

# EUROPEAN PARLIAMENT

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*Committee on Civil Liberties, Justice and Home Affairs*

**2008/0242(COD)**

30.3.2009

## **AMENDMENTS**

### **33 - 56**

**Draft report**  
**Nicolae Vlad Popa**  
(PE419.907v01-00)

on the 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] (recast)

Proposal for a regulation  
(COM(2008)0825 – C6-0475/2008 – 2008/0242(COD))



**Amendment 33**  
**Rareş-Lucian Niculescu**

**Proposal for a regulation**  
**Recital 2**

*Text proposed by the Commission*

(2) A common policy on asylum, including a Common European Asylum System, is a constituent part of the European Union's objective of progressively establishing an area of freedom, security and justice open to those who, **forced by circumstances**, legitimately seek protection in the Community.

*Amendment*

(2) A common policy on asylum, including a Common European Asylum System, is a constituent part of the European Union's objective of progressively establishing an area of freedom, security and justice open to those who legitimately seek **international** protection in the Community.

Or. en

*Justification*

*Modification in accordance with general terminology.*

**Amendment 34**  
**Rareş-Lucian Niculescu**

**Proposal for a regulation**  
**Recital 4**

*Text proposed by the Commission*

(4) 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

*Amendment*

(4) 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 **unauthorised** 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 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.

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

Or. en

### *Justification*

*Entry may be legally justified on the basis of a right of asylum. The use of the terms "unlawful" or "illegally" is therefore not totally correct.*

## **Amendment 35** **Claude Moraes**

### **Proposal for a regulation** **Recital 4**

#### *Text proposed by the Commission*

(4) 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

#### *Amendment*

(4) 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 *unauthorised* crossing of the external borders of the Community. It is also desirable, in order to *effectively* 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 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.

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

Or. en

### *Justification*

*Entry to an EU country by an asylum seeker may be legally justified on the basis of the right to asylum, and therefore the terms 'unlawful' and 'illegally' are not correct.*

## **Amendment 36** **Rareș-Lucian Niculescu**

### **Proposal for a regulation** **Recital 10**

#### *Text proposed by the Commission*

(10) Third country nationals or stateless persons who have requested international protection *in one Member State may have the option of requesting* international protection in another Member State for many years *to come. Therefore, the maximum period during which fingerprint data should be kept by the Central System should be of considerable length. Given that most third country nationals or stateless persons who have stayed in the Community for several years will have obtained a settled status or even citizenship of a Member State after that period*, a period of ten years should be considered a reasonable period for the conservation of fingerprint data.

#### *Amendment*

(10) *In view of the fact that the possibility for* third-country nationals or stateless persons who have requested international protection *to lodge another application for* international protection in another Member State *remains open* for many years, a period of ten years should be considered a reasonable period for the conservation of fingerprint data.

Or. en

*Justification*

*The modification proposes a more concise and more comprehensible text.*

**Amendment 37**

**Claude Moraes**

**Proposal for a regulation**

**Recital 11**

*Text proposed by the Commission*

(11) 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 third country nationals or stateless persons obtain citizenship of a Member State.

*Amendment*

(11) 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 third-country nationals or stateless persons obtain citizenship of a Member State, ***or are granted long-term residence status by a Member State.***

Or. en

*Justification*

*According to Directive 2003/109/EC, "The European Council, at its special meeting in Tampere on 15 and 16 October 1999, stated that the legal status of third-country nationals should be approximated to that of Member States' nationals and that a person who has resided legally in a Member State for a period of time to be determined and who holds a long-term residence permit should be granted in that Member State a set of uniform rights which are as near as possible to those enjoyed by citizens of the European Union." Consequently, the fingerprints of a long-term resident cannot justifiably be retained after they have been granted that status.*

**Amendment 38**

**Rareş-Lucian Niculescu**

**Proposal for a regulation**

**Recital 11**

*Text proposed by the Commission*

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*Amendment*

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there is no need to keep fingerprint data for that length of time. Fingerprint data should be erased immediately once third-country nationals or stateless persons obtain citizenship of a Member State ***or a long-term residence permit in one of the Member States.***

Or. en

*Justification*

*A long term residence permit in one of the Member States implies a right of mobility within the European Union. Therefore, further storage of data is not justified.*

**Amendment 39**  
**Jeanine Hennis-Plasschaert**

**Proposal for a regulation**  
**Recital 22**

*Text proposed by the Commission*

(22) Member States should provide for a system of penalties to sanction the use of data ***recorded*** in the Central System contrary to the purpose of EURODAC.

*Amendment*

(22) Member States should provide for a system of ***effective, proportionate and dissuasive*** penalties to sanction the use of data ***entered*** in the Central System contrary to the purpose of EURODAC.

Or. en

*Justification*

*To be in line with text of Article 29.*

**Amendment 40**  
**Claude Moraes**

**Proposal for a regulation**  
**Recital 24**

*Text proposed by the Commission*

(24) This Regulation respects and has to be

*Amendment*

(24) This Regulation respects and has to be

applied in accordance with the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, this Regulation seeks to ensure full respect for the protection of personal data and the right to asylum and to promote the application of Articles 8 *and* 18 of the Charter.

applied in accordance with the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, this Regulation seeks to ensure full respect for **human dignity**, the protection of personal data and the right to asylum and to promote the application of Articles **1, 4, 6, 8, 18, 19 and 24** of the Charter.

Or. en

### *Justification*

*This amendment aims to maintain coherence with the proposal for a directive laying down minimum standards for the reception of asylum seekers which includes these Articles. Additionally, given that these Articles refer to the right to human dignity, the right to be free from inhuman and degrading treatment, the right to liberty and security, and the protection of children, they are certainly of relevance to this Regulation.*

#### **Amendment 41** **Claude Moraes**

#### **Proposal for a regulation** **Article 3 – paragraph 5**

##### *Text proposed by the Commission*

5. The procedure for taking fingerprints shall be determined and applied in accordance with the national practice of the Member State concerned and in accordance with the safeguards laid down in the Charter of Fundamental Rights of the European Union, in the Convention for the Protection of Human Rights and Fundamental Freedoms and in the United Nations Convention on the Rights of the Child.

##### *Amendment*

5. The procedure for taking fingerprints shall be determined and applied in accordance with the national practice of the Member State concerned and in accordance with the safeguards laid down in **Articles 1, 4, 6, 8, 18, 19 and 24 of** the Charter of Fundamental Rights of the European Union, in **Article 5 of** the Convention for the Protection of Human Rights and Fundamental Freedoms and in **Articles 22, 37 and 40 of** the United Nations Convention on the Rights of the Child, **and in particular ensuring full respect for human dignity.**

Or. en



## *Justification*

*Given that the above human rights texts do not contain specific provisions for the taking of fingerprints of asylum seekers, in order to give greater clarification it is necessary to specify those Articles which refer to the right to human dignity, the right to be free from inhuman and degrading treatment, the right to liberty and security, the protection of personal data and the right to asylum.*

### **Amendment 42** **Jean Lambert**

#### **Proposal for a regulation** **Article 4 – paragraph 7 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. The setting-up of the Management Authority and the interoperability of the several databases for which it has competence shall be without prejudice to the separate and discrete operation of those datebases.***

Or. en

### **Amendment 43** **Simon Busuttill**

#### **Proposal for a regulation** **Article 6 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. Each Member State shall ***promptly*** after the lodging of an application as defined by Article 20(2) of the Dublin Regulation take the fingerprints of all fingers of every applicant for international protection of at least 14 years of age and shall no later than ***within*** 48 hours after the ***lodging of that application*** transmit ***them*** together with the data referred to in points (b) to (g) of Article 7 to the Central System.

1. Each Member State shall ***no later than 48 working hours*** after the lodging of an application as defined by Article 20(2) of the Dublin Regulation take the fingerprints of all fingers of every applicant for international protection of at least 14 years of age and shall no later than 48 ***working*** hours after the ***taking of the fingerprints*** transmit ***the fingerprint data*** together with the data referred to in points (b) to (g) of Article 7 ***of this Regulation*** to the Central System.

*By way of exception, in cases where a Member State is facing specific and disproportionate pressure on its asylum system, or where the fingerprints are seriously, but only temporarily, damaged and cannot provide suitable fingerprint data or in cases where there are serious medical reasons, including the need to enforce a quarantine period because of severe contagious disease, the period of 48 working hours for taking the fingerprints of applicants for international protection, as referred to in this paragraph, may be extended up to a maximum of three weeks. The period of 48 working hours for transmitting the required data shall apply accordingly.*

Or. en

**Amendment 44**  
**Claude Moraes**

**Proposal for a regulation**  
**Article 9 – paragraph 1**

*Text proposed by the Commission*

1. Data relating to a person who has acquired citizenship of any Member State before expiry of the period referred to in Article 8 shall be erased from the Central System, in accordance with Article 20(3) as soon as the Member State of origin becomes aware that the person has acquired such citizenship.

*Amendment*

1. Data relating to a person who has acquired citizenship of any Member State **or has been issued a long-term residence permit by a Member State**, before expiry of the period referred to in Article 8 shall be erased from the Central System, in accordance with Article 20(3) as soon as the Member State of origin becomes aware that the person has acquired such citizenship **or long-term resident status**.

Or. en

*Justification*

*According to Directive 2003/109/EC, "The European Council, at its special meeting in Tampere on 15 and 16 October 1999, stated that the legal status of third-country nationals should be approximated to that of Member States' nationals and that a person who has resided legally in a Member State for a period of time to be determined and who holds a long-*

*term residence permit should be granted in that Member State a set of uniform rights which are as near as possible to those enjoyed by citizens of the European Union." Consequently, the fingerprints of a long-term resident cannot justifiably be retained after they have been granted that status.*

**Amendment 45**  
**Rareș-Lucian Niculescu**

**Proposal for a regulation**  
**Article 9 – paragraph 1**

*Text proposed by the Commission*

1. Data relating to a person who has acquired citizenship of any Member State before expiry of the period referred to in Article 8 shall be erased from the Central System, in accordance with Article 20(3) as soon as the Member State of origin becomes aware that the person has acquired such citizenship.

*Amendment*

1. Data relating to a person who has acquired citizenship of any Member State ***or has obtained a long-term residence permit issued by a Member State*** before expiry of the period referred to in Article 8 shall be erased from the Central System, in accordance with Article 20(3) as soon as the Member State of origin becomes aware that the person has acquired such citizenship ***or has obtained such a permit.***

Or. en

*Justification*

*As we previously pointed out, a long term residence permit in one of the Member States implies a right of mobility within the European Union. Therefore, further storage of data in the system is not justified.*

**Amendment 46**  
**Simon Busuttil**

**Proposal for a regulation**  
**Article 10 – paragraph 1**

*Text proposed by the Commission*

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

*Amendment*

1. Each Member State shall, in accordance with the safeguards laid down in the European Convention *for the Protection of* Human Rights *and Fundamental Freedoms* and in the United Nations Convention on

fingerprints of all fingers of every third country national or stateless person 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.

the Rights of the Child take the fingerprints of all fingers of every third-country national or stateless person 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, ***no later than 48 working hours from the date of apprehension.***

Or. en

**Amendment 47**  
**Claude Moraes**

**Proposal for a regulation**  
**Article 10 – paragraph 1**

*Text proposed by the Commission*

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 all fingers of every third country national or stateless person 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.

*Amendment*

1. Each Member State shall, in accordance with the safeguards laid down ***in Articles 1, 4, 6, 8, 18, 19 and 24 of the Charter of Fundamental Rights of the European Union, in Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and in Articles 22, 37 and 40 of the United Nations Convention on the Rights of the Child*** promptly take the fingerprints of all fingers of every third-country national or stateless person 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.

Or. en

*Justification*

*Given that the above human rights texts do not contain specific provisions for the taking of*

*fingerprints of asylum seekers, in order to give greater clarification it is necessary to specify those Articles which refer to the right to human dignity, the right to be free from inhuman and degrading treatment, the right to liberty and security and the protection of personal data.*

**Amendment 48**  
**Simon Busuttil**

**Proposal for a regulation**  
**Article 10 – paragraph 2 – introductory part**

*Text proposed by the Commission*

2. The Member State concerned shall no later than 48 hours ***from the date of apprehension*** transmit to the Central System the following data in relation to ***any third country national or stateless person, as referred to in paragraph 1, who is not turned back:***

*Amendment*

2. The Member State concerned shall no later than 48 ***working*** hours ***after the taking of the fingerprints of the third-country national or stateless person, as referred to in paragraph 1,*** transmit to the Central System the following data in relation to ***that*** person:

Or. en

**Amendment 49**  
**Simon Busuttil**

**Proposal for a regulation**  
**Article 10 – paragraph 2 – subparagraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***By way of exception, in cases where a Member State is facing a disproportionate burden, or where the fingerprints are seriously, but only temporarily, damaged and cannot provide suitable fingerprint data or in cases where there are serious medical reasons, including the need to enforce a quarantine period because of severe contagious disease, the period of 48 working hours for taking the fingerprints of the third-country national or stateless person, as referred to in paragraph 1, may be extended provided that the fingerprints are collected as soon as possible when the circumstances warranting such extension cease to exist. The period of 48 working***

*hours for transmitting the required data shall apply accordingly.*

Or. en

**Amendment 50**  
**Simon Busuttil**

**Proposal for a regulation**  
**Article 14 – paragraph 2**

*Text proposed by the Commission*

2. The Member State of origin shall unmark data concerning a third country national or stateless person whose data were previously marked in accordance with paragraph 1 if his or her status is revoked or ended or renewal of his status is refused under Article 14 or 19 of Council Directive 2004/83/EC.

*Amendment*

2. The Member State of origin shall unmark data concerning a third-country national or stateless person whose data were previously marked in accordance with paragraph 1 if his or her status is revoked or ended or renewal of his *or her* status is refused under Article 14 or 19 of Council Directive 2004/83/EC, *or if he or she ceases to be a refugee or to be eligible for subsidiary protection under Articles 11 and 16 respectively of Council Directive 2004/83/EC.*

Or. en

**Amendment 51**  
**Claude Moraes**

**Proposal for a regulation**  
**Article 17 – paragraph 5**

*Text proposed by the Commission*

5. Where final identification in accordance with paragraph 4 reveal that the result of the comparison received from the Central System is inaccurate, Member States shall communicate this fact to the Commission *and* to the Management Authority.

*Amendment*

5. Where final identification in accordance with paragraph 4 *reveals* that the result of the comparison received from the Central System is inaccurate, Member States shall communicate this fact to the Commission, to the Management Authority *and to the European Data Protection Supervisor.*

Or. en

*Justification*

*In the interests of data protection the European Data Protection Supervisor should also be informed of inaccurate identifications.*

**Amendment 52**  
**Nicolae Vlad Popa**

**Proposal for a regulation**  
**Article 19 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. All the authorities that participate in the EURODAC system shall prevent the access to or the transfer of data recorded in EURODAC to the authorities of any unauthorised third country, especially to the state of origin of the persons covered by this Regulation.***

Or. en

*Justification*

*The provision of data recorded in the EURODAC system to the authorities of any unauthorised third country, especially to the state of origin of the persons covered by the present Regulation, could trigger severe consequences for the family members of the persons covered by the EURODAC Regulation.*

**Amendment 53**  
**Claude Moraes**

**Proposal for a regulation**  
**Article 23 – paragraph 1 – subparagraph 1 – introductory part**

*Text proposed by the Commission*

*Amendment*

1. A person covered by this Regulation shall be informed by the Member State of origin in writing, and where appropriate, orally, in a language which he or she ***is reasonably supposed to understand*** of the following:

1. A person covered by this Regulation shall be informed by the Member State of origin in writing, and where appropriate, orally, in a language which he or she ***understands*** of the following:

*Justification*

*Article 5(2) of the ECHR must be respected: it has been interpreted by the European Court of Human Rights as meaning that the individual concerned needs to be informed, in simple, non-technical language, of the reasons for his or her detention in such a way that he/she can challenge said detention before a court.*

**Amendment 54****Jeanine Hennis-Plasschaert****Proposal for a regulation****Article 23 – paragraph 1 – subparagraph 1 – introductory part***Text proposed by the Commission*

1. A person covered by this Regulation shall be informed by the Member State of origin in writing, and where appropriate, orally, in a language which he or she *is* reasonably *supposed* to understand of the following:

*Amendment*

1. A person covered by this Regulation shall be informed by the Member State of origin in writing, and where appropriate, orally, in a language which he or she *understands or may* reasonably *be presumed* to understand of the following:

Or. en

*Justification*

*The aim of this amendment is to adopt a harmonised approach throughout several legal instruments with similar references to the required level of understanding a language.*

**Amendment 55****Jeanine Hennis-Plasschaert****Proposal for a regulation****Article 23 – paragraph 10***Text proposed by the Commission*

10. In each Member State, the national supervisory authority shall assist the data subject in accordance with Article 28(4) of Directive 95/46/EC in exercising his/her rights.

*Amendment*

10. In each Member State, the national supervisory authority shall, *where appropriate*, assist the data subject in accordance with Article 28(4) of Directive 95/46/EC in exercising his/her rights.



*Justification*

*It should be made clear that the data controller is primarily responsible to hear claims concerning the protection of personal data.*

**Amendment 56**  
**Claude Moraes**

**Proposal for a regulation**  
**Article 25 – paragraph 1**

*Text proposed by the Commission*

1. The European Data Protection Supervisor shall check that the personal data processing activities of the Management Authority are carried out in accordance with this Regulation. The duties and powers referred to in Articles 46 and 47 of Regulation (EC) No 45/2001 shall apply accordingly.

*Amendment*

1. The European Data Protection Supervisor shall check that the personal data processing activities of the Management Authority are carried out in accordance with this Regulation. The duties and powers referred to in Articles 46 and 47 of Regulation (EC) No 45/2001 shall apply accordingly. ***The European Data Protection Supervisor may request any information from the Management Authority considered to be necessary to carry out the functions entrusted to it under that Regulation.***

Or. en

*Justification*

*This amendment aims to increase overall data protection controls, and to clarify the power of the European Data Protection Supervisor to request information from Community institutions and bodies as enshrined in Regulation (EC) No 45/2001.*