

EC/Switzerland/Liechtenstein agreement: protocol to the EC/Switzerland agreement on the criteria to determine the state responsible for the examination of an asylum application, participation of Denmark. Dublin Convention on Eurodac

2006/0257(CNS) - 04/12/2006 - Legislative proposal

PURPOSE: to sign and conclude a Protocol between the European Community, Switzerland and Liechtenstein to the Agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State, in Switzerland or Liechtenstein.

PROPOSED ACT: Council Decision.

CONTENT: on 26 October 2004, the European Community signed an Agreement with the Swiss Confederation regarding criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland (Dublin/Eurodac agreement with Switzerland. See [CNS/2004/0200](#)). That agreement provided for the possibility for Liechtenstein to accede to the agreement. The accession of Liechtenstein has been negotiated and a draft protocol on the

accession of Liechtenstein to the Dublin/Eurodac agreement with Switzerland has been initialled. Following the authorisation given by the Council to the Commission in February 2006, negotiations were held with Liechtenstein and Switzerland. On 21 June 2006, negotiations were finalised and the draft protocol on the participation of Denmark in the Dublin/Eurodac Agreement with Switzerland and Liechtenstein was initialled.

In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty of the European Union and the Treaty establishing the European Community, Denmark is not participating to Council Regulation 343/2003/EC 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 (the Dublin Regulation) and Council Regulation 2725/2000/EC concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of the Dublin Convention (the Eurodac Regulation).

The Dublin/Eurodac agreement with Switzerland provides for the possibility that Denmark may ask to participate. In that event, the Agreement provides that the contracting parties, with the consent of Denmark, set out the conditions for Denmark's participation in a protocol to the Agreement. By letter dated 8 November 2004, the Kingdom of Denmark asked to participate in the Dublin/Eurodac Agreement with Switzerland. As Liechtenstein will now accede to this Agreement, **it is appropriate that the participation of Denmark should be established in relation to both Switzerland and Liechtenstein.**

The negotiations were held and the draft protocol has been initialled on the basis that Liechtenstein would become a contracting party after the conclusion of the protocol on its accession to the Dublin/Eurodac agreement with Switzerland. It has therefore to be born in mind that Liechtenstein can only become a

contracting party to the protocol on the participation of Denmark when it has ratified the protocol on its accession to the Dublin/Eurodac agreement with Switzerland.

The legal basis of this Protocol is Article 63(1)a, in conjunction with the first sentence of the first subparagraph of Article 300(2) of the Treaty establishing the European Community. The Council will decide by qualified majority. The European Parliament will be consulted on the conclusion of the Protocol, in accordance with Article 300(3) of the Treaty establishing the European Community.

The **final content of the Protocol** can be summarised as follows:

- § it makes the Dublin and Eurodac regulations and their implementing rules applicable to the relations between Denmark on the one hand and the Confederation of Switzerland and the Principality of Liechtenstein on the other. It also renders future amendments or new implementing measures applicable to these relations.
- § it gives Switzerland and Liechtenstein the right to present written pleadings or observations to the Court of Justice when a court in Denmark applies to the Court of Justice for a preliminary ruling on the interpretation of a provision of the Agreement between the European Community and Denmark.
- § it provides for a conciliation mechanism in the event of disagreement between Denmark on the one hand and Switzerland or Liechtenstein on the other hand on its interpretation or application.
- § it lays down provisions relating to the end of its applicability.