EUROPEAN UNION
THE COUNCIL

Brussels, 18 February 1999

6059/99

LIMITE

SCHENGEN 8

OUTCOME OF PROCEEDINGS

from : The Schengen Acquis Working Group - SIS integration

dated: 4 February 1999

1. Agenda

The agenda as set out in telex N° 243 of 18 January 1999 was adopted and no points were raised under any other business.

2. **Draft Council Decision authorizing the Secretary General to act as representative of the Member States for the purpose of concluding certain SIS related contracts**
(doc. 5276/99 SCHENGEN 1)

3. **Conditions for the transfer of contracts concluded by the General Secretariat of the BENELUX on behalf of the Schengen States**
(doc. 14094/98 SCHENGEN 61)
Both points of the agenda were discussed together

On request of the President, the Council Legal Service explained the legal aspects of the documents Schengen 61 of 1998 and Schengen 1 of 1999 (including a Room Document amending document Schengen 1).

The delegations of Sweden, the Netherlands and Italy raised the question which Member States will be represented by the Secretary General of the Council. On proposal of the Legal Service, delegations agreed to amend the preamble of document Schengen 1 in order to underline that all Schengen states could be represented by the Secretary General. The contracts in question will however have to be amended in order to assure that the contracts apply to all Schengen States. This operation needs to be prepared in the Schengen framework and the Legal Service offered its assistance.

On request of the Netherlands delegation, the Group discussed the matter of existing or new Schengen contracts not covered by document Schengen 1. The President concluded that this matter should be addressed first in the OR.SIS Working Party in Schengen framework in order to determine which contracts remain of importance after the entry into force of the Amsterdam Treaty. On the basis of that discussion, the Council Working Party could discuss possible amendments to document Schengen 1.
As far as the contractual liability of the Council Secretary General vis-a-vis the Member States represented by it is concerned, the Legal Service underlined that such a liability should in any case be excluded.

As far as Article 3 is concerned, the United Kingdom delegation raised the question whether the UK and Ireland would have to pay through the Community budget a part of possible amounts to be paid in the light of the non-contractual liability of the Secretary General. In order to exclude this possibility, the UK introduced a Room Document in reaction of which the Legal Service promised to check the matter and refer back to it during the next meeting.

Finally the Legal Service introduced an amendment of document Schengen 1 introducing an Article allowing the Secretary General to manage the contracts through separate bank accounts. Also this proposal will be referred back to during the next meeting.

The President concluded by giving delegations till the end of February the chance to react in writing in order for document Schengen 1 to be finalized during the next meeting of this Group (19 March 1999).

4. **Amending the Financial Regulations as far as SIS contracts to be taken over by the Council Secretary General are concerned**

The Council Legal Service pointed out that the present Schengen Financial Regulation can not be taken over by the Council, but a new document has to be drawn up. This document will become available as soon as possible and has to be discussed during the next meeting of the Group (19 March 1999). The document will most likely follow the example of existing financial regulations within the EU framework. On request of the Legal Service, a number of delegations indicated their support for the Legal Service's proposal to make the Court of Auditors also responsible for the financial control as far as the Schengen contracts taken over by the Council Secretary General are concerned.

The President concluded by postponing the matter until the next meeting of this Group at which date a draft Financial Regulations should be available for discussion.

5. **Resumed consideration concerning the options for attribution of an legal basis for the SIS**

Most delegations repeated the points of view already defended during one of the previous meetings (see document 13278/1/98 Schengen 56 REV 1). The President thus concluded that none of the options as out in document 11561/2/98 Schengen 45 REV 2 could count on an unanimous support and urged delegations to consider a compromise that could be supported by all Member States and the Commission. In case no compromise could be found the solution as set out in Article 2, paragraph 1, last part, of the Schengen Protocol would apply: automatic attribution to a third pillar legal basis.

The president stressed that such a solution would create practical and legal problems, which also would be the case if the Member States would go against the will of the Commission. In order to avoid these problems, a compromise needs to be found and option 3 as set out in document Schengen 45 REV 2 of 1998 would be a good candidate for such a compromise solution. Although in reaction to the President's appeal the United Kingdom and Ireland signalled their willingness to consider option 3, the French and Spanish delegations remained strongly in favour of option 2.

On the basis of the discussion, the President asked the delegations and the representative of the Commission to consider their positions in order for a compromise to be found. The matter will be addressed again at the next meeting of the Group (19 March 1999); in the meantime the President will try to make some progress through bilateral contacts.