COUNCIL REGULATION (EC) No 871/2004

of 29 April 2004

concerning the introduction of some new functions for the Schengen Information System, including in the fight against terrorism

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 initiative of the Kingdom of Spain [1],

Having regard to the opinion of the European Parliament [2],

Whereas:

(1) The Schengen Information System, hereinafter referred to as 'SIS', set up pursuant to the provisions of Title IV of the Convention of 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders [3], hereinafter referred to as 'the 1990 Schengen Convention', constitutes an essential tool for the application of the provisions of the Schengen acquis as integrated into the framework of the European Union.

(2) The need to develop a new, second generation SIS, hereinafter referred to as 'SIS II', with a view to the enlargement of the European Union and allowing for the introduction of new functions, while benefiting from the latest developments in the field of information technology, has been recognised and the first steps have been taken to develop this new system.

(3) Certain adaptations of existing provisions and the introduction of certain new functions can already be realised with respect to the current version of the SIS, in particular as far as concerns the provision of access to certain types of data entered in the SIS for authorities the proper performance of whose tasks would be facilitated were they able to search these data, including Europol and the national members of Eurojust, the extension of the categories of missing objects about which alerts may be entered and the recording of transmissions of personal data. The technical facilities required for the purpose first need to be established in each Member State.

(4) The Conclusions of the Laeken European Council of 14 and 15 December 2001 and in particular Conclusions 17 (cooperation between specialised counter-terrorism services), 43 (Eurojust and police cooperation with regard to Europol) and the Action Plan of 21 September 2001 against terrorism refer to the need to enhance the SIS and improve its capabilities.

(5) Moreover, it is useful to enact provisions with respect to the exchange of all supplementary information through the authorities designated for that purpose in all Member States (Supplementary Information Request at National Entry), giving these authorities a common legal E basis within the provisions of the 1990 Schengen Convention and setting out rules on deletion of data kept by these authorities.

(6) The amendments to be made to this effect to the provisions of the Schengen acquis dealing with the SIS consist of two parts: this Regulation and a Council Decision based on Articles 30(1)(a) and (b), 31(a) and (b) and 34(2)(c) of the Treaty on European Union. The reason for this is that, as set out in Article 93 of the 1990 Schengen Convention, the purpose of the SIS is to maintain public policy and public security, including national security, in the territories of the Member States and to apply the provisions of the said Convention relating to the movement of persons in those territories, by using information communicated via the SIS in accordance with the provisions of that Convention. Since some of the provisions of the 1990 Schengen Convention are to be applied for both purposes at the same time, it is appropriate to modify such provisions in identical terms through parallel acts based on each of the Treaties.

(7) This Regulation is without prejudice to the adoption in future of the necessary legislation describing in detail the legal architecture, objectives, operation and use of SIS II, such as, but not limited to, rules further defining the categories of data to be entered into the system, the purposes for which they are to be entered and the criteria for their entry, rules concerning the content of SIS records, the interlinking of alerts, compatibility between alerts and further rules on access to SIS data and the protection of personal data and their control.

(8) As regards Iceland and Norway, this Regulation 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 association of those two States 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 [4], on certain arrangements for the application of that Agreement.

[1] OJ C 160, 4.7.2002, p. 5.
[2] OJ C 31 E, 5.2.2004, p.122.
[3] OJ L 239, 22.9.2000, p. 19.
[4] OJ L 176, 10.7.1999, p. 31.