



Council of the
European Union

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COMIX 311

LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL IMPLEMENTING DECISION 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

COUNCIL IMPLEMENTING DECISION (EU) 2015/...

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 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 offences¹, and in particular Article 18(2) thereof,

Having regard to the opinion of the European Parliament²,

¹ OJ L 218, 13.8.2008, p. 129.

² Opinion of ... (not yet published in the Official Journal).

Whereas:

- (1) Decision 2008/633/JHA provides that it is to 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 Council¹ 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 had entered into force and had been fully applicable as from 27 September 2011.
- (3) The conditions for triggering the exercise by the Council of its implementing powers pursuant to Decision 2008/633/JHA have been met and an implementing decision fixing the date of effect of Decision 2008/633/JHA should therefore be adopted.

¹ 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).

- (4) This Decision replaces Council Decision 2013/392/EU¹, which was annulled by a judgment of the Court of Justice of the European Union ('the Court')². In that judgment, the Court maintained the effects of Decision 2013/392/EU until the entry into force of a new act intended to replace it. Therefore, as of the date of entry into force of this Decision, Decision 2013/392/EU ceases to produce effects.
- (5) In order to ensure the continuity of 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, the date from which Decision 2008/633/JHA took effect should be maintained as set out in Article 1 of Decision 2013/392/EU.

¹ 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, 23.7.2013, p. 45).

² Judgment of the Court of Justice of 16 April 2015, Parliament v Council, C-540/13, ECLI:EU:C:2015:224.

- (6) 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*¹ which fall within the area referred to in Article 1, point H, of Council Decision 1999/437/EC².
- (7) 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*³ 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/EC⁴.

¹ OJ L 176, 10.7.1999, p. 36.

² 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).

³ OJ L 53, 27.2.2008, p. 52.

⁴ 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).

- (8) 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*¹ 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/EU².
- (9) 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.

¹ OJ L 160, 18.6.2011, p. 21.

² 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).

- (10) 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/EC¹. The United Kingdom is therefore not taking part in the adoption of this Decision and is not bound by it or subject to its application.
- (11) 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/EC². Ireland is therefore not taking part in the adoption of this Decision and is not bound by it or subject to its application.
- (12) 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 Decision 2008/633/JHA with regard to those Member States,

HAS ADOPTED THIS DECISION:

¹ 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* (OJ L 131, 1.6.2000, p. 43).

² 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* (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 shall cease to produce effects from ...*, 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

* OJ : please insert the date of entry into force of this Decision.