



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 8 October 2012

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**EURODAC 27
SIRIS 82
VISA 182
COMIX 535**

NOTE

from: Presidency
to: JHA Counsellors

Subject: Draft Council Decision concerning the request of Ireland to take part in some of the provisions of the Schengen acquis relating to the establishment of a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to Article 4 of 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 (hereinafter "the Schengen Protocol"),

Having regard to the request by the Government of Ireland, by its letter to the President of the Council of 14 March 2012, to participate in certain provisions of the Schengen acquis, as specified in that letter,

Whereas:

(1) By Decision 2002/192/EC¹ the Council authorised Ireland to take part in some of the provisions of the Schengen acquis, in accordance with the conditions set out in that Decision.

(2) On 25 October 2011 the European Parliament and the Council adopted Regulation (EU) No 1077/2011² establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice.

(3) According to Regulation No 1077/2011, the Agency is responsible for the operational management of the second generation Schengen Information System (SIS II), the Visa Information System (VIS) and Eurodac and it may be made responsible for the preparation, development and operational management of other large-scale IT systems in the area of freedom, security and justice, on the basis of a relevant legislative instrument, based on Title V of Part three of the Treaty on the Functioning of the European Union.

(4) The Agency has a single legal personality and is characterised by the unity of its organisational and financial structure. To this end, and in accordance with Article 288 of the Treaty on the Functioning of the European Union, the Agency was established by means of a single legislative instrument which is applicable in its entirety in the Member States bound by it. This excludes the possibility of partial applicability of Regulation 1077/2011 for Ireland. Consequently, necessary steps should be made to ensure that Regulation 1077/2011 is applicable to Ireland in its entirety.

(5) SIS II is part of the Schengen acquis. Regulation (EC) No 1987/2006 of the European Parliament and of the Council³ and Council Decision 2007/533/JHA⁴ govern the establishment, operation and use of SIS II. However, Ireland has only taken part in the adoption of Decision 2007/533/JHA which develops the provisions of the Schengen acquis referred to in Article 1(a)(ii) of Decision 2002/192/EC.

¹ OJ L 64, 7.3.2002, p. 20.

² OJ L 286, 1.11.2011, p. 1.

³ OJ L 381, 28.12.2006, p. 4.

⁴ OJ L 205, 7.8.2007 p. 63

(6) VIS is also part of the Schengen acquis. Ireland did not take part in the adoption of, and is not bound by Decision 2004/512/EC⁵, Regulation (EC) No 767/2008⁶ and Decision 2008/633/JHA⁷ which govern the establishment, operation or use of VIS.

(7) Eurodac is not part of the Schengen acquis. Ireland has taken part in the adoption of, and is bound by Regulation (EC) No 2725/2000⁸ which governs the establishment, operation and use of Eurodac. However, insofar as the provisions of Regulation (EU) No 1077/2011 relate to Eurodac, in accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union (hereinafter referred to as Protocol No 21) Ireland did not take part in the adoption of Regulation (EU) No 1077/2011 and is therefore not bound by it nor subject to its application.

(8) In accordance with Article 4 of Protocol No 21, Ireland notified the Commission and the Council by letters of 14 March 2012, of its intention to accept the provisions of Regulation (EU) No 1077/2011 relating to Eurodac.

(9) In accordance with the procedure provided for in art 331(1) of the Treaty, the Commission confirmed by Commission Decision C(2012) 4881 of 18.7.2012, the application to Ireland of Regulation 1077/2011 insofar as its provisions relate to Eurodac. This Decision provides that Regulation 1077/2011 should come into force for Ireland on the date of entry into force of the Council Decision concerning the request of Ireland to take part in the provisions of Regulation 1077/2011 relating to the second generation Schengen Information System as governed by (EC) Regulation No 1987/2006 and to the Visa Information System.

⁵ Council Decision 2004/512/EC of 8 June 2004 establishing the Visa Information System (VIS) (OJ L 213, 15.6.2004, p. 5).

⁶ Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation) (OJ L 218, 13.8.2008, p. 60).

⁷ Council Decision 2008/633/JHA of 23 June 2008 concerning access for consultation of the Visa Information System (VIS) by designated authorities of Member States and by Europol for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences (OJ L 218, 13.8.2008, p. 129).

⁸ Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of the Dublin Convention (OJ L 316, 15.12.2000, p. 1).

(10) Given that following the adoption of Commission Decision C(2012) 4881, the first precondition for the participation of Ireland in Eurodac related provisions of Regulation 1077/2011 is fulfilled, and, given its partial participation in SIS II related provisions, Ireland has the right to participate in the activities of the Agency, to the extent that the Agency is responsible for the operational management of SIS II as governed by Decision 2007/533/JHA, and Eurodac.

(11) In order to ensure compliance with the Treaties and the applicable Protocols, and at the same time to safeguard the unity and consistency of Regulation (EU) No 1077/2011, Ireland has requested, by letter of 14 March 2012, to take part in the Regulation 1077/2011 under Article 4 of the Schengen Protocol to the extent that the Agency is responsible for the operational management of SIS II as governed by Regulation (EC) No 1987/2006 and of VIS.

(12) The Council recognizes the right of Ireland to make, in accordance with Article 4 of the Schengen Protocol, a request for participation in the proposed Regulation, to the extent that Ireland does not participate in the Regulation (EU) No 1077/2011 on other grounds.

(13) Participation of Ireland in Regulation 1077/2011 is without prejudice to the fact that at present the Ireland does not and cannot participate in the provisions of the Schengen acquis relating to the free movement of third country nationals, visa policy and the crossing by persons of the external borders of the Member States. Regulation 1077/2011 contains therefore specific provisions reflecting this special position of Ireland, in particular as regards limited voting rights in the Management Board of the Agency.

(14) The Mixed Committee, established pursuant to Article 3 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 acquis⁹, has been informed about the preparation of this Decision in accordance with Article 5 of that Agreement.

⁹ OJ L 176, 10.7.1999, p. 36.

(15) The Mixed Committee, established pursuant to Article 3 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 acquis¹⁰, has been informed about the preparation of this Decision in accordance with Article 5 of that Agreement,

HAS ADOPTED THIS DECISION:

Article 1

Further to Council Decision 2002/192/EC, Ireland shall take part in Regulation (EU) No 1077/2011 of the European Parliament and of the Council establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice to the extent that it relates to the operational management of the Visa Information System (VIS) and the parts of the second generation Schengen Information System (SIS II), in which Ireland does not participate.

Article 2

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

Done at Brussels, Xx Xx 2012.

For the Council
The President,

¹⁰ OJ L 53, 27.2.2008, p. 52.