

THE GALLIC WOES OF SCHENGEN PILOTS

by George Irvin (Jan 1997)

In May 1996, Herr Hans Griebing of Weisbaden landed his Cessna at Strasbourg-Neuhof after filing an international flight plan. He and his family, including a two year old, were told by French customs that, because he had failed to give prior customs notice, he was liable to be jailed for the night and have his aircraft impounded. It took him 4 hours of phone calls and FFR 1000/- to extricate himself from this ordeal. Herr Griebing, with the backing of AOPA-D and AOPA-F, is suing the French authorities inter alia for breach of the spirit of the Schengen Agreement. But how much notice is needed?

One PPL-IR member (name withheld) reports that prior notice for Bergerac is 24 hours so I checked with the CCI well in time; everything seemed ok till the chap on the phone asked me how many we had on board. When told we were three, he said that this was impossible since I could only clear customs with a minimum of four on board. He also told me that a few days previously a British pilot had been fined FFR 1,500 for not having had the required four passengers".

Or consider the account of another member from Belgium: "Earlier this year, I gave the required 4 hours notice via the Dole (LFGJ) tower controller for a flight back to Belgium. We arrived early at the airport and filed a VFR plan with a departure time 30 minutes prior to the expiry of the four hour notice period... upon boarding the aircraft, the controller advised me that the Besancon customs were refusing to authorise the departure and that a new four hour notice was required; ie, a four and a half hour wait...."

The Schengen Agreement, named after an obscure hamlet on the Luxembourg border where it was first devised in 1985 and later signed in June 1990, abolishes customs and immigration formalities between signatory EU member states, notably Germany, France, Benelux, Italy Portugal and Spain initially---though not Eurosceptic Britain. After much wrangling about details, the Agreement came into effect formally some 18 months ago as part of the Single European Act. Most motorists are familiar with its practical implications since for some time it has been possible to drive from one end of continental Europe to the other without immigration formalities. Under the

Agreement, the frontier posts themselves are now being torn down and EU airports are introducing "Schengen exits". In effect, the Schengen EU countries have created a 'borderless Europe'; ie, a Union which distinguishes between internal frontiers and a common external frontier, much as the old EC created a common external tariff for imported goods and services.

Last year the French General Election brought to power a new government under Jacques Chirac of which elements of his support, mainly on the right, were anti-European. With France reeling under the strain of double-digit unemployment and a large budget deficit, the "dangers of unrestricted immigration" received increasing attention in the press as did the problem of drug trafficking, allegedly inspired by the overly liberal Dutch. Equally, bomb attacks by Algerian fundamentalists were claimed to be facilitated by lax customs controls in other Schengen states. Such was the groundswell of well-orchestrated sentiment in the French press that Monsieur Chirac's Prime Minister, Alain Juppé, brought into effect the "plan Vigie-pirate" in early 1996, in effect reintroducing discretionary customs controls within the Schengen area.

The reintroduction of discretionary controls in the case of intra-Schengen GA flights is compounded by the fact that the French CAA---the Direction Générale de l'Aviation Civile (DGAC)---has chosen to apply a strict interpretation of the French civil aviation code (article L-132-1) which requires that all international flights, including GA flights, depart and arrive at designated customs airports and obtain prior permission to do so. Moreover, because French customs administration is decentralised by major region, some regions have chosen to apply the law to GA flights on a discretionary basis while others have opted for a strict---not to say draconian---interpretation.

This is precisely what happened to the unfortunate Herr Griebing, and the possibility of discretionary interpretation tempts customs officials of whatever nationality to indulge in what might politely be termed 'rent-seeking' behaviour. As though administrative confusion were not enough, French civil air law does not yet distinguish between Schengen-style internal and external borders. According to a recent article by Maurice Castel in the legal section of the French GA magazine *Aviation et Pilote* (266, 1996), the provisions of French

law in principle should be superseded by international treaties. Nevertheless---and this is the rub---a key clause in the Schengen Agreement enables signatories "to take all appropriate measures to ensure closer co-operation of the parties concerned"; ironically, it is precisely in the name of 'closer co-operation' that the French authorities have returned to the status quo ante.

Since the Castel article was published, the story has taken a further odd twist. The French authorities now propose to abolish the need for intra-Schengen GA flights to land at customs aerodromes, though not the 'prior permission' provision. However, the Benelux countries would be excluded because of the alleged dangers of drug-running. Benelux pilots, including M Guy Charbonnier of the PPL-IR group, point out that to do so would in effect give legal sanction to a unilateral and discriminatory interpretation of Schengen unintended by its signatories.

The matter is being taken up by the international AOPA co-ordinator, M. Sylvain de Weert, while M Claude Leprince and M Pierre Duval (the former is President of our French counterpart group) have consulted several French Senators about the matter.

UK GA pilots may feel this matter to have little or bearing upon Britain. Obviously this would not be the case were the forthcoming British General election to return a new Government less ill-disposed to all things European. But even if this does not happen, consider the case of a British pilot flying to a Schengen country. If you land in Germany or Spain, having once cleared immigration and customs you will be entitled to fly to a non-customs aerodrome in France. If you land in Belgium or The Netherlands you will not. Nor, depending upon your destination, will you be able to depart France from a non-customs aerodrome. As to how much prior notice to give or in what denomination to give it---the mind boggles. Tune in next issue for another possible episode in our latest Euro-soap.