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Committee on Civil Liberties, Justice and Home Affairs

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*****I**

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 (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] (recast)
(COM(2010)0555 – C7-0319/2010 – 2008/0242(COD))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Monica Luisa Macovei

(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 (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] (recast)
(COM(2010)0555 – C7-0319/2010 – 2008/0242(COD))**

(Ordinary legislative procedure – recast)

The European Parliament,

- having regard to the amended Commission proposal to Parliament and the Council (COM(2010)0555),
 - having regard to Article 294(2) and Article 78(2)(e) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0319/2010),
 - 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 [...] 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 and the opinion of the Committee on Legal Affairs (A7-0000/2010),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission further to explore the possibility of 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 central database for the purposes of the prevention, detection and investigation of terrorist offences and other serious criminal offences;
 3. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 4. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

¹ OJ C 77, 28.3.2002, p. 1.

Amendment 1

Proposal for a regulation

Recital 4

Text proposed by the Commission

Amendment

(4) The Hague Programme called for the improvement of access to existing data filing systems of the European Union.

deleted

Or. en

Justification

The deletion is in line with the exclusion of law enforcement aspects from the scope of the current proposal for a EURODAC regulation.

Amendment 2

Proposal for a regulation

Recital 5

Text proposed by the Commission

Amendment

(5) For the purposes of applying **Council 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], 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 (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] , and in particular points (b) and (d) of Article 18(1) thereof, to allow each Member State

(5) 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

to check whether a third country national or stateless person found illegally present on its territory has applied for international protection in another Member State.

Member State to check whether a *third-country* national or stateless person found illegally present on its territory has applied for international protection in another Member State.

(The replacement of the term 'Community' by 'Union' and the replacement of the wording '[Council] Regulation (EC) No [.../...]' by 'Regulation (EU) No .../... [of the European Parliament and of the Council]' applies throughout the text and the title.)

Or. en

Justification

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

Amendment 3

Proposal for a regulation

Recital 7

Text proposed by the Commission

(7) To this end, it is necessary to set up a system known as "EURODAC", consisting of a Central System, which will operate a computerised central database of fingerprint data, as well as of the electronic means of transmission between the Member States and the Central System.

Amendment

(7) To this end, it is necessary to set up a system known as "EURODAC", consisting of a Central System, which will operate a computerised central database of fingerprint data, as well as of the electronic means of transmission between the Member States and the Central System (***hereinafter the "Communication Infrastructure"***).

Or. en

Justification

Technical amendment.

Amendment 4

Proposal for a regulation

Recital 8

Text proposed by the Commission

(8) In view of ensuring equal treatment for all applicants and beneficiaries of international protection, as well as in order to ensure consistency with current EU 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 (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], it is appropriate to extent the scope of this Regulation to order to include applicants for subsidiary protection and persons enjoying subsidiary protection.

Amendment

(8) In view of ensuring equal treatment for all applicants and beneficiaries of international protection, as well as in order to ensure consistency with current EU asylum acquis, in particular with Directive .../.../EC of the European Parliament and of the Council of ... on minimum standards for the qualification and status of third country nationals or stateless persons as **beneficiaries of** 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.

(The replacement of the words '[Council] Directive 2004/83/EC of 29 April 2004' with 'Directive .../.../EC [of the European Parliament and of the Council]' applies throughout the text.)

Or. en

Justification

The amendment is technical and aims to align the text to the provisions of the Lisbon Treaty and to the new title included in the recast proposal for a directive of the European Parliament and of the Council on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted (the “Qualification Directive”).

Amendment 5

Proposal for a regulation

Article 2 – paragraph 1 – point b

Text proposed by the Commission

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

Amendment

(b) "applicant for international protection" means a third-country national or a stateless person who has made an application for international protection as defined in **point (h) of Article 2 of Directive .../.../EU of the European Parliament and of the Council of [...] on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted** in respect of which a final decision has not yet been taken;

Or. en

Justification

This amendment is technical and aims to align the text to the recast proposal for a directive of the European Parliament and of the Council on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted (the “Qualification Directive”).

Amendment 6

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 7

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

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).

Or. en

Justification

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

Amendment 8

Proposal for a regulation

Article 4 – paragraph 1

Text proposed by the Commission

1. A Management Authority, funded from the general budget of the European Union, shall be responsible for the operational management of EURODAC. The Management Authority 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. A Management Authority, funded from the general budget of the European Union, shall be responsible for the operational management of EURODAC. The Management Authority shall ensure, in cooperation with the Member States, that at all times the best available **techniques**, subject to a cost-benefit analysis, is 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 9

Proposal for a regulation

Article 4 – paragraph 4

Text proposed by the Commission

4. **Before** the Management Authority takes up its responsibilities, the Commission shall be **responsible for** all tasks attributed to the Management Authority by this Regulation.

Amendment

4. **Until** the Management Authority takes up its responsibilities, **only** the Commission shall be **entrusted with** all tasks attributed to the Management Authority by this Regulation.

Or. en

Justification

The aim is to clarify that until the Management Authority takes up its responsibilities only the Commission will be entrusted with all tasks attributed to the Management Authority and that it cannot entrust the management of the system to another authority; in such a case additional provisions should be foreseen in order to ensure that this shall not adversely affect any effective control mechanism under Union law, whether of the Court of Justice, the Court of Auditors or the European Data Protection Supervisor as indicated in the opinion of the European Data Protection Supervisor (EDPS) on Eurodac of 18 February 2009.

Amendment 10

Proposal for a regulation

Article 5 – paragraph 1 – point e a (new)

Text proposed by the Commission

Amendment

(ea) the number of data sets marked in accordance with Article 15(1);

Or. en

Justification

It is important that the statistics also contain the number of data sets marked in accordance with the provisions of Article 15 paragraph (1).

Amendment 11

Proposal for a regulation

Article 5 – paragraph 1 – point e b (new)

Text proposed by the Commission

Amendment

(eb) the number of hits for persons referred to in Article 15(1) for whom hits have been recorded under (b), (c), (d);

Or. en

Justification

It is important that the statistics also contain the number of hits for persons referred to in Article 15 paragraph (1) (persons granted international protection).

Amendment 12

Proposal for a regulation

Article 5 – paragraph 2

Text proposed by the Commission

Amendment

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 been recorded under (b), (c), and (d).***

At the end of each year, statistical data shall be established in the form of a compilation of the monthly statistics for that year.

Or. en

Justification

As the statistics for the number of persons covered by points (b), (c), (d) and (eb) will be drawn up every month the additional comment is not necessary as at the end of the year they will be included in the compilation referred to in Article 5.

Amendment 13

Proposal for a regulation

Article 6 – 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 11 and 14).

Amendment 14

Proposal for a regulation

Article 10 – paragraph 1

Text proposed by the Commission

Amendment

1. Data relating to a person who has acquired citizenship of any Member State before expiry of the period referred to in Article 9 shall be erased from the Central System, in accordance with **Article 21(4)** as soon as the Member State of origin becomes aware that the person has acquired such citizenship.

1. Data relating to a person who has acquired citizenship of any Member State before expiry of the period referred to in Article 9 shall be erased from the Central System, in accordance with **Article 21(3)** as soon as the Member State of origin becomes aware that the person has acquired such citizenship.

Or. en

Justification

Technical amendment.

Amendment 15

Proposal for a regulation

Article 16 – paragraph 2

Text proposed by the Commission

Amendment

2. In accordance with **Article 11**, the Member State of origin shall ensure the security of the data referred to in paragraph

2. In accordance with **Article 20**, the Member State of origin shall ensure the security of the data referred to in paragraph

1 before and during transmission to the Central System as well as the security of the data it receives from the Central System.

1 *of this Article* before and during transmission to the Central System as well as the security of the data it receives from the Central System.

(The term 'Article 11' should also be replaced by 'Article 20' in Article 16(4)(b) and Article 22(2)).

Or. en

Justification

Technical amendment.

Amendment 16

Proposal for a regulation Article 17 – paragraph 2

Text proposed by the Commission

2. Member States shall transmit the data referred to in **Article 8(1)**, Article 11(2) and Article 14(2) electronically. The data referred to in **Article 8(1)** and Article 11(2) shall be automatically recorded in the Central System. As far as it is necessary for the efficient operation of the Central System, the Management Authority shall establish the technical requirements to ensure that data can be properly electronically transmitted from the Member States to the Central System and vice versa.

Amendment

2. Member States shall transmit the data referred to in **Article 8**, Article 11(2) and Article 14(2) electronically. The data referred to in **Article 8** and Article 11(2) shall be automatically recorded in the Central System. As far as it is necessary for the efficient operation of the Central System, the Management Authority shall establish the technical requirements to ensure that data can be properly electronically transmitted from the Member States to the Central System and vice versa.

Or. en

Justification

Technical amendment.

Amendment 17

Proposal for a regulation

Article 20 – paragraph 2 – point d

Text proposed by the Commission

(d) prevent the unauthorised input of data and the unauthorised inspection, modification or **deletion** of stored personal data (storage control);

Amendment

(d) prevent the unauthorised input of data and the unauthorised inspection, modification or **erasure** of stored personal data (storage control);
This amendment also applies to: Article 20(2)(g) ('delete' shall be replaced by 'erase') and Article 20(2)(j) ('deletion' shall be replaced by 'erasure').

Or.en

Justification

Terminology adaptation.

Amendment 18

Proposal for a regulation

Article 24 – paragraph 1 – subparagraph 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 25(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 25(1).

Or. en

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 19

Proposal for a regulation Article 24 – paragraph 13

Text proposed by the Commission

13. Any person may, in accordance with the laws, regulations and procedures of the Member State which transmitted the data, bring an action or, if appropriate, a complaint before the competent authorities or courts of that State concerning the data relating to him/her recorded in the Central System, in order to exercise his/her rights under paragraph 3. The obligation of the national supervisory authorities to assist and, where requested, advise the data subject, in accordance with **paragraph 13**, shall subsist throughout the proceedings.

Amendment

13. Any person may, in accordance with the laws, regulations and procedures of the Member State which transmitted the data, bring an action or, if appropriate, a complaint before the competent authorities or courts of that State concerning the data relating to him/her recorded in the Central System, in order to exercise his/her rights under paragraph 3. The obligation of the national supervisory authorities to assist and, where requested, advise the data subject, in accordance with **paragraph 11**, shall subsist throughout the proceedings.

Or. en

Justification

Technical amendment.

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 precise modalities of such access.⁷

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

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.

⁷ COM(2010) 555, p.2-3.

ongoing interinstitutional decision-making procedures¹ 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 takes out the option of access for law enforcement purposes present in the September 2009 proposal, takes into account the EP resolution from 2009 and introduces 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).

The Commission in its Explanatory Memorandum substantiates the deletion of the provisions referring to the access for law enforcement purposes from the current proposal by underlining the need to progress on the negotiations on the asylum package and facilitate the conclusion of an agreement on the EURODAC Regulation. It is also considered that enabling thereby the swifter adoption of the new EURODAC Regulation will also facilitate the timely set up of the Agency for the operational management of large-scale IT systems in the area of freedom, security and justice, since that Agency is planned to be also responsible for the management of EURODAC.² Your Rapporteur agrees with these arguments but considers that 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 central database for the purposes of the prevention, detection and investigation of terrorist offences and other serious criminal offences should be reconsidered at a later stage³.

Your Rapporteur has put forward a series of amendments that can be summed up in two categories: technical amendments (e.g.: alignment to Lisbon Treaty provisions, references to

¹ COM(2009) 665 final/2.

² COM(2010)555, p.3.

³ The principle included in the 2009 proposal was that a successful comparison which would have resulted in a 'hit' reply from EURODAC would have been accompanied by all data that is held in EURODAC regarding the fingerprint. Currently as indicated in the Commission Impact Assessment "there are some EU instruments that permit consultation of fingerprints and other law enforcement data held by one Member State by another Member State [...] but no single system exists that is accessible to law enforcement authorities which enables to determine the Member State that has information on an asylum seeker." Council Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime (Prüm Decision) can be a useful tool but only in the cases where Member States store fingerprints of asylum seekers together with other fingerprints collected by law enforcement authorities in a national AFIS. Another instrument that could be used for consultations regarding fingerprints is Framework Decision 2006/960/JHA on simplifying the exchange of information and intelligence between law enforcement authorities (FWD 2006/960) but only under a series of conditions. Finally Member States can use the mechanism of the mutual legal assistance under which the judicial authorities of the Member States can seek access to criminal and non-criminal fingerprint collections, including on asylum seekers on the basis of the Convention on Mutual Assistance in Criminal Matters. The request should be addressed to all Member States that are believed to have the relevant information (potentially all other Member States). For additional details see SEC(2009)0936, p.8-9.

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 as well as precisions on Article 4(4) concerning the role of the Commission during the transitional period, additions in the Statistics section and clarification concerning the right of access to data).