

6324/99

LIMITE

EURODAC 4

INTRODUCTORY NOTE

from: General Secretariat

to : Permanent Representatives Committee/Council

No. prev. doc.: 6094/99 EURODAC 3

Subject: Draft Council Act drawing up a Protocol extending the scope *ratione personae* of the Convention concerning the establishment of "Eurodac" for the comparison of fingerprints of applicants for asylum

1. At its session on 3/4 December 1998, the **(Justice and Home Affairs) Council** recorded **agreement**, subject to parliamentary scrutiny reservations from the Danish, Italian and United Kingdom delegations, on the content of the **draft Eurodac Convention** which was to be "frozen" pending the entry into force of the Treaty of Amsterdam. The Council noted that once that treaty entered into force, the Commission would put forward a proposal for a Community legal instrument incorporating the content of the draft convention.
2. With regard to the **draft Protocol** to the draft Eurodac Convention (extending the scope *ratione personae* of the draft Convention), the Council, on the one hand, agreed to forward the text as set out in 12298/98 to the European Parliament for opinion and, on the other hand, invited the Permanent Representatives Committee to continue examination of the outstanding questions on the text with a view to enabling the Council, in the light of the European Parliament's opinion, to reach agreement on the draft Protocol at its next session.

3. The **Eurodac Working Party** has devoted several meetings to the examination of the draft Protocol and, at its meeting on 16/17 February 1999 reached broad agreement on the text set out in the Annex hereto.
4. On 23 February 1999, the **K4 Committee** confirmed the agreement⁽¹⁾ reached in the Working Party.
5. The **Permanent Representatives Committee** is invited to suggest that the **Council**
 - record **agreement** on the content of the draft Protocol to the draft Eurodac Convention as set out in the Annex;
 - decide to "freeze" the text of the draft Protocol pending the entry into force of the Treaty of Amsterdam;
 - note that the Commission will, upon entry into force of that Treaty, put forward a proposal for a Community instrument incorporating the content of the draft Protocol taking account of the Opinion which the European Parliament is expected to deliver shortly.

⁽¹⁾ The **Italian and United Kingdom delegations** maintained parliamentary scrutiny reservations. Several delegations maintained linguistic reservations.

DRAFT

COUNCIL ACT

of

**drawing up a Protocol
extending the scope *ratione personae*
of 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 the Council has drawn up a Convention concerning the establishment of "Eurodac" for the comparison of fingerprints of applicants for asylum (the "Eurodac Convention"), for the purposes of applying 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;

Whereas it is also necessary, in order effectively to apply the Dublin Convention, and in particular Article 6 thereof, to make provision for communicating to "Eurodac" the fingerprints of persons apprehended in connection with the irregular crossing of the external border of a Member State;

(1) OJ No C 254, 19.8.1997, p. 1.

Whereas it is also desirable in order effectively to apply the Dublin Convention, and in particular Article 10, paragraph 1 (c) and (e) thereof, to allow for each Member State to check whether an alien found illegally present on its territory has applied for asylum in another Member State.

Having decided that a Protocol supplementing the Eurodac Convention to that effect, 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 and in such manner that it will enter into force at the same time as the Eurodac Convention.

Done at,

For the Council
The President

PROTOCOL

**drawn up on the basis of Article K.3 of the Treaty on European Union,
extending the scope *ratione personae*
of the Convention concerning the establishment of "Eurodac" for the comparison of
fingerprints of applicants for asylum**

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

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

RECOGNISING that the Convention signed at Dublin on 15 June 1990, determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities, is a measure relating to the free movement of persons in accordance with the objective set out in Article 7a of the Treaty establishing the European Community;

RECALLING that for the purposes of applying the Dublin Convention, and in particular Article 15 thereof, the Council has drawn up a Convention concerning the establishment of "Eurodac" for the comparison of fingerprints of applicants for asylum ;

WHEREAS it is also necessary in order effectively to apply the Dublin Convention, and in particular Article 6 thereof, to make provision for communicating to "Eurodac" the fingerprints of persons apprehended in connection with the irregular crossing of the external border of a Member State;

WHEREAS it is also desirable in order effectively to apply the Dublin Convention, and in particular Article 10, paragraph 1 (c) and (e) thereof, to allow for each Member State to use "Eurodac" for checking whether an alien found illegally present on its territory has applied for asylum in another Member State.

HAVE AGREED ON THE FOLLOWING PROVISIONS :

Article 1

Extension of "Eurodac"

The provisions of the Convention concerning the establishment of "Eurodac" for the comparison of fingerprints of applicants for asylum, hereinafter referred to as "the Eurodac Convention", shall be extended, subject to the provisions of this Protocol, to fingerprint data on certain other aliens, for the purpose of assisting in determining the Member State which is responsible under the Dublin Convention of 15 June 1990 for examining an application for asylum lodged in a Member State, as well as for the purpose of otherwise facilitating the application of the latter Convention.

Article 2

Definitions

Unless otherwise stated, the terms defined in Article 2 of the Eurodac Convention and in Article 1 of the Dublin Convention of 15 June 1990 shall have the same meaning in this Protocol.

Article 3

Collection and communication of fingerprint data on aliens who irregularly cross an external border

1. Each Member State shall promptly take the fingerprints of every alien of at least fourteen years of age who is apprehended by the competent control authorities in connection with the irregular crossing by land, sea or air of the border of that Member State having come from a third country and who is not turned back.
2. The Member State concerned shall promptly communicate the fingerprints of any alien as referred to in paragraph 1 above to the Eurodac Central Unit, together with the other relevant data referred to in Article 5 (1) of the Eurodac Convention.

Article 4

Recording of data on aliens who irregularly cross an external border

1. Data communicated to the Central Unit pursuant to Article 3 of this Protocol shall be recorded in the central database for the sole purpose of comparison with data on applicants for asylum transmitted subsequently to the Central Unit. The Central Unit shall therefore not compare data communicated to it pursuant to Article 3 with any data previously recorded in the central database, nor with data subsequently communicated to the Central Unit pursuant to Article 3.
2. In so far as the provisions of the Eurodac Convention apply to data on an alien as referred to in Article 3 of this Protocol, references to the "Member State of origin" shall be taken as meaning the Member State which communicates such data to the Central Unit.

Article 5

Storage of data on aliens who irregularly cross an external border

1. Each set of data relating to an alien as referred to in Article 3 of this Protocol shall be stored in the Eurodac central database for two years from the date on which the fingerprints of the alien were taken. Upon expiry of this period, the Central Unit shall automatically erase the data from the central database.
2. Notwithstanding the provisions of paragraph 1 above, the data relating to an alien as referred to in Article 3 shall be erased from the central database immediately when the Member State of origin becomes aware of either of the following circumstances before the two-year period mentioned in paragraph 1 has expired :
 - a) the alien has been issued with a residence permit; or
 - b) the alien has left the territory of the Member States.

Article 6

Rights of the data subject

The right of any alien as referred to in Article 3 to have access to data concerning him/her in the central database shall be exercised in accordance with the law of the Member State before which he/she invokes that right. If the national law so provides, the national supervisory authority provided for in Article 14 of the Eurodac Convention shall decide whether information shall be communicated and by what procedures. In the case referred to in the previous sentence, a Member State which did not transmit the data may communicate information concerning such data only if it has previously given the Member State of origin an opportunity to state its position.

Article 7

Comparison of fingerprints of aliens found illegally present in a Member State

1. With a view to checking whether an alien found illegally present within its territory has previously lodged an application for asylum in another Member State, each Member State may communicate to the Central Unit fingerprints it may have taken of any such alien of at least fourteen years of age. As a general rule there are grounds for checking whether the alien has previously lodged an application for asylum in another Member State where:
 - the alien declares that he/she has lodged an application for asylum but without indicating the Member State in which he/she made the application;
 - the alien does not request asylum but objects to being returned to his/her country of origin by claiming that he/she would be in danger, or
 - the alien otherwise seeks to prevent his/her removal by refusing to cooperate in order to establish his/her identity, in particular by showing no or false identity papers.

2. The fingerprints of an alien as referred to in paragraph 1 shall be communicated to the Central Unit solely for the purpose of comparison with the fingerprints of applicants for asylum transmitted by other Member States and already recorded in the central database. The fingerprints of such an alien shall not be stored in the central database, nor shall they be compared with the data communicated to the Central Unit pursuant to Article 3 of this Protocol.
3. The Central Unit shall destroy the fingerprints communicated to it under paragraph 1 above forthwith, once the results of the comparison have been communicated to the Member State of origin.

Article 8

Application of provisions of the Eurodac Convention

Unless otherwise stated in this Protocol or unless a different intention appears from the context, all the provisions of the Eurodac Convention shall apply *mutatis mutandis* to this Protocol.

Article 9

Reservations

This Protocol shall not be subject to any reservations.

Article 10

Entry into force

1. This Protocol 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 Protocol.
3. This Protocol shall enter into force on the first day of the third month after 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 Protocol, is the last to complete that formality, provided that the Eurodac Convention enters into force on the same date as this Protocol.

Article 11

Accession

1. This Protocol shall be open to accession by any State that becomes a member of the European Union.
2. The text of this Protocol 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 Protocol shall enter into force with respect to the acceding Member State on the first day of the third month after the deposit of its instrument of accession or on the date of entry into force of this Protocol if it has not already entered into force at the time of expiry of the aforesaid period, provided that the Eurodac Convention enters into force with respect to the acceding Member State on the same date as this Protocol.

Article 12

Depositary

1. The Secretary-General of the Council of the European Union shall act as depositary of this Protocol.
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 Protocol.

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)

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