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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Delegations will find attached document COM(2017) 17 final.

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Proposal for a

COUNCIL DECISION

**on the application of the provisions of the Schengen acquis in the area of the Schengen
Information System in the Republic of Croatia**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

In line with Article 4(2) of Croatia's Act of Accession to the European Union¹ certain provisions of the Schengen *acquis* are already applicable in Croatia from the date of accession, while other provisions only apply pursuant to a Council Decision to that effect after verification that the necessary conditions for the application of all parts of that *acquis* have been met. This verification is done in accordance with the relevant Schengen evaluation procedures.

Council Regulation (EU) No 1053/2013, establishing an evaluation and monitoring mechanism to verify the application of the Schengen *acquis*², provides for these Schengen evaluation procedures. In line with the Regulation, the Commission has established a multiannual evaluation programme 2014 - 2019³ and an annual evaluation programme for 2016 providing for the evaluation of Croatia.

The Schengen evaluation in the area of the Schengen Information System (SIS) can only take place when the SIS has been put into operation in Croatia. Therefore, it is required that the Council adopts a Decision on putting into effect the provisions of the Schengen *acquis* in the area of SIS in Croatia.

The Council is only able to take such Decision after Croatia has made the necessary technical and legal arrangements, including relating to data protection, to process SIS data and exchange supplementary information. Accordingly, a Schengen evaluation to verify the level of data protection in Croatia was carried out in February 2016. Following the positive opinion of the Schengen Committee⁴ on 6 October 2016, the Commission adopted, by means of Commission Implementing Decision⁵, the evaluation report confirming that a satisfactory level of data protection is met.

In addition, on 5 September 2016 the SIS II Advisory Group⁶, based on the results from the Test Summary Report (2016-093)⁷ produced by European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (eu-LISA),

¹ OJ L 112, 24.2.2012, p. 21.

² OJ L 295, 6.11.2013, p. 27.

³ Commission Implementing Decision C(2014)3683 of 18 June 2014 establishing the multi-annual evaluation programme 2014 - 2019 in accordance with Article 5 of the Council Regulation (EU) No 1053/2013 of 7 October 2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen *acquis*, amended by Commission Implementing Decision C(2015) 4827 of 23 July 2015.

⁴ Committee established by Article 21 of Council Regulation (EU) No 1053/2013.

⁵ C(2016) 6870.

⁶ The SIS II Advisory Group was set up to provide the Management Board of the European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (eu-LISA) with expertise relating to the SIS II central system. The Advisory Group comprises Member State representatives and the Commission. The procedures for the operation and cooperation of the Advisory Groups are laid down by the Management Board in eu-LISA's rules of procedure.

⁷ Those tests were carried out in accordance with Article 1(1) of Commission Implementing Decision (EU) 2015/450 of 16 March 2015 laying down test requirements for Member States integrating into the second generation Schengen Information System (SIS II) or changing substantially their directly related national systems (notified under document C(2015) 1612).

confirmed that from a technical point of view the Croatian national system (N.SIS) is ready to integrate into the SIS and its national system is “Fit for Purpose”. On 15 September 2016, the SIS II Committee⁸ endorsed the same test report, confirming that Croatia has met the technical conditions for putting the SIS in operation.

It is therefore now possible for the Council to set the date from which the Schengen acquis in the area of the SIS shall apply in Croatia. The entry into force of this Decision should allow for SIS data to be transferred to Croatia. The use of these data in Croatia should allow the Commission to verify, in accordance with the Schengen evaluation procedures, that the provisions concerning the SIS are being applied correctly.

Certain restrictions on the use of SIS in Croatia will be imposed until the Council has decided on the full application of the Schengen acquis in Croatia and on the lifting of checks at internal borders. Such Decision shall only be taken when it has been verified that the necessary conditions for the application of all parts of the relevant acquis have been met in Croatia in accordance with Article 4(2) of the Act of Accession.

- **Consistency with existing policy provisions in the policy area**

This proposal seeks to put into effect the existing provisions in the area of the SIS in Croatia.

- **Consistency with other Union policies**

This proposal has links with the provisions of the Schengen acquis in the area of data protection and police cooperation.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Article 4(2) of Croatia's Act of Accession to the European Union.

- **Subsidiarity (for non-exclusive competence)**

Article 4(2) of the 2012 Act of Accession stipulates that the provisions of the Schengen acquis not referred to in Article 4(1) of that Act, shall only apply in Croatia pursuant to a Council decision to that effect.

⁸ The Committee set up in accordance with Article 67 of Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II) (OJ L 205, 7.8.2007, p. 63) and Article 51 of Regulation (EC) No 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II) (OJ L 381, 28.12.2006, p. 4).

- **Proportionality**

Article 15(2) of Council Regulation (EU) No 1053/2013 mirrors the specific powers of the Council in the field of mutual evaluation of the implementation of Union policies within the area of freedom, security and justice.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

n.a.

- **Stakeholder consultations**

In line with Article 14(5) and Article 21(2) of Council Regulation (EU) no 1053/2013 Member States gave their positive opinion on the evaluation report in the area of data protection in the Schengen Committee of 6 September 2016.

- **Collection and use of expertise**

n.a.

- **Impact assessment**

n.a.

- **Regulatory fitness and simplification**

n.a.

- **Fundamental rights**

The protection of fundamental rights when applying the Schengen acquis is taken into account during the Schengen evaluation process.

4. BUDGETARY IMPLICATIONS

n.a.

5. OTHER ELEMENTS

n.a.

Proposal for a

COUNCIL DECISION

on the application of the provisions of the Schengen acquis in the area of the Schengen Information System in the Republic of Croatia

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Act of Accession of Croatia¹, and in particular Article 4(2) thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Parliament²,

Whereas:

- (1) Article 4(2) of the Act of Accession of Croatia provides that the provisions of the Schengen acquis not referred to in Article 4(1) of that Act, shall only apply in Croatia pursuant to a Council decision to that effect, after verification, in accordance with the applicable Schengen evaluation procedures, that the necessary conditions for the application of all parts of the relevant acquis have been met in Croatia, including the effective application of all Schengen rules in accordance with the agreed common standards and with fundamental principles.
- (2) The applicable Schengen evaluation procedures are set out in Council Regulation (EU) No 1053/2013³.
- (3) The Schengen evaluation in the area of data protection was carried out in Croatia in February 2016. The Commission adopted, by means of a Commission Implementing Decision⁴, the evaluation report confirming that the necessary conditions for the application of the Schengen acquis in the area of data protection are met in Croatia.
- (4) In accordance with Article 1(1) of Commission Implementing Decision (EU) 2015/450⁵ it has been verified that from a technical point of view the Croatian national system (N.SIS) is ready to integrate into the Schengen Information System ('SIS').

¹ OJ L 112, 24.2.2012, p. 21.

² OJ C , , p. .

³ Council Regulation (EU) No 1053/2013 of 7 October 2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen acquis and repealing the Decision of the Executive Committee of 16 September 1998 setting up a Standing Committee on the evaluation and implementation of Schengen (OJ L 295, 6.11.2013, p. 27.)

⁴ C(2016) 6870.

⁵ Commission Implementing Decision (EU) 2015/450 of 16 March 2015 laying down test requirements for Member States integrating into the second generation Schengen Information System (SIS II) or changing substantially their directly related national systems, notified under document C(2015) 1612.

- (5) The necessary technical and legal arrangements to process SIS data and exchange supplementary information thus being made by Croatia, it is now possible for the Council to set the date from which the Schengen acquis in the area of the SIS shall apply in Croatia.
- (6) The entry into force of this Decision should allow for SIS data to be transferred to Croatia. The concrete use of these data should allow the Commission to verify the correct application of the provisions of the Schengen acquis in the area of the SIS in Croatia. Once it has been verified that the necessary conditions for the application of all parts of the Schengen acquis have been met in Croatia, the Council should decide on the lifting of checks at the internal borders.
- (7) A separate Council Decision should be adopted setting a date for the lifting of checks at internal borders with Croatia. Until the date set out in that Decision, certain restrictions on the use of the SIS in Croatia should be imposed.
- (8) 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 acquis⁶ which fall within the area referred to in Article 1, point G of Council Decision 1999/437/EC.⁷
- (9) As regards Switzerland, this Decision constitutes a development of the provisions of the Schengen acquis within the meaning of the Agreement signed 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 acquis⁸, which falls within the area referred to in Article 1, point G of Council Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC⁹ and with Article 3 of Council Decision 2008/149/JHA¹⁰.
- (10) 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 acquis¹¹, which fall within the area referred to in Article

⁶ OJ L 176, 10.7.1999, p. 36.

⁷ 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 (OJ L 176, 10.7.1999, p. 31).

⁸ OJ L 53, 27.2.2008, p. 52.

⁹ Council Decision 2008/146/EC of 28 January 2008 on the conclusion, on behalf of the European Community, 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 acquis (OJ L 53, 27.2.2008, p. 1).

¹⁰ Council Decision 2008/149/JHA of 28 January 2008 on the conclusion on behalf of the European Union 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 acquis (OJ L 53, 27.2.2008, p. 50).

¹¹ OJ L 160, 18.6.2011, p. 21.

1, point G, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/349/EU¹² and Article 3 of Council Decision 2011/350/EU¹³,

HAS ADOPTED THIS DECISION:

Article 1

1. From [...] * [date to be filled in by the Council] the provisions of the Schengen acquis in the area of the Schengen Information System ('SIS'), as referred to in the Annex to this Decision, shall apply in the Republic of Croatia in its relations with the Kingdom of Belgium, the Republic of Bulgaria, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Italian Republic, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, Hungary, the Republic of Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, Romania, the Republic of Slovenia, the Slovak Republic, the Republic of Finland, the Kingdom of Sweden and the United Kingdom, subject to conditions specified in this Article.
2. From [...] * [date to be filled in by the Council] alerts defined in Article 3(1)(a) of Council Decision 2007/533/JHA¹⁴ and in Article 3(a) of Regulation (EC) No 1987/2006¹⁵ as well as supplementary information and additional data, within the meaning of Article 3(1)(b) and (c) of Decision 2007/533/JHA and Article 3(b) and (c) of Regulation (EC) No 1987/2006, connected with alerts, may be made available to Croatia in accordance with the provisions of that Decision and that Regulation.
3. From [...] * [date to be filled in by the Council] Croatia shall be able to enter alerts and additional data into the SIS, to use SIS data and to exchange supplementary information, subject to the provisions of paragraph 4.
4. Until checks at internal borders with Croatia are lifted, Croatia:
 - (a) shall not be obliged to refuse entry into or stay on its territory to third-country nationals for whom an alert has been issued by another Member State for the

¹² Council Decision 2011/349/EU of 7 March 2011 on the conclusion on behalf of the European Union 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 acquis, relating in particular to judicial cooperation in criminal matters and police cooperation (OJ L 160, 18.6.2011, p. 1).

¹³ Council Decision 2011/350/EU of 7 March 2011 on the conclusion, on behalf of the European Union, 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 acquis, relating to the abolition of checks at internal borders and movement of persons (OJ L 160, 18.6.2011, p. 19).

¹⁴ Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information Systems (SIS II) (OJ L 205, 7.8.2007, p. 63).

¹⁵ Regulation (EC) No 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II) (OJ L 381, 28.12.2006, p. 4.)

purposes of refusing entry or stay in accordance with Regulation (EC) No 1987/2006;

- (b) shall refrain from entering into the SIS alerts and additional information as well as from exchanging supplementary information on third-country nationals for the purposes of refusing entry or stay in accordance with Regulation (EC) No 1987/2006.

Article 2

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

Done at Brussels,

*For the Council
The President*