

DECISIONS

COMMISSION IMPLEMENTING DECISION (EU) 2023/201

of 30 January 2023

setting the date on which operations of the Schengen Information System start pursuant to Regulation (EU) 2018/1861 of the European Parliament and of the Council and Regulation (EU) 2018/1862 of the European Parliament and of the Council

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2018/1861 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of border checks, and amending the Convention implementing the Schengen Agreement, and amending and repealing Regulation (EC) No 1987/2006 ⁽¹⁾, and in particular Article 66(2) thereof,

Having regard to Regulation (EU) 2018/1862 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending and repealing Council Decision 2007/533/JHA, and repealing Regulation (EC) No 1986/2006 of the European Parliament and of the Council and Commission Decision 2010/261/EU ⁽²⁾, and in particular Article 79(2) thereof,

Whereas:

- (1) Regulation (EU) 2018/1861 and Regulation (EU) 2018/1862 lay down the new rules on the establishment, operation and use of the Schengen Information System. They increase the effectiveness and strengthen the technical and operational efficiency of the Schengen Information System and extend its use by introducing new alert categories and functionalities. In addition, Regulation (EU) 2018/1860 of the European Parliament and of the Council ⁽³⁾ established a new type of alert on the return of third-country nationals.
- (2) Regulation (EU) 2018/1861 constitutes the legal basis for the Schengen Information System in respect of matters falling within the scope of Chapter 2 of Title V of Part Three of the Treaty and Regulation (EU) 2018/1862 constitutes the legal basis for the Schengen Information System in respect of matters falling within the scope of Chapters 4 and 5 of Title V of Part Three of the Treaty. The fact that the legal basis for the Schengen Information System consists of separate instruments does not affect the principle that the Schengen Information System constitutes one single information system that should operate as such.
- (3) Since the entry into force of Regulations (EU) 2018/1860, (EU) 2018/1861 and (EU) 2018/1862, the Commission, Member States and the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA) have been completing the necessary technical and legal arrangements to implement the new rules at both central and national level, to be able to process data and exchange supplementary information according to the new rules.

⁽¹⁾ OJ L 312, 7.12.2018, p. 14.

⁽²⁾ OJ L 312, 7.12.2018, p. 56.

⁽³⁾ Regulation (EU) 2018/1860 of the European Parliament and of the Council of 28 November 2018 on the use of the Schengen Information System for the return of illegally staying third-country nationals (OJ L 312, 7.12.2018, p. 1).

- (4) Pursuant to Regulation (EU) 2018/1861 and Regulation (EU) 2018/1862, the new rules are to apply in successive stages in order to allow sufficient time for the necessary legal, operational and technical measures and arrangements to be put in place. On that basis, various provisions of Regulations (EU) 2018/1861 and (EU) 2018/1862 have started to apply on 28 December 2018, 28 December 2019 and 28 December 2020, respectively. As regards the start of application of the provisions that provide for the most complex changes having an overall impact on the technical implementation and operations of the Schengen Information System, those Regulations provide for a specific mechanism for a deferred start of application to ensure that those elements only become applicable after the necessary preparatory steps have been taken allowing for the continuous and uninterrupted operations of the system.
- (5) In accordance with that mechanism, the Commission is to set the date on which the operations of the Schengen Information System start, following verification that the legal, technical and operational conditions laid down in Regulations (EU) 2018/1860, (EU) 2018/1861 and (EU) 2018/1862 are met.
- (6) The Commission has verified that the implementing acts necessary for the application of Regulations (EU) 2018/1860, (EU) 2018/1861 and (EU) 2018/1862 were adopted; that Member States notified the Commission that they have made the necessary technical and legal arrangements to process Schengen Information System data and exchange supplementary information pursuant to the said Regulations and that eu-LISA notified the Commission of the successful completion of all testing activities with regard to Central SIS and the interaction between the a technical support function of Central SIS (CS-SIS) and the national systems (N.SIS). It is therefore appropriate to set the date on which the operations of the Schengen Information System pursuant to Regulations (EU) 2018/1860, (EU) 2018/1861 and (EU) 2018/1862 are to start.
- (7) By virtue of Article 66(5) of Regulation (EU) 2018/1861 of the European Parliament and of the Council and Article 79(5) of Regulation (EU) 2018/1862 of the European Parliament and of the Council, these regulations shall apply from the date set in this Decision. In addition, by virtue of Article 20 of Regulation (EU) 2018/1860 of the European Parliament and of the Council, the provisions establishing a new type of alert on the return of third-country nationals in the Schengen Information System provided for in that Regulation are to apply from the start date set in this Decision.
- (8) Given that, the Commission is to set a future date on which the operations of the Schengen Information System start, there is no need for any intermediate time period between the date of publication and the date of entry into force of this Decision. Therefore, this Decision should enter into force on the day of its publication.
- (9) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark did not take part in the adoption of Regulation (EU) 2018/1861 and Regulation (EU) 2018/1862 and is not bound by them or subject to their application. However, given that Regulation (EU) 2018/1861 and Regulation (EU) 2018/1862 build upon the Schengen *acquis*, Denmark, in accordance with Article 4 of that Protocol, notified on 26 April 2019 its decision to implement Regulation (EU) 2018/1861 and Regulation (EU) 2018/1862 in its national law. Denmark is therefore bound under international law to implement this Decision.
- (10) Ireland is taking part in this Decision to the extent that it concerns Regulation (EU) 2018/1862 in accordance with Article 5(1) of Protocol No 19 on the Schengen *acquis* integrated into the framework of the European Union, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union and Article 6(2) of Council Decision 2002/192/EC ⁽⁴⁾, read in conjunction with Council Implementing Decision (EU) 2020/1745 ⁽⁵⁾.

⁽⁴⁾ 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* (OJ L 64, 7.3.2002, p. 20).

⁽⁵⁾ Council Implementing Decision (EU) 2020/1745 of 18 November 2020 on the putting into effect of the provisions of the Schengen *acquis* on data protection and on the provisional putting into effect of certain provisions of the Schengen *acquis* in Ireland (OJ L 393, 23.11.2020, p. 3).

- (11) As regards Iceland and Norway, this Decision constitutes a development of provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning these States' association with the implementation, application and development of the Schengen *acquis* ⁽⁶⁾, which fall within the area referred to in Article 1, point (G) of Council Decision 1999/437/EC ⁽⁷⁾.
- (12) As regards Switzerland, this Decision constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* ⁽⁸⁾, which fall within the area referred to in Article 1, point (G), of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC ⁽⁹⁾ and Article 3 of Council Decision 2008/149/JHA ⁽¹⁰⁾.
- (13) As regards Liechtenstein, this Decision constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* ⁽¹¹⁾, which fall within the area referred to in Article 1, point (G), of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU ⁽¹²⁾ and Article 3 of Council Decision 2011/349/EU ⁽¹³⁾.
- (14) As regards Bulgaria and Romania, this Decision constitutes an act building upon, or otherwise relating to, the Schengen *acquis* within the meaning of Article 4(2) of the 2005 Act of Accession and should be read in conjunction with Council Decisions 2010/365/EU ⁽¹⁴⁾ and (EU) 2018/934 ⁽¹⁵⁾.
- (15) Concerning Cyprus, this Decision constitutes an act building upon, or otherwise relating to, the Schengen *acquis* within the meaning of Article 3(2) of the 2003 Act of Accession,

⁽⁶⁾ OJ L 176, 10.7.1999, p. 36.

⁽⁷⁾ 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* (OJ L 176, 10.7.1999, p. 31).

⁽⁸⁾ OJ L 53, 27.2.2008, p. 52.

⁽⁹⁾ Council Decision 2008/146/EC of 28 January 2008 on the conclusion, on behalf of the European Community, of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* (OJ L 53, 27.2.2008, p. 1).

⁽¹⁰⁾ Council Decision 2008/149/JHA of 28 January 2008 on the conclusion on behalf of the European Union of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* (OJ L 53, 27.2.2008, p. 50).

⁽¹¹⁾ OJ L 160, 18.6.2011, p. 21.

⁽¹²⁾ Council Decision 2011/350/EU of 7 March 2011 on the conclusion, on behalf of the European Union, of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*, relating to the abolition of checks at internal borders and movement of persons (OJ L 160, 18.6.2011, p. 19).

⁽¹³⁾ Council Decision 2011/349/EU of 7 March 2011 on the conclusion on behalf of the European Union of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*, relating in particular to judicial cooperation in criminal matters and police cooperation (OJ L 160, 18.6.2011, p. 1).

⁽¹⁴⁾ Council Decision 2010/365/EU of 29 June 2010 on the application of the provisions of the Schengen *acquis* relating to the Schengen Information System in the Republic of Bulgaria and Romania (OJ L 166, 1.7.2010, p. 17).

⁽¹⁵⁾ Council Decision (EU) 2018/934 of 25 June 2018 on the putting into effect of the remaining provisions of the Schengen *acquis* relating to the Schengen Information System in the Republic of Bulgaria and Romania (OJ L 165, 2.7.2018, p. 37).

HAS ADOPTED THIS DECISION:

Article 1

The operations of the Schengen Information System pursuant to Regulations (EU) 2018/1861 and (EU) 2018/1862 shall start on 7 March 2023.

Article 2

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

Done at Brussels, 30 January 2023.

For the Commission
The President
Ursula VON DER LEYEN
