

## II

(Preparatory Acts pursuant to Title VI of the Treaty on European Union)

**Initiative of the Kingdom of Spain with a view to adopting the Council Regulation (EC) No .../2002 concerning the introduction of some new functions for the Schengen information system, in particular in the fight against terrorism**

(2002/C 160/06)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 62, 63 and 66 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:

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.

(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.

(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, 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 certain provisions and the introduction of certain new functions can already be realised with respect to the current version of the SIS, in particular

(5) Moreover, it is useful to enact provisions with respect to the existence and functioning of the Sirene ('supplementary information requests at the national entry') offices in the Member States.

(6) The modifications to be made to this effect to the provisions of the Schengen *acquis* dealing with the Schengen information system consist of two parts: this Regulation and a Council Decision based on Articles 30(1)(a) and (b), 31(a) and (b) and 34(2)(c) of the Treaty on European Union. 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 modify such provisions in identical terms through parallel acts based on each of the Treaties. This concerns in particular modifications of the provisions of Articles 101(1), 103 and 108 of the 1990 Schengen Convention.

<sup>(1)</sup> OJ C ...

<sup>(2)</sup> Opinion delivered on ... (not yet published in the Official Journal).

- (7) This Regulation 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.
- (8) As regards Iceland and Norway, this Regulation constitutes a development of provisions of the Schengen *acquis* 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 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>.
- (9) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark is not taking part in the adoption of this Regulation and is therefore not bound by it or subject to its application. Given the fact that this Regulation builds upon the Schengen *acquis* under the provisions of Title IV of Part Three of the Treaty establishing the European Community, Denmark shall, in accordance with Article 5 of the said Protocol, decide within a period of six months after the Council has adopted this Regulation whether it will implement it in its national law.
- (10) This Regulation constitutes a development of provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with 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>; the United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.
- (11) This Regulation constitutes a development of the provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with 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>; Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.

HAS ADOPTED THIS REGULATION:

*Article 1*

The provisions of the 1990 Schengen Convention shall be amended as follows:

1. the following shall be added at the end of Article 101(1)(b):

‘and the judicial supervision thereof;’

2. Article 101(2) shall be replaced by the following:

‘2. In addition, access to data entered in accordance with Article 96 and data concerning identity documents entered in accordance with Article 100(3)(d) and (e) and the right to search such data directly may be exercised by the authorities responsible for issuing visas, the central authorities responsible for examining visa applications and the authorities responsible for issuing residence permits and for the administration of legislation on aliens in the context of the application of the provisions of this Convention relating to the movement of persons. Access to data by these authorities shall be governed by the national law of each Member State.’;

3. the following words shall be added to the second sentence of Article 102(4):

‘and data concerning identity documents entered under Article 100(3)(d) and (e) may also be used for those purposes.’;

4. 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 purpose of checking whether the search is admissible or not. The record may be used only for this purpose and shall be deleted at the latest one year after it has been recorded.’;

<sup>(1)</sup> OJ L 176, 10.7.1999, p. 31.

<sup>(2)</sup> OJ L 131, 1.6.2000, p. 43.

<sup>(3)</sup> OJ L 64, 7.3.2002, p. 20.

5. the following paragraph shall be added to Article 108:

'5. Member States shall exchange through the authorities designated for that purpose (known as Sirene), all 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 the system.;

6. the following paragraph shall be added to Article 113:

'3. Personal data held in files by the authorities referred to in Article 108(5) 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 concerned have been deleted from the Schengen information system.'

#### Article 2

This Regulation shall enter into force 90 days after the date of publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaty establishing the European Community.

Done at ...

For the Council

The President

...

### Initiative of the Kingdom of Spain with a view to adopting the Council Decision 2002/. . /JHA concerning the introduction of some new functions for the Schengen information system, in particular in the fight against terrorism

(2002/C 160/07)

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, 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.

(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 existence and functioning of the Sirene ('supplementary information requests at the national entry') offices in the Member States.

(6) The modifications to be made to this effect 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 Articles 62, 63 and 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

<sup>(1)</sup> OJ C ...

<sup>(2)</sup> Opinion delivered on ... (not yet published in the Official Journal).