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## **REPORT**

on the proposal for a Council Regulation concerning the establishment of  
'Eurodac' for the comparison of fingerprints for the effective application of the  
Dublin Convention  
(8417/2000 – C5-0256/2000 – 1999/0116(CNS)) (reconsultation)

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

Rapporteur: Hubert Pirker

### ***Symbols for procedures***

- \* Consultation procedure  
*majority of the votes cast*
- \*\*I Cooperation procedure (first reading)  
*majority of the votes cast*
- \*\*II Cooperation procedure (second reading)  
*majority of the votes cast, to approve the common position*  
*majority of Parliament's component Members, to reject or amend*  
*the common position*
- \*\*\* Assent procedure  
*majority of Parliament's component Members except in cases*  
*covered by Articles 105, 107, 161 and 300 of the EC Treaty and*  
*Article 7 of the EU Treaty*
- \*\*\*I Codecision procedure (first reading)  
*majority of the votes cast*
- \*\*\*II Codecision procedure (second reading)  
*majority of the votes cast, to approve the common position*  
*majority of Parliament's component Members, to reject or amend*  
*the common position*
- \*\*\*III Codecision procedure (third reading)  
*majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission)

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## PROCEDURAL PAGE

At the sitting of 18 November 1999, Parliament adopted its position on the proposal for a Council Regulation amending Regulation (EC) concerning the establishment of 'Eurodac' for the comparison of the fingerprints of applicants for asylum and certain other aliens (COM(1999) 260 – C5-0082/1999 - 1999/0116 (CNS)).

By letter of 25 May 2000 the Council decided to reconsult Parliament, pursuant to Article 63(1) of the EC Treaty, on the proposal for a Council Regulation (EC) concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention (8417/2000).

At the sitting of 13 June 2000 the President of Parliament announced that she had referred the Council text to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible and to the Committee on Legal Affairs and the Internal Market for its opinion (C5-0256/2000).

At its meeting of 21 June 2000, the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs confirmed the appointment of Hubert Pirker as rapporteur.

It considered the Council draft and the draft report at its meetings of 21 June, 12 July and 29 August 2000.

At the last meeting it adopted the draft legislative resolution by 20 votes to 16 with 3 abstentions.

The following were present for the vote: Graham R. Watson, chairman; Robert J.E. Evans, Enrico Ferri and Bernd Posselt, vice-chairmen; Hubert Pirker, rapporteur; Alima Boumdienne-Thiery, Marco Cappato, Michael Cashman, Charlotte Cederschiöld, Carmen Cerdeira Morterero (for Olivier Duhamel), Ozan Ceyhun, Thierry Cornillet, Raffaele Costa (for Rocco Buttiglione, pursuant to Rule 153(2)), Gérard M.J. Deprez, Giuseppe Di Lello Finuoli, Glyn Ford (for Elena Ornella Paciotti), Evelyne Gebhardt (for Martin Schulz), Vitalino Gemelli (for Marcello Dell' Utri, pursuant to Rule 153(2)), Jorge Salvador Hernández Mollar, Anna Karamanou, Margot Keßler, Timothy Kirkhope, Ewa Klamt, Alain Krivine (for Pernille Frahm), Baroness Sarah Ludford, Luis Marinho (for Gianni Vattimo), Juan Andrés Naranjo Escobar (for Daniel J. Hannan), Hartmut Nassauer, William Francis Newton Dunn (for Mary Elizabeth Banotti), Martine Roure (for Sérgio Sousa Pinto), Gerhard Schmid, Ingo Schmitt (for Carlos Coelho), Patsy Sørensen, Joke Swiebel, Fodé Sylla, Anna Terrón I Cusí, Maurizio Turco (for Frank Vanhecke), Christian von Boetticher and Jan-Kees Wiebenga.

The Committee on Legal Affairs and the Internal Market decided on 21 June 2000 not to deliver an opinion.

The report was tabled on 1 September 2000.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

## LEGISLATIVE PROPOSAL

**Proposal for a Council Regulation concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention. (8417/2000 – C5-0256/2000 – 1999/0116(CNS)) (reconsultation)**

**The proposal was amended as follows:**

Council draft<sup>1</sup>

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Amendments by Parliament

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(Amendment 1)  
Applies to entire text

Replace '*alien(s)*' by '*third-country national(s)*' throughout the text.

*Justification:*

*'Alien(s)' has negative connotations and is best replaced by 'third-country national(s)'.*

(Amendment 2)  
Recital 6

It is also necessary to require the Member States promptly to take fingerprints of every applicant for asylum and of every *alien* who is apprehended in connection with the irregular crossing of an external border of *a Member State*, if they are at least **14** years of age.

It is also necessary to require the Member States promptly to take fingerprints of every applicant for asylum and of every *third-country national* who is apprehended in connection with the irregular crossing of an external border of *the Community*, if they are at least **18** years of age.

*Justification:*

*The threshold of 14 is contrary to the existing international instruments on children's rights.*

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<sup>1</sup> OJ C not yet published

(Amendment 3)  
Recital 9

The conservation period should be shorter in certain special situations where there is no need to keep fingerprint data for that length of time: fingerprint data *should* be erased immediately once *aliens obtain citizenship of a Member State*.

The conservation period should be shorter in certain special situations where there is no need to keep fingerprint data for that length of time: fingerprint data *shall* be erased immediately once *the person concerned obtains a residence permit*.

*Justification:*

*There is no justification for keeping the fingerprints of someone whose situation has been regularised.*

(Amendment 4)  
Recital 13

*Since the Member States alone are responsible for identifying and classifying the results of comparisons transmitted by the Central Unit as well as for the blocking of data relating to persons admitted and recognised as refugees and since this responsibility concerns the particularly sensitive area of the processing of personal data and could affect the exercise of individual freedoms, there are specific grounds for the Council reserving for itself the exercise of certain implementing powers, relating in particular to the adoption of measures ensuring the safety and reliability of such data.*

Deleted

*Justification:*

*Follows from Amendment 15.*

(Amendment 5)

Recital 14

The measures necessary for the implementation of *other* provisions of this Regulation shall be adopted in accordance with Decision 1999/468/EC determining the provisions for the exercise of implementing powers conferred on the Commission.

The measures necessary for the implementation of *the* provisions of this Regulation shall be adopted in accordance with Decision 1999/468/EC determining the provisions for the exercise of implementing powers conferred on the Commission

*Justification:*

*Follows from Amendment 15.*

(Amendment 6)

Article 3 (4)

Pursuant to the procedure laid down in Article 23(2), the Central Unit may be charged with carrying out certain other statistical tasks on the basis of the data processed at the Central Unit.

Pursuant to the procedure laid down in Article 22, the Central Unit may be charged with carrying out certain other statistical tasks on the basis of the data processed at the Central Unit.

*Justification:*

*Follows from amendment 15.*

(Amendment 7)

Article 4(1)

Each Member State shall promptly take the fingerprints of all fingers of every applicant for asylum of at least **14** years of age and shall promptly transmit the data referred to in points (a) to (f) of Article 5 to the Central Unit. The procedure for taking fingerprints shall be determined in accordance with the national practice of the Member State concerned and in accordance with the safeguards laid down in the European Convention on Human Rights and in the United Nations Convention on the Rights of the Child.

Each Member State shall promptly take the fingerprints of all fingers of every applicant for asylum of at least **18** years of age and shall promptly transmit the data referred to in points (a) to (f) of Article 5 to the Central Unit. The procedure for taking fingerprints shall be determined in accordance with the national practice of the Member State concerned and in accordance with the safeguards laid down in the European Convention on Human Rights and in the United Nations Convention on the Rights of the Child.

*Justification:*

*The guarantees on privacy set out in the European Convention on Human Rights and, in the case of persons aged under 18, in the United Nations Convention on the Rights of the Child, constitute the necessary protection against abusive application of this regulation. It would be excessive to take fingerprint data as a routine practice from the age of 14: the age of 18, as the age of majority, should be adopted as the standard minimum age.*

(Amendment 8)  
Article 4(7)

The implementing rules setting out the procedures necessary for the application of paragraphs 1 to 6 shall be adopted in accordance with the procedure laid down in Article 22(1).

The implementing rules setting out the procedures necessary for the application of paragraphs 1 to 6 shall be adopted in accordance with the procedure laid down in Article 22.

*Justification:*

*Follows from amendment 15.*

(Amendment 9)  
Article 7

Data relating to a person who has acquired citizenship of any Member State ***before expiry of the period referred to in Article 6*** shall be erased from the central database, in accordance with Article 15(3) as soon as the Member State of origin becomes aware that the person has acquired such citizenship.

Data relating to a person who has acquired citizenship of any Member State ***or obtained refugee status, a form of subsidiary or complementary protection or another form of legal status*** shall be erased from the central database, in accordance with Article 15(3) as soon as the Member State of origin becomes aware that the person has acquired such citizenship ***or obtained refugee status, a form of subsidiary or complementary protection or another form of legal status.***

*Justification:*

*Where someone has obtained refugee status, or individual protection under other international rules or for humanitarian reasons, or another form of legal status, there is no longer any need to*



*keep the data concerning that person: the reason for keeping the data, i.e. to set limits on the 'hunt for refugee status', no longer applies once the asylum application has been processed.*

(Amendment 10)  
Article 8(1)

1. Each Member State shall, in accordance with the safeguards laid down in the European Convention on Human Rights and in the United Nations Convention on the Rights of the Child, promptly take the fingerprints of every ***alien*** of at least **14** years of age who is apprehended by the competent control authorities in connection with the irregular crossing by land, sea or air of the border of that Member State having come from a third country and who is not turned back.

1. Each Member State shall, in accordance with the safeguards laid down in the European Convention on Human Rights and in the United Nations Convention on the Rights of the Child, promptly take the fingerprints of every ***third-country national*** of at least **18** years of age who is apprehended by the competent control authorities in connection with the irregular crossing by land, sea or air of the border of that Member State having come from a third country and who is not turned back.

*Justification:*

*See Amendment 7.*

(Amendment 11)  
Article 10(2)(ca) (new)

***ca) the third-country national has obtained refugee status, a form of subsidiary or complementary protection or another form of legal status.***

*Justification:*

*See Amendment 9.*

(Amendment 12)  
Article 11(1), first subparagraph

With a view to checking whether *an alien* found illegally present within its territory has previously lodged an application for asylum in another Member State, each Member State may transmit to the Central Unit any fingerprint data relating to fingerprints which it may have taken of any such *alien* of at least **14** years of age together with the reference number used by that Member State.

With a view to checking whether *a third-country national* found illegally present within its territory has previously lodged an application for asylum in another Member State, each Member State may transmit to the Central Unit any fingerprint data relating to fingerprints which it may have taken of any such *third-country national* of at least **18** years of age together with the reference number used by that Member State.

*Justification:*

*See Amendment 7.*

(Amendment 13)  
Article 12(1)

Data relating to an applicant for asylum which has been recorded pursuant to Article 4(2) shall be **blocked in** the central database if that person is recognised and admitted as a refugee in a Member State. Such **blocking** shall be carried out by the Central Unit on the instructions of the Member State of origin.

Data relating to an applicant for asylum which has been recorded pursuant to Article 4(2) shall be **erased from** the central database if that person is recognised and admitted as a refugee in a Member State. Such **erasure** shall be carried out by the Central Unit on the instructions of the Member State of origin.

*Justification:*

*Data concerning anyone who has obtained refugee status should be automatically removed from the central database.*

(Amendment 14)  
Article 12(5)

The implementing rules concerning the procedure for the blocking of data referred to in paragraph 1 and the compilation of statistics referred to in paragraph 2 shall be adopted in accordance with the procedure laid down in Article 22(1).

The implementing rules concerning the procedure for the blocking of data referred to in paragraph 1 and the compilation of statistics referred to in paragraph 2 shall be adopted in accordance with the procedure laid down in Article 22.

*Justification:*

*Follows from amendment 15.*

(Amendment 15)  
Article 22(1)

***The Council shall adopt, acting by the majority laid down in Article 205(2) of the Treaty, the implementing provisions necessary for***

- *laying down the procedure referred to in Article 4(7);*
- *laying down the procedure for the blocking of the data referred to in Article 12(1);*
- *drawing up the statistics referred to in Article 12(2).*

***In cases where these implementing provisions have implications for the operational expenses to be borne by the Member States, the Council shall act unanimously.***

***Implementing powers shall be conferred on the Commission which, pursuant to the procedure under Article 5 of Decision 1999/468/EC shall be supported by a regulatory committee. The period mentioned in Article 5(6) of Decision 1999/468/EC shall be three months.***

*Justification:*

*Article 202 of the EC Treaty lays down the principle that the Council shall confer on the Commission, in the acts which the Council adopts, powers for the implementation of the rules which the Council lays down. No convincing reason has been given by the Council for departing*

*from this principle and reserving the most important implementing powers for itself. It therefore seems proper to confer all implementing powers on the Commission, which, under the regulatory procedure laid down in Article 5 of the Council decision laying down the procedures for the exercise of implementing powers conferred on the Commission (1999/468/EC), will be assisted by a committee.*

(Amendment 16)  
Article 22(2)

*The measures referred to in Article 3(4) shall be adopted in accordance with the procedure laid down in Article 23(2).* Deleted

*Justification:*

*Redundant in view of amendment 15.*

(Amendment 17)  
Article 23

- (1) *The Commission shall be assisted by a committee (hereinafter referred to as the ‘Committee’).* Deleted.
- (2) *In the cases where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply.  
The period referred to in Article 5(6) of Decision 1999/468/EC shall be three months.*
- (3) *The Committee shall adopt its rules of procedure.*

*Justification:*

*Covered in Article 22, pursuant to Amendment 15.*

## DRAFT LEGISLATIVE RESOLUTION

**Legislative resolution of the European Parliament on the proposal for a Council Regulation concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention (8417/2000 – C5-0256 – 1999/0116(CNS))**

### **(Consultation procedure)**

*The European Parliament,*

- having regard to the Council draft Regulation (8417/2000)<sup>1</sup>,
  - having regard to the proposal from the Commission to the Council (COM(1999)260<sup>2</sup>)
  - having regard to its position of 18 November 1999<sup>3</sup>,
  - having been reconsulted by the Council pursuant to Article 63(1) of the EC Treaty (C5-0256/2000),
  - having regard to Rule 67 of its Rules of Procedure,
  - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (A5-0219/2000),
1. Approves the amended Council draft Regulation;
  2. Calls on the Council to amend its draft accordingly;
  3. Calls on the Council to inform it if it intends to depart from the text approved by Parliament;
  4. Asks to be consulted again should the Council intend to amend the draft;
  5. Instructs its President to forward this opinion to the Council and Commission.

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<sup>1</sup> OJ C not yet published.

<sup>2</sup> OJ C not yet published.

<sup>3</sup> OJ C 189, 7.7.2000, p. 227.

## **EXPLANATORY STATEMENT**

### **Introduction**

By letter of 25 May 2000 the Council reconsulted Parliament on Articles 22 and 23 of the proposal for a Council Regulation (EC) concerning the establishment of 'Eurodac' for the comparison of fingerprints of applicants for asylum and certain other aliens for the effective application of the Dublin Convention.

This is the fourth time Parliament has considered this matter. On 6 October 1997 it received the proposal for a Convention concerning the establishment of Eurodac for the comparison of fingerprints of applicants for asylum, followed on 27 November 1998 by a proposal for a Protocol to the Convention extending the scope of Eurodac to certain illegal immigrants. Neither the Convention nor the Protocol was signed by the Member States. At its meetings of 3 and 4 December 1998 and 12 March 1999 the Justice and Home Affairs Council decided to shelve both proposals and called on the Commission to submit a proposal for a Community legal instrument after the entry into force of the Treaty of Amsterdam under which the legal basis would be changed as the matter now came under another 'pillar'. The Commission complied with this request and submitted a proposal for a Regulation covering both the Convention and the Protocol. The Council consulted Parliament by letter of 29 July 1999 and Parliament delivered its opinion on 18 November 1999. The provisions governing the implementing powers have subsequently been changed to such an extent as to constitute a substantial amendment, which required the present reconsultation of Parliament on Articles 22 and 23.

### **Note on the regulatory content of the regulation: the relationship between the Dublin Convention and the establishment of Eurodac**

For the purpose and substance of the Regulation as a whole please refer to the brief summary contained in report A5-0059/1999 (point 3 'Brief summary of the regulation'). For an assessment of the Regulation see point 4 of the same report. In considering the regulatory substance of the regulation the rapporteur will therefore confine himself to the relationship between Eurodac and the Dublin Convention. As the rapporteur has repeatedly pointed out in the numerous debates on the subject in the committee, Eurodac's sole purpose is the effective application of the Dublin Convention. Fortunately this is now abundantly clear from the new title of the regulation which itself was the result of a Parliament amendment.

After the Treaty of Amsterdam the Council is required by Article 63(1)(a) of the EC Treaty to adopt 'criteria and mechanisms for determining which Member State is responsible for considering an application for asylum submitted by a national of a third country in one of the Member States' within a period of five years. This implies a commitment on the part of the Council to revise the Dublin Convention<sup>1</sup> determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Union.

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<sup>1</sup> OJ C 254, 19.8.1997, p. 1.

Unfortunately the Commission has tackled the review of the Dublin Convention and Eurodac separately, all the more so as not only would a joint revision in a single document have been desirable for the sake of legal clarity, but would also have illustrated the purpose of and need for Eurodac from the outset, which would have made it more acceptable. The Commission did not take this course. There is now political agreement between the Member States on Eurodac; the revision of the Dublin Convention is only at a preliminary stage (Parliament has now received a Commission working paper on the subject<sup>1</sup>). As joint revision is now ruled out on grounds of efficiency, the Institutions now need to make Eurodac operational at the earliest opportunity so that the Dublin Convention may finally be put into practice. However, the rapporteur would ask the Commission in future wherever possible to seek overall solutions regarding immigration and asylum, thus avoiding piecemeal measures.

### **Subject of reconsultation: Articles 22 and 23**

Parliament has been explicitly reconsulted on Articles 22 and 23. The original Commission proposal on which Parliament was first consulted provided for the application of the regulatory committee procedure pursuant to Council Decision 87/373/EEC of 13 July 1987 laying down the procedures for the exercise of implementing powers conferred on the Commission to all the implementing powers to be exercised here. This article needed to be adjusted as that decision had now been superseded by Council Decision 1999/468/EC.

The new text does not however confine itself to this adjustment, but undertakes a far-reaching change which made reconsultation necessary. The power to adopt the main implementing provisions is no longer to be conferred on the Commission but retained by the Council; they are the implementing provisions regarding the collection, transmission and comparison of fingerprints (Article 4(1)-(6) of the Eurodac regulation) and those for the blocking of the data concerning applicants for asylum who are subsequently recognised as refugees and for drawing up the statistics on applicants for asylum already recognised as refugees in another Member State (Article 12(1) and (2) of the Eurodac regulation).

There are several objections to this change. Article 202 of the EC Treaty establishes the principle that the Council shall confer on the Commission, in the acts which the Council adopts, powers for the implementation of the rules which the Council lays down. Only in 'specific cases' may the Council reserve the right to exercise implementing powers itself. According to the case law of the Court of Justice there have to be adequate grounds for involving that exception. The Council deploys the following argument, in Recital 13: the Council should reserve for itself the exercise of implementing powers as the Member States alone are responsible for identifying and classifying the results of comparisons and for blocking data concerning refugees and this responsibility concerns the particularly sensitive area of the processing of personal data and thus might affect the exercise of individual freedoms. This does not hold water. There is no obvious reason why the Commission should not be equally capable of drawing up adequate safeguards for the processing of undeniably sensitive data. On the contrary, it might be supposed that the

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<sup>1</sup> COS 002134

Commission, which may not take account of specific national interests, might tackle the problem in a more unprejudiced and impartial way. Nor should it be forgotten that the procedure originally laid down did in any case provide for the Commission to be aided by a regulatory committee, which implies substantial influence by the Member States. There is therefore no obvious reason for departing from the rule of conferring implementing powers on the Commission.

Another consideration is that Parliament would see its rights whittled away if implementing provisions in certain areas are taken out of the commitology process. Pursuant to the new Council Decision on commitology (999/468/EC), supplemented by the Interinstitutional Agreement between the Commission and Parliament<sup>1</sup>, under the committee procedure the Commission is required to keep Parliament regularly informed of committee proceedings and whenever the Commission transmits to the Council measures or proposals for measures to be taken (Article 7 of the commitology decision). Under the regulatory committee procedure Parliament's position is also strengthened by the fact that it is entitled to receive draft implementing measures submitted to the committees pursuant to a basic instrument adopted under Article 251 of the Treaty, and, if the implementing powers provided for in the basic instrument are exceeded, to require the Commission to re-examine the draft measures (Article 8 of the commitology decision). Although the latter may not affect Eurodac, as codecision does not at present apply to asylum law, this may change after expiry of the five-year period from the entry into force of the Treaty of Amsterdam, and should therefore be borne in mind in the debate on the principle of transferring implementing powers. In the present case, however, the right of Parliament to receive information under the committee procedure is certainly relevant. If the Council keeps the implementing powers in the most sensitive areas to itself, as provided for in the current proposal, Parliament will lose its right to information and then be reliant on the Council's goodwill. The Council's interests would be safeguarded by the application of the regulatory procedure under which the Member States have the greatest say in the decision-making process.

The rapporteur cannot therefore support the new wording of Articles 22 and 23 and favours an arrangement under which the implementing powers are unreservedly conferred on the Commission, aided by a regulatory committee as provided for in the original proposal.

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<sup>1</sup> Minutes of 17 February 2000, p. 87.