

**1999/436/EC: Council Decision
of 20 May 1999**

determining, in conformity with the relevant provisions of the Treaty establishing the European Community and the Treaty on European Union, the legal basis for each of the provisions or decisions which constitute the Schengen acquis

COUNCIL DECISION

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(1999/436/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Acting on the basis of Article 2(1), second subparagraph, second sentence, of the Protocol annexed to the Treaty on European Union and to the Treaty establishing the European Community, integrating the Schengen acquis into the framework of the European Union (hereinafter referred to as the "Schengen Protocol");

- (1) Whereas pursuant to Article 2(1), first subparagraph, of the Schengen Protocol, the Schengen acquis as defined in the Annex to the Protocol shall, from the date of entry into force of the Treaty of Amsterdam, immediately apply to the thirteen Member States referred to in Article 1 of the Protocol, without prejudice to the provisions of Article 2(2) of the Protocol;
- (2) Whereas nothing in this Decision affects the continuation of legal obligations under the 1990 Convention;
- (3) Whereas the mandate conferred upon the Council by Article 2(1), second subparagraph, of the Schengen Protocol, to determine, acting unanimously and in conformity with the relevant provisions of the Treaties, the legal basis for each of the provisions or decisions which constitute the Schengen acquis, has as one of its objectives the identification of the legal basis for any future proposals and initiatives to amend or build upon the Schengen acquis, which, in accordance with Article 5(1), first subparagraph, of the Schengen Protocol, are subject to the relevant provisions of the Treaties, including those governing the form of the act to be adopted and the procedure for its adoption;
- (4) Whereas some provisions of the 1990 Convention implementing the Schengen Agreement require Contracting States to introduce penalties for their effective enforcement without, however, requiring any harmonisation of these penalties; whereas therefore, the legal basis to be determined for these provisions should be the one determined for the rules the breach of which has to be subject to sanctions, without prejudice to the legal basis for any future measure aiming at the harmonisation of penalties;
- (5) Whereas the determination of a legal basis in conformity with the relevant provisions of the Treaties for each of the provisions or decisions which constitute the Schengen acquis does not affect the exercise of the responsibilities incumbent upon the Member States according to Article 64 TEC and Article 33 TEU with regard to the maintenance of law and order and the safeguarding of internal security;
- (6) Whereas the determination of a legal basis in conformity with the relevant provisions of the Treaties for each of the provisions or decisions which constitute the Schengen acquis, or the determination that a legal basis is unnecessary for any such provisions or decisions, does not affect the right of Member States to carry out checks on goods linked to prohibitions or restrictions

laid down by the Member States, and which are compatible with Community law;

- (7) Whereas the determination of a legal basis in conformity with the Treaty establishing the European Community for the provisions of the 1990 Convention implementing the Schengen Agreement relating in particular to the conditions for entry into the territory of the Contracting States or for issuing visas does not affect current rules governing the recognition of the validity of travel documents;
- (8) Whereas the rights and obligations of Denmark are governed by Article 3 of the Protocol integrating the Schengen acquis into the framework of the European Union and in Articles 1 to 5 of the Protocol on the position of Denmark;
- (9) Whereas the relationship between the Protocol on the position of Denmark, the Protocol on the position of the United Kingdom and of Ireland on certain questions regarding the Treaty establishing the European Community and Treaty on European Union and the Protocol integrating the Schengen acquis into the framework of the European Union, on the basis of which various forms are prescribed for the adoption of and participation in the Schengen acquis and its further development, should be taken into account when Schengen is incorporated into the European Union;
- (10) Whereas the Schengen Protocol itself provides for the association of the Republic of Iceland and the Kingdom of Norway with the implementation of the Schengen acquis and its further development on the basis of the Agreement signed in Luxembourg on 19 December 1996;
- (11) Whereas the acts adopted on the basis of a proposal or an initiative for the further development of the Schengen acquis shall contain a reference to the Schengen Protocol, so that legal security is guaranteed and the provisions related to the Schengen Protocol can be applied in every case;
- (12) Whereas, while having regard to Article 134 of the Convention implementing Schengen, the integration of the Schengen acquis in the framework of the European Community does not affect Member States' competence in relation to the recognition of States and territorial units, their authorities and travel and other documents issued by them,

HAS DECIDED AS FOLLOWS:

Article 1

This Decision determines legal basis for the provisions and decisions set out in Annexes A to D and constituting the Schengen acquis, except for those provisions and decisions for which the Council, acting on the basis of Article 2(1), second subparagraph, first sentence, of the Schengen Protocol, has determined that no legal basis is necessary.

Article 2

The legal basis for the provisions of the Convention signed in Schengen on 19 June 1990 between the Kingdom of Belgium, the Federal Republic of Germany, the French Republic, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands implementing the Agreement on the gradual abolition of checks at their common borders, signed in Schengen on 14 June 1985 (hereafter referred to as "the Schengen Convention"), and its related Final Act, shall be determined in accordance with Annex A.

Article 3

The legal basis for the provisions of the Accession Agreements to the Schengen Convention concluded with the Italian Republic (signed in Paris on 27 November 1990), the Kingdom of Spain and the Portuguese Republic (signed in Bonn on 25 June 1991), the Hellenic Republic (signed in Madrid on 6 November 1992), the Republic of Austria (signed in Brussels on 28 April 1995) and the Kingdom of Denmark, the Republic of Finland and the Kingdom of Sweden (signed in Luxembourg on 19 December 1996), and their related Final Acts and declarations, shall be determined in accordance with Annex B.

Article 4

The legal basis for the decisions and declarations of the Executive Committee established by the Schengen Convention shall be determined in accordance with Annex C.

Article 5

The legal basis for the acts adopted for the implementation of the Schengen Convention by the organs upon which the Executive Committee has conferred decision-making powers shall be determined in accordance with Annex D.

Article 6

With regard to the Member States listed in Article 1 of the Protocol integrating the Schengen acquis into the framework of the European Union, the territorial scope of the provisions or decisions forming the Schengen acquis for which the Council has determined a legal basis in Title IV of Part 3 of the EC Treaty on the basis of Article 2(1), second sentence, of the abovementioned Protocol, and the territorial scope of measures extending or amending such provisions and decisions shall be that laid down in Article 138 of the 1990 Convention implementing the Schengen Agreement and that laid down in the relevant provisions of the accession instruments to that Convention.

Article 7

This Decision shall not affect the competence of Member States with regard to the recognition of States and territorial units and passports, travel and identity documents issued by their authorities.

Article 8

The acts adopted on the basis of a proposal or an initiative for the further development of the Schengen acquis shall contain a reference to the Schengen-Protocol in the preamble.

Article 9

This Decision shall take effect immediately. It shall be published in the Official Journal of the European Communities.

Done at Brussels, 20 May 1999.

For the Council

The President

E. BULMAHN

*ANNEX A**Article 2*

>TABLE POSITION>

*ANNEX B**Article 3*

>TABLE POSITION>

*ANNEX C**Article 4***CLASSIFICATION OF DECISIONS AND DECLARATIONS OF THE EXECUTIVE COMMITTEE**

Decisions of the Executive Committee

>TABLE POSITION>

Declarations of the Executive Committee

>TABLE POSITION>

*ANNEX D**Article 5*

DECISIONS OF THE CENTRAL GROUP

>TABLE POSITION>

STATEMENTS

1. The Council has made the following statement when the Decision was adopted:

"Notwithstanding the determination of legal bases for Article 2(2) and (3), Article 4(1) to (3), Article 5(1)(e) and Article 8 of the Convention implementing the Schengen Agreement, in conformity with the relevant provisions of the Treaties, the responsibilities and powers of the Member States with regard to surveillance measures, including at their borders, for the purposes of maintaining law and order and safeguarding internal security in accordance with national law, and through the means at their disposal, shall remain unaffected."

2. The Member States within the Council have made the following statement with respect to Member States listed in Article 1 of the Schengen Protocol:

"The inclusion of the first declaration of the Final Act of the Convention implementing the Schengen Agreement in this Decision must be interpreted as signifying that the decision confirming the capacity of each State acceding to the EU to implement the Schengen acquis, thus permitting the removal of controls at internal frontiers, will be taken unanimously by the Council comprised of the Member States named in Article 1 of the Schengen Protocol."

3. The Commission has made the following statement:

Statement on the Schengen Implementing Convention Standing Committee

"In accordance with Article 1 of the Protocol integrating the Schengen acquis into the framework of the European Union, closer cooperation on Schengen matters 'shall be conducted within the institutional and legal framework of the European Union and with respect for the relevant provisions of the Treaty on European Union and the Treaty establishing the European Community'. The Commission therefore considers that the integration into the Union framework of the Decision of the Executive Committee setting up a Schengen Implementing Convention Standing Committee (SCH/Com-ex (98) 26 Def of 16.9.1998) does not in any way affect the powers devolving on it from the Treaties and in particular its responsibility as guardian of the Treaties."

4. Statement made by the Netherlands delegation when the Council Decision determining the legal bases for the Schengen acquis was adopted:

"The Netherlands considers that provisions of Title IV of Part Three of the EC Treaty should be the legal basis for a number of decisions and provisions of the Schengen acquis concerning the Schengen Information System since the latter relate to aspects of the free movement of persons which touch on aliens' law."

Belgium associates itself with the statement made by the Netherlands delegation.

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