

RÅDETS AFGØRELSE

af 22. december 2004

Rådets afgørelse om iværksættelse af nogle af Schengen-reglerne i Det Forenede Kongerige Storbritannien og Nordirland

(2004/926/EF)

RÅDET FOR DEN EUROPÆISKE UNION HAR —

bestemmelser og deres videre udvikling kan dermed iværksættes i Det Forenede Kongerige.

under henvisning til Rådets afgørelse 2000/365/EF af 29. maj 2000 om anmodningen fra Det Forenede Kongerige Storbritannien og Nordirland om at deltage i visse bestemmelser i Schengen-reglerne ⁽¹⁾, særlig artikel 6, og

- (7) I afgørelse 2000/365/EF fastlægges det i artikel 5, stk. 2, hvilke bestemmelser i Schengen-reglerne der finder anvendelse for Gibraltar.

ud fra følgende betragtninger:

- (1) Det Forenede Kongerige har givet udtryk for, at det har til hensigt at gennemføre følgende dele af Schengen-reglerne: retligt samarbejde, narkotikasamarbejde, artikel 26 og 27 i Schengen-konventionen samt politisamarbejde.
- (2) Det Forenede Kongerige har oplyst, at det er parat til at anvende Schengen-reglerne på alle de områder, der er omhandlet i artikel 1 i afgørelse 2000/365/EF bortset fra bestemmelserne vedrørende Schengen-informationssystemet.
- (3) Det Forenede Kongerige vil fortsætte sine forberedelser på at gennemføre af de relevante bestemmelser i Schengen-informationssystemet og beskyttelse af personoplysninger.
- (4) Det Forenede Kongerige har fået tilsendt et spørgeskema, og besvarelsene er blevet registreret, hvorefter der har fundet kontrol- og evalueringsbesøg sted i Det Forenede Kongerige i overensstemmelse med de procedurer, der gælder på området for politisamarbejde.
- (5) For så vidt angår anvendelsen af Schengen-reglerne på ovennævnte områder har spørgeskema og besøg vist, at der er truffet tilfredsstillende foranstaltninger til at opfylde kravene med hensyn til lovgivning og personale og dettes uddannelse samt infrastruktur og disponible hjælpemidler.
- (6) Betingelserne for Det Forenede Kongeriges gennemførelse af de bestemmelser i Schengen-reglerne, der er opført i artikel 1, litra a), nr. i), litra b), litra c), nr. i), og litra d), nr. i), i afgørelse 2000/365/EF er opfyldt, og disse

- (8) Rådet for Den Europæiske Union har indgået en aftale med Republikken Island og Kongeriget Norge om fastsættelse af rettigheder og forpligtelser mellem Irland og Det Forenede Kongerige Storbritannien og Nordirland på den ene side og Republikken Island og Kongeriget Norge på den anden side på de områder af Schengen-reglerne, der gælder for disse stater ⁽²⁾. I henhold til artikel 2 i nævnte aftale er det fælles udvalg, der er nedsat i medfør af artikel 3 i aftalen mellem Rådet for Den Europæiske Union og Republikken Island og Kongeriget Norge om disse to staters associering i gennemførelsen, anvendelsen og udviklingen af Schengen-reglerne ⁽³⁾, blevet konsulteret om udarbejdelsen af denne afgørelse i overensstemmelse med artikel 4 i nævnte aftale —

TRUFFET FØLGENDE AFGØRELSE:

Artikel 1

Bestemmelserne i artikel 1, litra a), nr. i), litra b), litra c), nr. i), og litra d), nr. i), i afgørelse 2000/365/EF iværksættes i Det Forenede Kongerige fra den 1. januar 2005.

Bestemmelserne i artikel 5, stk. 2, i Rådets afgørelse 2000/365/EF iværksættes i Gibraltar fra den 1. januar 2005.

Bestemmelserne i de retsakter, der udgør en udvikling af Schengen-reglerne, som er vedtaget efter afgørelse 2000/365/EF, og som er opført i bilag I, iværksættes i Det Forenede Kongerige og Gibraltar fra den 1. januar 2005.

⁽¹⁾ EFT L 131 af 1.6.2000, s. 43.

⁽²⁾ EFT L 15 af 20.1.2000, s. 2.

⁽³⁾ EFT L 176 af 10.7.1999, s. 36.

Bestemmelserne i de retsakter, der udgør en udvikling af Schengen-reglerne, som er vedtaget efter Rådets afgørelse 2000/365/EF, og som er opført i bilag II, iværksættes i Det Forenede Kongerige fra den 1. januar 2005.

Artikel 2

Formelle meddelelser og fremsendelse af afgørelser mellem Gibraltars myndigheder, herunder retlige myndigheder, og myndighederne i Den Europæiske Unions-medlemsstater (undtagen Det Forenede Kongerige) i forbindelse med denne afgørelse foretages efter proceduren i de ordninger vedrørende Gibraltars myndigheder i forbindelse med EU- og EF-instrumenter og dertil knyttede traktater (se bilag III til denne afgørelse), der blev indgået mellem Spanien og Det Forenede Konge-

rige den 19. april 2000 og meddelt Den Europæiske Unions medlemsstater og institutioner.

Artikel 3

Denne afgørelse har virkning fra dagen efter offentliggørelsen i Den Europæiske Unions Tidende.

Udfærdiget i Bruxelles, den 22. december 2004.

På Rådets vegne

C. VEERMAN

Formand

BILAG I

Liste over udvikling af bestemmelser i Schengen-reglerne, der iværksættes Det Forenede Kongerige Storbritannien og Nordirland samt i Gibraltar

- 1) Rådets retsakt af 29. maj 2000 om udarbejdelse af konventionen om gensidig retshjælp i straffesager mellem Den Europæiske Unions medlemsstater (bestemmelserne omhandlet i konventionens artikel 2, stk. 1) (EFT C 197 af 12.7.2000, s. 1). Konventionen vil finde anvendelse på Gibraltar, når den europæiske konvention om gensidig retshjælp i straffesager er blevet udvidet til også at gælde for Gibraltar.
 - 2) Rådets direktiv 2001/51/EF af 28. juni 2001 om fastsættelse af supplerende bestemmelser til artikel 26 i konventionen om gennemførelse af Schengen-aftalen af 14. juni 1985 (EFT L 187 af 10.7.2001, s. 45).
 - 3) Rådets retsakt af 16. oktober 2001 om udarbejdelse af protokollen til konventionen om gensidig retshjælp i straffesager mellem Den Europæiske Unions medlemsstater (bestemmelserne omhandlet i protokollens artikel 15) (EFT C 326 af 21.11.2001, s. 1). Protokollen vil finde anvendelse på Gibraltar, når den europæiske konvention om gensidig retshjælp i straffesager træder i kraft i Gibraltar i overensstemmelse med nævnte konventions artikel 26.
 - 4) Rådets rammeafgørelse 2002/946/RIA af 28. november 2002 om styrkelse af de strafferetlige rammer med henblik på bekæmpelse af hjælp til ulovlig indrejse og transit samt ulovligt ophold (EFT L 328 af 5.12.2002, s. 1).
 - 5) Rådets direktiv 2002/90/EF af 28. november 2002 om definition af hjælp til ulovlig indrejse og transit samt ulovligt ophold (EFT L 328 af 5.12.2002, s. 17).
 - 6) Rådets forordning (EF) nr. 377/2004 af 19. februar 2004 om oprettelse af et netværk af indvandringsforbindelses-officerer (EUT L 64 af 2.3.2004, s. 1).
 - 7) Rådets direktiv 2004/82/EF af 29. april 2004 om transportvirksomheders forpligtelse til at fremsende oplysninger om passagerer (EUT L 261 af 6.8.2004, s. 24).
-

BILAG II

Liste over udvikling af bestemmelser i Schengen-reglerne, der finder anvendelse i Det Forenede Kongerige Storbritannien og Nordirland:

1. Rådets afgørelse 2000/586/RIA af 28. september 2000 om indførelse af en procedure til ændring af artikel 40, stk. 4 og 5, artikel 41, stk. 7, og artikel 65, stk. 2, i konventionen om gennemførelse af Schengen-aftalen af 14. juni 1985 om gradvis ophævelse af kontrollen ved de fælles grænser (EFT L 248 af 3.10.2000, s. 1).
 2. Rådets afgørelse 2003/725/RIA af 2. oktober 2003 om ændring af bestemmelserne i artikel 40, stk. 1 og 7, i konventionen om gennemførelse af Schengen-aftalen af 14. juni 1985 om gradvis ophævelse af kontrollen ved de fælles grænser (EUT L 260 af 11.10.2003, s. 37).
-

*BILAG 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



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

Bruselas, 19 de abril 2000

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.

En atenc.
[Firma]
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.
-

*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.
-

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.
