COMMISSION OF THE EUROPEAN COMMUNITIES

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COMMUNICATION of the COMMISSION on the abolition of controls of persons at intra-Community borders

COMMUNICATION of the COMMISSION TO THE COUNCIL

on the abolition of controls of persons at intra-Community borders

1. At its meeting on 14 October, the Council discussed the passage in the conclusions of the June 1988 Hanover European Council concerning immigration questions. It noted that the Commission was already in the process of preparing a report on the state of play on various problems linked to the removal of frontier controls as they affect the free movement of people. That report is now complete and is forwarded herewith. A copy for information is also being delivered to Ministers responsible for Immigration for their meeting in Athens on 9 December.

2. As the report makes clear, the initiatives that have been taken in various contexts, starting with conclusion of the Agreement between France and Germany at Saarbrücken in 1984 on the easing of controls on individuals at the French-German internal frontier and followed by the Schengen Agreement between France, Germany, the Netherlands, Belgium and Luxembourg, all have the same aim: free movement of persons between the countries concerned. This aim is one of the cornerstones of the single market to be completed by 1992.

3. The solutions envisaged differ according to the nature of the problems involved: some imply the adoption of new legal instruments; others point to closer cooperation between the Member States. This document reflects both approaches.

4. In that context, the work of the Immigration Group set up by Ministers responsible for Immigration at their meeting in London in October 1986 has proved most useful. It has opened the way for more detailed deliberations between the competent authorities of the Member States and has thus helped to define more precisely the measures required in order to attain the common objective. The beginning of progress has been made here on a number of complicated issues, such as visa policy and the right of asylum.

5. There is, however, a need for acceleration and a new political impulse which only the Council can provide. Such an impulse is needed for two main reasons:

(a) the Council has the responsibility for ensuring that the wishes of the Heads of State and Government are carried out. It cannot allow vital work in other fora to run into the ground through lack of agreement in those fora about what the real objective is;

(b) there is a need to pull together the work being done in the various fora identified in this paper to ensure that there is a coherent approach to the very similar problems which arise in each area. The Commission hopes that the presentation of this communication will encourage the Council to play this essential rôle. It is indispensable to speed up the work in this field in order to respect the 1992 timetable. We are concerned here with the implementation of one of the fundamental goals of the Single European Act, i.e. the free movement of persons by abolishing controls at intra-Community frontiers. This is reinforced by the declaration of the European Council at Hanover in June that "The European Council underlines the importance of removal of obstacles to the free movement of persons". Above and beyond the respective powers of the various bodies, the overall political responsbility for attainment of the internal market falls to the Council. It is therefore for the Council to carry out this task.

6. To that end, the Commission would ask the Council to display the political will to attain the 1992 objective by working, with the Commission, both to adopt the measures required where Community legislation is necessary, and also to ensure the setting in hand of the essential cooperation between the Member States, and between the latter and the Commission. This would be in line with the conclusions of the Rhodes European Council of 2-3 December 1988, which invited Member States to designate a single person to be responsible for the necessary coordination.

7. Finally, the Commission would make this comment. Anyone with intimate knowledge of these matters knows that the present frontier controls are ineffective. What we are looking for are more effective controls, and in these days of shortages of manpower ressources above all of more cost-effective controls. The abolition of the internal frontiers offers us the opporutnity to doing just that.

COMMISSION REPORT

on the abolition of controls of persons at intra-Community borders

I. INTRODUCTION

1. The White Paper on the completion of the Internal Market[1] set out a number of key areas in which action needed to be taken in order to achieve the goal of the free movement of people within the Community. With little more than four years to go before the end of 1992, this is a good moment to review the measures required, and to report on the progress achieved so far as well as on the work still to be done.

2. This report concentrates on the problems linked to the removal of physical controls. It does not deal with other aspects of the White Paper programme, such as the right of residence, that are concerned with the creation of a "People's Europe".

3. For several years now, because of the complex nature of the issues involved, the many and varied aspects of the problems involved have been discussed in a number of different fora (the Schengen Group, the Trevi Group, the Immigration Group, Political Cooperation meetings, the Council of the Ministers and the Council of Europe). This review of the work being done in these somewhat disconnected bodies is intended both to clarify the rather confused picture and to refocus the strategy so as to keep the overall programme, and each individual part of it, on target.

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1) COM(85)310 final.

II. THE BASIC TEXTS

4. The Commission's June 1985 White Paper on the completion of the Internal Market set out a programme for the removal of internal frontier controls between Member States by 1992. It identified (para. 24 and 25) a number of key areas which could have a direct bearing on the highly sensitive question of controls on individuals crossing frontiers and suggested that action was needed along the following lines:

(1) as a first step towards the eventual elimination of frontier controls on people, the easing of controls and formalities at intra-Community frontiers (see "border controls" directive below);

(2) the approximation of firearms legislation;

(3) the approximation of drugs legislation;

(4) the coordination of rules on the grant of asylum and refugee status;

(5) the coordination of visa policies;

(6) the coordination of rules on extradition.

(7) the coordination of rules on the status of third countries nationals.

5. Article 8A of the EEC Treaty, which was introduced into the Treaty of Rome by Article 13 of the Single European Act[2], which came into force on 1st July 1987, defines the internal market as "an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of this Treaty". It says that this is to be achieved "progressively ... in a period expiring on 31 December 1992".

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2) Bulletin of the European Communities - Supplement 2/86

6. A political declaration was made by the Governments of the Member States at the time of the adoption of the Single European Act in the following terms : "In order to promote the free movement of persons, the Member States shall cooperate, without prejudice to the powers of the Community, in particular as regards the entry, movement and residence of nationals of third countries. They shall also cooperate in the combating of terrorism, crime, the traffic in drugs and illicit trading in works of art and antiques." Clearly, these declarations cannot detract from the clear terms of the Single Act itself. Thet can only at best supplement them.

7. In addition, a general declaration was made on the subject of articles 13 to 19 of the Single European Act to the effect that: "Nothing in these provisions shall affect the right of Member States to take such measures as they consider necessary for the purpose of controlling immigration from third countries, and to combat terorism, crime, the traffic in drugs and illicit trading in works of art and antiques".

8. Article 8A, paragraph 1 of the EEC Treaty (introduced by the Single European Act) also gives the Community the powers to carry out the objectives set out in paragraph 2, by stipulating that :

"The Community shall adopt measures with the aim of progressively establishing the Internal Market over a period expiring on 31 December 1992, in accordance with the provisions of this Article and of Articles 8B, 8C, 28, 57(2), 59, 70(1), 84, 99, 100A and 100B and without prejudice to the other provisions of this Treaty."

9. These texts make clear that, in order to achieve the stated objective of completing the internal market as defined, decisions need to be taken both by the Community institutions and by the Member States in accordance with their respective powers, and that the Member States are called upon in particular to strengthen their cooporation in areas connected with internal security. Moreover, the Member States will remain free to adopt, in their territories, any measures compatible with Community law that they consider necessary to ensure their internal security.

10. To take forward work in this vital area, the UK Presidency in October 1986 took a very constructive initiative by launching a programme of regular meetings of the ministers responsible for immigration matters in the various countries, to be prepared by senior officials in a newly created Immigration Group. The link with the wider programme for completing the Internal Market was symbolised by the fact that the Commission was invited to take part in these meetings and the secretariat is provided by the Council secretariat.

11. At the October 1986 meeting in London - followed by similar meetings in Brussels (28 April 1987), Copenhagen (9 December 1987) and Munich (3 June 1988), Member States Ministers responsible for immigration issued a declaration setting themselves the objective of "easing and ultimately abolishing" frontier formalities between EEC countries.

From the beginning, it was recognised - as indeed had already been clearly stated in the Commission's own White Paper and in Council discussions of the draft directive on easing border controls - that there was a strong link between the removal of controls at internal frontiers and the strengthening of controls at external frontiers. These two objectives clearly need to be pursued simultaneously since only in this way can adequate standards of security be preserved, while at the same time the best possible use be made of the human and technical resources available to the Member States.

12. In a separate but parallel and very relevant exercise the five Member States who have signed the Schengen Agreement (France, Germany and the Benelux countries) have committed themselves to a process with the aim of abolishing identity controls of individuals at their common land borders. The Commission participates in the work of the Schengen Group which it finds invaluable in formulating its ideas in the wider Community context and which enables it to help ensure that Schengen is compatible with Community law and with the Community's objectives: but in no way would the Commission wish to slow down progress where progress can be made.

III. THE GENERAL APPROACH

13. The Single European Act sets an objective which goes beyond the mere easing of frontier controls. The concept of an "area without frontiers" necessarily implies that internal frontier controls must also be abolished - as Immigration Ministers themselves acknowledged at their October 1986 Meeting in London. Nor is it easy to see how identity controls at internal frontiers could be abolished selectively depending on whether the traveller was a Community citizen or a citizen of a third country, since nationality can only be established by applying some form of control. This implies that any such distinction must be made at the external rather than the internal frontiers.

14. In order to organise work effectively for the achievement of the stated objectives, two preliminary questions need answering:

- the first concerns the extent to which national policies and legislations need to be harmonized. Leaving aside the long-term desirability of the harmonisation of Member States legislation in this area, the immediate priority should be to define what actions are indispensable in order to achieve the abolition of border controls at internal frontiers by 1992. For example, while it could be a long term objective to reach a common policy on the rules governing the status and the right of residence of third countries nationals within the Community, the Commisison believes that the abolition of frontiers for all persons can and should be achieved on the basis of a more limited programme, which could include in particular a common visa policy, a common policy on refugees, and the strengthening of controls at the external Community borders;

- the second question concerns which actions that should be taken at Community level and which should be left to intergovernmental cooperation. The Commission is fully aware of the delicate nature of an exercise of this kind, and it considers that attention should be focused on practical effectiveness rather than on matters of legal doctrine. Therefore, without prejudging its interpretation of the Treaty as modified by the Single

European Act, the Commission proposes that Community legislation in this field be applied only to those cases where the legal security and uniformity provided by Community law constitutes the best instrument to achieve the desired goal. This would mean therefore that large scope would be left, at this stage, to cooperation among Member States notwithstanding the fact that the Commission should be permitted to participate, even on an informal basis, in this form of cooperation with a view to ensuring compliance with the beforementioned objectives..

14. The Commission would not, however, wish to rule out the possibility of coming forward with additional proposals, particularly if it becomes clear that intergovernmental cooperation is not the most efficient or cost-effective method, or if a consensus were to emerge among Member States that further harmonization and coordination would be desirable.

IV. MAIN PRIORITY AREAS

15. This section describes in summary form the progress achieved so far by the various bodies dealing with individual policy areas and sets out the Commission's ideas for taking the work forward. A more detailed account of the background and main issues in each area is given in the Annex.

i) Proposed Directive "easing of border controls" (Current forum : Internal Market Council)

This proposal, which was in response to the call by the Heads of State and Governments at Fontainebleau in 1984, was always considered by the Commission as being of a transitional nature. It is regrettable that, despite the call by the Heads of State and Governments, Member States have not been able to bring themselves to adopt the draft directive.

Time having passed and the Directive having been eviscerated by the Council contrary to the hopes expressed by the European Council, the Commission doubts the value of keeping this draft alive.

ii) Approximation of legislation on weapons (Current forum : Internal Market Council)

The Commission proposal has been on the Council table since July 1987. It is now up to the Council to make the necessary effort to discuss and adopt the Commission's proposal as soon as possible. The directive would introduce transnational procedures for controlling the authorized acquisition and possession of firearms in order to avoid controls having to be made at intra-community frontiers.

As far as illegal traffic in fire-arms is concerned, this is more a matter for the Member States to discuss within the Trevi Group.

iii) Drugs
(Current fora : Council ad hoc Group "Toxicomanie"; EPC; United Nations; Council of Europe Pompidou Group; TREVI)

Two United Nations conventions have already brought about a considerable degree of convergence in the relevant Member States'national laws.

As a result, the Commission does not envisage, as things now stand, putting forward proposals for harmonised legislation in this area as a necessary condition for the abolition of intra-community frontiers. Efforts need rather to be directed mainly at action to combat drug trafficking, by:

- tightening up controls at external frontiers, as drugs seized in the Community have almost always been imported from outside the EC;

- increasing cooperation between the Member States within the Pompidou Group, the Trevi Group and, as far as customs is concerned, in the Mutual Assistance Group under the Naples Convention. It would on the other hand be convenient if the Member States and, to the extent necessary, the Community, ratify quickly the future convention on illegal drug trafficking.

- increasing cooperation between Member States and the Commission in the framework of the new international convention, which will be adopted by a Plenipotenttiary Conference in Vienna (25 November-20 December 1988).

iv) Coordination of national rules on the grant of asylum and refugee status
(Current forum : Immigration Group)

After 1992 immigration controls at the Community's frontiers will have to serve the interests of all the Member States. For this reason it will be necessary to have rules for determining which country should be responsible for dealing with requests for asylum; and rules will be needed to cover the movement of asylum seekers and recognized refugees between Member States.

The work of the Immigration Group has contributed significantly to thinking on this subject, both on the cooperation aspects(exchange of statistics and legislation) and on common criteria for determining the responsibility of the Member State competent to deal with a request for asylum. This work is very closely connected with the Commission's initiatives on the subject.

The Commission is examining the case for a directive to regulate these matters. They can only be solved at Community level and are closely linked to the general question of freedom of movement.

v) Coordination of visa policies
(Current forum : Immigration Group)

Coordination of national policies on visas is necessary for two reasons:

- with the removal of intra-community frontier controls, a procedure should also be established for consultation and cooperation between Member States over the issuing of visas.

- coordinated visa policies would facilitate the controls on non-EC nationals when they cross the Community's external frontiers. As visa policies themselves reflect the stance of Member States on issues of foreign policy, the content of a directive would have to take this into account.

The Commission believes therefore that coordination should be left to negotiation between national governments under the appropriate machinery. Key points for negotiation are a common list of countries whose nationals are subject to a visa requirement and conditions for the grant of visas.

In the short term priority should be given to deciding on the countries for whose nationals compulsory visas will be required by all the Member States. Such issues, which raise security and foreign policy questions, will require discussion and early solution at political level.

vi) Coordination of rules on extradition
(Current forum : Political cooperation)

Coordination of national rules on extradition is required to avoid situations where, because of the removal of internal frontier controls, a person committing a criminal offence in one Member State is able to take refuge in another Member State and be safe there from both prosecution and extradition.

The European Convention on Extradition drawn up by the Council of Europe and its two Additional Protocols could provide the answer.

It is important therefore that the Member States that have not yet done so should ratify the three instruments. Furthermore, all twelve Member States should coordinate as far as possible the reservations that need to be entered in the instruments.

The Judicial Cooperation Group on Criminal Law within the Political Cooperation machinery could deal with the latter point and also discuss the possibility of ceasing to use diplomatic channels for delivering extradition requests and switching to modern communication methods.

vii) Action against terrorism and international crime
(Current forum : EPC; TREVI)

The removal of internal frontier controls in the Community should clearly not make it easier for terrorists or criminals to operate. The present controls are not effective and we need to find something much better.

The tightening up of controls at external frontiers (see point ix below) has a crucial part to play in this; but it will also be essential to step up the international cooperation launched by the Trevi Group and within EPC to prevent acts of terrorism and crime and to track down those responsible.

viii) Improvement of cooperation between criminal justice authorities (Current forum : Political cooperation)

Agreement needs to be reached by the Judicial Cooperation Group on Criminal law, which meets within the European Political Cooperation framework on the measures which are essential in the light of the removal of internal frontier controls.

These mainly concern mutual assistance between criminal justice authorities, international recognition of criminal judgements, the transfer of criminal proceedings, and cross-frontier surveillance measures.

ix) Tightening-up controls at external frontiers (Current fora : Immigration Group and TREVI)

A tightening-up of controls at the Community's external borders is universally recognised as being essential following the removal of those at internal frontiers.

There are a number of reasons for this. Identity checks now carried out at the frontiers between Member States will have to be transferred to the Community's external borders in order to prevent the first entry of undesirable persons into any part of the Community. The external frontiers will be the key point of entry controls at which to run identity checks against drug trafficking, terrorist activities and organized crime engaged in by non-Community or Community nationals.

In this context, consideration will have to be given to the implications of agreements that some Member States have entered with third countries such as the Nordic passport control agreement between Denmark and the Nordic countries.

A package of measures (identity checks, curbs on the use of forged travel documents and organized illegal immigrants traffic) is being studied by the Immigration Group.

As part of this exercise it will be necessary to reach an agreed definition of what constitutes an external frontier, especially as far as ports and airports are concerned.

As regards airports, the Member States' Immigration Ministers' meeting in Munich on 3 June 1988 agreed, on the basis of a Commission working paper, to the principle that for exclusively intra-community routes airports should be regarded as internal frontiers at which checks on passengers should be dispensed with, except during a transitional period while passenger handling facilities were redesigned to separate intra-community flights from international flights. On the latter passengers would still be checked because they would be crossing an external frontier.

As far as ports are concerned, the Immigration Group has been sent a Commission working paper which proposes that ferry crossings between Member States and possibly sailings by pleasure boats in Community waters should be classified as "intra-community" travel and controls should be abolished. Other sea crossings would normally be regarded as part of extra-Community travel and controls will remain.

The work relating to ports and airports needs to progress rapidly so that the necessary facilities can be provided in time and investment decisions avoided that run counter to the 1992 objectives. The possible need for a directive on this subject is a matter for further consideration.

The Commission has therefore decided that financial support from the Community cannot be provided for infrastructure projects which would be inconsistent with the goal of abolishing internal frontier controls.

One essential point needs underlining in the context of ports, and more particularly airports. Nothing in what the Commission proposes would in any way ban the use of security checks (as opposed to identity) checks of the kind currently conducted on passengers to ensure that they are not carrying weapons or other dangerous instruments either on themselves or in their luggage. Such checks take place on domestic flights as well as on international flights and there is no suggestion that they should not continue if needed on intra-Community travel.

ANNEX

1. The Schengen Agreement

In June 1984 the Council adopted a resolution on the easing of border-crossing formalities for EC nationals at internal frontiers at[1] and the European Council of 25-26 June 1984 in Fontainebleau issued a declaration on the abolition of police and customs formalities in respect for the movement of persons and goods across internal frontiers. Following the resolution and declaration, Germany and France signed an agreement at Saarbrücken on 13 July 1984 and Germany, France and the Benelux countries an agreement at Schengen on 14 June 1985 on the gradual removal of controls at their common frontiers.

By 1 January 1990, the countries in the Schengen Agreement intend to have abolished all checks on persons crossing their common land frontiers. For this purpose, the Schengen agreement contains short-term measures and provides for further long-term measures in the following fields : drugs, firearms and ammunition, mutual judicial assistance, frontier controls, frontier surveillance, visas, rules on stays of less than three months by aliens, and the grant of asylum. The Schengen initiative may help to speed up the removal of controls throughout the Community.

This political will, demonstrated by some members of the Community in the Schengen Agreement, is a wholly positive development.

The Commission takes part as an observer in the meetings of the Schengen Group which it finds invaluable in formulating its ideas in the wider Community context and which enables it to help ensure that the Agreements' are not contrary to Community rules and, in particular do not discriminate between nationals of members of the Agreement and nationals of the other Member States of the Community. Also, since the arrangements made under the Agreement concern the achievement of the objective of Article 13 of the Single Act, they must not, be it through their legal form or through their content, for example by taking account only of the interests of the countries belonging to the

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1) OJ No C 159, 19.6.1984, p. 1.

Agreement, make the achievement of that objective more difficult. By the same token, arrangements can only be temporary, pending the adoption of the Community measures to achieve the objective of Article 8A of the EEC Treaty.

The current state of play in the various areas of work under the Schengen Agreement is as follows :

a) Firearms and ammunition

The countries in the Schengen agreement have adopted a more ambitious approach than the Commission. They plan to make an intergovernmental agreement to inform one onother of sales of firearms to one another's residents, which would partly cover the areas dealt with in the Commission's proposal for a Directive. An international convention would also partially harmonize the laws of the five countries.

b) Drugs

In the field of drugs, the Schengen Group is

- recommending the Benelux countries to ratify the 1971 Convention on Psychotropic Substances, and

- interested mainly in the criminal justice and prevention aspect, several elements of which are still being studied.

c) Status of non-EC nationals

Under the the Schengen agreement the five countries are considering introducing a system of free movement of non-EC nationals lawfully on the territory of any one of them.

d) Grant of asylum

As at Community level, the Schengen Group is preparing provisions on : the exchange of general information in this field, the exchange of information on asylum seekers, the determination of the country responsible for entertaining asylum requests and the effects of that responsibility, and the movement of asylum seekers in the other States.

The Schengen group does not, however, have in mind any coordination of practice in the grant of asylum and refugee status.

e) Visas

The countries belonging Schengen agreement are trying to introduce a common visa policy.

f) Extradition

The following questions are being discussed under the Schengen agreement :

- the adoption of a joint position on extradition for tax offences;

- the possibility of agreeing to extradition for offences carrying at least one year's imprisonment;

- the possibility of establishing direct contact between the five countries' Foreign and Justice Ministries.

g) Frontier controls and fontier surveillance

Under this heading the Schengen Group is considering :

- common definitions of common frontiers, external frontiers, foreigners, etc.;

- rules on the crossing of common frontiers and external frontiers (crossing points, safeguard clauses);

- controls at external frontiers and the detailed arrangements for them.

2. Proposal for a directive "Easing of controls at intra-Community frontiers"

In January 1985 the Commission, responding to a request from the European Parliament and in line with the Franco-German agreement reached at Saarbrücken on 14 July 1984, sent the Council a proposal for a Directive on the easing of controls and formalities applicable to nationals of the Member States when crossing intra-Community borders.[2)]

The Commission was aware that controls could not be completely abolished until the accompanying measures set out subsequently in the White Paper were introduced but considered that they could already be eased.

It therefore proposed that the system of spot checks only be introduced at all internal frontiers in the EC, regardless of the means of transport used.

During the debate in the European Parliament, the Commission took up an amendment proposing the abolition of controls on exit. This obviated the need for a separate directive on exit controls referred to in the White Paper.

If adopted, the proposal would have represented a major step forward as, instead of being the rule, controls would become the exception and free passage the norm.

Around the same time, France, Germany and the Benelux countries were negotiating the Schengen agreement, which was concluded in June 1985. The agreement extended the relaxations of the Saarbrücken agreement to the common land frontiers of all five countries.

Meanwhile, in the Council, the Commission's proposal was heavily watered down by agreement to:

- abandon of principle of "free passage";
- exclude all Community airports;
- exclude sea frontiers, which was tantamount to granting de facto exemption to the United Kingdom, Ireland and Greece.

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2) OJ C 47, 19.2.1985, p. 5, amended by OJ C 131, 30.5.1985, p. 5.

Moreover, at the request of two Member States, a "Resolution on cooperation between control authorities" was drawn up containing parallel measures required with regard to external frontiers. The Commission informed the Council that, although it disapproved of the compromise, it would not oppose its adoption by the Council, but reserved the right to repropose the measures contained in its original proposal which had been excluded from the compromise.

Nevertheless, the Council still could not agree and as the negotiations proceeded the proposal was watered down even further by:

- exclusion of the German-Danish frontier for reasons connected with Denmark's membership of the Nordic Passport Control Agreement;

- transformation of the proposal into a transitional measure applicable only until 31 December 1990.

- demand that the principles embodied in the Directive should not apply to the future Channel Tunnel.

On this basis a consensus seemed to be forming within the Council but the adoption of the Directive remained tied to adoption of the resolution on cooperation between control authorities. Three key issues were to be addressed in the resolution:

- the conclusion of agreements on readmission ;

- the harmonization of international provisions on the grant of asylum;

- the rudiments of a common visa policy.

The outstanding difficulties concerned not so much the substance of the agreements required, as the question whether they could be carried out before the Directive came into force.

The Council decided, in 1987, to transfer responsibility for the Resolution to the ad hoc working group of Ministers responsible for immigration. Up to now, no agreement has been reached on the wording of the Resolution.

In view of its limited objective, the time that has passed since it was tabled and the considerable watering down of this proposal during its passage through the Council, the time will come when the Commission may have to consider withdrawing its proposal on the easing of controls at intra-Community borders.

3. The approximation of arms legislation

Frontier controls on persons may include an inspection of goods carried by them to ensure that they do not include weapons. Such controls are carried out because of the legitimate concern of authorities to combat terrorism, crime and illicit traffic in arms. They are also carried out in order to ensure that the traveller is complying, as far as the carrying of arms is concerned, with the relevant national legislation on possession of weapons.

To abolish controls at internal frontiers and hence give EC nationals the right to travel freely in the Community without formalities or controls, the Member States must be assured that :

- the degree of protection against terrorism and crime will not be reduced;

- the removal of intra-Community frontiers will not undermine the enforcement of national arms legislation.

This objective is being pursued in two ways :

- first, by improving the effectiveness of cooperation between national police authorities, on which security in Europe clearly depends; this is the task of the Trevi Group (see point 8);

- secondly, the avenue of approximation of Member States' arms legislation is being pursued. The effect of such approximation should be that each Member State no longer feels responsible only for security in its own territory but also, through its legislation applicable in its territory, for security throughout the Community.

Here too, the removal of internal frontier controls needs to be accompanied by a tightening up of controls at the Community's external frontiers.

In its Internal Market White Paper, the Commission announced that it would be making proposals to approximate arms legislation (point 55).

The ideal would be a complete harmonization of national law on arms. However, the Commission felt that, in view of the diversity of technical rules on the subject and experience of the Council of Europe, a true harmonization is currently unattainable. All that is needed to be able to do away with controls at internal frontiers is a system which makes it possible to link together national rules and procedures.

On 28 July 1987 the Commission therefore sent the Council a proposal for a Directive on the control of the acquisition and possession of weapons.[3)]

This would prohibit the possession of weapons when passing from one Member State to another. Special procedures are laid down for definitive transfers of firearms and for the possession of firearms by travellers. The procedures ensure that Member States are informed of the importation of weapons into their territory and allow them to make such importation subject to their own prior consent. The procedures thus enable the Member States to apply their own arms legislation to persons coming from another Member State.

On 17 December 1987 the Economic and Social Committee gave a favourable opinion on the proposal, but stressed that the Directive should be accompanied by additional measures strengthening liaison between Member States' police forces and security services.

The European Parliament and the Council have recently commenced their scrutiny of the proposal for a Directive but it is still too early to gauge the prospects for its speedy adoption. The Council discussions have dealt with the scope of the proposal (whether it should be limited to individuals or should extend to commercial operations; and whether it should include knives, side-arms, etc.), with the question of harmonizing the categories of arms subject to movement licences, and with the possible relaxation of the procedures in the case of huntsmen and sportsmen.

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3) COM (87) 383 final.

4. The approximation of drugs legislation

In its Internal Market White Paper the Commission announced that it would be presenting proposals on the approximation of laws in this field.

After a detailed examination of the question, it has become clear that the Member States' laws are already in fact very similar, largely as a result of the 1961 UN Single Convention on Narcotic Drugs, which has been ratified by all twelve Member States, and the 1971 UN Convention on Psychotropic Substances, which has been ratified by seven Member States and whose content - the substances subject to control - is largely reproduced in the laws of the Twelve.

The differences between the Member States relate to the policy on enforcement. Some consider that penalties should be harmonized or that minimum levels of possession triggering prosecution should be set. This gives rise to some constitutional problems (notably independence of the judiciary) and in any event presupposes a common policy towards drugs addicts (in the field of repression and/or reduction and rehabilitation) which does not exist at present.

The conclusion is that besides the need for a common approach to enforcement, the removal of controls at internal frontiers will have to be accompanied by a considerable tightening up of controls at external frontiers (almost all narcotic drugs are imported at one time or another in the production and distribution chain). Also, closer cooperation between Member States' police authorities and customs services is essential. This is already coordinated within the Pompidou Group (Council of Europe), the Trevi Group and, with regard to customs, under the mutual assistance provisions.

Finally, the Community is participating together with the twelve Member States in the preparation of a draft Convention against illicit traffic in narcotics. It would be convenient if the Member States and to the extent necessary the Community were to ratify the future convention.

5. Coordination of the rules on the grant of asylum and refugee status

Common rules are needed for three reasons:

- the abolition of frontier controls will mean that people of any nationality will be able to move about the Community freely.

- As controls at the Community's external frontiers will have to serve the whole Community, it is necessary to have clear rules for determining which Member State is responsible for examining an asylum request.

- the sharp increase in the number of asylum-seekers in recent years has shown that isolated, uncoordinated policies cannot control the influx of asylum-seekers in a manner consistent with the international conventions to which the Member States are parties.

For these reasons the Commission announced in its Internal Market White Paper that it would table a proposal for a Directive in 1988 for adoption in 1990.

The Council of Europe and the countries of the Schengen Agreement have also turned their attention to the problem, without as yet producing any legal instrument.

The matter has also been taken up by the governments of the Twelve. At a meeting of Ministers responsible for immigration held in London on 20 October 1986, a working party was set up to look into ways of developing a common policy to end abuses of the asylum process. On 28 April 1987 the Ministers, meeting in Brussels, agreed on a series of measures to assign greater responsibility to air carriers bringing in asylum-seekers, to curb the activities of operators organizing traffic in refugees, and to coordinate the processing of asylum requests.

At their meetings in Copenhagen on 9 December 1987 and Munich on 3 June 1988, the Ministers took a first step towards agreement on rules for determining responsibility for examining an asylum request : The basic rule was agreed

that responsibility should lie with the Member State that had first issued a residence permit or a visa to the applicant. It was also decided that, where the asylum seeker had close family members (spouse, parents or dependent children), responsibility for examining asylum requests for all the family should lie with that same country. Discussions are to continue on other points.

The Immigration working group has concentrated on the most acute problems. Its contribution has been valuable (for example, w$h regard to exchanges of information and the rules for determining the Member State responsible for examining an asylum request) in that it is to some extent filling a gap in an area where the Community has no experience. But although a policital agreement may be near on rules for determining responsibility, there is no agreement on the legal form such rules should take. Also, an answer to this probem is not sufficient to resolve all the problems raised by the abolition of controls at internal Community frontiers, and the discussions have shown that once they go beyond questions of principle to actual operating procedures, agreement becomes difficult.

The directive announced by the Commission therefore remains necessary both in principle and in practice. The directive needs to deal with the following issues:

- determination of the Member State responsible for examining an asylum requests : responsibility would lie with the Member State which had first shown its consent to the asylum seeker entering its territory (by the issue of a residence permit or visa) or through which he first entered the Community unless there are existing families or cultural ties with another country;

- travel by the asylum seekers to other Member States while their asylum requests are pending: this would be subject to authorisation by the country of departure and destination and visits could not be used to transfer responsibility for considering the asylum request to the second country;

- coordination of the practice of granting asylum : an Advisory Committee for Asylum Questions would be set up to give general advice in order to bring about a gradual convergence of national

practice;

- the removal of aliens refused asylum or permission to stay on other basis not only from the Member States taking the decision but from the whole Community;

- travel by recognized refugees: ratification of the Council of Europe's European Agreement on the Abolition of Visas for Refugees of 20 April 1959 by Greece and its reintroduction by France (which has suspended its application).

6. Coordination of visa policies

A common policy on visas, or at least coordination of Member States' policies, is necessary for two reasons :

1) because of the removal of intra-Community frontier controls;

2) because as a corollary to the removal of internal frontier controls, controls at external frontiers will have to be aligned so that they serve all the twelve Member States.

The Internal Market White Paper therefore announced that in 1988 the Commission would present a proposal on visa policies for adoption by the Council in 1990.

The Working Party set up by the Ministers responsible for immigration at their meeting on 20 October 1986 was also instructed to look at the question of harmonizing visa policies.

It began by holding general discussions of the subject, which were inconclusive, and then turned its attention to the question of agreeing lists of third countries whose nationals were, or were not, to be subject to a visa requirement and to identifying the other issues that needed to be addressed.

At their meeting in Copenhagen on 9 December the Ministers agreed on the following:

1) a list of countries whose nationals were to require visas for any of the twelve Member States from 1 January 1988; this list merely maintains the status quo;

2) the need to consider drawing up a "positive" list of countries for which none of the Twelve would in future require visas; this includes the EFTA countries and the very small independent states in Europe;

3) that the Working Party should now concentrate on harmonization of the conditions for the grant of visas, as there is no little point in harmonizing the list of third

countries subject to a visa requirement if the Member States have different approaches to the granting of visas;

4) not to change without prior consultation their policy on points which have already been agreed at Community level, except in an emergency.

5) the Ministers of the Interior agreed in Munich to add seven countries to the list referred to under point 1) above.

The Working Party's deliberations prompt the following remarks:

1) The drawing-up of lists of countries that are or are not to be subject to a visa requirement and the conditions governing the granting of visas are essentially a foreign policy matter. It might be advisable to involve the European Political Cooperation machinery in this work at a later stage in view of its responsibilities in the foreign policy area.

2) The following objectives could be adopted, taking the system already operating in the Benelux as a model:

- Member States would draw up before the end of 1992 an exhaustive list of third countries whose nationals are to be subject to a visa requirement. The list would be reviewed periodically and at the request of any country faced with specific problems;

- a visa issued by a Member State would normally be valid throughout the Community for six months for a stay of not more than three months. Visas would thus only be available for short stays, e.g. as a tourist;

- Member States would establish before the end of 1992 a procedure for informing one another about visa applications received to enable other Member State to oppose either the validity of the visa in its territory, this being indicated on the visa, either the issue of the visa.

- Member States would establish among themselves a procedure for informing one another about decisions taken on visa applications so as to prevent simultaneous applications being made in several Member States;

- visa applications that are rejected might be resubmitted after six months.

In view of the above, it does not appear necessary for the Commission to make a proposal for a directive to coordinate Member States' visa policy, and in particular the list of countries subject to a visa requirement and the conditions for granting visas. The Member States, however, will have to coordinate their policies through the appropriate channels, namely the meetings of Immigration ministers or the European Political Cooperation framework. In addition, it should be remembered that the Commission has set up, by its Decision 88/384 of 8 June 1988, a prior communication and consultation procedure on migration policies in relation to non-member countries, the objectives of which are, inter alia, to facilitate the mutual exchange of information and the identification of problems of common interest and, in relation to those problems, to facilitate the adoption of a common policy by the Member States particularly as regards international instruments relating to migration, and to examine the possibility of measures, which might be taken by the Community or Member States, aimed at achieving progress towards the harmonization of national legislation on foreigners.

If the Commission found that the intergovermental talks were failing to make headway, it would always be able to review its current position to avoid any slippage in the timetable for 1992.

7. Coordination of rules on extradition

With the prospect of the removal of internal frontiers by 1992, it is necessary to coordinate the rules on extradition to avoid situations where the absence of frontier controls allows a person who has commited a crime in one Member State to take refuge in another Member State where he would not face trial and be safe from extradition.

The Internal Market White Paper announced that a proposal for a Commission directive will be transmitted to the Council in 1989 for adoption in 1991.

A European Convention on Extradition was concluded in the Council of Europe in Paris on 13 December 1957. It has been supplemented by two Additional Protocols (Strasbourg - 15 October 1975, and Strasbourg - 17 March 1978). The position with regard to signature and ratification by the Member States of the EEC is as follows :

- Convention
  - . Ratified : Denmark, Germany, Greece, Spain, France, Ireland Italy, Luxembourg, Netherlands.
  - . Signed : Belgium, Portugal.
  - . Not signed : United Kingdom.

- Protocol No I
  - . Ratified : Denmark, Spain, Netherlands.
  - . Signed : Greece, Luxembourg, Portugal.
  - . Not signed : Belgium, Germany, France, Ireland, Italy, United Kingdom.

- Protocol No II
  - . Ratified : Denmark, Spain, Italy, Netherlands
  - . Signed : Germany, Greece, Portugal.
  - . Not signed : Belgium, France, Ireland, Luxembourg, United Kingdom.

Content of the Convention and of the two Additional Protocols

Extraditable offences are those carrying in the requested country and the requesting country a maximum penalty of at least one year's imprisonment, provided that if sentence has already been passed the actual penalty imposed was at least four months.

Any Contracting Party may exclude certain offences covered by the preceding paragraph from the application of the Convention.

Extradition is not granted :

i) if the requested country considers the offence to be political (or an offence based on considerations of religion, race or nationality); the following are not regarded as political :

- the taking or attempted taking of the life of a Head of State or a member of his family;
- crimes against humanity;
- certain serious violations of the Geneva Conventions on the law of war;

ii) for military offences.

Extradition will be granted for fiscal offences only if the facts constitute an offence of the same nature in both the requesting and requested countries.

Any country may refuse to extradite its own nationals but, if the requesting country so requests, it must allow legal proceedings to be brought in its territory.

There follow specific provisions concerning :

- the place of commission of the offence,
- pending proceedings in the requested country in respect of the same offence,
- ne bis in idem : on 25 May 1987 the Member States of the EC concluded an agreement on this subject within the of European Political Cooperation framework,
- the effects of lapse of time,
- judgments in absentia,

- capital punishment : the requested country may refuse extradition unless the requesting country gives it an assurance that, if it exists, the death penalty will not be carried out,
- procedure:
  . the request and supporting documents
  . supplementary information
  . "speciality" of the extradition
  . provisional arrest
  . conflicting requests
  . surrender of the person to be extradited
  . postponed or conditional surrender
  . handing-over of property, and
  . transit.

The Contracting Parties may make reservations in respect of any provision.

The Convention supersedes any bilateral agreements between Contracting Parties. The latter may conclude between themselves only agreements supplementing or facilitating the application of the Convention. Where the relations between two Contracting Parties are governed by a uniform law, this may prevail over the Convention.

For a number of years, a Working Party on Cooperation in Criminal Justice within the European Political Cooperation framework has been considering this issue from two angles :

a) Harmonization (and withdrawal) of the reservations made by the twelve Member States in respect of the Convention.

b) Simplification of extradition procedures : early in 1987, the Belgian Presidency presented a draft agreement to simplify and modernize the methods of transmitting extradition requests between the EC Member States, namely that they should no longer have to go through diplomatic channels but could be sent by modern telecommunications methods such as faosimile, if necessary in code.

At their meeting on 25 May 1987, the Ministers responsible for immigration policy agreed on the following text :

"d) Simplification and modernization of means of forwarding requests for extradition.

Considering it necessary to eliminate as far as possible the risk of failure to meet absolute deadlines for the communication of extradition documents, which is sufficient grounds in itself for extradition to be refused, the Ministers examined the scope for simplifying and modernizing extradition procedures.

They took note of a draft agreement on the subject drawn up on the initiative of the Belgian Presidency, which will be studied in detail under the Danish Presidency."

The work under way through the EPC machinery needs to be stepped up to ensure that the Council of Europe Convention and its Additional Protocols enter fully into force between the Twelve before 1991. A directive seems not necessary to attain the objective of abolishing controls at internal frontiers. However, the Commission may reconsider its position if significant progress is not made within the EPC framework.

8. Action against terrorism and international crime

The free movement afforded by the removal of frontier controls must not be allowed to result in an increase in acts of terrorism or serious crime. The increased incidence of terrorism and crime (such as drug trafficking and violence at sporting events) in recent years has shown that the European "mobility area" must also be a "security area".

The Twelve have stepped up the collaboration between their authorities in this field. This confidential cooperation takes place mainly within technical working parties and is regularly on the agenda of ministerial meeting within the Trevi Group.

In view of the international nature of terrorism and serious crime, contact has been established by the Troika of the Trevi Group with the authorities of non-EC countries (see part 10 below).

In addition, a working party set up within the European Political Cooperation framework is endeavouring to coordinate collaboration against international terrorism.

The ability to combine security and mobility in Europe is one of the main tests of the feasibility of abolishing frontiers controls. The aim is to avoid creating new security problems, by replacing traditional frontier controls with new and more effective means of collaboration to prevent and combat international crime and terrorism. The removal of internal frontier controls therefore needs to be coupled with efforts to make the new area of mobility into an area of security as well.

The Twelve must therefore actively pursue their work in the Trevi Group with a view to the removal of internal Community frontiers by 31 December 1992.

9. Improved cooperation in criminal justice

In context of the working party of the ministers responsible for immigration, the German Presidency submitted to delegations a document[4] which stresses the need to extend and facilitate international judicial cooperation in the field of criminal affairs by:

- ratifying without reservation the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959;

- ratifying without reservation the European Convention on Extradition of 13 December 1957 and simplifying procedures (see point 7, above);

- ratifying the European Convention on the International Validity of Criminal Judgments of 28 May 1970;

- drawing up a new convention on the transfer of criminal proceedings;

- drawing up rules on the cross-border surveillance of persons.

The solution of these various questions is not a prerequisite for removing internal Community frontiers, but it cannot be denied that improved cooperation in criminal justice would make it possible to introduce measures to fill any gaps that might arise in the criminal justice field as a result of the removal of internal frontier controls.

The proposals made in the German Presidency's note have been, or are being, discussed by the EPC's working party on Criminal Judicial Cooperation.

The Commission will urge the working party to discuss the proposals of the German Presidency as a matter of priority at the next few meetings.

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4) Document SN/553/88 (WGI 227).

10. Tightening up of controls at external frontiers

The tightening up of controls at external frontiers, which is an essential corollary of the removal of intra-Community frontiers, is one of the subjects of work by Ministers responsible for immigration. The main issues are:

- identity checks at land frontiers
- the delicate question of what controls should be carried out at external air and sea frontiers (particularly the definition of such frontiers);
- the surveillance of land and sea frontiers in places where there are no frontier posts;
- action to curb the use of forged documents.

Some measures referred to in the preceding points of this communication will also contribute to this objective, such as customs cooperation (prevention ofrug trafficking), collaboration in the issue of visas, and the activities of the Trevi Group.

At the present time, it does not appear necessary to propose a directive dealing specifically with these matters, but the Commission might reconsider its position in the light of progress of the intergovernmental talks, particulary as regards criteria for determining whether or not a port or airport is an intra-Community frontier requiring all checks on persons to be abolished.

It is important that rapid progress be made on this latter point to avoid decisions being taken in the coming months to undertake investment that would be contrary to the objective, and to ensure that the necessary infrastructure is ready in time.