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OUTCOME OF PROCEEDINGS

From: Permanent Representatives Committee

On: 6 June 2017

No. prev. doc.: 9074/17

Subject: Draft Council Decision of ...2017 on the putting into effect of certain provisions of the Schengen acquis relating to the Visa Information System in the Republic of Bulgaria and in Romania

At its meeting on 6 June 2017, COREPER agreed on the text of the draft Council Decision as set out in the Annex.

As announced by the Chair, this text will now be translated and revised in all languages in order to be forwarded to the European Parliament with a view to receiving its opinion before the adoption of the Decision by the Council.

DRAFT

COUNCIL DECISION

of2017

on the putting into effect of certain provisions of the Schengen *acquis* relating to the Visa Information System in the Republic of Bulgaria and Romania

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the 2005 Act of Accession, and in particular Article 4(2) thereof,

Having regard to the opinion of the European Parliament,

Whereas:

- (1) According to the first subparagraph of Article 4(2) of the 2005 Act of Accession, the provisions of the Schengen *acquis* other than those listed in Annex II to that Act, to which the Republic of Bulgaria ("Bulgaria") and Romania accede upon accession, are to apply in Bulgaria and Romania pursuant to a Council Decision to that effect after verification that the necessary conditions for the application of all parts of the Schengen *acquis* have been met.

- (2) On 9 June 2011, the Council concluded, in accordance with the applicable Schengen evaluation procedures, that the conditions in all the areas of the Schengen *acquis* relating to Air Borders, Land Borders, Police Cooperation, Data Protection, the Schengen Information System, Sea Borders and Visas had been fulfilled by Bulgaria and Romania.
- (3) A simplified regime for controls of persons at the external borders was introduced in accordance with Council Decision (EU) No 565/2014¹. That regime is based on the unilateral recognition by Bulgaria, Croatia, Cyprus and Romania of certain documents, notably Schengen visas, as equivalent to their national visas for transit through or intended stays on their territories, not exceeding 90 days in any 180-day period.
- (4) It is appropriate, as from the entry into force of this Decision, to allow Bulgaria and Romania access to consult, in a read-only mode, the Visa Information System (VIS) data without the right to enter, amend or delete data in the VIS, and this solely in order to facilitate their national visa application procedure to prevent fraud and any abuse of Schengen visas by verifying their validity and authenticity against the data stored in the VIS, to facilitate – with regard to third country nationals holding a Schengen visa – checks at border crossing points at external borders and within the territory of the Member States, to facilitate the determination of the Member State responsible for applications for international protection, to facilitate the examination of such applications, and to increase the level of internal security in the territory of the Member States by facilitating the fight against serious crime and terrorism. The access for the consultation and use of the VIS data should also assist in the identification of any person who may not, or may no longer, fulfil the conditions for entry to, or stay in, the territory of the Member States concerned.

¹ Decision No 565/2014/EU of the European Parliament and of the Council of 15 May 2014 introducing a simplified regime for the control of persons at the external borders based on the unilateral recognition by Bulgaria, Croatia, Cyprus and Romania of certain documents as equivalent to their national visas for transit through or intended stays on their territories not exceeding 90 days in any 180-day period and repealing Decisions No 895/2006/EC and No 582/2008/EC (OJ L 157, 27.5.2014, p. 23).

- (5) It is therefore desirable to adopt a decision putting into effect the corresponding provisions of the VIS as referred to in the Annex, as well as all the subsequent developments of those provisions. The putting into effect of such provisions should be limited to the extent that they are related to the access for the consultation of VIS data in read-only format. Therefore, Bulgaria and Romania should be authorised to access the VIS data for consultation for the purposes and in accordance with the procedures and conditions specified in the provisions put into effect. The Annex should contain the relevant *acquis* related to the access for consultation of VIS data. However, the following legal acts, based on the understanding that they already apply to Bulgaria and Romania for what regards the VIS, are not included in the Annex:
- (i) Regulation (EU) No 1077/2011 of the European Parliament and of the Council of 25 October 2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice;
 - (ii) Council Decision 2004/512/EC of 8 June 2004 establishing the Visa Information System (VIS), Commission Decision 2008/602/EC of 17 June 2008 laying down the physical architecture and requirements of the national interfaces and of the communication infrastructure between the central VIS and the national interfaces for the development phase; and
 - (iii) Commission Decision 2006/648/EC of 22 September 2006 laying down the technical specifications on the standards for biometric features related to the development of the Visa Information System.
- (6) It is also desirable for this Decision to set a date as from which the above-mentioned provisions of the Schengen *acquis* relating to the VIS should start to apply as determined in accordance with the VIS Regulation with regard to Bulgaria and Romania. This should happen as soon as eu-LISA has notified that all related comprehensive testing have been successfully completed.

- (7) The lifting of checks at internal borders of the Member States concerned and their full participation in the Schengen *acquis* relating to the common policy on visas, should be subject to a separate decision of the Council adopted by unanimity in accordance with Article 4(2) of the 2005 Act of Accession. Until the adoption of that Council decision, which will put into effect the provisions applicable in the field of short-stay visas other than those listed in the Annex to this Decision with regard to Bulgaria and Romania, and which include notably the Visa Code² and the provisions adopted for the purpose of its implementation, Bulgaria and Romania are not allowed to issue Schengen visas and continue to issue short-stay visas under their national law. Until the date set out in that Decision, restrictions on the use of the VIS resulting from this Decision, notably those concerning the right to introduce relevant data to it, should be maintained.
- (7a) However, it is desirable to grant to the competent visa authorities of Bulgaria and Romania during that transitional period, access for consultation to VIS data in read-only format for the purposes of the examination of applications for short-stay visas issued by them under their national law and the decisions relating to those applications, including the decision whether to annul, revoke, extend or shorten the validity of the visa issued in accordance with their relevant national provisions.
- (8) (...)

² Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) (OJ L 243, 15.9.2009).

- (8a) Given that the verification in accordance with the applicable Schengen evaluation procedures concerning Bulgaria and Romania has already been completed pursuant to Article 4(2) of the 2005 Act of Accession, the verification under Article 1(1)(b) of Regulation 1053/2013 will not be carried out in respect of those Member States. However, following the adoption of this Council Decision, the provisions listed in the Annex should only come into effect after Bulgaria and/or Romania have successfully undergone comprehensive tests carried out by eu-LISA and duly notified to the Commission. Moreover, it is desirable that Bulgaria and Romania invite experts from Member States and the Commission to perform reviews of the application of those provisions.
- (9) As regards Iceland and Norway, this Decision constitutes a development of 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 *acquis*³, which fall within the area referred to in Article 1, points B and G of Council Decision 1999/437/EC⁴.

³ OJ L 176, 10.7.1999, p. 36.

⁴ 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).

- (10) 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 *acquis*⁵ which fall within the area referred to in Article 1, points B and G of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC⁶.
- (11) 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 *acquis*⁷, which fall within the area referred to in Article 1, points B and G of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU⁸.

⁵ OJ L 53, 27.2.2008, p. 52.

⁶ 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).

⁷ OJ L 160, 18.6.2011, p. 21.

⁸ 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).

HAS ADOPTED THIS DECISION:

Article 1

1. The provisions of the Schengen *acquis* relating to the VIS referred to in the Annex to this Decision shall apply to Bulgaria and Romania, amongst themselves and in their relations with the Kingdom of Belgium, 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, the Republic of Slovenia, the Slovak Republic, the Republic of Finland and the Kingdom of Sweden as well as with the Republic of Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the Swiss Confederation following the successful completion of all related comprehensive tests with regard to the provisions listed in the Annex to be carried out by eu-LISA, Bulgaria and Romania and the notification to the Commission that those tests have been successfully completed. In addition, Bulgaria and Romania may invite experts from Member States and the Commission to perform reviews of the application of those provisions.
2. Until the adoption of the Council decision lifting the checks at internal borders of the Member States, the competent visa authorities of Bulgaria and Romania may access the VIS for consultation in read-only format, for the purposes of:
 - a) the examination of applications for short-stay visas to be issued by Bulgaria and Romania under their national law;
 - b) deciding upon those applications, including the decision whether to annul, revoke, extend or shorten the validity of the visa issued in accordance with their relevant national provisions.

Article 2

This Decision shall enter into force on the day of its adoption.

It shall apply from the date to be determined by the Commission when Bulgaria and Romania have notified the Commission that the comprehensive tests referred to in Article 1(1) have been successfully completed.

Article 3

This Decision shall be published in the Official Journal of the European Union.

Done at 2017.

For the Council

The President

List of the provisions of the Schengen *acquis* related to VIS to be rendered applicable to Bulgaria and Romania

1. Articles 1 and 126 to 130 of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders ("the Schengen Convention") (OJ L 239, 22.9.2000, p. 19) to the extent that they relate to other provisions mentioned in this Annex;
2. The following provisions of 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):
 - Chapter I with the exception of Article 6(1)
 - Article 15, which shall apply *mutatis mutandis* to the examination of applications for short-stay visas to be issued by Bulgaria and Romania under their national law including decisions upon those applications
 - Chapter III
 - Chapter V, with the exclusion of Article 31(2) and (3)
 - Chapter VI and VII with the exception of Article 50(6)
3. Article 21(2), Article 37(1) and 43(5) of Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) (OJ L 243, 15.9.2009, p. 1);

4. Title II and the annexes thereto of Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) to the extent that they relate to VIS;
5. 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); Council Decision 2004/512/EC of 8 June 2004 establishing the Visa Information System (VIS) (corrigendum);
6. Commission Decision 2009/876/EC of 30 November 2009 adopting technical implementing measures for entering the data and linking applications, for accessing the data, for amending, deleting and advance deleting of data and for keeping and accessing the records of data processing operations in the Visa Information System, to the extent that this Decision relates to the examination of visa applications;
7. Commission Decision 2009/756/EC of 9 October 2009 laying down specifications for the resolution and use of fingerprints for biometric identification and verification in the Visa Information System.

