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**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 26 November 1999

SEMDOC

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**11177/4/99
REV 4**

LIMITE

SCHENGEN 74

NOTE

From :	Presidency
to :	Coreper/Council
Subject :	UK application to participate in some of the provisions of the Schengen acquis

The Annex to this Note contains a draft Decision of the Council, to be taken on the basis of Article 4 of the Schengen Protocol, regarding the request of the United Kingdom to participate in some of the provisions of the Schengen acquis.

Added to the draft Decision are four Statements, to be made at the time of the adoption of the Decision by the Council.

Outstanding issues

1. Partial participation in the SIS

The United Kingdom has requested to take part in the provisions of the 1990 Schengen Convention relating to the Schengen Information System (SIS), but not to the extent that these provisions serve the purpose of applying the provisions of the Convention relating to the free movement of persons in the territories of the participating States. This means that the United Kingdom has not requested to participate in Article 96 of the 1990 Schengen Convention (on alerts for the purposes of refusing entry), nor in other provisions concerning the SIS to the extent that they relate, implicitly or explicitly, to Article 96.

It is technically feasible to construct the SIS in a manner which would make it impossible for the UK to enter data on the basis of Article 96 in the system and for it to have access to such data entered into the system by other participating States. A partial participation by the UK in the SIS would have certain consequences for the interpretation of some other provisions of the 1990 Schengen Convention concerning the SIS.

It was decided in the meeting of Coreper of 17 November 1999 that the Schengen acquis working group should discuss the legal and technical modalities of the partial participation in the SIS further. The legal and technical modalities concerning the partial participation in the SIS shall be decided by the Council before the provisions listed in Article 1 are put into effect for the UK (see Article 6(2)).

Most delegations recognise the right of the UK under Article 4 of the Schengen Protocol to request taking part in only some of the provisions of the Schengen acquis, and they are satisfied that the UK's request in respect of the provisions on the SIS can be met from the technical and legal point of view. The costs for making the necessary technical adjustments to the SIS would be borne by the UK (see Article 7(2)). The UK is ready to take its full share in the costs of installing and operating the technical support function of the SIS, even though its participation in the communication of information through the system will only be partial.

The **Spanish** delegation has not been ready to accept a partial participation by the UK in the SIS in accordance with Article 4 of the Schengen Protocol. Therefore, this delegation has expressed a reserve in respect of Articles 1(a)(ii) and 7(2) of the draft Decision and the corresponding recitals in the preamble.

2. Territorial scope

Article 5 of the draft Decision deals with the application of all or some of the provisions of the Schengen acquis in which the UK wishes to participate to:

- the Channel Islands and the Isle of Man (paragraph 1), and
- Gibraltar (paragraph 2).

With regard to the Channel Islands and the Isle of Man, the text of Article 5(1) foresees an additional unanimous decision of the Council concerning the participation of these territories. The delegations of **Austria** and **Luxembourg** still upheld a scrutiny reservation in respect of this provision.

Several delegations would like to see a commitment by the UK to have the Channel Islands and the Isle of Man involved as broadly as possible in the provisions in which the UK participates. They welcomed the intention of the UK to declare its commitment to ensure that in extending its participation to the Channel Islands and the Isle of Man, the coherence of the subject areas which constitute the ensemble of the Schengen acquis would be respected (see Declaration n° 4).

With regard to Gibraltar, the Government of the UK had indicated in its request that certain provisions of the Schengen acquis in which the UK wished to participate should not apply to Gibraltar. However, the matter is also the subject of bilateral

discussions between the UK and Spain. Pending the outcome of these discussions the matter is still open.

3. Consequences of the adoption of the decision for UK participation in the further development of the Schengen acquis

Article 8(2) of the draft Decision makes it clear that once the Council has decided on the UK's request, the UK will be authorised to participate fully in the decision-taking process in respect of proposals and initiatives which build upon the provisions of the Schengen acquis in which the UK participates, even if these provisions may not yet have been put into effect for the UK. Thus it is not necessary for the UK to make any (further) notifications to that effect under Article 5 of the Schengen Protocol.

The UK delegation has expressed a preference for dealing with this question by a unilateral declaration, to be made by the UK at the time of the adoption of the Decision. The other delegations hold the view that for reasons of openness and legal certainty, the provision should form part of the Council Decision.

Coreper/the Council is invited to remove the remaining obstacles for the adoption of the Decision.

DRAFT

COUNCIL DECISION

of

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

THE COUNCIL OF THE EUROPEAN UNION,

Acting on the basis of Article 4 of the Protocol annexed to the Treaty on European Union and to the Treaty establishing the European Community, integrating the Schengen acquis into the framework of the European Union (hereinafter referred to as 'the Schengen Protocol'),

Whereas the Government of the United Kingdom of Great Britain and Northern Ireland has requested, 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, as specified in those letters, of the Schengen acquis;

Having considered the opinion of the European Commission on this request¹;

Bearing in mind the special position of the United Kingdom of Great Britain and Northern Ireland 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 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:

1. The Schengen acquis was conceived and is functioning 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;
2. The Schengen Protocol provides for the possibility for the United Kingdom of Great Britain and Northern Ireland to participate in some of the provisions of the Schengen acquis, because of the aforementioned special position of the United Kingdom;

¹ Opinion of 20 July 1999, Doc. SEC(1999) 1198 final

3. 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;

4. 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;

5. 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 acquis², 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;
Articles 48-51;
Articles 52 and 53;
Articles 54-58;
Article 59;
Articles 61-66;
Articles 67-69;
Articles 71-73;

² OJ L 176 of 10 July 1999, p. 35.

Articles 75 and 76;
Articles 126-130 to the extent that they relate to the provisions in which the United Kingdom participates by virtue of this sub-paragraph;
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 93-95;
Articles 97-100;
Article 101, except its paragraph 2;
Articles 102-108;
Articles 109-111, 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 – 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, 5(2) 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 co-operation 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-co-operation in the area of crime prevention and detection when requested);

 SCH/Com-ex (98) 52 (handbook on cross border police-co-operation);

 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 co-operation in proceedings for road traffic offences).

 SCH/Com-ex (99) 18 (improvement of police co-operation 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 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: (p.m.)

b) 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: (p.m.)]

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 above, the Council shall decide on the legal and technical modalities, including provisions relating to data protection, concerning the participation of the United Kingdom in paragraphs (a)(ii) and (iii), (c)(ii) and (d)(ii) of Article 1.

3. Paragraph 1 applies *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 the Decision of the Council of 3 May 1999 (1999/323/CE), establishing a financial regulation governing the budgetary aspects of the management by the Secretary-General of the Council of certain contracts relating to the SIS³, and any subsequent amendments to it.

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 its publication in the *Official Journal of the European Communities*.

³ OJ L 123 of 13 May 1999, p. 51

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, paragraph 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 in to effect for the United Kingdom unless the measure itself provides for a later date.

Done at ,

*For the Council
The President*

DECLARATIONS

1. Joint Declaration by the Council

The United Kingdom shall, prior to the putting into effect of the provisions referred to in Articles 1 and 8(3), inform the Council of all circumstances that could have a significant bearing on the areas covered by the provisions referred to in these Articles.

2. Joint Declaration by Denmark and the United Kingdom

In the context of the forthcoming decision of the Council setting the date on which the provisions of the Schengen acquis shall be put into effect for Denmark, the United Kingdom will accept the conclusions of the Council relating to the application of those provisions to the Faroe Islands and Greenland, including the implementation of the Schengen Information System (SIS), to the extent that they relate to the provisions in which the United Kingdom participates by virtue of Article 1.

3. Declaration by the Government of the United Kingdom

The United Kingdom undertakes to make its best endeavours to accommodate the operational needs of Member States in any cross border surveillance exercises. In doing so, it will comply fully with the terms of Article 40 of the Schengen Implementation Convention and the agreed practise thereof. The United Kingdom will explore these arrangements with Member States with a view to establishing agreed and mutually satisfactory procedures for evaluation prior to the putting into effect of the participation by the United Kingdom.

4. Declaration by the Government of the United Kingdom



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 29 November 1999

**11177/4/99
REV 4 ADD 1**

LIMITE

SCHENGEN 74

ADDENDUM TO THE NOTE

from :	Presidency
to :	Coreper/Council
No. prev. doc.:	11177/4/99 SCHENGEN 74 REV 4
Subject :	UK application to participate in some of the provisions of the Schengen acquis

Declaration n°4 by the Government of the United Kingdom (page 12 of document 11177/4/99 SCHENGEN 74 REV 4) reads :

"Any future request pursuant to Article 5(1) of this Decision concerning the application to the Channel Islands and Isle of Man of provisions of the Schengen acquis mentioned in Article 1 will ensure coherence in the application of the Schengen acquis in the United Kingdom, Gibraltar and the Channel Islands and Isle of Man, consistent with their respective status under the Treaties. In this regard, the United Kingdom will ensure that any request covers all appropriate provisions of the acquis mentioned in Article 1 of this Decision, taking into account the status of the Channel Islands and Isle of Man under the Treaties."



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 30 November 1999

**11177/4/99
REV 4 COR 1**

LIMITE

SCHENGEN 74

CORRIGENDUM TO THE NOTE

From :	Presidency
to :	Coreper/Council
Subject :	UK application to participate in some of the provisions of the Schengen acquis

Read page 10, art. 6(2) line 4:

...United Kingdom in the provisions referred to in paragraphs...

Instead of

...United Kingdom in paragraphs...
