

AGREEMENT

between the European Community and the Kingdom of Denmark on the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in Denmark or any other Member State of the European Union and 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention

THE EUROPEAN COMMUNITY, hereinafter referred to as 'the Community',

of the one part, and

THE KINGDOM OF DENMARK, hereinafter referred to as 'Denmark',

of the other part,

REFERRING to Denmark's participation in the Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities, signed in Dublin on 15 June 1990, hereinafter referred to as the 'Dublin Convention';

REFERRING to Article 12 of the Agreement between the European Community and the Republic of Iceland and the Kingdom of Norway concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or Iceland or Norway;

TAKING INTO ACCOUNT that the Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, hereinafter referred to as the 'Dublin II Regulation', replaces the 'Dublin Convention';

NOTING that the Commission Regulation (EC) No 1560/2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national was adopted on 2 September 2003;

CONSIDERING the importance of the Council Regulation (EC) No 2725/2000 of 11 December 2000 regarding the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention, hereinafter referred to as the 'Eurodac Regulation'. The 'Eurodac Regulation' and the 'Dublin II Regulation' are hereinafter referred to as the 'Regulations';

NOTING that the Council on 28 February 2002 adopted the Regulation (EC) No 407/2002 regarding certain rules to implement the Eurodac Regulation;

REFERRING to the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community (the Protocol on the position of Denmark) pursuant to which the Dublin II Regulation and the Eurodac Regulation shall not be binding upon or applicable in Denmark;

DESIRING that the provisions of the Regulations, future amendments thereto and the implementing measures relating to them should under international law apply to the relations between the Community and Denmark being a Member State with a special position with respect to Title IV of the Treaty establishing the European Community;

STRESSING the importance of proper coordination between the Community and Denmark with regard to the negotiation and conclusion of international agreements that may affect or alter the scope of the Regulations;

STRESSING that Denmark should seek to join international agreements entered into by the Community where Danish participation in such agreements is relevant for the coherent application of the Regulations and this Agreement;

STATING that the Court of Justice of the European Communities should have jurisdiction in order to secure the uniform application and interpretation of this Agreement including the provisions of the Regulations and any implementing Community measures forming part of this Agreement;

REFERRING to the jurisdiction conferred to the Court of Justice of the European Communities pursuant to Article 68(1) of the Treaty establishing the European Community to give rulings on preliminary questions relating to the validity and interpretation of acts of the institutions of the Community based on Title IV of the Treaty, including the validity and interpretation of this Agreement, and to the circumstance that this provision shall not be binding upon or applicable in Denmark, as results from the Protocol on the position of Denmark;

CONSIDERING that the Court of Justice of the European Communities should have jurisdiction under the same conditions to give preliminary rulings on questions concerning the validity and interpretation of this Agreement which are raised by a Danish court or tribunal, and that Danish courts and tribunals should therefore request preliminary rulings under the same conditions as courts and tribunals of other Member States in respect of the interpretation of the Regulations and their implementing measures;

REFERRING to the provision that, pursuant to Article 68(3) of the Treaty establishing the European Community, the Council of the European Union, the European Commission and the Member States may request the Court of Justice of the European Communities to give a ruling on the interpretation of acts of the institutions of the Community based on Title IV of the Treaty, including the interpretation of this Agreement, and the circumstance that this provision shall not be binding upon or applicable in Denmark, according to the Protocol on the position of Denmark;

CONSIDERING that Denmark should, under the same conditions as other Member States in respect of the Regulations and their implementing measures, be accorded the possibility to request the Court of Justice of the European Communities to give rulings on questions relating to the interpretation of this Agreement;

STRESSING that under Danish law the courts in Denmark should — when interpreting this Agreement including the provisions of the Regulations and any implementing Community measures forming part of this Agreement — take due account of the rulings contained in the case-law of the Court of Justice of the European Communities and of the courts of the Member States of the European Communities in respect of provisions of the Regulations and any implementing Community measures;

CONSIDERING that it should be possible to request the Court of Justice of the European Communities to rule on questions relating to compliance with obligations under this Agreement pursuant to the provisions of the Treaty establishing the European Community governing proceedings before the Court;

WHEREAS, by virtue of Article 300(7) of the Treaty establishing the European Community, this Agreement binds Member States; it is therefore appropriate that Denmark, in the case of non-compliance by a Member State, should be able to bring a complaint to the Commission as guardian of the Treaty;

CONSIDERING that Denmark according to Article 3 of the Protocol on the position of Denmark does not bear financial consequences of measures which are not binding upon or applicable in Denmark other than administrative costs, and that Denmark's contribution to the operational costs linked to the establishment and operation of the Central Unit according to Article 3 of the Eurodac Regulation therefore must be determined;

STRESSING that a Protocol according to Article 12 of the Agreement between European Community and Iceland and Norway concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or Iceland or Norway shall ensure the relations between Iceland and Norway on the one hand and Denmark on the other hand regarding the provisions of the Dublin II Regulation and the Eurodac Regulation;

DESIRING that the content of this Protocol is determined by the European Community and Iceland and Norway in parallel with this Agreement, acting with the consent of Denmark,

HAVE AGREED AS FOLLOWS:

Article 1

Aim

1. The aim of this Agreement is to apply the provisions of Council Regulation (EC) No 343/2003 of 18 February 2003 on the criteria and mechanisms for establishing the Member State responsible for examining a request for asylum lodged in Denmark or any other Member State of the European Union (Dublin II Regulation), Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of Eurodac for the comparison of fingerprints for the effective application of the Dublin Convention (Eurodac Regulation) and their implementing measures to the relation between the Community and Denmark, in accordance with Article 2(1) and 2(2).

2. It is the objective of the Contracting Parties to arrive at a uniform application and interpretation of the provisions of the Regulations and their implementing measures in all Member States.

3. The provisions of Articles 3(1), 4(1) and 5(1) of this Agreement result from the Protocol on the position of Denmark.

Article 2

The Dublin II Regulation and the Eurodac Regulation

1. The provisions of the Dublin II Regulation which is annexed to this Agreement and forms part thereof, together with its implementing measures adopted pursuant to Article 27(2) of the Dublin II Regulation and — in respect of implementing measures adopted after the entry into force of this Agreement — implemented by Denmark as referred to in Article 4 of this Agreement, shall under international law apply to the relations between the Community and Denmark.

2. The provisions of the Eurodac Regulation which is annexed to this Agreement and forms part thereof, together with its implementing measures adopted pursuant to Article 22 or 23(2) of the Eurodac Regulation and — in respect of implementing measures adopted after the entry into force of this Agreement — implemented by Denmark as referred to in Article 4 of this Agreement, shall under international law apply to the relations between the Community and Denmark.

3. The date of entry into force of this Agreement shall apply instead of the date referred to in Article 29 of the Dublin II Regulation, and Article 27 of the Eurodac Regulation.

Article 3

Amendments to the Dublin II Regulation and to the Eurodac Regulation

1. Denmark shall not take part in the adoption of amendments to the Dublin II Regulation and the Eurodac Regulation and no such amendments shall be binding upon or applicable in Denmark.

2. Whenever amendments to the Regulations are adopted Denmark shall notify the Commission of its decision whether or not to implement the content of such amendments. Notification shall be given at the time of the adoption of the amendments or within 30 days hereafter.

3. If Denmark decides that it will implement the content of the amendments the notification shall indicate whether implementation can take place administratively or requires parliamentary approval.

4. If the notification indicates that implementation can take place administratively the notification shall, moreover, state that all necessary administrative measures enter into force on the date of entry into force of the amendments to the Regulations or have entered into force on the date of the notification, whichever date is the latest.

5. If the notification indicates that implementation requires parliamentary approval in Denmark the following rules shall apply:

(a) legislative measures in Denmark shall enter into force on the date of entry into force of the amendments to the Regulations or within 6 months after the notification, whichever date is the latest;

(b) if legislative measures in Denmark have not entered into force on the date the amendments to the Regulations enter into force, Denmark shall to the extent compatible with national law apply the substance of the amendments provisionally;

(c) Denmark shall notify the Commission of the date upon which the implementing legislative measures enter into force and of any particular measures taken with respect to provisional application.

6. A Danish notification that the content of the amendments have been implemented in Denmark, according to paragraph 4 or 5, creates mutual obligations under international law between Denmark and the Community. The amendments to the Regulations shall then constitute amendments to this Agreement and shall be considered annexed hereto.

7. In case:

- (a) Denmark notifies its decision not to implement the content of the amendments, or
- (b) Denmark does not make a notification within the 30 days time limit set out in paragraph 2; or
- (c) legislative measures in Denmark do not enter into force within the time limits set out in paragraph 5,

this Agreement shall be considered terminated unless within 90 days the parties decide otherwise or, in the situation referred to under (c), legislative measures in Denmark enter into force within the same period. Termination shall take effect three months after the expiry of the 90-day period.

8. Requests that have been transmitted in accordance with the Dublin II Regulation before the date of termination of the Agreement as set out in paragraph 7 are not affected hereby.

Article 4

Implementing measures

1. Denmark shall not take part in the adoption of opinions by the Committee referred to Article 27(2) of the Dublin II Regulation and Article 23(2) of the Eurodac Regulation or in the adoption of implementing measures adopted pursuant to Article 22 of the Eurodac Regulation. Implementing measures adopted pursuant to Article 27(2) of the Dublin II Regulation or pursuant to 23(2) of the Eurodac Regulation and implementing measures adopted pursuant to Article 22 of the Eurodac Regulation shall not be binding upon and shall not be applicable in Denmark.

2. Whenever implementing measures are adopted pursuant to Article 27(2) of the Dublin II Regulation and pursuant to Article 22 or 23(2) of the Eurodac Regulation, the implementing measures shall be communicated to Denmark. Denmark shall notify the Commission of its decision whether

or not to implement the content of the implementing measures. Notification shall be given upon receipt of the implementing measures or within 30 days thereafter.

3. The notification shall state that all necessary administrative measures in Denmark enter into force on the date of entry into force of the implementing measures or have entered into force on the date of the notification, whichever date is the latest.

4. A Danish notification that the content of the implementing measures have been implemented in Denmark, creates mutual obligations under international law between Denmark and the Community. The implementing measures will then form part of this Agreement.

5. In case:

- (a) Denmark notifies its decision not to implement the content of the implementing measures, or
- (b) Denmark does not make a notification within the 30-day time limit set out in paragraph 2;

this Agreement shall be considered terminated unless the parties decide otherwise within 90 days. Termination shall take effect three months after the expiry of the 90-day period.

6. Requests that have been transmitted in accordance with the 'Dublin II Regulation' before the date of termination of the Agreement as set out in paragraph 5 are not affected hereby.

7. If in exceptional cases the implementation requires parliamentary approval in Denmark, the Danish notification under paragraph 2 shall indicate this and the provisions of Article 3(5) to (8), shall apply.

Article 5

International agreements which affect the Dublin II Regulation and the Eurodac Regulation

1. International agreements entered into by the Community based on the rules of the Dublin II Regulation and the Eurodac Regulation shall not be binding upon and shall not be applicable in Denmark.

2. Denmark will abstain from entering into international agreements which may affect or alter the scope of the Regulations as annexed to this Agreement concerning the determination of responsibility for examining an asylum application or measures concerning the comparison of fingerprints of third country nationals covered by the Eurodac Regulation unless it is done with the agreement of the Community and satisfactory arrangements have been made with regard to the relationship between this Agreement and the international agreement in question.

3. When negotiating international agreements that may affect or alter the scope of the Regulations as annexed to this Agreement, Denmark will coordinate its position with the Community and will abstain from any actions that would jeopardise the objectives of a Community position within its sphere of competence in such negotiations.

Article 6

Jurisdiction of the Court of Justice of the European Communities in relation to the interpretation of the Agreement

1. Where a question on the validity or interpretation of this Agreement is raised in a case pending before a Danish court or tribunal, that court or tribunal shall request the Court of Justice to give a ruling thereon whenever under the same circumstances a court or tribunal of another Member State of the European Union would be required to do so in respect of the Dublin II Regulation and the Eurodac Regulation and their implementing measures referred to in Article 2(1) and 2(2).

2. Under Danish law, the courts in Denmark shall, when interpreting this Agreement, take due account of the rulings contained in the case-law of the Court of Justice in respect of provisions of the Dublin II Regulation and the Eurodac Regulation and any implementing Community measures.

3. Denmark may, like the Council, the Commission and any Member State, request the Court of Justice to give a ruling on a question of interpretation of this Agreement. The ruling given by the Court of Justice in response to such a request shall not apply to judgments of courts or tribunals of the Member States which have become *res judicata*.

4. Denmark shall be entitled to submit observations to the Court of Justice in cases where a question has been referred to it by a court or tribunal of a Member State for a preliminary ruling concerning the interpretation of any provision referred to in Article 2(1) and 2(2).

5. The Protocol on the Statute of the Court of Justice of the European Communities and its Rules of Procedure shall apply.

6. If the provisions of the Treaty establishing the European Community regarding rulings by the Court of Justice are amended with consequences for rulings in respect of the Dublin II Regulation and the Eurodac Regulation, Denmark may notify the Commission of its decision not to apply the amendments in respect of this Agreement. Notification shall be given at the time of the entry into force of the amendments or within 60 days hereafter.

In such a case this Agreement shall be considered terminated. Termination shall take effect three months after the notification.

7. Requests that have been transmitted in accordance with the Dublin II Regulation before the date of termination of the Agreement as set out in paragraph 6 are not affected hereby.

Article 7

Jurisdiction of the Court of Justice of the European Communities in relation to compliance with the Agreement

1. The Commission may bring before the Court of Justice cases against Denmark concerning non-compliance with any obligation under this Agreement.

2. Denmark may bring a complaint to the Commission as to the non-compliance by a Member State of its obligations by virtue of this Agreement.

3. The relevant provisions of the Treaty establishing the European Community governing proceedings before the Court of Justice as well as the Protocol on the Statute of the Court of Justice of the European Communities and its Rules of Procedure shall apply.

Article 8

Territorial application

This Agreement shall apply to the territories referred to in Article 299 of the Treaty establishing the European Community and in accordance with Article 26 of the 'Eurodac Regulation' and Article 26 of the 'Dublin II Regulation'.

Article 9

Financial contributions regarding Eurodac

As far as administrative and operational costs linked to the installation and operation of the Central Unit of Eurodac are concerned, Denmark shall contribute to the annual budget of the EU an annual sum, calculated on the basis of the budgetary appropriations allocated for that purpose, in accordance with the percentage of the Danish gross national product in relation to the overall gross national product of all participating States.

This provision shall apply from the year of the link-up of Denmark to the Central Unit.

The contribution of Denmark to the initial installation of the Central Unit will amount to a lump sum equivalent to the amount reimbursed on the Danish contribution to the general budget of the European Union, because of its initial non-participation to the Eurodac Regulation.

Article 10

Termination of the Agreement

1. This Agreement shall terminate if Denmark informs the other Member States that it no longer wishes to avail itself of the provisions of Part I of the Protocol on the position of Denmark, under Article 7 of that Protocol.

2. This Agreement may be terminated by either Contracting Party giving notice to the other Contracting Party. Termination shall be effective six months after the date of such notice.

3. Requests that have been transmitted before the date of termination of the Agreement as set out in paragraph 1 or 2 are not affected hereby.

Article 11

Entry into force

1. The Agreement shall be adopted by the Contracting Parties in accordance with their respective procedures.

2. The Agreement shall enter into force on the first day of the second month following the notification by the Contracting Parties of the completion of their respective procedures required for this purpose.

Article 12

Authenticity of texts

This Agreement is drawn up in duplicate in the Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Slovene, Slovak, Spanish and Swedish languages, each of these texts being equally authentic.

ANNEX

COUNCIL REGULATION (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.

COUNCIL REGULATION (EC) No 2725/2000 of 11 December 2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention.
