20. Believes that developing and acting on all possible ways of limiting the costs to contracting parties clearly constitutes a priority;

21. Considers, finally, that the best means of protecting individuals is to establish a system guaranteeing freedom of choice under conditions of free competition;

22. Calls on the Commission to brief Parliament regularly on the findings of the different studies and research projects commissioned and to notify Parliament as soon as possible, without allowing this in any way to obstruct the preparation of legislative proposals, of its position on the views adopted in this House on legislative policy;

23. Instructs its President to forward this resolution to the Council and the Commission.

4. Future of Schengen

A4-0014/97

Resolution on the functioning and future of Schengen

The European Parliament,

— having regard to the Treaty on European Union, and in particular Title VI thereof and Articles 7a, 100a and 100c of the EC Treaty,

— having regard to the Schengen Agreement of 14 June 1985 and the Convention applying the Schengen Agreement (CSA) of 19 June 1990,

— having regard to the Annual report on the implementation of the Convention from 26 March 1995 to 25 March 1996 (*) ,

— having regard to its resolutions on the free movement of persons, the third pillar and the Schengen Agreements and in particular its resolutions of 23 November 1989 on the signing of the Supplementary Schengen Agreement (?), 15 March 1990 on the free movement of persons in the internal market (1), 14 June 1990 on the Schengen Agreement, the Convention on the right of asylum and the status of refugees as defined by the ad hoc Group on Immigration (2), 19 November 1992 on the abolition of controls at internal borders and free movement of persons within the European Community (3), 19 November 1992 on the entry into force of the Schengen Agreement (4), 22 January 1993 on the setting up of Europol (5), 15 July 1993 on European immigration policy (6), 20 January 1994 on participation by the European Parliament in international agreements by the Member States and the Union on cooperation in the fields of justice and home affairs (7), 10 February 1994 on the Schengen Agreements (8), 6 April 1995 on the Schengen Agreement and political asylum (9), 17 May 1995 on the functioning of the Treaty on European Union with a view to the 1996 Intergovernmental Conference — Implementation and development of the Union (10), and 20 June 1996 on free movement of persons within the Nordic Passport Union, the European Economic Area and the Schengen countries (11),
— having regard to its resolutions on the 1996 Intergovernmental Conference and in particular its resolution of 13 March 1996 embodying (i) Parliament’s opinion on the convening of the Intergovernmental Conference, and (ii) an evaluation of the work of the Reflection Group and a definition of the political priorities of the European Parliament with a view to the Intergovernmental Conference (1),

— having regard to the deliberations in the national parliaments of the future Schengen countries and the countries of the Nordic Passport Union,

— having regard to Rule 148 of its Rules of Procedure,

— having regard to the report of the Committee on Civil Liberties and Internal Affairs (A4-0014/97),

A. whereas the provisions of Article 7a of the EC Treaty, which provides for the EU to become an area without internal borders and where people may enjoy free movement by 1 January 1993, have not yet entered into force and concerned that the flanking measures are becoming, as far as the Council is concerned, essential prerequisites for the entry into force of Article 7a,

B. whereas most countries of the European Union have decided in principle to abolish checks at their internal borders and to implement ‘accompanying measures’ under the CSA,

C. whereas France has maintained, pursuant to Article 2(2) of the CSA, checks at internal borders with Belgium and Luxembourg,

D. whereas an agreement has been reached on the accession of Denmark, Sweden and Finland to Schengen and whereas a cooperation agreement has been concluded with Norway and Iceland,

E. whereas the Nordic Passport Union, which entered into force in 1957, provides for the free movement of persons between Denmark, Sweden, Norway, Finland, Iceland and Faroe Islands; whereas the NPU aims to abolish identity checks at the internal borders of the Nordic countries and covers some of the main issues linked to freedom of movement and residence,

F. whereas there are insufficient guarantees in the CSA as regards parliamentary and judicial controls,

G. whereas the Schengen Agreements are limited in duration and must be replaced by Community legislation,

H. whereas there was no consensus at the Intergovernmental Conference to review the Treaty on European Union on giving a fundamentally democratic dimension to decision-making with regard to making the free movement of persons a reality and in respect of cooperation in the fields of justice and home affairs,

I. The functioning of Schengen

1. Notes that the Schengen countries have taken steps to guarantee both the right of freedom of movement and the right of security of their residents; points out nevertheless that, pursuant to Article 7a of the EC Treaty, the free movement of persons is an integral part of the internal market and of the European Union’s objectives; calls on the Commission, the Council and the Member States, using Community mechanisms, to put into practice the free movement of persons for all citizens of the Union and of third countries who are legally resident in the Union; regrets that the Schengen Agreements create new forms of discrimination firstly between citizens of the Union on account of their nationality and secondly against citizens of third countries who are legally resident in the Union; expects that the freedom to travel provided for by the Schengen Agreement will also be guaranteed for third-country nationals who are legally resident in the Union;

2. Considers that improving the security of all residents must be an important priority of any policy, including therefore that concerning Schengen; regrets that in practice the implementation of the Schengen agreements is geared mainly to restricting migration; urges therefore that more selective measures be adopted, designed to combat crime, which should improve cooperation between police forces and judicial authorities, with attention being devoted both to the effectiveness of action by the authorities and to protecting the rights of residents;

3. Underlines the need for greater openness and parliamentary control over the Executive Committee, and for a high standard of legal protection for affected individuals; 

4. Regrets the fact that the French government continues to make abolition of checks at internal borders dependent on new 'compensatory measures';

5. Is of the opinion that the abolition of checks at internal frontiers must not be the excuse for introducing systematic controls in border regions or for hermetically sealing the external borders, but ought perhaps to be counterbalanced, in the interests of security and immigration policy, by measures providing for other, more selective and targeted forms of random check;

6. Maintains that the abolition of checks at internal frontiers must not be accompanied by the introduction of new administrative checks which would infringe human rights;

7. Has noted the establishment by the Executive Committee of a consultative procedure for the application of Article 2(2) of the CSA; calls for greater account to be taken, when further details are formulated, of the provisions contained in the Commission proposal on the abolition of checks at internal frontiers so that the reintroduction of checks at internal frontiers is of limited duration and their period of operation can be extended only in consultation with the other Member States;

8. Calls on the Commission to carry out its role of guardian of the Treaties and observer of the activities of the Schengen Group and to inform Parliament of proposed measures and decisions, both within the context of the third pillar of the Treaty on European Union, and in the context of the working of Schengen;

9. Calls for greater transparency of the Schengen arrangements, by drawing up coordinated Schengen rules and compiling a public register of the reports of the Executive Committee; calls for the European Parliament and the national parliaments to be sent all useful documents and especially for them to receive in good time the agendas and draft texts for the Executive Committee, and full reports of the meetings of the Executive Committee and of the Central Group;

10. Calls on the Central Group, when drawing up the annual report, to provide more and better information on application of the CSA and the consequences of implementing the Schengen Agreement, with particular reference to possible changes to the various manuals, the effectiveness and the problems of checks at external frontiers, the implementation of the provisions on asylum policy, application of mutual assistance in criminal justice and police work and the use of contact and liaison officers; furthermore stresses that differences in application would lead to differing legal treatment of residents of the various Member States;

11. Draws attention to the need for the Schengen agreements to be transposed into national law; wishes international legal instruments on human rights, asylum and protection of personal privacy to be fully respected in doing this;

with regard to the working of the Schengen Information System (SIS) and the protection of privacy:

12. Is concerned at the fact that the SIS is used principally as a database on 'undesirable aliens', including aliens with no criminal record or means of redress;

13. Calls for inclusion in police records to be confined to the prevention of real threats or specific criminal action pursuant to the international rules of law in the framework of the Council of Europe; notes that the inclusion of aliens with the purpose of refusing them access to the territory does not satisfy this criterion and that an entire group of people are turned into criminals with no means of redress;

14. Notes that major differences exist between the Schengen countries as regards the inputting of data into the Schengen Information System; believes that this renders the functioning of the system less effective than it could be and calls upon the countries in question to harmonize their policies in this area;

15. Is of the opinion that the establishment of various data processing systems (Schengen Information System, Europol, European Information System, Customs Information System) is necessary to ensure that data protection rules are adhered to, in particular the requirement that data be used for the appropriate purposes, but that greater coordination is desirable, provided that account is taken of the rules governing protection, and that efforts should be made to achieve cooperation between the various national Europol and Sirene offices;
16. Calls for a data protection standard corresponding at least to the provisions of the Agreement of the Council of Europe of 28 January 1981 and Recommendation R(87)15 of the Committee of Ministers of the Council of Europe of 17 September 1987 to be guaranteed when personal data are used for police purposes;

17. Calls for inclusion in police records to be confined to objective information excluding personal data (such as sexual orientation, political and religious convictions, information about health, race, etc.) pursuant to the international rules of law in the framework of the Council of Europe;

18. Notes that the joint supervisory authority for the protection of privacy has reported arrests of persons who have been wrongly included in the SIS, and calls for appropriate measures to be taken to prevent this;

19. Calls for measures to be taken forthwith to make the work of the joint supervisory authority on the protection of privacy more effective (Article 115 of the CSA); calls, furthermore, for the public to be informed of the rules and for representatives of human rights organizations to be represented in the joint supervisory authority;

with regard to police and judicial cooperation:

20. Urges that police cooperation under the Schengen agreements be coordinated more by means of bilateral agreements, which would not only make it possible for the police to act more efficiently but also help to increase transparency and legal certainty and render practices on the ground easier to monitor;

21. Calls for a communication from the Central Group on experience with cross-border police cooperation, including cross-border observation, pursuit and communications;

22. Calls for a communication detailing the substance of the declarations specified in Article 41 of the CSA in respect of the right of pursuit and specifying which Member States have modified their declarations;

23. Calls on the governments of the Schengen countries to harmonize further the scope of a number of cross-border measures, so that the declarations provided for in the Convention are kept to a minimum;

24. Expects work to start as a matter of urgency on harmonizing the definitions and concepts in respect of legal assistance, offences and police cooperation, so that the information forwarded to Schengen is easier to compare and interpret;

25. Calls, as a matter of urgency, for a structural dialogue to be established between Schengen and Interpol and for these arrangements to be communicated to the European Parliament and national parliaments;

26. Calls on the Schengen countries to begin the task of compiling Schengen judicial decisions on the basis of best practice in order to establish the best practical administration of justice;

with regard to checks at external borders:

27. Calls for a comprehensive report on checks at external borders, including an analysis of all the problems occurring there;

28. Calls for implementation of the provisions required to guarantee persons detained at external borders the right of appeal against a decision to refuse access to the territory;

29. Calls, as a matter of urgency, for harmonization of visa policy and of the list of countries for which a visa is required in the Schengen area, and for rules on mutual recognition of travel and residence documents of the Schengen countries;

with regard to drugs:

30. Has taken note of the proposals on an approach to drug tourism and international drugs trafficking; notes that the administrative and judicial authorities in border areas have established a framework of cooperation; calls on the governments of the countries concerned to participate in these efforts and put an end to checks at the internal borders;

31. Regrets deeply the fact that the use of Article 2(2) of the CSA by the French government has been transformed into a means of exerting pressure designed to impose one Member State’s policy on drugs on other Member States without any democratic debate;
with regard to asylum policy:

32. Asks the Schengen countries for greater transparency with regard to the procedure and criteria used to establish responsibility for processing asylum applications; calls for asylum-seekers to be informed in a timely and clear manner about application of the Schengen provisions so that they can leave voluntarily for the Schengen country which is responsible for processing their applications;

33. Considers that the visa requirements and provisions on border control and the bilateral agreements which the Schengen countries conclude with third countries must be consistent with the right of individuals to seek asylum and the obligation of the state to respect the principle of 'non-refoulement', in accordance with the provisions of the Geneva Convention; calls on the Schengen countries not to return an asylum seeker to another country before determining that the asylum application will be substantively considered and the asylum-seeker will receive effective protection; calls for an appeals procedure, with suspensive effect, to be instituted so that applicants for asylum can rebut the presumed safety of the third country;

34. Is concerned that, despite common positions and resolutions adopted within the context of the Treaty on European Union, the differences in interpretation between the various Schengen countries as regards the definition of 'refugee', the procedure used to determine refugee status and the rights of asylum-seekers awaiting decisions as to the country responsible for processing their applications may result in legal inequality and uncertainty;

35. Calls on the Schengen group to draw up guidelines for the provisions of Articles 29(4) and 36 of the CSA to be used exclusively in the interests of asylum-seekers; calls on the Schengen countries to grant asylum-seekers the right to appeal, with suspensive effect, against decisions to transfer them to another country;

36. Calls on the Schengen countries to apply Article 36 of the CSA in such a way that members of the same family who are separated from each other in the Schengen area may be reunited on the basis of application of the Schengen criteria and their applications for asylum may be processed in the same country; calls for the ‘family unit’ principle to be applied also when decisions are still pending on the admissibility of applications for asylum; calls for the term ‘family’ to be given a broad interpretation covering all family members who live in the same household, in accordance with Article 185 of the UNHCR Manual;

37. Calls, with a view to the future enlargement of the EU, for close cooperation with the countries of Central and Eastern Europe on asylum legislation and practice;

38. Calls on the Schengen countries to implement carrier sanctions only in a manner consistent with refugee protection principles and for these sanctions to be accompanied by appropriate safeguards so as not to hinder access to status determination procedures by persons in need of protection;

II. Enlargement of Schengen

39. Urges the Schengen Executive Committee to ensure that every effort will be made to enable the simultaneous integration of Italy, Greece and Austria by October 1997;

40. Expects that, as countries accede to the Schengen Agreements, every technical precaution will be taken as regards both the test system and the SIS in order to ensure that there will be no delays in implementing the Schengen Agreements in those countries;

41. Considers that the Nordic Passport Union’s 40 years and more of experience shows that the effective freedom of movement of persons can be applied without deploying a whole legislative arsenal to establish security measures; considers that this ‘acquis’ has to be maintained;

42. Welcomes the inclusion of the Nordic Passport Union in the Schengen area with guarantees of the integrity of both the Nordic Passport Union and of the Schengen area; believes, however, that the inclusion in the Schengen area of the countries of the Nordic Passport Union may constitute an obstacle to any future communization of the Schengen acquis and therefore calls for clear legal arrangements so as to overcome institutional objections; is of the opinion that the inclusion of Norway and Iceland may not set a precedent for the enlargement of Schengen to include other countries which are not members of the European Union;
43. Hopes that the parliaments of the countries of the Nordic Passport Union will, in connection with ratification, ensure that their democratic rights to information, of scrutiny and of participation are guaranteed;

**III. The future of Schengen**

44. Reaffirms its position on the priorities for the IGC as set out in its abovementioned resolutions of 17 May 1995 and 13 March 1996, and calls therefore for the abolition of the unanimity rule for Council decisions concerning implementation of the free movement of persons, for a Community dimension to asylum policy, external borders, immigration, the fight against the drugs trade, international fraud, organized crime and judicial cooperation in civil cases, and for the use of Community procedures and institutions in the third pillar;

45. Reiterates its belief that free movement of persons is one of the four freedoms which must be implemented within the EC Treaty, with judicial control exercised by the European Court of Justice and democratic control by the European Parliament;

46. Regrets that the text of the draft revision of the Treaties submitted to the Dublin European Council does not contain clear options in favour of communitizing policy on the crossing of the external frontiers, asylum, migration and visa policy and policy on nationals of third countries; opposes any further postponement in implementing the free movement of persons and any discrimination, as regards the right to free movement, between EU citizens and nationals of third countries legally established in the Union; reiterates its belief that the free movement of persons must be applied to all people legally resident in the EU and cannot under any circumstances be restricted to EU citizens; regrets also the fact that, both in the new title on the free movement of persons, asylum and migration and in relation to other matters in the third pillar, no specific proposals are made either to strengthen the Commission's right of initiative, the European Parliament's role in the decision-making process and democratic and judicial scrutiny of the policy implemented, or as regards the power of the Court of Justice or the introduction of majority voting in the Council;

47. Is of the opinion that parliamentary supervision of the operation of Schengen could be improved considerably by setting up a permanent consultative group comprising representatives of the committees responsible in the parliaments concerned; wishes to be involved in this initiative;

48. Resolves to hold an annual debate on the operation of Schengen, and adopt a report on the subject, after receiving the annual report on the operation of the CSA;

49. Repeats its call for the Court of Justice to be given powers to settle disputes arising from interpretation of the Schengen Agreements, just as it should be given competence for all instruments established in the context of the third pillar;

50. Proposes that the Schengen secretariat be included in the services of the Commission pending the requisite integration of Schengen in the European Union;

51. Reaffirms its view that the free movement of persons in the EU is covered by Article 7a of the EC Treaty, and calls upon the Commission and the Council to take, as a matter of urgency, the steps needed in order that Article 7a may be fully implemented without further delays;

52. Is of the opinion that possible integration of Schengen via a protocol must be accompanied by significant progress towards the application of Community procedures, with provision for a right of initiative for the Commission, greater involvement of Parliament in the creation of the legislative framework and in monitoring implementation and judicial controls by the European Court of Justice;

* * *

53. Instructs its President to forward this resolution to the Commission, the Council, the Schengen Executive Committee, the governments and parliaments of the Member States of the European Union and the governments and parliaments of Norway and Iceland.