

Commission Decision of 5 May 2009 adopting implementing measures for the consultation mechanism and the other procedures referred to in Article 16 of Regulation (EC) No 767/2008 of the European Parliament and of the Council concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation) (notified under document number C(2009) 2359) (Only the Bulgarian, Czech, Dutch, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish texts are authentic) (2009/377/EC)

COMMISSION DECISION

of 5 May 2009

adopting implementing measures for the consultation mechanism and the other procedures referred to in Article 16 of Regulation (EC) No 767/2008 of the European Parliament and of the Council concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation)

(notified under document number C(2009) 2359)

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(2009/377/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to 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)⁽¹⁾, and in particular Article 45(2)(e) thereof,

Whereas:

- (1) Article 16 of Regulation (EC) No 767/2008 provides rules on the use of the VIS for consultation and requests for documents. In implementation of Article 16 of the VIS Regulation, measures should be adopted to set out rules for the exchange of the messages transmitted by the infrastructure of the VIS (VIS Mail Specifications). These messages shall not be recorded in the VIS and the personal data transmitted shall be used solely for the consultation of central visa authorities and consular cooperation.
- (2) Subject to further measures adopted by the date referred to in Article 46 of the VIS Regulation concerning the integration of the technical functionalities of the Schengen Consultation Network, the VIS Mail Specifications should define four types of messages which may be used from the start of operations of VIS until the date referred to in Article 46 of the VIS Regulation. These should include messages related

to consular cooperation (Article 16(3) of the VIS Regulation), messages related to the transmission of requests to the competent visa authority to forward copies of travel documents and other documents supporting the application and to the transmission of electronic copies of those documents (Article 16(3) of the VIS Regulation), messages that data processed in the VIS are inaccurate or that data were processed in the VIS contrary to the provisions of the VIS Regulation (Article 24(2) of the VIS Regulation) and messages that an applicant has acquired the nationality of a Member State (Article 25(2) of the VIS Regulation).

- (3) In accordance with Article 5 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and the Treaty establishing the European Community, on 13 October 2008 Denmark decided to implement Regulation (EC) No 767/2008 in Danish law. Regulation (EC) No 767/2008 is thus binding upon Denmark in international law. Denmark has therefore an obligation under international law to implement this Decision.
- (4) In accordance with 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*⁽²⁾, the United Kingdom has not taken part in the adoption of Regulation (EC) No 767/2008 and is not bound by it or subject to its application as it constitutes a development of provisions of the Schengen *acquis*. The United Kingdom is therefore not an addressee of this Commission Decision.
- (5) In accordance with Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis*⁽³⁾, Ireland has not taken part in the adoption of Regulation (EC) No 767/2008 and is not bound by it or subject to its application as it constitutes a development of provisions of the Schengen *acquis*. Ireland is therefore not an addressee of this Commission Decision.
- (6) This Decision constitutes an act building on the Schengen *acquis* or otherwise related to it within the meaning of Article 3(2) of the 2003 Act of Accession and Article 4(2) of the 2005 Act of Accession.
- (7) 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 latter's association with the implementation, application and development of the Schengen *acquis*⁽⁴⁾, which falls within the area referred to in Article 1, point B of 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*⁽⁵⁾.
- (8) As regards Switzerland, this Decision constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement signed by the European Union, the European Community and the Swiss Confederation on the latter's association with the implementation, application and development of the Schengen *acquis* which falls within the area referred to in Article 1, point B of Decision 1999/437/EC read in

conjunction with Article 3 of Council Decision 2008/146/EC⁽⁶⁾ on the conclusion of that Agreement on behalf of the European Community.

- (9) 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* which falls within the area referred to in Article 1, point B of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/261/EC of 28 February 2008 on the signature, on behalf of the European Community, and on the provisional application of certain provisions 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*⁽⁷⁾.
- (10) The measures provided for in this Decision are in accordance with the opinion of the Committee set up by Article 51 of 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)⁽⁸⁾,

HAS ADOPTED THIS DECISION:

Article 1

The implementing measures for the consultation mechanism and the other procedures referred to in Article 16 of Regulation (EC) No 767/2008 for the phase from the start of operations of VIS until the date referred to in Article 46 of Regulation (EC) No 767/2008 shall be as set out in the Annex.

Article 2

This Decision is addressed to the Kingdom of Belgium, the Republic of Bulgaria, the Czech Republic, 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 Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of 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.

Done at Brussels, 5 May 2009.

For the Commission

Jacques BARROT

Vice-President

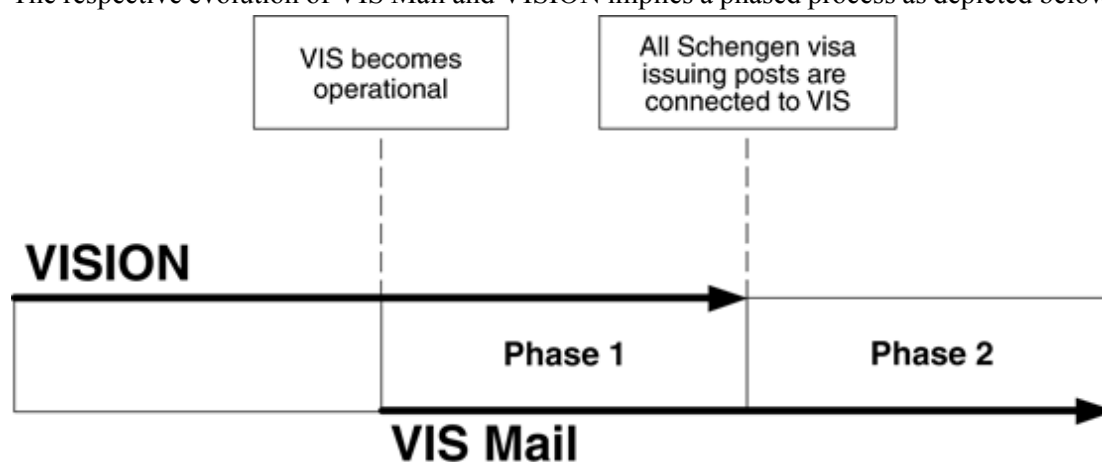
ANNEX

1. Introduction

The VIS Mail Communication mechanism shall be based on Article 16 of Regulation (EC) No 767/2008, allowing transmission of information between Member States via the infrastructure of the Visa Information System (VIS).

The personal data transmitted within this mechanism pursuant to Article 16 of the VIS Regulation shall be used solely for the consultation of central visa authorities and consular cooperation.

The respective evolution of VIS Mail and VISION implies a phased process as depicted below:



Before VIS becomes operational, VISION shall be the unique communication network for consultations on visas⁽⁹⁾.

In Phase 1, from the start of operations of VIS, the VIS Mail mechanism may be used for transmission of following types of information:

- messages related to consular cooperation,
- requests for supporting documents,
- messages on inaccurate data,
- Member State nationality acquired by an applicant.

The provisions of the VIS Regulation concerning the use of VIS Mail for the transmission of information relating to consular cooperation and requests for supporting documents (Article 16(3)), for the amendment of data (Article 24(2)) and for advance data deletion (Article 25(2)) are applicable in Phase 1. The VIS Mail mechanism, including the central mail relay and the national mail servers, needs to be in place in case at least one Member State intends to use the mechanism in Phase 1 to ensure that this Member State is able to transmit such messages⁽¹⁰⁾. During Phase 1 of the VIS Mail operation, VISION shall be used in parallel.

In Phase 2, when all the Schengen visa issuing posts are connected to VIS, the VIS Mail mechanism shall replace the Schengen Consultation Network from the date determined in accordance with Article 46 of the VIS Regulation. As from this date all types of messages shall be exchanged via the VIS infrastructure by means of the VIS Mail mechanism.

2. SMTP Mail Exchange Infrastructure

Status: This is the original version (as it was originally adopted).

The SMTP mail exchange shall use the VIS infrastructure, which includes national interfaces and the sTESTA network, and shall be based on national mail servers exchanging messages via a central mail relay infrastructure.

The central SMTP mail relay infrastructure shall be developed and installed in the VIS Central Unit and Back-up Central Unit sites. The management and monitoring of the mail relay including logging shall be provided by the Management Authority.

The national SMTP mail server infrastructure shall be prepared by the Member States. The national mail server infrastructure needs to be protected against unauthorised access to the messages.

3. **Application Solution**

The VIS Mail operations shall start in Phase 1 with business processes developed taking into account the technical solution of VISION to ensure a smooth switch-over between Phases 1 and 2 when VIS Mail will replace VISION.

Technical specifications describing the functionalities of the VIS Mail mechanism shall be without prejudice to the legal aspects of consular cooperation and visa procedures.

- (1) OJ L 218, 13.8.2008, p. 60.
- (2) OJ L 131, 1.6.2000, p. 43.
- (3) OJ L 64, 7.3.2002, p. 20.
- (4) OJ L 176, 10.7.1999, p. 36.
- (5) OJ L 176, 10.7.1999, p. 31.
- (6) OJ L 53, 27.2.2008, p. 1.
- (7) OJ L 83, 26.3.2008, p. 3.
- (8) OJ L 381, 28.12.2006, p. 4.
- (9) This network is used for consultations between Member States, including representation, and for the exchange of information that a visa with limited territorial validity (VLTV) has been issued.
- (10) The fact that the VIS Mail mechanism may be used concerns the optional use of the mechanism itself, not the availability of the tool, which is then obligatory.