

To the Presidents of

EuroMed Rights  
Mr. Michel Tubiana

AEDH  
Mr. Dominique Guibert

Via E-Mail: [advocacy@euromedrights.net](mailto:advocacy@euromedrights.net)

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DVR: 0000051

Vienna, 20 December 2017

**Subject:** Trilogue meeting on the Reform of the Common European Asylum System (EURODAC)

Dear Presidents,

the Austrian Ministry of the Interior has taken notice of your letter sent on 1st December 2017 with the subject: "Trilogue meeting on the Reform of the Common European Asylum System (EURODAC)".

First of all let me thank you for providing your concerns regarding the area of tension between EURODAC, the International Convention on the Rights of Child and your view on proportionality and necessity on the proposed broader use of EURODAC.

The Convention on the Rights of the Child was signed by Austria on 26th January 1990, approved by the Austrian National Council on 26th June 1992 and ratified on 6th August 1992 (Federal Law Gazette 1993/7). The Convention on the Rights of the Child entered into force in Austria on 5 September 1992. Therefore best interests of the child are a primary consideration in all actions of public and private institutions affecting children.

For EURODAC the Commission proposed to change the lower age limit for taking fingerprints starting at the age of six years. According to experts, six years is the age at which fingerprint recognition can be achieved with a satisfactory level of accuracy; also the Commission explains this modification by stating that many families travel to Europe with very young children who may get separated from their parents on the way. Collecting children's fingerprints and facial images would help authorities to query the system to

determine whether they have ended up in another Member State. The Commission also sees the modification as beneficial to unaccompanied minors, who might abscond from care institutions or child social services, and who cannot be identified under the current legal framework.

The "EXPLANATORY MEMORANDUM" of the Commission proposal states the following:

"The proposal also positively contributes to the protection of the rights of the child and to the respect of the right to respect for family life. Many applicants for international protection and third-country nationals arriving irregularly to the European Union travel with families and in many cases very young children. Being able to identify these children with the help of fingerprints and facial images will help identify children in cases where they are separated from their families by allowing a Member State to follow up a line of inquiry where a fingerprint match indicates that they were present in another Member State. It would also strengthen the protection of unaccompanied minors who do not always formally seek international protection and who abscond from care institutions or child social services under which their care has been assigned.

The obligation to take fingerprints shall be implemented in full respect of the right to human dignity and of the rights of the child. The proposal reaffirms the obligation upon Member States to ensure that the procedure for taking fingerprints and a facial image 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. Penalties attached to the failure to comply with the obligation to comply with the fingerprinting process shall be in accordance with the principle of proportionality. In particular, the proposal explicitly states that detention should only be used in this context as a means of last resort if necessary to determine or verify a third-country national's identity. As regards children, the taking of fingerprints from minors, particularly young children, should be carried out in a child-sensitive and child-friendly manner. Relevant provisions also ensure that a child is not subject to any administrative sanctions where there is a justified reason for not submitting their fingerprints or a facial image and that the authorities of a Member State must ensure that where they suspect that there may be child protection issues following a refusal to submit fingerprints or where a child may have damaged fingertips or hands, they should refer the child to the national child protection authorities.

The implementation of the proposal shall be without prejudice to the rights of applicant for and beneficiaries of international protection, in particular as regards the prohibition in the

event of removal, expulsion and extradition, including in the context of transfers of personal data to third countries.”

Let me stress that the proposal is still under negotiation in the co-decision procedure and Austria will contribute to the discussions in a manner that the principle of best interests of the child remains a primary consideration within the European legislative procedure.

With best regards

A handwritten signature in blue ink that reads "Ariane Holezek". The signature is written in a cursive, flowing style.

Mag. Ariane Holezek, LL.M.