DECISION OF THE EXECUTIVE COMMITTEE of 16 September 1998 setting up a Standing Committee on the evaluation and implementation of Schengen

The Executive Committee,

Having regard to Article 132 of the Convention implementing the Schengen Agreement,

Having regard to Article 7 of the Convention implementing the Schengen Agreement,

Having regard to the Joint Declaration concerning Article 139 in the Final Act annexed to the Convention,

Whereas the initiative to set up the Standing Committee stems from a concern for complementarity with existing instruments within the European Union;

Mindful of the need to observe the principle of national sovereignty,

Whereas this Committee may in due course have to be adapted to take account of the operational framework of the European Union

HAS DECIDED AS FOLLOWS:

A Standing Committee on the evaluation and implementation of Schengen (hereinafter "the Standing Committee") shall be set up under the aegis of the Executive Committee, firstly to establish whether all the preconditions for bringing the Convention into force in a candidate State there to have been fulfilled and secondly to ensure that Schengen acquis is properly applied by the States already implementing the Convention, notably by pinpointing problems and proposing solutions.

The Standing Committee shall have sole responsibility for drafting the reports with a view to evaluating the preparations by the candidate States to bring the Schengen Convention into force and verifying that all of the preconditions for the practical application of the Schengen Convention and the abolition of checks at the internal borders have been fulfilled.

The second task of the Standing Committee shall be to lay the foundations so that the Executive Committee can ensure the proper application of the Convention by the States which have already brought it into force, in particular by following up the recommendations made by the visiting committees to the external borders, by ensuring that follow-up action is taken to remedy the shortcomings mentioned in the Annual Report on the External Borders, by focusing greater attention on the joint efforts needed to improve the quality of controls at the external borders and by optimizing the application of the Convention in the fields of police cooperation, judicial cooperation and the SIS. The Standing Committee shall seek solutions to the problems detected and shall make proposals for the satisfactory and optimal implementation of the Convention. Sole responsibility for checking to ensure that the Convention is properly applied shall continue to remain with the Schengen States. The Standing Committee shall therefore confine itself to carrying out the verification procedures as defined in the following mandate.

These two tasks warrant the Standing Committee being awarded two separate mandates:

1. to prepare the reports to serve as a basis for establishing that all the preconditions for bringing the Schengen Convention into force in a candidate State have been satisfied. In these cases it shall be called the "Evaluation Committee", and shall be in charge of evaluating how well these States are prepared;

2. to lay the foundations so that the Executive Committee can ensure the proper application of the Convention in the States already implementing the Convention with a view to optimizing its application and cooperation between the Schengen partners. First, it has to find solutions to problems encountered since the bringing into force of the Convention and make proposals on improving controls in accordance with the objectives set and the spirit of the Convention. Here, it shall be called the "Implementation Committee";
I Evaluation Committee for candidate States to bring the Convention into force

1. Tasks of the Evaluation Committee

Each time a State is a candidate to bring the Convention into force, the Standing Committee, acting in the context of its evaluation remit, shall draw up a report laying down a list of the criteria to be satisfied by the candidate States. This list shall indicate precisely the standard to be reached in all of the areas covered by the Convention. Once these criteria have been approved by the Executive Committee, the Standing Committee shall verify in another report whether a candidate State to bring the Convention into force satisfies the criteria and complies with the standard required.

In each of the Committee’s spheres of competence, it may instruct a group of competent experts to draft a report in its specific field. These reports shall deal with the qualitative, quantitative, operational, administrative and organizational aspects and should pinpoint shortcomings or weaknesses, whilst proposing solutions.

2. Spheres of competence

The Committee shall draft a detailed and exhaustive report and shall assess how well prepared the candidate States to bring into force the Schengen Convention are in all of the fields referred to in Decision SCH/Com-ex (93) 10 of 14 December 1993 and shall ensure that all of the preconditions for implementing the Schengen acquis are respected. The assessment shall cover the following areas in particular:

- checks at the external borders, in particular the application of the Common Manual;
- surveillance of external land and sea borders;
- visas, in particular the application of the Common Consular Instructions;
- conditions governing the movement of aliens, including measures taken with regard to illegal immigration and aliens illegally on Schengen territory;
- residence permits and alerts for the purpose of refusing entry;
- police cooperation;
- mutual assistance in criminal matters, including extradition;
- drugs;
- SIS, in particular the application of the Sirene Manual;
- protection of personal data;
- policy on expulsion and readmission;
- arrangements for movement within airports.

On the one hand, the Standing Committee shall take as its basis the following tasks in the areas relating to external borders, police cooperation, the SIS and visas; on the other, it shall draw up a list of tasks to be carried out by the experts in the other areas:

a. Controls at the external borders and migratory flows, including bilateral and multilateral cooperation with third States and the question of readmission;

Taking into account the local geographical situation and depending on the kind of external borders in the visited State, the experts shall:

- visit all external maritime borders in order to gather information in situ regarding the efficiency of surveillance measures on sea and land, particularly at night; and observe how checks are carried out on persons and freight in major ports;
- observe control measures at the land borders with the aim of verifying their efficiency day and night. They must obtain information on the fight against the smuggling of illegal immigrants, inter alia by means of interviews with the control authorities;
- visit all airports for the purpose of checking how Schengen provisions have been applied;
- visit in addition the Central Authorities in charge of external border and immigration controls and examine administrative structures and coordination between national and local levels;
- enquire about practices for the issue of visas at the border when visiting the border crossing points and the
Central Authority;
- verify, when visiting the border crossing points and the Central Authority, that the SIS can be put into operation;
- assess the arrangements for carrying out checks at the external borders, at the official border crossing points and in the intervening areas;
- assess the technical means available at the external borders, inter alia to deal with false documents;
- assess the surveillance of land and sea borders;
- check whether there are sufficient staffing levels at the different borders visited, together with their training, inter alia on detecting false documents;
- check the measures taken at the external borders visited to tackle illegal immigration and more generally crime;
- check the measures taken vis-à-vis persons not admitted at the border or present illegally;
- check the means deployed to combat illegal immigration networks;
- assess cooperation with the bordering State(s);

The objective of the visit shall be to assess in situ the efficiency of surveillance measures and their compliance with the Schengen control standards laid down in the Schengen Convention, the Common Manual and the relevant Executive Committee decisions.

b. Cooperation at the joint borders with States already applying the Convention, mainly with regard to police and judicial cooperation, in particular the conclusion of bilateral agreements and the secondment of liaison officers;

In this context, the Standing Committee shall have the task of verifying:
- the efficiency of day-to-day cooperation in the common border regions in implementation of the Convention and bilateral agreements;
- the capacity and the willingness to implement and develop joint cross-border operations in compliance with the Convention and bilateral agreements;
- the capacity and the willingness to implement and develop cooperation with liaison officers;
- the efficiency of cooperation with States adjacent to Schengen's external borders in the fight against crime and, in particular, the fight against illegal immigration networks;
- police access to databases and general training;
- the efficiency of cross-border cooperation structures;
- direct cooperation and relations between the authorities of the candidate State and the Schengen States;
- security means and staff level in the border region.

c. the SIS, the SIRENE Bureaux, the protection of facilities and personal data.

In this context, the Standing Committee shall have the task of verifying:
* Technical aspects
  ? the qualitative, quantitative, operational, organizational and technical aspects of the future N.SIS;
  ? the technical means and the procedures used to transfer information from the national information systems to the N.SIS (downloading to the SIS from national systems);
  ? the technical means for making SIS data available to users on the ground and ensuring synchronization of...
N.SIS and C.SIS data;

- the technical availability of the N.SISes;

* Aspects concerning data and their use

- the quantity of data the State is prepared to integrate into the SIS;
- the quality of the data to be incorporated (completion of headings);
- the geographical location of terminals, the number of terminals and their operational state (accessibility of SIS data to end-users);
- training of employees authorized to use data contained in the SIS;
- the internal procedures and the instructions for issuing alerts and to be applied in the event of a hit;
- the use of different options for alerts;
- the operational capacity of the Sirene Bureaux (coordination between services, reply times);

* Protection of the facilities and data

- the organizational and technical aspects of the protection of the facilities and personal data;
- measures to prevent access to the systems and to data;
- measures geared towards different levels of processing according to the user's responsibilities;
- the conditions governing the removal of alerts which have expired;

d. the issue of visas

- general conditions governing the issue of visas compared to those laid down in the Common Consular Instructions;
- provisions for consultation prior to the issue of visas
- provisions for consulting the SIS prior to the issue of visas;
- provisions for procuring stickers and storage conditions.

The Standing Committee shall oversee the coordination of these reports and shall submit a general report to the Executive Committee.

II Implementation Committee for the States already applying the Convention

1. Tasks

The Standing Committee shall provide the scope for detecting any problems encountered at external borders and for identifying situations which do not comply with the standard set in accordance with the spirit and objectives of the Convention. By means of the Standing Committee, the State visited and the Executive Committee shall be informed of the problems encountered, together with solutions proposed for applying the Convention in a satisfactory and most effective manner. As for any problems encountered since the bringing into force of the Convention, it shall be up to the Committee to make technical proposals to improve checks, security and judicial cooperation, including extradition.

The Committee shall also check whether the recommendations and observations put forward by the visiting committees to external borders have been acted upon and have enabled any shortcomings in security to be overcome. The Committee shall also have the task of following up the problems highlighted in the annual report on the situation at the external borders of the States applying the Convention.
Finally, the Committee shall perform its duties flexibly and objectively, in cooperation with the competent authorities and in compliance with the legal and ethical rules applicable at national level, and in so doing strive to meet the common objective of improving security and taking account of the interests of the other States applying the Convention.

2. Areas to be covered

For those States already applying the Convention, the Committee shall be granted a wider remit than that of the visiting committees, but it shall continue to focus on the practical aspects. The following areas, extending across the whole of the Schengen acquis, may undergo evaluation and therefore have to be taken into account:

- external border checks and surveillance;
- police cooperation at the border areas of States already applying the Convention;
- the Schengen Information System;
- the conditions for the issuing of Schengen visas (in particular the arrangements governing prior consultation of the Partner States on sensitive nationalities);
- measures aimed at terminating the stay of aliens discovered to be illegally on the territory;
- mutual assistance in criminal matters, including extradition.

The following should be given priority:

a. external border checks and surveillance:

- provisions for carrying out checks at the authorised crossing points along the external borders and in the border areas;
- technical means available at the external borders, in particular for detecting counterfeit documents;
- determining whether staff levels are adequate for the particular border visited;
- external border checks and surveillance, encompassing mobile patrols as well as systems and methods of stationary surveillance;
- training for officials, inter alia in the detection of counterfeit documents;
- measures taken at the external borders visited to combat illegal immigration and crime in general;
- measures taken against individuals not granted admission at the border or individuals who are illegally on Schengen territory;
- means deployed to combat illegal immigration networks;
- existing forms of cooperation with neighbouring State(s);
- administrative organization of the service(s) responsible for combating illegal immigration and for coordination between these services at national and local level;
- SIS use at border posts.

b. police cooperation in the border areas of States already applying the Convention

- existence of bilateral agreements;
- exercising the right to pursuit and surveillance;
- organization of cross-border cooperation;
- direct cooperation between services;
- equipment and staff deployed in the border region for security purposes;
c. the Schengen Information System

? downloading to the SIS from the national systems;
? technical availability of the N.SIS's and the SIRENE Bureaux;
? end users’ access to SIS data;
? conditions for deleting expired alerts;
? exploiting the different possibilities with regard to alerts;
? operational capacity of the SIRENE Bureaux: response time, .... .

d. conditions for the issue of Schengen visas

? provisions for consultation prior to the issue of visas, as laid down in Annex 5B to the Common Consular Instructions;
? provisions for consulting the SIS prior to the issue of Schengen visas;
? VLTVs issued: quantity, target groups, grounds;
? provisions for procuring Schengen stickers and storage conditions.

III Principles Governing the Standing Committee

?Composition of the Standing Committee

The Committee shall be a standing body. It shall be composed of one high-ranking representative from each Signatory State to the Convention or the Cooperation Agreement. (This high-ranking representative may be accompanied). The Standing Committee shall be assisted by the Secretariat in connection with its meetings and various tasks.

The Standing Committee shall visit all of the countries, in an order and at intervals to be laid down by the Executive Committee.

For the performance of their tasks, the permanent members shall be able to call on the Schengen States to second temporarily experts in the each of the Committee’s areas of competence, in particular for the purpose of carrying out the assignments in the countries, in line with the arrangements defined by the permanent members. Certain assignments involving experts may be carried out jointly or may focus on one area. Each State shall be entitled to appoint an expert to perform assignments in the framework of the Standing Committee. The Standing Committee shall, however, endeavour to maintain membership of the delegations at a level that is compatible with the technical constraints of the assignments.

Where there are several visits taking place at the same time involving groups of experts specializing in each of the specific areas, a coordination meeting shall be organized with all the experts before the end of the visit.

The experts must have the requisite qualifications and, in general, it would be desirable for the same experts to be designated each time.

The European Commission shall participate as an observer in the Standing Committee's work and in the activities of the working groups which serve the Committee, the Central Group and the Executive Committee.

Joint Supervisory Authority

The Standing Committee shall carry out its tasks without prejudice to the powers of the Joint Supervisory Authority. The Committee shall be authorized to consult the Authority in areas within its sphere of competence.
?Locations to be visited

The Standing Committee shall, in conjunction with the respective working groups, select the locations to be visited and the information to be gathered on a case-by-case basis.

?Language arrangements

Details of the language arrangements to be used during the visits shall be determined for each visit.

?Facilitating the activities of the Committee

The authorities of the visited State shall ensure that its authorities afford the Committee the cooperation and assistance it requires to enable it to perform its tasks properly. The visited State must provide the Committee with the relevant information on the locations to be visited and all useful statistical, factual, analytical or other information (in one of the official Schengen languages) at least one month before the start of the visit.

Reimbursement of travel and accommodation expenses incurred during the visits

The costs of travel and accommodation are to be met by the Committee members or their experts. The host state shall bear the costs of the logistical support in situ.

?Drafting of the report

The report shall be drafted on the basis of a standard model to be laid down by the Standing Committee in consultation with the competent working groups. The model may be adjusted according to needs and circumstances.

A preliminary draft of the report shall be written by the Presidency and submitted to the group of experts, who shall seek a consensus on how the report should be drafted. The representatives of the host state shall have observer status within this group. Once the report has been drawn up by the experts, it shall be submitted to the host state, which may draft an opinion. The report and the opinion shall be submitted to the Standing Committee, which shall attempt to find a consensus between the two documents. With regard to points that remain contentious, the Committee shall put the position of each of the Parties.

The reports must clearly show in which areas the objectives have been reached and those in which this is not the case, together with concrete proposals for measures to take with a view to remedying or improving the situation. Responsibility for adopting the final decision shall in any case rest with the Executive Committee.

?Confidentiality

The Committee members and the experts shall regard as confidential the information they acquire in the course of performing their duties. The reports drawn up pursuant to this Decision shall be regarded as confidential.

Königswinter, 16 September 1998 The Chairman

M. KANTHER