EUROPEAN UNION
THE COUNCIL

Brussels, 18 February 1998

6115/98

LIMITE

SCHENGEN 9

OUTCOME OF PROCEEDINGS

of : Working Group on the Schengen Acquis

on : 12 February 1998

The delegations continued discussing the breakdown of the Schengen acquis on the basis of the documents 5828/98 **SCHENGEN 7** and 5353/98 **SCHENGEN 3**.

The Finnish delegation lifted its general scrutiny reservation. The Italian, Irish and Portugal delegations maintained their general scrutiny reservations.

1. **Requirement for the imposition of penalties**
   Articles 3 (2), 26 and 27 (1)

   Presidency proposal: 1st pillar legal basis

   Majority of the delegations agreed with the Presidency proposal. The Austrian and Swedish delegations were of the opinion that a dual legal basis could be considered whereas the French and Spanish delegations proposed solely a 3rd pillar legal basis.

   The Finnish delegation agreed to a 1st pillar legal basis in general but maintained its scrutiny reservation for these articles. In so far as the harmonization of penalties will be concerned, a 3rd pillar legal basis would be required.

   The Irish delegation made a scrutiny reservation for Article 26.

   The Council Legal Service stated that if an explicit 1st pillar legal basis can be determined there is no possibility to choose between a 1st and a 3rd pillar legal basis.

The Presidency concluded that a majority of the delegations accepted a 1st pillar legal basis for the Articles 3 (2) and 26, but in the light of the objections raised they will reflect further on this issue.

2. **Extradition**
   Article 60

Presidency proposal: redundant

It was agreed Article 60 to be redundant.

3. **Firearms**
   Articles 77 - 91

Presidency proposal: redundant

On request of this Group the Council Legal Service had produced a contribution (doc. 5464/98 JUR 36 SCHENGEN 4) consisting of a comparison between the provisions on firearms in the Schengen Convention and Council Directive 91/447/EEC on control of the acquisition and possession of weapons. In this contribution provisions of the Schengen Convention that are wider in scope and go further in substance than those in the Directive were identified.

The Spanish and Austrian delegation were of the opinion that only the provisions not covered by the Directive should be ventilated while the rest of the provisions of the Schengen Convention should be deemed to be redundant.

The Finnish delegation suggested either a complete ventilation of the Schengen Convention or a ventilation of articles not regarded as redundant.

It was inquired whether the Commission will make proposals concerning the broadening of the scope of the Directive to also cover provisions of the Schengen Convention. The representative of the Commission stated that proposals will not be forwarded during the next months.

The Presidency stated that it will make proposals how to proceed further on the basis of the conclusions of the meeting on firearms provisions that will be held at the Schengen Secretariat on 25 February 1998. That meeting will deal with the question whether or not the Schengen countries wish to maintain those provisions of the Convention being outside the scope of the Directive.

4. Schengen Information System (SIS)
Articles 92 - 119

Several delegations were of the opinion that the SIS should remain as an entity with a dual legal basis in the 1st and 3rd pillars.

The Spanish and French delegations were of the opinion that for the whole SIS a 3rd pillar basis should be determined.

The German delegation proposed to divide the SIS system into parts. According to this proposal the institutional part (system as such) would be based on under the 3rd pillar, the second part consisting of information categories should be based on either the 1st (provisions concerning immigration) or the 3rd pillar and the third part consisting of data protection provisions would follow the information categories mentioned in the second part (i.e. data protection for immigration purposes under the 1st pillar and with regard to other information a 3rd pillar legal basis).

The delegation of the Commission noted the proposal of the German delegation but was of the opinion that all provisions concerning data protection should be ventilated under the 1st pillar.

The Council Legal Service explained that the determination of a dual legal basis for some of the provisions concerning the Schengen Information System would not have to result in disrupting the integrity of the system and they were proposed to produce a document outlining their ideas.

The Presidency invited the Council Legal Service to give a written contribution on this item and stated that it will revert back to this item at the next meeting of this Group.

5. **Continuing the breakdown of the Schengen acquis**
Annex B of doc. 5353/98 SCHENGEN 3

- Section II -

Article 74

It was agreed to maintain the article.

Article 76

Presidency proposal: Article 95 TEC as legal basis

The Irish delegation pointed out that the aim of the articles 75 - 76 is to control drugs abuse and thereby a 3rd pillar legal basis is needed. The Irish and UK delegations made a scrutiny reservation concerning these articles. The Spanish delegation made a scrutiny reservation for Article 76.

With regard Article 76 the Council Legal Service referred to Article 152 TEC as a possible legal basis.

The Presidency decided to reflect further on this issue.

Article 136

Presidency proposal: Article 136 is redundant because it is entirely covered by the Protocol on external relations of the Member States with regard to crossing of external borders

The Spanish delegation was of the opinion that Article 136 and the Protocol on external relations do not regulate the same issues.

The Council Legal Service pointed out that Article 62 TEC would be more appropriate as a legal basis.

The Presidency stated that it will revert back to this issue.

- Section III -

Article 70

Presidency proposal: Article 34 (1) TEU

It was agreed to revert back to this article after COREPER has taken the decision concerning the future role of the Schengen working party on narcotic drugs.

Article 131 - 133

Presidency proposal: No legal base needed

It was agreed that it is not necessary to determine a legal basis for these articles because the role of the Executive Committee is, on the basis of Article 2 Schengen Protocol, taken over by the Council.

Article 138

Articles of the Accessions Agreements to 1990 Convention

The Presidency proposed to revert back to these articles as soon as the Council and the Commission Legal Services will forward their contribution concerning the territorial application of the Schengen Convention.

Article 140

Presidency proposal: No legal base needed

The Spanish delegation was of the opinion that a reference to the Articles 2 and 4 of the Schengen Protocol should be made.

Article 141

Presidency proposal: Redundant

It was agreed Article 141 to be redundant

The Presidency stated that discussion of the breakdown of the Schengen acquis has been completed as far as the 1990 Schengen Convention and the accession instruments are concerned on the basis of the comments made by the Member States. A first draft for a Council decision will be drawn up as soon as possible to be discussed during one of the next meetings of the Schengen Acquis Working Group.