



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 22.12.2000
COM(2000) 883 final

Proposal for a

COUNCIL DECISION

concerning the signing of 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 Iceland or Norway

(presented by the Commission)

EXPLANATORY MEMORANDUM

According to Art. 7 of the Agreement of 18 May 1999 concluded between the Council and Iceland and Norway on the latter's association with the implementation, application and development of the Schengen acquis (hereinafter referred to as the "Schengen framework Agreement"), the conclusion of an Agreement on the rights and obligations contained in the Dublin Convention is a precondition for the abolishment of border controls between the Schengen countries and the countries of the Nordic Passport Union. The abolishment is foreseen for 25 March 2001.

After a recommendation the Commission made to the Council in September 1999, the Council authorized the Commission in May 2000 to negotiate an Agreement with Norway and Iceland which basically reproduces the obligations and rights contained in the Dublin Convention and the EURODAC regulation which facilitates the application of the Dublin Convention.

Formal and informal negotiations started on 4 July 2000 and ended on 28 November. Member States have regularly been informed and consulted while negotiations were ongoing.

The legal basis for the Agreement is Article 63, paragraph 1, in conjunction with Article 300 TEC.

The scope of the Agreement are rights and obligations under

- a) the Dublin Convention of 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.
- b) the decisions of the Committee established under Art. 18 of the Dublin Convention
- c) the Council Regulation concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of the Dublin Convention (adopted on 11.12.2000).

The main specific feature of the Agreement concerns the Committee structure: given that the Agreement is not based on the Protocol (No. 2) integrating the Schengen acquis into the framework of the European Union, the « Mixed Committee » model provided for in the Schengen framework Agreement could not be copied and was replaced by a classical bilateral (or in this case « tripartite ») Committee to be found in all Community Agreements (in this Agreement, called « Joint Committee »). The Joint Committee will be chaired, alternately for a period of six months, by the Commission and either Iceland or Norway.

The Committee's structure is based on the approach that whereas Norway and Iceland shall be given the right to be involved in « decision shaping », they will not be involved in « decision making ».

As far as the Dublin Convention is concerned (a Public International Law Agreement concluded by the Member States), the Community cannot, in an Agreement with Third Parties, formally amend procedures and obligations for the parties under the Dublin Convention. It was therefore also not possible to « link » Norway and Iceland to the Committee established under Art. 18 of the Dublin Convention. A solution could only be found by agreeing on a number of declarations that purport the general idea that although this is a classical Community Agreement committee structure, Member States are involved to a certain extent.

Any future decisions by the Committee established under Art. 18 of the Dublin Convention can be discussed in the Joint Committee before being taken in the Art. 18 Committee but once decisions have been taken, they have to be implemented by Norway and Iceland. Non-acceptance triggers the same procedure as provided for under the Schengen framework agreement (suspension and eventual termination). A coherent application of all decisions related to the Dublin Convention is thus assured.

As for the future « communitarization » of the Dublin Convention, a similar mechanism exists. Norway and Iceland may contribute to the decision-shaping phase but will have to accept the final decision as adopted by the Council (otherwise, the Agreement will be suspended and later terminated). Similarly, new provisions related to EURODAC will also have to be accepted in the same fashion.

The objective of a coherent jurisprudence could be reached by « copying » the respective provisions in the Schengen acquis Agreement (Art. 6).

The Data Protection Directive will be applied by Iceland and Norway in the same way as it is applied by the Member States (Art. 1, para. 3)

The clause on the territorial application will, on the EU side, ensure parallelism with the Dublin Convention and in particular takes into account the issue of Gibraltar (Art. 13).

The specific situation of Denmark is considered in Article 13, para. 3.

The budgetary clause (Article 9) is mostly based on a similar provision in the Schengen framework Agreement.

The Commission considers negotiations have been successful and that the draft Agreement is acceptable to the Community.

For internal legal reasons, Iceland has insisted on a formal signature of the Agreement.

According to Art. 300, paragraph 3 TEC, the European Parliament will have to be consulted on the decision about the conclusion of the Agreement.

This proposal for a Council Decision relates to signature of the Agreement. This is intended to ensure that the signature can take place rapidly as has been agreed with Iceland and Norway in order to keep the deadline 25 March 2001. The Commission intends to submit very shortly a further draft decision in respect of conclusion which will have to be submitted to the European Parliament in accordance with the legal base.

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THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Whereas:

- (1) The Commission has negotiated on behalf of the Community an Agreement with 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.
- (2) Subject to its conclusion at a later date, the Agreement, initialled on 29 November 2000, should be signed

HAS DECIDED AS FOLLOWS:

Sole Article

Subject to conclusion at a later date, the President of the Council is hereby authorised to designate the person(s) empowered to sign, on behalf of the European Community, 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.

The text of the Agreement is attached to this Decision.

Done at , the

*For the Council
The President*

ANNEX

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, signed in Dublin on 15 June 1990 (hereinafter referred to as "the Dublin Convention")¹;

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 acquis² 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 and 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 data³ (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,

¹ OJ C 254, 19.8.1997, p. 1.

² OJ L 176, 10.7.1999, p. 35.

³ OJ L 281, 23.1.1995, p. 31.

RECOGNIZING, 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) a of the Treaty establishing the European Community;

CONVINCED that it is necessary to organize 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,

CONSIDERING that the Council has adopted a Regulation concerning the establishment of "Eurodac" for the comparison of the fingerprints of applicants for asylum and certain other third-country nationals to facilitate the implementation of the Dublin Convention in order to assist in determining which Contracting Party is to be responsible for examining an application for asylum pursuant to the Dublin Convention,

CONSIDERING that this Agreement should extend to the subject matter covered by that 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 the present Agreement should it so wish,

HAVE AGREED AS FOLLOWS:

Article 1

(1) The provisions of the Dublin Convention, listed in the Annex Part 1 to this Agreement and the decisions of the Committee established pursuant to Article 18 of the Dublin Convention listed in the Annex Part 2 to this Agreement 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) The 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 of the European Community 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 applies to the provisions of the Regulation concerning the establishment of "Eurodac" for the comparison of the fingerprints of applicants for asylum and certain other third-country nationals to facilitate the implementation of the Dublin Convention in order to assist in determining which Contracting Party is to be responsible for examining an application for asylum pursuant to the Dublin Convention 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 Communities.

Article 2

(1) When drafting new legislation based on Article 63, paragraph 1 point 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, paragraph 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 transmitting its proposals, which are relevant for this Agreement to the Council and to the European Parliament, the Commission shall transmit 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 consult each other again in the Joint Committee at the significant moments at the request of one of them. After its adoption, the procedure as laid down in Article 4, paragraphs 2 to 7 applies.

(4) The Contracting Parties shall co-operate 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 draft 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 transmit to the Council the views of the experts of Iceland and Norway.

Article 3

(1) A Joint Committee is hereby established, consisting of representatives of the Contracting Parties.

(2) The Joint Committee shall adopt its own 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 meets 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, paragraph 1 point a) of the Treaty establishing the European Community and covering the substance matter of the Annex or of Article 1, paragraph 5.

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, unless those acts and measures explicitly state otherwise, they shall be applied from the same time on by the Member States on the one hand and by Iceland and Norway on the other hand.

(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 Secretariat General 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 Secretariat General of the Council and the Commission of this at the time of its notification. Iceland shall promptly inform the Secretariat General of 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 Secretariat General of the Council and the Commission of this 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 Secretariat General 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 hand.

(6) In case:

(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 subparagraph 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. In case this Agreement continues to be suspended after ninety days this agreement 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 in Article 2, paragraph 1 and replacing the provisions referred in Article 1, paragraph 1, in conformity with Article 4, paragraphs 3 and 4 of this agreement, if a Contracting Party experiences major difficulties as a result of a substantial change in the circumstances obtaining on conclusion of this agreement, that Contracting Party may bring the matter before the Joint Committee established by Article 3 of this Agreement so that the latter may put to the Contracting Parties measures to deal with the situation. The Joint Committee decides in unanimity on these measures. In a case where unanimity cannot be reached, Article 8 applies.

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 “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, paragraph 5 and in Article 2, paragraph 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 case of a dispute about the application or the interpretation of this Agreement or in a case where the situation provided for in Articles 5 or 7 paragraph 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 Communities an annual sum of

- for Iceland 0,1 %

- for Norway 4,995 %

of an initial reference amount of 9.575.000 Euro in commitment appropriations and of 5.000.000 Euro 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 Communities an annual sum in accordance with the percentage of the gross national product of their countries in relation with 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, paragraph 2 of the Treaty establishing the European Community shall co-operate to the extent necessary for the performance of their duties and in particular by exchanging all useful information. The modalities of such co-operation 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 co-operation in the framework of the Nordic Passport union, to the extent that such co-operation 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 below, 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.

Annex A : 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

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 paragraph 1 of this 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

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, paragraph 1 of this Agreement.

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

Declaration

The Contracting Parties agree that the rules of procedure of the Joint Committee established by Article 3 of this 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

Within the scope of this 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 European Commission in the exercise of its executive powers.

Declaration

The Contracting Parties agree that Decision Nr 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 present Agreement according to the procedure of Article 4 of this Agreement.