



Statewatch analysis

The UK opt in to pre-Lisbon EU criminal law

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Introduction

The United Kingdom (UK) has exercised its power to opt out of all of the EU measures on policing and criminal law adopted before the Treaty of Lisbon ('pre-Lisbon third pillar measures'), but has also sought to opt back into a number of these measures. That application to opt back in has recently been agreed in principle. What will be the impact of these changes for the UK's participation in EU policing and criminal law?

The Legal Framework

Before the entry into force of the Treaty of Lisbon, the UK was a full participant in almost all EU policing and criminal law measures. The exception was a small part of those measures 'building on the Schengen acquis', ie measures set out in, or amending, implementing or closely related to the Schengen Convention on the abolition of border controls. Most of those Schengen-related measures applied to the UK from the start of 2005, except for the rules on cross-border hot pursuit by police officers (which the UK did not opt into) and the rules on the Schengen Information System (SIS) database (because the UK wanted to wait until a second-generation SIS was operational first, and this didn't happen until 2013).

The Treaty of Lisbon changed the legal framework for the adoption of EU policing and criminal law, applying to this field the normal jurisdiction of the Court of Justice of the European Union (CJEU) and, for the most part, the ordinary legislative procedure of the EU, which entails joint powers for the European Parliament and no vetoes for Member States in the Council.

The UK would only agree to these major changes in return for two forms of opt-out. The first opt-out relates to policing and criminal law measures adopted *after* the entry into force of the Treaty of Lisbon. This opt-out allows the UK to decide on a case-by-case basis, after each proposal is made, whether it seeks to opt in or out. If the UK initially decides to opt-out, it can

always seek to opt in again (needing the Commission's approval) at any time after the measure is adopted.

The second form of opt-out takes the form of a 'block' opt-out for those measures adopted *before* the entry into force of the Treaty of Lisbon. This is intrinsically linked to a five-year transition period concerning those measures, which is applicable to *all* Member States.

This second opt-out is set out in Article 10 of Protocol 36 to the Treaties, which is set out in full in Annex I. The Article states first of all that the normal powers of the Court of Justice of the European Union (CJEU) and the Commission will not apply for five years after the entry into force of the Treaty of Lisbon, to pre-Lisbon third pillar measures. This means that the Commission does not have power to bring infringement procedures against Member States to the CJEU during this time. Nor does the CJEU have jurisdiction over questions from national courts concerning EU law in this area, except where Member States chose to opt in to this jurisdiction (18 Member States have opted in, and the Court has delivered a number of judgments in this field). Also, the transitional rules cease to apply to an act which is amended after the Treaty of Lisbon comes into force, and a number of such acts have indeed been amended. This transitional period ends on 1 December 2014.

Secondly, Article 10 of Protocol 36 sets out a potential opt-out for the UK (but not for any other Member States) at the end of this five-year period. If the UK notifies the Council by 1 June 2014, all the pre-Lisbon third pillar acts cease to apply to it as of 1 December 2014, unless those acts have been amended and the UK has opted in to those amended measures. In this event, the Council shall decide the 'necessary consequential and transitional arrangements', and may also decide that the UK has to 'bear the direct financial consequences, if any, necessarily and unavoidably incurred' as a result. In both cases, the Council acts by a qualified majority vote on a proposal from the Commission. The UK does not participate in the first of these measures (consequential arrangements), but would participate in the second (financial consequences).

Thirdly, the UK can seek to opt back into to some of the measures it has opted out of 'at any time afterwards'. If it does so, then the rules for opting into Justice and Home Affairs measures in either the Protocol on the Schengen acquis or the Protocol on Title V (JHA measures) apply. In practice, that means that the Council, acting unanimously, decides on re-admission of the UK to measures building on the Schengen acquis (ie measures set out in, or amending, implementing or closely related to the Schengen Convention on the abolition of border controls), while the Commission (with no role for the Council, unless the Commission refuses the UK's request) decides on readmission of the UK to pre-Lisbon third pillar measures which do *not* build on the Schengen acquis. The Protocol concludes by stating that in such a case, the EU institutions and the UK 'shall seek to re-establish the widest possible measure of participating of the [UK] in the aquis of the Union in the area of freedom, security and justice, without seriously affecting the practical operability of the various parts thereof, while respecting their coherence'.

The block opt-out in practice

The UK government indicated in 2012 that it was inclined to invoke the block opt-out, and then seek to opt in to a number of measures. In 2013, it officially invoked the block opt-out (well before the deadline of 1 June 2014), and indicated the 35 measures which it wished to

opt back into. Informal negotiations then took place between the UK, the Council and the Commission, in particular during the Greek Council Presidency in the first half of 2014. The discussions were complicated somewhat by the UK's request to begin participation in the second-generation SIS (known as SIS II) shortly before 1 December 2014, along with its request to amend the rules relating to SIS II alerts on the European Arrest Warrants in accordance with new EU legislation.

Following these negotiations, the UK has agreed in principle with both the Council and Commission on what it will opt back into. In theory, the Council and Commission decisions will both be adopted officially on 1 December 2014, unless there is some change of heart within one or both institutions.

The agreement with the Council takes the form of a draft Decision, which amends the original Council Decision admitting the UK to participate in parts of the Schengen acquis, as well as the later Council Decision putting part of the Schengen acquis into force in the UK. Annexes II and III to this analysis set out versions of these Council Decisions, which shows how their texts will be amended (the Council will later publish its own codified text of the amended Decisions).

The crucial substantive point here is that the UK will continue to be committed to participating in the Schengen Information System, which provides for exchange of information on European Arrest Warrants, wanted persons and missing objects. It will also continue to be bound by the main criminal law and police cooperation provisions of the Schengen acquis.

As for the other measures, the Commission has reported back on its discussions with the UK, providing a list of measures agreed with the UK. This constitutes almost all of the EU measures on mutual recognition in criminal matters (most notably the European Arrest Warrant), the creation of EU agencies (Europol, Eurojust) and exchange of information or databases, with a few exceptions: the Framework Decisions on mutual recognition of pre-trial decisions and probation and parole decisions, and the so-called 'Prum' Decisions on cross-border exchange of information on DNA, licence plate information and fingerprints.

It appears that there has been a modest amount of negotiation on the lists of measures which the UK sought to opt out of. As regards the Council Decision, one measure on the operational functioning of the SIS has been added to the list. The Commission's deal with the UK includes a decision to opt in to three measures implementing the Europol Decision, as well as the Decision establishing the European Judicial Network. These additional measures which the UK agreed to opt in to are essentially technical, except for the European Judicial Network, which the UK government believes is essentially a useless talking shop.

Also, it should be noted that some pre-Lisbon measures were amended while discussions were going on, in particular the EU's Convention on mutual assistance in criminal matters and its amending Protocol. The UK did not want to opt back in to these measures, but this objection is now moot, since the UK participates in the EU Directive on the European Investigation Order, which has replaced some of the corresponding provisions of those measures. So this means that it will continue to participate in the Convention and Protocol, without having to opt back in.

Furthermore, the UK government agreed to consider opting in to further measures in future. These include the two Prum Decisions on exchange of information, by 1 December 2015. If the UK does not opt in, it has agreed to repay some EU funds which it received for the purpose of preparing to participate. The other measure which the UK has agreed to consider joining is the Framework Decision on mutual recognition of probation and parole measures. On this measure, there is no reference to any deadline for review.

In effect, it will fall to the next UK government to decide on these issues (the next general election will be in May 2015). It will always be open to the UK government to opt back in to more measures if it wishes.

However, the UK government withdrew its request to participate in two measures (a Decision on a hate-crime network, and a Decision on special police intervention units) during the discussions. This decision may well have been taken so that the government can still claim that it is only opting back in to a total of 35 measures.

It should also be noted that the UK's opt back in to some of the pre-Lisbon measures concerned could be very short-lived, since there are proposals to replace these measures which the UK has opted out of, but which have not yet been agreed. This is the case particularly with Europol and Eurojust. Negotiations are further advanced on the Europol proposal, where it looks as if the UK's concerns may have been addressed, with the consequence that the UK would opt in to the future Europol Regulation after its adoption. However, it is too early to say if the UK might eventually opt in to the future Eurojust Regulation.

Finally, it should be noted that the UK's attempt to opt in to SIS II only a few weeks before the general opt-in decisions, coupled with its demand for special treatment on this issue, failed, as previously documented in a Statewatch analysis. While the UK failed to get its way on that issue, it appears to have been largely successful in opting back into exactly what it wished to opt back in to.

Other transitional issues

Finally, the EU institutions will aim to clarify the legal position generally as from the end of the transition period. They will publish in the EU Official Journal a list of 'Lisbonised' measures, ie pre-Lisbon third pillar acts which have been amended since the Treaty of Lisbon entered into force. Also, the institutions had intended to consider which pre-Lisbon measures could now be considered obsolete, and which therefore could be repealed. But it appears that this latter process has not yet taken place.

The net result is a rather confusing situation, both in terms of the complexity of the EU 'acquis' in this area and of the UK's role in it. There will be a complete list published of pre-Lisbon measures which are not yet Lisbonised, but no step has been taken (or can now be taken in time, before the end of the transitional period) to pull out the legal weeds from this garden. There will be two separate Decisions listing pre-Lisbon measures which the UK has opted back into, but it would also be useful to have a list of post-Lisbon measures which apply to the UK. It would not unduly task the Council and/or Commission to make the effort to publish online a constantly updated list of the measures which do or not apply to the UK (as well as Ireland and Denmark, which also have opt-outs), and five years was certainly enough time to examine the pre-Lisbon acquis to see which measures were obsolete.

Documentation

UK notification of opt-out: Council document 12750/13:

<http://www.statewatch.org/news/2014/jul/eu-council-Prot36-uk-notification-12750-13.pdf>

Draft Council decision on UK opt back in to Schengen acquis: Council document 10115/14

<http://www.statewatch.org/news/2014/jul/eu-council-Prot36-6-draft-decision-schengen-acquis-10115-14.pdf>

Commission report on negotiations with UK on opting back in: Council document 10168/14:

<http://www.statewatch.org/news/2014/jul/eu-council-Prot36-9-art10-com-10168-14.pdf>

Overview of opt-in process: Council document 10167/14:

<http://www.statewatch.org/news/2014/jul/eu-council-Prot36-8-Art10-complementary-report-10167-14.pdf>

List of pre-Lisbon third pillar measures which have been 'Lisbonised', or which are the subject of a proposal to 'Lisbonise' them: Council document 9930/14:

<http://www.statewatch.org/news/2014/jul/eu-council-Prot-4-lisbonised-third-pillar-acquis-9930-14.pdf>

UK SIS II discussions: <http://www.statewatch.org/analyses/no-241-eu-uk-opt-out.pdf>

Previous Statewatch Analyses:

The UK opt-out from Justice and Home Affairs law: the other Member States finally lose patience (March 2014): <http://www.statewatch.org/analyses/no-241-eu-uk-opt-out.pdf>

The UK's planned 'block opt-out' from EU justice and policing measures in 2014 (October 2012): <http://www.statewatch.org/analyses/no-199-uk-opt-out.pdf>

The Mother of all Opt-outs? The UK's possible opt-out from prior third pillar measures in June 2014 (February 2012):

<http://www.statewatch.org/analyses/no-168-eu-uk-opt-out.pdf>

Annex I – Protocol 36, Article 10

1. As a transitional measure, and with respect to acts of the Union in the field of police cooperation and judicial cooperation in criminal matters which have been adopted before the entry into force of the Treaty of Lisbon, the powers of the institutions shall be the following at the date of entry into force of that Treaty: the powers of the Commission under Article 258 of the Treaty on the Functioning of the European Union shall not be applicable and the powers of the Court of Justice of the European Union under Title VI of the Treaty on European Union, in the version in force before the entry into force of the Treaty of Lisbon, shall remain the same, including where they have been accepted under Article 35(2) of the said Treaty on European Union.
2. The amendment of an act referred to in paragraph 1 shall entail the applicability of the powers of the institutions referred to in that paragraph as set out in the Treaties with respect to the amended act for those Member States to which that amended act shall apply.
3. In any case, the transitional measure mentioned in paragraph 1 shall cease to have effect five years after the date of entry into force of the Treaty of Lisbon.

4. At the latest six months before the expiry of the transitional period referred to in paragraph 3, the United Kingdom may notify to the Council that it does not accept, with respect to the acts referred to in paragraph 1, the powers of the institutions referred to in paragraph 1 as set out in the Treaties. In case the United Kingdom has made that notification, all acts referred to in paragraph 1 shall cease to apply to it as from the date of expiry of the transitional period referred to in paragraph 3. This subparagraph shall not apply with respect to the amended acts which are applicable to the United Kingdom as referred to in paragraph 2.

The Council, acting by a qualified majority on a proposal from the Commission, shall determine the necessary consequential and transitional arrangements. The United Kingdom shall not participate in the adoption of this decision. A qualified majority of the Council shall be defined in accordance with Article 238(3)(a) of the Treaty on the Functioning of the European Union.

The Council, acting by a qualified majority on a proposal from the Commission, may also adopt a decision determining that the United Kingdom shall bear the direct financial consequences, if any, necessarily and unavoidably incurred as a result of the cessation of its participation in those acts.

5. The United Kingdom may, at any time afterwards, notify the Council of its wish to participate in acts which have ceased to apply to it pursuant to paragraph 4, first subparagraph. In that case, the relevant provisions of the Protocol on the Schengen acquis integrated into the framework of the European Union or of the Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, as the case may be, shall apply. The powers of the institutions with regard to those acts shall be those set out in the Treaties. When acting under the relevant Protocols, the Union institutions and the United Kingdom shall seek to re-establish the widest possible measure of participation of the United Kingdom in the acquis of the Union in the area of freedom, security and justice without seriously affecting the practical operability of the various parts thereof, while respecting their coherence.

Annex II

Codified version of Council Decision on UK participation in Schengen acquis

Additions in bold/underline; deletions in ~~strikeout~~

Council Decision

of 29 May 2000

concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen acquis

(2000/365/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to Article 4 of 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, (hereinafter referred to as "the Schengen Protocol"),

Having regard to the request by the Government of the United Kingdom of Great Britain and Northern Ireland, by its letters to the President of the Council of 20 May 1999, 9 July 1999 and 6 October 1999, to participate in certain provisions of the Schengen acquis, as specified in the said letters,

Having regard to the Opinion of 20 July 1999 of the Commission of the European Communities on the request,

Whereas the United Kingdom of Great Britain and Northern Ireland has a special position in respect of matters covered by Title IV of Part Three of the Treaty establishing the European Community, as recognised in the Protocol on the position of the United Kingdom and Ireland and in the Protocol on the application of certain aspects of Article 14 of the Treaty establishing the European Community to the United Kingdom and to Ireland, annexed by the Treaty of Amsterdam to the Treaty on European Union and to the Treaty establishing the European Community;

Whereas the Schengen acquis was conceived and functions as a coherent ensemble which has to be fully accepted and applied by all States supporting the principle of the abolition of checks on persons at their common borders;

Whereas the Schengen Protocol provides for the possibility of the United Kingdom of Great Britain and Northern Ireland to participate in some of the provisions of the Schengen acquis, because of the said special position of the United Kingdom;

Whereas the United Kingdom will assume the obligations of a Member State arising from the Articles of the 1990 Schengen Convention listed in this Decision;

Whereas having regard to the aforementioned special position of the United Kingdom, neither the United Kingdom nor the territories referred to in Article 5 participate by virtue of this Decision in the frontiers provisions of the 1990 Schengen Convention;

Whereas taking account of the serious matters addressed by Articles 26 and 27 of the 1990 Schengen Convention, the United Kingdom and Gibraltar will apply these articles;

Whereas the United Kingdom has requested to participate in the ensemble of the provisions of the Schengen acquis concerning the establishment and operation of the Schengen Information System (hereinafter referred to as the "SIS"), except in respect of the provisions concerning the alerts referred to in Article 96 of the Schengen Convention of 1990 and the other provisions which relate to those alerts;

Whereas it is the view of the Council that any partial participation by the United Kingdom in the Schengen acquis must respect the coherence of the subject areas which constitute the ensemble of this acquis;

Whereas the Council thus recognises the right of the United Kingdom to make, in accordance with Article 4 of the Schengen Protocol, a request for partial participation, noting at the same time that it is necessary to consider the impact of such participation of the United Kingdom in the provisions concerning the establishment and operation of the SIS on the interpretation of the other relevant provisions of the Schengen acquis and on its financial implications;

Whereas 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 latter's association with the implementation, application, and development of the Schengen acquis⁽¹⁾, has been informed about the preparation of this Decision in accordance with Article 5 of that Agreement,

HAS DECIDED AS FOLLOWS:

Article 1

The United Kingdom of Great Britain and Northern Ireland shall participate in the following provisions of the Schengen acquis:

(a) In respect of the provisions of the 1990 Convention implementing the Schengen Agreement of 14 June 1985, its related Final Act and Joint Statements:

(i) Articles 26 and ~~27~~ **27(1)**;

Articles 39 and 40;

Articles 42 and 43 to the extent that they relate to Article 40;

Article 44;

Articles 46 and 47, except for Article 47(2)(c) **and (4)**;

Articles 48 to 51;

Articles 52 and 53;

Articles 54 to 58;

Article 59;

Articles 61 to 66;

Articles 67 to 69;

Articles 71 to 73;

Articles 75 and 76;

Articles 126 to 130 to the extent that they relate to the provisions in which the United Kingdom participates by virtue of this subparagraph;

Declaration 3 to the Final Act concerning Article 71(2);

~~(ii) the following provisions concerning the Schengen information system to the extent that they do not relate to Article 96:~~

~~Article 92;~~

~~Articles 93 to 95;~~

~~Articles 97 to 100;~~

~~Article 101, except paragraph 2 thereof;~~

~~Articles 102 to 108;~~

~~Articles 109 to 111, in respect of personal data registered in the national part of the SIS of the United Kingdom;~~

~~Articles 112 and 113;~~

~~Article 114, in respect of personal data registered in the national part of the SIS of the United Kingdom;~~

~~Articles 115 to 118;~~

~~(iii) other provisions concerning the Schengen information system:~~

~~Article 119;~~

(ii) the following provisions concerning the Schengen Information System:

- Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II);

- Commission Decision 2007/171/EC of 16 March 2007 laying down the network requirements for the Schengen Information System II (third pillar);

(b) in respect of the provisions of the Agreements of Accession to the 1990 Convention implementing the Schengen Agreement of 14 June 1985, their Final Acts and Common Declarations:

~~(i) the Agreement signed on 27 November 1990 on Accession of the Italian Republic: Articles 2 and 4 and Common Declaration on Articles 2 and 3 to the extent that it relates to Article 2;~~

~~(ii) the Agreement signed on 25 June 1991 on Accession of the Kingdom of Spain: Articles 2 and 4 and Final Act, Part III, Declaration 2;~~

~~(iii) the Agreement signed on 25 June 1991 on Accession of the Portuguese Republic: Articles 2, 4, 5 and 6;~~

~~(iv) the Agreement signed on 6 November 1992 on Accession of the Hellenic Republic: Articles 2, 3, 4 and 5 and Final Act, Part III, Declaration 2;~~

~~(v) the Agreement signed on 28 April 1995 on Accession of the Republic of Austria: Articles 2 and 4;~~

~~(vi) the Agreement signed on 19 December 1996 on Accession of the Kingdom of Denmark: Articles 2, 4 and 6 and Final Act, Part II, Joint Declaration 3;~~

~~(vii) the Agreement signed on 19 December 1996 on Accession of the Republic of Finland: Articles 2, 4 and 5 and Final Act, Part II, Joint Declaration 3;~~

~~(viii) the Agreement signed on 19 December 1996 on Accession of the Kingdom of Sweden: Articles 2, 4 and 5 and Final Act, Part II, Joint Declaration 3;~~

(i) the Agreement signed on 19 December 1996 on Accession of the Kingdom of Denmark: Article 6;

(ii) the Agreement signed on 19 December 1996 on Accession of the Republic of Finland: Article 5;

(iii) the Agreement signed on 19 December 1996 on Accession of the Kingdom of Sweden: Article 5;

(c) in respect of the provisions of the following Decisions of the Executive Committee established by the 1990 Convention implementing the Schengen Agreement of 14 June 1985 to the extent that they relate to the provisions in which the United Kingdom participates by virtue of subparagraph (a) above:

~~(i) SCH/Com-ex (93) 14 (improving practical cooperation between the judicial authorities to combat drug trafficking);~~

SCH/Com-ex (94) 28 rev (certificate provided for in Article 75 for transport of drugs and/or psychotropic substances);

SCH/Com-ex (98) 26 def (setting up the Schengen implementing Convention Standing Committee), subject to an internal arrangement specifying the modalities of participation of United Kingdom experts in missions carried out under the auspices of the relevant Council Working Party;

~~SCH/Com-ex (98) 51 rev 3 (cross border police cooperation in the area of crime prevention and detection when requested);~~

~~SCH/Com-ex (98) 52 (handbook on cross border police cooperation);~~

~~SCH/Com-ex (99) 1 rev 2 (drugs situation);~~

~~SCH/Com-ex (99) 6 (telecommunication);~~

~~SCH/Com-ex (99) 8 rev 2 (payment to informers);~~

~~SCH/Com-ex (99) 11 rev 2 (agreement on cooperation in proceedings for road traffic offences);~~

~~SCH/Com-ex (99) 18 (improvement of police cooperation in preventing and detecting crimes);~~

~~(ii) SCH/Com-ex (97) 2 rev 2 (awarding the tender for the SIS II preliminary study);~~

~~SCH/Com-ex (97) 18 (contributions from Norway and Iceland to the C.SIS operation costs);~~

~~SCH/Com-ex (97) 24 (future of SIS);~~

~~SCH/Com-ex (97) 35 (C.SIS Financial Regulations);~~

~~SCH/Com-ex (98) 11 (C.SIS with 15/18 connections);~~

~~SCH/Com-ex (99) 5 (SIRENE Manual);~~

~~(d) in respect of the provisions of the following Declarations of the Executive Committee established by the 1990 Convention implementing the Schengen Agreement of 14 June 1985 to the extent that they relate to the provisions in which the United Kingdom participates by virtue of subparagraph (a) above:~~

~~(i) SCH/Com-ex (96) decl 6 rev 2 (declaration on extradition);~~

~~(ii) SCH/Com-ex (97) decl 13 rev 2 (abduction of minors);~~

~~SCH/Com-ex (99) decl 2 rev (SIS structure);~~

Article 2

~~1. The officers referred to in the provision of Article 40(4) of the 1990 Convention as regards the United Kingdom shall be officers from police forces in the United Kingdom and officers of Her Majesty's Customs and Excise;~~

~~2. The authority referred to in the provision of Article 40(5) of the 1990 Convention as regards the United Kingdom shall be the National Criminal Intelligence Service.~~

Article 3

~~The competent Ministry referred to in the provision of Article 65(2) of the 1990 Convention shall be the Home Office as regards England, Wales and Northern Ireland and the Scottish Executive as regards Scotland.~~

Article 4

~~The delegation in the Joint Supervisory Authority, set up under Article 115 of the 1990 Convention, representing the national supervisory authority of the United Kingdom shall not be entitled to take part in voting procedures within the Joint Supervisory Authority on matters relating to the application of provisions of the Schengen acquis, or building upon the Schengen acquis, in which the United Kingdom does not participate.~~

Article 5

1. The United Kingdom shall notify in writing the President of the Council which of the provisions referred to in Article 1 it wishes to apply to the Channel Islands and the Isle of Man. **An implementing** decision on this request shall be taken by the Council acting with the unanimity of its Members referred to in Article 1 of the Schengen Protocol and of the representative of the Government of the United Kingdom.

2. The following of the provisions of Article 1 shall apply to Gibraltar:

(a) As far as the provisions of the 1990 Convention implementing the Schengen Agreement of 14 June 1985, its related Final Act and Joint Statements are concerned:

Articles 26 and 27**(1)**;

Article 39;

Article 44 to the extent that it does not relate to hot pursuit and cross border surveillance;

Articles 46 and 47, except for 47(2)(c) **and (4)**;

Articles 48 to 51;

Articles 52 and 53;

Articles 54 to 58;

Article 59;

Articles 61 to 63;

Articles 65 to 66;

Articles 67 to 69;

Articles 71 to 73;

Articles 75 and 76;

Articles 126 to 130 to the extent that they relate to the provisions in which Gibraltar participates by virtue of this sub-paragraph;

Declaration 3 to the Final Act concerning Article 71(2).

(b) In respect of the provisions of the Agreements of Accession to the 1990 Convention implementing the Schengen Agreement of 14 June 1985, their Final Acts and Common Declarations:

~~(i) the Agreement signed on 27 November 1990 on Accession of the Italian Republic: Article 4;~~

~~(ii) the Agreement signed on 25 June 1991 on Accession of the Kingdom of Spain: Article 4 and Final Act, Part III, Declaration 2.~~

~~(iii) the Agreement signed on 25 June 1991 on Accession of the Portuguese Republic: Articles 4, 5 and 6.~~

~~(iv) the Agreement signed on 6 November 1992 on Accession of the Hellenic Republic: Articles 3, 4 and 5 and Final Act, Part III, Declaration 2.~~

~~(v) the Agreement signed on 28 April 1995 on Accession of the Republic of Austria: Article 4.~~

~~(vi) the Agreement signed on 19 December 1996 on Accession of the Kingdom of Denmark: Articles 4 and 6 and Final Act, Part II, Joint Declaration 3.~~

~~(vii) the Agreement signed on 19 December 1996 on Accession of the Republic of Finland: Articles 4 and 5 and Final Act, Part II, Joint Declaration 3.~~

~~(viii) the Agreement signed on 19 December 1996 on Accession of the Kingdom of Sweden: Articles 4 and 5 and Final Act, Part II, Joint Declaration 3.~~

(i) the Agreement signed on 19 December 1996 on Accession of the Kingdom of Denmark: Article 6;

(ii) the Agreement signed on 19 December 1996 on Accession of the Republic of Finland: Article 5;

(iii) the Agreement signed on 19 December 1996 on Accession of the Kingdom of Sweden: Article 5;

(c) As far as the provisions of the Decisions of the Executive Committee established by the 1990 Convention implementing the Schengen Agreement of 14 June 1985 are concerned:

~~SCH/Com-ex (93) 14 (improving practical cooperation between the judicial authorities to combat drug trafficking);~~

~~SCH/Com-ex (94) 28 rev (certificate provided for in Article 75 for transport of drugs and/or psychotropic substances);~~

~~SCH/Com-ex (98) 51 rev 3 (cross border police cooperation in the area of crime prevention and detection when requested);~~

~~SCH/Com-ex (98) 52 (handbook on cross border police cooperation);~~

~~SCH/Com-ex (99) 1 rev 2 (drugs situation);~~

~~SCH/Com-ex (99) 6 (telecommunication);~~

~~SCH/Com-ex (99) 8 rev 2 (payment to informers);~~

~~SCH/Com-ex (99) 11 rev 2 (agreement on cooperation in proceedings for road traffic offences);~~

~~SCH/Com-ex (99) 18 (improvement of police cooperation in preventing and detecting crimes);~~

(d) As far as the provisions of the following Declaration of the Executive Committee established by the 1990 Convention implementing the Schengen Agreement of 14 June 1985 are concerned:

~~SCH/Com-ex (96) decl 6 rev 2 (declaration on extradition);~~

3. Article 8(3) shall apply to the territories referred to in paragraphs 1 and 2 above.

Article 6

~~1. Without prejudice to Article 8(3), the provisions referred to in Article 1 shall be put into effect, between the United Kingdom and the Member States and other States for which these provisions have already been put into effect when the preconditions for the implementation of those provisions have been fulfilled in all of these Member States and other States, by a decision taken by the Council. The Council may decide to set different dates for the putting into effect of different provisions by subject area.~~

~~2. Before the provisions referred to in Article 1 are put into effect in accordance with paragraph 1, the Council shall decide on the detailed legal and technical arrangements, including provisions relating to data protection, concerning the participation of the United Kingdom in the provisions referred to in paragraphs (a)(ii) and (iii), (c)(ii) and (d)(ii) of Article 1.~~

1. The provisions referred to in Article 1(a)(ii), as well as the other relevant provisions concerning the Schengen Information System adopted since 1 December 2009, but not yet put into effect, shall be put into effect, between the United Kingdom and the Member States and other States for which these provisions have already been put into effect, when the preconditions for the implementation of those provisions have been fulfilled, by an implementing decision taken by the Council.

~~3. Paragraph 1 shall apply mutatis mutandis to the putting into effect of the provisions referred to in Article 5 in respect of the territories concerned.~~

~~4. Any **implementing** decision under paragraphs 1 **and** 2 ~~and 3~~ shall be taken by the Council, acting with the unanimity of its members referred to in Article 1 of the Schengen Protocol and of the representative of the Government of the United Kingdom.~~

~~5. The provisions of Article 75 of the 1990 Convention implementing the Schengen Agreement of 14 June 1985 and of Executive Committee Decision SCH/Com-ex (94) 28 rev (certificate provided for in Article 75 for transportation of drugs and/or psychotropic substances) shall be directly applicable in the United Kingdom.~~

Article 7

~~1. The United Kingdom shall be bound by:~~

~~(a) Council Decision (1999/323/CE) of 3 May 1999 on the establishment of a financial regulation governing the budgetary aspects of the management by the 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 Help-Desk Server of the Management Unit and of the Sirene Network Phase II(2), and any subsequent amendments thereto.~~

~~(b) Council Decision (2000/265/CE) of 27 March 2000 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 for the Schengen environment, "Sisnet"(3).~~

~~2. The United Kingdom shall bear all the costs involved in the technical achievement of its partial participation in the operation of the SIS.~~

Article 8

~~1. This Decision shall enter into force on the day following that of its publication in the Official Journal of the European Communities.~~

~~2. From the date of adoption of this Decision the United Kingdom of Great Britain and Northern Ireland shall be deemed irrevocably to have notified the President of the Council under Article 5 of the Schengen Protocol that it wishes to take part in all proposals and initiatives which build upon the Schengen acquis referred to in Article 1. Such participation shall cover the territories referred to in Article 5(1) and (2) respectively, to the extent that the proposals and initiatives build upon the provisions of the Schengen acquis to which those territories become bound.~~

3. Measures building upon the Schengen acquis referred to in Article 1 which have been adopted prior to the adoption of the Council decision referred to in Article 6 shall take effect for the United Kingdom on the date or dates on which the Council decides under Article 6 to put the acquis referred to in Article 1 into effect for the United Kingdom unless the measure itself provides for a later date.

Annex III

Codified version of Council Decision on UK participation in Schengen Information System

Additions in bold/underline; deletions in ~~strikeout~~

Article 1

The provisions referred to in Article 1(a)(i), (b), (c)(i) and (d) (i) of Decision 2000/365/EC shall be put into effect for the United Kingdom as from 1 January 2005.

The provisions referred to in Article 5(2) of Decision 2000/365/EC shall be put into effect for Gibraltar as from 1 January 2005.

The provisions of the acts constituting developments of the Schengen acquis adopted since Decision 2000/365/EC and listed in Annex I of this Decision shall be put into effect for the United Kingdom and for Gibraltar as from 1 January 2005.

The provisions of the acts constituting developments of the Schengen acquis adopted since Decision 2000/365/EC and listed in Annex II of this Decision shall be put into effect for the United Kingdom as from 1 January 2005.

As from 1 December 2014, the provisions referred to in Articles 1(a)(i), (b) and (c) and 5(2) of Decision 2000/365/EC, as amended by Decision [2014/.../EU], a well as the provisions of the acts listed in Annexes I and II to this Decision, as amended by Decision [2014/.../EU], shall continue to be put into effect for the United Kingdom.

Article 2

Formal communications and transmission of decisions between the Gibraltar authorities, including the judicial authorities, and those of the Member States of the European Union (except the United Kingdom) for the purposes of this Decision shall be carried out in accordance with the procedure provided for in the arrangements relating to the Gibraltar authorities in the context of EU and EC instruments and related treaties (see Annex III to this Decision), concluded between Spain and the United Kingdom on 19 April 2000 and communicated to the Member States and the institutions of the European Union.

Article 3

This Decision shall take effect on the day following that of its publication in the Official Journal of the European Union.

ANNEX I

List of developments of the Schengen acquis, which shall be put into effect for the United Kingdom of Great Britain and Northern Ireland and for Gibraltar

1. Council Act of 29 May 2000 establishing the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (provisions referred to in Article 2(1) of the Convention) (OJ C 197, 12.7.2000, p. 1). The application of the Convention to Gibraltar will enter into effect when the European Convention on Mutual Assistance in Criminal Matters is extended to Gibraltar.

2. Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985 (OJ L 187, 10.7.2001, p. 45).

3. Council Act of 16 October 2001 establishing the Protocol to the Convention on Mutual Assistance in Criminal Matters between the Members States of the European Union (provisions referred to in Article 15 of the Protocol) (OJ C 326, 21.11.2001, p. 1). The Protocol will apply to Gibraltar when the European Convention on Mutual Assistance in Criminal Matters enters into effect in Gibraltar in accordance with Article 26 of that Convention.

~~4. Council framework Decision 2002/946/JHA of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence (OJ L 328, 5.12.2002, p. 1).~~

5. Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence (OJ L 328, 5.12.2002, p. 17).

6. Council Regulation (EC) No 377/2004 of 19 February 2004 on the creation of an immigration liaison officers network (OJ L 64, 2.3.2004, p. 1).

7. Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data (OJ L 261, 6.8.2004, p. 24).

8. Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters (OJ L 350, 30.12.2008, p. 60).

9. Council Decision 2008/149/EC of 28 January 2008 on the conclusion, on behalf of the European Union, 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 (OJ L 53, 27.2.2008, p. 52).

ANNEX II

List of developments of the Schengen acquis, which shall be applied by the United Kingdom of Great Britain and Northern Ireland:

1. Council Decision 2000/586/JHA of 28 September 2000 establishing a procedure for amending Articles 40(4) and (5), 41(7) and 65(2) of the Convention implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders (OJ L 248, 3.10.2000, p. 1).

2. Council Decision 2003/725/JHA of 2 October 2003 amending the provisions of Article 40(1) and (7) of the Convention implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders (OJ L 260, 11.10.2003, p. 37).

Annex IV

List of other Title V measures which the UK will opt back into (Commission Decision):

Council Framework Decision 2002/465/JHA of 13 June 2002 on joint investigation teams

Council Decision 2000/642/JHA of 17 October 2000 on financial intelligence units

Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or property related to, crime

Council Decision 2000/375/JHA to combat child pornography on the internet

Council Framework Decision 2006/783/JHA on the application of the principle of mutual recognition to confiscation orders

Council Decision 2009/917/JHA of 30 November 2009 on the use of information technology for customs purposes

Council Decision 2000/641/JHA of 17 October 2000 establishing a secretariat for the joint supervisory data-protection bodies set up by the Convention on the establishment of a European Police Office (Europol Convention), the Convention on the Use of Information Technology for Customs Purposes and the Convention implementing the Schengen Agreement on the gradual abolition of checks at the common borders (Schengen Convention)

Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States

Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from the criminal record between Member States.

Council Decision 2009/316/JHA of 6 April 2009 on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2009/315/JHA

Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network

Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime

Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust and amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime

Council Decision 2003/659/JHA amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime

Council Decision 2002/348/JHA of 25 April 2002 concerning security in connection with football matches with an international dimension

Council Decision 2007/412/JHA of 12 June 2007 amending Decision 2002/348/JHA concerning security in connection with football matches with an international dimension

Joint Action 97/827/JHA of 5 December 1997 establishing a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organized crime

Council Framework Decision 2002/465/JHA of 13 June 2002 on joint investigation teams

Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties

Council Act of 18 December 1997 drawing up the Convention on mutual assistance and cooperation between customs administrations (Naples II)

Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purposes of their enforcement in the European Union

Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union

Council Framework Decision 2008/675/JHA of 24 July 2008 on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings

Joint Action 98/700/JHA of 3 December 1998 concerning the setting up of a European Image Archiving System (FADO)

Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol)

- Council Decision 2009/934/JHA of 30 November 2009 adopting the implementing rules governing Europol's relations with partners, including the exchange of personal data and classified information

- Council Decision 2009/936/JHA of 30 November 2009 adopting the implementing rules for Europol analysis work files

- Council Decision 2009/968/JHA of 30 November 2009 adopting the rules on the confidentiality of Europol information

Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention

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