

Policy Department C
Citizens' Rights and Constitutional Affairs

PROPOSAL FOR A REGULATION CONCERNING THE ESTABLISHMENT OF "EURODAC" FOR THE COMPARISON OF FINGERPRINTS FOR THE EFFECTIVE APPLICATION OF REGULATION (EC), ESTABLISHING THE CRITERIA AND MECHANISMS FOR DETERMINING THE MEMBER STATES 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) 825 final

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**Directorate-General Internal Policies
Policy Department C
Citizens Rights and Constitutional Affairs**

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BRIEFING NOTE

Abstract:

The note offers a general assessment of the Commission's proposal. It underlines in particular questions related to the procedure for taking fingerprints, advance data erasure, the problem of third-country nationals found illegally present within the territory of a Member State, the role of the European Data Protection Supervisor.

PE 410.677

This note was requested by The European Parliament's committee on Civil Liberties, Justice and Home Affairs.

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1. General observations

The European Commission has identified a number of problems in the Explanatory Memorandum:

- late transmission of fingerprints
- inefficient management of deletion of data
- unclear specification of national authorities having access to EURODAC
- repeated applications of recognised refugees
- improvement of cooperation between the Member States
- improvement of data protection

By and large, the Commission's amendment proposals contribute substantially to the improvement of efficiency of implementation of the regulation and to the consistency with the Asylum Acquis (EG coverage of subsidiary protection: better designation of responsible national authorities in order to alleviate data protection concerns).

2. Recitals

There are a number of smaller points with regard to the recitals. The following modifications are suggested:

- recital No. 2: in accordance with the general terminology "international" should be added and the words "forced by circumstances" deleted;
- recital No. 4: the word "unlawful" should be replaced by unauthorized and the word "illegally" should be deleted. Entry and/or residence may be legally justified on the basis of a right of asylum; therefore the term "unlawful" does not appear to be fully correct;
- recital No. 7: the extension of the scope of application to subsidiary protection is a necessary consequence of the modification of the Dublin Regulation. However, with regard to the application of the Dublin Regulation as well as with EURODAC problems of distinguishing between subsidiary protection and other forms of (national) humanitarian protection may arise. A solution could be to introduce a presumption for an application for international protection.
- recital No. 10: should be reformulated since the terminology may be misleading.

Suggestion: Since the possibility of third-country nationals or stateless persons who have requested to file another application for international protection in another Member States exists for many years to come, a period of ten years

- recital No. 11: A long-term EU residence permit under the Directive 2003/109 should be included. Reason: the long-term residence permit implies a right of mobility within the European Union; therefore, a reason for further storage of data can hardly be identified.

- recital No. 18 and 19: recital No. 18 contains a somewhat strange general policy statement which has not direct relevance to EURODAC.

Suggestion: This Directive aims to supplement and clarify the principles set out in the Directive 95/46/EC regarding the and the Regulation No. 45/2001 particularly in respect of the responsibility for the processing

- recital No. 23: The exact meaning of this recital remains in the dark. It is probably meant “state” rather than “status”. It is also unclear what particular asylum procedures are meant by this provision.

Suggestion: “It is necessary that Member States are informed about the state of pending asylum procedure with a view

3. General provisions

a. Art. 3 para. 5 – procedure for taking fingerprints

The provision refers to safeguards laid down in various international conventions, including the Charter of Fundamental Rights of the European Union, ECHR and the UN Convention on the Rights of the Child. The reference to these international treaties seems to me somewhat unclear since none of these international conventions contain any provisions with regard to the procedure for taking fingerprints. If the provision is intended to make clear that there are limits under public international law treaties with regard to the procedure for taking fingerprints (human dignity etc.) it should say so. In its present form the provision is devoid of any content since it will not solve the different opinions on the proper procedures with regard to general principles laid down in these conventions.

4. Collection of fingerprints

The amended Art. 6 para. 2 provides reasonably for a derogation from para. 1 when an applicant arrives in the responsible Member State following a transfer. This, however, implies that fingerprints have been taken by the first responsible Member State under para. 1. If following a transfer no fingerprint data are recorded it would be necessary to subsequently take fingerprints in order to identify an applicant who files following the transfer another application in another Member State. Therefore, the question may arise whether there is need for an exception of the derogation under Art. 6 para. 2.

5. Advance data erasure (Art. 9)

Article 9 provides for the deletion of data of persons who have acquired citizenship. Following the previous remark it could be examined whether the position of a right of permanent residency can be equated or whether there is a need to keep such data in the system.

6. Third-country nationals found illegally present within the territory

Article 13 repeats the existing provision whereby fingerprint data of a third-country national found illegally present within the territory shall be transmitted to the central system solely for the purpose of comparison with the fingerprint data of applicants for international protection already recorded in the central system. According to para. 3 the fingerprint data of such third-country nationals shall not be recorded in the central system nor shall they be compared with the data transmitted to the central system pursuant to Art. 10 para. 2. It is clear that the EURODAC Regulation provides for a collection of data and comparison of data only with respect to the purpose of identifying applications for international protection. It should be examined, however, whether with regard to the enlarged scope of application of the Regulation (subsidiary protection) problems may arise with regard to distinguishing between subsidiary protection and other forms of request of humanitarian protection under national law. It should be discussed to what extent the existing restrictions with regard to storage of data can be maintained or whether the system should be extended to other forms of humanitarian protection.

Suggestion: extend the obligation to collect and transmit data also to third-country nationals found illegally present within the territory for the purpose of identifying applicants who do not apply for international protection.

In addition, a comparison of data should be made possible if an application for international protection has been rejected and an applicant been returned or reported in order to identify applicants filing repeated asylum applications upon an unsuccessful asylum procedure and departure or deportation.

7. Provisions on data use, data protection

Article 17 para. 5 contains a useful supplement in case of an inaccurate result of a comparison received from the central system.

Suggestion: to include information to the European Data Protection Supervisor.

8. Data security (Art. 19)

The new provision provides for a detailed account of necessary measures to guarantee data security. In principle, the provisions are useful.

Suggestion: prescribe an obligation of Member States to report about the measures taken to implement Art. 19.

9. Rights of the data subject (Art. 23)

A description of the “aims of the Dublin Regulation” seems unnecessary and amounts to an over-bureaucratic obligation (Art. 23 para. 1 lit. b).

10. European Data Protection Supervisor (Art. 25)

The new provision contains a description of the functions of the European Data Protection Supervisor. With regard to the duties and powers the provision refers to Art. 46 and 47 of Regulation No. 45/2001.

Suggestion: include a specific provision that for the functions described in this Regulation the European Data Protection Supervisor may request any information from the management authority considered as necessary to carry out the functions entrusted under the Regulation.