COUNCIL DECISION

of 5 June 2008

on the application of the provisions of the Schengen *acquis* relating to the Schengen Information System in the Swiss Confederation

(2008/421/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Agreement between the European Union, the European Community and the Swiss Confederation concerning the Swiss Confederation's association with the implementation, application, and development of the Schengen *acquis* (hereinafter referred to as the Agreement) (¹), which was signed on 26 October 2004 (²) and entered into force on 1 March 2008 (³), and in particular Article 15(1) thereof,

Whereas:

(1) Article 15(1) of the Agreement provides that the provisions of the Schengen *acquis* shall apply in the Swiss Confederation only 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 that the Swiss Confederation ensures satisfactory levels of data protection by taking the following steps:

A full questionnaire was forwarded to the Swiss Confederation, whose replies were recorded, and verification and evaluation visits were made to the Swiss Confederation, in accordance with the applicable Schengen evaluation procedures as set out in the Decision of the Executive Committee setting up a Standing Committee on the evaluation and implementation of Schengen (hereinafter referred to as SCH/Com-ex (98) 26 def.) (⁴), in the area of Data Protection.

(3) On 5 June 2008, the Council concluded that the Swiss Confederation had fulfilled the conditions in this area. It is therefore possible to set a date from which the Schengen *acquis* relating to the Schengen Information System (hereinafter referred to as the SIS) may apply to it.

(4) The entry into force of this Decision should allow for real SIS data to be transferred to the Swiss Confederation. The concrete use of that 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 Swiss Confederation. Once those evaluations have been carried out, the Council should decide on the lifting of checks at internal borders with the Swiss Confederation.

(5) The Agreement between the Swiss Confederation, the Republic of Iceland and the Kingdom of Norway concerning the implementation, application and development of the Schengen *acquis* and concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in Switzerland, Iceland or Norway stipulates that it shall be put into effect in respect of the implementation, application and development of the Schengen *acquis* on the same date as the Agreement is put into effect.

(6) A separate Council Decision should be taken setting a date for the lifting of checks on persons at internal borders. Until the date of the lifting of checks set out in that Decision, certain restrictions on the use of the SIS should be imposed,

HAS DECIDED AS FOLLOWS:

Article 1

1. The provisions of the Schengen *acquis* relating to the SIS, as referred to in Annex I, shall apply to the Swiss Confederation in its relations with the Kingdom of Belgium, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Italian Republic, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of Hungary, the Republic of Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, the Republic of Slovenia, the Slovak Republic, the Republic of Finland, and the Kingdom of Sweden from 14 August 2008.

(¹) OJ L 53, 27.2.2008, p. 52.
(²) Council Decisions 2004/849/EC (OJ L 368, 15.12.2004, p. 26) and 2004/860/EC (OJ L 370, 17.12.2004, p. 78).
(³) Council Decisions 2008/146/EC (OJ L 53, 27.2.2008, p. 1) and 2008/149/JHA (OJ L 53, 27.2.2008, p. 50).
(⁴) OJ L 239, 22.9.2000, p. 138.

2. The provisions of the Schengen *acquis* relating to the SIS, as referred to in Annex II, shall apply to the Swiss Confederation in its relations with the Kingdom of Belgium, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Italian Republic, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of Hungary, the Republic of Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, the Republic of Slovenia, the Slovak Republic, the Republic of Finland, and the Kingdom of Sweden from the date laid down in those provisions.

3. From 9 June 2008 real SIS data may be transferred to the Swiss Confederation.

From 14 August 2008, the Swiss Confederation will be able to enter data into the SIS and use SIS data, subject to paragraph 4.

4. Until the date of the lifting of checks at internal borders with the Swiss Confederation, the Swiss Confederation:

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

(b) shall refrain from entering the data covered by Article 96 of the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (¹) (hereinafter referred to as the Schengen Convention).

Article 2

This Decision shall enter into force on the day of its publication in the *Official Journal of the European Union*.

Done at Luxembourg, 5 June 2008.

For the Council
The President
D. MATE

_____
(¹) OJ L 239, 22.9.2000, p. 19. Convention as last amended by Regulation (EC) No 1987/2006 of the European Parliament and of the Council (OJ L 381, 28.12.2006, p. 4).

ANNEX I

List of the provisions of the Schengen *acquis* relating to the SIS to be rendered applicable to the Swiss Confederation

1. In respect of the provisions of the Schengen Convention:

    Article 64 and Articles 92 to 119 of the Schengen Convention.

2. Other provisions concerning SIS:

    (a) in respect of the provisions of the following Decision of the Executive Committee established by the Schengen Convention:

    Decision of the Executive Committee of 15 December 1997 amending the Financial Regulation on C. SIS (SCH/Com-ex (97) 35) (¹);

    (b) in respect of the provisions of the following Declaration of the Executive Committee established by the Schengen Convention:

    Declaration of the Executive Committee of 18 April 1996 defining the concept of an alien (SCH/Com-ex (96) decl. 5) (²);

    (c) other instruments:

        (i) 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 (³) in so far as it applies in relation to the processing of data within the SIS;

        (ii) Council 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, 'Sisnet' (⁴);

        (iii) Council Regulation (EC) 2424/2001 of 6 December 2001 on the development of the second generation Schengen Information System (SIS II) (⁵);

        (iv) Council Decision No 2001/886/JHA of 6 December 2001 on the development of the second generation Schengen Information System (SIS II) (⁶);

        (v) the SIRENE Manual (⁷);

        (vi) 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 terrorism (⁸), and any subsequent decisions on the date of application of those functions;

        (vii) 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 terrorism (⁹), and any subsequent decisions on the date of application of those functions;

        (viii) 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 (¹⁰).

(¹) OJ L 239, 22.9.2000, p. 444. Decision as last amended by Council Decision 2008/328/EC (OJ L 113, 25.4.2008, p. 21).
(²) OJ L 239, 22.9.2000, p. 458.
(³) OJ L 281, 23.11.1995, p. 31. Directive as amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).
(⁴) OJ L 85, 6.4.2000, p. 12. Decision as last amended by Decision 2008/319/EC (OJ L 109, 19.4.2008, p. 30).
(⁵) OJ L 328, 13.12.2001, p. 4. Regulation as amended by Regulation (EC) No 1988/2006 (OJ L 411, 30.12.2006, p. 1).
(⁶) OJ L 328, 13.12.2001, p. 1. Decision as last amended by Council Decision 2006/1007/JHA (OJ L 411, 30.12.2006, p. 78).
(⁷) Parts of the SIRENE manual were published in OJ C 38, 17.2.2003, p. 1. The manual was amended by Commission Decisions 2008/333/EC (OJ L 123, 8.5.2008, p. 1) and 2008/334/JHA (OJ L 123, 8.5.2008, p. 39).
(⁸) OJ L 162, 30.4.2004, p. 29.
(⁹) OJ L 68, 15.3.2005, p. 44.
(¹⁰) OJ L 191, 22.7.2005, p. 18.

ANNEX II

List of the provisions of the Schengen *acquis* relating to the SIS to be rendered applicable to the Swiss Confederation from the date laid down in those provisions

1. 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]);

2. 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]);

3. Council Decision 2007/533/JHA of 12 June 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.
[2] OJ L 381, 28.12.2006, p. 4.
[3] OJ L 205, 7.8.2007, p. 63.