

## II

*(Acts whose publication is not obligatory)*

## COUNCIL

## 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<sup>(1)</sup>, 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;

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);

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;

(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;

(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;

<sup>(1)</sup> OJ L 176, 10.7.1999, p. 36.

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. A 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;

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);

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.
- (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.

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 decision under paragraphs 1, 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 <sup>(1)</sup>, 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' <sup>(2)</sup>.

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*.

<sup>(1)</sup> OJ L 123, 13.5.1999, p. 51.

<sup>(2)</sup> OJ L 85, 6.4.2000, p. 12.

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.

Done at Brussels, 29 May 2000.

*For the Council*

*The President*

A. COSTA

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