



**COUNCIL OF
THE EUROPEAN UNION**

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NOTE

from : General Secretariat of the Council
to : COREPER / Mixed Committee

Subject: Draft Council Decision 2013/XXX/EU of XX XXX 2013 fixing the date of application of Decision 2007/533/JHA on the establishment, operation and use of the second generation Schengen Information System (SIS II)
COMMON GUIDELINES
Consultation deadline for Croatia: 6.3.2013

**Draft Council Decision 2013/XXX/EU
of XX XXX 2013**

fixing the date of application of Decision 2007/533/JHA on the establishment, operation and use of the second generation Schengen Information System (SIS II)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II), and in particular Article 71(2) thereof,

Whereas:

- (1) Article 71(2) of Decision 2007/533/JHA¹ specifies that Decision 2007/533/JHA shall apply to the Member States participating in SIS 1+ from a date to be fixed by the Council, acting by the unanimity of its Members representing the Governments of the Member States participating in SIS 1+.
- (2) Article 3, second paragraph, of Regulation (EC) No 1986/2006² specifies that this Regulation shall apply from the date set in accordance with Article 71(2) of Decision 2007/533/JHA³.
- (3) In accordance with Article 11(3) of Council Regulation (UE) No 1272/2012 the switchover into SIS II will start on the date fixed by the Council acting in accordance with Article 71(2) of Decision 2007/533/JHA.
- (4) In accordance with Article 71(3)(a) of Decision 2007/533/JHA⁴, the Commission adopted two Decisions with the necessary implementing measures. Those decisions are Commission Implementing Decision C(2013)1043⁵ of XX XXXX 2013 adopting the SIRENE Manual and other implementing measures for the second generation Schengen Information System (SIS II)⁶ and Commission Decision 2010/261/EU of 4 May 2010 on the Security Plan for Central SIS II and the Communication Infrastructure⁷.
- (5) In accordance with Article 71(3)(b) of Decision 2007/533/JHA⁸, the Commission has informed the Council that all Member States fully participating in SIS 1+ have notified it that they have made the necessary technical and legal arrangements to process SIS II data and exchange supplementary information.
- (6) In accordance with Article 71(3)(c) of Decision 2007/533/JHA⁹, the Commission has declared the successful completion of a comprehensive test of SIS II, which was conducted by the Commission together with the Member States, and the relevant preparatory bodies of the Council validated on 6 February 2013 the proposed test result and confirmed that the level of performance of SIS II is at least equivalent to that achieved with SIS 1+.

¹ OJ L 205, 7.8.2007, p. 63.

² OJ L 381, 28.12.2006, p. 1.

³ OJ L 205, 7.8.2007, p. 63.

⁴ OJ L 205, 7.8.2007, p. 63.

⁵ To be replaced by the definitive reference in the OJ.

⁶ OJ L XXX, X.X.2013, p. XX.

⁷ OJ L 112, 5.5.2010, p. 31.

⁸ OJ L 205, 7.8.2007, p. 63.

⁹ OJ L 205, 7.8.2007, p. 63.

- (7) In accordance with Article 71(3)(d) of Decision 2007/533/JHA¹⁰, the Commission has informed the Council that it has made the necessary technical arrangements for allowing Central SIS II to be connected to N.SIS II of the Member States concerned.
- (8) In accordance with Article 9(1) and (5) of Council Regulation (EU) No 1272/2012 on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II) (recast)¹¹ the Member States participating in SIS 1+ have successfully completed functional SIRENE tests and the relevant preparatory body of the Council has validated their results on 15 February 2013.
- (9) The conditions laid down by Article 71(3) of Decision 2007/533/JHA thus being fulfilled, it is for the Council to determine the date from which the SIS II shall apply to the Member States participating in the SIS 1+.
- (10) In view of the need to fix the date of the entry into operations of SIS II in the very near future, this Decision should enter into force on the day of its publication in the Official Journal of the European Union.
- (11) As regards Iceland and Norway, this Decision constitutes a development of the 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 latter's association with the implementation, application and development of the Schengen acquis¹² which fall within the area referred to in Article 1, point G, of Council Decision 1999/437/EC¹³ on certain arrangements for the application of that Agreement.
- (12) As regards Switzerland, this Decision constitutes a development of the provisions of the Schengen acquis within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis¹⁴ which fall within the area referred to in Article 1, point G, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC¹⁵.

¹⁰ OJ L 205, 7.8.2007, p. 63.

¹¹ OJ L 359, 29.12.2012, p. 21.

¹² OJ L 176, 10.7.1999, p. 36.

¹³ OJ L 176, 10.7.1999, p. 31.

¹⁴ OJ L 53, 27.2.2008, p. 52.

¹⁵ OJ L 53, 27.2.2008, p. 1.

- (13) As regards Liechtenstein, this Decision constitutes a development of the provisions of the Schengen acquis within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis¹⁶ which fall within the area referred to in Article 1, point G, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU¹⁷.
- (14) In accordance with Articles 1 and 2 of Protocol (No 22) on the position of Denmark, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application. Given that this Decision builds upon the Schengen acquis, Denmark shall, in accordance with Article 4 of that Protocol, decide within a period of six months after the Council has decided on this Decision whether it will implement it in its national law.
- (15) The United Kingdom is taking part in this Decision, in accordance with Article 5(1) of the Protocol (No 19) on the Schengen acquis integrated into the framework of the European Union, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and Article 8(2) of 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 acquis¹⁸.
- (16) Ireland is taking part in this Decision, in accordance with Article 5(1) of the Protocol (No 19) on the Schengen acquis integrated into the framework of the European Union, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and Article 6(2) of Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen acquis¹⁹.
- (17) This Decision is without prejudice to the arrangements for the partial participation of Ireland and the United Kingdom in the Schengen acquis as determined by Decisions 2000/365/EC and 2002/192/EC respectively.

¹⁶ OJ L 160, 18.6.2011, p. 21.

¹⁷ OJ L 160, 18.6.2011, p. 19.

¹⁸ OJ L 131, 1.6.2000, p. 43.

¹⁹ OJ L 64, 7.3.2002, p. 20.

(18) As regards Cyprus, this Decision constitutes an act building upon, or otherwise related to, the Schengen acquis within the meaning of Article 3(2) of the 2003 Act of Accession,

HAS DECIDED AS FOLLOWS:

Article 1

Decision 2007/533/JHA shall apply to the Member States participating in the SIS 1+ from 9 April 2013.

Article 2

This Decision shall enter into force on the day of its publication in the Official Journal of the European Union.

Done at Brussels, on XX XXXXXXX 2013.

For the Council,

The President
