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NOTE

from: Presidency
to: JHA Counsellors
on: 24 September 2012

No. Cion prop.: 10638/12 EURODAC 3 ENFOPOL 157 CODEC 1503

Subject: Amended proposal for a Regulation of the European Parliament and of the Council on the establishment of 'EURODAC' for the comparison of fingerprints for the effective application of Regulation (EU) No [.../...] (establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person) and to request comparisons with EURODAC data by Member States' law enforcement authorities and Europol for law enforcement purposes and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (Recast version)

Delegations will find attached a note explaining the need for EUROPOL to be able to request the comparison with EURODAC data for the purposes of preventing, detecting and investigating terrorist offences and other serious criminal offences.

Europol's need to have access to EURODAC

There are two main reasons as to why there is a need for Europol to be able to request comparisons with EURODAC data for the purposes of preventing, detecting and investigating terrorist offences and other serious criminal offences: 1) Europol's role as the EU criminal information hub; and 2) Europol's role in protecting victims of labour and sexual exploitation.

1) Europol as the EU criminal information hub

As the EU criminal information hub, Europol supports and strengthens action by Member States in preventing and combating serious crime that affects two or more Member States. Due to the strict conditions laid down in the Commission proposal on law enforcement access (Article 20), most fingerprint data sent by a Member State to Europol would not have been sent for comparison with EURODAC data before by that Member State. By cross-matching information, including fingerprint data, received from different Member States and by combining it with its own analysis, Europol can get indications proving reasonable grounds to consider that a comparison with EURODAC data will lead to the identification of a victim or suspect of serious crime, and thus contribute to the prevention, detection or investigation of the criminal offence in question.

An individual Member State might not be aware of these indications in a specific case, as not all information collected, analysed and cross-matched at Europol is directly shared with all Member States. This is because Member States use so-called handling codes based on Article 14(6) of the Europol Decision (2009/371/JHA) when providing information to Europol. According to Article 14(6), the Member State communicating an item of data to Europol shall be the sole judge of the degree of its sensitivity and shall be entitled to determine the conditions for the handling of the data. Therefore, the Member State that communicates an item of data to Europol decides on the dissemination or operational use of the data by Europol. Handling codes are thus a means of protection for the information provided by a Member State. For instance, Member States use handling codes to restrict the dissemination of information provided to Europol in order to ensure the protection of the source of the information, or to protect the security of the information for future use. By cumulating and cross-matching data items provided by different Member States with handling codes, and thus with restrictions on further dissemination, Europol might establish reasonable grounds to consider that a comparison with EURODAC data will result in the identification of a victim or suspect of serious crime in a specific case. In this case, Europol is in a unique position to identify unknown links between national investigations and to establish such a lead, as the handling codes prohibit the sharing of the relevant data items with other Member States. As the partial information available to individual Member States would not meet the strict conditions for accessing EURODAC for law enforcement purposes, Member States would not be able in these cases to request a comparison with EURODAC data.

Moreover, Europol receives information from third countries on the basis of operational agreements according to Article 23 of the Europol Decision (2009/371/JHA). Europol cross-matches information received by a third country with information received by Member States and combines this information with its own analysis. This might result in indications proving reasonable grounds to consider that a comparison with EURODAC data will lead to the identification of a victim or suspect of serious crime in a specific case. Due to the strict prohibition of any transfer of data obtained from the EURODAC central database to third countries, international bodies, private parties as foreseen in Article 35 of the Commission proposal, Europol would not share any data resulting from a comparison with EURODAC data with any third country.

According to the information provided by Europol, organised crime networks from third countries seek to abuse the asylum system to bring criminal members of the network into an EU Member State as contacts for their criminal business. Once within the territory of an EU Member State, these members of the organised crime network ask for asylum with false identities in order to get a legitimate stay in the EU without any criminal record. In a specific case, Europol received information from a third country that members of an organised crime group were active within the EU, together with the names and fingerprints of these persons. Checks for comparison of this data with criminal record databases did not lead to any result. Only at a later stage of the investigation, it was detected that members of the organised crime group had asked for asylum in EU Member States with false identities. By comparing the fingerprint data of the members of the organised crime network with EURODAC data, the false identities used by the members of the organised crime network could have been detected and serious crimes committed by the organised crime group could have been prevented.

2) Europol's role in protecting victims of labour and sexual exploitation

Europol supports and strengthens action by Member States in combating trafficking in human beings in order to combat labour and sexual exploitation and to protect victims of such exploitation. Europol receives data from Member States related to trafficking in human beings, including fingerprint data from traffickers and victims of human trafficking. This data is cross-checked at Europol and combined with its own analysis.

Asylum seekers can be victims of labour and sexual exploitation. Information received from Europol by Member States demonstrates that organised crime groups in destination countries abuse the asylum system to bring victims of labour or sexual exploitation into the EU.¹ As instructed by the traffickers, these victims discard their identity documents upon arrival at an airport in the EU, and subsequently allege citizenship of a war-torn country. Accompanied to a refugee centre pending evaluation of their asylum request, these victims abscond and meet a member of the organised crime group as arranged.

¹ See Europol EU Organised Crime Threat Assessment (OCTA) 2011, p. 25.
<https://www.europol.europa.eu/content/press/europol-organised-crime-threat-assessment-2011-429>.

Moreover, information provided by Europol suggests that human traffickers also seek to abuse the asylum system. In a specific case, a human trafficker from a third country successfully requested asylum alleging a false country of origin. He then set up a trafficking ring exploiting a number of women for prostitution.

If, on the basis of information and fingerprint data provided by different Member States with handling codes, Europol gets indications proving reasonable grounds to consider that a victim of human trafficking or a trafficker has requested asylum in the EU, Europol is in a unique position to identify this victim or trafficker by comparing her data with EURODAC data in this specific case. The early detection of victims of human trafficking is of paramount importance in order to avoid that the victims are exposed to traffickers.
