Council Implementing Decision (EU) 2020/1745 of 18 November 2020 on the putting into effect of the provisions of the Schengen acquis on data protection and on the provisional putting into effect of certain provisions of the Schengen acquis in Ireland

COUNCIL IMPLEMENTING DECISION (EU) 2020/1745

of 18 November 2020

on the putting into effect of the provisions of the Schengen *acquis* on data protection and on the provisional putting into effect of certain provisions of the Schengen *acquis* in Ireland

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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*[(1)], and in particular Article 4 thereof,

Whereas:

(1) By Decision 2002/192/EC, and in accordance with Article 4 of Protocol No 19 on the Schengen *acquis* integrated into the framework of the European Union, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union ('Protocol No 19'), the Council authorised Ireland to participate in certain provisions of the Schengen *acquis*.

(2) In accordance with Article 4(1) and 4(3) of Decision 2002/192/EC, the provisions referred to in Article 1 of that Decision are to be put into effect, between Ireland and the Member States and other States for which those provisions have already been put into effect, when the preconditions for the implementation of those provisions have been fulfilled in all of those Member States and other States, by an implementing decision taken by the Council, acting with the unanimity of its members as referred to in Article 1 of Protocol No 19 and of the representative of the Government of Ireland. The Council may set different dates for the putting into effect of different provisions by subject area.

(3) On 8 January 2018, Ireland expressed its intention to commence implementation of the following parts of the Schengen *acquis*: the Schengen Information System ('SIS') and the related data protection rules.

(4) By letter of 7 July 2020, Ireland expressed its intention to commence implementation of the following parts of the Schengen *acquis*: judicial cooperation, drugs cooperation, police cooperation and Article 26 of the Convention implementing the Schengen Agreement[(2)] (the 'Schengen Convention'). In that letter, Ireland also expressed its intention to implement Article 27 of the Schengen Convention, including Council Directive 2002/90/EC[(3)] and Council Framework Decision 2002/946/JHA[(4)] which constitute its subsequent developments, as well as Council Decisions 2008/149/JHA[(5)] and 2011/349/EU[(6)], as from 1 January 2022.

Changes to legislation: *There are currently no known outstanding effects for the Council Implementing Decision (EU) 2020/1745. (See end of Document for details)*

As regards the Decision of the Executive Committee of 22 December 1994[7], it is Ireland's intention to commence implementation of that Decision as from 1 July 2022.

(5) Ireland thus indicated that it was now ready to provisionally put into effect the provisions of the Schengen *acquis* referred to in Article 1 of Decision 2002/192/EC in so far as they relate to the functioning of SIS ('the provisions related to the functioning of SIS'), judicial cooperation, drugs cooperation, police cooperation and Article 26 of the Schengen Convention, with the exception of Article 27 of the Schengen Convention as well as Decisions 2008/149/JHA and 2011/349/EU and the Decision of the Executive Committee of 22 December 1994, which should be implemented at a later stage.

(6) With respect to the evaluation of Ireland for the purpose of verifying that the necessary conditions for the application of the relevant parts of the Schengen *acquis* in which Ireland requested to participate have been met, Council Regulation (EU) No 1053/2013[8] applies. However, given the fact that some of the provisions of the Schengen *acquis* in which Ireland participates should apply on a provisional basis, with the evaluations carried out only at a later stage, it is necessary to streamline the procedures for follow-up and monitoring provided for in Regulation (EU) No 1053/2013 in case those evaluations demonstrate that the conditions for the application of the relevant parts of the Schengen *acquis* have not been met by Ireland.

(7) Regulation (EU) 2018/1862 of the European Parliament and of the Council[9] governs the establishment, operation and use of SIS in the field of police cooperation and judicial cooperation in criminal matters. Once applicable, that Regulation will replace Council Decision 2007/533/JHA[10], which currently applies in those matters.

(8) Compliance with data protection requirements is a precondition for the provisional application of the provisions related to the functioning of SIS. In line with Regulation (EU) No 1053/2013, and based on the Commission's multiannual and annual evaluation programmes established pursuant to that Regulation, the data protection evaluation took place between 19 and 23 November 2018, and the Commission adopted an evaluation report on 9 August 2019.

(9) The evaluation report concluded that Ireland meets the necessary conditions for the application of the provisions of the Schengen *acquis* referred to in point (a)(ii) of Article 1 of Decision 2002/192/EC in so far as they relate to data protection, therefore allowing those provisions, to be put into effect by Ireland.

(10) In accordance with Article 1(1) of Commission Implementing Decision (EU) 2015/450[11], it has been verified that, from a technical point of view, the national system (N.SIS) of Ireland is ready to integrate into SIS.

(11) Since Ireland has made the necessary technical and legal arrangements to process SIS data and exchange supplementary information, it is possible to set a date from which the provisions related to the functioning of SIS should be applied on a provisional basis in Ireland. The application of this Decision should allow for SIS data, as well as supplementary information and additional data, to be transferred to Ireland. The concrete use made of these data exchanges would allow for the verification of the correct

application of the provisions related to the functioning of SIS in Ireland, through the applicable Schengen evaluation procedures.

(12) Given that the Schengen *acquis* was conceived and functions as a coherent ensemble, it is the view of the Council that any partial application by Ireland of the provisions of the Schengen *acquis* in which it participates must respect the coherence of the subject areas which constitute the ensemble of the *acquis*. Therefore, in order to apply on a provisional basis the provisions related to the functioning of SIS, it is necessary that Ireland, provisionally, put into effect the provisions of the Schengen *acquis* relating to judicial cooperation, drugs cooperation, police cooperation and Article 26 of the Schengen Convention from the same date as the provisional putting into effect of the provisions related to the functioning of SIS, namely as from the date of application of this Decision.

(13) Within six months of the date of application of this Decision, evaluation visits should be carried out in Ireland to verify whether SIS is functioning properly and whether Decision 2007/533/JHA is being applied correctly. Within 12 months of the date of application of this Decision, evaluation questionnaires should be sent to, and evaluation visits should be carried out in, Ireland, as appropriate, to evaluate the application of the provisions of the Schengen *acquis* relating to judicial cooperation, drugs cooperation, police cooperation and Article 26 of the Schengen Convention in order to demonstrate that the requirements relating to all relevant legislation and operational activities have been satisfied.

(14) Given the importance of the coherence in the application of the Schengen *acquis* and the importance of SIS as a compensatory measure in the area of freedom, security and justice, and given the fact that some of the provisions of the Schengen *acquis* in which Ireland participates should apply on a provisional basis, with the evaluations carried out only at a later stage, a mechanism should be put in place to withdraw the operational access of Ireland to SIS (‘the mechanism to withdraw operational access of Ireland to SIS’) in case those evaluations conclude that the conditions for the application of the provisions related to the functioning of SIS have not been met by Ireland. The same mechanism should apply in case evaluations conclude that the conditions for the application of the provisions of the Schengen *acquis* relating to judicial cooperation, drugs cooperation, police cooperation and Article 26 of the Schengen Convention necessary for the proper functioning of SIS have not been met by Ireland. In both cases, Ireland should cease to be entitled to have operational access to SIS. The Council should to that effect, by means of an implementing decision, set a date from which the provisions related to the functioning of SIS are to cease to apply to Ireland, and adopt the transitional arrangements necessary to exchange supplementary information concerning alerts issued in SIS before that date. eu-LISA should make the necessary arrangements to disconnect Ireland from SIS.

(15) This Decision should therefore put into effect, provisionally, the provisions related to the functioning of SIS and the remaining provisions referred to in Article 1 of Decision 2002/192/EC, with the exception of Article 27 of the Schengen Convention as well as Decisions 2008/149/JHA and 2011/349/EU and the Decision of the Executive

Changes to legislation: *There are currently no known outstanding effects for the Council Implementing Decision (EU) 2020/1745. (See end of Document for details)*

Committee of 22 December 1994 which should be put into effect provisionally at a later stage. Upon successful completion of the evaluations concerning the provisions that are provisionally put into effect, and without prejudice to the mechanism to withdraw operational access of Ireland to SIS, the Council should, within 24 months of the date of application of this Decision, examine the situation with a view to adopting, in accordance with Article 4(1) of Decision 2002/192/EC read in conjunction with Article 4 of Protocol No 19, an implementing decision setting the date for their final putting into effect.

(16) As regards Article 27 of the Schengen Convention and Decisions 2008/149/JHA and 2011/349/EU, Ireland should put them into effect provisionally as from 1 January 2022 at the latest. As regards the Decision of the Executive Committee of 22 December 1994, Ireland should put it into effect provisionally as from 1 July 2022 at the latest. Ireland should notify to the Council the date from which it will commence the application of those provisions accordingly.

(17) Regulation (EU) 2016/94 of the European Parliament and of the Council[(12)] repealed several decisions of the Executive Committee belonging to the Schengen *acquis* and referred to in point (c) of Article 1 of Decision 2002/192/EC because they had become obsolete. Those decisions are not therefore to be put into effect by Ireland. Such is the case for the Decisions of the Executive Committee SCH/Com-ex (93) 14 (improving practical cooperation between the judicial authorities to combat drug trafficking), SCH/Com-ex (98) 52 (handbook on cross-border police cooperation) and SCH/Com-ex (99) 11 rev 2 (agreement on cooperation in proceedings for road traffic offences).

(18) As regards Iceland and Norway, this Decision constitutes a development of the 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 latters' association with the implementation, application and development of the Schengen *acquis*[(13)], which fall within the area referred to in Article 1, point G, of Council Decision 1999/437/EC[(14)].

(19) In accordance with Article 2 of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway on the establishment of rights and obligations between Ireland and the United Kingdom of Great Britain and Northern Ireland, on the one hand, and the Republic of Iceland and the Kingdom of Norway, on the other, in areas of the Schengen *acquis* which apply to these States[(15)], the Mixed Committee established pursuant to Article 3 of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latters' association with the implementation, application, and development of the Schengen *acquis* has been consulted in accordance with Article 4 of the latter Agreement with regard to the preparation of this Decision.

(20) As regards Switzerland, this Decision constitutes a development of provisions of the Schengen *acquis* within the meaning of 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[16] which fall within the area referred to in Article 1, points G, H and I, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC[17].

(21) In accordance with Article 5 of 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*, the Mixed Committee established pursuant to Article 3 thereof has been informed about the preparation of this Decision.

(22) 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*[18] which fall within the area referred to in Article 1, points G, H and I, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU[19],

HAS ADOPTED THIS DECISION:

Article 1

1 The provisions referred to in point (a)(ii) of Article 1 of Decision 2002/192/EC, in so far as they relate to data protection, including the relevant provisions of the acts constituting the developments of the Schengen *acquis* adopted after the adoption of Decision 2002/192/EC and listed in the Annex to this Decision, shall be put into effect by and apply to Ireland in its relations with the Kingdom of Belgium, the Republic of Bulgaria, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Republic of Croatia, the Italian Republic, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, Hungary, 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, as from 1 January 2021.

2 The following provisions, including the relevant provisions of the acts constituting the developments of the Schengen *acquis* adopted after the adoption of Decision 2002/192/EC and listed in the Annex to this Decision, shall be put into effect by and apply to Ireland in its relations with the Kingdom of Belgium, the Republic of Bulgaria, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Republic of Croatia, the Italian Republic, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, Hungary, 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, on a provisional basis and subject to the conditions specified in this Decision, as from 1 January 2021:

a the provisions referred to in point (a)(ii) and (iii) of Article 1 of Decision 2002/192/EC, in so far as they relate to the functioning of SIS; and

b the remaining provisions referred to in Article 1 of Decision 2002/192/EC.

3 By way of derogation from paragraph 2 of this Article: