

SKLEP SVETA

z dne 22. decembra 2004

o izvajanju delov schengenskega pravnega reda s strani Združenega kraljestva Velike Britanije in Severne Irske

(2004/926/ES)

SVET EVROPSKE UNIJE JE –

nega kraljestva, kar omogoča začetek izvajanja teh določb in njihovega naknadnega razvoja v Združenem kraljestvu.

ob upoštevanju Sklepa Sveta 2000/365/ES z dne 29. maja 2000 o prošnji Združenega kraljestva Velike Britanije in Severne Irske za sodelovanje pri izvajanju nekaterih določb schengenskega pravnega reda ⁽¹⁾ in zlasti člena 6 Sklepa,

- (7) Sklep 2000/365/ES v členu 5(2) opredeljuje, katere izmed določb schengenskega pravnega reda se uporabljajo za Gibraltar.

ob upoštevanju naslednjega:

- (1) Združeno kraljestvo je izrazilo namen začeti z izvajanjem naslednjih delov schengenskega pravnega reda: pravosodno sodelovanje, sodelovanje na področju drog, člen 26 in člen 27 Schengenske konvencije in policijsko sodelovanje.
- (2) Združeno kraljestvo je izjavilo, da je pripravljeno uporabljati vse določbe schengenskega pravnega reda iz člena 1 Sklepa 2000/365/ES, razen tistih, ki zadevajo schengenski informacijski sistem.
- (3) Združeno kraljestvo se bo še naprej pripravljalo na izvajanje ustreznih določb schengenskega informacijskega sistema in za varovanje podatkov.
- (4) Združenemu kraljestvu je bil posredovan vprašalnik in njegovi odgovori so bili zabeleženi, potem pa je bil opravljen obisk za preveritev in oceno stanja v Združenem kraljestvu v skladu s postopki, ki se uporabljajo na področju policijskega sodelovanja.
- (5) Glede uporabe schengenskega pravnega reda na zgoraj omenjenih področjih sta vprašalnik in obisk pokazala, da so izpolnjeni pogoji v zvezi z zakonodajo, delovno silo, usposabljanjem, infrastrukturo in materialnimi viri.
- (6) Izpolnjeni so bili predpogoji za izvajanje določb schengenskega pravnega reda, ki so navedene v členu 1(a)(i), (b), (c)(i) in (d)(i) Sklepa 2000/365/ES, s strani Zdrže-

- (8) Med Svetom Evropske unije ter Republiko Islandijo in Kraljevino Norveško je bil sklenjen Sporazum o določitvi pravic in obveznosti med Irsko ter Združenim kraljestvom Velika Britanija in Severna Irska na eni strani ter Republiko Islandijo in Kraljevino Norveško na drugi strani na področjih schengenskega pravnega reda, ki velja za te države ⁽²⁾. Na podlagi člena 2 tega sporazuma so z mešanim odborom, ustanovljenim v skladu s členom 3 Sporazuma, sklenjenega med Svetom Evropske unije in Republiko Islandijo ter Kraljevino Norveško o pridružitvi obeh k izvajanju, uporabi in razvoju schengenskega pravnega reda ⁽³⁾ potekala posvetovanja o pripravi tega sklepa skladno s členom 4 navedenega sporazuma –

SKLENIL:

Člen 1

Določbe člena 1(a)(i), (b), (c)(i) in (d)(i) Sklepa 2000/365/ES se izvajajo v Združenem kraljestvu od 1. januarja 2005.

Določbe iz člena 5(2) Sklepa 2000/365/ES se izvajajo na Gibraltaru od 1. januarja 2005.

Določbe aktov, ki predstavljajo razvoj schengenskega pravnega reda in so bili sprejeti po Sklepu 2000/365/ES ter so navedeni v Prilogi I, se izvajajo v Združenem kraljestvu in na Gibraltaru od 1. januarja 2005.

⁽¹⁾ UL L 131, 1.6.2000, str. 43.

⁽²⁾ UL L 15, 20.1.2000, str. 2.

⁽³⁾ UL L 176, 10.7.1999, str. 36.

Določbe aktov, ki predstavljajo razvoj schengenskega pravnega reda in so bili sprejeti po Sklepu 2000/365/ES ter so navedeni v Prilogi II, se izvajajo v Združenem kraljestvu od 1. januarja 2005.

Člen 2

Za namene tega sklepa se uradno obveščanje in posredovanje sklepov med gibraltarskimi organi, vključno s sodnimi organi, in organi držav članic Evropske unije (razen Združenega kraljestva) izvajata v skladu s postopkom, ki ga predvidevajo ureditve, ki se nanašajo na gibraltarske organe v okviru instrumentov EU in ES in povezanih pogodb (glej Prilogo III k temu sklepu),

sklenjene med Španijo in Združenim kraljestvom 19. aprila 2000 in posredovane državam članicam in institucijam Evropske unije.

Člen 3

Ta sklep začne učinkovati dan po objavi v *Uradnem listu Evropske unije*.

V Bruslju, 22. decembra 2004

Za Svet
Predsednik
C. VEERMAN

PRILOGA I

Seznam razvoja schengenskega pravnega reda, ki se izvaja v Združenem kraljestvu Velike Britanije in Severne Irske ter na Gibraltarju:

1. Akt Sveta z dne 29. maja 2000 o ustanovitvi Konvencije o medsebojni pravni pomoči v kazenskih zadevah med državami članicami Evropske unije (določbe iz člena 2 (1) Konvencije) (UL C 197, 12.7.2000, str. 1). Konvencija se začne uporabljati za Gibraltar takrat, ko se Konvencija o medsebojni pravni pomoči v kazenskih zadevah razširi na Gibraltar.
 2. Direktiva Sveta 2001/51/ES z dne 28. junija 2001 o dopolnitvi določb člena 26 Konvencije o izvajanju Schengenskega sporazuma z dne 14. junija 1985 (UL L 187, 10.7.2001, str. 45).
 3. Akt Sveta z dne 16. oktobra 2001 o Protokolu Konvencije o medsebojni pravni pomoči v kazenskih zadevah med državami članicami Evropske unije (določbe iz člena 15 Protokola) (UL C 326, 21.11.2001, str. 1). Protokol se začne uporabljati za Gibraltar takrat, ko v skladu s členom 26 Konvencije v Gibraltarju začne veljati Konvencija o medsebojni pravni pomoči v kazenskih zadevah.
 4. Okvirni sklep Sveta 2002/946/PNZ z dne 28. novembra 2002 o krepitvi kazenskega okvirja na področju preprečevanja nudenja pomoči pri nedovoljenem vstopu, tranzitu in prebivanju (UL L 328, 5.12.2002, str. 1).
 5. Direktiva Sveta 2002/90/ES z dne 28. novembra 2002 o opredelitvi pomoči pri nedovoljenem vstopu, tranzitu in prebivanju (UL L 328, 5.12.2002, str. 17).
 6. Uredba Sveta (ES) št. 377/2004 z dne 19. februarja 2004 o vzpostavitvi mreže uradnikov za zvezo za priseljevanje (UL L 64, 2.3.2004, str. 1).
 7. Direktiva Sveta 2004/82/ES z dne 29. aprila 2004 o obveznosti prevoznikov, da sporočajo podatke o potnikih (UL L 261, 6.8.2004, str. 24).
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PRILOGA II

Seznam razvoja schengenskega pravnega reda, ki se uporablja za Združeno kraljestvo Velike Britanije in Severne Irske:

1. Sklep Sveta 2000/586/PNZ z dne 28. septembra 2000 o vzpostavitvi postopka za spremembo členov 40(4) in (5), 41(7) in 65(2) Konvencije o izvajanju Schengenskega sporazuma z dne 14. junija 1985 o postopni odpravi kontrol na skupnih mejah (UL L 248, 3.10.2000, str. 1).
 2. Sklep Sveta 2003/725/PNZ z dne 2. oktobra 2003 o spremembi določb členov 40(1) in (7) Konvencije o izvajanju Schengenskega sporazuma z 14. junija 1985 o postopni odpravi kontrol na skupnih mejah (UL L 260, 11.10.2003, str. 37).
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*PRILOGA 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 su nombre
[Firma]
Javier ELORZA

SECRETARIA 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.

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.
