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From: Presidency
To: Permanent Representatives Committee/Council

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Subject: Draft COUNCIL DECISION 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* relating to the European Union Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (*eu-LISA*)
- Adoption

1. On 29 June 2017, the European Commission presented a proposal for a Regulation of the European Parliament and of the Council on the European *Union* Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (*eu-LISA*), and amending Regulation (EC) No 1987/2006 and Council Decision 2007/533/JHA and repealing Regulation (EU) No 1077/2011 (hereinafter "the proposed Regulation").
2. According to the proposed Regulation, the above Agency will replace the European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice, established by Regulation (EU) No 1077/2011, and become its legal successor.

3. Under the regime currently in force, the question of the participation of the United Kingdom is regulated by Decision 2010/779/EU, by which the Council authorised the United Kingdom to take part in Regulation (EU) 1077/2011¹, 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 the United Kingdom does not participate.
4. Given its participation in Eurodac, Dublinet and its partial participation in SIS II, the United Kingdom also has the right to participate in the activities of the Agency to be established by the proposed Regulation, to the extent that it will be responsible for the operational management of SIS II as governed by Council Decision 2007/533/JHA, Eurodac and Dublinet, and as is the case with regard to the current Agency.
5. By a letter dated 19 July 2018², the United Kingdom has indeed requested to take part in the proposed Regulation under Article 4 of the Schengen Protocol to the extent that its provisions refer to the responsibility of the Agency for the operational management of SIS II as governed by Regulation (EC) No 1987/2006, and of the VIS, the EES and ETIAS.
6. The Council recognizes the right of the United Kingdom to make a request for participation in the proposed Regulation in accordance with Article 4 of the Schengen Protocol. For that matter, delegations may refer in particular to the explanations contained in documents³ which preceded the adoption of Decision 2010/779/EU, with the necessary adaptations to reflect the text of the proposed Regulation.
7. On 10 September 2018, the group of JHA Counsellors (eu-LISA) examined the proposal and endorsed its text with some minor technical adaptations, as proposed by the Council Legal Service and the Commission.

¹ 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 (OJ L 286, 1.11.2011, p. 1).

² 11389/18.

³ 12373/10, 14016/1/10 REV 1.

8. Based on the above, the Permanent Representatives Committee is invited to approve the draft Council Decision set out in the Annex to this note and forward it to the Council for adoption as an A item on the agenda of one of its meetings.
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COUNCIL DECISION

of...

**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*
relating to the European Union Agency
for the operational management of large-scale IT systems
in the area of freedom, security and justice (*eu-LISA*)**

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 the United Kingdom of Great Britain and Northern Ireland, by its letter to the President of the Council of 19 July 2018, to participate in certain provisions of the Schengen *acquis*, as specified in that letter,

Whereas:

- (1) By Decision 2000/365/EC⁴ the Council authorised the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis*, in accordance with the conditions set out in that Decision.
- (2) Regulation (EU) No 1077/2011 established the European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (hereinafter 'the Agency'), commonly referred to as eu-LISA, in order to ensure the operational management of the second generation Schengen Information System (SIS II), the Visa Information System (VIS) and Eurodac and of certain aspects of their communication infrastructures and potentially that of other large-scale IT systems in the area of freedom, security and justice, on the basis of separate Union legal acts, based on Articles 67 to 89 of the Treaty on the functioning of the European Union.
- (3) By Decision 2010/779/EU the Council authorised the United Kingdom to take part in Regulation (EU) 1077/2011⁵ 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 the United Kingdom does not participate.
- (4) On 29 June 2017 the European Commission presented a proposal for a Regulation of the European Parliament and of the Council on the European *Union Agency* for the operational management of large-scale IT systems in the area of freedom, security and justice (*eu-LISA*), and amending Regulation (EC) No 1987/2006 and Council Decision 2007/533/JHA and repealing Regulation (EU) No 1077/2011 (hereinafter "the proposed Regulation").

⁴ OJ L 131, 1.6.2000, p. 43.

⁵ 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 (OJ L 286, 1.11.2011, p. 1).

- (5) According to the proposed Regulation, the Agency will be replaced and succeeded by the European *Union* Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (*eu-LISA*) (hereinafter ‘the proposed Agency’) that will be the legal successor of the Agency. The proposed Agency is to be made responsible, as is the case for the Agency, for the operational management of the second generation Schengen Information System (SIS II), the Visa Information System (VIS) and Eurodac. The proposed Agency shall be also responsible for the preparation, development or operational management of the Entry/Exit System (EES), DubliNet and the European Travel Authorisation and Information System (ETIAS) 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 if so provided by relevant Union legal acts based on Articles 67 to 89 of the Treaty on the Functioning of the European Union.
- (6) SIS II is part of the Schengen *acquis*. Regulation (EC) No 1987/2006 of the European Parliament and of the Council⁶ and Council Decision 2007/533/JHA⁷ govern the establishment, operation and use of SIS II. However, the United Kingdom has only taken part in the adoption of Council Decision 2007/533/JHA which develops the provisions of the Schengen *acquis* referred to in Article 1(a)(ii) of Decision 2000/365/EC.
- (7) VIS is also part of the Schengen *acquis*. The United Kingdom did not take part in the adoption of, and is not bound by Decision 2004/512/EC⁸, Regulation (EC) No 767/2008⁹ and Decision 2008/633/JHA¹⁰ which govern the establishment, operation or use of VIS.

⁶ OJ L 381, 28.12.2006, p. 4.

⁷ OJ L 205, 7.8.2007, p. 63.

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

⁹ 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).

¹⁰ 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) Eurodac is not part of the Schengen *acquis*. The United Kingdom has taken part in the adoption of, and is bound by Regulation (EU) No 603/2013¹¹ which governs the establishment, operation and use of Eurodac.
- (9) The EES is part of the Schengen *acquis*. The United Kingdom did not take part in the adoption of, and is not bound by Regulation (EU) No 2017/2226 of the European Parliament and of the Council¹² which govern the establishment, operation and use of the EES.
- (10) ETIAS is also part of the Schengen *acquis*. The United Kingdom did not take part in the adoption of, and is not bound by Regulation (EU) No 2018/... of the European Parliament and of the Council¹³ which govern the establishment, operation and use of ETIAS.

¹¹ Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice.

¹² Regulation (EU) 2017/2226 of the European Parliament and of the Council of 30 November 2017 establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third-country nationals crossing the external borders of the Member States and determining the conditions for access to the EES for law enforcement purposes, and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 767/2008 and (EU) No 1077/2011 (OJ L 327, 9.12.2017, p. 20).

¹³ Regulation (EU) 2018/XX of the European Parliament and of the Council of ... establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 1077/2011, (EU) No 515/2014, (EU) 2016/399, (EU) 2016/1624 and (EU) 2017/2226 (OJ L ...).

- (11) DubliNet is not part of the Schengen *acquis*. The United Kingdom is bound by Regulation (EC) No 1560/2003¹⁴ which sets up DubliNet, a separate secure electronic transmission channel.
- (12) Given its participation in Eurodac, Dublinet and its partial participation in SIS II, the United Kingdom has the right to participate in the activities of the proposed Agency, to the extent that it will be responsible for the operational management of SIS II as governed by Council Decision 2007/533/JHA, Eurodac and Dublinet, as is the case with regard to the Agency.
- (13) The proposed Agency, as is the case for the Agency, should have a single legal personality and be characterised by the unity of its organisational and financial structure. To this end, the proposed Agency should be established by means of a single legislative instrument which must be voted on within the Council in its entirety. Moreover, once adopted, the proposed Regulation should become applicable in its entirety in the Member States bound by it. This excludes the possibility of partial applicability for the United Kingdom.
- (14) In order to ensure compliance with the Treaties and the applicable Protocols, and at the same time to safeguard the unity and consistency of the proposed Regulation, the United Kingdom has requested to take part in the proposed Regulation under Article 4 of the Schengen Protocol to the extent that its provisions refer to the responsibility of the Agency for the operational management of SIS II as governed by Regulation (EC) No 1987/2006, and of the VIS, the EES and ETIAS.
- (15) The Council recognizes the right of the United Kingdom to make, in accordance with Article 4 of the Schengen Protocol, a request for participation in the proposed Regulation, to the extent that the United Kingdom will not participate in the proposed Regulation on other grounds.

¹⁴ Commission Regulation (EC) No 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ L 222, 5.9.2003, p. 3).

- (16) Participation of the United Kingdom in the proposed Regulation would be without prejudice to the fact that at present the United Kingdom 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. This would justify the inclusion of specific provisions in the proposed Regulation reflecting this special position of the United Kingdom, in particular as regards limited voting rights in the Management Board of the Agency.
- (17) 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 *acquis*¹⁵, has been informed about the preparation of this Decision in accordance with Article 5 of that Agreement.
- (18) 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 *acquis*¹⁶, has been informed about the preparation of this Decision in accordance with Article 5 of that Agreement,

HAS ADOPTED THIS DECISION:

¹⁵ OJ L 176, 10.7.1999, p. 36.

¹⁶ OJ L 53, 27.2.2008, p. 52.

