

(Acts adopted under Title VI of the Treaty on European Union)

## 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

THE COUNCIL OF THE EUROPEAN UNION

Having regard to the Treaty on European Union, and in particular Article 30(1)(a) and (b), Article 31(a) and (b) and Article 34(2)(c) thereof,

Having regard to the initiative of the Kingdom of Spain<sup>(1)</sup>,

Having regard to the opinion of the European Parliament<sup>(2)</sup>,

Whereas:

- (1) The Schengen Information System, hereinafter referred to as 'SIS', set up pursuant to the provisions of Title IV of the Convention of 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders<sup>(3)</sup>, hereinafter referred to as 'the 1990 Schengen Convention', constitutes an essential tool for the application of the provisions of the Schengen *acquis* as integrated into the framework of the European Union.
- (2) The need to develop a new, second generation Schengen Information System, hereinafter referred to as 'SIS II', with a view to the enlargement of the European Union and allowing for the introduction of new functions, while benefiting from the latest developments in the field of information technology, has been recognised and the first steps have been taken to develop this new system.
- (3) Certain adaptations of existing provisions and the introduction of certain new functions can already be realised with respect to the current version of the SIS, in particular as far as concerns the provision of access to

certain types of data entered in the SIS for authorities the proper performance of whose tasks would be facilitated were they able to search these data, including Europol and the national members of Eurojust, the extension of the categories of missing objects about which alerts may be entered and the recording of transmissions of personal data. The technical facilities required for the purpose first need to be established in each Member State.

- (4) The Conclusions of the Laeken European Council of 14 and 15 December 2001 and in particular Conclusions 17 (cooperation between specialised counter-terrorism services), 43 (Eurojust and police cooperation with regard to Europol) and the Action Plan of 21 September 2001 against terrorism refer to the need to enhance the SIS and improve its capabilities.
- (5) Moreover, it is useful to enact provisions with respect to the exchange of all supplementary information through the authorities designated for that purpose in all Member States (Supplementary Information Request at National Entry), giving these authorities a common legal basis within the provisions of the 1990 Schengen Convention and setting out rules on deletion of data kept by these authorities.
- (6) The provisions in this Decision concerning Europol only set up the legal framework for access to the Schengen Information System and are without prejudice to adoption in the future of the necessary measures setting out the technical solution and the financial implications thereof.
- (7) The provisions in this Decision concerning the national members of Eurojust and their assistants only set up the legal framework for access to the Schengen Information System and are without prejudice to adoption in the future of the necessary measures setting out the technical solution and the financial implications thereof.

<sup>(1)</sup> OJ C 160, 4.7.2002, p. 7.

<sup>(2)</sup> OJ C 31 E, 5.2.2004, p. 122.

<sup>(3)</sup> OJ L 239, 22.9.2000, p. 19.

- (8) The provisions relating to access to SIS data for Europol and national members of Eurojust and their assistants only constitute a first phase and are without prejudice to further discussions on extending this facility to other provisions of the 1990 Schengen Convention.
- (9) The amendments to be made to this end to the provisions of the Schengen *acquis* dealing with the Schengen Information System consist of two parts: this Decision and a Council Regulation based on Article 66 of the Treaty establishing the European Community. The reason for this is that, as set out in Article 93 of the 1990 Schengen Convention, the purpose of the Schengen Information System is to maintain public policy and public security, including national security, in the territories of the Member States and to apply the provisions of the said Convention relating to the movement of persons in those territories, by using information communicated via the SIS in accordance with the provisions of that Convention. Since some of the provisions of the 1990 Schengen Convention are to be applied for both purposes at the same time, it is appropriate to amend such provisions in identical terms through parallel acts based on each of the Treaties.
- (10) This Decision is without prejudice to the adoption in future of the necessary legislation describing in detail the legal architecture, objectives, operation and use of SIS II, such as, but not limited to, rules further defining the categories of data to be entered into the system, the purposes for which they are to be entered and the criteria for their entry, rules concerning the content of SIS records, the interlinking of alerts, compatibility between alerts and further rules on access to SIS data and the protection of personal data and their control.
- (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 the association of those two States with the implementation, application and development of the Schengen *acquis*<sup>(1)</sup>, which fall within the area referred to in Article 1, point G of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of that Agreement.
- (12) The United Kingdom is taking part in this Decision, in accordance with Article 5 of the Protocol integrating the Schengen *acquis* into the framework of the European Union annexed to the Treaty on European Union and to the Treaty establishing the European Community, and Article 8(2) of Council Decision 2000/365/EC of 29 May 2000, concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis*<sup>(2)</sup>.
- (13) Ireland is taking part in this Decision in accordance with Article 5 of the Protocol integrating the Schengen *acquis* into the framework of the European Union annexed to the Treaty on European Union and to the Treaty establishing the European Community, and Article 6(2) of 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*<sup>(3)</sup>.
- (14) This Decision is without prejudice to the arrangements for the United Kingdom and Ireland's partial participation in the Schengen *acquis* as defined in Decision 2000/365/EC and in Decision 2002/192/EC respectively.
- (15) This Decision constitutes an act building on the Schengen *acquis* or otherwise related to it within the meaning of Article 3(2) of the Act of Accession,

HAS DECIDED AS FOLLOWS:

#### Article 1

The provisions of the 1990 Schengen Convention are hereby amended as follows:

- the following paragraph shall be added to Article 92:

'4. Member States shall, in accordance with national legislation, exchange through the authorities designated for that purpose (Sirene) all supplementary information necessary in connection with the entry of alerts and for allowing the appropriate action to be taken in cases where persons in respect of whom, and objects in respect of which, data have been entered in the Schengen Information System, are found as a result of searches made in this system. Such information shall be used only for the purpose for which it was transmitted.;

- Article 94(2)(b) shall be replaced by the following:

'(b) objects referred to in Articles 99 and 100.;

(1) OJ L 176, 10.7.1999, p. 31.

(2) OJ L 131, 1.6.2000, p. 43.

(3) OJ L 64, 7.3.2002, p. 20.

3. the first paragraph of Article 94(3) shall be replaced by the following:
- ‘3. For persons, the information shall be no more than the following:
- (a) surname and forenames, any aliases possibly entered separately;
  - (b) any specific objective physical characteristics not subject to change;
  - (c) (...);
  - (d) place and date of birth;
  - (e) sex;
  - (f) nationality;
  - (g) whether the persons concerned are armed, violent or have escaped;
  - (h) reason for the alert;
  - (i) action to be taken;
  - (j) in cases of alerts under Article 95: the type of offence(s);
4. Article 99(1) shall be replaced by the following:
- ‘1. Data on persons or vehicles, boats, aircraft and containers shall be entered in accordance with the national law of the Member State issuing the alert, for the purposes of discreet surveillance or of specific checks in accordance with paragraph 5.’;
5. the last sentence of Article 99(3) shall be replaced by the following:
- ‘The Member State issuing the alert pursuant to this paragraph shall be obliged to inform the other Member States thereof.’;
6. the first sentence of Article 99(5) shall be replaced by the following:
- ‘5. During the specific checks referred to in paragraph 1, persons, vehicles, boats, aircraft, containers and objects carried may be searched in accordance with national law for the purposes referred to in paragraphs 2 and 3.’;
7. Article 100(3) shall be replaced by the following:
- ‘3. The following categories of readily identifiable objects shall be entered:
- (a) motor vehicles with a cylinder capacity exceeding 50 cc, boats and aircraft which have been stolen, misappropriated or lost;
  - (b) trailers with an unladen weight exceeding 750 kg, caravans, industrial equipment, outboard engines and containers which have been stolen, misappropriated or lost;
  - (c) firearms which have been stolen, misappropriated or lost;
  - (d) blank official documents which have been stolen, misappropriated or lost;
  - (e) issued identity papers such as passports, identity cards, driving licences, residence permits and travel documents which have been stolen, misappropriated, lost or invalidated;
  - (f) vehicle registration certificates and vehicle number plates which have been stolen, misappropriated, lost or invalidated;
  - (g) banknotes (registered notes);
  - (h) securities and means of payment such as cheques, credit cards, bonds, stocks and shares which have been stolen, misappropriated or lost.’;
8. the following sentence shall be added at the end of Article 101(1):
- ‘However, access to data entered in the Schengen Information System and the right to search such data directly may also be exercised by national judicial authorities, *inter alia*, those responsible for the initiation of public prosecutions in criminal proceedings and judicial inquiries prior to indictment, in the performance of their tasks, as set out in national legislation.’;
9. the following Articles shall be inserted:
- ‘Article 101A
1. The European Police Office (Europol) shall within its mandate and at its own expense have the right to have access to, and to search directly, data entered into the Schengen Information System in accordance with Articles 95, 99 and 100.

2. Europol may only search data which it requires for the performance of its tasks.

3. Where a search by Europol reveals the existence of an alert in the Schengen Information System, Europol shall inform, via the channels defined by the Europol Convention, the Member State which issued the alert thereof.

4. Use of information obtained from a search in the Schengen Information System is subject to the consent of the Member State concerned. If the Member State allows the use of such information, the handling thereof shall be governed by the Europol Convention. Europol may only communicate such information to third States and third bodies with the consent of the Member State concerned.

5. Europol may request supplementary information from the Member State concerned in accordance with the provisions set out in the Europol Convention.

6. Europol shall:

(a) record every search made by it, in accordance with the provisions of Article 103;

(b) without prejudice to paragraphs 4 and 5, not connect parts of the Schengen Information System nor transfer the data contained therein to which it has access to any computer system for data collection and processing in operation by or at Europol nor download or otherwise copy any parts of the Schengen Information System;

(c) limit access to data entered into the Schengen Information System to specifically authorised staff of Europol;

(d) adopt and apply the measures provided for in Article 118;

(e) allow the Joint Supervisory Body, set up under Article 24 of the Europol Convention, to review the activities of Europol in the exercise of its right to accede to and to search data entered into the Schengen Information System.

#### Article 101B

1. The national members of Eurojust and their assistants shall have the right to have access to, and search, data entered in accordance with Articles 95 and 98 into the Schengen Information System.

2. The national members of Eurojust and their assistants may only search data which they require for the performance of their tasks.

3. Where a search by a national member of Eurojust reveals the existence of an alert in the Schengen Information System, he or she shall inform the Member State having issued the alert thereof. Any communication of information obtained from such a search may only be communicated to third States and third bodies with the consent of the Member State having issued the alert.

4. Nothing in this Article shall be interpreted as affecting the provisions of the Council Decision setting up Eurojust concerning data protection and the liability for any unauthorised or incorrect processing of such data by the national members of Eurojust or their assistants, or as affecting the powers of the Joint Supervisory Body set up pursuant to Article 23 of that Council Decision.

5. Every search made by a national member of Eurojust or an assistant shall be recorded in accordance with the provisions of Article 103 and every use made by them of data to which they have acceded shall be registered.

6. No parts of the Schengen Information System shall be connected nor shall the data contained therein to which the national members or their assistants have access be transferred to any computer system for data collection and processing in operation by or at Eurojust nor shall any parts of the Schengen Information System be downloaded.

7. The access to data entered into the Schengen Information System shall be limited to the national members and their assistants and not be extended to Eurojust staff.

8. Measures as provided for in Article 118 shall be adopted and applied.;

10. Article 103 shall be replaced by the following:

#### 'Article 103

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 purposes of checking whether the search is admissible or not. The record may only be used for this purpose and shall be deleted at the earliest after a period of one year and at the latest after a period of three years.;

11. the following Article shall be inserted:

*'Article 112A*

1. Personal data held in files by the authorities referred to in Article 92(4) as a result of information exchange pursuant to that paragraph, shall be kept only for such time as may be required to achieve the purposes for which they were supplied. They shall in any event be deleted at the latest one year after the alert or alerts concerning the person or object concerned have been deleted from the Schengen Information System.

2. Paragraph 1 shall not prejudice the right of a Member State to keep in national files data relating to a particular alert which that Member State has issued or to an alert in connection with which action has been taken on its territory. The period of time for which such data may be held in such files shall be governed by national law.;

12. Article 113(1) shall be replaced by the following:

'1. Data other than that referred to in Article 112 shall be kept for a maximum of 10 years and data on objects referred to in Article 99(1) for a maximum of five years.;

13. the following Article shall be inserted:

*'Article 113A*

1. Data other than personal data held in files by the authorities referred to in Article 92(4) as a result of information exchange pursuant to that paragraph, shall be kept only for such time as may be required to achieve the purposes for which they were supplied. They shall in any event be deleted at the latest one year after the alert or alerts concerning the person or object concerned have been deleted from the Schengen Information System.

2. Paragraph 1 shall not prejudice the right of a Member State to keep in national files data relating to a particular alert which that Member State has issued or to an alert in connection with which action has been taken on its territory. The period of time for which such data may be held in such files shall be governed by national law.'

*Article 2*

1. Article 1(1), (5) and (8) of this Decision shall take effect 90 days after the date of its publication in the *Official Journal of the European Union*.

2. Article 1(11) and (13) of this Decision shall take effect 180 days after the date of its publication in the *Official Journal of the European Union*.

3. Article 1(1), (5), (8), (11) and (13) of this Decision shall take effect for Iceland and Norway 270 days after the date of its publication in the *Official Journal of the European Union*.

4. Article 1(2), (3), (4), (6), (7), (9), (10) and (12) shall take effect from a date to be fixed by the Council, acting unanimously, as soon as the necessary preconditions have been fulfilled.

The Council may decide to fix different dates concerning the taking effect of:

— Article 1(2), (4) and (6),

— Article 1(3),

— Article 1(7),

— Article 1(9), new Article 101A,

— Article 1(9), new Article 101B,

— Article 1(12).

5. Any decision of the Council in accordance with paragraph 4 shall be published in the *Official Journal of the European Union*.

Done at Brussels, 24 February 2005.

*For the Council*

*The President*

N. SCHMIT