

II

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory)

DECISIONS

COMMISSION

COMMISSION DECISION

of 2 October 2009

setting out the practical arrangements for the exchange of information by electronic means between Member States under Chapter VI of Directive 2006/123/EC of the European Parliament and of the Council on services in the internal market

(notified under document C(2009) 7493)

(Text with EEA relevance)

(2009/739/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market ⁽¹⁾, and in particular the second sentence of Article 36 thereof,

After consulting the European Data Protection Supervisor,

Whereas:

- (1) The obligation of mutual assistance and effective cooperation with one another imposed on Member States under Articles 28 to 36 of Directive 2006/123/EC entails the exchange of information between their competent authorities. In order to function properly, cooperation between Member States needs to be supported by technical means which enable direct and fast communication between their competent authorities. For this purpose, Directive 2006/123/EC, in its Article 34(1), provides that the Commission, in cooperation with Member States, shall establish an electronic system for the exchange of information between Member States, taking into account existing information systems.
- (2) The Internal Market Information System (IMI), established pursuant to Decision 2004/387/EC of the European Parliament and of the Council of 21 April 2004 on

the Interoperable delivery of pan-European eGovernment services to public administrations, businesses and citizens (IDABC) ⁽²⁾, is an electronic tool which is intended to support a number of legislative acts in the field of internal market, which require the exchange of information between Member States' administrations. Since IMI allows secure and structured exchange of information between competent authorities by electronic means and since it also enables competent authorities to identify easily the relevant interlocutor in other Member States and to communicate with each other in a fast and efficient way, it is appropriate to use IMI for the exchange of information for the purposes of Directive 2006/123/EC.

- (3) In order to make it possible for the competent authorities of the Member States to efficiently exchange information by electronic means, it is necessary to lay down practical arrangements for such an exchange through IMI.
- (4) Besides requests for information and to carry out checks, inspections and investigations, as well as replies thereto, Directive 2006/123/EC provides for two specific mechanisms of information exchange: the exchange of information on serious specific acts and circumstances relating to a service activity that could cause serious damage to the health or safety of persons or to the environment (alerts), under Article 29(3) and Article 32(1) of Directive 2006/123/EC, and the exchange of information on exceptional measures relating to the safety of services (case-by-case derogations), under Article 18 and Article 35 of Directive 2006/123/EC.

⁽¹⁾ OJ L 376, 27.12.2006, p. 36.

⁽²⁾ OJ L 181, 18.5.2004, p. 25.

- (5) Since alerts concern serious threats to the health or safety of persons or to the environment, close cooperation between the competent authorities in different Member States is essential to put an end to the threat concerned and to keep these authorities adequately informed on the actions taken by the other authorities, as well as on the removal or persistence of the threat. In order to ensure effective supervision by the competent authorities of the providers and the services they provide, as well as adequate protection of personal data contained in alerts, it is necessary to provide for the closure of an alert which has been opened by a Member State in accordance with Directive 2006/123/EC, when the conditions laid down in Article 29(3) and Article 32(1) are no longer met. It should be made possible for Member States to object to a proposal of closing an alert where the threat of serious damage to the health or safety of persons or to the environment persists.
- (6) Under Article 43 of Directive 2006/123/EC, the implementation and application of that Directive and, in particular, the provisions on supervision are to respect the rules on the protection of personal data as provided for in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ⁽¹⁾ and Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) ⁽²⁾. Accordingly, the exchange of information by electronic means between Member States should be carried out in accordance with the rules on the protection of personal data in Directives 95/46/EC and 2002/58/EC. The processing of information by the Commission shall be carried out in accordance with 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 ⁽³⁾.
- (7) To ensure a high level of protection of personal data with regard to the operation of IMI, the Commission adopted Decision 2008/49/EC of 12 December 2007 concerning the implementation of the Internal Market Information System (IMI) as regards the protection of personal data ⁽⁴⁾ and Recommendation 2009/329/EC of 26 March 2009 on data protection guidelines for the Internal Market Information System (IMI) ⁽⁵⁾.
- (8) The measures provided for in this Decision are in accordance with the opinion of the Committee established by Article 40 of Directive 2006/123/EC,

HAS ADOPTED THIS DECISION:

Article 1

Use of IMI for the exchange of information

1. The Internal Market Information System (IMI) shall be used for the exchange of information by electronic means between Member States for the purpose of complying with the provisions on administrative cooperation set out in Chapter VI of Directive 2006/123/EC providing for the following:

- (a) requests for information and to carry out checks, inspections and investigations, as well as replies thereto, under Chapter VI of Directive 2006/123/EC;
- (b) alerts, pursuant to Article 29(3) and Article 32(1) of Directive 2006/123/EC;
- (c) case-by-case requests and notifications, in accordance with the procedure laid down in Article 35(2), (3) and (6) of Directive 2006/123/EC.

2. IMI coordinators referred to in Article 8 of Decision 2008/49/EC may be designated as liaison points foreseen by Article 28(2) of Directive 2006/123/EC.

Article 2

Functions of IMI in relation to requests for information and to carry out checks, inspections and investigations, as well as replies thereto

For the purpose of requests for information and to carry out checks, inspections and investigations, as well as replies thereto, IMI shall provide for the following actions:

- (a) sending requests;
- (b) sending and requesting additional information;
- (c) accepting requests;
- (d) forwarding requests;
- (e) replying to requests.

Article 3

Functions of IMI in relation to alerts

1. For the purpose of the exchange of information on alerts, IMI shall provide for the following actions:

- (a) sending alerts when the conditions laid down in Article 29(3) and Article 32(1) of Directive 2006/123/EC are met;

⁽¹⁾ OJ L 281, 23.11.1995, p. 31.

⁽²⁾ OJ L 201, 31.7.2002, p. 37.

⁽³⁾ OJ L 8, 12.1.2001, p. 1.

⁽⁴⁾ OJ L 13, 16.1.2008, p. 18.

⁽⁵⁾ OJ L 100, 18.4.2009, p. 12.

- (b) sending and requesting additional information on alerts;
- (c) withdrawing alerts which are sent without the conditions laid down in Article 29(3) and Article 32(1) of Directive 2006/123/EC being met;
- (d) correcting information contained in alerts;
- (e) sending proposals for closure of alerts;
- (f) objecting to proposals for closure of alerts;
- (g) closing alerts when the conditions laid down in Article 29(3) and Article 32(1) of Directive 2006/123/EC are no longer met.

2. For the purpose of sending alerts and related information to other Member States and of receiving alerts from other Member States, IMI shall provide for the function of alert coordinator. The function of alert coordinator may be carried out by the IMI actors provided for in Articles 7 and 8 of Decision 2008/49/EC.

3. Prior to erasure from the system according to the procedure laid down in Article 4 of Decision 2008/49/EC, information, including personal data, contained in an alert which has been closed shall no longer be visible to any user in IMI.

Article 4

Functions of IMI in relation to the case-by-case derogation mechanism

For the purpose of the exchange of information on the case-by-case derogations, IMI shall provide for the following actions:

- (a) sending a request to the Member State of establishment under Article 35(2) of Directive 2006/123/EC;
- (b) replying to a request sent under Article 35(2) of Directive 2006/123/EC;
- (c) sending a notification to the Commission and the Member State of establishment under Article 35(3) and Article 35(6) of Directive 2006/123/EC;
- (d) informing automatically a coordinator about the actions provided for in points (a), (b) and (c).

Article 5

Protection of personal data

The processing of personal data for the purpose of the exchange of information by electronic means between Member States shall be carried out in accordance with Directives 95/46/EC and 2002/58/EC.

The processing of personal data by the Commission shall be carried out in accordance with Regulation (EC) No 45/2001.

Article 6

Addressees

This Decision is addressed to the Member States.

Done at Brussels, 2 October 2009.

For the Commission

Charlie McCREEVY

Member of the Commission