



EUROPEAN UNION
THE COUNCIL

Brussels, 15 July 1999

SEMDOC

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LIMITE

SCHENGEN 67

NOTE

from :	the Finnish Presidency
to :	the Working Party on the Schengen Acquis
No. prev. doc.:	8562/99 SCHENGEN 56 + ADD 1
Subject :	The request of the United Kingdom to take part in some of the provisions of the Schengen acquis

1. Legal framework

Article 4 of the Schengen Protocol stipulates that Ireland and the United Kingdom may at any time request to take part in some or all of the provisions of the Schengen acquis. The Council shall decide on the request with the unanimity of its members referred to in Article 1 of the Schengen Protocol and of the representative of the Government of the State concerned.

With Declaration No. 45 annexed to the Final Act of the Conference of the Representatives of the Governments, signed in conjunction with the Treaty of Amsterdam, the Member States undertook to make their best efforts with a view to allowing Ireland or the United Kingdom, if they so wished, to use the provisions of Article 4 of the Schengen Protocol so that the Council would be in a position to take the decisions referred to in that Article upon the date of entry into force of the Protocol or at any time thereafter.

Therefore, it is for the United Kingdom to bring out in its request those provisions of the Schengen acquis for which it deems participation be appropriate in view of the special situation of the United Kingdom as regards frontier controls. The Council shall then take a decision on the request by unanimity.

The United Kingdom announced at the Justice and Home Affairs Council on 12 March 1999 that it intended to exercise the provision in Article 4 of the Schengen Protocol to the Treaty of Amsterdam by seeking to participate in those measures of the Schengen acquis that relate to the law-enforcement and criminal judicial co-operation, including the Schengen Information System. The United Kingdom subsequently made the request in accordance with Article 4 of the Schengen Protocol on 20 May 1999 (doc. 8562/99 Schengen 56). The United Kingdom supplemented its application on 9 July 1999 (doc. 8562/99 Schengen 56 add.1).

2. Procedural questions

The Schengen acquis working group had the opportunity to start examining the United Kingdom's request on 23 June 1999 during the German Presidency. The Finnish Presidency will continue the discussion with a view to preparing a Council decision in accordance with Article 4 of the Schengen Protocol.

The results of the Schengen acquis working group will be reported directly to Coreper. Moreover, the Presidency intends to keep Article 36 Committee and the Strategic Committee on Immigration, Frontiers and Asylum informed. The final decision will be made by the Council.

Article 2 of the Agreement based on Article 6(2) of the Schengen Protocol (signed on 30 June 1999) provides that before the Council decides on a request made by Ireland or the United Kingdom on the basis of Article 4 of the Schengen Protocol, consultations shall take place in the Mixed Committee. This agreement is not, however, yet in force nor can it be provisionally applied. Nevertheless, Article 5 of the Agreement based on Article 6(1) of the Schengen Protocol, signed on 18 May 1999, provides that the Mixed Committee shall be informed about the preparation within the Council of any acts or measures which may be relevant to this Agreement. This latter provision is provisionally applied as from 18 May 1999. Accordingly, the Presidency will inform the Mixed Committee about the request made by the United Kingdom.

In view of the next working group meeting, the Presidency invites the United Kingdom to be prepared to present its application for discussion in a greater detail. To facilitate discussion, the Presidency has summarised, in the Annex to this note, comments contained in the request made by the United Kingdom as well as comments made by delegations during the last working group meeting.

COMMENTS ON THE UK REQUEST OF 20 MAY 1999 AS SUPPLEMENTED ON 9 JULY 1999

Article of the Schengen Convention	EU legal base	Comment
<i>Police co-operation</i>		- Check related EU instruments in which the UK participates.
39	Articles 34 and 30 TEU	- UK central body National Criminal Intelligence Service
40	Articles 34 and 32 TEU	- UK to limit surveillance without prior authorisation. - UK legislation not yet in place. - Discussion needed concerning service weapons. - Competent officers: officers of the UK police forces and officers of Her Majesty's Customs and Excise (art. 40.4). - Competent UK authority National Criminal Intelligence Service (art. 40.5).
41	Articles 34 and 32 TEU	- UK legislation not yet in place. - Discussion needed concerning hand guns. - Bilateral arrangements concerning the Channel Tunnel between France and the UK - Competent officers officers of the UK police forces and officers of the Her Majesty's Customs and excise (art. 41.7).
42	Articles 34 and 32 TEU	- UK legislation not yet in place.
43	Articles 34 and 32 TEU	- UK legislation not yet in place.
44	Articles 34 and 30(1) TEU	
46	Articles 34 and 30(1) TEU	- Competent UK authority National Criminal Intelligence Service.
47	Articles 34 and 30(1) TEU	

<i>Mutual assistance in criminal matters, application of the <u>non bis in idem</u> principle, extradition and transfer of the enforcement of criminal judgements</i>		- Check related EU instruments in which the UK participates.
48	Articles 34 and 31(a) TEU	-
49	Articles 34 and 31(a) TEU	- UK reservation to the Additional Protocol to the 1959 Convention on Mutual Assistance in Criminal Matters.
50	Articles 34 and 31(a) TEU	- UK legislation not yet in place.
51	Articles 34 and 31(a) TEU	-
52	Articles 34 and 31(a) TEU	-
53	Articles 34 and 31(a) TEU	- UK reservation to Article 21 of the 1959 Convention on Mutual Assistance in Criminal Matters.
54	Articles 34 and 31 TEU	-
55	Articles 34 and 31 TEU	-
56	Articles 34 and 31 TEU	-
57	Articles 34 and 31 TEU	- Authorities to be nominated.
58	Articles 34 and 31 TEU	-
59	Articles 34 and 31(b) TEU	-
60	No legal base	- No legal base
61	Articles 34 and 31(b) TEU	-
62	Articles 34 and 31(b) TEU	-
63	Articles 34 and 31(b) TEU	-
64	Articles 34 and 31(b) TEU	-
65	Articles 34 and 31(b) TEU	-
66	Articles 34 and 31(b) TEU	- UK legislation not yet in place.
67	Articles 34 and 31(b) TEU	- UK legislation not yet in place.
68	Articles 34 and 31(b) TEU	- UK legislation not yet in place.
69	Articles 34 and 31(b) TEU	- UK legislation not yet in place.

- <i>Narcotic drugs</i>		
70	No legal base	- No legal base
71	Articles 34, 30 and 31 TEU	-
72	Articles 34 and 31 TEU	-
73	Articles 34, 30(1) and 31 TEU	-
74	No legal base	- No legal base
75	Article 95 TEC	- Competent authority Home Office.
76	Articles 95 and 152 TEC and Articles 30(1)(a) and 34 to the extent specified in document 8056/99 Schengen 41	-
- <i>Schengen Information System</i>		
92 – 119	p.m.	<ul style="list-style-type: none"> - Appropriate administrative and financial arrangements to be set up as well as legislative arrangements concerning the protection of personal data. - UK does not intend to access or enter information on SIS relating to the movement of persons. - Competent authorities the National Criminal Intelligence Service and National Crime Squad (art. 101.4). - Central responsible authority National Criminal Intelligence Service (art. 108). - Data Protection Registrar (Commissioner) the supervisory authority (art. 114 – 115).
- <i>Protection of personal data</i>		-
126 – 130	Articles 30(1) and 34; Article 95 TEC to the extent specified in document 8056/99 Schengen 41	<ul style="list-style-type: none"> - Administrative and legislative arrangements to be made. - Data Protection Registrar (Commissioner) the supervisory authority (art. 128).

- Schengen Decision or Declaration	- EU legal base	- Comment
- <i>Police co-operation</i>		
SCH/Com-ex (97) 6 rev 2	Articles 34 and 30(1) TEU	- Rescinded by SCH/Com-ex (98) 52
SCH/Com-ex (98) 26	Article 66 TEC and Articles 30 and 31 TEU	- Correct reference SCH/Com-ex (98) 26 def. - Definition of UK participation in evaluations
SCH/Com-ex (98) 51 rev 3	Article 30 TEU	
SCH/Com-ex (98) 52	Article 30 TEU	- To be updated with UK contribution
SCH/Com-ex (99) 6	Article 30 TEU	
SCH/Com-ex (99) 7 rev 2	Article 30 TEU	- related to external frontier controls
SCH/Com-ex (99) 8 rev 2	Article 30 TEU	
SCH/Com-ex (99) 18	Article 30 TEU	
<i>Judicial co-operation</i>	Article 30 TEU	
SCH/Com-ex (93) 14	Articles 31(a) and 34 TEU	
SCH/Com-ex (96) decl 6 rev 2	Article 31(b) TEU in conjunction with Article 34 TEU	
<i>Narcotic drugs</i>		
SCH/Com-ex (94) 28 rev	Article 95 TEC	
SCH/Com-ex (99) 1 rev 2	No legal base	- No legal base
<i>Schengen Information System</i>		
SCH/Com-ex (93) 16	p.m.	
SCH/Com-ex (95) 6	No legal base	- Not part of the acquis
SCH/Com-ex (95) 7	No legal base	- No legal base
SCH/Com-ex (95) 8	No legal base	- Not part of the acquis
SCH/Com-ex (95) 9	No legal base	- Not part of the acquis
SCH/Com-ex (97) 2 rev 2	p.m.	
SCH/Com-ex (97) 18	p.m.	
SCH/Com-ex (97) 24	p.m.	
SCH/Com-ex (97) 35	p.m.	
SCH/Com-ex (98) 11	p.m.	

SCH/Com-ex (97) decl 13	p.m.	Correct reference SCH/Com-ex (97) decl 13 rev 2
SCH/Com-ex (99) 5	p.m	- To be updated with UK contribution
SCH/Com-ex (99) decl 2 rev	p.m.	- To be updated with UK contribution