



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 16 July 2012

11797/12

**SIRIS 50
VISA 135
EURODAC 9
SCHENGEN 53
AELE 47
EEE 87
OC 370**

"I/A" ITEM NOTE

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

No. prev. doc.: 7459/12 SIRIS 13 VISA 61 EURODAC 1 SCHENGEN 21 AELE 14 EEE 18
RESTREINT UE
10661/12 JUR 309 SCHENGEN 42
11796/1/12 REV 1 SIRIS 49 VISA 134 EURODAC 8 SCHENGEN 52 AELE 46
EEE 86 OC 369
11796/1/12 REV 1 SIRIS 49 VISA 134 EURODAC 8 SCHENGEN 52 AELE 46
EEE 86 OC 369 ADD 1 RESTREINT UE

Subject: Council Decision authorising the opening of negotiations on an arrangement between the European Union, on the one part, and the Republic of Iceland, the Kingdom of Norway, the Swiss Confederation and the Principality of Liechtenstein, on the other part, on the modalities of the participation by those States in the European Agency for the operational management of large-scale information systems in the area of freedom, security and justice
COMMON GUIDELINES
Consultation deadline: 17 July 2012

1. On 29 February 2012, the Commission submitted to the Council a recommendation for a Council Decision, as set out in 7459/12.

2. The proposal was discussed at JHA Counsellors level on 27 April 2012 and 1 June 2012 and on 31 May 2012, the Council Legal Service issued a Legal Opinion (10661/12) on the participation of associated countries in the decision-making of the IT Agency.
3. As a result of these discussions, and taking into account the Opinion of the Legal Service, several modifications were made to the text of the Recommendation for a Council Decision, namely:
 - as regards the content of the arrangement in the Negotiating Directives, in order to grant the associated countries limited voting rights on decisions of an operational and technical nature and on opinions of Advisory Groups concerning information systems in which the associated countries participate, excluding regulatory decisions of the Agency,
 - the participation of Denmark, Ireland and the United Kingdom in the adoption of the Decision, based on the assumption that the correct participation of those States should be reflected already at the stage of the adoption of the negotiating mandate, and
 - the addition of the substantive legal basis for the adoption of the Council Decision.The Council Decision is set out in 11796/1/12 REV 1 and the Negotiating Directives in 11796/1/12 REV 1 ADD 1 RESTREINT UE.
4. COREPER considered certain outstanding questions at its meeting on 14 June 2012 and reached agreement on the text of the recommendation for a Council Decision, as set out in 11249/12. The text has undergone the necessary scrutiny by the lawyers-linguists.
5. The Commission and the United Kingdom made the statements as set out in the Annexes, which will be inserted in the minutes of the Council meeting at which his Decision is adopted.
6. **COREPER is therefore requested to confirm the agreement on the Decision as set out in 11796/1/12 REV 1 + ADD 1, and to invite the Council to adopt it as an "A" item on the agenda of a forthcoming Council meeting.**

Commission declarations

Voting rights

The Commission continues to take the view that the principle of institutional autonomy prevents third countries (including associated countries) from being granted voting rights in the IT Agency. Accordingly, the Commission maintains its position on this issue, and expressly reserves its right to submit to the Court of Justice before the signature of the envisaged arrangement between the EU and the associated countries on the modalities of their participation in the Agency, a request for an opinion in accordance with Article 218(11) TFEU.

Legal bases

The Commission does not consider it necessary that a Council Decision authorising the opening of negotiations indicates a substantive legal basis. Authorisations for negotiations should only refer to Article 218(3) and (4) of the TFEU, as proposed by the Commission.

United Kingdom declaration

The United Kingdom supports this recommendation for a Negotiating Mandate to authorise the Commission to open negotiations for the conclusion of arrangements between the European Union, on the one part, and the Republic of Iceland, the Kingdom of Norway, the Swiss Confederation and the Principality of Liechtenstein, on the other part, on the modalities of the participation by those States in the European Agency for the operational management of large-scale information systems in the area of freedom, security and justice (“the IT Agency”). Regulation No 1077/2011 establishing the IT Agency was a measure brought forward under Title V of the Treaty on the Functioning of the European Union and the UK’s participation in that Regulation was governed by the application of Protocols No 19 (Schengen Acquis) and No 21 (on the position of the UK and Ireland in respect of the area of Freedom, Security and Justice) annexed to the TEU and TFEU. Therefore, insofar as any Union Agreement with the relevant States on their participation in the IT Agency includes provisions relating to Eurodac they will only bind the United Kingdom as part of the Union when the UK has notified their wish to participate in the relevant Council Decision for a negotiating mandate in accordance with Protocol No 21. The UK notified its intention to opt into these provisions by way of a letter to the President of the Council dated 11 June 2012.

If, as we hope, the negotiations authorised by this Mandate are successful, the Council Decisions authorising signature and conclusion of the Agreement or Agreements with the States concerned will also engage Protocols 19 and 21, and will therefore only bind the UK if we choose to participate. We call upon the Commission to take this into account when discharging its duties as the Union’s negotiator and when proposing the Decisions to sign and conclude.
