NOTE

from  Presidentcy

to:  Schengen Acquis Working Group

Subject:  Definition of the Schengen Acquis for the purpose of its incorporation into the EU

Following the meeting of the Schengen Acquis Working Group on 7 April, the Presidency has revised the draft Decision, to be adopted by the Council acting at 13, which would define the Schengen acquis for the purpose of its integration into the framework of the European Union.
Decision of the Council.

concerning the definition of the Schengen acquis for the purpose of determining, in conformity with the relevant provisions of the Treaty establishing the European Community and the Treaty on European Union, the legal basis for each of the provisions or decisions which constitute the acquis.

THE COUNCIL OF THE EUROPEAN UNION,

Acting on the basis of Article 2(1), second subparagraph, first sentence, of the Protocol annexed to the Treaty on European Union and the Treaty establishing the European Community, integrating the Schengen acquis into the framework of the European Union (hereinafter referred to as "the Schengen Protocol");

Whereas in order to allow the Council to determine, in conformity with the relevant provisions of the Treaties, the legal bases for each of the provisions of the Schengen acquis, it is necessary for the Council to define the Schengen acquis;

Whereas the determination of legal bases is only necessary in respect of those provisions or decisions constituting the Schengen acquis, which are still operative, have not been replaced by provisions of Community law or other acts applicable to all member States, do not belong to the domain of exclusive competence of the Member States and are intended to have legal effects;

Whereas the Council should therefore establish for which provisions or decisions constituting the Schengen acquis it is not necessary to determine the legal basis in conformity with the relevant provisions of the Treaties;

...
Considérant que le constat que pour certaines dispositions de l'accus de Schengen il n'est pas nécessaire pour le Conseil de déterminer une base juridique conformément aux dispositions pertinentes des traités, n'a pas pour effet de les priver d'existence ni de validité juridique, et que les effets juridiques des actes toujours en vigueur adoptés sur la base de telles dispositions ne sont pas affectés ;

HAS DECIDED AS FOLLOWS:

Article 1

1. In accordance with the Annex to the Schengen Protocol the Schengen acquis comprises all the acts listed in Annex A to this decision.

2. The Schengen acquis, as referred to in paragraph 1, shall be published in the Official Journal of the European Communities, with the exception of those of its provisions which at the time of the adoption of the present decision are classified as "confidential" or "secret" by the Schengen Executive Committee or by organs on which the Executive Committee has conferred decision-making powers.

3. To the extent that in accordance with paragraph 2 any manuals or common instructions adopted by the Executive Committee are to be published in the Official Journal of the European Communities, they shall be so published in the versions which take into account all adjustments and modifications which may have been made subsequent to their first adoption.
Article 2

It shall not be necessary for the Council, acting on the basis of Article 2(1); second subparagraph, second sentence, of the Schengen Protocol, to determine, in conformity with the relevant provisions of the Treaties, a legal basis for the following provisions and decisions constituting part of the Schengen acquis which are either no longer operative, have been replaced by provisions by Community law or other acts applicable to all Member States, belong to the exclusive competence of the Member States or are not intended to have legal effects:

(a) the Agreement, signed in Schengen on 14 June 1985, between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders ("the Schengen Agreement");

(b) the provisions of the Convention, signed in Schengen on 19 June 1990, between the Kingdom of Belgium, the Federal Republic of Germany, the French Republic, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands, implementing the Schengen Agreement and its related Final Act and declarations ("the Schengen Convention") which are listed in Part 1 of Annex B;

(c) the provisions of the Accession Agreements and Protocols to the Schengen Agreement and the Schengen Convention with the Italian Republic (signed in Paris on 27 November 1990), the Kingdom of Spain and the Portuguese Republic (signed in Bonn on 25 June 1991), the Hellenic Republic (signed in Madrid on 6 November 1992), the Republic of Austria (signed in Brussels on 28 April 1995) and the Kingdom of Denmark, the Republic of Finland and the Kingdom of Sweden (signed in Luxembourg on 19 December 1996) which are listed in Part 2 of Annex B;
(d) the decisions and declarations of the Executive Committee established by the Schengen Convention which are listed in Part 3 of Annex B:

(e) the acts of organs upon which the Executive Committee has conferred decision-making powers which are listed in Part 4 of Annex 3.

Article 3

This decision shall take effect immediately.

It shall be published in the Official Journal of the European Communities.

Done at .......... on.............

For the Council

the President.
Part 1

1. The Agreement, signed in Schengen on 14 June 1985, between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders.

2. The Convention, signed in Schengen on 19 June 1990, between the Kingdom of Belgium, the Federal Republic of Germany, the French Republic, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands, implementing the Agreement on the gradual abolition of checks at their common borders, signed in Schengen on 14 June 1985, with related Final Act and common declarations.

3. The Accession Protocols and Agreements to the 1985 Agreement and the 1990 Implementation Convention with Italy (signed in Paris on 27 November 1990), Spain and Portugal (signed in Bonn on 25 June 1991), Greece (signed in Madrid on 6 November 1992), Austria (signed in Brussels on 28 April 1995) and Denmark, Finland and Sweden (signed in Luxembourg on 19 December 1996), with related Final Acts and declarations.

4. Decisions and Declarations of the Schengen Executive Committee

<table>
<thead>
<tr>
<th>DECISIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>SCH/Com-ex (93) 1 rev 2</td>
</tr>
<tr>
<td>SCH/Com-ex (93) 2</td>
</tr>
<tr>
<td>SCH/Com-ex (93) 3</td>
</tr>
<tr>
<td>SCH/Com-ex (93) 4 rev 2 corr</td>
</tr>
<tr>
<td>SCH/Com-ex (93) 5 rev corr</td>
</tr>
<tr>
<td>SCH/Com-ex (93) 6</td>
</tr>
<tr>
<td>SCH/Com-ex (93) 7</td>
</tr>
<tr>
<td>Declarations</td>
</tr>
<tr>
<td>--------------</td>
</tr>
<tr>
<td>SCH/Com-ex (93) decl 1</td>
</tr>
<tr>
<td>SCH/Com-ex (93) decl 2</td>
</tr>
<tr>
<td>SCH/Com-ex (93) decl 3</td>
</tr>
<tr>
<td>SCH/Com-ex (93) decl 4</td>
</tr>
<tr>
<td>SCH/Com-ex (93) decl 5</td>
</tr>
<tr>
<td>SCH/Com-ex (93) decl 6</td>
</tr>
<tr>
<td>SCH/Com-ex (93) decl 8 rev 2</td>
</tr>
<tr>
<td>SCH/Com-ex (93) decl 9</td>
</tr>
<tr>
<td>SCH/Com-ex (93) decl 10</td>
</tr>
<tr>
<td>SCH/Com-ex (93) decl 12 rev 2</td>
</tr>
<tr>
<td>SCH/Com-ex (93) decl 13</td>
</tr>
<tr>
<td>SCH/Com-ex (93) decl 15 def</td>
</tr>
<tr>
<td>SCH/Com-ex (93) decl 16 def</td>
</tr>
<tr>
<td>SCH/Com-ex (93) decl 17 rev</td>
</tr>
<tr>
<td>SCH/Com-ex (94) decl 1 rev</td>
</tr>
<tr>
<td>SCH/Com-ex (94) decl 4 rev 2</td>
</tr>
<tr>
<td>SCH/Com-ex (94) decl 5</td>
</tr>
<tr>
<td>SCH/Com-ex (94) decl 6 rev 4</td>
</tr>
<tr>
<td>SCH/Com-ex (94) decl 7 rev 3</td>
</tr>
<tr>
<td>SCH/Com-ex (94) decl 8</td>
</tr>
<tr>
<td>SCH/Com-ex (94) decl 9 rev</td>
</tr>
<tr>
<td>SCH/Com-ex (94) decl 12</td>
</tr>
<tr>
<td>SCH/Com-ex (94) decl 13 rev 2</td>
</tr>
<tr>
<td>SCH/Com-ex (94) decl 14 rev</td>
</tr>
<tr>
<td>SCH/Com-ex (95) decl 1</td>
</tr>
<tr>
<td>SCH/Com-ex (95) decl 2</td>
</tr>
<tr>
<td>SCH/Com-ex (95) decl 3</td>
</tr>
<tr>
<td>SCH/Com-ex (95) decl 4 rev 2</td>
</tr>
<tr>
<td>SCH/Com-ex (95) decl 5</td>
</tr>
<tr>
<td>SCH/Com-ex (96) decl 1</td>
</tr>
</tbody>
</table>
List of acts adopted for the implementation of the Convention by the organs upon which the Executive Committee has conferred decision-making powers.

5. [P.M.]
ANNEX B
Article 2

Part 1

The Convention, signed in Schengen on 19 June 1990, between the Kingdom of Belgium, the Federal Republic of Germany, the French Republic, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands, implementing the Schengen Agreement:

Article 2(4)

Article 4, as far as controls on baggage are concerned

Article 10(2)

Article 19(2)

Articles 28-38 and related definitions

Article 60

Article 70

Article 74

Articles 77-91

Articles 120-125

Articles 131-135

Article 137

Articles 139-142

Final Act: declaration
Final Act: declarations 4, 5 and 6
Protocol
Common declaration
Declaration by Ministers and State Secretaries

Part 2


2. The following provisions of the Agreement, signed in Paris on 27 November 1990, on Accession of the Italian Republic to the Convention, signed at Schengen on 19 June 1990, implementing the Schengen Agreement of 14 June 1985 between the Governments of the States Members of the Benelux Economic Union, the Federal Republic of Germany and the French Republic, its Final Act and related declarations:
   Article 1
   Articles 5 and 6
Final Act: Part I
Part II, declarations 2 and 3
Declaration by Ministers and State Secretaries.

4. The following provisions of the Agreement, signed in Bonn on 25 June 1991, on Accession of the Kingdom of Spain to the Convention, signed at Schengen on 19 June 1990, implementing the Schengen Agreement of 14 June 1985 between the Governments of the States Members of the Benelux Economic Union, the Federal Republic of Germany and the French Republic, to which the Italian Republic has acceded under the Agreement signed in Paris on 27 November 1990, its Final Act and related declarations:

- Article 1
- Articles 5 and 6
- Final Act Part I
- Part II, declarations 2 and 3
- Part III, declarations 3 and 4
- Declaration by Ministers and State Secretaries.

6. The following provisions of the Agreement, signed in Bonn on 25 June 1991, on Accession of the Portuguese Republic to the Convention, signed at Schengen on 19 June 1990, implementing the Schengen Agreement of 14 June 1985 between the Governments of the States Members of the Benelux Economic Union, the Federal Republic of Germany and the French Republic, to which the Italian Republic has acceded under the Agreement signed in Paris on 27 November 1990, its Final Act and related declarations:
   Article 1
   Articles 7 and 8
   Final Act: Part I
   Part II, declarations 2 and 3
   Part III, declarations 2, 3, 4 and 5
   Declaration by Ministers and State Secretaries.

8. The following provisions of the Agreement, signed in Madrid on 6 November 1992, on Accession of the Hellenic Republic to the Convention, signed at Schengen on 19 June 1990, implementing the Schengen Agreement of 14 June 1985 between the Governments of the States Members of the Benelux Economic Union, the Federal Republic of Germany and the French Republic, to which have acceded the Italian Republic under the Agreement signed in Paris on 27 November 1990, and the Kingdom of Spain and the Portuguese Republic under the Agreements signed in Bonn on 25 June 1991, its Final Act and related declarations:

Article 1

Articles 6 and 7

Final Act: Part I

Part II, declarations 2, 3 and 4

Part III, declarations 1 and 3

Declaration by Ministers and State Secretaries.

10. The following provisions of the Agreement, signed in Brussels on 28 April 1995, on Accession of the Republic of Austria to the Convention, signed at Schengen on 19 June 1990, implementing the Schengen Agreement of 14 June 1985 between the Governments of the States Members of the Benelux Economic Union, the Federal Republic of Germany and the French Republic, to which have acceded the Italian Republic, the Kingdom of Spain and the Portuguese Republic, and the Hellenic Republic under the Agreements signed on 27 November 1990, 25 June 1991 and 6 November 1992 respectively and its Final Act:

   Article 1
   Articles 5 and 6
   Final Act: Part I
   Part II, declaration 2, Part III.

11. The Protocol, signed in Luxembourg on 19 December 1996, on Accession of the Government of the Kingdom of Denmark to the Agreement on the gradual abolition of controls at their common borders signed at Schengen on 14 June 1985 and its related declaration.

12. The following provisions of the Agreement, signed in Luxembourg on 19 December 1996, on Accession of the Kingdom of Denmark to the Convention implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of controls at their common borders, signed at Schengen on 19 June 1990, and its Final Act: and related declaration:

   Article 1
   Articles 7 and 8
   Final Act: Part I
   Part II, declaration 2
   Part III
   Declaration of the Ministers and State Secretaries.

14. The following provisions of the Agreement, signed in Luxembourg on 19 December 1996, on Accession of the Republic of Finland to the Convention implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of controls at their common borders, signed at Schengen on 19 June 1990, and its Final Act and related declaration:
   Article 1
   Articles 6 and 7
   Final Act: Part I
   Part II, declaration 2
   Part III, except the declaration on the Åland Islands
   Declaration of the Ministers and State Secretaries.

15. The Protocol, signed in Luxembourg on 19 December 1996, on Accession of the Government of the Kingdom of Sweden to the Agreement on the gradual abolition of controls at their common borders signed at Schengen on 14 June 1985 and its related declaration.

16. The following provisions of the Agreement, signed in Luxembourg on 19 December 1996, on Accession of the Kingdom of Sweden to the Convention implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of controls at their common borders, signed at Schengen on 19 June 1990, and its Final Act and related declaration:
   Article 1
   Articles 6 and 7
   Final Act: Part I
   Part II, declaration 2
   Part III
   Declaration of the Ministers and State Secretaries.
Part 3

P.M.

Decisions and Declarations of the Schengen Executive Committee.

Part 4

P.M.

Acts adopted for the implementation of the Schengen Convention by the organs upon which the Executive Committee has conferred decision-making powers.