DANMARKS FASTE REPRÆSENTATION
VED DEN EUROPÆISKE UNION
BRYSSEL

ad 400.4 1-0

Fordel
- JT. EU-Kt
- Pol Inst.
- AOR
- MJR
- DES
- CC

OLE-DES

Justitsministeriet, Procesretskontoret
Integrationsministeriet, Int. Kontor
N.3

Rue d'Arlon 73
B-1040 Bruxelles
Telefon (02) 233.08.11
Telefax (02) 230.93.84
E-mail: bmrep@um.dk
Telex 64.434 DANREP B

Journalnummer	Antal sider inkl denne	Dato
400.Y.1-0	14	6. maj 2002

Ok
14 MAJ 2002

Telefax Desk by

Manglende sider kan rekvireres på fax (02) 230.93.84 eller telefon (02) 233.08.46

Indgåelse af parallelaftaler mellem Fællesskabet og Danmark på området retlige og indre anliggender

Kommissionens interne meddelelse vedrørende indgåelse af parallelaftaler mellem Fællesskabet og Danmark på området retlige og indre anliggender vedlægges i engelsk version.

For god ordens skyld bemærkes, at den engelske version er modtaget under hånden.

Med venlig hilsen

Katrine Schjønning

Katrine Schjønning

COMMISSION EUROPÉENNE

Secrétariat Général

SEC(2002) 483

Bruxelles, le 25 avril 2002

O/104/2002

Réunion spéciale des Chefs de cabinet

TEXTE E

INTERFACE ENTRE LA MISE EN OEUVRE DU TITRE IV DU TCE ET LE PROTOCOLE SUR LA POSITION DU DANEMARK

Communication de M. VITORINO, en accord avec
M. le PRESIDENT

Cette question est susceptible d'être inscrite à l'ordre du jour de la 1565ème réunion de la Commission le mardi 30 avril 2002.

Destinataires : Membres de la Commission
MM. FORTESCUE, O'SULLIVAN, MOGG, PETITE

NOTE DU SECRETARIAT GENERAL **O/104/2002**

PREPARATION DU DOCUMENT

Direction générale responsable

JAI Justice et affaires intérieures

Services consultés

pour accord

SG	Secrétariat général	: Accord (cf. / 2)
MARKT	Marché intérieur	: Accord (cf. / 2)

pour avis

SJ	Service juridique	: Avis favorable

Langue originale : FR

MEMORANDUM TO THE COMMISSION

The Protocol on the position of Denmark annexed to the Amsterdam Treaty provides among other things that Denmark will not take part in the adoption of measures pursuant to Title IV of the EC Treaty ("Visas, asylum; immigration and other policies related to free movement of persons") and that none of the provisions of Title IV, no measure adopted pursuant to that Title and no provision of an international agreement concluded by the Community pursuant to that Title will be binding on Denmark or applicable in relation to it.

To allow Denmark to take part in the frontier-free area created by the Schengen *acquis*, the Protocol allows it to opt in to measures adopted by the Council to develop this *acquis* pursuant to Title IV.

The present memorandum deals with the question of whether Denmark can be involved in the implementation of measures based on Title IV which do not aim to develop the Schengen *acquis* and its purpose is to set out the Commission's thinking on this subject.

The Commission is requested to:

- take note that according to Article 12 of the Agreement of 19 January 2001 between the Community, Iceland and Norway on the criteria and the mechanisms for determining the state responsible for examining an asylum request submitted in a Member State, Iceland or Norway, Mr Vitorino will submit to the Commission a draft autorisation for negotiating a Protocol to be concluded by the Community and Iceland and Norway, acting with the assent of Denmark, laying down the conditions for its participation in the agreement ;

- ask Mr Vitorino to submit to the Commission a draft autorisation for negotiating parallel agreements to be concluded by the Community and Denmark for its participation in the Brussels I Regulation and the Regulation on the service in the Member States of judicial and extrajudicial documents in civil and commercial matters.

DG JAI/JDC
17.4.2002

Draft

Memorandum from Mr Vitorino, in agreement with President Prodi

Interface between implementation of Title IV of the EC Treaty and the Protocol on the position of Denmark

1. Introduction

The Amsterdam Treaty introduces into the treaties the objective of developing the Union as an area of freedom, security and justice through the adoption of measures based on:

- Title IV of the EC Treaty (Visas, asylum, immigration and other policies related to free movement of persons), and
- Title VI of the Union Treaty (Provisions on police and judicial cooperation in criminal matters).

The Protocol on the position of Denmark annexed to the Amsterdam Treaty provides among other things that Denmark will not take part in the adoption of measures pursuant to Title IV of the EC Treaty and that none of the provisions of Title IV, no measure adopted pursuant to that Title and no provision of an international agreement concluded by the Community pursuant to that Title will be binding on Denmark or applicable in relation to it. To allow Denmark to take part in the frontier-free area created by the Schengen *acquis*, the Protocol allows it to opt in to measures adopted by the Council to develop this *acquis* pursuant to Title IV.

Ultimately, the architecture of the system is designed to allow Denmark to renounce the Protocol and play a full part in Title IV.[1] But the Protocol lays down very strict conditions for the possible participation of Denmark in measures pursuant to Title IV. The Danish authorities do not regard these conditions as being met for the moment. Until they are met, there are a number of specific situations in which the fact that Denmark is not involved in instruments based on Title IV but not constituting a development of the Schengen *acquis* is liable to jeopardise the homogeneity, consistency and legal certainty of Community rules and/or to upset the balance

[1] At any time Denmark may, in accordance with its constitutional requirements, inform the other Member States that it no longer wishes to avail itself of all or part of the Protocol. In that event Denmark will apply in full all relevant measures then in force, taken within the framework of the European Union (Article 7 of the Protocol on the position of Denmark).

between mutual obligations and responsibilities flowing from commitments entered into by all the Member States, including Denmark, before the questions were brought within the Community framework.

For these and other reasons, Denmark has expressed interest in participating in certain instruments based on Title IV of the EC Treaty which do not aim to develop the Schengen *acquis*.

Given the risks, there is the question whether there is a Community interest in solutions that are legally compatible with the primary legislation so that Denmark can participate ***exceptionally, as a transitional measure,*** in the implementation of measures based on Title IV which do not aim to develop the Schengen *acquis* by concluding an agreement between the Community and Denmark ("agreement parallel to a Community instrument") **without imperilling the ultimate objective of terminating the Protocol.**

It should be noted as a preliminary point that when the day-to-day involvement of Denmark in Title IV was discussed by the Council's subordinate bodies, legal interpretations were posited whereby, while the proper institutional position must be to remain within the Protocol and encourage Denmark to opt in, the conclusion of an international agreement between Denmark and the Community in relation to Title IV was not legally and institutionally excluded. And the Council has already formally approved the principle of Danish participation on measures based on Title IV which do not aim to develop the Schengen *acquis* on the basis of an international agreement (see below, page 6).

The purpose of this communication is to set out the Commission's initial thinking on this subject.

2. The specific position of Denmark in relation to Title IV of the EC Treaty

At the time of the Intergovernmental Conference which produced the Treaty of Amsterdam, Denmark did not accept that several fields covered under the Maastricht Treaty by the third pillar be brought within the Community framework. A Protocol on the position of Denmark was annexed to the Amsterdam Treaty to define the position of Denmark in relation to the new Title IV of the EC Treaty covering justice and home affairs, now within Community jurisdiction.

Briefly, this Protocol provides as follows:[2]

– Denmark is not to take part in the adoption by the Council of proposed measures pursuant to Title IV (Article 1);

– None of the provisions of Title IV, no measure adopted pursuant to that Title, no provision of an international agreement concluded by the Community pursuant to

[2] The Protocol on the position of Denmark is in three parts: the first, to which this memorandum applies, concerns non-participation in Title IV; the second, non-participation in measures adopted by the Council pursuant to Article 13(1) and Article 17 of the Union Treaty which have defence implications; the third consists of the procedure for terminating the Protocol (Article 7).

that Title and no decision of the Court of Justice interpreting these provisions or measures is binding on Denmark or applicable in relation to it (Article 2);

– Denmark is not to bear the financial consequences of measures pursuant to Title IV other than the administrative costs incurred for the institutions (Article 3);

– There is an **exception** to these principles for *the two aspects of visa policy already brought within the Community framework by the Maastricht Treaty* (the list of third countries subject to the visa requirement and the uniform model visa – former Article 100c of EC Treaty) (Article 4); for these two fields, Denmark remains bound by the Community obligations which it assumed under the Treaty of Maastricht;

– There is a **derogation** from these principles to **enable Denmark to continue to take part in the Schengen area without internal frontiers** (Article 5): Denmark is to decide within a period of six months of the Council deciding on a measure to develop the Schengen *acquis* pursuant to Title IV of EC Treaty whether it will transpose this measure into its national law; if it decides to do so, the decision will create an obligation of *international law* between Denmark and the other Schengen States; if it decides not to transpose it, the Schengen States will examine what measures should be taken;

– The derogation is in line with the method provided for in the **Protocol integrating the Schengen *acquis*** into the framework of the EU, which **aims to maintain the full participation of Denmark on a "status quo" basis in the Schengen *acquis*** even after it has been brought within the framework of the European Union, even though part of the Schengen *acquis* is determined to be part of the first pillar: regarding the components of the Schengen *acquis* that are determined to be in the first pillar and must therefore be regarded as an integral part of the Community legislation based on Title IV, "Denmark shall maintain the same rights and obligations in relation to the other Schengen states as before the said determination"; with regard to components of the Schengen *acquis* assigned to the third pillar, Denmark has the same rights and obligations as the other Schengen States (Article 3 of the Protocol integrating the Schengen *acquis*);

– Denmark may at any time, in accordance with its constitutional requirements, inform the other Member States that it no longer wishes to avail itself of all or part of the Protocol (Article 7).[3]

---

[3] This memorandum concerns only the specific situation of Denmark. However, a full picture of the situation requires a comparison with the specific position of the United Kingdom and Ireland.
Like Denmark, the United Kingdom and Ireland did not subscribe to the Amsterdam Treaty's bringing several fields within the Community framework. The Protocol on the position of the United Kingdom and Ireland proceeds from the same guiding principles as the Protocol on the position of Denmark: firstly, no participation in the adoption of measures based on Title IV; secondly, the United Kingdom and Ireland are not bound by such measures or international agreements.
Unlike the Protocol on the position of Denmark, the United Kingdom and the Ireland have an opt-in facility: either of them may "notify the President of the Council in writing, within three months after a proposal or initiative has been presented to the Council pursuant to Title IV of the EC Treaty, that it wishes to take part in the adoption and application of any such proposed measure (Article 3(1)); they may also, at any time after the adoption of such a measure, notify the Council and the Commission that they wish to accept to accept that measure; in that case,

3. The nature of the problem

At this stage, the Commission foresees two categories of Title IV measures which do not aim to develop the Schengen *acquis*, in which the fact that Denmark is not involved is liable to jeopardise the homogeneity, consistency and legal certainty of Community rules and/or to upset the balance between mutual obligations and responsibilities flowing from commitments entered into by all the Member States, including Denmark, before the questions were brought within the Community framework.

3.1 *Criteria and mechanisms for determining the Member State responsible for considering an application for asylum (Dublin II and Eurodac)*

Like all the other Member States, Denmark is bound by, and implements, the Dublin Convention of 19 June 1990 on the criteria and mechanisms for determining the Member State responsible for considering an application for asylum.[4] This Convention was drawn up for the purpose of creating the area without frontiers referred to in Article 14 (formerly Article 7a) of the EC Treaty.

Also under Schengen, Denmark undertook to take part in the creation of an area without internal frontiers, i.e. to lift internal frontier controls and implement all the necessary supporting measures (when it came into force, the Dublin Convention replaced the asylum chapter of the Schengen Convention).

The Amsterdam Treaty brought within the Community framework the criteria and mechanisms for determining the Member State responsible for considering an application for asylum (Article 63(1)(a) of the EC Treaty), expressly confirming that the measures to be taken here are among the measures directly related to removing controls on persons at internal frontiers (Article 61).

On 11 December 2000, the Council adopted the Eurodac Regulation[5] on the basis of Title IV of the EC Treaty to create a computerised system to compare fingerprints in order to facilitate the implementation of the Dublin Convention. A proposal for a Regulation to communitise the Dublin Convention is now before the Council and Parliament.[6]

---

the procedure provided for in Article 11(3) of the EC Treaty to opt in to a measure taken pursuant to Title IV applies; in that event, "the relevant provisions of that Treaty, including Article 68 [Court of Justice] shall apply to that State [having exercised the opt-in] in relation to that measure" (Article 6). If they opt in, the obligations of the United Kingdom and Ireland are therefore *Community legislation obligations*, and in particular their implementation is monitored within the *Community* framework.
Only Ireland, and not the United Kingdom, can notify the President of the Council in writing of its wish to no longer be covered by the Protocol. In that case, the normal provisions apply to Ireland.

4 This international Convention was concluded between the EC Member States before the third pillar was set up and therefore before asylum was brought within the European Union's powers.

5 OJ L 316, 15.12.2000.

6 COM(2001)447 final, 26.7.2001.

The Amsterdam Treaty and the Protocols annexed to it did not seek to end the participation of Denmark in the area without internal borders. Far from it: specific provisions aim to ensure the continuation of this participation despite the fact that Denmark did not accept the extension of the Community framework to certain fields covered by the Schengen *acquis*. The measures provided for by Article 63(1)(a) not being regarded as measures to develop the Schengen *acquis*, these specific provisions concerning the "participation" of Denmark in the Schengen *acquis* will not solve the problem of its participation in the Eurodac Regulation or the future Dublin II Regulation, even though its participation is essential because, if it does not implement these measures, it can no longer be part of the frontier-free area.

This is why it is important to accept Denmark's "participation" in these Community measures which, although related to the Schengen *acquis*, are not considered to be measures for the development of that *acquis* as such. Otherwise it will not be possible to attain the specific objective of the Treaty and the Protocols of accepting Denmark's continued participation in the frontier-free area; the homogeneity, consistency and balance of mutual obligations and responsibilities that are essential to the operation of the frontier-free area would be jeopardised.

This is borne out by Article 7 of the Agreement concluded by the Council of the European Union, Iceland and Norway concerning the latters' association with the implementation, application and development of the Schengen *acquis*,[7] which provides: "The Contracting Parties agree that an appropriate arrangement should be concluded on the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in any of the Member States or in Iceland or Norway". This Agreement has now been concluded between the European Community and Iceland and Norway[8] and covers the association of Iceland and Norway with the Dublin Convention and the Eurodac Regulation; it will also allow their association with the future Dublin II Regulation.

In the negotiating brief for an Agreement between the Council of the European Union, Iceland and Norway, the Council called on the Commission to find a solution enabling Denmark to be involved in the agreement and to take part in Eurodac and any future Communitisation of the Dublin Convention. This solution is to be found in Article 12 of the Agreement: "The Kingdom of Denmark may request to participate in this Agreement. The condition for such participation shall be determined by the Contracting Parties, acting with the consent of the Kingdom of Denmark, in a Protocol to this Agreement."

By letter dated 16 February 2001, Denmark notified the President of the Council of its request to take part in this Agreement.

The Commission should now present the Council with a draft negotiating brief for a Protocol to be concluded between the Community, Iceland and Norway, with the consent of Denmark.

3.2 *Certain instruments for judicial cooperation in civil matters*

---

7 Agreement of 18.5.1999, OJ L 176, 10.7.1999, p. 35.

8 Agreement of 19.1.2001, OJ L 93, 3.4.2001, p. 38.

On 27 September 1968, Member States concluded the Brussels Convention ("Brussels I") on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. The Convention was based on the last indent of Article 293 (formerly Article 220) of the EC Treaty, which provides that "Member States shall, so far as is necessary, enter into negotiations with each other with a view to securing for the benefit of their nationals :.. the simplification of formalities governing the reciprocal recognition and enforcement of judgments of courts or tribunals and of arbitration awards." The Convention introduced the free movement of judgments in the EC in support of the free movement of goods, persons, services and capital and was binding on all the Member States, including Denmark. It was revised before the Amsterdam Treaty came into force.

On 22 December 2000, the Council communitised the Brussels I Convention by adopting Regulation No 44/2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.[9] [10]

By Regulation No 1348/2000 of 29 May 2000 concerning the service in the Member States of judicial and extra-judicial documents in civil and commercial matters (the service of documents Regulation),[11] the Council communitised the Convention of 26 May 1997 agreed under Title VI of the Union Treaty (which never entered into force). The Brussels I Regulation contains provisions to facilitate the implementation of the service of documents Regulation, so that the two instruments are closely linked.

The fact that Denmark is not involved in the Brussels I and service of documents Regulations and the fact that they do not apply in relations between Denmark and the other Member States generates a confused legal situation:

- The Brussels I Regulation replaces the Brussels I Convention only in relations between the Member States that are bound by the Brussels I Regulation. Consequently the Brussels I Convention still applies in relations between Denmark and the other Member States. Preserving the Convention in relations between Denmark and the other Member States generates insoluble legal difficulties both in the determination of the instrument that applies in a given situation and, given the substantial differences between the two instruments, in the determination of the court having jurisdiction. The result is a complete lack of certainty in the law;

- This also entails the inconsistent application of rules at Community level and a total lack of transparency.

In addition there is a specific difficulty connected with Denmark's status in relation to the Lugano Convention: the Convention was concluded in 1980 between the fifteen Member States, Switzerland, Norway, Iceland and Poland to extend the Brussels I Convention to these countries and it was revised at the same time as Brussels I to achieve full parallelism in the rules of substance. Now that the revised Brussels I has

---

9 OJ L 12, 16.1.2001.

10 Note that the United Kingdom and Ireland have exercised their opt-in in relation to all the instruments on judicial cooperation in civil matters based on Title IV of the EC Treaty.

11 OJ L 160, 30.6.2000.

been communitised, the plan is to convert Lugano into an agreement between the Community, which now has power to conclude it, and Switzerland, Norway, Iceland and Poland.[12] Danish participation in the form of an agreement parallel to the Brussels I Regulation would doubtless ease the negotiations for Lugano II.

Establishing a agreement parallel to the Brussels I Regulation inevitably necessitates an agreement parallel to the service of documents Regulation since Brussels I refers explicitly to this Regulation.

A solution matching the specific problem set out above must be devised in full compliance with the following principles:

1. Under its Protocol Denmark does not have a case-by-case opt-in for measures based on Title IV of the EC Treaty which do not develop the Schengen *acquis*. The restrictive wording of Article 5 of the Protocol on the position of Denmark (which applies only to measures "to build upon the Schengen *acquis*") excludes its application to other measures based on Title IV, especially as Article 5 provides for a *unilateral* opt-in mechanism creating reciprocal obligations.

2. Article 7 of the Protocol on the position of Denmark provides that "At any time Denmark may, in accordance with its constitutional requirements, inform the other Member States that it no longer wishes to avail itself of all or part of this Protocol. In that event, Denmark will apply in full all relevant measures then in force taken within the framework of the European Union."

The Commission's opinion is accordingly that the long-term objective should be full participation by Denmark in measures based on Title IV within the institutional framework of the European Community, though Denmark must first fulfil the relevant constitutional requirements. Any other form of Danish "participation" in the implementation of instruments based on Title IV should therefore be considered *provisional*.[13]

3. It also follows that any mechanism or method theoretically enabling Denmark to "take part" *en bloc* in all the measures based on Title IV or in a large number of these measures without this participation taking place within the Community institutional framework should be considered incompatible with the spirit of the Protocol on the position of Denmark, and in particular Article 7. It would substantially reduce the interest for Denmark of renouncing its Protocol, and the response to the question being addressed here must be that the Protocol should ultimately be renounced.

The "participation" of Denmark in measures based on Title IV which do not aim to develop the Schengen *acquis* must therefore be the exception rather than the principle. Only modular participation, confined to certain measures based on Title IV, can be envisaged.

---

12 A draft Decision authorising negotiations for the Lugano II Convention has just been laid before the Commission by written procedure.

13 Consequently, such a parallel agreement should contain a final clause stipulating that the agreement will expire in the event of notification by Denmark that it no longer wishes to avail itself of the Protocol.

4. That is confirmed in legal and institutional terms by the fact that the measures available to the Community to attain its objectives *internally* would not appear to include conventions under public international law between the Community and one or more of its Member States.[14]

The attainment of Community internal objectives by conventions under public international law rather than by Community legislation would run counter to the fundamental case-law of the Court of Justice concerning the specific nature of the European Community and of Community legislation.

In any event, the institutional situation would be complicated by the conclusion of parallel agreements between the Community and Denmark.

5. However, the Legal Services of the Commission and the Council both consider that the Protocol on the position of Denmark and the Treaties do not absolutely exclude the possibility of a parallel agreement between the Community and Denmark as an alternative means of involving Denmark in an instrument enacted under Title IV of the EC Treaty which does not develop the Schengen *acquis*.[15] But the use of a parallel agreement is conceivable only in the exceptional situations described above.

Regarding the instruments of judicial cooperation concerned here, it should be remembered that an agreement parallel to the Brussels I Convention was concluded between the Member States and certain third countries (the Lugano Convention) and that an agreement parallel to the Brussels I Regulation is envisaged between the Community and certain third countries. Denmark should not be put in a less favourable position than the third countries concerned as regards participation, via a parallel agreement, in the Brussels I Regulation.

And since the Brussels I and service of documents Regulations are complementary instruments, there should be a coherent approach: Denmark should not be asked to participate in just one of them.

Finally, it must be emphasised that Denmark is not a third country in the fields covered by Title IV; despite its Protocol, *Denmark fully maintains Member State status*, albeit with a specific position. Article 300 of the EC Treaty and the rules governing the Community's external powers are not applicable to relations between the Community and Denmark. But principles and mechanisms governing the Community's external powers could be applied mutatis mutandis to an agreement (if there was one) between the Community and Denmark.

---

14 Article 293 of the EC Treaty (formerly Article 220) provides that "*Member States* shall, so far as is necessary, enter into negotiations *with each other* with a view to securing for the benefit of their nationals... [in particular] the simplification of formalities governing the reciprocal recognition and enforcement of judgments of courts or tribunals and of arbitration awards".

15 For a precedent of an agreement between the Community and one or more of its Member States, see Council Decision 91/668/EEC concerning the conclusion of an Agreement between the EEC of the one part and the Government of Denmark and the Government of the Faeroe Isles of the other part: OJ L 371, 31.12.1991.

6. If the Commission accepts the possibility of concluding parallel agreements between the Community and Denmark in relation to instruments based on Title IV, it will be necessary to ensure that the requirements imposed on Denmark are identical to those imposed on all the Member States, so as to ensure that rules with the same content are actually applied in Denmark and in the other Member States.

To this end, such a parallel agreement should contain: appropriate rules on the role of the Court of Justice, in particular to ensure the uniform interpretation of the instrument applied by the parallel agreement between Denmark and the other Member States;[16] a mechanism to enable Denmark to accept future amendments by the Council to the basic instrument and the future implementing rules to be adopted under Article 202 of the EC Treaty; a clause for the automatic denunciation of the agreement if Denmark refuses to accept such future amendments and implementing rules;[17] rules specifying Denmark's obligations in negotiations with third countries for agreements concerning matters covered both by Community legislation and by parallel agreements with Denmark;[18] the possibility of denouncing the parallel agreement to an instrument based on Title IV, in particular where Denmark does not abide by the commitments which it undertook in the agreement or does not wish to negotiate a parallel agreement relating to another Title IV instrument which is closely bound up with the first instrument or affects its application.[19]

Lastly, in this context, it should be borne in mind that Article 3 of the Protocol on the position of Denmark provides that "Denmark shall bear no financial consequences of [Title IV] measures other than administrative costs entailed for the institutions." Consideration should be given at a later date to the possible contribution to be requested from Denmark when a Title IV instrument covered by a parallel agreement entails operational expenditure and to the possibility of devising a mechanism for the purpose.

---

16 In particular it will be necessary to determine which Danish courts and tribunals must apply to the Court of Justice for preliminary rulings in relation to the parallel agreement (of which the Title IV instrument and, after acceptance by Denmark, the implementation measures, are an integral part); to give Denmark the right – enjoyed by the Council, the Commission and any other Member State – to submit questions of interpretation of the parallel agreement to the Court of Justice; and to give the contracting parties the possibility of referring to the Court of Justice in the event of non-observance of the obligations arising from the agreement.

17 Under its Protocol, Denmark does not take part in the adoption of the measures amending the instrument to which the parallel agreement and implementation measures apply, and these measures therefore do not enter automatically into the scope of the agreement. There is also a need for a mechanism for the acceptance of these measures by Denmark so as to bring them within the scope of the parallel agreement. Such a mechanism could be based on the comparable mechanism in the Agreement between the Council and Norway and Iceland to associate them with the implementation, application and development of the Schengen *acquis*.

18 Denmark will have to undertake not to sign international conventions which affect or are likely to amend the scope of the Title IV instrument and are covered by the parallel agreement, unless the Community agreed and a suitable mechanism regulated the relationship between the convention and the parallel agreement. In addition, when the Community and Denmark take part in negotiations for an international convention which will affect or is likely to amend the scope of the Title IV instrument covered by the parallel agreement, Denmark will have to undertake to refrain from any action which might harm the Community's coordinated position in these negotiations.

19 See also footnote 4.

Conclusion

The Commission is requested to:

- take note that in accordance with Article 12 of the Agreement of 19 January 2001 with Iceland and Norway on the criteria and mechanisms for determining the Member State responsible for considering an application for asylum presented in a Member State, Iceland or Norway, Mr Vitorino will present a draft negotiating brief for a Protocol to be concluded by the Community and Iceland and Norway, acting with the assent of Denmark, laying down the conditions for its participation in the agreement; and

- instruct Mr Vitorino to begin by presenting draft negotiating briefs for parallel agreements to be concluded by the Community and Denmark for its participation in the Brussels I Regulation and the service of documents Regulation.