Council of the European Union

Brussels, 1 February 2019
(OR. en)

5939/19

Interinstitutional File: 2019/0011(NLE)

MIGR 9
JAI 86
FRONT 34
RELEX 74
COMIX 53

PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	31 January 2019
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2019) 23 final
Subject:	Proposal for a COUNCIL DECISION concerning the notification of the United Kingdom of Great Britain and Northern Ireland of its wish no longer to take part in some of the provisions of the Schengen *acquis* which are contained in Council Regulation (EC) No 377/2004 of 19 February 2004 on the creation of an immigration liaison officers network

Delegations will find attached document COM(2019) 23 final.

Encl.: COM(2019) 23 final

EUROPEAN
COMMISSION

Brussels, 31.1.2019
COM(2019) 23 final

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Proposal for a

COUNCIL DECISION

concerning the notification of the United Kingdom of Great Britain and Northern Ireland of its wish no longer to take part in some of the provisions of the Schengen *acquis* which are contained in Council Regulation (EC) No 377/2004 of 19 February 2004 on the creation of an immigration liaison officers network

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

In accordance with Article 5 of Protocol integrating the Schengen *acquis* into the framework of the European Union annexed to the Treaty on European Union and to the Treaty establishing the European Community, and Article 8(2) of 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], the United Kingdom took part in Council Regulation (EC) No 377/2004 of 19 February 2004 on the creation of an immigration liaison officers network, as amended by Regulation (EU) No 493/2011 of the European Parliament and of the Council of 5 April 2011.

On 16 May 2018, the Commission proposed a further amendment of Regulation No 377/2004, in the form of a recast.[2] That proposal was received by the Council in all the required languages on 2 July 2018.

On 1 October 2018, in accordance with the procedure set out in Article 5(2) of the Protocol (No 19) on the Schengen acquis integrated into the framework of the European Union annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, the United Kingdom notified to the President of the Council its wish not to take part in the 16 May 2018 recast proposal. As a consequence the United Kingdom no longer takes part in the adoption of this proposal.

In view of the fact that the network character of the Immigration Liaison Officers network makes it impossible for a Member State to remain part of that network where the amended legislation setting up that network does not apply to that Member State, another consequence of the aforementioned notification will be that the United Kingdom will cease to participate in the Immigration Liaison Officers network from the date of entry into force of the recast proposal regarding that network.

In accordance with Article 5(3) of Protocol (No 19) on the Schengen acquis, the Council determines the extent and the conditions under which the United Kingdom will cease to participate in parts of the Schengen *acquis* affected by the aforementioned notification. The Council acts in the form of a decision, adopted by qualified majority on a proposal from the Commission.

The Council decision under Article 5(3) of Protocol (No 19) on the Schengen acquis takes account of the following criteria: the need to retain the widest possible participation of the notifying Member State in the Schengen *acquis* without seriously affecting its practical operability and while respecting its coherence.

The 16 May 2018 recast proposal aims to increase coordination and optimise the use of immigration liaison officers, including the new European liaison officers deployed to third countries, in order to respond more effectively to EU priorities in the field of migration.

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1 OJ L 131, 1.6.2000, p. 43.

2 Proposal for a Regulation of the European Parliament and of the Council on the creation of a European network of immigration liaison officers (recast)*, COM(2018) 303 final.

The 16 May 2018 recast proposal has the same objectives as Regulation (EC) No 377/2004, as amended by Regulation (EU) No 493/2011, focusing on enhancing cooperation and coordination between immigration liaison officers posted in third countries, notably by setting out the obligation to establish local or regional networks among immigration liaison officers as well as promoting the use of a dedicated e-tool for regular exchange of information within the local networks and establishing a reporting system on the activities of immigration liaison officers' networks, but without mandating specific operational interaction with other systems or legal instruments part of the Schengen *acquis*.

It follows from the nature of the 16 May 2018 recast proposal, as well as from that of the existing Regulation (EC) No 377/2004 as amended by Regulation (EU) 493/2011, that they constitute a self-standing measure within the Schengen *acquis*, which is not operationally interacting with other legal instruments that are part of the Schengen acquis.

Therefore, it can be considered, in this very exceptional case, that despite the cessation of the United Kingdom's participation in Regulation (EC) No 377/2004, as amended by Regulation (EU) No 493/2011, continued participation by the United Kingdom in the remainder of the Schengen *acquis* in which it currently participates, serves to ensure the UK's widest possible participation in such *acquis* without seriously affecting the Schengen *acquis'* practical operability while at the same time respecting its coherence.

- **Consistency with other Union policies**

Not applicable

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

This proposal is based on Article 5(3) of Protocol (No 19) on the Schengen *acquis* integrated into the framework of the European Union.

- **Subsidiarity (for non-exclusive competence)**

Not applicable

- **Proportionality**

Not applicable.

- **Choice of the instrument**

Protocol (No 19) on the Schengen *acquis* integrated into the framework of the European Union sets out the procedures regulating the United Kingdom's participation in measures building on the Schengen *acquis*.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

Given the nature and scope of this proposal, no ex-post evaluation, stakeholder consultation or impact assessment are necessary.

4. BUDGETARY IMPLICATIONS

The proposal bears no budgetary implication.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the European Union,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the proposal from the European Commission,

Having regard to the Protocol (No 19) on the Schengen *acquis* integrated into the framework of the European Union, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and in particular to Article 5(3) thereof,

Having regard to the notification, under Article 5(2) of the Protocol (No 19) on the Schengen *acquis* integrated into the framework of the European Union, by the Government of the United Kingdom of Great Britain and Northern Ireland, by its letter to the President of the Council of 1 October 2018, of its wish not to take part in the proposalfor a Regulation of the European Parliament and of the Council on the creation of a European network of immigration liaison officers, [3]

Whereas:

(1) The United Kingdom took part in Council Regulation (EC) No 377/2004[4], as amended by Regulation (EU) No 493/2011 of the European Parliament and of the Council of 5 April 2011[5].

(2) On 1 October 2018, within the required three-month deadline, the United Kingdom has notified to the President of the Council its wish not to take part in the adoption of the recast of the Regulation on the creation of a European network of immigration liaison officers, proposed by the Commission on 16 May 2018 and received by the Council in all the required languages on 2 July 2018.

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3 COM(2018) 303 final.

4 Council Regulation (EC) No 377/2004 of 19 February 2004 on the creation of an immigration liaison officers network (OJ L 064, 2.3.2004, p.1).

5 Regulation (EU) No 493/2011 of the European Parliament and of the Council of 5 April 2011, amending Council Regulation (EC) No 377/2004 of 19 February 2004 on the creation of an immigration liaison officers network (OJ L141, 27.5.2011, p.13).

(3) Regulation (EC) No 377/2004 aims to enhance cooperation between immigration liaison officers posted in third countries, notably by setting out the obligation to establish local or regional networks among immigration liaison officers as well as promoting the use of a dedicated e-tool for regular exchange of information within the local networks and establishing a reporting system on the activities of immigration liaison officers' networks through bi-annual Presidency reports, without requiring the use of any operational systems or directly interacting with any legal provisions contained in other legal instruments that are part of the Schengen *acquis*.

(4) The 16 May 2018 proposal for the recast of the Regulation on the creation of a European network of immigration liaison officers, while aiming to increase coordination and optimise utilisation of immigration liaison officers, including the new European liaison officers deployed to third countries, in order to respond more effectively to EU priorities in the field of migration, does not depart from the nature of the current Regulation (EC) No 377/2004, as amended by Regulation (EU) No 493/2011, inasmuch as its concrete interaction with the other parts of the Schengen *acquis* is concerned.

(5) The proposal for the recast of the Regulation on the creation of a European network of immigration liaison officers, just as Regulation (EC) No 377/2004 as amended by Regulation (EU) No 493/2011, can therefore be considered as a self-standing measure within the Schengen *acquis*, which is not interacting operationally with other legal instruments that are part of the Schengen *acquis*.

(6) In this exceptional case and in the light of the self-standing nature within the Schengen *acquis* of Regulation (EC) No 377/2004, as amended by Regulation (EU) No 493/2011, it may be considered that, if the United Kingdom no longer participates in this Regulation, or any further amendments thereof, but continues to participate in the remaining Schengen *acquis* in which it currently participates pursuant to Council Decision 2000/365/EC[6], this would ensure the widest possible participation of the United Kingdom without seriously affecting the practical operability of the other parts of the Schengen acquis, while respecting their coherence.

(7) Article 8(2) of Decision 2000/365/EC should therefore, in accordance with Article 5(3) of the Protocol (No 19) on the Schengen *acquis* integrated into the framework of the European Union and as from the entry into force of the proposed recast of Regulation (EC) No 377/2004, cease to apply to the United Kingdom of Great Britain and Northern Ireland as regards Regulation (EC) No 377/2004, as amended by Regulation (EU) No 493/2011, and any further amendments thereof, including the proposal for the recast of Regulation (EC) No 377/2004.

(8) As a consequence, point 6 of Annex I to Council Decision 2004/926/EC[7] as regards Regulation (EC) No 377/2004 should equally, in accordance with Article 5(3) of that Protocol, cease to apply as from the entry into force of the proposed recast,

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6 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 (OJ L 131, 1.6.2000, p.43).

7 Council Decision 2004/926/EC 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 (OJ L 395, 31.12.2004, p.70).

HAS ADOPTED THIS DECISION:

Article 1

Decision 2000/365/EC, as well as point 6 of Annex I to Decision 2004/926/EC, shall cease to apply to the United Kingdom of Great Britain and Northern Ireland as regards Council Regulation (EC) No 377/2004 on the creation of an immigration liaison officers network, as amended by Regulation (EU) No 493/2011, and any further amendments thereof, as from the day of entry into force of the proposed recast of the Regulation of the European Parliament and the Council on the creation of a European network of immigration liaison officers.

Article 2

This Decision shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels,

For the Council
The President