

7032/99

LIMITE

SCHENGEN 18

OUTCOME OF PROCEEDINGS

from : The Schengen Working Group (Norway/Iceland)

dated: 19 March 1999

1. Agenda

The agenda as set out in telex N° 1199 of 12 March 1999 was adopted and no points were raised under any other business.

2. Draft Council Decision on certain arrangements for the application of the Agreement concluded by the Council and the Republic of Iceland and the Kingdom of Norway concerning the association of those States with the implementation, application and further development of the Schengen acquis

(doc. 6611/99 SCHENGEN 17)

The President presented the document and asked delegations for comments. Article 1 was discussed first, followed by Articles 2 to 6 and, finally, Article 7.

With regard to the first Article defining the scope of cooperation with Norway and Iceland, all delegations agreed that this cooperation should be based on the exhaustive list set out in Article 1 lit A - I which enumerates all areas where cooperation should take place. It was agreed to bring the wording in line with the negotiating mandate set out in Document 10769/98 SCHENGEN 41. Furthermore, the text will be amended to point out that this list does not cover all the Schengen acquis but does only enumerate all the areas where cooperation with Norway and Iceland will take place.

With respect to Article 2, the Council Legal Service raised the following points:

1. With regard to the quorum required, the Treaty provides in its Article 148 (future Article 205) TEC that the Council shall act by a majority of its members if not otherwise provided in the Treaty. Article 189 a (future Article 250) TEC foresees that unanimity is required for amendments to a Commission proposal.
2. The decision on whether or not an issue is schengen-related could therefore be taken by a simple majority of all Members of the Council. The indication by the Commission, that the issue was considered to be schengen-related could be given in a cover note to the proposal since the decision to submit a proposal to the Mixed Committee was certainly a procedural matter and not a question of substance.

The Commission intervened, stressing that considering a proposal to be schengen-related would not be a simple matter of procedure but would certainly have consequences on the substance since the specific Norwegian or Icelandic requirements would have to be taken into account and would have to be reflected in the considerations. Furthermore, the Treaty did require unanimity for these issues during a period of five years and, as a consequence, this quorum should be foreseen in Article 2.

The Presidency underlined that the Group should take into consideration that providing for unanimity in this context might create enormous problems since any delegation could block the initiation of cooperation with Norway and Iceland. The quorum foreseen in Article 2 would only refer to the decision on whether or not an issue was schengen-related and would not concern or prejudice the discussions insofar as the substance was concerned.

Many delegations shared the view expressed by the Council Legal Service. The Spanish and Belgian delegations, however, expressed doubts concerning the legal conclusions and referred to the Treaty providing for unanimity for the 5 years following the entry into force of the Treaty of Amsterdam. The Spanish delegation explained that with regard to the majority required, only members applying the Schengen-acquis could be allowed to vote; as far as the United Kingdom and Ireland were concerned, their delegations could only vote insofar as their governments have opted for an application of the Schengen-acquis.

The French delegation invited delegations and the Commission to re-consider whether it was not dangerous to insist on unanimity to be required since only one single delegation could hamper any cooperation to be started with Norway and Iceland. It should be taken into account that voting by simple majority would not create any risk since any decision as to the substance of the proposal would have to be taken by unanimity during a period of five years.

The Commission Legal Service responded to the different statements, supporting the Presidency's intention to submit the issue to COREPER but repeating that their approach was different from that of the Council Legal Service. The question was not procedural and the consequences were going beyond Norway and Iceland. The idea to give an indication on the schengen-related character of a proposal in a cover note to the legal text would deprive the Commission from any freedom in making a legal proposal. Article 189a (future Article 250) TEC stated very clearly that "where the Council acts on a proposal from the Commission, unanimity shall be required for an act constituting an amendment to that proposal", thus not leaving any choice between "cover note" and "legal text". Any proposal submitted by the Commission was to be considered as a Commission proposal and would therefore be covered by the said Article.

With respect to Article 4, the Council Legal Service pointed out that this Article would need back-up by a corresponding Article in the Council's rules of procedure. So far, such a provision does not exist.

With respect to Article 7, the President pointed out that the text would ensure that Member states coordinate their position internally before information is given to Norway and Iceland that the application of the Treaty could not be continued.

The Commission Legal Service confirmed that there was a need for internal coordination within the Union as to whether or not the application of the Association Agreement should be continued. It was a necessity to inform Norway and Iceland accordingly that no common position could be reached. For that purpose, the Union should present itself as one entire body and speak with one voice.

The Danish and Swedish delegations, however, pointed out that Article 7 and especially its para 2 could be deleted since the same was already provided in the Association Agreement.

The Council Legal Service explained that Article 7 para 2 provided for a situation where Member States did not reach consensus but should, nevertheless, present themselves as one body to Norway and Iceland. It should be the Presidency and not individual Member States who informed the two countries of the lack of consensus.

The Presidency concluded the discussions on Article 7, stressing that it might not be indispensable to retain Article 7 para 2. In practice, the Presidency would always act on behalf of the other Member States and would therefore inform Norway and Iceland of the disagreement. Upon request by the Swedish delegation, the President confirmed that the wording of Article 7 would allow the deletion of Article 13 para 2 and Article 14 para 2 contained in the Draft Rules of Procedure of the Mixed Committee (set out in document 5339/1/99 SCHENGEN 2 REV 1).

The Presidency concluded the discussions on the document 6611/99 SCHENGEN 17, informing delegations that the open questions concerning Article 2 to 6 and Article 7 would be submitted to COREPER without delay.

The United Kingdom and Greek delegations raised scrutiny reservations on the document.

3. Information on the Justice and Home Affairs Council of 12 March 1999

The Presidency informed the Group of the outcome of the Justice and Home Affairs Council of 12 March 1999 as far as schengen-related matters are concerned. During the COREPER preparing the Council and the session of the Council, the Spanish delegation had confirmed the position that Member States had exclusive competence to recognize states and territorial entities, their authorities and passports, travel and identity documents issued by them. Furthermore, the same delegation had refused to agree to the negotiating mandate for the Association Agreement to be concluded with Iceland and Schengen according to Article 6 para 2 of the Schengen Protocol. With regard to the integration of the Schengen-acquis, no further progress had been made; bilateral meetings between the Presidency and the Spanish delegation had not brought the expected results.

The Presidency appealed to delegations to do their utmost to enable continuation of work related to Schengen matters.

The Spanish delegation intervened, stressing that hinderance to start negotiations with Norway and Iceland was due to disagreement with these countries on the EEA-cohesion-funding. These problems might be resolved in due course thus enabling the start of negotiations. With regard to the integration of the Schengen acquis into the European Union's legal framework, Spain confirmed to do its utmost to enable further progress. Bilateral meetings were considered to be a good means of achieving further progress.

The Presidency welcomed the positive signals and underlined that the Presidency was available for bilateral contacts whenever necessary.
