



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 19 May 2014

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LIMITE

**PROAPP 6
JAI 326
CATS 72
SCHENGEN 11**

NOTE

from: Presidency
to: Coreper

Subject: Draft Council Decision (*Schengen acquis*)

1. Following the work of the Friends of Presidency Group on the application of Article 10 of Protocol 36, delegations will find in Annex the text, as technically finalised so far in the Group, of the *draft Council Decision concerning the notification of the United Kingdom of Great Britain and Northern Ireland of its wish to take part in some of the provisions of the Schengen acquis which are contained in acts of the Union in the field of police cooperation and judicial cooperation in criminal matters and amending Council Decisions 2000/365/EC and 2004/926/EC*.
2. It is recalled that, in order to clarify the end result, when agreement will have been reached on the adoption of the above amending Decision, it will also be decided, in accordance with Articles 19(7)(g) and 17(4)(c) of the Council's rules of procedure, that a consolidated version of each of the two Decisions (2000/365 and 2004/926), as amended by that amending Decision, will be published in the Official Journal, for information (C part of the OJ), on the same day as the amending Decision will be adopted formally.

DRAFT**COUNCIL DECISION****of**

concerning the notification of the United Kingdom of Great Britain and Northern Ireland
of its wish to take part in some of the provisions of the Schengen *acquis*
which are contained in acts of the Union in the field of police cooperation
and judicial cooperation in criminal matters
and amending Council Decisions 2000/365/EC and 2004/926/EC

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Protocol (No 36) on transitional provisions (hereinafter "Protocol 36")
annexed to the Treaties, and in particular to Article 10(5) thereof,

Having regard the Protocol (No 19) on the Schengen *acquis* integrated into the framework of the
European Union (hereinafter "the Schengen Protocol") annexed to the Treaties, and in particular to
Article 4 thereof,

Having regard to the notification, under Article 10(4), first subparagraph, of Protocol 36, by the
Government of the United Kingdom of Great Britain and Northern Ireland (hereinafter "the United
Kingdom "), by its letter to the President of the Council of 24 July 2013,

Having regard to the notification, under Article 10(5), first sentence, of Protocol 36 and under
Article 4 of the Schengen Protocol, by the Government of the United Kingdom, by its letter to the
President of the Council of [...] 2014, of its wish to take part in some of the provisions of the
Schengen *acquis* which are contained in acts of the Union in the field of police cooperation and
judicial cooperation in criminal matters,

Whereas,

- (1) Article 10(4) of Protocol 36 allowed the United Kingdom, at the latest six months before the expiry of the five year transitional period referred to in paragraph 3 of Article 10 of Protocol 36, to notify to the Council that it does not accept, with respect to acts of the Union in the field of police cooperation and judicial cooperation in criminal matters which had been adopted before the entry into force of the Treaty of Lisbon, the powers of the Commission and of the Court of Justice as referred to in Article 10(1) of Protocol 36.
- (2) By letter to the President of the Council of 24 July 2013, the United Kingdom made use of the above possibility through notifying that it did not accept the said powers of the Commission and of the Court of Justice, with the consequence that the relevant acts in the field of police cooperation and judicial cooperation in criminal matters would cease to apply to the United Kingdom on 1 December 2014.
- (3) Article 10(5) of Protocol 36 allows the United Kingdom to notify of its wish to participate in the above acts, including those acts which are part of the Schengen *acquis*, in which case the relevant provisions of the Schengen Protocol shall apply.
- (4) By letter to the President of the Council of ... 2014, the United Kingdom made use of this possibility by notifying of its wish to participate in some of the provisions of the Schengen *acquis* which are contained in acts of the Union in the field of police cooperation and judicial cooperation in criminal matters to which it was already taking part in accordance with Council Decision 2000/365/EC 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*¹ (hereinafter "Decision 2000/365/EC"), Council Decision 2004/926/EC of 22 December 2004 on the putting into effect of parts of the Schengen *acquis* by the United Kingdom of Great Britain and Northern Ireland² (hereinafter "Decision 2004/926/EC") and Article 5(1) of the Schengen Protocol.

¹ OJ L 131, 1.6.2000, p. 43.

² OJ L 395, 31.12.2004, p. 70.

- (5) It is therefore necessary to identify the acts and provisions in the field of police cooperation and judicial cooperation in criminal matters which are part of the Schengen *acquis* to which the United Kingdom will continue to participate following the above notification of its wish to do so and therefore to amend Decision 2000/365/EC and Decision 2004/926/EC.
- (6) Decision 2000/365/EC and Decision 2004/926/EC, as amended, will thus continue to apply, in particular concerning those provisions of the Schengen *acquis* to which the United Kingdom was authorised to take part and which are not acts and provisions in the field of police cooperation and judicial cooperation in criminal matters as referred to in Article 10(1) of Protocol 36.
- (7) Likewise, the United Kingdom will continue to participate to those acts and provisions of the Schengen *acquis* to which it was authorised to take part, which although they are acts and provisions in the field of police cooperation and judicial cooperation in criminal matters adopted before the entry into force of the Treaty of Lisbon, have been amended by an act, applicable to the United Kingdom, adopted after the said entry into force and therefore fall under Article 10(2) of Protocol 36.

This is the case with regard to the Decision on the Schengen Evaluation Mechanism,³ which was amended by Regulation (EU) No 1053/2013,⁴ Articles 48 to 53 of the 1990 Schengen Convention, as well as the Convention of 2000 on mutual assistance in criminal matters between the EU Member States,⁵ and its Protocol,⁶ which were amended by Directive 2014/.../EU,⁷ and the Agreement of 2008 with Switzerland on its association with the Schengen *acquis*,⁸ which was amended by the Protocol of 2011 on the association of Liechtenstein with that *acquis*.⁹

³ Decision of the Executive Committee of 16 September 1998 setting up a Standing Committee on the evaluation and implementation of Schengen (SCH/Com-ex (98) 26 def.), OJ L 239, 22.9.2000, p. 138.

⁴ Council Regulation (EU) No 1053/2013 of 7 October 2013 establishing an evaluation and monitoring mechanism to verify the application of the Schengen *acquis* and repealing the Decision of the Executive Committee of 16 September 1998 setting up a Standing Committee on the evaluation and implementation of Schengen, OJ L 295, 6.11.2013, p. 27.

⁵ Council Act of 29 May 2000 establishing the Convention on mutual assistance in criminal matters between the Member States of the European Union, OJ C 197, 12.7.2000, p. 1.

⁶ Council Act of 16 October 2001 establishing the Protocol to the Convention on mutual assistance in criminal matters between the Member states of the European Union, OJ C 326, 21.11.2001, p. 1.

⁷ Directive 2014/41/EU of 3 April 2014 of the European Parliament and of the Council regarding the European Investigation Order in criminal matters, OJ L 130, 1.5.2014, p. 1.

⁸ 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.

⁹ Council Decision 2011/349/EU of 7 March 2011 on the conclusion on behalf of the European Union 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*, relating in particular to judicial cooperation in criminal matters and police cooperation, OJ L 160, 18.6.2011, p. 3.

- (8) As recalled in Decision 2000/365/EC, the United Kingdom has a special position in respect of matters covered by Title V of Part Three of the Treaty on the Functioning of the European Union (hereinafter "TFEU"), as recognised in the Schengen Protocol, in the Protocol (No 20) on the application of certain aspects of Article 26 of the TFEU to the United Kingdom and to Ireland (hereinafter "Protocol 20") and in the Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the area of Freedom, Security and Justice (hereinafter "Protocol 21"), annexed to the Treaties, and because of this special position, the Schengen Protocol provides for the possibility of the United Kingdom to participate in some of the provisions of the Schengen *acquis*.
- (9) In accordance with Article 10(5), last sentence, of Protocol 36, the participation of the United Kingdom to some of the provisions of the Schengen *acquis* which are contained in acts of the Union in the field of police cooperation and judicial cooperation in criminal matters as provided in this decision re-establishes the widest possible measure of participation of the United Kingdom in the Schengen *acquis* of the Union falling within in the area of freedom, security and justice without seriously affecting the practical operability of the various parts thereof, while respecting their coherence.
- (10) In addition, as recalled in Decision 2000/365/EC, 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.

- (11) In view of the specific role entrusted to the Council by the Schengen Protocol when it comes to agreeing, by unanimity, on new participants into the Schengen *acquis*, as well as the high level of mutual trust between the Member States which is required when examining that the preconditions for the implementation of the provisions on the Schengen Information System have been fulfilled and when taking the subsequent decision by which those provisions will be put into effect for the United Kingdom, the implementing power to adopt the decisions, under Articles 5(1) and 6(1) of Decision 2000/365/EC, whereby such *acquis* will be applied to the Channel Islands and the Isle of Man and the relevant *acquis* on the Schengen Information System will be put into effect for the United Kingdom should be conferred on the Council. The Council should act 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.
- (12) 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,¹⁰ 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*,¹¹ has been consulted, in accordance with Article 4 thereof, about the preparation of this Decision,
- (13) The Mixed Committee established pursuant to Article 3 of the Agreement concluded 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*,¹² including that Agreement as acceded to by the Principality of Liechtenstein,¹³ has been informed about the preparation of this Decision in accordance with Article 5 of that Agreement.

¹⁰ OJ L 15, 20.1.2000, p. 2.

¹¹ OJ L 176, 10.7.1999, p. 36.

¹² OJ L 53, 27.2.2008, p. 52.

¹³ OJ L 160, 18.6.2011, p. 3.

HAS DECIDED AS FOLLOWS:

Article 1

1. As from 1 December 2014, the United Kingdom shall continue to participate in the provisions of the Schengen *acquis* as provided in this Decision, including in accordance with Decision 2000/365/EC and Decision 2004/926/EC, as amended by this Decision.

2. This Article shall be without prejudice to acts and provisions of the Schengen *acquis* adopted since 1 December 2009 by which the United Kingdom is bound in accordance with Article 5(1) of the Schengen Protocol and Article 8(2) of Decision 2000/365/EC.

Article 2

Decision 2000/365/EC shall be amended as follows:

(1) In Article 1(a)(i):

(a) the reference to Article 27 shall be replaced by a reference to "27(1)";

(b) the words "except for Article 47(2)(c)" shall be replaced by "except for Article 47(2)(c) and (4)".

(2) In Article 1(a), points (ii) and (iii) shall be replaced by the following:

"(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);¹⁴
- Commission Decision 2007/171/EC of 16 March 2007 laying down the network requirements for the Schengen Information System II (third pillar);".

(3) In Article 1(b), points (i) to (v) shall be deleted and points (vi) to (viii) shall be replaced by the following:

- "(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;"

(4) In Article 1(c), point (i) shall be replaced by the following:

"(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;

¹⁴ OJ L 205, 7.8.2007, p. 63.

- (5) In Article 1(c), point (ii) shall be deleted.
- (6) In Article 1, paragraph (d) shall be deleted.
- (7) Articles 2, 3 and 4 shall be deleted.
- (8) In Article 5(1), the words "A decision on this request shall be taken by the Council ..." at the beginning of the second sentence shall be replaced by the following words: "An implementing decision on this request shall be taken by the Council ...".
- (9) In Article 5(2)(a):
- (a) the reference to Article 27 shall be replaced by a reference to "27(1)";
 - (b) the words "except for Article 47(2)(c)" shall be replaced by " except for Article 47(2)(c) and (4) ".
- (10) In Article 5(2)(b), points (i) to (v) shall be deleted and points (vi) to (viii) shall be replaced by the following:
- "(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;"

(11) In Article 5(2)(c), the list of acts under point (c) shall be replaced by the following:

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

(12) In Article 5(2), point (d) shall be deleted.

(13) In Article 6:

(a) paragraphs 1 and 2 shall be replaced by the following:

"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."

(b) Paragraphs 3, 4 and 5 shall be renumbered accordingly.

(c) In paragraph 4, renumbered 3, the first words "Any decision ..." shall be replaced by "Any implementing decision ..." and the reference to paragraphs 1, 2 and 3 shall be replaced by a reference to paragraphs 1 and 2.

(14) In Article 7, paragraph 1 shall be deleted.

Article 3

Decision 2004/926/EC shall be amended as follows:

- (1) In Article 1, the following new last paragraph shall be inserted at the end:

"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], as 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."

- (2) In Annex I, point 4 shall be deleted and the following new points 8 and 9 shall be inserted at the end:

"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)."

Article 4

This Decision shall enter into force on 1 December 2014.

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

Done at Brussels, 2014.

For the Council

The President
