

CIRCULAR LETTER NO. 32

MARCH 1995

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'Fortress Europe?'- Circular Letter is the organ of **Platform 'Fortress Europe?'** and of the **GENEVA GROUP - Violence and Asylum in Europe**. The 'Platform' is an informal international network concerned with European harmonisation in the fields of internal security, policing, justice, data protection, immigration and asylum and its effects on fundamental rights and liberties. It is associated with the European Civic Forum. The **GENEVA GROUP - Violence and Asylum in Europe** came into being in 1993 at a conference organised by the University of Geneva. The Group wishes to contribute to international multidisciplinary discussion on the right to asylum and its interaction with other developments in society. The objective of the Circular Letter is to offer a forum for mutual information, analysis and critical debate among experts and laypeople, scholars and practitioners. The Circular Letter is published 10 times a year. It offers a selection of news, comment and messages based essentially on the contributions of its readers.

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'SCHENGEN'

On 26 March, the Schengen implementing agreement finally entered into force in seven signatory states. Formally, controls at the internal borders between Germany, France, the Benelux states, Spain and Portugal were abolished the same day.

In Greece and Italy, the "N-SIS", the national components of the Schengen Information System (SIS), are not yet operational and external border controls are considered to be deficient by the other signatory states. The Austrian government signed the Agreement on 24 March, but is not expected to be able to implement it before 1998. Sweden has, for the first time, officially shown interest in membership.

The following articles try to provide an overview on the current state of the Schengen process, based on national reports on early effects of the implementation and recent documents of the Schengen Group.

"SCHENGEN" IMPLEMENTATION: FIRST EFFECTS ON BORDER CONTROLS

The Schengen Agreement provides for the abolition of internal border controls among the signatory states and increased control of the common external borders. However, as first reports from various borders appear to show, the signatory states have their own views on the practical implications of these measures. Thus, Germany has stepped up surveillance at its internal border with France, Austria is intending to grant the German police a territorially unrestricted right of "hot pursuit", while cross-border activities of the Italian police are to be confined to a zone of only 10 kilo metres inside the Austrian border. As for Switzerland, a non-Schengen and non-EU state, it is being treated by its Schengen-neighbours France and Germany almost as if it had already joined the Schengen Group.

Already it appears that the loudly publicised "abolition of internal border controls" is "compensated" for by massively increased surveillance of entire border regions.

Austria

On 15 March, a border control operation at the Austro-Hungarian frontier crossing-point, Nickelsdorf, caused a traffic jam with travellers waiting for up to nine hours to cross. Regional security authorities had announced the operation as a "test-run" according to the requirements of the Schengen Agreement's provisions on the control of external borders. The operation drew angry reactions from the public both in Austria and Hungary and the Hungarian Office of Tourism expressed concern about deteriorating relations between the two neighbouring countries. This led the Austrian Interior Minister, Franz Löschnak, to hurriedly and firmly deny any connection between the operation and the "Schengen" process. Instead, the operation aimed at clamping down on smugglers of illegal immigrants, Löschnak claimed. But an investigation by a Viennese daily newspaper soon revealed that the Interior Ministry had actually ordered the security authorities of Burgenland to carry out border controls "according to the provisions of the Schengen Agreement". Some commentators speculate that the Nickelsdorf operation might have got out of control because of overzealous customs officers trying to prove their aptitude for membership of the Border Protection Force that is to be set up in view of the implementation of external border control measures of "Schengen" and the EU.

The new *Grenzschutz* (Border Protection Force) will come under the control of the Interior Ministry (instead of the Customs Administration) and Customs officers fear for their jobs.

The *Grenzschutz* is to recruit 4,400 officers within four years. Its task will consist in controlling Austria's 1,460 km long external border with the Czech Republic, Slovakia, Hungary and Slovenia, as well as with Switzerland and Liechtenstein.

At the "internal" Austro-Italian frontier crossing-point, customs checks at the border have been all but abolished. Instead, travellers are now often confronted with grim-faced, machine-gun toting Gendarmerie officers, posted on the road some hundred metres inside Austrian territory. Their task is to find so-called "passers" (smugglers of human beings), drug traffickers and wanted persons by carrying out random checks.

In March, the Austrian Government was negotiating with Italy on a reciprocal right of cross-border "hot pursuit" for the two countries' police forces, according to the Schengen provisions. The agreement would come into force at the moment of the entry into force of the Schengen Agreement in both countries. The bilateral agreement provides for the police forces of both countries to operate within a 10 km range inside the border of its neighbouring country. A similar agreement between Austria and Germany is more "liberal": it contains no territorial restrictions on cross-border "hot pursuit" (see CL No.26, p.4). The "discrimination" against the Italians by Austria once again reveals the different levels of "prestige" various national police forces enjoy within the EU.

Switzerland

For months, Swiss police and security officials have been warning against the possible effects of the implementation of the Schengen Agreement for their country. A senior federal police official predicted serious impediments to Swiss cross-border traffic, once neighbouring states introduced increased control at their external borders with Switzerland. Off the record, however, police officials in Switzerland, France, and Germany make reassuring statements that the entry into force of the Schengen Agreement will have little effect on the situation at Swiss frontier crossing points. The extent and economic importance of simple commuter traffic, for example in the Basle region, which borders both on France and Germany, prevents a strict implementation of external border control as provided for by the Schengen Agreement. German governmental sources also emphasise that there is actually no need for changes at the borders with its southern neighbour, "since Switzerland has gradually upgraded its border controls in recent years and keeps up with the Schengen states in other respects too". As a matter of fact, Switzerland has to a large extent voluntarily harmonised its security policies with Schengen standards, by, among other things, setting up a plethora of new computer systems dealing with policing and internal security (see CL No.9, p.6; No.13, p.7), by introducing new laws intended to combat organised crime and money laundering, and in the field of foreigners and asylum law (see CL No.30, p.9; No.27, p.2; No.26 p.3; No.25, p.1; No.6, p.3). Swiss police and security agencies are also making successful efforts to develop cooperation with police and intelligence agencies of the EU member states on an informal level.

According to the German Border Protection Force (*Bundesgrenzschutz*), a number of Swiss nationals are registered in the SIS. It is an open question whether Swiss security bodies are exchanging sensitive data with the SIS through the intermediary of Germany. But it seems clear that Germany views Switzerland as a more trustworthy partner in policing than some EU and even Schengen partners. The Director General of the Swiss Federal Department of Justice and Police is confident about the future of police cooperation in the EU: "Our European partner states cannot have an interest in Switzerland becoming a 'factor of insecurity'", he recently argued.

Sources: Luzerner Neueste Nachrichten, 25.3.95; Neue Zürcher Zeitung, 23.2.95, 27.3.95; our sources.

Germany

On the Monday following the entry into force of the Schengen Agreement, Czech commuters working in Germany waited for up to three hours at the Philippsreut (Bavaria) crossing-point. The chief of the local border police said that commuters apparently had not taken the announcement of stricter border controls seriously and had not taken into account the longer waiting times at the border on the way to their work.

Apparently, Polish commuters were more far-sighted. No serious delays arose at crossing-points in the *Land* of Brandenburg, since many Polish commuters left their homes up to three hours earlier than usual, in order to get to their jobs in time. Thus waiting times did not exceed 30 to 60 minutes - "as usual", a spokesman of the *Bundesgrenzschutz* said. Within the first 24 hours of the entry into effect of the Schengen Agreement seven persons registered in the SIS were arrested at the border. An additional five were detained the following day.

No delays were reported at Frankfurt inter-national airport.

The State Secretary at the Federal Interior Ministry, Kurt Schelter, has announced that Germany wishes neighbouring states to introduce an obligation for their railway companies to sell tickets to destinations in Germany only to travellers in possession of valid travel documents.

The move aims at extending "carrier liability" as already introduced for airlines to other carriers. Negotiations are already under way with Denmark and Sweden. Mr. Schelter pointed out that similar obligations imposed by Germany on Scandinavian ferry companies had produced the expected effect. Practically no ferry passengers any longer tried to enter Germany without valid documents (see CL No.22, p.7).

The State secretary also said that the *Bundesgrenzschutz* was offering special training courses to carriers, namely bus companies, "enabling them, in particular, to recognise false documents". Mr. Schelter further pointed to the "good experience" with airlines. Since the introduction of carrier sanctions, the proportion of air-traffic in the total number of illegal entries into Germany had dropped from 20 to 2 per cent, he said.

While the abolition of internal border controls has been generally welcomed by German politicians, many police and customs officers appear to be less enthusiastic. Thus, for example, the Commissioner of the Bavarian Police in charge of Bavaria's frontiers with the Austrian *Land* of Vorarlberg, Switzerland and Liechtenstein, recently declared that "no alternatives exist to border controls". "The further away from the borders we move, the more success in the search of criminals becomes uncertain", he said. The Commissioner pointed to police statistics according to which 40,000 criminals had been stopped and 65,000 "undesirable persons" had been denied entry at the German borders in 1993.

Paradoxically, in view of the entry into force of the Schengen Agreement, German border surveillance has been upgraded not only on the country's "external" borders in the East, but also at the "internal" border to France in the West.

After the discovery, in December, of two bus-loads of "illegal immigrants" (mostly Albanian refugees from Kosovo) in a border town of Baden-Württemberg, 500 additional officers of the BGS have been sent to the Western border. According to a spokesman for the BGS, their task is to systematically track down "people with dark skin and southern looks". Checks in trains heading for the border have also been increased.

According to BGS statistics, from December to February, 82 "smugglers of illegal immigrants" were arrested at the border at Baden-Württemberg. However, only one of the alleged smugglers was actually convicted. This indicates that police statistics are often unreliable. According to various reports, BGS personnel tend to automatically consider drivers of vehicles carrying undocumented foreigners as "reckless smugglers" - an accusation rarely confirmed by the subsequent legal procedures.

Sources: Neue Zürcher Zeitung, 28.3.95; Junge Welt, 2.3.95; Süddeutsche Zeitung, 26.1.95; Neues Deutschland, 24.5.95.

SIS breaks down on second day of operation

The German N-SIS (the national component of the SIS), broke down on Monday 27 March, after only one day of operation. The system, which is based at the BKA (Federal Office of Criminal Investigation) in Wiesbaden, was out of order for six and a half hours, according to the Bavarian Interior Ministry. The breakdown caused serious problems of communication between police computers inside Germany. Some 8,000 stationary and mobile computer terminals are connected to the German N-SIS.

The BKA had first blamed a failure of the Strasbourg based C-SIS (Central support of the SIS) for the breakdown. This assertion was quickly denied by France, which is in charge of the C-SIS. A spokesman for the C-SIS said that no failures had been reported by any member state. Apparently, the BKA did not report the failure to Strasbourg.

The Germans later had to embarrassingly retract their hasty assertion that the French were to blame. The climb down once again reveals rivalries between the Schengen states about who has the best-performing computer technology (see CL No.23, p.1). The incident also highlights an on-going conflict between German Federal institutions and some *Länder*. Indeed, while the federal BKA tried to play down the incident, a spokesman of the Bavarian Interior Ministry rushed to call the incident "disquieting". "This has probably not happened for the last time", he predicted and pointed at Bavaria's long-standing demand for the decentralisation of the German N-SIS.

Source: Deutsche Presseagentur (DPA), 28.3.95.

IMPLEMENTING AND UPGRADING THE SIS

A month before the entry into force of the Schengen Agreement, the Schengen Information System, the first European databank for policing, contained two million items of data on persons and objects. The further upgrading of the system, as well as of the complementary SIRENE systems, is under way.

The "SIRENES"

While the setting-up of the SIS has gradually become known to a larger public, a second system of automated data banks, the so-called "SIRENE" system set up within the framework of the Schengen group has, so far, drawn little attention. However, the SIRENES are far more dubious than the SIS, so far as extensive automatic exchange of data and data protection are concerned. While the SIS contains only limited, so-called "standardised" information, the national SIRENES contain comprehensive, non-standardised information - that is, "free text" material which includes "soft" data on non-suspect persons.

"SIRENE" stands for "Supplementary Information at the National Entry". The SIRENES' role is to enable the mutual exchange of information between national police authorities of the Schengen states about persons and objects registered in the SIS. Thus, via the SIRENE system, police in one member state who have arrested a person whose name has been entered into the SIS by another member state can request additional information (not contained in the SIS) from the state that has entered the data into the SIS.

In the seven Schengen states now implementing the Agreement, the SIRENE offices are operational 24 hours a day.

The Provisional Common Authority of Control (ACCP) of the Schengen Agreement has expressed the need to provide the SIRENES with a "satisfactory legal basis". Indeed, the SIRENE system is not even mentioned in the Schengen Implementing Agreement.

The C-SIS (Central support) in Strasbourg

The functioning of the C-SIS is ensured by a staff of nine managers and 18 operators, organised in 5 teams.

Apart from the respective national police authorities, the national authorities with responsibility for issuing visas now have access to the SIS, as far as information on "undesirable foreigners" (Schengen Implementing Agreement article 96) is concerned.

The setting-up of a Permanent Management Unit for the administration of the system as a whole (including the N-SIS and the SIRENE-offices) is under way.

In February, the C-SIS in Strasbourg contained 1,916,247 items of data. The large majority of these data were entered by Germany (1,171,491) and France (699,799). Almost 800,000 items of personal data stored in the C-SIS concern "undesirable foreigners" (including asylum-seekers whose application has been turned down in one Schengen member state). A total of 2,788 persons were registered in the SIS for the purpose of extradition. France was the only country having reported

persons for "covert surveillance" (1,286) according to article 99 of the Schengen Implementing Agreement. Germany reported 130,143 stolen identity documents.

Sources: **Décision de l'Autorité de Contrôle Commune Provisoire (ACCP)**, Brussels, 22.2.95, SCH/Aut-contr (94) déc. 3 rev.; **Note du Comité d'Orientation SIS**, Brussels, 24.2.95, SCH/OR.SIS (95) 17, 2e rév.

SCHENGEN VISA POLICY: KEEPING OUT "UNDESIRABLE FOREIGNERS"

The common list of countries whose nationals are subjected to a visa obligation in all Schengen states, included 126 countries in February.

To nationals of 18 of these countries, one or several other Schengen states must be consulted prior to the issuing of a visa.

The common list of countries whose nationals need a visa in some Schengen states only comprises 29 countries, including all Latin American states, some South East Asian countries, and the following European countries: Croatia, Bosnia-Herzegovina, Serbia-Montenegro, and Poland.

The list of countries whose nationals are exempted from a visa obligation is made up of the following 20 countries (apart from all EU-member states):

Andorra, Canada, Cyprus, the Czech Republic, South Korea, Hungary, Iceland, Israel, Japan, Liechtenstein, Malta, Monaco, New Zealand, Norway, San Marino, Slovakia, Slovenia, the USA, the Vatican, and Switzerland.

Common instructions to the Consulates

A confidential handbook with instructions to the foreign representations of the Schengen States on how to implement common visa-regulations contains a section on cooperation of the consulates of the Schengen states on the local level.

Among other things, consulates shall cooperate in evaluating "migratory risks" in an attempt to determine common criteria for the examination of visa applications, exchange information regarding counterfeited documents and networks of illegal immigration, and co-operate on the rejection of "manifestly unfounded" or "fraudulent" visa applications.

Cooperation shall also facilitate the identification of persons who try to make visa applications at the consulates of other Schengen states after having been turned down by one member state.

As a rule, the SIS (to which consulates will have on-line access) must be consulted prior to issuing a visa. Applicants must present their request personally and orally at the consulate, "in particular, whenever there is doubt concerning the actual object of a stay and the intention to return to the country of origin". Consulates shall examine the trustworthiness (*bona fides*) of applicants. "Trustworthy" applicants, such as frequently travelling business men are thus likely to benefit of a speedy treatment of their applications, while suspected would-be immigrants must expect to be submitted to lengthy cross-examinations.

Sources: **Décision du Comité Exécutif (Schengen), Annexe 1**, Bonn, 22.12.94, SCH/Com-ex (94) 24 confidential/ SCH/II-Visa (93) 11, 7e rév.; **Instruction Consulaire Commune**, Schengen WG II, Sub-group "Visa", Brussels, 22.12.94.

"SCHENGEN" AND THE SCANDINAVIAN COUNTRIES

The Danish Government has already applied for membership of the Schengen Group. And on 27 February, the Swedish Prime Minister Ingvar Carlsson announced at a meeting of the Nordic Council in Reykjavik that his government is preparing the country's accession to "Schengen". Carlsson's announcement came as a surprise to the leaders of all other parties represented in the Swedish parliament. Carlsson however emphasised that the maintenance of the Nordic Passport Union was a precondition to a Swedish membership in the Schengen Group. Both Norway's and Iceland's Prime Ministers have stressed their countries' preparedness to carry out external border controls according to Schengen requirements. However, given Norway's and Iceland's non-membership of the EU, the matter is causing some headaches for diplomats both in Brussels and the Nordic capitals.

Denmark too is unequivocal about the prerequisites of its membership of "Schengen". Recently, the country's negotiators clearly stated that the introduction of (external) border controls at the internal borders of the Nordic Union are "impossible from a political point of view". This indicates a harshening of Danish positions. As late as November 1994, the Danish delegation considered that an "adaptation" of the Nordic Passport Union to "Schengen" requirements was possible.

Denmark proposed the following possible solutions to the problem:

- a) Without becoming members of the Schengen group, Norway and Iceland (both are non-EU states) carry out external border controls on behalf of Schengen, i.e. their borders to the Schengen territory become internal borders at which controls are abolished.
- b) Schengen reaches a special agreement with the two countries.
- c) Norway and Iceland implement part of the Schengen provisions or even join the Schengen group as members of the EEA.

Norway has already indicated its interest in joining the Schengen group on several occasions and stressed before the Schengen Presidency that such a step would not even require a referendum.

However, the delegation of the Belgian Presidency of the Schengen Group has reservations regarding the Danish proposals, on the following grounds:

- Hitherto, accession to the Schengen Agreement could not be subjected to any conditions and permanent concessions demanded by one member state.
- The realisation of external border controls in the Schengen area implies access to the SIS, which is not granted to non-Schengen states according to the text of the Agreement.
- Even if Norway was granted access to the SIS, a problem would remain regarding the Schengen states' common visa policy and their mutual consultations on visa related matters. "For Schengen, the problem is not so much about Norwegians but concerns foreigners who could freely enter the Schengen area via Norway", it says in a report of the Schengen Central Group.
- A partial adoption of the Schengen Agreement by a non-member state would amount to a "Schengen à la carte". Moreover, in this event, Norway would have to implement decisions of other states on visa matters on its own territory.
- The membership of an EEA-country would not only require a change of the Schengen Implementing Agreement, but also result in the impossibility of integrating Schengen into the Third Pillar of the Maastricht Treaty on European Union at a later stage.

Based on the above, the Delegation of the Belgian Schengen presidency, according to a document dated 22 February, drew the conclusion that "it seems out of question to make substantial progress in the short term".

The document also mentions Danish concern about increased controls at the German-Danish borders expected as a result of the entry into force of the Schengen Agreement.

Both in Norway and Sweden, government plans aiming at gaining some form of Schengen membership have drawn angry reactions.

However, criticism of the Schengen Agreement does not focus so much on matters related to civil liberties, such as police cooperation, the SIS and increased external border controls, but rather on the abolition of internal border controls. In both countries there is a strong public belief that controls at national borders are an effective means of preventing the influx of narcotics. Just as in Britain, the traditional "insularity" of Scandinavians might be the real reason for their opposition to the abolition of border controls.

EU opponents in Norway claim that, by seeking to join the Schengen cooperation, the government is showing total disrespect for the people's will expressed in the Referendum on EU membership, and is deliberately playing down the political consequences of an eventual Schengen membership. This view is likely to be supported by a majority of Norwegians. Recent opinion polls show that the voters are not regretting their No vote to EU membership.

Sources: **Compte rendu sur les entretiens entre la Présidence Schengen et le Danemark menés à Copenhague le 15 février 1995**, Schengen Central Group, Brussels, 22.2.95, SCH/C (95) 13; Svenska dagbladet, 27.2.95; Dagens Nyheter, 28.2.95; Klassekampen, 28.2.95; Le Monde, 1.3.95. See also in this CL.: Documents and Publications.

DENMARK READY TO CONSIDER EXTRADITION OF DANISH CITIZENS TO EU STATES

In a Danish reply to questions by France and the Netherlands regarding the conditions of Danish membership of Schengen, it says that "Denmark has declared its preparedness to consider - under conditions defined in detail - an abolition of the Danish prohibition on the extradition of Danish nationals, and thus, also of its declaration regarding article 6 of the European Convention on Extraditions of 13 December 1957".

The Danish paper further states that Danish law already fails to prohibit the extradition of non-nationals residing legally in Denmark.

Source: **Réponses du Danemark aux questions complémentaires posés par les Pays-Bas et par la France**, Groupe de Travail IV "Relations extérieures", Brussels 16.2.95, SCH/IV (95) 2.

EUROPEAN UNION

EU JUSTICE AND HOME AFFAIRS COUNCIL IN BRUSSELS

The Council of Ministers of Justice and Home Affairs (JHA) met in Brussels under the presidency of French Interior Minister Pasqua, on 9-10 March. A provisional legal basis for the Europol nucleus EDU, and the draft Convention on Europol were at the focus of the meeting. Other items discussed included the planned Customs Information System (CIS), the development of EURODAC, the European data bank of fingerprints, terrorism, extraditions, asylum policies and fraud against the EU.

Europol Convention

Agreement was reached on the automatic inclusion (demanded by Spain) of terrorism on the list of crimes dealt with by Europol, by, at the latest, two years after the entry into force of the Convention.

Long-standing disagreement on the architecture of Europol's own electronic information systems appears to have been overcome by the ministers of the 15 EU member states. No agreement is, however in sight regarding rules on citizens' access to their personal data and on a jurisdictional role for the European Court of Justice.

Europol is to be equipped with an extensive automatised information system of its own (i.e not to be incorporated into with the planned European Information System (EIS)).

The system will be composed of three particular data registers - the Information System, the Analysis Register, and the Index System.

The Information System

The Information System (IS) is a central register of standardised data including the personal data of

- persons sentenced for or suspected of a crime (within the scope of Europol);
- potential future offenders;

Moreover the IS will contain data on offences, reproached offenses, the times and places of perpetration, and the authority responsible for the records.

Automated storage and retrieval of data is possible for Europol, the National Parties, i.e. the national authorities in charge of cooperation with Europol (one in each member state), and the Liaison Officers of the member states stationed at Europol's headquarters.

The Analysis Registers

The Analysis Registers (ARs) are special temporary registers to be set up by Europol for the analysis of particular criminal activities and environments.

Apart non-person related information they will contain extensive data (including "soft" data) on:

- persons registered in the IS;
- potential witnesses in the event of future criminal prosecution;
- potential victims of future crimes;
- contacts and accompanying persons of a suspect;
- informers and other reference persons.

According to the Draft Europol Convention of 10 October 1994, only Europol has full access to the ARs. The Liaison Officers' access is restricted to the mere retrieval of data concerning persons registered in the IS. The National Parties have no access but are instead bound to communicate all relevant information.

Europol may request information relevant to the ARs from EU institutions, Third states, international organisations (e.g. Interpol) according to rules agreed by the Council. On the basis of special agreements, data collected by Third parties can be retrieved automatically.

In the view of the Utrecht-based "Standing Committee of Experts on International Immigration, Refugee and Criminal Law", the ARs "will enable Europol to become a real criminal intelligence service on a European/international level, the first such body ever to have been created".

The Index System

The Index System exclusively contains key-words referring to information stored in the Analysis Registers. The Index System merely provides information about whether and where data relating to the entered key-word are kept.

According to the draft Convention of 10 October 94, access is limited to Europol and the national Liaison Officers. The latter's access is further restricted merely to information concerning their own country.

Disagreement mainly turned on the National Parties' right of access to the ARs. France, in particular,

considered that national police and security authorities should have full access to the highly sensitive intelligence data stored in the ARs. The French demand high-lighted this country's reservations against a Europol architecture suggesting a possible operational role for the agency and a loss of sovereignty for national police.

It now seems that, in an effort to achieve at least some progress in the thorny negotiations on Europol, Interior Minister Pasqua has given in to mainly German pressure and accepted a system architecture basically following the outlines described above.

However, the dispute among member states about a jurisdictional role for the European Court of Justice was not settled at the Brussels meeting. Such a role for the Court is vigorously opposed by the United Kingdom (see CL No.29, p.1).

According to Brussels sources, no progress was made with regard to the sensitive issue of citizens' right of access to their personal data. France and Britain are said to object to any mention - even in a restrictive form - of such a right in the Convention, while Germany points to its constitution which guarantees such a right - although with many exceptions.

Another unresolved problem is about whether and when personal files in the ARs stored for the purpose of a particular analysis operation, must be erased, once the operation has been closed.

Europol Drug Unit (EDU)

The EDU has been at work since January 1994. It was set up as the first unit and nucleus of the future Europol, by mere inter-ministerial agreement.

In what may be seen as an attempt to meet mounting criticism against this obvious lack of a real legal basis for the first unit of Europol, the Council has now decided to replace the inter-ministerial agreement on the EDU by a "Common measure" according to article K.3 of the Maastricht Treaty. At the same time, the number of forms of crimes dealt with by the EDU was extended far beyond the mere fight against drugs to trafficking in nuclear materials, smuggling of illegal immigrants, trafficking in stolen cars, as well as criminal organisations and money laundering involved in the above criminal activities.

EDU, the office received almost 600 requests of information within its first year of existence.

Four criminologists employed by the EDU have begun with setting up a system of "strategic and operational analysis. Under the EDU's provisional statute, they are, however not authorised to store any personal data in a central data bank.

In February 1995, 27 national Liaison Officers were at work at the EDU office in The Hague (Germany: 6; France: 4; The Netherlands: 3; Belgium, Spain, Greece, Italy, UK: 2; Denmark, Ireland, Luxembourg, Portugal: 1). The new EU member states Austria, Sweden and Finland are expected to delegate Liaison Officers shortly.

While the EDU is, for the time being, prohibited from storing or processing data in central electronic data banks of its own, the Liaison Officers have full access to their national data banks and may exchange data with their colleagues from the other member states.

According to the Report of Activities, this has contributed to the speeding up and improvement of European police cooperation. The report names three practical cases, where this "pragmatic approach" lead to the detection of international criminals.

The personnel of the EDU consists of 30 persons, among whom five computer experts and 14 security agents. The Liaison Officers are not part of the EDU personnel, but are directly accountable to their respective member states.

On a technical level, the installation of equipment was achieved enabling:

- the transmission of coded information to some national criminal investigation authorities (Germany, Denmark, Belgium, Ireland and Holland);
- on-line access of the Liaison Officers to their national data banks (Germany only).

Connections have been established with a number of non-EU information sources, "in particular the National Criminal Justice Reference Service in Washington DC, CompuServe, and the UNCJIN-L (the United Nations information network on Criminal Justice).

The Customs Information System (CIS)

The Council accepted the principle of an "anticipated and provisional application" of the Convention - i.e the use of the CIS by the member states - by means of a "specific agreement". No agreement was reached with regard to the extent of the judicial competencies of the European Court of Justice.

Other issues

The Council agreed on the regulation to produce a prototype for a uniform common visa. A number of reservations of some member states must however be removed, before a final adoption of the regulation.

An on-going study of the needs and requirements states with regard to the electronic fingerprint register EURODAC is to be extended to the three new EU-member states.

The JHA ministers further agreed on a draft Resolution on minimal guarantees of the asylum procedure (to be adopted by the next Council), signed a Convention on facilitated extraditions between member states (the first convention adopted in the framework of Title VI of the Maastricht Treaty), and heard a report of the Presidency

on "Islamic terrorism".

Sources: Session 1831 of the Justice and Home Affairs Council, press-release, Brussels 10.3.95, 5423/95; **Rapport sur les activités de l'Unité Drogue d'Europol** du 1er janvier au 31 décembre 1994, The Hague, 24.1.95; **Gemeinsame Massnahme bezüglich der Europol-Drogenstelle** (Common measure with regard to the EDU), EU, the Council, Brussels, 7.3.95 (adopted 9.3.95), 5346/95, limited; *The Draft Convention on the Establishment of Europol* Comments by the Standing Committee of Experts on Immigration, Refugee and Criminal Law, Utrecht, 10.1.95.

BELGIUM

INHUMAN CONDITIONS IN DETENTION CENTRES FOR DEPORTEES

A Belgian MP, Germain Dufour, has highlighted, once again, the scandalous situation in so-called "closed" reception centres for rejected asylum-seekers awaiting deportation. In the infamous centre "127 Bis" at the new terminal of the Brussels-Zaventem airport, deportees have been locked up for up to 15 days in pitch black isolation cells, and the compound is surrounded by razor wire.

The Green MP had taken up the a recent case of a Zairian women and her two daughters. The women was detained at the "127 bis" centre and deported to Zaire with one of her children on 3 January. She has since vanished; her brother in Zaire was seriously beaten by members of the Zairian state security on the very day of her deportation. The women's other 13 year old daughter escaped from the centre in December, together with 13 other deportees and is still reported missing.

Mr Dufour stresses the total lack of public control over the centres: "Nobody knows, what's going on there and what happens to the people who pass there." Indeed, according to the internal rules of the centre, except for parliamentary committees, not even MPs have access to the compound.

The Belgian asylum support group, Open Frontiers, and the League for Human Rights have described the "127 bis" centre as a "concentration camp". According to Open Frontiers, isolation cells, which measure 1.5 by 3 metres and have no window, have been used as a back-up to ordinary dormitories. Deportees whom airlines refuse to take on board are also placed in the isolation cells when attempts to deport them are thwarted.

Sources: *Le Soir*, 10.1.95; European Race Audit, No. 12, March 95; MRAX-Info No. 76 - January 95.

BELGIAN GENDARMERIE INFORMS ZAIRIAN SECURITY ON DEPORTEES

In early February, a former officer of the Zairian Civil Guard (a special intervention force), currently waiting for a decision on his asylum application in the Netherlands, accused the Belgian airline, Sabena, of communicating the names of deportees on flights to Kinshasa to the Zairian security services, 15 minutes before landing. As a consequence, Zairian deportees from Belgium are seized by the "A4", the notorious National Intelligence and Protection Service headed by President Mobutu's son.

Kinshasa airport as a member of the Civil Guard from 1990 to 1993, the returned refugees are then subjected to systematic search and physical abuse. In absence of money to bribe the officers or other "protection", the returned asylum-seekers are imprisoned for days, sometimes for months. Some also simply disappear.

The former officer emphasised that no Zairian humanitarian organisation was able to control what is happening at the airport.

According to members of the personnel of Sabena, the passenger list includes, apart from the routine particulars of every passenger, a special indication of the "status" of each passenger. The names of Zairian returnees are accompanied by the mentions "inad" for undocumented voluntary returnees, and "dépa" for deportees.

As required by Zaire, Sabena regularly communicates the passenger lists to the "station manager" of Kinshasa airport who then hands them over to the security services.

Further investigations by the Belgian daily *Le Soir* have brought to light that, besides the airline's passenger list, there is another list, drawn up by the Belgian Gendarmerie at Zaventem. This list contains the personal data of all rejected asylum-seekers on a Sabena flight and is transmitted to the Zairian Immigration Office via the Captain of the plane.

Police cooperation is working in both ways. Thus, the Gendarmerie at Brussels-Zaventem airport is now in the habit of thoroughly checking Zairian passengers as soon as they leave the plane. According to numerous witnesses, the Gendarmerie often physically abuses passengers with false travel documents suspected of being asylum-seekers. "This is what one calls a policy of dissuasion", an article in *Le Soir* concludes.

Source: Le Soir, 7.2.95, 8.2.95.

PRO-ACTIVE POLICING OF YOUTH

In an effort to cope with increasing street delinquency, the Gendarmerie in some Belgian towns is "pro-actively" registering and filming non-suspect youths, as recent cases have revealed.

In last December, the Gendarmerie carried out a vast operation of identity checks at a square in Brussels frequented by many youths. Twenty seven youths were brought to the Gendarmerie station. The Gendarmerie took photographs of all the youths and registered their particulars.

None of the youths had, however, committed any offence. The operation of the Gendarmerie had been ordered by the Royal Prosecutor of Brussels following a series of assaults in the area. The Prosecutor later admitted that he had ordered the operation within the scope of "pro-active" or "preventive" search of delinquents, but that there was nothing illegal about such proceedings.

The proceedings of the police angered social workers in the district who in particular wanted to know, why pictures had been taken of the youths. One social worker was told by the Gendarmerie that this was done in order to set up a photo-album to be shown to victims of aggression.

Youths complain that the gendarmerie has conducted similar operations at other occasions. Each time the youths concerned were told that the objective was to set up a "register".

Legal experts of the Belgian League of Human Rights question the legality of such operations, and in particular, of taking pictures of non-suspects. The League suspects that police, supported by certain local prosecutors, are "setting up special registers without authorization".

The president of the Public Commission for the Respect of Privacy says that questions arise about "preventive" registers set up by police forces. The same can be said about increasingly widespread video surveillance of public places. For the time being, no regulations exist in this area.

Source: Le Soir, 20.1.95

AUSTRIA

"DRAG NET" SEARCH IN CARINTHIA

In the late 70s and the 80s, German anti-terrorism experts developed to methods of search involving the use of computers, known as *Rasterfahndung* (search by screening) and *Schlepp-netzfahndung* ("drag net" search). At regular intervals, police checked all movements of persons in a designed area. All data on persons and vehicles were electronically stored and matched with data from earlier operations. The declared purpose was to learn about lifestyle and movements of people and, in a second stage, detect particular persons whose way of life differed from average people's according to the patterns established by the police computers.

Meanwhile, the use of these methods of search has spread to other countries.

Recently, the police of the *Land* of Carinthia stopped thousands of commuters on their way to work in the regional capital of Klagenfurt. The operation was ordered by the Federal Interior Ministry. According to unnamed sources in the Interior Ministry, similar checks are to be carried out in coming weeks, "at any time of the day or the night". Police investigators say that the search operations aim at finding the perpetrators of a series of bomb attacks that occurred in Austria between 1993 and early 1995 (see CL No. 31).

In an attempt to meet mounting criticism against security authorities' dealing with the bomb attacks, Interior Minister Löschnak recently demanded more powers for the police in the interest of increased public security.

Sources: Kärntner Tageszeitung, 16.3.95; our sources.

ANNUAL "ULRICHSBERG" COVENANT INFILTRATED BY NAZIS

For years, German nationalist folklore, sports, and student associations have met at an annual memorial celebration on the picturesque mountain top of Ulrichsberg, near Klagenfurt. Regularly, the event drew busloads

of former members of SS troops from Germany, the Netherlands, France and Belgium and "guest-delegations" of Italian fascists. Some of those attending carried their old SS uniforms, and German nationalist students in uniforms drew their swords, when speakers surrounded by an ocean of flags told tales about the camaraderie of old days, Germany's fight against Bolshevism and for a "free, united Europe", and called for a minute of silence in honour of German war criminals, such as Rudolf Hess.

There was music too at the Ulrichsberg ceremonies, played by a brass band of . . . the Austrian army. The regional government seldom missed an occasion to send a representative to the Ulrichsberg. Regional Gendarmerie assured an orderly and intimate atmosphere by keeping away "undesirable" witnesses. Thus, on one occasion, a Dutch TV team trying to film the event was threatened and "escorted" back to their car by police.

For years, Austrian anti-Nazi organisations demanded the prohibition of the Ulrichsberg ceremony - without success.

But in response to the recent increase in extreme-right violence in Austria, The Federal Interior Ministry has now announced that it will no longer authorise any official participation of the Command of the Carinthian Gendarmerie at the meeting. A spokesman for the Ministry said that the decision was based on evidence of regular involvement of extreme right groups in the ceremony.

In the meantime, a member of the regional state security (*Staatsspolizei*), has revealed that Peter Binder and Franz Radl, two neo-Nazis accused of involvement in the letter bombings of the past two years, attended the Ulrichsberg ceremony last year.

As for the further participation of its brass band, the army has not taken any decision yet. Spokesmen said that the army had not been officially notified of the Interior Ministry's decision.

Source: Kärntner Tageszeitung, 16.1.95, our sources.

GERMANY

GENERAL HALT ON DEPORTATIONS OF KURDS TO TURKEY LIFTED

A general halt on deportations of Kurds, ordered by the Federal Interior Minister, Manfred Kanther, after the sentencing of six Kurdish MPs in Turkey (see CL No.30, p.7), was lifted on 15 March. Mr Kanther justified the measure with an agreement with his Turkish counterpart, Nahit Mentese on the "treatment of deported criminals in the entourage of the PKK". According to the president of the CDU/CSU parliamentary group, Wolfgang Schäuble, the Turkish government has promised a fair constitutional treatment of Kurdish returnees.

Speakers of the opposition in parliament, however, protested against the decision, calling the agreement a "smokescreen". The liberal Federal Minister of Justice, Sabine Leutheusser-Schnarrenberger, regretted the decision of the Interior Minister. Mr. Kanther should not have lifted the halt on deportations before the hearing of the parliamentary committee on internal affairs on the human rights situation in Turkey, she said.

Meanwhile, the German *Länder* governed by the SPD (Social-Democrats) have announced that they would maintain the ban. In practice, the various SPD governments in the *Länder* have implemented the measure very differently.

Source: Junge Welt, 13.3.95, 25.3.95.

AIR-PASSENGERS PREVENT DEPORTATION OF ALGERIAN ASYLUM-SEEKER

Algerian asylum-seekers whose application has been turned down, are systematically deported back to their country of origin by German authorities.

Recently, it became known that the Federal Interior Ministry regularly communicates the personal data and the flight dates to the Algerian embassy in Bonn, before putting deportees on the plane. As a consequence, returnees from Germany are often detained and maltreated for weeks by Algerian police upon arrival.

Things did not work as planned in the case of Algerian asylum-seeker Boualem Sadadou. When some inhabitants of the town of Soest (North Rhine-Westphalia), where Mr Sadadou had stayed as an asylum-seeker, learned about his planned deportation, they succeeded in finding out the date and time of departure of the plane to Algeria.

On the day of departure, a delegation of citizens of Soest drove to Dusseldorf airport and distributed leaflets to the passengers who were checking in on the flight: "Please ask your flight captain to refuse the transport of Mr. Sadadou, who is threatened with persecution in Algeria. Mr. Sadadou will thereby get another chance of awaiting a new decision free and alive". The leaflet also contained a picture of Mr. Sadadou and petition lists of various local groups.

The action was a success. Several passengers actually sent a common message to the pilot, saying that the passengers refused to fly, "as long as the Algerian

refugee is on board". The flight captain quickly decided that the deportee's presence on board amounted to a safety risk, whereupon Mr Sadadou was removed from the plane.

Source: Junge Welt, 9.3.95.

OPINION

MUDDLING WITH EUROPOL: WHO WANTS WHAT?

The EDU's Report of Activities and the significant extension by the Justice and Home Affairs (JHA) Council of the Unit's competencies (see article in this CL), makes one thing clear: The ministers are determined to quietly and gradually consolidate and expand the EDU, pending the entry into force of a Europol Convention that is now likely to take many years. The Germans enthusiastically call such proceedings a "pragmatic approach". Translated, this means creating *faits accomplis* on a basis of "ad hoc" agreements outside parliamentary and judicial scrutiny and legalising them "post hoc", if so required by some parliamentary busy-bodies.

The JHA ministers' most recent exploit, to rename their provisional and purely technical-administrative agreement on the establishment of the EDU a "Common Measure", does not make things better. As a matter of fact, "Common Measures" adopted under Title VI of the Maastricht Treaty do not provide for any parliamentary or judicial involvement worth mention. Legal experts and, as it seems, even the governments of the EU-member states, hesitate or even openly disagree about whether a "Common Measure" is actually legally binding or not. It seems as if nobody was particularly eager to examine the matter in depth, as both possible answers would deeply question the very legitimacy of the EDU. Declaring the "Common Measure" legally binding would imply that in the EU, executive powers are authorised to make law without parliamentary involvement. Declaring it legally non-binding would reduce the EDU regulations to a sheet of recycling paper, by depriving the Unit of any formal basis.

Thus we may expect the Council to muddle along as usual, while fundamental freedoms and liberties of European citizens are undermined step by step.

The EDU is already establishing contacts with automatised data registers of policing in the USA. Extensive cooperation with "third parties", including automatised access to their databanks, is provided for in the draft Europol Convention.

The draft also provides for the storing of non-verified personal data of any citizen considered by police to be a "potential victim of a future crime". In other words, if you are an asylum-seeker you may well be considered as a potential future victim of a smuggler gang, and if you are a proud car-owner, you might find your name stored in the "Analysis Registers", under the same rubric. However, this will probably not cause you any sleepless nights. Indeed, you are unlikely to ever learn about the police interest in your person. Access to your personal data, you must know, will be denied, if this could hinder the work of the police.

It seems that most governments are getting used to the prospect of having to live without a Europol Convention for a long time to come. Some observers in Brussels even wonder if all member states actually want a Convention and, in the last analysis, Europol.

The currently prevailing concept for Europol is largely "made in Germany". The German idea centred on making Europol a sort of "European Federal Office of Criminal Intelligence", with own powers. The role of Europol and its relations with the different member states would be comparable to the German BKA's position vis-à-vis the *Länder*. This concept implies two things. First, a common willingness of the EU member states to move towards a "federalist" Union; second, mutual confidence of all member states' police and, in particular, intelligence services.

None of this exists, for the time being. A number of member states, mainly the UK, France, Denmark, Spain and, recently, Sweden, are more or less openly opposing any development of the EU towards more federal structures.

They are likely to press for a continuing development of police and internal security cooperation within the traditional framework of intergovernmental cooperation under Title VI (on Justice and Home Affairs) of the Maastricht Treaty. Thus, any Europol architecture suggesting a "federal" framework makes them uncomfortable.

The national police and intelligence services seem to have considerable reservations with regard to sharing sensitive information and know-how with a fairly anonymous central police office and, thereby, with police and security forces of member states they consider as "unreliable". There are reasons to believe that this view is very common among grassroots police and intelligence officers. They will hesitate to share any information with an anonymous central office, and hence its data banks. Instead, they will tend to privilege "private" contacts with colleagues in the member states whom they know personally and whom they trust.

The French have, for a long time, opposed an architecture of Europol's data registers, which exclude the national authorities of each member state from full access to all information stored in the Europol computers, while the British have expressed strong reservations against making sensitive information accessible to all national parties on the grounds that this would result in an unacceptable risk of leaks of sensitive information.

The French and British arguments are less

contradictory than might appear at the first glance. As a matter of fact, in the last analysis, they both amount to questioning much of Europol's *raison d'être*. Indeed, the French must have been well aware that compliance with their demand would have amounted to making Europol's data banks useless. Given Europol's strong (and very questionable) focus on intelligence activities, no member state, France included, would hand out any information of importance to a Europol unable to prevent leaks. Instead, police cooperation and intelligence exchange would probably continue to develop relationships with "reliable partners", on a more informal level and according to the rules of "give and take".

France and Britain want.

We may guess that this is exactly what both

Some observers in Brussels also believe that the willingness currently shown by Britain and other "anti-federalist" member states to achieve some form of agreement on Europol might actually aim at proving the effectiveness of inter-governmental cooperation under the Third Pillar of the Maastricht Treaty, with a main purpose of countering in advance calls for an integration of the Third Pillar into Community law.

French lack of enthusiasm for Europol could also indicate that, in secret, France is still cherishing the idea of developing European police cooperation within the framework of Interpol (whose headquarters are in the French City of Lyon), rather than Europol.

French Interior Minister Pasqua's spectacular effort to overcome the deadlock in negotiations on the Europol Convention by proposing a "compromise" on the System architecture might soon prove to be a purely tactical move. Elections are on the agenda in France, and Mr. Pasqua, who has successfully cultivated his image of a "tough-on-crime" minister, is eager to suggest at home that, far from obstructing the setting-up of Europol, he is doing his best to speed up European police cooperation against "illegal migrants", and other "criminals and terrorists". However, one should not forget that the French elections will be held in May. It remains to be seen, whether France will be just as committed to reaching agreement on Europol one month after the elections, at the European Council in Cannes in June - the next occasion for the governments of the EU member states to sign the Convention.

N.B.

DOCUMENTS AND PUBLICATIONS

EUROPEAN COUNCIL:

The protection of individuals with regard to the processing of personal data and on the free movement of such Data, Common Position to be adopted by the Council, with a view to adopting the Directive of the European Parliament and of the Council, Brussels, 3.2.95, 12003/1/94 REV 1, *restreint*.

As compared to earlier drafts, this text provides for exemptions from the requirements of certain provisions regarding the processing of personal data for purposes of journalism, as well as literary and artistic expression. The new provisions were introduced upon request of Sweden, whose national law contains extensive freedom of information guarantees. Swedish journalist organisations, however, consider the draft provisions as being too vague.

It should further be noted that the Directive does not pertain to data protection in the field of public security and criminal law (i.e. the Third Pillar of the TEU).

SCHENGEN:

Projet de Manuel Commun, Brussels, 13.2.95, SCH/Gem-Hand (91) 10, 18e rév., *confidentiel*, 44 p. in French.

Draft Common Handbook on the implementation by the authorities of the Schengen states of the Schengen Agreement's provisions on external border controls.

Human Rights Project Bulgaria: Annual Report 1994, Human Rights project, 55-A, Neophit Rilski Str., 1st floor, apt. 3, 1000 Sofia, Bulgaria; Tel/Fax +359/2 882616.

Among other information on the Human Rights situation in Bulgaria, the report contains a chronological inventory of cases of Human Rights violations against Roma.

The Humanitarian Law Center (earlier: Humanitarian Law Fund):

- **Spotlight Report No. 16**, February 1995, 30 p. Comprehensive information on the recent increase of Human Rights violations against the Albanian population in Kosovo.
- **Spotlight report No. 17**, March 1995, 7 p. On the trial of General Trifunovic. The general, a commander of the ex-Yugoslav People's Army was sentenced to 11 years imprisonment after the Belgrade Military Court had found him guilty of subverting the defensive capabilities of the country. According to the HLC, the general's only crime consisted in meeting

his "duty to respect the rules of humanitarian law, the human rights of the citizens of [his] country, and the code of conduct of [his] country".

Order at: HCL, Terazije 6/III, Belgrade, FRY, Fax: +381/11 646341; Tel: +381/11 658430.

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The Circular Letter is published with the assistance of grants from:

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'Fortress Europe?'- Circular Letter

Utgivare: N. Busch, Blomsterv.7, 791 33 Falun; Tryck: Landstinget Dalarna, Falun

ISSN 1104-7976