



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 23 November 2010
(OR. en)**

15766/10

**JAI 905
SIRIS 158
VISA 260
EURODAC 45
SCHENGEN 58**

LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL DECISION 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* relating to the establishment of a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice

COUNCIL DECISION

of

**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*
relating to the establishment of a European Agency
for the operational management of large-scale IT systems
in the area of freedom, security and justice**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to Article 4 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 (hereinafter "the Schengen Protocol"),

Having regard to the request by the Government of the United Kingdom of Great Britain and Northern Ireland, by its letter to the President of the Council of 5 October 2010, to participate in certain provisions of the Schengen *acquis*, as specified in that letter,

Whereas:

- (1) By Decision 2000/365/EC¹ the Council authorised the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis*, in accordance with the conditions set out in that Decision.
- (2) On 24 June 2009 the European Commission presented a proposal for a Regulation of the European Parliament and of the Council establishing a European Agency for the operational management of large-scale IT systems in the area of freedom security and justice (hereinafter "the proposed Regulation").
- (3) According to the proposed Regulation, the European Agency for the operational management of large-scale IT systems in the area of freedom security and justice (hereinafter "the Agency") is to be made responsible for the operational management of the second generation Schengen Information System (SIS II), the Visa Information System (VIS) and Eurodac and it may be made responsible for the preparation, development and operational management of other large-scale IT systems in the area of freedom, security and justice, on the basis of a relevant legislative instrument, based on Title V of Part three of the Treaty on the Functioning of the European Union.

¹ OJ L 131, 1.6.2000, p. 43.

- (4) SIS II is part of the Schengen *acquis*. Regulation (EC) No 1987/2006 of the European Parliament and of the Council¹ and Council Decision 2007/533/JHA² govern the establishment, operation and use of SIS II. However, the United Kingdom has only taken part in the adoption of Council Decision 2007/533/JHA which develops the provisions of the Schengen *acquis* referred to in Article 1(a)(ii) of Decision 2000/365/EC.
- (5) VIS is also part of the Schengen *acquis*. The United Kingdom did not take part in the adoption of, and is not bound by Decision 2004/512/EC³, Regulation (EC) No 767/2008⁴ and Decision 2008/633/JHA⁵ which govern the establishment, operation or use of VIS.
- (6) Eurodac is not part of the Schengen *acquis*. The United Kingdom has taken part in the adoption of, and is bound by Regulation (EC) No 2725/2000⁶ which governs the establishment, operation and use of Eurodac.

¹ OJ L 381, 28.12.2006, p. 4.

² OJ L 205, 7.8.2007, p. 63.

³ Council Decision 2004/512/EC of 8 June 2004 establishing the Visa Information System (VIS) (OJ L 213, 15.6.2004, p. 5).

⁴ Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation) (OJ L 218, 13.8.2008, p. 60).

⁵ Council Decision 2008/633/JHA of 23 June 2008 concerning access for consultation of the Visa Information System (VIS) by designated authorities of Member States and by Europol for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences (OJ L 218, 13.8.2008, p. 129).

⁶ Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention (OJ L 316, 15.12.2000, p. 1).

- (7) Given its participation in Eurodac and its partial participation in SIS II, the United Kingdom has the right to participate in the activities of the Agency, to the extent that the Agency will be responsible for the operational management of SIS II as governed by Council Decision 2007/533/JHA, and Eurodac.
- (8) The proposed Agency should have a single legal personality and be characterised by the unity of its organisational and financial structure. To this end, the Agency should be established by means of a single legislative instrument which must be voted on within the Council in its entirety. Moreover, once adopted, the proposed Regulation should become applicable in its entirety in the Member States bound by it. This excludes the possibility of partial applicability for the United Kingdom.
- (9) In order to ensure compliance with the Treaties and the applicable Protocols, and at the same time to safeguard the unity and consistency of the proposed Regulation, the United Kingdom has requested to take part in the proposed Regulation under Article 4 of the Schengen Protocol to the extent that the Agency will be responsible for the operational management of SIS II as governed by Regulation (EC) No 1987/2006 and of VIS.
- (10) The Council recognizes the right of the United Kingdom to make, in accordance with Article 4 of the Schengen Protocol, a request for participation in the proposed Regulation, to the extent that the United Kingdom will not participate in the proposed Regulation on other grounds.

- (11) Participation of the United Kingdom in the proposed Regulation would be without prejudice to the fact that at present the United Kingdom does not and cannot participate in the provisions of the Schengen *acquis* relating to the free movement of third country nationals, visa policy and the crossing by persons of the external borders of the Member States. This would justify the inclusion of specific provisions in the proposed Regulation reflecting this special position of the United Kingdom, in particular as regards limited voting rights in the Management Board of the Agency.
- (12) The Mixed Committee, established pursuant to Article 3 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*¹, has been informed about the preparation of this Decision in accordance with Article 5 of that Agreement.
- (13) The Mixed Committee, established pursuant to Article 3 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*², has been informed about the preparation of this Decision in accordance with Article 5 of that Agreement,

HAS ADOPTED THIS DECISION:

¹ OJ L 176, 10.7.1999, p. 36.

² OJ L 53, 27.2.2008, p. 52.

Article 1

Further to Council Decision 2000/365/EC, the United Kingdom of Great Britain and Northern Ireland shall take part in the Regulation of the European Parliament and of the Council establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice to the extent that it relates to the operational management of the Visa Information System (VIS) and the parts of the second generation Schengen Information System (SIS II), in which the United Kingdom does not participate.

Article 2

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

Done at ...,

For the Council

The President
