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COUNCIL DECISION

of 6 December 2001

on the development of the second generation Schengen Information System (SIS II)

(2001/886/JHA)

(OJ L 328, 13.12.2001, p. 1)

Amended by:

		Official Journal		
		No	page	date
►**M1**	Council Decision 2006/1007/JHA of 21 December 2006	L 411	78	30.12.2006

Corrected by:

►**C1** Corrigendum, OJ L 027, 2.2.2007, p. 43 (2006/1007/JHA)

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COUNCIL DECISION

of 6 December 2001

on the development of the second generation Schengen Information System (SIS II)

(2001/886/JHA)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 30(1)(a) and (b), Article 31(a) and (b) and Article 34(2)(c) 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 Decision constitutes, together with Council Regulation (EC) No 2424/2001 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 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 and a Council Regulation based on Article 66 (…) of the Treaty establishing the European Community. 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

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[1] OJ C 183, 29.6.2001, p. 14.
[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 4 of this Official Journal.

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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 Decision 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, interlinking of alerts and compatibility between alerts, rules on access to SIS data and rules on the protection of personal data and their control.

(8) This Decision sets out procedures for the taking of measures necessary for its implementation which mirror the relevant provisions of Regulation (EC) No 2424/2001, so as to ensure that there will be one single implementing process for the development of SIS II as a whole.

(9) This Decision 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 ([1]) and Article 8(2) of Council Decision 2000/365/EC 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 ([2]).

(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.

(11) This Decision is 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,

HAS DECIDED AS FOLLOWS:

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.

([1]) OJ L 176, 10.7.1999, p. 31.
([2]) OJ L 131, 1.6.2000, p. 43.

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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 Decision. ►M1 ►C1 The development comprises the preparation of technical integration into SIS II, in particular of the Member States which have acceded to the European Union in 2004. ◄ ◄

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 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 6:

(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.

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Article 4A

1. Without prejudice to the Commission's responsibility for the development of SIS II, the central unit of SIS II shall be located in Strasbourg (France) and the back-up central unit in Sankt Johann im Pongau (Austria) during the development of the system.

2. France and Austria shall provide the appropriate infrastructure and means to host the central unit and the back-up central unit of SIS II respectively during the development of the system.

3. The national authority providing for the infrastructure and means referred to in paragraph 2 may receive a Community grant for the preparation and maintenance of the site or for providing other services necessary for hosting SIS II during its development.

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Article 5

1. Where reference is made to this Article, the Commission shall be assisted by a management committee composed of the representatives of the Member States and chaired by the representative of the Commission.

2. The committee shall adopt its rules of procedure on a proposal by the chair on the basis of standard rules of procedure which have been published in the *Official Journal of the European Communities*.

3. The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft, within a time-limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 205(2) of the Treaty establishing the European Community, in the case of decisions which the Council is required to adopt on a proposal from the Commission.

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The votes of the representatives of the Member States within the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

4. The Commission shall adopt measures which shall apply immediately. However, if these measures are not in accordance with the opinion of the committee, they shall be communicated by the Commission to the Council forthwith. In that event, the Commission may defer application of the measures which it has decided on for a period of two months from the date of such communication.

5. The Council, acting by qualified majority, may take a different decision within the period provided for by paragraph 4.

Article 6

1. Where reference is made to this Article, the Commission shall be assisted by a regulatory committee composed of the representatives of the Member States and chaired by the representative of the Commission.

2. The committee shall adopt its rules of procedure on a proposal by the chair on the basis of standard rules of procedure which have been published in the *Official Journal of the European Communities*.

3. The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time-limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 205(2) of the Treaty establishing the European Community, in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

4. The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the committee.

5. If the measures envisaged are not in accordance with the opinion of the committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken and shall inform the European Parliament.

6. The Council may act by qualified majority on the proposal, within two months from the date of referral to the Council.

If within that period the Council has indicated by qualified majority that it opposes the proposal, the Commission shall re-examine it. It may submit an amended proposal to the Council, re-submit its proposal or present a legislative proposal.

If on the expiry of that period the Council has neither adopted the proposed implementing act nor indicated its opposition to the proposal for implementing measures, the proposed implementing act shall be adopted by the Commission.

Article 7

This Decision shall take effect on the day following that of its publication in the Official Journal.

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It shall expire on 31 December 2008.