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Proposal for a

COUNCIL IMPLEMENTING DECISION

setting out a recommendation on addressing the serious deficiencies identified in the 2017 evaluation of the United Kingdom on the application of the Schengen acquis in the field of the Schengen Information System

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• **Reasons for and objectives of the proposal**

On 10 February 2015, the Council adopted Implementing Decision (EU) 2015/215 on the putting into effect of the provisions of the Schengen acquis on data protection and on the provisional putting into effect of parts of the provisions of the Schengen acquis on the Schengen Information System (SIS) for the United Kingdom of Great Britain and Northern Ireland¹. Article 2(3) of this implementing decision stipulates that upon the successful completion of the necessary Schengen evaluations, the Council should examine the situation with a view to adopting a second implementing decision setting the date for the final putting into effect by the UK of the provisions concerning SIS.

To this end, a first Schengen evaluation visit to the United Kingdom was carried out from 7 to 13 June 2015. The Evaluation Committee concluded following the visit that the UK had only partially implemented the Schengen acquis related to SIS and that a further visit was necessary to conclude the evaluation proceedings before the second implementing decision setting the date for the final putting into effect by the UK of the provisions concerning the SIS could be adopted.

At its meeting on 8 and 9 October 2015, the Council took note of the state of play in relation to the adoption of the second implementing decision (I/A item note 12246/15). In its conclusions of 4 December 2015, the Council agreed with the assessment of the Evaluation Committee, including the need for a further visit before the decision on the full application of SIS provisions could be taken².

The Council also noted in the conclusions³ that, since its competence for carrying out Schengen evaluations was to cease on 1 January 2016, the continuation of the evaluation process would have to take place in the framework of the new evaluation mechanism under Regulation (EU) No 1053/2013⁴ of 7 October 2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen *acquis*. The Council therefore invited the Commission to carry out the recommended revisit under the new Schengen evaluation mechanism, led by the Commission.

In line with Regulation (EU) No 1053/2013, the Commission has established an annual evaluation programme for 2017⁵ with detailed plans for on-site visits to the Member States to

¹ OJ L 36, 12.2.2015, p. 8.

² Council Conclusions on the evaluation of the correct application of the Schengen acquis in the field of police cooperation and on the completion of the process of evaluation of the state of preparedness to implement the relevant provisions of the Schengen acquis on the Schengen Information System (Document number 13378/1/15 REV 1 SCH-EVAL 41 SIRIS 75 COMIX 516 EU RESTRICTED). Adopted on 3-4 December 2015.

³ Ibidem. Section 11.

⁴ OJ L 295, 6.11.2013, p. 27.

⁵ Commission Implementing Decision C(2016) 7387 of 21 November 2016 establishing the first section of the annual evaluation programme for 2017 in accordance with Article 6 of Council Regulation (EU) No 1053/2013 of 7 October 2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen acquis.

be evaluated, areas to be evaluated and sites to be visited, and providing for the evaluation of the UK.

Based on this annual programme, a team of Member States and Commission experts carried out an evaluation revisit between 5 and 10 November 2017 to verify the UK's application of SIS. Their evaluation report⁶ sets out their findings and assessments, including best practices and any deficiencies identified during the evaluation.

The Working Party for Schengen Matters (Schengen Evaluations) discussed the main conclusions of the evaluation visit at its meeting of 19 June 2018. The Commission presented the main findings of the report, underlining that instances of non-compliance identified in the 2015 report had not been remedied. The Commission concluded that the report identified very serious deficiencies and asked for guidance from the Council as to the follow-up to be given to the report. The Working party on Schengen Matters agreed at its meeting on 3 September 2018 that the evaluation procedure should continue.

On that basis the Working Party suggested to Coreper to recommend that the Council invite the Commission to submit a proposal to the Council to adopt recommendations for remedial action aimed at addressing the very serious deficiencies identified in the evaluation. The invitation to the Commission to submit a proposal for recommendations (11845/18) was adopted at the General Affairs Council on 18 September 2018.

On 29 March 2017, the United Kingdom submitted the notification of its intention to withdraw from the Union pursuant to Article 50 of the Treaty on the European Union (TEU). In accordance with Article 50(3) TEU, the Treaties will cease to apply to the United Kingdom from the date of entry into force of a withdrawal agreement or, failing that, two years after that notification, unless the European Council, in agreement with the United Kingdom, unanimously decides to extend that period. After agreeing a first extension on 22 March 2019, and a second extension on 11 April 2019, the European Council adopted Decision (EU) 2019/1810⁷ on 29 October 2019, in which it agreed, following a further request by the United Kingdom, to extend the period provided for in Article 50(3) TEU until 31 January 2020.

In accordance with Article 50 TEU, the European Union negotiated with the United Kingdom an agreement setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union ('Withdrawal Agreement'). On 11 January 2019, the Council adopted Decision (EU) 2019/274 on the signing of the Withdrawal Agreement⁸. Following further negotiations between the negotiators of the Union and of the United Kingdom during the months of September and October 2019, an agreement was reached on a revised text of the Withdrawal Agreement, which was endorsed by the European Council on 17 October 2019. On 21 October 2019, the Council adopted Decision (EU) 2019/1750 on the signing of the revised Withdrawal Agreement⁹. Part Four of the Withdrawal

⁶ C(2018) 2250.

⁷ European Council Decision (EU) 2019/1810 taken in agreement with the United Kingdom of 29 October 2019 extending the period under Article 50(3) TEU (OJ L 278I, 30.10.2019, p. 1).

⁸ Council Decision (EU) 2019/274 of 11 January 2019 on the signing, on behalf of the European Union and of the European Atomic Energy Community, of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ L 47 I, 19.2.2019, p. 1).

⁹ Council Decision (EU) 2019/1750 of 21 October 2019 amending Council Decision (EU) 2019/274 of 11 January 2019 on the signing, on behalf of the European Union and of the European Atomic Energy Community, of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern

Agreement¹⁰ provides for a transition period starting on the date of entry into force of the Withdrawal Agreement and ending on 31 December 2020. During the transition period, and unless the Withdrawal Agreement provides otherwise, Union law shall continue to apply to and in the United Kingdom. Against this background, the current proposal for a Council Implementing Decision setting out a recommendation seeks to ensure that the UK takes the necessary remedial actions aimed at addressing very serious deficiencies identified during the evaluation.

This Decision will, in any event, apply only as long as Union law applies to and in the United Kingdom.

- **Consistency with existing policy provisions in the policy area**

These recommendations serve to implement the existing provisions in the policy area.

- **Consistency with other Union policies**

These recommendations may have links with the Union's data protection policy and the policies concerning police and judicial cooperation.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Council Regulation (EU) no 1053/2013 of 7 October 2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen acquis.

- **Subsidiarity (for non-exclusive competence)**

Article 15(2) of Council Regulation (EU) No 1053/2013 specifically requests the Commission to submit a proposal to the Council to adopt recommendations for remedial action aimed at addressing any deficiencies identified in the course of the evaluation. Action at Union level is required to strengthen mutual trust between the Member States and to ensure better coordination at Union level in order to guarantee that all Schengen rules are applied effectively by the Member States.

- **Proportionality**

Article 15(2) of Council Regulation (EU) No 1053/2013 mirrors the specific powers of the Council in the field of mutual evaluation of the implementation of Union policies within the area of freedom, security and justice.

3. RESULTS OF EXPOST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex post evaluations/fitness checks of existing legislation**

n.a.

Ireland from the European Union and the European Atomic Energy Community (OJ L 274 I, 28.10.2019, p. 1).

¹⁰ Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ C 384 I 12.11.2019 , p. 1).

- **Stakeholder consultations**

In line with Article 14(5) and Article 21(2) of Council Regulation (EU) no 1053/2013 Member States gave their positive opinion on the evaluation report in the Schengen Committee of 12 April 2018.

- **Collection and use of expertise**

n.a.

- **Impact assessment**

n.a.

- **Regulatory fitness and simplification**

n.a.

- **Fundamental rights**

The protection of fundamental rights when applying the Schengen acquis was taken into account during the evaluation process.

4. BUDGETARY IMPLICATIONS

n.a.

5. OTHER ELEMENTS

n.a.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EU) No 1053/2013 of 7 October 2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen acquis and repealing the Decision of the Executive Committee of 16 September 1998 setting up a Standing Committee on the evaluation and implementation of Schengen¹¹, and in particular Articles 1(1)(a) and 15 (3) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The purpose of this Decision is to recommend to the UK remedial actions to address the deficiencies identified during the Schengen evaluation in the field of the Schengen Information System (SIS) carried out in 2017. Following the evaluation, a report covering the findings and assessments, listing best practices and deficiencies identified during the evaluation, was adopted by Commission Implementing Decision C(2018) 2250 final.
- (2) Statistical reporting tools and the availability of detailed statistical reports on SIS data, as well as the peer review programme initiated by the Home Office consisting of visits (evaluations) to review how each force uses the SIS, are considered as best practice.
- (3) In light of the importance of complying with the Schengen acquis, priority should be given to implementing recommendations 1-25 below. It is important to remedy these very serious deficiencies immediately.
- (4) On 29 March 2017, the United Kingdom of Great Britain and Northern Ireland (the 'United Kingdom') submitted the notification of its intention to withdraw from the Union pursuant to Article 50 of the Treaty on the European Union (TEU). In accordance with Article 50(3) TEU, the Treaties cease to apply to the United Kingdom from the date of entry into force of a withdrawal agreement or, failing that, two years after that notification, unless the European Council, in agreement with the United Kingdom, unanimously decides to extend that period. After agreeing a first extension on 22 March 2019, and a second extension on 11 April 2019, the European Council

¹¹ OJ L 295, 6.11.2013, p. 27.

adopted Decision (EU) 2019/1810¹² on 29 October 2019, in which it agreed, following a further request by the United Kingdom, to extend the period provided for in Article 50(3) TEU until 31 January 2020.

- (5) In accordance with Article 50 TEU, the European Union negotiated with the United Kingdom an agreement setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union ('Withdrawal Agreement'). On 11 January 2019, the Council adopted Decision (EU) 2019/274 on the signing of the Withdrawal Agreement. Following further negotiations between the negotiators of the Union and of the United Kingdom during the months of September and October 2019, an agreement was reached on a revised text of the Withdrawal Agreement, which was endorsed by the European Council on 17 October 2019. On 21 October 2019, the Council adopted Decision (EU) 2019/1750 on the signing of the revised Withdrawal Agreement. Part Four of the Withdrawal Agreement provides for a transition period starting on the date of entry into force of the Withdrawal Agreement and ending on 31 December 2020. During the transition period, and unless the Withdrawal Agreement provides otherwise, Union law shall continue to apply to and in the United Kingdom.
- (6) This Decision shall apply only as long as Union law applies to and in the United Kingdom.
- (7) This Decision should be transmitted to the European Parliament and to the parliaments of the Member States. Within one month of its adoption, the UK should, pursuant to Article 16(1) of Regulation (EU) No 1053/2013, establish an action plan listing all recommendations to remedy any deficiencies identified in the evaluation report and provide that action plan to the Commission and the Council,

RECOMMENDS:

The United Kingdom should:

- (1) ensure that the provisions on equivalence of results and security of data are fully applied in respect of all its full and partial technical copies in accordance with Articles 9(2), 10(1) and Article 46(2)-(4) of Council Decision 2007/533/JHA¹³;
- (2) cease the unlawful copying of SIS data into the Warning Index (a database used by the UK Border Force at first- and second-line border checks) and ensure that the management of SIS data in this database complies with the provisions of Articles 10(1)(c) and 46 (2)-(4) of Council Decision 2007/533/JHA;
- (3) cease the unlawful copying of SIS data in the copy of the Warning Index stored onto back-up laptops;
- (4) ensure that the Warning Index in relation to SIS alerts displays the complete action to be taken, the type of offence, photographs, the existence of European Arrest

¹² European Council Decision (EU) 2019/1810 taken in agreement with the United Kingdom of 29 October 2019 extending the period under Article 50(3) TEU (OJ L 278I, 30.10.2019, p. 1).

¹³ Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II) (OJ L 205, 7.8.2007, p. 63).

Warrants and fingerprints, type of identity and aliases, links, misused identity extension, and all the warning markers;

- (5) fully synchronise all its full and partial technical copies and the Warning Index with the central SIS database (CS-SIS) in accordance with the provisions of Article 9(2), to be read in conjunction with Article 46(2), of Council Decision 2007/533/JHA, so that no alerts deleted by the issuing Member State would remain therein;
- (6) perform full data consistency checks on all its full and partial technical copies in accordance with the requirements of Article 9(2), to be read in conjunction with Article 46(2), of Council Decision 2007/533/JHA;
- (7) cease changing alerts issued under Article 36 of Council Decision 2007/533/JHA, with the ‘contact SIRENE immediately’ action, into discreet or specific check alerts without the action ‘contact SIRENE immediately’ in the Warning Index;
- (8) ensure that the Semaphore technical copy of SIS (application used to process advanced passenger data) contains all categories of SIS alerts, not only the non-flagged Article 26 alerts for arrest, in accordance with Article 9(2), to be read in conjunction with Article 46(2) and Article 40, of Council Decision 2007/533/JHA;
- (9) change national policies on systematic flagging of alerts for arrest (extradition requests) issued by the Schengen associated countries;
- (10) cease changing, in the Police National Computer (police information system) technical copy of SIS, all flagged alerts for arrest into alerts on persons sought to assist with a judicial procedure;
- (11) correctly apply the provisions of Article 24 of Council Decision 2007/533/JHA on flagging of alerts for arrest by waiting until the flag has been added by the SIRENE Bureau of the Member State that entered the alert;
- (12) introduce a procedure for its SIRENE Bureau to follow up and verify if the requested flag has been added to the alert by the issuing Member State in line with Article 24(1) of Council Decision 2007/533/JHA;
- (13) establish technical tools, mandatory procedures or guidelines for end-users to be able to attach photographs and fingerprints to SIS alerts when they are available, in accordance with the provisions of Article 20(3)(f) and Article 23(2) of Council Decision 2007/533/JHA;
- (14) make alerts for arrest immediately available to end-users without waiting for their validation by the SIRENE Bureau;
- (15) make alerts for discreet or specific checks with action ‘contact SIRENE immediately’, issued pursuant to Articles 36(2) and 36(3) of Council Decision 2007/533/JHA, immediately available to end-users without waiting for their validation by the SIRENE Bureau;
- (16) further develop the Police National Computer application to enable it to display binary data such as photographs as well as provide reference to the existence of European Arrest Warrants (EAW) and fingerprints;
- (17) further develop the Police National Computer application to enable it to display the misused identity extension;

- (18) fully synchronise the Police National Computer technical copy of SIS with the CS-SIS so that no alerts deleted by the issuing Member State would remain therein;
- (19) change the display of the alias data in the Police National Computer application so that the identity status does not remain as ‘confirmed by photograph, fingerprints or DNA’;
- (20) further develop the SIRENE case management system (CIMS) to enable it to display the photograph of the victim and the perpetrator of misused identity in all cases;
- (21) ensure that a back-up is available for the SIRENE SIS technical copy, since it is the only source of SIS biometric data for end-users;
- (22) take all the necessary measures to ensure that the objects subject to an Article 38 alert are systematically seized by UK officers, in accordance with Article 39 of Decision 2007/533/JHA and Appendix 2 of the SIRENE Manual¹⁴;
- (23) apply measures so that the information displayed on computer screens in first-line border controls at UK ports cannot be read by unauthorised parties, in accordance with Article 10 and Article 40 of Council Decision 2007/533/JHA;
- (24) introduce complex password requirements in the National Border Targeting Centre in line with the security measures set down in Article 10 of Council Decision 2007/533/JHA;
- (25) ensure that all categories of SIS alerts, in particular the alerts on lost/stolen/invalidated travel documents, and all alerts within any alert category are available at UK border crossing points, in accordance with Article 9(2), to be read in conjunction with Article 46(2) and Article 40, of Council Decision 2007/533/JHA;
- (26) improve the quality of information provided by the SIRENE Bureau to end-users, especially in cases of misused identity;
- (27) enhance the involvement of the SIRENE Bureau in SIS processes, such as by providing clear information to end-users and giving training to end-users on SIS-related matters;
- (28) enhance the involvement of the SIRENE Bureau in the peer review programme;
- (29) further develop the CIMS application to enable it to provide a sufficient level of automation in the management of the daily workflow, to search and retrieve cases with case names containing special characters, and to add and highlight the misused identity marker automatically;
- (30) provide all SIRENE operators with a special shortcut to enable them to perform searches for industrial equipment in the CIMS application;
- (31) further develop the Police National Computer application to enable it to provide for differentiation between Article 36(2) and 36(3) when displaying an alert, to make the

¹⁴ Commission Implementing Decision (EU) 2017/1528 of 31 August 2017 replacing the Annex to Implementing Decision 2013/115/EU on the SIRENE Manual and other implementing measures for the second generation Schengen Information System (SIS II) (notified under document C(2017) 5893) (OJ L 231, 07.09.2017, p6).

action 'contact SIRENE immediately' more prominently visible, to open the linked alert directly, and to highlight the links to person alerts;

- (32) further develop the Police National Computer application and change the mapping of the identity status 'confirmed by photograph, fingerprints or DNA' and align it with the concept of 'confirmed identity' in the SIS;
- (33) further improve the SIS hit-reporting procedure and avoid delays caused by the additional layer of information flow via the 24/7 intelligence units; in particular, it should be ensured that end-users can contact the SIRENE Bureau directly for alerts where action to be taken is 'contact SIRENE immediately';
- (34) provide more training to end-users on misused identity, linking functionality, possibility to retrieve pictures and other binary data from the SIRENE Bureau, new actions in the SIS such as 'contact SIRENE immediately' and invalidated documents.

Done at Brussels,

*For the Council
The President*