

# SEMDOC

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REV 1

LIMITE

ENFOCUSTOM 65  
SCHENGEN 55

## NOTE

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from: Presidency

to : Customs Cooperation Working Party

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Nos prev. docs: 9896/98 ENFOCUSTOM 38 SCHENGEN 28,  
13110/98 ENFOCUSTOM 65 SCHENGEN 55

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Subject: Integration of the Schengen *acquis* into the European Union framework  
- Synopsis of Member States' replies to the questionnaire on the powers of  
customs administrations in the framework of the Schengen agreements

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## INTRODUCTION

At its meeting on 14 and 15 July 1998, the Customs Cooperation Working Party approved 9896/98 ENFOCUSTOM 38 SCHENGEN 28 and agreed to reply to the questionnaire on the powers of customs administrations in the framework of the Schengen agreements by the end of September 1998.

All Member States party to the Schengen agreements have replied to the questionnaire. As regards the replies, it should be borne in mind that full entry into force of the Convention implementing the Schengen Agreement (CISA) for Greece is being prepared for in the Schengen context. Denmark, Finland and Sweden, it should be noted, are parties to the Schengen agreements, but the CISA has not yet come into force for them. The Accession Agreements of Denmark, Finland and Sweden each include a provision stipulating that cooperation within the Nordic passport union is unaffected by accession to the CISA, provided such cooperation does not conflict with the CISA's provisions.

Individual Member States' replies have to be seen in the light of these differences. It should further be pointed out that Norway and Iceland also cooperate in the Schengen context and a Cooperation Agreement has been concluded with them. Those two States were not included in the questionnaire exercise as they are not contracting parties under the Naples II Convention (OJ C 24, 23.1.1998, p. 1).

The purpose of the questionnaire is to provide a comparison of the powers of Member States' customs administrations. From the replies to the questionnaire, the Presidency has now drawn up an overview of customs administrations' powers and of the state of cooperation between police and customs authorities in individual Member States.

1. Questions re Article 39

1.1. Is the customs administration associated with mutual assistance between police authorities?

	B	DK	D	EL	E	F	I	L	NL	A	P	FIN	S
yes	x	x				x <sup>(1)</sup>	x <sup>(2)</sup>	x		x	x	x	x <sup>(3)</sup>
no			x	x	x				x				

**YES: 9 Member States**

**NO: 4 Member States**

1.2. Were there any instances of its application?

	B	DK	D <sup>(4)</sup>	EL	E	F <sup>(5)</sup>	I <sup>(6)</sup>	L	NL <sup>(7)</sup>	A	P	FIN	S
yes	x	x									x	x	x <sup>(8)</sup>
no				x	x			x		x			

**YES: 5 Member States**

**NO: 4 Member States**

**no/other reply: 4 Member States**

- (1) Yes, once the police and customs cooperation centres (CCPD) (Article 39(4) CISA) have been established, involvement will take place in that context, in strict compliance with the powers conferred. Where the customs take action under Article 99, they are indirectly participating in mutual assistance between police authorities.
- (2) The customs and indirect taxation authorities acting as the customs administration and the *Guardia di Finanza* acting for the police here.
- (3) There is smooth cooperation between customs and police authorities in all areas.
- (4) Customs-police dialogue is very common in combating drug smuggling, e.g. under air traffic operations. It is not known whether in practice Article 39 CISA has also been used as a legal basis for cooperation in individual cases, in addition to the Naples I Convention.
- (5) No details. The customs administration is a party to various bilateral mutual assistance agreements. The French customs administration also has a network of customs attaches.
- (6) No details.
- (7) No details.
- (8) Information is exchanged with other customs administrations. Sweden has concluded bilateral customs agreements with 18 States (Nairobi Convention); cooperation with EU Member States is based on Council Regulation No 515/97. There is close cooperation between Norway, Finland, Denmark and Sweden, particularly in combating drugs (with police and customs working together closely under Nordic cooperation).

1.3. What areas were covered by it? (narcotic drugs, precursors, arms and explosives, waste, other)

**Finland:** all of the areas listed have been covered;  
**Portugal:** narcotic drugs;  
**Denmark:** precursors;  
**Sweden:** narcotic drugs and precursors;  
**Belgium:** narcotic drugs.

2. **Questions re Article 40 (Surveillance) <sup>(1)</sup>**

2.1. Were bilateral agreements concluded by those States listed under Alternative 1?

	B	DK	EL	E	F	I	L	NL	A	P	FIN
yes	x			x	x	x			x		
no			x				x	x		x	x <sup>(2)</sup>

**YES:** 5 Member States  
**NO:** 5 Member States  
**no/other reply:** 1 Member State <sup>(3)</sup>

2.1.1. If so, with which States?

**Spain:** with France;  
**Italy:** with France and Austria;  
**France:** with Germany, Belgium, Italy, Spain and Luxembourg;  
**Austria:** with Italy; such an agreement has been drawn up with Germany but is not yet in force;

<sup>(1)</sup> The Danish customs are not involved and therefore the questions in section 2 were not answered.  
<sup>(2)</sup> No, as there is no common Schengen border with any State listed under Alternative 1.  
<sup>(3)</sup> Germany and Sweden are not listed under Alternative 1.

**Belgium:** with Germany and France <sup>(1)</sup>.

2.1.2. If not, are any intended to be concluded?

**Finland:** bilateral border agreements in connection with the Schengen agreements on surveillance and hot pursuit have been concluded with Sweden and Norway. The competent authorities are the police and customs authorities and the border guard. Bilateral border control agreements have also been concluded with Sweden (Regulation No 23/63) and Norway (Regulation No 575/69), with the customs authorities competent for these;

**Portugal:** no;

**Netherlands:** no;

**Luxembourg:** no;

**Greece:** yes.

2.2. Has the scope of surveillance been further extended at bilateral level?

	B	DK	D	EL	E	F	I	L	NL	A	P	FIN	S <sup>(2)</sup>
yes	x		x									x	
no				x		x	x	x	x	x	x		

**YES:** 3 Member States

**NO:** 7 Member States

**no/other reply:** 2 Member States

If so, is the customs administration affected by this?

**Finland:** yes.

<sup>(1)</sup> The Benelux Convention of 27 June 1962 allows for various possibilities of cooperation between the Netherlands, Luxembourg and Belgium. For this reason there is no need for any further bilateral or multilateral agreement.

<sup>(2)</sup> No details.

**Germany:** when the CISA was signed, the scope of cross-border surveillance for the customs administration of the Federal Republic of Germany in relation to Luxembourg, Belgium and France was extended to empower customs officers to act within their sphere of responsibility with regard to illicit trafficking in narcotic drugs, arms and explosives, and toxic and dangerous waste. The same also applies to cross-border hot pursuit.

### 3. Questions re Article 41 (Hot pursuit) <sup>(1)</sup>

#### 3.1. Have bilateral agreements been concluded by those States listed under Alternative 1?

	B	DK	EL	E	F	I	L	NL	A	P	FIN
yes	x			x	x	x			x		
no			x				x	x		x	x

**YES:** 5 Member States

**NO:** 5 Member States

**no/other reply:** 2 Member States <sup>(2)</sup>

#### 3.1.1. If so, with which States?

**Spain:** with France;

**Italy:** with Austria and France;

**France:** with Germany, Belgium, Italy, Spain and Luxembourg;

**Austria:** with Italy; such an agreement has been drawn up with Germany but is not yet in force;

**Belgium:** with Germany and France <sup>(3)</sup>.

<sup>(1)</sup> The Danish customs are not involved, and therefore the questions in section 3 have not been answered.

<sup>(2)</sup> Germany and Sweden are not listed under Alternative 1.

<sup>(3)</sup> Two Protocols to the Benelux Convention of 29 April 1969 have been concluded, one concerning import, export and transit, and the second one taxes. This provides for broad cooperation between customs and excise officials of the Benelux States.

3.1.2. If not, are any intended to be concluded?

Spain: no;  
 Finland: see 2.1.2;  
 Luxembourg: no;  
 Portugal: no;  
 Netherlands: no;  
 Greece: no.

3.2. Do the pursuing foreign officers (customs officers) have the right to apprehend within the meaning of Article 41(2)(b)?

	B	DK	D	EL	E	F	I	L	NL	A	P	FIN	S
yes	x <sup>(1)</sup>		x							x <sup>(2)</sup>		x	x <sup>(3)</sup>
no	x <sup>(4)</sup>			x	x	x	x	x	x	x <sup>(5)</sup>	x		

**YES: 5 Member States (see footnotes)**

**NO: 9 Member States**

3.3. What geographical or time limits within the meaning of Article 41(3) were agreed for foreign officers (customs officers)?

**Finland:** with Norway: 7 km geographical limit;  
 with Sweden: 3 km geographical limit;

**Italy:** with France: 10 km geographical limit;  
 with Austria: 20 km geographical limit on motorways, otherwise 10 km;

**France:** with Germany and Belgium: no geographical or time limits;  
 with Spain, Italy and Luxembourg: 10 km geographical limit;

<sup>(1)</sup> This depends on the nationality of the officials: D/NL and L officials have the right to apprehend, but French officials do not.  
<sup>(2)</sup> Also applies to German customs officers, including the customs investigation service.  
<sup>(3)</sup> While the CISA has not yet come into force or been brought into operation, according to the declarations made by Sweden when signing the Schengen agreements, it is intended that foreign customs officers should have the right to apprehend within the meaning of Article 41(2)(b).  
<sup>(4)</sup> See footnote 1 above.  
<sup>(5)</sup> Italian customs and police officers do not have the right to apprehend.

- Germany:** with Belgium, France, Luxembourg, the Netherlands and Austria: no geographical or time limits;
- Austria:** with Germany: no geographical or time limits;  
with Italy: 20 km geographical limit on motorways, otherwise 10 km;
- Sweden:** no geographical or time limits are planned;
- Belgium:** no geographical or time limits are planned.

3.4. Does the authorisation of pursuit by foreign officers relate to the list of offences in Article 41(4)(a) or to extraditable offences under Article 41(4)(b)?

	B	DK	D	EL <sup>(1)</sup>	E	F	I	L <sup>(2)</sup>	NL <sup>(3)</sup>	A	P <sup>(4)</sup>	FIN	S
(a)	x <sup>(5)</sup>				x	x	x <sup>(6)</sup>					x <sup>(7)</sup>	
(b)	x <sup>(8)</sup>		x				x <sup>(9)</sup>			x		x <sup>(10)</sup>	

(a): **5 Member States (see footnotes)**

(b): **6 Member States (see footnotes)**

no/other reply: **5 Member States**

<sup>(1)</sup> No details.

<sup>(2)</sup> No details.

<sup>(3)</sup> No details.

<sup>(4)</sup> No details.

<sup>(5)</sup> For Germany and France.

<sup>(6)</sup> For France.

<sup>(7)</sup> Both (a) and (b).

<sup>(8)</sup> For the Netherlands and Luxembourg.

<sup>(9)</sup> For Austria.

<sup>(10)</sup> Both (a) and (b).

3.5. Has the scope of pursuit been further extended at bilateral level?

	B	DK	D	EL	E	F	I	L	NL	A	P <sup>(1)</sup>	FIN	S <sup>(2)</sup>
yes	x		x										
no				x	x	x	x	x	x	x		x <sup>(3)</sup>	

**YES: 2 Member States**

**NO: 8 Member States**

**no/other reply: 3 Member States**

If so, is the customs administration affected by this?

**Germany:** when the CISA was signed, the scope of cross-border surveillance and cross-border hot pursuit for the customs administration of the Federal Republic of Germany in relations between the Federal Republic of Germany and Luxembourg, Belgium and France was extended as follows: empowerment of all customs officers within their sphere of responsibility with regard to illicit trafficking in narcotic drugs, arms and explosives, and toxic and dangerous waste.

The Government of the Federal Republic of Germany has also concluded agreements with the Government of the French Republic and the Austrian Federal Government on cooperation between police authorities and customs administrations in border areas. The customs administrations' powers with regard to cross-border surveillance and cross-border hot pursuit have not been extended under these.

<sup>(1)</sup> No details.

<sup>(2)</sup> The question is at present redundant in Sweden's case.

<sup>(3)</sup> The question is currently under discussion in Finland.

#### 4. Questions re Article 47

Has a customs liaison officer been seconded on the basis of this provision?

	B	DK	D	EL	E	F	I	L	NL	A	P	FIN	S
yes			x	x <sup>(1)</sup>								x	
no	x	x			x	x <sup>(2)</sup>	x	x	x	x	x		x

**YES:** 3 Member States

**NO:** 10 Member States

If so, to which State?

**Germany:** a customs liaison officer has been posted to France under Article 125 CISA. While he is not officially a liaison officer under Article 47 CISA, his duties do also include customs-specific law enforcement work of the kind described for police liaison officers in Article 47 CISA;

**Greece:** no details;

**Finland:** on the basis of the border customs agreements with Sweden and Norway, it has been decided to operate joint customs posts at borders.

#### 5. Question re Article 70

Is the customs administration associated with the work of the Standing Group on Combating Drug-Related Crime?

	B	DK	D	EL	E	F	I	L	NL	A	P	FIN	S
yes	x		x	x		x	x	x	x			x	x
no		x			x					x <sup>(3)</sup>	x <sup>(4)</sup>		

<sup>(1)</sup> But not under bilateral agreements.

<sup>(2)</sup> But France has its network of customs attaches.

<sup>(3)</sup> While not involved in the Group, the customs administration is within its sphere of responsibility involved in work on an operational basis (implementation of measures decided on).

<sup>(4)</sup> Yes, up to June 1996.

YES: 9 Member States  
 NO: 3 Member States

6. Question re Article 71

Have measures within the meaning of Article 71(3) been adopted within that Group which have affected the customs administration?

	B	DK	D	EL	E	F	I	L	NL	A	P	FIN	S
yes	x		x	x		x	x	x		x		x	x
no		x			x				x		x		

YES: 9 Member States  
 NO: 4 Member States

If so, what measures?

- Luxembourg:** increased checks on passenger and goods traffic and on vehicles at external borders; redeployment of some of the customs staff released from internal borders and modernisation of anti-drugs resources (X-ray apparatus, drugs sniffer dogs etc.);
- Finland:** the Finnish customs administration has taken part in various Schengen operations;
- Greece:** strengthening of customs posts at borders;
- Italy:** a risk analysis seminar was held in Brussels in 1997, for instance, with the aim of rationalising customs and police checks;
- France:** in the first half of 1998 a coordinated anti-drugs operation was organised; the customs administration was very heavily involved in it. Under the operation, the French customs administration managed to seize 1,4 tonnes of cannabis, for instance;

- Germany: the Schengen Group deals with cross-border surveillance operations in large part tallying with customs surveillance operations;
- Austria: participation in joint operations; the special units set up at customs posts on borders with non-member countries have in particular taken part in them;
- Sweden: participation in joint operations;
- Belgium: increased checks at external borders (specialisation and use of new equipment, use of drugs sniffer dogs).

7. (For Article 73 there were no questions asked)

8. Question re Article 75

Is the customs administration competent to check certificates concerning drugs carried for the purposes of medical treatment?

in the border area:

	B	DK	D	EL	E	F	I	L	NL	A	P	FIN	S
yes	x	x	x <sup>(1)</sup>	x	x <sup>(2)</sup>	x	x <sup>(3)</sup>	x	x	x	x	x	x
no													

YES: 13 Member States

NO: 0 Member States

<sup>(1)</sup> In the event of discrepancies or doubts, the supervisory authorities responsible for exceptional arrangements have to be called in.

<sup>(2)</sup> The Spanish customs authorities check on movements of such substances across the border, but always in close cooperation with and under the supervision of the Ministry of Health. The relevant authorities at the Ministry of Health rule on origin, but not on carriage and the relevant certificates.

<sup>(3)</sup> This applies to both the customs administration and the *Guardia di Finanza*.

inside the country:

	B	DK	D	EL	E	F	I	L	NL	A	P	FIN	S
yes	x		x <sup>(1)</sup>			x	x <sup>(2)</sup>	x		x		x	
no		x		x	x				x		x		x

**YES: 7 Member States**

**NO: 6 Member States**

## 9. Questions re Article 76

9.1. Is the customs administration competent to monitor the legal trade in narcotic drugs, psychotropic substances and substances frequently used in the manufacture of narcotic drugs and psychotropic substances?

drugs:

	B	DK	D	EL	E	F	I	L	NL	A	P	FIN	S
yes	x	x	x	x	x <sup>(3)</sup>	x	x	x	x <sup>(4)</sup>	x <sup>(5)</sup>	x	x	x
no													

**YES: 13 Member States**

**NO: 0 Member States**

<sup>(1)</sup> Mobile inspection squads have been set up to carry out checks inside the country within a limited area and time. They can also enforce the rules prohibiting or restricting the conveyance of goods into, through and out of German territory.

<sup>(2)</sup> This applies to both the customs administration and the *Guardia di Finanza*.

<sup>(3)</sup> For intra-Community traffic, no; for external trade (import, export and transit), the customs authorities control the passage of such substances across borders, but always in close cooperation with the Ministry of Health.

<sup>(4)</sup> This applies to monitoring at the border.

<sup>(5)</sup> Not competent in intra-Community trade.

precursors:

	B	DK	D	EL	E	F	I	L	NL <sup>(1)</sup>	A <sup>(2)</sup>	P	FIN	S
yes	x	x	x	x	x <sup>(3)</sup>	x	x	x	x	x	x	x	x
no													

**YES: 13 Member States**

**NO: 0 Member States**

If so:

9.2. Is the customs administration associated with the mutual exchange of information between Member States under Article 76(3)?

	B	DK	D	EL	E	F	I	L	NL	A	P	FIN	S <sup>(4)</sup>
yes	x <sup>(5)</sup>	x			x		x	x			x	x	
no			x	x		x			x	x			

**YES: 7 Member States**

**NO: 5 Member States**

10. Question re Article 92

The Schengen Information System shall enable the authorities designated by the Contracting Parties, by means of an automated search procedure, to have access to alerts on persons and objects for the purposes of customs checks carried out in the country in accordance with national law.

<sup>(1)</sup> This applies to monitoring at the border.

<sup>(2)</sup> Not competent in intra-Community trade.

<sup>(3)</sup> For intra-Community traffic, no; for external trade (import, export and transit), the customs authorities control the passage of such substances across borders, but always in close cooperation with the Ministry of Health.

<sup>(4)</sup> There has not as yet been any operational cooperation in this respect.

<sup>(5)</sup> Although the situation regarding narcotic drugs is not entirely clear.

Has this provision been transposed at national level with regard to the customs administration?

	B	DK	D	EL	E	F	I	L	NL	A	P	FIN	S
yes	x <sup>(1)</sup>		x			x	x <sup>(2)</sup>	x				x	
no		x		x	x		x <sup>(3)</sup>		x	x	x		x <sup>(4)</sup>

**YES: 5 Member States (see footnotes)**

**NO: 8 Member States (see footnotes)**

### 11. Questions re Article 99(4)

For the purposes of discreet surveillance, certain information may be collected in the Schengen Information System and sent to the authority issuing the alert when other customs checks are carried out within the country.

#### 11.1. Does the customs administration provide the information requested?

	B	DK	D	EL	E	F	I	L	NL	A	P	FIN	S <sup>(5)</sup>
yes		x	x	x		x <sup>(6)</sup>	x <sup>(7)</sup>	x			x	x	
no	x				x <sup>(8)</sup>		x <sup>(9)</sup>		x	x			

**YES: 8 Member States (see footnotes)**

**NO: 5 Member States (see footnotes)**

<sup>(1)</sup> No direct access.

<sup>(2)</sup> Yes as regards the *Guardia di Finanza*.

<sup>(3)</sup> No as regards the customs administration.

<sup>(4)</sup> The question is currently being settled; it is intended that the customs administration should have access to the SIS.

<sup>(5)</sup> No details.

<sup>(6)</sup> Yes, but indirectly. The customs administration cannot supply the information directly, but passes it on via the police authorities and via SIRENE.

<sup>(7)</sup> Yes as regards the *Guardia di Finanza*; no as regards the customs administration.

<sup>(8)</sup> This is technically feasible under the system, but Article 99 CISA covers very few data and so no data have been entered in the system by the Spanish police or customs authorities.

<sup>(9)</sup> No as regards the customs administration.

11.2. If not, has such information been requested of the customs administration?

Greece: no;  
 Netherlands: no;  
 Austria: no;  
 Belgium: no.

12. **Question re Article 101(1)**

Access to data contained in the Schengen Information System and the right to search such data directly shall also be reserved for the authorities responsible for other police and customs checks carried out within the country, and the coordination of such checks.

Has the customs administration obtained direct automated access to the Schengen Information System?

	B	DK	D	EL	E	F	I	L	NL	A	P	FIN	S
yes			x <sup>(1)</sup>	x	x <sup>(2)</sup>	x <sup>(3)</sup>	x <sup>(4)</sup>	x	x		x		
no	x <sup>(5)</sup>	x					x <sup>(6)</sup>			x <sup>(7)</sup>		x <sup>(8)</sup>	x <sup>(9)</sup>

**YES: 8 Member States (see footnotes)**

**NO: 6 Member States (see footnotes)**

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- (<sup>1</sup>) Only to data covered by Articles 96 and 97 CISA documents the customs administration have no access.
  - (<sup>2</sup>) Access to Articles 99(2) and 100 CISA.
  - (<sup>3</sup>) The customs administration has full and direct access regarding Article 96 CISA but only partial access regarding Articles 95, 97, 99 and 100 CISA. Access to additional information is available only to a police officer with legal training.
  - (<sup>4</sup>) Yes as regards the *Guardia di Finanza*.
  - (<sup>5</sup>) Although direct access to data covered by Articles 99(2) and 100 has been promised, but not yet provided.
  - (<sup>6</sup>) No as regards the customs administration.
  - (<sup>7</sup>) However, direct access will be sought when the CIS is implemented (Convention on the Customs Information System).
  - (<sup>8</sup>) A link is currently being set up.
  - (<sup>9</sup>) Currently being discussed; the customs administration should have direct access to the SIS.

The following conclusions may be drawn from the Member States' replies:

1. In any consideration and national assessment of the powers of a customs administration, its competence and powers under the Convention implementing the Schengen Agreement should also be taken into account in order to obtain a complete picture.
2. The synopsis of the replies to the questionnaire also reflects the generally very high level of cooperation between customs and police, whilst also showing that there are still a number of differences and gaps. With regard to the Schengen Information System (SIS), it should be noted that eight Member States already have on-line access while a further three Member States are planning to have access at least in the medium term. Consideration should therefore be given at national level to incorporating certain areas of the CISA into the police/customs agreements for combatting drugs to be concluded on the basis of the Council Resolution of 29 November 1996 (OJ C 375, 12.12.1996, p. 1), in order to establish cooperation which covers as extensively as possible the whole area of organised crime and international fraud.
3. When considering cooperation between customs administrations under the CISA, it is immediately apparent that, because it basically covers police regulations relating to the movement of people, Schengen does not constitute a real legal basis for direct contacts between customs administrations, and that the Naples II Convention, just as the current 1967 Naples Convention, will thus constitute the more appropriate legal basis for mutual assistance between customs administrations in the future because these instruments provide for closer and direct cooperation. Conversely, as regards cooperation between the police, the same conclusion can quite clearly be drawn that whenever cooperation is possible on the basis of the Schengen provisions (as Article 30(3) of the Naples II Convention also already stipulates), these provisions constitute the better and more appropriate legal basis because Schengen provides for

closer direct police cooperation. This also means that cooperation between two police forces can only take place via the customs coordinating units provided for in Article 5 of the Naples II Convention in the exceptional case of a particular matter not being covered under the Schengen legal framework.

4. Both agreements have the advantage of allowing intercommunication between a police force and a customs authority in different Member States and thus providing for better cooperation between customs and police both in terms of movement of people and of goods traffic. Given their different starting points, the two legal bases, the CISA and Naples II, cannot cover the same subject matter, but must exist side by side.
5. When Naples II enters into force, close contact between the central police units and the central coordinating units under Naples II will be necessary specifically in the case of cross-border forms of special cooperation in order not to prejudice concrete measures. This applies in particular to those Member States whose police and customs administrations use the instruments of hot pursuit, surveillance and controlled delivery. It is only through constant, full mutual involvement that the success of the measures put in place can be guaranteed.
6. Once the Amsterdam Treaty enters into force, it also will be necessary to work in closer consultation with the Council bodies then existing in the case of joint operations concerning prohibitions and restrictions, and, here, the fact that it has been decided that Europol and police authorities should be involved in activities of this kind dealt with by the Customs Cooperation Working Party should constitute the cornerstone for the operational improvement of cooperation between customs and the police

