<EntPE>EUROPEAN PARLIAMENT</EntPE>

|  |  |  |
| --- | --- | --- |
| 1999 | C:\DATA\MAIL\Stars.wmf | 2004 |

Session document

<RefStatus>FINAL</RefStatus>

<NoDocSe>A5-0233/2001</NoDocSe>

<RefVer></RefVer>

<Date>{14/06/2001}21 June 2001</Date>

<TitreType>REPORT</TitreType>

<Titre>on crossing external borders and the development of Schengen cooperation

<DocRef>(10846/1999 – C5‑0042/2000) +</DocRef>

<DocRef>(11329/3/1999 – C5‑0043/2000) +</DocRef>

</Titre><DocRef>(SCHAC 2533/1/2000 – C5‑0729/2000) +</DocRef>

<DocRef>(SEC(2000) 1439 – C5‑0730/2000 – 2000/2015(COS))</DocRef>

<Commission>{LIBE}Committee on Citizens' Freedoms and Rights, Justice and Home Affairs</Commission>

Rapporteur: <Depute>Carlos Coelho</Depute><PgIndex>CONTENTS

Page

PROCEDURAL PAGE 4

MOTION FOR A RESOLUTION 6

EXPLANATORY STATEMENT 14

OPINION OF THE COMMITTEE ON FOREIGN AFFAIRS, HUMAN RIGHTS, COMMON SECURITY AND DEFENCE POLICY 15

<PgReglementaire>PROCEDURAL PAGE

By letter of 13{14.09.2000} December 1999, the Council forwarded to Parliament the 1998 Annual Report on the implementation of the Schengen Convention and the 1998 Annual Report on the situation at the external borders of the States (11329/3/1999 and 10846/1999 - 2000/2015(COS)).

At the sitting of {21.01.2000}21 January 2000 the President announced that she had referred the 1998 Annual Report on the implementation of the Schengen Convention and the 1998 Annual Report on the situation at the external borders of the States to the {LIBE}Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible and the {AFET}Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy for its opinion (C5-0043/2000 and C5-0042/2000).

By letter of {14.09.2000}14 September 2000, Schengen Joint Supervisory Authority forwarded to Parliament its Fourth Annual Report on its activities – March 1999-February 2000 (SCHAC 2533/1/2000). By letter of 14 September 2000, the Commission forwarded its opinion on the request by Ireland to take part in some of the provisions of the Schengen acquis (SEC(2000) 1439 – 2000/2015(COS)).

At the sittings of {15.01.2001}15 December 2000 and 15 January 2001 the President of Parliament announced that she had referred the Schengen Joint Supervisory Authority Fourth Annual Report and the Commission Opinion on the request by Ireland to take part in some of the provisions of the Schengen acquis to the {LIBE}Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible and the {AFET}Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy for its opinion (C5‑0729/2000 and C5-0730/2000).

The {LIBE}Committee on Citizens' Freedoms and Rights, Justice and Home Affairs appointed Carlos Coelho rapporteur at its meeting of {24.02.2000}24 February 2000.

The Committee considered the 1998 Annual Report on the implementation of the Schengen Convention, the 1998 Annual Report on the situation at the external borders of the States, the Schengen Joint Supervisory Authority Fourth Annual Report, the Commission Opinion on the request by Ireland to take part in some of the provisions of the Schengen acquis and the draft report at its meetings of 12 July 2000, 5 February 2001, 20 March 2001, 28 May 2001 and 20 June 2001.

At the last meeting it adopted the motion for a resolution by 26 votes to 6, with 1 abstention.

The following were present for the vote: Graham R. Watson chairman; Robert J.E. Evans, vice-chairman; Carlos Coelho, rapporteur; Niall Andrews, Roberta Angelilli, Mary Elizabeth Banotti, Alima Boumediene-Thiery, Marco Cappato, Michael Cashman, Charlotte Cederschiöld, Ozan Ceyhun, Thierry Cornillet, Gérard M.J. Deprez, Andrew Nicholas Duff (for Baroness Sarah Ludford pursuant to Rule 153(2)), Carlo Fatuzzo (for Marcello Dell'Utri pursuant to Rule 153(2)), Bertel Haarder (for Jan-Kees Wiebenga), Adeline Hazan, Jorge Salvador Hernández Mollar, Anna Karamanou, Sylvia-Yvonne Kaufmann (for Pernille Frahm), Eva Klamt, Alain Krivine (for Giuseppe Di Lello Finuoli), Torben Lund (for Gerhard Schmid), Hartmut Nassauer, Arie M. Oostlander (for Daniel J. Hannan), Elena Ornella Paciotti, Hubert Pirker, Giacomo Santini (for Enrico Ferri), Patsy Sörensen, Joke Swiebel, Fodé Sylla, Anna Terrón i Cusí, Maurizio Turco (for Frank Vanhecke), Anne E.M. Van Lancker (for Martin Schulz) and Gianni Vattimo.

The opinion of the {AFET}Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy is attached.

The report was tabled on 21 June 2001.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

<PgPartieA><SubPage>MOTION FOR A RESOLUTION

European Parliament resolution on crossing external borders and the development of Schengen cooperation ((10846/1999 – C5‑0042/2000) + 11329/3/1999 – C5‑0043/2000 + SCHAC 2533/1/2000 – C5‑0729/2000) + SEC(2000) 1439 – C5‑0730/2000 – 2000/2015(COS))

The European Parliament,

<Visa>– having regard to the Council 1998 Annual Report on the implementation of the Schengen Convention (10846/1999 – C5‑0042/2000[[1]](#footnote-0)),

>– having regard to the Council Annual Report on the situation at the external borders of the states in which the Schengen Convention has been brought into force – 1 January 1998 to 31 December 1998 (11329/3/1999 – C5‑0043/2000[[2]](#footnote-1)2),

>– having regard to Schengen Joint Supervisory Authority Fourth Annual Report (SCHAC 2533/1/2000 – C5‑0729/2000[[3]](#footnote-2)3),

>– having regard to the Commission opinion on the request by Ireland to take part in some of the provisions of the Schengen acquis (SEC(2000) 1439 – C5‑0730/2000[[4]](#footnote-3)4),

* having regard to Title IV of the EC Treaty on visas, asylum, immigration and other policies related to free movement of persons,
* having regard to Title VI on the Treaty of European Union on police and judicial cooperation in criminal matters,
* having regard to the protocols and declarations on integrating the Schengen *acquis* into the framework of the European Union, on the application of certain aspects of Article 14 of the Treaty establishing the European Community to the United Kingdom and to Ireland, on the position of the United Kingdom and Ireland and on the position of Denmark,
* having regard to Article 255 of the EC Treaty and Article 41 of the Treaty on European Union,
* having regard to the Charter of Fundamental Rights of the European Union adopted by the European institutions and, in particular, to Article 6 (right of liberty and security), Article 8 (protection of personal data), Article 20 (equality before the law), Article 42 (right of access to documents) and Article 45 (right to free movement and residence),

Having regard to:

* Council Decision 1999/435/EC of 20 May 1999 concerning the definition of the Schengen acquis for the purpose of determining, in conformity with the relevant provisions of the Treaty establishing the European Community and the Treaty on European Union, the legal basis for each of the provisions or decisions which constitute the acquis[[5]](#footnote-4),
* Council Decision 1999/436/EC of 20 May 1999 determining, in conformity with the relevant provisions of the Treaty establishing the European Community and the Treaty on European Union, the legal basis for each of the provisions or decisions which constitute the Schengen acquis and Statements[[6]](#footnote-5),
* Council Decision 1999/438/EC of 20 May 1999 concerning the Joint Supervisory Authority set up under Article 115 of the Convention applying the Schengen Agreement of 14 June 1985, on the gradual abolition of checks at common borders, signed on 19 June 1990[[7]](#footnote-6),
* Council Decision 1999/439/EC of 17 May 1999 on the conclusion of the Agreement with the Republic of Iceland and the Kingdom of Norway concerning the latter’s association with the implementation, application and development of the Schengen acquis[[8]](#footnote-7),
* Council Decision 1999/307/EC of 1 May 1999 laying down the detailed arrangements for the integration of the Schengen Secretariat into the General Secretariat of the Council [[9]](#footnote-8),
* Council Decision 1999/848/EC of 13 December 1999 on the full application of the Schengen acquis in Greece[[10]](#footnote-9),
* 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[[11]](#footnote-10),
* Council Decision of 17 October 2000 establishing a secretariat for the joint supervisory data-protection bodies set up by the Convention on the Establishment of a European Police Office (Europol Convention), the Convention on the Use of Information Technology for Customs Purposes and the Convention implementing the Schengen Agreement on the gradual abolition of checks at the common borders (Schengen Convention)[[12]](#footnote-11),
* the Decision of the Schengen Executive Committee of 20 December 1995 on the procedure for applying Article 2(2) of the Convention implementing the Schengen Agreement (SCH/Com-ex (95) 20, rev. 2)[[13]](#footnote-12),

– Decision of the Schengen Executive Committee of 14 December 1993 concerning the confidential nature of certain documents (SCH/Com-ex (93) 22 rev.)[[14]](#footnote-13),

– having regard to Rule 47(1) of its Rules of Procedure,

– having regard to the report of the {LIBE}Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (and the opinion of the {AFET}Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy) (A5‑0233/2001),

<Action>A. Whereas Article 2 of the Treaty on European Union establishes as an objective *"maintain and develop the Union as an area of freedom, security and justice, in which the free movement of persons is assured in conjunction with appropriate measures with respect to external border controls, immigration, asylum and the prevention and combating of crime*",

***Respect for fundamental rights***

1. Whereas an area of freedom, security and justice implies an area where rights of citizens are respected,
2. Whereas the Charter of Fundamental Rights was proclaimed by the European institutions on 7th December 2000 and the Commission and Parliament have made a commitment to base their future actions on the Charter,
3. Whereas the Charter of Fundamental Rights should now provide a reference framework for all the activities of the institutions,

***Extension of the Schengen area***

1. Whereas the Schengen Convention is now fully in force in 10 Member States, and since 25 March 2001 became fully in force in the 5 countries of the Nordic Passport Union (Denmark, Finland, Sweden, Norway and Iceland),
2. Whereas following the partial participation of the United Kingdom in the Schengen acquis, the request from Ireland for similar partial participation in the Schengen acquis is to be welcomed; despite the fact that the participation of both the United Kingdom and Ireland is limited to the law enforcement aspects and that neither will participate in the Schengen acquis relating to the free movement of persons and the abolition of the internal borders,
3. Whereas the lack of consultation and information to the Parliament, in particular, on the extension of the Schengen Convention to the countries of the Nordic Passport Union and to the United Kingdom and Ireland is contrary to Article 39 of the Treaty on European Union,

***Results of the integration of the Schengen acquis into the Treaties***

1. Whereas the process for the examination of the legal basis of the Schengen acquis lacked consultation and transparency,
2. Whereas the strict interpretation of the Protocol on the integration of the Schengen acquis has limited the information considered as the Schengen acquis and therefore published in the Official Journal,

J. Whereas documents considered by the Council to be confidential on the basis of the Schengen rules on confidentiality are not available to the European Parliament or to the public,

K. Whereas since the entry into force of the Amsterdam Treaty and the subsequent incorporation of the Schengen acquis into the Treaty, major and serious shortcomings have existed with regard to transparency and democratic control by the European Parliament,

***Enhanced cooperation on the free movement of persons***

L. Whereas a large number of initiatives have been submitted by the Member States which aim to supplement or replace measures which formed part of the Schengen acquis; (although the aim of most of the initiatives can be supported) the initiatives are fragmentary, lacking consistency and often lacking explanatory statements, so that it is unclear whether and the extent to which the initiatives replace the Schengen acquis,

M. Whereas it will now be less clear for citizens to understand which measures in this field apply to which Member States,

N. Whereas there is no assessment of any negative effects of this enhanced cooperation on the development of the Union as an area of freedom, security and justice or on the citizens,

O. Whereas the maintenance of Article 2(2) of the Schengen Convention permits the Schengen states to unilaterally re-impose internal border controls with only prior notification of other states and, in particular, France, due to its opposition to the Dutch policy on drugs, maintains its right to control the border with Belgium,

P. Whereas the intention of the Commission is to adopt in the first quarter of 2001 a proposal on the integration of Article 2 of the Schengen Convention into Community legislation,

***Schengen measures concerning law enforcement and security***

Q. Whereas although progress has been made in relation to police cooperation under the framework of Schengen, legal problems arise from the differing powers of the police services of the Schengen states, including the lack of uniform rules concerning the grounds of an offence, the absence of a right of arrest for pursuing officers in some states, inadequate rules on the use of special rights of way and a lack of radio compatibility,

R. Whereas the separate development of police cooperation under Europol and the absence of public information result in the role of the police in the area of freedom, security and justice becoming less transparent and more confusing for the citizens,

S. Whereas the Parliament has not been informed of any developments in the field of police cooperation under Schengen since the integration of the Schengen acquis in the Treaties and, in particular, on any proposals, strategic or otherwise, on measures to remedy the shortcomings identified,

T. Whereas citizens' rights in criminal proceedings have recently been confirmed in the chapter on "Justice" in the Charter of Fundamental Rights and greater transparency is essential to ensure the protection and respect of citizens’ rights in the field of cooperation,

***Schengen Information System (SIS)***

U. Whereas no agreement was reached in the Council on the legal basis of the Schengen Information System (SIS), and therefore under the Schengen protocol, the SIS is dealt with under the third pillar; however, 89% of the data regarding persons[[15]](#footnote-14) in the SIS is held on ‘unwanted’ persons under Article 96, i.e. under the first pillar, and therefore consistent with the view expressed by the Netherlands and Belgium, at least part of the SIS falls within the first pillar,

V. Whereas the Joint Supervisory Authority in its Third Annual report (March 1998 to February 1999) and in its Fourth Annual Report (March 1999 to February 2000) has identified shortcomings in the treatment of personal data in the operation of the SIS, including: failures of the approved authorities to give reasons for their enquiries in the SIS; failure to destroy documents relating to alerts after the alerts had been deleted and use of these documents to supplement police records; maintenance on the SIS of data on persons whose identity has been usurped with no attempt to inform or obtain the consent of the legitimate holder of the identity that his/her data is contained on the SIS system; the abusive use of data; and slow or inadequate procedures for checking and correcting data,

W. Whereas concerns have also been raised by the Joint Supervisory Authority about the complexity of the system and shortcomings in the physical security of the SIS, including inadequate controls on access, inadequate authorisation procedures for operational access to the system and for the regular verification of user's rights, problems with the telecommunications encryption equipment, and that improvements could be made in the audit trail functions and to ensure protection against hacking,

X. Whereas there is no legal base for the operation of the Sirene system and therefore the Sirene bureaux operate without a strictly defined role,

Y. Whereas there is a lack of clear criteria for entering data on the system, in particular, in relation to unwanted aliens and therefore the Schengen States can interpret the rules as they wish, furthermore, decisions on the entry of data into the system can be taken at a relatively low level; given the many shortcomings identified by the Joint Supervisory Authority in relation to the protection of data and the inadequate remedies available to persons whose data is on the SIS, the current situation fails to meet the level of protection required by the Charter of Fundamental Rights with potentially serious consequences for citizens,

<Text>Z. Whereas the establishment of a joint secretariat has been agreed by the Council for the Supervisory Authority and this is a welcome step towards the fair and equal treatment of personal data under not only the Schengen Convention, but also the Convention on the establishment of a European Police Force (Europol Convention) and the Convention on the Use of Information technology for Customs Purposes; however, to be truly independent the joint secretariat requires an independent budget separate from the budget of the Council,</Text>

***External borders and enlargement***

AA. Whereas the report from 1998 on the situation at the external border notes that progress has been made on improving the external borders; the Parliament has received no further information on the situation at the external border since that report and any measures taken to improve the situation,

BB. Whereas the candidate countries include communities which cross borders and therefore the establishment of strict border controls would divide communities,

CC. Whereas the countries of the Nordic Passport Union were not required to establish border controls between themselves in order to participate in the Schengen area but joined as a group once the controls had been established by all of them.

1. Calls on Council to formally declare that its future actions, including the operation of the Schengen Information System, will be in accordance with the European Charter of Fundamental Rights;

1. Calls on the United Kingdom and Ireland to make a commitment to fully participate in the Schengen acquis (and therefore abolish border controls) and to indicate the calendar for the legal and technical modifications required, on which they should start work as soon as possible;
2. Calls for the Schengen rules on confidentiality of documents to be replaced with rules on public access to documents adopted under Article 255, and for the Parliament to be fully informed of documents excluded from public access;
3. ***<Text>***Calls for the annexes to the joint manual and joint consular instructions to be published, particularly the list of visa applications which require prior consultation by national central authorities or for reasons to be provided for refusing public access in accordance with Regulation 1049/01 regarding public access to European Parliament, Council and Commission documents;</Text

<Text>5. Urges the Council and Commission to submit an annual report to the Parliament on the measures adopted in the area of freedom security and justice with an evaluation of the development or replacement of the Schengen acquis, the enhanced cooperation between some Member States and the partial participation in the Schengen acquis of some Member States, with an evaluation of any problems for the consistency and coherence of Union law; notes that, pursuant to Articles 39 and 45 of the TEU, the Council and Commission are required to inform the European Parliament regularly of the development of closer cooperation regarding fields covered by the third pillar;

6. Recommends the creation of a working group within the framework of COSAC with responsibility for activities relating to the area of freedom, security and justice, whose meetings should also be attended by representatives of Parliaments of non-EU countries participating in Schengen;</Text>

<Text>7. States its intention of organising an annual joint meeting with delegations from the Parliaments of the Member States which are involved in Schengen cooperation (including those of the Nordic Passport Union) with the aim of exchanging experience of the practical operation and the implementation by the Member States of the policy adopted in this field;</Text>

<Text>8. Calls on the Commission to prepare a timetable for the review and, where necessary, replacement of the Schengen acquis and for remedying the shortcomings which have been noted in the preamble and to include this timetable in the revised Scoreboard;</Text>

9. Urges the Member States, prior to submitting a formal initiative pursuant to Article 67(1) of the EC Treaty, to make a formal request to the Commission for a Commission proposal on an issue and calls on the Commission to take account of Article 67(2) and the need for consistency and coherence, and to, as far as possible, prepare proposals that cover the issues raised by the Member States;

10. Calls on the Commission to include, in its proposal on the integration of Article 2(2) of the Schengen Convention into Community legislation, rules on the prior consultation of the Council, approval of temporary border controls only for a limited duration (possibly 30 days), a review of the proportionality of the controls and conditions for the extension of the duration;

11. Calls on the Council to ensure that the Parliament is able to fully participate in the debate on measures to remedy the shortcomings in the field of police cooperation and requests the Council to ensure consistency in the practical rules to be applied under the Schengen Convention;

12. Calls on the Council to fully respect Article 39 of the Treaty on European Union by submitting to the Parliament for its opinion all framework decisions, decisions and Conventions in sufficient time and with a reasonable deadline, and for the Council to provide regular reports on the cooperation under the third pillar in accordance with Article 39(2) of the Treaty on European Union;

13. Calls for the strengthening of the judicial control over the intergovernmental cooperation under the third pillar provided for in Article 35 of the Treaty on European Union, in particular, by giving the ECJ full jurisdiction to give preliminary rulings on references from the Member States and by removing the limitation on the review by the ECJ in cases concerning the maintenance of law and order and the safeguarding of internal security, at least in so far as fundamental rights are concerned;

<Text>14. Calls on the Council to adopt a legally binding instrument on the data protection standards to be applied in the third pillar which affords guarantees equivalent to the provisions of Directive 95/46/EC;

15. Calls on the Council to adopt uniform standards, procedures, powers and separate budget for the operation of the single supervisory body, under the supervision of the European Parliament,in respect of its activities under the three conventions (Schengen, Europol and Customs Use) to ensure the respect of the data protection standards in Article 8 of the Charter of Fundamental Rights;

16. Calls in the meantime for the strengthening of the competences of the Schengen Joint Supervisory Authority in order to enable it to perform its control functions over the Schengen Information System in a more effective and efficient way;

17. Calls for the Schengen Information System to be managed under the EU framework by a separate agency, financed from the EU budget, and for the establishment of Community (Union) Information System under the responsibility of the Commission which would be a single computer network system for the data received under the three conventions (Schengen, Europol and Customs Use) taking into account the need to keep the respective data separate and the need to ensure the functional separation (access levels, security system, etc.) required by the end-user services, both within the Community framework and under the third pillar;

<Text>18. Calls for the membership of the candidate countries to be subject only to the political acceptance of the Schengen acquis and the development of the necessary policy instruments to implement that acquis and, as was the case on the occasion of the previous accessions, for the actual lifting of internal borders for the free movement of persons to be the subject of a separate and subsequent decision of the Council, acting on a proposal from the Commission and after consultation of the Parliament;</Text>

19. Instructs its President to forward this resolution to the Council, the Commission and Schengen Joint Supervisory Authority.

EXPLANATORY STATEMENT

The views of the Rapporteur are set out in more detail in two working documents dated 23rd January 2001 concerning (i) crossing external borders and development of Schengen cooperation (DT\430739 / PE 294.302)</Titre> and (ii) the Schengen Information System and the protection of personal data (DT\428474 / PE.294.303).

<Date>{10/07/2000}13 July 2000</Date>

OPINION <COMMISSIONRESP>OF THE {AFET}COMMITTEE ON FOREIGN AFFAIRS, HUMAN RIGHTS, COMMON SECURITY AND DEFENCE POLICY</COMMISSIONRESP>

<CommissionInt>for the {AFET}Committee on Citizen’s Freedoms and Justice and Home Affairs</CommissionInt>

<Titre>on the Annual Report on the Situation at the External Borders of the States in which the Schengen Convention has been brought into force, 1 January 1998- 31 December 1998</Titre>

<DocRef>(10846/1999 - C5-0042/2000 - 11329/3/1999 - C5-0043/2000 – 2000/2015 (COS))</DocRef>

Draftsperson: Patsy Sörensen<Depute></Depute>

 <Procedure>PROCEDURE

The {AFET}Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy appointed Patsy Sörensen draftsperson at its meeting of {05-06-2000}1 February 2000.

It considered the draft opinion at its meetings of 21 June and 10 July 2000.

At the latter meeting it adopted the amendments below by 13 votes to 2, with 1 abstention.

The following were present for the vote: Baroness Nicholson of Winterbourne, acting chairman; William Francis Newton Dunn, vice-chairman; Patsy Sörensen, draftsperson; Alexandros Baltas, María Carrilho (for Claudio Martelli), Bertel Haarder, Klaus Hänsch, Efstratios Korakas, Pedro Marset Campos, Patricia McKenna (for Elisabeth Schroedter), Philippe Morillon, Pasqualina Napoletano, Jannis Sakellariou, Ioannis Souladakis, Gary Titley and Luís Queiró.

<PgPartieA><SubPage>SHORT JUSTIFICATION

**BACKGROUND**

The Schengen convention was signed in Schengen on 14 June 1985 as an agreement between the governments of the Benelux countries, the Federal Republic of Germany and France concerning the gradual abolition of checks at their common borders. On 19 June 1990 a Convention on the practical application of the 1985 agreement was signed between Belgium, Germany, France, the Grand Duchy of Luxembourg and the Netherlands. This additional convention set-up an Executive Committee. Several other EU Member States signed the Schengen provisions: Italy, Spain, Portugal, Greece, Austria, Finland, Sweden and Denmark.

The Treaty of Amsterdam has incorporated the Schengen *acquis* into the Union framework according to the following principles:

* co-operation between the 13 Member States which are signatories to Schengen will take place within the legal and institutional framework of the Union;
* the Amsterdam Treaty recognises the special nature of the United Kingdom and Ireland, which did not sign Schengen. These two countries are authorised to keep checks at their borders but may, at any time, choose to join Schengen *in toto*, or simply certain aspects of it;
* the Schengen *acquis* must be accepted in full by any country wishing to join the Union;
* Norway and Iceland are not members of the European Union but did sign the Luxembourg agreement on 19 December (with Denmark, Finland and Sweden): the Council of Ministers of the Union - since it will have become competent for the Schengen *acquis* - has to conclude a special agreement with the two countries laying down the relevant procedures.

The Amsterdam Treaty also requires the Council of Ministers, within five years of the entry into force of the Treaty, to adopt measures aimed at ensuring the free movement of persons and the absence of any controls on persons, be they citizens of the Union or nationals of non-member countries, when crossing borders between the Member States.

The governments have also agreed to take joint measures in the fields of asylum, immigration and controls at the Union's external borders. More efficient management of the external borders will mean that internal checks can be relaxed, encouraging the free movement of people.

The Amsterdam Treaty also laid down specific measures to create a common European policy on controls and authorisation to enter via the Union's external borders, especially in the areas of control and movement of people and dealing with asylum seekers and immigration questions.

Within five years of its entry into force, measures will be adopted by Member States in areas such as:

* in respect of controls at all the European Union's *external borders*, the establishment of:
* common standards and procedures for checking people;
* common rules on visas for intended stays of no more than three months;
* a common list of non-member countries whose nationals must hold visas when crossing external borders, and a list of non-member countries whose nationals are exempt from this requirement.

Other elements, which the Member States must introduce, include:

* common procedures and conditions for the issuing of *visas* by Member States;
* a uniform format for visas;
* definition of the terms on which nationals of non-member countries shall be free to travel within the EU for three months.

Regarding asylum, the Amsterdam Treaty lays down:

* the criteria and mechanisms for determining which Member State is responsible for considering an application for asylum submitted by a national of a non-member country in one of the Member States.

The Treaty also defines minimum standards for:

1. the reception of asylum seekers in Member States;
2. classifying nationals of non-member countries as refugees;
3. procedures in Member States for granting or withdrawing refugee status;
4. temporary protection for displaced persons from non-member countries who cannot return to their countries and persons who otherwise need international protection.

In the area of **immigration**, the Amsterdam Treaty lays down:

1. the terms of entry and residence in the European Union, and standards for procedures for the issue of long-term visas and residence permits by Member States;
2. standards for dealing with illegal immigration and illegal residence, and the repatriation of illegal residents.
3. the rights of citizens of non-member countries who are legally resident in a Member State and the terms on which they may reside in other Member States.

The document which is to be analysed by the Committee on Civil Liberties and Justice and Home Affairs is a report by the Member States of the Union participating in the Schengen Convention. It concerns the developments in the Schengen system and overall the situation at the EU’s external land, sea and air borders.

**ASSESSMENT**

The report shows a substantial amount of technical detail which is certainly opportune to consider by the Member States. The report gives an overall account of the global migratory flows, the situation at the external borders concerning land and sea borders as well as concerning borders at airports. It also lists the measures undertaken by Member States to improve the controls at the Schengen borders.

Overall it should be kept in mind that the developments within the Schengen system should be judged against the position which they assume between the two extremes of a too liberal policy which may have social and economical consequences for which there is no public basis and a policy excluding the movement of people leading to large scale illegal immigration. Migration is not a new practice, but stricter controls and entry requirements lead to an increase of illegal migration and moreover more and more individuals and organised criminal networks are involved in ‘organising’ illegal migrations. The market of services that facilitate illegal migration such as provision of fraudulent documents, transportation, clandestine border crossings, transient accommodation, job brokering and trafficking in human beings has grown in recent years.

To ensure the opportunity for people to have a legal base for migration or movement, illegal immigration has to be prevented and tackled adequately. The basic causes of migration pressure have to be analysed and dealt with. Another important issue which has to be dealt with is on the one hand human liberties and on the other hand effective control measures concerning the protection of personal data. Such approaches are not contained in the document as this document has not been concerned with questions of overall policy, although these are inextricably linked with the pure implementation questions. <AmJust></AmJust>

CONCLUSIONS

The {AFET}Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy thus takes note of the Schengen report but calls on the {INDU}Committee on Citizens’ Freedoms and Rights and Justice and Home Affairs, as the committee responsible, to incorporate the following considerations in its report:

The European Parliament,

Reminds Member States that a major driving force of migration is the poverty of society and individuals in the countries of origin and thus asks the Council to incorporate the results of its analysis of illegal migration flows into its development policies and economic support as well as its democracy policy and the policies vis-à-vis the candidate countries for EU accession.

Calls on the Member States to install training programmes for people involved in cross border control in order to make them aware for migrants in regular situations who were misled about the purpose of their travel at the time of recruitment and who became targets of traffickers while looking for employment upon arrival of their destination, e.g. women who arrive on entertainment visas, to find themselves forced into prostitution.

Calls on the Member States to bear in mind that it is necessary to harmonise their asylum and immigration laws in order to improve the Schengen system and to develop and implement an adequate anti-trafficking legislation, including stringent measures against traffickers.

Asks the Council to expand in its report on two fundamental questions:

Victims of smugglers and traffickers in illegal immigrants: In its analysis of illegal migratory flows the Council document ignores the human rights aspect of the issue. The illegal immigrants are often victims of organised criminal networks, which have found fertile ground in these areas to enlarge their activities and profits and exploit the migrants and keep them under inhuman conditions. When these people are discovered, they should in the first place be treated as victims and not purely as criminals. In transit or upon arrival, an important characteristic of trafficked migrants is their need for protection and assistance. Since they are trafficked under the auspices of criminal networks they find themselves at risk. This involves sufficiently installing shelters for them at border posts, which allow them to recover from their ordeals, during the time, which it takes to decide on their treatment.

Data protection and system upgrade: The report states that the Schengen information system needs to be upgraded to allow for easier and quicker comparisons of information about detected migrants. In many cases people fall victim to the inefficiency of the information system which is caused by a lack of maintenance of the data available. Parliament calls on the Schengen Member States to allocate the necessary funds for the maintenance of the system, in order to avoid problems as listed in the report. Furthermore, the directive 95/46/EC should be made binding for the Schengen Information System in order to have the same criteria in the third as in the first pillar regarding data protection.

1. Not published in OJ. [↑](#footnote-ref-0)
2. 2 Not published in OJ. [↑](#footnote-ref-1)
3. 3 Not published in OJ. [↑](#footnote-ref-2)
4. 4 Not published in OJ. [↑](#footnote-ref-3)
5. OJ L 176, 10.07.1999, p.1 [↑](#footnote-ref-4)
6. OJ L 176, 10.07.1999, p.17 [↑](#footnote-ref-5)
7. OJ L 176, 10.07.1999, p.34 [↑](#footnote-ref-6)
8. OJ L 176, 10.07.1999, p.35 [↑](#footnote-ref-7)
9. OJ L 119, 07.05.1999, p.49 [↑](#footnote-ref-8)
10. OJ L 327, 21.12.1999, p.58 [↑](#footnote-ref-9)
11. OJ L 131, 01.06.2000, p.43 [↑](#footnote-ref-10)
12. OJ L 271, 24.10.2000, p.1 [↑](#footnote-ref-11)
13. OJ L 239, 22.09.2000, p.16 [↑](#footnote-ref-12)
14. OJ L 239, 22.09.2000, p.43 [↑](#footnote-ref-13)
15. See the Justice Report: "The Schengen Information System: A human rights audit". [↑](#footnote-ref-14)