



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 21.8.2003
COM(2003) 510 final

2003/0198 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending the Convention implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders as regards access to the Schengen Information System by the services in the Member States responsible for issuing registration certificates for vehicles

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. INTRODUCTION

The Treaty of Amsterdam introduced the progressive establishment of an area of freedom, security and justice as a new goal of the Union. Article 2 of the Treaty on European Union (TEU) stipulates that in this area the free movement of persons is to be assured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime.

With regard to the latter, Article 61(e) of the Treaty Establishing the European Community (TEC) states that in order to establish progressively an area of freedom, security and justice, the Council shall adopt measures in the field of police and judicial co-operation in criminal matters aimed at a high level of security by preventing and combating crime within the Union in accordance with the provisions of the Treaty on European Union.

Article 29 TEU, that introduces Title VI “Provisions on police and judicial co-operation in criminal matters”, stipulates *inter alia* that without prejudice to the powers of the European Community, the Union’s objective shall be to provide citizens with a high level of safety within an area of freedom, security and justice by developing common action among the Member States in the fields of police and judicial co-operation in criminal matters.

Article 47 TEU states that nothing in the Treaty on European Union shall affect the Treaties establishing the European Communities or the subsequent Treaties and Acts modifying or supplementing them.

In the context of the common transport policy, provided for in Title V of the TEC, and more particularly in the interest of the functioning of the internal market, and the combating of fraud and illegal trade in stolen vehicles, close co-operation between Member States has been established based on an effective exchange of information, which may involve the use of an electronic network.

In its meeting in Tampere of 15 and 16 October 1999, the European Council agreed on a number of policy orientations and priorities to speedily make the area of freedom, security and justice a reality. The Tampere European Council *inter alia* emphasised that “maximum benefit should be derived from co-operation between Member States’ authorities when investigating cross-border crime in any Member State”.¹

Article 100 in 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: “the Schengen Convention”) which has been integrated into the framework of the European Union pursuant to the Protocol annexed to the Treaty on European Union and the Treaty establishing the European Community, allows authorities to insert data on motor vehicles which have been stolen, misappropriated or lost, to the Schengen Information System (hereinafter referred to as “SIS”). Pursuant to Article 101 of the Schengen Convention, access to SIS data is reserved exclusively to the authorities responsible for border checks, for other police and customs checks carried out within the country. In addition, access to certain data is given to the authorities responsible for issuing visas, examining visa applications, issuing residence

¹ Paragraph 43 of the Presidency Conclusions.

permits and the administration of legislation on aliens in the context of the application of that Convention.

The French presidency of 1999 initiated the examination of new functionalities that the users of the SIS deemed necessary to make it better meet the objectives of the area of freedom, security and justice. One of the functionalities that Member States identified was the need to allow vehicle registration authorities access to the SIS, especially to the SIS data concerning stolen, misappropriated or lost vehicles and trailers, blank official documents and issued identity papers (passports, identity cards, driving licences), for the purposes of checking whether vehicles presented to them for registration have not been stolen, misappropriated or lost and that persons applying to become holder of a registration certificate are not using identity or vehicle registration documents to that end which have been stolen, misappropriated or lost.

The purpose pursued contributes to attaining the objectives of the common transport policy provided for in Title V TEC. The competence for putting forward a legislative proposal in this field lies exclusively with the Commission. In this it differs from the initiatives that were submitted by the 2002 Spanish presidency. These also aimed at amending the relevant articles of the Schengen Convention but were taken on the basis of Title IV TEC and Title VI TEU, which allow Member States to initiate legislation.

Of particular relevance here is the 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*² that was proposed in May 2002 and is currently nearing the moment of adoption by the Council. Article 1(4) of that initiative will modify Article 100(3) of the Schengen Convention, and add new categories of data. The relevant part of the initiative as amended during the discussions in Council reads:

"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. [...];
- 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. [...];

² OJ C 160 , 4.7.2002, p. 7.

If the adoption of the Spanish legislative initiative precedes this Regulation, Article 1 will have to be modified to authorise access to data concerning vehicle registration certificates and vehicle number plates, mentioned in Article 100 (3)(f) as amended by the Spanish initiative. In its present form Article 1 relates to the current Article 100(3) (a), (b), (d) and (e).

If on the other hand the adoption of the Decision follows this Regulation, Article 102a(1) of the Schengen Convention, which will be inserted by Article 1 of this Regulation, will have to be amended to authorise access to data concerning vehicle registration certificates and vehicle number plates.

2. MEASURES ALREADY TAKEN

2.1 Council Directive 1999/37/EC

According to Council Directive 1999/37/EC of 29 April 1999 on the registration documents for vehicles³, the Member States shall issue a registration certificate for vehicles, which are subject to registration under their national law (Article 3). These registration certificates are mutually recognised by the Member States (Article 4).

Article 9 of the Directive sets out the possibility for the Member States to exchange information on a vehicle's legal status.

According to the text of Article 9 "Member States shall assist one another in the implementation of this Directive. They may exchange information at bilateral or multilateral level in particular so as to check, before any registration of a vehicle, the latter's legal status, where necessary in the Member State in which it was previously registered. Such checking may in particular involve the use of an electronic network."

The Directive does not impose an obligation to consult, but merely allows registration authorities to access information on stolen vehicles. No specific mention of the SIS or SIS data is made, it only sets out a possibility for Member States to act unilaterally or multilaterally.

2.2 The Schengen Convention

The Schengen Convention is specific about the authorities that have access to the SIS, the purpose for which they have access and the action they have to take when a positive identification has been made.

The following articles of the Schengen Convention are of relevance. Article 92(1), states the purpose of access by national authorities to the SIS alerts. The purpose is either border checks and other police and customs checks, or, as far as the category of third country nationals to be refused entry (Article 96) is concerned, issuing visas, residence permits and the administration of legislation on aliens.

Article 100(1) states that data on stolen, misappropriated, or lost vehicles and documents shall be entered in the SIS for the purposes of seizure or use as evidence in criminal proceedings.

³ OJ L 138, 1.6.1999, p. 57.

Article 101(1) and (2) lists the authorities that have the right to directly access and search the SIS data.

Article 102(4) states that data may not be used for administrative purposes. It provides however for an exemption for the purposes of Article 101(2) in respect of data entered under Article 96.

3. OBJECTIVES AND FIELD OF APPLICATION

3.1 General objective

The objective of the proposal is to amend the Schengen Convention to improve co-operation between Member States and as a result the functioning of the internal market. In concrete terms, the way in which this proposal intends to achieve this objective is by giving vehicle registration authorities of the Member States the right to consult certain categories of data contained in the SIS.

In doing so, they will have more and better possibilities to check whether vehicles presented to them for registration have not been stolen, misappropriated or lost and whether persons applying for a registration certificate are not using identity or vehicle registration documents to that end which have been stolen, misappropriated, lost or – in the future - invalidated. This will serve the interest of the functioning of the internal market and the fight against fraud and illegal trade in stolen vehicles.

3.2. Specific objectives

The specific objectives of this proposal are as follows.

In the first place this proposal contributes to the realisation of the common transport policy by providing Member States with an additional operational means to assist each with re-registration of vehicles and thus to facilitate the mutual recognition of vehicle registration certificates issued by another Member State. By increasing the possibilities to detect fraud and illegal trade in vehicles, Member States can be more confident that the certificates that have been delivered cover vehicles that are traded legally and owners that have a proper ownership title.

Article 2(b) of Council Directive 1999/37/EC of 29 April 1999 on the registration documents for vehicles, states that “registration” is the “administrative authorisation for the entry into service in road traffic of a vehicle, involving the identification of the latter and the issuing of it of a serial number, to be known as the registration number.”

The task of vehicle registration authorities is therefore of an administrative nature, and the vehicle registration authorities do not pursue penal law objectives by consulting the relevant data categories in the SIS. This is without prejudice to the fact that a vehicle registration authority that finds that a vehicle or a document that has been presented to it in the course of the administrative process has been reported in the SIS may inform a police authority about this finding, without itself acting in the field of criminal law.

In the second place this proposal signifies a development of the Schengen *acquis* in the sense of Council Decision 1999/436/EC⁴. It is a concrete contribution to a series of other initiatives developing the Schengen *acquis* aiming at augmenting the functionalities of the SIS. This will make the SIS an even more prominent instrument to fight crime and underpin the free travel area. It will provide Member States with a better instrument to work towards the progressive establishment of the area of freedom, security and justice.

In the third place the proposal will contribute to the achievement of the goals formulated by the European Council of Tampere, especially the objective mentioned under Chapter IX “Stepping up co-operation against crime”, in section C “A union-wide fight against crime”, paragraph 43 “Maximum benefit should be derived from co-operation between Member States’ authorities when investigating cross-border crime in any Member State”.

3.3 Field of application

This proposal for a Regulation makes a distinction between direct access to the SIS by public vehicle registration authorities and indirect access by private vehicle registration services that are in charge of the registration and re-registration of vehicles in some Member States. Directive 1999/37/EC does not make a distinction between public and private vehicle registration services.

The reason for this distinction is that the SIS is only accessible for certain public authorities that are mentioned in article 101 of the Schengen Convention. Private parties have no access to SIS. In this case, this is not necessary either, since by means of indirect access via the authorities that are mentioned in Article 101, the private vehicle registration services can perform their functions as laid down in Directive 1999/37/EC.

The proposal does explicitly not interfere with any provisions of national law of the Member States requiring the aforementioned public and private services to inform police or judicial authorities about facts or circumstances they may have found in connection with the registration of a vehicle and which give rise to suspicion of a criminal offence. The attitude to be adopted by vehicle registration services that find reason for suspicion is left to the discretion of the national legislator.

4. LEGAL BASIS

4.1 Choice of the legal basis

The legal basis for the proposal is Article 71(1)(d) TEC. This article stipulates that for the purpose of implementing the common transport policy, the Council shall adopt “any other appropriate provisions”, in accordance with the procedure referred to in article 251 TEC and after consultation of the European Economic and Social Committee and the Committee of the Regions. The access of vehicle registration services to the SIS is to be considered as such an appropriate provision to further implement the common transport policy, more specifically by allowing these authorities to check the status of a vehicle before registering it.

⁴ Council Decision 1999/436/EC of 20 May 1999 determining, in conformity with the relevant provisions of the Treaty establishing the European Community and the Treaty on European Union, the legal basis for each of the provisions or decisions which constitute the *acquis* *OJ L 176 of 10.7.1999 page 17-30*.

The same legal basis was chosen for Council Directive 1999/37/EC of 29 April 1999 on the registration documents for vehicles which, in Article 9, obliges Member States to assist each other in the implementation of that Directive, and allows them to exchange information, for instance by electronic networks.

According to Article 5(1) of the Protocol integrating the Schengen *acquis* into the framework of the European Union, proposals and initiatives to build upon the Schengen *acquis* shall be subject to the relevant provisions of the Treaties, even if, according to paragraph 2 of the same article, the Council has not adopted the measures referred to in Article 2(1), second subparagraph of that Protocol. This is at this moment the case for Articles 92 to 119 of the Schengen Convention. The choice of Article 71 TEC as a legal basis for this proposal, signifies that access to the SIS by vehicle registration authorities has a basis in the first pillar.

4.2 Choice of the legal instrument

The choice of a Regulation as the legal instrument is appropriate for the following reasons in particular.

In the first place, the proposal is not about approximating Member State legislation, which would justify the use of a Directive, but about establishing in a uniform manner basic rules of a common information system. In this particular case these rules concern the bodies that have access to the data, the modality (direct/indirect) and the purpose of this access. Member States should have no discretion as to these fundamental questions.

In the second place, the subject matter of the proposal, i.e. direct or indirect access to and querying of SIS by certain authorities, does not give any discretion to Member States. The margin for manoeuvre of Member States resulting from Article 92(2) Schengen Convention will not be restricted, as Member States will be responsible for providing the authorities identified in the Schengen Convention with access to the national part of the Schengen Information System (N.SIS).

Finally, amendments on the basis of Art 66 TEC have been presented in the form of a Regulation. Legal consistency means that a Regulation should also be chosen in this case.

For these reasons, a Regulation is the most appropriate here. The Regulation will amend provisions of the Schengen Convention whereby binding rules between Member States are altered. The intention is to set out that all public registration authorities have direct access to SIS data on vehicles, and authorities which are not governmental authorities in Member States, have indirect access to SIS data.

4.3 Legislative technique

One possibility for implementing this proposal might have been to amend Articles 92(1), 100(1), 101(1) and (2), 102(1), (4) and (5) of the Schengen Convention. However, since this proposal is the only one that is based on Article 71 TEC, a very complex legal situation would be created when opting for an amendment of the articles themselves. A future amendment of Article 101, for instance, could need three different legal instruments: on the basis of Article 66 TEC (first pillar, national administrations' co-operation in the field of Title IV TEC), Articles 30, 31 and 34 TEU (third pillar, law enforcement co-operation) and Article 71 TEC.

To avoid this intricate situation, the proposal that is herewith presented inserts a new article 102a into the Schengen Convention, which contains an internal reference to the other relevant articles. Because of this technique, all rules concerning the access to SIS by vehicle registration authorities are included in a single article that is an integral part of the Schengen Convention. This has the advantage of being transparent, since a future amendment of this article must and can only be based on Article 71 TEC.

5. POSITION OF NORWAY AND ICELAND

With regard to the position of Norway and Iceland, Article 1 point G of the 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*⁵, determines that the SIS, including the relevant provisions on protection and security of data, the provisions on the operation of the national sections of the SIS and the exchange of information between those national sections (SIRENE system), and the effect of the alerts in the SIS for persons wanted for arrest for extradition purposes, is one of the areas of the Schengen *acquis* in which these two countries will participate. Notwithstanding its double legal basis, it would be inconceivable to exclude Norway and Iceland from one of the aspects of the development of the SIS that is after all a single information and query system. Hence, Norway and Iceland are fully associated to its development, including the access of vehicle registration authorities.

6. FINANCIAL CONSEQUENCES

The Regulation will be directly applicable in its entirety in all Member States and in Norway and Iceland.

These States must create a connection between the national vehicle registration authorities and the national part of the Schengen Information System (N.SIS) adding the necessary filters to block access to other data (for public vehicle registration authorities), or set up a link between the private vehicle registration service and the public authority appointed to liaise with the former. To allow Member States sufficient time to take the necessary implementing measures, both technical and organisational, a period of six months (180 days) is foreseen between the moment of the publication of the Regulation and its actual entry into force.

As a result, this Regulation will have no financial consequences for the Community.

⁵ OJ L 176, 10.7.1999, p. 31

7. THE ARTICLES

7.1 Article 1

Article 1 introduces a new Article 102 a based on Article 71(1)(d) into the Schengen Convention. This new article gives public vehicle registration authorities the right to directly access SIS and query on data that are relevant for checking the status of a vehicle or the documents that a person who wants to register a vehicle presents to these authorities. Paragraph 2 allows indirect access, through a public authority, for other registration services than governmental authorities. Access is granted to these non-governmental licensing authorities only through the governmental authorities that are entitled to directly access and query on the basis of Article 101 of the Schengen Convention. This provision also ensures stricter data protection regime whereby access is through the intermediary of governmental authorities and Member States are obliged to ensure that provisions on data protection are applied in these cases when access is granted.

The Regulation links up with Directive 1999/37/EC on the registration documents for vehicles which determines the scope and purpose of action of the services responsible for issuing registration certificates that are the beneficiaries of this proposal for a Regulation. The Regulation creates an obligation for Member States to create the necessary technical infrastructure to allow to governmental registration authorities direct access to SIS. The Regulation does not set out specific rules on co-operation between national law enforcement authorities and those responsible for vehicle registration. This is to be governed by national law under paragraph 3. Furthermore paragraph 3 entails that national law governs the rules regarding use of those SIS data that are of relevance to vehicle registration authorities for the purpose of prevention of trafficking and fraud to implement Directive 1999/37/EC. This new possibility of consulting the SIS should not lead to undue delays in the process of vehicle registration.

7.2 Article 2

The second article sets out the rules for the entry into force of the Regulation. A period of six months is foreseen between the moment of publication and the moment the Regulation will apply. During that period Member States will prepare the implementation of the Regulation and take the relevant technical and operational measures to give vehicle registration authorities direct or, where applicable, indirect access to the SIS.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending the Convention implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders as regards access to the Schengen Information System by the services in the Member States responsible for issuing registration certificates for vehicles

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 71(1)(d) thereof,

Having regard to the proposal from the Commission⁶,

Having regard to the opinion of the European Economic and Social Committee⁷,

Having regard to the opinion of the Committee of the Regions⁸,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁹,

Whereas:

- (1) Article 9 of Council Directive 1999/37/EC of 29 April 1999 on the registration documents for vehicles¹⁰ provides that Member States are to assist one another in the implementation of that Directive and may exchange information at bilateral or multilateral level in particular so as to check, before any registration of a vehicle, the latter's legal status, where necessary in the Member State in which it was previously registered. Such checking may in particular involve the use of an electronic network.
- (2) The Schengen Information System (hereinafter "SIS"), set up under Title IV of the Convention of 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders¹¹ (hereinafter "the 1990 Schengen Convention"), and integrated into the framework of the European Union pursuant to the Protocol annexed to the Treaty on European Union and the Treaty establishing the European Community,² constitutes an electronic network between the Member States and contains *inter alia* data on motor vehicles with a cylinder capacity exceeding 50 cc which have been stolen, misappropriated or lost.

⁶ OJ C ..., ..., p. ...

⁷ OJ C ..., ..., p. ...

⁸ OJ C ..., ..., p. ...

⁹ OJ C ..., ..., p. ...

¹⁰ OJ L 138, 1.6.1999, p. 57.

¹¹ OJ L 239, 22.9.2000, p. 19.

- (3) Pursuant to Article 100(1) of the 1990 Schengen Convention, data on such objects sought for the purposes of seizure or use as evidence in criminal proceedings are entered in the SIS.
- (4) Article 101(1) of the 1990 Schengen Convention states that access to data entered in the SIS and the right to search such data directly is reserved exclusively to the authorities responsible for border checks and other police and customs checks carried out within the country, and the co-ordination of such checks.
- (5) Article 102(4) of the 1990 Schengen Convention specifies that data may in principle not be used for administrative purposes.
- (6) Authorities or services responsible in the Member States for issuing registration certificates for vehicles should have access to these data, as well as to data included in the SIS pertaining to blank or issued registration or identity documents which have been stolen, misappropriated or lost insofar as they require these data for the performance of their tasks.
- (7) To that end it is necessary to adopt rules granting access for these authorities and services to those data, and to allow them to use those data for the administrative purposes of properly issuing vehicle registration certificates.
- (8) To the extent that services in the Member States responsible for issuing registration certificates for vehicles are not government services, such access should be granted indirectly, that is to say through the intermediary of an authority mentioned in Article 101(1) of the 1990 Schengen Convention, responsible for ensuring compliance with the measures taken by these Member States pursuant to Article 118 of the 1990 Schengen Convention.
- (9) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data¹² as well as specific rules on data protection in the 1990 Schengen Convention which supplement or clarify the principles set out in that Directive apply to the processing of personal data by the authorities or services in the Member States responsible for issuing registration certificates for vehicles.
- (10) The objective of the proposed action, namely granting access to the SIS for services in the Member States responsible for issuing registration certificates, in order to facilitate their tasks under Directive 1999/37/EC, can only be achieved at Community level by reason of the very nature of the SIS as a joint information system. Action by the Member States individually could not achieve such an objective. This Regulation does not go beyond what is necessary to achieve that objective.
- (11) Member States should have a sufficient period within which to take the practical measures necessary to apply this Regulation.

¹² OJ L 281, 23.11.1995, p. 31.

- (12) 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 acquis¹³.
- (13) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union,

HAVE ADOPTED THIS REGULATION:

Article 1

The following Article 102a is inserted in Title IV of the 1990 Schengen Convention:

“Article 102a

1. Notwithstanding Articles 92(1), 100(1), 101(1) and (2), 102 (1), (4) and (5), the services in the Member States responsible for issuing registration certificates for vehicles as referred to in Council Directive 1999/37/EC of 29 April 1999 on the registration documents for vehicles, shall have the right to have access to the following data entered into the Schengen Information System for the purposes of checking whether vehicles presented to them for registration have not been stolen, misappropriated or lost and that persons applying for a registration certificate are not using identity documents to that end which have been stolen, misappropriated or lost:
 - (a) data concerning motor vehicles with a cylinder capacity exceeding 50 cc;
 - (b) data concerning trailers and caravans with an unladen weight exceeding 750 kg;
 - (c) data concerning blank official documents;
 - (d) data concerning issued identity papers.

Subject to paragraph 2, the national law of each Member State shall govern access to those data by those services.

¹³ OJ L 176, 10.7.1999, p. 31.

2. Services referred to in paragraph 1 that are government services shall be entitled to directly search the data entered in the Schengen Information System referred to in that paragraph.

Services referred to in paragraph 1 that are not government services shall have access to data entered in the Schengen Information System referred to in that paragraph only through the intermediary of an authority referred to in Article 101(1). That authority shall be entitled to directly search the data. The Member State concerned shall ensure that the service and its employees are obliged to respect any limitations on the permissible use of data conveyed to them by the public authority.

3. Article 100(2) shall not apply to a search made in accordance with the provisions of this Article. The communication by services referred to in paragraph 1 to the police or judicial authorities of information brought to light by a search of the Schengen Information System which gives rise to suspicion of a criminal offence shall be governed by national law.

Article 2

The Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from [six months from its publication date].

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

Done at Brussels,

For the European Parliament
The President

For the Council
The President