Council Decision 2019/1749 of 14 October 2019 concerning the request of Ireland to take part in some of the provisions of the Schengen acquis relating to the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA)

COUNCIL DECISION 2019/1749

of 14 October 2019

concerning the request of Ireland to take part in some of the provisions of the Schengen *acquis* relating to the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to 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,

Having regard to the request by the Government of Ireland, by its letter to the President of the Council of the European Union of 12 April 2019, to take part in certain provisions of the Schengen *acquis*, as specified in that letter,

Whereas:

(1) By Decision 2002/192/EC[(1)] the Council authorised Ireland to take part in some of the provisions of the Schengen *acquis*, in accordance with the conditions set out in that Decision.

(2) Regulation (EU) No 1077/2011 of the European Parliament and of the Council[(2)] established the European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice, commonly referred to as eu-LISA, in order to ensure the operational management of the second generation Schengen Information System (SIS II), the Visa Information System (VIS) and Eurodac and of certain aspects of their communication infrastructures and potentially that of other large-scale IT systems in the area of freedom, security and justice, on the basis of separate Union legal acts, based on Articles 67 to 89 of the Treaty on the Functioning of the European Union (TFEU).

(3) By Decision 2012/764/EU[(3)] the Council authorised Ireland to take part in Regulation (EU) No 1077/2011 to the extent that it relates to the operational management of the VIS and the parts of SIS II, in which Ireland does not take part.

(4) On 14 November 2018, Regulation (EU) 2018/1726 of the European Parliament and of the Council[(4)] was adopted which repeals Regulation (EU) No 1077/2011. Regulation (EU) 2018/1726 establishes the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA) (the 'Agency'), which replaces and succeeds the agency as established

by Regulation (EU) No 1077/2011. In accordance with Regulation (EU) 2018/1726, references to the repealed Regulation (EU) No 1077/2011 are to be construed as references to Regulation (EU) 2018/1726 and are to be read in accordance with the correlation table in the Annex to that Regulation.

(5) In accordance with Regulation (EU) 2018/1726 the Agency is responsible for the operational management of Schengen Information System (SIS), the VIS and Eurodac. The Agency is also responsible for the preparation, development or operational management of the Entry/Exit System (EES), DubliNet and the European Travel Authorisation and Information System (ETIAS). The Agency might also be made responsible for the preparation, development and operational management of other large-scale IT systems in the area of freedom, security and justice if so provided by relevant Union legal acts based on Articles 67 to 89 of the TFEU.

(6) SIS is part of the Schengen *acquis*. Regulations (EU) 2018/1861[(5)] and (EU) 2018/1862[(6)] of the European Parliament and of the Council govern the establishment, operation and use of SIS in the field of border checks and, respectively, in the field of police cooperation and judicial cooperation in criminal matters. Furthermore, Regulation (EU) 2018/1860[(7)] governs the use of the SIS for the return of illegally staying third-country nationals. Once applicable, Regulations (EU) 2018/1861 and (EU) 2018/1862 will replace Regulation (EC) No 1987/2006 of the European Parliament and of the Council[(8)] and Council Decision 2007/533/JHA[(9)] which currently apply in those matters. However, Ireland has only taken part in the adoption of Council Decision 2007/533/JHA and of Regulation (EU) 2018/1862 which develop the provisions of the Schengen *acquis* referred to in Article 1(a)(ii) of Decision 2002/192/EC.

(7) The VIS is also part of the Schengen *acquis*. Ireland did not take part in the adoption of, and is not bound by Council Decision 2004/512/EC[(10)], Regulation (EC) No 767/2008 of the European Parliament and of the Council[(11)] and Council Decision 2008/633/JHA[(12)] which govern the establishment, operation or use of the VIS.

(8) Eurodac is not part of the Schengen *acquis*. Ireland has taken part in the adoption of, and is bound by Regulation (EU) No 603/2013 of the European Parliament and of the Council[(13)] which governs the establishment, operation and use of Eurodac.

(9) The EES is part of the Schengen *acquis*. Ireland did not take part in the adoption of, and is not bound by Regulation (EU) 2017/2226 of the European Parliament and of the Council[(14)] which govern the establishment, operation and use of the EES.

(10) ETIAS is also part of the Schengen *acquis*. Ireland did not take part in the adoption of, and is not bound by Regulation (EU) 2018/1240 of the European Parliament and of the Council[(15)] which govern the establishment, operation and use of ETIAS.

(11) DubliNet is not part of the Schengen *acquis*. Ireland is bound by Commission Regulation (EC) No 1560/2003[(16)] which sets up DubliNet, a separate secure electronic transmission channel.

(12) Given its participation in Eurodac, DubliNet and its partial participation in SIS, Ireland has the right to participate in the activities of the Agency, to the extent that the Agency

is responsible for the operational management of SIS as governed by Regulation (EU) 2018/1862, of Eurodac and of DubliNet.

(13) The Agency has a single legal personality and is characterised by the unity of its organisational and financial structure. Accordingly, and in accordance with Article 288 of the TFEU, the Agency was established by means of a single legislative instrument which is applicable in its entirety in the Member States bound by it. This excludes the possibility of partial applicability for Ireland. Consequently, necessary steps should be taken to ensure that Regulation (EU) 2018/1726 in its entirety is applicable to Ireland.

(14) In accordance with Article 4 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, Ireland notified the Commission and the Council by letters of 12 April 2019, of its intention to accept the provisions of Regulation (EU) 2018/1726 relating to Eurodac and DubliNet.

(15) In accordance with the procedure provided for in Article 331(1) of the TFEU, the Commission confirmed, by Decision of 23 July 2019, the application to Ireland of Regulation (EU) 2018/1726 in so far as its provisions relate to Eurodac and DubliNet. That Decision provides that Regulation (EU) 2018/1726 comes into force for Ireland on the date of entry into force of the Council Decision concerning the request of Ireland to take part in the provisions of Regulation (EU) 2018/1726 relating to SIS, as governed by Regulation (EU) 2018/1861 which will replace Regulation (EC) No 1987/2006, and by Regulation (EU) 2018/1860, and relating to the VIS, the EES and ETIAS.

(16) Following the adoption of Commission Decision of 23 July 2019 the first precondition for Ireland to take part in the provisions of Regulation (EU) 2018/1726 is fulfilled.

(17) In order to ensure compliance with the Treaties and the applicable Protocols, and at the same time to safeguard the unity and consistency of Regulation (EU) 2018/1726, Ireland has requested, by letter of 12 April 2019 to the Council, to take part in Regulation (EU) 2018/1726 under 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 ('the Schengen Protocol') to the extent that the provisions of Regulation (EU) 2018/1726 refer to the responsibility of the Agency for the operational management of SIS as governed by Regulation (EU) 2018/1861 which will replace Regulation (EC) No 1987/2006 and by Regulation (EU) 2018/1860, and of the VIS, the EES and ETIAS.

(18) The Council recognises the right of Ireland to make, in accordance with Article 4 of the Schengen Protocol, a request to take part in the provisions of Regulation (EU) 2018/1726, to the extent that Ireland will not take part in that Regulation on other grounds.

(19) The participation of Ireland in Regulation (EU) 2018/1726 is without prejudice to the fact that at present Ireland does not and cannot take part in the provisions of the Schengen *acquis* relating to the free movement of third country nationals, visa policy and the crossing by persons of the external borders of the Member States. Regulation (EU) 2018/1726 therefore contains specific provisions reflecting this special position