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SCHENGEN

EN

Central Group

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ANNUAL REPORT

1. INTRODUCTION

1995 was the year in which the Schengen Convention was brought into force for seven Schengen States; 1996 was the year in which the Member States of the Nordic Passport Union acceded to Schengen; 1997 was the year in which the Schengen Convention was brought into force for Italy, Austria and Greece.

Bringing the Schengen Convention into force involves abolishing controls on persons at internal borders and implementing a range of measures aimed at countering the security deficit that results. An appraisal of the Schengen system shows that the combined application of the principles of free movement on the one hand, and security measures on the other, has generally proven effective in 1997. Nevertheless, Schengen continued to be vulnerable to strong migratory pressure and to the consequences of international crime, notably at its external borders. Security at these borders remains the weak spot in the compensatory mechanism and must be continually improved.

1997 saw the adoption of initial measures towards preparing or facilitating implementation of the 1996 decision on expansion to the Nordic States. A visiting committee to the external borders of these States measured the extent of the alterations and the legislative, regulatory or technical arrangements required to bring the Schengen Convention into force in these countries. The decision on the use of the uniform visa format by Iceland and Norway also formed part and parcel of this process. Guidelines were also drawn up for integrating the Nordic States into the SIS at the earliest possible juncture, in the course of the year 2000.

Last year was also a time for initial reflection on the need for formally updating the Schengen Convention. This gave rise to amendments to Articles 40, 41 and 65 by means of a Protocol signed under the Portuguese Presidency on 24 June 1997.

1997 was above all dominated by the bringing into force of the Convention in three new States, taking the number of States actually applying the Convention up to ten. Nevertheless, controls at the land borders were maintained, it being agreed that they would be gradually lifted by 31 March 1998 (in Italy and Austria).* The Executive Committee will take a decision on Greece, at the latest at its last meeting in 1998 on the basis of a report drawn up by the Sub-Group on Frontiers and the Central Group.

Throughout 1997, a series of technical measures were introduced to improve the functioning of the Convention, especially operational cooperation between the Schengen States, thus demonstrating the pragmatic and practical nature of the provisions laid down under Schengen (for instance, the Manual on Police Cooperation in Maintaining Law and Order and Security; arrangements for controls on high-speed trains; the issue of visas on behalf of another Schengen State; measures to be taken with regard to countries posing readmission problems.....

1997 was also the year in which the Schengen States gave tangible form to the concept of mutual cooperation between their police authorities by planning and implementing joint operations on a wide scale. These pilot projects, as they are called, were launched in three areas: stolen vehicles, drugs and illegal immigration. The pilot project on stolen vehicles was completed in 1997.

Over the year, the harmonization of visa policy was rather sporadic. The Schengen States agreed on a strategy that ought to lead to the abolition of the list of third countries which the Schengen States subject to different visa regulations (the grey list) by 1 January 1999 at the latest.

Finally, in the light of the Protocol on Schengen annexed to the Treaty establishing the European Community and to the Treaty on European Union, signed in 1997, a process of reflection focusing on the legal aspects (Norway and Iceland, the acquis, etc.) as well as the administrative elements (Schengen Secretariat, staff, etc.) of integration was initiated. A list of Executive Committee and Central Group decisions and declarations was compiled for transmission to the General Secretariat of the Council of the European Union.

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*It should be noted that, as planned, the Schengen Convention was fully implemented in Italy and Austria on 31 March 1998.

2. THE ABOLITION OF CONTROLS AT THE INTERNAL BORDERS

In 1997, the area without controls at the internal borders was widened to include Italy and Austria. Although the Convention was also brought into force for Greece, controls at the internal borders to this Schengen State have not yet been lifted (in practice, this applies only to flights between Greek airports and those of the other States where the Convention is in force as well as to regular ferry connections). The Executive Committee will take a decision on Greece, at the latest at its last meting in 1998 on the basis of a report drawn up by the Sub-Group on Frontiers and the Central Group.

As stated in the 1996 report, France continues to invoke the derogation provided for in Article 2 (2) of the Convention at its land borders with Belgium and Luxembourg. These two States are concerned at the maintenance of controls at their land borders with France.

On a more general note, in 1997 the Schengen States concluded more bilateral agreements on police cooperation in their common border regions (cf. Annex 1). These agreements are a means of giving substance to the forms of cooperation specifically provided for in the Convention, such as exchanges of operational information and equipment, joint police training, the organization of concerted actions, the creation of police and customs cooperation centres, etc.

3. EFFECTIVENESS OF CONTROLS ON PERSONS AT THE EXTERNAL BORDERS

During the first half of the year, the Visiting Committees, set up in accordance with an Executive Committee Decision adopted on 27 June 1996, carried out the mandate they had been given and visited the external borders of three States (Italy, Austria and Greece) for the first time. They discovered some shortcomings related to the arrangements in place at these borders which would have to be remedied before any decision was taken on bringing the Schengen Convention into force.

Of the measures intended to compensate for the abolition of controls at the internal borders, the tightening and harmonization of the standard of controls at the external borders are vital.

As in 1996, 1997 witnessed persistent pressure from illegal immigration at the borders of the Schengen area, aided and abetted by increasingly professional illegal immigration networks that are frequently linked to organized crime.

During the year, the Schengen States had to deal with a large influx of immigrants from eastern Turkey, northern Iraq and Iran. The main immigrant flows made their way through the Mediterranean countries (Greece, Italy and France), and the Balkan states (especially, Bulgaria, Romania, Slovakia and the Czech Republic), Austria and Germany en route to their destinations – countries in the west and north of the Schengen area. As a result, the countries situated along these routes had to continually step up measures aimed at countering illegal immigration.*

The situation in Albanian also generated a considerable flow of immigrants.

To tackle the problem of illegal immigration, the Schengen States decided firstly, to set up a Task Force charged with implementing various control measures at Schengen's external borders and secondly, to plan high-impact operations in the framework of a pilot project on illegal immigration routes.

However, the pressure was at its greatest at the land borders. The Schengen States have deployed considerable resources but it appears difficult to guarantee total watertightness at this type of border, particularly given the heavy border traffic which often necessitates recourse to flexible rules such as those laid down in the Common Manual on Border Controls.

To cope with this situation, the Schengen States launched a series of initiatives in their border regions, based on sustained contact with the local inhabitants or authorities in neighbouring countries. Specialist staff and different types of technical equipment were brought in to strengthen security at the external borders. High-impact operations were carried out on a regular basis to combat organized illegal immigration networks.

* In 1998, the fight against illegal immigration was closely coordinated with the EU action plan in this area.

The air borders were also exposed to considerable migratory pressure; however, it was possible to tackle this phenomenon more effectively by applying the rules laid down in the Common Manual on Border Controls. The channelling of passenger flows, restricting passenger movements to specific lanes, has facilitated the work of border staff and has made it possible to provide better guarantees that these borders will be kept watertight.

The Netherlands encountered problems generated by the occasional arrival of flights carrying large numbers of illegal immigrants (from east Asia and Sri Lanka) who then applied for asylum at the border. Belgium noted a shift whereby illegal immigrants increasingly targeted minor airports. Furthermore, problems arose in relations amongst the States, stemming from a lack of harmonization in visa matters (for instance, nationals from States on the grey list, a different length of validity for passports depending on the Schengen State, etc.) and from the performance of expulsion measures requiring transit through an airport in another Partner State.

The Schengen States have invested a great deal in training on offer for border control staff and airline personnel, have increasingly called on the services of specialists in false and falsified documents, have upped the number of upstream controls and enhanced procedures for exchanging information, all of which has gone a long way towards tackling these difficulties.

The Schengen States' decision to take all the necessary steps to harmonize their visa policies by 1 January 1999 will simplify the tasks incumbent on the border control authorities.

At the maritime borders there has been an overall increase in the number of persons refused entry. Similarly, the Schengen States have noted an increase in the number of illegal immigrants and stowaways, which points to growing pressure from illegal immigration at these borders. Although bilateral and multilateral initiatives have been taken to remedy this situation, the Schengen States must report that the migratory pressure has remained constant.

More widespread use was made of the European Information System of Immigration Control in Seaports (EISICS), as called for in the 1996 Annual Report. The participating States are consulting the system more systematically now and new ports, mainly in Portugal, were linked up to the system in 1997

Measures have been taken to raise staffing levels and enhance technical resources chiefly in the States aspiring to implement the Schengen Convention. Specific data is gathered. An assessment has yet to be undertaken to check whether the increased staffing levels and enhanced technical resources are adequate.

4. FUNCTIONING OF THE SCHENGEN INFORMATION SYSTEM (SIS)

The situation with regard to the functioning and use of the Schengen Information System was positive on the whole. The number of hits obtained in 1997 (following national alerts abroad and foreign alerts on national territory) clearly demonstrates the effectiveness of the SIS as a tool for international cooperation in the field of security and the fight against cross-border crime.

Compared with 1996, and taking account of the enlarged Schengen area incorporating three new States (Italy, Austria and Greece), there was a tangible increase in the number of alerts input into the SIS, which rose from 4 592 949 to 5 592 240. Moreover, an equally tangible increase was noted in the overall number of hits recorded in the individual Schengen States, which climbed from 17 952 in 1996 to 21 280 in 1997 as well as the number of hits recorded abroad which increased from 15 227 in 1996 to 15 669 in 1997 (cf. Annex 2).

The widening of the Schengen area to include three new Schengen States immediately led to a substantial increase in the number of arrests. For instance, in less than a month, Greece recorded 143 hits for alerts pursuant to Article 96.

A few procedural problems do remain, such as the duplication of alerts in Schengen and Interpol. Moreover, some problems occasionally arise in transmitting information between the SIRENE Bureaux, chiefly due to differences - sometimes considerable - in the set-up of the SIRENE Bureaux in each Schengen State.
In general, the workload of the SIRENE operators is constantly on the increase, particularly as a result of the arrival of new States.

The arrest of an employee working for one of these Bureaux, suspected of having fed criminals data supplied by the Schengen States, heightened awareness of the risks constantly run by organizations in possession of sensitive information, and led to renewed vigilance and activity on the part of the Schengen States with regard to data protection.

Some categories of alert are not exploited to their full potential, such as those covered by Articles 98 and 100 (for identity papers, weapons or stolen banknotes. Work remains to be done in this area.

Overall, the SIS is functioning very well both at the technical and operational levels and only a few isolated inconsequential problems arose during 1997. Levels of system technical stability and system availability continue to be high, even following the technical integration of Italy, Austria and Greece. On a more general note, the management of the entire system has been improved, mainly because a Help Desk was set up (computer tool for supervising the SIS). Staff numbers have been increased at the Management Unit *(based at the C.SIS headquarters in Strasbourg and in charge of the daily management of the entire SIS)*.

Work has got under way on the preliminary study for the second generation of the SIS (SIS II) with a view to improving the system, increasing its functionalities and reliability and linking up a much larger number of States. With this objective in mind, it was agreed that the SIS technical support function would be upgraded to get us over the hurdle of the year 2000 and to enable the Nordic States to join during the year 2000 without having to wait for the installation of SIS II.

The ball has also been set rolling for the installation of the SIRENE Phase II network, which is set to improve the quality, increase the quantity and throughput of the information exchanged in the event of a hit.

The report by the Joint Supervisory Authority (JSA) was studied in detail and its recommendations will serve as a basis for devising proposals, depending on whether the solutions are technically feasible and on the costs they are likely to entail.

5. MOVEMENT OF PERSONS

Over the entire year, **cooperation concerning the movement of persons progressed very satisfactorily**. Chiefly thanks to the common and clear desire to improve the system, the Schengen partners were able to find practical solutions to the problems that came to light.

The Annexes to the Common Consular Instructions on Visas have continued to evolve in line with practical needs, new circumstances or changes to regulations or practices in certain Schengen States.

A great step forward was taken in harmonizing visa policy. The Executive Committee decided to abolish the list of third countries subject to different visa regulations by 1 January 1999, on the understanding that for three third countries, the Schengen States undertook to adopt a solution pursuant to Article 100c of the Treaty on European Union.

Agreement in principle was reached on drawing up a decision which would require all future visa waiver agreements to include a clause on the length of stays in accordance with Article 20 of the Schengen Convention.

A procedure was set up to enable a diplomatic mission or consular post acting on behalf of another State to consult the central authority of the Schengen Partner it is representing in the area of visas. All that remains to be settled are technical hitches in putting this procedure into practice.

The Schengen States continued to examine the harmonization of cases in which an airport transit visa is required.

The recurrent issue of harmonizing arrangements for sponsorship declarations has not yet been settled, there still being legal and technical problems to iron out.

On balance, **consular cooperation presented a largely favourable picture**, notably when it came to efforts aimed at preventing visa shopping and to tackle falsified documents and migration risks more effectively.

The States Parties continued, and endeavoured to improve, the exchange information on **readmission**. They began to consider the joint measures which could be adopted vis-à-vis third countries posing readmission problems for one or more Schengen State. The Executive Committee also adopted a document setting out the guiding principles for means of proof and indicative evidence under readmission agreements between the Schengen States.

Statistics on the issue of visas by the Schengen States are provided in Annex 3.

The relevant Schengen provisions ceased to apply when the Dublin Convention entered into force on 1 September 1997. Before that date, the application of these provisions had posed some problems – of a practical rather than a legal nature. The main issue underlying these problems, which were especially acute in 1998, was determining the State responsible for processing applications for asylum.

6. THE FIGHT AGAINST DRUG TRAFFICKING

A marked increase in the production, traffic and misuse of synthetic drugs has been noted. Quantities of heroin and cocaine are still very high. Cannabis, however, remains the most widespread illicit substance.

Overall, the routes for illicit trafficking are the same, despite a trend towards diversification in the Balkan route. A pilot project on routes has been launched and is expected to make progress in the course of 1998.

The Schengen States updated the manual on controlled deliveries (notably by including information on the Nordic States) and the details of the authorities responsible in each Schengen State for issuing medical certificates for the transport of narcotics, as well as compiling accurate, practical information on techniques for setting up bogus drug deals in the Schengen States.

A seminar on risk analysis also attended by the Schengen States, the UK, Ireland and the EU Working Party on Drugs and Customs Cooperation clearly convinced all participants of the value of risk analysis for rationalizing work and enhancing efficiency by means of a methodical, targeted approach.

At the internal borders, bilateral and regional cooperation involved operations of a varying scale with the prime objective of fighting cross-border flows of illicit drugs by taking action close to the supply sources and concentrating on modi operandi and the players. A distinction should be made between these operations and day-to-day judicial operations in the Schengen States. Aside from producing immediate results, in the long term such bilateral or regional operations act as a deterrent and promote teamwork between the competent authorities.

Lastly, Schengen cooperation has also resulted in more frequent use of controlled deliveries.

Annex 4 to this Report contains an estimate of the number of seizures and arrests at the external air borders as well as a list of examples of cross-border anti-drugs operations carried out in the Schengen area.

7. POLICE COOPERATION

The aim of the Handbook on Police Cooperation is to equip officers on the ground with the information they need to put into practice the main forms of police cooperation foreseen in the Schengen Convention. Provisions on practical cooperation at events which might jeopardise law and order and public security in several of the Schengen States involved (events, sporting events, etc.) were added.

A seminar was held on measures to optimize cooperation in the border regions and minimize the reinstatement of routine border controls pursuant to Article 2 (2) of the Schengen Convention. This helped pinpoint the areas in need of attention, namely training, new techniques, improving the exchange of information and setting up lightweight consultation procedures between the border authorities.

A pilot project on stolen vehicles was launched in the first half of the year. Over a three-month period, high-impact operations were conducted simultaneously in several Schengen States on pre-determined routes. These operations targeted motorways, ports and Schengen's borders with the East. During the implementation of the high-impact operations, police officers were exchanged. Such exchanges improved the quality of cooperation and made for better training. In addition to enhancing cooperation, the controls resulted in 300 vehicles being stopped and around a hundred criminals being taken into custody. Certain controls triggered investigations which culminated in networks being dismantled. The final evaluation of this project is very favourable. Not only did it provide scope to improve transnational cooperation but it also resulted in a group of experts being set up at European level. In future, greater emphasis will be placed on a regional approach.

The Schengen States observed a steady increase in the number of exchanges of police information (Article 39 (1)) between the national central authorities through Schengen channels (or by other channels such as Interpol, although a statistical breakdown according to the different channels is not always available). A similar trend was noted with regard to exchanges of information between authorities located on either side of the common borders.

The Schengen States also reported that the quality of messages and reply times had improved.

The main difficulties encountered arose from the fact that the terms of reference of the police and the judicial authorities vary from one country to another, which gives rise to mistakes or delays in the cooperation procedure. This is an organizational problem, which can be solved by stepping up cooperation between the police and judicial authorities.

According to the information in the possession of the national central authorities, the number of cross-border surveillance operations (Article 40) performed on the territory of each Schengen State varied from 2 to 165: 2 in Portugal, 6 in Germany, 8 in Spain, 19 in Luxembourg, 46 in France, 125 in the Netherlands and 165 in Belgium.

The States reported that this number was either constant or had increased slightly compared with last year. However, numerous requests for surveillance were made and authorized without actually being carried out. In some States, other surveillance operations were conducted outside the strict legal framework of Schengen, subject to the consent of the national authorities concerned, on a case-by-case basis.

Certain States pointed out minor, practical slip-ups during surveillance operations on their territory, such as unwarranted use of the emergency procedure, lack of information at the Central authorities and a failure to keep a record of the operation. Bilateral consultations will have to be held in the near future so as to remedy these shortcomings.

The number of cross-border pursuit operations (Article 41) counted on the territory of each Schengen State varied from 0 to 13: 0 in Luxembourg and Portugal, 1 in Spain, 2 in Germany, 9 in France, and 13 in Belgium.

Compared to the previous year, this number was either constant or increased slightly. Use of this method is therefore still relatively uncommon.

The effective implementation of police tasks is constantly hindered by the major disparity between the procedures for carrying out cross-border pursuit and the very restrictive conditions in which cross-border surveillance and cross-border pursuit is allowed in the various Schengen States.

It is hard to put a figure on the number of exchanges of information between police authorities engaged in crime prevention (Article 46) given the existence of more than one information channel at national and local level.

With regard to telecommunications cooperation (Article 44), the Schengen States took various measures to facilitate communication between the police authorities in the regions on either side of the border, particularly by exchanging radio equipment.

These exchanges of equipment and other practical forms of cooperation have generally been of an informal nature, taking place directly between the local competent authorities. In some cases, cooperation has been formalized by agreements laid down at national level.

All the States have expressed satisfaction at the results obtained from these forms of cooperation, whether undertaken with a view to organizing joint operations or following-up cross-border pursuit operations. Projects are now underway aimed at ensuring that all common border regions are covered (cf. annex 5).

The temporary or permanent secondment of liaison officers (Article 47) is a measure which is also advocated at EU level. With the exception of Luxembourg, each State seconded at least one permanent liaison officer to most other Schengen States.

All States agree that permanent liaison officers are extremely useful to improve the processing of requests for police and judicial assistance. The temporary secondment of liaison officers is, however, much rarer.

The Schengen States have also posted a large number of liaison officers to foreign countries inside and outside Europe. So far, no bilateral agreements within the meaning of Article 47 (4) have been concluded so that a Schengen liaison officer can represent a liaison officer from another Schengen State abroad. The Benelux countries are looking at a draft of this kind.

The central authorities in the Schengen States continued to exchange information on the acquisition of weapons (Article 91) by individuals living in another Schengen State. This exchange of information is also provided for within the European Union in Directive (EEC) 477/91 of 18 June 1991.

Thanks to these exchanges of information, numerous criminal prosecution cases have been introduced for the illegal importation and possession of weapons, notably in Germany. Belgium also noted a drop in the number of weapons acquisitions on its territory by foreigners owing to the fact that the exchanges of information introduced by the Schengen Convention act as a deterrent.

In practice, this procedure appears fully satisfactory, apart from exchanges from France to Belgium, in which case there is still a need to improve the internal procedure for the collection of information.

8. JUDICIAL COOPERATION

The Schengen Convention provides the States with a body of instruments to extend and facilitate judicial cooperation.

The application of provisions making it possible to send procedural documents directly by post (Article 52) or allowing the direct transmission of letters rogatory between the judicial authorities has continued to spread. Most States noted a fall in the number of letters rogatory sent by Schengen States to their Ministries of Justice. For instance, the Dutch authorities reported what was roughly a 40% drop in the number of requests.

On the other hand, some States have not yet made any arrangements for the authorities responsible for requesting and receiving additional information needed to apply the *non bis in idem* rule laid down in Article 54.

Use of the Convention's provisions on extradition has brought about a considerable increase in the number of extradition arrests. This is especially the case with regard to the avenues opened up by Article 95 (equal force of a SIS alert and a formal provisional arrest warrant).

The following figures were recorded in 1997: Germany received 163 extradition requests from other Schengen States, the Netherlands 208, Belgium 94 and France 91.

The option of transferring the enforcement of criminal sentences was used much more frequently than in previous years. Each State reported somewhere between 2 to 6 transfers.

Broadly speaking, the Schengen States find that the Convention expedites and enhances judicial cooperation. The judicial authorities avail themselves of the instruments furnished by the Convention much more frequently.

Nevertheless, the potential of the Schengen Convention is not being fully exploited. The direct transmission of letters rogatory between judicial authorities should be encouraged further, despite the fact that it has already been promoted by the distribution of the Directory of Legal Districts and Communes (which makes it possible to identify which judicial authorities have jurisdiction for a particular area). The simplified procedure (Article 66) and the laying of information for the purposes of prosecution (Article 53 (5)) should be applied to a greater extent.

In view of the difficulties encountered when attempting to obtain extracts from the judicial records of another Schengen State, a uniform form was created and will be made available to the Schengen States' judicial authorities.

The way in which certain provisions contained in the Convention are applied can also be judged from judicial precedent. As with any other legal provisions, they are open to interpretation. It is interesting to look at the case law in order to see how the courts in the Schengen States interpret these provisions (cf. annex 6).

9. OTHER MATTERS

Both the Portuguese Presidency and the Austrian Presidency worked at ensuring good relations with the Joint Supervisory Authority. The Schengen States examined the JSA's reports and prepared the replies contained in these reports

The ultimate enlargement of Schengen, when integrated into the European Union, has left its mark on the international relations maintained by its competent bodies, which have been defined in an action programme and in accordance with guidelines contained in the Executive Committee Decision of 24 June 1997, which basically states that these relations supplement those pursued in the framework of the European Union.

Contacts with third countries interested in Schengen activities have thus been pursued, both at the traditional bilateral level and in seminars (in Hungary in November 1997 and Luxembourg in December 1997). Briefing sessions have been held, notably with Russia and the United States, at the request of these two countries.

Switzerland, considering its special position at the heart of the Schengen area, has continued to keep abreast of developments in Schengen cooperation. Concrete steps have been taken to conclude special arrangements at the external borders, in particular in the light of existing bilateral agreements.

In the light of Schengen's integration into the European Union as provided for by the Treaty of Amsterdam, the Schengen States have begun to take stock of what the European Union might adopt as the Schengen acquis after the entry into force of the Treaty of Amsterdam.

10. CONCLUSION

Since the abolition of controls at the internal borders for seven States on 26 March 1995, Schengen cooperation has continued, step by step, to improve and deepen in an area in which national instincts are still powerful and constraining.

We may pride ourselves on the success enjoyed by the free movement of persons, which extended to 10 States in 1997 and will be stretched to 15 in the future.

The Schengen groups have been tireless in their efforts to ensure that the strengthening of security measures entailed by Schengen goes hand in hand with the protection of fundamental freedoms and the observance of international legal obligations.

One of the great achievements of Schengen cooperation lies in its contribution to bringing the national law-enforcement agencies and the relevant administrations closer together with increasing effect at both bilateral and multilateral level. The Convention has consolidated these ties and turned collaboration between officials of the Schengen States and the exchange of know-how and information into an everyday occurrence.

Sustained investments have been made in the training needed to foster such cooperation, thereby contributing to the overall success in implementing the Convention and the decisions taken on that basis.

The will to push back the boundaries has often proved more powerful than any reticence. Take, for instance, the decision to harmonize visa policy, which was a major milestone in 1997.

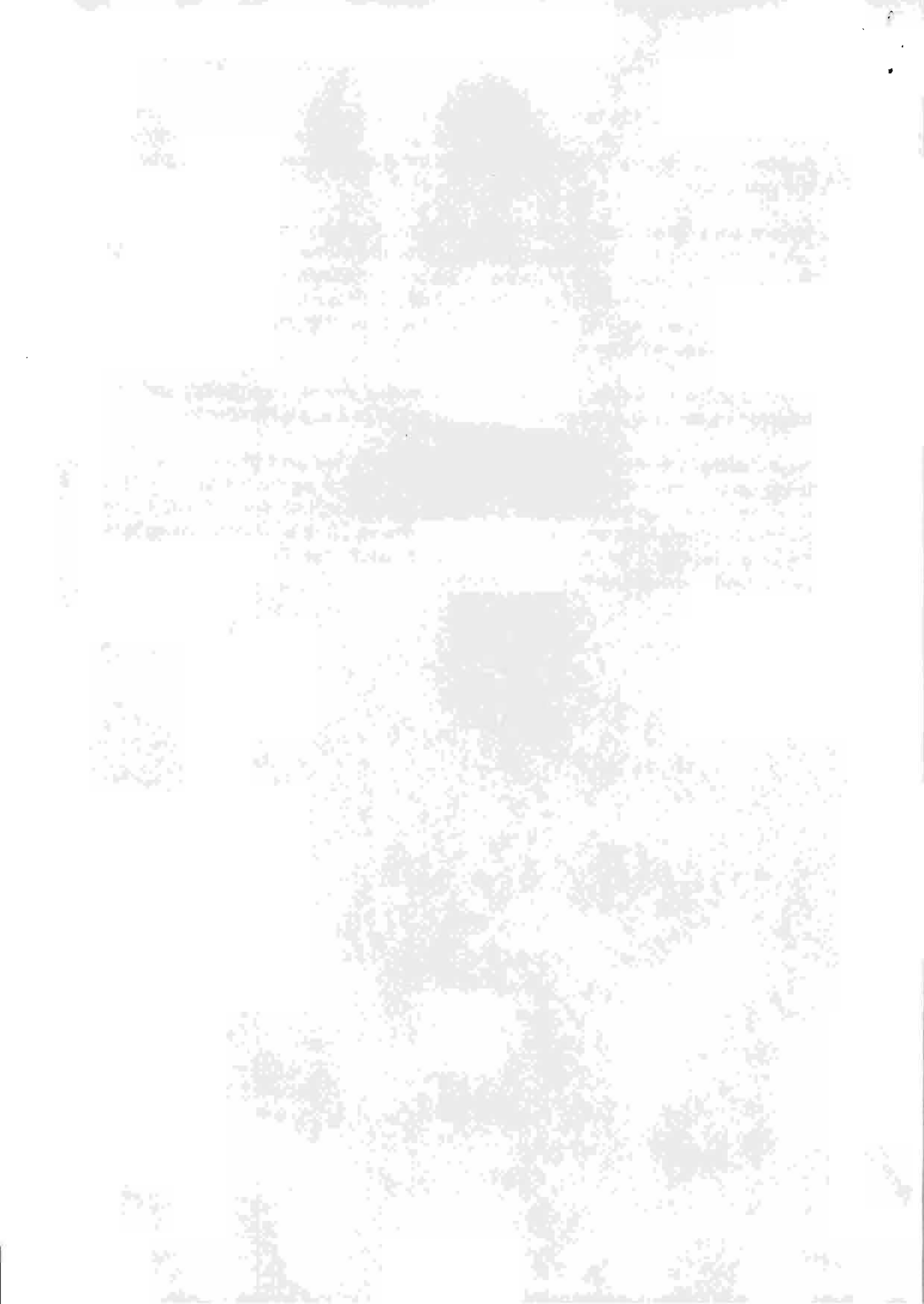
Cooperation between consular authorities, border control authorities and law enforcement agencies in general has also produced better results in the fight against illegal immigration, the various forms of smuggling and organized crime. The joint operations conducted in the first half of the year demonstrated the added value to be gained from such operations in terms of prevention and, in the long term, enhancing the operational potential of the agencies involved. Exchanges have become commonplace, making it possible to attain results which would have been unimaginable in the past.

Use of the SIS, a vital tool for the practical aspects of security cooperation, is spreading, covering ten Schengen States since the end of 1997 with the prospect of being able to store the data for the Nordic States after its upgrade in the year 2000.

Nevertheless, their concern for immediate results has not led the States to neglect the future of Schengen in the light of the forthcoming enlargement of European cooperation. For instance, a second generation SIS is being studied. Furthermore, a communication network (SIRENE Phase II) has been set up to improve, supplement and speed up exchanges of the additional information sometimes required after a hit.

There is growing interest in Schengen cooperation among Third States and this has led to a series of contacts between these States and the Presidency.

Nevertheless, the instruments provided for in the Schengen Convention are not being used to their full potential and one of the objectives the Schengen States must set their sights on, before and after integration into the EU, will be to identify the few shortcomings remaining in this area. It goes without saying that the implementation of the provisions contained in the Convention must be permanently, and methodically, monitored.



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NOTE FROM THE PRESIDENCY

REPORT ON AGREEMENTS ON POLICE COOPERATION AT THE INTERNAL BORDERS OF THE SCHENGEN AREA

1. Border between Portugal and Spain

a) Agreement of 15 February 1993 on the readmission of illegal immigrants;

b) Agreement of 17 January 1994 on coordinating mobile patrols with a view to combating illegal immigration from third countries and other forms of crime:

- setting up 8 coordination centres in each country (linked by telephone and fax);
- creation of consultative bodies at the national, regional and local levels, geared towards solving practical operational problems:

c) Agreement creating four joint police stations was signed on 18 November 1997. The jointly-manned police station at Villar Formoso-Fuentes de Onoro was opened on 23 February 1998.

2. Border between Spain and France

a) Convention of 17 July 1965 on *Bureaux à contrôles nationaux juxtaposés (BCNJ)* (juxtaposed national control offices);

b) Agreement of 25 June 1991 empowering customs officers to apply Articles 40 and 41 of the Schengen Convention;

c) Agreement of 8 January 1998 on the admission of illegal immigrants at border posts;

d) Agreement on the use of special frequencies for transmissions to facilitate cooperation between special units;

e) Paris Agreement of 3 June 1996 on the creation of four joint police stations at the common border for meetings between police departments, the exchange of information and the coordination of actions against illegal immigration rings.

f) Intergovernmental Agreement on cross-border customs and police cooperation, initialled in Salamanca on 2 December 1997. This agreement which has yet to be signed, creates police and customs cooperation centres and provides a legal basis for direct cooperation between units.

3. Border between France and Italy

a) Agreement of 13 October 1986 on creating a cooperation committee to combat terrorism, drugs trafficking and organized crime.

b) Intergovernmental Agreement on cross-border customs and police cooperation, signed in Chambery on 3 October 1997, creating police and customs cooperation centres and providing a legal basis for direct cooperation between units. This agreement remains to be ratified.

4. Border between France and Germany

a) Convention of 18 April 1958 on BCNJ;

b) Agreement of 3 February 1977 on police cooperation in the border region;

c) Arrangement of 12 October 1992 on police cooperation between the *Länder* and *Départements* on either side of the border:
- setting up a coordination unit
- creating 3 joint police stations
- organizing concerted actions
- exchanging information
- temporary secondment of police officers
- consolidating means of communication

d) Agreement of 19 June 1990 empowering customs officers to apply Articles 40 and 41 of the Schengen Convention;

e) Agreement of 7 December 1995 on police cooperation in border areas by establishing permanent, joint Franco-German police stations. [In the meantime, the fourth joint police station has been set up at Lauterburg Bienwald.]

f) On 9 October 1997, a global agreement was concluded at Mondorf between the Government of the Federal Republic of Germany and the Government of the French Republic on cooperation between police and customs authorities in the border regions.

g) Administrative Agreement of 12 March 1997 on customs cooperation in border regions.

5. Border between France and Luxembourg

a) Convention of 21 May 1964 on the *BCNJ*;

b) Agreement of 19 June 1990 empowering customs officers to apply Articles 40 and 41 of the Schengen Convention;

c) Draft agreement, currently under scrutiny, on the same matters as in the other abovementioned agreements in accordance with Article 39 (4) of the Schengen Convention.

6. Border between France and Belgium

a) Agreement of 19 November 1919 on cooperation and the movement of the *gendarmerie* across the common border;

b) Convention of 30 March 1962 on the *BCNJ*;

c) Agreement of 19 June 1990 empowering customs officers to apply Articles 40 and 41 of the Schengen Convention

d) Framework agreement of 16 March 1995 on cross-border police cooperation (+ draft supplementary agreement currently being negotiated):
- creation of a consultative forum
- consolidating the exchange of information and concerted actions
- setting up operational contact points in the border region
- enhancing means of communication
- joint training courses

7. Border between Belgium and Luxembourg

a) Benelux agreement of 21 December 1993 on the fight against drugs (+ supplementary arrangement between the police authorities): exchange of information and concerted actions against drugs tourism along the Maastricht-Liège-Luxembourg route;

b) Senningen agreement of 4 June 1996 on coordinating police cooperation in border regions;

c) Benelux Memorandum of Understanding of 4 June 1996 on cooperation in police, justice and immigration matters. (Trilateral consultative forum created.)

8. Border between Luxembourg and Germany

Agreement of 24 October 1995 on bilateral police cooperation (entered into force on 1 June 1996):
- designation of operational contact points
- coordination of joint actions in the border region
- exchange of police information
- organization of joint training and exercises
- specification of practical arrangements for cross-border surveillance and pursuit
- exchanges of communications equipment

9. Border between Belgium and Germany

a) Agreement of 30 September 1959 on departmental relations between the police authorities at the common border;

b) Draft agreement on the same matters as in the other abovementioned agreements in accordance with Article 39 (4) of the Schengen Convention.

10. Border between Belgium and the Netherlands

a) Agreement of 11 August 1949 on direct contact between the Police d'Etat and the *Maréchaussée Royale* for the one part and the *gendarmerie nationale* on the other part;

b) Benelux agreement of 21 December 1993 on the fight against drugs (+ supplementary arrangement between the police authorities): exchange of information and concerted actions to combat drugs tourism along the Maastricht-Liège-Luxembourg route;

c) Agreement of 27 March 1995 on setting up a structure for police cooperation and expanding the means of communication between the border authorities;

d) Benelux memorandum of understanding of 4 June 1996 on cooperation in the fields of police, justice and immigration. (Creation of a trilateral consultative forum.)

11. Border between Germany and the Netherlands

Agreement of 17 April 1996 on police cooperation in the border region between the Netherlands and the Federal Republic of Germany (entered into force on 1 February 1997):

- designation of operational contact points
- exchange of police information
- coordination of police operations in the border region
- guidelines on cross-border surveillance and pursuit
- organizing joint training activities

12. Border between Austria and Germany

a) Agreement of 13 April 1988 on cooperation in combating international drug trafficking, international terrorism and international organized crime concluded between the ministries of these two countries

b) Intergovernmental agreement on cooperation between police and customs authorities in the border regions.

13. Border between Austria and Italy

a) Agreement of 12 November 1986 on cooperation in combating international drug trafficking, international terrorism and international organized crime, concluded between the ministries of these two countries.

b) Intergovernmental agreement of 25 April 1997 on cross-border surveillance and pursuit by customs authorities (Article 39 (4) of the Convention).

c) Agreement of 15 December 1997 on police cooperation in the border regions.

General Comments

1. Greece has no common borders with another Schengen State and has therefore not concluded any agreements on police cooperation in land border regions.

2. The Federal Republic of Germany has entered into negotiations with Denmark on an agreement within the meaning of Article 39 (4) of the Schengen Convention.

3. As concerns the border between Spain and France, a customs agreement on cooperation in joint border regions has been finalized and is due to be signed in the near future.

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Table of hits recorded by the SIRENE Bureaux

Period : 1 January 1997 to 31 December 1997

		art 95		art 96		art 97		art.98		art.99 WP		art.99 Veh.		art.100 Veh.		Art.100 F.A.		art. 100 D.B..		art.100 I.D.		art.100 B.K.		TOTAL	
		INT	EXT	INT	EXT	INT	EXT	INT	EXT	INT	EXT	INT	EXT	INT	EXT	INT	EXT	INT	EXT	INT	EXT	INT	EXT	INT	EXT
NL	1996	93	62	754	96	56	48	163	23	68	24			1114	807					5	48			2253	1108
(a)	1997	121	75	431	51	65	50	208	6	125	5	85	59	943	704	15	0	89	54	42	605			2124	1609
BEL	1996	58	65	1527	62	47	45	196	5	43	15	1	1	1297	1390	8	5	4	129	2	1			3183	1718
	1997	82	143	1416	47	65	87	264	50	72	32	5	1	1399	1664	18	5	15	390	61	6			3397	2425
DE (**)	1996	83	187	288	5972	82	126	287	63	187	29			607	2125									1534	8502
(b&c)	1997	99	266	725	3999	64	74	480	68	260	55			984	2163									2612	6625
LU (**)	1996	27	9	18	6	317	15	40	33			1		65	261					14	1			482	325
	1997	14	7	13	5	472	29	39	42	8				363	220									909	303
ES	1996	88	16	753	226	60	24	286	4	79	4			590	184									1856	458
	1997	155	18	640	188	77	36	428	6	158	1	18	2	611	203	19	14							2106	468
FR	1996	62	171	6283	483	66	110	57	910	17	363	18	15	1804	946	31	1	6	3	26	6	2		8372	3008
(c)	1997	112	183	5756	373	157	102	410	936	205	475	18	52	2025	994	31	9	78	3	234	15	3	1	9029	3143
IT (*)	1996																							0	0
	1997	25	12	67	433	2	13	16	226	14	210			12	1									136	895
PT	1996	4	3	182	13	1	2	7		8				70	86		2		1		1			272	108
	1997	8	6	290	13	4	3	17	2	7				77	84		3			1	2			404	113
GR (*)	1996																							0	0
	1997			143	16			16		7				7						9				182	16
AU (*)	1996																							0	0
(a)	1997	11	20	158	42	1	1	102	4	56		4		11	5			4		34				381	72
TOTAL	1996	415	513	9805	6858	629	370	1036	1038	402	435	20	16	5547	5799	39	8	10	133	47	57	2		17952	15227
	1997	627	730	9639	5167	907	395	1980	1340	912	778	130	114	6432	6038	83	31	186	447	381	628	3	1	21280	15669

* INT. : Hit recorded internally in response to an alert entered abroad
* EXT.: Hit recorded abroad in response to a national alert
(*) : Italy has been operational since 26.10.97, Austria since 1.12.97 and Greece since 08.12.97 -
(**) : There is no specific distinction in articles 99 and 100
(a) : Hits at external borders are not entered
(b) : Account should be taken of the approx. 11,000 people turned back every month by the Federal Border Guard (*Bundesgrenzschutz*). These figures are not included in the table.
(c) : Hits recorded internally in response to national alerts are not entered0

WP - wanted persons
Veh - vehicles
F.A - firearms
D.B. - blank documentd
I.D. - dentity documents
B.K. - banknotes

COUNTRY		VISAS ISSUED PER NATIONALITY																			
		Federal Republic of Yugoslavia		Turkey		Iraq		Iran		Afghanistan		Georgia		Sri Lanka		Algeria		Pakistan		Vietnam	
		1996	1997	1996	1997	1996	1997	1996	1997	1996	1997	1996	1997	1996	1997	1996	1997	1996	1997	1996	1997
	Germany (1) (4)	50954	28735	160416	88600	0 (2)		46347	17098	0 (2)		22489	9684	4126	1888	4743	2570	12996	4605	3867	1892
	Austria (1)	67402	65696	34467	38146	0 (2)		9138	10318 (3)	0 (2)		0 (2)		0 (2)		0 (2)		881	811	0 (2)	
I	Belgium (1)	3087	3290	5719	5436	0 (2)		1093	0 (5)	0 (2)		0 (2)		0 (2)		2720	3702	756	650	509	426
S	Denmark (4)	2593	531	1383	450	85	53	1747	938	50	17	56	21	432	159	109	22	721	391	196	153
S	Spain (1)	5951	3895	0 (5)	10258	409	0 (5)	2134	2148	25	0 (5)	153	0 (5)	400	0 (5)	24571	18390	1397	719	165	0 (5)
U	Finland (5)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
E	France (1) (4)	14231	6507	51447	27517	304	125	11733	4661	0 (2)		2118	1317	2088	892	0 (5)		9845	5275	2857	1505
D	Greece (6)	316386		179496		699		6691		212		22360		347		3208		4802		137	
	Iceland (4)	141	52	58	45	1	0	27	9	1	0	2	0	21	6	17	69	13	9	20	11
	Italy (7)	0	3705	0	3342	0	44	0	830	0	5	0	542	0	378	0	674	0	297	0	15
	Luxembourg (5)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
B	Netherlands (8)	3461	0	26540	0	1029	0	6959	0	145	0	117	0	5133	0	149	0	5054	0	1032	0
Y	Norway (10)	338	1200	174	2700	82	0	1115	1700	3	0	11	0	166	570	38	0	1277	1770	172	360
	Portugal	963	358	1310	652	106	14	470	111	24	1	13	6	100	61	2470	789	458	145	42	26
	Sweden (5)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
TOTAL (9)		78647	42785	245432	132463	1848	139	68736	24018	194	1	24890	11007	11847	2841	34653	25451	30506	11394	8472	3849

(1) The statistics are kept per post not per nationality.
(2) No consular post or post provisionally closed.
(3) These figures include airport transit visas : 3466 in 1996 and 4105 in 1997.
(4) The figures for 1997 cover the period from 1 January to 30 June.
(5) No figures were sent in.
(6) Figures for the period from 1 January 1996 to 30 June 1997.
(7) Figures for the period from 26 October to 31 December 1997, period when the Schengen Convention was brought into force for Italy.
(8) No figures sent in for 1997.
(9) For countries applying the Schengen Convention during the entire reference period: Germany, Belgium, Spain, France, Luxembourg, Netherlands and Portugal
(10) Approximate figures for 1997

Overall figures for visas requested/ issued in 1997

Key : uniform visa = C ; transit visa = B ; airport transit visa = C

BELGIUM
Visas requested : 152 735
Visas issued : 120 586
C : /
B : /
ATV : /

GERMANY
Visas requested : 2 858 705
Visas issued : 2 005 699
C : /
B : /
ATV : /

AUSTRIA

Visas requested : 820.626(*)
Visas issued : 767.592(*)
p.m. these statistics incorporate the visas issued by Austria for the whole of 1997 although it has only been implementing the Schengen Convention since 1 December 1997.

SPAIN
Visas requested : /
Visas issued : 472.846
C : 455.215
B : 17.327
ATV : 304

GREECE : / (*)
* has only been implementing the Schengen Convention since 1 December 97

FRANCE
Visas requested : /
Visas issued : 1 668 068
C : 1 477 148
B : 178 211
ATV : 12 709

THE NETHERLANDS
Visas requested : 459 037
Visas issued : 428 726
C : /
B : /
ATV : /

ITALY (period from 26 October to 31 December 1997*)
Visas requested : 96 614
Visas issued : 79 658
* period of implementation of the Schengen Convention by Italy in 1997

PORTUGAL
Visas requested : 70.649
Visas issued : 67.931
C : /
B : /
ATV : /

LUXEMBOURG
Visa applications: 11 133
Visas issued: 9 602
Visas refused: 1 531
C: /
B: /
ATV: /

Table 1 – number of arrests

COUNTRY	1996	1995	1994	1993
Austria	46	36	27	63
Belgium	107	77	101	95
France	292	257	287	236
Germany	437	381	169	123
Italy	409	238	476	237
Luxembourg	3	2	6	14
The Netherlands	826	561	748	456
Portugal	109	109	83	50
Spain	783	704	598	0
Greece	103	107	28	22
TOTAL	**3115**	**2472**	**2523**	**1296**

2) Number of seizures

The vast majority of seizures (85% in 1995) were made in the Netherlands, Spain, Italy and Germany. An increase was noted in all countries between 1995 and 1996.

	1995					1996				
PAYS	heroin	cocaine	cannabis	psycho-tropics	TOTAL	heroin	cocaine	cannabis	psycho-tropics	TOTAL
Austria	8	19	18	0	45	8	18	36	0	62
Belgium	7	35	60	4	106	3	74	29	7	113
France	16	96	94	78	224	13	125	149	4	291
Germany	37	364	259	4	664	13	586	117	5	721
Italy	42	256	369	28	695	9	16	16	26	67
Luxembourg	0	2	0	0	2	0	3	0	0	3
Netherlands	29	412	143	0	584	22	632	185	8	847
Portugal	0	98	32	0	130	2	97	9	0	108
Spain	22	608	57	9	696	14	694	18	1	727
Grèce	12	18	28	40	98	7	20	34	17	78
TOTAL	**173**	**1908**	**1060**	**103**	**3244**	**91**	**2265**	**593**	**68**	**3017**

3) Quantities seized

Quantities (in kg)	1996				1995				1994				1993		
Country	heroin	cocaine	cannabis	psycho-tropes	heroin	cocaine	cannabis	psycho-tropes	heroin	cocaine	cannabis	psycho-tropes	heroin	cocaine	cannabis
Austria	19.90	37.00	1.681	0.00	0.40	27.25	3.908	0.00	2.280	37.477	266.27	3.468	5.311	63.316	8.797
Belgium	6.94	368.00	1551.74	13.40	46.23	169.35	233.38	2.09	52.280	106.970	449.61	1.179	24.330	214.400	611.970
France	21.07	285.07	1041.40	18.77	23.09	279.65	516.50	109.30	43.436	430.000	1038.00	0.000	9.147	539.554	285.075
Germany	60.40	1082.50	595.80	9.73	120.21	897.82	325.21	0.46	71.641	459.858	756.08	111.972	55.552	627.586	22.257
Italy	45.00	593.00	71.00	61.00	92.92	447.33	87.70	219.00	39.551	300.983	204.00	993.000	32.100	366.150	90.698
Luxembourg	0.00	12.70	0.00	0.00	0.00	7.40	0.00	0.00	9.948	14.500	1131.00	0.000	10.420	15.540	400.700
Netherlands	69.00	2335.00	6471.00	3.38	114.00	1531.00	3517.00	0.00	92.332	1261.690	2063.09	1229.059	82.081	1237.217	6159.013
Portugal	3.11	524.77	34.86	0.00	0.00	394.96	270.04	0.00	49.745	276.065	0.00	0.000	120.000	144.710	21.951
Spain	16.95	1713.69	219.98	0.50	41.23	1919.07	415.24	1.41	65.000	1586.000	279.82	3.157	69.633	975.514	361.550
TOTAL	**242.36**	**6952.00**	**9987**	**106.78**	**438**	**5673.80**	**5369.68**	**332.252**	**423.933**	**4473.543**	**6187.88**	**2341.835**	**408.574**	**4183.987**	**7962.011**

EB\div

S C H E N G E N

Working Group
on Telecommunications

Brussels, 5 November 1997
SCH/I-Telecom (95) 4 rev 2
Translation:
Orig./NL

SUMMARY DOCUMENT

CONCERNING BILATERAL AGREEMENTS

IN CONNECTION WITH THE EXCHANGE OF TELECOMMUNICATIONS DATA

(Article 44 of the Convention implementing the Schengen Agreement)

Amended under the Dutch Presidency on 21 June 1996, under the Luxembourg Presidency on 3 October 1996 and under the Austrian Presidency on 24 November 1997.

During the meeting held on 20 October 1993 (Document SCH/I-Telecom (93) PV 4) it was decided that the Presidency would compile a summary document on the basis of documents sent by the delegations to the General-Secretariat, concerning bilateral agreements in connection with the exchange of telecommunications data. When the necessary measures were taken *inter alia* in the framework of bilateral agreements concluded between the Schengen States, the conditions for the entry into force of the Convention were completed.

BELGIUM (Document SCH/I-Telecom (94) 13)

First and foremost, a system of alerts and data exchange has to be set up between the different incident rooms of border areas by means of permanent links. These incident rooms should be manned permanently.
In addition, a zone with an overlapping radio coverage of approximately 10 km has to be provided in the border areas. If necessary, radio material will be exchanged between the different police services involved in a cross-border incident.

Belgium -the Netherlands

A protocol agreement was signed with the Netherlands. Radio material for cross-border contacts has been installed; some posts are already operational.

Belgium - Luxembourg

A radio post from the Belgian Gendarmerie was installed in Luxembourg. The link-up is now operational. An agreement on cross-border police cooperation was signed on 4 June 1996.

Belgium - Germany

Several radio posts have been installed enabling Belgium to access different German police services (Aachen, Trier and Eiskirchen). They are all operational. However, there is still no protocol agreement.

Belgium- France

French radio posts from the Diamond network have been installed in Belgium. These links are operational. A protocol agreement has to be prepared.

GERMANY (Doc. SCH/I-Telecom (94) 38)

Germany - Luxembourg

A technical solution which was developed for both the police and customs is now operational. However no formal protocol agreements have been signed yet.

Germany - the Netherlands

A technical solution which was developed for both the police and customs is now operational. Although no formal protocol agreements have been signed yet, special measures have been taken.

Germany - France

A technical solution which was developed for both the police and customs is now operational. Although no formal protocol agreements have been signed yet, special measures have been taken, i.e. two joint *commissariats* (authorities) have been set up.

Germany - Belgium

A technical solution was developed for both the police and customs which is now operational. However, no formal protocol agreements have been signed yet. Concrete measures still have to be taken for customs.

FRANCE (Doc. SCH/I-Telecom (94) 15)

The creation of a direct cross-border link between France and its neighbouring states is currently underway. Meetings will be organized at the local level under the supervision of the head of the police who has territorial jurisdiction and will be attended by all parties responsible for security at a defined sector at the border. Pragmatic solutions adapted to suit the services' needs are used at present (exchange of equipment).

France - Belgium

see Belgium

France - Germany

see Germany

France - Italy

A joint authority was set up at VINTIMIGLIA enabling access to each others' networks. In addition, local apparatus is sometimes exchanged. A draft protocol agreement is currently being finalized.

France - Spain

A joint authority was set up at the border crossing point of the Perthus motorway (La Junquera) thus enabling access to each others' network. Sometimes local equipment is exchanged. A protocol agreement has been signed.

THE NETHERLANDS (Doc. SCH/I-Telecom (93) 36)

Consultations between the Netherlands and two bordering German States (Nordrhein-Westfalen and Niedersachsen) and Belgium resulted in technical protocols with Germany and a cooperation protocol with Belgium. They refer mainly to radio provisions for the incident room - incident room communication and mobile communication to vehicles in the border area. See also Belgium and Germany.

SPAIN (Doc. SCH/I-Telecom (94) 39, SCH/I (95) 28 corr., SCH/I-Telecom (96) 40, SCH/I-Telecom (97) 52)

Spain - France

see France

Spain - Portugal

Since January 1995, Spain has an agreement with Portugal laying down the provisions for coordination centres in both States. Coordination bodies have been established at the local, provincial and national level. No agreement has been reached yet on the allocation of joint frequencies.
The *Guardia Nacional Republicana* of Portugal and the Guardia Civil of Spain have set up a radio communication network between the border-crossing points of TAVIRA (FARO) and AYAMONTE (HUELVA). The following radio frequencies have existed since 1 September 1997:
- Caya (Badajoz) - Elvas (Portugal)
- Tuy (Pontevedra) - Valença (Viana do Castelo)
- Alcañices (Zamora) - Bragança (Bragança)
- Fuentes de Oñoro (Salamanca) - Villar Formoso (Guarda)

LUXEMBOURG (SCH/I-Telecom (96) 37)

Luxembourg - Belgium

see Belgium

Luxembourg - France

A French radio post has been set up in the operational centre of the *Gendarmerie* and the police in Luxembourg. Although no protocol agreement has been signed yet, it is currently being negotiated.

Luxembourg - Germany

A radio link has been set up between the command centres. Radio posts were exchanged and distributed amongst the units operating in the border area. An agreement on cross-border police cooperation was signed on 24 October 1995.

PORTUGAL (Doc. SCH/I-Telecom (95) 10, SCH/I-Telecom (97) 52)

Joint coordination centres have been set up; communications are by telephone and fax. In addition to the existing radio communication link between Tavira (Faro) and Ayamonte (Huelva) the following radio communication links have existed since 1 September 1997:

Elvas (Portugal) - Caya (Badajoz)
Valença (Viana do Castelo) - Tuy (Pontevedra)
Bragança (Bragança) - Alcañices (Zamora)
Vilar Formosa (Guarda) - Fuentes de Oñoro (Salamanca).

ITALY

The agreement between France and Italy is currently being completed.
There are plans for agreements with Greece and Austria.

GREECE (Doc. SCH/I-Telecom (95) 1)

Greece has no common land borders with the Member States of the European Union. It only has a maritime border with Italy. Consequently, there are no bilateral agreements enforcing the provisions of Article 44 of the Convention implementing the Schengen Agreement.
Greece and Italy have concluded an agreement which provides for data exchange between police, customs and port authorities via radio links for the combat against drug trafficking via the Balkan route.

AUSTRIA (Doc. SCH/I-Telecom (96) 35)

Austria - Germany

Telephone links were set up in the border areas exclusively for bilateral communication between the incident rooms of the operational services of both States.
A mutual link was set up between the States' radio relay stations for test purposes in the Achenpas area. Other pragmatic solutions have been discussed. A bilateral agreement is currently being outlined.

Austria - Italy

No consultations have taken place at the present time.

BELGIUM	the Netherlands - Pragmatic solution - protocol agreement	Germany - Pragmatic solution - continued discussions	Luxembourg - Pragmatic solution - agreement on cross-border police cooperation (4/6/96)	France - Pragmatic solution - discussions on protocol agreement	
NETHERLANDS	Belgium - Pragmatic solution - protocol agreement	Germany - Pragmatic solution - operational agreements			
GERMANY	Belgium - Pragmatic solution - on-going discussions	the Netherlands - Pragmatic solution - operational agreements	Luxembourg - Pragmatic solution - agreement cross-border police cooperation (24/10/95)	France - Pragmatic solution - operational agreement - concrete measures	
FRANCE	Belgium - Pragmatic solution - discussions on protocol agreements	Germany - Pragmatic solution - operational agreements - concrete measures	Italy - joint authority - pragmatic solution - draft protocol agreement in the final stage	Spain - joint authority - pragmatic solution - protocol agreement	Luxembourg - Pragmatic solution - on-going discussions on protocol agreement

SPAIN	France - joint authority - pragmatic solution - protocol agreement	Portugal - agreement on coordination centres -radio communication link between 1.Tavira (Faro) and Ayamonte (Huelva) 2. Elvas (Portugal) and Caya (Badajoz) 3. Valença (Viana do Castelo) and Toy (Pontevedra) 4. Bragança (Bragança) and Alcañices (Zamora) 5. Vilar Formoso (Guarda) and Fuentes de Oñoro (Salamanca)			
LUXEMBOURG	Belgium - pragmatic solution - agreement on cross-border police cooperation (4/6/96)	France - pragmatic solution - discussions on protocol agreements	Germany - pragmatic solution - agreement on cross-border police coordination (24/10/95)		
ITALY	France - joint authority - pragmatic solution - draft protocol agreement in final stage	Greece	Austria		
PORTUGAL	Spain - agreements on coordination centres - radio link between 1.Tavira (Faro) and Ayamonte (Huelva) 2. Elvas (Portugal) and Caya (Badajoz) 3. Valença (Viana do Castelo) and Toy (Pontevedra) 4. Bragança (Bragança) and Alcañices (Zamora) 5. Vilar Formoso (Guarda) and Fuentes de Oñoro (Salamanca)				

G R E E C E	No land borders with Schengen States, only a maritime border with Italy. No bilateral agreement within the meaning of art.44. However, there is a TELE-DRUG agreement which contains a provision on data exchange via radio links				
A U S T R I A	Germany pragmatic solution preparations for a protocol agreement are under way	Italy			

The Netherlands indicated that two decisions were delivered based on an interpretation of Article 51 (conditions for consenting to house searches). The first was a ruling given by Arnhem court of appeal on 21 March 1997. The Arnhem public prosecutor received letters rogatory from the examining magistrate at the *Tribunal de Grande Instance* in Evry. After receipt of these letters rogatory, the Arnhem public prosecutor applied for a search warrant at the district court in Arnhem. Arnhem district court ruled that, pursuant to Article 111 of the Dutch Code of Criminal Procedure, it had to examine whether the criteria that the house search must be necessary was satisfied. According to Arnhem district court it did not ensue from the letters rogatory that a house search was necessary. It consequently rejected the application for a search warrant. However, Arnhem court of appeal ruled that, pursuant to Article 51, when assessing letters rogatory based on the Schengen Convention the Dutch magistrate had limited right of examination. According to the court of appeal, an examination of the necessity for a house search on the basis of letters rogatory therefore exceeded this right.

Portugal reported a judgement from the Supremo Tribunal de Justica (High Court of Justice) regarding the interpretation of provisions on extradition. This concerns a case in which Germany had requested extradition, and the provisions laid down in Article 5 of the Agreement on the Accession of the Portuguese Republic to the Schengen Convention implementing the Schengen Agreement was interpreted as follows: "Extradition may only be granted if the requesting State explicitly and with a high degree of probability guarantees that life imprisonment will be commuted into another, not degrading and not indefinite punishment".

Belgium reported a judgement regarding direct tax offences. This judgement was rendered in response to an appeal against a decision of the Chambers of Antwerp court of first instance ordering the transfer of documents seized in execution of letters rogatory from the Netherlands. The Court found that although the offence giving rise to the letters rogatory came under common fraud in the Netherlands, in view of the facts of the case in Belgium it should be dealt with as a fiscal offence with the intent of direct tax evasion. The Court pointed out that Article 50 (1) only covered indirect taxes and that the Ministerial Circular of 4 April 1995, recommending that letters rogatory for direct tax offences should be executed "within the bounds of the possible", expressed a wish but in this case this in no way annulled the applicable provisions of the Convention. The Court declared the letters
rogatory, the house search and the seizures null and void and ordered the return of the seized goods to the appellant.

Germany reported two arrests in which the application of the non bis in idem rule (Article 54) had been examined.

a. Ruling of the Bundesgerichtshof (supreme court of appeal) of 13 May 1997 – StR 596/96

The Federal High Court of Justice gave the following fundamental arguments concerning Article 54 of the Schengen Convention in proceedings against two persons charged with tax fraud:

The non bis in idem rule cannot be inferred from the principle or the general rules of international law, nor from the international Covenant on Civil and Political Rights, nor from the Convention for the Protection of Human Rights and Fundamental Freedoms nor from the principles of European Community law. Nevertheless, Article 54 of the Schengen Convention does contain an internationally binding obligation. The Schengen Convention entered into force in the Federal Republic of Germany on 1 September 1993, subject to the reservation that the Federal Republic of Germany is not bound by Article 54 where an offence giving rise to a foreign judgement was wholly or partly committed in its territory. This reservation is, however, to be interpreted within the meaning of sub-paragraph 1a of Article 55 of the Schengen Convention.

The Schengen Agreement and subsequent Convention do not provide for a joint judicial authority shared by all Schengen Contracting Parties to give a binding interpretation of these instruments. The European Court of Justice is competent for the uniform interpretation of European Community law. However, the Schengen Convention does not form part of Community law. The applicability of the provisions of the Schengen Convention is therefore subject to the proviso that they must be compatible with Community law (Article 134). Moreover, the Convention is open to accession by all Member States of the European Communities (Article 140 (1) of the Schengen Convention). As long as the Member States of the European Union have not uniformly acceded to the *acquis* of the Schengen Convention and have not agreed that the Convention forms an integral part of European Community law, the Court of the European Communities in Luxembourg is not competent.

A uniform interpretation of the Convention in all Contracting Parties is therefore not guaranteed. Rather, the national courts have to interpret and apply the Convention for the territory of each Contracting Party.

The Schengen Convention is an international treaty and must be interpreted as such. Article 31 of the Vienna Convention on the Law of Treaties of 23 May 1969, ratified by the Federal Republic of Germany by the act of 3 August 1985, lays down how international treaties must be interpreted. When the three authentic versions (German, French and Dutch) are interpreted

according to the principles of the Vienna Convention, it must be assumed that the regulations laid down in Article 54 of the Schengen Convention only refer to judicial decisions. On the other hand, Article 58 of the Schengen Convention provides that the Contracting Parties may adopt broader national provisions on the applicability of the *non bis in idem* rule to foreign judicial decisions.

Articles 54 and 55 are intended to set certain minimum standards regarding the non bis in idem rule in the states which have acceded to the Schengen Convention whilst allowing them to implement this rule more generously at national level.

Taking into account the aims of the Schengen Convention ensuing from the instrument and the individual regulations, Article 54 of the Schengen Convention must not necessarily be interpreted as meaning that every measure finally concluding investigative proceedings or criminal proceedings must be respected by the other Contracting Parties. The aims are also achieved when Article 54 of the Schengen Convention is restricted to judicial decisions.

The Senate did not conclusively establish whether the non bis in idem rule pursuant to Article 54 could only apply by a final decision pronounced by a court in one of the Contracting Parties. In this respect, it should be borne in mind that the Schengen Convention is not a conventional international treaty but rather consists of agreements to deepen and further what is already advanced integration within the framework of the European Communities. The question as to whether Article 54 of the Schengen Convention – contrary to the above – should be extended to decisions other than judicial decisions must still be decided by clarifying the interpretation of the provisions with the Contracting Parties concerned.

b. Ruling of Aix-la-Chapelle Landesgericht (regional court) of 27 August 1997 – 72 Ns 99 Js 169/96

A suspended cumulative sentence of imprisonment of one year and five months for offences against the German narcotics act was passed against the accused by Aix la Chapelle magistrates' court. On appeal by Aix la Chapelle prosecution service and the accused, the proceedings were discontinued pursuant to § 206 of the German Code of Criminal Procedure as continuation was prohibited by a permanent impediment.

The accused had already been criminally prosecuted in the Netherlands for the offence giving rise to the decision of the first instance. Criminal prosecution of the accused in the Netherlands had been closed after the accused had accepted a settlement to end the criminal prosecution offered by the Dutch prosecution service and had paid the amount of 3000 guilders. The accused's counsel had submitted a receipt for the amount at the trial before the magistrates' court in the Netherlands.

The proceedings were discontinued by Aix la Chapelle regional court on the basis of the non bis in idem rule. The closure of the proceedings in the Netherlands by means of so-called "prosecution settlements" is equivalent to a final judgement within the meaning of the German version of Article 54 of the Schengen Convention. The grounds given are that these settlements are a judicial form of settling proceedings which is final under Dutch law in that repeat (criminal) prosecution and punishment of the offence is no longer possible in the Netherlands. The final judicial settlement of proceedings in a Contracting State is the sole condition for the prohibition of further prosecution for the offence giving rise to the proceedings in another Contracting Party. This also applies when the proceedings were not settled by a judgement or were not even closed with the participation of a court as long as the prosecution authorities would have taken the same decision in their capacity as guardians of the right to prosecute.

The final closure of the proceedings is still awaited.