

EUROPEAN PARLIAMENT



session documents

ENGLISH EDITION

27 February 1997

A4-0062/97

FILE COPY



REPORT

on the draft Council act drawing up the Convention on the establishment of the European Information System (EIS) (12029/94 - 9277/1/95 - C4-0249/95)

Committee on Civil Liberties and Internal Affairs

Rapporteur: Mrs Anna Terrón i Cusí

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PE 219.575/fin.

- * Consultation procedure
simple majority
- **I Cooperation procedure (first reading)
simple majority
- **II Cooperation procedure (second reading)
simple majority to approve the common position
majority of Parliament's component Members to reject or amend the common position
- *** Assent procedure
majority of Parliament's component Members to give assent
but simple majority under Articles 8a, 105, 106, 130d and 228 EC

- ***I Codecision procedure (first reading)
simple majority
- ***II Codecision procedure (second reading)
simple majority to approve the common position
majority of Parliament's component Members to adopt a declaration of intended rejection of the common position, and amend the common position or confirm its rejection
- ***III Codecision procedure (third reading)
simple majority to approve the joint text
majority of Parliament's component Members to reject the Council text

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By letter of 14 June 1995 the Presidency of the European Union forwarded to Parliament the draft Council act drawing up the Convention on the establishment of the European Information System (EIS).

At the sitting of 10 July 1995 (OJ C 249, 25 September 1995) the President of Parliament announced that he had referred this proposal to the Committee on Civil Liberties and Internal Affairs as the committee responsible and the Committee on Legal Affairs and Citizens' Rights, the Committee on Budgetary Control and the Committee on Economic and Monetary Affairs and Industrial Policy for their opinions.

At its meeting of 6 September 1995 the Committee on Civil Liberties and Internal Affairs appointed Mrs Anna Terrón i Cusí rapporteur.

At its meeting of 23 October 1995 it decided to consider petition No 461/95 in the context of this report.

It considered the draft Convention and the draft report at its meetings of 8 and 9 July 1996, 20 and 21 January 1997 and 24 and 25 February 1997.

At the last meeting it adopted the draft legislative resolution by 23 votes to 1.

The following were present for the vote: D'Ancona, chairman; Reding, Vinci and Wiebenga, vice-chairmen; Terrón i Cusí, rapporteur; Andrews, Bontempi, Cederschiöld, Colombo Svevo, De Luca, Ford, Gomolka, Hernandez Mollar, Lindeperg, Marinho, McKenna (for Roth, pursuant to Rule 138(2)), Lindholm, Mohamed Ali, Nassauer, Oostlander, Pirker, Schaffner, Schulz, Stewart-Clark, Van Lancker, Wilson and Zimmermann.

The opinions of the Committee on Legal Affairs and Citizens' Rights, the Committee on Budgetary Control, and the Committee on Economic and Monetary Affairs and Industrial Policy are attached.

The report was tabled on 27 February 1997.

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

A
LEGISLATIVE PROPOSAL

Draft Council act drawing up the Convention on the establishment of the European Information System (EIS) (12029/94 - 9277/1/95 - C4-0249/95)

The proposal is approved with the following amendments:

<u>Text proposed by the Council</u>	<u>Amendments by Parliament</u>
DRAFT ACT	
(Amendment 1)	
<u>DRAFT COUNCIL ACT of... drawing up the Convention on the establishment of the European Information System</u>	Deleted
<u>THE COUNCIL OF THE EUROPEAN UNION</u>	Deleted
<u>HAVING REGARD to the Treaty on European Union, and in particular Article K.3(2)(c) thereof:</u>	Deleted
<u>WHEREAS for the purposes of achieving the objectives of the Union, the Member States regard the rules governing the crossing by persons of the external borders of the Member States and exercise of controls thereon, judicial cooperation and police cooperation as matters of common interest coming under the cooperation provided for in Title VI of the Treaty;</u>	Deleted
<u>HAS DECIDED on the drawing up of the Convention, the text of which is annexed, which has been signed this day by the Representatives of the Governments of the Member States of the Union;</u>	Deleted
<u>RECOMMENDS that it be adopted by the Member States in accordance with their respective constitutional requirements.</u>	Deleted

DRAFT CONVENTION

(Amendment 2)
Title and citations

CONVENTION drawn up on the basis of Article K.3 of the Treaty on European Union on the establishment of the European Information System

Council Regulation (EEC) No...of...establishing a European Information System to assist in checks at external frontiers and the free movement of persons

THE HIGH CONTRACTING PARTIES to the present Convention, Member States of the European Union,

The Council of the European Communities,

REFERRING to the Act of the Council of the European Communities of...

Having regard to the Treaty establishing the European Economic Community, and in particular Article 235 thereof,

Having regard to the amended proposal of the Presidency(1)

(1) 9277/1/95 CK 4.36 REV 1

Having regard to the opinion of the European Parliament,

(Amendment 3)
Recitals

Considering the common objective of an area without internal frontiers in which persons can move freely in accordance with the provisions of Article 7a of the Treaty establishing the European Community;

Whereas the removal of internal frontiers has created a situation such that checks on persons must be carried out in some other way and whereas Community-wide computerized systems are required for this;

Considering the common objective of the maintenance and development of an area of freedom, security and justice in which the free movement of persons is ensured as provided for in Article 7a;

Whereas the attainment of this objective implies that progress be made in solidarity and cooperation between the Member States of the European Union, in particular by means of effective checks on persons at the external frontiers of those States conducted in accordance with jointly agreed rules;

Whereas the attainment of this objective also implies that progress be made in police and judicial cooperation between the Member States of the European Union, notably through the rapid dissemination of information on persons who need to be sighted, reported or arrested;

Whereas such progress must enable public order and security to be maintained and illegal immigration to be effectively countered;

Whereas to this end the basis should be the information exchange system implemented by the countries signatory to the Convention applying the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at their common borders, signed on 19 June 1990,

Whereas the attainment of this objective implies that progress be made in solidarity and cooperation between the Member States of the European Union, in particular by means of effective checks on persons at the external frontiers of those States conducted in accordance with jointly agreed rules;

Whereas the attainment of this objective also implies that progress be made in customs, police and judicial cooperation between the Member States of the European Union, notably through the rapid dissemination of information on persons who need to be sighted, reported or arrested;

Whereas such progress must enable public order and security to be maintained and illegal immigration to be countered effectively and in accordance with the principle of the rule of law;

Whereas to this end the basis should be the information exchange system implemented by the countries signatory to the Convention applying the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at their common borders, signed on 19 June 1990,

Whereas consideration should be given to Council of Europe Convention 108 for the Protection of Individuals with regard to the Automatic Processing of Personal Data (1981);

Whereas it is desirable to acknowledge the possibility of opening up the Information System to participation by third countries which share the interest of the Community and its Member States in achieving the objectives of the Information System through agreements concluded between such countries and the Community;

Whereas the present Regulation may be modified, where appropriate, after a period of three years has elapsed, with a view to taking a decision on a possible extension of the tasks of the Information System, in particular in the light of the development of Community powers:

Whereas although Article K.1 of the Treaty on European Union refers to controls at the external borders, the powers under Title VI of the Treaty apply only if there are no Community powers, and whereas this is an issue which is intimately linked with the freedom of movement of persons:

Whereas the Treaty provides no other powers than those contained in Article 235 for the establishment of this Regulation:

(Amendment 4)
Article 1(1)

1. The Member States of the European Union shall set up and maintain a joint information system, hereinafter referred to as the European Information System, consisting of a national section to be established and maintained in each of the Member States and a separate technical support function. The European Information System shall enable the authorities designated by the Member States, by means of an automated search procedure, to have access to reports on persons and objects for the purposes of border checks and controls and other police and customs checks carried out within the territory of each Member State in accordance with international law, and, for the category of information referred to in Article 5 of this Convention, for the purposes of issuing visas and residence permits and the administration of aliens in the context of the application of the provisions of the Convention between the Member States of the European Communities on the Crossing of their External Frontiers, hereinafter referred to as the External Frontiers Convention.

(The word 'Convention' to be replaced with the word 'Regulation' whenever it occurs)

1. The Member States of the European Union and the Commission shall set up and maintain a joint information system, hereinafter referred to as the European Information System, consisting of a national section to be established and maintained in each of the Member States and a separate technical support function. The European Information System shall enable the authorities designated by the Member States, by means of an automated search procedure, to have access to reports on persons and objects for the purposes of border checks and controls and other police and customs checks carried out within the territory of each Member State in accordance with international law, and, for the category of information referred to in Article 5 of this Regulation, for the purposes of issuing visas and residence permits and the administration of aliens in the context of the application of the provisions of the Regulation between the Member States of the European Communities on the Crossing of their External Frontiers, hereinafter referred to as the External Frontiers Regulation.

(The word 'Convention' to be replaced with the word 'Regulation' whenever it occurs)

(Amendment 5)

Article 1(3)

3. Member States shall set up and maintain jointly, and with joint liability for risks, the technical support function of the European Information System, the responsibility for which shall be assumed by the French Republic: the technical support function shall be located in Strasbourg. The technical support function shall consist of a data file which will be used to ensure that the data files of the national sections are kept identical by the on-line transmission of information. The data file of the technical support function shall contain reports on persons and objects where these are of concern to all the Member States. The data file of the technical support function shall contain no other data than those referred to in this paragraph and in Article 19.

3. The Commission shall set up and maintain and shall be responsible, subject to its powers, for the technical support function of the European Information System, the appropriate work for which shall be carried out by the French Republic on the responsibility of the Commission: the technical support function shall be located in Strasbourg. The technical support function shall consist of a data file which will be used to ensure that the data files of the national sections are kept identical by the on-line transmission of information. The data file of the technical support function shall contain reports on persons and objects where these are of concern to all the Member States. The data file of the technical support function shall contain no other data than those referred to in this paragraph and in Article 19.

(Amendment 6)

Heading (new) - OBJECTIVE

Article 1a (new)

Article 1a

1. The European Information System is a system which in principle provides customs, police and judicial authorities with information concerning criminal acts and threats to public order which are so serious that, in the Community where the free movement of persons is possible,

(a) notification may be useful for the police and justice authorities of other Member States,

(b) on the basis of the information persons may be arrested or extradited,

(c) cross-border cooperation in one form or another is needed.

The European Information System may under no circumstances contain information of purely local or national importance.

2. The European Information System can also play a part in:

(a) a common asylum policy.

(b) visa policy.

(c) ascertaining whether a missing person is still alive.

(Amendment 7)

Article 1b (new)

Article 1b.

Whenever personal data are provided by the European Information System, the reason for providing such data and the category into which they fall must be clearly stated on the screen.

(Amendment 8)

Article 2

The purposes of the European Information System shall be to maintain public order and security, including state security, and to allow for the operation of the External Frontiers Convention, in particular in order to support the implementation of the principle of free movement of persons in accordance with the Treaty establishing the European Community, using information transmitted by the system.

The purposes of the European Information System shall be to allow for the operation of the External Frontiers Regulation, both within the territory of the EC and at the external frontiers, without any loss of security, in particular in order to support the implementation of the principle of free movement of persons in accordance with the Treaty establishing the European Community, using information transmitted by the system.

(Amendment 9)
Article 3(4)

4. Insofar as a Member State considers that a report in accordance with Articles 4, 6 or 8 is incompatible with its national law, its international obligations or essential national interests, it may subsequently have added to the report in the data file of its national section of the European Information System a note to the effect that the action referred to will not be taken in its territory in connection with the reasons for the report and in this circumstance must consult all other Member States. If the reporting Member State does not withdraw the report, it will continue to apply in full for all other Member States.

4. Insofar as a Member State considers that a report in accordance with Articles 4, 6 or 8 is incompatible with its national law, its international obligations or essential national interests, it may subsequently have added to the report in the data file of its national section of the European Information System a note to the effect that the action referred to will not be taken in its territory in connection with the reasons for the report and in this circumstance must consult the Commission and all other Member States. If the reporting Member State does not withdraw the report, it will continue to apply in full for all other Member States.

(Amendment 10)
Article 4(1)

1. Data relating to persons wanted for arrest for extradition purposes shall be included at the request of the competent authority of the requesting Member State.

1. Data relating to persons wanted for arrest for extradition purposes shall be included at the request of the competent authority of the requesting Member State. Such a report shall be possible only if the circumstances justifying arrest in the original Member State apply and the requisite formalities have been completed.

(Amendment 11)
Article 8(2)

2. Such a report may be made for the purposes of preventing criminal offences and for the prevention of threats to public security:

- (a) where substantial evidence gives reason to believe that the person concerned intends to commit or is committing numerous and extremely serious offences, or;
- (b) where an overall evaluation of the person concerned, in particular on the basis of offences committed hitherto, gives reason to suppose that he will also commit extremely serious offences in future.

2. Such a report may be made for the purposes of maintaining public order, preventing criminal offences and for the prevention of threats to public security where substantial reliable evidence gives reason to believe that the person concerned intends to commit or is committing extremely serious offences or is implicated in such acts.

(Amendment 12)
Article 9(4)

4. In addition to these categories of objects, other categories of stolen, misappropriated or lost objects may be included in the European Information System by decision of the Executive Committee. Such a decision should also cover the length of time for retaining information in data as set out in Article 18 of this Convention.

In addition to these categories of objects, other categories of stolen, misappropriated, counterfeit and pirated goods or lost objects may be included in the European Information System by decision of the Executive Committee. Such a decision should also cover the length of time for retaining information in data as set out in Article 18 of this Regulation

Amendment 13)
Article 10 (2a) and (2b) (new)

2a. For as long as no common substantive visa policy and common asylum policy is in force, rejected asylum-seekers shall not in principle be included in the system; inclusion in the list of undesirable aliens shall take place only in the case of serious criminal activities.

2b. The Commission may only take note of general data, for example, number of records, categories and reasons for records, should this prove necessary for the functioning of the system. In order to deal with complaints the Commission may search the data relating to the complaint. The number of officials of the Commission gaining access to the system as a result shall be kept to a strict minimum.

(Amendment 14)
Article 10(4)

4. Each of the Member States shall communicate to the Executive Committee a list of the competent authorities which are authorized to search the data included in the European Information System directly. That list shall indicate for each authority the data which it may search, and for what purpose.

4. Each of the Member States shall communicate to the Commission a list of the competent customs, police and judicial authorities which are authorized to search the data included in the European Information System directly. That list shall indicate for each authority the data which it may search, and for what purpose.

(Amendment 15)
Article 17(1)

1. Personal data included in the European Information System on the basis of Articles 4 to 8 shall be kept only for the time required to achieve the purpose for which they were supplied. No later than three years after their inclusion, the need for their retention must be reviewed by the reporting Member State. This period shall be one year in the case of reports referred to in Article 8.

1. Personal data included in the European Information System on the basis of Articles 4 to 8 shall be kept only for the time required to achieve the purpose for which they were supplied. No later than one year after their inclusion, the need for their retention must be reviewed by the reporting Member State.

(Amendment 16)
Article 20(1)

1. The right of any person to have access to data relating to him which are included in the European Information System shall be exercised in accordance with the law of the Member State before which he invokes that right. If the national law so provides, the national supervisory authority provided for in Article 31 shall decide whether information shall be communicated to him and by what procedures. A Member State which has not made the report may communicate information concerning such data only if it has previously given the reporting Member State an opportunity to state its position.

1. The right of any person to have access to data relating to him which are included in the European Information System shall be exercised in accordance with the law of the Member State before which he invokes that right. If the national law so provides, the national supervisory authority provided for in Article 31 shall decide whether information shall be communicated to him and by what procedures. A Member State which has not made the report shall forward this request, via the Commission, to the Member State which has made the report.

(Amendment 17)
Article 20(2)

2. Communication of information to the person concerned shall be refused if it may undermine the performance of the legal task specified in the report, or in order to protect the rights and freedoms of others. It shall be refused in any event during the period of reporting for the purposes of sighting and reporting specified in Article 8 of this Convention.

2. Communication of information to the person concerned shall be refused if it may undermine the performance of the legal task specified in the report, or in order to protect the rights and freedoms of others. The person concerned shall be informed of the refusal, with the appropriate reasons, within two months in the case of normal refusal; in the case of sighting and reporting, notification of the refusal shall be given within two months, and the reasons shall be given no later than ten months thereafter.

(Amendment 18)
Article 22(3) and (4) (new)

3. An appeal to the national courts or authorities shall not, in any way, be prejudicial to the possibility of submitting disputes to the Court of First Instance or the Court of Justice of the European Communities or to the possibility of submitting questions to the Court of Justice of the European Communities for a preliminary ruling.

4. Decisions by the Court of First Instance or the Court of Justice of the European Communities shall oblige the Member States and the Commission to make any changes to the implementation of this Regulation which may be necessitated by those decisions.

(Amendment 19)
Article 25(a) and (b)

With regard to the automatic processing of personal data transmitted pursuant to Article 30(5), the following provisions shall also apply:

(a) the data may be used by the recipient Member State solely for the purposes for which this Convention stipulates that such data may be transmitted; such data may be used for other purposes only with the prior authorization of the Member State which transmitted the data and in compliance with the law of the recipient Member State; such authorization may be granted insofar as the national law of the Member State transmitting the data permits:

(b) the data may be used only by the judicial authorities and by the departments and authorities carrying out a task or performing a function in connection with the aims mentioned in paragraph (a):

With regard to the automatic processing of personal data transmitted pursuant to Article 30(5), the following provisions shall also apply:

(a) the data may be used by the recipient Member State solely for the purposes for which this Regulation stipulates that such data may be transmitted;

(b) the data may be used only by the judicial authorities and by the departments and authorities designated pursuant to Article 10:

(Amendment 20)
Article 28(2)

2. Each Member State must take special measures to ensure the security of data when they are being transmitted to services located outside the territories of the Member States. Such measures must be communicated to the joint supervisory authority referred to in Article 32.

2. Each Member State must take special measures to ensure the security of data when they are being transmitted to its services located outside the territories of the Member States. Such measures must be communicated to the joint supervisory authority referred to in Article 32.

(Amendment 21)
Article 29

~~1. The measures necessary for the management, control, supervision and general operation of the Convention are taken by the High Contracting Parties meeting within the Council.~~

~~Deleted~~

~~2. They shall act without prejudice to the powers of the authority referred to in Article 32(1).~~

~~Deleted~~

~~3. Decisions shall be taken unanimously by the High Contracting Parties.~~

~~Deleted~~

(Amendment 22)
Article 30(6)

6. The Member States shall inform ~~one another, via the depository,~~ of the authorities referred to in paragraphs 1 and 4.

6. The Member States shall inform the Commission of the authorities referred to in paragraphs 1 and 4. The Commission shall be responsible for publishing this information in the Official Journal.

(Amendment 23)

Article 31(2)

2. Any person shall have the right to ask national supervisory authorities to check the data concerning him which are included in the European Information System, and the use which is made of such data. That right shall be governed by the national law of the Member State to which the request is made. If the data have been included by another Member State, the check shall be carried out in close coordination with that Member State's supervisory authority.

2. Any person shall have the right to ask national supervisory authorities to check the data concerning him which are included in the European Information System, and the use which is made of such data. That right shall be governed by the national law of the Member State to which the request is made. If the data have been included by another Member State, the request shall be forwarded, via the Commission, to the supervisory authority of the Member State which has included the data. The request shall be dealt with within two months.

(Amendment 24)

Article 32(1)

1. A joint supervisory authority shall be set up, with responsibility for supervising the technical support function of the European Information System. This authority shall consist of not more than two representatives from each national supervisory authority. Each Member State shall have one vote.

1. A joint supervisory authority shall be set up, with responsibility for supervising the use and functioning of the European Information System. This authority shall consist of not more than two representatives from each national supervisory authority and the Commission, which shall chair the authority. Each Member State shall have one vote. The Commission shall have a casting vote.

Supervision shall be exercised in accordance with the provisions of the Convention, of the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to the Automatic Processing of Personal Data, taking into account Recommendation R(87)15 of 17 September 1987 of the Committee of Ministers of the Council of Europe regulating the use of personal data in the police sector, and in accordance with the national law of the Member State responsible for the technical support function.

Supervision shall be exercised in accordance with the provisions of the Regulation, of the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to the Automatic Processing of Personal Data, taking into account Recommendation R(87)15 of 17 September 1987 of the Committee of Ministers of the Council of Europe regulating the use of personal data in the police sector, and in accordance with the national law of the Member State responsible for the technical support function.

(Amendment 25)
Article 32(2)

2. ~~As regards the technical support function, the joint supervisory authority shall have the task of checking that the provisions of this Convention are properly implemented. For this purpose it shall have access to the technical support function.~~

2. ~~Notwithstanding the powers of the Commission,~~ the joint supervisory authority shall have the task of checking that the provisions of this Regulation are properly implemented. For this purpose it shall have access to the technical support function.

(Amendment 26)
Article 32(4)

4. Reports drawn up by the joint supervisory authority shall be forwarded to the authorities to which the national supervisory authorities submit their reports.

4. Reports drawn up by the joint supervisory authority shall be forwarded ~~to the Commission, the Council, the European Parliament and~~ to the authorities to which the national supervisory authorities submit their reports.

(Amendment 27)
Article 33

1. The costs of setting up and using the technical support function referred to in Article 1(3), including the cost of means of communications between the national sections of the European Information System and the technical support function, shall be ~~defrayed jointly by the Member States. Each Member State's share shall be determined according to the proportion of its gross national product to the sum total of the gross national products of the Member States for the year preceding the year in which the costs are incurred. For the purposes of this Article the expression 'gross national product' means the gross national product determined in accordance with Council Directive 89/130/EEC of 13 February 1989 or any amending or replacing Community instrument.~~

1. The costs of setting up and using the technical support function referred to in Article 1(3), including the cost of means of communications between the national sections of the European Information System and the technical support function, shall be ~~borne by the budget of the European Community~~ .

2. The costs of setting up and using the national section of the European Information System shall be borne by each Member State individually.

2. The costs of setting up and using the national section shall be borne by each Member State individually

(Amendment 28)
Article 35

This Convention shall not be subject to any reservations, save for those referred to in Article 4(8).

In the third year after the entry into force of this Regulation the Commission shall submit to the European Parliament and the Council a report on what has been achieved by the European Information System, together with proposals for modifying or extending the tasks of the System, in particular in the light of developments in the powers of the Community.

(Amendment 29)
Article 36

1. This Convention shall be subject to adoption by the Member States in accordance with their respective constitutional requirements.

Deleted

2. The Member States shall notify the depositary of the completion of their constitutional requirements for adopting this Convention.

Deleted

3. This Convention shall enter into force on the first day of the month following the expiry of a period of two months after the notification referred to in paragraph 2 by the last State, belonging to the European Union on the date of the adoption by the Council of the act establishing this Convention, to fulfil that formality.

Deleted

4. This Convention shall be applied four months after the date of its entry into force or, at the earliest, on the same date as the entry into force of the Convention on the crossing by persons of the external frontiers of Member States of the European Union.

Deleted

4. This Convention shall be applied four months after the date of its entry into force or, at the earliest, on the same date as the entry into force of the Convention on the crossing by persons of the external frontiers of Member States of the European Union. Deleted

5. Nevertheless, if the High Contracting Parties meeting within the Council find that the European Information System would not be operational and accessible in all Member States by the scheduled date, they shall, by a decision taken unanimously, postpone the implementation of this Convention until a later date. Deleted

This Regulation shall enter into force one year after publication in the Official Journal. It shall be binding in its entirety and directly applicable in all Member States.

(Amendment 30)
Article 37

1. This Convention shall be open to accession by any state that becomes a member of the European Union. Deleted

2. The text of the Convention in the language of the acceding Member State, as drawn up by the Council of the European Union, shall be authentic. Deleted

3. The instruments of accession shall be deposited with the depositary. Deleted

4. This Convention shall enter into force with respect to any acceding Member State on the first day of the month following the expiry of a period of four months after the date of deposit of its instrument of accession or on the date of entry into force of the Convention if it has not already entered into force at the time of expiry of the aforementioned period, but in no circumstances before the date of entry into force, with respect to the acceding Member State, of the Convention on the crossing by persons of the external frontiers of Member States of the European Union.

Deleted

5. Nevertheless, if the High Contracting Parties meeting within the Council find that the European Information System would not be operational and accessible by the scheduled date in the acceding Member State, they shall, by a decision taken unanimously, postpone the implementation of this Convention in respect of that Member State until a later date.

Deleted

(Amendment 31)
Article 38

1. Amendments to this Convention may be proposed by any Member State that is a High Contracting Party. Any proposed amendment shall be sent to the depositary, who shall communicate it to the Council and the Commission.

Deleted

2. Amendments shall be adopted by the Council, which shall recommend them to the Member States for adoption in accordance with their respective constitutional requirements.

Deleted

3. Amendments adopted in accordance with paragraph 2 shall enter into force in accordance with the provisions of Article 36(3).

Deleted

(Amendment 32)

Article 39

~~1. The Secretary-General of the Council of the European Union shall act as depositary of this Convention.~~ Deleted

~~2. The depositary shall publish in the Official Journal of the European Communities information on the progress of adoptions and accessions, implementation, declarations and reservations, and also any other notification concerning this Convention.~~ Deleted

(Amendment 33)

~~IN WITNESS WHEREOF, The undersigned Plenipotentiaries have hereunto set their hands.~~ Deleted

~~DONE at..... in a single original, in the Danish, Dutch, English, Finnish, French, German, Greek, Irish, Italian, Portuguese, Spanish and Swedish languages, each text being equally authentic, such original remaining deposited in the archives of the General Secretariat of the Council of the European Union.~~ Deleted

DRAFT LEGISLATIVE RESOLUTION

Legislative resolution embodying Parliament's opinion on the draft Council act drawing up the Convention on the establishment of the European Information System (12029/94 - 9277/1/95 - C4-0249/95)

(Consultation procedure: first reading)

The European Parliament,

- having regard to the amended Council proposal (12029/94 - 9277/1/95),
 - having been consulted by the Council pursuant to the second paragraph of Article K.6 of the Treaty on European Union (C4-0249/95),
 - having regard to Rule 58 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties and Internal Affairs and the opinions of the Committee on Legal Affairs and Citizens' Rights, the Committee on Budgetary Control and the Committee on Economic and Monetary Affairs and Industrial Policy (A4-0062/97),
1. Approves the Council proposal, subject to Parliament's amendments;
 2. Calls on the Council to notify Parliament should it intend to depart from the text approved by Parliament;
 3. Instructs its President to forward this opinion to the Council and Commission.

B EXPLANATORY STATEMENT

I. Introduction

Although the European Information System (EIS) is intended to replace the Schengen Information System (SIS), there are much more wide-ranging issues at stake. The Schengen treaties were intended as forerunners to an EC system. A provisional measure which is temporary in nature is subject to different requirements to a permanent measure. Temporary measures did not need to take much account of subsequent developments.

Article 142 of the Convention applying the Schengen Agreement of 14 June 1985 between the governments of the states of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, with the appropriate Final Act, Protocol and Joint Statement, adopted on 19 June 1990 in Schengen (Schengen Convention), explicitly provided for parts of the Convention to be replaced piecemeal by measures taken by the EC Member States as a whole. One recent factor complicating an already complicated situation is the enlargement of Schengen to involve non-EC Member States.

A number of computerized systems have been, or are being, set up under the auspices of the Union for the storage or exchange of policy, police or personal data or data on drugs. The least well-known systems are: CIREFI⁽¹⁾, CIREA⁽²⁾, Eurodac (for fingerprints) and a 'clearing house', to which may be added immigration statistics⁽³⁾, the drugs observatory and RETOX⁽⁴⁾. The systems that are better known are EUROPOL⁽⁵⁾ and the Customs Information System⁽⁶⁾.

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- (¹) Centre for Information, Discussion and Exchange on the Crossing of Frontiers and Immigration. There is no wish to develop the current system, which is based on very rudimentary computer programs (the system actually consists of using various diskettes from the Member States).
- (²) Centre for Information, Reflection and Exchange on Asylum. There is no wish to develop the current system, which is based on very rudimentary computer programs (the system actually consists of using various diskettes from the Member States).
- (³) In the past there was talk of an immigration observatory. Although the Commission has had feasibility studies carried out, the current situation involving EUROSTAT statistics is satisfactory, and it may therefore be assumed that an observatory will probably not be created.
- (⁴) OJ L 36, 12.2.1993, p. 1
- (⁵) Convention based on Article K.3 of the Treaty on European Union on the establishment of a European Police Office (Europol Convention) - OJ C 316, 27.11.1995, p. 1 et seq.
- (⁶) Council Act of 26 July 1995 drawing up the Convention on the use of information technology for customs purposes (OJ C 316, 27.11.1995, p. 33), the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the use of information technology for customs purposes (OJ C 316, 27.11.1995, p. 34) and the Agreement on provisional application between certain Member States of the European Union of the convention drawn up on the basis of Article K.3 of the Treaty on European Union on the use of information technology for customs purposes (OJ C 316, 27.11.1995, p. 58).

II. Consultation of the European Parliament and the national parliaments

By letter of 14 June 1995 the French Presidency forwarded a draft EIS Convention to the European Parliament with a reference to Article K.6. Although it is not clear from the text of the letter whether the European Parliament is being consulted, it is Parliament's duty to deliver an opinion. Since the proposal is for a convention within the meaning of Article K.3 of the Union Treaty and this convention has not yet been adopted, it is necessary to submit amendments to the proposed text. It should be noted that the European Parliament must be consulted on the adoption of conventions pursuant to Article K.6, but the national parliaments are faced with a *fait accompli*. If they have any influence at all they can only give their approval or (if necessary) withhold ratification, but there is no scope for amending the texts.

III. Legal basis and relationship with the EC Treaty

Article K.1 of the Union Treaty specifically refers to the crossing of external borders (point 2), immigration policy regarding nationals of third countries (point 3), judicial cooperation in civil matters (point 6) and criminal matters (point 7), customs cooperation (point 8) and police cooperation for the purposes of preventing and combatting terrorism, unlawful drug-trafficking and other serious forms of international crime (point 9).

However, the EIS covers another area. The main purpose of the EIS is to provide a compensatory measure in relation to the free movement of persons - an area for which the Community has exclusive powers pursuant to Article 7a of the EC Treaty. Article K.1 provides, quite superfluously, that the cooperation described in K.1 applies 'without prejudice to the powers of the European Community'. Because of the exclusive Community powers one would have expected Community rules for the EIS. It needs to be pointed out that checks at external borders are mentioned not only in Article K.1, point 2, but also in Article 3(d) of the EC Treaty under the concept of 'entry'. The European Parliament has already expressed its opinion on a number of occasions that in view of the fact that the free movement of persons should have become a reality in 1958, checks at external borders on persons should be covered in the same way as checks on goods. It would then be possible to refer to a 'Community power'.

If we look at the substance of the EIS (see point IV, below), it is even more obvious that Community legislation is appropriate: although the EIS is concerned with police cooperation, it is not specifically concerned with terrorism, illegal drug-trafficking and other forms of international crime.

The main objective of the EIS is to sight and monitor the movements of persons wanted 'nationally', which is no longer always possible at the national level because of the removal of internal borders. The recitals of the Convention clearly acknowledge the links with Article 7a. In our opinion, the clear preference for a reference to Article 235 of the EC Treaty is therefore justified⁽⁷⁾.

⁽⁷⁾ In the preparatory phase to the IGC a number of proposals were made seeking to give a Community dimension to the whole question of external borders. The rapporteur accepts the general trend expressed in Parliament on a number of occasions that, given the reference to Article 3(d) of the EC Treaty, there are grounds for a broad interpretation of Community powers. However, most Member States have made it clear that they do not (yet) accept Community powers in this area.

This has the following advantages:

- proper consultation of Parliament
- speedy entry into force (entry into force can take almost ten years with a Convention; see, for example, the Dublin and Schengen agreements)
- easier to amend subsequently
- a clear role for the Commission
- Community jurisdiction.

IV. Data recorded by the EIS

Article 3(2) and (3) indicate what types of data are recorded:

- a. persons reported
- b. objects referred to in Article 9 and vehicles referred to in Article 8
- c. name and forename, with any aliases possibly recorded separately
- d. any particular objective and permanent physical feature
- e. first letter of second forename
- f. date and place of birth
- g. sex
- h. nationality
- i. whether the persons concerned are armed
- j. whether the persons concerned are violent
- k. reason for the report
- l. action to be taken.

The data are used primarily for arrest or extradition purposes (Article 4) and, secondarily, to refuse entry (Article 5). Data are also included on missing persons or persons who need to be placed provisionally in a place of safety in their own interests (Article 6, simplified by the rapporteur), data relating to witnesses, suspects or persons to be notified of a criminal judgment whose place of residence is sought (Article 7); on the basis of the data sighting and specific checks are carried out on persons or vehicles (Article 8) and objects can be traced (Article 9).

All these actions are very wide-ranging and they need to be examined very carefully from the point of view of protection of fundamental freedoms and privacy.

V. The element of privacy

With regard to the protection of personal data Europol, the CIS (the European Customs Information System) and the EIS refer to the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to the Automatic Processing of Personal Data and Recommendation R(87) 15 of 17 September 1987 of the Council of Ministers of the Council of Europe regulating the use of personal data in the police sector⁽⁸⁾. This seems fair enough, but it is neither wholly satisfactory nor consistent. Firstly, it is not entirely clear whether all Member States will have ratified and transposed the Council of Europe instruments before ratification of the EIS Convention. It would appear that the Member States are far more interested in police cooperation

⁽⁸⁾ Article 24.

and the exchange of information that in citizens' rights. Secondly, there are EC initiatives for the protection of personal data (for example, Directive 95/46/EC), too, although these do not cover activities under the second and third pillars of the Union Treaty.

VI. Protection of the Community's financial interests

In view of the extent of fraud involving the Community's financial resources, the Committee on Civil Liberties and Internal Affairs calls for consideration to be given to this matter. In addition to Europol's 'intelligence work' there are grounds for including in a computerized system, for the purposes of assistance and sighting, the areas for which the Community is responsible: management of own resources and the fight against money laundering. Given the complications that have arisen in setting up the SIS, the different legal basis and the fact that some Member States which are part of the Schengen Group are still not able to take part in the SIS after all these years, the rapporteur favours phased integration (see above), although she fully supports the priority objective of including the abovementioned subjects in the EIS.

VII. The role of the system with regard to refugees and visa applicants

The EIS, like the SIS (Schengen Information System), is assigned a function with regard to refugees and visa applicants. Article 5 states that the EIS is the computerized system referred to in Article 13 of the External Frontiers Convention and contains the joint list referred to in Article 10 of that Convention of persons to be refused entry to the territory of the Member States. This is a dangerous move if the substantive right of asylum and substantive visa policy have not yet been harmonized at EU level. Persons whose applications for recognition as Convention refugees have been turned down or who are not admitted to the procedure can easily end up in the EIS category of 'undesirable aliens'. Given that entirely different criteria apply to visas for tourist purposes and for asylum applications, such a practice would be undesirable and unintentional. One solution would be to provide as strict a definition as possible of the category of 'undesirable aliens', and to restrict this category to criminals in the usual sense of the word.

VIII. EIS, EUROPOL, DIS and a future overall structure

One thing which is obvious is that because of the data recorded and the fact that the EIS will also be used by customs services (see Article 1(1) and Article 10 of the proposal), there will be an overlap between the EIS and the part of the CIS concerned with crime which also contains data on persons.

The literature refers to three main objectives of exchanging police information: 'intelligence', 'assistance' and 'sighting'. 'Intelligence' covers the collection of specific information, standardized processing (crime analyses) and dissemination of results, both in general and with regard to a specific restricted action. 'Assistance' is the simple exchange of information on request, or at one's own initiative, to support investigation services in relevant matters. The 'sighting' aspect involves disseminating information with a view to tracing persons, vehicles or objects⁽⁹⁾.

⁽⁹⁾ For further information see: Patrick ZANDERS: Verhouding tussen Schengen - Europol - Interpol en de communicatie van politiediensten in de grensgebieden, in 'Schengen en de Belgische Politiediensten', ed. L. Van Oustrive, Centre for Police Studies.

The Europol system is concerned mainly with 'intelligence'. The EIS, CIS and the SIS provide for assistance and, more importantly, sighting. This only serves to complicate matters with regard to Europol and to make the question of protecting citizens from the state more sensitive. Europol is principally a 'study club', but because the word 'police' appears in its title and because the politically vexed issue of combating terrorism is linked with Europol, long discussions preceded the setting up of this organization. The SIS and the EIS, too, appear to be easier to accept without any discussion. But this is quite wrong! Extra care must be exercised in setting up systems such as the SIS, CIS and EIS.

To return to the overlap between the systems, the rapporteur is of the opinion that the Europol, EIS and CIS (crime) systems will eventually have to be harmonized..

There is clearly a place for an intelligence unit (Europol) and a separate place for managing assistance and sighting.

In the first place the EIS should be set up now. The next priority is to integrate a system which can serve to combat fraud and corruption involving the financial resources of the Community (in addition to the 'intelligence' part which must be carried out by Europol) and money laundering. In addition, in the rapporteur's opinion, it would not involve too much effort to integrate the personal data part of the CIS which is currently situated in the third pillar. Only at a later date, after asylum and immigration policy have been harmonized and given a Community dimension, would it be appropriate to integrate a definitive system of fingerprinting, immigration and asylum in the EIS with a view to replacing Eurodac, CIREFI and CEREAs as they are currently structured.

IX. Role of the Court of Justice of the European Communities

With regard to Schengen, a number of parliaments of the Member States have objected to the fact that there is no judicial supervision by the Court of Justice and hence that there is no guarantee of uniform interpretation of the agreement and the Convention. Nor does the draft EIS Convention assign a role to the Court of Justice. This is all the more regrettable now that a breakthrough has been achieved with regard to the Court's role in respect of Europol. However, the role of the Court should go much further than the role it currently has with regard to Europol, since to a large extent Europol is concerned with investigations. The central feature of the EIS, by contrast, is the recording of specific personal data. In our opinion, the Court and the Court of First Instance should therefore be involved with regard to dealing with complaints from citizens and with a view to uniform interpretation. Converting the Convention to a Regulation would make this change automatically. However, with regard to Article 22, clarification of the current 'European citizen' is needed.

X. Relationship with the External Frontiers Convention

As it stands at present the EIS is linked to the External Frontiers Convention. At no point is any sound reason given for this link. A Community scheme cannot be made dependent on a convention under Title VI of the Union Treaty. Nor is there any reason for making such a connection because the main purpose of the EIS is to compensate for the lack of checks at internal borders. Checks at the external borders will be carried out come what may, regardless of whether there is an External Frontiers Convention. And checks within the territory of the EC are carried out come what may. It is not easy to see, therefore, why the setting up of the EIS has to wait until the conflict between

two Member States on the External Frontiers Convention has been resolved. If all Member States were to use this as a pretext to restrict the free movement of persons within the Community, they would be acting in contravention of what is clearly set out in Article 7a of the EC Treaty.

XI. Experience with the SIS - an object lesson

In the draft report on Schengen (PE 219.570), paragraphs 9-15 are concerned with the SIS. The report states that:

- the SIS is used as a database on 'undesirable aliens';
- the inclusion in the system of aliens discriminates against a group of people without any means of redress;
- homogeneity in recording data in the SIS leaves much to be desired;
- the remit of the SIS should be extended to include an exchange of information concerning the tracing of missing persons;
- the proliferation of databases in the EU leads to inefficiency and a lack of monitoring of the recording of data;
- inclusion in police records should be confined to the prevention of real threats or specific criminal action pursuant to the international rules of law in the framework of the Council of Europe;
- the joint supervisory authority for the protection of privacy has reported arrests of persons who have been wrongly included in the SIS; and
- there is a need for an effective joint supervisory authority with regard to protection of privacy and informing the public.

XII. Method of amending the proposal: some specific explanatory remarks

In view of the foregoing the rapporteur has a number of suggestions and changes and refers to the excellent opinions (attached) which also contain amendments. In order to maintain the structure of the Council proposal and to adopt as realistic an approach as possible to the text of the proposal, the amendments are kept to a minimum.

The recitals in the Convention are based on police and judicial cooperation. This implies that there is no duplication with the CIS, whereas the articles of the EIS Convention specifically refer to customs services and other administrative services. For the sake of clarity, it is therefore proposed that customs services be included in the recitals.

The Commission needs to be assigned a clear role in respect of setting up and managing the system. Given the unfavourable experience of the past with the development of the information technology concerning the SIS, we cannot accept the aim of the proposal to give the French government what amounts to considerable freedom of manoeuvre (see Article 1). However, with regard to the specific data the Commission will be given a role in order to take account of the principle of subsidiarity and the fact that because the data require proper protection of privacy they should be made available to as few officials as possible.

There are grounds (see Article 1a) for defining and spelling out a clear objective so that it is clear even to less experienced users of the system why a person appears in the system (Article 1b).

Use for purposes other than those provided for (see Article 25) must be prevented as far as possible.

The prevention of criminal activities (Article 8(2)) is an excellent aim. The extent to which the system will be successful in realising this aim is something which must be regarded with considerable scepticism, but the ability to include in the system everyone with a criminal record (letter b) is not a satisfactory solution from the human rights point of view. There must be some evidence at least that the person involved is planning or committing another crime if his name and data are to be included in the EIS.

The rapporteur would like the proposal to give definitions of the main terms; this might prevent blunders such as the reference to an Executive Committee (Article 9) - a body not defined in the proposal.

EUROPEAN PARLIAMENT

9 October 1996

OPINION

(Rule 147)

for the Committee on Civil Liberties and Internal Affairs

on the draft Council act drawing up the Convention on the establishment of the European Information System (12029/94 - C4-0249/95)

Committee on Legal Affairs and Citizens' Rights

Draftsman: Mrs Anne-Marie Schaffner

PROCEDURE

At its meeting of 25 and 26 July 1995 the Committee on Legal Affairs and Citizens' Rights appointed as draftsman Mr Luigi Florio, who was replaced on 16 January 1996 by Mrs Anne-Marie Schaffner.

At its meetings of 2 and 3 September and 2 and 3 October 1996 it considered the draft opinion and adopted the conclusions as a whole unopposed, with 1 abstention.

The following were present for the vote: Palacio, 2nd vice-chairman and acting chairman; Schaffner, draftsman, Añoveros Trias de Bes, Candal, Cot, Fontaine, Gebhardt, Nassauer, Oddy, Ullmann and Zimmermann.

I. INTRODUCTION

1. The Convention establishing the European Information System (EIS)⁽¹⁾ comes under the third pillar and is based on Article K.3 (2)(c) of the Treaty on European Union (TEU). This opinion has been drawn up on the basis of a draft convention dating from 1 December 1995 which has been considered by the Council in the normal way.
2. Parliament's involvement in the procedure is based on Article K.6 of the TEU, which provides for Parliament to be informed and/or consulted by the Council presidency (the requirement to provide information on matters relating to the third pillar also applies to the Commission). The nature of Parliament's involvement in third-pillar procedures was examined in greater depth in the opinion drawn up by the Committee on Legal Affairs and Citizens' Rights for the Committee on Civil Liberties and Internal Affairs on the subject of the Europol Convention⁽²⁾. Such

⁽¹⁾ Document 9277/1/95 CK 4 Rev. 1.

⁽²⁾ See second Nassauer report on Europol, A4-0061/96 of 29 February 1996, Part II. B, paragraphs 9 and 10, p. 22.

involvement, of whatever nature, has many shortcomings: it is unsystematic, it often depends on the goodwill of each presidency and, clearly, it lacks the judicial control guarantees associated with Parliament's involvement in the legislative process pursuant to Article 138b of the EC Treaty.

3. This means that the comments made in this opinion can only relate to the draft Convention; there is no guarantee or promise that, if the draft is amended in the course of the negotiations, the final version of the text will be made available to us before the Convention is concluded. Another shortcoming associated with this kind of involvement is the fact that Parliament is not even able to follow the discussions on the ultimate role to be allocated to the Court of Justice, i.e. whether or not it will be declared competent to interpret the provisions and give a ruling on any dispute concerning the application of the Convention. This power is provided for in Article K.3(2)(c), third subparagraph of the TEU, but the Council is apparently reserving the exclusive right of consideration on this topic, given that the questions concerning the Court of Justice are dealt with in a separate document, the acquisition of which is no easy matter⁽³⁾.

II. CONTEXT AND MAIN CHARACTERISTICS OF THE DRAFT CONVENTION

4. Against this background we shall study the draft Convention in order to outline the major aspects thereof. This will enable us to place the future Convention in its own context and to draw parallels with other instruments (conventions and other texts) referring to the same topic (see Part A). We shall then highlight certain particular points which, by virtue of their nature, define the system set up by the Convention and determine the objectives thereof (see Part B).

A. The context within which the draft Convention establishing the EIS may be viewed

5. The preamble to the draft Convention refers to 'the common objective of an area without internal frontiers' (first recital), which makes it essential:
 - for 'progress [to] be made in solidarity and cooperation between the Member States of the European Union, in particular by means of effective checks on persons at the external frontiers of those States conducted in accordance with jointly agreed rules' (second recital);
 - for 'progress [to] be made in police and judicial cooperation between the Member States of the European Union, notably through the rapid dissemination of information on persons who need to be sighted, reported or arrested' (third recital).
6. This means, therefore, that the draft Convention under consideration is more concerned with the means or even the preconditions for obtaining the common objective - i.e. the free movement of persons pursuant to Article 7a of the EC Treaty. The wording of the abovementioned recitals gives an immediate impression of the area within which the future Convention will lie: an area which lends itself admirably to police and judicial cooperation in criminal matters and within which there also exists a whole set of texts and instruments for international cooperation at European level. These are texts which have a bearing in several respects on the draft Convention and it is essential for us to determine the impact they will have

⁽³⁾ The document in question is 10429/1/95 CK 4 46 Rev. 1, which is referred to on the first page of the draft Convention under consideration.

on that Convention if we wish to have a clearer idea of the ground that needs to be covered (so to speak) if the Convention is to be fully and effectively implemented.

7. The instruments in question (without prejudice to the Conventions referred to in Article K.2(1)) are the following:
 - (a) the Convention implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of controls at common frontiers, which was signed on 19 June 1990. This set up the Schengen Information System (SIS) (see Article 92 et seq.) and laid down provisions for the protection of personal data (see Article 95 et seq. and Article 102 et seq.) and for the processing of such data (see Article 126 et seq.). The SIS therefore constitutes the basis, and even the model, on which the EIS has been devised.
 - (b) Application of the Convention on the crossing by persons of the external frontiers of Member States of the European Union, which currently exists in draft form (see C4-0251/95 of 5 July 1995) will be facilitated by the Convention establishing the EIS (in this connection see Article 2 of the latter). It is clear that the two Conventions overlap, in view of the large number of referrals to the first Convention which the draft Convention under consideration contains (see Articles 5, 10(2), 11(4) and 34). As proof of the indissoluble link between the two documents, Article 36(4) of the draft Convention states that 'this Convention shall be applied four months after the date of its entry into force or, at the earliest, on the same date as the entry into force of the Convention on the crossing by persons of the external frontiers of Member States of the European Union.' At the time of writing, conclusion of this Convention is still a long way off⁽⁴⁾.
 - (c) The European Convention on Extradition of 13 December 1957, which was concluded by the Council of Europe, and the Benelux Treaty of 28 June 1962 on Extradition and Mutual Assistance in Criminal Matters (as amended by the Protocol of 11 May 1974) serve as a reference framework, particularly in the case of Article 4(2) of the draft convention, which states that a report included in the EIS shall have the same force as a request for provisional arrest under Articles 16 and 15 respectively of the abovementioned Conventions.
 - (d) The Council of Europe Convention of 28 January 1981 on the protection of personal data and the Council of Europe Committee of Ministers Recommendation R (87)15 of 17 September 1987 regulating the use of personal data in the police sector are two documents which, in their field, represent the highest degree of harmonization at European level (since they go beyond the frontiers of the European Union). The fact that they are mentioned in two major provisions of the draft Convention - Articles 24 and 32 - makes them essential to the effective application thereof.
8. A final remark in order to prevent any misunderstanding on this subject: Directive 94/46/EC of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data⁽⁵⁾ does not apply to the draft Convention since,

⁽⁴⁾ See the opinion in letter form of the Committee on Legal Affairs and Citizens' Rights for the Committee on Civil Liberties and Internal Affairs (PE 214.181/fin.), which was adopted on 24 April 1996.

⁽⁵⁾ OJ L 281, 23.11.1995, p 31.

under Article 3(2), first subparagraph of the Directive, second- and third-pillar activities are explicitly excluded from the scope thereof.

B. Main characteristics of the draft Convention establishing the EIS

9. Under this heading, four general remarks will be made which bring together certain questions relating to the system established and to the application thereof.

(a) The system established

10. Like the SIS the EIS consists of two parts: a national section to be established and maintained in each of the Member States and a separate technical support function. The latter will be located in Strasbourg and responsibility for operating it will be assumed by the French Republic (see Article 1). This 'twin-arm' system inevitably has the disadvantage that each Member State will apply two separate laws: its own law and that of the convention. The problem will in all likelihood arise in respect of the reporting procedure laid down in Article 4, the actions required under that procedure and the data included in the national section of the EIS (see Article 13), to mention just the main activities of the system. It is clear that the difficulties will be compounded if the Member States' international obligations do not fully converge.

(b) The multiplicity of international instruments in relation to the Convention establishing the EIS

11. The problems here are of two kinds:

- firstly, the question of differing interpretations of the international instruments referred to. The likelihood of this may be greater or lesser: for example, Article 4(2) regards a report included in the EIS as equivalent to a request for provisional arrest under Article 16 of the European Convention on Extradition. However, it is not certain that the Member States which are party to the Convention (14 out of the 15 Member States) interpret it in the same way, given that they all expressed different reservations when ratifying the Convention or joining the EU. The matter could have become much more acute in relation to the Council of Europe Convention of 28 January 1981 on the protection of individuals with regard to the automatic processing of personal data, to which the draft Convention refers as a reference text. However, it may be noted that, by 1 July 1996, 14 Member States had already deposited their instruments of ratification in respect of that Convention which, incidentally, does not allow any expression of reservations (see Article 25 thereof) and should not, in theory, create any problems.
- The second problem concerns the entry into force and the effective application of the Convention establishing the EIS where other Conventions appear to be genuine suspensory conditions. This is the case with the abovementioned Convention of 28 January 1981, the principles of which should serve as a basis for the high level of protection to be provided by national provisions 'not later than the time of entry into force of this Convention' (see Article 24(1)); in the absence of provisions such as those prescribed in the preceding article 'the transmission of personal data provided for in this Convention may [not] take place' (see Article 24(2)). Furthermore, pursuant to Article 34, application of the Convention under

consideration is subject (as is indeed logical) to the application of the Convention on the crossing of external frontiers.

12. The effect of these observations may be that:

- (a) the entry into force of the EIS Convention will be considerably delayed, particularly in view of the fact that Article 36(3) thereof requires the Convention to be ratified by all the Member States;
- (b) the absence of uniformity in the applicable laws will strengthen the position of those who oppose any recognition of the Court of Justice's jurisdiction.
- (c) The establishment of a control authority

13. Apart from the national supervisory authorities responsible for monitoring the automatic processing of data and the transmission thereof (see Article 27), the setting up of a joint supervisory authority responsible for monitoring the EIS technical support function is extremely important in view of the fact that such monitoring will also be carried out in accordance with other instruments - such as the Council of Europe Convention of 28 January 1981 - which are better able to ensure uniformity amongst the various legal systems concerned (see Article 32).

(d) No reservations - provision for amending the Convention

14. Like the Convention of 28 January 1981 the draft Convention does not contain any provision for expressing reservations. This is perhaps unnecessary in so far as national law applies and, as regards reports, the Convention grants the Member States a genuine right of refusal for reasons relating to constraints based on national law (see Article 4(4)).

15. Under Article 38 there is provision for proposing amendments to the Convention but this right is granted only to Member States which are High Contracting Parties. The absence of the Commission should be noted, despite the fact that the ultimate objective pursued by the Convention is to secure the free movement of persons referred to in Article 7a of the EC Treaty.

III. CONCLUSIONS

16. In the light of the above remarks, the Committee on Legal Affairs and Citizens' Rights calls on the Committee on Civil Liberties and Internal Affairs, as the committee responsible, to incorporate in its report the following conclusions:

- A. The Convention establishing the European Information System (EIS) is a further step towards creating an area without internal frontiers within which there is free movement of persons pursuant to Article 7a of the EC Treaty.
- B. Police and judicial cooperation between the Members States of the European Union, in particular through the rapid dissemination of information on persons who need to be sighted, reported or arrested subject to the legal guarantees laid down by the Convention, will contribute to the achievement of the stated objective.

- C. The large number of international instruments which feature in the Convention demonstrates the importance of the questions dealt with; however, the overlap between them and their wide scope may constitute a further complicating factor which could even result in an indefinite delay in the actual application of the Convention.
- D. It is regrettable that there is no reference to the European Court of Justice. Despite the difficulties which recognition of the Court's role within the Convention may create, the involvement of the Court would strengthen legal certainty when the Convention is applied.
- E. Among the multilateral European legal instruments referred to in Article 4 of the draft Convention should be the recently concluded convention on improving extradition arrangements between European Union Member States.
- F. A refusal based on 'special reasons of expediency', although a standard indeterminate concept, may be justified in Article 8 but not in Article 4.
- G. It is paradoxical that the only practical goal stipulated in the penultimate recital, together with the maintenance of public order and security, is 'to enable illegal immigration to be effectively countered'. The European Information System is a key instrument for attaining other objectives which should have been placed on the same footing, i.e. the fight against international crime, drugs trafficking, etc.

EUROPEAN PARLIAMENT

22 November 1996

OPINION

(Rule 147)

for the Committee on Civil Liberties and Internal Affairs

on the Council act establishing the Convention on the European Information System
(12029/94 - C4-0249/95)

Committee on Budgetary Control

Draftsman: Mr Otto Bardong

PROCEDURE

At its meeting of 19 July 1995 the Committee on Budgetary Control appointed Mr Otto Bardong draftsman.

At its meeting of 19 November 1996 it considered the draft opinion.

At the last meeting it adopted the conclusions as a whole unanimously.

The following were present for the vote: Theato, chairman; Bösch, Colom I Naval, Garriga Polledo, Kellett-Bowman, Kjer Hansen, Müller, Rack, Tomlinson, Virrankoski and Wynn.

I. DRAFT COUNCIL ACT ESTABLISHING THE CONVENTION ON THE EUROPEAN INFORMATION SYSTEM - THE ENACTING TERMS OF THE CONVENTION

1. On 5 July 1995 the Council forwarded to the European Parliament a draft Council Act establishing the Convention on the European Information System. The representatives of the Member States of the Union have been asked to proceed to signature of that convention establishing a joint Information System, the ratification of which the Council has recommended to the Member States pursuant to Article K.3 of the Treaty on European Union.

2. The objective of the Convention creating the European Information System (EIS) is to improve the effectiveness of checks at the Union's external frontiers, in particular those on natural persons, while ensuring the solidarity and cooperation of the Member States and laying down jointly fixed standards for such checks.

3. Achieving this objective implies, in the Council's view, that progress will be made with police and judicial cooperation between Member States and the rapid dissemination of information on persons to be sought, investigated or arrested.

4. The objectives assigned also include maintaining public order and security and combating clandestine immigration.

5. The EIS originates with a transposition of the Implementing Convention to the Schengen Agreement of 14 June 1985 on the gradual elimination of checks at common borders signed on 19 February 1990 between certain Member States and outside the scope of the EEC and EU Treaties.

6. The EIS will authorize the authorities designated by the Member States to use an automated query procedure to retrieve descriptions of persons and objects in the course of border checks and verifications, as well as other police and customs checks carried out on the territory of each Member State in accordance with national law and, for the category of information referred to in Article 5 of the Convention, for the purpose of issuing visas and residence permits and admitting foreigners within the framework of the implementation of the provisions of the Conventions of the Member States of the European Communities relating to the crossing of external borders.

7. Each Member State will create and maintain, on its own account and at its own risk, its national part of the European Information System, the data file of which will be made materially identical, by means of the technical support function, to the data files held in the national parts of each of the other Member States. To enable fast and efficient transmission of data, each Member State will conform, when setting up its national part, to the protocols and procedures drawn up jointly by the Member States for the technical support function. The data file of the national part will be used for running automated queries on the territory of each of the Member States. Queries by a Member State addressing data files in the national parts belonging to other Member States will not be possible.

8. There is provision for the Member States to create and maintain, on their joint account and at jointly assumed risk, the EIS technical support function, responsibility for which is assumed by the French Republic. The technical support function is installed in Strasbourg. The technical support function consists of a data file that will be used to ensure that the contents of the data files in the national parts are identical by transmitting information on line. The technical support function data file will contain the descriptions of persons and objects where these are held to be important to all the Member States. The technical support function data file will not contain any data other than that referred to in this paragraph and in Article 19 of the Convention.

9. The items of information to be placed on the system will at the maximum be the following:

- name and forename;
- physical distinguishing features;
- initial of second forename;
- date and place of birth;
- sex;
- nationality;
- any indication that the persons concerned are armed;
- reason for the description;
- action to be taken.

10. There is provision in this connection for data relating to persons whose arrest is being sought for the purpose of extradition to be placed on the system at the request of the competent authority in the applicant Member State.

11. It will be for the Member State submitting a description to verify whether an arrest is authorized under the national law of the Member States addressed.

12. In the case of descriptions submitted for the purpose of securing an arrest the following information must be supplied:

- the authority from which the application for an arrest emanates;
- proof of the existence of an arrest warrant or an act having the same force in law or an enforceable judgment;
- nature and legal classification of the offence;
- description of the circumstances of the offence, including the time, the place, and the degree of involvement of the person described;
- to the extent possible, the consequences of the offence.

13. For a transitional period there is provision for the Member State addressed to defer the arrest procedure requested by the applicant Member State (Article 4 of the Convention).

14. In addition, provisions are laid down for data relating to witnesses, persons subpoenaed or to be served with notification of the judgment of a court or a sentence of deprivation of liberty, and to missing persons and minors reported missing.

15. There are also provisions for organizing an undercover surveillance or special investigation procedure.

16. ~~The specific categories of objects sought~~ for the purpose of seizure or for use as evidence that may be placed on the EIS can include:

- motor vehicles of any kind having a cylinder capacity greater than 50 cc;
- trailers and lorries over 750 kg;
- firearms;
- documents of any kind;
- identity documents;
- banknotes.

17. The Executive Committee of the Convention may extend this list.

18. The Convention rests on the following mechanisms:

- the law applicable to descriptions is that of the Member State submitting them;
- in the event of enforcement, the law applicable is that of the Member State addressed.

19. It is stipulated that data placed on the system relating to information concerning persons must be re-examined every three years and that relating to objects every year.

20. A number of safeguards are stipulated, in particular a right of access and to rectification of data, and a general principle of responsibility incumbent on the applicant Member State.

II. THE EUROPEAN INFORMATION SYSTEM WILL NECESSARILY INCLUDE INFORMATION RELATING TO THE PROTECTION OF THE COMMUNITY'S FINANCIAL INTERESTS

21. The European Information System (EIS) has not been set up expressly to ensure protection for the Community's financial interests. But the EIS is certain to include various items of information that incontestably will relate directly to instances of fraud against the Community budget (whether on the revenue or the expenditure side) and therefore be significant in terms of protecting the Community's financial interests (e.g. lists of persons convicted or sought by the authorities, etc.).

22. Two points therefore need to be considered:

1. The EIS is not primarily concerned with processing data relating to the identities of persons suspected or sought in connection with Community fraud, but it may well concern itself with this in future in an incidental fashion;
2. The type of fraud dealt with by the EIS cannot be expected to relate directly to the Community budget, for the reasons set out above, but could well include information relating to fraud committed by perpetrators (international crime, transnational undertakings) also responsible for fraud against the Community.

23. This means that operational links will necessarily have to be set up between the EIS and the officials responsible for combating fraud against the Community budget. The exchange of strategic information and assessments between the two entities will be necessary in this case.

In this connection it is worth pointing out that the last recital of the EUROPOL Convention states that Europol and the European Communities have a mutual interest, within the framework of the European Union, in establishing forms of cooperation enabling each of them to exercise their respective functions. No such option is provided for in the case of the EIS.

III. MECHANISMS OF COOPERATION BETWEEN THE COMMUNITY AND THE EIS IN THE AREA OF PROTECTION OF THE COMMUNITY'S FINANCIAL INTERESTS

24. The enacting terms relating to the EIS consequently do not provide for any institutional form of cooperation, in particular in the area of the submission or exchange of information or access for European officials responsible to national files.

25. There is no provision for the EIS to enter into relations with Community units. The right of access to the information system by Community officials is not provided for. Nor is the European Parliament's right to information about the activities engaged in by the EIS assured, and no form whatsoever of relations with Community bodies is envisaged.

Even the EIS budget is funded entirely from national contributions.

26. Establishing real cooperation with the Community, in particular in the area of legal protection of Community financial interests, is nevertheless necessary. Such cooperation requires:

- (a) that the Community become a genuine partner in the exchange of information, advice and strategic assessments, and thus have access to the system;
- (b) consequently, that the Community establish a liaison unit, which could be provided by the Unit for the Coordination of Fraud Prevention (UCLAF);
- (c) that Community liaison officers be authorized to access the EIS.

27. Were it to prove possible for items (a), (b) and (c) to be secured by way of amendments to the Convention in the near future, an adjustment to the EIS's sources of financing to include a contribution from the Community budget would be necessary. That adjustment would enable Community departments responsible for monitoring budget implementation to exercise surveillance over this fundamental aspect of Union activity.

IV. CONCLUSIONS

28. On the basis of the foregoing considerations the Committee on Budgetary Control calls on the Committee on Civil Liberties and Internal Affairs to include the following paragraphs in the resolution on the establishment of the EIS:

(The European Parliament)

- A. Notes that it is no part of the purposes of the EIS to concern itself with fraud against the Community budget, but that this new function could be added subsequently;
- B. Points out that the information over which the EIS will assume management will include data relating to fraud at the expense of the Community budget; considers that such fraud should be investigated in a legislative and operational Community environment;
- C. Considers at all events that cooperation between the EIS and the Community must be consolidated in the specific area of anti-Community fraud in the form of stronger institutional liaison between these two entities, to include in particular:
 - authorizing a Community Unit to participate in liaison between the EIS and the Commission's anti-fraud services;
 - setting up data-processing liaison between UCLAF and the EIS;
 - empowering Community liaison officers to exercise all the functions assigned to national officers, including the right directly to place data on the computerized information system and to retrieve data from it;
- D. Considers, in the event that such cooperation between the Community and the EIS were to be set up, that the arrangements for financing the EIS budget would have to be amended by providing for an adequate contribution from the Community budget and for checks to be carried out by the Community authorities responsible for monitoring budgetary implementation;
- E. Deplores the fact that the Council has drawn up binding terms of enactment that can include restrictions on fundamental civil liberties and be applied to European citizens without the European Parliament - elected by those same citizens - having been consulted or even associated with the relevant proceedings.

OPINION

of the Committee on Economic and Monetary Affairs and Industrial Policy

Letter from the chairman to Mr MARINHO, chairman of the Committee on Civil Liberties and Internal Affairs

Brussels, 30 April 1996

Subject: Draft Council act establishing the Convention on the European Information System (COS0275 - 12029/94 - C4-0249/95)

Dear Mr Marinho,

At its meeting of 25 April 1996 the Committee on Economic and Monetary Affairs and Industrial Policy considered the above Convention.

Article 13 thereof mentions the need for a computerized data exchange system on individuals refused entry to the territory of the European Union.

The Convention on the European Information System (EIS), therefore, has been drawn up with a view to implementing the above Convention, but also in response to the desire to maintain law and order and guarantee public safety within the territory of the Union.

It is, indeed, essential in a Europe where the barriers to the movement of persons are being steadily lowered - or even abolished - to provide the authorities in the Member States with the means to contend on an equal footing with those engaging in criminal or clandestine activities. It is to be deplored that the latter are adapting more quickly to the new Community environment than are legal activities.

Thanks to the EIS's technical support function, the Member States will be able to transmit information stored in their national files. The data in question will relate to:

- individuals whose arrest is being sought for the purpose of extradition;
- persons to whom the Member States refuse access to their territory (in accordance with Article 10 of the Convention on the crossing by persons of the external frontiers of the Member States drawing up of a common list);
- missing persons or those needing to be kept temporarily in a place of safety;
- witnesses or subpoenaed persons;
- individuals or vehicles included for purposes of undercover surveillance or special investigation;
- objects sought with a view to confiscation or use as evidence.

The protection of personal data within the EIS is the subject of Chapter 3 of the Convention on the European Information System.

The Committee on Economic and Monetary Affairs and Industrial Policy would like to point out in this connection, as it did in its letter of 19 December 1995 on the Convention establishing Europol, that the processing of such data must be carried out in accordance with the European Parliament and Council Directive 95/46/EC of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

The Committee on Economic and Monetary Affairs and Industrial Policy would like to see the Convention under discussion rapidly ratified, since it represents an important step towards the establishment of a Europe without internal borders, i.e. of a secure area within which people can move freely. It sets up the information system called for by the Convention on the crossing by persons of the external frontiers of the Member States, lays firm foundations for greater judicial, police and customs cooperation, improves the safety of persons (and objects) on Union territory, and helps to eliminate obstacles to the proper functioning of national economies: the fight against the black economy, trafficking of all kinds (drugs, arms), terrorism, crime and embezzlement.

Yours sincerely,

(sgd) Karl von WOGAU

The following took part in the vote: von Wogau, chairman; Katiforis, vice-chairman; Barton (for Billingham), de Brémond d'Ars, Cassidy, Caudron, Cox (for Gasòliba I Böhm), Donnelly, Ewing, Friedrich, García-Margallo y Marfil, Garosci, Hautala, Hendrick, Herman, Jarzembowski (for Hoppenstedt), Kestelijn-Sierens, Lindqvist, Meier (for Glante), Miller, Murphy, Peijs, Pérez Royo, Randzio-Plath, Rapkay, Read, Riis-Jørgensen, Secchi, Sindal (for Harrison), Skinner (for Kuckelkorn), Soltwedel-Schäfer, Spindelegger, W.G. Van Velzen (for Konrad), Watson and Wibe (for Rönholm).

