

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

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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 Spain(1),

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

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(3), 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 SIS, 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 amendments to be made to this effect to the provisions of the Schengen acquis dealing with the SIS 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 SIS 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.

(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 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, which fall within the area referred to in Article 1, point G of Decision 1999/437/EC(4), on certain arrangements for the application of that Agreement.

(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 not bound by it or subject to its application. Given 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 the SIS for the purpose of its application in relation to provisions of the Schengen acquis relating to the movement of persons; the United Kingdom has not applied to and does not take part in the SIS for these purposes, 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(5); 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 SIS for the purpose of its application in relation to provisions of the Schengen acquis relating to the movement of persons; Ireland has not applied to and does not take part in the Schengen Information System for these purposes, 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(6); Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.

(12) This Regulation 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 ADOPTED THIS REGULATION:

Article 1

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

1. 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."

2. points (a) to (i) of the first paragraph of Article 94(3) shall be replaced by 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;"

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

"However, access to data entered in the SIS 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."

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

"2. In addition, access to data entered in accordance with Article 96 and data concerning documents relating to persons 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."

5. the second sentence of Article 102(4) shall be replaced by the following:

"By way of derogation, data entered under Article 96 and data concerning documents relating to persons entered under Article 100(3)(d) and (e) may be used in accordance with the national law of each Member State for the purposes of Article 101(2) only."

6. 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."

7. the following Article shall be inserted:

"Article 112 A

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."

8. the following Article shall be inserted:

"Article 113 A

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. This Regulation shall enter into force on the 20th day following that of its publication in the Official Journal of the European Union.

2. It shall apply 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 set different dates for the application of different provisions.

3. Any Decision of the Council in accordance with paragraph 2 shall be published in the Official Journal of the European Union.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Luxembourg, 29 April 2004.

For the Council

The President

M. McDowell

(1) OJ C 160, 4.7.2002, p. 5.

(2) OJ C 31 E, 5.2.2004, p.122.

(3) OJ L 239, 22.9.2000, p. 19.

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

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

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