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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	12 August 2021
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Subject:	Proposal for a COUNCIL DECISION on the application of the provisions of the Schengen acquis in the area of Schengen Information System in the Republic of Cyprus

Delegations will find attached document COM(2021) 472 final.

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EUROPEAN
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Brussels, 12.8.2021
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2021/0266 (NLE)

Proposal for a

COUNCIL DECISION

on the application of the provisions of the Schengen acquis in the area of Schengen Information System in the Republic of Cyprus

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

In line with Article 3(1) and (2) of the 2003 Act of Accession to the European Union[1] certain provisions of the Schengen acquis are already applicable in Cyprus from the date of accession, while other provisions only apply pursuant to a Council Decision to that effect after verification that the necessary conditions for the application of all parts of that acquis have been met. This verification is done in accordance with the relevant Schengen evaluation procedures.

Council Regulation (EU) No 1053/2013, establishing an evaluation and monitoring mechanism to verify the application of the Schengen *acquis*[2], provides for these Schengen evaluation procedures. On 28 May 2019, Cyprus declared its willingness and commitment to apply all parts of the Schengen *acquis* and to be subject to Schengen evaluations, to the extent possible considering the special circumstances of Cyprus as recognised in Protocol No 10 to the 2003 Act of Accession. In line with Council Regulation (EU) No 1053/2013, the Commission amended the annual[3] and multiannual evaluation programmes[4] on 15 October 2019 to include the evaluation of Cyprus in 2019 and 2020. The geographical scope of the Schengen evaluations in Cyprus takes into consideration the special circumstances of Cyprus.

The Schengen evaluation in the area of the Schengen Information System can only take place when the Schengen Information System has been put into operation in Cyprus. Therefore, it is required that the Council adopts a Decision on putting into effect the provisions of the Schengen acquis in the area of the Schengen Information System in Cyprus.

The Council is only able to take such Decision after Cyprus has made the necessary technical and legal arrangements, including relating to data protection, to process Schengen Information System data and exchange supplementary information. Accordingly, a Schengen evaluation to verify the level of data protection in Cyprus was carried out in November 2019. Following the positive opinion of the Schengen Committee[5], on 5 November 2020 the Commission adopted, by means of Commission Implementing Decision[6], the evaluation report confirming that a satisfactory level of data protection is met.

In the meantime, on-site teams have carried out Schengen evaluation visits in Cyprus in other areas of the Schengen *acquis*, notably on return (November 2020), police cooperation (February 2021) and external borders (February 2021).

In addition, on 3 December 2020, the Schengen Information System II Advisory Group[7], based on the results from the Test Summary Report (2020-377) produced by the European

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1 OJ L 236, 23.9.2003, p. 33.
2 OJ L 295, 6.11.2013, p. 27.
3 C (2019) 7326.
4 C (2019) 7278.
5 Committee established by Article 21 of Council Regulation (EU) No 1053/2013.
6 C (2020) 8150.
7 The Schengen Information System II Advisory Group was set up to provide the Management Board of the European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (eu-LISA) with expertise relating to the Schengen Information System II central system. The Advisory Group comprises Member State representatives and the Commission. The

Agency for the operational management of large-scale IT systems in the area of freedom, security and justice, confirmed that from a technical point of view the national system of Cyprus is ready to integrate into the Schengen Information System and its national system is fit for purpose.

It is therefore now possible for the Council to set the date from which the Schengen acquis in the area of the Schengen Information System shall apply in Cyprus. The entry into force of this Decision should allow for Schengen Information System data to be transferred to Cyprus. The use of these data in Cyprus should allow the Commission to verify, in accordance with the Schengen evaluation procedures, that the provisions concerning the Schengen Information System are being applied correctly.

Certain restrictions on the use of the Schengen Information System in Cyprus will be imposed until the Council has decided on the full application of the Schengen acquis in Cyprus and on the lifting of checks at internal borders. Such Decision shall only be taken when it has been verified that the necessary conditions for the application of all parts of the relevant acquis have been met in Cyprus in accordance with Article 3(2) of the Act of Accession.

- **Consistency with existing policy provisions in the policy area**

This proposal seeks to put into effect the existing provisions in the area of the Schengen Information System in Cyprus.

- **Consistency with other Union policies**

This proposal has links with the provisions of the Schengen acquis in the area of data protection and police cooperation.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Article 3(2) of the 2003 Act of Accession to the European Union.

- **Subsidiarity (for non-exclusive competence)**

Article 3(2) of the 2003 Act of Accession stipulates that the provisions of the Schengen *acquis* not referred to in Article 3(1) of that Act, shall only apply in Cyprus pursuant to a Council decision to that effect.

- **Proportionality**

Article 15(2) of Council Regulation (EU) No 1053/2013 mirrors the specific powers of the Council in the field of mutual evaluation of the implementation of Union policies within the area of freedom, security and justice.

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procedures for the operation and cooperation of the Advisory Groups are laid down by the Management Board in eu-LISA's rules of procedure.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

n.a.

- **Stakeholder consultations**

In line with Article 14(5) and Article 21(2) of Council Regulation (EU) No 1053/2013 Member States gave their positive opinion on the evaluation report in the area of data protection in the Schengen Committee of 9 July 2020 The report was adopted on 5 November 2020.

- **Collection and use of expertise**

n.a.

- **Impact assessment**

n.a.

- **Regulatory fitness and simplification**

n.a

- **Fundamental rights**

The protection of fundamental rights when applying the Schengen *acquis* is taken into account during the Schengen evaluation process.

4. BUDGETARY IMPLICATIONS

n.a.

5. OTHER ELEMENTS

n.a.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the 2003 Act of Accession, and in particular Article 3(2) thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Parliament[8],

Whereas:

(1) Article 3(2) of the 2003 Act of Accession sets out that the provisions of the Schengen *acquis* not referred to in Article 3(1) of that Act, is to apply in Cyprus only pursuant to a Council decision to that effect, after verification, in accordance with the applicable Schengen evaluation procedures, that the necessary conditions for the application of all parts of the relevant *acquis* have been met in Cyprus, including the effective application of all Schengen rules in accordance with the agreed common standards and with fundamental principles.

(2) The applicable Schengen evaluation procedures are set out in Council Regulation (EU) No 1053/2013[9]. Such an evaluation, however, must take into consideration the special circumstances of Cyprus, as recognised in Protocol No. 10 of the 2003 Act of Accession. In addition, in its declaration of readiness, Cyprus reiterated its commitment once the evaluation is concluded, to be submitted to regular further Schengen evaluations on the aspects of the Schengen *acquis* that will be made applicable by the Council up to that time.

(3) The Schengen evaluation relating to data protection was carried out in Cyprus in November 2019. An evaluation report adopted by Commission Implementing Decision C(2020)8150 in accordance with Article 14(5) of Regulation (EU) No 1053/2013 of 7 October 2013, confirmed that the necessary conditions for the application of the Schengen acquis relating to data protection have been met in Cyprus.

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8 OJ C [xx], p [XX].

9 Council Regulation (EU) No 1053/2013 of 7 October 2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen acquis and repealing the Decision of the Executive Committee of 16 September 1998 setting up a Standing Committee on the evaluation and implementation of Schengen (OJ L 295, 6.11.2013, p. 27.)

(4) In accordance with Article 1(1) of Commission Implementing Decision (EU) 2015/450[10] it has been verified that, from a technical point of view, the national system of Cyprus is ready to integrate into the Schengen Information System.

(5) Cyprus thus having made the necessary technical and legal arrangements to process Schengen Information System data and exchange supplementary information, it is now possible for the Council to set the date from which the Schengen *acquis* relating to the Schengen Information System shall apply in Cyprus.

(6) This Decision should allow for Schengen Information System data to be transferred to Cyprus. The concrete use of those data should allow the Commission to verify the correct application of the provisions of the Schengen *acquis* relating to the Schengen Information System in Cyprus. Once it has been verified that the necessary conditions for the application of all parts of the Schengen *acquis* have been met in Cyprus, the Council should decide on the lifting of checks at the internal borders.

(7) A separate Council Decision should be adopted setting a date for the lifting of checks at internal borders with Cyprus. Until the date set out in that Decision, certain restrictions on the use of the Schengen Information System in Cyprus should be imposed.

(8) 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 their association with the implementation, application and development of the Schengen *acquis*[11] which fall within the area referred to in point G of Article 1 of Council Decision 1999/437/EC.[12]

(9) 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*[13], which fall within the area referred to in point G of Article 1 of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC[14] and with Article 3 of Council Decision 2008/149/JHA[15].

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10 Commission Implementing Decision (EU) 2015/450 of 16 March 2015 laying down test requirements for Member States integrating into the second generation Schengen Information System (SIS II) or changing substantially their directly related national systems (OJ L 74, 18.3.2015, p. 31).

11 OJ L 176, 10.7.1999, p. 36.

12 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).

13 OJ L 53, 27.2.2008, p. 52.

14 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).

15 Council Decision 2008/149/JHA of 28 January 2008 on the conclusion on behalf of the European Union 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. 50).

(10) 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*[16], which fall within the area referred to in point G of Article 1 of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/349/EU[17] and Article 3 of Council Decision 2011/350/EU[18],

HAS ADOPTED THIS DECISION:

Article 1

1. Subject to the conditions specified in this Article, from […]* [*date to be filled in by the Council*], the provisions of the Schengen *acquis* relating to the Schengen Information System, set out in the Annex, shall apply in the Republic of Cyprus in its relations with:

   (a) the Kingdom of Belgium, the Republic of Bulgaria, the Republic of Croatia, 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, Romania, the Republic of Slovenia, the Slovak Republic, the Republic of Finland, and the Kingdom of Sweden.

   (b) Ireland with regard to the provisions referred to in Council Decision 2007/533/JHA[19].

   (c) the Republic of Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the Swiss Confederation.

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16 OJ L 160, 18.6.2011, p. 21.

17 Council Decision 2011/349/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 in particular to judicial cooperation in criminal matters and police cooperation (OJ L 160, 18.6.2011, p. 1).

18 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).

19 Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information Systems (SIS II) (OJ L 205, 7.8.2007, p. 63).

2. From […]* [*date to be filled in by the Council*], the following alerts, supplementary information and additional data may be made available to Cyprus in accordance with Decision 2007/533/JHA and Regulation (EC) No 1987/2006 of the European Parliament and of the Council[20]:

   (a) alerts defined in Article 3(1), point (a), of that Decision and in Article 3, point (a), of that Regulation;

   (b) supplementary information and additional data, defined in Article 3(1), points (b) and (c), of that Decision and Article 3, points (b) and (c), of that Regulation, that are connected with those alerts.

3. From […]* [*date to be filled in by the Council*], Cyprus shall be able to enter alerts and additional data into the Schengen Information System, to use Schengen Information System data and to exchange supplementary information, subject to paragraph 4.

4. Until checks at internal borders with Cyprus are lifted, Cyprus:

   (a) shall not be obliged 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 Article 24 of Regulation (EC) No 1987/2006;

   (b) shall refrain from entering into the Schengen Information System alerts and additional data as well as from exchanging supplementary information on third-country nationals for the purposes of refusing entry or stay in accordance with Article 24 of Regulation (EC) No 1987/2006.

Article 2

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

Article 3

This Decision is addressed to the Member States in accordance with the Treaties.

Done at Brussels,

For the Council
The President

[20] Regulation (EC) No 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II) (OJ L 381, 28.12.2006, p. 4).