

COUNCIL DECISION

of 5 March 2007

amending Decision 2000/265/EC on the establishment of a financial regulation governing the budgetary aspects of the management by the Deputy Secretary-General of the Council, of contracts concluded in his name, on behalf of certain Member States, relating to the installation and the functioning of the communication infrastructure or the Schengen environment ('SISNET')

(2007/155/EC)

THE COUNCIL OF THE EUROPEAN UNION,

HAS DECIDED AS FOLLOWS:

Having regard to the Protocol integrating the Schengen *acquis* into the framework of the European Union, annexed to the Treaty on European Union and to the Treaty establishing the European Community, and in particular first sentence of the second subparagraph of Article 2(1) thereof,

*Article 1*Decision 2000/265/EC ⁽³⁾ is hereby amended as follows:

1. Article 1 shall be replaced by the following:

Whereas:

'Article 1

(1) The Deputy Secretary-General of the Council was authorised by Decision 1999/870/EC ⁽¹⁾ and Decision 2007/149/EC ⁽²⁾ to act, in the context of the integration of the Schengen *acquis* within the European Union, as representative of certain Member States for the purposes of concluding contracts relating to the installation and the functioning of the communication infrastructure for the Schengen environment ('SISNET') and to manage such contracts, pending the migration to a communication infrastructure at the charge of the European Community.

1. For the purposes of this Financial Regulation, the budget is the instrument which sets out forecasts of, and authorises in advance, for each financial year, the revenue and expenditure required to meet the obligations arising under the contracts referred to in Decision 1999/870/EC and Decision 2007/149/EC ^(*).

(2) The financial obligations arising under those contracts are borne by a specific budget (hereinafter 'the SISNET budget') financing the communication infrastructure referred to in those Council Decisions.

2. For the purposes of this Financial Regulation, the reference to "SISNET" comprises the Communication infrastructure for the Schengen environment as referred to in Decision 1999/870/EC and Decision 2007/149/EC.

^(*) OJ L 66, 6.3.2007, p. 19.;

(3) The new Member States, within the meaning of the 2003 Act of Accession, with the exception of Cyprus, are to be integrated into the first generation Schengen Information System (SIS 1+) on a date to be set by the Council in accordance with Article 3(2) of the 2003 Act of Accession, (hereinafter the 'SISone4ALL project').

2. Article 25(1) shall be replaced by the following:

'1. Budget revenue shall consist of financial contributions from the following Member States: Austria, Belgium, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, United Kingdom, as well as Norway and Iceland.;

(4) From that date, those Member States should participate in the budget.

3. A new sentence shall be added to Article 26:

(5) Two Member States, Ireland and the United Kingdom, which contribute to the SISNET budget, but which are not connected to the Schengen Information System, should not contribute to additional costs entailed by the SISone4ALL project,

'The additional costs resulting from the extension of the communication infrastructure to the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia shall not be borne by Ireland or the United Kingdom.;

⁽¹⁾ OJ L 337, 30.12.1999, p. 41.

⁽²⁾ OJ L 66, 6.3.2007, p. 19.

⁽³⁾ OJ L 85, 6.4.2000, p. 12. Decision as last amended by Decision 2003/171/EC (OJ L 69, 13.3.2003, p. 25).

4. A new paragraph shall be added to Article 28:

'3. By way of derogation from paragraph 1, and without prejudice to the provisions of Article 49, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia shall be required to pay their initial contributions in accordance with a schedule to be determined by the Member States referred to in Article 25.:'

5. Article 29 shall be amended as follows:

(a) paragraphs 2 and 3 shall be replaced by the following:

'2. All such contracts for which the estimated value equals or exceeds the thresholds set out in Directive 2004/2018/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (*) shall be concluded in accordance with the provisions of that Directive (hereinafter the 'Directive on public procurement').

3. Contracts for which the estimated value of the contract in question does not exceed the thresholds set out in the Directive on public procurement may be made by private treaty. In such cases, the Member States referred to in Article 25 shall none the less be bound, as far as possible and by all appropriate means, to enable suppliers who are likely to be able to supply the goods and services in question to compete.

(*) OJ L 134, 30.4.2004, p. 114. Directive as last amended by Council Directive 2006/97/EC (OJ L 363, 20.12.2006, p. 107).';

(b) paragraph 5 shall be replaced by the following:

'5. The tendering procedures and selection and award criteria shall be determined and governed by the provisions of the Directive on public procurement, as supplemented by the provisions of this Financial Regulation.:'

6. The fifth subparagraph of Article 37 shall be replaced by the following:

'The Advisory Committee shall endeavour to adopt its opinions by consensus. If such consensus is not possible, the Advisory Committee shall adopt its opinions by a simple majority of its representatives. A quorum of 19 shall be required for the proceedings to be valid. In the event of a tied vote, the Chairman shall have the casting vote.:'

7. Article 39(a) shall be replaced by the following:

'(a) all proposed contracts for supplies or services, including studies, for which the estimated value equals or exceeds the thresholds in the Directive on public procurement.:'

8. Article 43(4) shall be replaced by the following:

'4. The provision of such security shall be obligatory where the value of the contract concerned equals or exceeds the thresholds set out in the Directive on public procurement.:'

9. Article 49(c) shall be replaced by the following:

'(c) adjustment of the contributions of the States referred to in Article 25 in order to establish the proportion of earlier SISNET installation costs to be borne by the other State. This percentage shall be calculated on the basis of the ratio of the VAT resources paid by the other State to the total VAT resources of the European Communities for the earlier financial years in which the necessary SISNET installation costs have been incurred. If no data on VAT resources is available, the adjustment of contributions shall be calculated on the basis of the share of each Member State concerned in the total GDP of all the Member States referred to in Article 25. The percentage contribution shall be the subject of a 'credit note' to the States referred to in Article 25 for an amount pro rata to their share as calculated in accordance with Article 26. The other States may choose to allocate the amount concerned towards their share of the budget or request reimbursement.'

Article 2

This Decision shall take effect from the date of its adoption.

Article 3

This Decision shall be published in the *Official Journal of the European Union*.

Done at Brussels, 5 March 2007.

For the Council
The President

F.-W. STEINMEIER