II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION
of 1 December 2000
on the application of the Schengen acquis in Denmark, Finland and Sweden, and in Iceland and Norway

(2000/777/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Protocol annexed to the Treaty on European Union and to the Treaty establishing the European Community, integrating the Schengen acquis into the framework of the European Union, and in particular Article 2(2) thereof,

Having regard to the Agreement concluded by the Council of the European Union, the Republic of Iceland and the Kingdom of Norway concerning the latters' association with the implementation, application, and development of the Schengen acquis [1] (hereinafter referred to as the 'Agreement of 18 May 1999'), which was signed on 18 May 1999 and entered into force on 26 June 2000, and in particular Article 15(4) thereof,

Whereas:

(1) Point 1 of the Final Act to the Convention Implementing the Schengen Agreement signed on 19 June 1990 and of the respective Final Acts to the Agreements on the accession, to that Convention, of the Kingdom of Denmark, the Republic of Finland and the Kingdom of Sweden, which were signed on 19 December 1996, contains a Joint Declaration on the entry into force of the instruments in question.

(2) The date on which the Schengen acquis will apply to Denmark, Finland and Sweden, and to Iceland and Norway (hereinafter referred to as 'the Nordic States') should be fixed.

(3) In order to be compatible with the Nordic passport union, that date will have to apply to all the Nordic States.

(4) Preparation of this Decision comprised the following stages. Firstly, a full questionnaire was forwarded to the Nordic States, whose replies were recorded. Then, verification and evaluation visits were made to all the Nordic States in accordance with the procedures applicable within the Council, in the areas of police cooperation and data protection. On 29 May 2000 the Council concluded that the conditions in these areas had been fulfilled. As regards the application of the Schengen acquis relating to visas and consular cooperation, the visits demonstrated that, except for some points which the Nordic States will undertake to deal with, the requirements relating to legislation, manpower levels, training, infrastructure and material resources had been satisfied.

(5) However, as regards the Schengen Information System (SIS), extension of which under the SIS 1 + project should be completed with test exercises demonstrating its ability to operate in 18 countries, visits to evaluate its functioning should be carried out before controls at the future internal borders are lifted.

(6) Evaluation visits in the context of controls and surveillance at the external borders have been carried out. They revealed that a positive record of progress achieved could be drawn up. Some gaps do, however, remain. It is therefore necessary to conduct further evaluation visits.

(7) The Nordic States have forwarded to the Council a list of their competent authorities referred to in Articles 101(4) and 108(1) of the Convention implementing the Schengen Agreement, signed on 19 June 1990. The Nordic States have satisfied the obligations of Article 114 of the said implementing Convention.

(8) To check that the SIS is functioning correctly in the Nordic States, the national section of the Schengen Information System (N.SIS) of the Nordic States should become fully operational (i.e. final users should be able to access real data in all 15 countries) as from 1 January 2001, before the abolition of internal border controls.

[1] OJ L 176, 10.7.1999, p. 36.

(9) The Council should ensure that an arrangement on criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in any of the Member States or in Iceland or Norway, as mentioned in Article 7 of the Agreement of 18 May 1999, is set up in due course.

(10) Unless the Council establishes, on conclusion of the evaluation visits to be carried out after 1 January 2001, that the SIS does not function correctly in one or more of the Nordic States, or that the ports and airports in those countries do not fulfil all the necessary requirements, the entire Schengen acquis will have to be applied with regard to these States as from 25 March 2001.

(11) The procedure referred to in Article 15(4) of the Agreement of 18 May 1999 has been observed,

HAS DECIDED AS FOLLOWS:

Article 1

As from 25 March 2001, and subject to Article 3(2):

(a) all the provisions of the Schengen acquis referred to in Annexes A, B, C and D to 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 Schengen acquis [1], and any act adopted by the Council establishing an instrument which has entered into force and constitutes a further development of one or more of these provisions, shall apply to Denmark, Finland and Sweden, in their relations between each other and with Belgium, Germany, Greece, Spain, France, Italy, Luxembourg, Netherlands, Austria and Portugal;

(b) all the provisions referred to in Annexes A and B to the Agreement of 18 May 1999 concluded by the Council of the European Union, the Republic of Iceland and the Kingdom of Norway concerning the latters' association with the implementation, application, and development of the Schengen acquis, and any act adopted by the Council establishing an instrument which has entered into force and constitutes a further development of one or more of these provisions, shall apply to Iceland and Norway, in their relations between each other and with Belgium, Denmark, Germany, Greece, Spain, France, Italy, Luxembourg, Netherlands, Austria, Portugal, Finland and Sweden.

[1] OJ L 176, 10.7.1999, p. 17.

Article 2

1. The provisions of the Schengen acquis relating to the SIS shall apply, according to the procedure referred to in Article 1, as from 1 January 2001. To this end, the SIS will be loaded with real data by the Nordic States which, like the Member States in respect of which the Schengen acquis has already been implemented, will be able to use such data, subject to the provisions of paragraph 3. This application shall not hinder cooperation within the Nordic passport union.

2. The provisions referred to in the first paragraph shall be set out in the Annex.

3. Until the date mentioned in Article 1, the Nordic States:

(a) shall not be obliged to refuse entry to their territory or to expel nationals of third States for whom an SIS alert has been issued by another Member State for the purposes of refusing entry and who come direct from a Member State in respect of which the Schengen acquis provisions already apply;

(b) may admit to their territory nationals of third States for whom an SIS alert has been issued by another Member State for the purposes of refusing entry, where a Nordic State has decided to grant a visa or another residence permit to such nationals;

(c) shall refrain from entering the data covered by Article 96 of the Convention implementing the Schengen Agreement.

Article 3

1. During January and February 2001, evaluation visits shall be carried out in all the Nordic States in accordance with the procedures applicable within the Council for this purpose, in order to check whether the SIS functions and is applied there correctly.

During this same period, additional evaluation visits shall be carried out at the Danish and Norwegian ports and at the airports of all the Nordic States to ascertain whether these ports and airports fulfil the necessary requirements.

The reports on these visits shall be submitted to the Council by 1 March 2001.

2. On the basis of these reports, the Council, acting by a qualified majority of its members representing the Governments of the Member States referred to in Article 1 of the Protocol integrating the Schengen acquis into the framework of the European Union, and with the vote of at least 10 of these members, may decide to defer the date mentioned in Article 1. In that case, a new date shall be set by the Council, acting by unanimity of its members representing the Governments of the Member States referred to in Article 1 of the said Protocol.

Article 4

This Decision shall enter into force on the date of its publication.

Done at Brussels, 1 December 2000.

For the Council
The President
C. PAUL

ANNEX

The provisions referred to in Article 2 are as follows:

— Articles 62, 64, 65 and 92 to 119 of the 1990 Convention implementing the 1985 Schengen Agreement, as supplemented by the Accession Agreements of Italy, Spain, Portugal, Greece, Austria, Denmark, Finland and Sweden,

— Decision of the Executive Committee of 14 December 1993 on the Financial Regulation on the costs of installing and operating the Schengen Information System (C.SIS) (SCH/Com-ex(93) 16),

— Decision of the Executive Committee of 25 April 1997 on awarding the contract for the SIS II Preliminary Study (SCH/Com-ex(97) 2 rev. 2),

— Decision of the Executive Committee of 7 October 1997 on contributions from Norway and Iceland to the costs of installing and operating of the C.SIS (SCH/Com-ex(97) 18),

— Decision of the Executive Committee of 7 October 1997 on the development of the SIS (SCH/Com-ex(97) 24),

— Decision of the Executive Committee of 15 December 1997 amending the Financial Regulation on C.SIS (SCH/Com-ex(97) 35),

— Decision of the Executive Committee of 21 April 1998 on C.SIS with 15/18 connections (SCH/Com-ex(98) 11),

— Decision of the Executive Committee of 28 April 1999 on the Help Desk budget for 1999 (SCH/Com-ex(99) 3),

— Decision of the Executive Committee of 28 April 1999 on C.SIS installation expenditure (SCH/Com-ex(99) 4),

— Decision of the Executive Committee of 28 April 1999 on adopting the SIRENE Manual (SCH/Com-ex(99) 5),

— Declaration of the Executive Committee of 18 April 1996 defining the concept of alien (SCH/Com-ex(96) decl. 5),

— Declaration of the Executive Committee of 28 April 1999 on the structure of SIS (SCH/Com-ex(99) decl. 2 rev),

as well as:

— Decision of the Executive Committee of 23 June 1998 concerning the confidential nature of certain documents (SCH/Com-ex(98) 17), insofar as such documents relate to provisions referred to above,

— Decision of the Executive Committee of 23 June 1998 on a catch-all clause to cover the whole technical Schengen acquis (SCH/Com-ex(98) 29 rev),

— Declaration of the Executive Committee of 9 February 1998 on the abduction of minors (SCH/Com-ex(97) decl. 13 rev 2),

— Council Decision 1999/323/EC of 3 May 1999 on the establishment of a Financial Regulation governing the budgetary aspects of the management by the Secretary-General of the Council, of contracts concluded in his name, on behalf of certain Member States, relating to the installation and the functioning of the 'Helpdesk Server' of the Management Unit and of the Sirene Network Phase II,

— Council Decision 2000/265/EC of 27 March 2000 on the establishment of a Financial Regulation governing the budgetary aspects of the management by the Deputy Secretary-General of the Council, of contracts concluded in his name, on behalf of certain Member States, relating to the installation and the functioning of the communication infrastructure for the Schengen environment, 'Sisnet', as amended by Council Decision 2000/664/EC of 23 October 2000.

Statement by the Council, meeting on 30 November and 1 December 2000 in Brussels

The provisions of Article 3(2) of the draft Council Decision on the application of the Schengen acquis in Denmark, Finland and Sweden, and in Iceland and Norway, do not imply any derogation from the rule whereby the application of the Schengen acquis in new Member States takes place under the conditions and on the dates set by the Council acting by unanimity of its members.

Swedish declaration

Sweden confirms its obligation to apply the entire Schengen acquis. The Swedish Government has therefore commissioned a Committee of Inquiry to review existing legislation concerning carrier liability in order to comply with the provision of Article 26.2 of the Schengen Convention.

The Government undertakes to present a proposal to the Parliament based on the findings of the Committee and sets as an objective the adoption of new legislation before July 2002.

The Government will also regularly inform the Council about its undertakings in this regard.
