Regulation (EC) No 1160/2005 of the European Parliament and of the Council of 6 July 2005 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 (Text with EEA relevance)

REGULATION (EC) No 1160/2005 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 6 July 2005

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 71(1)(d) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee[(1)],

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty[(2)],

Whereas:

(1) Article 9 of Council Directive 1999/37/EC of 29 April 1999 on the registration documents for vehicles[(3)] provides that Member States are to assist one another in the implementation of that Directive and may exchange information at bilateral or multilateral level in particular so as to check, before any registration of a vehicle, the latter's legal status, where necessary in the Member State in which it was previously registered. Such checking may in particular involve the use of an electronic network.

(2) The Schengen Information System (or the SIS), set up under Title IV of the Convention of 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders[(4)](hereinafter 'the 1990 Schengen Convention') and integrated into the framework of the European Union pursuant to the Protocol annexed to the Treaty on European Union and the Treaty establishing the European Community, constitutes an electronic network between the Member States and contains, *inter alia*, data on motor vehicles with a cylinder capacity exceeding 50 cc which have been stolen, misappropriated or lost. Pursuant to Article 100 of the 1990 Schengen Convention, data on such motor vehicles sought for the purposes of seizure or use as evidence in criminal proceedings are entered in the SIS.

(3) Council Decision 2004/919/EC of 22 December 2004 on tackling vehicle crime with cross-border implications[(5)] includes the use of the SIS as an integral part of the law enforcement strategy against vehicle crime.

(4) Pursuant to Article 101(1) of the 1990 Schengen Convention, access to data entered in the SIS and the right to search such data directly is reserved exclusively to the authorities responsible for border checks and other police and customs checks carried out within the country, and the coordination of such checks.

(5) Article 102(4) of the 1990 Schengen Convention provides that data may not, in principle, be used for administrative purposes.

(6) Services responsible in the Member States for issuing registration certificates for vehicles and clearly identified for this purpose should have access to data entered in the SIS concerning motor vehicles with a cylinder capacity exceeding 50cc, trailers and caravans with an unladen weight exceeding 750 kg and vehicle registration certificates and vehicle number plates which have been stolen, misappropriated, lost or invalidated, in order to enable them to check whether the vehicles presented to them for registration have been stolen, misappropriated or lost. To that end it is necessary to adopt rules granting those services access to those data, and to allow them to use those data for the administrative purpose of properly issuing registration certificates for vehicles.

(7) Member States should take the necessary measures to ensure that, in case of a hit, the measures provided for under Article 100(2) of the 1990 Schengen Convention are taken.

(8) The European Parliament recommendation to the Council of 20 November 2003 on the second-generation Schengen Information System (SIS II) outlines a number of important concerns and considerations in relation to the development of the SIS, particularly as regards access to the SIS by private bodies such as vehicle registration services.

(9) To the extent that services in the Member States responsible for issuing registration certificates for vehicles are not government services, access to the SIS should be granted indirectly, that is to say through the intermediary of an authority as referred to in Article 101(1) of the 1990 Schengen Convention responsible for ensuring compliance with the measures taken by these Member States pursuant to Article 118 of that Convention.

(10) 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[(6)], and the specific rules on data protection in the provisions of the 1990 Schengen Convention, which supplement or clarify the principles set out in that Directive, apply to the processing of personal data by the services responsible in the Member States for issuing registration certificates for vehicles.

(11) Since the objective of this Regulation, namely granting access to the SIS to services in the Member States responsible for issuing registration certificates for vehicles, in order to facilitate their tasks under Directive 1999/37/EC, cannot be sufficiently achieved by the Member States by reason of the very nature of the SIS as a joint information system,

and can therefore only be 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 Regulation does not go beyond what is necessary in order to achieve that objective.

(12) Member States should have a sufficient period within which to take the practical measures necessary to apply this Regulation.

(13) As regards Iceland and Norway, this Regulation constitutes a development of provisions of the Schengen *acquis* which fall within the area referred to in Article 1, point G, 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*[(7)].

(14) 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*, which fall within the area referred to in Article 1, point G, of Decision 1999/437/EC read in conjunction with Article 4(1) of Council Decision 2004/860/EC of 25 October 2004[(8)] on the signing, on behalf of the European Community, and on the provisional application of certain provisions of that Agreement.

(15) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.

(16) This Regulation 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,

HAVE ADOPTED THIS REGULATION:

Article 1

The following Article shall be inserted in Title IV of the 1990 Schengen Convention:

Article 102A

1 Notwithstanding Articles 92(1), 100(1), 101(1) and (2), 102(1), (4) and (5), the services in the Member States responsible for issuing registration certificates for vehicles, as referred to in Council Directive 1999/37/EC of 29 April 1999 on the registration documents for vehicles[(9)], shall have the right to have access to the following data entered into the Schengen Information System, for the sole purpose of checking whether vehicles presented to them for registration have been stolen, misappropriated or lost:

a data concerning motor vehicles with a cylinder capacity exceeding 50 cc which have been stolen, misappropriated or lost;

b data concerning trailers and caravans with an unladen weight exceeding 750 kg which have been stolen, misappropriated or lost;

c data concerning registration certificates for vehicles and vehicle number plates which have been stolen, misappropriated, lost or invalidated.

Subject to paragraph 2, the national law of each Member State shall govern access to those data by those services.