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**EU/SCHENGEN REQUIREMENTS FOR
NATIONAL BORDER SECURITY SYSTEMS**

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Preface

This paper is a compilation of European Union requirements relating to border security. The main sources for this document are the EU's common negotiation positions for candidate countries, i.e. the so-called "Schengen paper"¹, reports and analyses made by the Collective Evaluation Working Group as well as the Schengen Evaluation Working Group. The primary purpose of this document is to clarify some basic requirements and characteristics for national border security systems, enabling them to become compatible with EU structures.

1. What is the *acquis* in the field of border security?

The EU *acquis* in the field of border security consists of the Ex-Schengen *acquis* (1999/435/EC), which represents the main part of the *acquis*, and those elements of the *acquis* that were presented in document 6473/3/98 REV 3 JAI 7 ELARG 51 and its updates (other than Schengen-related *acquis*). The Schengen *acquis* not only includes written rules, but also non-written but commonly accepted standards relating most notably to the organisation of border police services and practices in which border authorities engage in order to guarantee the efficient implementation of the *acquis*. Given that the *acquis* on border management is evolving, it is also important to take note of the conclusions concerning border management that were drawn-up at EU-summits², as well as the conclusions reached in the most recent evaluations³

¹ Following a proposal by the Commission, the member states examined the Schengen provisions and divided them into two categories: those which need to be in place prior to EU accession and those required for the full implementation of Schengen. The attached paper provides these two lists and contains some explanatory notes. The Committee of Permanent Representatives formally endorsed this paper on 26 September 2001 and requested that the Commission forward the document to candidate countries.

² E.g. the conclusions of the European Council of Tampere (15-16 October 1999) concerning border control matters.

³ Greece, Nordic Countries

made by the Schengen Evaluation Group. These should be used as guidelines for the management of the future external borders.

2. Accession procedure – two-step approach

An important feature of the Schengen *acquis* is that its implementation by member states takes place as a two-stage process. A substantial part of the *acquis* needs to be in place at the latest by the time of accession, whereas other elements need only be applied following the full introduction of Schengen – i.e., at the point when internal border controls are lifted. This second phase occurs some time after accession to the EU, and is subject to a separate Council decision.

3. The basic requirements for Schengen-like border security

The EU Common Positions define two essential features of high-level external border control: 1) all persons crossing the external borders are checked in a systematic manner and 2) effective border surveillance is ensured between authorised border crossing points. However, there is no fixed list defining the practical measures relating to “a high level of external border control” to be achieved at the point of EU accession.

Other than the Schengen *acquis*, the Union has practically no other *acquis* concerning external border control. Therefore guidance in interpreting the notion of “a high level of external border control” has to be sought from there, whilst appreciating that it is partly a political notion.

The basic requirements for effective external border control can be found in Chapter 2 of Title II of the Schengen Convention and the so-called ‘Common Manual on External Borders’.⁴ Notwithstanding these specific rules, the Schengen Evaluation Working Group has the task of specifying certain criteria and requirements, (including the requirements related to external border control), to be fulfilled before internal border controls are lifted. These criteria and requirements would not be directly

⁴ Some parts of the Common Manual still remain confidential, see Council Decision 2000/751/EC.

applicable to the current enlargement process as they are formulated on a case-by-case basis, taking into account the specific characteristics of the country (including its geographical situation) and are subject to evaluation. Moreover, the Schengen Evaluation Working Group has a role to play in drawing up recommendations and best practices.

Upon accession, a sufficiently high level of border control is also required at the temporary external borders⁵, whilst appreciating that special arrangements at these borders are justified, to tighten the cooperation between the future Schengen partners. This is in order to allow for a smooth transition when internal border controls are abolished, and to avoid unnecessary investments. The border control system should be based on cooperation with the border authorities operating on the other side of the border. Practical cooperation models across the temporary external border should be accepted: for instance, everyone crossing the border is checked but the control authorities on either side of the border co-operate so that the administrative and logistical burden does not lie with only one country. Consideration should, whenever possible, be given to shared infrastructure and removable and/or shared equipment and joint controls could.

Such mechanisms, infrastructure and equipment offer a good basis for effective cooperation between relevant authorities working at the border, even after the accession to the Union by all of the candidate countries in question, especially in implementing cross-border cooperation.⁶ Furthermore, from the “user’s” point of view, these arrangements would facilitate the movement of people and goods by rendering the control procedures more straightforward and smooth.

Finally, it should be emphasised that the current Schengen States will be responsible for the control of the Schengen external borders until the internal border controls are lifted *vis-à-vis* new member states. However, after accession, the nationals of the new member states would no longer be third country nationals who have to fulfil all

⁵ National borders between the new member states and the remaining candidate countries. In principle, the same applies to national borders between the new member states and between the new member states and the current Schengen States.

⁶ It should be noted that the control arrangements at the temporary external borders could remain useful after the lifting of internal border controls, so as to apply Article 2(2) of the Schengen Convention.

entry requirements. For nationals of the EU Member States, the mere presentation or production of a travel document would be sufficient.

With a view to the point when internal border controls are lifted with a particular new member state, and the full Schengen *acquis* enters into force, the new member state will, without exception, become fully responsible for the protection of its external Schengen borders according to the Schengen *acquis*. This also includes borders with those member states or candidate countries with which the internal borders have not yet been lifted.

A) *The formal acquis*

1. When implementing the Schengen requirements, border authorities must have a solid legal basis for their work. These powers should cover all border related crimes without territorial or operational limitations. Sanctions against illegal border crossings and carriers must be defined.
2. External borders may only be crossed at the authorised border crossing points.
3. All passengers must be checked according to the Schengen principles (this includes local border traffic).
4. Division of tasks between national authorities involved in border security matters shall be put into place and defined within national legislation. Co-operation agreements between these authorities should clarify co-operation models and practices.
5. Co-operation agreements should be established with neighbouring countries in order to facilitate co-operation between border authorities.
6. The aim of this co-operation is the fulfilment of the Schengen co-operation requirements for EU member states and candidate countries. Although the provisions concerning cross-border co-operation are only applicable following the lifting of internal border controls, bilateral arrangements could and should be developed in advance.

AS far as third countries are concerned, there should be as much functional and practical cross-border co-operation based on bilateral agreements and protocols as possible. Co-operation models cannot comprise on shared responsibilities or combined border controls as the full responsibility of the external borders remains in the hands of EU candidates.

7. Appropriate travel documents (passports for non-EU citizens) are required, including visas for nationals of all countries appearing on the Visa List.
8. Visa policy and most of the practices must be aligned before a country's accession. However, it is not possible for a new member state to start issuing Schengen visas before the final implementation of the Schengen Convention. As far as visa policy in general is concerned, first of all it should be stressed that Schengen related instruments, the EU instruments relating to the uniform format for visa and the common visa list⁷, are EU *acquis* that have to be accepted and implemented upon accession.
9. Either national borders should be demarcated and restricted by agreements, or they should at least be properly marked and defined.

B) Administrative capacity

1. In order to ensure a coherent and broad approach to border security issues, border control should be based on a national strategy, which highlights the necessity for trouble-free co-operation between the relevant authorities. This national strategy should be endorsed at the appropriate political level.
2. The EU underlines the need for effective control of the EU Member States' future external borders by specialised trained professionals who are properly equipped and possess the all the necessary powers to tackle border related crimes.
3. Efficient implementation, continuous development and the need for a rapid reaction to the changing nature of cross-border crime require one leading

⁷ Reg. (EC) 1683/95 and Reg. (EC) 539/2001.

authority to hold the responsibility for the national border security. This authority should consist of one national non-military and specialised organisation that is responsible for border security and the organisation should operate under the auspices of either the Ministry of the Interior or the Ministry of Justice.

4. Furthermore, the EU underlines the fact that co-operation between all national authorities working within the field of border security (including the police, customs officers and the prosecution service) is essential for an effective border security system.
5. The commanding, communication and control system should operate on a 24-hour basis, at all levels of the system (vertical and horizontal) and in all conditions (back up),
6. Staff should be specially trained and satisfactory both in terms of quantity and quality (technical skills, language skills and investigation etc).
7. As a part of the national border security strategy, it is necessary to have the following in place in all cases: a risk assessment system, the capacity to create and maintain reliable situational awareness and the means for rapid reaction.
8. A career management, recruiting and training system must be in place. Salaries should be situated at such a high level that corruption is prevented.
9. The administrative capacity should also cover the system of liaison officers, document advisors and co-operation with carriers.
10. Basic infrastructure should be in place (border guard stations, communication, crossing points etc).

C) Implementation performance

1. The EU underlines that an accountable, reliable and effective national organisation is essential for the adequate implementation of the national border security strategy.⁸
2. There should be sufficient suitably trained staff, capable of carrying out their tasks in all weather conditions (night vision capacity) and all situations (including emergencies) 24 hours a day.
3. Checking that procedures are conducted according to the Schengen requirements and that crossing points are equipped with the necessary technical devices (including second line checks) is required. All persons crossing the external borders ought to be checked and passenger flows must be separated according to the Schengen principles.
4. Co-operation between the national border authorities is functional in practical terms; joint operation, shared information, inter-operability (radio channels, databases), joint risk analysis and training etc.
5. Co-operation between the national border authorities and neighbouring countries' border authorities is functional in practice; joint operations, LO's, exchange of information, communication channels (24-hour), sharing experiences etc.
6. The infrastructure (staff, lines, including separate lines for EU/EEA nationals, and number of checking booths) at a border crossing point, must be attuned to the amount of traffic, in order to avoid long waiting times and, simultaneously, guarantee a high number of border checks. Each border crossing point should be equipped with the appropriate material, such as an on-line connection to all necessary databases, equipment to detect forged documents (e.g. magnifying glasses, retro viewers, ultra-violet lamps etc).
7. As far as international ports and airports are concerned, there is no need to separate extra- and intra-Schengen passenger flows prior to the internal border

⁸ E.g. EU's Common Position on Latvia (CONF-LV 42/01)

controls being lifted. However, this issue should be addressed in the Schengen action plan, in order to give a clear picture of the plans, including the financial implications and the timetable.

8. Operative (airborne) and tactical mobility is effective for prevailing conditions (climate, terrain, border situation).
9. The border crossing points must have on-line access to National Data Registers. It is understood that full access to the Schengen Information System prior to the lifting of internal border controls is not possible for the new member states. Therefore the member states must implement Article 5 (1) e) on the basis of international agreements and other arrangements on the exchange of information to which they are party. Member states must also give due consideration to the provisions of the EU *acquis*, in particular the provisions regarding Europol and those concerning police cooperation (Articles 39 and 46 of the Schengen Convention). Furthermore, the exchange of information under this provision must be in compliance with the relevant *acquis* provisions on data protection.
10. The level of surveillance between border crossing points on land and maritime borders is credible, so that illegal border crossings (in all forms) are exposed. For the effective surveillance of the “green” borders (mobile patrols) an adequate number of professional staff and equipment is required. The number needed depends on the geographical and political situation of the border concerned (e.g. patrol cars with radio-communication, stationary as well as mobile technical surveillance systems, thermal-vision equipment, infra-red binoculars). There is an integrated sea surveillance system covering the whole sea area. The system (using the patrol technique) must be able to detect, identify and, if necessary, act against all possible offenders at the border.



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