

EUROPEAN PARLIAMENT



session documents

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18 March 1999

A4-0138/99

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FILE COPY

REPORT

on

I. the proposal for a Council Act drawing up a Protocol to the Convention concerning the establishment of "Eurodac" for the comparison of fingerprints of applicants for asylum

and

II. the draft Protocol drawn up on the basis of Article K.3 of the Treaty on European Union, to the Convention concerning the establishment of "Eurodac" for the comparison of fingerprints of applicants for asylum

(12298/98 - C4-0673/98 - 98/0916(CNS))

Committee on Civil Liberties and Internal Affairs

Rapporteur: Hubert Pirker

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PE 229.979/fin.

- * Consultation procedure
simple majority
- **I Cooperation procedure (first reading)
simple majority
- **II Cooperation procedure (second reading)
simple majority to approve the common position
majority of Parliament's component Members to reject or amend the common position
- *** Assent procedure
majority of Parliament's component Members to give assent
but simple majority under Articles 8a, 105, 106, 130d and 228 EC

- ***I Codecision procedure (first reading)
simple majority
- ***II Codecision procedure (second reading)
simple majority to approve the common position
majority of Parliament's component Members to adopt a declaration of intended rejection of the common position, and amend the common position or confirm its rejection
- ***III Codecision procedure (third reading)
simple majority to approve the joint text
majority of Parliament's component Members to reject the Council text

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PROCEDURAL PAGE

By letter of 27 November 1998 the Council Presidency consulted Parliament, pursuant to Article K.6 of the Treaty on European Union, on the proposal for a Council Act drawing up a Protocol to the Convention concerning the establishment of "Eurodac" for the comparison of fingerprints of applicants for asylum and on the draft Protocol drawn up on the basis of Article K.3 of the Treaty on European Union, to the Convention concerning the establishment of "Eurodac" for the comparison of fingerprints of applicants for asylum.

At the sitting of 18 December 1998 the President of Parliament announced that he had referred this proposal to the Committee on Civil Liberties and Internal Affairs as the committee responsible and the Committee on Legal Affairs and Citizens' Rights for its opinion.

At its meeting of 20 January 1999 the Committee on Civil Liberties and Internal Affairs appointed Hubert Pirker rapporteur.

It considered the proposal for a Council Act and the draft Convention at its meetings of 25 January and 16 March 1999.

At the latter meeting it adopted the draft legislative resolution by 13 votes to 6.

The following took part in the vote: d'Ancona, chairman; Pirker, rapporteur; Andersson (for Elliott), Baron Crespo (for Ford pursuant to Rule 138(2)), Bontempi, Caccavale (for Schaffner), Cederschiöld, Ceyhan, Colombo Svevo, Deprez, Lindeperg, Nassauer, Perez Royo (for Candal, pursuant to Rule 138(2)), Pradier, Schmid, Stewart-Clark, Terrón i Cusí, Van Lancker (for Crawley), Voggenhuber (for Orlando) and Zimmermann.

The opinion of the Committee on Legal Affairs and Citizens' Rights is attached.

The report was tabled on 18 March 1999.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

A I
LEGISLATIVE PROPOSAL

Proposal for a Council Act drawing up a Protocol to the Convention concerning the establishment of "Eurodac" for the comparison of fingerprints of applicants for asylum (12298/98 - C4-0673/98 - 98/0916(CNS))

The proposal is rejected.

A II

Draft Protocol drawn up on the basis of Article K.3 of the Treaty on European Union, to the Convention concerning the establishment of "Eurodac" for the comparison of fingerprints of applicants for asylum (12298/98 - C4-0673/98 - 98/0916(CNS))

The proposal is rejected.

DRAFT LEGISLATIVE RESOLUTION

Legislative resolution embodying Parliament's opinion on

I. the proposal for a Council Act drawing up a Protocol to the Convention concerning the establishment of "Eurodac" for the comparison of fingerprints of applicants for asylum

and

II. the draft protocol drawn up on the basis of Article K.3 of the Treaty on European Union, to the Convention concerning the establishment of "Eurodac" for the comparison of fingerprints of applicants for asylum (12298/98 - C4-0673/98 - 98/0916(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the proposal of the Presidency (12298/98 - 98/0916(CNS)),
 - having been consulted by the Council Presidency pursuant to Article K.6, second paragraph of the Treaty on European Union (C4-0673/98),
 - having regard to Rule 58 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties and Internal Affairs and the opinion of the Committee on Legal Affairs and Citizens' Rights (A4-0138/99),
1. Rejects the proposal, of the Presidency;
 2. Instructs its President to forward this opinion to the Council and Commission.

B

EXPLANATORY STATEMENT

1. INTRODUCTION

By letter of 27 November 1998 the Council consulted the European Parliament on the proposal for a Council Act drawing up a Protocol to the Convention concerning the establishment of "Eurodac" for the comparison of fingerprints of applicants for asylum and the draft Protocol drawn up on the basis of Article K.3 of the Treaty on European Union, to the Convention concerning the establishment of "Eurodac" for the comparison of fingerprints of applicants for asylum.

At the Justice and Home Affairs Council held in early December 1998 the Council decided not to sign the Eurodac Convention until after the entry into force of the Amsterdam Treaty. In a document from the K.4 committee (5340/99) it is stated clearly that after entry into force of that Treaty many of the Council's working parties which deal with immigration and asylum will work within the framework of the first pillar. This applies inter alia to CIREA, CIREFI and Eurodac.

Nonetheless the Council asked Parliament to deliver an opinion before the middle of February.

Despite the unjustified time pressure the European Parliament is submitting its opinion because it considers it needful to present to the Commission proposals which should be taken into account in drawing up a Community measure on the basis of the Treaty of Amsterdam.

2. SUMMARY OF THE MEASURE

From the proposed Council Act and the proposed recitals of the Protocol it is apparent that the aim of the draft Protocol is in line with Article 6 and Article 10(1)(c) and (e) of the Dublin Convention (OJ C 254, 19.8.1997, p.1). In these provisions it is stated that 'When it can be proved that an applicant for asylum has irregularly crossed the border into a Member State by land, sea or air, having come from a non-member State of the European Communities, the Member State thus entered shall be responsible for examining the application of asylum. That State shall cease to be responsible, however, if it is proved that the applicant has been living in the Member State where the application for asylum was made at least six months before making his application for asylum. In that case it is the latter Member State which is responsible for examining the application for asylum' (Article 6) and 'The Member State responsible for examining an application for asylum according to the criteria set out in this Convention shall be obliged to: ... readmit 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 ... 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' (Article 10(1)(c) and (e)).

The draft Protocol states that the fingerprints should be taken of every alien of at least fourteen years of age who is apprehended in connection with the irregular crossing of the border of the Member State (Article 3). The data are stored for two years (Article 5).

Similarly, aliens found illegally present in a Member State shall have their fingerprints taken in order to check whether they had previously lodged an application for asylum in another Member State. The fingerprints of this group of people shall be destroyed as soon as the comparison has been made (Article 7).

3. LEGAL BASIS AND PROCEDURE

The proposal is based on Article K.3(2)(c) of the TEU.

The Council has reached political agreement on the Eurodac Convention with which a system for the comparison of fingerprints for asylum seekers in the EU Member States is to be established. At present the Council is considering a draft Protocol to the draft Eurodac Convention on the basis of which the taking of fingerprints is to be extended to aliens who have irregularly crossed an external border and aliens who are illegally present in a Member State.

Article 63 of the Treaty of Amsterdam provides for measures on illegal immigration, illegal residence and repatriation under the first pillar. The Commission will submit a proposal on the basis of this Article as soon as the Treaty of Amsterdam has entered into force.

4. OPINIONS ALREADY GIVEN BY PARLIAMENT

The European Parliament has already given its opinion twice on Eurodac: on 15 January 1998 (report on the Eurodac Convention) and on 14 January 1999 (Resolution following the K6 debate). Two differing viewpoints were adopted on the extension of Eurodac: 'Without prejudice to the use of data stored in Eurodac by the Member State of origin in other 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' (Amendment 6 in the report) and 'The use of the system pursuant to the preceding paragraphs must be regarded as subject to very strict limits. The use of the Eurodac system must on no account be extended to cover wider areas or purposes' (Amendment 7 in the report).

The European Parliament's resolution of 14 January 1999 clearly calls for 'the Eurodac Convention to be extended to cover illegal immigrants' (paragraph 20 of the K6 resolution).

5. NEED TO COLLECT FINGERPRINTS

The objective of the Dublin Convention of 15 June 1990 is to determine clearly the responsibility for examining applications for asylum. The Member State responsible, according to the criteria listed in the Convention, is required to carry out the examination of the application for asylum. The asylum seeker is thus guaranteed a single examination of his application and multiple applications and the associated abuse are prevented.

The Eurodac Convention is thus established to provide support in determining the Member State which, under the Dublin Convention, is responsible for examining the application for asylum.

The application of the Dublin Convention, which entered into force on 1 September 1997, has shown that the necessary information must be available in order to determine the Member State responsible for examination of the asylum application in the event of an irregular crossing of an external border and for examination of whether an alien illegally present on its territory has made an asylum application in another Member State.

The draft Protocol to the Eurodac Convention was submitted for this reason. The Protocol states that the fingerprints of persons apprehended in connection with an irregular crossing of an external border of a Member State are to be recorded in Eurodac. Every Member State should also have the possibility to use Eurodac to check whether an alien illegally present on its territory has made an application for asylum in another Member State.

This method safeguards the efficient application of the Dublin Convention and guarantees that Member States can fulfil their obligations deriving from this Convention.

15 March 1999

OPINION

(Rule 147)

for the Committee on Civil Liberties and Internal Affairs

on the Draft Protocol to the Convention concerning the establishment of 'Eurodac' for the comparison of fingerprints of applicants for asylum (12298/98 - C4-0673/98 - 98/0916(CNS))
(report by Mr Hubert Pirker)

Committee on Legal Affairs and Citizens' Rights

Draftsman: Mrs Wilmya Zimmermann

PROCEDURE

At its meeting of 19-21 January 1999 the Committee on Legal Affairs and Citizens' Rights appointed Mrs Wilmya Zimmermann draftsman.

It considered the draft opinion at its meetings of 22-23 February 1999 and 15 March 1999.

At the latter meeting it adopted the following conclusions by 6 votes to 2, with no abstentions.

The following were present for the vote: De Clercq, chairman; Zimmermann, draftsman; Anastassopoulos, Barzanti, Cassidy, Gebhardt, Medina Ortega and Verde I Aldea.

BACKGROUND

- 1.1 The **Dublin Convention**⁽¹⁾ lays down detailed provisions for determining the Member State that is responsible for examining an application for asylum lodged in a Member State⁽²⁾. The basic rule is that Member States undertake to examine the application of any alien who applies at the border or in their territory to any one of them for asylum (Article 3).

Responsibility is determined in accordance with the following priorities:

-
- (¹) Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities, (OJ C 254, 19.8.1997, p. 1), as supplemented by Decisions 1/97 and 2/97 (OJ L 281, 14.10.1997, p. 1 and p. 26), and 1/98 (OJ L 196, 14.7.1998, p. 49) of the Dublin Committee
- (²) The Schengen Convention (Article 28) lays down similar rules for the Schengen countries. The relationship of the Dublin Convention (15 June 1990) to the Schengen Convention (19 June 1990), and in particular Article 30(e) thereof, is not clear in every particular, but that aspect will be disregarded here.

- In the event of lawful residence of family members recognised as having refugee status within the meaning of the Geneva Convention in another Member State, that Member State shall be responsible (Article 4);
- Where the applicant for asylum is in possession of a valid residence permit or a valid visa for another Member State, that Member State shall be responsible (Article 5);
- In the event of illegal entry, that Member State by crossing whose borders it can be proved that the applicant for asylum first entered shall be responsible (Article 6, first paragraph);
- Where it can be proved that the applicant had been living unlawfully for at least six months in another Member State before the application was made, that Member State shall be responsible (Article 6, second paragraph);
- Certain Member States that have been entered legally (Article 7);
- The state of first application (Article 8).

In practice the problem arises that it can be difficult to prove that any particular sequence of events has taken place. Member States use that fact as a way of getting rid of asylum applicants. Applicants can thus fall victim to a game of ping-pong contemptuous of their humanity; they may well be returned to the state of their first illegal entry but be unable to prove as much, and from there be deported to a third country.

The Eurodac system is in principle intended to make it possible to demonstrate more conclusively the real sequence of relevant events.

- 1.2 The *Eurodac Convention*⁽¹⁾ - as yet neither signed nor ratified - lays down rules on the collection and use of the fingerprints of applicants for asylum, and specifies the circumstances under which such fingerprints can be recorded in a database. Fingerprints of applicants for asylum are compared by the Central Unit with those of other applicant for asylum that have already been recorded.
- 1.3 The *Protocol to the Eurodac Convention* here under consideration governs two other sets of circumstances where the fingerprints of applicants for asylum may be taken and used:
 - (a) The fingerprints of aliens who have been apprehended by the competent control authorities in connection with the illegal crossing of the borders of a Member State by land sea or air from a third country and who are not turned back will be compared with the fingerprints of applicants for asylum from other Member States that are forwarded at a later date.
 - (b) The fingerprints of aliens unlawfully remaining in the territory of a Member State will be compared with the fingerprints of applicants for asylum who have lodged their application for asylum at an earlier date in another Member State.

2. Entry into force of the Treaty of Amsterdam

⁽¹⁾ What follows draws substantively on the Text of Council Document 11079/97 of 2 October 1997, on which the EP was consulted. The Council has meanwhile made additions and changes to the text, but has not as yet published it.

The Council proposes Article K.3 of the Treaty on European Union as the legal basis.

Since the Dublin Convention is a third-pillar instrument, there is no judicial body with authority over and above that of the Member States that could resolve disputes between Member States concerning responsibility for examining applications for asylum. This also has an impact on applicants for asylum themselves, who - especially in the event of negative conflicts of responsibility - have no supranational body that they can appeal to for a judicial ruling that a particular Member State is responsible for examining their application for asylum.

With entry into force of the Treaty of Amsterdam the Council could unanimously (Article 73 of the EC Treaty) adopt 'asylum measures' (Article 73k(1) of the EC Treaty). Such 'measures' would have to be binding acts of law under the first pillar, i.e. Regulations, Decisions or Directives. The ECJ would be called upon to provide interpretation and judicial monitoring. There are, even so, exemption clauses for the United Kingdom and Ireland, and for Denmark⁽¹⁾.

It would be appropriate to wait for the Treaty of Amsterdam to enter into force and adopt the substance of the Protocol as a Regulation.

3. The anticipated impact of the Eurodac system

- (a) The Eurodac system (Convention and Protocol) will mean that both applicants for asylum and the Member State responsible for granting recognition will be more clearly **identifiable**.
- (b) The Member State of illegal entry can be identified at best *unreliably* if it can never be known if the illegal entrant has, in the interim, been in a third country and has again entered illegally by crossing the borders of another Member State, so that the latter would become responsible for examining the application for asylum. Although there is provision for data to be deleted in the event of removal to a third country (Article 5(2)(b) of the Eurodac Protocol), *there is no reliable means of unambiguously determining and confirming such removal*.

Establishing the logical connection between fingerprints and exit data will also be impossible if a different database is used to record exit data (Articles 4(1) and 7(2)).

Nor may the Schengen Information System central database (Article 92 ff of the Schengen II Convention of 19 June 1990) contain exit data.

- (c) Above all, the (often spurious) certainty of such data leads to the **over-rating of the criterion of illegal entry** into the EU by comparison with all other criteria for determining the Member State responsible.
- (d) The **storage deadlines** for the fingerprints of illegal entrants play a fundamental part in determining their useability. The longer the fingerprints of aliens within the meaning of Article 3 are stored, the longer they remain available, in the event of a subsequent application, as evidence of first illegal entry. The Member State whose borders have been illegally crossed can

(¹) See Protocol on the position of the United Kingdom and Ireland and Protocol on the position of Denmark.

be considered as the Member State responsible for examining the application for asylum for the corresponding period of time. On the other hand, the longer the time between first confirmed illegal entry and application for asylum, the higher the probability that the party concerned will again have left the territory of the EU and subsequently have re-entered it, possibly by crossing the borders of another Member State. In that event however, responsibility would have to be reassessed.

- (e) Certain parts of the Dublin Convention procedure are being brought forward. Article 3(6) of the Dublin Convention however states:

The process of determining the Member State responsible for examining the application for asylum under this Convention shall start as soon as an application for asylum is **first** lodged with a Member State.

- (f) **The definition of the category of persons concerned** is unclear and infringes legal certainty, which amounts in practice to uncertainty as to the application of fingerprinting to the right category of persons in the central database. Whereas Article 3 refers to every alien apprehended in connection with the irregular crossing of a border from a third country who is not sent back, Article 7 specifies every alien found illegally present in a Member State.

As these definitions stand it is difficult to distinguish between aliens as referred to in Article 3 and in Article 7, since anyone who illegally crosses a border necessarily is also illegally present in the territory concerned.

It consequently cannot be excluded that two procedures might be applied to one and the same person.

- (g) It is moreover still unclear whether an illegal entrant who immediately lodges an asylum application is to be treated in accordance with Article 4 of the Protocol or in accordance with the Eurodac Convention.

Nor is there any assurance that no one can have their particulars recorded by the Central Unit both as an 'illegal' (regardless of whether as illegal entrant or someone found illegally present) and as an applicant for asylum. Duplicate recording as an applicant for asylum is superfluous by reason of the ranking of criteria laid down in the Dublin Convention, and should therefore be prohibited.

4. EP opinion on the Eurodac Convention

The European Parliament delivered its opinion on the Eurodac Convention on 15 January 1998.

The EP took the view that **data protection** in relation to the database to be established under the Eurodac Convention for the individual particulars of applicants for asylum assumed special importance. The majority of its amendments concerned that aspect.

Equally important to the EP was that the **Commission** should operate the system and not the Member States (Amendment 5; Amendment 13).

5. Assessment of the proposal from the point of view of fundamental rights

The draftsman of this opinion has serious reservations concerning the taking of fingerprints of applicants for asylum as constituting a major encroachment on the **right to integrity of the person** of those concerned. Lodging an application for asylum is in any event not an offence but a right pursuant to Article 14 of the Universal Declaration of Human Rights: 'Everyone has the right to seek and to enjoy in other countries asylum from persecution'.

The EP has therefore considered it necessary to strengthen the rights of applicants for asylum under the Eurodac system by introducing additional data-protection safeguards. It is difficult, in the draftsman's view, for Parliament to approve any extension to the recording and comparing of data in the Eurodac Central Unit to include further categories of persons without knowing the Council's reaction to its opinion.

If Community bodies are to share responsibility for managing data held on persons, then Article 286 (former Article 213b) of the EC Treaty (application of data-protection directives, establishment of an independent supervisory body) must be complied with and implemented. Extending the scope of the data-protection directive to include activities hitherto managed under the third pillar would be judicially well advised when such activities are transferred to the first pillar. It would be unthinkable for any one area of Commission or Council activities not to be subject to any form of data protection.

6. CONCLUSIONS

The Committee on Legal Affairs and Citizens' Rights reached the following conclusions:

1. The doubts already surrounding the protection of data stored for purposes of comparison under the Eurodac Convention have not been dispelled. The amendments adopted by Parliament in its opinion on the Eurodac Convention must also be applied in full to this Protocol. The reference to the Convention in Article 8 of the Protocol is to be understood in that sense.
2. The order of priority of the criteria laid down in the Dublin Convention and the application of Article 10(1)(c) and (e) thereof must be retained.
3. The European Parliament recommends that the Eurodac Convention together with the Protocol should not be adopted until the Treaty of Amsterdam has entered into force, since joint arrangements will then be possible that can be supervised by the European Court of Justice.
4. The Committee on Legal Affairs and Citizens' Rights calls on the Committee on Civil Liberties and Internal Affairs to incorporate the following amendments into its report:

(Amendment 1)
Preamble, fourth recital

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;

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, on which the European Parliament delivered its opinion on 15 January 1998;

(Amendment 2)
Preamble, sixth recital

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.

WHEREAS it is desirable that the Dublin Convention should be applied effectively.

(Amendment 3)
Article 3(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.

Each Member State shall promptly take the fingerprints of every alien of at least eighteen years of age who lodges no application for asylum and 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.

(Amendment 4)
Article 4(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.

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 with the objective of determining the Member State responsible in accordance with the Dublin Convention for examining an application for asylum. 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.

(Amendment 5)
Article 4(3) - (new)

Only data in accordance with Article 5 of the Eurodac Convention shall be recorded. Instead of the place and date of the application for asylum, the place in and date on which the fingerprints were taken shall be recorded.

(Amendment 6)
Article 7(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, particularly where:
[...]

With a view to checking in accordance with the Dublin Convention 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 eighteen years of age who lodges no application for asylum, particularly where:
[...]

(Amendment 7)
Article 7(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. [...]

An alien who is apprehended without valid residence documents in a Member State and whose fingerprints are taken in accordance with paragraph 1 may not simultaneously be treated as an alien within the meaning of Article 3. 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. [...]

(Amendment 8)
Article 7a - (new)

Information to concerned parties and data protection officer

1. All persons whose fingerprints have been taken under the Eurodac Convention or the Eurodac Protocol shall be informed in writing in a language intelligible to them of the purpose for which their fingerprints were taken, for how long they will be stored, what Member States have access to Eurodac and what legal assistance is available to them.
2. A European data protection officer, appointed by the European Parliament, shall have unrestricted right of access to the system, the right to examine complaints and access to the meetings of the Joint Supervisory Authority. He shall report annually to the Community Institutions.

(Amendment 9)
Article 7b - (new)

1. Should it arise in relation to an applicant for asylum on the occasion of a comparison of data that his or her data have already been recorded in the Central Unit as pertaining to an illegal entrant within the meaning of Article 3, his or her data may not additionally be recorded in connection with his or her status as an applicant for asylum.
2. If however the Member State in which the application for asylum was lodged states that it is willing to examine the application for asylum, the applicant's data may be recorded solely in connection with his or her status as an applicant for asylum; data recorded in connection with his or her status as an illegal entrant within the meaning of Article 3 shall be deleted.

(Amendment 10)
Article 8

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.

Unless otherwise stated in this Protocol all the provisions of the Eurodac Convention shall apply *mutatis mutandis* to this Protocol.

(Amendment 11)
Article 10(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.

Member States shall notify the President of the Commission of the European Union of the completion of the procedures necessary under their constitutional requirements for adopting this Protocol.

(Amendment 12)

Article 10(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.

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 in advance of or on the same date as this Protocol.