

Eurodac system for the comparison of the fingerprints of applicants for asylum and certain other aliens for the effective application of the Dublin Convention

1999/0116(CNS) - 15/03/2000 - Modified legislative proposal

The Commission's amended proposal concerning the establishment of "Eurodac" for the comparison of the fingerprints of applicants for asylum and certain other third-country nationals takes into consideration the amendments proposed by the European Parliament and accepted by the Commission and also amendments brought about by the Commission following discussions in the Council on this issue. The Parliament's amendments which were accepted by the Commission include: - the use of the term "third country national" instead of "alien" (the addition of a definition of the term "third country national" to make it clear that the scope of the instrument includes stateless persons); - an exclusive link with the Dublin Convention, a reference to the Dublin Convention should be inserted in the title; - the erasure of data from the central databases : the Parliament considered that the data of applicants for asylum and of persons apprehended at the external border should be erased from the central database when the persons concerned has been granted refugee status or a subsidiary or complementary form of protection or any other legal status; - the taking of fingerprints should be in accordance with the safeguards laid down in the European Convention on Human Rights and Fundamental Freedoms and the United Nations Convention on the Rights of the Child; - the need for a clear fingerprint match; - the prohibition on the transfer of data to third countries and to other agencies with a view to prevent data being sent to the authorities of the asylum applicant's country of origin, which could put the applicant at risk. On the other hand, the Commission did not accept the main amendment of the Parliament relating to the minimum age for fingerprinting (18 years old instead of 14). The Commission recalls that within the Council, the pressure has been for a lower rather than a higher minimum age limit. With regard to the amendments brought about by the Commission in order to take account of the developments which have occurred since the original proposal, these relate to: - comitology: the Commission envisages recourse to a comitology procedure, and to replace the procedure contained in each proposal with the procedure of the same type contained in Decision 1999/468/EEC; - territorial scope: the United Kingdom and Ireland have notified the President of the Council that they wish to take part in the adoption and application of the Eurodac Regulation. In the interests of transparency, a recital has been added to make it clear that the Regulation applies to these two Member States. The territorial application has also been adapted with a view to fully aligning the territorial scope on that of the Dublin Convention. A recital has also been added on the position of Denmark. In relation to the amendments accepted by the Commission after negotiations with the Council, the revised text includes a number of amendments which have been agreed in the Council, most of which are of a technical nature. These include in particular amendments concerning the processing of personal data, statistical requirements, specification of fingerprints of which fingers are required, the results of fingerprint comparison, erasure and destruction of data media relating to persons found illegally present in a Member State, provisions relating to the Secretariat to the joint supervisory authority, the costs of the Central Unit (borne by the budget of the European Communities), the penalties relating to the use contrary to the purpose of Eurodac of data recorded in the central database. Finally, a certain number of amendments have been proposed by the Council however not accepted by the Commission. The amendments deal with: - the deletion of the term "citizenship of the Union": the Commission has objected this term and prefers the term "nationality of a Member State", first on the grounds that citizenship of the Union is not a clear legal concept and secondly on the grounds that it undermines the concept of national of a Member State; - implementing powers: the Council proposes to reserve the implementing powers under the Eurodac Regulation to itself rather than to delegate them to the Commission. The Commission considers that the justification given by the Council for this is totally

inadequate. The Commission has noted that the retention of implementing powers by the Council would affect the roles of both the Commission and the Parliament. The Parliament would lose its right of information in relation to the implementing measures which it possesses by virtue of Article 7 of the new comitology decision. Furthermore, the Commission has also noted that in the nearest comparable case, the Customs Information System, a regulatory committee procedure was used. The European Parliament shall have to be reconsulted on any substantial change to the Commission's original position; - penalties: the council proposes to replace this Article with the following wording taken from the frozen Eurodac Convention text: "Member States shall ensure that the 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". Whilst the Commission can agree that penalties should relate specifically to the use contrary to the purpose of Eurodac of data recorded in the central database, it has three difficulties with the proposed text. First, the language used is not appropriate in a binding Community regulation. Secondly, it is regrettable that the Council should seek to delete the reference to penalties being effective, proportionate and dissuasive, since the jurisprudence of the Court of Justice is clear on this point. Thirdly, it is regrettable that the Council should seek to remove the duty to notify the Commission of the relevant national rules relating to penalties.