

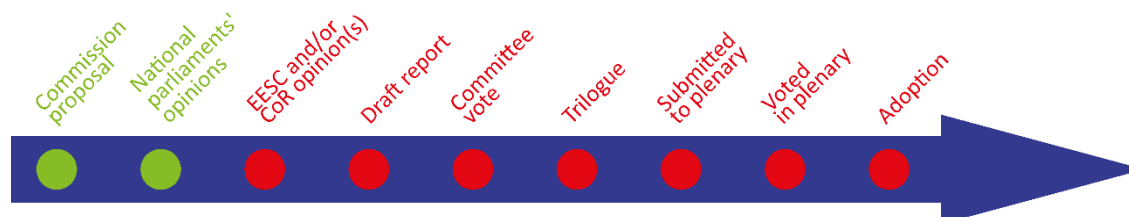
Recast Eurodac Regulation

OVERVIEW

Eurodac is a biometric database in which Member States are required to enter the fingerprint data of asylum-seekers in order to identify where they entered the European Union (EU). Established in 2000 and reviewed in 2013, its main purpose is to facilitate the application of the Dublin Regulation. The 2013 revision broadened the scope to provide law enforcement authorities with access to the Eurodac database. As part of the reform of the common European asylum system in 2016, the European Commission proposed a recast Eurodac Regulation. The co-legislators reached a partial agreement on the proposal in 2018. As part of the broader migration and asylum pact, the new Commission presented an amended proposal on 23 September 2020. The Commission expects the co-legislators to promptly adopt the proposal on the basis of the agreement already reached.

Amended proposal for a regulation of the European Parliament and of the Council on the establishment of 'Eurodac' for the comparison of biometric data for the effective application of Regulation (EU) xxx/xxx [Regulation on Asylum and Migration Management] and of Regulation (EU) xxx/xxx [Resettlement Regulation], 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 and amending Regulations (EU) 2018/1240 and (EU) 2019/818

<i>Committee responsible:</i>	Civil Liberties, Justice and Home Affairs (LIBE)	COM(2020) 614 23.9.2020
<i>Rapporteur:</i>	Jorge Buxadé Villalba (ECR, Spain)	COM(2016) 272 4.5.2016
<i>Shadow rapporteurs:</i>	Karlo Ressler (EPP, Croatia) Isabel Santos (S&D, Portugal) Hilde Vautmans (Renew, Belgium) Tom Vandendriessche (ID, Belgium) Saskia Bricmont (Greens/EFA, Belgium) Malin Björk (The Left, Sweden).	2016/0132(COD) Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision')
<i>Next steps expected:</i>	Publication of the draft report	



Introduction

Eurodac stands for European asylum dactyloscopy (fingerprints) database. It is a computerised system consisting of a central unit, which operates the central database of biometric data, and communications infrastructure for transmitting the data between Member States and the central unit. First established in 2000 under the Eurodac Regulation and subsequently reviewed in 2013, its main purpose at the outset was to facilitate the application of the Dublin Regulation, which determines the Member State responsible for processing an asylum claim. In many cases, it is the first country of entry and for that reason, it is essential to establish where the applicant entered the European Union (EU). This was the underlying logic for creating the Eurodac database, in which Member States are required to record the fingerprint data of all persons who are seeking asylum or who have been apprehended crossing the external border irregularly.

Context

In 2014-2015, [migratory flows](#) into the EU grew substantially, exhausting national reception capacities, revealing gaps in registration of arrivals and exacerbating [shortcomings](#) of the current migration management system. In 2016, Frontex's [annual risk analysis](#) announced that the majority of persons who entered through Greece, and many of those who entered through Italy, moved on to other EU Member States, mostly Germany. Frontex estimated that in 2015 around 1 million persons travelled through the EU without proper travel documents. This created new challenges for Member States, who had to find ways to register and transport large numbers of persons. It also led to fears of threats to internal security, as the identity and motivation of migrants remained undetermined. Following the high pressure at EU external borders in September 2015, when migrants tried to force their way to other countries, several Member States resorted to the temporary [reintroduction of internal border controls](#). Frontex notes that while reintroducing internal border control managed to regain a certain degree of order at the borders, it did not stem the migratory flows at external or internal borders between September and December 2015.

The European Commission, tasked under the [European Agenda on Migration](#) to find solutions to the migratory challenge, proposed a reform of the [legal framework](#) of the common European asylum system (CEAS) for the reception and recognition of persons in need of international protection. In the legislative package presented on 4 May 2016, aimed at reforming the CEAS, the Commission made three proposals for: amending the [Dublin Regulation](#), creating a [European Union Agency for Asylum](#), and reinforcing the [Eurodac](#) system for fingerprinting migrants. This first package was complemented on 13 July 2016 with the publication of three further proposals: to replace the [Asylum Procedures Directive](#) and the [Qualification Directive](#) with directly applicable regulations, and to reform the [Reception Conditions Directive](#).

The reform of the CEAS reached an impasse in the interinstitutional negotiations, and subsequently, on 23 September 2020 the new Commission presented its [new pact on migration and asylum](#), comprising a new legislative package aimed at amending and complementing the 2016 proposals, including the proposal for a [recast Eurodac Regulation](#).

In its [explanatory memorandum](#), the Commission states that while the number of irregular entries to the EU has decreased, the percentage of migrants coming from countries with low asylum recognition rates (25 % and less) has increased over time, from 14 % in 2015 to 57 % in 2018. The Commission also takes note of the increase of more complex cases and the continuing pressure on national asylum systems due to the large number of asylum applications. For the Commission, these trends seem to indicate 'persistent onward movement and multiple applications for international protection within the EU'.

The Commission specifies that as the issues to be addressed have largely remained the same, the amended Eurodac proposal builds on the informal agreement on the earlier proposal already reached by the co-legislators.

Existing situation

2013 Regulation

The current [Eurodac Regulation](#) applies to all EU Member States ([Ireland](#) opted in in 2014) except Denmark. The latter does not participate in adoption of legislation in this area, but has a [separate agreement](#) with the EU to apply the [initial Eurodac Regulation](#) from 2000. The current regulation is also applicable in four associated countries (Iceland, Norway, Switzerland and Liechtenstein). Participating states are required to 'promptly' fingerprint all persons over the age of 14 who fall into one of the following two categories:

- applicants for international protection;
- third-country nationals or stateless persons found crossing the external border irregularly.

Authorities may also fingerprint third-country nationals or stateless persons found illegally staying *in* a Member State, but in contrast to the first two categories, registering their fingerprints is currently not mandatory. The regulation establishes common procedures and standards but does not deal with enforcement. Fingerprinting and Eurodac registration remain primarily a task for Member State authorities. This is regulated under national legislation, ensuring not only compliance with the regulation, but also with fundamental rights obligations resulting from EU and international law, in particular with the [European Convention on Human Rights](#) and the United Nations [Convention on the Rights of the Child](#).

The European Agency for the operational management of large-scale information technology (IT) systems in the area of freedom, security and justice ([eu-LISA](#)) is in charge of operational management of Eurodac as well as its maintenance in accordance with security and data protection law. The Agency also organises training on the use of Eurodac for national authorities, and [provides](#) statistics and reports.

Failure to fingerprint

The mass influx of migrants in 2015 revealed gaps in registration of migrants at the border required under the Eurodac Regulation. One of the reasons for the lack of systematic fingerprinting in some countries was the lack of capacity given the large flows of migrants. Greek authorities [estimated](#) in August 2015 that more than a third of migrants arriving on Lesbos, Kos and other islands were not fingerprinted. German police [deplored](#) in July 2015 that they lacked the resources to fingerprint all arriving migrants. [Frontline countries'](#) difficulties in meeting the legal requirement to fingerprint led to a situation where unregistered asylum-seekers who moved on within the Schengen area to reach other countries were not identified.

To address problems related to registering migrant arrivals, and to adapt reception capacities to the large influx, the Commission proposed a ['hotspot' system](#) as an immediate action under the European agenda on migration. The aim was to create a platform for EU agencies such as Frontex, the European Asylum Support Office (EASO) and Europol to intervene temporarily, and to provide operational support for identification, registration and fingerprinting of migrants at the sections of the external border 'characterised by specific and disproportionate migratory pressure, consisting of mixed migratory flows'.¹ In its February 2016 state-of-play [report](#), the Commission indicated that the hotspot approach had significantly increased the registration of fingerprints in the Eurodac database: the level had risen in Greece from 8 % in September 2015 to 78 % in January 2016, and in Italy from 36 % to 87 % over the same period. In its [sixth report on relocation and resettlement](#), published on 28 September 2016, the Commission observed that the close cooperation of Member States, EU agencies and international organisations in the hotspots has resulted 'in the achievement of close to 100 % fingerprinting'.

Nevertheless, the difficulties of fingerprinting are not limited to the lack of reception and administrative capacity at the entry points. Another aspect is the high number of applicants refusing

to have their fingerprints taken, or intentionally damaging their fingerprints to avoid identification, as evidenced by the 2014 [annual report](#) on Eurodac. Reasons vary, from fear and mistrust of authorities to the desire to be registered only in a specific country – with higher recognition rates or in which asylum-seekers have family and community ties. When migrants move onwards in the Schengen area without being registered, they effectively bypass the Dublin rules and put in jeopardy the overall functioning of the CEAS. A Council of Europe [report](#) from September 2015 takes note of this situation and comes to the conclusion that both Member States and migrants have incentives to evade the procedures.

Law enforcement access

As regards the fears for internal security following the arrival of large numbers of persons who remain unidentified, the 2013 Eurodac Regulation introduced the possibility for national police and [Europol](#) to access Eurodac data for the purposes of preventing, detecting and investigating serious crimes and terrorism. They can also check the database to match the fingerprints of irregular migrants for identification, but without storing that data. However, this access for law enforcement purposes is not applicable to all countries. Participation in the Dublin and Eurodac Regulations, on the basis of [special agreements](#), by Denmark, as well as four Dublin associated countries (Norway, Iceland, Switzerland, and Liechtenstein), is currently possible only for asylum-related purposes.

Data protection supervision

The processing of data in the central unit of Eurodac has been supervised by the European Data Protection Supervisor ([EDPS](#)) since 2004, while national data protection authorities are in charge of data processing and transmission in their respective Member States. The [Eurodac supervision coordination group \(SCG\)](#), comprising the EDPS and national authorities (from EU Member States and Dublin associated countries), meets twice a year to discuss common problems related to the use of Eurodac, and to seek common solutions. The Eurodac SCG also undertook to look into the issue of data subjects' rights related to Eurodac processing and a [report](#) was published in November 2019. The group welcomed the fact that, in several Member States, data subjects were informed about the collection of their data and the law enforcement access to it and that all Member States had some procedure in place to ensure the right of access to data. At the same time, the group took note of some progress to be made, namely the lack of procedure in some Member States to document the provision of information to data subjects as well as the need to update and finalise the procedures to grant the right to deletion and the right to correction in some Member States.

Parliament's starting position

In its [resolution](#) of 12 April 2016 on the situation in the Mediterranean and the need for a holistic EU approach to migration, the European Parliament stressed the importance of allocating technical and financial resources and support to the main countries of entry, to 'enable the swift and effective registration and referral to the competent authorities of all migrants arriving in the Union with full respect for their fundamental rights'. The Parliament observed that, while one of the main aims of creating the hotspots was to provide help to those in need, the proper identification of asylum-applicants at entry points should also contribute to the overall functioning of the CEAS.

On 8 June 2017, the LIBE committee [report](#) drafted by the rapporteur Monica Macovei (ECR, Romania) was presented to the plenary and on 14 June 2017 the plenary confirmed the committee's decision to enter into interinstitutional negotiations. Members of the European Parliament maintained that Europol should have direct access to the Eurodac database, which would also contain facial images, names and ID-numbers alongside fingerprints. They also recommended fingerprinting children from the age of six to facilitate family reunification.

Jorge Buxadé Villalba (ECR, Spain) was [appointed](#) as the new rapporteur on 26 October 2020.

Council and European Council starting position

The **European Council** meeting of [25-26 June 2015](#) gave its green light to setting up hotspots in the frontline Member States, with operational support provided by EASO, Frontex and Europol, to 'ensure the swift identification, registration and fingerprinting of migrants'. The purpose of the hotspot approach was to reduce pressure at the borders, but also to determine those who need international protection and those who do not. The hotspot approach was approved at the [informal meeting](#) of Heads of State or Government on 23 September 2015 as part of the priority actions proposed by the Commission to offer short-term relief at the EU's external borders.

In the **Council**, on 28 April 2017, the Maltese Presidency presented to delegations its suggestions for modifying the text of the draft Eurodac Regulation. The Presidency suggested adding a new category of data on admitted persons, allowing law enforcement authorities to search in Eurodac on the basis of alphanumeric data and including colour copies of identity or travel documents. Based on these discussions, the Presidency presented a progress report on 9 June 2017, which was followed by an updated mandate in Coreper on 15 June 2017.

Preparation of the proposal

The first Eurodac Regulation was adopted in 2000 and revised in 2013 to improve the compatibility of the system with the recast EU asylum *acquis*, including the Dublin III Regulation, and to help complete the CEAS.

The purpose and the scope of application of the Eurodac Regulation have been continually broadened since its creation. At the outset, the data were accessible only to immigration authorities to help them detect multiple asylum applications and prevent irregular entries. The scope of application was subsequently broadened in the 2013 regulation to enable law enforcement authorities to access the Eurodac database. In light of the developing migratory pressure, on 27 May 2015, the Commission published a [staff working document](#) on the implementation of the Eurodac Regulation, which was endorsed by the [Council](#) on 20 July 2015. This document provides guidelines for Member States to follow a common approach to fingerprinting, which encompasses counselling and informing applicants of their rights and obligations, but also specifies that 'if applicants do not cooperate..., Member States should make use of specific and limited use of detention, and use coercion as last resort'. This suggestion is based on a 2014 [ad hoc query](#) on Eurodac fingerprinting published by the European Migration Network ([EMN](#)) on laws and practices used in Member States. While most (18 of 28) at the time did not allow the use of force or coercion for asylum-seekers (category 1), the situation was more varied for irregular migrants (categories 2 and 3), with several allowing for the use of coercion, detention or both.

In the 2016 [proposal](#), the Commission notes that after the large influx of migrants in 2015, frontline Member States did not always manage to fulfil their registration obligations at the border. Moreover, refusal of some migrants to be fingerprinted led to suggestions of using other biometric identifiers such as facial recognition and the collection of digital photos. Moreover, Member States not located at the EU external border increasingly reported a need to collect and compare information on irregular migrants found on their territory, particularly those not seeking asylum. The Commission concluded that additional steps were needed to tackle irregular migration within and to the EU in a situation where thousands of migrants, including unaccompanied minors remained invisible in Europe.

An [evidence document](#) published alongside the new pact on migration and asylum on 23 September 2020 deplored that data in Eurodac is collected and processed in an inefficient way, which makes it difficult to estimate onward movements and the burden placed on Member States. Moreover, the current Eurodac central system does not permit registering applicants but only applications, which makes it impossible to identify multiple applications in the system.

The changes the proposal would bring

More data collected and stored for longer

The proposal would introduce the obligation to store data on names, nationalities, place and date of birth, and travel document information. For asylum-seekers, the asylum application number and the Member State responsible under the Dublin Regulation would also be stored. A new element in the 2020 proposal would be the addition of information on relocation. The retention period for data on asylum-seekers would continue to be 10 years.

Currently, the Eurodac Regulation enables Member States to search for matches in the database to determine the identity of irregular migrants, but does not require their data to be stored in the system. The new proposal would introduce a requirement also to collect and store data on third-country nationals or stateless persons who have been found irregularly on EU territory (Article 14). Their personal data, and where relevant their date of removal and any granting of assistance for voluntary return and re-integration, would be introduced in the database and retained for five years (rather than 18 months under the current regulation). This information could then be used for the issue of a travel document for their return and readmission. The Commission explains that the aim is to track secondary movements within the EU and to strengthen the EU's return policy.

A new category would be added in the Eurodac database for persons disembarked following a search and rescue operation. Previously, they could have been registered in Eurodac as persons crossing the external border irregularly but, according to the Commission, a separate category would give a better understanding of the migratory flows.

All information would be recorded as datasets, linking all sequences corresponding to the same third-country national or stateless person. This would permit the counting of applicants in addition to applications. The Commission explains that gathering statistics on the number of applicants would help to provide an accurate picture of how many third-country nationals and stateless persons request asylum in the EU and map their possible secondary movements. This new purpose of Eurodac to 'assist with the control of illegal immigration to the Union' was introduced by the 2016 proposal and would be maintained under the 2020 proposal.

Fingerprinting age lowered to 6

Under the new proposal, the fingerprinting age would be lowered from 14 to 6 years. 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.

Other biometric data stored in addition to fingerprints

The new proposal would introduce the requirement to store facial images in addition to fingerprints. The Commission refers to the fingerprinting difficulties reported by some Member States where applicants either refuse to have their fingerprints taken or damage their fingerprints. Use of additional biometrics was also one of the commitments made by the Commission under the European Agenda on Migration.

Possible access to third-country authorities

Under the 2013 Eurodac Regulation, the police, public prosecutors and Europol could search the database alongside national immigration authorities. The new recast proposal would go even further, suggesting giving partial access to the authorities of third countries on certain conditions

(article 38). These authorities would not acquire direct access to the database but personal data could be transferred or made available for them to prove the identity of third-country nationals for return purposes. Their access would be subject to conditions, including the refusal to disclose if the person has applied for asylum.

Interoperability with other EU databases

Interoperability between EU information systems means that these systems could be used to supplement each other to help with the correct identification of persons. Alongside Eurodac, the interoperability components include the Entry/Exit System ([EES](#)), Visa Information System ([VIS](#)), European Travel Information and Authorisation System ([ETIAS](#)), Schengen Information System ([SIS](#)), and European Criminal Records Information System holding conviction information on third-country nationals and stateless persons ([ECRIS-TCN](#)). [Europol data](#) should also be covered, but only to query the Europol data simultaneously with those EU information systems.

Technical amendments were needed to align Eurodac with [two Interoperability regulations](#) to include references to the common identity repository (where Eurodac data is proposed to be stored) and its use alongside the central system. This will ensure a proper legal basis for Eurodac to operate within the new interoperability framework.

In connection with the ETIAS Regulation and VIS Regulation, amendments were necessary to permit the access of ETIAS national units and competent visa authorities to Eurodac.

The recast proposal allows to integrate Eurodac in the future interoperable IT structure in the area of justice and home affairs. As explained by eu-LISA in its [2019 annual report](#), Eurodac's data model is currently not aligned with other large-scale IT systems in the area. Because it contains no biographical data, its datasets cannot be effectively compared with other systems' datasets. As eu-LISA specifies, more in-depth analyses for re-engineering Eurodac rely on the adoption of the recast proposal.

In the future, based on the Interoperability Regulations, eu-LISA would be able to draw up cross-system statistics using data from Eurodac, EES, ETIAS and VIS to better assess the situation regarding asylum applications, visas, and secondary movements. In addition to the Commission and the Member States, the European Union Agency for Asylum and Frontex would also be given access to such statistics for analysis and reporting purposes.

Advisory committees

The European Committee of the Regions (CoR) adopted its [opinion](#) on the New Pact on Migration and Asylum on 19 March 2021 (rapporteur: Antje Grotheer, Germany, PES). In her working document, the rapporteur expressed concern that countries on the EU's external borders bear primary responsibility for arrival and registration, and called for solidarity among Member States through fast distribution of asylum-seekers and greater involvement of the European Agency for Asylum and regional and civil society players.

In 2016, the CoR assessed the Eurodac proposal among other elements of the CEAS reform in its [opinion](#), 'Reform of the Common European Asylum System', which was adopted on 8 December 2016. The Committee endorsed lowering the fingerprinting age from 14 to 6 years to help to find missing minors through sharing of data between EU agencies and Member States' authorities. However, the CoR found that the prohibition on sharing data with third countries should stay in effect.

The European Economic and Social Committee (EESC) adopted an [opinion](#) on 'Screening regulation, amended proposal revising the asylum procedures regulation and the amended proposal revising the Eurodac regulation'. The opinion, prepared by rapporteur Panagiotis Gkofas (Greece, Diversity Europe – Group III) for the Employment, Social Affairs III and Citizenship section, was adopted on 24 February 2021.

On the previous Eurodac proposal, the Committee adopted its [opinion](#) on 'Reform of the Common European Asylum System (CEAS) – first package' on 19 October 2016. The EESC assessed that extending the scope of the Eurodac Regulation to include data on third-country nationals 'who have not applied for international protection and are residing in the EU irregularly' would need to be duly balanced by the necessity and proportionality of the measures, especially 'with regard to applicants for international protection and the confidentiality of the procedure'.

National parliaments

The [subsidiarity deadline](#) was 22 January 2021. Chambers from Spain, Portugal, Italy, France and Czechia have entered into political dialogue, while the Hungarian National Assembly sent a reasoned opinion.

Stakeholder views²

Data protection

One of the main concerns surrounding the Eurodac database is data protection. In its initial comments on the new proposal, the European Council on Refugees and Exiles ([ECRE](#)) deplores that 'data protection principles such as purpose-limitation, necessity and proportionality are at risk of being compromised from such a broad expansion'.

Data protection and privacy concerns, while already raised in respect of the initial regulation, were [considered](#) to have multiplied with the addition of law enforcement access in the 2013 Regulation. Departing from the premise that the risk of misuse of biometric data is increased when stored in a centralised database, commentators referred to the European Court of Human Rights (ECtHR) statement³ that centralised units should all be adequately protected against unauthorised access and attacks. Should this not be the case, the right to respect for private life under Article 8 of the European Convention on Human Rights ([ECHR](#)) would be violated.

The European Association for the Defence of Human Rights ([AEDH](#)) finds that the proposal significantly exceeds the initial scope of Eurodac and introduces coercive forms that are not necessarily accompanied by adequate safeguards. It emphasises that the European Parliament should be closely involved in the supervision of Eurodac, ensuring that its application respects data protection standards as well as the right to apply for international protection.

Statewatch and the Platform for International Cooperation on Undocumented Migrants ([PICUM](#)) express their concern regarding the common identity repository (CIR) as part of the interoperability initiative. It would have the capacity to store up to 300 million records containing biographical and biometric data from existing and future EU databases. They conclude that using data for purposes not foreseen in the original legislation would go against the principle of purpose limitation, and question whether adding these purposes to the relevant legislation in amendments manages to overcome this issue.

Law enforcement access

Concerning law enforcement access under the 2013 Eurodac Regulation, the EDPS had already [pointed](#) to difficulties in reconciling the proposals with the 'purpose limitation' principle and warned against function creep. He also questioned the necessity and proportionality of law enforcement access, and warned against potential unequal treatment between asylum-seekers and other individuals. This concern was shared by the United Nations High Commissioner for Refugees ([UNHCR](#)), commenting that it would 'further risk putting persons seeking international protection at risk of stigmatisation'.

The use of databases leading to potential discrimination for lack of proportionality was condemned by the ECtHR in 2008 in the [S. and Marper](#) case. With the scope of the regulation expanded even

further under the proposal, these concerns would only be amplified. In a [study](#), 'The implementation of the common European asylum system', prepared for the Civil Liberties, Justice and Home Affairs Committee of the European Parliament in May 2016, experts question in particular the proportionality and necessity of extending 'the personal and material scope of the Regulation' and their compatibility with the purpose limitation principle. They also draw attention to the fact that, in storing such a significant amount of personal data and continually expanding the list of authorities who can access this data, a proper balance between competing public interests and the need to protect the rights of a highly vulnerable group is essential.

[Statewatch and PICUM](#) also fear the significant effect the changes in the recast proposal are likely to have on third-country nationals as Eurodac's initial function as an asylum database is broadened to include more data gathered from more people and for more purposes.

Use of detention and coercion

The 2015 Commission staff working document, which allows 'specific and limited use of detention, and use of coercion as last resort', has met with objections from human rights activists. The 2016 European Parliament study, 'The implementation of the common European asylum system', observes that the Eurodac proposal relies on the principle of coercion, and criticises it as seeking 'quick fixes' to save the Dublin system rather than attempting to address its reported fundamental deficiencies.

[Statewatch](#), as well as other [commentators](#), heavily criticise coercive fingerprinting of migrants, with the only potential exception left for children and pregnant women. The EU's Agency for Fundamental Rights ([FRA](#)) finds it 'difficult to imagine a situation where the use of physical or psychological force to obtain fingerprints for Eurodac would be justified'. [ECRE](#) observes that 'taking fingerprints is not necessarily a condition for applying the Dublin Regulation, since other circumstantial evidence can also be used'. In line with the practice in some countries that already use other methods of identification, the new proposal provides for the use of other biometrics in addition to fingerprinting.

Moreover, allowing detention of migrants who refuse to be fingerprinted also raises concerns. Article 8(3)(a) of the recast [Reception Conditions Directive](#), in force since 20 July 2015, specifically permits the use of detention to determine or verify the identity or nationality of an applicant. The proposal for a reception conditions regulation, presented on 13 July 2016, goes even further by adding new grounds for detention. The new article 8(3)(c) specifies that 'in case an applicant has been assigned a specific place of residence but has not complied with this obligation, and where there is a continued risk that the applicant may abscond, the applicant may be detained ...'. Previously, [ECRE](#) had noted, regarding the 2013 Eurodac system, that it contains only information on the applicant's set of fingerprints and sex, which on their own do not allow the applicant's identity or nationality to be established or verified, and found the use of detention for that purpose unnecessary. However, should the new Eurodac Regulation be adopted, this argument would lose its validity as the database would also store additional information, such as names, nationalities, place and date of birth, travel document information and EU asylum application number.

Legislative process

The legislative proposal ([COM\(2020\) 614](#)) was published on 23 September 2020. It falls under the ordinary legislative procedure ([2016/0132/COD](#)), following the previous proposal ([COM\(2016\) 272](#)), published on 4 May 2016. The proposal has been assigned to the Civil Liberties, Justice and Home Affairs Committee. The rapporteur is Jorge Buxadé Villalba (ECR, Spain).

On the 2016 proposal, the Civil Liberties, Justice and Home Affairs Committee adopted its [report](#), prepared by the previous rapporteur Monika Macovei (ECR, Romania) on 30 May 2017, by 35 votes to 10 with 8 abstentions, and also voted to open negotiations with the Council, a decision confirmed by plenary in June 2017. The committee held that Europol should have direct access to the Eurodac

database holding fingerprints of asylum-seekers. In addition to fingerprints, facial images, names and ID-numbers should also be stored in Eurodac, if available. In order to improve safety of refugee minors, children from the age of six should be fingerprinted to facilitate tracking and family reunifications.

In the Council, the Justice and Home Affairs (JHA) Counsellors expressed broad support for the objectives of the proposal, to extend Eurodac's scope by including the possibility for Member States to store and search data belonging to persons who are not applicants for international protection so that they can be identified for return and readmission purposes. The issue of law enforcement access to Eurodac was also repeatedly discussed. On 9 December 2016, the Council agreed on a partial general approach and endorsed a [mandate for negotiations](#) with the European Parliament on the recast of the Eurodac Regulation, which was followed by an updated [mandate](#) in Coreper on 15 June 2017. On 14 February 2018, the mandate was further extended in Coreper to cover issues related to resettlement.

Trilogue negotiations started in September 2017, and a [partial agreement](#) on the majority of outstanding issues was reached on 19 June 2018. Namely, the co-legislators agreed: to store, in addition to fingerprints, the facial images and alphanumeric data of asylum-seekers and irregular migrants; to lower the age for obtaining fingerprints and facial images of minors from 14 to 6 years; to allow Europol to query the database more efficiently; and also to register persons falling under the Union or national resettlement schemes. Concerning one of the main subjects of divergent views from the start of the negotiations – the data retention period for asylum-seekers – the Presidency reserved its position on the cross-references to other migration files, in particular the Dublin Regulation and the Asylum Procedure Regulation.

As negotiations on the rest of the asylum package reached an impasse in 2019, the Eurodac proposal also became blocked. Having published an amended proposal in 2020, the Commission highlighted its support for all the elements of the provisional agreement reached between the Parliament and the Council on the 2016 proposal.

EP SUPPORTING ANALYSIS

Dumbrava C., [Screening of third-country nationals at the EU's external borders](#), EPRS, European Parliament, November 2020.

[European implementation assessment on asylum procedures at the border](#), EPRS, European Parliament, November 2020.

Malmersjo G. and Remáč M., [Regulation 604/2013 \(Dublin Regulation\) and asylum procedures in Europe](#), Implementation appraisal, EPRS, European Parliament, April 2016.

Orav, A., [Fingerprinting migrants: Eurodac Regulation](#), EPRS, European Parliament, November 2015.

Radjenovic A., [Reforming asylum and migration management](#), EPRS, European Parliament, October 2020.

[The implementation of the common European asylum system](#), Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, May 2016.

OTHER SOURCES

[Eurodac Regulation](#), European Parliament, Legislative Observatory (OELI).

ENDNOTES

- ¹ [Explanatory note on the 'Hotspot' approach](#), European Commission, 2015.
- ² This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal. Additional information can be found in related publications listed under 'EP supporting analysis'.
- ³ E. J. Kindt, *Privacy and Data Protection Issues of Biometric Application: A Comparative Legal Analysis*, Springer, 2013, p. 360.

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