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REV 1

LIMITE

ASIM 127

NOTE

from : the Presidency

to : COREPER/COUNCIL

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Subject : Draft Eurodac Convention

1. This note summarises the issues which COREPER/Council is asked to address in respect of the draft Eurodac Convention. The Presidency's intention is to submit the draft Convention to the Justice and Home Affairs Council in May 1998 for political agreement. COREPER/Council will recall that rapid completion of the Eurodac Convention was agreed as part of the Action Plan on the influx of migrants from Iraq and the Neighbouring Region (5593/98 ASIM 13 EUROPOL 12 PESC 27 COMEM 4 COSEE 4).

Fingerprinting Illegal Immigrants

2. The Justice and Home Affairs Council on 19 March 1998 commissioned a feasibility study to examine the legal and technical implications of a possible extension of the Eurodac Convention to cover illegal immigrants. A decision would be taken at the May 1998 Council on how to proceed in the light of this study.

3. In Annex I to this note is a feasibility study prepared by the Presidency and revised in the light of discussion in the working group and the K4 Committee. The following are the main issues covered in the study:
- i) Experts agreed that any fingerprinting of illegal immigrants should be confined to the purposes of the Dublin Convention and to Article 6 in particular. Some Member States would support a further extension to cover the purposes of Article 10(1)(c) and (e) of the Dublin Convention (see paragraphs 2(vi) and 19-24), but a majority are either opposed to this or have expressed reservations and the Council Legal Service has indicated doubts about its proportionality;
 - ii) It was generally accepted that for the purposes of the European Convention on Human Rights, support for the operation of the Dublin Convention reflected a compelling social need and could be a justified and legitimate purpose. However, it was not unanimously considered that fingerprinting illegal immigrants would be a proportionate response to the problems, some Member States doubting that such a response would be sufficiently effective. Several Member States considered that the safeguards in terms, for example, of duration of storage provided the key to being satisfied that the measure was a proportionate response (paragraphs 2(i) and 6-9);
 - iii) There are different views on whether the definition of "illegal immigrant" should include those entering illegally from outside the territory of the Member States who are not detected until some while after their arrival (paragraphs 10-14);
 - iv) It was generally accepted that an extension of Eurodac to include the fingerprints of illegal immigrants would be technically feasible.
 - v) At present a majority of Member States favour extending Eurodac by means of a Protocol, should extension be agreed by the Council, rather than extending the Convention before adoption. The possibility of imposing a deadline for the conclusion of such a Protocol could be considered. It was established in discussion that a number of Member States could need additional time in which to ratify an extended Convention. No delegation favours the option of a Protocol which would come into force once a majority of Member States had ratified it (paragraphs 25-29).

Management/funding of Eurodac

4. Further discussion at working group level established that there is a clear choice to be made between either Community funding and Commission management of the Eurodac Central Unit or Member State funding with a headquarters Member State managing the Central Unit. The Working Group also considered an option whereby there would be management by a Member State but whereby the Community institutions would exercise financial control. The majority of Member States have so far expressed a preference for Community funding and Commission management. The Presidency has therefore incorporated in a consolidated text of the draft Convention (Annex II) amendments discussed by the working group which would be necessary if Commission management were to be agreed.

Outstanding reservations

5. There are a number of other outstanding reservations on the text not associated with either the scope of the Convention or the management and funding of the Central Unit. These are set out in Annex II.
6. In light of discussion in the working group and the K4 Committee, the Presidency invites COREPER/Council:
- (a) to note the feasibility study and decide whether it provides a sufficient basis to agree the extension of the Eurodac Convention to illegal immigrants ;
 - (b) to consider whether to do this by means of a Protocol to be adopted by the end of 1998, or by amendment to the present draft Convention ;
 - (c) to consider the arrangements for the management and funding of Eurodac;
 - (d) subject to do this, to agree the text of the Eurodac Convention itself.



FINGERPRINTING OF ILLEGAL IMMIGRANTS: FEASIBILITY STUDY

1. At its meeting on 19 March 1998, the Justice and Home Affairs Council commissioned a feasibility study on the possible extension of the Eurodac Convention to cover illegal immigrants. The remit was that there should be:
 - a feasibility study to examine the legal and technical implications of a possible extension of the Eurodac Convention to cover illegal immigrants: a decision to be taken at the May Council, in the light of this study, as to whether and, if so, how to extend the Convention. The mandate from the Council is that the feasibility study should examine the possibility of extending the text of the draft Convention or drawing up a Protocol. The Protocol might, once adopted by at least half of the Member States, enter into force for those Member States.

Summary

2. The main conclusions of this feasibility study are that:
 - (i) The extension of Eurodac to illegal immigrants in support of Article 6 of the Dublin Convention would answer a legitimate purpose. Whether it would be justified and proportionate with regard to that purpose in ECHR terms depends mainly on a view of how effective the measure would be in overcoming problems with the operation of the Dublin Convention, and on the application of appropriate limitations and safeguards, particularly with respect to data protection.
 - (ii) The definition of "illegal immigrant" for the purpose of any such extension should be based on the concept of persons illegally entering the territory of the Member States from a non-Member State. A number of issues about the definition would need further study, including whether to confine it to persons detected as illegal entrants at or near the border or whether to include people who entered illegally but were not detected until later on.

- (iii) There would have to be additional measures in the Eurodac Convention to enable data entered on the system to be categorised as either "asylum seeker" or "illegal immigrant" data; to set a time limit for storing "illegal immigrant" data on the central database; and to provide for such data to be erased when an "illegal immigrant" was known to have left the territory of the Member States.
- (iv) The technical requirements for extending Eurodac are feasible. They are mainly a matter of redefining the required functionality so that tenderers can propose an appropriate solution. There is no reason to think that there would be any technical obstacle to differentiating between the data of asylum seekers and of illegal immigrants.
- (v) Costs could be between 20 and 100 per cent greater than for the system as currently conceived. The increase in cost would depend mainly on the volume of transactions, and thus on the precise scope of the new group to be fingerprinted.
- (vi) A further extension of Eurodac to cover the distinct purposes of Article 10(1)(c) and (e) of the Dublin Convention raises greater doubts in terms of proportionality. It would be otherwise legally and technically feasible, but would require more complicated definitions and operating procedures to be built into the Eurodac system.
- (vii) Extension, if agreed, could be either by extending the Convention before adoption or by concluding a Protocol afterwards. Extending the Convention before adoption would result in a single ratification procedure for Member States, but would also delay adoption and ratification; a Protocol would enable Eurodac in its current form to be adopted and ratified without the additional delay. A time limit could be set for the conclusion of a Protocol.

Fingerprinting of illegal immigrants to support the operation of the Dublin Convention

3. At discussions in the working groups it has been generally acknowledged that the Dublin Convention is not working as well as it could, while there is at the same time an acceptance that the Convention has been in operation for only a relatively short period.

4. It is generally recognised that the most difficult criterion by which to establish responsibility for an asylum seeker under the Dublin Convention is illegal entry into the territory of the Member States (Article 6). The question is whether this provision could provide sufficient justification for the collection and systematic exchange of fingerprints of illegal immigrants, within Eurodac, for the purposes of Article 15 of the Dublin Convention. The Council Legal Service has given an opinion in document reference 6754/98 JUR 115 ASIM 72. This opinion, which is limited to the implications of extending the Eurodac Convention in support of Article 6 of the Dublin Convention, concludes:

- the possible extension of Eurodac to persons who have irregularly crossed the external frontier of a Member State would answer a legitimate purpose in the context of the implementation of the Dublin Convention, but the Council must judge, in the light of Article 8 of the European Convention on Human Rights and on the basis of the material facts, whether such an extension would be justified and proportionate with regard to the aim sought.

5. Consideration has also been given to whether, in addition, Eurodac might be extended to cover the fingerprinting of third country nationals who are irregularly in a Member State for the purposes of Article 10(c) of the Dublin Convention, or illegally in a Member State for the purposes of Article 10(e) of the Dublin Convention. In general, there appears to be significantly greater doubt about whether this would be legitimate and proportionate compared to the fingerprinting of third country nationals for the purposes of Article 6 of the Dublin Convention. The Council Legal Service has concluded that:

- the inclusion in Eurodac of data relating to persons who had legitimately crossed the external frontiers of a Member State, but had later been found residing unlawfully in a Member State, cannot be justified.

The technical and legal implications of extending the Convention to cover Article 10 purposes as well as Article 6 purposes are examined in more detail in paragraphs 19 to 23 below.

Compatibility with International Law

6. As recorded in paragraph 4 of the Council Legal Service opinion, Article 8(1) of the ECHR provides that the taking of fingerprints and the collection and processing of personal data constitute interferences in the right to privacy. However, under Article 8(2), 'There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others'. The Council Legal Service opinion points out that the European Court of Human Rights has declared in this regard that 'the concept of "necessity" implies an interference based on a compelling social need, and, in particular, proportionate to the legitimate aim pursued.

7. There is no doubt that the purposes to which the Dublin Convention contribute do constitute a compelling social need and that the fingerprinting of third country nationals who have illegally crossed the external frontier of a Member State in support of Dublin can be regarded as supporting a legitimate aim. Where reservations about proportionality have been expressed, these have focused on the degree to which fingerprinting illegal immigrants would provide an effective answer to the problems, rather than on the degree to which such fingerprinting is an invasion of privacy.

8. The Council Legal Service opinion also refers (at paragraph 4) to the legal constraints in Article 5 of the 1981 Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data. These require that data should be stored only for a 'specified and legitimate' purpose and that the data stored should not be excessive in relation to the purpose of which they are stored. In the light of the arguments set out in paragraph 5 of the Council Legal Service opinion, the inclusion of data relating to illegal immigrants can be considered to meet the 'legitimate' and 'not excessive' purpose tests.

9. The 1981 Convention also requires that data should not be stored for any longer than is strictly necessary. The Council Legal Service opinion argues that Article 6 of the Dublin Convention does not justify the retention of fingerprints of illegal entrants who subsequently voluntarily depart or are removed from the territory of the European Union. It would therefore be necessary, in extending the provisions of Eurodac to cover persons who have illegally crossed the external frontier of a Member State, also to make distinct provision for the deletion of such fingerprints upon the departure or expulsion of the illegal entrant in question. For the same reason it would not be legitimate to take fingerprints for the purposes of Eurodac from those refused entry to territory of the European Union who then depart or are removed without having actually entered.

Definition of illegal immigrant

10. Discussions in the working groups have indicated that there are various national definitions of illegal immigrant and that, in some Member States, no definition at all of illegal immigrant *per se* but only a legal concept of illegal entry or stay. It would be possible for the purposes of any extension of Eurodac merely to refer to the very broad language in Article 6(1) of the Dublin Convention and leave it to Member States to interpret the concept in accordance with their national laws. However, when it comes to obtaining and storing sensitive personal data in an electronic database a tighter definition is advisable so as to ensure that the measure is used only where justified, and to minimise the risk of disputes and legal challenges. Moreover, if this is to be a key tool in supporting the effective operation of Dublin Convention it is desirable to ensure a degree of consistency in the way in which the scope of individual Member States' responsibility is determined. No final consensus has been reached so far on the definition of illegal immigrant for the purpose of fingerprinting in the EU context, although there are emerging elements which might form the basis of such a common determination.

11. At the Justice and Home Affairs Council on 19 March, Ministers identified the following elements which needed to be taken into account in any definition of illegal immigrant for the purpose of extending Eurodac, namely that it should be:

- a third country national;
- who at the point and time of entry to a Member State did not seek authority to enter;
- whose identity could not be confirmed;
- without authority to enter;
- did not observe the conditions of entry.

12. Taking into account the considerations set out at paragraph 4 above the definition of illegal immigrant for the purposes of extending the Eurodac Convention in support of Article 6 of the Dublin Convention has to be restricted to persons illegally crossing the external borders of the Member States of the European Union. On this basis, the relevant elements can be elaborated into a more comprehensive definition as set out below.

13. This definition of illegal immigrants could be:

- third country nationals who have entered directly from a non-Member State, the territory of a Member State illegally, including those:
- who fail to present themselves to the immigration control;
- who enter with inadequate, forged or fraudulently obtained documents; or
- who otherwise employ deception in order to enter

as well as those who, although previously refused entry, have not departed or been removed, and who succeed in remaining illegally in the territory of the Member State concerned.

14. A number of significant issues would require further work before a definition on these broad lines for the purposes of Article 6 of the Dublin Convention could be finalised. In particular the following have been identified:

- whether the last category in the proposed definition should be included, and if so whether it should be limited to those who intentionally sought to evade or frustrate the control on entry or whether it should also include those who present themselves to the control in good faith, are formally refused entry, but in fact continue to stay in the Member State illegally;
- whether the definition should be limited to those illegal entrants detected at or near the border soon after their arrival, or whether it should include those detected at a later stage who are shown to have entered directly from a non-Member State. (There is an entirely separate issue about people residing irregularly or illegally for the purposes of Article 10 of the Dublin Convention : see paragraphs 19 to 24 below).

Other legal and technical requirements

15. If the scope of Eurodac were to be extended to include data on illegal immigrants in support of Article 6 of the Dublin Convention, it would be necessary to distinguish the fingerprints of asylum seekers from those of illegal immigrants when entering them on to the system. While the fingerprints of asylum seekers would need to be checked against the full existing data base when transmitted to the central unit, the fingerprints of illegal immigrants would simply need to be added to the data base. Matches would not be provided for when data on illegal immigrants was entered on to the database but only when the data of an asylum applicant was entered. Such data would be compared with data on both asylum seekers and illegal immigrants. There is no reason why this should not be technically feasible: in its current form, the draft Eurodac Convention already provides data relating to recognised refugees to be differential and "blocked" in the system.

16. The arrangements for deletion of the data of illegal immigrants would also, as described in paragraph 9 above, need to be different. It would be necessary to decide what means and standard of proof would apply to determining whether and when an illegal immigrant had left the territory of the Member State. One solution would be to provide that a Member State must delete the data of an illegal immigrant when either
- (a) that person is recorded as having left the territory of the Member State, or
 - (b) is recorded as having re-entered the territory of the Member States, in which case the new entry should supersede the previous entry.

In addition, there is a question as to whether the period of storage of this data should be ten years, as it is for the data of asylum seekers under Eurodac, or some lesser period.

17. A considerable amount of work has already been done by consultants to draw up draft specifications for the Eurodac system based on the existing scope of the draft Convention. A two part document was circulated under reference SN 1057/98 in January 1998. This would provide the basis of an early move to tender following conclusion of the Convention on its current basis.
18. Any extension to the scope of Eurodac of the sort addressed in this paper would require some revision of the draft specifications to take into account the addition of data on illegal immigrants, the different response to be provided in respect of the two different categories of fingerprints and the increased numbers of fingerprints within the system which it would need to be able to handle. The initial assessment is that is unlikely that there would be any technical bar to including the prints of illegal immigrants on the system - nor any need to undertake fundamental revision of the draft specifications. It would simply be necessary to redefine the required functionality so that potential tenderers could propose an appropriate technical solution. Increasing the scope of the system - both in terms of functionality and the numbers of prints - would add to the cost of the system. It is difficult to assess at this stage how significant the increase would be. Very provisional preliminary estimates suggest that the increase might be anywhere between 20-100% (estimates of the cost of a system based on the current scope of the draft Convention provided by consultants have suggested that the central unit might cost between 2.75 - 5.4 million ECU to set up and between 0.85 - 1.7 million ECU to run each year).

Possible extension to cover irregular residents under Article 10(1)(c) and illegal residents under Article 10(1)(e) of the Dublin Convention

19. Article 10(1) of the Dublin Convention provides that:
- "The Member State responsible for examining an application for asylum according to the criteria set out in this Convention shall be obliged to:
- (c) Re-admit or take back under the conditions laid down in Article 13 an applicant whose application is under examination and who is irregularly in another Member State.
 - (e) Take back, under the conditions laid down in Article 13, an alien whose application it has rejected and who is illegally in another Member State."
20. It is possible that the fingerprinting of all those irregularly or illegally resident in a Member State who might previously have made an application for asylum in another Member State, and the checking of such fingerprints in Eurodac, would support the operation of Article 10(1) of the Dublin Convention. However, there is significant doubt as to whether the extension of Eurodac to cover this group of people would be a legitimate and proportionate response to the problems associated with operating this particular provision of the Dublin Convention.
21. In terms of the legal and technical requirements for extending Eurodac to cover Article 10 purposes, The first point to note is that Article 1(1) of the present text of the draft Convention (concerning scope) would need amendment, since at present it refers only to the purpose of determining the Member State responsible under the Dublin Convention and not to other purposes of that Convention. There would also need to be a clear distinction between the procedures in relation to this group and those relating to the Article 6 group. For the Article 10 group, the only legitimate purpose of entering data onto the Eurodac system would be to see if there were any match with data of asylum seekers previously entered into Eurodac. For the Article 6 group, the opposite is the case: entering the data would not itself trigger a search for matching data, but instead the data on illegal immigrants would remain in the database against the possibility of a future asylum application.

22. It would therefore be necessary to define the two groups of subjects so as to draw a clear boundary between them and so as to avoid any risk of mis-categorisation. Nevertheless there could be some overlap between the groups, since according to Article 10(3), an asylum applicant in one Member State who leaves the territory of the Member States for less than three months before entering another Member State remains the responsibility of the first Member State while his application is still pending there. Any such area of overlap would also need to be very clearly defined.
23. Different requirements for storage of data would also apply to the Article 10 group. With this group, there would be no justification for retaining the data in Eurodac after the immediate search for previous matching data had been completed, and the data would therefore have to be deleted from the central database straightaway after that search for matches had been made. Again, this in contrast to the position of data for Article 6 purposes which cannot be checked instantly and which will be stored for a defined period in case the same person makes a future asylum claim. In the case of any data belonging to both Article 6 and Article 10 groups, an instant search would need to be made but the data would also need to be retained in the system against the possibility of future matches.
24. One possibility would be to provide for an optional procedure of fingerprinting and interrogation of the database for the purposes of Article 10 of the Dublin Convention. This would mean that Member States who did not wish to undertake the procedure for reasons of cost-effectiveness would not have to do so. It would still be necessary, however, for such a provision to be based on agreement that Article 10 coverage in Eurodac would be legitimate and proportionate.

Means of extension

25. The Justice and Home Affairs Council identified two options for the implementation of such an extension, if agreed:
- a. extension of the draft Eurodac Convention before adoption; or
 - b. a Protocol to the Eurodac Convention enabling the Convention in its present scope to be adopted in the meantime.

These two options are considered below.

a. Extension to Eurodac Convention

26. If a decision were to be taken by the Council that illegal immigrants should be included within the scope of the draft Convention, the existing text would require amendment. Austria has already suggested a possible amendment to Article 4 based on one possible definition of illegal immigrant. Germany has also proposed various amendments which are contained in document SN 2646/98. Other amendments are also likely to be required to Articles 2, 5 and 6a. There may also be drafting changes required to other Articles, for example, Article 3 and Article 1,3 and 11.

27. Extending the draft Convention before adoption would enable Member States to pursue a single ratification process, and might help to simplify the tendering operation. On the other hand, it is clear from the discussion by experts that the textual amendments required to extend the draft Convention would take time to negotiate and would therefore delay conclusion of the Convention. Additionally, a number of Member States would need more time in which to ratify the Convention if it were extended to include the exchange of fingerprints of illegal immigrants which could seriously delay the Convention's entry into force. There is therefore a risk that the Eurodac Convention would not enter into force, even in respect of its originally intended scope, for some considerable time, and that this would further limit the effective implementation of the Dublin Convention.

b. Protocol to the Eurodac Convention

28. The alternative is for Eurodac to be extended by means of a protocol. In this event, the draft specifications would also need to be revised so that potential tenderers were aware from the outset of the need to take account of the additional functionality which such a protocol would require. This course would enable the existing Convention to be ratified and come into force quickly for all Member States, thus enhancing the effective operation of the Dublin Convention in the shorter term. The development of a protocol could be taken forward immediately after adoption of the Convention. A deadline could be imposed for conclusion of the Protocol.

29. For these reasons, if the exchange of fingerprints of illegal immigrants is agreed in principle by the Council, the majority view is that this should be given effect by means of a protocol to the Eurodac Convention. Consideration has been given to whether such a protocol might be implemented as soon as a simple majority had ratified it, but there are legal and practical complications with this proposal. No Member State supported it in discussions.

COUNCIL ACT

of

**drawing up the Convention concerning the establishment of "Eurodac"
for the comparison of fingerprints of applicants for asylum**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article K.3(2)(c) thereof,

Whereas asylum policy is regarded as a matter of common interest for the Member States under Article K.1(1) of the Treaty; whereas it is necessary to set up a computerized system for comparison of fingerprints of persons seeking asylum in a Member State in order effectively to apply the Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities (signed at Dublin on 15 June 1990) ⁽¹⁾, and in particular Article 15 thereof;

Having decided that the Convention, the text of which is given in the Annex and which has been signed today by the Representatives of the Governments of the Member States, is hereby drawn up;

Having examined the views of the European Parliament, following the consultation conducted by the Presidency in accordance with Article K.6 of the Treaty on European Union;

RECOMMENDS that it be adopted by the Member States in accordance with their respective constitutional requirements.

Done at

*For the Council
The President*

⁽¹⁾ OJ No C 254, 19.8.1997, p. 1.

CONVENTION

drawn up on the basis of Article K.3 of the Treaty on European Union
concerning the establishment of "Eurodac"
for the comparison of fingerprints
of applicants for asylum

THE HIGH CONTRACTING PARTIES to this Convention, Member States of the
European Union,

REFERRING to the Act of the Council of the European Union of,

RECALLING the objective of harmonization of the Member States' asylum policies, set by
the Strasbourg European Council on 8 and 9 December 1989 and further developed by the
Maastricht European Council on 9 and 10 December 1991 and the Brussels European Council
on 10 and 11 December 1993 as well as in the Commission communication on
23 February 1994 on immigration and asylum policies;

DETERMINED, in keeping with their common humanitarian tradition, to guarantee adequate
protection to refugees in accordance with the terms of the Geneva Convention of
28 July 1951, as amended by the New York Protocol of 31 January 1967, relating to the
Status of Refugees, and to continue the dialogue begun with the United Nations High
Commissioner for Refugees on any issues relating to application of this Convention;

CONSIDERING the joint objective of an area without internal frontiers in which the free
movement of persons is ensured, in accordance with the provisions of the Treaty
establishing the European Community;

AWARE of the need, in pursuit of this objective, to take measures to avoid any situations
arising which would result in applicants for asylum being left in doubt for too long as to the
likely outcome of their applications and concerned to provide all applicants for asylum with a
guarantee that their applications will be examined by one of the Member States and to
ensure that applicants for asylum are not referred successively from one Member State to
another without any of these States acknowledging itself to be competent to examine the
application for asylum;

CONSIDERING that the specific aim of the Dublin Convention of 15 June 1990 determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities ⁽¹⁾ is to meet that concern;

CONSIDERING that for the purposes of applying the Dublin Convention it is necessary to establish the identity of applicants for asylum;

CONSIDERING that fingerprints constitute an important element in establishing the exact identity of such persons and considering that it is necessary to set up a system for the comparison of their fingerprints;

WHEREAS the provisions of this Convention may only be applied in compliance with the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950;

CONSIDERING that the processing of such data must observe the strictest standards of confidentiality and is only possible with due regard for the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, signed at Strasbourg on 28 January 1981,

HAVE AGREED ON THE FOLLOWING PROVISIONS:

⁽¹⁾ OJ No C 254, 19.8.1997, p. 1.

Article 1

Purpose of "Eurodac"

1. The Member States shall establish and maintain a system, known as "Eurodac", the sole purpose of which shall be to assist in determining the Member State which is responsible pursuant to the Dublin Convention for examining an application for asylum lodged in a Member State.

1. A system known as "Eurodac" **is hereby established**, the sole purpose of which shall be to assist in determining the Member State which is responsible pursuant to the Dublin Convention for examining an application for asylum lodged in a Member State.

2. To that end, Eurodac shall consist of:

- the Central Unit referred to in Article 3,
- a computerized central database in which the data referred to in Article 5(1) are recorded and stored for the purpose of comparing the fingerprints of applicants for asylum,
- means of transmission between the Member States and the central database.

The rules governing Eurodac shall also apply to operations effected by the Member States as from the transmission of data to the Central Unit until use is made of the results of the comparison.

3. Without prejudice to the use of data intended for Eurodac by the Member State of origin in databases set up under the latter's national law, fingerprints and other personal data may be processed in Eurodac only for the purposes set out in Article 15(1) of the Dublin Convention.

Article 2

Definitions

For the purposes of this Convention:

1. "The Dublin Convention" shall mean the Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities, signed at Dublin on 15 June 1990.
2. Unless stated otherwise, the terms defined in Article 1 of the Dublin Convention shall have the same meaning in this Convention.
3. An "applicant for asylum" shall mean an alien who has made an application for asylum or on whose behalf such an application has been made.
4. "Transmission of data" shall mean:
 - communication of personal data from Member States to the Central Unit for recording in the central database and communication to Member States of the results of the comparison made by the Central Unit, and
 - recording of personal data directly by Member States in the central database and direct communication of the results of the comparison to such Member States.
5. "Personal data" shall mean any information relating to an identified or identifiable natural person; an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical identity.
6. "Member State of origin" shall mean the Member State which transmits the personal data to the Central Unit and receives the results of the comparison.
7. "Headquarters State" shall mean the Member State in which the Central Unit is situated.
- ~~7. "Headquarters State" shall mean the Member State in which the Central Unit is situated.~~

Article 3

Central Unit

1. A Central Unit shall be established in the Member State designated as responsible for operating the central database of fingerprints of applicants for asylum on behalf of the Member States ⁽¹⁾. The Central Unit shall be equipped with a computerized fingerprint recognition system.
 2. Data on applicants for asylum which are processed at the Central Unit shall be processed on behalf of the Member State of origin.
 3. Insofar as the Convention does not provide otherwise, operation of the Central Unit shall be governed by the national law of the headquarters State.
 4. The headquarters State shall submit to the Council an annual report on the activities of the Central Unit, and the Council shall submit that report to the European Parliament.
1. A Central Unit shall be established **within the Commission which shall be** responsible for operating the central database of fingerprints of applicants for asylum on behalf of the Member States. The Central Unit shall be equipped with a computerized fingerprint recognition system.
 3. Insofar as the Convention does not provide otherwise, operation of the Central Unit shall be governed by the national law of the **Member State in which the Central Unit is located**.
 4. The **Commission** shall submit to the Council **and the European Parliament** an annual report on the activities of the Central Unit.

⁽¹⁾ How the decision designating the Member State responsible for operating Eurodac is to be taken will be examined at a later stage.

Article 4

Procedure

1. Each Member State shall promptly take the fingerprints of every applicant for asylum of at least 14 ⁽¹⁾ years of age and shall promptly transmit the data referred to in Article 5(1), points 1 to 6, to the Central Unit. The procedure for taking fingerprints shall be determined in accordance with the national practice of the Member State concerned. The applicant for asylum shall be informed of the purpose of taking his/her fingerprints as provided for in Article 11(1).⁽²⁾
2. The data referred to in Article 5(1) shall be immediately recorded in the central database:
 - (i) by the Central Unit or,
 - (ii) insofar as the technical conditions for such purposes are met, directly by the Member State of origin.
3. Fingerprint data within the meaning of point 2 of Article 5(1) transmitted by any Member State shall be compared by the Central Unit with the fingerprint data transmitted by other Member States and already recorded in the central database.

⁽¹⁾ Reservation from the Netherlands delegation relating to the age of "14".

⁽²⁾ Reservations from the German and the Austrian delegations on Article 4(1) ; these delegations want an obligation for each Member State to take the fingerprints of illegal immigrants also.

Text suggested by the Austrian delegation :

4 (1a) : "The same shall apply to the fingerprints of nationals of third States who enter a Member State without the required travel document or visa and whose identity cannot be established by means of appropriate documents."

4 (3) : "In the case of an application for asylum, fingerprint data (as drafted)".

The following should be inserted as a fourth recital :

"Considering that on the basis of experience acquired to date in implementing the Dublin Convention, it is necessary to counter the trend whereby illegal migrants enter the European Union, deliberately submit no application for asylum, continue travelling and only submit an application for asylum in another country. As such a procedure undermines the Dublin Convention, it is necessary to incorporate in the comparison certain data on unidentified illegal border crossers."

4. Any Member State may request that the comparison referred to in paragraph 3 should cover the fingerprint data previously transmitted by it, in addition to the data from other Member States.
5. The Central Unit shall forthwith communicate the results of the comparison to the Member State of origin, together with the data referred to in Article 5(1), relating to those fingerprints which, in the opinion of the Central Unit, are so similar as to be considered as matching with the fingerprints which were transmitted by that Member State. Direct transmission to the Member State of origin of the results of the comparison shall be permissible where the technical conditions for such purpose are met.
6. The results of the comparison shall be immediately checked in the Member State of origin. Final identification shall be made by the Member State of origin in cooperation with the Member States concerned, pursuant to Article 15 of the Dublin Convention. Information received from the Central Unit relating to any data mismatch or other data found to be unreliable shall be erased by the Member State of origin as soon as the mismatch or unreliability of the data is established.
7. The Council shall adopt the implementing rules which are necessary to give effect to the procedures provided for in this Article.

Article 5

Recording of data

1. Only the following data shall be recorded in the central database:
 1. Member State of origin, place and date of the application for asylum;
 2. fingerprints ⁽¹⁾ pursuant to the rules for implementing this Convention adopted by the Council;
 3. sex;
 4. reference number used by the Member State of origin;
 5. date on which the fingerprints were taken;
 6. date on which the data were transmitted to the Central Unit;
 7. date on which the data were entered in the central database;
 8. details in respect of the recipient(s) of the data transmitted and the date(s) of transmission(s).

⁽¹⁾ "Fingerprints" here refers to both the prints themselves and data relating to them.

2. After recording the data in the central database, the Central Unit shall destroy the media used for transmitting the data, unless the Member State of origin has requested their return.

Article 6

Data storage

Each set of data, as referred to in Article 5 (1), shall be stored in the central database for ten years from the date on which the fingerprints were last taken. Upon expiry of this period, the Central Unit shall automatically erase the data from the central database.

Article 6a

Advance data erasure

Notwithstanding the provisions of Article 6, data relating to a person who has acquired citizenship of a Member State shall be erased from the central database. In conformity with Article 9(3), such erasure shall be carried out by the Member State of origin either directly or, at the request of the latter, by the Central Unit, as soon as that Member State becomes aware that the person has acquired citizenship of a Member State.

Article 6b

Blocking of data

1. Notwithstanding the provisions of Article 6, data relating to a person who in accordance with the Geneva Convention of 28 July 1951, as amended by the New York Protocol of 31 January 1967, has been recognised and admitted as a refugee in a Member State shall be blocked in the central database. Such blocking shall be carried out by the Central Unit on the instructions of the Member State of origin.
2. Five years after Eurodac begins its activities, the Council shall, on the basis of reliable statistics compiled by the Central Unit on persons who have lodged an application for asylum in a Member State after having been recognised and admitted as refugees as defined in paragraph 1 in another Member State, unanimously adopt a procedure enabling it to decide whether the data relating to those persons should be stored or erased.

3. The Council shall adopt implementing rules concerning compilation of the statistics referred to in paragraph 2. ⁽¹⁾

⁽¹⁾ Draft statement for the Council minutes:

"When adopting the implementing rules concerning the compilation of the statistics referred to in Article 6b(3) of the Convention establishing Eurodac for the comparison of fingerprints of applicants for asylum, the Council will take due account of the following:

1. As soon as a person has been recognized and admitted as a refugee in a Member State, that State will inform the Central Unit of Eurodac which will:
 - (i) give the data relating to that person an appropriate identification mark;
 - (ii) separate them, by appropriate technical means, from the data relating to applicants for asylum which have been registered in the central database.
2. The data relating to refugees which is thus blocked in the central database will continue to be subjected to comparisons requested by the Member States. However, the results of those comparisons will not be forwarded to the Member State of origin; appropriate technical means must guarantee that the results of their comparison are not forwarded even in circumstances where technical conditions allow the results of the comparison to be transmitted directly to the Member State of origin pursuant to Article 4(5) of the Convention.
3. The Central Unit, under the responsibility of the headquarters State[Commission] and under the control of the joint [Central Unit] supervisory authority referred to in Article 13 of the Eurodac Convention, will take all useful and necessary technical measures to prevent any access to data relating to refugees.
4. If a comparison of data relating to refugees results in a hit, the Central Unit will attach the hit information to the data.
5. After the periods provided for in Article 6b(2), the Central Unit will, in accordance with Article 6b(2), compile statistics on:
 - (i) the number of persons who, having been recognized and admitted as refugees in a Member State, have lodged a further application for asylum in another Member State;
 - (ii) the number of persons who have been recognized and admitted as refugees in more than one Member State;
 - (iii) the Member States in which the refugees have lodged a further application for asylum, with:
 - per Member State, the number of applicants for asylum who, having the status of refugee in that State, have applied for asylum in another Member State and the number of such persons for each of the latter Member States;
 - per Member State, the number of applicants for asylum who already have the status of refugee in another Member State, and the number of such persons for each of the latter Member States.

Article 7

Responsibility for data use

1. The Member State of origin shall be responsible for ensuring that:

- (a) fingerprints are taken lawfully;
- (b) fingerprints and the other data referred to in Article 5(1) are lawfully transmitted ⁽¹⁾ to the Central Unit;
- (c) data are accurate and up-to-date when they are transmitted to the Central Unit;
- (d) without prejudice to the responsibilities of the headquarters State referred to in Article 6 and paragraph 4, data in the central database are lawfully recorded ⁽¹⁾, stored, corrected and erased;
- (d) without prejudice to the responsibilities of the **Commission**, data in the central database are lawfully recorded ⁽¹⁾, stored, corrected and erased;
- (e) the results of fingerprint comparisons transmitted by the Central Unit are lawfully used.

2. In accordance with Article 8, the Member State of origin shall ensure the security of these data before and during transmission to the Central Unit as well as the security of the data it receives from the Central Unit.

3. The Member State of origin shall be responsible for the final identification of the data pursuant to Article 4(6).

⁽¹⁾ Transmission pursuant to the second indent of Article 2(4) already includes recording.

4. The headquarters State shall ensure that the Central Unit is operated in accordance with the provisions of the Convention and with the implementing rules adopted by the Council. In particular, the headquarters State shall:

(a) provide that it shall not be lawful for persons working in the Central Unit to use the data recorded in the central database in a way contrary to the purpose of Eurodac as laid down in Article 1(1) and that such use shall be subject to appropriate penalties.

(b) ensure that persons working in the Central Unit comply with all requests from Member States made pursuant to the Convention in relation to recording, comparison, correction and erasure of data for which they are responsible;

(c) take the necessary measures to ensure the security of the Central Unit in accordance with Article 8.

4. The **Commission** shall ensure that the Central Unit is operated in accordance with the provisions of the Convention and with the implementing rules adopted by the Council. In particular, the **Commission** shall:

(a) **adopt measures ensuring that persons working in the Central Unit do not use the data recorded in the central database in a way contrary to the purpose of Eurodac as laid down in Article 1(1).**

(d) **ensure that only persons authorised to work in the Central Unit shall have access to data recorded in the central database, without prejudice to Article 13.**

5. **Member States shall ensure that use of data recorded in the central database contrary to the purpose of Eurodac as laid down in Article 1(1) shall be subject to appropriate penalties.**

Article 8

Security

1. The Member State of origin shall take the necessary measures to:

- (a) prevent any unauthorized person from having access to national installations in which the Member State carries out operations in accordance with the aim of Eurodac (checks at the entrance to the installation);
- (b) prevent data and data media in Eurodac from being read, copied, modified or erased by unauthorized persons (control of data media);
- (c) guarantee that it is possible to check and establish *a posteriori* what data have been recorded in Eurodac, when and by whom, (control of data recording);
- (d) prevent the unauthorized recording of data in Eurodac and any unauthorized modification or erasure of data recorded in Eurodac (control of data entry);
- (e) guarantee that, for the use of Eurodac, authorized persons have access only to data which are within their competence (control of access); ⁽¹⁾
- (f) guarantee that it is possible to check and establish to which authorities data recorded in Eurodac may be transmitted by data transmission equipment (control of transmission);
- (g) prevent the unauthorized reading, copying, modification or erasure of data during both the direct transmission of data to the central database and vice versa and the transport of data media to the Central Unit and vice versa (control of transport).

2. As regards the operation of the Central Unit, the headquarters State shall be responsible for applying the abovementioned measures.

2. As regards the operation of the Central Unit, the **Commission** shall be responsible for applying the abovementioned measures.

⁽¹⁾ The possibility of recording unauthorized attempts at access to data should be spelt out either in the implementing rules, or when drawing up the specifications.

Article 9

Access to and correction or erasure of data recorded in Eurodac

1. The Member State of origin shall have access to data which it has transmitted and which are recorded in the central database in accordance with the provisions of this Convention. No Member State may conduct searches in the data transmitted by another Member State, nor may it receive such data apart from data resulting from the comparison referred to in Article 4(5).
2. The authorities of Member States which, pursuant to paragraph 1, have access to data recorded in the central database shall be those designated by each Member State. Each Member State shall communicate to the depositary a list of these authorities.
3. Only the Member State of origin shall have the right to amend the data it has transmitted to the Central Unit by correcting or supplementing such data, or to erase them, without prejudice to erasure carried out in application of Article 6. Where the Member State of origin records data directly in the central database, it shall amend or erase the data directly, if appropriate. Where the Member State of origin does not record data directly in the central database, the Central Unit shall alter or erase the data at the request of that Member State.
4. If a Member State or the Central Unit has evidence to suggest that data recorded in the central database are factually inaccurate, it shall advise the Member State of origin as soon as possible. In addition, if a Member State has evidence to suggest that data were recorded in the central database contrary to this Convention, it shall similarly advise the Member State of origin as soon as possible. The latter shall check the data concerned and, if necessary, amend or erase without delay.

Article 10⁽¹⁾

Damages

1. The Member State of origin shall, in accordance with its national law, be liable for any damage caused to persons or other Member States resulting from the illegal use of the results of the fingerprint comparisons transmitted by the Central Unit.
2. The headquarters State shall be liable for any damage caused to persons or other Member States through the fault of persons working in the Central Unit in breach of their duties under this Convention or in violation of the law of the headquarters State or both. The headquarters State may, in accordance with its national law, seek compensation from the persons concerned. If the headquarters State cannot invoke entitlement to such compensation, Article 14(1) of this Convention shall apply, provided the headquarters State can show that it has taken reasonable steps to prevent the damage from happening or to minimise its impact.
2. The **European Community** shall be liable, in accordance with **Article 215, second paragraph, of the Treaty establishing the European Community**, for any damage caused to persons or other Member States through the fault of persons working in the Central Unit in breach of their duties under this Convention. **Article 178 of the Treaty establishing the European Community shall be applicable.**

⁽¹⁾ The following text will be inserted into the Explanatory Report of the Convention :
"The purpose of Article 10 is to allocate responsibility between the Member States for damage arising from the operation of the Eurodac system. The provisions of Article 10 are without prejudice to liability incurred by a Member State in accordance with its national law for the unlawful taking of fingerprints, for the unlawful transmission of fingerprints to the Central Unit and for the unlawful taking, transmission and use of personal data."

3. The headquarters State shall be liable for damage to the central database if it has not taken reasonable steps to prevent the damage from happening or to minimise its impact. In other circumstances, Article 14(1) of the Convention shall apply unless the damage is due to the failure of a Member State to comply with its obligations under this Convention, in which case that Member State shall be liable.

4. Claims for compensation for the damage referred to in this Article shall be governed by the provisions of national law of the defendant Member State.

3. The **European Community** shall likewise be liable for damage to the central database. **However**, if the damage is due to the failure of a Member State to comply with its obligations under this Convention, that Member State shall be liable, **unless the Commission failed to take reasonable steps to prevent the damage from happening or to minimise its impact.**

4. **Claims for compensation against a Member State for the damage referred to in paragraphs 1 and 3 shall be governed by the provisions of national law of the defendant Member State.**

Article 11⁽¹⁾

Rights of the data subject

1. Member States shall inform the applicant for asylum, when taking his/her fingerprints, of the purpose, as defined in Article 1(1), of taking the prints and of his/her rights under this Article and their procedural practices.

⁽¹⁾ Scrutiny reserve from Germany.

2. In each Member State any person may, in accordance with the laws, regulations and procedures of the State, exercise a right of access to data concerning him/her recorded in the central database. The person will be informed of the data relating to him/her recorded in the central database and of the Member State which transmitted them to the Central Unit.
2. In each Member State any person may, in accordance with the laws, regulations and procedures of the State, exercise a right of access to data concerning him/her recorded in the central database. **Such access to data may be granted only by a Member State.** The person will be informed of the data relating to him/her recorded in the central database and of the Member State which transmitted them to the Central Unit.
3. If the person contests the accuracy of the data or the lawfulness of recording them in the central database, he/she may ask for data which are factually inaccurate to be corrected or for data recorded unlawfully to be erased. The correction and erasure shall be carried out by the Member State which transmitted the data in accordance with its laws, regulations and procedures.
4. If the rights of correction and erasure are exercised in a Member State other than that (those) which transmitted the data, the authorities of that Member State shall contact the authorities of the Member State(s) in question so that the latter may check the accuracy of the data and the lawfulness of their transmission and recording in the central database.
5. If it emerges that data recorded in the central database are factually inaccurate or have been recorded unlawfully, the Member State which transmitted them shall correct or erase the data in accordance with Article 9(3). That Member State shall confirm in writing to the data subject that it has taken action to correct or erase data relating to him/her.

- 5a. If the Member State which transmitted the data does not accept that data recorded in the central database are factually inaccurate or have been recorded unlawfully it shall explain in writing to the data subject why it is not prepared to correct or erase the data. That Member State shall also provide the data subject with information explaining the steps which he/she can take if he/she does not accept the explanation provided. This shall include information about how to bring an action or, if appropriate, a complaint before the competent authorities or courts of that Member State and any financial or other assistance that is available in accordance with the laws, regulations and procedures of that Member State.
6. Any request under paragraphs 2 and 3 shall contain all the necessary particulars to identify the data subject, including fingerprints. Such data shall be used exclusively to exercise the rights referred to in paragraphs 2 and 3 and shall be destroyed immediately afterwards.
7. Member States shall undertake to ensure that their competent authorities cooperate actively to enforce promptly the rights to correct and erase data laid down in paragraphs 3 to 5.
8. In each Member State, the national supervisory authority shall, in accordance with Article 12(2), assist the data subject in exercising his/her right of access to data.
- 8a. The national supervisory authority of the Member State which transmitted the data shall assist any person resident in another Member State to exercise his/her right to correct or erase data. Such assistance shall be granted in accordance with its laws, regulations and procedures giving effect to the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, signed at Strasbourg on 28 January 1981. Requests for such assistance may be made to the national supervisory authority of the Member State of residence, which shall transmit the requests to the authority of the Member State which transmitted the data. Alternatively, the data subject may apply for assistance directly to the joint supervisory authority set up in Article 13.

9. In each Member State any person may, in accordance with the laws, regulations and procedures of that State, bring an action or, if appropriate, a complaint before the competent authorities or courts of the State if he/she is refused the right of access provided for in paragraph 2.
10. Any person may, in accordance with the laws, regulations and procedures of the State which transmitted the data, bring an action or, if appropriate, a complaint before the competent authorities or courts of that State concerning the data relating to him/her recorded in the central database, in order to exercise his/her rights under paragraph 3.

Article 12

National supervisory authority

1. Each Member State shall designate a national supervisory authority or authorities responsible for personal data protection in that Member State. The task of the national supervisory authority shall be to monitor independently, in accordance with its respective national law, the lawfulness of the processing, in accordance with the provisions of this Convention, of personal data by the Member State in question, as well as of their transmission to the Central Unit, and to examine whether this violates the rights of the data subject. For this purpose, the supervisory authority shall have access to the data processed by the Member State concerned. The Member State shall also make available to the national supervisory authority any information which it requests and allow it access to all documents and files, as well as all premises, at all times.
 - 1a. Each Member State shall ensure that its national supervisory authority has access to advice from persons with sufficient knowledge of fingerprint data.

2. Any person may ask the national supervisory authority to ensure that the recording and transmission of data concerning him/her to the Central Unit and the retrieval and use of such data by the Member State in question are lawful. This right shall be exercised in accordance with the national law applicable to the national supervisory body of which the request is made.

Article 13

Joint supervisory authority[Central Unit supervisory authority]

1. A joint supervisory authority shall be set up, consisting of a maximum of two members or representatives from the supervisory authorities of each Member State. Each delegation shall be entitled to vote.
1. **Any authority designated or created for the purpose of exercising the function of independent data protection supervision over personal data held by the Commission pursuant to its functions under the Treaty establishing the European Community, shall be competent to exercise the same function with respect to personal data held by the Commission by virtue of this Convention. For the purposes of this Convention, it shall be referred to as the "Central Unit supervisory authority".**

2. The joint supervisory authority shall have the task of monitoring the activities of the Central Unit to ensure that the rights of data subjects are not violated by the processing or use of the data held by the Central Unit. In addition, it shall monitor the lawfulness of the transmission of personal data to the Member States by the Central Unit.
 3. The joint supervisory authority shall also be competent for the examination of implementation or interpretation problems in connection with the operation of Eurodac, for the examination of possible difficulties during checks by the national supervisory authorities and for drawing up proposals for common solutions to existing problems.
 4. In the performance of its duties, the joint supervisory authority shall, if necessary, be actively supported by the national supervisory authorities.
2. The **Central Unit** supervisory authority shall have the task of monitoring the activities of the Central Unit to ensure that the rights of data subjects are not violated by the processing or use of the data held by the Central Unit. In addition, it shall monitor the lawfulness of the transmission of personal data to the Member States by the Central Unit.
 3. The **Central Unit** supervisory authority shall also be competent for the examination of implementation or interpretation problems in connection with the operation of Eurodac, for the examination of possible difficulties during checks by the national supervisory authorities and for drawing up proposals for common solutions to existing problems.
 4. In the performance of its duties, the **Central Unit** supervisory authority shall, if necessary, be actively supported by the national supervisory authorities.

4a. The joint supervisory authority shall have access to advice from persons with sufficient knowledge of fingerprint data.

5. The headquarters State must assist the joint supervisory authority in the performance of its tasks. In particular, it must supply information requested by the joint supervisory body, give it access to all documents and paper files as well as access to the data stored in the system and allow it access to all its premises, at all times.

6. The joint supervisory authority shall unanimously adopt its rules of procedure.

7. Reports drawn up by the joint supervisory authority shall be forwarded to the bodies to which the national supervisory authorities submit their reports, as well as to the Council for information. In addition, the joint supervisory authority may submit comments or proposals for improvement regarding its remit to the Council at any time.

4a. The **Central Unit** supervisory authority shall have access to advice from persons with sufficient knowledge of fingerprint data.

5. The **Commission shall** assist the **Central Unit** supervisory authority in the performance of its tasks. In particular, it shall supply information requested by the **Central Unit** supervisory body, give it access to all documents and paper files as well as access to the data stored in the system and allow it access to all its premises, at all times.

6. The **Central Unit** supervisory authority shall unanimously adopt its rules of procedure.

7. Reports drawn up by the **Central Unit** supervisory authority shall be forwarded to the bodies to which the national supervisory authorities submit their reports, as well as to the Council for information. In addition, the **Central Unit** supervisory authority may submit comments or proposals for improvement regarding its remit to the Council at any time.

8. In the performance of their duties, the members of the joint supervisory authority shall not receive instructions from any government or body.

9. The joint supervisory authority shall be consulted on that part of the draft operating budget of the Eurodac Central Unit which concerns it. Its opinion shall be annexed to the draft budget in question.

8. In the performance of their duties, the members of the **Central Unit** supervisory authority shall not receive instructions from any government or body.

9. The **Central Unit** supervisory authority shall be consulted on that part of the draft operating budget of the Eurodac Central Unit which concerns it. Its opinion shall be annexed to the draft budget in question.

Article 14

Costs

1. The costs incurred in connection with the establishment and operation of the Central Unit shall be borne by the budget of the European Communities. ⁽¹⁾
2. The costs incurred by national units and for their connection to the central database shall be borne by each Member State.
3. The costs of transmission of data from the Member State of origin and of the findings of the comparison to that State shall be borne by the State in question.

⁽¹⁾ Scrutiny reservations from the French and Spanish delegations. Reservation from the Danish delegation.

Variant:

"1. The costs incurred in connection with the establishment and management of the Central Unit shall be borne by the headquarters State. Member States shall reimburse each year to the headquarters State the amount of the costs borne on the basis of their share of the gross national product of the Member States of the European Union and of the criteria adopted the previous year."

The Commission has underlined the close relationship between Article 14(1) and Article 3(1) (headquarters of the Central Unit). In the light of the Commission's remarks and the opinion of the European Parliament, two viable options have been identified :

option 1 : management by a headquarters State and Member States funding provisionally favoured by : DK,F,D.

option 2 : management by the Commission and Community funding provisionally favoured by : B, EL,E,IRL,I,L,NL,A,P,FIN,A.

United Kingdom could provisionally accept either option.

Article 15

Settlement of disputes

The Court of Justice shall have jurisdiction to rule on any dispute between Member States regarding the interpretation or the application of this Convention whenever such dispute cannot be settled by the Council within six months of its being referred to the Council by one of its members.

- 2. The Court of Justice shall have jurisdiction to rule on any dispute between one or more Member States and the Commission of the European Communities regarding the interpretation or the application of this Convention whenever such dispute cannot be settled through negotiation.**

Article 16 ⁽¹⁾

Preliminary rulings

1. Any court in a Member State may ask the Court of Justice to give a preliminary ruling on a matter concerning the interpretation of this Convention.
2. The competence of the Court of Justice provided for in paragraph 1 shall be subject to its acceptance by the Member State concerned in a declaration to that effect made at the time of the notification referred to in Article 19(2) or at any subsequent time.
3. A Member State making a declaration under paragraph 2 may restrict the possibility of asking the Court of Justice to give a preliminary ruling to those of its courts against the decisions of which there is no judicial remedy under national law.

⁽¹⁾ Scrutiny reservation from the German delegation. Reservation from the Netherlands delegation.

4. The Statute of the Court of Justice of the European Community and its Rule of Procedure shall apply. In accordance with those Statutes, any Member State, whether or not it has made a declaration under paragraph 2, shall be entitled to submit statements of case or written observations to the Court of Justice in cases which arise under paragraph 1.

Article 17

Supervision of implementation

The Council shall supervise the implementation and application of the provisions of this Convention to ensure that Eurodac operates effectively.

The Council, acting by a two-thirds majority of the High Contracting Parties, shall adopt the necessary implementing rules.

Article 18

Reservations

This Convention shall not be subject to any reservations.

Article 18a

Amendment of the Convention

1. In accordance with the procedure laid down in Title VI of the Treaty on European Union, the Council shall unanimously decide on any amendments to this Convention which it shall recommend to the Member States for adoption in accordance with their respective constitutional requirements.
2. Notwithstanding paragraph 1, the Convention shall be amended in accordance with the procedure adopted by the Council pursuant to Article 6b(2) five years after Eurodac begins its activities.

Article 19

Entry into force

1. This Convention shall be subject to adoption by the Member States in accordance with their respective constitutional requirements.
2. Member States shall notify the Secretary-General of the Council of the European Union of the completion of the procedures necessary under their constitutional requirements for adopting this Convention.
3. Article 4(7), Article 6b(3), Article 10(2) and the second paragraph of Article 17 of this Convention shall enter into force on the day following the notification referred to in paragraph 2 by the State which, being a member of the European Union on the date of adoption by the council of the Act drawing up this Convention, is the last to complete that formality. The other provisions of this Convention shall enter into force on the first day of the third month after that notification.

4. Without prejudice to paragraph 3, Eurodac shall not begin its activities pursuant to this Convention until the implementing rules referred to in Article 4(7) and 6b(3) have been adopted.

Article 19a⁽¹⁾

As regards the United Kingdom, the provisions of this Convention shall apply only to the United Kingdom of Great Britain and Northern Ireland.

Article 20

Accession

1. This Convention shall be open to accession by any State that becomes a member of the European Union.
2. The text of this Convention in the language of the acceding Member State, drawn up by the Council of the European Union, shall be authentic.
3. Instruments of accession shall be deposited with the depositary.
4. This Convention shall enter into force with respect to the acceding Member State 90 days after the deposit of its instrument of accession or on the date of entry into force of the Convention if it has not already entered into force at the time of expiry of the aforesaid period.

⁽¹⁾ **Reservation from the Luxembourg delegation.**

Article 21

Depositary

1. The Secretary-General of the Council of the European Union shall act as depositary of this Convention.
2. The depositary shall publish in the Official Journal of the European Communities information on the progress of adoptions and accessions, together with declarations and any other notification concerning this Convention.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries have hereunto set their hands.

..... (etc.) (in all the languages)

Done at this day of in a single original, in the Danish, Dutch, English, Finnish, French, German, Greek, Irish, Italian, Portuguese, Spanish and Swedish languages, all texts being equally authentic, such original being deposited in the archives of the General Secretariat of the Council of the European Union.

..... (etc.) (in all the languages)

For the Government of the Kingdom of Belgium

..... (etc.) (all the Member States)

8441/1/98
REV 1 COR 1 (en, es)

LIMITE

ASIM 127

CORRIGENDUM TO THE NOTE

from : the Presidency

to : COREPER/COUNCIL

N° prev. docs. : 7566/1/98 ASIM 95 REV 1
7820/98 ASIM 108

Subject : Draft Eurodac Convention

Page 14, point 26, last sentence:

Read :

...

There may also be drafting changes required to other Articles, for example, Articles 1, 3 and 11.