private bodies such as vehicle registration agencies.

(1) P5_TA(2003)0509.

Justification

The Parliament's recommendation includes comments that are directly relevant and that should be referred to in order to underline the importance of strong safeguards in the development of the SIS.

Amendment 4

ARTICLE 1, POINT -1 (new)

Article 100, paragraph 3, point (fa) (new) (Title IV of 1990 Schengen Convention)

-1. The following point (fa) shall be added to Article 100(3):

"(fa) vehicle registration certificates and vehicle number plates which have been stolen, misappropriated or lost."

Justification

Only with this data in the SIS can the proposed access for vehicle registration authorities really achieve the results desired. The Spanish initiatives with a view to adopting the Council Decision 2002/.../JHA concerning the introduction of some new functions for the Schengen Information System, in particular in the fight against terrorism, provide for this data to be entered in the SIS but they are still not adopted. Therefore it is proposed to include the necessary changes of the Schengen convention in this legislative text.

Amendment 5

ARTICLE 1

Article 102 a, paragraph 1, introduction (Title IV of 1990 Schengen Convention)

1. Notwithstanding Articles 92(1), 100(1), 101(1) and (2), 102 (1), (4) and (5), the services in the Member States responsible for issuing registration certificates for vehicles as referred to in Council Directive 1999/37/EC of 29 April 1999 on the registration documents for vehicles, shall have the right to have access to the following data entered into the Schengen Information System for the ***purposes*** of checking whether vehicles presented to them for registration have not been stolen, misappropriated or lost ***and that persons applying for a registration certificate are not using identity documents to that end which have been stolen, misappropriated***

1. Notwithstanding Articles 92(1), 100(1), 101(1) and (2), 102 (1), (4) and (5), the services in the Member States responsible for issuing registration certificates for vehicles as referred to in Council Directive 1999/37/EC of 29 April 1999 on the registration documents for vehicles, shall have the right to have access to the following data entered into the Schengen Information System for the ***sole purpose*** of checking whether vehicles presented to them for registration have not been stolen, misappropriated or lost:

or lost:

Justification

The sentence is changed to underline that the data can be used exclusively for the defined purposes. The last part of the paragraph is deleted in order to bring it in line with the proposed amendments 6 and 7.

Amendment 6

ARTICLE 1

Article 102a, paragraph 1, point (c) (Title IV of 1990 Schengen Convention)

(c) data concerning blank official documents; ***deleted***

Justification

The concept of blank official documents is too broad and unspecified.

Amendment 7

ARTICLE 1

Article 102a, paragraph 1, point (d) (Title IV of 1990 Schengen Convention)

(d) data concerning issued identity papers. ***deleted***

Justification

The Schengen Joint Supervisory Authority in its opinion stressed that there may be questions regarding the legal basis of giving access to this kind of data. Therefore it should be deleted.

Amendment 8

ARTICLE 1

Article 102a, paragraph 1, point (da) (new) (Title IV of 1990 Schengen Convention)

(da) data concerning vehicle registration certificates and vehicle number plates which have been stolen, misappropriated or lost.

Justification

Vehicle registration authorities should have access to this data as well in order to be able to fully check the legal status of vehicles presented for registration to them, i.e. whether they were stolen, misappropriated or lost. See also amendment no. 4.

Amendement 9

ARTICLE 1

Article 102 bis, paragraphe 2 (titre IV de la Convention de Schengen de 1990)

2. Les services visés au paragraphe 1 qui sont des services publics sont habilités à interroger directement les données du système d'information Schengen visées dans ledit paragraphe.

Les services visés au paragraphe 1 **qui ne sont pas des services publics** n'ont accès aux données du système d'information Schengen visées dans ledit paragraphe que par l'intermédiaire d'une instance mentionnée à l'article 101, paragraphe 1. Cette instance est habilitée à interroger directement les données. L'État membre concerné veille à ce que le service et ses employés soient tenus de respecter toute limite fixée en ce qui concerne les conditions d'utilisation des données qui leur sont communiquées par l'instance publique.

2. Les services visés au paragraphe 1 n'ont accès aux données du système d'information Schengen visées dans ledit paragraphe que par l'intermédiaire d'une instance mentionnée à l'article 101, paragraphe 1. Cette instance est habilitée à interroger directement les données. L'État membre concerné veille à ce que le service et ses employés soient tenus de respecter toute limite fixée en ce qui concerne les conditions d'utilisation des données qui leur sont communiquées par l'instance publique.

Justification

La directive 1999/37/CE ne fait pas de différence entre les services d'immatriculation publics et les services d'immatriculation privés. Il n'est pas utile, pour assurer une identification des crimes efficace, d'introduire des distinctions pour l'accès aux informations. Du reste, la nécessité de limiter l'accès direct au SIS II (cfr rapport Coelho A5-0398/2003), pour éviter de multiplier les risques liés à la protection des données personnelles, suggère de ne permettre l'accès indirect qu'à tous les services de caractère administratif qui exercent les mêmes fonctions, qu'ils soient publics ou privés. L'accès indirect se fera — comme c'est déjà actuellement le cas dans plusieurs États membres — par le biais des services de police déjà autorisés à accéder directement aux données. C'est là un moyen de mieux assurer le respect du principe de proportionnalité entre les exigences de sécurité et le respect des droits fondamentaux et de faciliter le contrôle par les autorités garantes des données personnelles.

Amendment 10

ARTICLE 1

Article 102 a, paragraphe 3 a (new) (Title IV of 1990 Schengen Convention)

3a. Each year, after seeking the opinion of the joint supervisory authority set up pursuant to Article 115 of this Convention on the data protection rules, the Commission shall submit a report to the European Parliament and the Council on the implementation of Article 102a. In this report, the Commission shall state how many searches were made, how many stolen vehicles were detected and how the data protection rules were applied. Member States shall transmit to the Commission the data necessary for this report to be drawn up.

Justification

To make sure that the Commission is in the possession of the information necessary for the drawing up of the requested report it should be added that Member States should provide this information.

Amendment 11

ARTICLE 1, POINT 1a (new)

Article 103 (Title IV of 1990 Schengen Convention)

1a. Article 103a shall be replaced by the following:

"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 shall include the person or object on whom the search is run, the terminal or user carrying out the search, the place, date and time of the search and the reasons for the search.

The record may be used only for this purpose and shall be deleted at the latest one year after it has been recorded."

Justification

The two Spanish initiatives concerning the introduction of some new functions for the

Schengen Information System, in particular in the fight against terrorism contain certain improvements to the SIS, in particular as regards the full recording of searches. So far the Spanish initiatives are not yet adopted. Since Parliament can only agree to give access to the SIS for vehicle registration authorities if appropriate data protection rules are in force it is proposed to include the relevant provisions in this report as they were voted by Parliament in its opinion on the initiatives¹.

¹ European Parliament legislative resolution of 17 December 2002 on the initiative by the Kingdom of Spain with a view to adopting a Council Decision concerning the introduction of some new functions for the Schengen Information System, in particular in the fight against terrorism; not yet published in OJ.

EXPLANATORY STATEMENT

1. The proposal

The general objective of the proposal is to fight against fraud and illegal trade in stolen vehicles by amending the Schengen Convention to give public vehicle registration authorities direct access to certain categories of data contained in the Schengen Information System (SIS). This should allow them to better check whether vehicles presented to them for registration have not been stolen, misappropriated or lost. Where vehicle registration services are provided by a private entity, i.e. not a public authority, that entity may have only indirect access via an authority with access to the SIS.

2. Evaluation of the proposal

The rapporteur has used for the evaluation of the Commission's proposal the following paragraph that was adopted by Parliament¹:

e) that each proposal for granting full or partial access to new authorities be thoroughly examined as regards the specific purpose for which those authorities need to access the SIS, which data they will be allowed to access, how the access should take place (directly or indirectly), and how the data protection requirements of Article 118 of the Schengen Convention can be ensured; argues that special attention should be given to the position of private parties (e.g. in the case of vehicle registration);

2.1 The purpose

Next to the fight against crime the proposed measure would also contribute to the functioning of the internal market, the realisation of the common transport policy and the development of the SIS: "It is a concrete contribution to a series of other initiatives developing the Schengen *acquis* aiming at augmenting the functionalities of the SIS. This will make the SIS an even more prominent instrument to fight crime and underpin the free travel principle. It will provide Member States with a better instrument to work towards the progressive establishment of the area of freedom, security and justice."

The rapporteur considers the fight against fraud and illegal trade in stolen vehicles to be legitimate objectives.

2.2 The need / how the access should take place

The questions of "need" and the question how the access should take place are closely related. The first question to be answered as to the "need" is whether there are no other ways of achieving the objective.

There are of course many measures that can be taken to fight theft and trafficking in stolen vehicles. To prevent, in particular, stolen vehicles being registered and thereby legalised, it is

¹ European Parliament recommendation to the Council of 20 November 2003 on the second-generation Schengen information system (SIS II), recommendation letter e); not yet published in OJ.

sometimes argued that there are other possibilities: Instead of the vehicle registration authorities having direct access to the SIS they could transmit the list of vehicles presented for registration to an authority with access to SIS, for example the police, for a check. This would constitute a sort of indirect access which is currently practice in several Member States.

The arguments in favour of direct access, however, are:

- efficiency: Several million cars are registered in the EU. It would be too much for the police to check all these cars systematically in the SIS. If the vehicle registration authorities could check in the SIS directly it would also be the fastest way to check the legal status of a car.
- transparency: Currently Member States have all found some way to ensure that it can be checked at the moment of the registration of the car whether it has been stolen. These methods are, however, all more or less opaque and complicated. To include one Article in the Schengen Convention would therefore make it more transparent than the current situation.

One could also argue that administrative authorities should as a matter of principle not be granted direct access to the SIS. Article 102.4 of the Schengen Convention states:

"4. Data may not be used for administrative purposes. By way of derogation, data entered under to Article 96 may be used in accordance with the national law of each contracting party for the purposes of Article 101(2) only."

The present proposal constitutes the second exemption to this principle.

The rapporteur does not think that administrative authorities should be refused access as a matter of principle. If there is a specific legal basis and if there are convincing reasons to grant access then the question of access should be examined in light of the other conditions defined.

2.3 Which data

The Commission in its proposal specifies clearly to what kind of data the vehicle registration authorities should be given access. These are: data concerning motor vehicles with a cylinder capacity exceeding 50 cc, data concerning trailers and caravans with an unladen weight exceeding 750 kg, data concerning blank official documents and data concerning issued identity papers.

The rapporteur proposes to delete the data concerning issued identity papers and blank official documents. With respect to identity papers the Schengen Joint Supervisory Authority (JSA) in its formal opinion¹ also raised the question "whether Article 9² provides sufficient legal basis for vehicle registration authorities to search SIS data concerning identity documents." These two changes, the set of data vehicle registration authorities will have access to is clearly defined and limited to what is necessary and appropriate.

¹ SCHAC 2509/1/03 REV 1

² Council Directive 1999/37/EC of 29 April 1999 on the registration documents for vehicles, OJ L 138, 1/6/1999, p. 57.

Filters, as they are used on a systematic basis in the SIS, will be put in place to ensure that the vehicle registration authorities can access only the data they are authorised to.

The Spanish initiatives concerning the introduction of some new functions for the Schengen Information System, in particular in the fight against terrorism¹, that are still not adopted due to parliamentary reserves, will add new categories of data also relevant for the current proposal. If they are adopted before this proposal is adopted, it would need to be adjusted accordingly. If, however, this proposal is adopted before the Spanish initiatives another proposal to amend the Schengen Convention will become necessary. This situation is unsatisfactory. Therefore the rapporteur proposes amendment no. 2 to immediately include the relevant data.

2.4 Data protection

As stated in recital 9 of the proposal the data protection directive 95/46² as well as the specific data protection rules of the Schengen Convention apply.

The opinion of the JSA contains the following conclusion:

"Since the proposal introduces a legal basis to use SIS data relating to vehicles for the purpose mentioned, and given that there are no further data protection objections, the JSA does not have any objections to the proposal in principle."

In addition, it specifically emphasised that in addition to the Schengen data protection rules "vehicle registration authorities are also required to comply with Directive 95/46/EC on the protection of individuals with regard to the processing of personal data, and national legislation which may take account of the nature of the authority and whether access should be direct or indirect."

2.5 Private parties

The Commission proposes an indirect access for those vehicle registration "authorities" that are private, e.g. not government services, to ensure the respect of the applicable data protection rules. The rapporteur agrees with this approach.

The JSA in its opinion emphasised that "it will be important to ensure that indirect access by non-governmental authorities is properly regulated."

3. Conclusion

The evaluation of the proposal according to the criteria as defined in the recommendation to Council as cited above leads to the conclusion that the preoccupations of Parliament as they were defined are taken into account: The purpose, the fight against fraud and illegal trade in stolen vehicles, is a legitimate one; there is a need for direct access to ensure efficiency and

¹ OJ C 160 , 4.7.2002, p. 7.

² OJ L 281, 23.11.1995, p.31.

transparency; the type of data is clearly defined and not excessive; appropriate data protection rules to be respected by the authorities are in place and private parties are not granted direct access.

4. The larger picture

The rapporteur evaluated the proposal of the Commission as it was presented without linking it to the ongoing discussion on the development of the SIS II and on data protection. He would like to stress, however, that he expects Council to follow the recommendations Parliament made on 20 November 2003 concerning the second-generation Schengen information system (SIS II).

The JSA in its opinion also stressed "that this proposal is part of a continuing trend, marking another departure from the original purposes of the SIS. Whereas access to the SIS was originally limited to border, police, customs and immigration authorities, this proposal will see access granted to another type of body — vehicle registration authorities. Once such authorities have access to SIS data, the purposes for which the SIS is used will include supporting the EU's common transport policy." He recalls that an open and intensive debate as to the purpose of the SIS is overdue.

The rapporteur would also like to announce that Parliament will look very carefully at each proposal to give access to the SIS to new authorities. Many proposals are being discussed also concerning private entities. Private entities should under no circumstances be granted direct access to the SIS. It also needs to be kept in mind that the security risk increases with an increasing number of people having access to what is essentially police information.

The rapporteur would also wish to receive in the future more reassurance that the data protection rules of the Schengen convention as well as regards Directive 95/46 are effectively respected and controlled. Data protection authorities need sufficient resources to fulfil their task and Member States have to be firmly committed to defend the fundamental right of data protection.