

**Proposal for a Council Decision concerning the conclusion of an agreement between the European Community and the Republic of Iceland and the Kingdom of Norway concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or Iceland or Norway**

(2001/C 154 E/19)

(Text with EEA relevance)

COM(2001) 55 final — 2001/0031(CNS)

(Submitted by the Commission on 30 January 2001)

THE COUNCIL OF THE EUROPEAN UNION,

HAS DECIDED AS FOLLOWS:

Having regard to the Treaty establishing the European Community, and in particular Article 63(1) in conjunction with the second sentence of the first subparagraph of Article 300(2) and the first subparagraph of Article 300(3),

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

- (1) The Commission has negotiated on behalf of the European Community an Agreement between the European Community and the Republic of Iceland and the Kingdom of Norway concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Iceland or Norway (hereinafter referred to as 'the Agreement').
- (2) The Agreement has been signed, on behalf of the European Community, on 19 January 2001, subject to its possible conclusion at a later date, in accordance with Decision .../EC of the Council of 19 January 2001.
- (3) The Agreement should now be approved.
- (4) It is also necessary to establish arrangements for the application of certain of the provisions of this Agreement.
- (5) The Agreement establishes a Joint Committee with decision-making powers in certain areas and it is thus necessary to specify who represents the Community within this Committee.
- (6) It is further necessary to provide for a procedure laying down how a Community position is adopted,

*Article 1*

The Agreement between the European Community and the Republic of Iceland and the Kingdom of Norway concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Iceland or Norway is hereby approved on behalf of the Community.

The text of the Agreement is attached to this Decision.

*Article 2*

The President of the Council is hereby authorised to designate the person empowered to deposit on behalf of the European Community the instrument of approval provided for in Article 14 of the Agreement, in order to express the consent of the Community to be bound.

*Article 3*

The Commission shall represent the Community in the Joint Committee established by Article 3 of the Agreement.

*Article 4*

1. The position of the Community within the Joint Committee with regard to the adoption of its rules of procedure as required under Article 3(2) of the Agreement shall be taken by the Commission after consultation of a special committee designated by the Council.

2. For all other Joint Committee decisions, the position of the Community shall be adopted by the Council, acting by qualified majority, on a proposal by the Commission.

*Article 5*

This Decision shall be published in the *Official Journal of the European Communities*.

**AGREEMENT****between the European Community and the Republic of Iceland and the Kingdom of Norway concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Iceland or Norway**

THE EUROPEAN COMMUNITY

and

the REPUBLIC OF ICELAND

and

the KINGDOM OF NORWAY,

hereinafter referred to as 'the Contracting Parties',

CONSIDERING that the Member States of the European Union have concluded the Dublin Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities <sup>(1)</sup>, signed in Dublin on 15 June 1990 (hereinafter referred to as 'the Dublin Convention');

RECALLING that Article 7 of the Agreement of 18 May 1999 concluded by the Council of the European Union (hereinafter referred to as 'the Council') and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen acquis <sup>(2)</sup> calls for the conclusion of an appropriate arrangement on the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in any of the Member States or in Iceland or Norway;

CONSIDERING that it is therefore appropriate that this Agreement shall incorporate the provisions of the Dublin Convention and the relevant provisions which have already been adopted by the Committee established pursuant to Article 18 of that Convention, without prejudice to the relations established by the Dublin Convention between the Contracting Parties of that Convention;

CONSIDERING that Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data <sup>(3)</sup> (hereinafter referred to as the 'Data Protection Directive') shall be applied by Iceland and Norway as it is applied by the Member States of the European Community when processing data for the purpose covered by this Agreement;

RECOGNISING, however, that the provisions incorporated into this Agreement must, where necessary, be adapted to take account of the position of Iceland and Norway as non-member States;

CONVINCED that it is necessary to include a mechanism in this Agreement that provides for consistency with the development of Community acquis, in particular in relation to the matters referred to in Article 63(1) point (a) of the Treaty establishing the European Community;

CONVINCED that it is necessary to organise the cooperation with the Republic of Iceland and the Kingdom of Norway at all levels with regard to the implementation, the practical application and the further development of the Dublin Convention;

CONSIDERING that for this purpose it is necessary to set up an organisational structure, ensuring the association of the Republic of Iceland and the Kingdom of Norway with the activities in these fields and enabling their participation in these activities through a Committee;

<sup>(1)</sup> OJ C 254, 19.8.1997, p. 1.

<sup>(2)</sup> OJ L 176, 10.7.1999, p. 36.

<sup>(3)</sup> OJ L 281, 23.11.1995, p. 31.

CONSIDERING that on 11 December 2000 the Council adopted Regulation (EC) No 2725/2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention <sup>(1)</sup> in order to assist in determining which Contracting Party is to be responsible for examining an application for asylum pursuant to the Dublin Convention (hereinafter referred to as the 'Eurodac Regulation');

CONSIDERING that this Agreement should extend to the subject matter covered by the Eurodac Regulation with a view to a parallel implementation of that Regulation in Iceland, Norway and the European Communities;

CONSIDERING that the provisions of Title IV of the Treaty establishing the European Community and acts adopted on the basis of that title do not apply to the Kingdom of Denmark, but that Denmark should be given the opportunity to participate in this Agreement should it so wish,

HAVE AGREED AS FOLLOWS:

#### Article 1

1. The provisions of the Dublin Convention, listed in Part 1 of the Annex to this Agreement and the decisions of the Committee set up by Article 18 of the Dublin Convention listed in Part 2 of the said Annex shall be implemented by Iceland and Norway and applied in their mutual relations and in their relations with the Member States, subject to paragraph 4.

2. Member States shall apply the rules referred to in paragraph 1, subject to paragraph 4, in relation to Iceland and Norway.

3. The provisions of the Data Protection Directive as they apply to the Member States in relation to the data processed for the purpose of the implementation and application of the provisions as defined in the Annex shall be implemented and applied *mutatis mutandis* by Iceland and Norway.

4. For the purposes of paragraphs 1 and 2, references in the provisions covered by the Annex to 'Member States' shall be understood to include Iceland and Norway.

5. This Agreement shall apply to the Eurodac Regulation taking into account the particular situation of Norway and Iceland outside the European Union with a view to a parallel implementation of that Regulation in Iceland, Norway and the European Community.

#### Article 2

1. When drafting new legislation based on Article 63, point 1(a) of the Treaty establishing the European Community in a field which is covered by the subject matter of the Annex to this Agreement or by Article 1(5), the Commission of the European Communities (hereinafter referred to as 'the Commission') shall informally seek advice from experts of Iceland and Norway in the same way it seeks advice from experts of the Member States for drawing up its proposals.

2. When forwarding its proposals, which are relevant for this Agreement, to the European Parliament and to the Council, the Commission shall forward copies thereof to Iceland and Norway.

At the request of one of the Contracting Parties, a preliminary exchange of views may take place in the Joint Committee established under Article 3.

3. During the phase preceding the adoption of legislation, in a continuous information and consultation process, the Contracting Parties shall consult each other again in the Joint Committee at significant moments at the request of one of them. After the adoption of legislation, the procedure as laid down in Article 4(2) to (7) shall apply.

4. The Contracting Parties shall cooperate in good faith during the information and consultation phase with a view to facilitating, at the end of the process, the functions of the Joint Committee according to this Agreement.

5. The representatives of the governments of Iceland and Norway shall have the right to make suggestions in the Joint Committee relating to matters mentioned in paragraph 1.

6. The Commission shall ensure experts of Norway and Iceland as wide a participation as possible according to the areas concerned, in the preparatory stage of draft measures to be submitted subsequently to the committees which assist the Commission in the exercise of its executive powers. In this regard, when drawing up measures the Commission shall refer to experts of Iceland and Norway on the same basis as it refers to experts of Member States.

7. In the cases where the Council is seized in accordance with the procedure applicable to the type of committee involved, the Commission shall forward to the Council the views of the experts of Iceland and Norway.

<sup>(1)</sup> OJ L 316, 15.12.2000, p. 1.

*Article 3*

1. A Joint Committee is hereby established, consisting of representatives of the Contracting Parties.
2. The Joint Committee shall adopt its rules of procedure by consensus.
3. The Joint Committee shall meet at the initiative of its President or at the request of any of its members.
4. The Joint Committee shall meet at the appropriate level, as circumstances require, in order to review the practical implementation and application of the provisions covered by the Annex, including new acts or measures referred to in Article 1 adopted by the Committee established by Article 18 of the Dublin Convention and to exchange views on the elaboration of new legislation based on Article 63, point 1(a) of the Treaty establishing the European Community and covering the substance matter of Article 1(5) or of the Annex.

All exchange of information pertaining to this Agreement shall be considered to take place within the remit of the Joint Committee.

5. The office of President of the Joint Committee shall be held, alternately for a period of six months, by the representative of the European Community and by the representative of the government of Iceland or Norway, following the alphabetical order.

*Article 4*

1. Subject to paragraph 2, when new acts or measures related to matters referred to in Article 1 are adopted by the Committee established by Article 18 of the Dublin Convention they shall, unless they explicitly state otherwise, be applied from the same time on by the Member States, on the one hand, and by Iceland and Norway on the other.
2. The adoption of the acts or measures referred to in paragraph 1 shall be notified immediately by the Commission to Iceland and Norway. Iceland and Norway shall decide independently whether to accept their content and to implement it into their internal legal order. These decisions shall be notified to the General Secretariat of the Council and to the Commission within thirty days of the adoption of the acts or measures concerned.
3. If the content of such an act or measure can be binding on Iceland only after fulfilment of constitutional requirements, Iceland shall inform the General Secretariat of the Council and the Commission thereof at the time of its notification. Iceland shall promptly inform the General Secretariat of the Council and the Commission in writing upon fulfilment of all constitutional requirements, and shall provide such information as soon as possible before the date laid down for the entry into

force of the act or measure for Iceland according to paragraph 1.

4. If the content of such an act or measure can be binding on Norway only after fulfilment of constitutional requirements, Norway shall inform the General Secretariat of the Council and the Commission thereof at the time of its notification. Norway shall promptly, and at the latest six months from notification by the competent institution of the European Union, inform the General Secretariat of the Council and the Commission in writing upon fulfilment of all constitutional requirements. From the date laid down for the entry into force of the act or measure for Norway and until the information upon fulfilment of constitutional requirements, Norway shall provisionally apply, where possible, the content of such act or measure.

5. The acceptance by Iceland and Norway of the acts and measures referred to in paragraph 1 shall create rights and obligations between Iceland and Norway, and between Iceland and Norway on the one hand, and the Member States of the European Union on the other.

6. Where:

- (a) either Iceland or Norway notifies its decision not to accept the content of an act or measure referred to in paragraph 1 and to which the procedures set out in this Agreement have been applied; or
- (b) either Iceland or Norway does not make a notification within the thirty days' time limit set out in paragraph 2; or
- (c) Iceland does not make a notification prior to the date laid down for the entry into force of the act or measure concerned for it; or
- (d) Norway does not make a notification within the six months' time limit set out in paragraph 4 or does not provide for provisional application as envisaged in the same paragraph from the date laid down for the entry into force of the act or measure concerned for it;

this Agreement shall be considered suspended with respect to Iceland or Norway, as the case may be.

7. The Joint Committee shall examine the matter that led to the suspension and undertake to remedy the causes for the non-acceptance or the non-ratification within a period of ninety days. Having examined all further possibilities to maintain the good functioning of this Agreement, including the possibility to take notice of the equivalence of legislation, it may decide by unanimity to reinstate the Agreement. Should this Agreement continue to be suspended after ninety days, it shall be considered terminated with respect to Iceland or Norway, as the case may be.

#### Article 5

Pending the entry into force of the measures referred to in Article 2(1) and replacing the provisions referred to in Article 1(1), in conformity with Article 4(3) and (4), if a Contracting Party experiences major difficulties as a result of a substantial change in the circumstances obtaining on conclusion of this Agreement, it may bring the matter before the Joint Committee established by Article 3 so that the latter may put to the Contracting Parties measures to deal with the situation. The Joint Committee shall decide unanimously on these measures. Where unanimity cannot be reached, Article 8 shall apply.

#### Article 6

1. In order to achieve the objective of the Contracting Parties to arrive at as uniform an application and interpretation as possible of the provisions referred to in Article 1, the Joint Committee shall keep under constant review the development of the case law of the Court of Justice of the European Communities (hereinafter referred to as the 'Court of Justice') as well as the development of the case law of the competent courts of Iceland and Norway relating to such provisions. To this end the Contracting Parties agree to ensure mutual transmission of such case law without delay.

2. Subject to the adoption of the necessary modifications to the rules of procedure of the Court of Justice, Iceland and Norway shall be entitled to submit statements of case or written observations to the Court of Justice in cases where a question has been referred to it by a court or tribunal of a Member State for a preliminary ruling concerning the interpretation of any provision referred to in Article 1(5) and in Article 2(1).

#### Article 7

1. Iceland and Norway shall submit reports annually to the Joint Committee on the way in which their administrative authorities and their courts have applied and interpreted the provisions referred to in Article 1, as interpreted by the Court of Justice, as the case may be.

2. If the Joint Committee, within two months after a substantial difference in the case law of the Court of Justice and the courts of Iceland and Norway or a substantial difference in application between the authorities of the Member States concerned and those of Iceland and Norway in respect of the provisions referred to in Article 1 has been brought before it, has not been able to ensure the preservation of a uniform application and interpretation, the procedure in Article 8 shall apply.

#### Article 8

1. In the case of a dispute concerning the application or interpretation of this Agreement or where the situation provided for in Articles 5 or 7(2) occurs, the matter shall be officially entered as a matter of dispute on the agenda of the Joint Committee.

2. The Joint Committee shall have ninety days from the date of the adoption of the agenda on which the dispute has been entered within which to settle the dispute.

3. In a case where the dispute cannot be settled by the Joint Committee within the period of ninety days envisaged in paragraph 2, a further period of ninety days shall be observed for reaching a final settlement. If the Joint Committee has not taken a decision at the end of that period, this Agreement shall be considered terminated with respect to Iceland and Norway, as the case may be, at the end of the last day of that period.

#### Article 9

1. As far as administrative and operational costs linked to the installation and operation of the Central Unit of Eurodac are concerned, Iceland and Norway shall contribute to the general budget of the European Union an annual sum of

— for Iceland 0,1 %

— for Norway 4,995 %

of an initial reference amount of EUR 9 575 000 in commitment appropriations and of EUR 5 000 000 in payment appropriations and from the budgetary year 2002 onwards the relevant budget appropriations for the budgetary year concerned.

As far as other administrative or operational costs involved in the application of this Agreement are concerned, Iceland and Norway shall share in these costs by contributing to the general budget of the European Union an annual sum in accordance with the percentage of the gross national product of their countries in relation to the gross national product of all participating States.

2. Iceland and Norway shall have the right to receive documents pertaining to this Agreement and, at meetings of the Joint Committee, to request interpretation into an official language of the institutions of the European Communities of their choice. However, any costs of translation or interpretation into or from Icelandic or Norwegian shall be borne by Iceland or Norway, as the case may be.

#### Article 10

The national data protection supervisory authorities of Iceland and Norway and the independent supervisory body established by virtue of Article 286(2) of the Treaty establishing the European Community shall cooperate to the extent necessary for the performance of their duties and in particular by exchanging all useful information. The modalities of such cooperation shall be agreed upon as soon as this body has been established.

#### Article 11

1. This Agreement shall not affect in any way the Agreement on the European Economic Area or any other agreement concluded between the European Community and Iceland and/or Norway or the Council and Iceland and/or Norway.

2. This Agreement shall not affect in any way future agreements to be concluded with Iceland and/or Norway by the European Community.

3. This Agreement shall not affect the cooperation in the framework of the Nordic Passport union, to the extent that such cooperation is not contrary to, and does not hinder, this Agreement and the acts and measures based on this Agreement.

#### *Article 12*

The Kingdom of Denmark may request to participate in this Agreement. The condition for such participation shall be determined by the Contracting Parties, acting with the consent of the Kingdom of Denmark, in a Protocol to this Agreement.

#### *Article 13*

1. Subject to paragraphs 2 to 5, this Agreement shall apply to the territory in which the Treaty establishing the European Community is applicable, and to Iceland and Norway.

2. This Agreement shall not apply to Svalbard (Spitzbergen).

3. This Agreement shall only apply to the territory of the Kingdom of Denmark in accordance with the provisions of Article 12 and to the Faroe Islands and Greenland only on extension of the Dublin Convention to these territories.

4. This Agreement shall not apply to the French overseas departments.

5. This Agreement shall take effect in Gibraltar only on the application of the Dublin Convention, or any Community measure which replaces that Convention, to Gibraltar.

#### *Article 14*

1. This Agreement is subject to ratification or approval by the Contracting Parties. Instruments of ratification or approval shall be deposited with the Secretary-General of the Council who shall act as depositary.

2. This Agreement shall enter into force on the first day of the month following the communication by the depositary to the Contracting Parties that the last instrument of ratification or approval has been deposited.

#### *Article 15*

Each Contracting Party may terminate this Agreement by written declaration to the depositary. Such declaration shall take effect six months after its deposition. The Agreement shall cease to be effective if either the European Community or both Iceland and Norway have denounced it.

Done at ... on the ... day of ... in the year .. in a single original in the Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Spanish, Swedish, Icelandic and Norwegian languages, each text being equally authentic, such original remaining deposited in the archives of the General Secretariat of the Council of the European Union.

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## ANNEX

**PROVISIONS RELATED TO THE DUBLIN CONVENTION AND DECISIONS OF THE COMMITTEE SET UP BY ARTICLE 18 OF THE DUBLIN CONVENTION****Part 1: Dublin Convention**

All provisions of the Convention, signed in Dublin on 15 June 1990, determining the State responsible for examining applications for asylum lodged in one of the Member States, with the exception of Articles 16 to 22.

**Part 2: Decisions of the Committee set up by Article 18 of the Dublin Convention**

Decision No 1/97 of 9 September 1997 of the Committee set up by Article 18 of the Dublin Convention of 15 June 1990, concerning provisions for the implementation of the Convention.

Decision No 1/98 of 30 June 1998 of the Committee set up by Article 18 of the Dublin Convention of 15 June 1990, concerning provisions for the implementation of the Convention.

**Declaration No 1**

Pending the adoption by the European Community of legislation which will replace the Dublin Convention, the Contracting Parties will hold a meeting of the Joint Committee established by Article 3(1) of the Agreement in connection with any meeting of the Committee set up by Article 18 of the Dublin Convention, including meetings at expert level to prepare its work.

**Declaration No 2**

The contracting parties underline the importance of a close and active dialogue of all those involved in the implementation of the Dublin Convention and the measures referred to in Article 2(1) of the Agreement.

The Commission will invite experts from the Member States to meetings of the Joint Committee, in order to exchange views, in full compliance with Article 3(1) of the Agreement, with Iceland and Norway on all matters covered by the Agreement.

The contracting parties took note of the willingness of the Member States to accept such invitations and participate in such exchange of views with Iceland and Norway on all matters covered by the Agreement.

**Declaration No 3**

The Contracting Parties agree that the rules of procedure of the Joint Committee established by Article 3 of the Agreement will state that the rules of the institutions of the European Union from which the documents originate concerning the measures for the protection of classified information applicable to those institutions shall also apply to the protection of classified information to be used by the Joint Committee.

**Declaration No 4**

Within the scope of the Agreement, the Contracting Parties agree that the principles underlying the exchange of letters annexed to the Agreement of 18 May 1999 shall apply in respect of Committees which assist the Commission of the European Communities in the exercise of its executive powers.

**Declaration No 5**

The Contracting Parties agree that Decision No 1/2000 of 31 October 2000 of the Committee set up by Article 18 of the Dublin Convention of 15 June 1990, concerning the transfer of responsibility for family members in accordance with Article 3(4) and Article 9 of that Convention shall be brought within the remit of the Agreement according to the procedure of Article 4 thereof.

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