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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 2424/2001**of 6 December 2001****on the development of the second generation Schengen Information System (SIS II)**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 66 thereof,

Having regard to the initiative of the Kingdom of Belgium and the Kingdom of Sweden ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Whereas:

- (1) The Schengen Information System, 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 Schengen Information System in its current form has the capacity to service no more than 18 participating States. It is at present operational for 13 Member States and 2 other States (Iceland and Norway) and is intended to become operational for the United Kingdom and Ireland in the foreseeable future. It has, however, not been constructed so as to service the increased number of Member States of the European Union after its enlargement.
- (3) For this reason, and in order to benefit from the latest developments in the field of information technology and to allow for the introduction of new functions, it is necessary to develop a new, second generation Schengen Information System (SIS II), as already acknowledged in Decision SCH/Com-ex (97) 24 of the Executive Committee of 7 October 1997 ⁽³⁾.
- (4) The expenditure involved in the development of SIS II is to be charged to the budget of the European Union in accordance with the Council conclusions to that effect of 29 May 2001. This Regulation constitutes, together with Council Decision 2001/886/JHA of 6 December 2001 on the development of the second generation Schengen

Information System (SIS II) ⁽⁴⁾, the required legislative basis to allow for the inclusion in the budget of the Union of the necessary appropriations for the development of SIS II and the execution of that part of the budget.

- (5) The legislative basis consists of two parts: this Regulation based on Article 66 of the Treaty establishing the European Community and a Council Decision based on Article 30(1)(a) and (b), Article 31(a) and (b) and Article 34(2)(c) of the Treaty on European Union. The reason for this is that, as set out in Article 92 of the 1990 Schengen Convention, the Schengen Information System is to enable the authorities designated by the Member States, by means of an automated search procedure, to have access to alerts on persons and property for the purposes of border checks and other police and customs checks carried out within the country in accordance with national law, as well as for the purposes of issuing visas, residence permits and the administration of legislation on aliens in the context of the application of the provisions of the Schengen acquis relating to the movement of persons.
- (6) The fact that the legislative basis required for allowing the development of SIS II to be financed by the Union budget consists of two separate instruments does not affect the principle that the Schengen Information System constitutes, and should continue to constitute, one single, integrated, information system and that SIS II must be developed as such.
- (7) This Regulation is without prejudice to the adoption in future of the necessary legislation describing in detail the operation and use of SIS II, such as, but not limited to, rules 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, including responsibility for their correctness, rules on the duration of alerts, inter-linking of alerts and compatibility between alerts, rules on access to SIS data and rules on the protection of personal data and their control.

⁽¹⁾ OJ C 183, 29.6.2001, p. 12.

⁽²⁾ Opinion delivered on 23 October 2001 (not yet published in the Official Journal).

⁽³⁾ OJ L 239, 22.9.2000, p. 442.

⁽⁴⁾ See page I of this Official Journal.

- (8) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽¹⁾.
- (9) 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 ⁽²⁾ 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 ⁽³⁾.
- (10) An arrangement has to be made to allow representatives of Iceland and Norway to be associated with the work of committees assisting the Commission in the exercise of its implementing powers. Such an arrangement has been contemplated in the Exchange of Letters between the Community and Iceland and Norway, annexed to the abovementioned Association Agreement ⁽⁴⁾.
- (11) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on European Union and the Treaty establishing the European Community, the United Kingdom gave notice, by letter of 6 September 2001, of its wish to take part in the adoption and application of this Regulation.
- (12) This Regulation and the United Kingdom's participation in its adoption and application are without prejudice to the arrangements for the United Kingdom's partial participation in the Schengen acquis defined by the Council in Decision 2000/365/EC.
- (13) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and 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 adoption of this instrument whether it will implement it in its national law,

HAS ADOPTED THIS REGULATION:

Article 1

The Schengen Information System set up pursuant to the provisions of Title IV of the 1990 Schengen Convention, shall be replaced by a new system, the Schengen Information System II (SIS II), which shall allow for new Member States to be integrated into the system.

Article 2

The SIS II, which shall be a single integrated system, shall be developed by the Commission, in accordance with the procedures set out in this Regulation.

Article 3

The measures necessary for the development of SIS II shall be adopted in accordance with the management procedure referred to in Article 5(2) where they concern matters other than those listed in Article 4.

Article 4

The measures necessary for the development of SIS II concerning the following matters shall be taken in accordance with the regulatory procedure referred to in Article 5(3):

- (a) the design of the physical architecture of the system, including its communication network;
- (b) technical aspects which have a bearing on the protection of personal data;
- (c) technical aspects which have serious financial implications for the budgets of the Member States or which have serious technical implications for the national systems of the Member States;
- (d) the development of security requirements.

Article 5

1. The Commission shall be assisted by a Management or Regulatory committee respectively.

2. Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply.

The period laid down in Article 4(3) of Decision 1999/468/EC shall be set at two months.

3. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at two months.

4. The respective committees shall adopt their rules of procedure.

⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

⁽²⁾ OJ L 176, 10.7.1999, p. 31.

⁽³⁾ OJ L 131, 1.6.2000, p. 43.

⁽⁴⁾ OJ L 176, 10.7.1999, p. 53.

Article 6

The Commission shall submit by the end of every six month period, and for the first time by the end of the second six month period of 2002, a progress report to the Council and the European Parliament concerning the development of SIS II.

Article 7

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

It shall expire on 31 December 2006.

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

Done at Brussels, 6 December 2001.

For the Council

The President

M. VERWILGHEN
