

## PLATFORM 'FORTRESS EUROPE?'

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**sPlatform "Fortress Europe?"(PFE)** is an international network of groups and individuals concerned with European harmonization in the fields of internal security, policing, justice, immigration and asylum and its effects on fundamental rights and liberties./s

sBy serving as a forum of mutual information, analysis and critical debate among experts and laymen, scholars and practitioners in both the East and West of Europe, PFE wishes to encourage a common search for alternative policies in conformity with human rights and constitutional democracy. As an informal and open network, PFE refrains from taking public stands, leaving such to the own initiative of each participating group or individual. /s

sPFE is associated with the European Civic Forum./s

sThe PFE's **Circular Letter (CL)** is published 10 times a year. The Circular offers a selection of news, comment and messages based essentially on the contributions of its readers. Its main aim is to facilitate direct contacts among the participants of PFE./s

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### EUROPEAN HARMONIZATION

#### EUROPOL: WHAT IS THIS BABY GOING TO LOOK LIKE, ONCE IT IS BORN?

**In Maastricht, the decision was taken to set up "Europol". But little is said in the Treaty on Union on what will be the real role of this new institution of European police cooperation. Merely a center for the exchange of experience and information among the various national police forces or a centralized European apparatus with own policing powers and outside democratic control?**

**A working document of the European Parliament's Committee on Civil Liberties and Internal Affairs (Rapporteur: Lode van Outrive) raises a lot of questions about the future role and organization of Europol. These questions will have to be answered clearly and the development of the project submitted to public debate at each step, if the already heavily shattered democratic and institutional credibility of the Maastricht process is not to suffer a further - and maybe deadly - blow. One lesson to learn from the Danish people's No to European Union is that evading public debate on long term political goals by a tactic of step by step information and "ad hoc" arrangements leads to institutional chaos and popular distrust in the long run.**

#### **A synopsis of the van Outrive document on Europol**

Article K.1(9) of the Treaty on European Union (Maastricht treaty) provides for "police cooperation for the purpose of preventing and combating terrorism, unlawful drug trafficking and other serious forms of international crime (...), in connection with the organization of a Union-wide system for exchanging information within a European Police Office (Europol)".

In the Declaration on Police Cooperation, which follows the text of the Treaty, the signatory states further state that they are willing to envisage the adoption of practical measures in areas relating to the following functions in the exchange of information and experience:

- support for national criminal investigation and security authorities, in particular in the coordination of investigations and search operations;

- creation of databases;
- central analysis of data on national prevention methods for forwarding to Member States and for drawing up Europe-wide prevention strategies;
- measures relating to further training, research, criminology and forensic matters.

The Member States further agree to consider - during 1994 at the latest - whether the scope of such cooperation should be extended.

The European Council instructed the TREVI Ministers, in collaboration with the Commission, "to take such measures as were needed to allow Europol to be set up at an early date".

Since the early 1970s, the main impetus for the creation of a "European FBI" has come from Germany's BKA (Federal department of criminal investigation). The Under-Secretary of the German Ministry for Home Affairs, Schreiber, argues: "We Germans, with our federalist state structure, have considerable experience with security issues. We should apply the approach used in Germany at European level." It was, accordingly, the German Chancellor Kohl, who proposed the setting up of Europol at the Luxembourg Summit.

The future form of the Europol police structure is unclear and actually depends in large measure on the future form of the Union (federation, confederation, decentralization?).

The question of Europol's institutional framework will pose problems. Does it make sense to limit participation with Europol to the Member States of the European Union, when the main goal is combating international "organized crime"?

In short: do we want a Europe-wide police area or a common police organization of the European Union?

Who will further take responsibility for membership of Europol at national level? The national police forces? Will other forces and administrations dealing with internal security also be involved?

Who will do what and what resources and powers will they have?

According to the treaty on European Union, Europol, in its **initial phase**, will be based on a European drug unit (EDU) and specifically the gathering and exchanging of information.

What sort of information will be processed? The Schengen Agreement provides for the exchange and collection of information far beyond material criminal suspicion (e.g. covert or targeted surveillance of persons to "prevent crime and danger to public security"). Will Schengen serve as a model for Europol? Already now, work is in progress within the 1992 TREVI working party on a Europe-wide information system (EIS), to be based on the Schengen Information System (SIS) model.

This leads to the question in the van Oudiz working document: "Should we not be wary of the unregulated growth and overlapping, with all these different information exchange systems? In addition to the SIS and the EIS, referred above, Interpol also has an information system, not to mention SCENT and DAF, and so on. How can these systems be kept separate, or, if necessary, be geared up to another properly?"

Van Oudiz also wonders, what sort of protection for privacy will be built in and if systems differ in this field as well.

Another aim for Europol is to set up a network of liaison officers to combat drug trafficking (in an initial phase).

Van Oudiz points out that the German BKA already at present deploys liaison officers in such non-EC countries as Turkey, Brazil and Argentina. Will such countries also be part of an exchange of liaison officers in the framework of Europol? What will be their status in the host country? Will they have executive police powers? Who will monitor them?

Some suggest that Europol should develop joint tactics and strategies for combating and preventing crime and should have own investigatory powers. This could lead to Europol

conducting investigations itself or issuing instructions to police officers from the Member States. Such a development would constitute a shift from the declared aim of mere "information exchange" to a sort of a common general staff of European police forces with strong executive powers. Would this not lead to the need for the creation of a European Public Prosecutor's Office (the equivalent to the German Federal Prosecutor General (Bundesgeneralanwalt)? If so, before what court of law? In other words, who is to judge whether the actions of Europol officers are lawful, and before what court of law?

Drug trafficking is the first field in which Europol will operate, but it is quite obvious that the "fathers" of the Europol project wish to massively extend the field of operation as soon as possible.

The following crimes were mentioned at the European Council of Luxembourg in June 1991:

- organized crime (unspecified)
- trafficking in human beings;
- economic crimes;
- environmental crime;

Other lists of crimes to be dealt with in the framework of European police cooperation were drawn by the Council of Europe and the European Parliament, but, according to van Ouirive, "on the whole, the Member States have not done very much detailed research in these fields". This, van Ouirive says, calls for the selection of criteria which can be used to pinpoint priority areas and for a clear definition of a number of key terms. The lack of a clear legal definition of terms like "danger to public order", "public security" and "organized crime" opens the door to extensive interpretation.

It is proposed in the working document that the definition "could be modelled on the interpretation under Community law of the term "public policy" in, for example, an existing directive".

(Article 3 of Council Directive (64/221/EEC) of 25 February 1964 on special measures concerning the movement and residence of foreign nationals on public policy, public security or public health grounds stipulates that such measures "shall be based exclusively on the personal conduct of the individual concerned" and that there must be "clear evidence to show that the person concerned is a danger to public policy or public security. Suspicions are not enough.")

[Ed. note: This definition is far more restrictive than the Schengen provisions allowing for covert surveillance and preventive exchange of personal data among police forces of the Member States].

With regard to the protection of privacy, van Ouirive suggests that in Europol's initial stages, if it transpires that not all Member States have sound laws in this area, a distinction could be drawn between, for instance, members, provisional members and non-members.

Concern is expressed in the working document with regard to the weakened position of defence: "But should not the defence have independent access to the cooperation networks, to obtain the information it needs on an independent basis? This implies that the defence should be in a position to carry out some type of monitoring if the trend towards stepping up the exchange of information between the police forces persists."

"This would also entail a set of international regulations on the legal consequences of unlawful or improper actions on the part of the authorities responsible for investigation and prosecution."

The fundamental question remains how a European police staff with some operational powers could be conceived against the background of the "considerable differences between the criminal law systems of the various Member States" (van Ouirive). Wouldn't a single European criminal law be a precondition for the setting up of such a common police structure? And would, in its turn, such a uniformization be desirable, considering the differences in criminal law culture, which "form an integral part of the national culture of a particular country"?

Van Outrive also expresses concern for the democratic deficit in setting up European police cooperation: "Negotiations on Europol have so far been held within a sub-group of TREVI [thus, at an intergovernmental level and in a climate of confidentiality]. Would it not be appropriate to involve the national parliaments and the European Parliament in further negotiations and decision making? Should not information be passed on to the parliaments directly?"

The working document raises the question of monitoring and control. How can adequate monitoring and control be carried out to guarantee justice and human rights? Who will be able to monitor the anticipated intensification of police cooperation? Will the the judicial power, the magistrature, have the capacity, in terms of international organization, staff and equipment, to carry out monitoring? Which court will be responsible for judicial control of international policing activities within the framework of Europol?

How will international "preventive" police strategies and tactics, and administrative measures be monitored?

Growing police internationalization has so far not been matched by judicial or parliamentary monitoring.

Van Outrive suggests that the national parliaments and the European Parliament should be involved in practical decision-making and proposes the setting up of an ad hoc parliamentary police monitoring committee.

The Europol document of the Committee on Civil Liberties and Internal Affairs ends with a crucial question: "Finally, how are the European public and their various interest groups to be able to follow developments within Europol and react to them?"

N.B.

Source: European Parliament, Committee on Civil Liberties and Internal Affairs: Working Document on Europol, rapporteur: Lode van Outrive (Doc EN\DT\205180, PE 200.599 Or. NL).

## **SWITZERLAND**

### **50 PERCENT LESS ASYLUM REQUESTS IN SWITZERLAND IN THE FIRST 4 MONTHS OF 1992, BUT ILLEGAL IMMIGRATION IS INCREASING**

**In the first four months of this year the number of asylum applications in Switzerland has dropped to 7854. This is less than half the number registered in the same period in 1991. The Swiss Minister of Justice and Police, Arnold Koller triumphantly talks of a "trend reversal". According to him, people have understood that conditions have become tougher for asylum seekers in the Confederation with an economic recession and relatively high unemployment dissuading many foreigners just seeking work to abuse the asylum procedure and with an accelerated asylum procedure showing first results. Furthermore, the war in the Balkans is obstructing the "Balkan route" previously used by a majority of refugees, thus forcing refugees to head rather for Austria than Switzerland. However, the explanation given by Minister Koller for the miraculous trend reversal is questionable. Refugee fluxes in and to Europe have not decreased. Alone in former Yugoslavia there are an estimated 1,3 million refugees. The Turkish security forces have wound up their campaign against Kurdish resistance, leading to a further exodus of Kurds. Compared with the labour market in neighbouring countries, unemployment in Switzerland continues to be remarkably low. Nonetheless, Germany; Austria and France are confronted with record numbers of asylum seekers. So what is the secret behind the Swiss "success story"?**

Since January the federal office for refugees has instructed its reception centers for asylum seeker to simply refuse registration of asylum applications by undocumented asylum seekers. Asylum seekers who lack a valid identity card are kindly requested to come back with valid documents. As not even the names of the undocumented asylum seekers are registered, nobody knows how large the number of asylum seekers in Switzerland who have been denied access to the asylum procedure really is. The government seems to deliberately put up with these refugees remaining in Switzerland illegally - without accommodation and boarding. If

cought by the police, they can be deported immediately.

The United Nations High Commission for Refugees has commented on the new Swiss practice as follows: "On principle, every asylum request must be registered. If the [Swiss] directive renders impossible registration for the asylum procedure, this would constitute a violation of the Geneva Refugee Convention."

The UNHCR is now preparing a documentation with evidence proving the violation of international law by the new Swiss practice.

The development of illegal immigration into Switzerland is more evidence that the alleged "trend reversal" is due to the new practice of the refugee office rather than to a shrinking number of refugees. Compared with 1991, the number of discovered attempts to cross the Swiss border illegally has doubled and while only 8 smugglers of illegal immigrants were arrested between February and April 1991, 30 were intercepted in the same period of this year.

The introduction of the visa obligation for Yugoslavs in January seems to have had a direct effect on illegal immigration. Refugees from former Yugoslavia have almost no chance to obtain asylum. If their request is rejected they lose definitively the right to apply for work in Switzerland as season or guest workers. With the exception of refugees from Bosnia-Herzegovina, they risk immediate deportation combined with a prohibition to enter Switzerland for a period of three years. Considering these risks, refugees from Yugoslavia often prefer to stay in Switzerland illegally, with the support of family members or friends already residing in the country. Yugoslav refugees whose asylum request has been rejected often do not comply with deportation orders. According to the federal office of refugees 10'200 asylum requests of Yugoslavs were definitively rejected in the first four months of this year. Only 1'900 left the country of their own, 1'627 were deported by force, while the whereabouts of 6'600 are unknown. Most of them are working as clandestines without any social assistance and thus completely dependent on the goodwill of their employer.

Source: "Der Schwindel mit der Trendwende", Article by Susan Boos in "Wochezeitung" (Zurich) No.21, 22.5.92; Neue Zürcher Zeitung 7/8.6.92

### **Comment**

A similar decrease of asylum applications can be observed in some other European countries, among them Sweden. There are indications that, just as in Switzerland, such decreases are due to practices preventing refugees from registering as asylum seekers (deportation without procedure at the borders, refusal by airlines to carry ill-documented persons, etc.). The victims of such practices in breach with the Geneva Refugee Convention do not appear in statistics.

"Trend reversals" due to such practices should often result in a massive increase of illegal immigration and clandestine labour. The Circular letter is interested in any information on such developments.

N.B.

### **INTERNATIONAL DATABASE FOR FINGERPRINTS - SWITZERLAND'S "WEDDING PRESENT" TO TREVI**

The Minister for Justice and Police, Arnold Koller, led a Swiss delegation participating at the regular TREVI-meeting in Lisbon, in June. As a non-EC state, Switzerland is not member of the TREVI group (an informal working group of ministers dealing with terrorism, radicalism, extremism and violence which is to play a leading role in the setting up of Europol) but is part of the states regularly invited as "observers" (together with the other EFTA-states, the USA, Canada and Morocco).

According to a press release of the Justice and Police department, the TREVI-meeting was to discuss migration problems, international terrorism and the combat against crime. At the same time the proceedings for the conclusion of a parallel convention to the EC-Dublin Convention (country of first asylum) shall be decided upon. The parallel convention will allow non-EC countries to take over the provisions of the Dublin Convention.

Furthermore Switzerland presented a feasibility study on the setting up of a European information system on fingerprints of asylum seekers. According to the ministry of justice and police such a database would be "an efficient and economic means" for preventing asylum seekers from presenting asylum requests repeatedly and simultaneously in several countries. Switzerland therefore proposes the setting up of such a database in conjunction with the preparations for the "parallel" convention.

Source: Eidgenössisches Justiz- und Polizeidepartement, Informations- und Pressedienst, press release, 10.6.1992

## **SWEDEN**

### **DRAFT BILL FOR "MASS FLIGHT" INTRODUCES A NEW TERM IN REFUGEE POLICIES: THE "ASSISTANCE SEEKER"**

**The Swedish government intends to introduce special provisions allowing immigration authorities to escape individual examination of asylum applications. The provisions would also allow the government to requisition by constraint sport halls and other spaces for the accommodation of refugees. In the government's opinion the risk for Sweden of being sooner or later confronted with a mass influx of refugees has significantly increased with the disintegration of Eastern Europe.**

According to the Swedish immigration authorities (SIV), the country is at present not prepared to cope with war-like mass flight.

The draft bill provides for the following measures:

- In case of "very large numbers" of refugees fleeing to Sweden, they will no longer have the right to an individual asylum procedure. "Mass refugees" will be considered as "assistance seeking collectives".
- It will be possible to submit refugees to collective internment for a "limited time" in order to enable the registration and screening of potential asylum seekers. The eventual examination of asylum requests would however be postponed to a later date.
- Through registration the "assistance seekers", as the immigration authorities wish to call them, shall obtain a provisional right to stay and work in Sweden.

SIV would be responsible for the registration procedure which would be carried out by the police. The police would also be in charge of the screening and transport. Regional and municipal authorities would among other things be responsible for reception, housing and food.

Source: Dagens Nyheter, Stockholm, 4.6.1992

## **Comment**

The Swedish draft bill represents a new step in the terminological devaluation of refugee status. In the beginning of the 80s the term unknown before of "asylum seeker" was first introduced by the Germans. By the application of the term "asylum seekers" refugees were ear-marked in public as suspected "false refugees". In its turn the "assistance seeker" risks to be seen by the public as an element not even deserving access to an asylum procedure - a "false asylum seeker", so to say.

While further undermining the status of refugees, the draft bill would provide Sweden with the opportunity to dispose of large numbers of work force, tolerated whenever and as long as useful for the economy of the sparsely populated kingdom.

Quite smart, indeed.

N.B.

## **AUSTRIA**

### **BILL ON RESIDENCE INCREASES LEGAL INSECURITY OF ALIENS**

**After the introduction of new, restrictive asylum legislation, the legal security of aliens**

**risks being further undermined by a bill on residence. Even unlimited residence permits can be withdrawn, when the alien concerned has lost his job or dwelling.**

The bill is to be voted on the end of June. Compared with previous legislation the bill further undermines aliens' rights of residence. Instead of facilitating the integration of foreigners living and working in the country by greater freedom of movement and equal access to the labour market, in future only short term residence permits will be granted for the first five years. There is no legal claim for the grant neither of a first residence permit nor for permit prolongation. Even the unlimited residence permit (which can be granted after five years of residence at the earliest) does not result in increased legal security, as it can be withdrawn "when the livelihood or accommodation, as locally customary for a native, is no longer secured in Austria".

Thus the right of residence of even long term residents becomes extremely insecure. The eviction from an apartment or dismissal can lead to the immediate loss of the right of residence. For alien workers the risks of the labour and the housing market thus become an existential question.

The foreigners police is in charge of residence permits and deportation measures. In case of the withdrawal of the residence permit it can simultaneously pronounce an expulsion order. In such cases an appeal against the withdrawal of the residence permit has no suspensive effect on the expulsion measure.

While the bill further undermines the rights and chances of integration of foreigners already residing in Austria, it enables the Minister for labour and social affairs to grant by ordinance a certain number of residence and work permits limited to 6 months, when this is seen as necessary for meeting the demands of tourism and construction industries. With this regulation the chances for longer term residents are further reduced. The mobile and rightless short term work force will further aggravate competition on the labour market.

Eminent constitutional jurists also criticize that the bill's definition of the circle of family members who have a right to family reunification is in breach of article 8 of the European Convention on Human Rights, as well as of the jurisdiction of the European Court of Human Rights and the Austrian Constitutional Court. The bill takes over the interpretation of Schengen II which, in its turn is contradictory to the jurisdiction of the EC court in Luxembourg.

The bill will not apply to nationals of countries with which Austria has concluded bilateral or multilateral agreements (e.g. EES countries). Thus it constitutes a further step towards "positive discrimination".

It must be feared that, once voted, the law will force even more people into illegality and thereby aggravate social and racial conflicts.

Sepp Brugger (Expert of the Green fraction in the Austrian parliament for asylum, refugee and immigration matters)

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## **AUSTRIA AND TREVI**

**Although not a formal member of TREVI, Austria is intensifying its cooperation with the group. The informal cooperation takes place outside parliamentary control.**

**The government is keeping remarkably silent about this cooperation. Traces of its real extent can however be found in the "security reports" which the ministry of Home Affairs annually presents to the parliament.**

**The following quotations are drawn from these security reports.**

"The European Conference of Ministers in Strasbourg of the ministers responsible for combating terrorism (...) presented the opportunity for the Austrian Minister of Home Affairs to engage bilateral talks (...) regarding an even closer cooperation in the field of the combat against terrorism. On this occasion, among other things, a reinforced cooperation with the

TREVI-group which has been established within the EC, was discussed. These talks were continued by direct contacts with the TREVI-group on a civil servant level" (Security report 1986).

"Intensive efforts (were made) regarding a close cooperation with (...) the TREVI-group. A cooperation sought for, above all, in the following domains: Combat against terrorism, combat against organized crime, equipment and training of organs of security, immigration- and future asylum policy, border control and visa policy. Henceforth, Austria will be granted the same status as already presently granted to the USA and Canada. This special status consists in the fact that Austria will in future have the possibility to present its opinion concerning the planned themes of the conferences and to articulate its particular desires **before** the respective meetings of the interior and justice ministers of the EC-Member States, without being a formal member of this group." (Security report 1987).

"Further consultative talks with the Troika of the TREVI-group took place on a minister level, at which a strong interest was stressed from the Austrian side, to bring about a further intensification of cooperation with the EC countries in all matters of security, including asylum, aliens and migration. On this occasion the impression rose, that these states are giving a high rating to cooperation with Austria and that they are ready to assist Austria in every possible way. It may be mentioned as an example, that Austria will henceforth be given the opportunity to send participants to the seminars for complementary training organized by the TREVI-group in the most various domains of security" (Security report 1988).

Thomas Sperlich

## **UNITED KINGDOM**

### **"PORTS ARE OUR FIRST AND LAST LINES OF DEFENCE" - BRITISH POLICE SEES THE ABOLITION OF INTERNAL BORDER CONTROLS AS A THREAT TO SECURITY AND DREAMS OF A EUROPEAN PREVENTION OF TERRORISM ACT**

**In a memorandum submitted to the Home Affairs Committee of the House of Commons the British Police service expresses concern for "the pressure within the EC for the removal of internal frontier controls".**

**If a "credible external border" is to be achieved, it is vital that the special policing powers available under the British "Prevention of Terrorism Act (PTA) are introduced "along the whole of the EC border", says the police.**

**Here is a summary, based mainly on quotations from the memorandum.**

**It is followed by a synoptical comment of the PTA and its implications, by Bill Heberton, lecturer at the Department of Social Policy and Social Work of the University of Manchester.**

#### **The Memorandum of the British Police Service**

In a fairly dramatic introduction the worried policemen speak out, what is at a stake: "The pressure within the EC for the removal of internal frontier controls (...) continue to be matters of real concern to the Police Service. Criminals, terrorists, and their supporters can be expected to do no other than exploit to the full any gaps or weaknesses in frontier arrangements - internal or external."

In the opinion of the police, the rapid pace of change in Eastern Europe has intensified the problems of illegal immigration into the EC from economic migrants, "many of whom live by crime".

An "acceptable level of control" must be sought in the whole of the EC, capable of deterring "would be terrorists, other criminals and illegal immigrants".

From the British Police Service's point of view, it "is vital that the powers available under the Prevention of Terrorism Act should remain and, if a credible external frontier is to be achieved, that equivalent powers be introduced along the whole of the EC border, accompanied by agreed

arrangements and standards for, for example, the conduct of interviews and the examination of travel and other documents".

In order to assure effective external border controls the following "vital objectives" should be achieved: "Common entry conditions; the harmonisation of all relevant laws and procedures; common jurisdiction rights; and a common sentencing policy".

As a concrete measure for contributing to strong external borders of the EC, the Police Service calls on the British government to "pass legislation to extend the provisions of the Prevention of Terrorism Act to transit passengers: in that way controls on transit passengers will be no less than those on passengers whose destination is the UK".

And the police warns that the abolition of the special police powers under the PTA "would be detrimental to the efficiency of the operations of officers at the UK ports and could affect public confidence". In case of the abolition of the PTA powers the police would have to "rely on the provisions of the Police and Criminal Evidence Act 1984, which provides a power to stop and search - but the "reasonable grounds" requirements of that legislation would to a very large extent reduce our ability to prevent the free movement of passengers and the undoubted consequential increase in the commission of terrorist and other serious offences".

After warning once more of the negative consequences of an abolition of controls at the internal frontiers the Police service presents a list of drastic proposals for compensating the loss of internal security which they say would result from an abolition. Among the initiatives proposed are:

- An amendment of section 14 of the PTA to overcome the present requirement for police officers to have "reasonable grounds" to suspect the commission of an offence [Section 14 of the PTA empowers police to arrest without warrant a person whom they have reasonable grounds for suspecting to be guilty of some terrorism related offence; a person who is or has been concerned in the commission, preparation or instigation of acts of terrorism; a person subject to an exclusion order].
- The requirement on shipping and airline companies to vet and check the identification of passengers.
- The introduction of a "Euro-warrant", which would enable a fugitive from abroad to be brought to justice in the UK without the necessity of involving often complicated extradition procedures.
- The introduction of mandatory identification cards in a common format throughout the EC [The British "Association of Chief Police Officers" (ACPO) has formulated more specified demands for such an ID-card. It should be the size of a normal credit card, with a computer-readable strip. It should further include, among other things, the individual's fingerprint].
- the inclusion of provisions in the British immigration law to enable a police officer, whether at a port or anywhere in the UK, to demand showing of a passport from any member of the travelling public in order to ascertain if that person is involved in terrorism, wanted for a criminal offence or is of security or criminal interest.
- Substantial additional manpower to assist in maintaining the former level of effectiveness should the role of the Immigration Service be reduced or removed.

The Police Service points out that Britain will hold the presidency and membership of the "Troika" of TREVI in the next 18 months and should use its influence during that period for, among other things, "the promotion of DNA profiling techniques with the object of achieving a common standard for evidential purposes" as well as "the gathering and handling of information on terrorism".

Reference is made to an initiative by the ACPO for a "Police Programme for Europe", wherein policing topics can be discussed by police practitioners.

With reference to the the heavy process of European judicial harmonization the importance of closer police cooperation on a "practical" level is stressed: "We believe that much can be achieved within the existing framework of legislation, and therefore without delay, by the

encouragement of a closer liaison at practitioner level".

Under the heading "Illegal immigration" the Police service asks some good questions: "The major issue...is one of jurisdiction. If intra-Community agreement is reached on enforcement of external frontier controls and on EC wide visas for third country nationals, how will police and immigration officers deal with those in breach of those agreed controls? What immediately springs to mind are such questions as: where is the offence committed? Which authority is competent to prosecute the case? Under whose judicial competence may the person be tried? How is evidence to support the prosecution case to be obtained from other EC Member States? The jurisdiction issues alone are extremely complex."

In addition, says the Police service, greater police involvement would be required for inland operations to counter the flow of illegal immigration, and to search for EC overstayers. "If there is a requirement for individuals to carry some acceptable proof of identity it would clearly assist the police - though increasing police powers to check for illegal immigrants could lead to discriminatory practices, and a change of public perception of the police role."

Under the rubric "The Schengen Agreement" reference is made to the "hot pursuit" provisions [enabling police of one Member State to continue the hunt of suspected criminals on the territory of neighbouring Member States]: "A classic lesson on 'hot pursuit' could be drawn from the Irish border. The more internal frontier controls are relaxed, the more the requirement for agreed cross border "hot pursuit" becomes necessary in criminal and terrorist cases."

To end with, the Police Service once more stresses the need to maintain the provisions of the Prevention of Terrorism Act and particularly the provisions of Schedule 5, even in the case of the setting up of a free travel area within the EC, "in the best interests of the security and the safety of the nation."

[Schedule 5.2 of the POTA regulates examinations on arrival or departure. It enables the examination of of any person who has arrived or is seeking to leave Great Britain or Northern Ireland for the purpose of determining -

- whether the person appears to be or to have been concerned in the commission, preparation or instigation of acts of terrorism;
- whether the person is subject to an exclusion order or whether there are grounds to suspect that the person has committed an other offence under the PTA.]

The memorandum ends with a dramatically formulated credo appealing to British sentiments of insularity: "Terrorism is still the principal threat to the UK and taken together with the potential threat from drug abuse and other serious crime issues, underlines the need for us to maintain vigilance at our ports. Ports are our first and last line of defence. Experience(...) indicates that we relax port controls at our cost."

N.B.

Sources: House of Commons, Session 1991-92, Home Affairs Committee: Migration control at the external borders of the European Community, Minutes of Evidence, 5, 12 and 26 February 1992 and Appendices, Appendix 9 and 17, London: HMSO, 215-i, ii and iii; Prevention of Terrorism Act, part IV, Section 14, and Schedule 5.

### **The Prevention of Terrorism Act**

The Prevention of Terrorism Act was originally introduced in 1974 to: proscribe support for the I.R.A. (Irish Republican Army); enable the police to detain suspected terrorists without an arrest warrant for up to a week; exclude from Great Britain or Northern Ireland those thought to be involved in terrorism; and question travellers entering and leaving Great Britain. In 1984 the powers of arrest and detention were extended to cover those connected with international terrorism. The provisions of the PTA are renewed each year by parliament.

The PTA gives powers to the police to:

- detain without warrant;

- detain for up to 48 hours without application to a court or the Home Secretary;
- examine persons arriving or leaving Great Britain or Northern Ireland to determine whether they have any connection with Irish or international terrorism;
- stop and search without warrant;
- strip search, fingerprint and otherwise record a person detained;
- require the person to give information about others suspected of connection with terrorism.

During the first 48 hours the person will have no right to inform others of his whereabouts, consult a lawyer or talk to friends/relatives. After 48 hours the person's only right in detention is to take legal advice - this advice will not necessarily be given in private, if the police feel it necessary to be present. The person can be detained by the police for up to 7 days, thereafter he must be either brought to court or released.

**The PTA has been found to be in violation of the European Convention on Human Rights.** In November 1988 the European Court held in the case of Brogan and others that it was a breach of Article 5(3) because none of the four defendants had been brought "promptly" before a court.

Some academics who have looked at the statistics on the operation of the PTA argue that the police are increasingly using it to police ordinary crime, because of the very strong powers it gives. In other words there is a process of "normalisation" of emergency legislation taking place. It has also been pointed out that the British government may be arguing that the PTA be used as a basis for a some form of "European Internal Security Act [a project stressed, as we have seen, by the Police Service].

The allegation of the Police Service, according to which the special powers under the PTA have proven to be very helpful in combating terrorism and crime is questioned by a number of academics. Alan Butt Philip in his work - e.g. Dismantling Border Controls (Chatham House Papers, May 1991) argues strongly that in the case of Great Britain there is no good evidence to support the need for "internal" port controls.

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## **GERMANY**

### **GERMAN PARLIAMENT VOTES LAW ON FURTHER ACCELERATED ASYLUM PROCEDURE**

**The bill was approved by the totality of the MP's of the governing parties (CDU, CSU and FDP) and almost all Social-Democrats in early June and will come in force by July 1.**

In Germany the right of asylum is a constitutional right. Article 16 of the Constitution [Grundgesetz] stipulates: "Political persecutees are granted asylum."

This constitutional guarantee of a subjective right results in a right to legal remedy. Thus, an asylum seeker whose application has been rejected by the refugee authorities can appeal to an independent administrative court.

On a purely formal level these guarantees are maintained, even with the new law, but the right of asylum is further undermined by restrictive procedural measures.

In order to accelerate the asylum procedure, central reception facilities and "collection camps" are to be set up, where the federal refugee administration (Bundesamt zur Anerkennung ausländischer Flüchtlinge) will establish branch services. The right to legal remedy is reduced to one instance of appeal. Simultaneously, the time limits for bringing in an appeal and substantiating a claim (evidence and legal grounds) are drastically reduced. [Various lawyer associations have protested this measure which, they say, makes it materially almost impossible

for them to lodge and substantiate an appeal in time].

After the rejection of his request by the refugee administration an asylum seeker will have no more than 2 weeks time for lodging a complaint and the time limit for filing a complaint against the deportation order [which follows a rejection] has been reduced to just one week.

The main objective of the centralized "collection camps" is to facilitate the carrying out of deportation orders.

The various Länder of the Federal Republic are required by the law to set up such camp facilities until March 1, 1993, at the latest.

The law provides for taking the fingerprints of asylum seekers for identification purposes. The Federal Prosecution Department (BKA) is setting up an automatized database for the administration of fingerprints.

Thomas Sperlich

Sources: Süddeutsche Zeitung, 6,7/8.6.92; Neue Zürcher Zeitung 7/8.6.92

Further documentation: "Zum Entwurf eines Gesetzes zur Neuregelung des Asylverfahrens", by RA Dr. Reinhard Marx, Informationsbrief Ausländerrecht (Hamburg) 3/92, p.109 and following; "Stellungnahme zur Anhörung im Innenausschuss des deutschen Bundestages am 18.März 1992 zum Entwurf eines Gesetzes zur Neuregelung des Asylverfahrens" (BT-Drucksache 12/2062), by RA Hubert Heinhold, Schellingstr. 52, D-8000 München 40; "Stellungnahme der Fachgruppe Asyl- und Ausländerrecht in der Neuen Richtervereinigung (NRV) zur aktuellen Diskussion einer weiteren Asylrechtsreform.