

9398/96

LIMITE

JUR 240
ASIM 111

LEGAL SERVICE OPINION

Subject: Draft Convention concerning the establishment of "Eurodac"
– 8665/96 ASIM 99

1. At its meeting on 12 July 1996, the Working Party on Eurodac asked the Council Legal Service whether the Dublin Convention ⁽¹⁾ precluded the Council from making provision in the abovementioned draft Convention for:
 - (i) taking the fingerprints of members of an asylum-seeker's family (spouse and children of at least 14 years of age) and
 - (ii) continued storage in Eurodac for a specific period (10 years) of data relating to the persons concerned even after they have been granted refugee status.
2. The Legal Service pointed out that it had already delivered an opinion in which it had noted that Article 15 of the Dublin Convention provided for the exchange of information between Member States on a bilateral basis and that another Convention would have to be applied to establish a central system for the exchange and comparison of asylum-seekers' fingerprints ⁽²⁾.

⁽¹⁾ 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.

⁽²⁾ See Legal Service opinion of 18 March 1993, 5546/93.

3. Such was the purpose of the draft Convention concerning the establishment of Eurodac based on Article K.3(2) of the Treaty on European Union, which provides that "the Council may ... draw up Conventions which it shall recommend to the Member States for adoption in accordance with their respective constitutional requirements."
4. Once the draft Convention under discussion is drawn up and adopted in due and proper form, its provisions will of course have the same legal value as those of the Dublin Convention. Accordingly, nothing would prevent the Council from providing for measures in the draft Convention which go beyond the bilateral exchange of information already provided for in Article 15 of the Dublin Convention, provided the fundamental rights of the persons concerned are respected in accordance with Article F(2) and Article K.2(1) of the Treaty on European Union ⁽³⁾.
5. Personal data, including fingerprints, are covered by Article 8 of the European Convention on Human Rights ⁽⁴⁾, which provides for respect for private life and stipulates that there shall be no unjustified interference by a public authority with the exercise of that right. Article 5(b) of the Strasbourg Convention ⁽⁵⁾, which stipulates that: "Personal data undergoing automatic processing shall be ... stored for specified and legitimate purposes and not used in a way incompatible with those purposes", is an expression of that right.

⁽³⁾ Recitals 9 to 13 in the preamble to the draft Convention (in Annex 1 to the document under discussion) give the impression that Eurodac comes under exactly the same heading as the bilateral exchange of information as provided for in Article 15(2) of the Dublin Convention. This is not the case: these recitals should therefore be replaced by a more precise text, which might read as follows:

"whereas it is important, for the purposes of applying the Dublin Convention, to establish the asylum-seeker's identity and, where appropriate, that of the members of his family;

whereas fingerprints represent an important element for the purposes of exact identification of such individuals and whereas it is necessary to set up a system for the exchange and comparison of their fingerprints;"

⁽⁴⁾ Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950. See Leander judgment delivered by the European Court of Human Rights on 26 March 1987, series A No 116.

⁽⁵⁾ Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, opened for signing on 28 January 1981.

6. The Legal Service contends that there can be objective grounds for recording the fingerprints of members of the asylum-seeker's family as it is quite possible that a member of the family may also apply for asylum or may already have applied for asylum in a Member State other than that with which the asylum-seeker has lodged his application.
7. Similarly, the possibility that an individual already granted refugee status in a Member State might re-apply for asylum in another Member State which, for example, grants higher allowances, cannot be ruled out. Such circumstances could justify the stipulation in the draft Convention under discussion that data be kept in Eurodac for a specific period even after refugee status has been granted to the individuals concerned. The Legal Service is of the opinion that such a provision would not be incompatible with Article 5(e) of the Strasbourg Convention, which stipulates that: "personal data undergoing automatic processing shall be ... preserved in a form which permits identification of the data subjects for no longer than is required for the purpose for which those data are stored."
8. In conclusion, the opinion of the Legal Service is that the Council could stipulate in the draft Convention under discussion:
 - that the fingerprints of members of the asylum-seeker's family should be taken, and
 - that data should continue to be stored in Eurodac for a specific period, even after the individuals concerned have been granted refugee status.