COUNCIL OF THE EUROPEAN UNION

Brussels, 3 December 2012

16990/12

LIMITE

Interinstitutional File: 2008/0242(COD)

EURODAC 35
CODEC 2855
ENFOPOL 395

NOTE

from:	Presidency
to:	JHA Counsellors
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 providing additional evidence for the necessity of law enforcement access to EURODAC on the basis of contributions by the German, the Netherlands and the Austrian delegations.

ANNEX

Paper contains law enforcement sensitive information.

Additional evidence for the necessity of law enforcement access to EURODAC

This paper provides additional evidence to further illustrate the necessity of enabling national law enforcement authorities to request the comparison with fingerprint data stored in the EURODAC database for the purposes of the prevention, detection and investigation of terrorist offences and other serious criminal offences under strict conditions and with effective safeguards as laid down in the Commission proposal COM (2012) 254 final of 30 May 2012.[1] Section I provides statistics and information on specific cases of serious crime and terrorism in which data from a national asylum database was necessary to assist in solving the crime. Section II provides information on specific cases of serious crime and terrorism in which national law enforcement authorities would request access to EURODAC as foreseen in the Commission proposal.

Section I: Cases in which access to the national asylum database was necessary to solve serious crime and terrorism

This section provides statistics and information on specific cases of serious crime and terrorism in which data from a national asylum database was necessary to assist in solving the crime. These are examples of real cases where the comparison of fingerprint data taken at a crime scene with data stored in the national asylum database significantly aided an investigation and enabled national law enforcement authorities to identify the perpetrator.

[1] Both the explanatory memorandum in the Commission proposal and the accompanying Impact Assessment (SEC (2009) 936) demonstrate that law enforcement access to EURODAC is necessary in order to address a structural information and verification gap. 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 is also explained in Council Document 14081/12 of 21 September 2012.

In The Netherlands, national law enforcement authorities can request the consultation of the national asylum database under strict conditions that are similar to the strict conditions laid down in the Commission proposal for law enforcement access to EURODAC. This includes the conditions that the comparison with the national criminal fingerprint database did not lead to the identification of the suspect and that the comparison is necessary in a specific case of serious crime. Moreover, the strict conditions require that either there are reasonable grounds to believe the suspect has applied for asylum, or the investigation has reached a dead end and / or there is insufficient prospect of a quick result where it is needed. Under these strict conditions, Dutch law enforcement authorities requested the comparison of fingerprint data with the national asylum database in 356 cases of serious crime and terrorism between 2007 and 2011. In 134 of these cases (38%) the comparison led to one or more identifications ("hits").[2] This included the comparison of fingerprint data with the national asylum database in 64 homicide cases, which in 21 cases (33%) led to one or more identifications. It also includes 6 terrorism cases, which in 3 cases (50%) led to one or more identifications. Between 2001 and 2004, Dutch law enforcement authorities requested the comparison of fingerprint data with the national asylum database in 143 cases of serious crime and terrorism, which led to one or more identifications in 67 cases (46%). In addition to cases of terrorism and murder, this also includes the identification of perpetrators of armed robberies, the identification of two perpetrators of home robbery and rape that subsequently confessed having committed 38 additional criminal offences, the identification of members of an organised crime group that committed a large number of organised robberies, and the identification of perpetrators of financial fraud cases on the basis of latent fingerprints found on documents, including an important fraud case of EUR 10 million. All these identifications in cases of serious crime could not have been made without consultation of the national asylum database.

[2] For more detailed statistics see the table in the annex. Member States report that the identification of the perpetrator in a specific case on the basis of a comparison with fingerprint data held in the national asylum database can result in solving a number of serious criminal offences committed by the identified person, e.g. on the basis of confessions or subsequent DNA comparisons, especially in cases of organised crime.

In Germany, national law enforcement authorities may compare fingerprint data related to criminal cases with fingerprint data stored in the national Automated Fingerprint Identification System (AFIS). The national AFIS contains fingerprint data of both criminal cases and asylum seekers cases. Around 40% of the identifications ("hits") being generated by the national AFIS result from a comparison with the fingerprint data of asylum seekers, including terrorist cases, homicide, trafficking in human beings and drugs trafficking. In cases of trafficking in human beings, German law enforcement authorities identified the traffickers by comparing latent fingerprints found in vehicles used for human trafficking with national asylum data. In cases of drugs trafficking, members of organised crime groups of third country nationals were identified on the basis of the comparison of latent fingerprints found on drug packages.

In Austria, national law enforcement authorities may compare fingerprint data related to criminal cases with fingerprint data of asylum seekers stored in the national Automated Fingerprint Identification System (AFIS). The comparison of latent fingerprints found at a crime scene with the national asylum data led to 87 identifications ("hits") in 2007, 85 identifications in 2008, 105 identifications in 2009, 71 identifications in 2010 and 52 identifications in 2011. As for example, this includes a case of robbery and manslaughter where the culprit was identified by a comparison of latent fingerprints taken at the scene of the crime with fingerprint data stored in the national asylum database. He was sentenced to life imprisonment. It also includes a case of a religiously-motivated terrorist act where a murder was committed in a prayer house and the perpetrator was identified on the basis of a comparison of latent fingerprints taken at the crime scene with the national asylum database.

Member States and Europol report that members of organised crime groups from certain third countries ask for asylum in the EU with false identities, with the aim of regularising their stay in the EU without any criminal record in order to commit serious crimes in various Member States. Member States also report cases where criminals from third countries use various false identities in different Member States. For example, the perpetrator in a murder case in Austria had previously submitted an asylum application in Austria using a false identity and had stayed in Austria irregularly after the application had been rejected, but moved to another Member State immediately after the crime. When he was arrested in that other Member State, the perpetrator had on his person numerous identity documents made out in different names and it was subsequently established that he had already surfaced in additional Member States using different aliases. Member States also report cases of narcotic offences where suspects from certain third countries invariably move on to another Member State before a potential arrest is made, and carry on their activities there. These criminals are reported to systematically change their names as soon as they have been formally identified. Criminals from certain third countries are even able to obtain genuine travel documents containing false particulars from the responsible authorities in their country of origin. In such cases, the comparison of fingerprint data is often the only way to correctly identify the criminal. The above mentioned cases demonstrate that access to the national asylum database was necessary in order to solve serious crimes. It therefore demonstrates the necessity of enabling law enforcement authorities also to request a comparison with EURODAC data in order to effectively fight serious crime and terrorism in the European Union.

Asylum data stored in the national database of a Member State have already proved to be necessary to solve cases of terrorism and serious crime committed in another Member State. Specific examples include:

- The case of a key terrorism suspect wanted by Dutch law enforcement authorities who was identified on the basis of national asylum data held by Germany, where he had applied for asylum.

- A murder case in a Dublin-Associated country was solved due to the comparison of latent fingerprints found at the scene of crime with national asylum data held by Germany.

- On the basis of a comparison of fingerprint data provided by a neighbouring Member State with the Dutch national asylum database, Dutch law enforcement authorities identified all members of a criminal gang of third-country national specialised in armed robberies.

In such cases, the Member State investigating the serious crime or terrorism used bilateral police information exchange instruments to request the comparison of latent fingerprints found at a crime scene with the national asylum data held by a specific Member State. Such a targeted request is only possible in cases where there are existing angles of investigation pointing in the direction of that other Member State. Such targeted requests are not possible in cases where there are reasonable grounds to generally consider that the perpetrator has applied for asylum in another Member State but no information pointing in the direction of a State or group of States. In the latter cases, the investigation of serious crime and terrorism is hindered by a structural information and verification gap that currently results from the lack of an EU instrument available to law enforcement authorities to determine the Member State that holds information on an asylum seeker. This gap is addressed by the Commission proposal, which provides for an effective procedure to establish if data on a suspect of serious crime and terrorism is available in the national asylum database of another Member State, while providing effective safeguards that mitigate the impact on the right to the protection of personal data. In this case, further information on the suspect can be requested from that other Member State by using existing instruments for bilateral police information exchange as applied in the cases listed above.

Section II: cases in which law enforcement authorities would request access to EURODAC as foreseen in the Commission proposal

As under current rules it is not possible to request comparisons with EURODAC data for law enforcement purposes, there are obviously no cases of serious crime or terrorism where EURODAC data were used. However, there are existing cases of serious crime and terrorism in which national law enforcement authorities would request the comparison with EURODAC data as foreseen in the Commission proposal because there are no other angles of investigation available to identify the suspect. This includes specific cases of organised crime or terrorism where the suspect is identified as a third country national who is on the run, and where there are reasonable grounds to consider that the suspect will apply for asylum in another Member State using different identities to obtain at least a temporary permission to stay. One such case is a recent homicide committed in Austria by a third country national who is still on the run. On the basis of available information, there are reasonable grounds to consider that this suspect has applied for asylum in another Member State and Austria possesses the suspect's fingerprints found at the crime scene. In such cases where an identified suspect of terrorism and serious crime is on the run, the Commission proposal, once adopted, will provide Member States' law enforcement authorities with the instrument necessary to determine the Member State in which the suspect has applied for asylum, in order to ascertain the suspect's used identity and place of residence.

Another important field of application of law enforcement access to EURODAC as foreseen in the Commission proposal is the fight against organised crime groups operating in several Member States. As stated above, EUROPOL and Member States report that organised crime groups from certain third countries seek to abuse the asylum system to bring criminal members of the network in the European Union as contacts for their criminal business. Once within the territory of a Member State, the members of the organised crime network request asylum, producing false identities in order to get a legitimate stay in the EU, and subsequently commit serious crimes in several Member States. Specific examples include an organised crime group consisting of third country nationals of the same ethnic background that is involved in cocaine and heroin trafficking into Germany. Those members of the organised crime group who have been arrested so far had previously applied for asylum in EU Member States. There are thus reasonable grounds to consider that other members of this drug smuggling ring have also applied for asylum in the EU. Moreover, latent fingerprints of unidentified persons have been found on drug packages seized from warehouses used by the organised crime group. The comparison of the latent fingerprints with the national Automated Fingerprint Identification System (AFIS) and the AFIS of other Member States on the basis of the Prüm Decision did not lead to the establishment of the identity of the suspects. The Commission proposal, once adopted, will provide Member States' law enforcement authorities with the instrument necessary to determine if the suspects have applied for asylum in another Member State, in order to ascertain the suspect's used identity and place of residence.

Another example is an organised crime group consisting of third country national of the same ethnic background that is involved in organised robberies in various Member States. The group operates in teams, carrying out simultaneous robberies and changing their team composition in accordance with circumstances. The group only spends a few weeks or months at a time in any given Member State, and its members use sometimes more than ten false identities. After the arrest of some members of the group, it was established that they had applied for asylum in Member States using false identities. There are thus reasonable grounds to consider that other members of the group have also applied for asylum in the EU. There are a number of robbery cases where the group's modus operandi has been applied and where fingerprints of unidentified suspects have been found at the crime scene, but where it is unclear if the serious crime was committed by members of the group. The Commission proposal, once adopted, will provide Member States' law enforcement authorities with the instrument necessary to determine if the suspects have applied for asylum in another Member State, in order to get further information on the suspects and possibly link them to the organised crime group.

Annex: Results of the comparison of latent fingerprints related to investigations into serious crimes with the national asylum database in The Netherlands

Period: 1 January 2007 to 1 October 2011

Offence[3]	**Number of cases**[4]	**Number of cases with identifications**[5]
Burglary / theft of property / business	124	40 (32%)
Destruction	1	1 (100%)
Robbery	49	19 (39%)
Threat	9	1 (11%)
Cheque fraud	3	3 (100%)
Other fraud / money crimes	49	27 (55%)
(Aggravated) assault	7	1 (15%)
Terrorism / political activism	6	3 (50%)
Murder / manslaughter / death by guilt	64	21 (33%)
Suicide / unidentified bodies	2	2 (100%)
Sex crimes	4	2 (50%)
Arson	2	0 (0%)
Opium law	13	4 (31%)
Firearms law	2	2 (100%)
Abduction	8	4 (50%)
Other	13	4 (31)
Total	**356**	**134 (38%)**

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3 The types of cases in which the comparisons were conducted.

4 The number of cases in which a public prosecutor requested comparison; such a request could relate to one or more traces found in that case.

5 The number of cases in which such a request has led to one or more identifications.