

**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**

The KINGDOM OF BELGIUM, the FEDERAL REPUBLIC OF GERMANY, the FRENCH REPUBLIC, the GRAND DUCHY OF LUXEMBOURG and the KINGDOM OF THE NETHERLANDS, hereinafter referred to as 'the Contracting Parties',

TAKING as their basis the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at their common borders,

HAVING DECIDED to fulfil the resolve expressed in that Agreement to abolish checks at their common borders on the movement of persons and facilitate the transport and movement of goods at those borders,

WHEREAS the Treaty establishing the European Communities, supplemented by the Single European Act, provides that the internal market shall comprise an area without internal frontiers,

WHEREAS the aim pursued by the Contracting Parties is in keeping with that objective, without prejudice to the measures to be taken to implement the provisions of the Treaty,

WHEREAS the fulfilment of that resolve requires a series of appropriate measures and close cooperation between the Contracting Parties,

HAVE AGREED AS FOLLOWS:

TITLE I

**DEFINITIONS**

*Article 1*

*third State*: shall mean any State other than the Contracting Parties;

For the purposes of this Convention:

*alien*: shall mean any person other than a national of a Member State of the European Communities;

*internal borders*: shall mean the common land borders of the Contracting Parties, their airports for internal flights and their sea ports for regular ferry connections exclusively from or to other ports within the territories of the Contracting Parties and not calling at any ports outside those territories;

*alien for whom an alert has been issued for the purposes of refusing entry*: shall mean an alien for whom an alert has been introduced into the Schengen Information System in accordance with Article 96 with a view to that person being refused entry;

*external borders*: shall mean the Contracting Parties' land and sea borders and their airports and sea ports, provided that they are not internal borders;

*border crossing point*: shall mean any crossing point authorised by the competent authorities for crossing external borders;

*internal flight*: shall mean any flight exclusively to or from the territories of the Contracting Parties and not landing in the territory of a third State;

*border check*: shall mean a check carried out at a border in response exclusively to an intention to cross that border, regardless of any other consideration;

*carrier*: shall mean any natural or legal person whose occupation it is to provide passenger transport by air, sea or land;

*residence permit*: shall mean an authorisation of whatever type issued by a Contracting Party which grants right of residence within its territory. This definition shall not include temporary permission to reside in the territory of a Contracting Party for the purposes of processing an application for asylum or a residence permit;

*application for asylum*: shall mean any application submitted in writing, orally or otherwise by an alien at an external border or within the territory of a Contracting Party with a view to obtaining recognition as a refugee in accordance with the Geneva Convention relating to the Status of Refugees of 28 July 1951, as amended by the New York Protocol

of 31 January 1967, and as such obtaining the right of residence;

*asylum seeker*: shall mean any alien who has lodged an application for asylum within the meaning of this Convention and in respect of which a final decision has not yet been taken;

*processing applications for asylum*: shall mean all the procedures for examining and taking a decision on applications for asylum, including measures taken under a final decision thereon, with the exception of the determination of the Contracting Party responsible for processing applications for asylum pursuant to this Convention.

## TITLE II

### ABOLITION OF CHECKS AT INTERNAL BORDERS AND MOVEMENT OF PERSONS

#### CHAPTER 1

#### CROSSING INTERNAL BORDERS

##### Article 2

1. Internal borders may be crossed at any point without any checks on persons being carried out.

2. However, where public policy or national security so require a Contracting Party may, after consulting the other Contracting Parties, decide that for a limited period national border checks appropriate to the situation shall be carried out at internal borders. If public policy or national security require immediate action, the Contracting Party concerned shall take the necessary measures and at the earliest opportunity shall inform the other Contracting Parties thereof.

3. The abolition of checks on persons at internal borders shall not affect the provisions laid down in Article 22, or the exercise of police powers throughout a Contracting Party's territory by the competent authorities under that Party's law, or the requirement to hold, carry and produce permits and documents provided for in that Party's law.

4. Checks on goods shall be carried out in accordance with the relevant provisions of this Convention.

#### CHAPTER 2

#### CROSSING EXTERNAL BORDERS

##### Article 3

1. External borders may in principle only be crossed at border crossing points and during the fixed opening hours. More detailed provisions, exceptions and arrangements for local border traffic, and rules governing special categories of maritime traffic such as pleasure boating and coastal fishing, shall be adopted by the Executive Committee.

2. The Contracting Parties undertake to introduce penalties for the unauthorised crossing of external borders at places other than crossing points or at times other than the fixed opening hours.

##### Article 4

1. The Contracting Parties shall ensure that, as from 1993, passengers on flights from third States who transfer onto internal flights will be subject to an entry check, together with their hand baggage, at the airport at which the external flight arrives. Passengers on internal flights who transfer onto flights bound for third States will be subject to a departure check, together with their hand baggage, at the airport from which the external flight departs.

2. *The Contracting Parties shall take the necessary measures to ensure that checks are carried out in accordance with paragraph 1.*

3. *Neither paragraph 1 nor paragraph 2 shall affect checks on registered baggage; such checks shall be carried out either in the airport of final destination or in the airport of initial departure.*

4. *Until the date laid down in paragraph 1, airports shall, by way of derogation from the definition of internal borders, be considered as external borders for internal flights.*

#### Article 5

1. For stays not exceeding three months, aliens fulfilling the following conditions may be granted entry into the territories of the Contracting Parties:

- (a) that the aliens possess a valid document or documents, as defined by the Executive Committee, authorising them to cross the border;
- (b) that the aliens are in possession of a valid visa if required;
- (c) that the aliens produce, if necessary, documents justifying the purpose and conditions of the intended stay and that they have sufficient means of subsistence, both for the period of the intended stay and for the return to their country of origin or transit to a third State into which they are certain to be admitted, or are in a position to acquire such means lawfully;
- (d) that the aliens shall not be persons for whom an alert has been issued for the purposes of refusing entry;
- (e) that the aliens shall not be considered to be a threat to public policy, national security or the international relations of any of the Contracting Parties.

2. An alien who does not fulfil all the above conditions must be refused entry into the territories of the Contracting Parties unless a Contracting Party considers it necessary to derogate from that principle on humanitarian grounds, on grounds of national interest or because of international obligations. In such cases authorisation to enter will be restricted to the territory of the Contracting Party concerned, which must inform the other Contracting Parties accordingly.

These rules shall not preclude the application of special provisions concerning the right of asylum or of the provisions laid down in Article 18.

3. Aliens who hold residence permits or re-entry visas issued by one of the Contracting Parties or, where required, both documents, shall be authorised entry for transit purposes, unless their names are on the national list of alerts of the Contracting Party whose external borders they are seeking to cross.

#### Article 6

1. Cross-border movement at external borders shall be subject to checks by the competent authorities. Checks shall be carried out for the Contracting Parties' territories, in accordance with uniform principles, within the scope of national powers and national law and taking account of the interests of all Contracting Parties.

2. The uniform principles referred to in paragraph 1 shall be as follows:

- (a) Checks on persons shall include not only the verification of travel documents and the other conditions governing entry, residence, work and exit but also checks to detect and prevent threats to the national security and public policy of the Contracting Parties. Such checks shall also be carried out on vehicles and objects in the possession of persons crossing the border. They shall be carried out by each Contracting Party in accordance with its national law, in particular where searches are involved.
- (b) All persons shall undergo at least one such check in order to establish their identities on the basis of the production or presentation of their travel documents.
- (c) On entry, aliens shall be subject to a thorough check, as defined in (a).
- (d) On exit, the checks shall be carried out as required in the interest of all Contracting Parties under the law on aliens in order to detect and prevent threats to the national security and public policy of the Contracting Parties. Such checks shall always be carried out on aliens.
- (e) 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.

3. The competent authorities shall use mobile units to carry out external border surveillance between crossing points; the same shall apply to border crossing points outside normal opening hours. This surveillance shall be carried out in such a way as to discourage people from circumventing the checks at crossing points. The surveillance procedures shall, where appropriate, be established by the Executive Committee.

4. The Contracting Parties undertake to deploy enough suitably qualified officers to carry out checks and surveillance along external borders.

5. An equal degree of control shall be exercised at external borders.

*Article 7*

The Contracting Parties shall assist each other and shall maintain constant, close cooperation with a view to the effective implementation of checks and surveillance. They shall, in particular, exchange all relevant, important information, with the exception of personal data, unless otherwise provided for in this Convention. They shall as far as possible harmonise the instructions given to the authorities responsible for checks and shall promote standard basic and further training of officers manning checkpoints. Such cooperation may take the form of an exchange of liaison officers.

*Article 8*

The Executive Committee shall take the necessary decisions on the practical procedures for carrying out border checks and surveillance.

## CHAPTER 3

**VISAS**

## Section 1

**Short-stay visas***Article 9*

1. The Contracting Parties undertake to adopt a common policy on the movement of persons and, in particular, on the arrangements for visas. They shall assist each other to that end. The Contracting Parties undertake to pursue through common consent the harmonisation of their policies on visas.

2. The visa arrangements relating to third States whose nationals are subject to visa arrangements common to all the Contracting Parties at the time of signing this Convention or at a later date may be amended only by common consent of all the Contracting Parties. A Contracting Party may in exceptional cases derogate from the common visa arrangements relating to a third State where overriding reasons of national policy require an urgent decision. It shall first consult the other Contracting Parties and, in its decision, take account of their interests and the consequences of that decision.

*Article 10*

1. A uniform visa valid for the entire territory of the Contracting Parties shall be introduced. This visa, the period of validity of which shall be determined by Article 11, may be issued for visits not exceeding three months.

2. Pending the introduction of such a visa, the Contracting Parties shall recognise their respective national visas, provided that these are issued in accordance with common conditions and criteria determined in the context of the relevant provisions of this Chapter.

3. By way of derogation from paragraphs 1 and 2, each Contracting Party shall reserve the right to restrict the territorial validity of the visa in accordance with common arrangements determined in the context of the relevant provisions of this chapter.

*Article 11*

1. The visa provided for in Article 10 may be:

- (a) a travel visa valid for one or more entries, provided that neither the length of a continuous visit nor the total length of successive visits exceeds three months in any half-year, from the date of first entry;
- (b) a transit visa authorising its holder to pass through the territories of the Contracting Parties once, twice or exceptionally several times en route to the territory of a third State, provided that no transit shall exceed five days.

2. Paragraph 1 shall not preclude a Contracting Party from issuing a new visa, the validity of which is limited to its own territory, within the half-year in question if necessary.

*Article 12*

1. The uniform visa provided for in Article 10(1) shall be issued by the diplomatic and consular authorities of the Contracting Parties and, where appropriate, by the authorities of the Contracting Parties designated under Article 17.

2. The Contracting Party responsible for issuing such a visa shall in principle be that of the main destination. If this cannot be determined, the visa shall in principle be issued by the diplomatic or consular post of the Contracting Party of first entry.

3. The Executive Committee shall specify the implementing arrangements and, in particular, the criteria for determining the main destination.

*Article 13*

1. No visa shall be affixed to a travel document that has expired.

2. The period of validity of a travel document must exceed that of the visa, taking account of the period of use of the visa.

It must enable aliens to return to their country of origin or to enter a third country.

#### Article 14

1. No visa shall be affixed to a travel document if that travel document is not valid for any of the Contracting Parties. If a travel document is only valid for one Contracting Party or for a number of Contracting Parties, the visa to be affixed shall be limited to the Contracting Party or Parties in question.

2. If a travel document is not recognised as valid by one or more of the Contracting Parties, an authorisation valid as a visa may be issued in place of a visa.

#### Article 15

In principle the visas referred to in Article 10 may be issued only if an alien fulfils the entry conditions laid down in Article 5(1)(a), (c), (d) and (e).

#### Article 16

If a Contracting Party considers it necessary to derogate on one of the grounds listed in Article 5(2) from the principle laid down in Article 15, by issuing a visa to an alien who does not fulfil all the entry conditions referred to in Article 5(1), the validity of this visa shall be restricted to the territory of that Contracting Party, which must inform the other Contracting Parties accordingly.

#### Article 17

1. The Executive Committee shall adopt common rules for the examination of visa applications, shall ensure their correct implementation and shall adapt them to new situations and circumstances.

2. The Executive Committee shall also specify the cases in which the issue of a visa shall be subject to consultation with the central authority of the Contracting Party with which the application is lodged and, where appropriate, the central authorities of other Contracting Parties.

3. The Executive Committee shall also take the necessary decisions on the following:

- (a) the travel documents to which a visa may be affixed;
- (b) the visa-issuing authorities;
- (c) the conditions governing the issue of visas at borders;

(d) the form, content, and period of validity of visas and the fees to be charged for their issue;

(e) the conditions for the extension and refusal of the visas referred to in (c) and (d), in accordance with the interests of all the Contracting Parties;

(f) the procedures for limiting the territorial validity of visas;

(g) the principles governing the drawing up of a common list of aliens for whom an alert has been issued for the purposes of refusing entry, without prejudice to Article 96.

## Section 2

### Long-stay visas

#### Article 18

Visas for stays exceeding three months shall be national visas issued by one of the Contracting Parties in accordance with its national law. Such visas shall enable their holders to transit through the territories of the other Contracting Parties in order to reach the territory of the Contracting Party which issued the visa, unless they fail to fulfil the entry conditions referred to in Article 5(1)(a), (d) and (e) or they are on the national list of alerts of the Contracting Party through the territory of which they seek to transit.

## CHAPTER 4

### CONDITIONS GOVERNING THE MOVEMENT OF ALIENS

#### Article 19

1. Aliens who hold uniform visas and who have legally entered the territory of a Contracting Party may move freely within the territories of all the Contracting Parties during the period of validity of their visas, provided that they fulfil the entry conditions referred to in Article 5(1)(a), (c), (d) and (e).

2. *Pending the introduction of a uniform visa, aliens who hold visas issued by one of the Contracting Parties and who have legally entered the territory of one Contracting Party may move freely within the territories of all the Contracting Parties during the period of validity of their visas up to a maximum of three months from the date of first entry, provided that they fulfil the entry conditions referred to in Article 5(1)(a), (c), (d) and (e).*

3. Paragraphs 1 and 2 shall not apply to visas whose validity is subject to territorial limitation in accordance with Chapter 3 of this Title.

4. This Article shall apply without prejudice to Article 22.

#### Article 20

1. Aliens not subject to a visa requirement may move freely within the territories of the Contracting Parties for a maximum period of three months during the six months following the date of first entry, provided that they fulfil the entry conditions referred to in Article 5(1)(a), (c), (d) and (e).

2. Paragraph 1 shall not affect each Contracting Party's right to extend beyond three months an alien's stay in its territory in exceptional circumstances or in accordance with a bilateral agreement concluded before the entry into force of this Convention.

3. This Article shall apply without prejudice to Article 22.

#### Article 21

1. Aliens who hold valid residence permits issued by one of the Contracting Parties may, on the basis of that permit and a valid travel document, move freely for up to three months within the territories of the other Contracting Parties, provided that they fulfil the entry conditions referred to in Article 5(1)(a), (c) and (e) and are not on the national list of alerts of the Contracting Party concerned.

2. Paragraph 1 shall also apply to aliens who hold provisional residence permits issued by one of the Contracting Parties and travel documents issued by that Contracting Party.

3. The Contracting Parties shall send the Executive Committee a list of the documents that they issue as valid travel documents, residence permits or provisional residence permits within the meaning of this Article.

4. This Article shall apply without prejudice to Article 22.

#### Article 22

1. Aliens who have legally entered the territory of one of the Contracting Parties shall be obliged to report, in accordance with the conditions laid down by each Contracting Party, to the competent authorities of the Contracting Party

whose territory they enter. Such aliens may report either on entry or within three working days of entry, at the discretion of the Contracting Party whose territory they enter.

2. Aliens resident in the territory of one of the Contracting Parties who enter the territory of another Contracting Party shall be required to report to the authorities, as laid down in paragraph 1.

3. Each Contracting Party shall lay down its exemptions from paragraphs 1 and 2 and shall communicate them to the Executive Committee.

#### Article 23

1. Aliens who do not fulfil or who no longer fulfil the short-stay conditions applicable within the territory of a Contracting Party shall normally be required to leave the territories of the Contracting Parties immediately.

2. Aliens who hold valid residence permits or provisional residence permits issued by another Contracting Party shall be required to go to the territory of that Contracting Party immediately.

3. Where such aliens have not left voluntarily or where it may be assumed that they will not do so or where their immediate departure is required for reasons of national security or public policy, they must be expelled from the territory of the Contracting Party in which they were apprehended, in accordance with the national law of that Contracting Party. If under that law expulsion is not authorised, the Contracting Party concerned may allow the persons concerned to remain within its territory.

4. Such aliens may be expelled from the territory of that Party to their countries of origin or any other State to which they may be admitted, in particular under the relevant provisions of the readmission agreements concluded by the Contracting Parties.

5. Paragraph 4 shall not preclude the application of national provisions on the right of asylum, the Geneva Convention relating to the Status of Refugees of 28 July 1951, as amended by the New York Protocol of 31 January 1967, paragraph 2 of this Article or Article 33(1) of this Convention.

#### Article 24

Subject to the Executive Committee's definition of the appropriate criteria and practical arrangements, the Contracting Parties shall compensate each other for any financial imbalances which may result from the obligation to expel as provided for in Article 23 where such expulsion cannot be effected at the alien's expense.

## CHAPTER 5

**RESIDENCE PERMITS AND ALERTS FOR THE PURPOSES OF REFUSING ENTRY***Article 25*

1. Where a Contracting Party considers issuing a residence permit to an alien for whom an alert has been issued for the purposes of refusing entry, it shall first consult the Contracting Party issuing the alert and shall take account of its interests; the residence permit shall be issued for substantive reasons only, notably on humanitarian grounds or by reason of international commitments.

If a residence permit is issued, the Contracting Party issuing the alert shall withdraw the alert but may put the alien concerned on its national list of alerts.

2. Where it emerges that an alert for the purposes of refusing entry has been issued for an alien who holds a valid residence permit issued by one of the Contracting Parties, the Contracting Party issuing the alert shall consult the Party which issued the residence permit in order to determine whether there are sufficient reasons for withdrawing the residence permit.

If the residence permit is not withdrawn, the Contracting Party issuing the alert shall withdraw the alert but may nevertheless put the alien in question on its national list of alerts.

## CHAPTER 6

**ACCOMPANYING MEASURES***Article 26*

1. The Contracting Parties undertake, subject to the obligations resulting from their accession to the Geneva Convention relating to the Status of Refugees of 28 July 1951, as amended by the New York Protocol of 31 January 1967, to incorporate the following rules into their national law:

(a) If aliens are refused entry into the territory of one of the Contracting Parties, the carrier which brought them to the external border by air, sea or land shall be obliged immediately to assume responsibility for them again. At the request of the border surveillance authorities the carrier shall be obliged to return the aliens to the third State from which they were transported or to the third State which issued the travel document on which they travelled or to any other third State to which they are certain to be admitted.

(b) The carrier shall be obliged to take all the necessary measures to ensure that an alien carried by air or sea is in possession of the travel documents required for entry into the territories of the Contracting Parties.

2. The Contracting Parties undertake, subject to the obligations resulting from their accession to the Geneva Convention relating to the Status of Refugees of 28 July 1951, as amended by the New York Protocol of 31 January 1967, and in accordance with their constitutional law, to impose penalties on carriers which transport aliens who do not possess the necessary travel documents by air or sea from a Third State to their territories.

3. Paragraphs 1(b) and 2 shall also apply to international carriers transporting groups overland by coach, with the exception of border traffic.

*Article 27*

1. The Contracting Parties undertake to impose appropriate penalties on any person who, for financial gain, assists or tries to assist an alien to enter or reside within the territory of one of the Contracting Parties in breach of that Contracting Party's laws on the entry and residence of aliens.

2. If a Contracting Party is informed of actions as referred to in paragraph 1 which are in breach of the law of another Contracting Party, it shall inform the latter accordingly.

3. Any Contracting Party which requests another Contracting Party to prosecute, on the grounds of a breach of its own laws, actions as referred to in paragraph 1 must specify, by means of an official report or a certificate from the competent authorities, the provisions of law that have been breached.

## CHAPTER 7

**RESPONSIBILITY FOR PROCESSING APPLICATIONS FOR ASYLUM***Article 28*

*The Contracting Parties reaffirm their obligations under the Geneva Convention relating to the Status of Refugees of 28 July 1951, as amended by the New York Protocol of 31 January 1967, with no geographic restriction on the scope of those instruments, and their commitment to cooperating with the United Nations High Commissioner for Refugees in the implementation of those instruments.*

## Article 29

1. The Contracting Parties undertake to process any application for asylum lodged by an alien within any one of their territories.

2. This obligation shall not bind a Contracting Party to authorising all asylum seekers to enter or remain within its territory.

Every Contracting Party shall retain the right to refuse entry or to expel asylum seekers to a third State on the basis of its national provisions and in accordance with its international commitments.

3. Regardless of the Contracting Party with which an alien lodges an application for asylum, only one Contracting Party shall be responsible for processing that application. This shall be determined on the basis of the criteria laid down in Article 30.

4. Notwithstanding paragraph 3, every Contracting Party shall retain the right, for special reasons connected in particular with national law, to process an application for asylum even if, under this Convention, the responsibility for so doing lies with another Contracting Party.

## Article 30

1. The Contracting Party responsible for processing an application for asylum shall be determined as follows:

(a) If a Contracting Party has issued an asylum seeker with a visa, of whatever type, or a residence permit, it shall be responsible for processing the application. If the visa was issued on the authorisation of another Contracting Party, the Contracting Party which gave the authorisation shall be responsible.

(b) If two or more Contracting Parties have issued an asylum seeker with a visa, of whatever type, or a residence permit, the Contracting Party responsible shall be the one which issued the visa or the residence permit that will expire last.

(c) As long as the asylum seeker has not left the territories of the Contracting Parties, the responsibility defined in (a) and (b) shall remain even if the period of validity of the visa, of whatever type, or of the residence permit has expired. If the asylum seeker has left the territories of the Contracting Parties after the visa or the residence permit has been issued, these documents shall be the basis for the responsibility as defined in (a) and (b), unless they have expired in the meantime under national provisions.

(d) If the Contracting Parties exempt the asylum seeker from the visa requirement, the Contracting Party across whose external borders the asylum seeker entered the territories of the Contracting Parties shall be responsible.

Until the harmonisation of visa policies is fully achieved, and if the asylum seeker is exempted from the visa requirement by some Contracting Parties only, the Contracting Party across whose external borders the asylum seeker, through exemption from the visa requirement, has entered the territories of the Contracting Parties shall be responsible, subject to (a), (b) and (c).

If the application for asylum is lodged with a Contracting Party which has issued a transit visa to the asylum seeker — whether the asylum seeker has passed through passport control or not — and if the transit visa was issued after the country of transit had ascertained from the consular or diplomatic authorities of the Contracting Party of destination that the asylum seeker fulfilled the entry conditions for the Contracting Party of destination, the Contracting Party of destination shall be responsible for processing the application.

(e) If the asylum seeker has entered the territory of the Contracting Parties without being in possession of one or more documents, to be defined by the Executive Committee, authorising the crossing of the border, the Contracting Party across whose external borders the asylum seeker entered the territories of the Contracting Parties shall be responsible.

(f) If an alien whose application for asylum is already being processed by one of the Contracting Parties lodges a new application, the Contracting Party responsible shall be the one processing the first application.

(g) If an alien on whose previous application for asylum a Contracting Party has already taken a final decision lodges a new application, the Contracting Party responsible shall be the one that processed the previous application unless the asylum seeker has left the territory of the Contracting Parties.

2. If a Contracting Party has undertaken to process an application for asylum in accordance with Article 29(4), the Contracting Party responsible under paragraph 1 of this Article shall be relieved of its obligations.

3. Where no Contracting Party responsible can be determined on the basis of the criteria laid down in paragraphs 1 and 2, the Contracting Party with which the application for asylum was lodged shall be responsible.

## Article 31

1. The Contracting Parties shall endeavour to determine as quickly as possible which Party is responsible for processing an application for asylum.

2. If an application for asylum is lodged with a Contracting Party which is not responsible under Article 30 by an alien residing within its territory, that Contracting Party may request the Contracting Party responsible to take charge of the asylum seeker in order to process the application for asylum.

3. The Contracting Party responsible shall be obliged to take charge of the asylum seeker referred to in paragraph 2 if the request

is made within six months of the application for asylum being lodged. If the request is not made within that time, the Contracting Party with whom the application for asylum was lodged shall be responsible for processing the application.

#### Article 32

The Contracting Party responsible for processing an application for asylum shall process it in accordance with its national law.

#### Article 33

1. If an asylum seeker is illegally within the territory of another Contracting Party while the asylum procedure is in progress, the Contracting Party responsible shall be obliged to take the asylum seeker back.

2. Paragraph 1 shall not apply where the other Contracting Party has issued an asylum seeker with a residence permit valid for one year or more. In that case, responsibility for processing the application shall be transferred to the other Contracting Party.

#### Article 34

1. The Contracting Party responsible shall be obliged to take back an alien whose application for asylum has been definitively rejected and who has entered the territory of another Contracting Party without being authorised to reside there.

2. Paragraph 1 shall not, however, apply where the Contracting Party responsible expelled the alien from the territories of the Contracting Parties.

#### Article 35

1. The Contracting Party which granted an alien the status of refugee and right of residence shall be obliged to take responsibility for processing any application for asylum made by a member of the alien's family provided that the persons concerned agree.

2. For the purposes of paragraph 1, a family member shall be the refugee's spouse or unmarried child who is less than 18 years old or, if the refugee is an unmarried child who is less than 18 years old, the refugee's father or mother.

#### Article 36

Any Contracting Party responsible for processing an application for asylum may, for humanitarian reasons, based in particular family or cultural grounds, ask another Contracting Party to assume that responsibility provided that the asylum seeker so desires. The Contracting Party to which such a request is made shall consider whether it can be granted.

#### Article 37

1. The competent authorities of the Contracting Parties shall at the earliest opportunity send each other details of:

(a) any new rules or measures adopted in the field of asylum law or the treatment of asylum seekers no later than their entry into force;

(b) statistical data on the monthly arrivals of asylum seekers, indicating the main countries of origin and decisions on applications for asylum where available;

(c) the emergence of, or significant increases in, certain categories of asylum seekers and any information available on this subject;

(d) any fundamental decisions in the field of asylum law.

2. The Contracting Parties shall also ensure close cooperation in gathering information on the situation in the asylum seekers' countries of origin with a view to a joint assessment.

3. Any instruction given by a Contracting Party concerning the confidential processing of the information that it communicates must be complied with by the other Contracting Parties.

#### Article 38

1. Every Contracting Party shall send every other Contracting Party at their request any information it has on an asylum seeker which is necessary for the purposes of:

— determining the Contracting Party responsible for processing the application for asylum,

— processing the application for asylum,

— implementing the obligations arising under this chapter.

2. Such information may concern only:

(a) identity (surname and forename, any previous names, nicknames or aliases, date and place of birth, present nationality and any previous nationalities of the asylum seeker and, where appropriate, of the asylum seeker's family members);

(b) identity and travel documents (references, periods of validity, dates of issue, issuing authorities, place of issue, etc.);

(c) any other details needed to establish the asylum seeker's identity;

- (d) places of residence and routes travelled;
- (e) residence permits or visas issued by a Contracting Party;
- (f) the place where the application for asylum was lodged;
- (g) where appropriate, the date any previous application for asylum was lodged, the date on which the present application was lodged, the stage reached in the procedure and the decision taken.

3. In addition, a Contracting Party may ask another Contracting Party to inform it of the grounds invoked by an asylum seeker in support of an application and, where appropriate, the grounds for the decision taken on the asylum seeker. The Contracting Party requested shall consider whether it can comply with such a request. In all events the communication of such information shall be subject to the asylum seeker's consent.

4. Information shall be exchanged at the request of a Contracting Party and may only be exchanged between the authorities designated by each Contracting Party, once the Executive Committee has been informed thereof.

5. The information exchanged may only be used for the purposes laid down in paragraph 1. Such information may only be communicated to the authorities and courts and tribunals responsible for:

- determining the Contracting Party responsible for processing the application for asylum,
- processing the application for asylum,
- implementing obligations arising under this chapter.

6. The Contracting Party that forwards the information shall ensure it is accurate and up-to-date.

If it appears that a Contracting Party has supplied information that is inaccurate or should not have been forwarded, the recipient Contracting Parties shall be informed immediately thereof. They shall be obliged to correct such information or delete it.

7. Asylum seekers shall have the right to receive on request the information exchanged which concerns them as long as it remains available.

If they establish that such information is inaccurate or should not have been forwarded, they shall have the right to demand its correction or deletion. Corrections shall be made in accordance with paragraph 6.

8. Each Contracting Party concerned shall record the forwarding and receipt of information exchanged.

9. Information forwarded shall be held no longer than necessary for the purposes for which it was exchanged. The Contracting Party concerned shall assess in due course whether it is necessary for it to be held.

10. In any case, information thus forwarded shall enjoy at least the same protection as is provided for similar information in the law of the recipient Contracting Party.

11. If information is not processed automatically but is handled in some other form, each Contracting Party shall take the appropriate measures to ensure compliance with this Article by means of effective controls. If a Contracting Party has a body of the type referred to in paragraph 12, it may assign the control task to it.

12. If one or more Contracting Parties wishes to computerise all or part of the information referred to in paragraphs 2 and 3, such computerisation shall only be authorised if the Contracting Parties concerned have adopted laws applicable to such processing which implement the principles of the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of 28 January 1981 and if they have entrusted an appropriate national body with the independent monitoring of the processing and use of data forwarded pursuant to this Convention.

### TITLE III

## POLICE AND SECURITY

### CHAPTER 1

## POLICE COOPERATION

### Article 39

1. The Contracting Parties undertake to ensure that their police authorities shall, in compliance with national law and

within the scope of their powers, assist each other for the purposes of preventing and detecting criminal offences, in so far as national law does not stipulate that the request has to be made and channelled via the judicial authorities and provided that the request or the implementation thereof does not involve the application of measures of constraint by the requested Contracting Party. Where the requested police authorities do not have the power to deal with a request, they shall forward it to the competent authorities.

2. Written information provided by the requested Contracting Party under paragraph 1 may not be used by the

requesting Contracting Party as evidence of the offence charged other than with the consent of the competent judicial authorities of the requested Contracting Party.

3. Requests for assistance referred to in paragraph 1 and the replies to such requests may be exchanged between the central bodies responsible in each Contracting Party for international police cooperation. Where the request cannot be made in good time using the above procedure, the police authorities of the requesting Contracting Party may address it directly to the competent authorities of the requested Party, which may reply directly. In such cases, the requesting police authority shall at the earliest opportunity inform the central body responsible for international police cooperation in the requested Contracting Party of its direct request.

4. In border areas, cooperation may be covered by arrangements between the competent Ministers of the Contracting Parties.

5. The provisions of this Article shall not preclude more detailed present or future bilateral agreements between Contracting Parties with a common border. The Contracting Parties shall inform each other of such agreements.

#### Article 40

1. Officers of one of the Contracting Parties who, as part of a criminal investigation, are keeping under surveillance in their country a person who is presumed to have participated in an extraditable criminal offence shall be authorised to continue their surveillance in the territory of another Contracting Party where the latter has authorised cross-border surveillance in response to a request for assistance made in advance. Conditions may be attached to the authorisation.

On request, the surveillance will be entrusted to officers of the Contracting Party in whose territory this is carried out.

The request for assistance referred to in the first subparagraph must be sent to an authority designated by each of the Contracting Parties and empowered to grant or to pass on the requested authorisation.

2. Where, for particularly urgent reasons, prior authorisation cannot be requested from the other Contracting Party, the officers carrying out the surveillance shall be authorised to continue beyond the border the surveillance of a person presumed to have committed criminal offences listed in paragraph 7, provided that the following conditions are met:

(a) the authority of the Contracting Party designated under paragraph 5, in whose territory the surveillance is to be continued, must be notified immediately, during the surveillance, that the border has been crossed;

(b) a request for assistance submitted in accordance with paragraph 1 and outlining the grounds for crossing the border without prior authorisation shall be submitted immediately.

Surveillance shall cease as soon as the Contracting Party in whose territory it is taking place so requests, following the notification referred to in (a) or the request referred to in (b) or, where authorisation has not been obtained, five hours after the border was crossed.

3. The surveillance referred to in paragraphs 1 and 2 shall be carried out only under the following general conditions:

(a) The officers carrying out the surveillance must comply with the provisions of this Article and with the law of the Contracting Party in whose territory they are operating; they must obey the instructions of the competent local authorities.

(b) Except in the situations outlined in paragraph 2, the officers shall, during the surveillance, carry a document certifying that authorisation has been granted.

(c) The officers carrying out the surveillance must at all times be able to prove that they are acting in an official capacity.

(d) The officers carrying out the surveillance may carry their service weapons during the surveillance save where specifically otherwise decided by the requested Party; their use shall be prohibited save in cases of legitimate self-defence.

(e) Entry into private homes and places not accessible to the public shall be prohibited.

(f) The officers carrying out the surveillance may neither challenge nor arrest the person under surveillance.

(g) All operations shall be the subject of a report to the authorities of the Contracting Party in whose territory they took place; the officers carrying out the surveillance may be required to appear in person.

(h) The authorities of the Contracting Party from which the surveillance officers have come shall, when requested by the authorities of the Contracting Party in whose territory the surveillance took place, assist the enquiry subsequent to the operation in which they took part, including judicial proceedings.

4. The officers referred to in paragraphs 1 and 2 shall be:

— as regards the Kingdom of Belgium: members of the 'police judiciaire près les Parquets' (Criminal Police attached to the Public Prosecutor's Office), the 'gendarmerie' and the 'police communale' (municipal police), as well as customs officers, under the conditions laid down in appropriate bilateral agreements referred to in paragraph 6, with

respect to their powers regarding illicit trafficking in narcotic drugs and psychotropic substances, trafficking in arms and explosives, and the illicit transportation of toxic and hazardous waste;

- as regards the Federal Republic of Germany: officers of the 'Polizeien des Bundes und der Länder' (Federal Police and Federal State Police), as well as, with respect only to illicit trafficking in narcotic drugs and psychotropic substances and arms trafficking, officers of the 'Zollfahndungsdienst' (customs investigation service) in their capacity as auxiliary officers of the Public Prosecutor's Office;
- as regards the French Republic: criminal police officers of the national police and national 'gendarmérie', as well as customs officers, under the conditions laid down in appropriate bilateral agreements referred to in paragraph 6, with respect to their powers regarding illicit trafficking in narcotic drugs and psychotropic substances, trafficking in arms and explosives, and the illicit transportation of toxic and hazardous waste;
- as regards the Grand Duchy of Luxembourg: officers of the 'gendarmérie' and the police, as well as customs officers, under the conditions laid down in appropriate bilateral agreements referred to in paragraph 6, with respect to their powers regarding illicit trafficking in narcotic drugs and psychotropic substances, trafficking in arms and explosives, and the illicit transportation of toxic and hazardous waste;
- as regards the Kingdom of the Netherlands: officers of the 'Rijkspolitie' (national police) and the 'Gemeentepolitie' (municipal police), as well as, under the conditions laid down in appropriate bilateral agreements referred to in paragraph 6, with respect to their powers regarding illicit trafficking in narcotic drugs and psychotropic substances, trafficking in arms and explosives and the illicit transportation of toxic and hazardous waste, officers of the tax inspection and investigation authorities responsible for import and excise duties.

5. The authority referred to in paragraphs 1 and 2 shall be:

- as regards the Kingdom of Belgium: the 'Commissariat général de la Police judiciaire' (Criminal Investigation Department),
- as regards the Federal Republic of Germany: the 'Bundeskriminalamt' (Federal Crime Office),
- as regards the French Republic: the 'Direction centrale de la Police judiciaire' (Central Headquarters of the Criminal Police),
- as regards the Grand Duchy of Luxembourg: the 'Procureur général d'Etat' (Principal State Prosecutor),
- as regards the Kingdom of the Netherlands: the 'Landelijk Officier van Justitie' (National Public Prosecutor) responsible for cross-border surveillance.

6. The Contracting Parties may, at bilateral level, extend the scope of this Article and adopt additional measures in application thereof.

7. The surveillance referred to in paragraph 2 may only be carried out where one of the following criminal offences is involved:

- murder,
- manslaughter,
- rape,
- arson,
- forgery of money,
- aggravated burglary and robbery and receiving stolen goods,
- extortion,
- kidnapping and hostage taking,
- trafficking in human beings,
- illicit trafficking in narcotic drugs and psychotropic substances,
- breach of the laws on arms and explosives,
- wilful damage through the use of explosives,
- illicit transportation of toxic and hazardous waste.

#### Article 41

1. Officers of one of the Contracting Parties who are pursuing in their country an individual caught in the act of committing or of participating in one of the offences referred to in paragraph 4 shall be authorised to continue pursuit in the territory of another Contracting Party without the latter's prior authorisation where, given the particular urgency of the situation, it is not possible to notify the competent authorities of the other Contracting Party by one of the means provided for in Article 44 prior to entry into that territory or where these authorities are unable to reach the scene in time to take over the pursuit.

The same shall apply where the person being pursued has escaped from provisional custody or while serving a sentence involving deprivation of liberty.

The pursuing officers shall, not later than when they cross the border, contact the competent authorities of the Contracting Party in whose territory the hot pursuit is to take place. The hot pursuit will cease as soon as the Contracting Party in whose territory the pursuit is taking place so requests. At the request of the pursuing officers, the competent local authorities shall challenge the pursued person in order to establish the person's identity or to make an arrest.

2. Hot pursuit shall be carried out in accordance with one of the following procedures, defined by the declaration laid down in paragraph 9:

- (a) The pursuing officers shall not have the right to apprehend the pursued person;
- (b) If no request to cease the hot pursuit is made and if the competent local authorities are unable to intervene quickly enough, the pursuing officers may detain the person pursued until the officers of the Contracting Party in whose territory the pursuit is taking place, who must be informed immediately, are able to establish the person's identity or make an arrest.

3. Hot pursuit shall be carried out in accordance with paragraphs 1 and 2 and in one of the following ways as defined by the declaration provided for in paragraph 9:

- (a) in an area or during a period as from the crossing of the border, to be established in the declaration;
- (b) without limit in space or time.

4. In the declaration referred to in paragraph 9, the Contracting Parties shall define the offences referred to in paragraph 1 in accordance with one of the following procedures:

- (a) The following criminal offences:
  - murder,
  - manslaughter,
  - rape,
  - arson,
  - forgery of money,
  - aggravated burglary and robbery and receiving stolen goods,
  - extortion,
  - kidnapping and hostage taking,
  - trafficking in human beings,
  - illicit trafficking in narcotic drugs and psychotropic substances,
  - breach of the laws on arms and explosives,
  - wilful damage through the use of explosives,

- illicit transportation of toxic and hazardous waste,
- failure to stop and give particulars after an accident which has resulted in death or serious injury.

(b) Extraditable offences.

5. Hot pursuit shall be carried out only under the following general conditions:

- (a) The pursuing officers must comply with the provisions of this Article and with the law of the Contracting Party in whose territory they are operating; they must obey the instructions issued by the competent local authorities.
- (b) Pursuit shall be solely over land borders.
- (c) Entry into private homes and places not accessible to the public shall be prohibited.
- (d) The pursuing officers shall be easily identifiable, either by their uniform, by means of an armband or by accessories fitted to their vehicles; the use of civilian clothes combined with the use of unmarked vehicles without the aforementioned identification is prohibited; the pursuing officers must at all times be able to prove that they are acting in an official capacity.
- (e) The pursuing officers may carry their service weapons; their use shall be prohibited save in cases of legitimate self-defence.
- (f) Once the pursued person has been apprehended as provided for in paragraph 2(b), for the purpose of being brought before the competent local authorities that person may only be subjected to a security search; handcuffs may be used during the transfer; objects carried by the pursued person may be seized.
- (g) After each operation referred to in paragraphs 1, 2 and 3, the pursuing officers shall appear before the competent local authorities of the Contracting Party in whose territory they were operating and shall report on their mission; at the request of those authorities, they shall remain at their disposal until the circumstances surrounding their action have been sufficiently clarified; this condition shall apply even where the hot pursuit has not resulted in the arrest of the person pursued.
- (h) The authorities of the Contracting Party from which the pursuing officers have come shall, when requested by the authorities of the Contracting Party in whose territory the hot pursuit took place, assist the enquiry subsequent to the operation in which they took part, including judicial proceedings.

6. A person who, following the action provided for in paragraph 2, has been arrested by the competent local authorities may, whatever that person's nationality, be held for questioning. The relevant rules of national law shall apply *mutatis mutandis*.

If the person is not a national of the Contracting Party in whose territory the person was arrested, that person shall be released no later than six hours after the arrest was made, not including the hours between midnight and 9.00 a.m., unless the competent local authorities have previously received a request for that person's provisional arrest for the purposes of extradition in any form whatsoever.

7. The officers referred to in the previous paragraphs shall be:

- as regards the Kingdom of Belgium: members of the 'police judiciaire près les Parquets' (Criminal Police attached to the Public Prosecutor's Office), the 'gendarmerie' and the 'police communale' (municipal police), as well as customs officers, under the conditions laid down in appropriate bilateral agreements referred to in paragraph 10, with respect to their powers regarding illicit trafficking in narcotic drugs and psychotropic substances, trafficking in arms and explosives, and the illicit transportation of toxic and hazardous waste;
- as regards the Federal Republic of Germany: officers of the 'Polizeien des Bundes und der Länder' (Federal and Federal State Police), as well as, with respect only to illegal trafficking in narcotic drugs and psychotropic substances and arms trafficking, officers of the 'Zollfahndungsdienst' (customs investigation service) in their capacity as auxiliary officers of the Public Prosecutor's Office;
- as regards the French Republic: criminal police officers of the national police and national 'gendarmerie', as well as customs officers, under the conditions laid down in the appropriate bilateral agreements referred to in paragraph 10, with respect to their powers regarding illicit trafficking in narcotic drugs and psychotropic substances, trafficking in arms and explosives, and the illicit transportation of toxic and hazardous waste;
- as regards the Grand Duchy of Luxembourg: officers of the 'gendarmerie' and the police, as well as customs officers, under the conditions laid down in the appropriate bilateral agreements referred to in paragraph 10, with respect to their powers regarding illicit trafficking in narcotic drugs and psychotropic substances, trafficking in arms and explosives, and the illicit transportation of toxic and hazardous waste;
- as regards the Kingdom of the Netherlands: officers of the 'Rijkspolitie' (national police) and the 'Gemeentepolitie' (municipal police) as well as, under the conditions laid down in the appropriate bilateral agreements referred to in paragraph 10, with respect to their powers regarding the illicit trafficking in narcotic drugs and psychotropic substances, trafficking in arms and explosives and the illicit transportation of toxic and hazardous waste, officers of the

tax inspection and investigation authorities responsible for import and excise duties.

8. For the Contracting Parties concerned this Article shall apply without prejudice to Article 27 of the Benelux Treaty concerning Extradition and Mutual Assistance in Criminal Matters of 27 June 1962, as amended by the Protocol of 11 May 1974.

9. At the time of signing this Convention, each Contracting Party shall make a declaration in which it shall define for each of the Contracting Parties with which it has a common border, on the basis of paragraphs 2, 3 and 4, the procedures for carrying out a hot pursuit in its territory.

A Contracting Party may at any time replace its declaration by another declaration provided the latter does not restrict the scope of the former.

Each declaration shall be made after consultation with each of the Contracting Parties concerned and with a view to obtaining equivalent arrangements on both sides of internal borders.

10. The Contracting Parties may, on a bilateral basis, extend the scope of paragraph 1 and adopt additional provisions in implementation of this Article.

#### Article 42

During the operations referred to in Articles 40 and 41, officers operating in the territory of another Contracting Party shall be regarded as officers of that Party with respect to offences committed against them or by them.

#### Article 43

1. Where, in accordance with Articles 40 and 41 of this Convention, officers of a Contracting Party are operating in the territory of another Contracting Party, the first Contracting Party shall be liable for any damage caused by them during their operations, in accordance with the law of the Contracting Party in whose territory they are operating.

2. The Contracting Party in whose territory the damage referred to in paragraph 1 was caused shall make good such damage under the conditions applicable to damage caused by its own officers.

3. The Contracting Party whose officers have caused damage to any person in the territory of another Contracting Party shall reimburse the latter in full any sums it has paid to the victims or persons entitled on their behalf.

4. Without prejudice to the exercise of its rights vis-à-vis third parties and with the exception of paragraph 3, each Contracting Party shall refrain in the case provided for in paragraph 1 from requesting reimbursement of damages it has sustained from another Contracting Party.

#### Article 44

1. In accordance with the relevant international agreements and account being taken of local circumstances and technical possibilities, the Contracting Parties shall install, in particular in border areas, telephone, radio, and telex lines and other direct links to facilitate police and customs cooperation, in particular for the timely transmission of information for the purposes of cross-border surveillance and hot pursuit.

2. In addition to these short-term measures, they will in particular consider the following options:

- (a) exchanging equipment or posting liaison officers provided with appropriate radio equipment;
- (b) widening the frequency bands used in border areas;
- (c) establishing common links for police and customs services operating in these same areas;
- (d) coordinating their programmes for the procurement of communications equipment, with a view to installing standardised and compatible communications systems.

#### Article 45

1. The Contracting Parties undertake to adopt the necessary measures in order to ensure that:

- (a) the managers of establishments providing accommodation or their agents see to it that aliens accommodated therein, including nationals of the other Contracting Parties and those of other Member States of the European Communities, with the exception of accompanying spouses or accompanying minors or members of travel groups, personally complete and sign registration forms and confirm their identity by producing a valid identity document;
- (b) the completed registration forms will be kept for the competent authorities or forwarded to them where such authorities deem this necessary for the prevention of threats, for criminal investigations or for clarifying the circumstances of missing persons or accident victims, save where national law provides otherwise.

2. Paragraph 1 shall apply *mutatis mutandis* to persons staying in any commercially rented accommodation, in particular tents, caravans and boats.

#### Article 46

1. In specific cases, each Contracting Party may, in compliance with its national law and without being so requested, send the Contracting Party concerned any information which may be important in helping it combat future crime and prevent offences against or threats to public policy and public security.

2. Information shall be exchanged, without prejudice to the arrangements for cooperation in border areas referred to in Article 39(4), via a central body to be designated. In particularly urgent cases, the exchange of information within the meaning of this Article may take place directly between the police authorities concerned, unless national provisions stipulate otherwise. The central body shall be informed of this as soon as possible.

#### Article 47

1. The Contracting Parties may conclude bilateral agreements providing for the secondment, for a specified or unspecified period, of liaison officers from one Contracting Party to the police authorities of another Contracting Party.

2. The secondment of liaison officers for a specified or unspecified period is intended to further and accelerate cooperation between the Contracting Parties, particularly by providing assistance:

- (a) in the form of the exchange of information for the purposes of combating crime by means of both prevention and law enforcement;
- (b) in executing requests for mutual police and judicial assistance in criminal matters;
- (c) with the tasks carried out by the authorities responsible for external border surveillance.

3. Liaison officers shall have the task of providing advice and assistance. They shall not be empowered to take independent police action. They shall supply information and perform their duties in accordance with the instructions given to them by the seconding Contracting Party and by the Contracting Party to which they are seconded. They shall report regularly to the head of the police department to which they are seconded.

4. The Contracting Parties may agree within a bilateral or multilateral framework that liaison officers from a Contracting

Party seconded to third States shall also represent the interests of one or more other Contracting Parties. Under such agreements, liaison officers seconded to third States shall supply information to other Contracting Parties when requested to do so or on their own initiative and shall, within the limits of their powers, perform duties on behalf of such Parties. The Contracting Parties shall inform one another of their intentions with regard to the secondment of liaison officers to third States.

## CHAPTER 2

### MUTUAL ASSISTANCE IN CRIMINAL MATTERS

#### Article 48

1. The provisions of this Chapter are intended to supplement the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 as well as, in relations between the Contracting Parties which are members of the Benelux Economic Union, Chapter II of the Benelux Treaty concerning Extradition and Mutual Assistance in Criminal Matters of 27 June 1962, as amended by the Protocol of 11 May 1974, and to facilitate the implementation of those Agreements.

2. Paragraph 1 shall not affect the application of the broader provisions of the bilateral agreements in force between the Contracting Parties.

#### Article 49

Mutual assistance shall also be afforded:

- (a) in proceedings brought by the administrative authorities in respect of acts which are punishable under the national law of one of the two Contracting Parties, or of both, by virtue of being infringements of the rules of law, and where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters;
- (b) in proceedings for claims for damages arising from wrongful prosecution or conviction;
- (c) in clemency proceedings;
- (d) in civil actions joined to criminal proceedings, as long as the criminal court has not yet taken a final decision in the criminal proceedings;
- (e) in the service of judicial documents relating to the enforcement of a sentence or a preventive measure, the imposition of a fine or the payment of costs for proceedings;

- (f) in respect of measures relating to the deferral of delivery or suspension of enforcement of a sentence or a preventive measure, to conditional release or to a stay or interruption of enforcement of a sentence or a preventive measure.

#### Article 50

1. The Contracting Parties undertake to afford each other, in accordance with the Convention and the Treaty referred to in Article 48, mutual assistance as regards infringements of their laws and regulations on excise duties, value added tax and customs duties. Customs provisions shall mean the rules laid down in Article 2 of the Convention of 7 September 1967 between Belgium, the Federal Republic of Germany, France, Italy, Luxembourg and the Netherlands on Mutual Assistance between Customs Administrations, and Article 2 of Council Regulation (EEC) No 1468/81 of 19 May 1981.

2. Requests regarding evasion of excise duties may not be rejected on the grounds that the requested country does not levy excise duties on the goods referred to in the request.

3. The requesting Contracting Party shall not forward or use information or evidence obtained from the requested Contracting Party for investigations, prosecutions or proceedings other than those referred to in its request without the prior consent of the requested Contracting Party.

4. The mutual assistance provided for in this Article may be refused where the alleged amount of duty underpaid or evaded does not exceed ECU 25 000 or where the presumed value of the goods exported or imported without authorisation does not exceed ECU 100 000, unless, given the circumstances or the identity of the accused, the case is deemed to be extremely serious by the requesting Contracting Party.

5. The provisions of this Article shall also apply when the mutual assistance requested concerns acts punishable only by a fine by virtue of being infringements of the rules of law in proceedings brought by the administrative authorities, where the request for assistance was made by a judicial authority.

#### Article 51

The Contracting Parties may not make the admissibility of letters rogatory for search or seizure dependent on conditions other than the following:

- (a) the act giving rise to the letters rogatory is punishable under the law of both Contracting Parties by a penalty involving deprivation of liberty or a detention order of a

maximum period of at least six months, or is punishable under the law of one of the two Contracting Parties by an equivalent penalty and under the law of the other Contracting Party by virtue of being an infringement of the rules of law which is being prosecuted by the administrative authorities, and where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters;

- (b) execution of the letters rogatory is consistent with the law of the requested Contracting Party.

#### Article 52

1. Each Contracting Party may send procedural documents directly by post to persons who are in the territory of another Contracting Party. The Contracting Parties shall send the Executive Committee a list of the documents which may be forwarded in this way.

2. Where there is reason to believe that the addressee does not understand the language in which the document is written, the document — or at least the important passages thereof — must be translated into (one of) the language(s) of the Contracting Party in whose territory the addressee is staying. If the authority forwarding the document knows that the addressee understands only some other language, the document — or at least the important passages thereof — must be translated into that other language.

3. Experts or witnesses who have failed to answer a summons to appear sent to them by post shall not, even if the summons contains a notice of penalty, be subjected to any punishment or measure of constraint, unless subsequently they voluntarily enter into the territory of the requesting Party and are there again duly summoned. Authorities sending a postal summons to appear shall ensure that this does not involve a notice of penalty. This provision shall be without prejudice to Article 34 of the Benelux Treaty concerning Extradition and Mutual Assistance in Criminal Matters of 27 June 1962, as amended by the Protocol of 11 May 1974.

4. If the act on which the request for assistance is based is punishable under the law of both Contracting Parties by virtue of being an infringement of the rules of law which is being prosecuted by the administrative authorities, and where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters, the procedure outlined in paragraph 1 must in principle be used for the forwarding of procedural documents.

5. Notwithstanding paragraph 1, procedural documents may be forwarded via the judicial authorities of the requested Contracting Party where the addressee's address is unknown or where the requesting Contracting Party requires a document to be served in person.

#### Article 53

1. Requests for assistance may be made directly between judicial authorities and returned via the same channels.

2. Paragraph 1 shall not prejudice the possibility of requests being sent and returned between Ministries of Justice or through national central bureaux of the International Criminal Police Organisation.

3. Requests for the temporary transfer or transit of persons who are under provisional arrest, being detained or who are the subject of a penalty involving deprivation of liberty, and the periodic or occasional exchange of information from the judicial records must be effected through the Ministries of Justice.

4. Within the meaning of the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959, where the Federal Republic of Germany is concerned, Ministry of Justice shall mean the Federal Minister of Justice and the Justice Ministers or Senators in the Federal States (*Länder*).

5. Information laid in connection with proceedings against infringement of the legislation on driving and rest periods, in accordance with Article 21 of the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 or Article 42 of the Benelux Treaty on Extradition and Mutual Assistance in Criminal Matters of 27 June 1962, as amended by the Protocol of 11 May 1974, may be sent by the judicial authorities of the requesting Contracting Party directly to the judicial authorities of the requested Contracting Party.

### CHAPTER 3

#### APPLICATION OF THE NE BIS IN IDEM PRINCIPLE

#### Article 54

A person whose trial has been finally disposed of in one Contracting Party may not be prosecuted in another Contracting Party for the same acts provided that, if a penalty has been imposed, it has been enforced, is actually in the process of being enforced or can no longer be enforced under the laws of the sentencing Contracting Party.

#### Article 55

1. A Contracting Party may, when ratifying, accepting or approving this Convention, declare that it is not bound by Article 54 in one or more of the following cases:

- (a) where the acts to which the foreign judgment relates took place in whole or in part in its own territory; in the latter case, however, this exception shall not apply if the acts took place in part in the territory of the Contracting Party where the judgment was delivered;
- (b) where the acts to which the foreign judgment relates constitute an offence against national security or other equally essential interests of that Contracting Party;
- (c) where the acts to which the foreign judgment relates were committed by officials of that Contracting Party in violation of the duties of their office.

2. A Contracting Party which has made a declaration regarding the exception referred to in paragraph 1(b) shall specify the categories of offences to which this exception may apply.

3. A Contracting Party may at any time withdraw a declaration relating to one or more of the exceptions referred to in paragraph 1.

4. The exceptions which were the subject of a declaration under paragraph 1 shall not apply where the Contracting Party concerned has, in connection with the same acts, requested the other Contracting Party to bring the prosecution or has granted extradition of the person concerned.

#### Article 56

If a further prosecution is brought in a Contracting Party against a person whose trial, in respect of the same acts, has been finally disposed of in another Contracting Party, any period of deprivation of liberty served in the latter Contracting Party arising from those acts shall be deducted from any penalty imposed. To the extent permitted by national law, penalties not involving deprivation of liberty shall also be taken into account.

#### Article 57

1. Where a Contracting Party charges a person with an offence and the competent authorities of that Contracting Party have reason to believe that the charge relates to the same acts as those in respect of which the person's trial has been finally disposed of in another Contracting Party, those authorities shall, if they deem it necessary, request the relevant information from the competent authorities of the Contracting Party in whose territory judgment has already been delivered.

2. The information requested shall be provided as soon as possible and shall be taken into consideration as regards further action to be taken in the proceedings under way.

3. Each Contracting Party shall, when ratifying, accepting or approving this Convention, nominate the authorities authorised to request and receive the information provided for in this Article.

#### Article 58

The above provisions shall not preclude the application of broader national provisions on the *ne bis in idem* principle with regard to judicial decisions taken abroad.

### CHAPTER 4

#### EXTRADITION

#### Article 59

1. The provisions of this chapter are intended to supplement the European Convention on Extradition of 13 September 1957 as well as, in relations between the Contracting Parties which are members of the Benelux Economic Union, Chapter I of the Benelux Treaty concerning Extradition and Mutual Assistance in Criminal Matters of 27 June 1962, as amended by the Protocol of 11 May 1974, and to facilitate the implementation of those agreements.

2. Paragraph 1 shall not affect the application of the broader provisions of the bilateral agreements in force between the Contracting Parties.

#### Article 60

*In relations between two Contracting Parties, one of which is not a Party to the European Convention on Extradition of 13 September 1957, the provisions of the said Convention shall apply, subject to the reservations and declarations made at the time of ratifying that Convention or, for Contracting Parties which are not Parties to the Convention, at the time of ratifying, approving or accepting this Convention.*

#### Article 61

The French Republic undertakes to extradite, at the request of one of the Contracting Parties, persons against whom proceedings are being brought for acts punishable under French law by a penalty involving deprivation of liberty or a detention order of a maximum period of at least two years and under the law of the requesting Contracting Party by a penalty involving deprivation of liberty or a detention order of a maximum period of at least one year.

## Article 62

1. As regards interruption of limitation of actions, only the provisions of the requesting Contracting Party shall apply.

2. An amnesty granted by the requested Contracting Party shall not prevent extradition unless the offence falls within the jurisdiction of that Contracting Party.

3. The absence of a charge or an official notice authorising proceedings, necessary only under the law of the requested Contracting Party, shall not affect the obligation to extradite.

## Article 63

The Contracting Parties undertake, in accordance with the Convention and the Treaty referred to in Article 59, to extradite between themselves persons being prosecuted by the judicial authorities of the requesting Contracting Party for one of the offences referred to in Article 50(1), or sought by the requesting Contracting Party for the purposes of enforcing a sentence or preventive measure imposed in respect of such an offence.

## Article 64

An alert entered into the Schengen Information System in accordance with Article 95 shall have the same force as a request for provisional arrest under Article 16 of the European Convention on Extradition of 13 September 1957 or Article 15 of the Benelux Treaty concerning Extradition and Mutual Assistance in Criminal Matters of 27 June 1962, as amended by the Protocol of 11 May 1974.

## Article 65

1. Without prejudice to the option of using the diplomatic channel, requests for extradition and transit shall be sent by the relevant Ministry of the requesting Contracting Party to the competent Ministry of the requested Contracting Party.

2. The competent Ministries shall be:

— as regards the Kingdom of Belgium: the Ministry of Justice,

— as regards the Federal Republic of Germany: the Federal Ministry of Justice and the Justice Ministers or Senators in the Federal States (*Länder*),

— as regards the French Republic: the Ministry of Foreign Affairs,

— as regards the Grand Duchy of Luxembourg: the Ministry of Justice,

— as regards the Kingdom of the Netherlands: the Ministry of Justice.

## Article 66

1. If the extradition of a wanted person is not clearly prohibited under the laws of the requested Contracting Party, that Contracting Party may authorise extradition without formal extradition proceedings, provided that the wanted person agrees thereto in a statement made before a member of the judiciary after being heard by the latter and informed of the right to formal extradition proceedings. The wanted person may be assisted by a lawyer during the hearing.

2. In cases of extradition under paragraph 1, wanted persons who explicitly state that they will relinquish the protection offered by the principle of speciality may not revoke that statement.

## CHAPTER 5

## TRANSFER OF THE ENFORCEMENT OF CRIMINAL JUDGMENTS

## Article 67

The following provisions shall apply between the Contracting Parties which are Parties to the Council of Europe Convention on the Transfer of Sentenced Persons of 21 March 1983, for the purposes of supplementing that Convention.

## Article 68

1. The Contracting Party in whose territory a penalty involving deprivation of liberty or a detention order has been imposed by a judgment which has obtained the force of *res judicata* in respect of a national of another Contracting Party who, by escaping to the national's own country, has avoided the enforcement of that penalty or detention order may request the latter Contracting Party, if the escaped person is within its territory, to take over the enforcement of the penalty or detention order.

2. The requested Contracting Party may, at the request of the requesting Contracting Party, prior to the arrival of the documents supporting the request that the enforcement of the penalty or detention order or part thereof remaining to be served be taken over, and prior to the decision on that request, take the sentenced person into police custody or take other measures to ensure that the person remains within the territory of the requested Contracting Party.

### Article 69

The transfer of enforcement under Article 68 shall not require the consent of the person on whom the penalty or the detention order has been imposed. The other provisions of the Council of Europe Convention on the Transfer of Sentenced Persons of 21 March 1983 shall apply *mutatis mutandis*.

## CHAPTER 6

### NARCOTIC DRUGS

#### Article 70

1. The Contracting Parties shall set up a permanent working party to examine common problems relating to combating crime involving narcotic drugs and to draw up proposals, where necessary, to improve the practical and technical aspects of cooperation between the Contracting Parties. The working party shall submit its proposals to the Executive Committee.

2. The working party referred to in paragraph 1, whose members shall be nominated by the competent national authorities, shall include representatives of the police and customs authorities.

#### Article 71

1. The Contracting Parties undertake as regards the direct or indirect sale of narcotic drugs and psychotropic substances of whatever type, including cannabis, and the possession of such products and substances for sale or export, to adopt in accordance with the existing United Nations Conventions<sup>(\*)</sup>, all necessary measures to prevent and punish the illicit trafficking in narcotic drugs and psychotropic substances.

2. The Contracting Parties undertake to prevent and punish by administrative and penal measures the illegal export of narcotic drugs and psychotropic substances, including cannabis, as well as the sale, supply and handing over of such products and substances, without prejudice to the relevant provisions of Articles 74, 75 and 76.

(\*) Single Convention on Narcotic Drugs of 1954, as amended by the 1955 Protocol amending the 1954 Single Convention on Narcotic Drugs; the 1971 Convention on Psychotropic Substances; the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 20 December 1988.

3. To combat the illegal import of narcotic drugs and psychotropic substances, including cannabis, the Contracting Parties shall step up their checks on the movement of persons, goods and means of transport at their external borders. Such measures shall be drawn up by the working party provided for in Article 70. This working party shall consider, *inter alia*, transferring some of the police and customs staff released from internal border duty and the use of modern drug-detection methods and sniffer dogs.

4. To ensure compliance with this Article, the Contracting Parties shall specifically carry out surveillance of places known to be used for drug trafficking.

5. The Contracting Parties shall do their utmost to prevent and combat the negative effects arising from the illicit demand for narcotic drugs and psychotropic substances of whatever type, including cannabis. Each Contracting Party shall be responsible for the measures adopted to this end.

#### Article 72

The Contracting Parties shall, in accordance with their constitutions and their national legal systems, ensure that legislation is enacted to enable the seizure and confiscation of the proceeds of the illicit trafficking in narcotic drugs and psychotropic substances.

#### Article 73

1. The Contracting Parties undertake, in accordance with their constitutions and their national legal systems, to adopt measures to allow controlled deliveries to be made in the context of the illicit trafficking in narcotic drugs and psychotropic substances.

2. In each individual case, a decision to allow controlled deliveries will be taken on the basis of prior authorisation from each Contracting Party concerned.

3. Each Contracting Party shall retain responsibility for and control over any operation carried out in its own territory and shall be entitled to intervene.

#### Article 74

As regards the legal trade in narcotic drugs and psychotropic substances, the Contracting Parties agree that the checks arising from obligations under the United Nations Conventions listed in Article 71 and which are carried out at internal borders shall, wherever possible, be transferred to within the country.

## Article 75

1. As regards the movement of travellers to the territories of the Contracting Parties or their movement within these territories, persons may carry the narcotic drugs and psychotropic substances that are necessary for their medical treatment provided that, at any check, they produce a certificate issued or authenticated by a competent authority of their State of residence.

2. The Executive Committee shall lay down the form and content of the certificate referred to in paragraph 1 and issued by one of the Contracting Parties, with particular reference to details on the nature and quantity of the products and substances and the duration of the journey.

3. The Contracting Parties shall notify each other of the authorities responsible for the issue and authentication of the certificate referred to in paragraph 2.

## Article 76

1. The Contracting Parties shall, where necessary, and in accordance with their medical, ethical and practical usage, adopt appropriate measures for the control of narcotic drugs and psychotropic substances which in the territory of one or more Contracting Parties are subject to more rigorous controls than in their own territory, so as not to jeopardise the effectiveness of such controls.

2. Paragraph 1 shall also apply to substances frequently used in the manufacture of narcotic drugs and psychotropic substances.

3. The Contracting Parties shall notify each other of the measures taken in order to monitor the legal trade of the substances referred to in paragraphs 1 and 2.

4. Problems experienced in this area shall be raised regularly in the Executive Committee.

## CHAPTER 7

## FIREARMS AND AMMUNITION

## Article 77

1. The Contracting Parties undertake to adapt their national laws, regulations and administrative provisions relating to the acquisition, possession, trade in and handing over of firearms and ammunition to the provisions of this chapter.

2. This chapter covers the acquisition, possession, trade in and handing over of firearms and ammunition by natural and legal

persons; it does not cover the supply of firearms or ammunition to, or their acquisition or possession by, the central and territorial authorities, the armed forces or the police or the manufacture of firearms and ammunition by public undertakings.

## Article 78

1. For the purposes of this chapter, firearms shall be classified as follows:

- (a) prohibited firearms;
- (b) firearms subject to authorisation;
- (c) firearms subject to declaration.

2. The breach-closing mechanism, the magazine and the barrel of firearms shall be subject *mutatis mutandis* to the regulations governing the weapon of which they are, or are intended to be, mounted.

3. For the purposes of this Convention, 'short firearms' shall mean firearms with a barrel not exceeding 30 cm or whose overall length does not exceed 60 cm; 'long firearms' shall mean all other firearms.

## Article 79

1. The list of prohibited firearms and ammunition shall include the following:

- (a) firearms normally used as weapons of war;
- (b) automatic firearms, even if they are not weapons of war;
- (c) firearms disguised as other objects;
- (d) ammunition with penetrating, explosive or incendiary projectiles and the projectiles for such ammunition;
- (e) ammunition for pistols and revolvers with dum-dum or hollow-pointed projectiles and projectiles for such ammunition.

2. In special cases the competent authorities may grant authorisations for the firearms and ammunition referred to in paragraph 1 if this is not contrary to public policy or public security.

## Article 80

1. The list of firearms the acquisition and possession of which is subject to authorisation shall include at least the following if they are not prohibited:

- (a) semi-automatic or repeating short firearms;
- (b) single-shot short firearms with centrefire percussion;
- (c) single-shot short firearms with rimfire percussion, with an overall length of less than 28 cm;
- (d) semi-automatic long firearms whose magazine and chamber can together hold more than three rounds;
- (e) repeating semi-automatic long firearms with smoothbore barrels not exceeding 60 cm in length;
- (f) semi-automatic firearms for civilian use which resemble weapons of war with automatic mechanisms.

2. The list of firearms subject to authorisation shall not include:

- (a) arms used as warning devices or alarms or to fire non-lethal incapacitants, provided that it is guaranteed by technical means that such arms cannot be converted, using ordinary tools, to fire ammunition with projectiles and provided that the firing of an irritant substance does not cause permanent injury to persons;
- (b) semi-automatic long firearms whose magazine and chamber cannot hold more than three rounds without being reloaded, provided that the loading device is non-removable or that it is certain that the firearms cannot be converted, using ordinary tools, into firearms whose magazine and chamber can together hold more than three rounds.

#### Article 81

The list of firearms subject to declaration shall include, if such arms are neither prohibited nor subject to authorisation:

- (a) repeating long firearms;
- (b) long firearms with single-shot rifled barrel or barrels;
- (c) single-shot short firearms with rimfire percussion whose overall length exceeds 28 cm;
- (d) the arms listed in Article 80(2)(b).

#### Article 82

The list of arms referred to in Articles 79, 80 and 81 shall not include:

- (a) firearms whose model or year of manufacture, save in exceptional cases, predates 1 January 1870, provided that they cannot fire ammunition intended for prohibited arms or arms subject to authorisation;
- (b) reproductions of arms listed under (a), provided that they cannot be used to fire metal-case cartridges;
- (c) firearms which by technical procedures guaranteed by the stamp of an official body or recognised by such a body have been rendered unfit to fire any kind of ammunition.

#### Article 83

Authorisation to acquire and to possess a firearm listed in Article 80 may be issued only:

- (a) if the person concerned is over 18 years of age, with the exception of dispensations for hunting or sporting purposes;
- (b) if the person concerned is not unfit, as a result of mental illness or any other mental or physical disability, to acquire or possess a firearm;
- (c) if the person concerned has not been convicted of an offence, or if there are no other indications that the person might be a danger to public policy or public security;
- (d) if the reasons given by the person concerned for acquiring or possessing firearms can be considered legitimate.

#### Article 84

1. Declarations in respect of the firearms mentioned in Article 81 shall be entered in a register kept by the persons referred to in Article 85.

2. If a firearm is transferred by a person not referred to in Article 85, a declaration of transfer must be made in accordance with procedures to be laid down by each Contracting Party.

3. The declarations referred to in this Article shall contain the details necessary in order to identify the persons and the arms concerned.

#### Article 85

1. The Contracting Parties undertake to impose an authorisation requirement on manufacturers of, and on dealers in, firearms subject to authorisation and to impose a declaration requirement on

manufacturers of, and on dealers in, firearms subject to declaration. Authorisation for firearms subject to authorisation shall also cover firearms subject to declaration. The Contracting Parties shall carry out checks on arms manufacturers and arms dealers, thereby guaranteeing effective control.

2. The Contracting Parties undertake to adopt measures to ensure that, as a minimum requirement, all firearms are permanently marked with a serial number enabling identification and that they carry the manufacturer's mark.

3. The Contracting Parties shall require manufacturers and dealers to keep a register of all firearms subject to authorisation or declaration; the register shall enable rapid identification of the type and origin of the firearms and the persons acquiring them.

4. As regards firearms subject to authorisation under Articles 79 and 80, the Contracting Parties undertake to adopt measures to ensure that the serial number and the manufacturer's mark on the firearm are entered in the authorisation issued to its holder.

#### Article 86

1. The Contracting Parties undertake to adopt measures prohibiting legitimate holders of firearms subject to authorisation or declaration from handing such arms over to persons who do not hold either an authorisation to acquire them or a declaration certificate.

2. The Contracting Parties may authorise the temporary handing over of such firearms in accordance with procedures that they shall lay down.

#### Article 87

1. The Contracting Parties shall incorporate in their national law provisions enabling authorisation to be withdrawn from persons who no longer satisfy the conditions for the issue of authorisations under Article 83.

2. The Contracting Parties undertake to adopt appropriate measures, including the seizure of firearms and withdrawal of authorisations, and to lay down appropriate penalties for any infringements of the laws and regulations on firearms. Such penalties may include the confiscation of firearms.

#### Article 88

1. A person who holds an authorisation to acquire a firearm shall not require an authorisation to acquire ammunition for that firearm.

2. The acquisition of ammunition by persons not holding an authorisation to acquire arms shall be subject to the arrangements governing the weapon for which the ammunition is intended. The authorisation may be issued for a single category or for all categories of ammunition.

#### Article 89

The lists of firearms which are prohibited, subject to authorisation or subject to declaration, may be amended or supplemented by the Executive Committee to take account of technical and economic developments and national security.

#### Article 90

The Contracting Parties may adopt more stringent laws and provisions on the acquisition and possession of firearms and ammunition.

#### Article 91

1. The Contracting Parties agree, on the basis of the European Convention on the Control of the Acquisition and Possession of Firearms by Individuals of 28 June 1978, to set up within the framework of their national laws an exchange of information on the acquisition of firearms by persons — whether private individuals or firearms dealers — habitually resident or established in the territory of another Contracting Party. A firearms dealer shall mean any person whose trade or business consists, in whole or in part, in the retailing of firearms.

2. The exchange of information shall concern:

- (a) between two Contracting Parties having ratified the Convention referred to in paragraph 1: the firearms listed in Appendix 1(A)(1)(a) to (h) of the said Convention;
- (b) between two Contracting Parties at least one of which has not ratified the Convention referred to in paragraph 1: firearms which are subject to authorisation or declaration in each of the Contracting Parties.

3. Information on the acquisition of firearms shall be communicated without delay and shall include the following:

- (a) the date of acquisition of the firearm and the identity of the person acquiring it, i.e.:
  - in the case of a natural person: surname, forenames, date and place of birth, address and passport or identity card number, date of issue and details of the issuing authority, whether firearms dealer or not,

- in the case of a legal person: the name or business name and registered place of business and the surname, forenames, date and place of birth, address and passport or identity card number of the person authorised to represent the legal person;
- (b) the model, manufacturer's number, calibre and other characteristics of the firearm in question and its serial number.

4. Each Contracting Party shall designate the national authority responsible for sending and receiving the information referred to in paragraphs 2 and 3 and shall immediately inform the other Contracting Parties of any change of designated authority.

5. The authority designated by each Contracting Party may forward the information it has received to the competent local police authorities and the authorities responsible for border surveillance, for the purposes of preventing or prosecuting criminal offences and infringements of rules of law.

#### TITLE IV

### THE SCHENGEN INFORMATION SYSTEM

#### CHAPTER 1

#### ESTABLISHMENT OF THE SCHENGEN INFORMATION SYSTEM

##### *Article 92*

1. The Contracting Parties shall set up and maintain a joint information system, hereinafter referred to as 'the Schengen Information System', consisting of a national section in each of the Contracting Parties and a technical support function. The Schengen Information System shall enable the authorities designated by the Contracting Parties, by means of an automated search procedure, to have access to alerts on persons and property for the purposes of border checks and other police and customs checks carried out within the country in accordance with national law and, in the case of the specific category of alerts referred to in Article 96, for the purposes of issuing visas, residence permits and the administration of legislation on aliens in the context of the application of the provisions of this Convention relating to the movement of persons.

2. Each Contracting Party shall set up and maintain, for its own account and at its own risk, its national section of the Schengen Information System, the data file of which shall be made materially identical to the data files of the national sections of each of the other Contracting Parties by means of the technical support function. To ensure the rapid and effective transmission of data as referred to in paragraph 3, each Contracting Party shall observe, when setting up its national section, the protocols and procedures which the Contracting Parties have jointly established for the technical support function. Each national section's data file shall be available for the purposes of carrying out automated searches in the territory of each of the Contracting Parties. It shall not be possible to search the data files of other Contracting Parties' national sections.

3. The Contracting Parties shall set up and maintain, on a common cost basis and bearing joint liability, the technical support function of the Schengen Information System. The French Republic shall be responsible for the technical support function, which shall be located in Strasbourg. The technical

support function shall comprise a data file which will ensure via on-line transmission that the data files of the national sections contain identical information. The data files of the technical support function shall contain alerts for persons and property in so far as these concern all the Contracting Parties. The data file of the technical support function shall contain no data other than those referred to in this paragraph and in Article 113(2).

#### CHAPTER 2

#### OPERATION AND USE OF THE SCHENGEN INFORMATION SYSTEM

##### *Article 93*

The purpose of the Schengen Information System shall be in accordance with this Convention to maintain public policy and public security, including national security, in the territories of the Contracting Parties and to apply the provisions of this Convention relating to the movement of persons in those territories, using information communicated via this system.

##### *Article 94*

1. The Schengen Information System shall contain only those categories of data which are supplied by each of the Contracting Parties, as required for the purposes laid down in Articles 95 to 100. The Contracting Party issuing an alert shall determine whether the case is important enough to warrant entry of the alert in the Schengen Information System.

2. The categories of data shall be as follows:

- (a) persons for whom an alert has been issued;
- (b) objects referred to in Article 100 and vehicles referred to in Article 99.

3. For persons, the information shall be no more than the following:

- (a) surname and forenames, any aliases possibly entered separately;
- (b) any specific objective physical characteristics not subject to change;
- (c) first letter of second forename;
- (d) date and place of birth;
- (e) sex;
- (f) nationality;
- (g) whether the persons concerned are armed;
- (h) whether the persons concerned are violent;
- (i) reason for the alert;
- (j) action to be taken.

Other information, in particular the data listed in the first sentence of Article 6 of the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of 28 January 1981, shall not be authorised.

4. Where a Contracting Party considers that an alert in accordance with Articles 95, 97 or 99 is incompatible with its national law, its international obligations or essential national interests, it may subsequently add to the alert contained in the data file of the national section of the Schengen Information System a flag to the effect that the action to be taken on the basis of the alert will not be taken in its territory. Consultation must be held in this connection with the other Contracting Parties. If the Contracting Party issuing the alert does not withdraw the alert, it shall continue to apply in full for the other Contracting Parties.

#### Article 95

1. Data on persons wanted for arrest for extradition purposes shall be entered at the request of the judicial authority of the requesting Contracting Party.

2. Before issuing an alert, the Contracting Party shall check whether the arrest is authorised under the national law of the requested Contracting Parties. If the Contracting Party issuing the alert has any doubts, it must consult the other Contracting Parties concerned.

The Contracting Party issuing the alert shall send the requested Contracting Parties by the quickest means possible both the alert and the following essential information relating to the case:

- (a) the authority which issued the request for arrest;
- (b) whether there is an arrest warrant or other document having the same legal effect, or an enforceable judgment;
- (c) the nature and legal classification of the offence;
- (d) a description of the circumstances in which the offence was committed, including the time, place and the degree of participation in the offence by the person for whom the alert has been issued;
- (e) in so far as is possible, the consequences of the offence.

3. A requested Contracting Party may add to the alert in the data file of its national section of the Schengen Information System a flag prohibiting arrest on the basis of the alert until the flag is deleted. The flag must be deleted no later than 24 hours after the alert has been entered, unless the Contracting Party refuses to make the requested arrest on legal grounds or for special reasons of expediency. In particularly exceptional cases where this is justified by the complex nature of the facts behind the alert, the above time limit may be extended to one week. Without prejudice to a flag or a decision to refuse the arrest, the other Contracting Parties may make the arrest requested in the alert.

4. If, for particularly urgent reasons, a Contracting Party requests an immediate search, the requested Contracting Party shall examine whether it is able to withdraw its flag. The requested Contracting Party shall take the necessary steps to ensure that the action to be taken can be carried out immediately if the alert is validated.

5. If the arrest cannot be made because an investigation has not been completed or because a requested Contracting Party refuses, the latter must regard the alert as being an alert for the purposes of communicating the place of residence of the person concerned.

6. The requested Contracting Parties shall carry out the action as requested in the alert in accordance with extradition Conventions in force and with national law. They shall not be obliged to carry out the action requested where one of their nationals is involved, without prejudice to the possibility of making the arrest in accordance with national law.

#### Article 96

1. Data on aliens for whom an alert has been issued for the purposes of refusing entry shall be entered on the basis of a

national alert resulting from decisions taken by the competent administrative authorities or courts in accordance with the rules of procedure laid down by national law.

2. Decisions may be based on a threat to public policy or public security or to national security which the presence of an alien in national territory may pose.

This situation may arise in particular in the case of:

- (a) an alien who has been convicted of an offence carrying a penalty involving deprivation of liberty of at least one year;
- (b) an alien in respect of whom there are serious grounds for believing that he has committed serious criminal offences, including those referred to in Article 71, or in respect of whom there is clear evidence of an intention to commit such offences in the territory of a Contracting Party.

3. Decisions may also be based on the fact that the alien has been subject to measures involving deportation, refusal of entry or removal which have not been rescinded or suspended, including or accompanied by a prohibition on entry or, where applicable, a prohibition on residence, based on a failure to comply with national regulations on the entry or residence of aliens.

#### Article 97

Data on missing persons or persons who, for their own protection or in order to prevent threats, need temporarily to be placed under police protection at the request of the competent authority or the competent judicial authority of the Party issuing the alert shall be entered, so that the police authorities may communicate their whereabouts to the Party issuing the alert or may move the persons to a safe place in order to prevent them from continuing their journey, if so authorised by national law. This shall apply in particular to minors and persons who must be interned following a decision by a competent authority. The communication of data on a missing person who is of age shall be subject to the person's consent.

#### Article 98

1. Data on witnesses, persons summoned to appear before the judicial authorities in connection with criminal proceedings in order to account for acts for which they are being prosecuted, or persons who are to be served with a criminal judgment or a summons to report in order to serve a penalty involving deprivation of liberty shall be entered, at the request of the competent judicial authorities, for the purposes of communicating their place of residence or domicile.

2. Information requested shall be communicated to the requesting Party in accordance with national law and the Conventions in force on mutual assistance in criminal matters.

#### Article 99

1. Data on persons or vehicles shall be entered in accordance with the national law of the Contracting Party issuing the alert, for the purposes of discreet surveillance or of specific checks in accordance with paragraph 5.

2. Such an alert may be issued for the purposes of prosecuting criminal offences and for the prevention of threats to public security:

- (a) where there is clear evidence that the person concerned intends to commit or is committing numerous and extremely serious criminal offences; or
- (b) where an overall assessment of the person concerned, in particular on the basis of past criminal offences, gives reason to suppose that that person will also commit extremely serious criminal offences in the future.

3. In addition, the alert may be issued in accordance with national law, at the request of the authorities responsible for national security, where there is clear evidence that the information referred to in paragraph 4 is necessary in order to prevent a serious threat by the person concerned or other serious threats to internal or external national security. The Contracting Party issuing the alert shall be obliged to consult the other Contracting Parties beforehand.

4. For the purposes of discreet surveillance, all or some of the following information may be collected and communicated to the authority issuing the alert when border checks or other police and customs checks are carried out within the country:

- (a) the fact that the person for whom or the vehicle for which an alert has been issued has been found;
- (b) the place, time or reason for the check;
- (c) the route and destination of the journey;
- (d) persons accompanying the person concerned or occupants of the vehicle;
- (e) the vehicle used;
- (f) objects carried;
- (g) the circumstances under which the person or the vehicle was found.

During the collection of this information steps must be taken not to jeopardise the discreet nature of the surveillance.

5. During the specific checks referred to in paragraph 1, persons, vehicles and objects carried may be searched in accordance with national law for the purposes referred to in paragraphs 2 and 3. If the specific check is not authorised under the law of a Contracting Party, it shall automatically be replaced, for that Contracting Party, by discreet surveillance.

6. A requested Contracting Party may add to the alert in the data file of its national section of the Schengen Information System a flag prohibiting, until the flag is deleted, performance of the action to be taken on the basis of the alert for the purposes of discreet surveillance or specific checks. The flag must be deleted no later than 24 hours after the alert has been entered unless the Contracting Party refuses to take the action requested on legal grounds or for special reasons of expediency. Without prejudice to a flag or a refusal, the other Contracting Parties may carry out the action requested in the alert.

#### Article 100

1. Data on objects sought for the purposes of seizure or use as evidence in criminal proceedings shall be entered in the Schengen Information System.

2. If a search brings to light an alert for an object which has been found, the authority which matched the two items of data shall contact the authority which issued the alert in order to agree on the measures to be taken. For this purpose, personal data may also be communicated in accordance with this Convention. The measures to be taken by the Contracting Party which found the object must be in accordance with its national law.

3. The following categories of objects shall be entered:

- (a) motor vehicles with a cylinder capacity exceeding 50 cc which have been stolen, misappropriated or lost;
- (b) trailers and caravans with an unladen weight exceeding 750 kg which have been stolen, misappropriated or lost;
- (c) firearms which have been stolen, misappropriated or lost;
- (d) blank official documents which have been stolen, misappropriated or lost;
- (e) issued identity papers (passports, identity cards, driving licences) which have been stolen, misappropriated or lost;
- (f) banknotes (suspect notes).

#### Article 101

1. Access to data entered in the Schengen Information System and the right to search such data directly shall be reserved exclusively to the authorities responsible for:

- (a) border checks;
- (b) other police and customs checks carried out within the country, and the coordination of such checks.

2. In addition, access to data entered in accordance with Article 96 and the right to search such data directly may be exercised by the authorities responsible for issuing visas, the central authorities responsible for examining visa applications and the authorities responsible for issuing residence permits and for the administration of legislation on aliens in the context of the application of the provisions of this Convention relating to the movement of persons. Access to data shall be governed by the national law of each Contracting Party.

3. Users may only search data which they require for the performance of their tasks.

4. Each Contracting Party shall send the Executive Committee a list of competent authorities which are authorised to search the data contained in the Schengen Information System directly. That list shall specify, for each authority, which data it may search and for what purposes.

#### CHAPTER 3

#### PROTECTION OF PERSONAL DATA AND SECURITY OF DATA IN THE SCHENGEN INFORMATION SYSTEM

#### Article 102

1. The Contracting Parties may use the data provided for in Articles 95 to 100 only for the purposes laid down for each category of alert referred to in those Articles.

2. Data may only be copied for technical purposes, provided that such copying is necessary in order for the authorities referred to in Article 101 to carry out a direct search. Alerts issued by other Contracting Parties may not be copied from the national section of the Schengen Information System into other national data files.

3. With regard to the alerts laid down in Articles 95 to 100 of this Convention, any derogation from paragraph 1 in order to change from one category of alert to another must be justified by the need to prevent an imminent serious threat to

public policy and public security, on serious grounds of national security or for the purposes of preventing a serious criminal offence. Prior authorisation from the Contracting Party issuing the alert must be obtained for this purpose.

4. Data may not be used for administrative purposes. By way of derogation, data entered under Article 96 may be used in accordance with the national law of each Contracting Party for the purposes of Article 101(2) only.

5. Any use of data which does not comply with paragraphs 1 to 4 shall be considered as misuse under the national law of each Contracting Party.

#### Article 103

Each Contracting Party shall ensure that, on average, every 10th transmission of personal data is recorded in the national section of the Schengen Information System by the data file management authority for the purposes of checking whether the search is admissible or not. The record may only be used for this purpose and shall be deleted after six months.

#### Article 104

1. Alerts shall be governed by the national law of the Contracting Party issuing the alert unless more stringent conditions are laid down in this Convention.

2. In so far as this Convention does not lay down specific provisions, the law of each Contracting Party shall apply to data entered in its national section of the Schengen Information System.

3. In so far as this Convention does not lay down specific provisions concerning performance of the action requested in the alert, the national law of the requested Contracting Party performing the action shall apply. In so far as this Convention lays down specific provisions concerning performance of the action requested in the alert, responsibility for that action shall be governed by the national law of the requested Contracting Party. If the requested action cannot be performed, the requested Contracting Party shall immediately inform the Contracting Party issuing the alert.

#### Article 105

The Contracting Party issuing the alert shall be responsible for ensuring that the data entered into the Schengen Information System is accurate, up-to-date and lawful.

#### Article 106

1. Only the Contracting Party issuing the alert shall be authorised to modify, add to, correct or delete data which it has entered.

2. If one of the Contracting Parties which has not issued the alert has evidence suggesting that an item of data is factually incorrect or has been unlawfully stored, it shall advise the Contracting Party issuing the alert thereof as soon as possible; the latter shall be obliged to check the communication and, if necessary, correct or delete the item in question immediately.

3. If the Contracting Parties are unable to reach agreement, the Contracting Party which did not issue the alert shall submit the case to the joint supervisory authority referred to in Article 115(1) for its opinion.

#### Article 107

Where a person is already the subject of an alert in the Schengen Information System, a Contracting Party which enters a further alert shall reach agreement on the entry of the alert with the Contracting Party which entered the first alert. The Contracting Parties may also lay down general provisions to this end.

#### Article 108

1. Each Contracting Party shall designate an authority which shall have central responsibility for its national section of the Schengen Information System.

2. Each Contracting Party shall issue its alerts via that authority.

3. The said authority shall be responsible for the smooth operation of the national section of the Schengen Information System and shall take the necessary measures to ensure compliance with the provisions of this Convention.

4. The Contracting Parties shall inform one another, via the depositary, of the authority referred to in paragraph 1.

#### Article 109

1. The right of persons to have access to data entered in the Schengen Information System which relate to them shall be exercised in accordance with the law of the Contracting Party before which they invoke that right. If national law so provides, the national supervisory authority provided for in

Article 114(1) shall decide whether information shall be communicated and by what procedures. A Contracting Party which has not issued the alert may communicate information concerning such data only if it has previously given the Contracting Party issuing the alert an opportunity to state its position.

2. Communication of information to the data subject shall be refused if this is indispensable for the performance of a lawful task in connection with the alert or for the protection of the rights and freedoms of third parties. In any event, it shall be refused throughout the period of validity of an alert for the purpose of discreet surveillance.

#### Article 110

Any person may have factually inaccurate data relating to them corrected or unlawfully stored data relating to them deleted.

#### Article 111

1. Any person may, in the territory of each Contracting Party, bring before the courts or the authority competent under national law an action to correct, delete or obtain information or to obtain compensation in connection with an alert involving them.

2. The Contracting Parties undertake mutually to enforce final decisions taken by the courts or authorities referred to in paragraph 1, without prejudice to the provisions of Article 116.

#### Article 112

1. Personal data entered into the Schengen Information System for the purposes of tracing persons shall be kept only for the time required to meet the purposes for which they were supplied. The Contracting Party which issued the alert must review the need for continued storage of such data not later than three years after they were entered. The period shall be one year in the case of the alerts referred to in Article 99.

2. Each Contracting Party shall, where appropriate, set shorter review periods in accordance with its national law.

3. The technical support function of the Schengen Information System shall automatically inform the Contracting Parties of scheduled deletion of data from the system one month in advance.

4. The Contracting Party issuing the alert may, within the review period, decide to keep the alert should this prove necessary for the purposes for which the alert was issued. Any extension of the alert must be communicated to the technical support function. The provisions of paragraph 1 shall apply to the extended alert.

#### Article 113

1. Data other than that referred to in Article 112 shall be kept for a maximum of 10 years, data on issued identity papers and suspect banknotes for a maximum of five years and data on motor vehicles, trailers and caravans for a maximum of three years.

2. Data which have been deleted shall be kept for one year in the technical support function. During that period they may only be consulted for subsequent checking as to their accuracy and as to whether the data were entered lawfully. Afterwards they must be destroyed.

#### Article 114

1. Each Contracting Party shall designate a supervisory authority responsible in accordance with national law for carrying out independent supervision of the data file of the national section of the Schengen Information System and for checking that the processing and use of data entered in the Schengen Information System does not violate the rights of the data subject. For this purpose, the supervisory authority shall have access to the data file of the national section of the Schengen Information System.

2. Any person shall have the right to ask the supervisory authorities to check data entered in the Schengen Information System which concern them and the use made of such data. That right shall be governed by the national law of the Contracting Party to which the request is made. If the data have been entered by another Contracting Party, the check shall be carried out in close coordination with that Contracting Party's supervisory authority.

#### Article 115

1. A joint supervisory authority shall be set up and shall be responsible for supervising the technical support function of the Schengen Information System. This authority shall consist of two representatives from each national supervisory authority. Each Contracting Party shall have one vote. Supervision shall be carried out in accordance with the provisions of this Convention, the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to the Automatic Processing of Personal Data, taking into account Recommendation No R (87) 15 of 17 September 1987 of the Committee of Ministers of the Council of Europe regulating the use of personal data in the police sector, and in accordance with the national law of the Contracting Party responsible for the technical support function.

2. As regards the technical support function of the Schengen Information System, the joint supervisory authority shall have the task of checking that the provisions of this Convention are properly implemented. For that purpose, it shall have access to the technical support function.

3. The joint supervisory authority shall also be responsible for examining any difficulties of application or interpretation that may arise during the operation of the Schengen Information System, for studying any problems that may occur with the exercise of independent supervision by the national supervisory authorities of the Contracting Parties or in the exercise of the right of access to the system, and for drawing up harmonised proposals for joint solutions to existing problems.

4. Reports drawn up by the joint supervisory authority shall be submitted to the authorities to which the national supervisory authorities submit their reports.

#### Article 116

1. Each Contracting Party shall be liable in accordance with its national law for any injury caused to a person through the use of the national data file of the Schengen Information System. This shall also apply to injury caused by the Contracting Party which issued the alert, where the latter entered factually inaccurate data or stored data unlawfully.

2. If the Contracting Party against which an action is brought is not the Contracting Party issuing the alert, the latter shall be required to reimburse, on request, the sums paid out as compensation unless the data were used by the requested Contracting Party in breach of this Convention.

#### Article 117

1. As regards the automatic processing of personal data communicated pursuant to this Title, each Contracting Party shall, no later than the date of entry into force of this Convention, adopt the necessary national provisions in order to achieve a level of protection of personal data at least equal to that resulting from the principles laid down in the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of 28 January 1981 and in accordance with Recommendation No R (87) 15 of 17 September 1987 of the Committee of Ministers of the Council of Europe regulating the use of personal data in the police sector.

2. The communication of personal data provided for in this Title may not take place until the provisions for the protection of personal data as specified in paragraph 1 have entered into force in the territories of the Contracting Parties involved in such communication.

#### Article 118

1. Each Contracting Party undertakes, in relation to its national section of the Schengen Information System, to adopt the necessary measures in order to:

- (a) deny unauthorised persons access to data-processing equipment used for processing personal data (equipment access control);
- (b) prevent the unauthorised reading, copying, modification or removal of data media (data media control);
- (c) prevent the unauthorised input of data and the unauthorised inspection, modification or deletion of stored personal data (storage control);
- (d) prevent the use of automated data-processing systems by unauthorised persons using data communication equipment (user control);
- (e) ensure that persons authorised to use an automated data-processing system only have access to the data covered by their access authorisation (data access control);
- (f) ensure that it is possible to verify and establish to which bodies personal data may be transmitted using data communication equipment (communication control);
- (g) ensure that it is subsequently possible to verify and establish which personal data have been input into automated data-processing systems and when and by whom the data were input (input control);
- (h) prevent the unauthorised reading, copying, modification or deletion of personal data during transfers of personal data or during transportation of data media (transport control).

2. Each Contracting Party must take special measures to ensure the security of data while they are being communicated to services located outside the territories of the Contracting Parties. Such measures must be notified to the joint supervisory authority.

3. For the processing of data in its national section of the Schengen Information System each Contracting Party may appoint only specially qualified persons who have undergone security checks.

4. The Contracting Party responsible for the technical support function of the Schengen Information System shall adopt the measures laid down in paragraphs 1 to 3 in respect of that function.

## CHAPTER 4

**APPORTIONMENT OF THE COSTS OF THE SCHENGEN INFORMATION SYSTEM**

## Article 119

1. The costs of installing and operating the technical support function referred to in Article 92(3), including the cost of lines connecting the national sections of the Schengen Information System to the technical support function, shall be

borne jointly by the Contracting Parties. Each Contracting Party's share shall be determined on the basis of the rate for each Contracting Party applied to the uniform basis of assessment of value added tax within the meaning of Article 2(1)(c) of the Decision of the Council of the European Communities of 24 June 1988 on the system of the Communities' own resources.

2. The costs of installing and operating the national section of the Schengen Information System shall be borne by each Contracting Party individually.

## TITLE V

**TRANSPORT AND MOVEMENT OF GOODS**

## Article 120

1. The Contracting Parties shall jointly ensure that their laws, regulations or administrative provisions do not unjustifiably impede the movement of goods at internal borders.

2. The Contracting Parties shall facilitate the movement of goods across internal borders by carrying out formalities relating to prohibitions and restrictions when goods are cleared through customs for home use. Such customs clearance may, at the discretion of the Party concerned, be conducted either within the country or at the internal borders. The Contracting Parties shall endeavour to encourage customs clearance within the country.

3. In so far as it is not possible in certain fields to achieve the simplifications referred to in paragraph 2 in whole or in part, the Contracting Parties shall endeavour either to create the conditions therefor amongst themselves or to do so within the framework of the European Communities.

This paragraph shall apply in particular to monitoring compliance with rules on commercial transport permits, roadworthiness of means of transport, veterinary inspections and animal health checks, veterinary checks on health and hygiene, including meat inspections, plant health inspections and monitoring the transportation of dangerous goods and hazardous waste.

4. The Contracting Parties shall endeavour to harmonise formalities governing the movement of goods across external borders and to monitor compliance therewith according to uniform principles. The Contracting Parties shall, to this end, work closely together within the Executive Committee in the framework of the European Communities and other international forums.

## Article 121

1. In accordance with Community law, the Contracting Parties shall waive, for certain types of plant and plant products, the plant health inspections and presentation of plant health certificates required under Community law.

The Executive Committee shall adopt the list of plants and plant products to which the simplification specified in the first subparagraph shall apply. It may amend this list and shall fix the date of entry into force for such amendments. The Contracting Parties shall inform each other of the measures taken.

2. Should there be a danger of harmful organisms being introduced or propagated, a Contracting Party may request the temporary reinstatement of the control measures laid down in Community law and may implement those measures. It shall immediately inform the other Contracting Parties thereof in writing, giving the reasons for its decision.

3. Plant health certificates may continue to be used as the certificate required under the law on the protection of species.

4. The competent authority shall, upon request, issue a plant health certificate when a consignment is intended in whole or in part for re-export in so far as plant health requirements are met for the plants or plant products concerned.

## Article 122

1. The Contracting Parties shall step up their cooperation with a view to ensuring the safe transportation of hazardous goods and undertake to harmonise their national provisions adopted pursuant to international Conventions in force. In addition, they undertake, particularly with a view to maintaining the existing level of safety, to:

- (a) harmonise their requirements with regard to the vocational qualifications of drivers;
- (b) harmonise the procedures for and the intensity of checks conducted during transportation and within undertakings;
- (c) harmonise the classification of offences and the legal provisions concerning the relevant penalties;

(d) ensure a permanent exchange of information and experience with regard to the measures implemented and the checks carried out.

2. The Contracting Parties shall step up their cooperation with a view to conducting checks on transfers of hazardous and non-hazardous waste across internal borders.

To this end, they shall endeavour to adopt a common position regarding the amendment of Community Directives on the monitoring and management of transfers of hazardous waste and regarding the introduction of Community acts on non-hazardous waste, with the aim of setting up an adequate infrastructure for its disposal and of introducing waste disposal standards harmonised at a high level.

Pending Community rules on non-hazardous waste, checks on transfers of such waste shall be conducted on the basis of a special procedure whereby transfers may be checked at the point of destination during clearance procedures.

The second sentence of paragraph 1 shall also apply to this paragraph.

#### Article 123

1. The Contracting Parties undertake to consult each other for the purposes of abolishing among themselves the current requirement to produce a licence for the export of strategic industrial products and technologies, and to replace such a licence, if necessary, by a flexible procedure in cases where the countries of first and final destination are Contracting Parties.

Subject to such consultations, and in order to guarantee the effectiveness of such checks as may prove necessary, the Contracting Parties shall, by cooperating closely through a coordinating mechanism, endeavour to exchange relevant information, while taking account of national law.

2. With regard to products other than the strategic industrial products and technologies referred to in paragraph 1, the Contracting Parties shall endeavour, on the one hand, to have export formalities carried out within the country and, on the other, to harmonise their control procedures.

3. In pursuit of the objectives set out in paragraphs 1 and 2, the Contracting Parties shall consult the other partners concerned.

#### Article 124

The number and intensity of checks on goods carried by travellers when crossing internal borders shall be reduced to the lowest level possible. Further reductions in and the final abolition of such checks will depend on the gradual increase in travellers' duty-free allowances and on future developments in the rules applicable to the cross-border movement of travellers.

#### Article 125

1. The Contracting Parties shall conclude arrangements on the secondment of liaison officers from their customs administrations.

2. The secondment of liaison officers shall have the general purposes of promoting and accelerating cooperation between the Contracting Parties, in particular under existing Conventions and Community acts on mutual assistance.

3. The task of liaison officers shall be to advise and to provide assistance. They shall not be authorised to take customs administration measures on their own initiative. They shall provide information and shall perform their duties in accordance with the instructions given to them by the seconding Contracting Party.

### TITLE VI

#### PROTECTION OF PERSONAL DATA

#### Article 126

1. As regards the automatic processing of personal data communicated pursuant to this Convention, each Contracting Party shall, no later than the date of entry into force of this Convention, adopt the necessary national provisions in order to achieve a level of protection of personal data at least equal to that resulting from the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of 28 January 1981.

2. The communication of personal data provided for in this Convention may not take place until the provisions for the protection of personal data as specified in paragraph 1 have entered into force in the territories of the Contracting Parties involved in such communication.

3. In addition, the following provisions shall apply to the automatic processing of personal data communicated pursuant to this Convention:

(a) such data may be used by the recipient Contracting Party solely for the purposes for which this Convention

stipulates that they may be communicated; such data may be used for other purposes only with the prior authorisation of the Contracting Party communicating the data and in accordance with the law of the recipient Contracting Party; such authorisation may be granted in so far as the national law of the Contracting Party communicating the data so permits;

- (b) such data may be used only by the judicial authorities and the departments and authorities carrying out tasks or performing duties in connection with the purposes referred to in paragraph (a);
- (c) the Contracting Party communicating such data shall be obliged to ensure the accuracy thereof; should it establish, either on its own initiative or further to a request by the data subject, that data have been provided that are inaccurate or should not have been communicated, the recipient Contracting Party or Parties must be immediately informed thereof; the latter Party or Parties shall be obliged to correct or destroy the data, or to indicate that the data are inaccurate or were unlawfully communicated;
- (d) a Contracting Party may not plead that another Contracting Party communicated inaccurate data, in order to avoid its liability under its national law vis-à-vis an injured party; if damages are awarded against the recipient Contracting Party because of its use of inaccurate communicated data, the Contracting Party which communicated the data shall refund in full to the recipient Contracting Party the amount paid in damages;
- (e) the transmission and receipt of personal data must be recorded both in the source data file and in the data file in which they are entered;
- (f) the joint supervisory authority referred to in Article 115 may, at the request of one of the Contracting Parties, deliver an opinion on the difficulties of implementing and interpreting this Article.

4. This Article shall not apply to the communication of data provided for under Chapter 7 of Title II and Title IV. Paragraph 3 shall not apply to the communication of data provided for under Chapters 2 to 5 of Title III.

#### Article 127

1. Where personal data are communicated to another Contracting Party pursuant to the provisions of this Convention, Article 126 shall apply to the communication of the data from a non-automated data file and to their inclusion in another non-automated data file.

2. Where, in cases other than those governed by Article 126(1), or paragraph 1 of this Article, personal data are communicated to another Contracting Party pursuant to this Convention, Article 126(3), with the exception of subparagraph (e), shall apply. The following provisions shall also apply:

- (a) a written record shall be kept of the transmission and receipt of personal data; this obligation shall not apply where such a record is not necessary given the use of the data, in particular if they are not used or are used only very briefly;
- (b) the recipient Contracting Party shall ensure, in the use of communicated data, a level of protection at least equal to that laid down in its national law for the use of similar data;
- (c) the decision concerning whether and under what conditions the data subject shall, at his request, be provided information concerning communicated data relating to him shall be governed by the national law of the Contracting Party to which the request was addressed.

3. This Article shall not apply to the communication of data provided for under Chapter 7 of Title II, Chapters 2 to 5 of Title III, and Title IV.

#### Article 128

1. The communication of personal data provided for by this Convention may not take place until the Contracting Parties involved in that communication have instructed a national supervisory authority to monitor independently that the processing of personal data in data files complies with Articles 126 and 127 and the provisions adopted for their implementation.

2. Where the Contracting Party has, in accordance with its national law, instructed a supervisory authority to monitor independently, in one or more areas, compliance with the provisions on the protection of personal data not entered in a data file, that Contracting Party shall instruct the same authority to supervise compliance with the provisions of this Title in the areas concerned.

3. This Article shall not apply to the communication of data provided for under Chapter 7 of Title II and Chapters 2 to 5 of Title III.

#### Article 129

As regards the communication of personal data pursuant to Chapter 1 of Title III, the Contracting Parties undertake, without prejudice to Articles 126 and 127, to achieve a level of protection of personal data which complies with the principles of Recommendation No R (87) 15 of 17 September 1987 of the Committee of Ministers of the Council of Europe

regulating the use of personal data in the police sector. In addition, as regards the communication of data pursuant to Article 46, the following provisions shall apply:

- (a) the data may be used by the recipient Contracting Party solely for the purposes indicated by the Contracting Party which provided the data and in compliance with the conditions laid down by that Contracting Party;
- (b) the data may be communicated to police forces and authorities only; data may not be communicated to other authorities without the prior authorisation of the Contracting Party which provided them;

- (c) the recipient Contracting Party shall, upon request, inform the Contracting Party which provided the data of the use made of the data and the results thus obtained.

#### Article 130

If personal data are communicated via a liaison officer as referred to in Article 47 or Article 125, the provisions of this title shall not apply unless the liaison officer communicates such data to the Contracting Party which seconded the officer to the territory of the other Contracting Party.

### TITLE VII

#### EXECUTIVE COMMITTEE

##### Article 131

1. An Executive Committee shall be set up for the purposes of implementing this Convention.
2. Without prejudice to the special powers conferred upon it by this Convention, the overall task of the Executive Committee shall be to ensure that this Convention is implemented correctly.

##### Article 132

1. Each Contracting Party shall have one seat on the Executive Committee. The Contracting Parties shall be represented on the Committee by a Minister responsible for the implementation of this Convention; that Minister may, if necessary, be assisted by experts, who may participate in the deliberations.

2. The Executive Committee shall take its decisions unanimously. It shall draw up its own rules of procedure; in this connection it may provide for a written decision-making procedure.

3. At the request of the representative of a Contracting Party, the final decision on a draft on which the Executive Committee has acted may be postponed for no more than two months from the date of submission of that draft.

4. The Executive Committee may set up working parties composed of representatives of the administrations of the Contracting Parties in order to prepare decisions or to carry out other tasks.

##### Article 133

The Executive Committee shall meet in the territory of each Contracting Party in turn. It shall meet as often as is necessary for it to discharge its duties properly.

### TITLE VIII

#### FINAL PROVISIONS

##### Article 134

The provisions of this Convention shall apply only in so far as they are compatible with Community law.

##### Article 135

The provisions of this Convention shall apply subject to the provisions of the Geneva Convention relating to the Status of Refugees of 28 July 1951, as amended by the New York Protocol of 31 January 1967.

##### Article 136

1. A Contracting Party which envisages conducting negotiations on border checks with a third State shall inform the other Contracting Parties thereof in good time.

2. No Contracting Party shall conclude with one or more third States agreements simplifying or abolishing border checks without the prior agreement of the other Contracting Parties, subject to the right of the Member States of the European Communities to conclude such agreements jointly.

3. Paragraph 2 shall not apply to agreements on local border traffic in so far as those agreements comply with the exceptions and arrangements adopted under Article 3(1).

#### Article 137

*This Convention shall not be the subject of any reservations, save for those referred to in Article 60.*

#### Article 138

As regards the French Republic, the provisions of this Convention shall apply only to the European territory of the French Republic.

As regards the Kingdom of the Netherlands, the provisions of this Convention shall apply only to the territory of the Kingdom in Europe.

#### Article 139

1. *This Convention shall be subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Government of the Grand Duchy of Luxembourg, which shall notify all the Contracting Parties thereof.*

2. *This Convention shall enter into force on the first day of the second month following the deposit of the final instrument of ratification, acceptance or approval. The provisions concerning the setting up, activities and powers of the Executive Committee shall apply as from the entry into force of this Convention. The other provisions shall apply as from the first day of the third month following the entry into force of this Convention.*

3. *The Government of the Grand Duchy of Luxembourg shall notify all the Contracting Parties of the date of entry into force.*

#### Article 140

1. *Any Member State of the European Communities may become a Party to this Convention. Accession shall be the subject of an agreement between that State and the Contracting Parties.*

2. *Such an agreement shall be subject to ratification, acceptance or approval by the acceding State and by each of the Contracting Parties. It shall enter into force on the first day of the second month following the deposit of the final instrument of ratification, acceptance or approval.*

#### Article 141

1. *Any Contracting Party may submit to the depositary a proposal to amend this Convention. The depositary shall forward that proposal to the other Contracting Parties. At the request of one Contracting Party, the Contracting Parties shall re-examine the provisions of the Convention if, in their opinion, there has been a fundamental change in the conditions obtaining when the Convention entered into force.*

2. *The Contracting Parties shall adopt amendments to this Convention by common consent.*

3. *Amendments shall enter into force on the first day of the second month following the date of deposit of the final instrument of ratification, acceptance or approval.*

#### Article 142

1. *When Conventions are concluded between the Member States of the European Communities with a view to the completion of an area without internal frontiers, the Contracting Parties shall agree on the conditions under which the provisions of this Convention are to be replaced or amended in the light of the corresponding provisions of such Conventions.*

*The Contracting Parties shall, to that end, take account of the fact that the provisions of this Convention may provide for more extensive cooperation than that resulting from the provisions of the said Conventions.*

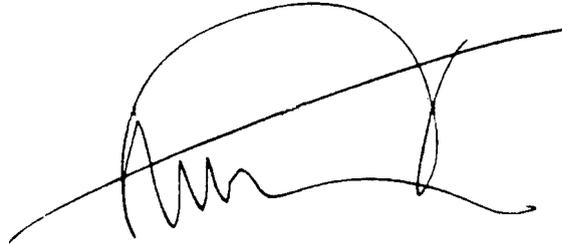
*Provisions which conflict with those agreed between the Member States of the European Communities shall in any case be adapted.*

2. *Amendments to this Convention which are deemed necessary by the Contracting Parties shall be subject to ratification, acceptance or approval. The provision contained in Article 141(3) shall apply on the understanding that the amendments will not enter into force before the said Conventions between the Member States of the European Communities enter into force.*

In witness whereof, the undersigned, duly empowered to this effect, have hereunto set their hands.

Done at Schengen, this nineteenth day of June in the year one thousand nine hundred and ninety, in a single original in the Dutch, French and German languages, all three texts being equally authentic, such original remaining deposited in the archives of the Government of the Grand Duchy of Luxembourg, which shall transmit a certified copy to each of the Contracting Parties.

For the Government of the Kingdom of Belgium

A handwritten signature in black ink, consisting of a large, sweeping arch at the top, followed by several smaller, connected loops and a long horizontal stroke extending to the right.

For the Government of the Federal Republic of Germany

A handwritten signature in black ink, starting with a large 'L', followed by a series of connected loops and a long horizontal stroke at the end.

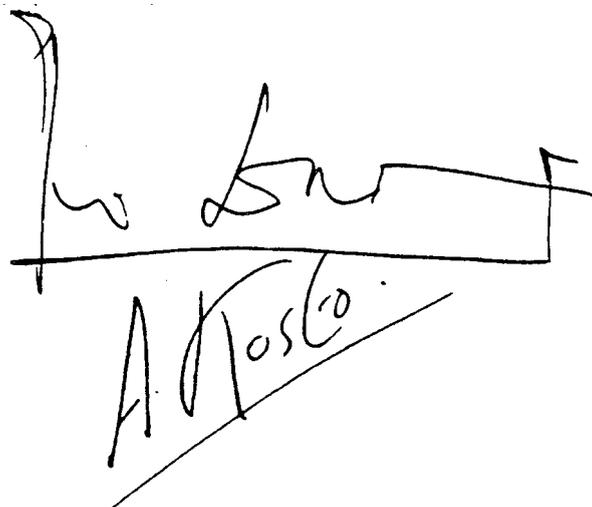
For the Government of the French Republic

A handwritten signature in black ink, featuring a large, stylized initial 'R' followed by several connected loops and a long horizontal stroke.

For the Government of the Grand Duchy of Luxembourg

A handwritten signature in black ink, consisting of a large, stylized initial 'L' followed by several connected loops and a long horizontal stroke.

For the Government of the Kingdom of the Netherlands

A handwritten signature in black ink, consisting of a large, stylized initial 'L' followed by several connected loops and a long horizontal stroke. Below the signature, the name 'A. Koster' is written in a smaller, cursive script.

## FINAL ACT

At the time of signing 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, the Contracting Parties have adopted the following declarations:

### 1. Joint Declaration on Article 139

The Signatory States shall, prior to the entry into force of the Convention, inform each other of all circumstances that could have a significant bearing on the areas covered by this Convention and the bringing into force thereof.

The Convention shall not be brought into force until the preconditions for its implementation have been fulfilled in the Signatory States and checks at external borders are effective.

### 2. Joint Declaration on Article 4

*The Contracting Parties undertake to make every effort to comply simultaneously with this deadline and to preclude any shortcomings in security. Before 31 December 1992, the Executive Committee shall examine what progress has been made. The Kingdom of the Netherlands stresses that difficulties in meeting the deadline in a particular airport cannot be excluded but that this will not give rise to any shortcomings in security. The other Contracting Parties will take account of this situation although this may not be allowed to entail difficulties for the internal market.*

*In the event of difficulties, the Executive Committee shall examine how best to achieve the simultaneous implementation of these measures at airports.*

### 3. Joint Declaration on Article 71(2)

In so far as a Contracting Party departs from the principle referred to in Article 71(2) in connection with its national policy on the prevention and treatment of addiction to narcotic drugs and psychotropic substances, all Contracting Parties shall adopt the necessary administrative measures and penal measures to prevent and punish the illicit import and export of such products and substances, particularly towards the territories of the other Contracting Parties.

### 4. Joint Declaration on Article 121

*In accordance with Community law, the Contracting Parties shall waive the plant health inspections and presentation of plant health certificates required under Community law for the types of plant and plant products:*

*(a) listed under 1, or*

*(b) listed under 2 to 6 and originating in one of the Contracting Parties:*

*(1) Cut flowers and parts of plants suitable for ornamental purposes of:*

*Castanea*

*Chrysanthemum*

*Dendranthema*

*Dianthus*

*Gladiolus*

Gypsophila  
 Prunus  
 Quercus  
 Rosa  
 Salix  
 Syringa  
 Vitis.

(2) Fresh fruit of:

Citrus  
 Cydonia  
 Malus  
 Prunus  
 Pyrus.

(3) Wood of:

Castanea  
 Quercus.

(4) Growing medium constituted wholly or in part of earth or solid organic matter such as parts of plants, turf and bark with humus, but not constituted entirely of turf.

(5) Seeds.

(6) Live plants listed below and appearing under the CN codes listed below in the Customs Nomenclature published in the Official Journal of the European Communities of 7 September 1987.

CN code	Description
0601 20 30	Bulbs, onions, tubers, tuberous roots and rhizomes, in growth or in flower: orchids, hyacinths, narcissi and tulips
0601 20 90	Bulbs, onions, tubers, tuberous roots and rhizomes, in growth or in flower: other
0602 30 10	Rhododendron simsii (Azalea indica)
0602 99 51	Outdoor plants: perennial plants
0602 99 59	Outdoor plants: other
0602 99 91	Indoor plants: flowering plants with buds or flowers, excluding cacti
0602 99 99	Indoor plants: other

5. Joint Declaration on national asylum policies

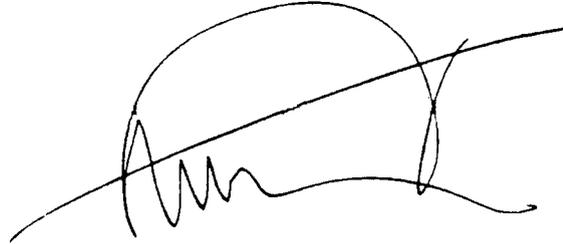
The Contracting Parties shall draw up an inventory of national asylum policies with a view to the harmonisation thereof.

6. Joint Declaration on Article 132

The Contracting Parties shall inform their national Parliaments of the implementation of this Convention.

Done at Schengen, this nineteenth day of June in the year one thousand nine hundred and ninety, in a single original, in the Dutch, French and German languages, all three texts being equally authentic, such original remaining deposited in the archives of the Government of the Grand Duchy of Luxembourg, which shall transmit a certified copy to each of the Contracting Parties.

For the Government of the Kingdom of Belgium



For the Government of the Federal Republic of Germany



For the Government of the French Republic



For the Government of the Grand Duchy of Luxembourg



For the Government of the Kingdom of the Netherlands



Ad Hock

## MINUTES

Further to the Final Act of 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, the Contracting Parties have adopted the following joint statement and taken note of the following unilateral declarations made in respect of the said Convention:

### I. Declaration on the scope of the Convention

The Contracting Parties note that, after the unification of the two German States, the scope of the Convention shall under international law also extend to the current territory of the German Democratic Republic.

### II. Declarations by the Federal Republic of Germany on the interpretation of the Convention

1. The Convention has been concluded in the light of the prospective unification of the two German States.

The German Democratic Republic is not a foreign country in relation to the Federal Republic of Germany.

Article 136 shall not apply in relations between the Federal Republic of Germany and the German Democratic Republic.

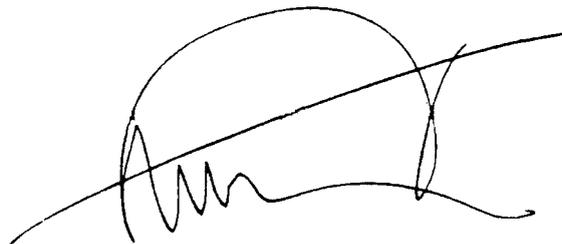
2. This Convention shall be without prejudice to the arrangements agreed in the Germano-Austrian exchange of letters of 20 August 1984 simplifying checks at their common borders for nationals of both States. Such arrangements will however have to be implemented in the light of the overriding security and immigration requirements of the Schengen Contracting Parties so that such facilities will in practice be restricted to Austrian nationals.

### III. Declaration by the Kingdom of Belgium on Article 67

The procedure which will be implemented internally for the transfer of the enforcement of foreign criminal judgments will not be that specified under Belgian law for the transfer of sentenced persons between States, but rather a special procedure which will be determined when this Convention is ratified.

Done at Schengen, this nineteenth day of June in the year one thousand nine hundred and ninety, in a single original, in the Dutch, French and German languages, all three texts being equally authentic, such original remaining deposited in the archives of the Government of the Grand Duchy of Luxembourg, which shall transmit a certified copy to each of the Contracting Parties.

For the Government of the Kingdom of Belgium



For the Government of the Federal Republic of Germany



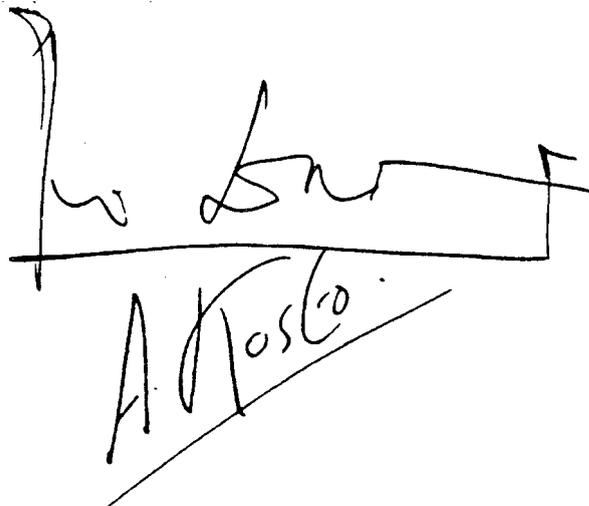
For the Government of the French Republic



For the Government of the Grand Duchy of Luxembourg



For the Government of the Kingdom of the Netherlands



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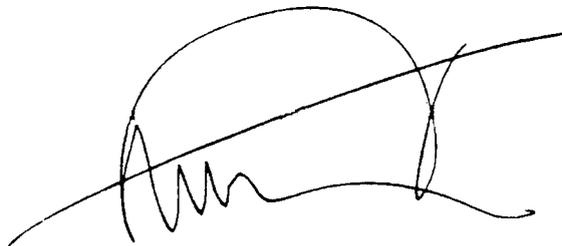
**JOINT DECLARATION****BY THE MINISTERS AND STATE SECRETARIES MEETING IN SCHENGEN ON 19 JUNE 1990**

The Governments of the Contracting Parties to the Schengen Agreement will open or continue discussions in particular in the following areas:

- improving and simplifying extradition practices,
- improving cooperation on bringing proceedings against road traffic offences,
- arrangements for the mutual recognition of disqualifications from driving motor vehicles,
- possibilities of reciprocal enforcement of fines,
- introduction of rules on reciprocal transfers of criminal proceedings including the possibility of transferring the accused person to that person's country of origin,
- introduction of rules on the repatriation of minors who have been unlawfully removed from the authority of the person responsible for exercising parental authority,
- further simplification of checks on commercial movements of goods.

Done at Schengen, this nineteenth day of June in the year one thousand nine hundred and ninety, in a single original, in the Dutch, French and German languages, all three texts being equally authentic, such original remaining deposited in the archives of the Government of the Grand Duchy of Luxembourg, which shall transmit a certified copy to each of the Contracting Parties.

For the Government of the Kingdom of Belgium



For the Government of the Federal Republic of Germany



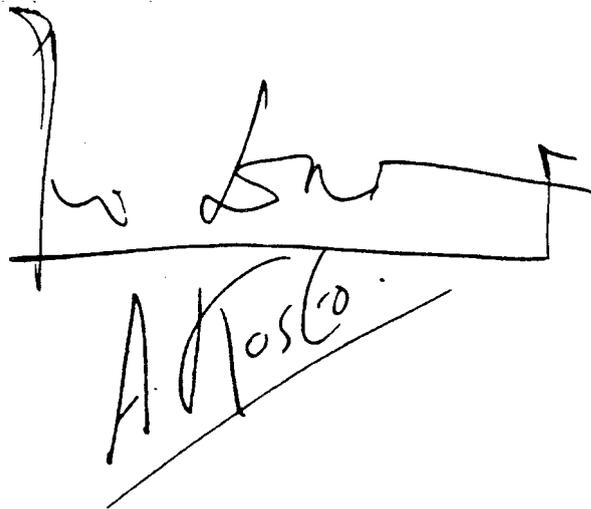
For the Government of the French Republic



For the Government of the Grand Duchy of Luxembourg



For the Government of the Kingdom of the Netherlands



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**DECLARATION BY THE MINISTERS AND STATE SECRETARIES**

On 19 June 1990 representatives of the Governments of the Kingdom of Belgium, the Federal Republic of Germany, the French Republic, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands signed at Schengen, in the Grand Duchy of Luxembourg, the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders.

At the time of signing that Convention, they adopted the following declarations:

- The Contracting Parties consider that the Convention constitutes an important step towards creating an area without internal borders and take it as a basis for further activities amongst the Member States of the European Communities.
- In view of the risks in the fields of security and illegal immigration, the Ministers and State Secretaries underline the need for effective external border controls in accordance with the uniform principles laid down in Article 6. With a view to implementing those uniform principles, the Contracting Parties must, in particular, promote the harmonisation of working methods for border control and surveillance.

Moreover, the Executive Committee will examine all relevant measures with a view to establishing uniform and effective external border controls and the practical implementation thereof. Such measures will include measures making it possible to ascertain the circumstances under which a third-country national has entered the territories of the Contracting Parties, application of the same procedures for refusing entry, the drafting of a common manual for the officials responsible for border surveillance and encouragement of an equivalent level of external border control by means of exchanges and joint working visits.

At the time of signing that Convention, they also confirmed the Central Negotiating Group's decision to set up a working party with the following mandate:

- to inform the Central Negotiating Group before the entry into force of the Convention of all circumstances that have a significant bearing on the areas covered by the Convention and on its entry into force, in particular the progress achieved in harmonising legal provisions in connection with the unification of the two German States,
  - to consult each other on any impact that that harmonisation and those circumstances may have on the implementation of the Convention,
  - with a view to the movement of aliens exempt from the visa requirement, to devise practical measures and put forward proposals before the entry into force of the Convention for harmonising procedures for carrying out controls on persons at the future external borders.
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