

COUNCIL DECISION**of 22 December 2004****on the putting into effect of parts of the Schengen acquis by the United Kingdom of Great Britain and Northern Ireland**

(2004/926/EC)

THE COUNCIL OF THE EUROPEAN UNION,

2000/365/EC have been fulfilled, allowing these provisions and their later developments to be put into effect for the United Kingdom.

Having regard to the 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⁾, and in particular to article 6 thereof,

(7) Decision 2000/365/EC defines, in its Article 5(2), which provisions of the Schengen acquis are applicable to Gibraltar.

Whereas:

(1) The United Kingdom has expressed its intention to commence implementation of the following parts of the Schengen acquis: Judicial cooperation, Drugs co-operation, Article 26 and Article 27 of the Schengen Convention, and Police cooperation.

(8) An Agreement has been 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⁽²⁾. On the basis of Article 2 of that Agreement, 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⁽³⁾, has been consulted, in accordance with Article 4 thereof, about the preparation of this Decision,

(2) The United Kingdom indicated to be ready to apply all provisions of the Schengen acquis referred to in Article 1 of Decision 2000/365/EC with the exception of those concerning the Schengen Information System.

(3) The United Kingdom will continue to prepare for the implementation of the relevant provisions of the Schengen Information System and for data protection.

HAS DECIDED AS FOLLOWS:

(4) A questionnaire was forwarded to the United Kingdom, whose replies were recorded and a subsequent verification and evaluation visit was made to the United Kingdom in accordance with the procedures applicable in the area of police cooperation.

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.

(5) As regards the application of the Schengen acquis relating to the abovementioned areas, the questionnaire and the visit demonstrated that the requirements relating to legislation, manpower levels, training, infrastructure and material resources have been satisfied.

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.

(6) The preconditions for the implementation by the United Kingdom of those provisions of the Schengen acquis as listed in Article 1(a)(i), (b), (c)(i) and (d)(i) of Decision

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.

⁽¹⁾ OJ L 131, 1.6.2000, p. 43.

⁽²⁾ OJ L 15, 20.1.2000, p. 2.

⁽³⁾ OJ L 176, 10.7.1999, p. 36.

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.

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*.

Done at Brussels 22 December 2004.

For the Council
The President
C. VEERMAN

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).

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 III***COPY OF LETTER**

From: Mr. Javier SOLANA, Secretary General of the Council of the European Union

Date: 19 April 2000

To: Permanent Representatives of the Member States and to other institutions of the European Union

Subject: Gibraltar authorities in the context of E.U. and E.C. instruments and related treaties

I hereby circulate a document which contains agreed arrangements relating to Gibraltar authorities in the context of EU and EC instruments and related treaties ('the arrangements'), together with an exchange of correspondence between the Permanent Representatives of the United Kingdom and Spain, which, in accordance with paragraph 8 of the arrangements, are notified to the Permanent Representatives of the Member States and to the other institutions of the European Union for their information and for the purposes indicated in them.



United Kingdom
Permanent Representation
To the European Union

Avenue d'Auderghem 10
1040 Brussels

Telephone: 0032 2 287 8211

Telex: 24312

Facsimile: 0032 2 287 8398

DID: 0032 2 287 8231

The Permanent Representative

19 April 2000

HE Mr Javier Elorza
Permanent Representative of Spain
to the European Union
BRUSSELS

Dear Ambassador,

I refer to the discussions which have taken place between our two Governments to resolve certain difficulties which have arisen relating to Gibraltar authorities in the context of EU and EC instruments and related treaties. I now attach to this letter arrangements, as agreed in those discussions, relating to Gibraltar authorities in the context of EU and EC instruments and related treaties ("the arrangements") in the English and the Spanish languages, both texts having equal validity, which will take effect on 1 June 2000.

If the Government of Spain confirms its agreement to the arrangements, they will form an understanding to which our two Governments are committed.

I propose that, on receipt of your reply, we should each copy the arrangements, together with our exchange of correspondence, to the Secretary General of the Council with the request that he circulates the arrangements, together with this exchange of correspondence, to the Permanent Representatives of other Member States and to the other institutions of the European Union in accordance with paragraph 8 of the arrangements for their information and for the purposes indicated in them.

Yours sincerely
Stephen Wall

J S Wall



Bruselas, 19 de abril 2000

*El Embajador
Representante Permanente de España
ante la Unión Europea*

Excmo. Sr. Sir J. Stephen WALL
Embajador, Representante Permanente
del Reino Unido ante la Unión Europea
Bruselas.

Estimado Embajador

Le agradezco su carta de fecha 19 de abril de 2000 a la que se acompaña el régimen acordado en las conversaciones a las que Vd. se refiere, relativo a las autoridades de Gibraltar en el contexto de los instrumentos de la UE y de la CE y tratados conexos ("el régimen").

Le confirmo el acuerdo del Gobierno de España con dicho régimen, el cual constituirá un entendimiento con el que nuestros dos Gobiernos quedarán comprometidos.

Estoy de acuerdo en que, a la recepción de mi respuesta, cada uno de nosotros transmitamos copia de este régimen, así como de nuestro intercambio de correspondencia, al Secretario General del Consejo con el ruego de que distribuya dicho régimen, junto con ese intercambio de correspondencia, a los Representantes Permanentes de los demás Estados miembros y a las demás instituciones de la Unión Europea de conformidad con el apartado 8 de dicho régimen, para su información y a los efectos indicados en el mismo.

Javier Elorza
Javier ELORZA

SECRETARÍA DEL EMBAJADOR
ESPAÑA - CEE

TRADUCCION OFICIAL

Brussels, 19 April, 2000

His Excellency Sir J. Stephen WALL
Ambassador, Permanent Representative
of the United Kingdom to the European Union
BRUSSELS

Thank you for your letter dated 19 April to which are attached arrangements, as agreed in the discussions to which you refer, relating to Gibraltar authorities in the context of EU and EC instruments and related treaties ("the arrangements").

I confirm the agreement of the Government of Spain to the arrangements, which will form an understanding to which our two Governments are committed.

I agree that, on your receipt of my reply, we should each copy the arrangements, together with our exchange of correspondence, to the Secretary General of the Council with the request that he circulates the arrangements, together with this exchange of correspondence, to the Permanent Representatives of other Member States and to the other institutions of the European Union in accordance with paragraph 8 of the arrangements for their information and for the purposes indicated in them.

(signed)

Javier ELORZA

POSTBOXING ARRANGEMENTS

Agreed Arrangements relating to Gibraltar Authorities in the Context of EU and EC Instruments and Related Treaties

1. Taking account of the responsibility of the United Kingdom of Great Britain and Northern Ireland as the Member State responsible for Gibraltar, including its external relations, under the terms of Article 299.4 of the Treaty establishing the European Community, when in an instrument or treaty of the type specified in paragraph 5 a provision is included whereby a body, authority or service of one Member State of the European Union may communicate directly with those of another EU Member State or may take decisions with some effect in another EU Member State, such a provision will be implemented, in respect of a body, authority or service of Gibraltar (hereinafter referred to as 'Gibraltar authorities', in accordance with the procedure in paragraph 2, and in the cases specified therein, through the authority of the United Kingdom specified in paragraph 3. The obligations of an EU Member State under the relevant instrument or treaty remain those of the United Kingdom.
2. In order to implement such a provision, formal communications and decisions to be notified which are taken by or addressed to the Gibraltar authorities will be conveyed by the authority specified in paragraph 3 under cover of a note in the form attached for illustrative purposes in Annex 1. The authority specified in paragraph 3 will also ensure an appropriate response to any related enquiries. Where decisions are to be directly enforced by a court or other enforcement authority in another EU Member State without such notification, the documents containing those decisions by the Gibraltar authority will be certified as authentic by the authority specified in paragraph 3. To this effect the Gibraltar authority will make the necessary request to the authority specified in paragraph 3. The certification will take the form of a note based in Annex 1.
3. The authority of the United Kingdom mentioned in paragraphs 1 and 2 will be The United Kingdom Government/ Gibraltar Liaison Unit for EU Affairs of the Foreign and Commonwealth Office based in London or any United Kingdom body based in London which the Government of the United Kingdom may decide to designate.
4. The designation by the United Kingdom of a Gibraltar authority in application of any instrument or treaty specified in paragraph 5 that includes a provision such as that mentioned in paragraph 1 will also contain a reference to the authority specified in paragraph 3 in the terms of Annex 2.
5. These arrangements will apply as between EU Member States to:
 - a) Any present or future European Union or Community instrument or any present or future treaty concluded within the framework of the European Union or European Community;
 - b) Any present or future treaty related to the European Union or European Community to which all or a number of EU Member States or all or a number of EU and EFTA/EEA states are the only signatories or contracting parties;
 - c) The Council of Europe Conventions mentioned in the Convention of 19 June 1990 implementing the Schengen Agreement;
 - d) The following treaties related to instruments of the European Union:
 - The convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters done at the Hague on 15 November 1965.
 - The Convention on the Taking of Evidence Abroad in Civil or Commercial Matters done at the Hague on 18 March 1970
 - The Convention on the Civil Aspects of International Child Abduction done at the Hague on 25 October 1980 (when extended to Gibraltar).
 - e) Other treaties to which both sides agree that these arrangements should apply. Where there is no such agreement, the two sides will nevertheless seek to avoid and to resolve any problems, which may arise.

In respect of the treaties specified in sub-paragraphs (a) and (b) these arrangements will also apply as between all the contracting parties to those treaties. Paragraphs 1 and 2 of these arrangements will be constructed accordingly.

6. The spirit of these arrangements will be respected to resolve questions that may arise in the application of any provisions of the kind described in paragraph 1, bearing in mind the desire of both sides to avoid problems concerning the designation of Gibraltar authorities.
 7. These arrangements or any activity or measure taken for their implementation or as a result of them do not imply on the side of the Kingdom of Spain or on the side of the United Kingdom any change in their respective positions on the question of Gibraltar or on the limits of that territory.
 8. These arrangements will be notified to the EU institutions and Member States for their information and for the purposes indicated in them.
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*Annex 1***SPECIMEN NOTE FROM THE AUTHORITY SPECIFIED IN PARAGRAPH 3**

On behalf of the United Kingdom of Great Britain and Northern Ireland as the Member State responsible for Gibraltar, including its external relations, in accordance with Article 299 (4) of the Treaty establishing the European Community, I attach a certificate in respect of (the company), signed by the Commissioner of Insurance, the supervisory authority for Gibraltar.

In accordance with the Article 14 of the Directive 88/375/EEC, as amended by Article 34 of Directive 92/49/EEC, the (name of company) has notified to the Commissioner of Insurance in Gibraltar its intention to provide services into (name of EU Member State). The process envisaged by Article 35 of Directive 92/49/EEC is that within one month of the notification the competent authorities of the home Member State shall communicate to the host Member State or Member State within the territory of which an undertaking intends to carry on business under the freedom to provide services:

- a) A certificate attesting that the undertaking has the minimum solvency margin calculated in accordance with Article 16 and 17 of Directive 73/239/EEC;
 - b) The classes of insurance which the undertaking has been authorised to offer;
 - c) The nature of the risks which the undertaking proposes to cover in the Member State of the provision of services.
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*Annex 2***FORMULA TO BE USED BY THE UNITED KINGDOM WHEN DESIGNATING A GIBRALTAR AUTHORITY**

In respect of the application of the (name of instrument) to Gibraltar, the United Kingdom, as the Member State responsible for Gibraltar, including its external relations, in accordance with Article 299 (4) of the Treaty establishing the European Community, designates (name of Gibraltar authority) as the competent authority for the purposes of (relevant provision of the instrument). In accordance with arrangements notified in Council document xxx of 2000:

1.1. One or more of the following alternatives will be used as appropriate

- any formal communications required under the relevant provisions of (name of instrument) which come from or are addressed to (name of Gibraltar authority)
- any decision taken by or addressed to (name of Gibraltar authority) which is to be notified under the relevant provisions of (name of instrument)

will be conveyed by (name of UK authority) under cover of a note. The (name of UK authority) will also ensure an appropriate response to any related enquiries.

Where decisions are to be directly enforced by a court or other enforcement authority in another Member State without the need of a formal previous notification

The documents containing such decisions of (name of Gibraltar authority) will be certified as authentic by the (name of UK authority). To this effect the (name of Gibraltar authority) will make the necessary request to the (name of UK authority). The certification will take the form of a note.
