



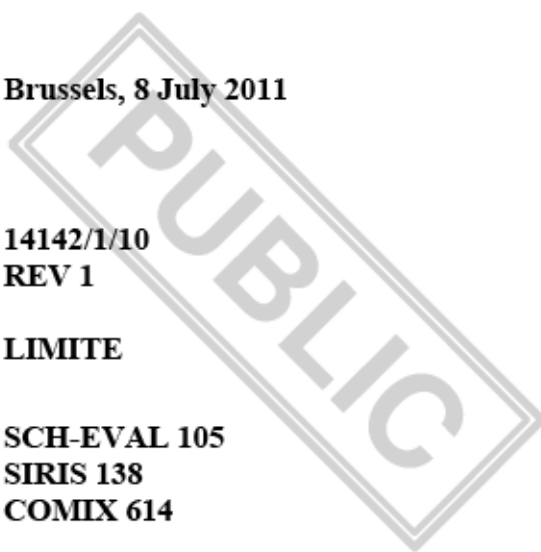
**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 8 July 2011

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REV 1**

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**SCH-EVAL 105
SIRIS 138
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NOTE

from: the Presidency
to: the Working Party for Schengen Matters (Schengen evaluation)
Subject: Draft Council Decision on the full application of the provisions of the Schengen
acquis in the Republic of Bulgaria and Romania

DRAFT COUNCIL DECISION

of

**on the full application of the provisions of the Schengen acquis
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 ¹,

¹ Opinion delivered on 8 of June 2011 (not yet published in the Official Journal).

Whereas:

- (1) Article 4(2) of the 2005 Act of Accession provides that the provisions of the Schengen acquis other than those mentioned in Annex I to the said Act shall only apply in each of those Member State within the meaning of that instrument pursuant to a Council Decision to that effect after verification that the necessary conditions for the application of that acquis have been met.
- (2) The Council, having verified that the necessary conditions for the application of the data protection part of the Schengen acquis concerned had been met by the Republic of Bulgaria and Romania, rendered the provisions of the Schengen acquis related to the Schengen Information System applicable to the Member States concerned from 15 October 2010.
- (3) The Council has now verified, in accordance with the applicable Schengen evaluation procedures as set out in the Decision of the Executive Committee of 16 September 1998 setting up a Standing Committee on the evaluation and implementation of Schengen (SCH/Com-ex (98) 26 def.)², that the necessary conditions for the application of the Schengen acquis have been met in all other areas of the Schengen acquis – Air Borders, Land Borders, Police Cooperation, the Schengen Information System, Sea Borders and Visas – in Bulgaria and Romania.

² OJ L 239, 22.9.2000, p.138.

- (4) On 9 of June 2011, the Council concluded that the conditions in each of the areas mentioned had been fulfilled by Bulgaria and Romania.
- (5) It is possible to set dates for the application of the Schengen acquis in full by those Member States, i.e. dates from which checks on persons at the internal borders with those Member States should be lifted.
- (6) From the earliest such dates, the restrictions on the use of the Schengen Information System, provided for in 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 the Republic of Bulgaria and Romania ³, should be lifted.
- (7) In order to avoid the enlargement of the Schengen area causing travel within the area to become more difficult for certain categories of persons, the facilitation provided by Decision No 582/2008 ⁴ for third-country nationals holding a national short-term visa issued by Bulgaria or Romania for transit through the territory of other Member States concerned, should be maintained. Consequently, certain provisions of that Decision should continue to apply for a limited, transitional period.

³ OJ L 166 of 1.7.2010, p. 17.

⁴ Decision No 582/2008 of the European Parliament and of the Council of 17 June 2008 introducing a simplified regime for the control of persons at the external borders based on the unilateral recognition by Bulgaria, Cyprus and Romania of certain documents as equivalent to their national visas for the purposes of transit through their territories (OJ L 161, 20.6.2008, p. 30).

- (8) In accordance with the second subparagraph of Article 4(2) of the 2005 Act of Accession and as a result of the partial application of the Schengen acquis by the United Kingdom of Great Britain and Northern Ireland provided for in Council Decision 2004/926/EC of 22 December 2004 on the putting into effect of parts of the Schengen acquis by the United Kingdom of Great Britain and Northern Ireland ⁵, and in particular the first subparagraph of Article 1 thereof, only part of the provisions of the Schengen acquis applicable to Bulgaria and Romania in their relations with Member States applying the Schengen acquis in full should apply in the relations of Bulgaria and Romania with the United Kingdom of Great Britain and Northern Ireland.
- (9) 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 association of those two States with the implementation, application and development of the Schengen acquis, which fall within the area referred to in Article 1, points B, C, D, F and H of Council Decision 1999/437/EC of 17 May 1999 ⁶, on certain arrangements for the application of that Agreement,
- (10) 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* ⁷ which fall within the area referred to in Article 1, points B, C, D, F and H of Council Decision 1999/437/EC of 17 May 1999, read in conjunction with Article 3 of Council Decision 2008/149/JHA ⁸ and with Article 3 of Council Decision 2008/146/EC ⁹.

⁵ OJ L 395, 31.12.2004, p. 70.

⁶ OJ L 176, 10.7.1999, p. 31.

⁷ OJ L 53, 27.2.2008, p. 52.

⁸ OJ L 53, 27.2.2008, p. 50.

⁹ OJ L 53, 27.2.2008, p. 1.

- (11) [As regards Liechtenstein, this Decision constitutes a development of provisions of the Schengen *acquis* within the meaning of the Protocol signed 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 concluded 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*, which fall within the area referred to in Article 1, points B, C, D, F and H, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/261/EC ¹⁰ and with Article 3 of Council Decision 2008/262/EC ¹¹ on the signing of that Protocol.]

HAS DECIDED AS FOLLOWS:

Article 1

1. From the XXXX 2011, the provisions of the Schengen *acquis* referred to in Annex I shall 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 Republic of France, the Italian Republic, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of Hungary, Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, the Republic of Slovenia and the Slovak Republic, the Republic of Finland and the Kingdom of Sweden as well as the Republic of Iceland, the Kingdom of Norway and the Swiss Confederation.

To the extent that those provisions regulate the abolition of checks on persons at internal borders, they shall apply as from XXXX 2011 to air borders.

¹⁰ OJ L 83, 26.3.2008, p. 3.

¹¹ OJ L 83, 26.3.2008, p. 5.

All restrictions on the use of the Schengen Information System by Bulgaria and Romania shall be lifted as from XXXX (same date as in the first subpara).

2. The provisions of the Schengen acquis referred to in Annex II shall apply to Bulgaria and Romania in their relations with the United Kingdom of Great Britain and Northern Ireland as from XXXX (same date as in the first subpara).

Article 2

Until XXXX, and during their period of validity, national short-term visas issued by Bulgaria and Romania before XXXX (same date as in the first subpara) shall remain valid for the purpose of transit through the territory of the other Member States concerned in so far as they recognised such short-term visas for the purpose of transit in accordance with Decision No 582/2008/EC. The conditions set out in that Decision shall apply.

Article 3

This Decision shall enter into force on the day of its adoption.

Article 4

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

Article 5

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

Done at

For the Council

The President

ANNEX I

List of the provisions of the Schengen acquis within the meaning of Article 4(2) of the 2005 Act of Accession to be rendered applicable to Bulgaria and Romania in their relations with the Member States applying the Schengen acquis in full as well as Iceland, Norway and the Swiss Confederation

1. In respect of the provisions of the Schengen Convention, as amended by certain of the acts listed in paragraph (2)(c) below:

Article 1 to the extent that it relates to the provisions of this paragraph, Articles 18-22 excluding Article 19(2), Article 25, Articles 40-43, and Articles 126-130 to the extent that they relate to the provisions of this paragraph, of the Schengen Convention;

2. Other provisions:

- (a) The following provisions of the Agreements on Accession to the Convention signed in Schengen on 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at their common borders, their Final Acts and the related Declarations:

- the Agreement signed on 27 November 1990 on the Accession of the Italian Republic: Article 2, Article 3 and Joint Declaration on Articles 2 and 3 of the Agreement on the Accession of the Italian Republic to the Convention Implementing the Schengen Agreement of 14 June 1985,
- the Agreement signed on 25 June 1991 on the Accession of the Kingdom of Spain: Article 2 and Article 3,
- the Agreement signed on 25 June 1991 on the Accession of the Portuguese Republic: Article 2, Article 3, and Declaration 1 in Part III of the Final Act,
- the Agreement signed on 6 November 1992 on the Accession of the Hellenic Republic: Article 2,

- the Agreement signed on 28 April 1995 on the Accession of the Republic of Austria: Article 2 and Article 3,
 - the Agreement signed on 19 December 1996 on the Accession of the Kingdom of Denmark: Article 2 and Article 3,
 - the Agreement signed on 19 December 1996 on the Accession of the Republic of Finland: Article 2 and Article 3,
 - the Agreement signed on 19 December 1996 on the Accession of the Kingdom of Sweden: Article 2 and Article 3;
- (b) The following Decisions of the Executive Committee established by the Schengen Convention:

Decision of the Executive Committee of 23 June 1998 on a catch-all clause to cover the whole technical Schengen acquis (SCH/Com-ex (98) 29 rev.);

Decision of the Executive Committee of 21 November 1994 introducing a computerised procedure for consulting the central authorities referred to in Article 17(2) of the Convention (SCH/Com-ex (94) 15 rev.)¹²;

Decision of the Executive Committee of 15 December 1997 on the guiding principles for means of proof and indicative evidence within the framework of readmission agreements between Schengen States (SCH/Com-ex (97) 39 rev.);

Decision of the Executive Committee of 23 June 1998 on measures to be taken in respect of countries posing problems with regard to the issue of documents required for expulsion from the Schengen territory (SCH/Com-ex (98) 18 rev.);

¹² *Schengen Consultation Network will be replaced using the VIS for consultation purposes (Articles 16, 46 of the VIS Regulation). If it is intended for the SCN to stay operational after the adoption of this RO/BG decision, than the provisions related to it should be listed. Depends on the timeframe for the VIS.*

Decision of the Executive Committee of 16 December 1998 on the Handbook on cross-border police cooperation (SCH/Com-ex (98) 52);

(c) The following other instruments:

Council Decision 2000/645/EC of 17 October 2000 correcting the Schengen acquis as contained in Schengen Executive Committee SCH/Com-ex (94)15 Rev (OJ L 272, 25.10.2000, p. 24. Decision as amended by Decision 2003/330/EC (OJ L 116, 13.5.2003, p. 22))¹³;

Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals (OJ L 149, 2.6.2001, p. 34) and Council Decision No 2004/191/EC of 23 February 2004 setting out the criteria and practical arrangements for the compensation of the financial imbalances resulting from the application of Directive 2001/40/EC on the mutual recognition of decisions on the expulsion of third country nationals (OJ L 60, 27.2.2004, p. 55);

Council Decision 2003/725/JHA of 2 October 2003 amending the provisions of Article 40 (1) and (7) of the Convention implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders (OJ L 260, 11.10.2003, p. 37);

Recommendation 2005/761/EC of the European Parliament and of the Council of 28 September 2005 to facilitate the issue by the Member States of uniform short-stay visas for researchers from third countries travelling within the Community for the purpose of carrying out scientific research (OJ L 289, 3.11.2005, p. 23);

The first sentence of Article 1 and Title III of Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 105, 13.4.2006, p. 1);

¹³ Cf. footnote 12.

Articles 4(b) and 9(c) of Regulation (EC) No 1931/2006 of the European Parliament and of the Council of 20 December 2006 laying down rules on local border traffic at the external land borders of the Member States and amending the provisions of the Schengen Convention (OJ L 405, 30.12.2006, p. 1);

Council Decision 2007/519/EC of 16 July 2007 amending Part 2 of the Schengen consultation network (technical specifications) (OJ L 192, 24.07.2007, p. 26) ¹⁴;

Council Decision 2007/866/EC of 6 December 2007 amending Part 1 of the Schengen consultation network (technical specifications)(OJ L 340, 22.12.2007, p. 92–94) ¹⁵;

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. 60–81);

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, save Article 6 (OJ L 218, 13.8.2008, p. 129–136);

Council Decision 2008/910/EC of 27 November 2008 amending Parts 1 and 2 of the Schengen consultation network (technical specifications)(OJ L 328, 6.12.2008, p. 38–41) ¹⁶;

Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) except Article 3 (OJ L 243, 15.9.2009, p. 1–58);

¹⁴ Cf. footnote 12.

¹⁵ Cf. footnote 12.

¹⁶ Cf. footnote 12.

Council Decision 2009/1024/EU of 22 December 2009 amending the Schengen consultation network (technical specifications) (OJ L 353, 31.12.2009, p. 49–67) ¹⁷;

Regulation (EU) No 265/2010 of the European Parliament and of the Council of 25 March 2010 amending the Convention Implementing the Schengen Agreement and Regulation (EC) No 562/2006 as regards movement of persons with a long-stay visa (OJ L 85, 31.3.2010, p. 1–4).

¹⁷ Cf. footnote12.

ANNEX II

List of the provisions of the Schengen acquis
within the meaning of Article 4(2) of the 2005 Act of
Accession to be rendered applicable to Bulgaria and Romania in their relations with the United
Kingdom of Great Britain and Northern Ireland

1. In respect of the provisions of the Schengen Convention:

Article 40 and Articles 42 and 43 to the extent that they relate to Article 40.

2. Other provisions:

(a) The following Decisions of the Executive Committee established by the Schengen Convention:

Decision of the Executive Committee of 16 December 1998 on the Handbook on cross-border police cooperation (SCH/Com-ex (98) 52).

(b) The following other instruments:

Council Decision 2003/725/JHA of 2 October 2003 amending the provisions of Article 40 (1) and (7) of the Convention implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders (OJ L 260, 11.10.2003, p. 37).
