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(OR. en)

11450/02  
ADD 2 DCL 1

SCH-EVAL 20  
COMIX 483

## DECLASSIFICATION

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Subject: Replies from the Netherlands to the questionnaire submitted to the Benelux countries for the purpose of evaluating the implementation of the Schengen acquis  
- Answers to the additional questions and further requests for clarification made in 12401/02 SCH-EVAL 21 COMIX 537 + ADD 1+ ADD 2

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Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.

# RESTREINT UE



COUNCIL OF  
THE EUROPEAN UNION

Brussels, 22 October 2002 (28.10)  
(OR. fr,en,nl)

11450/02  
ADD 2

RESTREINT UE

SCH-EVAL 20  
COMIX 483

## ADDENDUM TO NOTE

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from: Netherlands delegation  
to : Working Party on Schengen Evaluation

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Subject : Replies from the Netherlands to the questionnaire submitted to the Benelux countries for the purpose of evaluating the implementation of the Schengen acquis - Answers to the additional questions and further requests for clarification made in 12401/02 SCH-EVAL 21 COMIX 537 + ADD 1+ ADD 2

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(12401/02 SCH-EVAL 21 COMIX 537)

## **Drugs**

### **Re question 160 f**

We refer to Article 71(2) in conjunction with Article 74 of the Convention implementing the Schengen Agreement and to the Joint Declaration relating to Article 71(2) of the said Agreement and request further details as to what concrete measures are taken to prevent the export of cannabis in cases where trade in this item is tolerated in the Netherlands.

# RESTREINT UE

## Answer

Firstly, it should be clearly stated that both the trade in and the export of cannabis are offences under Article 3(1) in conjunction with Article 11 of the Netherlands Opium Act. The maximum penalties for these offences range from two to four years. These provisions also apply to the sale of cannabis in so-called coffee-shops. The export of cannabis outside Netherlands territory is invariably subject to the prohibition laid down in the Opium Act and attracts a maximum sentence of four years' imprisonment. These offences can therefore be regarded as serious violations of the law, and law-enforcement agencies attach high priority to them.

With regard to the role of coffee-shops as a source of cannabis for export, it should be noted that Netherlands policy is aimed at combating "coffee-shop tourism". To this end, the maximum permissible quantity that could be traded in each transaction was reduced from 30 to 5 grams in 1996.

Another concrete measure concerns the cooperation that has existed for several years between the Netherlands, Belgian and French police forces in the "Hazeldonk" framework. These activities are aimed specifically at combating the export of small quantities of drugs from the Netherlands to Belgium and France. Mention can also be made of the enforcement and prevention project initiated in 2001 in the border town of Venlo. This project focuses, inter alia, on the role of German consumers in bringing cannabis across the border, and involves active cooperation with the German authorities. The Netherlands Government also proposes to take additional measures concerning coffee-shops in the region bordering Belgium and Germany in order to combat the problem of coffee-shop tourism. These measures will be of an administrative rather than a criminal-law nature.

Furthermore, in the last five years the number of coffee-shops in the Netherlands has been reduced from over 1 200 to about 800 at present. This enables the Dutch law-enforcement agencies to keep a better watch on the unlawful sale of larger quantities of cannabis than those intended for personal use.

# RESTREINT UE

## How do you proceed when a person presents him/herself at the border with a visa issued by another Member State?

### Reply:

In cases where an alien presents him/herself at one of the BCPs in the Netherlands with a visa issued by another Member State, he or she will in principle be treated in the same way as an alien who presents a visa issued by one of the diplomatic representations of the Netherlands abroad.

Both will be subjected to the checks provided for in Article 6(2) of the Schengen Convention (developed in greater detail in part II under 1.3 of the Common Manual).

In the context of carrying out border controls it will be verified whether the alien effectively intends to travel mainly to the Member State that issued the visa (Article 12(2) of the Schengen Convention). If this is not the case, it may be necessary to verify the statement of the alien against the information submitted by him or her to the issuing embassy or consulate.

It is evident that the border control officer will take into account the fact that a visa was issued in the representation of another Member State.

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# RESTREINT UE

12401/02 SCH-EVAL 21 COMIX 537 ADD 1

## **Question 1:**

Article 40(1) of the Convention implementing the Schengen Agreement provides that officers of a Contracting Party are authorised to continue surveillance in the territory of another Contracting Party where the latter has authorised such surveillance. This Article also enables a requesting party to ask for surveillance to be entrusted to officers of the requested party: the rule therefore seems to be that the officers conducting the case may personally continue their investigations in the territory of another Contracting Party.

In the light of experience gained over several years, it appears that the Netherlands generally refuses permission for investigators to be physically present when surveillance is carried out in its territory, at least in the case of requests made by France.

As regards these requests for mutual assistance, on what provisions does the competent authority in the Netherlands rely for imposing this condition as a matter of principle (cf. Handbook on cross-border police cooperation, column 2 - Netherlands) which limits police effectiveness?

## **Answer:**

With regard to the Schengen Convention, the Netherlands has opted where possible to assume responsibility for crossborder surveillance from counterpart agencies in other countries. The Netherlands has special surveillance teams which are constantly available for carrying out such operations. Each team consists of between 8 and 10 specially trained police officers.

On account of their professionalism and their close familiarity with the situation in the Netherlands (as regards both infrastructure and the rules of law in force) deployment of these surveillance teams can entail added value for the (further) implementation of surveillance. For example, they can seek contact swiftly with the competent national authorities in situations where this is required under Netherlands law or with the local police when certain circumstances, such as imminent danger, arise.

## RESTREINT UE

That the Netherlands police (can) assume where possible responsibility for cross-border surveillance rests on the provision contained in Article 40(1) of the Schengen Convention *"Officers...who are keeping under surveillance in their country a person ... shall be authorised to continue their surveillance in the territory of another Contracting Party when the latter has authorised cross-border surveillance.*

*Conditions may be attached to the authorisation.*

*On request, the surveillance will be entrusted\* to officers of the Contracting Party in whose territory this is carried out."*

In practice, this means that the Netherlands (i.e. the National Public Prosecutor as the relevant competent authority) authorises the requesting country to continue (cross-border) surveillance in the Netherlands until responsibility for the operation is assumed by a Netherlands surveillance team. In contrast with the general view, the foreign police who are conducting the surveillance do not need to stop at the Netherlands border. They may continue surveillance until the Netherlands police take over the operation.

With regard to Article 40 of the Schengen Convention, the competent Netherlands authority (National Public Prosecutor) acts on the principle that, if need be, (one or two) foreign police officers may be present when the Netherlands police take over further surveillance.

The question therefore also arises as to whether the requests are indeed made to the competent authority.

In fact, in 2001 and 2002 the National Public Prosecutor has received only a few requests for assistance from France under Article 40 of the Schengen Convention, and none of the requests received by him were refused. The question therefore arises as to whether France directs its requests to the proper body: the National Public Prosecutor via the LCGO (National Coordination Point for Crossborder Surveillance) in Zoetermeer.

Accordingly, the National Public Prosecutor would appreciate receiving examples of such requests that have been refused.

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\* Misunderstandings may arise owing to a discrepancy in the texts of the Schengen Convention. In French: "Sur demande l'observation sera confiée aux agents de la partie sur le territoire de laquelle elle est effectuée". This appears to indicate that the requesting party must submit a request to this end. The German text seems to be analogous to the Dutch: "Auf Verlangen ist die Observation ( ) zu übergeben."

# RESTREINT UE

It is also up to the leader of the Netherlands surveillance team to make arrangements for foreign colleagues to accompany the team. In general that will cause few problems, as the Netherlands surveillance teams are so constituted that it is almost always possible to pick up (a few) foreign colleagues (at a carpark or the like).

## **Question 2:**

Article 40(2) of the Schengen Convention provides that, for particularly urgent reasons, surveillance may be continued beyond the border without prior authorisation under certain conditions.

Experience acquired over a number of years demonstrates, at least with regard to surveillance operations carried out by the Netherlands police services, that a very large proportion of requests for surveillance are made under this urgent procedure, and at any rate far more than those made by our other partners. Police officers are thus usually already present on French territory when the request is made to the competent French authority. What action has been taken to encourage police on the ground to make use of the normal procedure, and what criteria do the Netherlands authorities adopt to define the "particularly urgent reasons" which they cite ?

## **Reply**

In the view of the National Public Prosecutor the "particularly urgent reasons" must arise from the nature of the investigation (which must require that it is important to be able to continue the surveillance) and be based on the criminal offences listed in Article 40 of the Schengen Convention. It must also be impossible to make a request for assistance (in writing or perhaps orally) before the border is crossed.

This situation will, for example, occur when a person under surveillance crosses the border of another country without any indication in advance that he would do so.

Example:

The Netherlands police continue surveillance of a suspect over the Belgian border. The Belgian authorities had given consent to this on the basis of a request for assistance. From Belgium the suspect does not drive back to the Netherlands, but enters France.

## **RESTREINT UE**

As there was no indication in advance that he would do this, no request for assistance was made to France and it is now no longer possible to make such a request. This is the type of situation covered by Article 40(2) of the Schengen Convention.

It has appeared to the writer that the French police, in particular, are unclear about the (judicial) treatment of requests for assistance for cross-border surveillance and the practical execution of them in the Netherlands. He is willing to give the French authorities and police all the information they wish - either general information or for the purposes of specific requests for assistance.

An information sheet is being prepared for this purpose.

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# RESTREINT UE

12401/01 SCH-EVAL 21 COMIX 537 ADD 2

## Question

Where police authorities request the forwarding of a copy of a report which can be used as evidence in judicial proceedings, may they use the procedure laid down in Article 39(2) of the Schengen Convention or should the request be submitted by means of letters rogatory referring to the European Convention on Mutual Assistance ?

## Answer

If material such as reports that has been obtained via police cooperation (in this case on the basis of the Schengen Convention) is going to be used as evidence, a judicial request (originating from a judicial authority) must be made to that effect (this is the most important factor) and, in the Netherlands, be sent to the public prosecutor (since the Public Prosecutor's Office is in charge of criminal proceedings). Although Article 39(2) of the Schengen Convention states that material can only be used as evidence with the consent of the judicial authorities, the Article does not seem to indicate the procedure to be followed subsequently or to provide any basis for this (judicial assistance) procedure. In principle the Schengen Convention does not cover judicial cooperation, and therefore such a request will, in principle, have to be based on the European Convention on Mutual Assistance.

8240/02 SCH-EVAL 12 COMIX 282

## Question

Presentation of the computer architecture of national police systems which are connected to the SIS.

## Answer:

# N.SIS System Architecture

