

CL 23 March 1993

EUROPE

EUROPEAN SQUABBLING ROUND AFTER 'SCHENGEN' FLOP

The entry into force of the Schengen Implementing Agreement has been postponed for the third time and sine die. The decision was taken on 14 December by the Ministers of the Schengen Executive Committee, but made public only on 25 January 1994. Technical problems with making one of the agreement's main pillars, the common police computer-system SIS (Schengen Information System) operational, are blamed for the failure. However, squabbling among the member states following the announcement of the postponement indicates that political and commercial rivalries exacerbated by a lack of institutional and public control inherent to the Schengen process, are more likely to be at the root of the debacle.

Concretely, the SIS should allow e.g. a police officer in Belgium questioning a German suspect in Brussels to have immediate access to relevant information stored by the German police. Yet direct access is inconceivable as long as long as police and criminal affairs remain matters of national sovereignty.

The Schengen states therefore opted for a "two level" system, consisting of a ground level, the national databases, and a top level, the central support system, ensuring the exchange of the "filtered" information provided by the national systems.

In 1988, a permanent working group (PWG) was set up. The PWG's task was to monitor the realisation of the SIS' central support system, the C.SIS and to

coordinate the construction of the national components, the N.SIS.

At a first stage, the technicians proposed a so-called "synchronic" communication standard, ensuring high-speed round the clock connection of the national data bases. But after political pressure from the Netherlands and Germany and against technical reservations of the French and the Belgians, the synchronic standard was dropped in favour of a more aged "asynchronic" standard, the X-400. The X-400 works like an Email-support, i.e. without a permanent connection between the various national bases, which makes it considerably slower.

In October 1991, contracts for the SIS computer were duly put out to open tender by the PWG. A consortium made up of the US company Arthur Andersen and the French computer group Bull won the bid. The technically motivated decision to entrust an American company with the setting up of the system, however displeased political decision-makers who wished to rely on purely European high-technology for a project as symbolic of European unity as the SIS. At German insistence, the then French Prime Minister, Edith Cresson, pressed the president of Bull to withdraw from the consortium with Andersen, obliging the latter to renounce its bid. Instead, a new consortium composed of the Anglo-French firm SEMA, the Bull group, and Siemens-Nixdorf in Germany got the contract.

In summer 1993, rumours about technical problems and threats of delays in making the SIS operational began to spread. But the Schengen governments hurried to dispel growing public concern by affirming that the system would be ready in time to implement the Schengen agreement's most symbolic and attractive element - the abolition of controls at the member states' internal borders, by 1 February 1994. As early as October however, the Schengen Executive Committee had asked two independent experts to assess the technical problems of the SIS. They soon came up with the following, quite appalling conclusions: "Though certain improvements have been achieved during the last months, the system is far from being operational in such a sensitive environment as the SIS", and: "It does not seem possible to determine whether the system will be capable of working operationally within the reasonable time frame of a few months or whether the magnitude of the problems identified is such that the system will never work

according to the specifications of the contract. As a matter of fact, it appears totally illusory to consider that the system might be operational on the 1st of February 1994".

The experts' findings appear to be confirmed by field-tests with the SIS carried out at the beginning of this year at Frankfurt airport and the German-Polish border. They revealed serious adaption problems between the C.SIS and the German N.SIS and resulted "in the most total confusion", as a rapporteur of the French Senat underlines.

Since then, some experts believe that the system failure is beyond repair and that an entirely new system will have to be set up, which would necessitate 2 - 3 years.

On 25 January, only days before the announced entry into force of the Schengen agreement, the Schengen "Central Group" of high officials was finally forced to definitively admit the fiasco: the agreement would not enter into force on the planned date and, due to the complexity of the technical problems, it was unwise to set a new deadline.

The announcement has triggered a seemingly unending flow of accusations and counter-accusations among politicians, senior officials and technicians of the member states involved.

The French have been suspected of trying to obstruct the Schengen process ever since the Gaullist hard-liner, Charles Pasqua, became Interior Minister following the victory of a center-right coalition in the French elections early last year. Clearly inspired by the old tactical wisdom that early attack is the best form of defence, they were the first to go public with their version of the story. A "mission of information" headed by Senator Paul Masson was mandated (on 10 December 1993!) by the French Senat to examine the setting up and the functioning of the Schengen Implementing Agreement. Obviously benefiting from broad access to insider information provided by Mr. Pasqua's staff, the mission presented a comprehensive report to the Senat on 25 January, the very day of the public announcement of the system failure by the Schengen "Central Group". According to the report, "the politicians imposed a poor choice on the technicians". The failure

of the SIS is "less a technical failure than an organizational one". It results from "a succession of dysfunctions within the indistinct nebula of Schengen", without it being possible to identify the sole responsibility of one of the parties involved.

Yet the rapporteur, Senator Xavier de Villepin, a party friend of Interior Minister Pasqua, does not fail to hint as to the true culprits.

After a lengthy description of the X.400 communication standard's deficiencies, the report underlines that the alternative "synchronic" solution "inspired by the French system" was heavily criticised by the Dutch delegation, "without any serious technical justification". And it was Germany, with the support of the then (socialist) French government, that insisted on a purely European consortium rather than the more efficient French-US bidder.

The Belgian Minister of Trade and European Affairs pointed out that, according to the Schengen agreement, France had sole legal and technical control over the setting up of the C.SIS. He refuted what he sees as the French report's attempt to "dilute into collective responsibility... a responsibility indeed belonging to France alone".

European officials point to the French Interior Minister's "mysterious delay" in alerting his Schengen partners to the growing problems with the SIS and suspect that Mr. Pasqua withheld details of the software problems deliberately, in order to pursue his crackdown on immigration further.

Mr. Bernd Schmidbauer, state secretary of European Affairs at the German chancellery, blamed SEMA, the Anglo-French computing service group for failing to remedy system software problems. SEMA angrily dismissed both this and Dutch assessments blaming the Strasbourg-based C.SIS computer and in its turn accused national governments of not making their national computer systems compatible.

This triggered a statement of Mr. Schmidbauer putting the blame on the bad (i.e. French) management of the project and vigorously defending the quality of the N.SIS material furnished by the German company, Siemens.

Meanwhile, Portugal has informed its Schengen partners of its decision not to take over the next presidency. According to the Portuguese secretary of state for

European Affairs, "the conditions necessary for Portugal to assume the presidency of the Schengen Group during the period in question with the efficiency and dignity that it deserves have not been met". Portugal, he said, could not assume "a badly prepared presidency" and refused "to enter into an exhibition game only to show who will become the first of all others".

The Schengen debacle could not fail to draw some malicious comments in Britain, an inveterate non-member state. Stressing the importance of maintaining control at EU-internal borders as a means of combatting terrorism and crime, Prime Minister John Major noted that, once again, this delay proved that his government was right in refusing "too much Europe too fast".

Sources: Rapport d'Information sur la mise en place et le fonctionnement de la Convention d'Application de l'Accord de Schengen du 14 juin 1985, French Senat, 25.1.94 (Mission report to the French Senat by Paul Masson (pres.) and Xavier de Villepin (rapporteur)), 55 p., in French; Belgian Ministry of Foreign Trade and European affairs: Entrée en vigueur de la Convention de Schengen: Etat de la question, Brussels, 2.2.94, 4 p., in French; *The European*, 21-27.1.94; *Le Monde*, 27.1.94, 15.2.94; *Financial Times*, 26.1.94; *Libération*, 2.2.94; *Migration Newssheet*, No.132/94-03.

See also in this issue: Opinion: "The Schengen debacle - a chance for a democratic turnabout?"

EUROPEAN COMMISSION: COMMUNICATION ON IMMIGRATION AND ASYLUM POLICIES

On 23 February, the European Commission adopted a Communication to the Council and the European Parliament drafted by Commissioner Flynn. Compared to earlier statements of the Commission regarding this domain, the Communication must be welcomed as a step forward in that it

acknowledges the strong interrelation of asylum and immigration policies.

For the first time it at least addresses some of the major challenges in these fields. Thus, a stronger accent is put on the permanence of migration pressure and the urgency of combatting its root causes.

However, the Communication has once again failed to propose a coherent programme of action. There are fundamental contradictions of some its findings and concrete measures of control proposed.

Referring to its Communication on Immigration in October 1991 (SEC (91)1855: see CL No.2, p.6) the Commission once again emphasises a comprehensive approach including measures for reducing migration pressures, controlling migration flows, and improving integration policies for legal immigrant residents in the EC.

Such an approach must consist of three main elements:

- reducing migration pressure by attacking root causes;
- monitoring and controlling migration flows;
- introducing measures favouring the integration of legal immigrants.

This requires European co-ordination of action in the domains of foreign policy, economic co-operation and immigration/asylum.

In the view of the Commission, this comprehensive approach is more necessary than ever as "no international forum...has yet proved capable of making such a policy operational". Thanks to the (Maastricht) Treaty on European Union (TEU) and namely its "third pillar" (on Justice and Home Affairs) the EU now "has the institutional means to do so". The TEU introduces the obligation for the Member States "to co-operate within a single institutional structure on matters now recognised formally as being of common interest".

According to the Communication, one of the most important developments in European migration policies since 1991 has been the introduction of the concept of "temporary protection" in the context of the conflict in former Yugoslavia. The objective is to "avoid an over-burdening of asylum procedures in cases of mass influx".

The Communication, however, notes that there is no uniform pattern in the secondary rights (e.g. family reunification, work, the right to seek permanent residence, etc.) of those who enjoy some form of temporary protection and advocates the setting up of clear common standards to be defined in a Convention on temporary protection. (Temporary protection: see CL No.7,p.5; CL No.22,p.6).

Commenting on the implementation of the European Council's 1991 work programme aimed at harmonisation of asylum/immigration policies, the Communication is far from enthusiastic when noting that there has been "approximation rather than harmonisation". As an illustration the Communication names the policy initiated by the EU-Immigration ministers at their London Conference in November 1992 (see CL No.11, p.2,10) aiming at mutual approximation of practice by means of common "Resolutions", "Recommendations" and "Conclusions" rather than through genuine legal harmonisation. The European Commission now appears to be questioning the efficacy of such measures. The Resolutions are not legally binding, it remarks. Their interpretation and implementation is left up to each Member State, and important issues, such as family formation i.a., are entirely left out in the scheme. On this point, the Commission's conclusions are remarkably unequivocal: "Achieving and implementing a common policy will not be possible without greater reliance on legally binding instruments and procedures to ensure uniform interpretation of those common rules...in relation to both substantive and procedural law...".

It remains to be seen if this statement will mark the beginning of a turn away from informal "ad hoc" approximation of practice. The latter has been clearly favoured by senior officials in the numerous intergovernmental bodies dealing with immigration, asylum and internal security, while it regularly draws the ire of the European Parliament, denouncing the lack of accountability, and judicial and democratic control inherent in such proceedings (see CL No.20,p.8; CL No.21,p.6).

Migration pressure

Looking back on the development of migratory flows since 1991, the Commission

concludes that "immigration is not a temporary phenomenon and...assumptions to that effect which were sometimes current in the 1950s and 1960s were based on a fundamental misconception...". Moreover the Commission cautiously advocates a less restrictive view of immigration by stressing the eventuality that "in the long run, for example, for demographic reasons Europe would have to increase possibilities for legal immigration".

Availability of accurate information (harmonised statistics) on migratory movements is a prerequisite for action, it says in the Communication. Reliable statistics would also meet the concerns of a public which are fuelled by the absence of a clear picture. There is a need to compare data with information provided by NGOs and for an "early warning" system permitting major migratory movements to be forecast.

Earlier recommendations of the Commission aiming at improved, harmonised collection of information have met with little enthusiasm from Member States, however. Thus the Commission's attempt to conduct studies to determine the resources available to obtain harmonised information on migration flows with the help of Member States ended in failure. In 1991 the Commission sent a questionnaire to the Member States, but, as it dryly says in the Communication "Member States either failed to reply at all or in some cases did so too slowly to be useful".

The Communication mentions the work of the CIREA (Centre for Information, Discussion and Exchange on Asylum) and the CIREFI (Centre for Information, Discussion and Exchange on the crossing of Borders and Immigration), but notes that the information provided by the Member States "is as yet not always directly comparable" and that there are limits set to the CIREA and the CIREFI with regard to the study of the causes of migration pressures.

Considering this, the Commission takes up the idea of the creation of an "observatory" which would not be confined to the collection and interpretation of merely statistical data and thus would better meet the need for a comprehensive approach. However, the Commission hurries to underline that such a new body should not lead to more bureaucracy...

Not all forms of immigration are undesirable, the Communication emphasises.

"Migration pressure" refers to forms of inward movement "for which there is no specific demand in the Union".

Furthermore, due to humanitarian obligations, a distinction must be made between various types of migration pressure. Thus there are types of immigration undesirable even from the immigrant's point of view, i.e. where he/she would normally have preferred to stay in his/her country, had the human rights situation there been better. There are no underlying negative reasons when family reunification is concerned: "An immigrant joining his or her family is doing no more than exercising his or her basic human right".

As a consequence, dealing with the root-causes of migration should concentrate on "those forms whose underlying causes are inherently undesirable".

Refugees are part of this "inherently undesirable" migration. With regard to them, the Communication has little more than a truism to offer: emphasis of the EU and its Member States on the respect for human rights and the rule of law in their foreign relations can contribute to alleviating refugee pressure. One more concrete proposal, however, deserves mention. The Commission quite accurately points out that information obtained during the examination of successful asylum applications is a "source of information which is underutilised at present" in determining the human rights situation in countries of origin. "Information provided by refugees may well contain very precise indications on human rights violations in their countries of origin, which could easily form the basis for follow-up action at bilateral or multi-lateral level against the country concerned".

Considering the general trend among Member States to base their assessment of the human rights situation in refugee producing countries on reports often biased as a result of diplomatic requirements rather than on the information provided by both victims of repression and NGOs present on the spot, the Commission's proposal makes sense. Its consequent application however would imply a fundamental turnabout in the asylum and human rights policies of the EU and its Member States, in total contradiction to current practice. The Commission fails to make any proposal on how to implement its good idea, thus demonstrating the

wide gap between declared intentions and true willingness to act.

The Communication also deals with types of migration pressure not caused by the human rights situation. It names root causes such as economic disparities, demographic pressures and ecological disasters. It quotes the UN Population Fund (UNFPA) 1993 report on the State of the World Population, according to which the "combination of population pressures and economic imbalances could produce mass migration from poorer to richer countries and mentions the warnings of the UNHCR and the UNFPA that incidental and longterm ecological factors (e.g. droughts, erosion and desertification, and the rising sea level) likely to produce massive migratory movements are often neglected. It states that "it may turn out that international migration is the sequel of internal migration from rural to urban areas". The mere fact that these fundamental problems are, at last, mentioned in a statement of the Commission on immigration should be welcomed as a step forward. Yet once again, proposals on how to meet these enormous challenges are held in general declarations on the need for "economic co-operation", "liberal trade policy", "development co-operation", "the "establishment of a link between more general ecological programmes and migration", "introducing labour-intensive development projects for these rural areas [threatened with depopulation]" and "improving housing and working conditions in urban areas, especially small/medium sized towns". Against the background of the EU's appalling inactivity, if not obstruction in all these fields, the remedies proposed by the Commission sound rather naive, not to say cynical.

Controlling migration flows

"Controlling migration does not necessarily mean bringing it to an end: it means migration management", the Commission states. In Commissioner Flynn's draft proposal for the Communication, this sentence is followed by another one, just as important: "It calls for a combination of admission and repatriation policies that are well-rooted in society and well-understood by all concerned as being justified and equitable".

This latter sentence can not be found in the final text adopted by the Commission.

Instead, it says: "Defining grounds for admission in clear terms makes it possible to translate those concepts into practical policies. The definition and implementation of policies in order to deal with irregular forms of immigration will be another essential element in the control of migration flows".

Was this statement suppressed because the Commission viewed Mr. Flynn's emphasis on a policy well-understood by all concerned - i.e. even the immigrants concerned - as justified and equitable as implying too strong a bow to public calls for transparency and democratic accountability? Or was it suppressed because of the implicit acknowledgement of a right of even illegal and would-be immigrants to justified and equitable treatment?

However that may be, the suppression of the statement is regrettable.

Under the rubric of Admission policies the Commission inter alia proposes:

- setting up of a Convention on family reunification aimed at putting an end to legal uncertainty in that domain;
- the introduction of temporary work schemes, training programmes, and regulations for frontier and seasonal workers;
- the definition of admission on humanitarian grounds.

Admission policies leading to a brain-drain in countries of emigration should be avoided and the return of foreigners admitted within temporary schemes must be enforced, the Communication stresses.

As for asylum, it is "by definition impossible to curb the number of refugees to whom Member States are required to give protection". Thus, regarding this category of immigrants, not their number but managing the examination of asylum applications in order to ensure fair and efficient procedures is the objective of control.

The Commission acknowledges that "the introduction of pre-screening procedures [e.g. the "safe country" and "manifestly unfounded" principles] aimed at excluding certain categories of asylum applications from the more substantive examination procedures, with a view in particular to identifying manifestly unfounded applications, carries the risk that Member States, unless they take great care, may in-

voluntarily find themselves violating the principle of non-refoulement". Considering this, the Commission calls for the harmonised application of the refugee definition of article 1A of the 1951 Geneva Convention and namely for the elaboration of a Convention on manifestly unfounded asylum applications and the implementation of the third host country principle.

A reflection on the efficiency of all too restricted access to the asylum procedure deserves particular mention:

"In the absence of active measures to reduce migration pressures, would-be asylum seekers may turn to illegal immigration if asylum procedures are no longer accessible to all. It is unlikely that the costs involved in effectively countering such illegal movements would be any less than actual costs of dealing with the asylum requests. The advantage of the asylum procedure, however, is that the majority of cases, and especially in case of manifestly unfounded applications, the whereabouts of asylum applicants is known or is readily ascertainable, whereas, in the case of irregular movements, almost by definition a considerable effort will be needed to locate the people concerned."

This passage indicates both the Commission's implicit avowal of the failure of current policies of curbing immigration by restrictive legislation and policing, and its lack of courage to draw the necessary conclusions. The number of people who prefer any situation, no matter how precarious, to the situation in their own countries, is continuously growing. It is obvious that as possibilities for legal entry are gradually suppressed, they will turn increasingly to illegal immigration. Indeed they are already doing so.

The Commission's conclusion, however, that wider access to the asylum procedure alone would curb illegal immigration, is questionable. While it may prove easier to control and, in the end, deport unwanted immigrants who have been identified as a result of a formal asylum application, we should not expect would-be immigrants to continue to resort to the asylum procedure as a means of entry to the EU, once it becomes clear that their chances of actually staying here are less than by entering illegally.

Once again the Communication is giving involuntary proof of the fundamental contradiction between its claim for a "comprehensive" approach to the phenomenon of immigration and a practice limited to policing and repression.

This contradiction is emphasised once more, when the Commission on the one hand calls for blocking traditional entry routes and clamping down on traffickers of immigrants, while on the other hand pointing out that such measures "should not block off any possibility for persons in need of protection to leave their country of origin". Unfortunately, the Commission forgot to consider the question, how a genuine refugee should enter the territory of the Union otherwise than by making use of the few routes constituting loopholes in the "fortress", and by resorting to the costly aid of traffickers. Are not both the routes and the traffickers a direct result of Europe's anti-immigration policies?

Other measures proposed against illegal immigration comprise "rigorous controls at external borders; internal checks (the Communication however admits that it is not easy for the police to identify illegal immigrants in a multi-cultural society), a clamp-down on employers, and effectively barring illegal immigrants from access to all public support schemes.

The signature by all Member States of the UN Convention on Migrant Workers is among the measures proposed to guarantee some basic rights even to illegal migrants.

Integration policies for the benefit of legal immigrants

The Commission repeatedly stresses the importance of speedier and better integration of immigrants residing legally in the territory of the EU and therefore is in favour of joint action for the development of common approaches by the Member States. While the Communication appears to advocate a policy aiming at equal rights and non-discrimination for these non EU-nationals, it remains vague on issues which are controversial among the Member States but would be crucial in carrying out such a policy, e.g. speedier access to citizenship and dual citizenship. According to "Migration Newsheet", a monthly information bulletin on immigration

published in Brussels, objections to a more precise definition of common goals in this domain have been raised mainly by Germany.

Anyhow, the goal of facilitating integration of legal immigrants seems quite incompatible with the objective (also mentioned in the Communication) - of intensifying internal and border checks for the purpose of combatting illegal immigration and crime. In practice this form of policing regularly leads to serious discrimination against legal and naturalised immigrants with a non-European appearance.

Even the most well-intentioned integration programmes are difficult to conceive against this background of actual discrimination and precariousness.

Another new obstacle to integration is the scheme of "temporary protection".

Persons staying in the EU under this scheme live in a precarious situation of constant uncertainty about their right to remain in the host country. Setting up a Convention is not likely to lead to a fundamental improvement, as the inherent aim of the "temporary protection" scheme is actually none other than preventing permanent immigration, i.e. integration.

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Sources: Draft Communication of the Commission to the Council and the European Parliament on Immigration and Asylum policies, proposed by Commissioner Flynn, January 1994, 33 p., Annex 1: Description of main migratory flows (8 p. plus tables), Annex II: Implementation of the 1991 work programme on asylum and immigration policies (6 p.); Communication of the Commission to the Council and the European Parliament on Immigration and Asylum Policies; Brussels, 23.2.94, 44 p.; *Migration Newssheet*, Brussels, No.132/94-03, p.1.

ELECTRONIC ID-CARDS: THE MAKING OF THE TRANSPARENT EU-CITIZEN

EU-member states are preparing the piecemeal introduction of identity cards

in the form of "smartcards" capable of storing medical and other private data of their carriers. The cards are presented as the ultimate answer to fraud, terrorism and illegal immigration, by enabling authorities to keep track of citizens in a borderless Europe.

A smartcard can hold the equivalent of seven closely typed A4 pages, but technical advances are expected to greatly increase their memory soon.

Britain plans to link all National Health Service computers as a first stage in the introduction of a national card system that could later also serve as an ID-card.

France will replace all paper-based ID-documents with smartcards by 1995.

Due to public resistance, Germany and the Netherlands have introduced universal computerised health cards instead.

If the ID-smartcards become compulsory in the EU, authorities will soon be able to conduct electronic dragnet searches by data matching. Simon Davies, of privacy International, a civil liberties group, says that this is "the technological equivalent of a general warrant on the entire population. Data matching is directly equivalent to arbitrary investigation without cause or suspicion".

Source: *The Independent*, article by Leonard Doyle, 3.2.94.

SWITZERLAND

INTRODUCTION OF A MACHINE-READABLE ID-CARD

Within half a year, Swiss citizens will receive a new, machine-readable ID-card the size of a credit card. The Swiss Federal Office of Police (BAP) praises the card as a masterpiece of technical pioneering making counterfeits practically

impossible. Swiss civil liberties activists are less enthusiastic.

According to a police official, "initially, the declared intention of the Federal Office was to use the personal data stored on the new ID-card for all imaginable purposes of search and surveillance and to make them available to all departments of the BAP and related agencies such as the Federal Office of Prosecution".

This would, for instance, have enabled the State Security to track the cross-border movements of suspect citizens.

The Federal data protection authority, however, obtained an ordinance that will restrict the use of the data stored on the ID-card.

Critics of the card say that the draft ordinance is too vague. As a matter of fact, the draft provides for computerised storage in the central police database of both the photograph and the signature (i.e. a graphological sample) contained on the application form. At all Swiss borders and airports the machine-readable ID-card allows for the immediate access to all connected police information systems containing data on Swiss citizens. The border check-points are already linked with the Swiss criminal search system RIPOL. Besides information relevant to criminal prosecution, this system also contains data on missing psychiatric patients and discriminating marks such as "HIV-infected".

The Swiss drug database, DOSIS, and the state security computer, ISIS, are not being linked for the time being.

But Paul Rechsteiner, a social-democrat MP, is unhappy with the draft ordinance and particularly with provisions permitting the use of the ID-data for purposes beyond the requirements of border checks, namely for prosecution and "warding off threats to public security".

Other critics have warned that the new ID-card constitutes a further temptation for police authorities to gather information on persons not actually suspected of a crime. They emphasise that a mere ordinance (rather than a law) provides insufficient legal guarantee against a gradually extended use of the ID-card for other purposes. "In other political circumstances the Federal Council [government] can amend any ordinance without the consent of the people or the parliament", Mr. Rechsteiner says.

Source: *Die WochenZeitung*, 18.2.94.

NETHERLANDS

SCHIPOL AIRPORT CONCERNED BY PIECEMEAL INTRODUCTION OF FREE MOVEMENT

Present policies of the EU-Member States indicate that the free movement of persons is not likely to be introduced by all member states simultaneously. The International Affairs-manager of Amsterdam-Schipol airport is concerned about the organisational and economic effects on airports required to adapt their passenger management to free movement regulations.

On the occasion of a meeting on 18 January with the European Parliament's Frontiers Intergroup, the Schipol-manager said, that Schipol airport in its extension plans of 1987/1990 had assumed from the introduction of free movement of persons by all 12 EU-Member States. Investments and building activities are based on this number of participants. When it became apparent that the Schengen Agreement would also apply to airports and that a physical segregation of passenger flows would become necessary, the Netherlands indicated that such a partial segregation applying only to 'Schengen'- nationals could not be realised. However, in order to be able to accommodate free travel within Schengen anyway, the Netherlands, instead of physical segregation, opted for a "procedural solution" based on the issuing of a card with a magnetic strip to intra-Schengen passengers, with which they can operate a turn-style.

[Schipol airport has also issued volunteers with smartcards the size of credit cards

which contain personal data with a digitised reading of the passenger's "hand geometry". The system allows automatised identity checks sparing regular travellers long waiting-lines.]

Schipol airport points out that traffic division belonging to a smaller number of participating member states differs essentially from that belonging to the 12 EU-Member States. Nearly 25% of Schipol's passengers and flights originate from or go to the United Kingdom.

The persistent uncertainty about the EU's policy regarding free movement of persons and particularly the continually changing number of participating Member States presents planning problems to Schipol and other European airports and "leads to both extra investments and capital annihilation", the manager stresses. If not all EU-airports will accomodate free movement for persons, an unequal situation within the Internal Market will be created. Unfair competition will occur, because airports in states introducing free movement will have to make unprofitable investments and suffer delays in passenger-transfer. This will harm the attractiveness of airports concerned. "Consequently, non-introduction by EU-Member States of free travel is rewarded" it says in the Schipol paper, and for passengers "the situation to come is hardly understandable with free movement for baggage in all EU-Member States [introduced since 1 January 1993] and free movement in a restricted number of EU-Member States, which is even likely to change underway".

All this constitutes an "unacceptable encroachment on the quality of the Schipol-product", the Schipol-manager concluded.

Source: Outline of the presentation by Maryse Schermerhorn, manager International Affairs, Amsterdam Airport Schipol, on the occasion of the meeting on 18.1.94 of the Frontiers Intergroup, European Parliament.

FRANCE

EXIT-VISA OBLIGATION FOR NATIONALS OF 13 COUNTRIES RESIDING IN FRANCE

The French Interior Ministry has published a decree requiring Palestinians, and nationals of 13 countries considered to be involved in terrorism to apply for an exit-visa whenever they wish to travel abroad.

The decree was published on 12 February and applies to nationals of Afghanistan, Armenia, Azerbaijan, North Korea, the former Soviet Republic of Georgia, Irak, Iran, Jordan, Lybia, Syria, Sudan and Yemen, as well as to Palestinians. According to the Interior Ministry, the measure was taken in the interest of "national security". Already in 1986, during the first government of socialist-conservative "cohabitation", the then and present Interior Minister had decided a similar measure regarding about 50 "sensitive" states. But following a complaint of the GISTI, a Paris based organisation for the rights of immigrants, in May 1992, the *Conseil d'Etat* annulled the decree on the grounds that it violated "the fundamental freedom of coming and going which is not limited to the national territory, but includes the right to leave it".

Charles Pasqua's new decree is, however, based on a new law from 24 August 1993 allowing certain restrictions on the right of non-EC nationals legally residing in France to leave the country on national security grounds. The provision has not been censored by the Constitutional Court.

Sources at the Interior Ministry played down the importance of the decree. The exit visa, they stress, has the character of a "mere report" to the authorities and should not be compared with a requirement for special preliminary authorisation.

But a representative of the French League of Human Rights points at earlier experience showing that "certain officials of the Interior Ministry have their own, personal interpretation of legislation".

Source: *Le Monde*, 15.2.94

GERMANY

THE COMBAT OF CRIME - A NEW ROLE FOR GERMAN INTELLIGENCE?

The *Bundesnachrichtendienst* (BND), Germany's foreign intelligence service, is to play a role in investigating internationally operating criminals.

This is the aim of a draft bill proposed by the legal and Home Affairs experts of the government-coalition parties CDU/CSU and FDP. The draft bill authorises the BND to conduct intelligence activities on terrorist actions, arms smuggling, drug trafficking, counterfeiting and laundering of money originating from the criminal activities above. Initially, the coalition partners intended to legalise only the communication of "accidental finds" by the BND to the criminal prosecution authorities.

The draft bill represents a further step in a growing trend, in Germany, to blur the lines between the formerly distinct roles of police and secret services (see CL No.4,p.3; No.20, p.1).

Source: *Weser Kurier*, 3.2.94.

CROATIA

FASCIST "BLACKSHIRT" COMMANDOS TERRORISE CIVILIAN POPULATION IN SPLIT

Fascist commandos bearing uniforms of the Croatian army are terrorising civilians in Croatia. According to AIM, an alternative information network set up by independent journalists from all parts of the former Yugoslavia, about 200 families have been brutally evicted from their homes by the commandos in December 1993 alone. The evictees can not expect any help from the police or the judiciary.

In recent months the eviction raids seem to have been concentrated in the area of Split (Dalmatia). The commandos, formed of up to 15 armed men, break into flats in residential settlements earlier owned by the former Yugoslavian People's Army (YPA). The commandos usually claim that the flats are the property of the Croatian army and that they must be given to the "invalids and fighters of the war for the homeland". Many of the tenants have obtained exclusive tenancy rights to their flat after the departure of the former YPA and, as a general rule, evictions without a legal procedure are illegal. Nonetheless, the civil police regularly confines itself to drawing up a report following complaints of evictees and stresses that the matter lies in the competence of the military police. Yet, military policemen are often standing by the scene, when the raids occur.

Thus, on 2 February, the president of the Dalmatian Committee for Human Rights, Tonci Majic was brutally beaten by an eviction squad of 9 men introducing themselves as members of the Croatian Armed Forces (HOS), when he tried to prevent them from physically abusing a women tenant and her two daughters. Civil and military policemen passively watched the incident. Together with the women tenant, he was then interrogated for three hours by the military police. An officer told Mr. Majic that he could not provide any help, because he had "instructions" not to intervene against the eviction.

Shortly after, however, the woman was told that she could return to her flat and

would be helped by the military police, if necessary.

When she came to the flat in the company of Mr. Majic, the door was opened by a woman wearing a black uniform who started shouting that this was now an "Ustashi flat". Several HOS-members making death threats than drove the two out of the building.

Mr. Majic and the evicted women went to the military police for help. While they were waiting for an officer outside the barracks, the man who had led the eviction squad came out of the barracks and hit Mr. Majic's head with a gun.

Mr. Majic suffered a broken nose, mild brain concussion, and severe bruises and cuts in the incident.

The eviction squads generally use brutal terror. In one incident, the seven-year old daughter of a tenant family was driven out in her night gown, with a knife held against her throat. In another incident, a gun was pointed and cocked at the head of a two-year old child. According to figures presented by human rights organisations on the occasion of the visit to Croatia of Tadeusz Mazowiecki, Special Rapporteur of the UN Commission for the Observance of Human Rights in the territory of former Yugoslavia, in December, about 5000 people had been evicted from their flats by force in Croatia.

The ethnic affiliation of the victims seems no longer to be important to the eviction squads, as the growing number of Croatians among the evictees shows.

Moreover, recent statistics indicate that the vacated flats are not given to Croatian war invalids as the eviction squads claim. This is why some observers believe that the evictions are the work of a mafia within the military engaging in war profiteering and making money by taking advantage of the reigning patriotic hysteria and a non-functional state - the Croatian blend of fascist terror and organised crime.

Source: AIM (Alternative Information Network), Message no.56, 1.2.94, and no.61, 3.2.94.

AIM is a network of independent journalists from all republics of former Yugoslavia linked together by an E-mail system. It was created in October 1992 and has three aims: to exchange articles and information among the republics of ex-Yugoslavia;

to prepare the ground for the creation of independent media; and to provide an information service for the media, institutions and NGO's outside former Yugoslavia. For further information contact: AIM, 13, rue Gazan, F-75014 Paris, Tel: +33/1 45898949, Fax:+33/1 45809940.

OPINION

THE SCHENGEN DEBACLE - A CHANCE FOR A DEMOCRATIC TURNABOUT?

The Schengen debacle is raising critical and self-critical thoughts both about the still limited applicability of computer technology for policing and the deficiencies of intergovernmental policy-making outside democratic institutional frameworks. Nothing however, indicates that the essential objectives of the Schengen process - more control and policing - are likely to be dropped.

With the sine die postponement of the entry into force of the implementing agreement, the Schengen process has suffered a breakdown - temporary at least - on two levels: the technical and the political.

On the technical level, persistent trouble in making the SIS, this gigantic tool of computerised policing, operational, tends to show that a wide gap still remains between the conception of ever more sophisticated high-tech devices of control and surveillance and their actual applicability in a complex reality governed not only by binary mathematics, but just as much by innumerable social, economic, political, historical and cultural factors.

The failure of the SIS is not the only illustration of the fact. Some years ago, criminal investigators in Hamburg investigating a squatter movement suspected of being inclined to violence and terrorism sornily admitted that Germany's impressive

electronic data base on terrorism and extremism, APIS, was of no use in identifying the ringleaders of the boisterous squatters. The police computer simply contained too much and too soft (unreliable) information on too many people. The Hamburg policemen gradually discovered that a daily reading of the local newspapers' reports on the squatter issue was far more fruitful for the investigation.

There is political failure too. Executive branches of government have long since shown frustration at the slow pace of European harmonisation in the field of law and order. This is why they developed a scheme of policymaking that enabled them to circumvent to a large extent cumbersome and time-consuming public debate, and parliamentary and judicial control. The scheme consisted of resorting to inter-governmental "ad hoc" and step-by-step cooperation matching the needs of the day and outside clearly defined common legal and institutional frameworks. It was based on a secretive and discriminating policy of co-optation of some Member States acting as the self designated elite of European policing.

By creating *faits accomplis* in this domain, the "elite-states" hoped to gradually impose their political choices on the "retarded" rest of the Community.

As the haste of the southern EU-member states to join the Schengen group shows, this policy has had some success.

Moreover, the scheme of basically secretive intergovernmental "ad hoc" cooperation favoured the rise of the "Fifth power". Politically un-accountable senior officials were exchanging experience, drafting agreements and, *de facto*, making political decisions in a plethora of more or less informal working groups that is increasingly difficult to oversee. The Schengen process was the principal laboratory in shaping this profoundly undemocratic scheme of European cooperation.

The political lesson to draw from the present debacle is, that - in the long run - efforts to achieve European unity by such means are doomed to failure.

As the Masson report to the French Senat emphasises, the Schengen fiasco is the result of "policies engaged without prior concertation, either with public opinion, or with the parliaments". The report further recalls the fact that both the European and

the national parliaments were deliberately kept outside of the Schengen negotiations, the work of the Ad hoc Group on Immigration, the CIREA and the CIREFI, "just as they are now from the work of the committee established by article K.4 of the Treaty on European Union".

The report concludes that "transparency and democratic control are indispensable in creating a European political determination" to cope with serious crime.

In its recent Communication on Immigration and Asylum Policies (see article in this issue) the European Commission appears to draw similar lessons, when it questions the efficacy of ad hoc "approximation" in this policy domain and insists on the need for "legally binding instruments and procedures" as the only means of achieving and implementing a common policy.

The Schengen debacle - and this is maybe its major positive aspect - is likely to further stimulate such necessary reflection about the wisdom of building European unity on intergovernmental ad hoc approximation rather than public democratic consent.

We should seize this possibly unique chance for a genuine public debate.

On the other hand, malicious satisfaction in the face of Big Brother's nervous break-down is unjustified.

The Schengen laboratory has already done great damage by serving as a welcome pretext for "law and order" hard-liners both in the Schengen-member states and in the rest of Europe to infringe on fundamental rights and liberties: France and Germany have amended their constitutional provisions pertaining to the right of asylum. The Netherlands is considering the introduction of a compulsory identity card and similar projects are under way in other countries (see article in this issue on electronic ID-card in Switzerland). Spain has hardened its legislation on drugs and Portugal has abandoned formerly liberal immigration and naturalisation policies vis à vis its former colonies.

On a general European level, discriminatory internal checks and external border controls have become routine.

All these developments have been justified by the respective national governments

as a necessary pre-requisite for the implementation of the Schengen Agreement, which in its turn is presented as the fore-runner of European harmonisation in the fields of justice and home affairs.

Yet, while the Schengen Agreement and thus the implementation of its only positive element, the free movement of persons within the member states, is postponed sine die, the liberty-restrictive "prae hoc" changes in law and practice it caused are likely to remain and further spread.

As a matter of fact, the Schengen debacle was caused by contradictions and rivalries inherent in the scheme of policy implementation chosen, and not by the central implications of the agreement - the curbing of immigration and a general shift of power towards police and security. Regarding these objectives no change of attitudes is in sight.

None of the governments that, for various reasons, have quite successfully obstructed both the Schengen process and the development of the Third pillar of the Maastricht treaty (cooperation in the fields of Justice and Home Affairs) are opposed to these repressive objectives. Britain, for instance, is eager to exploit a powerful European policing computer of the SIS type. Just like the French Interior Minister Pasqua, the British government is opposed only to the Schengen policy, aborted for the time being, of abolishing EU-internal border controls. The argument is about more, not less policing.

N.B.

DOCUMENTS AND PUBLICATIONS

EUROPEAN COUNCIL: Prioritair werkprogramma voor 1994 en structuren

die op de gebied van justitie en binnenlandse zaken moten worden ingesteld (Work programme for 1994 Programme of work having priority and structures to be set up in the domain of Justice and Home Affairs), Brussels, 2.12.93, 10684/93, 11 p., in Dutch. The document contains policy objectives to be implemented in the following fields:

1. Asylum and immigration; 2. Police and Customs cooperation in the fight against narcotics; 3. Judicial cooperation.

Asylum:

Action required as a consequence of the implementation of the Dublin Convention, a final decision on legal and technical aspects of the Eurodac (fingerprint-database on asylum seekers); Considering a Community approach regarding the setting up of a Convention based on the resolutions (on manifestly unfounded asylum applications and safe third host countries) adopted by the immigration ministers in London (November/December 1992).

Immigration:

Adaption of the Draft Convention on the crossing of external borders required by the entry into force of the Third pillar of the Treaty on European Union, and signing of the Convention; Conclusion of works regarding rules of admission of self-employed, workers and students; The consequences of returning persons to "sensitive countries" (with the participation of the UNHCR); Considering cooperation in carrying out measures of removal and methods enabling better control of irregular foreigners, i.a. by combatting illegal immigration and employment; Feasibility study of an electronic data base for the storage and communication of images of false documents; Drafting of a Community handbook on the control of common external borders; Harmonisation of the situation of third-country long-term residents in EU-Member States; Definition of the principles which must be included in bilateral and multilateral agreements on return.

The following Working groups are set up for the realisation of the above programme of action: Migration; Asylum; Visa; External borders; False documents.

The CIREA and CIREFI are to pursue their work.

Police:

Acceleration of work on the draft convention on the setting up of EUROPOL, namely regarding data protection, the role of the national units and the supervision of EUROPOL, in view of concluding the agreement by October 1994; Realisation of the recommendations made by the Ad hoc Group on Organised Crime (see CL No.17, p.9,p.11); The fight against terrorism, including the consideration of visa policies vis à vis states posing a terrorist threat; Cooperation in the field of public order (namely intervention techniques and prevention of group vandalism); Interception of communications (study of legal and technical aspects); Police training; Closer relations with non-EU countries, namely in Central and Eastern Europe.

Customs:

Action programme on an external-borders strategy; Community action regarding air and sea transports, as well as transit passengers; Improvement of the CIS (Customs Information System); Increased cooperation among police and Customs authorities, particularly in the light of the work on the Draft Convention on the EIS (European Information System), and on cross-border crime and illegal immigration. The following Working Groups are in charge of the above programme: Terrorism; Police cooperation (operational and technical aspects); Drugs and organised crime; Customs; Ad hoc Group Europol.

Judicial cooperation:

The Council has set up a priority programme for 1994. It includes action on extradition in fields covered by judicial cooperation in penal affairs, improvement of mutual judicial assistance namely pertaining to prosecution and the execution of sentences, particularly with respect to international organised crime, and better contacts among the judiciary of the various member states in other possible fields, by the introduction of liaison-magistrates.

Pour le Droit de vivre en Famille des Immigrés en Europe, (For the right of immigrants in Europe to family life), introductory report and conclusions of an international conference in Brussels, November 1993, 80 p., in French.

A comprehensive survey presented by GISTI of legal and administrative policies in

Europe infringing on this fundamental right and thirteen concrete proposals for an improvement of the situation.

Published by: Coordination pour les Droits des Immigrés à vivre en Famille, 46 rue de Montreuil, F-75011 Paris; Tel:+33/1 43563498.

EUROPE: MONTREZ LA PATTE BLANCHE! - Les nouvelles frontières du

"laboratoire Schengen", January 1994, edited by Marie-Claire Caloz-Tschopp and Micheline Fontollet Honoré, 481 p., in French.

A quite unique attempt at genuinely interdisciplinary analysis and reflection on the interrelation of borders and exclusion, asylum and violence in the light of the Schengen process. The book is mainly based on texts presented by some 25 authors on the occasion of the International Symposium on Violence and the Right of Asylum in Europe, at the University of Geneva, last September. The aim of this book is not primarily to present a chronology of European debate on the issue, but rather to reveal the spirit and the stakes of the Schengen process in shaping European unity.

In a preface to the book, Professor Lode van Outrive, MEP, writes that "for anybody concerned...with the Europe of the free movement of persons, the following texts are extremely instructive. Undoubtedly, the scientific analyses are of great use and value. This is true both for those examining the etymology and history of notions such as *refugees*, *naturalisation*, or *racism* and those focusing on important categories ranging from *assimilation*, *multiculturalism*, or *integration* to psychological, psychoanalytical analysis, or the socio-political study of the Schengen Agreement...".

The book contains contributions of, among others, François Julien-Lafferrière, Georges-Henri Beauthier, François Rigaux, Marie-Claire Caloz-Tschopp, Mike King, Robert Miles, Abdelmalek Sayad, Colette Guillaumin, and Stephen Castles. Published by: CETIM, 37, Quai Wilson, CH-1201 Geneva; Tel:+41/22 731. The price is sfr.35.- + postage.

The Making of European Immigration Policies, by Jan Niessen, CCME Briefing

Paper no.15, February 1994 (available in English, French, Dutch and German).
This paper does not contain an analysis of current migration and refugee policies. Instead, it is an attempt to formulate proposals for European policy-making procedures using existing international fora, and European policies using international human rights standards. Although the proposals concern migration for political, economic and social reasons, the emphasis is on the latter two types of migration.

Available at: CCME, 174 rue Joseph II, B-1040 Brussels, Tel:+32/2 2302011, Fax: +32/2 2311413. Price: 240 bfr/5£/12 DM.

Les Forces de Police dans l'Union Européenne, by Patrice Meyzonnier, February 1994, 370 p., in French.

This book explains the geographical, human, legal and judiciary environment of the national police forces of each of the 12 European Union countries. It provides information about the organisation, structure, recruitment procedures, hierarchy, training, and career opportunities, as well as the political and union rights of the women and men in charge of Internal Security in Europe.

Published by: l'Harmattan, 7 rue de l'Ecole Polytechnique, F-75005 Paris,; Tel: +33/1 43547910, Fax:+33/1 43258203.

Unlawful Conduct of Police Organs of the Republic of Serbia, Spotlight Report No.9 of the Humanitarian Law Fund, Belgrade, 15.2.94, 4 p. The report names several cases involving harassment, threats, illegal detention, and kidnapping by the State Security Service in the Republic of Serbia.

Published by: The Humanitarian Law Fund, Terazije 6/III, FRY-11000 Belgrade; Tel: +38/11 658430, Fax:+38/11 646341.

Contributors to CL No.23: Lode van Outrive (Leuven), Michael Williams (Hedemora, S), Christine Pierre (Briançon, F), Leonard Doyle (London), Janne Flyghed (Stockholm), Marie-Claire Caloz (Lausanne), Alternative Information

Network - AIM (Paris), Nicholas Bell (Forcalquier, F), Jolyon Jenkins (London),
Nicholas Busch (Falun).