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**NOTE**

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From:	Presidency
To:	Law Enforcement Working Party
No. prev. doc.:	11431/13, 8541/15
Subject:	Draft COUNCIL <i>IMPLEMENTING</i> DECISION 2015/.../EU of ... fixing the date of effect of Decision 2008/633/JHA 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

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In its judgement of 16 April 2015, in [Case C-540/13](#) the Court of Justice of the European Union ruled that the Council should have consulted the European Parliament before adopting Council Decision [2013/392/EU](#) of 22 July 2013 fixing the date of effect of Decision [2008/633/JHA](#) 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<sup>1</sup>, as stipulated by Article 39(1) of the former Treaty on European Union<sup>2</sup>.

Therefore, Council Decision [2013/392/EU](#) was annulled by the Court judgement and now needs to be re-adopted, following consultation of the European Parliament. However, the Court decided to maintain the legal effects of this Decision until the entry into force of new act intended to replace it.

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<sup>1</sup> OJ L 198, 23.7.2013, p. 45.

<sup>2</sup> For more information on this case, see the note by the Legal Service addressed to Coreper: [8541/15](#).

To this end delegations will find attached the revised text of the aforementioned Decision with the amendments proposed by the Council Legal Service. Changes introduced by the Council Legal Service are marked ***in bold italics and underlined***. The proposed changes are purely formal and do not affect the substance of the formerly adopted Decision, but tend to ensure the continuity and legal certainty in relation to that Decision and its effects.

The LEWP is invited to agree to the draft Council Decision set out in the Annex prior to consulting the European Parliament.

COUNCIL IMPLEMENTING DECISION 2015/.../EU

of ...

**fixing the date of effect of Decision 2008/633/JHA 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**

THE COUNCIL OF THE EUROPEAN UNION,

**Having regard to the Treaty on the Functioning of the European Union,**

Having regard to Council Decision 2008/633/JHA 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<sup>3</sup>, and in particular Article 18(2) thereof,

**Having regard to the opinion of the European Parliament<sup>4</sup>,**

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<sup>3</sup> OJ L 218, 13.8.2008, p. 129.

<sup>4</sup> **Opinion of XX XX 2015 (OJ / not yet published in the Official Journal).**

Whereas:

(1) Decision 2008/633/JHA provides that it shall take effect from a date to be determined by the Council once the Commission has informed the Council that 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)<sup>5</sup> has entered into force and is fully applicable.

(2) By letter of 2 July 2013, the Commission informed the Council that Regulation (EC) No 767/2008 has entered into force and is fully applicable as from 27 September 2011.

**(2a) As the conditions and procedure for triggering the exercise of the abovementioned implementing powers by the Council have been met, an implementing decision should be adopted in order to fix the date of effect of Decision 2008/633/JHA.**

**(2b) This Decision replaces Council Decision 2013/392/EU<sup>6</sup> which was annulled by the Court of Justice of the European Union ('the Court') by its judgment of 16 April 2015 in Case C-540/13. In that judgment, the Court maintained the effects of Decision 2013/392/EU until the entry into force of new act intended to replace it. Therefore, as of the day of entry into force of this Decision, Decision 2013/392/EU ceases to produce effects.**

**(2c) In order to ensure the continuity of the access rights for consultation of the 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, this Decision should maintain the initial date from which Decision 2008/633/JHA took effect, as set out in Article 1 of Decision 2013/392/EU.**

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<sup>5</sup> OJ L 218, 13.8.2008, p. 60.

<sup>6</sup> **Council Decision 2013/392/EU of 22 July 2013 fixing the date of effect of Decision 2008/633/JHA 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 198 of 23.7.2013, p. 45).**

- (3) 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 *acquis*<sup>7</sup> which fall within the area referred to in Article 1, point H, of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of that Agreement<sup>8</sup>.
- (4) 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*<sup>9</sup> which fall within the area referred to in Article 1, point H, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC<sup>10</sup>.
- (5) 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*<sup>11</sup> which fall within the area referred to in Article 1, point H, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU<sup>12</sup>.

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<sup>7</sup> OJ L 176, 10.7.1999, p. 36.

<sup>8</sup> OJ L 176, 10.7.1999, p. 31.

<sup>9</sup> OJ L 53, 27.2.2008, p. 52.

<sup>10</sup> OJ L 53, 27.2.2008, p. 1.

<sup>11</sup> OJ L 160, 18.6.2011, p. 21.

<sup>12</sup> OJ L 160, 18.6.2011, p. 19.

- (6) 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.
- (7) This Decision constitutes a development of provisions of the Schengen *acquis* in which the United Kingdom does not take part in accordance with 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 *acquis*<sup>13</sup>. The United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.
- (8) This Decision constitutes a development of provisions of the Schengen *acquis* in which Ireland does not take part in accordance with Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis*<sup>14</sup>. Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.
- (9) This Decision should not affect the position of the Member States in respect of which Regulation (EC) No 767/2008 has not yet been put into effect. In particular it should not affect the application of Article 6 of the Decision 2008/633/JHA with regard to those Member States,

HAS ADOPTED THIS DECISION:

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<sup>13</sup> OJ L 131, 1.6.2000, p. 43.

<sup>14</sup> OJ L 64, 7.3.2002, p. 20.

*Article 1*

Decision 2008/633/JHA shall take effect from 1 September 2013, as set out in Article 1 of Decision 2013/392/EU.

*Article 2*

Decision 2013/392/EU ceases to produce effects from the date of entry into force of this Decision, without prejudice to the date of effect of Decision 2008/633/JHA, as set out in Article 1 of Decision 2013/392/EU.

*Article 3*

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

Done at ...,

*For the Council*

*The President*

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