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Committee on Civil Liberties, Justice and Home Affairs

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8.3.2005

***II
DRAFT RECOMMENDATION FOR SECOND READING

on the Council common position for adopting a regulation of the European Parliament and of the Council amending the Convention implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders as regards access to the Schengen Information System by the services in the Member States responsible for issuing registration certificates for vehicles
(14238/1/2004 – C6-0007/2005 – 2003/0198(COD))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Carlos Coelho

Symbols for procedures

*	Consultation procedure *majority of the votes cast*
**I	Cooperation procedure (first reading) *majority of the votes cast*
**II	Cooperation procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***	Assent procedure *majority of Parliament's component Members except in cases covered by Articles 105, 107, 161 and 300 of the EC Treaty and Article 7 of the EU Treaty*
***I	Codecision procedure (first reading) *majority of the votes cast*
***II	Codecision procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***III	Codecision procedure (third reading) *majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

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(14238/1/2004 – C6-0007/2005 – 2003/0198(COD))

(Codecision procedure: second reading)

The European Parliament,

– having regard to the Council common position (14238/1/2004 – C6-0007/2005),

– having regard to its position at first reading[1] on the Commission proposal to Parliament and the Council (COM(2003)0510)[2],

– having regard to the Commission assessment (COM(2005)0003)[3],

– having regard to Article 251(2) of the EC Treaty,

– having regard to Rule 62 of its Rules of Procedure,

– having regard to the recommendation for second reading of the Committee on Civil Liberties, Justice and Home Affairs (A6-0000/2005),

1. Approves the common position as amended;

2. Instructs its President to forward its position to the Council and Commission.

Council common position	Amendments by Parliament
	Amendment 1 Recital 3
(3) ***The initiative of the Kingdom of the Netherlands with a view to adopting a*** Council Decision on tackling vehicle crime with cross-border implications[1] includes the use of the SIS as an integral part of the law enforcement strategy against vehicle crime.	(3) Council Decision ***2004/919/EC of 22 December 2004*** on tackling vehicle crime with cross-border implications[1] includes the use of the SIS as an integral part of the law enforcement strategy against vehicle crime.

[1] Texts Adopted, 1.4.2004, P5_TA(2004)0266.
[2] Not yet published in OJ.
[3] Not yet published in OJ.

[1] ***OJ C 34, 7.2.2004, p. 18.*** [1] ***OJ L 389, 30.12.2004, p. 28.***

Justification

Since the initiative now been adopted, the text of the recital needs to be adjusted.

Amendment 2
Recital 13 a (new)

(13a) As regards Switzerland, this Regulation 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 association of the Swiss Confederation with the implementation, application and development of the Schengen acquis[1], which falls in the area referred to in Article 1, point G of Decision 1999/437/EC[2] read in conjunction with Article 4(1) of the Council Decisions of 25 October 2004 on the signing on behalf of the European Union, and on the signing on behalf of the European Community, and on the provisional application of certain provisions of that Agreement[3].

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[1] Council document 13054/04 is accessible at http://register.consilium.eu.int.

[2] OJ L 176, 10.7.1999, p. 31.

[3] OJ L 368, 15.12.2004, p. 26 and OJ L 370, 17.12.2004, p. 78.

Justification

Since the Agreement with Switzerland was signed on 26 October, any legislative act that constitutes a development of the Schengen Acquis as regards the purposes served by the Agreement should be identified as such in a separate recital. Since this Regulation is a development of the Schengen Acquis, it requires a recital concerning Switzerland.

Amendment 3

ARTICLE 1
Article 102 a, paragraph 3 a (new) (1990 Schengen Convention)

3a. Each year, after seeking the opinion of the joint supervisory authority set up pursuant to Article 115 on the data protection rules, the Council shall submit a report to the European Parliament on the implementation of this Article. This report shall include information and statistics relating to the use and results of the implementation of this Article and shall state how the data protection rules were applied.

Justification

To receive a report about the implementation of this Article is very important for Parliament. The original amendment 10, which was not included by Council in its common position, is therefore tabled again. It is, however, modified in two aspects: first, because the Commission has no responsibility for the management of SIS 1+, it is proposed that the Council itself sends this report. Second, to save the Member States the job of making technical changes, the number of searches and the number of stolen vehicles is replaced by the more general words "information and statistics relating to the use and results of the implementation of this Article".

EXPLANATORY STATEMENT

I. Background

In view of increase in the number of vehicles which are being stolen and illegally traded[1], further action to combat crime of this nature must be taken as a matter of urgency. In a Europe within which checks at internal borders have been abolished, a response must be found which involves clear action at Community level. One course of action discussed in this context is the access to the Schengen Information System (SIS) for vehicle registration authorities.

Following the request of Council and intensive debates the Commission in 2003 made such a proposal to give public vehicle registration authorities direct access to some data in the SIS (COM(2003)510). This should allow them to better check whether vehicles presented to them for registration have been stolen. Should a vehicle registration authority be a private entity then the access should be indirect, i.e. an access via a public authority.

On 1st April 2004 the European Parliament adopted its first reading (T5-0266/2004)[2] based on the rapporteur's previous report (A5-0205/2004). At its first reading, Parliament on the one hand limited the data to which vehicle registration authorities should have access by withdrawing access to data relating to blank official documents and to data concerning issued identity papers. On the other hand, Parliament suggested including in the SIS (and subsequently giving vehicle registration authorities access to) data concerning vehicle registration certificates and vehicle number plates which have been stolen, misappropriated or lost. In addition, it emphasised that clearer information should be given as to which bodies are entitled to have access, and for what purpose. Furthermore, Parliament requested a yearly report on the implementation of this measure. Finally, to underline that increased access should only be possible with strengthened data protection rules it introduced the requirement to record every transmission.

II. Council's common position

On 22 December 2004 Council adopted its common position (14238/1/04) accompanied by the statement of the Council's reasons (14238/1/04 REV 1 ADD 1). Pursuant to Article 251.2 TEC the European Commission informed that it supports the common position (COM(2005)3).

The Council essentially followed Parliament's first reading. It agreed to modify the data to which vehicle registration authorities should have access, as outlined above. Overall, Council accepted 7 out of 10 amendments from Parliament.

[1] Statistics provided by Europol reveal that in 2002 1.149.114 vehicles were stolen of which only 388.779 could be recovered.
[2] Not yet published in OJ.

III. Recommendation of the rapporteur

The rapporteur welcomes the common position of Council and is pleased that the Council followed Parliament's first reading to such a large extent. He is confident that the legal act can soon be finally adopted, in order to allow this useful measure to come into force.[1]

Since most of Parliament's amendments were accepted by Council there are very few outstanding issues for the second reading.

As regards Amendment 4 as contained in the report A5-0205/2004 and adopted by Parliament, which was not included by Council, the rapporteur has dropped it, since on 24 February 2005 the Council finally adopted the initiative by the Kingdom of Spain with a view to adopting a Council Decision concerning the introduction of some new functions for the Schengen Information System, in particular in the fight against terrorism. This decision provides for a change to Article 100 f) of the Schengen Implementing Convention by including data on "vehicle registration certificates and vehicle number plates which have been stolen, misappropriated, lost or invalidated;". This change covers the original Amendment 4.

As regards Amendment 11 as contained in the report A5-0205/2004 and adopted by Parliament, which was not included by Council, the rapporteur has dropped it too, since its paragraphs 1 and 3 are also contained in the Decision mentioned above. Paragraph 2 of the amendment 11 is, however, not included. This paragraph proposed recording the person or object on whom the search in the SIS was run, the terminal or user carrying out the search, the place, date and time of the search and the reasons for the search. It was an attempt to change the data-protection rules for the SIS in general and the rapporteur can accept that it was, for the moment, not included in the revised text of the Schengen Implementing Convention. Since the proposal for the SIS II is forthcoming, this issue can be dealt with in the context of this legal instrument.

The rapporteur does, however, insist on Amendment 10. This amendment requests an annual report about the implementation of the proposed access to vehicle registration authorities to combat vehicle crime. In this report the Commission shall also "state how many searches were made, how many stolen vehicles were detected and how the data protection rules were applied". Council did not include this amendment by arguing that "the current draft Regulation does not provide the correct and sufficient legal basis for these provisions."[2] The rapporteur does not agree with this argument because if it would be true then we would never have a report on anything.

Reporting about the SIS is of great importance for Parliament. Currently Parliament receives no report on the SIS. Only the table of hits and the report of the Joint Supervisory Authority are available. With these documents alone it is not possible for Parliament to make an assessment of the system. Only with more detailed reports which include a qualitative and quantitative assessment can Parliament exercise its legislative function. The legislator needs to know whether a law achieves its objectives or not. Reporting is also important for Parliament's role as one arm of the budgetary authority, since the SIS central unit is paid for

[1] For a general appreciation of the Commission's proposal the rapporteur refers to his report A5-0205/2004.
[2] 14238/1/04 REV 1 ADD 1, p. 2, point 4.

out of the European budget. The rapporteur therefore proposes that Amendment 10 be retained.

Nevertheless, he proposes a slightly different wording, in order to ensure that Member States do not have to change their national systems at this stage before changes will become necessary anyway under SIS II. He also proposes that the report should be sent by the Council because the Commission has no responsibility for the management of the current system (SIS 1+).

In addition to this amendment the rapporteur proposes two further amendments which are of a technical nature. One amendment is introduced to take account of Switzerland's forthcoming accession to the Schengen acquis on which this measure constitutes a development. A second amendment updates the text in order to take account of the fact that the Dutch initiative to which Parliament referred in its Amendment 1 and the Council in recital 3 has in the meantime been adopted.[1]

IV. The second generation Schengen Information System (SIS II)

Since the amendments contained in this proposal will be included in the proposal on the new SIS II, the rapporteur considers that some of Parliament's requests should be restated: first of all, the SIS II proposal should be based on a legal basis providing for the codecision procedure, as is the case with the proposal on the Visa Information System. Nothing else would be appropriate in the changed context. This forthcoming procedure would then also be the occasion to deal with the outstanding issues of this report, notably reporting and the data-protection rules in general.

In this context the rapporteur also expresses his concern about the declaration Austria and Germany made for the minutes. This declaration states that the two Member States are of the opinion that this legal act should have had its legal basis in the third pillar.

Furthermore, the rapporteur would like to point out that Parliament will look very carefully at each proposal to give access to the SIS to new authorities.[2] As already outlined in report A5-0205/2004, several proposals are being discussed which also relate to private entities. Private entities should under no circumstances be granted direct access to the SIS. It should also be borne in mind that the security risk increases as increasing numbers of people have access to what is very sensitive information.

Finally, the rapporteur also repeats his wish to receive in the future more reassurance that the data-protection rules laid down in the Schengen convention and in Directive 95/46 are effectively respected and controlled. Data-protection authorities need sufficient resources to fulfil their task and Member States have to be firmly committed to defending the fundamental right of data protection.

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[1] Council Decision (2004/920/EC) of 22 December 2004 on tackling vehicle crime with cross-border implications, in OJ L 389 of 30.12.2004, p. 28.

[2] European Parliament recommendation to the Council on the second-generation Schengen information system (SIS II) (2003/2180(INI)) adopted on 20.11.2003.