EUROPEAN PARLIAMENT

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Committee on Civil Liberties, Justice and Home Affairs

2008/0242(COD)

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***I
DRAFT REPORT

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)
(COM(2008)0825 – C6-0475/2008 – 2008/0242(COD))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Nicolae Vlad Popa

(Recast – Rule 80a of the Rules of Procedure)

Symbols for procedures

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

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

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics*.** In the case of amending acts, passages in an existing provision that the Commission has left unchanged, but that Parliament wishes to amend, are highlighted in **bold**. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...]. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). Suggested corrections of this kind are subject to the agreement of the departments concerned.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

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(COM(2008)0825 – C6-0475/2008 – 2008/0242(COD))

(Codecision procedure – recast)

The European Parliament,

– having regard to the Commission proposal to the European Parliament and the Council (COM(2008)0825),

– having regard to Article 251(2) and Article 63(1)(a) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0475/2008),

– having regard to the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts[1],

– having regard to the letter of 29 January 2009 from the Committee on Legal Affairs to the Committee on Civil Liberties, Justice and Home Affairs in accordance with Rule 80a(3) of its Rules of Procedure,

– having regard to Rules 80a and 51 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 (A6-0000/2009),

A. whereas, according to the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission, the proposal in question does not include any substantive amendments other than those identified as such in the proposal and whereas, as regards the codification of the unchanged provisions of the earlier acts together with those amendments, the proposal contains a straightforward codification of the existing texts, without any change in their substance;

1. Approves the Commission proposal as adapted to the recommendations of the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission and incorporating the technical amendments approved by the Committee on Legal Affairs and as amended below;

2. 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;

3. Instructs its President to forward its position to the Council and the Commission.

[1] OJ C 77, 28.3.2002, p. 1.

Amendment 1

Proposal for a regulation
Recital 9

Text proposed by the Commission	*Amendment*
(9) It is necessary to lay down precise rules on the transmission of such fingerprint data to the Central System, the recording of such fingerprint data and other relevant data in the Central System, their storage, their comparison with other fingerprint data, the transmission of the results of such comparison and the ***blocking*** and erasure of the recorded data. Such rules may be different for, and should be specifically adapted to, the situation of different categories of third country ***national*** or stateless persons.	(9) It is necessary to lay down precise rules on the transmission of such fingerprint data to the Central System, the recording of such fingerprint data and other relevant data in the Central System, their storage, their comparison with other fingerprint data, the transmission of the results of such comparison and the ***marking*** and erasure of the recorded data. Such rules may be different for, and should be specifically adapted to, the situation of different categories of third-country ***nationals*** or stateless persons.

Or. en

Justification

Since the concept of "blocking data" has been replaced in the Commission proposal by the concept of "marking data", the recital should be adapted accordingly.

Amendment 2

Proposal for a regulation
Recital 19

Text proposed by the Commission	*Amendment*
(19) Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data ***should apply***. However, certain ***point*** should be clarified in respect of the responsibility for the processing of data and of supervision of data protection.	(19) Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data ***applies to the processing of personal data by the Community institutions and bodies carried out pursuant to this Regulation***. However, certain ***points*** should be clarified in respect of the responsibility for the processing of data and of ***the*** supervision

of data protection.

Or. en

Justification

This amendment aims at a clearer wording of the text.

Amendment 3

Proposal for a regulation
Article 4 – paragraph 1

Text proposed by the Commission	*Amendment*
1. After a transitional period, 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.	1. After a transitional period, 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, ***are*** used for the Central System.

Or. en

Justification

As pointed out by the European Data Protection Supervisor in his opinion of 18 February 2009, the broader term "techniques", which includes both the technology used and the way in which the installation is designed, built, maintained and operated, should be used.

Amendment 4

Proposal for a regulation
Article 4 – paragraph 7

Text proposed by the Commission	*Amendment*
7. The Management Authority referred to in this Regulation shall be the Management Authority competent for SIS II and VIS.	7. The Management Authority referred to in this Regulation shall be the Management Authority competent for ***EURODAC,*** SIS II and VIS.

Or. en

Justification

All three IT systems for which the Management Authority will be competent should be mentioned.

Amendment 5

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, including an indication of the number of persons for whom hits have been recorded under (b), (c)***,*** (d) and ***(g)***.

Or. en

Justification

Since the number of hits for persons granted international protection is included in the obligation of the Management Authority to draw up statistics according to paragraph 1 of Article 5, their number should also be part of the indication in the annual compilation of the monthly statistics.

Amendment 6

Proposal for a regulation
Article 6 – title and paragraph 1

Text proposed by the Commission	*Amendment*
Collection, transmission and comparison of ***fingerprints***	Collection, transmission and comparison of ***fingerprint data***
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	1. Each Member State shall ***no later than 48 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 ***24 hours*** after the ***taking of the fingerprints*** transmit ***the fingerprint***

data referred to in points (b) to (g) of Article 7 to the Central System.	***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 when the fingerprints are seriously, but only temporarily, damaged and cannot provide suitable fingerprint data or in cases when there is a need to enforce a quarantine period because of severe contagious disease, the period of 48 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 24 hours for transmitting the required data shall apply accordingly.***

Or. en

Justification

Although it is of the utmost importance to introduce a specific deadline for the transmission of the fingerprint data, the deadline of 48 hours seems to be too short for taking and transmitting the fingerprint data to the Central System. A deadline of 48 hours for taking the fingerprints and a deadline of 24 hours for transmitting the fingerprint data seems to be more appropriate while still tackling the problem of late transmission of fingerprints by Member States. The second part of this amendment takes account of situations where the taking of fingerprints proves temporarily impossible.

Amendment 7

Proposal for a regulation
Article 6 – paragraph 2

Text proposed by the Commission	*Amendment*
2. By way of derogation from paragraph 1, when an applicant for international protection arrives in the ***responsible*** Member State following a transfer pursuant to the Dublin Regulation, the responsible Member State shall only ***transmit a transaction indicating*** the fact of the successful transfer ***regarding*** the relevant data recorded in the Central System pursuant to ***Article 6***, in conformity with the requirements for electronic communication with the Central System	2. By way of derogation from paragraph 1, when an applicant for international protection arrives in the Member State ***responsible for examining an application for international protection*** following a transfer pursuant to ***Article 23 of*** the Dublin Regulation, the responsible Member State shall only ***indicate*** the fact of the successful transfer ***with regard to*** the relevant data recorded in the Central System pursuant to ***Article 7 of this Regulation***, in conformity with the

established by the Management Authority. This information shall be stored in accordance with Article 8 for the purpose of transmission under Article ***6(5)***.	requirements for electronic communication with the Central System established by the Management Authority. This information shall be stored in accordance with Article 8 for the purpose of transmission under ***paragraph 5 of this*** Article.

Or. en

Justification

Reference should be made to Article 7 according to which the relevant data are recorded. The rest of this amendment aims at a clearer wording of the text.

Amendment 8

Proposal for a regulation
Article 6 – paragraph 5

Text proposed by the Commission	*Amendment*
5. The Central System shall automatically transmit the hit or the negative result of the comparison to the Member State of origin. Where there is a hit, it shall transmit for all data sets corresponding to the hit, the data referred to in Article 7(a) to ***(f)*** along with, where appropriate, the mark referred to in Article 14(1).	5. The Central System shall automatically transmit the hit or the negative result of the comparison to the Member State of origin. Where there is a hit, it shall transmit for all data sets corresponding to the hit, the data referred to in Article 7(a) to ***(g)*** along with, where appropriate, the mark referred to in Article 14(1).

Or. en

Justification

The operator user ID should also be part of the transmitted data.

Amendment 9

Proposal for a regulation
Article 9 – paragraph 2

Text proposed by the Commission	*Amendment*
2. The Central System shall inform all Member States of origin about the ***deletion*** of data by another Member State of origin having produced a hit with data ***it*** transmitted relating to persons referred to	2. The Central System shall inform all Member States of origin about the ***erasure*** of data ***for the reason specified in paragraph 1*** by another Member State of origin having produced a hit with data

in Article 6 or Article 10.	***which they*** transmitted relating to persons referred to in Article 6 or Article 10.

Or. en

Justification

The link with paragraph 1 of Article 9 should be stressed (as in Article 12 (3) and (4) for the second category of persons subject to the EURODAC procedure). It should be made clear that the last part of the sentence refers to all Member States of origin having transmitted data and not to the Member State of origin having erased the data.

Amendment 10

Proposal for a regulation
Article 10 – paragraph 1

Text proposed by the Commission	*Amendment*
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.	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 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 hours from the date of apprehension.***

Or. en

Justification

Although it is of the utmost importance to introduce a specific deadline for the transmission of the fingerprint data, the deadline of 48 hours seems to be too short for taking and transmitting the fingerprint data to the Central System. A deadline of 48 hours for taking the fingerprints and a deadline of 24 hours for transmitting the fingerprint data seems to be more appropriate while still tackling the problem of late transmission of fingerprints by Member States.

Amendment 11

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

Text proposed by the Commission	*Amendment*
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***:	2. The Member State concerned shall no later than ***24 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

Justification

Although it is of the utmost importance to introduce a specific deadline for the transmission of the fingerprint data, the deadline of 48 hours seems to be too short for taking and transmitting the fingerprint data to the Central System. A deadline of 48 hours for taking the fingerprints and a deadline of 24 hours for transmitting the fingerprint data seems to be more appropriate while still tackling the problem of late transmission of fingerprints by Member States. The objective of the second part of this amendment is to avoid repetition of a condition which is already laid down in the first paragraph of Article 10.

Amendment 12

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

Text proposed by the Commission	*Amendment*
	By way of exception, in cases when the fingerprints are seriously, but only temporarily, damaged and cannot provide suitable fingerprint data or in cases when there is a need to enforce a quarantine period because of severe contagious disease, the period of 48 hours for taking the fingerprints of the third-country national or stateless person, as referred to in paragraph 1, may be extended up to a maximum of three weeks. The period of 24 hours for transmitting the required data shall apply accordingly.

Or. en

Justification

This amendment takes account of situations where the taking of fingerprints proves temporarily impossible.

Amendment 13

Proposal for a regulation
Article 12 – paragraph 2 – introductory part

Text proposed by the Commission	*Amendment*
2. The data relating to a third country national or stateless person as referred to in Article 10(1) shall be erased from the Central System in accordance with ***Article 21(3) immediately, if*** the Member State of origin becomes aware of one of the following circumstances before the ***one-year*** period mentioned in paragraph 1 has expired:	2. The data relating to a third**-**country national or stateless person as referred to in Article 10(1) shall be erased from the Central System in accordance with ***Article 20(3) as soon as*** the Member State of origin becomes aware of one of the following circumstances before the period mentioned in paragraph 1 *of this Article* has expired:

Or. en

Justification

Reference should be made to Article 20(3) according to which only the Member State of origin is entitled to erase data. The second part of this amendment aims at an alignment with the wording of Article 9(1) where the corresponding provisions for the first category of persons subject to the EURODAC procedure are laid down. The deletion seeks to avoid duplication.

Amendment 14

Proposal for a regulation
Article 12 – paragraph 3

Text proposed by the Commission	*Amendment*
3. The Central System shall inform all Member States of origin about the ***deletion*** of data for the reason specified in paragraph 2(a) ***and*** (b) by another Member State of origin having produced a hit with data ***it*** transmitted relating to persons	3. The Central System shall inform all Member States of origin about the ***erasure*** of data for the reason specified in paragraph 2(a) ***or*** (b) by another Member State of origin having produced a hit with data ***which they*** transmitted relating to

referred to in Article 10.	persons referred to in Article 10.

Or. en

Justification

It should be made clear that the last part of the sentence refers to all Member States of origin having transmitted data and not to the Member State of origin having erased the data.

Amendment 15

Proposal for a regulation
Article 12 – paragraph 4

Text proposed by the Commission	*Amendment*
4. The Central System shall inform all Member States of origin about the ***deletion*** of data for the reason specified in paragraph 2(c) by another Member State of origin having produced a hit with data ***it*** transmitted relating to persons referred to in Article 6 or Article 10.	4. The Central System shall inform all Member States of origin about the ***erasure*** of data for the reason specified in paragraph 2(c) by another Member State of origin having produced a hit with data ***which they*** transmitted relating to persons referred to in Article 6 or Article 10.

Or. en

Justification

It should be made clear that the last part of the sentence refers to all Member States of origin having transmitted data and not to the Member State of origin having erased the data.

Amendment 16

Proposal for a regulation
Article 14 – paragraph 1

Text proposed by the Commission	*Amendment*
1. The Member State of origin which granted international protection to an applicant for international protection whose data were previously recorded pursuant to ***Article 6*** in the Central System shall mark the relevant data in conformity with the requirements for electronic communication with the Central System established by the Management Authority. This mark shall be stored in the Central	1. The Member State of origin which granted international protection to an applicant for international protection whose data were previously recorded pursuant to ***Article 7*** in the Central System shall mark the relevant data in conformity with the requirements for electronic communication with the Central System established by the Management Authority. This mark shall be stored in the Central

System in accordance with Article 8 for the purpose of transmission under Article 6(5).	System in accordance with Article 8 for the purpose of transmission under Article 6(5).

Or. en

Justification

Reference should be made to Article 7 according to which the relevant data are recorded.

Amendment 17

Proposal for a regulation
Article 16 – paragraph 2

Text proposed by the Commission	*Amendment*
2. Member States ***should*** transmit the data referred to in Article 7, Article 10(2) and Article 13(2) electronically. The data referred to in Article 7 and Article 10(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.	2. Member States ***shall*** transmit the data referred to in Article 7, Article 10(2) and Article 13(2) electronically. The data referred to in Article 7 and Article 10(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

Since data are only transmitted electronically, references to paper form or other means of data support have been deleted in the Commission proposal. Accordingly, the electronic transmission of data should be obligatory.

Amendment 18

Proposal for a regulation
Article 16 – paragraph 3

Text proposed by the Commission	*Amendment*
3. The reference number referred to in Article 7(d) ***and*** Article 10(2)(d) shall make it possible to relate data	3. The reference number referred to in Article 7(d)***,*** Article 10(2)(d) ***and Article 13(1)*** shall make it possible to relate data

unambiguously to one particular person and to the Member State which ***is transmitting*** the data. In addition, it shall make it possible to tell whether such data relate to a person referred to in Article 6, Article 10 or Article 13.	unambiguously to one particular person and to the Member State which ***transmitted*** the data. In addition, it shall make it possible to tell whether such data relate to a person referred to in Article 6, Article 10 or Article 13.

Or. en

Justification

The reference number to be transmitted according to Article 13(1) should also fulfil the above mentioned conditions.

Amendment 19

Proposal for a regulation
Article 17 – paragraph 2

Text proposed by the Commission	*Amendment*
2. The Central System shall carry out comparisons in the order of arrival of requests. Each request must be dealt with within 24 hours. ***In the case of data which are transmitted electronically,*** a Member State may for reasons connected with national law require particularly urgent comparisons to be carried out within one hour. Where these times cannot be respected owing to circumstances which are outside the Management Authority's responsibility, the Central System shall process the request as a matter of priority as soon as those circumstances no longer prevail. In such cases, as far as it is necessary for the efficient operation of the Central System, the Management Authority shall establish criteria to ensure the priority handling of requests.	2. The Central System shall carry out comparisons in the order of arrival of requests. Each request must be dealt with within 24 hours. A Member State may for reasons connected with national law require particularly urgent comparisons to be carried out within one hour. Where these times cannot be respected owing to circumstances which are outside the Management Authority's responsibility, the Central System shall process the request as a matter of priority as soon as those circumstances no longer prevail. In such cases, as far as it is necessary for the efficient operation of the Central System, the Management Authority shall establish criteria to ensure the priority handling of requests.

Or. en

Justification

Since data are only transmitted electronically, the text should be adapted accordingly.

Amendment 20

Proposal for a regulation
Article 17 – paragraph 4 – subparagraph 2

Text proposed by the Commission	*Amendment*
Information received from the Central System relating to other data found to be unreliable shall be erased ***or destroyed*** as soon as the unreliability of the data is established.	Information received from the Central System relating to other data found to be unreliable the data shall be erased as soon as the unreliability of the data is established.

Or. en

Justification

Since data are only transmitted electronically, references to paper form or other means of data support have been deleted in the Commission proposal and the text should be adapted accordingly.

Amendment 21

Proposal for a regulation
Article 17 – paragraph 6

Text proposed by the Commission	*Amendment*
6. The Member State which assumes responsibility in accordance with Article 17 of the Dublin Regulation shall ***transmit a transaction indicating*** this fact ***regarding*** the relevant data recorded in the Central System pursuant to ***Article 6*** of this Regulation, in conformity with the requirements for electronic communication with the Central System established by the Management Authority. This information shall be stored in accordance with Article 8 for the purpose of transmission under Article 6(5).	6. The Member State which assumes responsibility in accordance with Article 17 of the Dublin Regulation shall ***indicate*** this fact ***with regard to*** the relevant data recorded in the Central System pursuant to ***Article 7*** of this Regulation, in conformity with the requirements for electronic communication with the Central System established by the Management Authority. This information shall be stored in accordance with Article 8 for the purpose of transmission under Article 6(5). *(This paragraph should be inserted in Article 6 as a new paragraph 2a.)*

Or. en

Justification

Reference should be made to Article 7 according to which the relevant data are recorded. The rest of this amendment aims at a clearer wording of the text.

Amendment 22

Proposal for a regulation
Article 19 – paragraph 1

Text proposed by the Commission	*Amendment*
1. The Member State ***responsible*** shall ensure the security of the data before and during transmission to the Central System. Each Member State shall ensure the security of the data which it receives from the Central System.	1. The Member State ***of origin*** shall ensure the security of the data before and during transmission to the Central System. Each Member State shall ensure the security of the data which it receives from the Central System.

Or. en

Justification

This amendment aims at a harmonised wording throughout the text.

Amendment 23

Proposal for a regulation
Article 19 – paragraph 3 a (new)

Text proposed by the Commission	*Amendment*
	3a. The Management Authority shall lay down a common set of requirements to be fulfilled by persons in order to be granted authorisation to access EURODAC.

Or. en

Justification

A common level of requirements should be in place throughout the EU in order to ensure that the persons who have access to EURODAC have the same level of reliability.

Amendment 24

Proposal for a regulation
Article 20 – paragraph 2

Text proposed by the Commission	*Amendment*
2. The authorities of Member States which, pursuant to paragraph 1, have access to data recorded in the Central System shall be those designated by each Member State for the purpose of Article 1(1). This designation shall specify the exact unit responsible for carrying out tasks related to the application of this Regulation. Each Member State shall without delay communicate to the Commission and the Management Authority a list of those authorities and any amendments thereto. The Management Authority shall publish the consolidated list in the Official Journal of the European Union. Where there are amendments thereto, the Management Authority shall publish once a year an updated consolidated list.	2. The authorities of Member States which, pursuant to paragraph 1, have access to data recorded in the Central System shall be those designated by each Member State for the purpose of Article 1(1). This designation shall specify the exact unit responsible for carrying out tasks related to the application of this Regulation. Each Member State shall without delay communicate to the Commission and the Management Authority a list of those authorities and any amendments thereto***, in the case of amendments at the latest 30 days after the list was amended***. The Management Authority shall publish the consolidated list in the Official Journal of the European Union. Where there are amendments thereto, the Management Authority shall publish once a year an updated consolidated list.

Or. en

Justification

An explicit deadline is needed, in which changes made to the list of the authorities, that have access to data recorded in the Central System, are communicated to the Commission and the Management Authority.

Amendment 25

Proposal for a regulation
Article 21 – paragraph 2

Text proposed by the Commission	*Amendment*
2. Such records may be used only for the data-protection monitoring of the admissibility of data processing as well as to ensure data security pursuant to Article 19. The records ***must*** be protected by	2. Such records may be used only for the data-protection monitoring of the admissibility of data processing as well as to ensure data security pursuant to Article 19. The records ***shall*** be protected by

appropriate measures against unauthorised access and erased after a period of one year after the ***retention*** period referred to in Article 8 and in Article 12(1) has expired, if they are not required for monitoring procedures which have already begun.	appropriate measures against unauthorised access and erased after a period of one year after the ***storage*** period referred to in Article 8 and in Article 12(1) has expired, if they are not required for monitoring procedures which have already begun.

Or. en

Justification

This amendment aims at a harmonised wording throughout the text.

Amendment 26

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 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 acts of Community legislation with similar references to the required level of understanding a language.

Amendment 27

Proposal for a regulation
Article 23 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission	*Amendment*
(b) ***regarding*** the purpose for which ***his or her*** data will be processed within EURODAC including a description of the aims of the Dublin Regulation, in accordance with Article 4 of that	(b) the purpose for which data ***relating to him/her*** will be processed within EURODAC including a description of the aims of the Dublin Regulation, in accordance with Article 4 of that

Regulation;	Regulation;

Or. en

Justification

This amendment aims at a clearer wording of the text.

Amendment 28

Proposal for a regulation
Article 23 – paragraph 1 – subparagraph 1 – point e

Text proposed by the Commission	*Amendment*
(e) ***the existence of*** the right of access to data relating to ***them***, and the right to request that inaccurate data relating to ***them*** be corrected or that unlawfully processed data relating to ***them*** be ***deleted***, ***including the right to receive information on*** the procedures for exercising those rights ***and*** the contact details of the National Supervisory Authorities referred to in ***Article 25(1)***, which shall hear claims concerning the protection of personal data.	(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 ***him/her*** be ***erased***, ***as well as*** the procedures for exercising those rights***,*** ***including*** the contact details ***of the controller and*** of the National Supervisory Authorities referred to in ***Article 24***, which shall hear claims concerning the protection of personal data.

Or. en

Justification

As pointed out by the European Data Protection Supervisor in his opinion of 18 February 2009, it should be clarified that the data subject should be informed about the content and not only the existence of the right of access to data and the rights to correction or erasure of data as well as, separately, on the procedural steps he/she may take. The addition of the contact details of the relevant authorities takes account of the fact that the data controller is primarily responsible to ensure the application of the rights of the data subject. Reference should be made to Article 24 which contains the provisions about the supervision by the National Supervisory Authorities.

Amendment 29

Proposal for a regulation
Article 23 – paragraph 1 – subparagraph 4

Text proposed by the Commission	*Amendment*
Where the ***applicant for international***	Where the ***person covered by this***

protection is a minor, Member States shall provide the information in an age-appropriate manner.	***Regulation*** is a minor, Member States shall provide the information in an age-appropriate manner.

Or. en

Justification

The obligation to provide information in an age-appropriate manner should apply to all categories of persons subject to the EURODAC procedure who are minors and not only to applicants for international protection.

Amendment 30

Proposal for a regulation
Article 23 – paragraph 9

Text proposed by the Commission	*Amendment*
9. Whenever a person requests data relating to him ***or*** her in accordance with ***paragraph 1***, the competent authority shall keep a record in the form a written document that such a request was made, and shall make this document available to the National Supervisory Authorities referred to in ***Article 25*** without delay, upon their request.	9. Whenever a person requests data relating to him/her in accordance with ***paragraph 2***, the competent authority shall keep a record in the form ***of*** a written document that such a request was made, and shall make this document available to the National Supervisory Authorities referred to in ***Article 24*** without delay, upon their request.

Or. en

Justification

Reference should be made to paragraph 2 of Article 23 according to which the data subject may obtain access to data and to Article 24 which contains the provisions about the supervision by the National Supervisory Authorities.

Amendment 31

Proposal for a regulation
Article 33 – paragraph 3

Text proposed by the Commission	*Amendment*
3. Member States shall notify the Commission as soon as the arrangements referred to in paragraph 2(a) have been made, ***and*** in any event no later than 12	3. Member States shall notify the Commission as soon as the arrangements referred to in paragraph 2(a) have been made, ***which shall be*** in any event no later

months from the date of the entry into force of this Regulation.	than 12 months from the date of the entry into force of this Regulation.

Or. en

Justification

This amendment aims at a clearer wording of the text.

Amendment 32

Proposal for a regulation
Article 33 – paragraph 3 a (new)

Text proposed by the Commission	*Amendment*
	3a. During the transitional period referred to in Article 4(4), references in this Regulation to the Management Authority shall be construed as references to the Commission.

Or. en

Justification

This amendment is necessary for reasons of legal certainty. The same provision exists in Article 51(4) of the VIS Regulation (Regulation (EC) No 767/2008) which also contains many references to the Management Authority.

EXPLANATORY STATEMENT

I. Background

EURODAC became operative in January 15th 2003 as a Community-wide information technology system for the comparison of fingerprints of applicants for asylum and certain other third-country nationals or stateless persons. The system ensures the effective application of the Dublin Convention (later replaced by the Dublin Regulation), which aims at establishing a clear and workable mechanism for determining responsibility for asylum applications lodged in one of the Member States of the EU.

The "Dublin system"[1], its implementing regulation[2] and the EURODAC Regulation[3] – currently apply to the 27 Member States, to Norway, Iceland and Switzerland, and it is soon to be extended to Liechtenstein.

The Dublin system, which tackles, inter alia, the problems of secondary migration and multiple applications for international protection (also known as "asylum-shopping"), is based on criteria relating to: 1) the principle of family reunification; 2) the issue of residence permits or visas; 3) illegal entry into, or illegal residence within, the territory of a Member State; and 4) legal entry into the territory of a Member State. In order to ensure the necessary degree of flexibility, the Dublin Regulation also includes two discretionary provisions: the "sovereignty clause" and the "humanitarian clause". The "sovereignty clause" enables a Member State to examine an application for international protection even if such examination is not its responsibility according to the criteria specified in the Dublin Regulation (Article 3(2)). The "humanitarian clause" enables a Member State, on the basis of family or cultural considerations, to examine that application at the request of another Member State (Article 15), even if it is not responsible for dealing with an application according to the criteria specified in the Regulation.

In order to respond to problems arising in practice and to meet the needs of persons from third countries and stateless persons, who sometimes seek asylum in more than one Member State, the concerned Member State collects the fingerprints and transmits them electronically to the EURODAC Central System. EURODAC is a computerised database comprising the fingerprint data of applicants for international protection who are aged at least 14, third-country nationals and stateless persons aged at least 14 who have been apprehended in connection with an irregular crossing of a Member State's land, sea or air borders and persons aged at least 14 who have been found illegally present in a Member State.

The request of a Member State to compare the transmitted fingerprint data and the ones stored in the database will be processed by the EURODAC Central System. If there is a hit – because, for example, the data subject had previously lodged an application in another Member State – the information can be used to help establish which Member State is responsible for examining the application for international protection.

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[1] Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application (Dublin Regulation).
[2] Commission Regulation (EC) No 1560/2003 of 2 September 2003, OJ L 222, 5.9.2003.
[3] Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention.

Because the European Commission considers the nature of the provisions in the two instruments - the EURODAC Regulation and the implementing regulation - to be similar and the procedure for their adoption is the same (i.e. codecision), the Commission's proposal envisages to repeal the Implementing Regulation and to include its content in the EURODAC Regulation. Thus, according to the Commission, the proposal to recast the EURODAC Regulation is intended:

- on one hand to ensure a more efficient use of the EURODAC database by:
  – establishing rules that provide for a prompt transmission of fingerprints to the Central Unit of EURODAC in order to ensure that the Member State responsible under the Dublin Regulation for examining the application is correctly identified;
  – updating and clarifying definitions of the different stages of management of the database, also in line with the objective to house all large-scale IT systems under Title IV of the TEC in one location under one management and running on the same platform (enabling the improvement of productivity and reducing operational costs);
  – unblocking data on recognised refugees and making them available for search by national asylum authorities, in order to avoid that a recognised refugee in one Member State applies for protection in another Member State; and
- on the other hand to address data protection issues by:
  – establishing technical rules to ensure that Member States delete data which are no longer necessary for the purpose for which they were collected and to ensure that the Commission can better monitor the respect of the data protection principles;
  – clarifying the provisions ensuring effective monitoring by the National Supervisory Authorities.

These amendments drawn up in the Commission proposal for a revision of the EURODAC Regulation represent the first concrete proposals presented by the European Commission. These proposals intend to implement the Policy Plan on Asylum and the Pact on Immigration and Asylum, which aim at ensuring a higher degree of harmonisation and better standards of protection for the Common European Asylum System (CEAS).

The present proposal intends to recast Council Regulation (EC) No 2725/2000 and its implementing regulation, Council Regulation (EC) No 407/2002 (Implementing Regulation), in order to make adjustments required by practical changes and the need for consistency with the evolution of the asylum *acquis* since the adoption of the EURODAC Regulation. Modifications are also necessary in order to accommodate the operational management of EURODAC to the new management structure and to ensure a better protection of personal data.

II. Rapporteur's position

The reports on the EURODAC activity, developed by the European Commission and by other institutions with attributions in the field of personal data protection and protection of fundamental human rights, prove the usefulness of EURODAC. Still, some measures on the system efficiency are considered necessary, as well as the elimination of the problems that arise in practice.

Subsequent to discussions with representatives of the institutions involved in this process, the rapporteur identified a number of issues on which he focused:

- The need to elaborate **an effective and practical compromise solution** concerning the **collection and transmission of fingerprint data by the Member States, dividing it in two stages with distinct deadlines:**

  – in the first stage, the digital fingerprints **will be taken within 48 hours,** with the exception of situations where due to either partial destruction of fingerprints, or the necessity of observing a quarantine period for serious diseases the deadline is **extended up to 3 weeks**, and

  – in the second stage, the obtained data **will be forwarded** by Member States **to the Central EURODAC System, within 24 hours**, without exception.

- The need for a consistent application of the principle that data should not be stored for a period longer than necessary, in order to achieve the purpose for which they were taken. Therefore, **the rapporteur supports reducing the storage period for second category data (CAT 2) from 2 years to 1 year.**
- **The establishment, as soon as possible, of a decentralized EURODAC, VIS and SIS II Management Agency**.
- The Management Agency shall elaborate **a common set of requirements** that must be fulfilled by those who are granted **authorisation to access** EURODAC facilities and information.

In this context, the rapporteur considers that the proposal of the European Commission for codification and partial amendment of the EURODAC regulations (COM(2008)0825) can raise the efficiency of the entire system, dealing also with the thorny issues faced by some Member States, which are subject to an influx of illegal immigrants.

Thus, the rapporteur believes that the approach of the Commission to simultaneously amend the regulations concerning Dublin II and EURODAC provides an opportunity to adjust and harmonize the provisions contained in these documents, providing for a comprehensive and transparent legal framework – in favour of the completion of a European area of freedom, security and justice. Consequently, the rapporteur supports the fast and parallel completion of the reports elaborated by the European Parliament regarding these two proposals.