



EUROPEAN PARLIAMENT

2009 - 2014

Committee on Civil Liberties, Justice and Home Affairs

2008/0242(COD)

26.9.2012

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DRAFT REPORT

on the amended proposal for a regulation of the European Parliament and of the Council on the establishment of 'EURODAC' for the comparison of fingerprints for the effective application of Regulation (EU) No [.../...] (establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person) and to request comparisons with EURODAC data by Member States' law enforcement authorities and Europol for law enforcement purposes and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (recast)
(COM(2012)0254 – C7-0148/2012 – 2008/0242(COD))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Monica Luisa Macovei

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PE450.875v03-00

EN

United in diversity

EN

(Recast – Rule 87 of the Rules of Procedure)

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the amended proposal for a regulation of the European Parliament and of the Council on the establishment of 'EURODAC' for the comparison of fingerprints for the effective application of Regulation (EU) No [...] (establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person) and to request comparisons with EURODAC data by Member States' law enforcement authorities and Europol for law enforcement purposes and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (recast)

(COM(2012)0254 – C7-0148/2012 – 2008/0242(COD))

(Ordinary legislative procedure – recast)

The European Parliament,

- having regard to the amended Commission proposal to Parliament and the Council (COM(2012)0254),
 - having regard to Article 294(2), Article 78(2)(e), Article 87(2)(a) and Article 88(2)(a) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0148/2012),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts¹,
 - having regard to the letter of 20 September 2012 from the Committee on Legal Affairs to the Committee on Civil Liberties, Justice and Home Affairs in accordance with Rule 87(3) of its Rules of Procedure,
 - having regard to Rules 87 and 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A7-0000/2012),
- A. whereas, according to the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission, the proposal in question does not include any substantive amendments other than those identified as such in the proposal and whereas, as regards the codification of the unchanged provisions of the earlier acts together with those amendments, the proposal contains a straightforward codification of the existing texts, without any change in their substance;

1. Adopts its position at first reading hereinafter set out, taking into account the

¹ OJ C 77, 28.3.2002, p. 1.

recommendations of the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a regulation

Recital 4

Text proposed by the Commission

(4) For the purposes of applying **Council** Regulation (EU) No [...] [establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person], it is necessary to establish the identity of applicants for international protection and of persons apprehended in connection with the unlawful crossing of the external borders of the **Community**. It is also desirable, in order effectively to apply the **Council** Regulation (EU) No [...] [establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person], and in particular points (b) and (d) of Article 18(1) thereof, to allow each Member State to check whether a third country national or stateless person found illegally staying on its territory has applied for international protection in another Member State.

Amendment

(4) For the purposes of applying Regulation (EU) No [...] **of the European Parliament and of the Council** [establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person], it is necessary to establish the identity of applicants for international protection and of persons apprehended in connection with the unlawful crossing of the external borders of the **Union**. It is also desirable, in order effectively to apply Regulation (EU) No [...] [establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person], and in particular points (b) and (d) of Article 18(1) thereof, to allow each Member State to check whether a third country national or stateless person found illegally staying on its territory has applied for international protection in another Member State.

(The replacement of the term 'Community' by 'Union' applies throughout the text.)

Justification

The amendment is technical and aims to align the text to the provisions of the Lisbon Treaty.

Amendment 2**Proposal for a regulation****Recital 14***Text proposed by the Commission*

(14) In view of ensuring equal treatment for all applicants and beneficiaries of international protection, as well as in order to ensure consistency with current Union asylum *acquis*, in particular with **Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted** and Regulation (EU) No [.../...] [establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person], it is appropriate to extent the scope of this Regulation to order to include applicants for subsidiary protection and persons enjoying subsidiary protection.

Amendment

(14) In view of ensuring equal treatment for all applicants and beneficiaries of international protection, as well as in order to ensure consistency with current Union asylum *acquis*, in particular with **Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted**¹ and Regulation (EU) No [.../...] [establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person], it is appropriate to extent the scope of this Regulation to order to include applicants for subsidiary protection and persons enjoying subsidiary protection.

¹ *OJ L 337, 20.12.2011, p. 9.*

Justification

The amendment is technical and aims to align the text to the title of the amended

Amendment 3

Proposal for a regulation

Recital 16 a (new)

Text proposed by the Commission

Amendment

(16a) Member States should ensure the transmission of fingerprint data in an appropriate quality for the purpose of comparison by means of the computerised fingerprint recognition system. All authorities with right of access to EURODAC should invest in adequate training and in the necessary technological equipment. The authorities with right of access to EURODAC should inform the Agency of specific difficulties encountered with regard to the quality of data, in order to resolve them.

Or. en

Amendment 4

Proposal for a regulation

Recital 35

Text proposed by the Commission

Amendment

(35) Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data and in particular Articles 21 and 22 thereof concerning confidentiality and security of processing apply to the processing of personal data by Union institutions, bodies, offices and agencies carried out in application of this Regulation. However, certain points should

(35) Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data and in particular Articles 21 and 22 thereof concerning confidentiality and security of processing apply to the processing of personal data by Union institutions, bodies, offices and agencies carried out in application of this Regulation. However, certain points should

be clarified in respect of the responsibility for the processing of data and of the supervision of data protection.

be clarified in respect of the responsibility for the processing of data and of the supervision of data protection, ***bearing in mind that data protection is a key factor in the successful operation of EURODAC and that data security, high technical quality and lawfulness of consultations are essential to ensure the smooth and proper functioning of EURODAC as well as to facilitate the application of Regulation (EU) No [.../...] [establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person].***

Or. en

Amendment 5

Proposal for a regulation Recital 37

Text proposed by the Commission

(37) It is appropriate to monitor and evaluate the performance of EURODAC at regular intervals.

Amendment

(37) It is appropriate to monitor and evaluate the performance of EURODAC at regular intervals. ***The Agency should submit an annual report on the activities of the Central System to the European Parliament and to the Council.***

Or. en

Amendment 6

Proposal for a regulation Article 2 – paragraph 1 – point b

Text proposed by the Commission

(b) ***an*** "applicant for international

Amendment

(b) "applicant for international protection"

protection" means a third-country national or a stateless person who has made an application for international protection as defined in *Article 2(g) of Council Directive 2004/83/EC* in respect of which a final decision has not yet been taken;

means a third-country national or a stateless person who has made an application for international protection as defined in *Article 2(h) of Directive 2011/95/EU* in respect of which a final decision has not yet been taken;

Or. en

Justification

The amendment is technical and aims to align the text to the amended Qualification Directive.

Amendment 7

Proposal for a regulation

Article 2 – paragraph 1 – point c – point iii

Text proposed by the Commission

(iii) in relation to a person covered by Article 14, the Member State which transmits *such* data to the Central System and receives the results of the comparison;

Amendment

(iii) in relation to a person covered by Article 14, the Member State which transmits *the personal* data to the Central System and receives the results of the comparison;

Or. en

Justification

Terminology adaptation.

Amendment 8

Proposal for a regulation

Article 2 – paragraph 1 – point e

Text proposed by the Commission

(e) "hit" *shall mean* the existence of a match or matches established by the Central System by comparison between fingerprint data recorded in the central database and those transmitted by a Member State with regard to a person,

Amendment

(e) "hit" *means* the existence of a match or matches established by the Central System by comparison between fingerprint data recorded in the *computerised* central *fingerprint* database and those transmitted by a Member State with regard to a person,

without prejudice to the requirement that Member States shall immediately check the results of the comparison pursuant to Article 18(4);

without prejudice to the requirement that Member States shall immediately check the results of the comparison pursuant to Article 18(4);

Or. en

Justification

This amendment is technical and aims to align the wording to that present in Article 3(1)(a).

Amendment 9

Proposal for a regulation
Article 3 – paragraph 5

Text proposed by the Commission

5. The procedure for taking fingerprints shall be determined and applied in accordance with the national practice of the Member State concerned and in accordance with the safeguards laid down in the Charter of Fundamental Rights of the European Union, in the Convention for the Protection of Human Rights and Fundamental Freedoms and in the United Nations Convention on the Rights of the Child.

Amendment

5. The procedure for taking fingerprints shall be determined and applied in accordance with the national practice of the Member State concerned and in accordance with the safeguards laid down in the Charter of Fundamental Rights of the European Union, in the Convention for the Protection of Human Rights and Fundamental Freedoms and in the United Nations Convention on the Rights of the Child. ***The best interests of the child shall be a primary consideration of Member States in the application of this Regulation.***

Or. en

Justification

This amendment brings this Regulation in line with the Directive on minimum standards on procedures in Member States for granting and withdrawing international protection which specifies that the best interests of the child should be a primary consideration when implementing the Regulation. Also the EDPS in its 2008-2009 Activity Report highlighted the rights of persons subjected to age evaluations.

Amendment 10

Proposal for a regulation

Article 4 – paragraph 1

Text proposed by the Commission

1. The Agency, shall be responsible for the operational management of EURODAC. The Agency shall ensure, in cooperation with the Member States, that at all times the best available **technology**, subject to a cost-benefit analysis, **is** used for the Central System.

Amendment

1. The Agency shall be responsible for the operational management of EURODAC. The Agency shall ensure, in cooperation with the Member States, that at all times the best available **techniques**, subject to a cost-benefit analysis, **are** used for the Central System.

Or. en

Justification

The reference to "techniques" covers both the technology used and the way the installation is designed, built, maintained and operated as it is also suggested in the opinion of the European Data Protection Supervisor (EDPS) on Eurodac of 18 February 2009.

Amendment 11

Proposal for a regulation

Article 8 – paragraph 1 – introductory part

Text proposed by the Commission

1. The Agency shall draw up statistics on the work of the Central System every **month**, indicating in particular:

Amendment

1. The Agency shall draw up statistics on the work of the Central System every **quarter**, indicating in particular:

Or. en

Justification

Monthly statistics are too frequent and they would only overload the work of the Agency and of the institutions receiving them with the risk of not providing a relevant image of the activities reported on.

Amendment 12

Proposal for a regulation

Article 8 – paragraph 1 – point f

Text proposed by the Commission

(f) the number of **requests for marking and unmarking transmitted** in accordance with Article 18(1) and (2).

Amendment

(f) the number of **data sets marked** in accordance with Article 18(1) and (2);

Or. en

Justification

According to Article 18, it is the Member States which mark and unmark the relevant data. Statistics should contain the number of data sets marked and not the requests for such marking.

Amendment 13

Proposal for a regulation

Article 8 – paragraph 1 – point g

Text proposed by the Commission

(g) the number of hits for persons referred to in Article 18(1) for whom hits have been recorded under **points (b) and (d)** of this Article.

Amendment

(g) the number of hits for persons referred to in Article 18(1) for whom hits have been recorded under **points (b), (c) and (d)** of this Article.

Or. en

Amendment 14

Proposal for a regulation

Article 8 – paragraph 2

Text proposed by the Commission

2. At the end of each year, statistical data shall be established in the form of a compilation of the **monthly** statistics for that year, including an indication of the number of persons for whom hits have

Amendment

2. At the end of each year, statistical data shall be established in the form of a compilation of the **quarterly** statistics for that year, including an indication of the number of persons for whom hits have

been recorded under points (b), (c), and (d). The statistics shall contain a breakdown of data for each Member State.

been recorded under points (b), (c), and (d). The statistics shall contain a breakdown of data for each Member State.

Or. en

Justification

See the justification under Amendment 11.

Amendment 15

Proposal for a regulation
Article 9 – title

Text proposed by the Commission

Amendment

Collection, transmission and comparison of
fingerprints

Collection, transmission and comparison of
fingerprint data

Or. en

Justification

Technical amendment (harmonisation of wording in line with the titles of Articles 14 and 17).

Amendment 16

Proposal for a regulation
Article 9 – paragraph 2

Text proposed by the Commission

Amendment

2. By way of derogation from paragraph 1, where it is not possible to take the fingerprints of an applicant on account of measures taken to ensure the health of the applicant ***or*** the protection of public health, Member States shall take and send the fingerprints of the applicant as soon as possible and no later than 48 hours after these grounds no longer prevail.

2. By way of derogation from paragraph 1, where it is not possible to take the fingerprints of an applicant on account of measures taken to ensure the health of the applicant, ***for*** the protection of public health ***or for technical reasons***, Member States shall take and send the fingerprints of the applicant as soon as possible and no later than 48 hours after these grounds no longer prevail.

Justification

Technical defects can occur at any time, hence the need for the addition.

Amendment 17

Proposal for a regulation
Article 14 – paragraph 5

Text proposed by the Commission

5. By way of derogation from paragraph 1, where it is not possible to take the fingerprints of such person on account of measures taken to ensure the health of the person *or* the protection of public health, the Member State concerned shall take and send the fingerprints of the person, in accordance with the deadline set out in paragraph 2, once these grounds no longer prevail.

Amendment

5. By way of derogation from paragraph 1, where it is not possible to take the fingerprints of such person on account of measures taken to ensure the health of the person, *for* the protection of public health *or for technical reasons*, the Member State concerned shall take and send the fingerprints of the person, in accordance with the deadline set out in paragraph 2, once these grounds no longer prevail.

Justification

Technical defects can occur at any time, hence the need for the addition.

Amendment 18

Proposal for a regulation
Article 21 – paragraph 1

Text proposed by the Commission

1. Requests for comparison with EURODAC data by Europol shall take place within the limits of its mandate and where necessary for the performance of its tasks pursuant to the Europol Decision *and for the purposes of a specific analysis or an analysis of a general nature and of a strategic type.*

Amendment

1. Requests for comparison with EURODAC data by Europol shall take place within the limits of its mandate and where necessary for the performance of its tasks pursuant to the Europol Decision.

Justification

This amendment is proposed in order to align the text with the conditions set forth in Article 20(1)(b).

Amendment 19**Proposal for a regulation****Article 29 – paragraph 1 – point e***Text proposed by the Commission*

(e) the ***existence of the*** right of access to data relating to him/her, and the right to request that inaccurate data relating to him/her be corrected or that unlawfully processed data relating to them be erased, as well as ***the right to receive information on*** the procedures for exercising those rights including the contact details of the controller and the National Supervisory Authorities referred to in Article 31(1).

Amendment

(e) the right of access to data relating to him/her, and the right to request that inaccurate data relating to him/her be corrected or that unlawfully processed data relating to them be erased, as well as the procedures for exercising those rights including the contact details of the controller and the National Supervisory Authorities referred to in Article 31(1).

Justification

The objective is to clarify that the person covered by the Regulation shall be informed about the "right of access to data relating to him/her" instead of "the existence of the right". In the same line it is clearer to indicate that the person will be informed about "the procedures for exercising the rights" as it has also been suggested by the European Data Protection Supervisor in its opinion.

Amendment 20**Proposal for a regulation****Article 29 – paragraph 1 – subparagraph 5***Text proposed by the Commission*

Where a person covered by this Regulation is a minor, Member States shall provide the information in an age-appropriate manner.

Amendment

Where a person covered by this Regulation is a minor, Member States shall provide the information in an age-appropriate manner.

The best interests of the child shall be a primary consideration of Member States when applying this Article.

Or. en

Justification

This amendment brings this Regulation in line with the Directive on minimum standards on procedures in Member States for granting and withdrawing international protection which specifies that the best interests of the child should be a primary consideration when implementing the Regulation. Also the EDPS in its 2008-2009 Activity Report highlighted the rights of persons subjected to age evaluations.

EXPLANATORY STATEMENT

EURODAC was established by Regulation (EC) No 2725/2000 concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of the Dublin Convention¹. The Commission adopted in December 2008² a recast proposal for the amendment of the EURODAC Regulation with the aim of ensuring a more efficient support to the application of the Dublin Regulation, properly addressing data protection concerns and taking into account developments in the asylum *acquis* and technical progress which took place since the adoption of the Regulation in 2000. It also aligned the IT management framework to that of the SIS II and VIS Regulations by providing for the taking over of the tasks of the operational management for EURODAC by the future Agency for the operational management of large-scale IT systems in the area of freedom, security and justice.³

In May 2009, the European Parliament adopted a legislative resolution⁴ endorsing the Commission proposal subject to a number of amendments.

The Commission adopted an amended proposal in September 2009 in order to, on the one hand, take into account the resolution of the European Parliament and the results of negotiations in the Council, and, on the other hand, introduce the possibility for Member States' law enforcement authorities and Europol to access the EURODAC central database for the purposes of prevention, detection and investigation of terrorist offences and other serious criminal offences.⁵ The proposal introduced a bridging clause to allow access for law enforcement purposes as well as the necessary accompanying provisions and amended the December 2008 proposal. At the same time the Commission put forward the Proposal for a Council Decision on requesting comparisons with EURODAC data by Member States' law enforcement authorities and Europol for law enforcement purposes⁶, which indicated the

¹ OJ L 062, 05.03.2002, p. 1.

² Proposal for a Regulation of the European Parliament and of the Council concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EC) No [...] [establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person], COM(2008)825 final.

³ The Proposal for a Regulation of the European Parliament and of the Council establishing an Agency for the operational management of large-scale IT systems in the area of freedom, security and justice [COM(2009) 293 final] was adopted on 24 June 2009. An amended proposal was adopted on 19 March 2010: Amended proposal for a Regulation (EU) No .../... of the European Parliament and of the Council on establishing an Agency for the operational management of large-scale IT systems in the area of freedom, security and justice, COM(2010)93.

⁴ Establishment of 'Eurodac' for the comparison of fingerprints (recast), P6_TA(2009)0378.

⁵ Such a proposal was called for by Council Conclusions on access to Eurodac by Member States' police and law enforcement authorities as well as Europol of 12 and 13 June 2007.

⁶ COM(2009) 344.

precise modalities of such access.¹

The European Parliament did not issue a legislative resolution on the September 2009 proposals.

The Council Decision proposal lapsed as a result of the entry into force of the Lisbon Treaty. The Communication on the consequences of the entry into force of the Treaty of Lisbon for ongoing interinstitutional decision-making procedures² indicated that such proposal would be formally withdrawn and replaced with a new proposal to take account of the new framework of the Treaty on the Functioning of the European Union (TFEU).

The proposal submitted by the Commission on 11 October 2010 did not include the option of access for law enforcement purposes present in the September 2009 proposal and introduced two additional elements:

- in Article 18(4) the need for a check of the automated hit result by a fingerprint expert is clarified
- in Article 24(1) appropriate provisions are inserted in order to allow the committee under the Dublin Regulation to include information on EURODAC in the leaflet to be prepared under Article 4(3).

On 3 February 2011, the Committee on Civil Liberties, Justice and Home Affairs adopted an orientation vote on the Commission's proposal.

The current proposal withdraws the 2010 proposal and replaces it with a new one in order first to better take into account the resolution of the European Parliament and the results of negotiations in the Council; second to introduce the possibility for Member States' law enforcement authorities and Europol to access the EURODAC central database for the purposes of prevention, detection and investigation of terrorist offences and other serious criminal offences. Including law enforcement access for EURODAC was needed as part of a balanced deal on the negotiations of the Common European Asylum System package with a view to completing the package by the end of 2012.

Organised crime networks from third countries seek to abuse the asylum system to bring criminal members of a network into an EU Member State as contacts for their criminal business. Once within the territory of an EU Member State, these members of the organised crime network ask for asylum with false identities in order to get a legitimate stay in the EU without any criminal record. Moreover, information provided by Europol suggests that human traffickers also seek to abuse the asylum system by requesting asylum alleging a false country of origin. With these concerns in mind, your Rapporteur welcomes the possibility for Member States' designated authorities and the European Police Office (Europol) to request the comparison of fingerprint data -on a hit/no hit basis- with those stored in the EURODAC database for the fight against terrorist offences and other serious criminal offences. The Rapporteur believes that providing for the law enforcement access to EURODAC is a significant step forward from the last proposal, capable of preventing the type of situations described above while being accompanied by the necessary safeguards.

Your Rapporteur supports the Commission's proposal. She has put forward a series of

¹ COM(2010) 555, p.2-3.

² COM(2009) 665 final/2.

amendments that can be summed up in two categories: technical amendments (e.g.: alignment to Lisbon Treaty provisions, references to the recast proposal on "Qualification Directive", internal references) and amendments aimed at providing clarifications of the text (e.g.: replacement of term "technology" by "techniques" in Article 4, additions in the Statistics section and clarification concerning the right of access to data). Additional amendments aim to include relevant remarks of the European Data Protection Supervisor.

ANNEX: LETTER FROM THE COMMITTEE ON LEGAL AFFAIRS

Ref.: D(2012)46723

Mr Juan Fernando López Aguilar
Chair of the Committee on Civil Liberties, Justice and Home Affairs
ASP 11G306
Brussels

***Subject:** Amended proposal for a regulation of the European Parliament and of the Council on the establishment of 'EURODAC' for the comparison of fingerprints for the effective application of Regulation (EU) No [.../...] (establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person) and to request comparisons with EURODAC data by Member States' law enforcement authorities and Europol for law enforcement purposes and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (recast)
(COM(2012)0254 – C7-0148/2012 – 2008/0242(COD))*

Dear Chairman,

The Committee on Legal Affairs, which I am honoured to chair, has examined the proposal referred to above, pursuant to Rule 87 on Recasting, as introduced into the Parliament's Rules of Procedure.

Paragraph 3 of that Rule reads as follows:

"If the committee responsible for legal affairs considers that the proposal does not entail any substantive changes other than those identified as such in the proposal, it shall inform the committee responsible.

In such a case, over and above the conditions laid down in Rules 156 and 157, amendments shall be admissible within the committee responsible only if they concern those parts of the proposal which contain changes.

However, if in accordance with point 8 of the Interinstitutional Agreement, the committee responsible intends also to submit amendments to the codified parts of the proposal, it shall

immediately notify its intention to the Council and to the Commission, and the latter should inform the committee, prior to the vote pursuant to Rule 54, of its position on the amendments and whether or not it intends to withdraw the recast proposal."

Following the opinion of the Legal Service, whose representatives participated in the meetings of the Consultative Working Party examining the recast proposal, and in keeping with the recommendations of the draftsman, the Committee on Legal Affairs considers that the proposal in question does not include any substantive changes other than those identified as such in the proposal and that, as regards the codification of the unchanged provisions of the earlier acts with those changes, the proposal contains a straightforward codification of the existing texts, without any change in their substance.

In conclusion, after discussing it at its meeting of 17 September 2012, the Committee on Legal Affairs, by 17 votes in favour, 2 against and no abstentions¹, recommends that your Committee, as the committee responsible, proceed to examine the above proposal in accordance with Rule 87.

Yours faithfully,

Klaus-Heiner LEHNE

Encl.: Opinion of the Consultative Working Party.

¹ Members present : Charalampos Angourakis; Raffaele Baldassarre; Edit Bauer; Luigi Berlinguer; Sebastian Valentin Bodu; Piotr Borys; Françoise Castex; Christian Engström; Marielle Gallo; Eva Lichtenberger; Antonio Masip Hidalgo; Bernhard Rapkay; Evelyn Regner; Dagmar Roth-Behrendt; Rebecca Taylor; Alexandra Thein; Axel Voss; Cecilia Wikström; Tadeusz Zwiefka.

ANNEX: OPINION OF THE CONSULTATIVE WORKING PARTY OF THE LEGAL SERVICES OF THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE COMMISSION



CONSULTATIVE WORKING PARTY
OF THE LEGAL SERVICES

Brussels, 18 July 2012

OPINION

**FOR THE ATTENTION OF THE EUROPEAN PARLIAMENT
THE COUNCIL
THE COMMISSION**

Amended Proposal for a regulation of the European Parliament and of the Council on the establishment of 'EURODAC' for the comparison of fingerprints for the effective application of Regulation (EU) No [.../...] (establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person) and to request comparisons with EURODAC data by Member States' law enforcement authorities and Europol for law enforcement purposes and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (recast)

COM(2012)0254 of 30.5.2012 – 2008/0242(COD)

Having regard to the Inter-institutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts, and in particular to point 9 thereof, the Consultative Working Party consisting of the respective legal services of the European Parliament, the Council and the Commission met on 14 and 20 June 2012 for the purpose of examining, among others, the aforementioned proposal submitted by the Commission.

At those meetings, an examination of the proposal for a Regulation of the European Parliament and of the Council recasting Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of the Dublin Convention and Council Regulation (EC) No 407/2002 of 28 February 2002 laying down certain rules to implement Regulation (EC) No 2725/2000 concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of the Dublin Convention resulted in the Consultative Working Party's establishing, by common accord, as follows.

1) As far as the explanatory memorandum is concerned, in order to be drafted in full compliance with the relevant requirements laid down by the Inter-institutional Agreement such a document should have specified which provisions of the earlier act remain unchanged in the proposal, as is provided for under point 6(a)(iii) of that agreement.

2) In the recast proposal, the following parts of text should have been marked with the grey-shaded type generally used for identifying substantive changes:

- in the title of the act, the final words "and to request comparisons with EURODAC data by Member States' law enforcement authorities and Europol for law enforcement purposes and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice";

- in Article 8(1), introductory wording, in Article 24(1), (5) and (6) and in Article 26, the replacement of the words "Central Unit" with the word "Agency";

- in Article 9(3), the words "with exception to those transmitted in accordance with Article 10 point (b)";

- in Article 9(5), the replacement of the article number "5(1)" with the number "8(a) to (g)";

- in Article 17(4), the deletion of the words "and 6";

- in Article 24(2), the words "Article 14(2) and Article 17(2)";

- in Article 27(3), the deletion of the article number "12(4)(a)".

3) The existing wordings of Recitals 13, 14, 20 and 23 of Regulation (EC) No 2725/2000 should have been present in the text of the recast proposal. Those wordings should have been identified by using the double strikethrough and the grey-shaded type generally used for marking substantive changes consisting of the proposed deletion of existing texts.

4) In Article 2(1)(c)(i) the reference made to "Article 6" appears to be inaccurate and should be replaced by a correct reference.

5) In Article 2(1)(c)(ii) the reference made to "Article 11" should be adapted so as to read as a reference made to "Article 14".

6) In Article 2(1)(c)(iii) the reference made to "Article 14" should be adapted so as to read as a reference made to "Article 17".

7) In Article 2(e) the reference made to "Article 18(4)" should be adapted so as to read as a reference made to "Article 25(4)".

8) In Article 8(1)(a), the words "applicants for asylum and the", appearing before the word "persons" in the existing wording of Article 3(3), first subparagraph, point (a), of Regulation (EC) No 2725/2000, should have been present and should have been identified with double strikethrough.

9) In Article 9(3), the words "by the Central Unit", appearing between the words "shall be

compared" and "with the fingerprint data" in the existing wording of Article 4(3) of Regulation (EC) No 2725/2000, should have been present and should have been identified with double strikethrough.

10) In Article 16(2), the reference made to "Article 28(3)" should be adapted so as to read as a reference made to "Article 27(3)".

11) In Article 29(13), the reference made to "paragraph 13" should be adapted so as to read as a reference made to "paragraph 11".

12) The existing wording of Article 20 of Regulation (EC) No 2725/2000 should have been present and should have been identified with double strikethrough.

13) The introductory wording and points (a) and (b) of Article 1 of Regulation (EC) No 407/2002 should have been present in the recast text and should have been identified with double strikethrough. Point (c) of that same article should also have been present and should have been identified with double strikethrough and grey shaded type.

14) The existing wording of Article 5 of Regulation (EC) No 407/2002 should have been present in the recast text and should have been identified with double strikethrough.

In consequence, examination of the proposal has enabled the Consultative Working Party to conclude, without dissent, that the proposal does not comprise any substantive amendments other than those identified as such. The Working Party also concluded, as regards the codification of the unchanged provisions of the earlier act with those substantive amendments, that the proposal contains a straightforward codification of the existing legal text, without any change in its substance.

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