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'I' ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee (Part 2)
No. prev. doc.:	14974/17
Subject:	Draft Council Decision on the putting into effect of remaining provisions of the Schengen <i>acquis</i> relating to the Schengen Information System in the Republic of Bulgaria and Romania

Article 66 of the Regulation of the European Parliament and the Council establishing an Entry/exit system (EES)¹ provides that the EES may be operated by Member States not yet applying the Schengen *acquis* in full provided that the following conditions are met:

- "(i) the verification in accordance with applicable Schengen evaluation procedures has been successfully completed;
- (ii) the provisions of the Schengen *acquis* relating to the Schengen Information System have been put into effect in accordance with the relevant Act of Accession, and
- (iii) the provisions of the Schengen *acquis* relating to the Visa information system which are necessary for the operation of the EES as defined in this Regulation, have been put into effect in accordance with the relevant Act of Accession."

¹ doc. PE-CONS 47/17, signed on 30 November 2017, entry into force 29 December 2017.

Bulgaria and Romania currently meet the first condition. As regards the third condition, passive access to VIS, the Council adopted, on 12 October 2017, Decision (EU) 2017/1908 putting into effect in the Republic of Bulgaria and Romania certain provisions of the Schengen acquis relating to the Visa Information System.

Consequently, this draft Council Decision has been prepared in order to meet the second condition by allowing Bulgaria and Romania to apply the SIS without any remaining restrictions, as set out in Article 1 (4) of Council Decision 2010/365/EU of 29 June 2010 on the application of the provisions of the Schengen acquis relating to the Schengen Information System in Bulgaria and Romania.

Following its presentation and discussion in the Working Party for Schengen Matters (Evaluations) on 7 June, JHA counsellors discussed on 29 November and agreed in principle on the text of the draft Council Decision on 1 December 2017.

The Permanent Representatives Committee is invited to confirm agreement on the text of the draft Council decision as set out in the Annex, with a view to its eventual adoption by the Council after consultation of the European Parliament and translation and legal-linguist revision of the text in all languages.

DRAFT

COUNCIL DECISION

of2017

on the putting into effect of remaining provisions of the Schengen *acquis* relating to the Schengen 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 29 June 2010, the Council adopted a Decision on the application of the provisions of the Schengen acquis relating to the Schengen Information System in the Republic of Bulgaria and Romania². Following that Decision, the provisions of the Schengen acquis relating to the SIS started to apply to Bulgaria and Romania from 15 October 2010, with the exception of the obligation 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 purposes of refusing entry or stay in accordance with Regulation (EC) No 1987/2006 and with the obligation to 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 ("remaining restrictions").
- (3) 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.
- (4) Without prejudice to the separate decision of the Council to be adopted by unanimity in accordance with Article 4(2) of the 2005 Act of Accession as regards the lifting of checks at internal borders of the Member States concerned, the Council adopted, on 12 October 2017, a decision putting into effect in the Republic of Bulgaria and Romania certain provisions of the Schengen acquis relating to the Visa Information System³. The putting into effect of those provisions which authorises Bulgaria and Romania to access the VIS data for consultation purposes and in accordance with the procedures and conditions specified in that decision is aiming at facilitating checks by Bulgaria and Romania at border crossing points at their external borders, which are Schengen external borders, and within their territory, thereby increasing the level of security in the Schengen area and facilitating the fight against serious crime and terrorism.

² OJ L 166, 1.7.2010, p. 17–20.

³ Council Decision (EU) 2017/1908, OJ L 269, 19.10.2017, p.39–43.

- (6) In order to increase the level of security in the Schengen area and to make more effective the fight against serious crime and terrorism, the checks by Bulgaria and Romania at their external borders and in their territory should be more effective by entering in the SIS alerts for the purposes of refusing entry or stay and by executing such alerts introduced by other Member States, in particular if such alerts are based on a threat to public policy or public security or national security. In order to ensure that Bulgaria and Romania have the obligation to refuse entry into or stay on their respective territory to third country nationals for whom an entry ban has been issued by another Member State, as well as the obligation to enter such alerts into the SIS, it is appropriate to lift the remaining restrictions concerning the use of the SIS. The lifting of those restrictions in Bulgaria and Romania will contribute to increase the level of security in the Schengen area and make more effective the fight against serious crime and terrorism.
- (7) It is appropriate to set a date as from which the above-mentioned restrictions of the Schengen acquis relating to the SIS should be lifted.
- (8) This Council decision is without prejudice to the lifting of checks at internal borders of the Member States concerned which should be subject to a separate decision of the Council to be adopted by unanimity in accordance with Article 4(2) of the 2005 Act of Accession.
- (9) 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 lifting of the remaining restrictions on the use of the SIS [should come into effect on [.....]].

- (10) 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*⁴, which fall within the area referred to in Article 1, points B and G of Council Decision 1999/437/EC⁵.
- (11) 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*⁶ 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/EC⁷.

⁴ OJ L 176, 10.7.1999, p. 36.

⁵ 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).

⁶ OJ L 53, 27.2.2008, p. 52.

⁷ 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).

(12) 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*⁸, 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/EU⁹.

HAS ADOPTED THIS DECISION:

Article 1

The remaining restrictions of the Schengen *acquis* relating to the SIS referred to in Article 1 paragraph 4 a) and b) of Council Decision 2010/365/EC shall not 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, as from [XXX].

⁸ OJ L 160, 18.6.2011, p. 21.

⁹ 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).

The application of this paragraph is without prejudice to the adoption of the Council decision setting the date for lifting the checks at internal borders with Bulgaria and Romania.

Article 2

This Decision shall enter into force on the day of its adoption. It shall apply from the date set out in Article 1.

Article 3

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

Done at 2017.

For the Council

The President
