



**COUNCIL OF
THE EUROPEAN UNION**

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LIMITE

EURODAC 18

INTRODUCTORY NOTE

from:	General Secretariat
to :	Council
No. Cion prop.:	9988/99 EURODAC 6 COM (1999) 260 final
No. prev. doc.:	11869/99 EURODAC 15
Subject:	Proposal for a Council Regulation concerning the establishment of 'Eurodac' for the comparison of fingerprints of applicants for asylum and certain other aliens - State of play

1. On 9 July 1999 the Commission transmitted to the Council a proposal for a Council Regulation (EC) concerning the establishment of "Eurodac" for the comparison of fingerprints of applicants for asylum and certain other aliens.

The Commission proposal transposes into a first pillar instrument the texts of the "frozen" draft Eurodac Convention and Protocol on which the Council had reached agreement respectively in December 1998 and March 1999.

2. The **Irish and United Kingdom delegations** have, in application of Protocols to the Treaty regarding their positions, notified the President of the Council, respectively on 13 October and 7 October 1999, that Ireland and the United Kingdom wish to take part in the adoption and application of the Eurodac Regulation.

The **Danish delegation** is still considering its position in the light of the Protocol to the Treaty regarding its position. **DELETED**

3. The Council, in application of Article 67(1) TEC, consulted the European Parliament on 29 July 1999. The opinion of Parliament is expected in November 1999.
4. The Working Party on Asylum (Eurodac) has so far devoted several meetings to the examination of the Commission proposal (one meeting in July, two in September and two in October 1999 – the latest having taken place on 15 October 1999). The Strategic Committee on Immigration, Frontiers and Asylum took note of the work done so far at its meeting on 21 October 1999. The **Permanent Representatives Committee** examined several of the outstanding questions relating to the draft Regulation at its meeting on 26 October 1999. The text of the draft Regulation as it currently stands following the discussions is set out in the Annex.

Over and above the general scrutiny and linguistic reservations entered by **several delegations**, a number of technical issues remain to be settled. The Permanent Representatives Committee instructed the Asylum Working Party (Eurodac) to resolve these issues at its next meeting on 4 November 1999.

The **Permanent Representatives Committee** gave consideration in particular to the following issues :

- Article 22 (“Committee”)

The **Commission** proposes a regulatory comitology procedure, based on the new Council decision on comitology (Council Decision 1999/468/EC), for the adoption of the Eurodac implementing rules. **Some delegations** consider that due to the specificity of Eurodac, some implementing rules should be reserved for the Council in application of Article 202, third indent TEC (see footnote 43, page 36).

- Article 25 (“Territorial scope”)

The question of the territorial scope of Eurodac, limited with regard to the United Kingdom, to the territory of Great Britain and Northern Ireland, had been settled in the “frozen” draft Convention. Now that the United Kingdom has notified its wish to participate in the adoption and application of the Regulation, the Commission will present a text on that issue. The Spanish delegation has already suggested a text. The United Kingdom delegation has also indicated its views on the matter (see footnote 44, page 38).

Draft**COUNCIL REGULATION (EC)****concerning the establishment of "Eurodac" for the comparison of fingerprints
for the effective application of the Dublin Convention**

THE COUNCIL OF THE EUROPEAN UNION,*

Having regard to the Treaty establishing the European Community, and in particular Article 63(1)(a) thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the European Parliament²,

Whereas:

- (1) Member States have concluded the Dublin 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")³.
- (2) For the purposes of applying the Dublin Convention, it is necessary to establish the identity of applicants for asylum and of persons apprehended in connection with the unlawful crossing of the external borders of the Community. It is also desirable in order to effectively apply the Dublin Convention, and in particular points (c) and (e) of Article 10(1) thereof, to allow each Member State to check whether an alien found illegally present on its territory has applied for asylum in another Member State.
- (3) Fingerprints constitute an important element in establishing the exact identity of such persons; whereas it is necessary to set up a system for the comparison of their fingerprints.

* The preamble has not yet been examined by the Working Party.

¹ OJ C

² OJ C

³ OJ C 254, 19.8.1997, p. 1.

- (4) To this end, it is necessary to set up a system known as “Eurodac”, consisting of a Central Unit, to be established within the Commission and which will operate a computerized central database of fingerprints, as well as of the electronic means of transmission between the Member States and the central database.
- (5) It is also necessary to require the Member States promptly to take fingerprints of every applicant for asylum and of every alien who is apprehended in connection with the irregular crossing of an external Community border, if they are at least 14 years of age.
- (6) It is necessary to lay down precise rules on the transmission of such fingerprint data to the Central Unit, the recording of such fingerprint data and other relevant data in the central database, their storage, their comparison with other fingerprint data, the transmission of the results of such comparison and the blocking and erasure of the recorded data; such rules may be different for, and should be specifically adapted to, the situation of different categories of aliens.
- (7) Aliens who have requested asylum in one Member State may have the option of requesting asylum in another Member State for many years to come; whereas, therefore, the maximum period during which fingerprint data should be kept by the Central Unit should be of considerable length; whereas, given that most aliens who have stayed in the Community for several years will have obtained a settled status or even citizenship of a Member State after that period, a period of 10 years should be considered a reasonable period for the conservation of fingerprint data.
- (8) The conservation period should be shorter in certain special situations where there is no need to keep fingerprint data for that length of time: fingerprint data should be erased immediately once aliens obtain citizenship of a Member State.
- (9) It is necessary to lay down clearly the respective responsibilities of the Commission, in respect of the Central Unit, and of the Member States, as regards data use, data security, access to and correction of recorded data.

- (10) While the non-contractual liability of the Community in connection with the operation of the Eurodac system will be governed by the relevant provisions of the Treaty, it is necessary to lay down specific rules for the non-contractual liability of the Member States in connection with the operation of the system.
- (11) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data⁴ applies to the processing of personal data by the Member States within the framework of the Eurodac system.
- (12) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, the objective of the proposed measures, namely the creation within the Commission of a system for the comparison of fingerprints to assist the implementation of the Community's asylum policy, cannot, by its very nature, be sufficiently achieved by the Member States and can therefore be better achieved by the Community: this Regulation confines itself to the minimum required in order to achieve those objectives and does not go beyond what is necessary for that purpose.
- (13) By virtue of Article 286 of the Treaty, Directive 95/46/EC also applies to the Community institutions and bodies; whereas, the Central Unit being established within the Commission, that Directive applies to the processing of personal data by that Unit.
- (14) The principles set out in Directive 95/46/EC regarding the protection of the rights and freedoms of individuals, notably their right to privacy, with regard to the processing of personal data should be supplemented or clarified, in particular as far as certain sectors are concerned.
- (15) It is appropriate to monitor and evaluate the performance of Eurodac.
- (16) Member States should provide for a system of sanctions for infringements of this Regulation.

⁴ OJ L 281, 23.11.1995, p. 31.

- (17) It is appropriate to restrict the territorial scope of this Regulation so as to align it on the territorial scope of the Dublin Convention.
- (18) This Regulation should enter into force on the day of its publication in the *Official Journal of the European Communities* in order to serve as legal basis for the implementing rules which, with a view to its rapid application, are required for the establishment of the necessary technical arrangements by the Member States and the Commission; the Commission should therefore be charged with verifying that those conditions are fulfilled.

HAS ADOPTED THIS REGULATION:

Chapter I - General provisions

Article 1⁵

Purpose of "Eurodac"

1. A system known as "Eurodac" is hereby established, the purpose of which shall be to assist in determining which Member State is to be responsible pursuant to the Dublin Convention for examining an application for asylum lodged in a Member State, and otherwise to facilitate the application of the Dublin Convention under the conditions set out in this Regulation.

⁵ In connection with Article 1, the **Greek delegation** wondered whether Directive 95/46/EC applied fully in the situation covered by Eurodac and reserved its position to reflect further on this question. **DELETED**.

2. Eurodac shall consist of:
 - (a) the Central Unit referred to in Article 3,
 - (b) a computerized central database in which the data referred to in Article 5(1), Article 8(2) and Article 11(2) are processed for the purpose of comparing the fingerprints of applicants for asylum and of the categories of aliens referred to in Article 8(1) and Article 11(1),
 - (c) means of data transmission between the Member States and the central database.

The rules governing Eurodac shall also apply to operations effected by the Member States as from the transmission of data to the Central Unit until use is made of the results of the comparison.

3. Without prejudice to the use of data intended for Eurodac by the Member State of origin in 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.

Article 2

Definitions

1. For the purposes of this Regulation:
 - (a) "The Dublin Convention" means 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.
 - (b) An "applicant for asylum" means an alien who has made an application for asylum or on whose behalf such an application has been made.

(c)⁶ "Personal data" means any information relating to an identified or identifiable natural person ("data subject"); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity.

(d)⁽¹⁾ "Processing of personal data" ("processing") means any operation or set of operations which is performed on personal data, whether or not by automatic means, such as collection, recording, organisation, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction.

⁶ **Scrutiny reservation** from the **German, Spanish and United Kingdom delegations** on (c) and (d). The **German and Spanish delegations** suggested **deleting** these two subparagraphs since these definitions are already set out in Directive 95/46/EC.

As a compromise, **all the delegations of the Member States** could accept **replacing them by a cross-reference** to the definitions of Directive 95/46/EC; such a reference would have the advantage of transparency and, at the same time, not require an amendment of the present Regulation should the definition in Directive 95/46/EC be revised.

The **Commission representative** entered a **reservation** on both deletion and a cross reference to Directive 95/46/EC.

(e)⁷ "Transmission of data" means:

- (i) communication of personal data from Member States to the Central Unit for recording in the central database and communication to Member States of the results of the comparison made by the Central Unit; and
- (ii) recording of personal data directly by Member States in the central database and direct communication of the results of the comparison to such Member States.

(f) "Member State of origin" means:

- (i) in relation to an applicant for **asylum**, the Member State which transmits the personal data to the Central Unit and receives the results of the comparison;
- (ii) **in relation to a person covered by Article 11, the Member State which communicates the personal data to the Central Unit and receives the results of the comparison**
- (iii) in relation to a person covered by Article 8, the Member State which communicates such data to the Central Unit.

(g) "Refugee" means a person who has been recognised as a refugee in accordance with the Geneva Convention on Refugees of 28 July 1951, as amended by the New York Protocol of 31 January 1967.

2. Unless stated otherwise, the terms defined in Article 1 of the Dublin Convention shall have the same meaning in this Regulation.

⁷ The **German delegation** suggested that the definition in Article 2(1)(e) be deleted and that the concept of "transferring" data be conveyed by the term "transmit" (übermitteln) throughout (cf. 11225/99 EURODAC 9). This suggestion was supported by the **Austrian and Portuguese delegations**.

The **United Kingdom delegation** preferred "transfer" instead of "transmit".

The **French delegation**, supported by the **Belgian, Greek, Spanish and Swedish delegations**, was in favour of maintaining the text as it is : the distinction between transmission and communication was the cornerstone for the distinction between the treatment of data relating to asylum seekers and to other aliens and for the approval of the extension of Eurodac to illegal immigrants.

The **Belgian, Greek and Spanish delegations** suggested inserting in Article 2 a definition of the term "communication".

The Working Party agreed to return to this issue at the next meeting.

Article 3

Central Unit

1. A Central Unit shall be established within the Commission which shall be responsible for operating the central database **referred to in Article 1(2)(b)** on behalf of the Member States. The Central Unit shall be equipped with a computerized fingerprint recognition system.
2. Data on applicants for asylum, persons covered by Article 8 and persons covered by Article 11 which are processed at the Central Unit shall be processed on behalf of the Member State of origin **under the conditions set out in this Regulation..**
3. Pursuant to the procedure laid down in Article 22, the Central Unit may be charged with carrying out certain statistical tasks on the basis of the data processed at the Unit.⁸

Chapter II - Applicants for asylum

Article 4

Collection, transmission and comparison of fingerprints

1. Each Member State shall promptly take the fingerprints of every applicant for asylum of at least 14 years of age and shall promptly transmit the data referred to in points (a) to (f) of Article 5(1) to the Central Unit. The procedure for taking fingerprints shall be determined in accordance with the national practice of the Member State concerned.
2. The data referred to in Article 5(1) shall be immediately recorded in the central database by the Central Unit, or, provided that the technical conditions for such purposes are met, directly by the Member State of origin.
3. Fingerprint data within the meaning of point (b) of Article 5(1), transmitted by any Member State, shall be compared by the Central Unit with the fingerprint data transmitted by other Member States and already stored in the central database.

⁸ The **German delegation** has forwarded in writing a suggestion (11840/99 EURODAC 14) taking into account Article 4(3) of the frozen text of the draft Eurodac implementing rules

4. The Central Unit shall ensure, on the request of a Member State, that the comparison referred to in paragraph 3 covers the fingerprint data previously transmitted by that Member State, in addition to the data from other Member States.
- 5.⁹ The Central Unit shall forthwith communicate the results of the comparison to the Member State of origin, together with the data referred to in Article 5(1) relating to those fingerprints which, in the opinion of the Central Unit, are so similar as to be regarded as matching the fingerprints which were transmitted by that Member State.

Direct transmission to the Member State of origin of the results¹⁰ of the comparison shall be permissible where the technical conditions for such purpose are met.

6. The results¹ of the comparison shall be immediately checked in the Member State of origin. Final identification shall be made by the Member State of origin in cooperation with the Member States concerned, pursuant to Article 15 of the Dublin Convention.

Information received from the Central Unit relating to any data mismatch or other data found to be unreliable shall be erased or destroyed by the Member State of origin as soon as the mismatch or unreliability of the data is established.

7. The implementing rules setting out the procedures necessary for the application of paragraphs 1 to 6 shall be adopted in accordance with the procedure laid down in Article 22.

(8140/99 EURODAC 5). It will be examined once translated into other languages.

⁹ The **German delegation** suggested replacing “are so similar as to be regarded as matching” by “match”.

Scrutiny reservation from the **French, Italian and Austrian delegations** on this suggestion. These delegations prefer to maintain the current text, which is taken from the frozen draft Eurodac Convention.

The **German delegation** has forwarded a new formulation in writing (11840/99 EURODAC 14), which will be examined once translated into other languages.

¹⁰ The **German delegation** suggested replacing “results” by “result” thus reflecting Article 3 (3) of the frozen Eurodac implementing rules.

The **Commission representative** considered that the plural (“results”) should be kept to cover the case where the person has been registered in more than two Member States.

The **German delegation** has subsequently forwarded a new wording in writing (11840/99 EURODAC 14), which will be examined once translated into other languages.

Article 5

Recording of data

1. Only the following data shall be recorded in the central database:
 - (a) Member State of origin, place and date of the application for asylum;
 - (b) fingerprint **data**;¹¹
 - (c) sex;
 - (d) reference number used by the Member State of origin;
 - (e) date on which the fingerprints were taken;
 - (f) date on which the data were transmitted to the Central Unit;
 - (g) date on which the data were entered in the central database;
 - (h) details in respect of the recipient(s) of the data transmitted and the date(s) of transmission(s).

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2. After recording the data in the central database, the Central Unit shall destroy the media used for transmitting the data, unless the Member State of origin has requested their return.

¹¹ The **Greek delegation** suggested inserting a definition of “fingerprints” in Article 2.

¹² The **French delegation** suggested adding the following sentence at the end of Article 5(1): (see 11091/99 EURODAC 8)

“In accordance with the procedure laid down in Article 22, the implementing provisions shall specify the fingers whose prints must or may be transmitted or communicated and lay down the format for the exchange of digital data.”

The **Commission representative** explained that this was already covered by Article 4(7).

The **French delegation** indicated that it would reflect further on its suggestion.

The **Spanish delegation** wished that the relevant provision of the frozen Eurodac implementing rules, concerning the number of fingers whose fingerprints must be taken and transmit to the Central Unit, be inserted in the body of the draft Regulation.

Article 6

Data storage

Each set of data, as referred to in Article 5 (1), shall be stored in the central database for ten years from the date on which the fingerprints were taken.

Upon expiry of this period, the Central Unit shall automatically erase the data from the central database.

Article 7

Advance data erasure

Data relating to a person who has acquired citizenship of any Member State before expiry of the period referred to in Article 6 shall be erased from the central database, in accordance with Article 15(3) as soon as the Member State of origin¹³ becomes aware that the person has acquired such citizenship.

¹³ The **United Kingdom delegation** pointed out that several Member States could have entered data relating to the person concerned. It suggested adding the following sentence: “The Member State of origin whose citizenship the person has acquired (leading the person to become a citizen of a Member State) shall inform the other Member State(s) of origin that the person has acquired citizenship of a Member State.” This suggestion will be examined once translated into other languages.

Chapter III - Aliens apprehended in connection with the irregular crossing of an external border

Article 8¹⁴

Collection and communication of fingerprint data

1. Each Member State shall promptly take the fingerprints of every alien of at least 14 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.¹⁵
2. The Member State concerned shall promptly communicate to the Central Unit the following data in relation to any alien as referred to in paragraph 1:
 - (a) Member State of origin, place and date of the apprehension;
 - (b) fingerprint **data**;¹⁶
 - (c) sex;

¹⁴ **Some delegations** tended to the view that rather than the Council repeat the draft minutes statement relating to Article 3 of the frozen draft Protocol text, it would be appropriate to include that text in the body of the Regulation.

The Presidency proposed inserting the following new second subparagraph to Article 8(1):

“An alien shall be considered to have been apprehended in connection with the irregular crossing of the border of a Member State having come from a third country if either:

- (a) the alien is apprehended at or close to the border itself; or
- (b) the alien is apprehended beyond the border, where he/she is still en route and there is no reasonable doubt that he/she crossed the border of the Member State irregularly having come from a third country.”

This proposal was supported by the **United Kingdom delegation** and did not give rise to difficulties for the **Commission representative**.

Several delegations (D, ESP, IRL, I, A, and S) entered a **scrutiny reservation**, taking into consideration that including this statement in the body of the draft Regulation would confer to it a different legal value.

The **representative of the Council Legal Service** confirmed that both the inclusion in the body of the Regulation or in a statement in the Council minutes were possible and that, according to the ECCJ case law, in principle, while the Regulation is legally binding, the legal value of a statement is less.

¹⁵ The **United delegation** suggested adding: “or detained in order to be turned back as soon as possible”. It was suggested that rather than making such an addition to the text of the draft Regulation, the suggestion from the United Kingdom delegation be recorded in the form of a Council minutes statement.

¹⁶ See footnote 11 on page 13.

- (d) reference number used by the Member State of origin;
- (e) date on which the fingerprints were taken;
- (f) date on which the data were communicated to the Central Unit.

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Article 9

Recording of data

1. The data referred to in Article 5(1)(g) and in Article 8(2) shall be recorded in the central database.

Without prejudice to Article 3(3), data communicated to the Central Unit pursuant to Article 8(2) shall be recorded for the sole purpose of comparison with data on applicants for asylum transmitted subsequently to the Central Unit.

The Central Unit shall not compare data communicated to it pursuant to Article 8(2) with any data previously recorded in the central database, nor with data subsequently communicated to the Central Unit pursuant to Article 8(2).

2. The procedures provided for in Article 4(1) to (6)¹⁸ and Article 5(2) as well as the provisions laid down pursuant to Article 4(7) are applicable.¹⁹

¹⁷ The **French delegation** suggested (see 11091/99 EURODAC 8) adding a similar provision to that suggested under Article 5(1) concerning the legal basis for the implementing provisions (see footnote 12, page 13).

¹⁸ **Scrutiny reservation** from the **German and Spanish delegations** on the reference to Article 4(1) to (6) which is not completely appropriate for aliens apprehended in connection with the irregular crossing of an external border. The **German delegation** has forwarded in writing a new text (11840/99 EURODAC 14) which will be examined once translated into other languages.

¹⁹ **Reservation** from the **Spanish delegation** linked to the comitology procedure.

Article 10

Storage of data

1. Each set of data relating to an alien as referred to in Article 8(1) shall be stored in the 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. The data relating to an alien as referred to in Article 8(1) shall be erased from the central database in accordance with Article 15(3) immediately, if the Member State of origin becomes aware of one 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;
 - (b) the alien has left the territory of the Member States;
 - (c) the alien has acquired the citizenship of any Member State.

CHAPTER IV - Aliens found illegally present in a Member State

Article 11

Comparison of fingerprints

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 any fingerprints which it may have taken of any such alien of at least 14 years of age together with the reference number used by that Member State.

As a general rule there are grounds for checking whether the alien has previously lodged an application for asylum in another Member State where:

- (a) 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;
- (b) 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
- (c) the alien otherwise seeks to prevent his/her removal by refusing to cooperate in establishing his/her identity, in particular by showing no, or false, identity papers.

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²⁰ The **French delegation** suggested adding a similar provision as that suggested under Article 5(1) concerning the legal basis for the implementing provisions (see 11091/99 EURODAC 8 and footnote 12, page 13).

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~~ **recorded**²¹ in the central database, nor shall they be compared with the data communicated to the Central Unit pursuant to Article 8(2).

3. The procedures provided for in Article 4(1) to (6) as well as the provisions laid down pursuant to Article 4(7) are applicable.²²

4. **Once the results of the comparison have been communicated to the Member State of origin, the Central Unit shall forthwith:**

- (a) **erase the fingerprint data and other data communicated to it under paragraph 1; and**
- (b) **destroy the media used by the Member State of origin for communicating the data to the Central Unit, unless the Member State of origin has requested their return.**²³

²¹ **Scrutiny reservation** from the **Commission representative** who suggested verifying whether the difficulty with the term “stored”, initially raised by the German delegation, was not due to an incorrect translation of the word “stored” in the German text.

²² The **German delegation** forwarded in writing a new formulation for Article 11(3) (11840/99 EURODAC 14) which will be examined once translated into other languages.

²³ **Scrutiny reservation** from the **Swedish delegation** on this new text.

Chapter V - Recognised refugees

Article 12

Blocking of data

1. Data relating to a person who has been recognised and admitted as a refugee in a Member State shall be blocked in the central database. Such blocking shall be carried out by the Central Unit on the instructions of the Member State of origin.^{24,25}
2. Five years after Eurodac starts operations, and on the basis of reliable statistics compiled by the Central Unit on persons who have lodged an application for asylum in a Member State after having been recognised and admitted as refugees in another Member State, a decision shall be taken in accordance with the procedure referred to in Article 67²⁶ of the Treaty, as to whether the data relating to persons who have been recognised and admitted as refugees in a Member State should:
 - (a) be stored in accordance with Article 6 for the purpose of the comparison provided for in Article 4(3); or
 - (b) be erased in advance once a person has been recognised and admitted as a refugee.

²⁴ The **French delegation** suggested including in Article 12(1) the content of Article 3(4) of the draft frozen implementing rules (see 11091/99 EURODAC 8). It was agreed that the **Commission representative** would endeavour to find an appropriate wording to reflect that suggestion.

²⁵ The **United Kingdom delegation** suggested adding the following sentence: “Where there is more than one Member State of origin, the Member State of origin which has recognised and admitted the person as a refugee shall inform the other Member State(s) of origin of this. Until such information has been communicated to the other Member State(s) of origin, the duty under Article 12(1) shall not apply to them”. This suggestion will be examined once translated into other languages.

²⁶ In response to the **Luxembourg delegation** which wondered how the procedure referred to in Article 67 of the Treaty would operate in this case

- the **Commission representative** recalled that the future procedure could, depending on the Decision the Council will be called upon to take in accordance with the Treaty, require action either by qualified majority in codecision with the European Parliament or by unanimity under current arrangements,
- the **representative of the Council Legal Service** reminded delegations that in any case the procedure would change since the Commission alone would have the right of initiative and would have to bring forward a proposal in accordance with Article 67(2).
Scrutiny reservation from the **German and Spanish delegations**.

3. In the case referred to in paragraph 2 (a), the data blocked pursuant to paragraph 1 shall be unblocked and the procedure referred to in that paragraph shall no longer apply.
4. In the case referred to in paragraph 2 (b):
 - (a) data which have been blocked in accordance with paragraph 1 shall be erased immediately by the Central Unit; and
 - (b) data relating to persons who are subsequently recognised and admitted as refugees shall be erased in accordance with Article 15(3), as soon as the Member State of origin becomes aware that the person has been recognised and admitted as a refugee in a Member State.
5. The implementing rules concerning the compilation of the statistics referred to in paragraph 2 shall be adopted in accordance with the procedure laid down in Article 22.

Chapter VI - Data use, data protection²⁷, security and liability

Article 13

Responsibility for data use

1. The Member State of origin shall be responsible for ensuring that:
 - (a) fingerprints are taken lawfully;
 - (b) fingerprints and the other data referred to in Article 5(1), Article 8(2) and Article 11(2) are lawfully transmitted or communicated to the Central Unit;²⁸
 - (c) data are accurate and up-to-date when they are transmitted to the Central Unit;
 - (d) without prejudice to the responsibilities of the Commission, data in the central database are lawfully recorded, stored, corrected and erased;
 - (e) the results of fingerprint comparisons transmitted by the Central Unit are lawfully used.²⁹
2. In accordance with Article 14, the Member State of origin shall ensure the security of these data before and during transmission to the Central Unit as well as the security of the data it receives from the Central Unit.
3. The Member State of origin shall be responsible for the final identification of the data pursuant to Article 4(6).

²⁷ **Scrutiny reservation** from the **Belgian delegation** on all the data protection provisions.

²⁸ **Scrutiny reservation** from the **German delegation** on the distinction between “transmission” and “communication” (cf. footnote 7 on page 10).

²⁹ The **Irish delegation** considered that (e) was not sufficient concerning the responsibility of the Member State of origin for the treatment of the results of fingerprint comparisons.

4. The Commission shall ensure that the Central Unit is operated in accordance with the provisions of this Regulation and its implementing rules. In particular, the Commission shall:
- (a) adopt measures ensuring that persons working in the Central Unit use the data recorded in the central database only in accordance with the purpose of Eurodac as laid down in Article 1(1);
 - (b) ensure that persons working in the Central Unit comply with all requests from Member States made pursuant to this Regulation in relation to recording, comparison, correction and erasure of data for which they are responsible;
 - (c) take the necessary measures to ensure the security of the Central Unit in accordance with Article 14;
 - (d) ensure that only persons authorised to work in the Central Unit shall have access to data recorded in the central database, without prejudice to Article 20 and the powers of the independent supervisory body which will be established under Article 286 (2) of the Treaty.

The Commission shall inform the European Parliament and the Council of the measures it takes pursuant to the first subparagraph.

Article 14

Security

1. The Member State of origin shall take the necessary measures to:
- (a) prevent any unauthorized person from having access to national installations in which the Member State carries out operations in accordance with the aim of Eurodac (checks at the entrance to the installation);
 - (b) prevent data and data media in Eurodac from being read, copied, modified or erased by unauthorized persons (control of data media);
 - (c) guarantee that it is possible to check and establish *a posteriori* what data have been recorded in Eurodac, when and by whom (control of data recording);

- (d) prevent the unauthorized recording of data in Eurodac and any unauthorized modification or erasure of data recorded in Eurodac (control of data entry);
 - (e) guarantee that, in using Eurodac, authorized persons have access only to data which are within their competence (control of access);
 - (f) guarantee that it is possible to check and establish to which authorities data recorded in Eurodac may be transmitted by data transmission equipment (control of transmission);
 - (g) prevent the unauthorized reading, copying, modification or erasure of data during both the direct transmission of data to or from the central database and the transport of data media to or from the Central Unit (control of transport).
2. As regards the operation of the Central Unit, the Commission shall be responsible for applying the measures mentioned under paragraph 1.³⁰

Article 15³¹

Access to and correction or erasure of data recorded in Eurodac

1. The Member State of origin shall have access to data which it has transmitted or communicated and which are recorded in the central database in accordance with the provisions of this Regulation.

No Member State may conduct searches in the data transmitted by another Member State, nor may it receive such data apart from data resulting from the comparison referred to in Article 4(5).

³⁰ The **French delegation** suggested the following addition to Article 14(2) (cf. 11091/99 EURODAC 8):

“In accordance with the procedure laid down in Article 22, the implementing rules may specify their content and scope.”

The **Commission representative** indicated that this was already addressed in Articles 13(4) and 16.

The **French delegation** would reflect further on this question.

³¹ **Substantive reservation** from the **Spanish delegation** linked to the question of the territorial scope.

Scrutiny reservation from the **French delegation** due to the discrepancies in the French translation in particular of the text of paragraph 3.

2. The authorities of Member States which, pursuant to paragraph 1, have access to data recorded in the central database shall be those designated by each Member State. Each Member State shall communicate to the Commission a list of those authorities.
3. Only the Member State of origin shall have the right to amend the data which it has transmitted to the Central Unit by correcting or supplementing such data, or to erase them, without prejudice to erasure carried out in pursuance of Article 6, Article 10(1) or Article 12(4)(a).

Where the Member State of origin records data directly in the central database, it may amend or erase the data directly.

Where the Member State of origin does not record data directly in the central database, the Central Unit shall alter or erase the data at the request of that Member State.

4. If a Member State or the Central Unit has evidence to suggest that data recorded in the central database are factually inaccurate, it shall advise the Member State of origin as soon as possible.

If a Member State has evidence to suggest that data were recorded in the central database contrary to this Regulation, it shall similarly advise the Member State of origin as soon as possible. The latter shall check the data concerned and, if necessary, amend or erase them without delay.

Article 16

Keeping of records by the Central Unit

1. The Central Unit shall keep records of all data processing operations within the Central Unit. These records shall show the purpose of access, the date and time, the data transmitted, the data used for interrogation and the name of both the unit putting in or retrieving the data and the persons responsible.

- 2.³² Such records may be used only for the data-protection monitoring of the admissibility of data processing as well as to ensure data security pursuant to Article 14. The records must be protected by appropriate measures against unauthorised access and erased after a period of one year, if they are not required for monitoring procedures which have already begun.

Article 17

Liability

1. Any person who, or Member State which, has suffered damage as a result of an unlawful processing operation or any act incompatible with the provisions laid down in this Regulation shall be entitled to receive compensation from the Member State responsible for the damage suffered. That State may³³ be exempted from its liability, in whole or in part, if it proves that it is not responsible for the event giving rise to the damage.

³² For the record: the Working Party agreed that national supervisory bodies (Article 19) will also have access to the records kept by the Central Unit.

³³ The **German delegation** wondered whether “may” should not be replaced by “shall”. The **Greek delegation** considered that it was not necessary to keep “in whole or in part”. The **Commission representative** suggested the following text:
“..... That State ~~may~~ **shall** be exempted from its liability, ~~in whole or in part, if to the extent that~~ it proves that it is not responsible for the event giving rise to the damage.”
The **German delegation** maintained a **scrutiny reservation** but considered that the new text seemed to go in the right direction.
The **French delegation** could accept “shall” but preferred maintaining “in whole or in part”.

2. If failure of a Member State to comply with its obligations under this Regulation causes damage to the central database, that Member State shall be held liable for such damage, unless and insofar as the Commission failed to take reasonable steps to prevent the damage from occurring or to minimise its impact.³⁴
3. Claims for compensation against a Member State for the damage referred to in paragraphs 1 and 2 shall be governed by the provisions of national law of the defendant Member State.

³⁴ **Scrutiny reservation** from the **Irish delegation**. The **Greek delegation** thought that the expression “unless ... the Commission failed to take reasonable steps” unclear. The **German delegation** felt that the Working Party should state for the record that on the last phrase of Article 17(2), there was agreement that, where the Commission bears part of the responsibility, the Member State’s liability is reduced by the proportion attributable to the Commission. The **Presidency** suggested inserting in the Council minutes a joint statement from the Council and the Commission to that end.

Article 18^{35,36,37}

Rights of the data subject

1. A person covered by this Regulation shall be informed by the Member State of origin of the following when his/her fingerprints are taken:
 - (a) the purpose of taking his/her fingerprints;

³⁵ **Scrutiny reservation** from the **United Kingdom delegation** on Article 18.

³⁶ **Substantive reservation** from the **Spanish delegation** linked to the question of the territorial scope of the Regulation.

The **Commission representative** explained that Article 18 had been aligned on Directive 95/46/EC. The **Spanish delegation** indicated that Directive 95/46/EC was addressed to the Member States and that it was possible that the Member States had different provisions concerning the rights of own country nationals and third country nationals, in particular in cases of illegal immigration; in its view Article 18 seemed broader in scope than the previously established texts.

The **Commission representative** stated that Directive 95/46/EC made no distinction between the rights of own or third country nationals and considered that there were no grounds for discrimination with regard to the rights of persons as data subjects.

³⁷ Referring to the discussions which had taken place on Article 6 of the text of the frozen draft Protocol, the **Luxembourg delegation** wondered whether there was not scope for exceptions to the rules laid down in Article 18, along the lines of the provisions of Article 13 of Directive 95/46/EC.

- (b) the transmission or communication to the Central Unit of data referred to in Article 5(1), Article 8(2) or Article 11(2);
- (c) the obligation to have his/her fingerprints taken, where applicable;
- (d) the existence of the right of access to data concerning him/her and the right to rectify such data.

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³⁸ Following a number of observations on Article 18(1) (see 11683/99, footnotes p. 26 and 27), the **German delegation** forwarded a new text (set out in 11411/99 EUODAC 11) and the **Commission representative** also suggested a new text, which reads as follows:

- “1. A person covered by this regulation shall be informed by the Member State of origin of the following when his/her fingerprints are taken:
- () **[the identity of the national authority determining the purposes and the means of the processing of the fingerprints and the other personal data which are collected];**
 - (a) (unchanged)
 - (b) **the fact that the recipients of the transmission or communication of data referred to in Article 5(1), Article 8 or Article 11 are the Central Unit and, in the circumstances referred to in Article 15(1), the authorities of Member States referred to in Article 15(2);**
 - (b) (unchanged)
 - (c) the existence of the right of access to ~~data concerning him/her~~ and the right to rectify ~~such~~ **the data concerning him/her.**

Scrutiny reservation from the **German and Greek delegations** on this suggestion. The **Greek delegation's** reservation concerned especially the obligation of fingerprinting in Article 18 (1)(c) in cases mentioned in mentioned in Article 11 (1).

The **German delegation's** suggestion was favoured by the **Spanish and Portuguese delegations.**

2. In each Member State any data subject may, in accordance with the laws, regulations and procedures of that State, exercise the rights provided for in Article 12 of Directive 95/46/EC.³⁹

Without prejudice to the obligation to provide other information in accordance with point (a) of Article 12 of Directive 95/46/EC, the person shall have the right to obtain communication of the data relating to him/her recorded in the central database and of the Member State which transmitted them to the Central Unit. Such access to data may be granted only by a Member State.

3. In each Member State, any person may request that data which are factually inaccurate be corrected or that data recorded unlawfully be erased⁴⁰. The correction and erasure shall be carried out without excessive delay by the Member State which transmitted the data, in accordance with its laws, regulations and procedures.

³⁹ The **Netherlands delegation** considered that the first subparagraph of paragraph 2 was superfluous. This view was not shared by the **German delegation** which thought it important to specify that the rights can be exercised “in each Member State”.

⁴⁰ **Scrutiny reservation** from the **United Kingdom delegation** on the words “which are factually inaccurate” and “data recorded unlawfully”; it felt that these expressions, which are not in Article 12 of Directive 95/46/EC, would be unhelpful. The **German and French delegations and the Commission representative** observed that this text was already accepted in the frozen draft Eurodac Convention.

4. If the rights of correction and erasure are exercised in a Member State, other than that, or those, which transmitted the data, the authorities of that Member State shall contact the authorities of the Member State, or States, in question so that the latter may check the accuracy of the data and the lawfulness of their transmission and recording in the central database.
5. If it emerges that data recorded in the central database are factually inaccurate or have been recorded unlawfully, the Member State which transmitted them shall correct or erase the data in accordance with Article 15(3). That Member State shall confirm in writing to the data subject without excessive delay that it has taken action to correct or erase data relating to him/her.
6. If the Member State which transmitted the data does not agree that data recorded in the central database are factually inaccurate or have been recorded unlawfully, it shall explain in writing to the data subject without excessive delay why it is not prepared to correct or erase the data.

That Member State shall also provide the data subject with information explaining the steps which he/she can take if he/she does not accept the explanation provided. This shall include information about how to bring an action or, if appropriate, a complaint before the competent authorities or courts of that Member State and any financial or other assistance that is available in accordance with the laws, regulations and procedures of that Member State.

7. Any request under paragraphs 2 and 3 shall contain all the necessary particulars to identify the data subject, including fingerprints. Such data shall be used exclusively to permit the exercise of the rights referred to in paragraphs 2 and 3 and shall be destroyed immediately afterwards.
8. The competent authorities of the Member States shall cooperate actively to enforce promptly the rights laid down in paragraphs 3, 4 and 5.

9. In each Member State, the national supervisory authority shall assist the data subject in accordance with Article 28(4) of Directive 95/46/EC in exercising his/her rights.
10. The national supervisory authority of the Member State which transmitted the data and the national supervisory authority of the Member State in which the data subject is present shall assist⁴¹ and, where requested, advise him/her in exercising his/her right to correct or erase data. Both national supervisory authorities shall cooperate to this end. Requests for such assistance may be made to the national supervisory authority of the Member State in which the data subject is present, which shall transmit the requests to the authority of the Member State which transmitted the data. The data subject may also apply for assistance and advice to the joint supervisory authority set up in Article 20.
11. In each Member State any person may, in accordance with the laws, regulations and procedures of that State, bring an action or, if appropriate, a complaint before the competent authorities or courts of the State if he/she is refused the right of access provided for in paragraph 2.
12. Any person may, in accordance with the laws, regulations and procedures of the Member State which transmitted the data, bring an action or, if appropriate, a complaint before the competent authorities or courts of that State concerning the data relating to him/her recorded in the central database, in order to exercise his/her rights under paragraph 3. The obligation of the national supervisory authorities to assist¹ and, where requested, advise the data subject, in accordance with paragraph 10, shall subsist throughout the proceedings.

⁴¹ The **German delegation** stated that it interprets the term “assist” in Article 18(10) and (12) as meaning that the national supervisory authorities are to provide active assistance to the data subject in exercising the rights in question. However, they are not obliged to assume specific professional legal status for the data subject, e.g. to assist the data subject in appeal proceedings either in substance or in procedural terms.

Article 19

National supervisory authority

1. Each Member State shall provide that the national supervisory authority or authorities designated pursuant to Article 28(1) of Directive 95/46/EC shall monitor independently, in accordance with its respective national law, the lawfulness of the processing, in accordance with the provisions of this regulation, of personal data by the Member State in question, including their transmission to the Central Unit.
2. Each Member State shall ensure that its national supervisory authority has access to advice from persons with sufficient knowledge of fingerprint data.

Article 20

Joint supervisory authority

1. An independent joint supervisory authority shall be set up, consisting of a maximum of two representatives from the supervisory authorities of each Member State. Each delegation shall have one vote.
2. The joint supervisory authority shall have the task of monitoring the activities of the Central Unit to ensure that the rights of data subjects are not violated by the processing or use of the data held by the Central Unit. In addition, it shall monitor the lawfulness of the transmission of personal data to the Member States by the Central Unit.
3. The joint supervisory authority shall be responsible for the examination of implementation problems in connection with the operation of Eurodac, for the examination of possible difficulties during checks by the national supervisory authorities and for drawing up recommendations for common solutions to existing problems.
4. In the performance of its duties, the joint supervisory authority shall, if necessary, be actively supported by the national supervisory authorities.
5. The joint supervisory authority shall have access to advice from persons with sufficient knowledge of fingerprint data.

6. The Commission shall assist the joint supervisory authority in the performance of its tasks. In particular, it shall supply information requested by the joint supervisory body, give it access to all documents and paper files as well as access to the data stored in the system and allow it access to all its premises, at all times.
7. The joint supervisory authority shall unanimously adopt its rules of procedure. It shall be assisted by a secretariat, the tasks of which shall be defined in the rules of procedure.
8. Reports drawn up by the joint supervisory authority shall be made public and shall be forwarded to the bodies to which the national supervisory authorities submit their reports, as well as to the European Parliament, the Council and the Commission for information. In addition, the joint supervisory authority may submit comments or proposals for improvement regarding its remit to the European Parliament, the Council and the Commission at any time.
9. In the performance of their duties, the members of the joint supervisory authority shall not receive instructions from any government or body.
10. The joint supervisory authority shall be consulted on that part of the draft operating budget of the Eurodac Central Unit which concerns it. Its opinion shall be annexed to the draft budget in question.
11. The joint supervisory authority shall be disbanded upon the establishment of the independent supervisory body referred to in Article 286(2) of the Treaty. The independent supervisory body shall replace the joint supervisory authority and shall exercise all the powers conferred on it by virtue of the act under which that body is established.

Chapter VII - Final provisions

Article 21

Costs

1. **The costs incurred in connection with the establishment and operation of the Central Unit shall be borne by the budget of the European Communities.**
2. The costs incurred by national units and the costs for their connection to the central database shall be borne by each Member State.
3. The costs of transmission or communication of data from the Member State of origin and of the findings of the comparison to that State shall be borne by the State in question.

Article 22⁴²

Committee

The Commission shall be assisted by a committee composed of the representatives of the Member States and chaired by the representative of the Commission.

The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 205(2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

⁴² The **French delegation** has submitted in writing its position regarding the appropriateness of reserving for the Council the power to determine the implementing rules of Eurodac (11091/99).

The **German and French delegations** have forwarded in writing (cf. 11411/99 and 11623/99), the list of the matters for which implementing rules should in their view be reserved for the Council acting by qualified majority. Their suggestions found support with the **Austrian delegation**. The **Spanish delegation**, while able to accept the approach put forward by the French and German delegations, was in favour of the implementing rules reserved for the Council being adopted unanimously. The **Belgian, Swedish and Portuguese delegations** favoured, in principle, the comitology procedure proposed by the Commission; the **Netherlands delegation**, while sharing this view, considered nevertheless that the approach of the French and German delegations could form the basis for a possible compromise provided that such an approach did not constitute a precedent for other acts to be adopted under title IV of the Treaty and that the Regulation clearly set out the motivation for reserving certain implementing powers for the Council.

The **Commission representative** for his part felt that the comitology procedure proposed by his Institution contained safeguards guaranteeing that the interests of the Member States would be taken into consideration. He wondered in particular what could justify having a different procedure from the one adopted in the framework of the Customs Information System. He recalled that the legality of acts of the Council could be questioned before the Court of Justice if important elements of the procedure are not respected. Referring to the Commission proposal, the Commission representative indicated that the text of Article 22 would, at some stage, be replaced with the regulatory procedure contained in Article 5 of the new Council decision on comitology (Council Decision 1999/468/EC; OJ L 184, 17.7.99). The **Permanent Representatives Committee** instructed the Working Party to identify the provisions for which the Council might reserve implementing powers for itself and to draw up a clear motivation for such an approach and to report to the Strategic Committee on Immigration, Frontiers and Asylum and to Coreper in due course.

The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the committee.

If the measures envisaged are not in accordance with the opinion of the committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.

If, on the expiry of a period of three months from the date of referral to the Council, the Council has not acted, the proposed measures shall be adopted by the Commission.

Article 23

Annual Report: Monitoring and evaluation

1. The Commission shall submit to the European Parliament and the Council an annual report on the activities of the Central Unit. The annual report shall include information on the management and performance of the system against pre-defined quantitative indicators for the objectives referred to in paragraph 2.
2. The Commission shall ensure that systems are in place to monitor the functioning of the Central Unit against objectives, in terms of outputs, cost-effectiveness and quality of service.
3. The Commission shall regularly evaluate the operation of the Central Unit in order to establish whether its objectives have been attained cost-effectively and with a view to providing guidelines for improving the efficiency of future operations.
4. One year after Eurodac starts operations, the Commission shall produce an evaluation report on the Central Unit, focusing on the level of demand compared with expectation and on operational and management issues in the light of experience, with a view to identifying possible short-term improvements to operational practice.
5. Three years after Eurodac starts operations and every six years thereafter, the Commission shall produce an overall evaluation of Eurodac, examining results achieved against objectives and assessing the continuing validity of the underlying rationale and any implications for future operations.

Article 24

Penalties

Member States shall ensure that use of data recorded in the central database contrary to the purpose of Eurodac as laid down in Article 1(1) shall be subject to appropriate penalties.

Article 25⁴³

Territorial scope

As regards the French Republic, the provisions of this Regulation shall apply only to the European territory of the French Republic.

⁴³ **Substantive reservation** from the **Spanish delegation** . The Spanish delegation proposed to include the following text :

“Were this Regulation to apply to the United Kingdom it would only apply to the territory of the United Kingdom and Northern Ireland.”

The **Commission representative** indicated that now that the United Kingdom has notified its intention to participate in the adoption of this Regulation, the Commission will prepare a text to make appropriate adjustments to Article 25, in line with Article 299(4) TEC.

The **United Kingdom delegation** has indicated that, given that the purpose of the Eurodac Regulation is linked to the implementation of the Dublin Convention – a non-EU treaty instrument – logic dictates that the territorial scope of Eurodac should be the same as for Dublin. This would, however, in its view, be very much an exception to the normal rule. It has recalled that under Article 19 of the Dublin Convention the United Kingdom can, at any time, make a unilateral declaration to extend the scope of Dublin to Gibraltar and considers that therefore any amendment to Article 25 of the Eurodac Regulation to bring it into line with the Dublin Convention must allow for its automatic application to Gibraltar at such time as the Dublin Convention is extended to Gibraltar.

Article 26⁴⁴

Entry into force and applicability

1. This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Communities*.
2. This Regulation shall apply, and Eurodac shall start operations, from the date which the Commission shall publish in the *Official Journal of the European Communities*, when the following conditions are met:
 - (a) each Member State has notified the Commission that it has made the necessary technical arrangements to transmit or communicate data to the Central Unit in accordance with the implementing measures adopted under Article 4(7); and
 - (c) the Commission has made the necessary technical arrangements for the Central Unit to begin operations in accordance with the implementing measures adopted under Article 4(7).

⁴⁴ The **Greek delegation** favoured Eurodac entering into application when all Member States had undertaken the necessary preparations, but thought, as well as the **French delegation** that it would be useful to set a specific date for that entry into application. The **Commission representative** was open to reflecting further on that question but drew delegations' attention to difficulties for determining with certainty the right deadline and to the consequences (possibility of infringement proceedings) of such a deadline should Member States not have completed their technical arrangements. The **German, Irish, Netherlands, Finnish, and Swedish delegations** considered that it would be quite impossible to insert a precise date in the Regulation, but that it could be useful to have a kind of political framework agreed by Ministers giving some sort of indication on the time needed in order to have the system up and running.

The **representative of the Commission** would present a new text for Article 26(2) to take account of the **German delegation's** request concerning a reference in Article 26(2) to the measures necessary for the implementation of Articles 12(5) and 5(1).

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaty establishing the European Community.

Done at Brussels,

For the Council

The President
