

12 January 1999 A4-0006/99

PROPOSAL FOR A RECOMMENDATION

to the Council on the programme of activities to be conducted under the
Schengen cooperation arrangements up to June 1999

Committee on Civil Liberties and Internal Affairs

Rapporteur: Mrs Anne Van Lancker

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Commented [COMMENT1]:

(Amendment ##)

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PROCEDURAL PAGE

By letter of 8 October 1998 the Committee on Civil Liberties and Internal Affairs asked the President of Parliament, pursuant to Rule 94(1), second subparagraph, of the Rules of Procedure, for authorisation to draw up a recommendation on the programme of activities to be conducted under the Schengen cooperation arrangements up to June 1999.

At the sitting of 20 November 1998 the President announced that the Conference of Presidents had granted authorisation.

At its meeting of 23 and 24 November 1998 the Committee on Civil Liberties and Internal Affairs appointed Mrs Van Lancker rapporteur.

At its meeting of 30 November and 1 December 1998 the committee considered the proposal for a recommendation and, at its meeting of 12 January 1999, adopted it unanimously.

The following took part in the vote: d'Ancona, chairman; Wiebenga, vice-chairman, Van Lancker, rapporteur, Andersson (for Crawley), Berger (for Ford), Bontempi, Cederschiöld, Ceyhun, Chanterie (for Deprez), De Esteban Martin, Elliott, Hernandez Mollar (for Jean-Pierre), Lambrias (for Mendes Bota), Lindeperg, Matikainen (for Reding), Nassauer, Orlando, Palacio (for Colombo Svevo), Pirker, Pradier, Posselt, Sauquillo (for G. Schmid), Schaffner, Schulz, Stewart-Clark and Terrón i Cusi.

The proposal for a recommendation was tabled on 12 January 1999.

The deadline for tabling amendments is 3 p.m. on 13 January 1999.

PROPOSAL FOR A RECOMMENDATION

European Parliament recommendation to the Council on the programme of activities to be conducted under the Schengen cooperation arrangements up to June 1999

The European Parliament,

- having regard to Rule 94 of its Rules of Procedure,
 - having regard to Articles 7a and 100c (ECT) and Article K.6(3) (TEU),
 - having regard to the Amsterdam Treaty, with particular reference to Articles 61, 62 and 63 ECT and 30, 31, 43, 44 and 45 TEU, the protocols and declarations concerning the integration of the Schengen *acquis* into the framework of the European Union, and especially the protocols and declarations on the position of the United Kingdom, Ireland and Denmark,
 - having regard to the decisions of the Presidency following the Vienna European Council of 11 and 12 December 1998,
 - having regard to the legislative proposals on freedom of movement and related policy measures at present under consideration,
 - having regard to the long-standing Nordic Passport Union between Denmark, Finland, Sweden, Norway, Iceland and the Faeroe Islands, and to the Common Travel Area between the United Kingdom and Ireland,
 - having regard to the proposal for a recommendation of the Committee on Civil Liberties and Internal Affairs (A4-0006/99),
- A. having been informed by the competent parliamentary committee:
- (a) of the work carried out in 1997 under the Schengen cooperation arrangements and the work programme of the German Presidency for the period July 1998-June 1999,
 - (b) of the reports of the Joint Supervisory Authority (JSA) covering the period March 1997-March 1998 and the operation of the SIRENE network,
- B. pointing out that:
- (a) the purpose of the Schengen Agreement and the subsequent implementing convention is to create an area in which full freedom of movement for persons is guaranteed, with a reasonable balance being struck between the principles of freedom and security,
 - (b) the countervailing police and judicial cooperation measures cannot therefore under any circumstances take precedence over consolidation of this area of freedom and security and continuing to ensure the free movement of persons,

- (c) the operation of the Nordic Passport Union and the UK-Ireland Common Travel Area show that freedom to travel can be achieved without elaborate structures,
- C. aware that:
 - (a) Schengen's integration into the Union must meet the need for effectiveness while respecting the Union's legal and institutional set-up and that, as a result, the goals set out in the first pillar take precedence over the measures to be drawn up under the third pillar,
 - (b) the Amsterdam Treaty sets a more ambitious goal than mere freedom of movement for persons, which includes the freedom to live in an area of security and justice in which all fundamental rights are guaranteed,
- D. addressing the German Presidency in its dual capacity as holder of both the Schengen Presidency and the Council Presidency,

Sets out the following recommendations:

I. *Integration of Schengen into the Treaty on Union*

1. Considers it essential for the Schengen Member States to make further progress in the drive for integration and closer cooperation within the Union framework;
2. Expresses surprise at the fact that, with little more than a year to go until the Amsterdam Treaty enters into force, the Schengen States have not yet defined their *acquis* or the parts of the *acquis* which have become redundant and that guidelines will in future arise regarding the scope of the instructions used daily by the various services (such as the provisions contained in the 'external borders' manual and in the 'consular instructions');
3. Considers it to be of vital importance for the Schengen *acquis* to be defined in good time so as to enable the EU Member States to divide that *acquis* between the first and third pillars as soon as the Treaty enters into force, since any recourse to the safeguard clause (provided for in Article 2(1), fourth subparagraph of the Schengen Protocol), under which the whole Schengen system will be deemed to be based on the third pillar, would have to be seen as an extremely serious failure, for which the Presidency and the Council would bear full institutional and political responsibility, and would constitute a major obstacle to the communitarisation of certain areas pursuant to the Amsterdam Treaty;
4. Expresses concern at the establishment of a 'standing committee on Schengen implementation' a few months before the entry into force of the Treaty, since this is likely to undermine the efforts by the institutions to implement policies at European and national levels; considers that the Commission should take back such powers when the Amsterdam Treaty enters into force; in any event, urges the Schengen Member States to take the necessary action to ensure that the 'standing committee on Schengen implementation' carries out its appointed tasks, namely to check that the requirements for applicant States are met and to lay the foundations for proper implementation of the Convention in tandem with the preparations being made for the integration of the Schengen *acquis* into the Union framework;

5. Urges the Member States to cooperate to the full in the work currently under way on integrating the Schengen *acquis* into the Union framework; queries, as far as the work on the take-over of the Schengen *acquis* is concerned, the objections to including the Schengen provisions under the first pillar, with particular regard to the inclusion of the Schengen Convention (SC) provisions on penalties (Article 3(2), Article 26(2) and (3), and Article 27(1)), conditions for the admission of aliens (Article 5), border controls and surveillance (Articles 7 and 8), extradition (Article 60), and firearms and ammunition (Articles 77 to 91); considers the drawing up of a 'mopping-up' clause to cover all provisions which could not be identified to be contrary to the principle of legal certainty; endorses the call made by the Vienna European Council and asks the Commission to propose an initiative aimed at integrating the Schengen *acquis* into the Treaty;
6. Considers that the agreement to be concluded with Norway and Iceland should remain strictly within the Union's institutional framework and comply with current legislation in Norway and Iceland so as to ensure the free movement of persons in accordance with the Nordic Passport Union, which has proved its efficacy over the past 40 years;
7. Considers that the European Parliament should be informed of the substance of the Schengen *acquis* and consulted on the draft decision integrating that *acquis* into the Treaty on Union and the agreement with Norway and Iceland, since the legal bases of future proposals to develop the Schengen *acquis* and, therefore, the role of the European institutions *vis-à-vis* such proposals, will depend on that decision; asks its committee responsible for such matters to consider whether an appeal should be made to the Court of Justice if the Council fails to consult Parliament;
8. Calls on the Council and the Commission to negotiate with Parliament an interinstitutional agreement on the latter's involvement in the formulation of strategies and the legislative measures to be taken under the third pillar;
9. Considers that, although the texts of the decisions and statements of the Executive Committee and the Schengen Central Group will remain within the sphere of competence of the Schengen States until the entry into force of the Amsterdam Treaty, those States should base their approach on the principle of information and access to documents established by the Amsterdam Treaty, and, as of now, should give thought to:
 - reviewing and publishing the rules governing the classification of documents and declassifying all documents which do not meet objective criteria;
 - having the texts already adopted translated into all the official languages and published in the OJ;
 - informing the European Parliament and, in exactly the same way, the national parliaments, given that a document which is made public in one Member State must also be made public in the other Member States so as to guard against discrimination between European citizens;
 - making available to citizens more comprehensive, relevant information on the impact of the agreement's implementation;
 - compiling a compendium of national and European case law on Schengen and a compendium of 'best practice';
10. Considers that the information handled under the Schengen cooperation arrangements should comply with the rules on data protection laid down in Directive 95/46 and should

be submitted to the supervisory body provided for in Article 286 of the EC Treaty, which should draw on the experience and working methods developed by the Schengen Joint Supervisory Authority (JSA);

11. Considers nonetheless that, pending (interpillar) general rules on data protection and of supervisory bodies covering the first and third pillars, a start should now be made on converting the Schengen Information System (SIS) into a European Information System (EIS), the core of which would comprise data relating to the movement of persons and immigration, in accordance with the new Chapter IV of the EC Treaty; considers, for obvious reasons of subsidiarity and effectiveness, that this system should:
 - (a) be developed as a trans-European network (see IDA II codecision) and funded from the Union budget in accordance with Article 129c of the current Treaty;
 - (b) be managed by an agency under the operational authority of the Commission (in respect of Title IV data) and the Council (in respect of Title VI data);
 - (c) be supervised by the body provided for in new Article 286 of the EC Treaty (see previous paragraph);
 - (d) integrate the data already managed under the Customs Information System, so as to prevent duplication and ensure data consistency;
 - (e) 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;
 - (f) the relationship with the Europol data processing systems;

considers that, in the meantime, an agreement providing for the future maintenance of the system should be signed with the Member State which manages the SIS;

12. Regrets the Council's decision to integrate the Schengen Secretariat into the Council Secretariat; considers that its integration into the Commission would have provided for greater consistency between security and justice policy and policy on the free movement of persons;

II. *Other priorities set out in the German Presidency's programme*

13. Welcomes the German Presidency's undertaking to improve cross-border cooperation in cases of criminal prosecution, on condition that such cooperation is duly recorded and subjected to legal scrutiny; notes that such a move could make an informal practice already existing in border regions more transparent; calls for the rights of the persons concerned to be guaranteed;
14. Endorses the Schengen States' decisions to:
 - (a) abolish the grey list, which currently comprises 23 States;
 - (b) harmonise their visa policies before 1 January 1999 and make provision for the harmonisation of the procedures and arrangements concerning responsibility, on condition that such harmonisation enhances the transparency of procedures and speeds matters up, and that the persons concerned are guaranteed a right of appeal;

- (c) ensure uniform application of visa provisions and enable diplomatic representations in third countries to gain access to visa data, on condition that the strict criteria on data reliability and updating are complied with;
- (d) introduce without delay the uniform format for residence permits for third-country nationals;

III. *Assessing the operation of the Schengen arrangements: the annual report of the Executive Committee and the Joint Supervisory Authority*

- 15. Considers that the operation of the Schengen arrangements can only be properly assessed once a satisfactory solution has been found to the problems existing in connection with both the rights of citizens to freedom of movement, security and access to justice and cooperation between Member States in combating crime; expresses concern, nonetheless, at the absence of a reliable system for systematically checking the effectiveness of the activities conducted under the Schengen cooperation arrangements and the implementing measures taken by each Member State;

extension of the Schengen area

- 16. Welcomes the progress made on integrating Italy and Austria into the Schengen system, and hopes that Greece will be able to join in the near future;
- 17. Calls on the United Kingdom and Ireland to involve themselves in the policies provided for in Title IV of the Treaty; taking account of the geographical situation of the United Kingdom and Ireland, calls on the two Member States to take a consistent approach on 'opting in' with regard to the Schengen *acquis*; and calls on the Schengen countries to encourage the 'opting in' of the two Member States by giving due attention to openness, transparency and legal certainty;
- 18. Points out that, with the exception of the United Kingdom and Ireland, all new Member States have been asked to apply controls at the Schengen internal frontiers; calls for the independent and impartial administration of justice, respect for individual rights and the principles of the rule of law, and their ties with ethnic minorities outside the European Union also to be taken into consideration when implementation of the Schengen rules by the applicant countries is assessed;

implementation of Article 2(2) of the Convention

- 19. Deplores the fact that France is continuing to make use of the exemption mechanism provided for in Article 2(2) of the Convention in respect of its land borders with Belgium and Luxembourg, despite the concerted efforts made by France and the Benelux countries to combat drug trafficking;
- 20. Notes the intention of Belgium and the Netherlands to carry out controls at the internal border during the European football championship in 2000; takes the view that measures to restrict the free movement of persons should be applied exclusively to individuals who represent a serious risk to public safety as a result of their past conduct and any previous convictions;

21. Deplores the lack of solidarity shown by the Schengen States in connection with the influx into Europe of Kurds from the Kurdish areas of Iraq and Turkey;

asylum policy

22. Considers that the entry into force of the Dublin Convention on 1 September 1997 has had a positive impact; notes that problems are continuing to arise in connection with determining which State is responsible for processing asylum requests;

operation of the Schengen 'information system'

23. Notes that the incident which occurred at the Belgian Sirene office, where personal data were stolen, has shown that the Sirene and N-SIS databases are not sufficiently well protected; demands that measures be taken at all levels to encode information, improve tracing procedures and reduce the number of users with special access;
24. Reiterates its call for improved coordination between the Schengen States as regards the entry of data into the SIS and ensuring that names are entered on police files only when real risks or specific criminal acts are involved, with due respect for the relevant international provisions laid down by the Council of Europe;

operation of the Joint Supervisory Authority

25. Welcomes the Executive Committee's acknowledgement of the importance of the JSA's role; calls nonetheless for the JSA to be given an independent structure and a budget large enough for it to be able to carry out its task of protecting citizens' rights; emphasises the importance of its being given a 'users' account' so as to facilitate controls on the C-SIS;
26. Notes that the JSA's opinions highlight the existence of serious problems regarding:
- the security of computerised personal data during processing and transmission;
 - illegal storage of data relating to wanted notices;
 - failure to respect the principle of data finalisation;
 - failure to respect individual rights in connection with the abusive use of identity data;
 - the lack of a right of appeal for persons recorded as having been refused entry to the area;
27. Calls for the Executive Committee to take proper account of the JSA's opinions and for action to be taken without delay on the recommendations contained therein; welcomes the undertaking given by the Presidency to shorten the Executive Committee's deadline for reply;
28. Instructs its President to forward this recommendation to the Council, the Commission and the Schengen Executive Committee, and to the governments and parliaments of the Member States, Norway, Iceland and the applicant countries.