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REPORT

on the proposal for a Council decision on the signing of the Agreement between the European Community and the Kingdom of Denmark extending to Denmark the provisions of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national and Council Regulation (EC) No 2725/2000 concerning the establishment of “Eurodac” for the comparison of fingerprints for the effective application of the Dublin Convention
(COM(2004)0594 – 14787/2004 – C6-0198/2005 – 2005/0205(CNS))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Martine Roure

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission.)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a Council decision on the signing of the Agreement between the European Community and the Kingdom of Denmark extending to Denmark the provisions of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national and Council Regulation (EC) No 2725/2000 concerning the establishment of “Eurodac” for the comparison of fingerprints for the effective application of the Dublin Convention (COM(2004)0594 – 14787/2004 – C6-0198/2005 – 2005/0205(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the proposal for a Council decision (COM(2004)0594)¹,
 - having regard to the Agreement between the European Community and the Kingdom of Denmark (14787/2004),
 - having regard to Article 63(1)(a) and Article 300(2), first subparagraph of the EC Treaty,
 - having regard to Article 300(3), first subparagraph of the EC Treaty, pursuant to which the Council consulted Parliament (C6-0198/2005),
 - having regard to Rule 51 and Rule 83(7) of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A6-0379/2005),
1. Approves the conclusion of the Agreement;
 2. Instructs its President to forward its position to the Council and Commission and to the governments and parliaments of the Member States.

¹ Not yet published in OJ.

EXPLANATORY STATEMENT

1. Background

The purpose of the two proposals under consideration (Agreement and Protocol) is to extend to Denmark the provisions of the Eurodac system and the procedure for determining the Member State responsible for examining a Dublin Regulation asylum application.

Pursuant to the Protocol on Denmark which is appended to the Amsterdam Treaty, Denmark does not take part in measures based on Title IV of the EC Treaty other than those relating to visa policy. As regards the development of the Schengen *acquis*, Denmark decides within six months of any decision adopted by the Council whether or not it will incorporate that decision into its laws.

Since the Eurodac¹ and Dublin II² regulations are not part of the development of the Schengen *acquis*, Denmark cannot resort to an opt-in in order to participate in those regulations.

However, following the conclusion of an agreement between the EU and Norway and Iceland which enables those countries to participate in the Eurodac and Dublin regulations, Denmark has expressed a wish to participate as well. In order to enable Denmark to participate, an international agreement between the Community and Denmark³ (hereinafter 'the Agreement') will have to be drawn up, together with a Protocol to the Agreement between the Community, Iceland and Norway⁴ (hereinafter 'the Protocol').

2. Legal construction

The legal construction is based on two separate legal acts:

The Agreement is needed if the Court of Justice is to have jurisdiction over Denmark as regards both the interpretation and the application of the agreements and regulations concerned and if mutual obligations are to be regulated in the context of international agreements⁵.

The Protocol is needed for the purpose of establishing the terms and conditions under which Denmark will participate in the Agreement between the Community and Norway and Iceland⁶ and in particular for the purpose of establishing the rights and obligations which obtain between Iceland and Norway on the one hand and Denmark on the other⁷.

¹ Council Regulation (EC) No 2725/2000 of 11 December 2000.

² Council Regulation (EC) No 343/2003 of 18 February 2003.

³ COM(2004)594 final.

⁴ COM(2005)131 final.

⁵ Page 2 of the Explanatory Statement to the Agreement and page 8 of the Preamble to the Protocol.

⁶ OJ L 093, 03.04.2001, p. 38. Pursuant to Article 12 of the Agreement, Denmark may ask to participate in the Agreement and the Community, Norway and Iceland (acting with Denmark's consent) shall determine the conditions for such participation in a Protocol to the Agreement.

⁷ See Preamble to the Protocol.

From a political point of view this legal construction means the two legal instruments must at all costs be kept in step. This is necessary if the regulations are to be applied simultaneously by the contracting parties, thereby preventing greater complexity from arising.

3. Substance of the Agreement

Under the Agreement the provisions of the Dublin II Regulation, the Eurodac Regulation and the implementing rules¹ relating thereto are made applicable to relations between the Community and Denmark.

As regards the amendments to the above-mentioned regulations and the new implementing rules, Denmark must notify the Commission of its decision to or not to incorporate them into its internal law. Delayed notification (or a failure to notify) on Denmark's part will cause the Agreement to be denounced unless the parties decide otherwise within 90 days.

If the Community or Denmark wishes to conclude international agreements with non-EU countries which may have an effect on the scope of the regulations, there must - according to the Agreement - be proper liaison between the contracting parties.

Pursuant to the Agreement the Court of Justice has jurisdiction over Denmark as regards both the interpretation and the uniform application of the Agreement and the regulations concerned, just as it has jurisdiction over the other Member States. Similarly, the Court of Justice has been deemed competent to rule on the contracting parties' compliance with the Agreement, pursuant to the EC Treaty provisions which govern proceedings at the Court.

Under the Agreement, Denmark is required to pay part of the cost of the initial setting-up of the Eurodac Central Unit and in future an annual share of the cost of running the system.

If Denmark informs the other Member States that it no longer wishes to take advantage of Part I of the Protocol on Denmark, or should one of the contracting parties denounce the Agreement, the latter will cease to apply.

The Dublin II Regulation and the Eurodac Regulation are appended to the Agreement and they constitute an integral part thereof.

4. Substance of the Protocol

The Protocol makes applicable to relations between Iceland, Norway and Denmark the rights and obligations which stem - in the case of Denmark - from the Agreement between that country and the Community and - in the case of Iceland and Norway - from the Agreement between those countries and the Community².

Hence the Dublin II Regulation and Eurodac Regulation provisions and implementing rules³,

¹ In this sphere, relations between the Community and Denmark must take into account the special position which Denmark has adopted vis-à-vis Title IV of the EC Treaty and will therefore be governed by international law.

² See the 6 May 2003 negotiating directives, 8314/03, ASILE 24.

³ Article 2(1) and (2) of the Protocol.

the amendments to the two regulations and the new implementing rules¹ will apply to relations between the three countries in accordance with international law.

Pursuant to the Protocol the Court of Justice is competent to receive notes or written comments from Iceland and Norway in cases where a Danish court asks it for a preliminary ruling concerning the interpretation of the Agreement between the Community and Denmark.

Any disputes between Iceland or Norway on the one hand and Denmark on the other as regards the application or the interpretation of the Protocol will be settled by a Joint Committee². Denmark is not represented within the Joint Committee but it will be able to take part in the proceedings thereof by means of the written comments which it may submit. If the Joint Committee is unable to resolve a conflict within 180 days, the Protocol will lapse.

Lastly, the Protocol may be denounced by any of the contracting parties. Furthermore, should the Agreement between the Community and Denmark be denounced, the Protocol will also lapse.

The Dublin II and Eurodac Regulations are appended to the Protocol and they constitute an integral part thereof.

5. Rapporteur's view

5.1 Legal basis of the proposal concerning the Protocol

As a legal basis for the proposal under consideration the Commission has taken the first subparagraph of Article 300(3) of the EC Treaty, pursuant to which Parliament is merely consulted.

In a letter dated 23 June 2005 the Committee on Civil Liberties, Justice and Home Affairs requested (pursuant to Rule 35(2) of the Rules of Procedure) the Legal Affairs Committee's opinion concerning the proposed legal basis. On 13 July the latter committee decided that the Joint Committee set up under the Agreement between the Community, Iceland and Norway and entrusted with particular powers and responsibilities in relation to the Protocol may be regarded as a 'specific institutional framework' within the meaning of the second subparagraph of Article 300(3) of the EC Treaty. Consequently, the Commission should have taken the second subparagraph of Article 300(3) of the EC Treaty as the legal basis for the above-mentioned proposal. This calls for application of the assent procedure.

For this reason the following assessment will deem this procedure appropriate in the case of the Protocol.

¹ Article 2(3) and (4) of the Protocol.

² This Joint Committee will be set up under the Agreement between the Community, Iceland and Norway and will comprise representatives of the Community (represented by the Commission) and representatives from Norway and Iceland.

5.2. Assessment of the proposals

The rapporteur is proposing to endorse the conclusion of both the Agreement and the Protocol, although not without drawing attention to a range of fairly serious problems.

Firstly, drawing up an International Agreement between the Community and Denmark (an agreement in which Denmark is regarded as a non-Member State) creates 'a new form of flexibility' under Title IV of the EC Treaty which may lead not only to political tensions but also to legal fragmentation in this area¹.

As the Commission states in its Explanatory Memorandum, such international agreements² may be concluded only under special circumstances and for a limited period of time. The rapporteur is not willing to endorse other agreements of this type which go beyond the existing opt-ins and opt-outs.

Secondly, Denmark is to apply the Dublin II and Eurodac regulations in its relations with the Community on the one hand and with Iceland and Norway on the other but it will have no part in any other measure adopted at European level in respect of the common asylum policy. This may prompt questions regarding the differing guarantees which asylum seekers will enjoy depending on the place at which their asylum application is dealt with: in Denmark or in one of the countries participating in the European asylum policy.

In view of these considerations the rapporteur is of the opinion that in future, Denmark should renounce the Protocol on Denmark which is appended to the Amsterdam Treaty and take part in all measures under Title IV of the EC Treaty³.

Thirdly, the rapporteur would ask the Council and the Commission to inform Parliament regarding all the other agreements which it is planning to conclude in order to extend the application of the Eurodac/Dublin system.

Finally, in the rapporteur's view it should be pointed out that the Member States⁴ should regularly supply the Commission with all information and statistics relating to the application of the Dublin II and Eurodac regulations in order to enable the Commission to perform its assessment task effectively⁵.

¹ Monar, Jorg, *Justice and Home Affairs in the Treaty of Amsterdam: Reform at the Price of Fragmentation*, European Law Review, Vol. 23, No. 4, August 1998, p. 332-334.

² Two other international agreements concerning the Brussels I Regulation (COM(2005)145) and the Regulation on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (COM(2005)146) have recently been finalised and submitted to Parliament for consultation purposes.

³ According to Article 7 of the Protocol, Denmark can exercise that right at any time.

⁴ And also Iceland and Norway.

⁵ See Article 28 of the Dublin II regulation, Article 23(4) and (3) of the Eurodac regulation and page 16 of the report on Eurodac (2004).

PROCEDURE

Title	Proposal for a Council decision on the signing of the Agreement between the European Community and the Kingdom of Denmark extending to Denmark the provisions of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national and Council Regulation (EC) No 2725/2000 concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of the Dublin Convention
References	COM(2004)0594 – 14787/2004 – C6-0198/2005 – 2004/0205(CNS)
Date of consulting Parliament	15.6.2005
Committee responsible Date announced in plenary	LIBE 22.6.2005
Committee(s) asked for opinion(s) Date announced in plenary	
Not delivering opinions Date of decision	
Enhanced cooperation Date announced in plenary	
Rapporteur(s) Date appointed	Martine Roure 10.1.2005
Previous rapporteur(s)	
Simplified procedure – date of decision	
Legal basis disputed Date of JURI opinion	
Financial endowment amended Date of BUDG opinion	
Parliament to consult European Economic and Social Committee – date decided in plenary	
Parliament to consult Committee of the Regions – date decided in plenary	
Discussed in committee	5.10.2005 24.11.2005
Date adopted	24.11.2005
Result of final vote	+: 35 -: 0 0: 0
Members present for the final vote	Edit Bauer, Johannes Blokland, Mihael Brejc, Kathalijne Maria Buitenweg, Michael Cashman, Giusto Catania, Jean-Marie Cavada, Charlotte Cederschiöld, Carlos Coelho, Agustín Díaz de Mera García Consuegra, Rosa Díez González, Kinga Gál, Patrick Gaubert, Adeline Hazan, Lívia Járóka, Ewa Klamt, Magda Kósáné Kovács, Wolfgang Kreissl-Dörfler, Barbara Kudrycka, Stavros Lambrinidis, Sarah Ludford, Edith Mastenbroek, Martine Roure, Inger Segelström, Antonio Tajani, Manfred Weber, Stefano Zappalà, Tatjana Ždanoka
Substitute(s) present for the final vote	Gérard Deprez, Genowefa Grabowska, Jeanine Hennis-Plasschaert, Sylvia-Yvonne Kaufmann, Bill Newton Dunn, Siiri Oviir, Herbert Reul, Marie-Line Reynaud

Substitute(s) under Rule 178(2) present for the final vote	Sharon Margaret Bowles, Othmar Karas
Date tabled	30.11.2005
Comments (available in one language only)	...