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NOTE

From: Presidency
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Subject: 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 604/2013 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], for identifying an illegally staying third-country national or stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes (recast)

- Addition of persons registered for the purpose of conducting a resettlement and humanitarian admission procedure to Eurodac

Delegations will find in Annex suggestions from the Presidency on the possible addition to Eurodac of data on persons registered for the purpose of conducting a resettlement or humanitarian admission procedure, to be discussed at the Asylum Working Party meeting on 4-5 April 2017.

New text compared to the partial general approach agreed by the Council in December 2016 (document 15119/16) is in **bold underlined**. Only Articles in which changes are being suggested are included in the Annex.

Article 1

Purpose of "Eurodac"

1. A system known as "Eurodac" is hereby established, the purpose of which shall be to:
 - (a) assist in determining which Member State is to be responsible pursuant to Regulation (EU) No [...] for examining an application for international protection lodged in a Member State by a third-country national or a stateless person, and otherwise to facilitate the application of Regulation (EU) No [...] under the conditions set out in this Regulation;

(aa) facilitate the application of Regulation (EU) No [...] (Resettlement Regulation) under the conditions set out in this Regulation;
 - (b) assist with the control of illegal immigration to and secondary movements within the Union and with the identification of illegally staying third-country nationals **and stateless persons** for determining the appropriate measures to be taken by Member States, including removal and **returns of persons staying illegally** [...].
 - (c) lay down the conditions under which Member States' designated authorities and the European Police Office (Europol) may request the comparison of **biometric [or alphanumeric]** [...] data with those stored in the Central System for law enforcement purposes for the prevention, detection or investigation of terrorist offences or of other serious criminal offences.

2. Without prejudice to the processing of data intended for Eurodac by the Member State of origin in databases set up under the latter's national law, **biometric** [...] data and other personal data may be processed in Eurodac only for the purposes set out in this Regulation and [Article [32, 33 and 48(1)(b) [...] of Regulation (EU) No 604/2013].

Article 2

Obligation to take biometric data [...]

1. Member States are obliged to take the **biometric data** [...] of persons referred to in Article 10(1), **12a(1), 12d**, 13(1) and 14(1) for the purposes of Article 1(1)(a), **(aa)** and (b) of this Regulation and shall impose on the data-subject the requirement to provide his or her **biometric data** [...] and inform them as such in accordance with Article 30 of this Regulation.

Article 3

Definitions

1. For the purposes of this Regulation:

(aa) a 'person registered for the purpose of conducting a resettlement and humanitarian admission procedure' means a person who has been registered in accordance with Article 10 (2) of Regulation (EU) No [.../...] (Resettlement Regulation);

(ab) a 'person resettled in accordance with a national resettlement scheme' means a person resettled by a Member State outside the framework of Regulation (EU) No [.../...] (Resettlement Regulation), if that person is granted international protection as defined in Article 2(1) of Regulation (EU) No [.../...] (Qualification Regulation) in accordance with the rules governing the national resettlement scheme;

- (b) 'Member State of origin' means:
- (i) in relation to a person covered by Article 10(1), the Member State which transmits the personal data to the Central System and receives the results of the comparison;
 - (ii) in relation to a person covered by Article 13(1), the Member State which transmits the personal data to the Central System and receives the results of the comparison;
 - (iii) in relation to a person covered by Article 14(1), the Member State which transmits the personal data to the Central System and receives the results of the comparison;
 - (iv) in relation to a person covered by Article 12a(1), the Member State which transmits the personal data to the Central System and receives the results of the comparison;**
 - (v) in relation to a person covered by Article 12d, the Member State which transmits the personal data to the Central System and receives the results of the comparison;**

Article 4

System architecture and basic principles

4. Data on persons covered by Articles 10(1), **12a(1), 12d,** 13(1) and 14(1) which are processed in the Central System shall be processed on behalf of the Member State of origin under the conditions set out in this Regulation and separated by appropriate technical means.

Article 9

Statistics

1. eu-LISA shall draw up statistics on the work of the Central System every month, indicating in particular:
 - (a) the number of data sets transmitted on persons referred to in Articles 10(1), **12a(1), 12d,** 13(1) and 14(1);
 - (b) the number of hits for persons referred to in Article 10(1):
 - (i)** who have subsequently lodged an application for international protection in another Member State,
 - (ii)** **who have subsequently been registered for the purpose of conducting a resettlement and humanitarian admission procedure,**
 - (iii)** who were apprehended in connection with the irregular crossing of an external border, and
 - (iv)** who were found illegally staying in a Member State;
 - (ba) **the number of hits for persons referred to in Article 12a(1):**
 - (i)** **who have subsequently been registered for the purpose of conducting a resettlement and humanitarian admission procedure by another Member State,**
 - (ii)** **who have subsequently lodged an application for international protection in another Member State,**
 - (iii)** **who were apprehended in connection with the irregular crossing of an external border, and**
 - (iv)** **who were found illegally staying in a Member State;**

(bb) the number of hits for persons referred to in Article 12d:

(i) who have subsequently been registered for the purpose of conducting a resettlement and humanitarian admission procedure in accordance with Regulation (EU) No [.../...] (Resettlement Regulation),

(ii) who have subsequently lodged an application for international protection in another Member State,

(iii) who were apprehended in connection with the irregular crossing of an external border, and

(iv) who were found illegally staying in a Member State;

(c) the number of hits for persons referred to in Article 13(1):

(i) who have subsequently lodged an application for international protection,

(ii) who have subsequently been registered for the purpose of conducting a resettlement and humanitarian admission procedure,

(iii) who were apprehended in connection with the irregular crossing of an external border, and

(iv) who were found illegally staying in a Member State;

(d) the number of hits for persons referred to in Article 14(1):

(i) who had previously lodged an application for international protection in another Member State,

(ii) who had previously been registered for the purpose of conducting a resettlement and humanitarian admission procedure,

(iii) who were apprehended in connection with the irregular crossing of an external border, and

(iv) who were found illegally staying in a Member State;

(e) the number of **biometric** [...] data which the Central System had to request more than once from the Member States of origin because the **biometric** [...] data originally transmitted did not lend themselves to comparison using the computerised fingerprint **and facial image** recognition system;

(f) the number of data sets marked **and** [...] unmarked [...] in accordance with Article 19(1) and **19**[...] (2), (3) and (4);

(g) the number of hits for persons referred to in Article 19(1) and (4) for whom hits have been recorded under points (b), (c) and (d) of this Article;

(h) the number of requests and hits referred to in Article 21(1);

(i) the number of requests and hits referred to in Article 22(1);

(j) the number of requests made for persons referred to in Article 31;

(k) [...] the number of hits received from the Central System as referred to in Article 26(6).

2. The monthly statistical data for persons referred to in paragraph 1(a) to **(k)** [...] shall be published and made public by each month. At the end of each year, the yearly statistical data for persons referred to in paragraph 1(a) to **(k)** [...] shall be published and made public by eu-LISA. The statistics shall contain a breakdown of data for each Member State.

3. At the request of the Commission, eu-LISA shall provide it with statistics on specific aspects **related to the implementation of this Regulation as well as the statistics pursuant to paragraph 1, and make it available upon request to a Member State** [...].

- 4. Eu-LISA shall establish, implement and host a central repository in its technical sites containing the data referred to in paragraphs 1 to 3, for research and analysis purposes, which would not allow for the identification of individuals and would allow the authorities listed in paragraph 5 to obtain customisable reports and statistics. Access to the central repository shall be granted by means of secured access through the TESTING with control of access and specific user profiles solely for the purpose of reporting and statistics.**
- 5. Access to the central repository shall be granted to eu-LISA, the Commission and to the authorities of Member States, which have been listed as the designated authorities responsible for carrying out tasks related to the application of this Regulation pursuant to Article 28(2). Access may also be granted to authorised users of other Justice and Home Affairs Agencies if access to the data hosted in the central repository is relevant for the implementation of their tasks.**

CHAPTER IIA

PERSONS REGISTERED FOR THE PURPOSE OF CONDUCTING A RESETTLEMENT AND HUMANITARIAN ADMISSION PROCEDURE

Section 1

Persons registered for the purpose of conducting a resettlement and humanitarian admission procedure

Article 12a

Collection and transmission of biometric data

1. Each Member State shall at the time of registration in accordance with Regulation (EU) No [.../...] (Resettlement Regulation) take the biometric data of every person of at least six years of age and shall transmit them as soon as possible and no later than 72 hours after registration together with the data referred to in Article 12c (c) to (l) of this Regulation to the Central System.

Non-compliance with the 72-hour time-limit shall not relieve Member States of the obligation to take and transmit the biometric data [...] to the Central System. Where the condition of the fingertips does not allow the taking of the fingerprints of a quality ensuring appropriate comparison under Article 26, the Member State of origin shall retake the fingerprints of that person and resend them as soon as possible and no later than 48 hours after they have been successfully retaken.

In the event of serious technical problems, Member States may extend the 72-hour time-limit by a maximum of a further 48 hours in order to carry out their national continuity plans.

2. Where requested by the Member State concerned, the biometric [...] data may be taken and transmitted by other Member States.

Article 12b

Information on the status of the data subject

The following information shall be sent to the Central System in order to be stored in accordance with Article 17 (1) for the purpose of transmission under Articles 15 and 16:

- (a) in case of a person in relation to whom a positive conclusion on admission was reached, as soon as the Member State of origin reached that conclusion, that Member State shall update its data set recorded in accordance with Article 12c relating to the person concerned by adding the date of the positive conclusion;**
- (b) in case of a person in relation to whom a negative conclusion on admission was reached, as soon as the Member State of origin reached that conclusion, that Member State shall update its data set recorded in conformity with Article 12c relating to the person concerned by adding the date of the negative conclusion.**

Article 12c

Recording of data

Only the following data shall be recorded in the Central System:

- (a) fingerprint data;**
- (b) a facial image;**
- (c) surname(s) and forename(s), name(s) at birth and previously used names and any aliases, which may be entered separately;**
- (d) nationality(ies);**
- (e) place and date of birth;**
- (f) Member State of origin, place and date of the registration;**
- (g) sex;**
- (h) where available, type and number of identity or travel document; three letter code of the issuing country and expiry date [...];**
- (i) reference number used by the Member State of origin;**
- (j) date on which the biometric data were taken;**
- (k) date on which the data were transmitted to the Central System;**
- (l) operator user ID;**
- (m) in accordance with Article 12b(a), the date of the positive conclusion;**
- (n) in accordance with Article 12b(b), the date of the negative conclusion and whether the person was excluded on the basis of one of the grounds referred to in Article 6(1) of Regulation (EU) No [.../...] (Resettlement Regulation).**

Section 2

Persons resettled in accordance with a national resettlement scheme

Article 12d

Collection and transmission of biometric data

Each Member State shall, upon arrival on its territory, take the biometric data of every person of at least six years of age, and shall transmit them as soon as possible and no later than 72 hours after arrival together with the data referred to in Article 12e (c) to (l) to the Central System.

Non-compliance with the 72-hour time-limit shall not relieve Member States of the obligation to take and transmit the biometric data [...] to the Central System. Where the condition of the fingertips does not allow the taking of the fingerprints of a quality ensuring appropriate comparison under Article 26, the Member State of origin shall retake the fingerprints of that person and resend them as soon as possible and no later than 48 hours after they have been successfully retaken.

In the event of serious technical problems, Member States may extend the 72-hour time-limit by a maximum of a further 48 hours in order to carry out their national continuity plans.

Article 12e

Recording of data

Only the following data shall be recorded in the Central System:

- (a) fingerprint data;**
- (b) a facial image;**
- (c) surname(s) and forename(s), name(s) at birth and previously used names and any aliases, which may be entered separately;**
- (d) nationality(ies);**
- (e) place and date of birth;**
- (f) Member State of origin, place and date of the registration;**
- (g) sex;**
- (h) where available, type and number of identity or travel document; three letter code of the issuing country and expiry date [...];**
- (i) reference number used by the Member State of origin;**
- (j) date on which the biometric data were taken;**
- (k) date on which the data were transmitted to the Central System;**
- (l) operator user ID.**

CHAPTER V

PROCEDURE FOR COMPARISON OF DATA FOR APPLICANTS FOR INTERNATIONAL PROTECTION, PERSONS REGISTERED FOR THE PURPOSE OF CONDUCTING A RESETTLEMENT AND HUMANITARIAN ADMISSION PROCEDURE, PERSONS RESETTLED IN ACCORDANCE WITH A NATIONAL RESETTLEMENT SCHEME AND THIRD-COUNTRY NATIONALS AND STATELESS PERSONS APPREHENDED CROSSING THE BORDER IRREGULARLY OR ILLEGALLY STAYING IN THE TERRITORY OF A MEMBER STATE

Article 15

Comparison of **biometric** [...] data

1. **Biometric** [...] data transmitted by any Member State, with the exception of those transmitted in accordance with Article 11(b) and (c), shall be compared automatically with the **biometric** [...] data transmitted by other Member States and already stored in the Central System in accordance with Article 10(1), **12a(1), 12d**, 13(1) and 14(1).
2. The Central System shall ensure, at the request of a Member State, that the comparison referred to in paragraph 1 of this Article covers the **biometric** [...] data previously transmitted by that Member State, in addition to the **biometric** [...] data from other Member States.
3. The Central System shall automatically transmit the hit or the negative result of the comparison to the Member State of origin following the procedures set out in Article 26(4). Where there is a hit, it shall transmit for all data sets corresponding to the hit the data referred to in Article 12, **12c, 12e**, 13(2) and 14(2) along with, where appropriate, the mark referred to in Article 19(1) and (4). Where a negative [...] result is received, the data referred to in Article 12, **12c, 12e**, 13(2) and 14(2) shall not be transmitted.

4. Where [...] a hit is received by a Member State from Eurodac that can assist that Member State to carry out its obligations under Article 1(1)(a), that evidence shall take precedence over any other hit received.

Article 16

Comparison of facial image data

- (1) Where the condition of the fingertips does not allow for the taking of fingerprints of a quality ensuring appropriate comparison under Article 26 [...], a Member State **shall** [...] carry out a comparison of facial image data [...].
- (2) Facial image data and data relating to the sex of the data-subject may be compared automatically with the facial image data and personal data relating to the sex of the data-subject transmitted by other Member States and already stored in the Central System in accordance with Article 10(1), **12a(1), 12d**, 13(1) and 14(1) with the exception of those transmitted in accordance with Article 11(b) and (c).
- (3) The Central System shall ensure, at the request of a Member State that the comparison referred to in paragraph 1 of this Article covers the facial image data previously transmitted by that Member State, in addition to the facial image data from other Member States.
- (4) The Central System shall automatically transmit the hit or the negative result of the comparison to the Member State of origin following the procedures set out in Article 26 (5) [...]. Where there is a hit, it shall transmit for all data sets corresponding to the hit the data referred to in Article 12, **12c, 12e**, 13(2) and 14(2) along with, where appropriate, the mark referred to in Article 19 [...] (1) and (4). Where a negative hit result is received, the data referred to in Article 12, **12c, 12e**, 13(2) and 14(2) shall not be transmitted.
- (5) Where [...] a hit is received by a Member State from Eurodac that can assist that Member State to carry out its obligations under Article 1(1)(a), that evidence shall take precedence over any other hit received.

CHAPTER VI

DATA STORAGE, ADVANCED DATA ERASURE AND MARKING OF DATA

Article 17

Data storage

1. For the purposes laid down in Article 10(1), each set of data relating to an applicant for international protection, as referred to in Article 12, shall be stored in the Central System for ten years from the date on which the **biometric data** [...] were taken.
 - 1a. For the purposes laid down in Article 12a(1), each set of data relating to a third-country national or stateless person to be admitted, as referred to in Article 12c, shall be stored in the Central System for ten years from the date on which the biometric data were taken.**
 - 1b. For the purposes laid down in Article 12d, each set of data relating to a third-country national or stateless person to be resettled, as referred to in Article 12e, shall be stored in the Central System for ten years from the date on which the biometric data were taken.**
2. For the purposes laid down in Article 13(1), each set of data relating to a third-country national or stateless person as referred to in Article 13(2) shall be stored in the Central System for five years from the date on which his or her **biometric data** [...] were taken.
3. For the purposes laid down in Article 14(1), each set of data relating to a third-country national or stateless person as referred to in Article 14(2) shall be stored in the Central System for five years from the date on which his or her **biometric data** [...] were taken.
4. Upon expiry of the data storage periods referred to in paragraphs 1 to 3 of this Article, the Central System shall automatically erase the data of the data-subjects from the Central System.

Article 18

Advanced data erasure

1. Data relating to a person who has acquired citizenship of any Member State before expiry of the period referred to in Article 17(1), **(1a), (1b)**, (2) or (3) shall be erased from the Central System in accordance with Article 28(4) as soon as the Member State of origin becomes aware that the person concerned has acquired such citizenship.

1a. Data relating to a person in relation to whom a negative conclusion on admission was reached in accordance with Regulation (EU) No [.../...] (Resettlement Regulation) shall be erased from the Central System in accordance with Article 28(4) five years after the date on which the biometric data were taken.

2. The Central System shall, as soon as possible and no later than after 72 hours, inform all Member States of origin of the erasure of data in accordance with paragraphs **1 and 1a** by another Member State of origin having produced a hit with data which they transmitted relating to persons referred to in Article 10(1), **12a(1), 12d**, 13(1) or 14(1).

Article 19

Marking of data

1. For the purposes laid down in Article 1(1)(a) **and in Article 1(1)(aa)**, the Member State which granted international protection to an applicant for international protection **or to a person registered for the purpose of conducting a resettlement and humanitarian admission procedure and** whose data were previously recorded in the Central System pursuant to Article 12, **12c or 12e** shall mark the relevant data in conformity with the requirements for electronic communication with the Central System established by eu-LISA. That mark shall be stored in the Central System in accordance with Article 17(1) for the purpose of transmission under Article 15 **and 16**. The Central System shall, as soon as possible and no later than 72 hours, inform all Member States of origin of the marking of data by another Member State of origin having produced a hit with data which they transmitted relating to persons referred to in Article 10(1), **12a(1), 12d**, 13(1) or 14(1). Those Member States of origin shall also mark the corresponding data sets.
2. The data of beneficiaries of international protection stored in the Central System and marked pursuant to paragraph 1 of this Article shall be made available for comparison for the purposes laid down in Article 1(1)(c) **until such data is automatically erased from the Central System in accordance with Article 17(4)** [...].

[...]
