

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 16 March 2005

establishing a secure web-based Information and Coordination Network for Member States' Migration Management Services

(2005/267/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 66 thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament⁽¹⁾,

Whereas:

(1) The Council's comprehensive plan to combat illegal immigration and trafficking of human beings of 28 February 2002, which is based on the Commission's Communication of 15 November 2001 to the European Parliament and to the Council on a common policy on illegal immigration, called for the development of a secure web-based intranet site to establish secure and rapid information exchange between Member States on irregular or illegal migratory flows and phenomena.

(2) The development and management of the network should be entrusted to the Commission.

(3) Access to the web-based intranet site should be limited to authorised users in compliance with the established terms, procedures and security measures.

(4) Since the objectives of this Decision, namely secure and rapid information exchange between Member States, cannot be sufficiently achieved by the Member States

and can therefore, by reason of the effects of the envisaged action, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Decision does not go beyond what is necessary in order to achieve those objectives.

(5) This Decision respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union as general principles of Community law.

(6) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data⁽²⁾ and Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data⁽³⁾ should be taken into account in the context of the web-based intranet site.

(7) The measures necessary for the implementation of this Decision should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁽⁴⁾.

⁽¹⁾ Opinion delivered on 20 April 2004 (not yet published in the Official Journal).

⁽²⁾ OJ L 281, 23.11.1995, p. 31.

⁽³⁾ OJ L 8, 12.1.2001, p. 1.

⁽⁴⁾ OJ L 184, 17.7.1999, p. 23.

- (8) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark is not participating in the adoption of this Decision, and is therefore not bound by it or subject to its application. Given that this Decision builds upon the Schengen *acquis* under the provisions of Title IV of Part Three of the Treaty establishing the European Community, except insofar as it establishes an exchange of information on the problems associated with the return of third-country nationals other than those who do not fulfil or who no longer fulfil the conditions for a short stay applicable within the territory of a Member State by virtue of the provisions of the Schengen *acquis*, Denmark, in accordance with Article 5 of the aforementioned Protocol, shall decide within a period of six months after the Council has adopted this Decision whether it will implement it in its national law.
- (9) As regards the Republic of Iceland and the Kingdom of Norway, except insofar as it establishes an exchange of information on the problems associated with the return of third-country nationals other than those who do not fulfil or who no longer fulfil the conditions for a short stay applicable within the territory of a Member State by virtue of the provisions of the Schengen *acquis*, this Decision constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement concluded on 18 May 1999 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*⁽¹⁾, which fall within the areas referred to in Article 1, points A, B, C and E of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of that Agreement⁽²⁾.
- (10) As regards Switzerland, except insofar as it establishes an exchange of information on the problems associated with the return of third-country nationals other than those who do not fulfil or who no longer fulfil the conditions for a short stay applicable within the territory of a Member State by virtue of the provisions of the Schengen *acquis*, this Decision constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement signed between the European Union, the European Community and the Swiss Confederation concerning the implementation, application and development of the Schengen *acquis*⁽³⁾, which fall within the areas referred to in Article 1, points A, B, C and E of Decision 1999/437/EC read in conjunction with Article 4(1) of Council Decision 2004/849/EC of 25 October 2004⁽⁴⁾ and of Council Decision 2004/860/EC of 25 October 2004⁽⁵⁾ on the signing of that Agreement on behalf of the European Union and the European Community, respectively, and on the provisional application of certain provisions thereof.
- (11) An arrangement has to be made to allow representatives of Iceland, Norway and Switzerland to be associated with the work of the committee assisting the Commission in the exercise of its implementing powers pursuant to this Decision with respect to the provisions constituting a development of the Schengen *acquis*.
- (12) The United Kingdom is taking part in this Decision, in accordance with Article 5 of the Protocol integrating the Schengen *acquis* into the framework of the European Union annexed to the Treaty on European Union and to the Treaty establishing the European Community and Article 8(2) of 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*⁽⁶⁾, to the extent that its measures develop provisions of the Schengen *acquis* against the organisation of illegal immigration in which the United Kingdom participates, and the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on European Union and to the Treaty establishing the European Community, having notified under Article 3 thereof its wish to take part in the adoption and application of this Decision.
- (13) Ireland is taking part in this Decision, in accordance with Article 5 of the Protocol integrating the Schengen *acquis* into the framework of the European Union annexed to the Treaty on European Union and to the Treaty establishing the European Community and Article 6(2) of Council Decision 2002/192/EC of 28 February 2002 concerning the request of Ireland to take part in some of the provisions of the Schengen *acquis*⁽⁷⁾, to the extent that its measures develop provisions of the Schengen *acquis* against the organisation of illegal immigration in which Ireland participates.
- (14) In accordance with Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on European Union and to the Treaty establishing the European Community, and without prejudice to Article 4 of the said Protocol, Ireland is not taking part in the adoption of this Decision and is not bound by it or subject to its application to the extent that its measures do not develop provisions of the Schengen *acquis* against the organisation of illegal immigration in which Ireland participates,

(1) OJ L 176, 10.7.1999, p. 36.

(2) OJ L 176, 10.7.1999, p. 31.

(3) 13054/04, accessible on <http://register.consilium.eu.int>

(4) OJ L 368, 15.12.2004, p. 26.

(5) OJ L 370, 17.12.2004, p. 78.

(6) OJ L 131, 1.6.2000, p. 43.

(7) OJ L 64, 7.3.2002, p. 20.

HAS ADOPTED THIS DECISION:

Article 1

This Decision establishes a secure web-based Information and Coordination Network for the exchange of information on irregular migration, illegal entry and immigration and the return of illegal residents.

Article 2

1. The Commission shall be responsible for the development and management of the network, including the structure and content thereof and the elements for information exchange.

2. The elements for information exchange shall include at least the following:

- (a) early warning system on illegal immigration and facilitator networks;
- (b) network of immigration liaison officers;
- (c) information on the use of visas, borders and travel documents in relation to illegal immigration;
- (d) return-related issues.

3. The network shall include all the appropriate tools, the confidentiality of which shall be determined in accordance with the procedure referred to in Article 6(2).

4. The Commission shall make use of the existing technical platform within the Community framework of the trans-European telematic network for the interchange of data between administrations.

Article 3

In accordance with the procedure referred to in Article 6(2) the Commission shall:

- (a) establish the terms and procedures for granting full or selective access to the network;
- (b) lay down rules and guidelines on the terms of use of the system, including rules on the confidentiality, transmission, storage, filing and deletion of information and on standardised forms.

Article 4

1. Member States shall provide access to the network in compliance with the measures adopted by the Commission in accordance with Article 3.

2. Member States shall designate national contact points and notify the Commission thereof.

Article 5

1. The uploading of data onto the network shall not affect the ownership of the information concerned. Authorised users shall remain solely responsible for the information they provide and shall ensure that its contents are fully compliant with existing Community and national law.

2. Unless marked as public, the information provided shall be strictly limited to authorised users of the network and shall not be disclosed to third parties without prior permission of the owner of the information concerned.

3. Member States shall take the necessary security measures to:

- (a) prevent any unauthorised person from having access to the network;
- (b) guarantee that, when using the network, authorised persons have access only to data which are within their sphere of competence;
- (c) prevent information on the network from being read, copied, modified or erased by unauthorised persons.

4. Without prejudice to paragraph 3, further security measures shall be adopted by the Commission in accordance with the procedure referred to in Article 6(2).

Article 6

1. The Commission shall be assisted by the Committee set up under Council Decision 2002/463/EC of 13 June 2002 adopting an action programme for administrative cooperation in the fields of external borders, visas, asylum and immigration (ARGO programme) ⁽¹⁾.

⁽¹⁾ OJ L 161, 19.6.2002, p. 11.

2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply.

3. The Committee shall adopt its Rules of Procedure.

Article 7

1. Where necessary for the development of the network, the Commission shall conclude agreements with bodies governed by public law established under the Treaties establishing the European Communities or established within the framework of the European Union.

2. The Commission shall inform the Council of the progress made in the negotiations of any such agreements.

Article 8

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

Article 9

This Decision is addressed to the Member States.

Done at Brussels, 16 March 2005.

For the Council

The President

J. ASSELBORN
