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**COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE  
EUROPEAN PARLIAMENT**

**TOWARDS INTEGRATED MANAGEMENT OF THE EXTERNAL BORDERS OF  
THE MEMBER STATES OF THE EUROPEAN UNION**

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## TOWARDS INTEGRATED MANAGEMENT OF THE EXTERNAL BORDERS OF THE MEMBER STATES OF THE EUROPEAN UNION

### I. INTRODUCTION

#### *The political and institutional environment*

1. In the conclusions of the European Council of Laeken of 14 and 15 December 2001 we read:

*“ Better management of the Union’s external border controls will help in the fight against terrorism, illegal immigration networks and the traffic in human beings. The European Council asks the Council and the Commission to work out arrangements for cooperation between services responsible for external border control and to examine the conditions in which a mechanism or common services to control external borders could be created (...).”*<sup>1</sup>

This conclusion of the European Council reminds us that coherent, effective common management of the external borders of the Member States of the Union will boost security and the citizen’s sense of belonging to a shared area and destiny. It also serves to secure continuity in the action undertaken to combat terrorism, illegal immigration and trafficking in human beings.<sup>2</sup> The European Council also emphasises on this occasion the very strong complementarity of the different tasks which are carried out during checks and surveillance of the crossing of the external borders, even where, from an institutional point of view, certain of these tasks are distributed between the first and third pillars.

There can be no doubt, for example, that the crossing of the external frontiers by persons is a matter regulated by community law in terms of Title IV of the EC Treaty. Neither is there any doubt that the arrest of a person being sought by the law, or the challenging of a person threatening public order are matters falling within the third pillar. In everyday action, it may happen that the services controlling the external borders must carry out both tasks simultaneously: checking entry to the territory begins always with checking passports and visas, tasks which are set down in community law, however the check on entry may lead to carrying out a task with a policing or judicial nature, if it appears that the person is wanted or poses a security threat.

2. The potential generated by the Single European Act, the Maastricht Treaty and the “Schengen laboratory” led to the Treaty of Amsterdam and the Protocols annexed to it. On 1 May 1999, the legal instruments and operational experience built up in the Schengen acquis were integrated into the institutional framework of the European Union. The essential mechanisms of this acquis relating to the crossing of external borders by persons were incorporated into Title IV of the EC Treaty; other provisions on compensatory measures in security matters were incorporated into Title VI of the Union Treaty. The first-pillar security measures, such as the strengthening of common external border checks,<sup>3</sup> and the third-pillar

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<sup>1</sup> Conclusion No 42 of the Laeken European Council of 14 and 15 December 2001.

<sup>2</sup> Commission communication on illegal immigration (COM(2001) 672, 15.11.2001), and speech by President Prodi at the College of Europe, Bruges in November 2001.

<sup>3</sup> On the basis of Title IV of the EC Treaty and especially Article 62.

measures, such as police and judicial co-operation in the area of freedom of movement,<sup>4</sup> are complementary and must progress together. This is the very purpose of the area of freedom, security and justice established by the Amsterdam Treaty.

Integrated into the European Union, the legislative and operational Schengen acquis was neither amended nor altered but simply given new legal bases.<sup>5</sup> This means in practice that:

- the provisions of the acquis now have the legal and institutional status allotted to them by the new legal basis in Title IV of the EC Treaty or Title VI of the Union Treaty;
- the division of the Schengen acquis between Title IV of the EC Treaty and Title VI of the Union Treaty determines the institutional procedures required for amending or developing the acquis; but this division prejudices neither the nature, nor the status nor the organisation of national services that each Member State designates to implement one or other provision of the Schengen acquis as regards external border checks.

To remove a few misunderstandings that may subsist, a distinction must be made between these two concepts: the source of legal rules and the organisation of work by the national authorities concerned.

3. Current EU acquis on external borders has been largely developed in the context of Schengen and under Title IV to the TEC. In developing an overall strategy for the external frontiers of the European Union, it is noted that the United Kingdom and Ireland do not automatically take part in Schengen and Title IV and are entitled to maintain controls on persons entering from other Member States. Reciprocally, the other Member States are entitled to exercise controls on persons entering their territory “from the United Kingdom or any territories whose external relations are under its responsibility” as well as persons entering from Ireland.

However, both Member States do take part in all Title VI co-operation and have now chosen to participate in the police and judicial co-operation aspects of the Schengen acquis, including certain measures to combat illegal immigration. Both have also sought to participate in Community action under Title IV in this area, such as action against carriers, the facilitation of unauthorized entry, transit and residence, readmission agreements with third countries and measures to strengthen visa security.

Notwithstanding the special position of the UK and Ireland, it is recognized that action to strengthen the EU's external frontiers is of importance to all Member States. Weak frontiers, the need to develop infrastructures in candidate countries and third countries and to tackle illegal immigration and the dangers of organized crime and terrorism have an impact on all Member States, whether or not they fully apply the Schengen acquis. In this respect, much of the focus needs to be on enhanced operational co-operation, on issues such as forgery, detection, and strengthening of capacity in third countries, not necessarily requiring a formal legal base as a first step. This can benefit from the experience and input of all Member States.

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<sup>4</sup> Article 61 of the EC Treaty refers to “measures in the field of police and judicial cooperation (...) in accordance with the provisions of the Treaty on European Union”. Article 29 of the Union Treaty envisages “a high level of safety within an area of freedom, security and justice”, thanks in particular to “closer cooperation between police forces, customs authorities and other competent authorities in the Member States ...”.

<sup>5</sup> Council Decision 1999/435/EC of 20 May 1999 concerning the definition of the Schengen acquis (OJ L 176, 10.7.1999, pp. 1 to 16), surveys all the provisions considered as belonging legally to the Schengen acquis in force. Council Decision 1999/436/EC of 20 May 1999 determines, in conformity with the relevant provisions of the Treaty establishing the European Community and the Treaty on European Union, the legal basis for each of the provisions or decisions which constitute the acquis (OJ L 176, 10.7.1999, pp.17 to 30).

## *The challenges*

4. The security of the external borders of the European Union is an essential subject for European citizens. Rightly or wrongly the external borders of the Union European are still sometimes seen as a weak link that can affect the internal security of the Member States, in particular in an area without internal borders. The European Union already possesses an exact *acquis communautaire* in the area of external frontiers, but the principal current difficulty is the ability to organise between the Member States all the operational synergies which would permit action to be better co-ordinated and therefore a more homogenous level of security at all the external frontiers. Furthermore, in the context of expansion, citizens recall the necessity to maintain, and even improve, the level of internal security of an enlarged European Union. Given the diversification of threats to the crossing of external borders by persons and goods alike, synergies, efficiency gains and a better allocation of resources would be possible thanks to less fragmentary management by national services, while respecting institutional and geographical reality.

The new challenges to internal security force a European Union in the process of expansion to regard external borders as a priority question. Four major needs have to be met:

- ensure mutual confidence between the Member States which have abolished checks on persons and goods<sup>6</sup> at their internal borders and thereby facilitate movement of travellers;
- increase the effectiveness of the fight against illegal immigration while respecting the principles of the right to asylum, trafficking in human beings and trafficking of all kinds connected with organised crime, including drugs;
- possess the means of combating all forms of internal and external threats that terrorism poses to the Member States and to the security of persons;
- guarantee a high level of security within the European Union after enlargement, in particular after new Member States have been authorised to implement the Schengen *acquis*<sup>7</sup>, which will have as a consequence a considerable increase in the external land borders in a regional environment which is frequently more difficult.

It might be recalled here that the implementation of the Schengen *acquis* will be done in two distinct stages for the new Member States, as this was the case in the past for the other Member States<sup>8</sup>: accession to the European Union for a new Member State does not signify an authorisation to apply the complete Schengen *acquis*, as a specific Council decision is

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<sup>6</sup> The Community customs territory covers the territory of all the Member States of the European Union. It covers in particular certain remote portions of the territory of the Member States which are excluded from the Schengen *acquis* in accordance with Article 138 of the Schengen Convention and with declarations made at the signing of the Amsterdam Treaty. The Community customs territory does not cover Norway or Iceland, or certain peripheral or autonomous territories which are included in the Nordic Passport Union and remain explicitly covered for the purposes of the Schengen *acquis*.

<sup>7</sup> Article 8 of the Protocol incorporating the Schengen *acquis* in the European Union provides that “the Schengen *acquis* and further measures taken by the institutions within its scope shall be regarded as an *acquis* which must be accepted in full by all States candidates for admission”. However, the Schengen *acquis* will not apply to new Member States immediately upon accession to the European Union, unlike the community customs *acquis*.

<sup>8</sup> Among the last examples in date which are the most comparable to the situation of the current candidate countries figure particularly Austria, Finland and Sweden which became members of the European Union on 1 January 1995. Austria acceded to the Schengen Convention on 28 April 1996, however it was only authorised to fully apply the Schengen *acquis* from 31 March 1998. Finland and Sweden acceded to the Schengen Convention on 19 December 1996, but were only authorised to full apply the Schengen *acquis* from 26 March 2001.

required for that, following a finding that the Member State in particular has attained the required degree of security at its external borders. The candidate countries have been seriously preparing for several years to meet the requirements of the Justice and Home Affairs acquis. For this purpose they benefit from the expertise provided through from the European Union, together with its significant financing. The adaptation of their legal and institutional systems, as well as the modernisation of their infrastructures and equipment for the management of the borders of the candidate countries is progressing in an encouraging fashion.

It might also be recalled that the improvement of efficiency in checking procedures at external borders serves not only to increase internal security in the Member States, but also to speed up the movement of persons, goods and merchandise between the European Union and third countries. Economic and cultural exchanges, particularly with third countries which are geographically the closest, should benefit from this to the mutual interest.

5. The European Union's external borders are also a place where a common security identity is asserted. The absence of a clearly stated vision and common policy on external borders would entail major political and strategic risks. Those could ultimately block the expression of a viable Union policy on Justice and Home Affairs. Several types of weaknesses can be highlighted:

- purely national management of borders or management under agreements between neighbouring countries: this scenario would be not highly conducive to the development of the mutual confidence which is essential to maintaining the abolition of checks on persons at internal borders;
- impossibility of obtaining a structured, foreseeable budgetary framework that guarantees a degree of continuity in action: this is one of the conditions for the European Union to achieve goals more ambitious than a mere succession of one-off operations. What is at stake here is the capacity of the Member States and the Union to share the financial burden fairly and their capacity to achieve new synergies generating economies of scale and resources;
- impossibility of responding in unison to the external dimension of the policy on checks and surveillance at external borders: the Union's capacity to state its own policy is put to the test in negotiations or discussions with third countries, or on the occasion of technical work in international organisations in fields directly or indirectly affecting border checks.

### ***The objectives***

6. One of the ambitions of this communication is to propose mechanisms for working and co-operation at European Union level which will permit practitioners of the checks at the external borders to come together around the same table to co-ordinate their operational actions in the framework of an integrated strategy which takes progressively into account the multiplicity of aspects to the management of the external borders. The intention is to arrive at a coherent framework for common action in the medium to long term. This communication is focused on persons and relies upon the Schengen acquis which is today the sole reality of community law in this area. The guidelines and provisions advocated in this communication have a dynamic character in time. They are conceived to be established in the first instance as a development of the Schengen acquis, in the framework of the Treaties as they currently exist. The institutional reality of the three pillars which is an absolute must for the creation of legal norms remains unaffected. Above all, it is intended to launch a dynamic of operational actions founded on the Justice and Home Affairs dimensions of the external borders. If, on the way, this dynamic should reveal new institutional needs for better and further common action at Union level, it would of course be most opportune for the Convention on the Future of

Europe to be aware of this. Be that as it may, and to complete the consideration of the external borders, in the existing framework, this communication will be followed by a second communication centred on all types of goods and merchandise. Relying upon such differing experience, both communications should together contribute to an overall strategy aimed at increased efficiency in the integrated management of the external borders.

Moreover enlargement will add new challenges as regards external border protection. To a large extent the future Member States will become responsible for the internal security of the Union while still undergoing the process of economic and social transition. The management at these future external borders will play a decisive role for the prospects of developing the relationship of the Union to its future neighbours, such as Belarus and Ukraine. Consequently there is a need to develop a coherent approach in close co-operation with the future Member States, in the extension of actions undertaken by the European Union for many years.

7. This Communication starts by taking stock of the situation (Part II) and describing the *acquis* and existing operational practices, so as to lead to a diagnosis of the needs of the European Union in the process of expansion. On the basis of this diagnosis, it proposes (Part III) the development of a common policy on management of the external borders of the Member States of the European Union, incorporating the components which are regarded as inseparable from each other.

## **II. THE SITUATION: THE ACQUIS COMMUNAUTAIRE AS REGARDS THE CROSSING OF EXTERNAL BORDERS STILL LACKS PROPER OPERATIONAL COORDINATION**

We must begin by briefly describing the legal and institutional framework resulting from the Schengen *acquis* and current operational practices, in order to lead to a diagnosis of needs.

### **II. (a) The legal and institutional framework for the management of external borders**

#### **8. The *acquis* communautaire and the current sources of positive law**

Since the Schengen Convention came into operation on 26 March 1995,<sup>9</sup> checks and surveillance at the external borders of the participating Member States have been governed by common uniform principles. The content of these common uniform principles is established by Chapter 2 of Title II of the Schengen Convention. The detailed rules applying them are laid down and spelled out by the Common Manual for External Borders.<sup>10</sup> These provisions received a new legal basis in Title IV of the EC Treaty.<sup>11</sup>

Article 3 of the Schengen Convention provides that “*External borders may in principle only be crossed at border crossing points and during the fixed opening hours*”. Article 5 of the Schengen Convention lays down the principles of Community legislation concerning foreign

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<sup>9</sup> To simplify the language used, the term “Schengen Convention” is used here, but the correct reference is to the “Convention Implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, signed in Schengen on 19 June 1990”. The full text of this Convention is in OJ L 239, 22.9.2000 (pp. 19 to 62).

<sup>10</sup> The Decision of the Schengen Executive Committee of 28 April 1999 adopting the Manual is in OJ L 239, 22.9.2000 (p. 317). It was given a European Union legal basis in accordance with Council Decision 1999/436/EC of 20 May 1999.

<sup>11</sup> See Council Decision 1999/436/EC of 20 May 1999 (OJ L 176, 10 July 1999).

nationals' entry for a stay not exceeding three months in the common area of free movement and of the legal provisions determining the response of border guards when persons are identified for the purpose of refusal of entry on the basis of Article 96 of the Schengen Convention.

Article 6 of the Schengen Convention determines the obligations of the Member States as regards checks and surveillance at external borders.<sup>12</sup> Checks are carried out on persons who cross external borders legally. As regards checks on persons, the obligations of the Member States are relatively extensive. The systematic checking of identities is compulsory, including in the case of Union citizens and beneficiaries of Community law. Surveillance is exercised in the spaces located between the permitted passage points in order to dissuade persons from crossing the external border illegally. Member States must ensure that its level is equivalent all along the external borders.

9. Other elements of the Schengen acquis are indissociable from checks and surveillance at external borders:

- Articles 26 (carriers' liability) and 27 (liability for assistance to unlawful immigration for lucrative purposes) of the Schengen Convention, and the provisions subsequently enacted to prevent illegal immigration;<sup>13</sup>
- the provisions of Article 71. 3 relating to the strengthening of checks on the movement of persons, goods and means of transport, "to combat the illegal import of narcotic drugs and psychotropic substances";
- horizontal provisions such as the Schengen Information System (SIS),<sup>14</sup> which are also implemented at external borders.

Article 101(1)(a) of the Schengen Convention provides that the "*authorities responsible for (...) border checks*" have access to all "*data entered [in the SIS] and the right to search such data directly*". The purpose of this provision is make the external border operate as a barrage or filter from the point of view of internal security in the broad sense when checks are carried out on persons entering or leaving the territory. Moreover consular authorities have access to alerts issued on the basis of Article 96 of the Schengen Convention for the purposes of refusal of entry of certain aliens to the territory. They are required to consult the SIS before issuing a visa abroad.<sup>15</sup>

#### 10. How is the proper implementation of the common rules for the crossing of external borders verified?

Schengen intergovernmental cooperation established a mutual monitoring mechanism called the *Standing Committee on the Evaluation and Implementation of Schengen*, with a remit covering precise matters.<sup>16</sup> Under this remit, what can basically be evaluated for all Member States are the links and interactions between the manner in which checks and surveillance are carried out at external borders, practices for the issuing of visas, police and judicial co-

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<sup>12</sup> See Annex 1 for the terminology used.

<sup>13</sup> Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985 (OJ L 187, 10.7.2001, pp. 45-46).

<sup>14</sup> See Articles 92 to 101 of the Schengen Convention.

<sup>15</sup> Citizens of the European Union, nationals of the countries of the European Economic Area and members of the family of these beneficiaries of Community law, irrespective of their nationality, cannot be registered, in theory, under Article 96.

<sup>16</sup> See Schengen Executive Committee Decision SCH/Com-ex (98) 26 def. of 16 September 1998 (OJ L 239, 22.9.2000, p. 138).

operation at internal borders and use of the SIS. This evaluation mechanism serves two distinct purposes:

- to evaluate new Member States with a view to preparing the Council Decision which will authorise them to apply the Schengen acquis;<sup>17</sup>
- to check thereafter that Member States implement the Schengen acquis properly.<sup>18</sup>

This evaluation mechanism received a twofold legal basis in Article 66 of the EC Treaty and Articles 30 and 31 of the Union Treaty.<sup>19</sup>

11. For the moment, the evaluation mechanism does not allow unannounced visits, and visits cannot strictly be called inspections. There is no provision for observing phenomena or functional defects that affect several Member States at once: for example certain types of external borders (maritime, land or air) or the consulates of several Member States in the same region of the world.

In the case of Member States applying the Schengen acquis, the evaluation mission gives rise to a report. However, the logical conclusions cannot all be drawn from this report, for instance in the form of penalties or of operational and financial aid to one or more Member States. Nonetheless, this mechanism resulting from the *Standing Committee on the Evaluation and Implementation of Schengen* does give a valuable starting point for strengthening the external borders evaluation function in terms of internal security. It deserves to be deepened, in compliance with the statement that the Commission made when the Schengen acquis was integrated into the European Union<sup>20</sup> and with the ordinary institutional machinery in the event of failure by a Member State to implement Community law correctly.

## II. (b) Current operational practices

### 12. Who guards the borders of the Member States of the European Union?

Article 6 of the Schengen Convention provides that checks in accordance with uniform principles are carried out “*within the scope of national powers and national law and taking account of the interests of all Contracting Parties*”. The result is that each Member State is free to entrust checks and surveillance at external borders to the authorities of its choice, according to its own national structures. These missions are entrusted in certain states to a single body and in other states to several bodies reporting to different government departments. Coordination between these various services is done either at central national level or at regional level, as recommended by the “EU Schengen Catalogue (Recommendations and Best Practice)”.<sup>21</sup>

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<sup>17</sup> The last evaluation of this type covered the group consisting of Denmark, Finland, Sweden, Norway and Iceland from the first quarter of 2000 to the first quarter of 2001.

<sup>18</sup> The last evaluation of this type covered France in the first quarter of 2002,

<sup>19</sup> See Council Decision 1999/436/EC of 20 May 1999 (OJ L 176, 10.7.1999).

<sup>20</sup> In accordance with Article 1 of the Protocol integrating the Schengen acquis into the European Union, Schengen cooperation is “conducted within the institutional and legal framework of the European Union and with respect for the relevant provisions of the Treaty on European Union and the Treaty establishing the European Community”. In addition, the Commission considers that the incorporation into the Union of the Executive Committee Decision creating a Standing Committee on the Evaluation and Implementation of Schengen (SCH/Com-ex (98) 26 def of 16.9.1998) in no way affects the powers conferred on it by the Treaties, and in particular its responsibility as guardian of the Treaties (See OJ L 176, 10.7.1999, p. 30).

<sup>21</sup> EU Schengen Catalogue: External borders control, removal and readmission: Recommendations and best practice (adopted by the JHA Council on 28 February 2002 and published by the General Secretariat of the Council of the European Union).



13. The nature of the missions entrusted by the Member States to the various national authorities present at external borders entails a wide range of activities. Each national service of a Member State does not always have an exact counterpart in another Member State engaging in the same tasks and exercising the same powers of enforcement, prevention or investigation. This diversity of the national administrative organisations is of course legitimate but it should nevertheless be capable of fitting in practice to the framework of a common strategy for management of the external borders at the level of the European Union. For this reason therefore the managers and staff of these various services need to develop an awareness that they are in fact now guarding the borders of the Member States of the European Union. They should, therefore, see their activity as a contribution to a European check and surveillance network. Combining the activities and functions of these services should ensure the homogeneous implementation of the Schengen acquis, the Community Customs Code and all other EC/EU provisions likely to be implemented at external borders. Increasing co-ordination between the administrations concerned should bring added value, for example, in exchanging their methods of risk analysis.

14. Financially speaking, the cost of staff and supplies is borne by the national budget of each Member State, which geographical features can make extremely expensive for certain of them, in particular for the surveillance of maritime borders. Working methods, staff and resource deployment and management rules all follow primarily national considerations, despite the provisions of Article 6 of the Schengen Convention.<sup>22</sup> Things are, however, different as regards the customs field. Member States keep 25% of Community own resources derived from customs duties to cover infrastructures at the external customs border.<sup>23</sup> Community support is available for joint actions along the external borders of the Union, including maritime borders, in the field of police, customs and judicial co-operation. On the Union side, such actions are eligible for support under the INTERREG Community Initiative which supports cross-border, transnational and inter-regional co-operation. This can be matched by actions on the other side of the border using different instruments according to the geographical context (TACIS, PHARE, CARDS, MEDA). INTERREG will be extended to cover the new Member States after enlargement.

15. What are the difficulties of implementing the acquis as regards the crossing of external borders by persons?

Article 5 of the Schengen Convention provides that to be admitted to the common area of freedom of movement, foreign nationals must not “*be considered to be a threat to public policy, national security or the international relations of any of the [Member States]*”. Implementing this principle uniformly at the external borders is far from easy, since the situation of persons is assessed on national criteria, which are not equivalent from one Member State to another. The same difficulty can arise for the provisions implementing Article 6 of the Schengen Convention concerning the detection and prevention of threats.<sup>24</sup>

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<sup>22</sup> “[Member States] undertake to deploy enough suitably qualified officers to carry out checks and surveillance along external borders ... An equal degree of control shall be exercised at external borders”.

<sup>23</sup> In conformity with Council Decision 2000/597/EC, Euratom, on the system of the European Communities’ own resources, which entered into force on the 1<sup>st</sup> March 2002, the Member States are authorised to retain 25% by way of collection costs related to traditional own resources.

<sup>24</sup> “Checks on persons shall include (...) checks to detect and prevent threats to the national security and public policy of the [Member States]. Such checks shall also be carried out on vehicles and objects in the possession of persons crossing the border.”

Possible differences in national legislation and administrative practices can generate security differentials between sections of external borders controlled by different Member States. The interpretation of the rules concerning SIS alerts can vary from one Member State to another. Differences also exist regarding SIS access for the various services concerned with checks and surveillance at the external borders. These factors necessarily affect the homogeneity of the management of external borders from an internal security point of view for the common area of freedom of movement.

In addition, Article 6 of the Schengen Convention envisages checks on the entry and exit of all persons who cross the external borders, but its wording<sup>25</sup> might suggest that exit checks play a secondary role. This situation deserves detailed examination in terms of the sound implementation of prohibitions on leaving the territory or of discreet surveillance of persons likely to threaten security. There is scope for improvement in the complementarity between services responsible for checks on persons leaving the territory and those responsible for customs and tax checks.

#### 16. Forms of cooperation between the Member States *in situ* at the external borders of the European Union.

Regarding checks and surveillance at the external borders, Member States today apply two types of cooperation framework under the Schengen acquis:

- exchanges of liaison officers provided for by Article 7 of the Schengen Convention:<sup>26</sup> their purpose is assistance and permanent cooperation between the Member States “*with a view to the effective implementation of checks and surveillance*” and to “*promote standard basic and further training of officers manning checkpoints*”;
- bilateral police co-operation agreements between the Member States on the basis of Article 47 of the Schengen Convention:<sup>27</sup> the main objective of using these at the external borders is to combat illegal immigration and prevent organised crime in accordance with guidelines set by the Schengen Executive Committee.<sup>28</sup>

17. Some of these bilateral police cooperation agreements are used as means of testing joint bi-national teams on secondment at external borders. Their size, missions and capacity to act are still limited. They are finding it difficult to transcend the bilateral framework and achieve a truly European dimension. For the moment, officials seconded to another Member State cannot exercise the prerogatives of public authority without which they cannot perform checks and surveillance tasks at the external borders. Moreover, these bilateral forms of cooperation between Member States on the basis of the Schengen acquis are not coordinated

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<sup>25</sup> “On exit, the checks shall be carried out as required in the interest of all [Member States] under the law on aliens in order to detect and prevent threats to the national security and public policy of the [Member States]. Such checks shall always be carried out on aliens. If in certain circumstances such checks cannot be carried out, priorities must be set. In that case, entry checks shall as a rule take priority over exit checks”.

<sup>26</sup> Article 7 of the Schengen Convention was given a legal basis in Article 66 of the EC Treaty “to the extent that these provisions do not concern forms of police cooperation covered by the provisions of Title III of the Schengen Convention”, by Council Decision 1999/436/EC of 20 May 1999 (OJ L 176, 10.7.1999).

<sup>27</sup> This provision was given a legal basis in Articles 34 and 30(1) of the Treaty on European Union, in accordance with Council Decision 1999/436/EC of 20 May 1999. Article 47 of the Schengen Convention appears under “Police Cooperation”, while Article 7 is under “Crossing external borders”.

<sup>28</sup> See Decision of the Executive Committee SCH/Com-ex (99) 7, Rev. 2 of 28 April 1999 (OJ L 239, 22.9.2000).

with other forms of cooperation, such as the management of the external borders in the customs context.

## **II. (c) The main needs identified**

18. The initiatives put forward by successive Presidencies and the Member States reflect the need for a more operational co-operation and co-ordination unit for practitioners<sup>29</sup> of checks and surveillance at the external borders. They also aim at closer integration between tasks performed at the external borders and those performed by other authorities within the common area of freedom of movement.<sup>30</sup>

19. The Commission recalls several needs to be met by the European Union, as they have been identified any old how in discussion these last months in the Council:

- How can the practices of national units responsible for checks and surveillance at external borders be further harmonised and improved?
- How can better operational consistency be secured between activities at the external borders and activities within the common area of freedom of movement?
- Where and how can regular follow-up between those responsible for management and operational forecasting regarding staff and equipment deployment be arranged?
- How can those responsible for operational services be enabled to share a common risk analysis so as to treat their operational objectives on a hierarchical basis and co-ordinate them in European Union terms?
- Do certain existing legal provisions concerning checks and surveillance at the external borders need amending?
- How can financial and operational burden-sharing be organised?
- How can a common basis for border guard training be organised?

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<sup>29</sup> Belgian Presidency note to the Council on 27 November 2001 concerning the concept of border management (Council document 14570/01 FRONT 69).

<sup>30</sup> See Police and Border Security Workshop organised at Neusiedl/See, Austria, on 10 and 11 January 2002, and financed by the OISIN programme.

### III. A COMMON POLICY ON MANAGEMENT OF EXTERNAL BORDERS: TOWARDS A EUROPEAN CORPS OF BORDER GUARDS

20. To offer a coherent response to all the needs which have been expressed in a scattered fashion by the Member States and are described above, the Commission recommends structuring projects and ensuring continuity within a common policy of integrated management of external borders. This common policy should include at least five mutually interdependent components:

- (a) A common corpus of legislation;
- (b) A common co-ordination and operational co-operation mechanism;
- (c) Common integrated risk analysis;
- (d) Staff trained in the European dimension and inter-operational equipment;
- (e) Burden-sharing between Member States in the run-up to a European Corps of Border Guards.

Democratic and jurisdictional control of all these activities must be assured.

21. The guidelines to be followed and measures to be taken need to be specified for each of these components.

For the sake of clarity, Annex I defines the terminology used in Part III, without giving legal status to these concepts: checks at external borders, surveillance at external borders, internal security in the common area of free movement, security at external borders, border guard, management of external borders.

#### III (a) A common corpus of legislation

22. Title IV of the EC Treaty, and in particular Articles 62 and 66, provide a rich legal potential for structuring the strategy, and creating and operating all the components of the common policy on integrated management of external borders.

23. The Commission recommends four measures concerning the crossing of external borders which can be taken **in the short term**:

– Recast the *Common Manual on Checks at the External Borders* to clarify the legal status of its provisions and make them a source of law alongside other legal instruments in place, such as those regulating the free movement of Union citizens or developing the Schengen acquis and Conventions under public international law which are relevant to border checks. The Commission intends taking a legislative initiative on this subject.

– Introduce into the Common Manual certain “*best practices*” proceeding on the basis of the Schengen Catalogue of Best Practices and thus making them mandatory.

– Produce a *practical handbook* usable by border guards and available in electronic form: the objective is to give every member of the border guard services an easy to use handbook which could be available for consultation continually. This handbook would not be a source of law but a systematic, coherent compilation of all the rules governing checks and surveillance under the relevant legal instruments.

– Identify principles and adopt common measures on “*local border traffic*”,<sup>31</sup> particularly with a view to enlargement. The Commission intends taking an initiative aiming to better define the fundamental principles and procedures of such a system and, if necessary, to prepare for agreements between the Community and neighbouring third countries.

24. The Commission recommends in the **medium term** that “measures on the crossing of the external borders of the Member States” be amplified by new “standards and procedures to be followed by Member States in carrying out checks on persons at such [external] borders”.<sup>32</sup>

– In compliance with Article 64(1) of the EC Treaty, include among the “standards and procedures to be followed by Member States in carrying out checks on persons at [external] borders” a formalised process of exchanging and processing data and information between authorities operating at the external borders and those operating within the common area of freedom of movement.

– Determine the powers that might be conferred on a European Corps of Border Guards.

– Determine the geographical boundaries within which such a European Corps of Border Guards would be entitled to operate.

25. To guarantee an objective level of internal security in an area without borders, it is also necessary to envisage a legal framework for the performance of a genuine *inspection function at external borders*. Such an operational inspection function should be operable either at the request of a Member State or of its own initiative, in particular when it is obvious that all the Member States should deploy reinforcements at an external border where there are temporary objective difficulties of checking and surveillance.

26. Provision should also be made, above and beyond the national contribution, for financing this common policy by recourse to Article 66 of the EC Treaty (administrative cooperation between relevant departments of the Member States and between them and the Commission).

### **III. (b) How can a common operational co-ordination and co-operation mechanism be set up?**

27. A common co-ordination and operational co-operation mechanism could rest on two instruments:

– an *External borders practitioners common unit* that should be set up;

– a *permanent process of exchange and processing of data and information* that should be established gradually in the medium term between the authorities of the various Member States operating at the external borders and those operating within the common area of freedom of movement.

28. The *External borders practitioners common unit*

The Commission recommends creating an *External borders practitioners common unit*<sup>33</sup> responsible for:

<sup>31</sup> Article 3 of the Schengen Convention provides that “More detailed provisions, exceptions and arrangements for local border traffic ... shall be adopted by the Executive Committee.” Neither the Schengen Executive Committee nor the Council which took over from it after the entry into force of the Treaty of Amsterdam made use of this provision.

<sup>32</sup> Quoted direct from Article 62(2)(a) of the EC Treaty.

- acting as a “head” of the common policy on management of external borders to carry out common integrated risk analysis;
- acting as “leader” coordinating and controlling operational projects on the ground, in particular in crisis situations;
- acting as manager and strategist to ensure greater convergence between the national policies in the field of personnel and equipment;
- exercising a form of power of inspection, in particular in the event of crisis or if risk analysis demands it.

29. The *External borders practitioners common unit* set up mainly to associate managers and practitioners of external border checks and surveillance would not be confined to the fields covered by Article 62(2)(a) of the EC Treaty.<sup>34</sup> The common unit should play a full multidisciplinary and horizontal role to associate managers and practitioners whose functions are related to security at external borders:

- the authorities responsible for issuing short-stay and long-stay visas, whose functions are covered by Article 62(2)(b) (ii)<sup>35</sup> and Article 63(3)(a)<sup>36</sup> of the EC Treaty;
- the authorities responsible for implementing all the compensatory measures provided for by Articles 61(e)<sup>37</sup> and 62(1)<sup>38</sup> of the EC Treaty, intended to set up the area of freedom, security and justice: in practice this might mean the police, judicial and customs authorities and EUROPOL within the meaning of the Treaty on European Union.<sup>39</sup>

30. The general political guidelines for *External borders practitioners common unit* would be fixed by the Council, to the extent that this *common unit* should most probably develop from the SCIFA (Strategic Committee for Immigration, Frontiers, and Asylum) working group meeting in its formation of those responsible for the Member States services ensuring controls at the external borders. In this first phase of activity, Article 66 of the EC Treaty would be the working framework for this Unit, as this would bring together those hierarchically responsible enabled to commit their national administrations to the concrete actions of administrative co-operation for the control and surveillance of external borders in the areas covered by the Schengen acquis and Title IV of the EC Treaty. It appears clear however that the framework of the SCIFA alone, even Article 66 of the EC Treaty, would rapidly prove insufficient to ensure that this unit could be truly multidisciplinary in ensuring the necessary synergies with customs co-operation and above all with police co-operation under the third pillar.

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<sup>33</sup> At the special European Council of 21.9.2001 and the JHA Council of 16.11.2001 Finland has already referred to the idea of a Forum for external borders.

<sup>34</sup> “Standards and procedures to be followed by Member States in carrying out checks on persons at [external] borders”.

<sup>35</sup> “The procedures and conditions for issuing visas by Member States”.

<sup>36</sup> “Conditions of entry and residence, and standards on procedures for the issue by Member States of long term visas and residence permits, including those for the purpose of family reunion”.

<sup>37</sup> “Measures in the field of police and judicial cooperation in criminal matters aimed at a high level of security by preventing and combating crime within the Union in accordance with the provisions of the Treaty on European Union”.

<sup>38</sup> “Measures with a view to ensuring, in compliance with Article 14 [of the EC Treaty], the absence of any controls on persons, be they citizens of the Union or nationals of third countries, when crossing internal borders”.

<sup>39</sup> Article 61(e) of the EC Treaty refers to provisions of the Treaty on European Union, including Article 29, which reads: “Without prejudice to the powers of the European Community, the Union's objective shall be to provide citizens with a high level of safety within an area of freedom, security and justice ... through ... closer cooperation between police forces, customs authorities and other competent authorities in the Member States, both directly and through the European Police Office (Europol) ...”.

It is necessary therefore that, for the exercise of at least some of its functions, the External borders practitioners common unit should progressively extend its activities beyond Article 66 of the EC Treaty, and where necessary beyond the structures of the Council working groups, in particular if the creation of a European Corps of Border Guards gave rise to a need for a permanent headquarters staff structure charged with its operational command, the management of its personnel and equipment.

For the exercise of its inspection function, the unit would use as a starting point the mandate of the Standing Committee on the evaluation and implementation of Schengen, which is part of the *acquis* but which could be improved and strengthened without dissociating the link which this mandate establishes between the activities falling under the first pillar and the third pillar. This manner of proceeding appears the most pragmatic because currently this mandate is executed by the Council group *Schengen-Evaluation* (SCH/EVAL) which is in fact placed under the authority of the SCIFA which should be the frame for the inception of *the External borders practitioners common unit*. There would therefore be no multiplication of structures: the inspection function in time of crisis would in practice be carried out by the hierarchical superiors of the practitioners who currently undertake the “routine” evaluation visits carried out by the SCH/EVAL working group.

In any event, whether in the short term or the longer term, the functions exercised by the common unit would include activities to improve the effective implementation of Union law but they would involve no legislative proposals and no implementing measures within the meaning of Article 202 of the EC Treaty.

The Commission will participate in the establishment of this *common unit*, and will exercise its institutional roles of initiative and supervision as devolved by the EC Treaty.

31. The framework for the activities exercised by this *External borders practitioners common unit*, to be conceived as a development of the Schengen *acquis*, would also be the ideal forum to gradually receive the new states applying for the accession to the Union. The full participation of the new Member States in the various activities of the common unit and in the common policy on integrated management of external borders will have to proceed at the same rhythm as the implementation by each Member State of the Schengen *acquis*. It would, however, be desirable to be able to anticipate this timetable as regards convergence of the staff and equipment policies, as well as for possible exercises on themes in which the new Member States or the applicant countries could be involved on an ad hoc basis.

32. Within the framework of its risk analysis function, the *common unit* could be requested to conduct an analysis to develop the second instrument of the common coordination and operational cooperation mechanism, namely the permanent process of data and information exchange and processing, which is considered below.

### 33. *A permanent process of data and information exchange and processing*

The permanent process of data and information exchange and processing envisaged here is not a database or a computer network, or even an administrative structure. It is a procedure or a code of conduct which, depending on the nature of the information and of the risks identified, would aim to establish direct links and exchanges between the authorities concerned with security at external borders. This security procedure (PROSECUR:<sup>40</sup> “PROcédure de SECURité” or “PROcedure of SECURity”) would be based on plurality of

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<sup>40</sup> Abbreviation used in the rest of this document for the sake of simplicity.

instruments and technical exchange procedures, some of which already exist while others should be created gradually. To give a concrete illustration, PROSECUR could, for example, have the following tools, operating alongside each other so as to cover if possible every aspect of security at external borders:

- the SIS used to consult information on the occasion of checks at external borders;
- the various electronic data banks being developed (e.g. network of visas issued and refused) to consult the information made available by other authorities;
- the channels for exchange of information relating to prevention of drug trafficking;
- an encrypted Intranet connecting national contact points to exchange information interactively or to consult on very precise measures to be taken within a very short time with regard to a person crossing the external border;
- the traditional means of telecommunication (telephone or radio), passing through national contact points if necessary.<sup>41</sup>

34. In the framework of PROSECUR a request could also be generated for a service to send another service the information and documents needed for the full treatment of an offence or threat observed at the external border. This might be the case where legal or material reasons prevent a service from handling the case and its follow-up from beginning to end. The result expected from PROSECUR in such a situation would be to overcome the effect of compartmentalisation of services without affecting the powers conferred on them by national law. Procedures for alerting customs services and for requisitioning plant health services or scientific laboratories should also be envisaged by PROSECUR. Reciprocally, the intelligence services of a Member State should be able to supply all border guard services and consulates of the Member States without delay with sufficiently relevant and precise information to enable them to exercise targeted surveillance of certain types of individuals, of objects, of geographical origins or modes of transport for a given period.

35. To be able to function correctly, PROSECUR should in the long term be formalised by a legal instrument<sup>42</sup> specifying at Union level the obligations and the reciprocal rights:

- of the various border guard services responsible for checks and supervision of persons or goods crossing the external borders; and
- as between these border guard services and other administrative, police or judicial authorities within the territory which are involved in security in the common area of freedom of movement.

As far as possible, the exchange of information and intelligence covered by the PROSECUR code of conduct should apply in the same way between authorities of the same Member State and between authorities of different Member States. Depending on the nature of the information and risks, the technical exchange procedures and the degree of urgency of the information, PROSECUR should establish privileged links with EUROPOL and other existing police, customs or judicial cooperation mechanisms.

### **III. (c) How should common integrated risk evaluation be structured?**

36. Common integrated risk analysis is also a vital component in the joint discussion of three strategic lines of protection at external borders: in third countries, at the external border, and within the common area of freedom of movement.

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<sup>41</sup> For linguistic convenience or when information which interests national security forces is involved.

<sup>42</sup> This could be adopted on the basis of Articles 62(1) and 62(2)(a) of the EC Treaty as it would supplement the procedures for checking persons at external borders to take account of the security of the common area of freedom of movement, in the spirit of Article 6 of the Schengen Convention.



Two successive stages should be distinguished:

- the initial determination of the indicators considered relevant for the analysis and the development of the risks;
- following the adoption of the common indicators, the constant and continuous monitoring of their development to draw operational conclusions for action on the ground.

To arrive at this objective, the *External borders practitioners common unit* should be instructed to structure the activity and evaluate the immediate operational needs. The multidisciplinary nature of the unit should in addition enable it to establish all necessary synergies with EUROPOL and the police cooperation authorities to select the risks which are of specific interest at the external borders.

### 37. Act in and with third countries to identify risks upstream from the external border.

Two main principles can structure risk analysis regarding third countries to ensure a high level of *security at the external borders* of the European Union: action in relation to the consulates of the Member States<sup>43</sup> and to the police liaison officers and attachés. Local consular cooperation established by the *Common Consular Instruction*<sup>44</sup> and the policy on visas is to help protect the external borders of the Member States of the Union. The sending of liaison officers to third countries could be less specific in time and area. The role of the liaison officers and police attachés in the embassies of certain Member States could be increased and act in the interest of all the Member States so that consular cooperation covers broader fields and contributes better to preventing the risk of terrorism.

### 38. How can risks at the actual border be identified?

Several principles could focus risk analysis at border crossing points:

(a) The optimisation of best practices for checks and surveillance: the *EU Schengen Catalogue* should facilitate risk analysis, in particular in relation to maritime borders. The various forms of organisation of work could be analysed in terms of their reliability in achieving *security at external borders* and their adaptability to changing needs.

(b) Technological surveillance: risk analysis should anticipate the effects of technological progress on the work of the *border guard*, for example for the use of electronic databases, of digitised biometric data or of remote sensing techniques for external border surveillance. At the moment where the Union has just chosen to develop an instrument such as Galileo, the possibilities for its' use in surveillance of flows across external borders should be given prominence.

(c) The practical questions of daily co-operation with neighbouring third countries on our external land borders: risk analysis could help to organise checks in such a way as to save time and infrastructures<sup>45</sup> and promote cross-border co-operation. The idea would be to identify movements entailing risk at the moment of their passage or their origin, most often in neighbouring third countries or territories, with the assistance of their authorities, and without *de facto* delegating part of the external border check and surveillance function to them.

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<sup>43</sup> If necessary in relation to the joint visa issuing offices.

<sup>44</sup> The Schengen Executive Committee Decision adopting the Common Consular Instruction is in OJ L 239, 22.9.2000 (p. 317). It was given a European Union legal basis in accordance with Council Decision 1999/436/EC of 20 May 1999.

<sup>45</sup> National Joint Border Control Facilities are appreciated by the Member States which practised them among themselves for several decades before the implementation of the Schengen Convention and which continue developing them at land borders with third countries.

(d) The “security distortions” connected with the topography of the border and the regional environment.

(e) Improvement and development of an intelligence function: risk analysis should here determine how to optimise the use of the external border as an “information gathering resource” on movements of persons, goods, objects and vehicles, including, where necessary, the risk of traffic in narcotic drugs.

39. How can risks requiring continuity of action between border guards and other authorities within the territory be identified and treated?

At the time of the initial phase consisting of determining the relevant indicators for risk analysis, the new *External borders practitioners common unit* should consider the type of information that it is worth collecting at the external borders. This analysis should also cover the use which should be made of it in the interests of the internal security of the common area of freedom of movement. This would involve:

(a) selecting the types of missions which would gain by being compared and are exercised by *border guard* services and by services within the territory;

(b) determining categories of information which should be exchanged between *border guard* services and by services within the territory for the purposes of enforcement, prevention or investigation connected with a sufficiently precise and probable risk at the external borders.

Following this analysis, the *External borders practitioners common unit* should be in a position to specify what the content of PROSECUR could be.

**III. (d) How can the common policy for the integrated management of the external borders be properly equipped with personnel and inter-operational equipment?**

40. The personnel and operational equipment used for checks and surveillance are the most tangible component of the common policy on integrated management of external borders. Their effectiveness should be increased by means of greater convergence between national policies.

41. How can complementarity be developed between the national policies on staff and staff training?

The convergence of national staff policies should aim to gradually reduce quantitative and qualitative disparities that are likely to generate “security distortions” between the Member States at external borders.

The development of a *common syllabus for the training of border guards* and of their middle management and the regular organisation of advanced training courses could be envisaged in the very short term. The training of *border guards* in the European dimension of their functions should be given very close attention, in particular by language-training, the acquisition of the main concepts as to the powers and status of *border guards* in the other Member States and the development of immersion training periods in a *border guard* service of another Member State.<sup>46</sup> Staff training could also strengthen the integrated character of the management of the external borders by familiarising staff with the functions of the services which contribute to the *internal security in the common area of freedom of movement* and of consular services and liaison officers posted in third countries. It is equally important to

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<sup>46</sup> The new ARGO programme will probably serve as a support, initially.

ensure training for the border guards about respect for the rights of, and the protection of asylum seekers.

42. The *External borders practitioners common unit* should be given the task of designing a specific curriculum for training border guards, based on the national training institute network, to culminate in a *European border guards college*.

43. How can complementarity between national policies on operational equipment be achieved?

The convergence of national policies should also be sought as regards border guards' equipment, fixed infrastructure, mobile equipment and telecommunication services.

The development of permitted crossing points on land external borders (road crossings or railway stations), in ports and in airports depends primarily on the development of the movement of persons and trade in goods and services. Good cooperation between the public authorities and private-sector economic operators for the opening of new crossing points would be desirable, as would consistency with the major European Union transport policies. In this respect, as the time comes when new Member States will be permitted to implement the Schengen acquis in full, the investment strategies of the Member States and the applicant countries at future internal land borders will have to be changed in line with the common policy on management of the external borders.

44. A common policy on fixed infrastructures could include the development of new technologies to facilitate checks at border crossing points and surveillance between crossing points. Monitoring the coast by radar or satellite deserves better policy coordination between the Member States to ensure a more uniform level of security. The geographical situation of certain Member States warrants burden-sharing for the sound operation of fixed and mobile infrastructures for checks and surveillance from which all the Member States would benefit. The *Galileo* system is an example of a European high-technology tool capable of bringing a new dimension to the common policy of checks and surveillance of the external borders.<sup>47</sup>

The convergence of national policies should also aim to achieve the greatest interoperability between the mobile equipment of the Member States.<sup>48</sup> It would also aim for the greatest geographical mobility so as to be able to move them easily from one Member State to another in response to changing needs. Particularly expensive equipment such as a satellite-based maritime border inspection network should be shared

### **III. (e) From financial burden-sharing between the Member States to a European Corps of Border Guards**

45. The Commission is of the view that that in due course there could be established a financial burden-sharing mechanism between the Member States making use of the existing national financing together with Union budgetary support. This financial burden-sharing should in the long term be supplemented by operational burden-sharing through the establishment of European Corps of Border Guards, once the constitutional difficulties of the Member States have been overcome. The Commission will proceed with an initial evaluation

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<sup>47</sup> The European Union is currently equipping itself with the GALILEO system of satellite radio-navigation, which should be operational from 2008. This system, which will be supported by terrestrial stations, will, in particular, have an encrypted and protected government signal.

<sup>48</sup> Vehicles for patrolling land borders, high-speed launches for coastal surveillance, helicopters or surveillance aircraft to provide information for land vehicles or high-speed launches.

of the financial implications, as soon as precise activities have been identified, in function of the options which could be retained.

#### 46. Budgetary support for financial burden-sharing

The common policy of integrated management of the external borders should also establish for itself as an objective a genuine sharing of the financial burden as well as sharing the requirements in equipment and human resources. Currently this burden is not shared in a balanced way between the Member States. Some of them, owing to their geographical situation, have to perform checks and surveillance in the common interest on highly exposed and very long external maritime or land borders, while some other Member State no longer have any external borders except the airports. It is in their interest also to take part in the joint protection effort at all the external borders, since the security of the area without internal borders depends on this. The sharing of this burden should not have as an objective the integral financing of all checks and surveillance at the external borders through the community budget. National budgets should remain the principle resources affected to these expenses. Nevertheless, Community budget support could be used to establish a mechanism for financial redistribution between Member States as well as to finance in the longer term the acquisition of common equipment, in particular in the hypothesis of the creation of a European Corps of Border Guards. In the short term, Article 66 and the ARGO programme should be able to finance the most pressing requirements for example in common training. It should also be recalled that candidate countries already benefit from very substantial financing in the framework of the PHARE programmes to establish for themselves the means of control and surveillance at their external borders, which are efficient and compatibles with their accession to the European Union.

In any event, whatever the options for the use of the Community budget, these should without doubt have as a first objective to avoid financial contributions set by bilateral agreements between Member States, which quickly become complex and inequitable. It could also be a source of stability and foreseeability for the Member States and of greater transparency for Parliament, and an assurance of rational management thanks to scrutiny by the Court of Auditors. In the long term, this burden-sharing between Member States could also make it possible to envisage financial burden-sharing between services, by bringing within a single budgetary framework the financing of:

- checks and surveillance when persons and goods cross external borders;<sup>49</sup> and
- the instruments used to exchange and process data and information which might be established between the authorities operating at the external borders and those operating within the common area of freedom of movement.

At the appropriate juncture, the Commission will examine in depth all the budgetary, institutional and legal aspects which could arise from the different foreseeable options.

#### 47. Towards a European Corps of Border Guards

The Commission recommends that the national services of the Member States receive the support of a European Corps of Border Guards. At the first stage it could exercise real *surveillance functions* at the external borders by joint multinational teams, perhaps starting with maritime borders. In effect, common experience seems for the moment to be least

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<sup>49</sup> Synergies with the financing of the operation of external customs borders could be considered – even where no explicit financing may be provided for in the Community budget, given that the Member States retain 25% of the own resources collected by their customs administrations.

developed in this area, by comparison with certain bilateral co-operation already existing between Member States for the land or air borders. The operational tasks will naturally have to be provided for by legislative measures, because this will be necessary for clarity and legal certainty of the missions of the European Corps, not forgetting the required democratic and jurisdictional control which should accompany these. In any event, in the immediate future, this Corps will not be able to replace the national authorities to maintain law and order and safeguard internal security in the host country, in compliance with Article 64(1) of the EC Treaty.

48. As matters stand, it is estimated that a European Corps of Border Guards should be designed and should function in accordance with the following elementary principles:<sup>50</sup>

- initially, handle surveillance functions at the external borders of the Member States of the European Union;<sup>51</sup> subsequently, handle checks at border crossing points;
- consist of staff having the full prerogatives of public authority needed to perform these functions, irrespective of their nationality and their place of deployment;
- be placed under the operational command of the *External borders practitioners common unit*;
- respect the local national authorities' powers in matters which are not covered by Title IV<sup>52</sup> or Title X<sup>53</sup> of the EC Treaty or other directly applicable Community legislation;
- be open at all the hierarchical levels to any national of a Member State of the European Union<sup>54</sup> who satisfies the requirements as to qualifications and ethical standing.

49. The main difficulty to be overcome in establishing a European Corps of Border Guards is connected with conferring the prerogatives of public authority on staff of the European Corps who do not have the nationality of the Member State where they are deployed. This is a fundamental question on constitutional grounds. Another problem might lie in the method of recruiting staff and their staff regulations and status for disciplinary purposes. The bulk of the manpower of this European Corps will probably have to be made up of staff seconded by the Member States for a given duration. In the event of crisis, this stable core of manpower could be supplemented if necessary by a pool of national staff who have been preselected and are regarded as reservists who can be mobilized at short notice by the *External borders practitioners common unit*.

The equipment of the European Corps should be covered by the Community budget so that the *Practitioners common unit* does not have to perform a delicate balancing act between national priorities and Union priorities for the use of certain mobile equipment.

50. The tasks inseparable from the effective achievement of common surveillance functions mean that staff must be empowered to:

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<sup>50</sup> The feasibility study entrusted to Italy on a European Border Police Force will contribute to the debate on what might be called a "European Corps of Border Guards". This terminology makes it possible to transcend differences in names, status and powers of officers currently performing checks and surveillance.

<sup>51</sup> This would initially involve checks and surveillance at the external borders of the Member States implementing the Schengen acquis in full. At a later stage, closer cooperation formulas might make it possible to commit the European Corps of Border Guards to surveillance at the external borders of the Community customs area, even in Member States which do not implement the Schengen acquis in full.

<sup>52</sup> "Visas, asylum, immigration and other policies related to free movement of persons".

<sup>53</sup> "Customs cooperation".

<sup>54</sup> Norway and Iceland should also be associated with the missions of the European Corps of Border Guards in the implementation of the Schengen acquis.

- check the identity papers, travel documents and visas of persons crossing the external border legally or illegally;
- question aliens on the reasons for their stay in the common area of freedom of movement, or on the reasons why they have crossed the external border outside the official crossing points;
- go on board a civilian ship or boat in the territorial waters of a Member State to question the captain as to his route and to verify the passengers' identity;
- notify a person that he is admitted or refused entry to the common area of freedom of movement;
- apprehend a person and hand him over to the competent national authorities to take the appropriate preventive or enforcement measures (administrative, police, customs or judicial) where necessary.

51. These powers conferred on staff of the European Corps of Border Guards could be confined territorially to the strict needs of the surveillance and checks provided for by Article 62 of the EC Treaty, without prejudice to police cooperation efforts under agreements based on Articles 7 and 47 of the Schengen Convention. One might envisage confining them, for surveillance purposes, to a strip a few hundred metres wide at external land borders and to a portion of the territorial waters. Some land, maritime and air-crossing points could be included for the purposes of checks. These portions of territory, enjoying special status, should be listed exhaustively and be delimited precisely by maps and plans, which could be annexed to the Common Manual for External Borders.

#### **IV. SUMMARY OF PRIORITY PROJECTS**

52. The European Union possesses a relatively complete and detailed community legislation in the area of control of the crossing of the external borders by persons. This *acquis communautaire* essentially is constituted by the Schengen *acquis* which has received now new legal bases in Title IV of the EC Treaty. The current difficulty resides in the need for much greater operational co-ordination and much greater complementarity of action between the national services which are responsible for the external borders. It should also be noted that there exists a real need to better take account of the many dimensions of the security of external borders likely to have an effect on the internal security of the common area of free movement where checks on persons have been abolished between the Member States.

The actions envisaged have a dynamic evolution in time, consisting in the development of a common policy for management of the external borders. Some of these actions can begin in the current institutional framework without modification of the Treaties. Other actions are likely to require an evolution of the Treaties on certain points in order to be capable of full development. With a view to giving an idea of the horizon envisaged by the Commission for the measures set out hereunder, it could be considered that the short term would be about one year. The medium term means that it would be desirable if the measure could be operational before the new Member States are authorised to apply the Schengen *acquis*.

The Commission considers that the following action should be taken in the short and medium term:

##### **(a) A common corpus of legislation**

- *In the short term and without amending the Treaties*, recast the Common Manual on Checks at the External Borders on the basis of a proposal which the Commission intends to introduce within a reasonable time frame.

- Give mandatory status to certain recommendations of the EU Schengen Catalogue of best practices.
- Produce a practical handbook for the use of border guards, constituting a full compilation of the rules governing checks and surveillance on the basis of the relevant legal instruments.
- Specify the legal framework and practical procedures regarding “local border traffic”, on the basis of an initiative which the Commission intends to submit within a short time frame.
- *In the medium term and if necessary following amendment of the Treaties*, specify the institutional and legal framework of the staff of a future European Corps of Border Guards.

**(b) A common and operational co-ordination and co-operation mechanism**

- *In the short term*, establish an External borders practitioners common unit involving those responsible for border guard services in the Member States and, in a multidisciplinary spirit, the representatives of various services whose functions also contribute to security at external borders. To this end, the common unit should have a steering role to carry out integrated risk analysis, co-ordinate projects on the ground, encourage major convergence in the field of the staff and equipment, exercise an inspection function and put forward emergency operational measures. At the appropriate time, the Commission will evaluate the institutional and legal aspects of this *common unit in particular to determine the measures which would require amendment of the Treaties*.
- *In the medium term and without amending the Treaties*, the Practitioners common unit should explore the feasibility and relevance of a security procedure at external borders, consisting of establishing exchanges and processing of information and intelligence between the authorities concerned with security at borders, possibly setting up permanent contact points.

**(c) Common integrated risk analysis**

- *In the short term and without amending the Treaties*, the External borders practitioners common unit should establish the common risk analysis matrix.
- *In the medium term and without amending the Treaties*, the common unit should ensure the permanent monitoring of the development of risks with a view to drawing conclusions for the deployment of personnel and equipment at external borders.

**(d) Inter-operational personnel and equipment**

- *In the short term and without amending the Treaties*, the External borders practitioners common unit should develop a common basis for training border guards in the European Union.
- It could encourage the common use of mobile surveillance equipment.
- *In the medium term and without amending the Treaties*, a common radar or satellite-based (in particular, thanks to the *Galileo* system) external border surveillance network could be

established, with better European Union co-ordination of fixed external border check infrastructures.

- In the same way the setting up a European border guards college on the basis of the national training institute networks could be considered

**(e) Burden-sharing between the Member States and the Union**

- *In the short term and without amending the Treaties*, organise the bases for Community financing of the policy on management of the external borders covered by Title IV of the EC Treaty. The Commission will undertake a first evaluation of the financial implications of the measures proposed.
- *In the medium term and most likely after amendment of the Treaties*, establish a European Corps of Border Guards, the first function of which would be the “common surveillance” of the most sensitive places, in particular at maritime borders, before assuming checking functions at border crossing points. At the appropriate juncture, the Commission will evaluate the institutional and legal nature of this structure.
- Establish in the medium term a complementarity of action with the customs administrations, and set up synergies to create economies of scale as regards community financing of the management of the external borders to the extent that this is allowed by the Treaties.



## ANNEX 1

### TERMINOLOGY USED IN THIS COMMUNICATION

#### ***Checks at external borders***

All operations carried out by official authorities in the Member States at border crossing points to ensure pursuant to *Article 6 of the Schengen Convention* that persons, their vehicle and the objects in their possession can be permitted to enter or leave the common area of freedom of movement.

#### ***Surveillance at external borders***

All activities and operations carried out by official authorities in the Member States at external land, maritime and air borders to prevent, pursuant to *Article 6 of the Schengen Convention*, persons from circumventing the official border crossing points in order to evade checks and illegally enter the common area of freedom of movement.

#### ***Internal security in the common area of freedom of movement***

Level of protection enjoyed in the area of freedom of movement by natural persons and bodies corporate, goods and properties of all kinds, capital, the provision of services and all lawful commercial transactions, as well as intellectual and artistic property rights, against attacks on their interests or threats to their integrity caused by:

- failure to comply with Community or national regulations;
- crime, terrorism, trafficking in human beings, crimes against children, arms trafficking, corruption and fraud, as understood in Article 29 of the Union Treaty, as well as traffic in narcotic drugs.

#### ***Security at external borders***

Capacity of the external borders to constitute a barrage, or at least a reliable filter, for the Member States against potential threats to:

- the effectiveness of checks and surveillance;
- compliance with Community or national regulations;
- the level of internal security of the common area of freedom of movement;
- law and order or the national security of the Member States, except as regards the military defence of the external borders of the European Union against aggression where one or more third countries commits it openly or claims responsibility for it.

### ***Border guard***

Public official deployed either at a land, maritime or air border crossing point or along the land or maritime external border or in the immediate vicinity of the latter, who enjoys the prerogatives of public authority needed to exercise one or more of the following functions:

- carry out checks or surveillance at external borders;
- take at the external border the preventive or enforcement measures needed to secure compliance with Community regulations, the internal security of the common area of freedom of movement, law and order or national security;
- conduct investigations into facts observed in the course of checks or surveillance at external borders.

### ***Management of external borders***

The activities carried out by public authorities of the Member States to:

- carry out checks and surveillance at external borders provided for by Articles 5 and 6 of the *Schengen Convention*;
- gather, analyse and exchange any specific intelligence or general information enabling the border guard to analyse the risk that a person, object or asset constitutes for the internal security of the common area of freedom of movement, law and order or the national security of the Member States, and for general compliance with Community legislation;
- analyse the development of the threats likely to affect the security of the external borders and to set the priorities for action of by border guards accordingly;
- anticipate the needs as regards staff and equipment to ensure security at external borders.