

## COUNCIL DECISION

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

(2010/365/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the 2005 Act of Accession, and in particular Article 4(2) thereof,

Having regard to the opinion of the European Parliament <sup>(1)</sup>,

Whereas:

(1) Article 4(2) of the 2005 Act of Accession provides that the provisions of the Schengen *acquis*, other than those mentioned in Annex II to that Act, shall apply in Bulgaria and Romania (hereinafter the 'Member States concerned') 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 Member States concerned ensure satisfactory levels of data protection by taking the following steps:

A full questionnaire was forwarded to the Member States concerned, whose replies were recorded, and verification and evaluation visits were made to those Member States, 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 (SCH/Com-ex (98) 26 def.) <sup>(2)</sup>, in the area of Data Protection.

(3) On 26 April 2010, the Council concluded that the conditions in this area had been fulfilled by the Member States concerned. It is therefore possible to set a date from which the Schengen *acquis* relating to the Schengen Information System (SIS) may apply in those Member States.

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

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

(6) As regards Iceland and Norway, this Decision constitutes a development of the 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 the latter's association with the implementation, application and development of the Schengen *acquis* <sup>(3)</sup> which fall within the area referred to in Article 1, point G, of Council Decision 1999/437/EC <sup>(4)</sup> on certain arrangements for the application of that Agreement.

(7) 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* <sup>(5)</sup>, which fall within the area referred to in Article 1, point G of Council Decision 1999/437/EC of 17 May 1999, read in conjunction with Article 3 of Council Decision 2008/149/JHA <sup>(6)</sup> and with Article 3 of Council Decision 2008/146/EC <sup>(7)</sup>,

HAS ADOPTED THIS DECISION:

## Article 1

1. From 15 October 2010, the provisions of the Schengen *acquis* relating to the SIS, as referred to in Annex I, shall apply to the Republic of Bulgaria and Romania amongst themselves and in their 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 Republic of France, the Italian Republic, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of Hungary, Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, the Republic of Slovenia and the Slovak Republic, the Republic of Finland and the Kingdom of Sweden as well as the Republic of Iceland, the Kingdom of Norway and the Swiss Confederation.

<sup>(3)</sup> OJ L 176, 10.7.1999, p. 36.

<sup>(4)</sup> OJ L 176, 10.7.1999, p. 31.

<sup>(5)</sup> OJ L 53, 27.2.2008, p. 52.

<sup>(6)</sup> OJ L 53, 27.2.2008, p. 50.

<sup>(7)</sup> OJ L 53, 27.2.2008, p. 1.

<sup>(1)</sup> Opinion delivered on 17 June 2010 (not yet published in the Official Journal).

<sup>(2)</sup> 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 from the date specified therein to the Republic of Bulgaria and Romania amongst themselves and in their 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 Republic of France, the Italian Republic, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of Hungary, Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, the Republic of Slovenia and the Slovak Republic, the Republic of Finland and the Kingdom of Sweden as well as the Republic of Iceland, the Kingdom of Norway and the Swiss Confederation.

3. From 29 June 2010 real SIS data may be transferred to the Member States concerned.

From 15 October 2010, the Member States concerned, like the Member States in respect of which the Schengen *acquis* has already been implemented, shall be able to enter data into the SIS and use SIS data, subject to the provisions of paragraph 4.

4. Until the date of the lifting of checks at internal borders with the Member States concerned, those Member States:

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

(b) shall refrain from entering the data covered by the provisions of 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 (hereinafter the 'Schengen Convention') <sup>(1)</sup>.

*Article 2*

This Decision shall enter into force on the day of its adoption.

*Article 3*

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

Done at Luxembourg, 29 June 2010.

*For the Council*

*The President*

E. ESPINOSA

---

<sup>(1)</sup> OJ L 239, 22.9.2000, p. 19.

## ANNEX I

**List of the provisions of the Schengen *acquis* relating to the SIS within the meaning of Article 4(2) of the 2005 Act of Accession to be rendered applicable to the Member States concerned**

## 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) Decisions 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) <sup>(1)</sup>;

## (b) Declarations of the Executive Committee established by the Schengen Convention:

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

(ii) Declaration of the Executive Committee of 28 April 1999 on the structure of the SIS (SCH/Com-ex (99) decl. 2 rev) <sup>(3)</sup>,

## (c) other instruments:

(i) 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' <sup>(4)</sup>,

(ii) The SIRENE Manual <sup>(5)</sup>,

(iii) 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 <sup>(6)</sup>, and any subsequent decisions on the date of application of those functions,

(iv) 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 <sup>(7)</sup>, and any subsequent decisions on the date of application of those functions,

(v) 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 <sup>(8)</sup>,

(vi) Article 5(4)(a) and the provisions of Title II and the annexes thereto referring to the Schengen Information System (SIS) of Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) <sup>(9)</sup>,

(vii) Council Regulation (EC) No 1104/2008 of 24 October 2008 on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II) <sup>(10)</sup>,

(viii) Council Decision 2008/839/JHA of 24 October 2008 on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II) <sup>(11)</sup>.

<sup>(1)</sup> OJ L 239, 22.9.2000, p. 444.

<sup>(2)</sup> OJ L 239, 22.9.2000, p. 458.

<sup>(3)</sup> OJ L 239, 22.9.2000, p. 459.

<sup>(4)</sup> OJ L 85, 6.4.2000, p. 12.

<sup>(5)</sup> Parts of the SIRENE manual were published in OJ C 38, 17.2.2003, p. 1. The manual was amended by Commission Decisions 2006/757/EC (OJ L 317, 16.11.2006, p. 1) and 2006/758/EC (OJ L 317, 16.11.2006, p. 41).

<sup>(6)</sup> OJ L 162, 30.4.2004, p. 29.

<sup>(7)</sup> OJ L 68, 15.3.2005, p. 44.

<sup>(8)</sup> OJ L 191, 22.7.2005, p. 18.

<sup>(9)</sup> OJ L 105, 13.4.2006, p. 1.

<sup>(10)</sup> OJ L 299, 8.11.2008, p. 1.

<sup>(11)</sup> OJ L 299, 8.11.2008, p. 43.

## ANNEX II

**List of the provisions of the Schengen *acquis* relating to the SIS within the meaning of Article 4(2) of the 2005 Act of Accession to be rendered applicable to the Member States concerned from the date provided 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 <sup>(1)</sup>;
  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) <sup>(2)</sup>;
  3. Decision 2007/533/JHA of the Council of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II) <sup>(3)</sup>.
- 

<sup>(1)</sup> OJ L 381, 28.12.2006, p. 1.

<sup>(2)</sup> OJ L 381, 28.12.2006, p. 4.

<sup>(3)</sup> OJ L 205, 7.8.2007, p. 63.