UK PARTICIPATION IN SCHENGEN ACQUIS

As you know, I announced at the JHA Council on 12 March that the UK intends to seek participation in those areas of the Schengen acquis which relate to law enforcement and judicial co-operation, including the Schengen Information System (SIS). We are now ready to apply formally to participate under Article 4 of the Schengen Protocol and I am writing today to Otto Schily, the German Minister of the Interior and acting President of the JHA Council, with the UK’s formal application. The Irish Government intends to make a parallel application along similar lines.

I enclose a copy of our application, which consists of a list of the Articles of the Schengen Implementing Convention and supplementary acquis in which we wish to participate, together with a commentary addressing the implications of participation. This identifies those Schengen provisions which will require primary legislation and addresses the question of territorial application.

I will report to the JHA Council that the UK has lodged its application but I do not anticipate substantive discussion. The next stage will be for the Commission to issue its Opinion on our application, after which a draft Council Decision will be issued for discussion in the Council. We shall of course formally submit this draft Decision for scrutiny.
I know your Committee has a keen interest in Schengen and I will continue to keep you informed as negotiations on our application progress.

I am writing in similar terms to Lord Tordoff.

Yours sincerely,

JACK STRAW
At the Justice and Home Affairs Council on 12 March I announced that the United Kingdom intended to exercise the provision in Article 4 of the Schengen Protocol by seeking to participate in those measures of the Schengen acquis, now integrated into the EU Treaties, that relate to law-enforcement and criminal judicial co-operation, including the SIS. I was most grateful for the positive response you gave to this announcement and I am happy to submit with this letter the United Kingdom's written application to participate in these areas.

This application is one part of the UK's wider intention to participate in all aspects of JHA co-operation which are consistent with the UK's different policy on frontier controls, as set out in a protocol of the Amsterdam Treaty. I am clear that it is very much in our interests to co-operate at a European level in this area of activity. We also believe that the UK has a valuable contribution to make, to the benefit of EU partners, in the areas covered by this application and in future measures in the fields of police and judicial co-operation, asylum and immigration.

The application takes the form of a list of Articles and supplementary acquis in which the United Kingdom is seeking to participate (annexed to this letter). This is accompanied by a commentary, setting out our position on a number of Articles of the Schengen Implementing Convention that will require legislative or operational change before they can take effect in the United Kingdom. We will of course discuss with the Presidency Commission and other partners the precise nature of our participation in these areas and the extent of any transition periods we require.
I understand that my colleague John O'Donoghue is submitting a parallel application. We are continuing to discuss the difficult and sensitive issues of cross-border surveillance and hot pursuit with our Irish colleagues.

I am sure that the United Kingdom will continue to enjoy the full support of Germany in its continued and determined efforts to play the fullest possible part in the development of future European co-operation.

I am copying this letter and enclosure to Justice Minister Daubler-Gmelin, to Anita Gradin and Mario Monti in the Commission and to Charles Elsen in the Council Secretariat.

Yours sincerely,

Jack Straw

JACK STRAW
1. THE UNITED KINGDOM WISHES TO PARTICIPATE IN THE FOLLOWING ARTICLES OF THE SCHENGEN IMPLEMENTING CONVENTION

Articles 39-44, 46-47  Police co-operation
Articles 48-69  Mutual assistance in criminal matters, application of the non bis in idem principle, extradition and transfer of the enforcement of criminal judgements
Articles 70-76  Narcotic drugs
Articles 92-119  Schengen Information System
Articles 126-130  Protection of personal data

The definitions in Article 1 of the Schengen Implementing Convention will apply insofar as they are relevant to the Articles listed above.

The United Kingdom accepts the provisions of the instruments of accession to the Schengen Convention as they have been listed in Annex B of the Council Decision on the allocation of legal bases.
2. DECISIONS AND DECLARATIONS OF THE SCHENGEN EXECUTIVE COMMITTEE WHICH RELATE TO THE ARTICLES IN WHICH THE UK WISHES TO SEEK PARTICIPATION

The United Kingdom has sought to identify all the Decisions and Declarations of the Schengen Executive Committee which relate to those Articles, listed in Part 1, in which we wish to seek participation. This list considers only Decisions and Declarations that are considered to belong to that part of the Schengen acquis which continues to have legally binding force. The UK considers that it cannot seek to participate in measures that fall under the terms of Article 2 of the Council Decision defining the Schengen acquis.

**Police Co-operation**
Sch/Com-ex Decision (97) 6 rev 2

**Judicial Co-operation**
Sch/Com-ex Decision (93) 14;
Sch/Com-ex Declaration (96) 6 rev 2 (extradition)

**Narcotic drugs**
Sch/Com-ex Decision (94) 28 rev

**Schengen Information System**
Sch/Com-ex Decisions (93) 16, 16 rev 2
Sch/Com-ex Decisions (95) 6, 7, 8 & 9
Sch/Com-ex Decisions (97) 2 rev 2, 18, 24, 35
Sch/Com-ex Decisions (98) 11
Sch/Com-ex Declaration (97) 13
There are a number of Schengen Executive Committee Decisions agreed in 1998 and 1999, notably those relating to the Schengen Information System and the handbook on police co-operation, which the United Kingdom has only very recently received. The United Kingdom must reserve its position on these decisions until their implications have been properly considered. These are:

**Police Co-operation**
Sch/Com-ex Decisions (98) 26, 51 rev 3, 52
Sch/Com-ex Decisions (99) 6, 7 rev 2, 8 rev 2, 18

**Judicial Co-operation**
Sch/Com-ex Decisions (99) 11

**Schengen Information System**
Sch/Com-ex Decisions (99) 5
Sch/Com-ex Declaration (99) 2 rev
COMMENTARY ON ARTICLES OF THE SCHENGEN IMPLEMENTING CONVENTION IN WHICH THE UNITED KINGDOM WISHES TO SEEK PARTICIPATION

The Articles of the Schengen Implementing Convention in which the United Kingdom wishes to seek participation are listed in Annex 1, together with the relevant Decisions and Declarations of the Schengen Executive Committee. This Note provides a commentary on the implications for the United Kingdom of implementing this acquis and indicates any specific measures which will need to be taken under UK law to enable full compliance with the relevant provisions. Primary legislation will be introduced when parliamentary time allows.

This analysis is based on available information about the purposes and effect of the Schengen provisions.

Police co-operation

Article 39

The United Kingdom intends to designate the National Criminal Intelligence Service (NCIS) as the central body under Article 39.3.

Article 40

A transition period will be needed to enable the United Kingdom to put in place the operational framework necessary for cross-border surveillance to be carried out. In view of the United Kingdom's island geography, it is expected that surveillance which takes place without prior authorisation would be limited to those situations where the duration of travel to the UK is shorter than could reasonably allow for prior authorisation to be sought.
Article 40.3

The United Kingdom recognises that the intention of Article 40.3(d) is to enable police officers to carry their service weapons while carrying out cross-border surveillance. However, handguns are prohibited weapons in England, Wales and Scotland and, with some exemptions, can only be possessed with the specific authorisation of the Secretary of State. The UK wish to discuss with partners how to take forward co-operation in this area consistent with UK law and with the provisions of Articles 40.3(a) and 40.3(d) of the Convention.

Article 40.4

Under the terms of this Article, competent officers in the United Kingdom would be officers from police forces in the United Kingdom and officers of Her Majesty’s Customs and Excise.

Article 40.5

The competent authority for the receipt of requests for authorisation of cross-border surveillance would be the National Criminal Intelligence Service.

Article 41

The only land border of mainland UK is that with the Republic of Ireland, as it is recognised that the Fixed Link between England and France is not a land border. Implementing Articles 41.1, 41.2 and 41.6 will require primary legislation and will therefore need a transition period. In relation to Article 41.5, gun controls in England, Wales and Scotland prohibit, with some exceptions, the carrying of handguns unless specifically authorised by the Secretary of State. The UK will discuss with its partners how to take forward co-operation in this area. Any change to the United Kingdom’s current laws would require legislation. The United
Kingdom will develop legislation in close consultation with the Republic of Ireland and will make a joint declaration under Article 41.9.

Article 41.7

The competent officers as designated under this Article would be officers from police forces in the United Kingdom and officers of Her Majesty’s Customs and Excise.

Article 42

To meet the requirements of this Article, the United Kingdom will need to introduce primary legislation. A transition period will therefore be needed.

Article 43

United Kingdom implementation of this Article will be linked to the measures necessary for implementation of Article 42 and will require primary legislation. A transition period will therefore be required.

Article 46

The United Kingdom will designate the National Criminal Intelligence Service as the central authority for the exchange of information.

Judicial co-operation

Article 49e & 49f

In relation to certain legal statements, suspension of sentences etc, the UK has reserved the right in the Additional Protocol to the 1959 Convention on Mutual Assistance in Criminal Matters not to assist with such matters.
Article 50

The provision of assistance in a form admissible as evidence in relation to non-criminal infringements would require legislation. The UK will therefore require a transition period.

Article 53.5

The United Kingdom does not intend to apply this discretionary provision as it has reserved the right not to apply Article 21 of the 1959 Convention on Mutual Assistance in Criminal Matters.

Article 57

The United Kingdom will nominate the authorities declared under Article 24 of the 1959 European Convention on Mutual Assistance in Criminal Matters, with any variation made pursuant to the future EU Convention on Mutual Legal Assistance in Criminal Matters.

Article 64

The United Kingdom will need to introduce primary legislation to implement the provisions of this Article. A transition period will therefore be requested.

Article 66

The United Kingdom will need to introduce primary legislation to implement this. A transition period will therefore be requested.
Article 67-69

The United Kingdom will need to introduce primary legislation to implement the provisions of these Articles. A transition period will therefore be requested.

Narcotic drugs

Article 75

The competent authority referred to in Article 75 would be the Home Office.

Schengen Information System

Articles 92-119

The United Kingdom will need to make appropriate administrative and financial arrangements to set up a national section under the Schengen Information System. A transition period will be required to enable this work to be completed. The nature of UK participation and the level of financial contribution to be made to the technical support function will also need to be discussed.

The United Kingdom will need to make appropriate administrative and possibly legislative arrangements to give effect to the provisions of these articles relating to the protection of personal data. A transition period will therefore be needed to enable this work to be completed.

Articles 96 and 101.2

Although the United Kingdom has sought participation in all the Articles relating to the SIS, in recognition of the view of Schengen States that the SIS represents a whole, the United Kingdom does not intend to access or enter information on the Schengen Information System relating to the movement of persons.
Article 101

The authorities allowed to have direct access to the data on the Schengen Information System under Article 101.4 will be:

The National Criminal Intelligence Service

The National Crime Squad

The United Kingdom will set out at a later stage the information on the data on which each body may search and for what purposes.

Articles 108

The central responsible authority under Article 108 would be the National Criminal Intelligence Service.

Articles 114-115

The United Kingdom will designate the Data Protection Registrar (to become the Data Protection Commissioner after the entry into force of the Data Protection Act 1998) as the supervisory authority responsible for the activities described in these articles.
Data Protection

Articles 126-130

The United Kingdom will need to make appropriate administrative and possibly legislative arrangements to give effect to the provisions of these articles relating to the protection of personal data insofar as they apply to activities in which the UK is seeking to participate. A transition period will be needed to enable this work to be completed.

Article 128

The United Kingdom intends to designate the National Data Protection Registrar (to become the Data Protection Commissioner after the entry into force of the Data Protection Act 1998) as the supervisory authority under this Article.

Legal Effect

The United Kingdom will wish to clarify in the Decision under Article 4 of the Schengen Protocol the legal effect of the Schengen acquis as it applies to the United Kingdom, bearing in mind that, on the date of its application to the United Kingdom, it will have been incorporated into European Union and Community Law.

Territorial Application

For the purposes of this application, the provisions of the Schengen acquis which the UK wishes to accept should apply to Gibraltar except the following provisions which should not apply to Gibraltar.
Articles 40-43:

i) Cross border surveillance and hot pursuit.

Articles 48-53:

ii) Mutual assistance in criminal matters: the provisions of this chapter are intended to supplement the 1959 Convention on Mutual Assistance in Criminal Matters which does not currently apply to Gibraltar.

Articles 59-66:

iii) Extradition: the provisions of this chapter are intended to supplement the 1957 European Convention on extradition which does not currently apply to Gibraltar.

iv) Those provisions of the Schengen acquis, such as Article 75, which will be allocated a legal base of Article 95 TEC and relate to the free movement of goods (since Gibraltar is outside the Common Customs Territory).

The Crown Dependencies, that is the Channel Islands and the Isle of Man, may also wish to participate in some areas of co-operation under Schengen. The arrangements for any such participation will be taken forward separately.