



**COUNCIL OF
THE EUROPEAN UNION**

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LIMITE

**EURODAC 5
CODEC 639
ENFOPOL 79**

NOTE

from: Presidency
to: Permanent Representatives Committee (Part II)

No. prev. doc.: 7476/13 EURODAC 4 CODEC 580 ENFOPOL 76
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)

- Analysis of the final compromise text with a view to an agreement

The covering note should read as follows - added text in bold:

Following the informal trilogue held on 21 March 2013, the Presidency submits the consolidated text in the Annex to this note for endorsement by the Permanent Representatives Committee.

The Presidency wishes to highlight the elements of the text that were discussed at the trilogue and the agreements reached thereupon.

Issues of political importance

Article 16 – Agreement was reached on 18 months data storage, as per the Permanent Representatives Committee mandate.

Article 18 – Agreement was reached on the marking of data for 3 years from the date of granting of international protection, as per the Permanent Representatives Committee mandate.

Article 20 – Agreement was reached as per the Permanent Representatives Committee mandate.

Article 25(5) – After a lengthy negotiation, the European Parliament did not pursue its demand to place a limit on the number of fingerprints that can be transmitted. In exchange, it was provisionally agreed that, where a “hit” from the Central System was adjudged by the Member State's fingerprint expert not to correspond with the fingerprint sent by the MS to the Central System for comparison, the Member State would immediately erase the fingerprint received from the Central System. (It is noted that there is no time-limit for the verification by the fingerprint expert, of whether the hit corresponds with the fingerprint sent by the Member State to the Central System for comparison).

The fingerprint would in any case be erased after a month under Article 33(4), but the European Parliament felt that in cases where the “hit” was in effect false, the data received from the Central System should be erased without delay, and this communicated to the Agency and to the Commission within three working days. The Presidency feels that Member States should be able to agree to this compromise, as the requirements both to erase the “hit” and to communicate with the Agency and the Commission already existed in the text; the only change in Member States obligations relates to the timing and this does not create any additional administrative burden. The word “inaccurate” has also been clarified at the Parliament's request, and is now replaced by “does not correspond to the fingerprint data sent for comparison” – this does not change the meaning of the text.

Article 35/Recital 33 – Agreement was reached as per the Permanent Representatives Committee mandate.

Issues of technical nature

Article 6(1) – The Presidency secured a provision to allow the designation of more than one verifying authority by Member States, as per the Permanent Representatives Committee mandate.

Addition to Recital 27 – The Presidency secured agreement to remove references to the best interests of the child from the operative text (Articles 3(5) and 29(1)) and to instead add a reference in Recital 27, as per the Permanent Representatives Committee mandate.

Article 32(1a) - The Presidency proposed a new compromise wording during the trilogue, in response to the request of the Parliament to refer explicitly to national supervisory authorities in this provision. A reference to the agreed text in Article 33(1a) (which states that the monitoring of the lawfulness of the processing of personal data will be carried out by the national supervisory authorities) has been added in this regard, but the essential element of the Council text that it be left to Member States to decide who should carry out the audit remains. This proposal therefore does not change the previous meaning of the provision nor constitute any additional administrative burden.

New Recital 36a – The Presidency secured the deletion of Article 32(2a). In its place a Recital is proposed. Crucially, the Presidency secured the deletion of the reference to financial and personal resources, with the new Recital merely committing Member States and the three institutions to ensuring that the national and European Supervisory Authorities are able to supervise the use of and access to Eurodac data. As such supervision is foreseen in Articles 30 and 33, this represents no additional commitment on the Member States.

Article 29(9) – Agreement was reached as per the Permanent Representatives Committee mandate.

Article 40(4) – it was agreed to merge paragraph 4 of Article 40 with paragraph 1, meaning that the annual report on the activities of the Central System submitted by the Agency will also cover the technical functioning and security of the Central System, rather than these being dealt with in a separate biennial report.

Article 40(5) – The Presidency ensured that an evaluation of the time period of Art. 18 (2) will be carried out, but without including an explicit reference in Art. 40 (5). Instead, the Commission will make a statement at the point of adoption that the evaluation will include, inter alia, the unblocking period in Article 18 and storage period in Article 16.

Article 40(8) – The Presidency secured agreement that a reference to national law be inserted in order to ensure that sensitive information will not be published in the annual report on law enforcement access. In response to Parliament's concerns that the Council wording was unnecessarily broad, it was agreed to rephrase the reference to read: “While respecting the provisions of national law on the publication of sensitive information, each Member State and Europol shall prepare annual reports...”.

The Permanent Representatives Committee is invited to examine, with a view to endorsement, the draft compromise package, as it appears in the Annex to this note. In case of endorsement, the Chair of the Permanent Representatives Committee will send a letter to the Chair of the Parliament's Civil Rights Committee, informing him that, if the Parliament adopts the compromise text annexed to the letter, the Council will, after the lawyer-linguists revision, approve the position of the European Parliament.

Page 79 - the Annex I - should read as follows (the Eurodac fingerprint form is added):

Data format for the exchange of fingerprint data

The following format is prescribed for the exchange of fingerprint data:

ANSI/NIST-ITL 1a-1997, Ver.3, June 2001 (INT-1) and any future further developments of this standard.

Norm for Member State identification letters

The following ISO norm will apply: ISO 3166 - 2 letters code.

EURODAC – Fingerprint form

1.	Reference number			
2.	Place of the application for asylum or place where the third country national or stateless person was apprehended			
3.	Date of the application for asylum or date on which the third country national or stateless person was apprehended			
4.	Sex			
5.	Date on which the fingerprints were taken			
6.	Date on which the data were transmitted to the Central System			

↑ 105 mm from top of form
 ↑ 155 mm from top of form
 ↑ 205 mm from top of form

ROLLED IMPRESSIONS

1. Right thumb	2. Right forefinger	3. Right middle finger	4. Right ring finger	5. Right little finger
50 mm	40 mm	40 mm	40 mm	40 mm
40 mm				40 mm
6. Left thumb	7. Left forefinger	8. Left middle finger	9. Left ring finger	10. Left little finger
40 mm				40 mm

PLAIN IMPRESSIONS

LEFT HAND Four fingers taken simultaneously 75 mm 65 mm	TWO THUMBS Impressions taken simultaneously <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; text-align: center;">LEFT</td> <td style="width: 50%; text-align: center;">RIGHT</td> </tr> <tr> <td style="width: 50%;">30 mm</td> <td style="width: 50%;">30 mm</td> </tr> <tr> <td style="width: 50%;">35 mm</td> <td style="width: 50%;">35 mm</td> </tr> </table>	LEFT	RIGHT	30 mm	30 mm	35 mm	35 mm	RIGHT HAND Four fingers taken simultaneously 75 mm
LEFT	RIGHT							
30 mm	30 mm							
35 mm	35 mm							