EC/Switzerland agreement: State responsible for the examination of an asylum application. Dublin Convention on Eurodac

2004/0200(CNS) - 22/10/2004 - Legislative proposal

PURPOSE : to conclude provisional application of certain provisions of the Agreement between the European Union and Switzerland concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland.

PROPOSED ACT : Council Decision (Conclusion of an Agreement).

CONTENT : negotiations between the European Community and the Swiss Confederation on Seven Agreements were concluded in June 1999. All those Agreements entered simultaneously into force on 1 June 2002 (please refer to AVC/1999/0103 to 1999/0109). Attached to the agreements, the Swiss Confederation made a declaration on migration and asylum policy declaring its intention to participate in the EU system for coordinating asylum policies and proposing that negotiations be entered into for the conclusion of a convention parallel to the Dublin Convention.

Following the authorization given to the Commission on 17 June 2002, negotiations were held with the Swiss Confederation on its association with the implementation, application and development of the Schengen Acquis as well as with the legislation establishing Eurodac and the legislation on the State responsible for examining requests for asylum (which has been adopted subsequently and which will be referred to as "Dublin" Regulation). According to the negotiating directives, the agreements follow the model of the agreements with Norway and Island - concerning the latter's association with the implementation, application and development of the Schengen acquis (CNS/2004/0199) and 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 - adapted to the specific constitutional requirements of Switzerland.

Lastly, it is considered that the texts are in accordance with the negotiating directives adopted by the Council on 17 June 2002. The sole exception to the principle of full acceptance of the current and future Schengen acquis is the derogation granted to Switzerland in respect of the acceptance of future acquis related to requests for search and seizure in respect of offences in the field of direct taxation (refer to CNS /2004/0199). COREPER approved this derogation on 17.5.2004 as part of an overall compromise with Switzerland in a wide range of sectors, which was agreed upon in the EU/Switzerland summit on 19.5.2004.

The two agreements on Schengen and Dublin/EURODAC are linked ad should therefore be signed simultaneously.

The following points are highlighted in order to show the differences with or adaptations to the corresponding Agreements concluded with Norway and Iceland:

- Transition period : Switzerland is granted a two year period for acceptance and implementation of future acquis into its internal legal order in case a referendum is requested. If possible, Switzerland has to apply the development of the acquis on a provisional basis. If Switzerland cannot apply the content of the development on a provisional basis, EU and EC may take proportional and necessary measures against Switzerland in order to ensure the efficient functioning of the Dublin/EURODAC cooperation.

- Participation of the costs : the calculation of the contribution of Switzerland to the costs of the central unit of Eurodac is based on the relevant Norwegian and Icelandic contributions, in relation to the GDP of these three countries;

- Bilateral agreements : according to Denmark's special position with regard to acts adopted pursuant to Title IV of the Treaty establishing the European Community, Denmark needs to be associated via a protocol to the present Agreement in order to create rights and obligations between Denmark and Switzerland in relation to the provisions of Dublin/Eurodac;

In addition, Norway and Iceland need to conclude an agreement with Switzerland in order to create rights and obligations between all associated partners applying the Dublin/Eurodac acquis.

An Article allows Liechtenstein to join the present Agreement.

- Comitology : a Mixed Committee will be established in order to address all Council items relevant for the implementation, application and development of the Dublin/EURODAC acquis. The creation of the Joint Committee, are provisionally applied upon signature. This provisional application (and a similar provisional application is provided for in Schengen) will allow Switzerland to prepare itself for the technical implementation of the Agreement during the period of ratification;

- Simultaneous application : a necessary link between the implementation and termination of the agreement on Dublin/Eurodac and the implementation and termination of the Schengen agreement has been created.

It should be noted that several declarations have been made which state in particular that:

1) it commits itself to speed up as much as possible the different procedures in case a referendum is asked;

2) the participation in Committees assisting the commission in its exercise of executive powers in accordance with the Iceland and Norway model for their participation in Dublin/Eurodac follows the same structure as that foreseen in article 100 of the EEA Agreement;

3) there is an interest to develop, as far as possible, Switzerland's cooperation with Eurojust and with the European Judicial Network.