



Plenary sitting

A8-0212/2017

8.6.2017

*****I**
REPORT

on the 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 604/2013 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], for identifying an illegally staying third-country national or stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes (recast)
(COM(2016)0272 – C8-0179/2016 – 2016/0132(COD))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Monica Macovei

(Recast – Rule 104 of the Rules of Procedure)

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

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

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the **■** symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the 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 604/2013 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], for identifying an illegally staying third-country national or stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes (recast) (COM(2016)0272 – C8-0179/2016 – 2016/0132(COD))

(Ordinary legislative procedure – recast)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2016)0272),
 - having regard to Article 294(2) and Article 78(2)(e), Article 79(2)(c), Article 87(2)(a), and Article 88(2)(a) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0179/2016),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Economic and Social Committee of 19 October 2016¹,
 - having regard to the opinion of the Committee of Regions of 8 December 2016²,
 - having regard to the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts³,
 - having regard to the letter of 2 February 2017 from the Committee on Legal Affairs to the Committee on Civil Liberties, Justice and Home Affairs in accordance with Rule 104(3) of its Rules of Procedure,
 - having regard to Rules 104 and 59 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 Budgets (A8-0212/2017),
- A. whereas, according to the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission, the Commission proposal 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

¹ OJ C 34, 2.2.2017, p. 144.

² Not yet published in OJ.

³ OJ C 77, 28.3.2002, p. 1.

earlier acts together with those amendments, the proposal contains a straightforward codification of the existing texts, without any change in their substance;

1. Adopts its position at first reading hereinafter set out, taking into account the recommendations of the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission;
2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a regulation Title 1

Text proposed by the Commission

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
604/2013 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]
, for identifying an illegally staying third-
country national or stateless person and on
requests for the comparison with Eurodac
data by Member States' law enforcement
authorities and Europol for law
enforcement purposes (recast)

Amendment

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
604/2013 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]
, for identifying an illegally staying third-
country national or stateless person and on
requests for the comparison with Eurodac
data by Member States' law enforcement
authorities and Europol for law
enforcement purposes, **and amending
Regulation (EU) No 1077/2011** (recast)

Amendment 2

Proposal for a regulation Citation 1

Text proposed by the Commission

Amendment

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 78 (2)(e), 79(2)(c), 87(2)(a) and 88(2)(a) thereof,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 78 (2)(d) **and (e)**, 79(2)(c), 87(2)(a) and 88(2)(a) thereof,

Amendment 3

Proposal for a regulation

Recital 4 a (new)

Text proposed by the Commission

Amendment

(4a) It is necessary that all Member States register in Eurodac information on resettled third-country nationals and stateless persons for the purposes of identifying secondary movements of such persons.

Amendment 4

Proposal for a regulation

Recital 4 b (new)

Text proposed by the Commission

Amendment

(4b) The registration in Eurodac of information on resettled third-country nationals or stateless persons is designed to ensure that such persons enjoy, in accordance with [Regulation XXX/XXX], the same level of protection and the same rights applicable to other beneficiaries of international protection as regards the processing of their data. This should also enable Member States to verify whether or not a third-country national or stateless person has already been resettled in another Member State in accordance with Regulation XXX/XXX. Where a third-country national or stateless person has already been resettled, it should be possible to establish the Member State of resettlement and to monitor any

secondary movements.

Amendment 5

Proposal for a regulation

Recital 5

Text proposed by the Commission

(5) Biometrics constitute an important element in establishing the exact identity of such persons. It is necessary to set up a system for the comparison of their *fingerprint and facial image* data.

Amendment

(5) Biometrics constitute an important element in establishing the exact identity of such persons ***because they ensure high accuracy of identification***. It is necessary to set up a system for the comparison of their ***biometric*** data.

Amendment 6

Proposal for a regulation

Recital 9

Text proposed by the Commission

(9) ***In 2015, the refugee and migration crisis brought to the fore challenges faced by some Member States with taking fingerprints of illegally staying third-country nationals or stateless persons who attempted to avoid the procedures for determining the Member State responsible for examining an application for international protection.*** The Communication of the Commission of 13 May 2015, titled "A European Agenda on Migration"²⁵ noted that "Member States must also implement fully the rules on taking migrants' fingerprints at the borders" and further proposed that "The Commission will also explore how more biometric identifiers can be used through the Eurodac system (such as using facial recognition techniques through digital photos)".

Amendment

(9) The Communication of the Commission of 13 May 2015, titled "A European Agenda on Migration"²⁵ noted that "Member States must also implement fully the rules on taking migrants' fingerprints at the borders" and further proposed that "the Commission will also explore how more biometric identifiers can be used through the Eurodac system (such as using facial recognition techniques through digital photos)".

Amendment 7

Proposal for a regulation

Recital 10

Text proposed by the Commission

(10) *To assist Member States overcome challenges relating to non-compliance with the fingerprinting process, this Regulation also permits the comparison of a facial image without fingerprints as a last resort, where it is impossible to take the fingerprints of the third-country national or stateless person because his or her fingertips are damaged, either intentionally or not, or amputated.*

Member States should exhaust all attempts to ensure that fingerprints can be taken from the data-subject before a comparison using a facial image only can be carried out *where non-compliance based on reasons not relating to the conditions of the individual's fingertips are given. Where facial images are used in combination with fingerprint data, it allows for the reduction of fingerprints registered while enabling the same result in terms of accuracy of the identification.*

Amendment

(10) *For the purposes of obtaining high accuracy identification, fingerprints should always be preferred over facial images.* Member States should exhaust all attempts to ensure that fingerprints can be taken from the data-subject before a comparison using a facial image only can be carried out. *To assist Member States overcome challenges, where it is impossible to take the fingerprints of the third-country national or stateless person because his or her fingertips are damaged, either intentionally or not, or amputated, this Regulation should also permit the comparison of a facial image without fingerprints. Where the physical impossibility to give fingerprints is of a temporary nature, that fact should be recorded and the fingerprinting process should be carried out at a later stage when the physical integrity of the fingertips is restored.*

Amendment 8

Proposal for a regulation

Recital 11

Text proposed by the Commission

(11) The return of third-country nationals who do not have a right to stay in the Union, in accordance with fundamental rights as general principles of Union law as

Amendment

(11) The return of third-country nationals *or stateless persons* who do not have a right to stay in the Union, in accordance with fundamental rights as

well as international law, including refugee protection and human rights obligations, and in compliance with the provisions of Directive 2008/115/EC²⁶, is an *essential* part of the comprehensive efforts to address migration and, in particular, to reduce and deter irregular migration. To increase the effectiveness of the Union system to return illegally staying third-country nationals is needed in order to maintain public trust in the Union migration and asylum system, and should go hand in hand with the efforts to protect those in need of protection.

²⁶ Directive of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, OJ L 348, 24,12,2008, p. 98.

general principles of Union law as well as international law, including refugee protection, *the principle of non-refoulement* and human rights obligations, and in compliance with the provisions of Directive 2008/115/EC²⁶, is an *important* part of the comprehensive efforts to address migration *in a fair and efficient way* and, in particular, to reduce and deter irregular migration. To increase the effectiveness of the Union system to return illegally staying third-country nationals *or stateless persons* is needed in order to maintain public trust in the Union migration and asylum system, and should go hand in hand with the efforts to protect those in need of protection.

²⁶ Directive of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, OJ L 348, 24,12,2008, p. 98.

Amendment 9

Proposal for a regulation Recital 12

Text proposed by the Commission

(12) National authorities in the Member States experience difficulties in identifying illegally staying third-country nationals *who use deceptive means to avoid their identification and to frustrate the procedures for re-documentation* in view of their return and readmission. It is therefore essential to ensure that information on third-country nationals or stateless persons who are found to be staying illegally in the *Union* are collected and transmitted to Eurodac and are compared also with those collected and transmitted for the purpose of establishing the identity of applicants for international

Amendment

(12) National authorities in the Member States experience difficulties in identifying illegally staying third-country nationals *or stateless persons* in view of their return and readmission. It is therefore essential to ensure that information on third-country nationals or stateless persons who are found to be staying illegally in the *Union* are collected and transmitted to Eurodac and are compared also with those collected and transmitted for the purpose of establishing the identity of applicants for international protection and of third-country nationals *or stateless persons* apprehended in connection with the

protection and of third-country nationals apprehended in connection with the unlawful crossing of the external borders of the Union, in order to facilitate their identification and re-documentation and to ensure their return and readmission, and to reduce identity fraud. It should also contribute to reducing the length of the administrative procedures necessary for ensuring return and readmission of illegally staying third-country nationals, including the period during which they may be kept in administrative detention awaiting removal. It should also allow identifying third countries of transit, where the illegally staying third-country national may be readmitted.

unlawful crossing of the external borders of the Union, in order to facilitate their identification and re-documentation and to ensure their return and readmission, and to reduce identity fraud. It should also contribute to reducing the length of the administrative procedures necessary for ensuring return and readmission of illegally staying third-country nationals *or stateless persons*, including the period during which they may be kept in administrative detention awaiting removal. It should also allow identifying third countries of transit, where the illegally staying third-country national *or stateless person* may be readmitted. ***This should be without prejudice to the operation and use of the Schengen Information System (SIS), which remains the primary system to ensure cooperation and information exchange on return.***

Amendment 10

Proposal for a regulation Recital 12 a (new)

Text proposed by the Commission

Amendment

(12a) Member States should be able to derogate from the provisions of Article 14 in respect of illegally staying third-country nationals who entered the Union by legally crossing the external border where they have overstayed their authorised period of stay by a period of no more than 15 days.

Amendment 11

Proposal for a regulation Recital 13

Text proposed by the Commission

Amendment

(13) In its Conclusions of 8 October

(13) In its Conclusions of 8 October

2015 on the future of return policy, the Council endorsed the initiative announced by the Commission to explore an extension of the scope and purpose of Eurodac to enable the use of data for return purposes²⁷. Member States should have the necessary tools at their disposal to be able to detect illegal migration to and secondary movements of illegally staying third-country nationals in the Union. Therefore, the data in Eurodac should be available, subject to the conditions set out in this Regulation, for comparison by the designated authorities of the Member States.

²⁷ EU Action Plan on return, COM(2015) 453 final.

2015 on the future of return policy, the Council endorsed the initiative announced by the Commission to explore an extension of the scope and purpose of Eurodac to enable the use of data for return purposes²⁷. Member States should have the necessary tools at their disposal to be able to detect illegal migration to *the Union and to identify* secondary movements and illegally staying third-country nationals *and stateless persons* in the Union. Therefore, the data in Eurodac should be available, subject to the conditions set out in this Regulation, for comparison by the designated authorities of the Member States.

²⁷ EU Action Plan on return, COM(2015) 453 final.

Amendment 12

Proposal for a regulation Recital 13 a (new)

Text proposed by the Commission

Amendment

(13 a) The European Border and Coast Guard Agency, as established by Regulation (EU) 2016/1624 of the European Parliament and of the Council^{1a}, plays a key role in the Union's efforts for a better management of external borders, and the prevention of illegal immigration and secondary movements. Consequently, the European Border and Coast Guard Agency should be provided with access to Eurodac data in order to be able to undertake risk analyses to the highest possible standard and to assist Member States with return-related tasks. Those data should be processed in compliance with the data protection safeguards provided for in that Regulation.

^{1a} Regulation (EU) 2016/1624 of the European Parliament and the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC (OJ L 251, 16.9.2016, p.1).

Amendment 13

Proposal for a regulation Recital 13 b (new)

Text proposed by the Commission

Amendment

(13 b) As one of the tasks of the European Border and Coast Guard Agency and the European Union Agency for Asylum, referred to in this Regulation, is the taking and transmitting of biometric data, the European Border and Coast Guard Agency and the European Union Agency for Asylum should be provided with their own interfaces so that they no longer need to rely on national infrastructures. In the long run, those interfaces could be used as a single search interface, as described in the Commission Communication of 6 April 2016 entitled "Stronger and Smarter Information Systems for Borders and Security"^{1a}.

^{1a} COM(2016) 0205.

Amendment 14

Proposal for a regulation Recital 14

Text proposed by the Commission

Amendment

(14) *The Commission's* Communication

(14) *In line with its* Communication on

on Stronger and Smarter Information Systems for Borders and Security²⁸ **highlights** the need to improve the interoperability of information systems as a long-term objective, as also identified by the European Council and the Council. **The Communication proposes to set up** an Expert Group on Information Systems and Interoperability to address the legal and technical feasibility of achieving interoperability of the information systems **for borders and security. This group should assess the necessity and proportionality of establishing** interoperability with the Schengen Information Systems (SIS) **and** the Visa Information Systems (VIS), and **examine if there is a need to revise the legal framework for law enforcement access to EURODAC.**

Stronger and Smarter Information Systems for Borders and Security²⁸, **which highlighted** the need to improve the interoperability of information systems as a long-term objective, as also identified by the European Council and the Council, **the Commission set up** an Expert Group on Information Systems and Interoperability to address the legal and technical feasibility of achieving interoperability of the information systems **which would allow for simpler and quicker access to all relevant information and for improving the quality of service that the relevant databases provide to their users.** **Therefore, technological solutions should be developed to ensure the interoperability of Eurodac with the Schengen Information Systems (SIS), the Visa Information Systems (VIS), Europol, and any new relevant information systems developed in the area of freedom, security and justice, in order to enhance effective cooperation among Member States in managing external borders and combatting serious crime. In particular, an assessment should be made as to whether interoperability should be established between Eurodac and the Entry-Exist-System (EES) in order to allow consultation between the EES and Eurodac of the data of third-country nationals or stateless persons having exceeded the maximum duration of authorised stay.**

²⁸ COM(2016) 205 *final*

²⁸ COM(2016) 0205

Amendment 15

Proposal for a regulation Recital 14 a (new)

Text proposed by the Commission

Amendment

(14a) Eu-LISA should establish a secure communication channel between the EES

central system and the Eurodac central system in order to enable interoperability between them. It is necessary to connect the two central systems to allow for the transfer to Eurodac of the biometric data of a third-country national registered in the EES where registration of those biometric data are required by this Regulation.

Amendment 16

Proposal for a regulation Recital 15

Text proposed by the Commission

(15) It is essential in the fight against terrorist offences and other serious criminal offences for the law enforcement authorities to have the fullest and most up-to-date information if they are to perform their tasks. The information contained in Eurodac is necessary for the purposes of the prevention, detection *or investigation* of terrorist offences as referred to in Council Framework Decision 2002/475/JHA²⁹ or of other serious criminal offences as referred to in Council Framework Decision 2002/584/JHA³⁰. Therefore, the data in Eurodac should be available, subject to the conditions set out in this Regulation, for comparison by the designated authorities of Member States and the European Police Office (Europol).

²⁹ *Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism (OJ L 164, 22.6.2002, p. 3).*

³⁰ *Council Framework Decision 2002/584/JHA of 13 June 2002 on the*

Amendment

(15) It is essential in the fight against terrorist offences and other serious criminal offences for the law enforcement authorities to have the fullest and most up-to-date information if they are to perform their tasks. The information contained in Eurodac is necessary for the purposes of the prevention, detection, *investigation or prosecution* of terrorist offences as referred to in *Directive (EU) 2017/... of the European Parliament and of the Council [combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA]* or of other serious criminal offences as referred to in Council Framework Decision 2002/584/JHA. Therefore, the data in Eurodac should be available, subject to the conditions set out in this Regulation, for comparison by the designated authorities of Member States and the European Police Office (Europol).

European arrest warrant and the surrender procedures between Member States (OJ L 190, 18.7.2002, p. 1).

Amendment 17

Proposal for a regulation Recital 19

Text proposed by the Commission

(19) Requests for comparison of Eurodac data by Europol should be allowed only in specific cases, under specific circumstances and under strict conditions.

Amendment

(19) Requests for comparison of Eurodac data by Europol should be allowed only in specific cases, under specific circumstances and under strict conditions, *in line with the principles of necessity and proportionality enshrined in Article 52(1) of the Charter of Fundamental Rights of the European Union and as interpreted by the Court of Justice of the European Union*^{1a}.

^{1a} Judgment of the Court of Justice of 8 April 2014, Digital Rights Ireland Ltd v Minister for Communications, Marine and Natural Resources and Others and Kärntner Landesregierung and Others, Joined cases C-293/12 and C-594/12, ECLI:EU:C:2014:238; Judgment of the Court of Justice of 21 December 2016, Tele2 Sverige AB v. Post-och telestyrelsen and Secretary of State for the Home Department v. Tom Watson and Others, Joined cases C-203/15 and C-698/15, ECLI:EU:C:2016:970.

Amendment 18

Proposal for a regulation Recital 20

Text proposed by the Commission

(20) Since Eurodac was originally established to facilitate the application of the Dublin Convention, access to Eurodac

Amendment

(20) Since Eurodac was originally established to facilitate the application of the Dublin Convention, access to Eurodac

for the purposes of preventing, detecting *or investigating* terrorist offences or other serious criminal offences constitutes a *change* of the original purpose of Eurodac, *which interferes* with the *fundamental right to respect for the private life of individuals whose personal data are processed in Eurodac*. *In line* with the *requirements of Article 52(1) of the Charter of Fundamental Rights of the European Union*, any such interference must be in accordance with the law, which must be formulated with sufficient precision to allow individuals to adjust their conduct and it must protect individuals against arbitrariness and indicate with sufficient clarity the scope of discretion conferred on the competent authorities and the manner of its exercise. Any interference must be necessary to genuinely meet an objective of general interest and proportionate to the legitimate objective it aims to achieve.

for the purposes of preventing, detecting, *investigating or prosecuting* terrorist offences or other serious criminal offences constitutes a *further development* of the original purpose of Eurodac. *In line* with the *requirements of Article 52(1) of the Charter of Fundamental Rights of the European Union*, any interference with the *fundamental right to respect for the private life of individuals whose personal data are processed in Eurodac* must be in accordance with the law, which must be formulated with sufficient precision to allow individuals to adjust their conduct and it must protect individuals against arbitrariness and indicate with sufficient clarity the scope of discretion conferred on the competent authorities and the manner of its exercise. Any interference must be necessary to genuinely meet an objective of general interest and proportionate to the legitimate objective it aims to achieve.

Amendment 19

Proposal for a regulation Recital 22

Text proposed by the Commission

(22) This Regulation also lays down the conditions under which requests for comparison of *fingerprint* data with Eurodac data for the purposes of preventing, detecting or investigating terrorist offences or other serious criminal offences should be allowed and the necessary safeguards to ensure the protection of the fundamental right to respect for the private life of individuals whose personal data are processed in Eurodac. The strictness of those conditions reflects the fact that the Eurodac database registers *fingerprint* data of persons who are not presumed to have committed a terrorist offence or other serious criminal

Amendment

(22) This Regulation also lays down the conditions under which requests for comparison of *biometric or alphanumeric* data with Eurodac data for the purposes of preventing, detecting or investigating terrorist offences or other serious criminal offences should be allowed and the necessary safeguards to ensure the protection of the fundamental right to respect for the private life of individuals whose personal data are processed in Eurodac. The strictness of those conditions reflects the fact that the Eurodac database registers *biometric and alphanumeric* data of persons who are not presumed to have committed a terrorist offence or other serious criminal offence. *Law enforcement*

offence.

authorities and Europol do not always have the biometric data of the suspect, perpetrator or victim whose case they are investigating, which can hamper their ability to check biometric matching databases such as Eurodac. In order to contribute further to the investigations carried out by those authorities and Europol, searches based on alphanumeric data should be allowed in Eurodac in such cases, in particular where those authorities and Europol possess evidence of the personal details or identity documents of the suspect, perpetrator or victim.

Amendment 20

Proposal for a regulation Recital 23

Text proposed by the Commission

(23) With a view to ensuring equal treatment for all applicants and beneficiaries of international protection, as well as in order to ensure consistency with the current Union asylum acquis, in particular with Directive 2011/95/EU of the European Parliament and of the Council³² and Regulation (EU) No [.../...], this Regulation includes applicants for subsidiary protection and persons eligible for subsidiary protection *in its scope* .

³² Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform

Amendment

(23) With a view to ensuring equal treatment for all applicants and beneficiaries of international protection, as well as in order to ensure consistency with the current Union asylum acquis, in particular with Directive 2011/95/EU of the European Parliament and of the Council³² and *with [Regulation XXX/XXX] establishing a Union Resettlement Framework and* Regulation (EU) No [.../...], this Regulation includes *in its scope* applicants for subsidiary protection and persons eligible for subsidiary protection, *as well as persons granted international protection on the basis of resettlement in accordance with [Regulation XXX/XXX].*

³² Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform

status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ L 337, 20.12.2011, p. 9).

status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ L 337, 20.12.2011, p. 9).

³² Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ L 337, 20.12.2011, p. 9).

³² Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ L 337, 20.12.2011, p. 9).

Amendment 21

Proposal for a regulation Recital 24

Text proposed by the Commission

(24) It is also necessary to require the Member States promptly to take and transmit the **fingerpr**int data of every applicant for international protection and of every third-country national or stateless person who is apprehended in connection with the irregular crossing of an external border of a Member State or is found to be staying illegally in a Member State, if they are at least six years of age.

Amendment

(24) It is also necessary to require the Member States promptly to take and transmit the **biometric** data of every applicant for international protection, of every **resettled third-country national or stateless person in accordance with [Regulation XXX/XXX]** and of every third-country national or stateless person who is apprehended in connection with the irregular crossing of an external border of a Member State or is found to be staying illegally in a Member State, if they are at least six years of age.

Amendment 22

Proposal for a regulation Recital 25

Text proposed by the Commission

(25) In view of strengthening the protection of unaccompanied minors who

Amendment

(25) In view of strengthening the protection of **all migrant and refugee**

have not applied for international protection and those children who may become separated from their families, it is also necessary to take *fingerprints and a facial image* for storage in the Central System *to help establish the identity of a child* and assist a Member State to trace any family or links they may have with another Member State. Establishing family links is a key element in restoring family unity and must be *is* closely linked to the determination of the best interests of the child and eventually, the determination of a *durable* solution.

children, including unaccompanied minors who have not applied for international protection and those children who may become separated from their families, it is also necessary to take *biometric data* for storage in the Central System and assist a Member State to trace any family or links they may have with another Member State. ***Biometric data should be taken for that sole purpose, and should be processed and used accordingly.*** Establishing family links is a key element in restoring family unity and must be closely linked to the determination of the best interests of the child and eventually, the determination of a *sustainable* solution. ***In the performance of those tasks, Member States should observe the principles laid down in the United Nations Convention on the Rights of the Child of 1989. Improved identification procedures for missing children should assist Member States in guaranteeing that adequate protection of children is ensured. To that end, Member States, upon the identification of a missing child or of a child who is the victim of crime, should promptly contact the competent national child protection authorities, which should undertake a needs assessment with a view to finding a sustainable solution for the child in accordance with his or her best interests.***

Amendment 23

Proposal for a regulation

Recital 26

Text proposed by the Commission

(26) The best interests of the minor should be a primary consideration for Member States when applying this Regulation. Where the requesting Member State establishes that Eurodac data pertain to a child, *these* data may only be used for law enforcement purposes by the requesting Member State in accordance

Amendment

(26) The best interests of the minor should be a primary consideration for Member States when applying this Regulation. Where the requesting Member State establishes that Eurodac data pertain to a child, *those* data may only be used for law enforcement purposes, ***in particular those relating to the prevention, detection***

with that State's laws applicable to minors and in accordance with the obligation to give primary consideration to the best interests of the child.

and investigation of child trafficking and other serious crimes against children, by the requesting Member State ***and*** in accordance with that State's laws applicable to minors and in accordance with the obligation to give primary consideration to the best interests of the child.

Amendment 24

Proposal for a regulation

Recital 30

Text proposed by the Commission

(30) Member States should refer to the Commission's Staff Working Document on Implementation of the Eurodac Regulation as regards the obligation to take fingerprints adopted by the Council on 20 July 2015³⁴, which sets out a best practice approach to taking fingerprints of irregular third-country nationals. Where a Member State's national law allows for the taking of fingerprints by force or coercion as a last resort, those measures must fully respect the *EU Charter of Fundamental Rights*. ***Third-country nationals who are deemed to be vulnerable persons and minors should not be coerced into giving their fingerprints or facial image, except in duly justified circumstances that are permitted under national law.***

Amendment

(30) ***In order to ensure that all the persons referred to in Article 10(1), 12a, 13(1) and 14(1) are registered in Eurodac***, Member States should refer to the Commission's Staff Working Document on Implementation of the Eurodac Regulation as regards the obligation to take fingerprints adopted by the Council on 20 July 2015³⁴, which sets out a best practice approach to taking fingerprints of irregular third-country nationals ***or stateless persons***. ***When carrying out that process, Member States should also take account of the guidelines established by the European Union Agency for Fundamental Rights in its focus paper of May 2015 entitled "Fundamental rights implications of the obligation to provide fingerprints for Eurodac"***. Where a Member State's national law allows for the taking of fingerprints by force or coercion as a last resort, those measures must fully respect the *Charter of Fundamental Rights of the European Union*. ***Where a minor, in particular an unaccompanied or separated minor, refuses to give his or her fingerprints or facial image and there are reasonable grounds for believing that there are child safeguarding or protection risks, that minor should be referred to the competent national child protection authorities, national referral mechanisms,***

or both. Those authorities should undertake an assessment of the minor's special needs in accordance with the relevant law with a view to finding a sustainable solution for the minor in full respect of the best interests of the child.

³⁴ COM(2015) 150 final, 27.5.2015

Amendment 25

Proposal for a regulation
Recital 31

Text proposed by the Commission

(31) Hits obtained from Eurodac should be verified by a trained fingerprint expert in order to ensure the accurate determination of responsibility under Regulation (EU) No [.../...]; the exact identification of the third-country national or stateless person and the exact identification of the criminal suspect or victim of crime whose data might be stored in Eurodac. Hits obtained from Eurodac based on facial images should also be verified where *there is doubt that the result relates to the same person.*

Amendment 26

Proposal for a regulation
Recital 32

Text proposed by the Commission

(32) *Third-country* nationals or stateless persons who have requested international protection *in one Member State may try to request international protection in*

³⁴ COM(2015) 0150.

Amendment

(31) Hits obtained from Eurodac should be verified by a trained fingerprint expert in order to ensure the accurate determination of responsibility under Regulation (EU) No [.../...], the exact identification of the third-country national or stateless person and the exact identification of the criminal suspect or victim of crime whose data might be stored in Eurodac. Hits obtained from Eurodac based on facial images should also be verified *by an official trained in accordance with national practice, in particular where the comparison is made with a facial image only. Where a fingerprint and facial image comparison is carried out simultaneously and a hit is received for both biometric data sets, Member States may check and verify the facial image result, if needed.*

Amendment

(32) *The maximum period during which biometric data of* third-country nationals or stateless persons who have requested international protection *can be*

another Member State for many years to come. Therefore, the maximum period during which fingerprint and facial image data should be kept by the Central System should be of considerable length. Given that most third-country nationals or stateless persons who have stayed in the Union for several years will have obtained a settled status or even citizenship of a Member State after that period, a period of *ten* years should be considered a reasonable period for the storage of fingerprint and facial image data.

kept by the Central System should be limited to the extent strictly necessary and should be proportionate, in line with the principle of proportionality enshrined in Article 52(1) of the Charter and as interpreted by the the Court of Justice. Given that most third-country nationals or stateless persons who have stayed in the Union for several years will have obtained a settled status or even citizenship of a Member State after that period, a period of *five* years should be considered a reasonable period for the storage of *biometric* data.

Amendment 27

Proposal for a regulation Recital 32 a (new)

Text proposed by the Commission

Amendment

(32 a) In its conclusions on Statelessness of 4 December 2015, the Council and the Representatives of the Governments of the Member States recalled the Union's pledge of September 2012 that all Member States were to accede to the 1954 Convention relating to the Status of Stateless Persons and were to consider acceding to the 1961 Convention on the Reduction of Statelessness. In its resolution of 25 October 2016 on human rights and migration in third countries, the European Parliament recalled the importance of identifying stateless persons in order to afford them the protections available under international law.

Amendment 28

Proposal for a regulation Recital 33

Text proposed by the Commission

Amendment

(33) In view of successfully preventing and monitoring unauthorised movements of third-country nationals or stateless persons who have no right to stay in the Union, and of taking the necessary measures for successfully enforcing effective return and readmission to third countries in accordance with Directive 2008/115/EC³⁵ and the right to protection of personal data, a period of five years should be considered a necessary period for the storage of *fingerprint and facial* data.

³⁵ OJ L 348, 24.12.2008, p.98

(33) In view of successfully preventing and monitoring unauthorised movements of third-country nationals or stateless persons who have no right to stay in the Union, and of taking the necessary measures for successfully enforcing effective return and readmission to third countries in accordance with Directive 2008/115/EC³⁵ and the right to protection of personal data, a period of five years should be considered a necessary period for the storage of *biometric and alphanumeric* data.

³⁵ OJ L 348, 24.12.2008, p.98

Amendment 29

Proposal for a regulation Recital 34

Text proposed by the Commission

(34) The storage period should be shorter in certain special situations where there is no need to keep *fingerprint and facial* data and all other personal data for that length of time. *Fingerprint and facial image* data and all other personal data belonging to a third-country national should be erased immediately once third-country nationals or stateless persons obtain citizenship of a Member State.

Amendment 30

Proposal for a regulation Recital 37

Text proposed by the Commission

(37) It is necessary to lay down clearly the respective responsibilities of the Commission and eu-LISA, in respect of the Central System *and* the Communication Infrastructure, and of the

Amendment

(34) The storage period should be shorter in certain special situations where there is no need to keep *biometric* data and all other personal data for that length of time. *Biometric* data and all other personal data belonging to a third-country national *or a stateless person* should be erased immediately *and permanently* once third-country nationals or stateless persons obtain citizenship of a Member State.

Amendment

(37) It is necessary to lay down clearly the respective responsibilities of the Commission and eu-LISA, in respect of the Central System, the Communication Infrastructure *and interoperability with*

Member States, as regards data processing, data security, access to, and correction of recorded data.

other information systems, and of the Member States, as regards data processing, data security, access to, and correction of recorded data.

Amendment 31

Proposal for a regulation

Recital 42

Text proposed by the Commission

(42) In addition, access should be allowed only on condition that ***comparisons with*** the national fingerprint databases of the Member State and ***with*** the automated fingerprinting identification systems of all other Member States under Council Decision 2008/615/JHA³⁶ ***did not lead to the establishment of the identity of the data subject***. That condition requires the requesting Member State to conduct comparisons with the automated fingerprinting identification systems of all other Member States under Decision 2008/615/JHA which are technically available, unless that Member State can justify that there are reasonable grounds to believe that it would not lead to the establishment of the identity of the data subject. Such reasonable grounds exist in particular where the specific case does not present any operational or investigative link to a given Member State. That condition requires prior legal and technical implementation of Decision 2008/615/JHA by the requesting Member State in the area of fingerprint data, as it should not be permitted to conduct a Eurodac check for law enforcement purposes where those above steps have not been first taken.

³⁶ Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime (OJ L 210, 6.8.2008, p. 1).

Amendment

(42) In addition, access should be allowed only on condition that ***a prior search in*** the national fingerprint ***and facial image*** databases of the Member State and ***in*** the automated fingerprinting identification systems of all other Member States under Council Decision 2008/615/JHA³⁶ ***has been conducted***. That condition requires the requesting Member State to conduct comparisons with the automated fingerprinting identification systems of all other Member States under Decision 2008/615/JHA which are technically available, unless that Member State can justify that there are reasonable grounds to believe that it would not lead to the establishment of the identity of the data subject. Such reasonable grounds exist in particular where the specific case does not present any operational or investigative link to a given Member State. That condition requires prior legal and technical implementation of Decision 2008/615/JHA by the requesting Member State in the area of fingerprint data, as it should not be permitted to conduct a Eurodac check for law enforcement purposes where those above steps have not been first taken.

³⁶ Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime (OJ L 210, 6.8.2008, p. 1).

Amendment 32

Proposal for a regulation

Recital 43

Text proposed by the Commission

(43) Prior to searching Eurodac, designated authorities should also, provided that the conditions for a comparison are met, consult the Visa Information System under Council Decision 2008/633/JHA³⁷.

Amendment

deleted

³⁷ Council Decision 2008/633/JHA of 23 June 2008 concerning access for consultation of the Visa Information System (VIS) by designated authorities of Member States and by Europol for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences (OJ L 218, 13.8.2008, p. 129).

Amendment 33

Proposal for a regulation

Recital 50

Text proposed by the Commission

(50) Transfers of personal data obtained by a Member State or Europol pursuant to this Regulation from the Central System to any third country or international organisation or private entity established in or outside the Union should be prohibited, in order to ensure the right to asylum and to safeguard applicants for international protection from having their data disclosed to a third country. This implies that Member States should not transfer information obtained from the Central System concerning: the name(s); date of birth; nationality; the Member State(s) of origin or Member State of allocation; the

Amendment

(50) Transfers of personal data obtained by a Member State or Europol pursuant to this Regulation from the Central System to any third country or international organisation or private entity established in or outside the Union should be prohibited, in order to ensure the right to asylum and to safeguard applicants for international protection **and resettled third-country nationals and stateless persons in accordance with [Regulation XXX/XXX]** from having their data disclosed to a third country. This implies that Member States should not transfer information obtained from the Central System concerning: the

details of the identity or travel document; ; the place and date of application for international protection; the reference number used by the Member State of origin; the date on which the fingerprints were taken as well as the date on which the Member State(s) transmitted the data to Eurodac; the operator user ID; and any information relating to any transfer of the data subject under [Regulation (EU) No 604/2013]. That prohibition should be without prejudice to the right of Member States to transfer such data to third countries to which [Regulation (EU) No 604/2013] applies [in accordance with Regulation (EU) No [.../2016]respectively with the national rules adopted pursuant to Directive [2016/.../EU]], in order to ensure that Member States have the possibility of cooperating with such third countries for the purposes of this Regulation.

name(s); date of birth; nationality; the Member State(s) of origin or Member State of allocation **or the Member State of resettlement**; the details of the identity or travel document; the place and date of **resettlement or of the** application for international protection; the reference number used by the Member State of origin; the date on which the fingerprints were taken as well as the date on which the Member State(s) transmitted the data to Eurodac; the operator user ID; and any information relating to any transfer of the data subject under [Regulation (EU) No 604/2013]. That prohibition should be without prejudice to the right of Member States to transfer such data to third countries to which [Regulation (EU) No 604/2013] applies [in accordance with Regulation (EU) No [.../2016] respectively with the national rules adopted pursuant to Directive [2016/.../EU]], in order to ensure that Member States have the possibility of cooperating with such third countries for the purposes of this Regulation.

Amendment 34

Proposal for a regulation Recital 51

Text proposed by the Commission

(51) In individual cases, information obtained from the Central System may be shared with a third-country in order to assist with the identification of a third-country national in relation to his/her return. Sharing of any personal data must be subject to strict conditions. Where such information is shared, no information shall be disclosed to a third-country relating to the fact that an application for international protection has been made by a third-country national where the country the individual is being readmitted to, is also the individual's country of origin or another

Amendment

(51) In individual cases, information obtained from the Central System may be shared with a third-country in order to assist with the identification of a third-country national **or a stateless person** in relation to his/her return. Sharing of any personal data must be subject to strict conditions. Where such information is shared, no information shall be disclosed to a third-country relating to the fact that an application for international protection has been made by a third-country national **or a stateless person** where the country the individual is being readmitted to, is also

third-country where they will be readmitted. Any transfer of data to a third-country for the identification of a third-country national must be in accordance with the provisions of Chapter V of Regulation (EU) No. [...2016].

the individual's country of origin or another third-country where they will be readmitted. Any transfer of data to a third-country for the identification of a third-country national **or a stateless person** must be in accordance with the provisions of Chapter V of Regulation (EU) No. [679/2016].

Amendment 35

Proposal for a regulation

Article 1 – paragraph 1 – point a a (new)

Text proposed by the Commission

Amendment

(aa) assist with the identification of secondary movements of third-country nationals or stateless persons resettled in accordance with [Regulation XXX/XXX];

Amendment 36

Proposal for a regulation

Article 1 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) assist with the control of illegal immigration to **and secondary movements within** the Union and with the identification of illegally staying third-country nationals for determining the appropriate measures to be taken by Member States, including removal **and repatriation of** persons **residing without authorisation**;

(b) assist with the control of illegal immigration to the Union and with the identification of **secondary movements and** of illegally staying third-country nationals **and stateless persons** for determining the appropriate measures to be taken by Member States, including **as appropriate**, removal **and return of illegally staying third-country nationals and stateless persons, or granting permanent resident status**;

Amendment 37

Proposal for a regulation

Article 1 – paragraph 1 – point c

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Text proposed by the Commission

(c) lay down the conditions under which Member States' designated authorities **and the European Police Office (Europol)** may request the comparison of ***fingerprint and facial image*** data with those stored in the Central System for law enforcement purposes for the prevention, detection or investigation of terrorist offences or of other serious criminal offences.

Amendment

(c) lay down the conditions under which Member States' designated authorities may request the comparison of ***biometric data and alphanumeric*** data with those stored in the Central System for law enforcement purposes for the prevention, detection or investigation of terrorist offences or of other serious criminal offences. ***This Regulation shall also lay down the conditions under which the European Police Office (Europol) may request comparisons with Eurodac data for the purpose of preventing, detecting or investigating terrorist offences or other serious criminal offences falling within its mandate.***

Amendment 38

**Proposal for a regulation
Article 1 – paragraph 2**

Text proposed by the Commission

2. Without prejudice to the processing of data intended for Eurodac by the Member State of origin in databases set up under the latter's national law, ***fingerprint*** data and other personal data may be processed in Eurodac only for the purposes set out in this Regulation and [Article 34(1) of Regulation (EU) ***No 604/2013***].

Amendment

2. Without prejudice to the processing of data intended for Eurodac by the Member State of origin in databases set up under the latter's national law, ***fingerprints and facial image*** data and other personal data may be processed in Eurodac only for the purposes set out in this Regulation and [Article 34(1) of Regulation (EU)]. ***The data of minors may be used by the Member States for the purposes of assisting them in the identification and tracing of missing children and of establishing family links of unaccompanied minors.***

Amendment 39

**Proposal for a regulation
Article 2 – paragraph 1**

1. ***Member States are obliged to take the fingerprints and facial image of persons referred to in Article 10(1), 13(1) and 14(1) for the purposes of Article 1(1)(a) and (b) of this Regulation and shall impose on the data-subject the requirement to provide his or her **fingerprints and a facial image** and inform **them** as such in accordance with Article 30 of this Regulation.***

1. ***The persons referred to in Articles 10(1), 13(1) and 14(1) shall be registered. Therefore, Member States shall take those person's biometric data for the purposes of Article 1(1)(a) and (b) of this Regulation and shall impose on the data-subject the requirement to provide his or her **biometric data** and inform **him or her** as such in accordance with Article 30 of this Regulation. Member States shall, at all times, respect the dignity and physical integrity of the person during the fingerprinting procedure and when capturing his or her facial image.***

Amendment 40

Proposal for a regulation Article 2 – paragraph 2

2. ***Taking fingerprints and facial images of minors from the age of six shall be carried out in a child-friendly and child-sensitive manner by officials trained specifically to enrol minor's fingerprints and facial images. The minor shall be informed in an age-appropriate manner using leaflets and/or infographics and/or demonstrations specifically designed to explain the fingerprinting and facial image procedure to minors and they shall be accompanied by a responsible adult, guardian or representative at the time their fingerprints and facial image are taken. At all times Member States must respect the dignity and physical integrity of the minor during the fingerprinting procedure and when capturing a facial image.***

deleted

(See Amendment relating to Article 2 a paragraph 1)

Amendment 41

Proposal for a regulation Article 2 – paragraph 3

Text proposed by the Commission

3. Member States may introduce administrative sanctions, in accordance with their national law, for non-compliance with the ***fingerprinting process and capturing a facial image in accordance with paragraph 1 of this Article. These*** sanctions shall be effective, proportionate and dissuasive. ***In this context, detention should*** only be used as a means of last resort in order to determine or verify a third-country national's identity.

Amendment

3. ***In order to ensure that all the persons referred to in Articles 10(1), 13(1) and 14(1) are registered in accordance with paragraph 1, Member States may introduce, where appropriate, well-justified administrative sanctions, in accordance with their national law and with full respect for the Charter of Fundamental Rights of the European Union, for non-compliance with the process of taking biometric data. Member States shall ensure that an opportunity for counselling has been provided to those persons in order to persuade them to cooperate with the procedure and to inform them of the possible implications of non-compliance. The administrative sanctions shall be effective, proportionate and dissuasive. Detention shall only be used as a means of last resort and for as short a period as possible and necessary in order to determine or verify a third-country national's identity and, in particular, where there is a risk of absconding. Where a decision is taken to detain a third-country national or a stateless person, competent national authorities shall carry out an assessment in each individual case in order to verify whether the detention complies with all legal and procedural safeguards to prevent arbitrary detention.***

Amendment 42

Proposal for a regulation Article 2 – paragraph 4

Text proposed by the Commission

4. Without prejudice to paragraph 3 of

Amendment

4. Without prejudice to paragraph 3 of

this Article, where enrolment of the fingerprints or facial image is not possible from third-country nationals who are deemed to be vulnerable persons **and from a minor** due to the conditions of the fingertips or face, the authorities of that Member State shall not use sanctions **to coerce the taking of fingerprints or a facial image**. A Member State may attempt to re-take the fingerprints or facial image of a **minor or** vulnerable person who refuses to comply, where the reason for non-compliance is not related to the conditions of the fingertips or facial image or the health of the individual and where it is duly justified to do so. **Where a minor, in particular an unaccompanied or separated minor refuses to give their fingerprints or a facial image and there are reasonable grounds to suspect that there are child safeguarding or protection risks, the minor shall be referred to the national child protection authorities and /or national referral mechanisms.**

Amendment 43

Proposal for a regulation Article 2 – paragraph 5

Text proposed by the Commission

5. The procedure for taking fingerprints and a facial image shall be determined and applied in accordance with the national practice of the Member State concerned and in accordance with the safeguards laid down in the Charter of Fundamental Rights of the European Union, in the Convention for the Protection of Human Rights and Fundamental Freedoms **and in the United Nations Convention on the Rights of the Child.**

this Article, where enrolment of the fingerprints or facial image is not possible from third-country nationals **or stateless persons** who are deemed to be vulnerable persons due to the conditions of the fingertips or face, the authorities of that Member State shall not use sanctions **for non-compliance with the obligation to provide biometric data**. A Member State may attempt to re-take the fingerprints or facial image of a vulnerable person who refuses to comply, where the reason for non-compliance is not related to the conditions of the fingertips or facial image or the health of the individual and where it is duly justified to do so.

Amendment

5. The procedure for taking fingerprints and a facial image shall be determined and applied in accordance with the national practice of the Member State concerned and in accordance with the safeguards laid down in the Charter of Fundamental Rights of the European Union **and** in the Convention for the Protection of Human Rights and Fundamental Freedoms.

Amendment 44

Proposal for a regulation Article 2 a (new)

Text proposed by the Commission

Amendment

Article 2a

Special provisions relating to minors

1. *The biometric data of minors from the age of six shall be taken by officials trained specifically to enrol minor's fingerprints and to capture facial images in full respect of the best interests of the child, the principles established by the United Nations Convention on the Rights of the Child in a child-friendly and child-appropriate and gender-appropriate manner. The minor shall be informed in an age-appropriate manner, both orally and in writing, using leaflets and infographics and demonstrations specifically designed to explain the fingerprinting and facial image procedure to minors in a language he or she can understand. The minor shall be accompanied by a responsible adult or legal guardian throughout the time his or her biometric data are taken. At all times Member States shall respect the dignity and physical integrity of the minor during the fingerprinting procedure and when capturing a facial image. Member States shall not use coercion to compel the taking of fingerprints of minors. Detention of minors shall be prohibited.*

2. *Where the enrolment of the fingerprints or facial image of a minor is not possible due to the conditions of the fingertips or face, Article 2(3) shall apply. Where the fingerprints or facial image of a minor are retaken, the Member State concerned shall proceed in accordance with paragraph 1 of this Article. Where a minor, in particular an unaccompanied or separated minor, refuses to give his or her fingerprints or a facial image and there are reasonable grounds for believing that*

there are child safeguarding or protection risks, as assessed by an official trained specifically to deal with minors, the minor shall be referred to the competent national child protection authorities, the national referral mechanisms or both.

3. For the purposes laid down in Article 13(1) and Article 14(1), each set of data relating to a minor shall be stored in the Central System for five years from the date on which his or her biometric data were taken.

4. Without prejudice to national criminal law, in particular relating to the age of criminal responsibility, where a request under Article 1(1)(c) concerns the data of a minor, it shall be accompanied by evidence of the relevance of those data for the prevention, detection or investigation of child trafficking or other serious crimes against children.

5. Member States shall record in the Schengen Information System (SIS) the biometric data of children who have gone missing from reception facilities as missing persons. Missing children identified by Member States' law enforcement authorities based on a hit pursuant to Article 26 of this Regulation shall be promptly referred to the competent national child protection authorities, which shall undertake a needs assessment with a view to finding a sustainable solution for the child in accordance with his or her best interests.

(Paragraph 1 reproduces the substance of Article 2 paragraph 2)

Amendment 45

Proposal for a regulation Article 3 – paragraph 1 – point a a (new)

Text proposed by the Commission

Amendment

(aa) 'resettled third-country national or stateless person' means a third-country

national or stateless person who, following a resettlement procedure in accordance with national law or with [Regulation XXX/XXX], arrives on the territory of the Member State of resettlement.

Amendment 46

Proposal for a regulation

Article 3 – paragraph 1 – point b – subpoint i a (new)

Text proposed by the Commission

Amendment

(ia) in relation to a person covered by Article 12a, the Member State which transmits the personal data to the Central System and receives the results of the comparison;

Amendment 47

Proposal for a regulation

Article 3 – paragraph 1 – point d

Text proposed by the Commission

Amendment

(d) 'illegal stay' means the presence on the territory of a Member State, of a third-country national who does not fulfill, or no longer fulfils the conditions of entry as set out in Article 5 of the Schengen Borders Code or other conditions for entry, stay or residence in that Member State;

(d) 'illegal stay' means the presence on the territory of a Member State, of a third-country national *or stateless person* who does not fulfil, or no longer fulfils the conditions of entry as set out in Article 5 of the Schengen Borders Code or other conditions for entry, stay or residence in that Member State;

Amendment 48

Proposal for a regulation

Article 3 – paragraph 1 – point f

Text proposed by the Commission

Amendment

(f) 'hit' means the existence of a match or matches established by the Central System by comparison between *fingerprints*

(f) 'hit' means the existence of a match or matches established by the Central System by comparison between *biometric*

data recorded in the computerised central database and those transmitted by a Member State with regard to a person, without prejudice to the requirement that Member States shall immediately check the results of the comparison pursuant to Article 26(4);

data recorded in the computerised central database and those transmitted by a Member State with regard to a person, without prejudice to the requirement that Member States shall immediately check the results of the comparison pursuant to Article 26(4);

Amendment 49

Proposal for a regulation

Article 3 – paragraph 1 – point j

Text proposed by the Commission

(j) 'Eurodac data' means all data stored in the Central System in accordance with Article 12, Article **13(2)** and Article 14(2);

Amendment

(j) 'Eurodac data' means all data stored in the Central System in accordance with Article 12, Article **12a**, **Article 13(2)** and Article 14(2);

Amendment 50

Proposal for a regulation

Article 3 – paragraph 1 – point k

Text proposed by the Commission

(k) 'law enforcement' means the prevention, detection **or investigation** of terrorist offences or of other serious criminal offences;

Amendment

(k) 'law enforcement' means the prevention, detection, **investigation or prosecution** of terrorist offences or of other serious criminal offences;

(This amendment applies throughout the text. Adopting it will necessitate corresponding changes throughout.)

Amendment 51

Proposal for a regulation

Article 3 – paragraph 1 – point l

Text proposed by the Commission

(l) 'terrorist offences' means the offences **under national law which correspond or are equivalent to those**

Amendment

(l) 'terrorist offences' means the offences **referred to in Articles 3 to 12 of Directive (EU) 2017/... of the European**

referred to in Articles 1 to 4 of Framework Decision 2002/475/JHA;

Parliament and of the Council [on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA].

Amendment 52

Proposal for a regulation

Article 3 – paragraph 1 – point o a (new)

Text proposed by the Commission

Amendment

(oa) 'biometric data' means fingerprint data and facial image data;

(This amendment applies throughout the text. Adopting it will necessitate corresponding changes throughout.)

Amendment 53

Proposal for a regulation

Article 3 – paragraph 1 – point o b (new)

Text proposed by the Commission

Amendment

(ob) 'stateless person' means a person who is not considered to be a national of any State under the operation of its law.

Amendment 54

Proposal for a regulation

Article 3 – paragraph 1 – point o c (new)

Text proposed by the Commission

Amendment

(oc) 'alphanumeric data' means data represented by letters, digits, special characters, spaces and punctuation marks;

Amendment 55

Proposal for a regulation

Article 3 – paragraph 1 – point o d (new)

Text proposed by the Commission

Amendment

(od) 'residence document' means a residence document as defined in point (...) of Article of Regulation ... [COD(2016)0133; Dublin IV];

Amendment 56

Proposal for a regulation

Article 3 – paragraph 1 – point o e (new)

Text proposed by the Commission

Amendment

(oe) 'interface control document' means a technical document that specifies the necessary requirements with which the national access points referred to in Article 4(3) are to comply in order to be able to communicate electronically with the Central System, in particular by detailing the form and possible content of the information to be exchanged between the Central System and the national access points.

Amendment 57

Proposal for a regulation

Article 4 – paragraph 2

Text proposed by the Commission

Amendment

2. The EURODAC Communication Infrastructure will be using the existing 'Secure Trans European Services for Telematics between Administrations' (TESTA) network. *A separate virtual private network dedicated to the EURODAC shall be established on the existing TESTA private virtual network to ensure the logical separation of*

2. The EURODAC Communication Infrastructure will be using the existing 'Secure Trans European Services for Telematics between Administrations' (TESTA) network. *In order to ensure confidentiality, personal data transmitted to or from Eurodac shall be encrypted.*

EURODAC data from other data.

Amendment 58

Proposal for a regulation Article 4 – paragraph 3

Text proposed by the Commission

3. Each Member State shall have a single National Access Point.

Amendment

3. Each Member State shall have a single National Access Point. ***Europol shall have its own access point.***

Amendment 59

Proposal for a regulation Article 4 – paragraph 4

Text proposed by the Commission

4. Data on persons covered by Articles 10(1), 13(1) and 14(1) which are processed in the Central System shall be processed on behalf of the Member State of origin under the conditions set out in this Regulation and separated by appropriate technical means.

Amendment

4. Data on persons covered by Articles 10(1), ***12a***, 13(1) and 14(1) which are processed in the Central System shall be processed on behalf of the Member State of origin under the conditions set out in this Regulation and separated by appropriate technical means.

Amendment 60

Proposal for a regulation Article 5 – paragraph 2 – subparagraph 1 – introductory part

Text proposed by the Commission

Eu-LISA shall be permitted to use real personal data of the Eurodac production system for testing purposes in the following circumstances:

Amendment

Eu-LISA shall be permitted to use real personal data of the Eurodac production system for testing purposes, ***in accordance with Regulation (EU)2016/679, and in strict compliance with Article 17 of the Staff Regulations^{1a} in respect of every person involved in the testing only*** in the following circumstances:

^{1a} Council Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 laying down the Staff

Amendment 61

Proposal for a regulation

Article 5 – paragraph 2 – subparagraph 2

Text proposed by the Commission

In such cases, the security measures, access control and logging activities at the testing environment shall be equal to the ones for the Eurodac production system. Real personal data adopted for testing shall be rendered anonymous in such a way that the data-subject is no longer identifiable.

Amendment

In such cases, the security measures, access control and logging activities at the testing environment shall be equal to the ones for the Eurodac production system. Real personal data adopted for testing shall be ***subject to stringent conditions and*** rendered anonymous in such a way that the data-subject is no longer identifiable. ***Once the purpose for which the testing was carried out has been achieved or the tests have been completed, such real personal data shall be immediately and permanently erased from the testing environment. Eu-LISA shall ensure that relevant guarantees are provided in respect of the accessing of data by external contractors, in accordance with Articles 24 to 28 of Regulation (EU) 2016/679.***

Amendment 62

Proposal for a regulation

Article 5 – paragraph 3 – point c a (new)

Text proposed by the Commission

Amendment

(ca) interoperability with other information systems.

Amendment 63

Proposal for a regulation

Article 6 – paragraph 1

Text proposed by the Commission

1. For the purposes laid down in Article 1(1)(c), Member States shall designate the authorities that are authorised to request comparisons with Eurodac data pursuant to this Regulation. Designated authorities shall be authorities of the Member States which are responsible for the prevention, detection or investigation of terrorist offences or of other serious criminal offences. ***Designated authorities shall not include agencies or units exclusively responsible for intelligence relating to national security.***

Amendment 64

**Proposal for a regulation
Article 6 – paragraph 2**

Text proposed by the Commission

2. Each Member State shall keep a list of the designated authorities.

Amendment 65

**Proposal for a regulation
Article 7 – paragraph 2 – subparagraph 1**

Text proposed by the Commission

The verifying authority shall ensure that the conditions for requesting comparisons of ***fingerprints*** with Eurodac data are fulfilled.

Amendment

1. For the purposes laid down in Article 1(1)(c), Member States shall designate the authorities that are authorised to request comparisons with Eurodac data pursuant to this Regulation. Designated authorities shall be authorities of the Member States which are responsible for the prevention, detection or investigation of terrorist offences or of other serious criminal offences.

Amendment

2. Each Member State shall keep a list of the designated authorities ***and communicate it without delay to the Commission and to eu-LISA. Eu-LISA shall publish a consolidated list of those designated authorities in the Official Journal of the European Union. Where that list has been amended, eu-LISA shall annually publish an updated consolidated list online.***

Amendment

The verifying authority shall ensure that the conditions for requesting comparisons of ***biometric or alphanumeric data*** with Eurodac data are fulfilled.

Amendment 66

Proposal for a regulation

Article 7 – paragraph 2 – subparagraph 3

Text proposed by the Commission

Only the verifying authority shall be authorised to forward requests for comparison of *fingerprints and facial images* to the National Access Point.

Amendment

Only the verifying authority shall be authorised to forward requests for comparison of *biometrics or alphanumeric data* to the National Access Point.

Amendment 67

Proposal for a regulation

Article 8 – paragraph 1

Text proposed by the Commission

1. For the purposes laid down in Article 1(1)(c), Europol shall designate *a specialised unit with duly empowered Europol officials to act as its verifying authority, which shall act independently of the designated authority referred to in paragraph 2 of this Article when performing its tasks under this Regulation and shall not receive instructions from the designated authority as regards the outcome of the verification. The unit shall ensure that the conditions for requesting comparisons of fingerprints and facial images with Eurodac data are fulfilled. Europol shall designate in agreement with any Member State the National Access Point of that Member State which shall communicate its requests for comparison of fingerprint and facial image data to the Central System.*

Amendment

1. For the purposes laid down in Article 1(1)(c), Europol shall designate *an authority which is authorised to request comparisons with Eurodac data through its designated Europol access point in order to prevent, detect and investigate terrorist offences or other serious criminal offences.* The *designated authority* shall be an operating unit of Europol.

Amendment 68

Proposal for a regulation

Article 8 – paragraph 2

Text proposed by the Commission

2. For the purposes laid down in Article 1 (1)(c), Europol shall designate an *operating unit that is authorised to request comparisons with Eurodac data through its designated National Access Point. The designated authority shall be an operating unit of Europol which is competent to collect, store, process, analyse and exchange information to support and strengthen action by Member States in preventing, detecting or investigating terrorist offences or other serious criminal offences falling within Europol's mandate.*

Amendment 69

Proposal for a regulation Article 8 – paragraph 2 a (new)

Text proposed by the Commission

Amendment 70

Proposal for a regulation Article 8 a (new)

Text proposed by the Commission

Amendment

2. For the purposes laid down in Article 1(1)(c), Europol shall designate an *specialised unit with duly empowered Europol officials as the Europol access point. The Europol access point shall verify that the conditions to request comparisons with Eurodac data laid down in Article 22 are fulfilled. The Europol access point shall act independently when performing its tasks under this Regulation and shall not receive instructions from the designated authority referred to in paragraph 1 as regards the outcome of the verification.*

Amendment

2 a. *Europol shall designate an operating unit in charge of collecting, storing, processing, analysing and exchanging the data on child victims of trafficking in human beings. The operating unit shall be authorised to request comparisons with Eurodac data in order to support and strengthen Member States' action in preventing, detecting or investigating child trafficking, child labour or sexual exploitation.*

Amendment

Article 8 a

European Border and Coast Guard

In accordance with Article 40(8) of Regulation (EU) 2016/1624, the members of the European Border and Coast Guard Agency or teams of staff involved in return-related tasks as well as the members of the migration management support teams shall, within their mandate, have the right to access and search data entered in Eurodac. They shall access the data by using the technical interface set up and maintained by the European Border and Coast Guard Agency as referred to in Article 10(3a) of this Regulation.

Amendment 71

Proposal for a regulation Article 9 – paragraph 1 – point a

Text proposed by the Commission

(a) the number of data sets transmitted on persons referred to in Articles 10(1), 13(1) and 14(1);

Amendment

(a) the number of data sets transmitted on persons referred to in Articles 10(1), **12a**, 13(1) and 14(1);

Amendment 72

Proposal for a regulation Article 9 – paragraph 1 – point e

Text proposed by the Commission

(e) the number of ***fingerprint*** data which the Central System had to request more than once from the Member States of origin because the ***fingerprint*** data originally transmitted did not lend themselves to comparison using the computerised ***fingerprint*** recognition system;

Amendment

(e) the number of ***biometric*** data which the Central System had to request more than once from the Member States of origin because the ***biometric*** data originally transmitted did not lend themselves to comparison using the computerised ***biometric*** recognition system;

Amendment 73

Proposal for a regulation Article 9 – paragraph 1 – point j

Text proposed by the Commission

(j) the number of requests made for persons referred to in Article 31;

Amendment

(j) the number **and type** of requests made for persons referred to in Article 31;

Amendment 74

Proposal for a regulation
Article 9 – paragraph 2

Text proposed by the Commission

2. The monthly statistical data for persons referred to in paragraph 1(a) to (h) shall be published and made public by each month. At the end of each year, the yearly statistical data for persons referred to in paragraph 1(a) to (h) shall be published and made public by eu-LISA . The statistics shall contain a breakdown of data for each Member State.

Amendment

2. The monthly statistical data for persons referred to in paragraph 1(a) to (h) **shall contain a breakdown, where possible, of the data subjects' years of birth and genders, and** shall be published and made public by each month. At the end of each year, the yearly statistical data for persons referred to in paragraph 1(a) to (h) shall be published and made public by eu-LISA. The statistics shall contain a breakdown of data for each Member State.

Amendment 75

Proposal for a regulation
Article 9 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3 a. The duly authorised staff of the European Border and Coast Guard Agency shall have access to the statistics drawn up by eu-LISA referred to in points (a) to (h) of paragraph 1 of this Regulation and to the relevant data referred to in Article (12)(d) to (s), Article 13(2)(d) to (m) and Article 14(2)(d) to (m) of this Regulation, solely for the purposes laid down in Article 1(1)(b) of this Regulation and for the purposes laid down in Articles 11 and 37 of Regulation (EU) 2016/1624. Access shall be granted to such statistics and data in such a way as to ensure that individuals are not

identified. The processing of those data shall be carried out in compliance with the data protection safeguards provided for in Regulation (EU) 2016/1624.

Amendment 76

Proposal for a regulation Article 10 – paragraph 3

Text proposed by the Commission

3. *Fingerprint* data may also be taken and transmitted by members of the European Border [and Coast] Guard Teams or by Member State asylum experts when performing tasks and exercising powers in accordance with [Regulation *on the European Border [and Coast] Guard and repealing Regulation (EC) No 2007/2004, Regulation (EC) No 863/2007 and Council Decision 2005/267/EC*] and [Regulation (EU) No. 439/2010].

Amendment

3. *Where requested by the Member State concerned, the biometric* data may also be taken and transmitted by members of the European Border and Coast Guard Teams or by Member State asylum experts when performing tasks and exercising powers in accordance with Regulation (EU) 2016/1624 or by asylum support teams in accordance with [Regulation (EU) No].

Amendment 77

Proposal for a regulation Article 10 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. *For the purposes of paragraph 3, the European Border and Coast Guard Agency and the European Union Agency for Asylum established by Regulation (EU) 2017/... shall set up and maintain a technical interface which allows a direct connection to the Central System of Eurodac.*

Amendment 78

Proposal for a regulation Article 12 – paragraph 1 – point c

Text proposed by the Commission

(c) surname(s) and forename(s), name(s) at birth and previously used names ***and any aliases, which may be entered separately;***

Amendment

(c) surname(s) and forename(s), name(s) at birth and previously used names;

Amendment 79

Proposal for a regulation Article 12 – paragraph 1 – point d

Text proposed by the Commission

(d) nationality(ies);

Amendment

(d) nationality(ies) ***or presumed and declared nationality(ies) or status as stateless person in accordance with Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons;***

Amendment 80

Proposal for a regulation Article 12 – paragraph 1 – point s a (new)

Text proposed by the Commission

Amendment

(sa) details of family members of minors, which are relevant for family tracing and reunification such as their names, family link to the minor and, where available, their passport or identification card numbers.

Amendment 81

Proposal for a regulation Chapter II a (new)

Text proposed by the Commission

Amendment

CHAPTER IIa: RESETTLED THIRD-COUNTRY NATIONALS OR STATELESS PERSONS

Amendment 82

Proposal for a regulation Article 12 a (new)

Text proposed by the Commission

Amendment

Article 12a

Collection and transmission of fingerprints and facial image data

1. Each Member State shall promptly take the fingerprints of all fingers and capture a facial image of every resettled third-country national or stateless person of at least six years of age, upon their arrival on its territory, and shall transmit the fingerprints and facial image, together with the other data referred to in Article 10 of Regulation (EU) .../..., to the Central System.

Non-compliance with the requirement to promptly take all the fingerprints and capture the facial image shall not relieve Member States of the obligation to take the fingerprints or capture the facial image and transmit them to the Central System. Where the condition of the fingertips does not allow the taking of the fingerprints of a quality ensuring appropriate comparison under Article 26, the Member State of resettlement shall retake the fingerprints of the applicant and resend them as soon as possible and no later than 48 hours after they have been successfully retaken.

2. By way of derogation from paragraph 1, where it is not possible to take the fingerprints, the facial image or both of a resettled third-country national or stateless person on account of measures taken to ensure his or her health or the protection of public health, Member States shall take and send such fingerprints, facial image or both as soon as possible and no later than 48 hours after those health grounds no longer prevail.

Amendment 83

Proposal for a regulation Article 12 b (new)

Text proposed by the Commission

Amendment

Article 12b

Recording of data

Only the following data shall be recorded in the Central System:

- (a) fingerprint data;***
- (b) a facial image;***
- (c) surname(s) and forename(s), name(s) at birth and previously used names and any aliases, which may be entered separately;***
- (d) nationality(ies);***
- (e) place and date of birth***
- (f) Member State of resettlement, place and date of the registration;***
- (g) sex;***
- (h) where applicable, the type and number of identity or travel document; three letter code of the issuing country and validity;***
- (i) reference number used by the Member State of origin;***
- (j) date on which the fingerprints and/or facial image were taken;***
- (k) date on which the data were transmitted to the Central System;***
- (l) operator user ID;***

Amendment 84

Proposal for a regulation Article 13 – paragraph 2 – point c

Text proposed by the Commission

Amendment

(c) surname(s) and forename(s), name(s) at birth and previously used names ***and any aliases, which may be entered separately;***

(c) surname(s) and forename(s), name(s) at birth and previously used names;

Amendment 85

Proposal for a regulation Article 13 – paragraph 2 – point d

Text proposed by the Commission

(d) nationality(ies);

Amendment

(d) nationality(ies) ***or presumed and declared nationality(ies) or status as stateless person in accordance with Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons;***

Amendment 86

Proposal for a regulation Article 13 – paragraph 2 – point g a (new)

Text proposed by the Commission

Amendment

(ga) details of family members of minors, which are relevant for family tracing and reunification such as their names, family link to the minor and, where available, their passport or identification card numbers;

Amendment 87

Proposal for a regulation Article 13 – paragraph 2 – point i a (new)

Text proposed by the Commission

Amendment

(ia) return decision taken, or removal order issued, by the Member State of origin;

Amendment 88

Proposal for a regulation

Article 13 – paragraph 7

Text proposed by the Commission

7. ***Fingerprint*** data may also be taken and transmitted by members of the European Border [and Coast] Guard Teams when performing tasks and exercising powers in accordance with [Regulation ***on the European Border [and Coast] Guard and repealing Regulation (EC) No 2007/2004, Regulation (EC) No 863/2007 and Council Decision 2005/267/EC***].

Amendment

7. ***Where requested by the Member State concerned, the biometric*** data may also be taken and transmitted by members of the European Border and Coast Guard Teams when performing tasks and exercising powers in accordance with Regulation (EU) 2016/1624 and by asylum support teams in accordance with [Regulation (EU)].

Amendment 89

Proposal for a regulation

Article 14 – paragraph 2 – point d

Text proposed by the Commission

(d) nationality(ies);

Amendment

(d) nationality(ies) ***or presumed and declared nationality(ies) or status as stateless person in accordance with Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons;***

Amendment 90

Proposal for a regulation

Article 14 – paragraph 2 – point g a (new)

Text proposed by the Commission

Amendment

(ga) details of family members of minors, which are relevant for family tracing and reunification such as their names, family link to the minor and, where available, their passport or identification card numbers;

Amendment 91

Proposal for a regulation
Article 14 – paragraph 2 – point i a (new)

Text proposed by the Commission

Amendment

(ia) return decision taken, or removal order issued, by the Member State of origin;

Amendment 92

Proposal for a regulation
Article 14 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Member States may derogate from the provisions of paragraph 1 and 2 in respect of illegally staying third-country nationals who entered the Union by legally crossing the external border and have overstayed the authorised period of stay by a period of no more than 15 days.

Amendment 93

Proposal for a regulation
Article 14 – paragraph 4

Text proposed by the Commission

Amendment

4. Non-compliance with the 72-hour time-limit referred to in paragraph 3 of this Article shall not relieve Member States of the obligation to take and transmit the ***fingerprints*** to the Central System. Where the condition of the fingertips does not allow the taking of fingerprints of a quality ensuring appropriate comparison under Article 26, the Member State of origin shall retake the fingerprints of persons apprehended as described in paragraph 1 of this Article, and resend them as soon as possible and no later than 48 hours after they have been successfully retaken.

4. Non-compliance with the 72-hour time-limit referred to in paragraph 3 of this Article shall not relieve Member States of the obligation to take and transmit the ***biometric data*** to the Central System. Where the condition of the fingertips does not allow the taking of fingerprints of a quality ensuring appropriate comparison under Article 26, the Member State of origin shall retake the fingerprints of persons apprehended as described in paragraph 1 of this Article, and resend them as soon as possible and no later than 48 hours after they have been successfully retaken.

Amendment 94

Proposal for a regulation Chapter V – title

Text proposed by the Commission

PROCEDURE FOR COMPARISON OF DATA FOR APPLICANTS FOR INTERNATIONAL PROTECTION AND THIRD-COUNTRY NATIONALS APPREHENDED CROSSING THE BORDER IRREGULARLY OR ILLEGALLY STAYING IN THE TERRITORY OF A MEMBER STATE

Amendment

PROCEDURE FOR COMPARISON OF DATA FOR APPLICANTS FOR INTERNATIONAL PROTECTION, **RESETTLED THIRD-COUNTRY NATIONALS AND STATELESS PERSONS** AND THIRD-COUNTRY NATIONALS APPREHENDED CROSSING THE BORDER IRREGULARLY OR ILLEGALLY STAYING IN THE TERRITORY OF A MEMBER STATE

Amendment 95

Proposal for a regulation Article 15 – paragraph 1

Text proposed by the Commission

1. **Fingerprint and facial image** data transmitted by any Member State, with the exception of those transmitted in accordance with Article 11(b) and (c), shall be compared automatically with the fingerprint data transmitted by other Member States and already stored in the Central System in accordance with **Article** 10(1), 13(1) and 14(1).

Amendment

1. **Biometric** data transmitted by any Member State, with the exception of those transmitted in accordance with Article 11(b) and (c), shall be compared automatically with the fingerprint data transmitted by other Member States and already stored in the Central System in accordance with **Articles** 10(1), **12a**, 13(1) and 14(1).

Amendment 96

Proposal for a regulation Article 15 – paragraph 3

Text proposed by the Commission

3. The Central System shall automatically transmit the hit or the negative result of the comparison to the Member State of origin following the

Amendment

3. The Central System shall automatically transmit the hit or the negative result of the comparison to the Member State of origin following the

procedures set out in Article 26(4) . Where there is a hit, it shall transmit for all data sets corresponding to the hit the data referred to in **Article** 12, 13(2) and 14(2) along with, where appropriate, the mark referred to in Article 19(1) and (4) . Where a negative hit result is received, the data referred to in **Article** 12, 13(2) and 14(2) shall not be transmitted.

procedures set out in Article 26(4). Where there is a hit, it shall transmit for all data sets corresponding to the hit the data referred to in **Articles** 12, **12b**, 13(2) and 14(2) along with, where appropriate, the mark referred to in Article 19(1) and (4). Where a negative hit result is received, the data referred to in **Articles** 12, **12b**, 13(2) and 14(2) shall not be transmitted.

Amendment 97

Proposal for a regulation Article 16 – title

Text proposed by the Commission

Comparison of facial image data

Amendment

Comparison of facial image data **only**

Amendment 98

Proposal for a regulation Article 16 – paragraph 2

Text proposed by the Commission

(2) Facial image data and data relating to the sex of the data-subject may be compared automatically with the facial image data and personal data relating to the sex of the data-subject transmitted by other Member States and already stored in the Central System in accordance with **Article** 10(1), 13(1) and 14(1) with the exception of those transmitted in accordance with Article 11(b) and (c).

Amendment

(2) Facial image data and data relating to the sex of the data-subject may be compared automatically with the facial image data and personal data relating to the sex of the data-subject transmitted by other Member States and already stored in the Central System in accordance with **Articles** 10(1), **12a**, 13(1) and 14(1) with the exception of those transmitted in accordance with Article 11(b) and (c).

Amendment 99

Proposal for a regulation Article 16 – paragraph 4

Text proposed by the Commission

(4) The Central System shall automatically transmit the hit or the

Amendment

(4) The Central System shall automatically transmit the hit or the

negative result of the comparison to the Member State of origin following the procedures set out in Article 26(4). Where there is a hit, it shall transmit for all data sets corresponding to the hit the data referred to in **Article** 12, 13(2) and 14(2) along with, where appropriate, the mark referred to in Article **17(1)** and (4). Where a negative hit result is received, the data referred to in **Article** 12, 13(2) and 14(2) shall not be transmitted.

negative result of the comparison to the Member State of origin following the procedures set out in Article 26(4). Where there is a hit, it shall transmit for all data sets corresponding to the hit the data referred to in **Articles** 12, **12b**, 13(2) and 14(2) along with, where appropriate, the mark referred to in Article **19(1)** and (4). Where a negative hit result is received, the data referred to in **Articles** 12, **12b**, 13(2) and 14(2) shall not be transmitted.

Amendment 100

Proposal for a regulation Article 17 – paragraph 1

Text proposed by the Commission

1. For the purposes laid down in Article 10(1), each set of data relating to an applicant for international protection, as referred to in Article 12, shall be stored in the Central System for **ten** years from the date on which the fingerprints were taken.

Amendment

1. For the purposes laid down in Article 10(1), each set of data relating to an applicant for international protection, as referred to in Article 12, shall be stored in the Central System for **five** years from the date on which the fingerprints were **first** taken.

Amendment 101

Proposal for a regulation Article 17 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. For the purposes laid down in Article 12a, each set of data relating to a resettled third-country national or stateless person shall be kept in the Central System for five years from the date on which the fingerprints were taken.

Amendment 102

Proposal for a regulation Article 17 – paragraph 2

Text proposed by the Commission

2. For the purposes laid down in Article 13(1), each set of data relating to a third-country national or stateless person as referred to in Article 13(2) shall be stored in the Central System for five years from the date on which his or her fingerprints were taken.

Amendment

2. For the purposes laid down in Article 13(1), each set of data relating to a third-country national or stateless person as referred to in Article 13(2) shall be stored in the Central System for ***a period limited to the duration of a measure taken upon the third-country national or stateless person which shall not be more than*** five years from the date on which his or her fingerprints were ***first*** taken.

Amendment 103

**Proposal for a regulation
Article 17 – paragraph 3**

Text proposed by the Commission

3. For the purposes laid down in Article 14(1), each set of data relating to a third-country national or stateless person as referred to in Article 14(2) shall be stored in the Central System for five years from the date on which his or her fingerprints were taken.

Amendment

3. For the purposes laid down in Article 14(1), each set of data relating to a third-country national or stateless person as referred to in Article 14(2) shall be stored in the Central System for ***a period limited to the duration of a measure taken upon the third-country national or stateless person which shall not be more than*** five years from the date on which his or her fingerprints were ***first*** taken.

Amendment 104

**Proposal for a regulation
Article 18 – paragraph 1**

Text proposed by the Commission

1. Data relating to a person who has acquired citizenship of any Member State before expiry of the period referred to in Article 17(1), (2) or (3) shall be erased from the Central System in accordance with Article 28(4) ***as soon as*** the Member State of origin ***becomes aware that*** the person concerned has acquired such

Amendment

1. Data relating to a person who has acquired citizenship of any Member State before expiry of the period referred to in Article 17(1), (2) or (3) shall be erased from the Central System in accordance with Article 28(4). The Member State of origin ***shall be informed immediately if*** the person concerned has acquired such

citizenship.

citizenship *in order to erase the data*.

Amendment 105

Proposal for a regulation Article 18 – paragraph 2

Text proposed by the Commission

2. The Central System shall, as soon as possible and no later than after 72 hours, inform all Member States of origin of the erasure of data in accordance with paragraph 1 by another Member State of origin having produced a hit with data which they transmitted relating to persons referred to in **Article** 10(1), 13(1) or 14(1) .

Amendment

2. The Central System shall, as soon as possible and no later than after 72 hours, inform all Member States of origin of the erasure of data in accordance with paragraph 1 by another Member State of origin having produced a hit with data which they transmitted relating to persons referred to in **Articles** 10(1), **12a**, 13(1) or 14(1).

Amendment 106

Proposal for a regulation Article 19 – paragraph 1

Text proposed by the Commission

1. For the purposes laid down in Article 1(1)(a), the Member State of origin which granted international protection to an applicant for international protection whose data were previously recorded in the Central System pursuant to Article 12 shall mark the relevant data in conformity with the requirements for electronic communication with the Central System established by eu-LISA . That mark shall be stored in the Central System in accordance with Article 17(1) for the purpose of transmission under **Article 15** . The Central System shall , as soon as possible and no later than 72 hours, inform all Member States of origin of the marking of data by another Member State of origin having produced a hit with data which they transmitted relating to persons referred to in Article 10(1), 13(1) or 14(1) . Those Member States of origin shall also mark

Amendment

1. For the purposes laid down in Article 1(1)(a), the Member State of origin which granted international protection to an applicant for international protection whose data were previously recorded in the Central System pursuant to Article 12 shall mark the relevant data in conformity with the requirements for electronic communication with the Central System established by eu-LISA . That mark shall be stored in the Central System in accordance with Article 17(1) for the purpose of transmission under **Articles 15 and 16**. The Central System shall, as soon as possible and no later than 72 hours, inform all Member States of origin of the marking of data by another Member State of origin having produced a hit with data which they transmitted relating to persons referred to in Article 10(1), 13(1) or 14(1). Those Member States of origin shall also

the corresponding data sets.

mark the corresponding data sets.

Amendment 107

Proposal for a regulation

Article 19 – paragraph 2 – subparagraph 1

Text proposed by the Commission

The data of beneficiaries of international protection stored in the Central System and marked pursuant to paragraph 1 of this Article shall be made available for comparison for the purposes laid down in Article 1(1)(c) **for a period of three years after the date on which the data subject was granted international protection.**

Amendment

The data of beneficiaries of international protection stored in the Central System and marked pursuant to paragraph 1 of this Article shall be made available for comparison for the purposes laid down in Article 1(1)(c) **until such data are automatically erased from the Central System in accordance with Article 17(4).**

Amendment 108

Proposal for a regulation

Article 20 – title

Text proposed by the Commission

Procedure for comparison of **fingerprint** data with Eurodac data

Amendment

Procedure for comparison of **biometric or alphanumeric** data with Eurodac data

Amendment 109

Proposal for a regulation

Article 20 – paragraph 1

Text proposed by the Commission

1. For the purposes laid down in Article 1(1)(c), the designated authorities referred to in Articles 6(1) **and 8(2)** may submit a reasoned electronic request as provided for in Article 21(1) together with the reference number used by them, to the verifying authority for the transmission for comparison of **fingerprint and facial image** data to the Central System via the National Access Point. Upon receipt of such a request, the verifying authority shall

Amendment

1. For the purposes laid down in Article 1(1)(c), the designated authorities referred to in Articles 6(1) may submit a reasoned electronic request as provided for in Article 21(1) together with the reference number used by them, to the verifying authority for the transmission for comparison of **biometric or alphanumeric** data to the Central System, via the National Access Point. Upon receipt of such a request, the verifying authority shall verify

verify whether all the conditions for requesting a comparison referred to in Articles 21 or 22, as appropriate, are fulfilled.

whether all the conditions for requesting a comparison referred to in Articles 21 or 22, as appropriate, are fulfilled.

Amendment 110

Proposal for a regulation Article 20 – paragraph 2

Text proposed by the Commission

2. Where all the conditions for requesting a comparison referred to in Articles 21 or 22 are fulfilled, the verifying authority shall transmit the request for comparison to the National Access Point which will process it to the Central System in accordance with Articles 15 and 16 for the purpose of comparison with the ***fingerprint and facial image*** data transmitted to the Central System pursuant to Articles 10(1), 13 (1) and 14(1) .

Amendment

2. Where all the conditions for requesting a comparison referred to in Articles 21 or 22 are fulfilled, the verifying authority shall transmit the request for comparison to the National Access Point which will process it to the Central System in accordance with Articles 15 and 16 for the purpose of comparison with the ***biometric or alphanumeric*** data transmitted to the Central System pursuant to Articles 10(1), ***12a***, 13 (1) and 14(1).

Amendment 111

Proposal for a regulation Article 20 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. For the purposes laid down in Article 1(1)(c), Europol's designated authority may submit a reasoned electronic request as provided for in Article 22(1) for the comparison of biometric data or alphanumeric data to the Europol access point referred to in Article 8(2). Upon receipt of such a request, the Europol access point shall verify whether all the conditions for requesting a comparison referred to in Article 22 are fulfilled. Where all the conditions referred to in Article 22 are fulfilled, the duly authorised staff of the Europol access point shall process the request. The Eurodac data requested shall

be transmitted to the operating unit referred to in Article 8(1) in such a way as to ensure the security of the data.

Amendment 112

Proposal for a regulation Article 20 – paragraph 4

Text proposed by the Commission

4. In exceptional cases of urgency where there is a need to prevent an imminent danger associated with a terrorist offence or other serious criminal offence, the verifying authority may transmit the ***fingerprint*** data to the National Access Point for comparison immediately upon receipt of a request by a designated authority and only verify ex-post whether all the conditions for requesting a comparison referred to in Article 21 or Article 22 are fulfilled, including whether an exceptional case of urgency actually existed. The ex-post verification shall take place without undue delay after the processing of the request.

Amendment

4. In exceptional cases of urgency where there is a need to prevent an imminent danger associated with a terrorist offence or other serious criminal offence, the verifying authority may transmit the ***biometric or alphanumeric*** data to the National Access Point for comparison immediately upon receipt of a request by a designated authority and only verify ex-post whether all the conditions for requesting a comparison referred to in Article 21 or Article 22 are fulfilled, including whether an exceptional case of urgency actually existed. The ex-post verification shall take place without undue delay after the processing of the request.

Amendment 113

Proposal for a regulation Article 21 – paragraph 1 – introductory part

Text proposed by the Commission

1. For the purposes laid down in Article 1(1)(c), designated authorities may submit a reasoned electronic request for the comparison of ***fingerprint*** data with the data stored in the Central System within the scope of their powers only if ***comparisons with the following databases did not lead to the establishment of the identity of the data subject:***

Amendment

1. For the purposes laid down in Article 1(1)(c), designated authorities may submit a reasoned electronic request for the comparison of ***biometric or alphanumeric*** data with the data stored in the Central System within the scope of their powers only if ***prior check has been conducted in:***

Amendment 114

Proposal for a regulation
Article 21 – paragraph 1 – indent 2

Text proposed by the Commission

- the automated fingerprinting identification systems of all other Member States under Decision 2008/615/JHA ***where comparisons are technically available, unless there are reasonable grounds to believe that a comparison with such systems would not lead to the establishment of the identity of the data subject. Such reasonable grounds shall be included in the reasoned electronic request for comparison with Eurodac data sent by the designated authority to the verifying authority;*** and

Amendment

- the automated fingerprinting identification systems of all other Member States under Decision 2008/615/JHA ; and

Amendment 115

Proposal for a regulation
Article 21 – paragraph 2

Text proposed by the Commission

2. Requests for comparison with Eurodac data shall be limited to searching with ***fingerprint or facial image*** data.

Amendment

2. Requests for comparison with Eurodac data shall be limited to searching with ***biometric or alphanumeric*** data.

Amendment 116

Proposal for a regulation
Article 22 – paragraph 2

Text proposed by the Commission

2. Requests for comparison with Eurodac data shall be limited to comparisons of ***fingerprint and facial image*** data.

Amendment

2. Requests for comparison with Eurodac data shall be limited to comparisons of ***biometric or alphanumeric*** data

Amendment 117

Proposal for a regulation
Article 22 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. *Europol may request further information from the Member State concerned in accordance with Regulation (EU) 2016/794.*

Amendment 118

Proposal for a regulation
Article 22 – paragraph 3 b (new)

Text proposed by the Commission

Amendment

3b. *The processing of personal data as a result of the access referred to in paragraph 1 shall be carried out in compliance with the data protection safeguards provided for in Regulation (EU) 2016/794. Europol shall keep records of all searches and access to the Central System and shall make that documentation available, upon request, to the Data Protection Officer appointed pursuant to Regulation (EU) 2016/794 and to the European Data Protection Supervisor for the purpose of verifying the lawfulness of the data processing.*

Amendment 119

Proposal for a regulation
Article 22 – paragraph 3 c (new)

Text proposed by the Commission

Amendment

3 c. *Personal data obtained as a result of a search in the Central System shall not be transferred or made available to any third country, international organisation or private entity established in or outside the Union unless such a transfer is strictly necessary and proportionate in cases falling within Europol's mandate. Any such transfer shall be carried out in accordance with*

Amendment 120

Proposal for a regulation

Article 24 – paragraph 1 – point b

Text proposed by the Commission

(b) fingerprint data and the other data referred to in Article 12, Article 13(2) and Article 14(2) are lawfully transmitted to the Central System;

Amendment

(b) fingerprint data and the other data referred to in Article 12, **Article 12b**, Article 13(2) and Article 14(2) are lawfully transmitted to the Central System;

Amendment 121

Proposal for a regulation

Article 25 – paragraph 2

Text proposed by the Commission

2. Member States shall transmit the data referred to in Article 12, Article 13(2) and Article 14(2) electronically. The data referred to in Article 12, Article 13(2) and Article 14(2) shall be automatically recorded in the Central System. As far as necessary for the efficient operation of the Central System, eu-LISA 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.

Amendment

2. Member States shall transmit the data referred to in Article 12, **Article 12b**, Article 13(2) and Article 14(2) electronically. The data referred to in Article 12, **Article 12b**, Article 13(2) and Article 14(2) shall be automatically recorded in the Central System. As far as necessary for the efficient operation of the Central System, eu-LISA 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.

Amendment 122

Proposal for a regulation

Article 25 – paragraph 3

Text proposed by the Commission

3. The reference number referred to in Articles 12(i), 13(2)(i), 14 (2)(i) and 20(1)

Amendment

3. The reference number referred to in Articles 12(i), **12b(i)**, 13(2)(i), 14 (2)(i) and

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** 10(1), 13(1) or 14(1).

20(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 **Articles** 10(1), **12a**, 13(1) or 14(1).

Amendment 123

Proposal for a regulation Article 25 – paragraph 4

Text proposed by the Commission

4. The reference number shall begin with the identification letter or letters by which the Member State transmitting the data is identified. The identification letter or letters shall be followed by the identification of the category of person or request. "1" refers to data relating to persons referred to in Article 10(1), "2" to persons referred to in Article 13(1), "3" to persons referred to in Article 14(1), "4" to requests referred to in Article 21, "5" to requests referred to in Article 22 **and** "9" to requests referred to in Article 30.

Amendment

4. The reference number shall begin with the identification letter or letters by which the Member State transmitting the data is identified. The identification letter or letters shall be followed by the identification of the category of person or request. "1" refers to data relating to persons referred to in Article 10(1), "2" to persons referred to in Article 13(1), "3" to persons referred to in Article 14(1), "4" to requests referred to in Article 21, "5" to requests referred to in Article 22, "9" to requests referred to in Article 30, **and "6" to requests referred to in Article 12a.**

Amendment 124

Proposal for a regulation Article 26 – paragraph 4

Text proposed by the Commission

4. The result of the comparison of ***fingerprint data*** carried out pursuant to Article 15 shall be immediately checked in the receiving Member State by a fingerprint expert as defined in accordance with its national rules, specifically trained in the types of fingerprint comparisons provided for in this Regulation. For the purposes laid down in Article 1(1)(a) and (b) of this Regulation, final identification

Amendment

4. The result of the comparison of ***fingerprints and facial image*** carried out pursuant to Article 15 shall be immediately checked in the receiving Member State by a fingerprint ***and facial identification*** expert as defined in accordance with its national rules, specifically trained in the types of fingerprint ***and facial image*** comparisons provided for in this Regulation. For the purposes laid down in

shall be made by the Member State of origin in cooperation with the other Member States concerned.

Article 1(1)(a), **(aa)** and (b) of this Regulation, final identification shall be made by the Member State of origin in cooperation with the other Member States concerned.

Amendment 125

Proposal for a regulation Article 26 – paragraph 5 – subparagraph 1

Text proposed by the Commission

The result of the comparison of facial image data carried out pursuant to Article 16 shall be immediately checked and verified in the receiving Member State. For the purposes laid down in Article 1(1)(a) and (b) of this Regulation, final identification shall be made by the Member State of origin in cooperation with the other Member States concerned.

Amendment

The result of the comparison of facial image data carried out pursuant to Article 16 shall be immediately checked and verified in the receiving Member State, **where necessary by a specially trained expert and in accordance with its national rules**. For the purposes laid down in Article 1(1)(a), **(aa)** and (b) of this Regulation, final identification shall be made by the Member State of origin in cooperation with the other Member States concerned.

Amendment 126

Proposal for a regulation Article 28 – paragraph 2

Text proposed by the Commission

2. The authorities of Member States which, pursuant to paragraph 1 of this Article, have access to data recorded in the Central System shall be those designated by each Member State for the purposes laid down in Article 1(1)(a) and (b). That 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 eu-LISA a list of those units and any amendments thereto. eu-LISA shall publish the consolidated list in the Official Journal

Amendment

2. The authorities of Member States which, pursuant to paragraph 1 of this Article, have access to data recorded in the Central System shall be those designated by each Member State for the purposes laid down in Article 1(1)(a), **(aa)** and (b). That 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 eu-LISA a list of those units and any amendments thereto. eu-LISA shall publish the consolidated list in the Official Journal

of the European Union. Where there are amendments thereto, eu-LISA shall publish once a year an updated consolidated list online.

of the European Union. Where there are amendments thereto, eu-LISA shall publish once a year an updated consolidated list online.

Amendment 127

Proposal for a regulation Article 29 – paragraph 3

Text proposed by the Commission

3. For the purposes laid down in Article 1(1)(a) and (b), each Member State shall take the necessary measures in order to achieve the objectives set out in paragraphs 1 and 2 of this Article in relation to its national system. In addition, each Member State shall keep records of the staff duly authorised to enter or retrieve the data.

Amendment

3. For the purposes laid down in Article 1(1)(a), **(aa)** and (b), each Member State shall take the necessary measures in order to achieve the objectives set out in paragraphs 1 and 2 of this Article in relation to its national system. In addition, each Member State shall keep records of the staff duly authorised to enter or retrieve the data.

Amendment 128

Proposal for a regulation Article 30 – paragraph 1 – introductory part

Text proposed by the Commission

1. A person covered by **Article** 10(1), Article 13(1) or Article 14(1) shall be informed by the Member State of origin in writing, and where necessary, orally, in a language that he or she understands or is reasonably supposed to understand in a concise, transparent, intelligible and easily accessible form, using clear and plain language , of the following:

Amendment

1. A person covered by **Articles** 10(1), **12a**, Article 13(1) or Article 14(1) shall be informed by the Member State of origin in writing, and where necessary, orally, in a language that he or she understands or is reasonably supposed to understand in a concise, transparent, intelligible and easily accessible form, using clear and plain language , of the following:

Amendment 129

Proposal for a regulation Article 30 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) the purpose for which his or her data will be processed in Eurodac, including a description of the aims of Regulation (EU) No [.../...], in accordance with Article 6 thereof and an explanation in intelligible form of the fact that Eurodac may be accessed by the Member States and Europol for law enforcement purposes;

(b) the purpose for which his or her data will be processed in Eurodac, including a description of the aims of Regulation (EU) No [.../...], in accordance with Article 6 thereof and, **where applicable, of the aims of Regulation (EU) XXX/XXX, and** an explanation in intelligible form of the fact that Eurodac may be accessed by the Member States and Europol for law enforcement purposes;

Amendment 130

Proposal for a regulation Article 30 – paragraph 1 – point c

Text proposed by the Commission

(c) the recipients **or categories of recipients** of the data;

Amendment

(c) the recipients of the data;

Amendment 131

Proposal for a regulation Article 30 – paragraph 1 – point d

Text proposed by the Commission

(d) in relation to a person covered by **Article** 10(1) **or** 13(1) or 14(1), the obligation to have his or her fingerprints taken;

Amendment

(d) in relation to a person covered by **Articles** 10(1), **12a**, 13(1) or 14(1), the obligation to have his or her fingerprints taken;

Amendment 132

Proposal for a regulation Article 30 – paragraph 1 – point f

Text proposed by the Commission

(f) the existence of the right to request from the controller access to data relating to him or her, and the right to request that inaccurate data relating to him or her be rectified and the completion of incomplete

Amendment

(f) the existence of the right to **object to the processing of personal data, to** request from the controller access to data relating to him or her, and the right to request that inaccurate data relating to him

personal data or that unlawfully processed personal data concerning him or her be erased or restricted, as well as the right to receive information on the procedures for exercising those rights including the contact details of the controller and the supervisory authorities referred to in Article 32(1);

or her be rectified and the completion of incomplete personal data or that unlawfully processed personal data concerning him or her be erased or restricted, as well as the right to receive information on the procedures for exercising those rights including the contact details of the controller and the supervisory authorities referred to in Article 32(1);

Amendment 133

Proposal for a regulation

Article 30 – paragraph 2 – subparagraph 1

Text proposed by the Commission

In relation to a person covered by **Article** 10(1) or 13(1) and 14(1) , the information referred to in paragraph 1 of this Article shall be provided at the time when his or her fingerprints are taken.

Amendment

In relation to a person covered by **Articles** 10(1), **12a**, 13(1) and 14(1) , the information referred to in paragraph 1 of this Article shall be provided at the time when his or her fingerprints are taken.

Amendment 134

Proposal for a regulation

Article 30 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Where a person covered by Article 10(1), Article 13(1) and Article 14(1) is a minor, Member States shall provide the information in an age-appropriate manner.

Amendment

Where a person covered by Article 10(1), **Article 12a**, Article 13(1) and Article 14(1) is a minor, Member States shall **ensure that that person understands the procedure by providing** the information in an age-appropriate manner, **both orally and in writing, using leaflets, infographics, demonstrations, or a combination of all three, which are specifically designed to explain the fingerprinting and facial image procedure to minors..**

Amendment 135

Proposal for a regulation

Article 30 – paragraph 3 – subparagraph 3

Text proposed by the Commission

The leaflet shall be established in such a manner as to enable Member States to complete it with additional Member State-specific information. This Member State-specific information shall include at least the rights of the data subject, the possibility of information by the national supervisory authorities, as well as the contact details of the office of the controller and of the data protection officer, and the national supervisory authorities.

Amendment

The leaflet shall be established in such a manner as to enable Member States to complete it with additional Member State-specific information. This Member State-specific information shall include at least the ***possible administrative sanctions under national law to which a person may be subject in case of non-compliance with the fingerprinting process or the process for capturing facial images***, the rights of the data subject, the possibility of information ***and assistance*** by the national supervisory authorities, as well as the contact details of the office of the controller and of the data protection officer, and the national supervisory authorities.

Amendment 136

Proposal for a regulation Article 31 – paragraph 1

Text proposed by the Commission

1. For the purposes laid down in Article 1(1)(a) and (b) of this Regulation, the data subject's rights of access, rectification and erasure shall be exercised in accordance ,with Chapter III of Regulation (EU) No. [.../2016] and applied as set out in this Article .

Amendment

1. For the purposes laid down in Article 1(1)(a), ***(aa)*** and (b) of this Regulation, the data subject's rights of access, rectification and erasure shall be exercised in accordance ,with Chapter III of Regulation (EU) No. [.../2016] and applied as set out in this Article.

Amendment 137

Proposal for a regulation Article 31 – paragraph 2

Text proposed by the Commission

2. The right of access of the data subject in each Member State shall include the right to obtain communication of the

Amendment

2. The right of access of the data subject in each Member State shall include the right to obtain communication

data relating to him or her recorded in the Central System and of the Member State which transmitted them to the Central System. Such access to data may be granted only by a Member State.

of the data relating to him or her recorded in the Central System and of the Member State which transmitted them to the Central System. Such access to data may be granted only by a Member State. ***For the purposes laid down in Article 1(1), in each Member State, any person may request that data which are factually inaccurate be corrected or that data recorded unlawfully be erased. The Member State that transmitted such data shall correct or erase it without excessive delay, in accordance with national law and practice.***

Amendment 138

Proposal for a regulation Article 32 – paragraph 1

Text proposed by the Commission

1. ***Each*** Member State shall provide that The supervisory authority or authorities of each Member State designated pursuant to Article 41 of Directive referred to in Article [46(1)] of Regulation (EU) [.../2016] shall monitor the lawfulness of the processing of personal data by the Member State in question for the purposes laid out in Article 1(1)(a) and (b) , including their transmission to the Central System.

Amendment

1. ***Each*** Member State shall provide that The supervisory authority or authorities of each Member State designated pursuant to Article 41 of Directive referred to in Article [46(1)] of Regulation (EU) [.../2016] shall monitor the lawfulness of the processing of personal data by the Member State in question for the purposes laid out in Article 1(1)(a), ***(aa)*** and (b), including their transmission to the Central System.

Amendment 139

Proposal for a regulation Article 34 – paragraph 4

Text proposed by the Commission

4. For the purpose laid down in paragraph 3, the national supervisory authorities and the European Data Protection Supervisor shall meet at least twice a year. The costs and servicing of these meetings shall be for the account of

Amendment

4. For the purpose laid down in paragraph 3, the national supervisory authorities and the European Data Protection Supervisor shall meet at least twice a year. The costs and servicing of these meetings shall be for the account of

the European Data Protection Supervisor. Rules of procedure shall be adopted at the first meeting. Further working methods shall be developed jointly as necessary. A joint report of activities shall be sent to the European Parliament, the Council, the Commission and eu-LISA every *two* years.

the European Data Protection Supervisor. Rules of procedure shall be adopted at the first meeting. Further working methods shall be developed jointly as necessary. A joint report of activities, ***assessing the application of the data protection provisions of this Regulation, as well as the necessity and proportionality of access to Eurodac for law enforcement purposes***, shall be sent to the European Parliament, the Council, the Commission and eu-LISA every years.

Amendment 140

Proposal for a regulation Article 36 – paragraph 3

Text proposed by the Commission

3. Member States shall inform eu-LISA of security incidents detected on their systems without prejudice to the notification and communication of a personal data breach pursuant to [Articles **31 and 32**] of Regulation (EU) **No [.../2016] respectively [Articles 28 and 29]**. eu-LISA shall inform the Member States, Europol and the European Data Protection Supervisor in case of security incidents. The Member States concerned, eu-LISA and Europol shall collaborate during a security incident.

Amendment

3. Member States shall inform eu-LISA of security incidents detected on their systems without prejudice to the notification and communication of a personal data breach pursuant to [Articles **33 and 34**] of Regulation (EU) **679/2016**. ***In particular, data subjects shall be notified by eu-LISA without undue delay when a security incident is likely to result in a high risk to their rights and freedoms.*** eu-LISA shall inform the Member States, Europol and the European Data Protection Supervisor in case of security incidents. The Member States concerned, eu-LISA and Europol shall collaborate during a security incident.

Amendment 141

Proposal for a regulation Article 37 – paragraph 1

Text proposed by the Commission

1. Personal data obtained by a Member State or Europol pursuant to this Regulation from the Central System shall

Amendment

1. Personal data obtained by a Member State or Europol pursuant to this Regulation from the Central System shall

not be transferred or made available to any third country, international organisation or private entity established in or outside the Union. This prohibition shall also apply if those data are further processed at national level or between Member States within the meaning of [Article [...] of Directive [2016/./EU]].

not be transferred or made available to any third country, international organisation or private entity established in or outside the Union. This prohibition shall also apply if those data are further processed at national level or between Member States within the meaning of **Regulation (EU) 679/2016 and [Article [...]2(b) of Directive [(EU) 2016/680].**

Amendment 142

Proposal for a regulation Article 37 – paragraph 2

Text proposed by the Commission

2. Personal data which originated in a Member State and are exchanged between Member States following a hit obtained for the purposes laid down in Article 1(1)(c) shall not be transferred to third countries if there is a real risk that as a result of such transfer the data subject may be subjected to torture, inhuman and degrading treatment or punishment or any other violation of his or her fundamental rights.

Amendment

2. Personal data which originated in a Member State and are exchanged between Member States following a hit obtained for the purposes laid down in Article 1(1)(c) shall not be transferred to third countries, **including** if there is a real risk that as a result of such transfer the data subject may be subjected to torture, inhuman and degrading treatment or punishment or any other violation of his or her fundamental rights.

Amendment 143

Proposal for a regulation Article 37 – paragraph 3

Text proposed by the Commission

3. No information regarding the fact that an application for international protection has been made in a Member State shall be disclosed to any third-country for persons related to Article 10(1), particularly where that country is also the applicant's country of origin.

Amendment

3. No information regarding the fact that an application for international protection has been made in a Member State shall be disclosed to any third-country for persons related to Article 10(1) **or Article 12a**, particularly where that country is also the applicant's country of origin.

Amendment 144

Proposal for a regulation

Article 38 – paragraph 1 – introductory part

Text proposed by the Commission

1. By way of derogation from Article 37 of this Regulation, **the** personal data relating to persons referred to in Articles 10(1), 13(2), 14(1) obtained by a Member State following a hit for the purposes laid down in Article 1(1)(a) or (b) may be transferred or made available to a third-country in accordance with **Article 46** of Regulation (EU) **No. [.../2016]**, **if necessary** in order to prove the identity of third-country nationals for the purpose of return, only where the following conditions are satisfied:

Amendment

1. By way of derogation from Article 37 of this Regulation, **only the necessary** personal data relating to persons referred to in Articles 10(1), 13(2), 14(1) obtained by a Member State following a hit for the purposes laid down in Article 1(1)(a) or (b) may be transferred or made available to a third-country in accordance with **Chapter V** of Regulation (EU) **2016/679**, if necessary in order to prove the identity of third-country nationals **or stateless persons** for the purpose of return, only where the following conditions are satisfied:

Amendment 145

Proposal for a regulation

Article 38 – paragraph 1 – point c

Text proposed by the Commission

(c) the Member State of origin which entered the data in the Central System has given its consent and the individual concerned has been informed that his or her personal information **may** be shared with the authorities of **a** third-country.

Amendment

(c) the Member State of origin which entered the data in the Central System has given its consent and the individual concerned has been informed that his or her personal information **will** be shared with the authorities of **that** third-country.

Amendment 146

Proposal for a regulation

Article 38 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Personal data which originated in a Member State and are exchanged between Member States following a hit obtained for the purposes laid down in Article 1(1)(a) and (b) shall not be

transferred to third countries if there is a real risk that, as a result of such transfer, the data subject may be subjected to torture, inhuman and degrading treatment or punishment or any other violation of his or her fundamental rights.

Amendment 147

Proposal for a regulation Article 38 – paragraph 2

Text proposed by the Commission

2. No information regarding the fact that an application for international protection has been made in a Member State shall be disclosed to any third-country for persons related to Article 10(1), *particularly where that country is also the applicant's country of origin.*

Amendment

2. No information regarding the fact that an application for international protection has been made in a Member State shall be disclosed to any third-country for persons related to Article 10(1).

Amendment 148

Proposal for a regulation Article 40 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Ultimate responsibility for the processing of personal data shall lie with the Member States, which are considered to be ‘controllers’ within the meaning of Regulation (EU) 2016/679.

Amendment 149

Proposal for a regulation Article 40 – paragraph 3

Text proposed by the Commission

3. Claims for compensation against a Member State for the damage referred to in paragraphs 1 and 2 shall be governed by the provisions of national law of the

Amendment

3. Claims for compensation against a Member State for the damage referred to in paragraphs 1 and 2 shall be governed by the provisions of national law of the

defendant Member State in accordance with **Articles [75 and 76]** of Regulation (EU) [.../2016] and **Articles [52 and 53]** of Directive [2016/.../EU] .

defendant Member State in accordance with **Chapter VIII** of Regulation (EU) 2016/679 and **Chapter VIII** of Directive (EU) 2016/680 concerning remedies, liabilities and penalties.

Amendment 150

Proposal for a regulation Article 40 a (new)

Text proposed by the Commission

Amendment

Article 40a

Operational management of DubliNet and related tasks

- 1. Eu-LISA shall operate and manage a separate secure electronic transmission channel between the authorities of Member States known as the 'DubliNet' communication network established by Article 18 of Commission Regulation (EC) No 1560/2003^{1a} for the purposes set out in Articles 32, 33 and 46 of Regulation (EU) No ...[Dublin IV].***
- 2. The operational management of DubliNet shall consist of all the tasks necessary to ensure its availability five days a week during normal business hours.***
- 3. Eu-LISA shall be responsible for the following tasks relating to DubliNet:***
 - (a) providing technical support to Member States by way of a helpdesk, five days a week during normal business hours, including in relation to problems concerning communication, email encryption and decryption, and problems arising from the signature of forms;***
 - (b) providing IT security services;***
 - (c) managing, registering and renewing digital certificates used for encrypting and signing DubliNet e-mail messages;***

(d) *the technical evolution of DubliNet;*

(e) *contractual matters.*

4. *Eu-LISA shall ensure, in cooperation with the Member States, that at all times the best available and most secure technology and techniques, subject to a cost-benefit analysis, are used for DubliNet.*

^{1a} Commission Regulation (EC) No 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ L 222, 5.9.2003, p. 3).

Amendment 151

Proposal for a regulation Chapter VIII a (new)

Text proposed by the Commission

Amendment

CHAPTER VIIIa

AMENDMENTS TO REGULATION (EU) NO 1077/2011

Amendment 152

Proposal for a regulation Article 40 b (new)

Text proposed by the Commission

Amendment

Article 40 b

Regulation (EU) No 1077/2011 is amended as follows:

(1) **In Article 1(2), the following**

subparagraph is added:

*"The Agency shall also be responsible for the operational management of a separate secure electronic transmission channel between the authorities of Member States, known as the 'DubliNet' communication network, established by Article 18 of Commission Regulation (EC) No 1560/2003, for the exchange of information under Regulation (EU) No... * [Dublin IV].*

** Commission Regulation (EC) No 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ L 222, 5.9.2003, p. 3)."*

(2) The following Article is inserted:

"Article 5a

Tasks relating to DubliNet

1. In relation to DubliNet, the Agency shall perform:

- (a) the tasks conferred on it by Article [...] of Regulation (EU).../[Eurodac];*
- (b) tasks relating to training on the technical use of DubliNet."*

Amendment 153

Proposal for a regulation Article 41 – paragraph 1

Text proposed by the Commission

1. The costs incurred in connection with the establishment and operation of the Central System and the Communication Infrastructure shall be borne by the general budget of the European Union.

Amendment

1. The costs incurred in connection with the establishment and operation of the Central System and the Communication Infrastructure shall be borne by the general budget of the European Union, *in*

accordance with the principles of sound financial management.

Amendment 154

Proposal for a regulation

Article 42 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. In order to enable interoperability between the EES and Eurodac, eu-LISA shall establish a secure communication channel between the EES Central System and the Eurodac Central System. The two central systems shall be connected to allow for the transfer to Eurodac of the biometric data of third-country nationals registered in the EES where registration of those biometric data are required by this Regulation.

Amendment 155

Proposal for a regulation

Article 42 – paragraph 4

Text proposed by the Commission

Amendment

4. By [2020] eu-LISA shall conduct a study on the technical feasibility of adding facial recognition software to the Central System for the purposes of comparing facial images. The study shall evaluate the reliability and accuracy of the results produced from facial recognition software for the purposes of EURODAC and shall make any necessary recommendations prior to the introduction of the facial recognition technology to the Central System.

4. By [2020] eu-LISA shall conduct a study on the technical feasibility ***and added value*** of adding facial recognition software to the Central System for the purposes of comparing facial images ***of minors***. The study shall evaluate the reliability and accuracy of the results produced from facial recognition software for the purposes of EURODAC and shall make any necessary recommendations prior to the introduction of the facial recognition technology to the Central System. ***The study shall also include an impact assessment of the possible risks to the rights of privacy and human dignity, the rights of the child, as well as non-discrimination, as a result of using facial recognition software. The study shall take***

into account the views of other Union agencies, the European Data Protection Supervisor, relevant actors as well as academics.

Amendment 156

Proposal for a regulation Article 42 – paragraph 5

Text proposed by the Commission

5. By [...] and every four years thereafter, the Commission shall produce an overall evaluation of Eurodac, examining the results achieved against objectives and the impact on fundamental rights, including whether law enforcement access has led to indirect discrimination against persons covered by this Regulation, and assessing the continuing validity of the underlying rationale and any implications for future operations, and shall make any necessary recommendations. The Commission shall transmit the evaluation to the European Parliament and the Council.

Amendment

5. By [...] and every four years thereafter, the Commission shall produce an overall evaluation of Eurodac, ***together with a full data protection and privacy impact assessment***, examining the results achieved against objectives and the impact on fundamental rights, including whether law enforcement access has led to indirect discrimination against persons covered by this Regulation, and assessing the continuing validity of the underlying rationale and any implications for future operations, and shall make any necessary recommendations. The Commission shall transmit the evaluation to the European Parliament and the Council.

Amendment 157

Proposal for a regulation Article 45 – paragraph 2

Text proposed by the Commission

2. By [...], Europol shall notify the Commission of its designated authority, ***of its verifying authority and of the National Access Point which it has designated***, and shall notify ***without delay*** any amendment thereto.

Amendment

2. By [...], Europol shall notify the Commission of its designated authority, and ***it*** shall notify any amendment thereto ***without delay***.

EXPLANATORY STATEMENT

The current proposal for a second recast of Eurodac is part of the first package of proposals reforming the Common European Asylum System (CEAS), put forward by the Commission in May 2016, in response to the migration and refugees crisis of 2015. The proposal supports the practical implementation of the reformed Dublin system and adapts and reinforces the Eurodac system in order to meet the current immigration challenges.

The ongoing migration and refugee crisis has revealed serious gaps in the existing CEAS, with national authorities in the Member States often experiencing difficulties in identifying illegally staying third-country nationals, who use deceptive means to avoid their identification and to frustrate the procedures for re-documentation in view of their return and readmission. The rapporteur therefore welcomes the extension of the scope of Eurodac, which would allow the Member States to transmit and compare data on illegally staying third-country nationals or stateless persons who do not claim asylum and who may move within the Union undetected. In this way, the Eurodac system will no longer serve only for the purpose of assisting in determining which Member State is responsible under the Dublin Regulation but will also become a system providing for wider immigration purposes, including removal and repatriation measures.

The Commission proposal also emphasizes that comparisons of data with those stored in the Central System may be used for law enforcement purposes for the prevention, detection or investigation of terrorist offences or other serious criminal offences. In this regard, the rapporteur underlines the importance of law enforcement access to Eurodac, and proposes a set of amendments aimed at facilitating Europol's performance of its tasks. Europol is currently unable to connect due to technical difficulties and strict conditions provided in the Regulation in force. The proposed amendments, aimed at granting simplified and direct access of Europol to Eurodac, are counterbalanced by amendments to reinforce data protection requirements also proposed by the Rapporteur.

The Commission proposal allows for comparisons of fingerprint and facial image data together and facial images separately under defined conditions. This rule also applies for law enforcement purposes. Therefore, under the Commission proposal, national law enforcement authorities and Europol would not be able to request comparison with specific alphanumeric data, which would be highly detrimental to investigations, especially in the counter-terrorism field, and in particular when trying to establish the places and dates of entry into the EU of suspects for which a used identity is known, but no fingerprint is available. In this context, the rapporteur proposes that law enforcement authorities and Europol should be allowed to make comparisons based on alphanumeric data, in particular where they may possess evidence of the criminal suspect or victim's personal details or identity documents.

Another important element in the Commission proposal is to lower the age at which children's fingerprints are taken to six years old. The rapporteur welcomes this proposal as it would facilitate tracking of unaccompanied minors in cases where they are separated from their families or abscond from care institutions. It would also be of critical help in keeping track of vulnerable children and protecting them from exploitation or smuggling. In order to ensure the welfare and the best interest of minors, the minors themselves need to understand the procedure. Therefore, to facilitate the procedure, the rapporteur introduces an obligation to

provide information in an age-appropriate manner, both orally and in writing, using leaflets, infographics, demonstrations or a combination of all three, which are specifically designed to explain the procedure to minors. With a view to increase the system's potential to trace and reunite missed family members, and should additional alphanumeric data of applicants for international protection be included in the future version of Eurodac, the rapporteur proposes to also record family links and a particular indication if a minor is unaccompanied.

Finally, the rapporteur proposes improvements relating to the security electronic transmission channel between the Member States and the Commission known as DubliNet and its operational management by eu-LISA. This provision is moved in a separate article and the tasks of eu-LISA relating to the operational management of DubliNet are clarified. A corresponding amendment of Regulation (EU) No 1077/2011 on eu-LISA is also proposed to reflect this amendment.

ANNEX: LETTER FROM THE COMMITTEE ON LEGAL AFFAIRS

Ref. D(2017)4715

Claude Moraes
Chair, Committee on Civil Liberties, Justice and Home Affairs
ASP 13G205
Brussels

Subject: 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 604/2013 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, for identifying an illegally staying third-country national or stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes (recast) COM(2016)272 of 4.5.2016 – 2016/0132(COD)

Dear Chair,

The Committee on Legal Affairs has examined the proposal referred to above, pursuant to Rule 104 on Recasting, as introduced into the Parliament's Rules of Procedure.

Paragraph 3 of that Rule reads as follows:

"If the committee responsible for legal affairs considers that the proposal does not entail any substantive changes other than those identified as such in the proposal, it shall inform the committee responsible.

In such a case, over and above the conditions laid down in Rules 169 and 170, amendments shall be admissible within the committee responsible only if they concern those parts of the proposal which contain changes.

However, if in accordance with point 8 of the Interinstitutional Agreement, the committee responsible intends also to submit amendments to the codified parts of the proposal, it shall immediately notify its intention to the Council and to the Commission, and the latter should inform the committee, prior to the vote pursuant to Rule 58, of its position on the amendments and whether or not it intends to withdraw the recast proposal."

Following the opinion of the Legal Service, whose representatives participated in the meetings of the Consultative Working Party examining the recast proposal, and in keeping with the recommendations of the draftsperson, the Committee on Legal Affairs considers that the proposal in question does not include any substantive changes other than those identified

as such in the proposal and that, as regards the codification of the unchanged provisions of the earlier acts with those changes, the proposal contains a straightforward codification of the existing texts, without any change in their substance.

In conclusion, at its meeting of 31 January 2017, the Committee on Legal Affairs decided by 17 votes in favour and 0 votes against and 2 abstentions¹ to recommend that the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, proceed to examine the above proposal in accordance with Rule 104.

Yours sincerely,

Pavel Svoboda

Encl.: Opinion of the Consultative Working Party.

¹ The following Members were present: Max Andersson, Joëlle Bergeron, Marie-Christine Boutonnet, Jean-Marie Cavada, Kostas Chrysogonos, Sergio Gaetano Cofferati, Therese Comodini Cachia, Mady Delvaux, Angel Dzhambazki, Rosa Estaràs Ferragut, Evelyne Gebhardt, Lidia Joanna Geringer de Oedenberg, Sajjad Karim, Sylvia-Yvonne Kaufmann, Gilles Lebreton, António Marinho e Pinto, Jiří Maštálka, Emil Radev, Julia Reda, Evelyn Regner, Pavel Svoboda, József Szájer, Axel Voss, Tadeusz Zwiefka.

ANNEX: OPINION OF THE CONSULTATIVE WORKING PARTY OF THE LEGAL SERVICES OF THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE COMMISSION



CONSULTATIVE WORKING PARTY
OF THE LEGAL SERVICES

Brussels, 12 January 2017

OPINION

**FOR THE ATTENTION OF THE EUROPEAN PARLIAMENT
THE COUNCIL
THE COMMISSION**

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 604/2013 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, for identifying an illegally staying third-country national or stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes (recast) COM(2016)0272 of 4.5.2016 – 2016/0132(COD)

Having regard to the Inter-institutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts, and in particular to point 9 thereof, the Consultative Working Party consisting of the respective legal services of the European Parliament, the Council and the Commission met on 31 May and 7 July 2016 for the purpose of examining, among others, the aforementioned proposal submitted by the Commission.

At those meetings, an examination of the proposal for a Regulation of the European Parliament and of the Council recasting Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 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 on requests for the comparison 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 resulted in the Consultative Working Party's establishing, by common accord, as follows.

1. The following should have been marked with the grey-shaded type generally used for

identifying substantive changes:

- in the first citation, the proposed adding of a reference to Article 79(2)(c) of the Treaty on the Functioning of the European Union;
- in recital 46, the adding of the words 'and migration';
- in Article 9(1)(b), the adding of the word 'subsequently';
- the entire text of Article 15;
- in Article 26(6), the proposed deletion of the final words 'pursuant to Article 34 of Regulation (EU) No 604/2013';
- in Article 37(2), the proposed replacement of the words 'serious risk' with 'real risk'.

2. In the title of Article 14, the word 'Comparison' should have been marked with 'double-strikethrough'.

In consequence, examination of the proposal has enabled the Consultative Working Party to conclude, without dissent, that the proposal does not comprise any substantive amendments other than those identified as such. The Working Party also concluded, as regards the codification of the unchanged provisions of the earlier act with those substantive amendments, that the proposal contains a straightforward codification of the existing legal text, without any change in its substance.

F. DREXLER
Jurisconsult

Jurisconsult

H. LEGAL
Director General

L. ROMERO REQUENA

21.3.2017

OPINION OF THE COMMITTEE ON BUDGETS

for the Committee on Civil Liberties, Justice and Home Affairs

on the 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 604/2013 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], for identifying an illegally staying third-country national or stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes (recast)
(COM(2016)0272 – C8-0179/2016 – 2016/0132(COD))

Rapporteur: Gérard Deprez

SHORT JUSTIFICATION

The rapporteur is of the opinion that the ongoing migration and refugee crisis facing the European Union has exposed significant structural weaknesses in the design and implementation of European asylum and migration policy, including the Dublin and Eurodac systems. Thus, it forces the Union and Member States to rethink and, where appropriate, redesign the Common European Asylum System and to search for ways to better address irregular migration. The Commission's proposal for a recast Eurodac Regulation is part of a first set of legislative proposals in the context of such a major reform.

Overall, the rapporteur welcomes the Commission's proposal, which aims to adapt the Eurodac system and extend its present scope for wider migration purposes. This reform should allow Eurodac to continue to provide the biometric and personal data it needs to function and maintain its relevance in a changing migration context. The rapporteur welcomes the fact that the reformed Eurodac system can contribute to the fight against irregular migration by better monitoring secondary movements of irregular migrants within the EU and facilitating the identification and re-documentation of illegally staying third-country nationals and those who have entered the European Union irregularly at the external borders, thus improving the effectiveness of the EU's return and readmission policies. The rapporteur underlines that this must take place in full respect of existing data protection requirements and

the fundamental rights of the individuals concerned.

Scope of Eurodac

The rapporteur proposes to reduce the scope. Currently, as foreseen in Article 14, each Member State shall promptly take the fingerprints of all fingers and capture a facial image of every third-country national or stateless person of at least six years of age who is found illegally staying within its territory. This includes the case of tourists who mistakenly overstayed the three-month period allowed by only a few days and are at the border trying to leave the EU. [Therefore](#), the rapporteur suggests the following derogation: when the third-country national previously crossed the border legally, the Member State could allow a maximum of 15 days of overstay before including the information in Eurodac. Such a derogation would limit the insertion of unnecessary data and avoid unnecessary costs.

The rapporteur considers that the information regarding third-country nationals for whom there is an ongoing resettlement procedure should be added to Eurodac. In line with the resettlement proposal¹, Member States should take the fingerprints from the date of resettlement (article 10 of the proposal) and when a Member State excludes a person from resettlement, no other Member State can take this person for 5 years (Article 6 of the proposal). The rapporteur believes that this information should be added to Eurodac.

List of data

To improve the cooperation between Member States in the field of irregular migration, the rapporteur considers that it will be very useful to indicate in Eurodac the removal measures (voluntary, forced, etc.), rather than the asylum request number. Currently, the problem is that there is no information sharing on return decisions between Member States. Therefore, when a Member State delivers a return decision, the person concerned can simply go to another Member State and restart the entire procedure.

The rapporteur thinks that eu-LISA should carry out a study to determine whether it is necessary to harmonize combinations of biometric identifiers from the different EU databases in the field of Justice and Home Affairs, in particular, if it is appropriate for Eurodac to reduce the identification elements to four fingerprints and a facial image, as is the case for the Entry/Exit System (EES). The rapporteur calls on the Commission to assess the budgetary impact of such a reduction of the number of data to be stored and collected.

¹ Proposal for a Regulation of the European Parliament and of the Council establishing a Union Resettlement Framework and amending Regulation (EU) No 516/2014 of the European Parliament and the Council, COM(2016)468 final.

Development and interoperability with other databases

The rapporteur notes that the intention is to add facial recognition software in the future, thus bringing Eurodac in line with the other systems such as the EES; the rapporteur attaches particular importance to improving the interoperability of information systems on borders and security, which is a stated common objective of all EU institutions.

The rapporteur is of the opinion that Eurodac must as soon as possible be made interoperable with the Schengen Information Systems (SIS), as well as with the new EES. The EES will take the biometric data of all third-country nationals coming to Europe for a short stay and produce a list of those who overstay. The rapporteur is of the opinion that a connection between the two systems is necessary in order for the data of a third-country national registered in the EES to be automatically transferred to Eurodac if the third-country national exceeds the authorized period of stay by more than 15 days.

The rapporteur calls on the Commission and eu-LISA to anticipate as much as possible the future addition of facial recognition and the interoperability with other databases, both in administrative and technological terms, within the present recast exercise, in order to be as cost-effective as possible.

Forced fingerprinting

Even if the budgetary impact is non-existent, the rapporteur supports an EU procedure for forced fingerprinting. The rapporteur considers it necessary to add in an annex the *best practices presented in the* Commission staff working document on Implementation of the Eurodac Regulation as regards the obligation to take fingerprints¹ and to add the obligation for Member States to respect this annex.

Cost of the proposal

The rapporteur notes that the cost of the proposal is estimated at EUR 29.872 million, spread over four years. This sum, which is to cover the costs of the technical upgrade and increased storage and throughput of Eurodac's Central System, as well as the addition of two posts to eu-LISA's establishment plan, seems proportionate to the intended ambition and scope of the recast. It is important to note, however, that the financial statement attached to the proposal is

¹ SWD(2015)150 final.

purely indicative and does not bind the budgetary authority, which is free to determine the appropriations to be used to reform the system as part of the annual budgetary procedure.

AMENDMENTS

The Committee on Budgets calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to take into account the following amendments:

Amendment 1

Proposal for a regulation

Recital 11 a (new)

Text proposed by the Commission

Amendment

(11a) In order to improve cooperation between Member States in the management of irregular migration, third-country nationals found illegally staying within the territory of a Member State should provide the competent authorities with the type of removal measure taken by the Member State which entered the data in Eurodac rather than the unique application number of the application for international protection.

Justification

There are many kinds of removal measures taken against illegally residing persons, such as voluntary returns, orders to leave the territory, deportation, repatriation or expulsion. Each measure entails different procedures and deadlines. It is therefore important for Member States to be aware of what expulsion measures have been taken against illegally residing persons by other Member States, for the purposes of enhanced cooperation. This amendment fits in with the series of new recitals (9-14) proposed by the Commission, and is therefore covered by Rule 104(2), second subparagraph, of Parliament's Rules of Procedure.

Amendment 2

Proposal for a regulation

Recital 12 a (new)

(12a) Member States should have a reasonable deadline of 15 days after the end of authorised periods of stay for fulfilling their obligations under this Regulation as regards comparing, collecting and transmitting the fingerprint and facial image data of illegally staying third-country nationals who entered the territory of the Union by lawfully crossing the external borders of the Schengen area.

Justification

Data concerning illegally residing third-country nationals will be logged in Eurodac for five years. This is why Member States should have a margin of discretion and be able to give third-country nationals – who have only recently exceeded their permitted length of stay, will shortly leave the territory of their own accord or for whom a regularisation procedure is under way and present no flight risk – a reasonable deadline for leaving the territory or regularisation before registering their data for such a long period of time. Only the data of persons entering the territory of a Member State illegally should be entered directly into Eurodac; those entering legally should therefore be afforded a reasonable deadline of 15 days. This amendment fits in with the series of new recitals (9-14) proposed by the Commission, and is therefore covered by Rule 104(2), second subparagraph, of Parliament's Rules of Procedure.

Amendment 3

Proposal for a regulation

Recital 13 a (new)

(13a) Regulation (EU) No.../... of the European Parliament and of the Council^{1a} obliges Member States to take the fingerprints and a facial image of every third-country national of at least six years of age for whom they intend to conduct the resettlement procedure. That Regulation also provides that persons whom Member States have refused to resettle in the last five years are to be excluded from Union resettlement schemes. Information regarding third-

country nationals for whom there is an ongoing resettlement procedure should therefore be collected and recorded in Eurodac.

1^a Proposal for a regulation of the European Parliament and of the Council establishing a Union Resettlement Framework and amending Regulation (EU) No 516/2014 of the European Parliament and the Council, COM(2016)0468.

Justification

This amendment fits in with the series of new recitals (9-14) proposed by the Commission, and is therefore covered by Rule 104(2), second subparagraph, of Parliament's Rules of Procedure.

Amendment 4

Proposal for a regulation Recital 14

Text proposed by the Commission

(14) The Commission's Communication on Stronger and Smarter Information Systems for Borders and Security²⁸ highlights the need to improve the interoperability of information systems as a long-term objective, as also identified by the European Council and the Council. The Communication proposes to set up an Expert Group on Information Systems and Interoperability to address the legal and technical feasibility of achieving interoperability of the information systems for borders and security. This group should assess the necessity and proportionality of establishing interoperability with the Schengen Information Systems (SIS) and the Visa Information Systems (VIS), and examine if there is a need to revise the legal framework for law enforcement access to EURODAC.

Amendment

(14) The Commission's Communication on Stronger and Smarter Information Systems for Borders and Security²⁸ highlights the need to improve the interoperability of information systems as a long-term objective, as also identified by the European Council and the Council. The Communication proposes to set up an Expert Group on Information Systems and Interoperability to address the legal and technical feasibility of achieving interoperability of the information systems for borders and security. This group should assess the necessity and proportionality of establishing interoperability with the Schengen Information Systems (SIS) and the Visa Information Systems (VIS), and examine if there is a need to revise the legal framework for law enforcement access to EURODAC. ***Such interoperability should respect the***

Amendment 5

Proposal for a regulation Recital 14 a (new)

Text proposed by the Commission

Amendment

(14a) In order to enable interoperability between Eurodac and the EES, eu-LISA should establish a secure communication channel between the EES Central System and the Eurodac Central System. It is necessary to connect the two systems so that the data of a third-country national registered in the EES can be automatically transferred to Eurodac where that third-country national exceeds the authorised period of stay by more than 15 days.

Justification

The purpose of the entry/exit system will be to register the entry and exit of non-EU nationals entering the Schengen area for a short stay and report any unauthorised overstays. Third-country nationals overstaying their authorised period of stay are therefore residing illegally and their data should therefore be recorded in Eurodac, in accordance with Article 14. Interoperability between the two systems serves to avoid duplication. The aim here is to improve interoperability, as referred to in the new recital 14 proposed by the Commission. This amendment is therefore in line with that recital.

Amendment 6

Proposal for a regulation Recital 18

Text proposed by the Commission

Amendment

(18) Moreover, Europol plays a key role with respect to cooperation between Member States' authorities in the field of cross-border crime investigation in

(18) Moreover, Europol plays a key role with respect to cooperation between Member States' authorities in the field of cross-border crime investigation in

supporting Union-wide crime prevention, analyses and investigation. Consequently, Europol should also have access to Eurodac within the framework of its tasks and in accordance with Council Decision 2009/371/JHA³¹.

supporting Union-wide crime prevention, analyses and investigation. Consequently, Europol should also have access to Eurodac within the framework of its tasks and in accordance with Council Decision 2009/371/JHA³¹, ***in a manner which is proportionate and respects the balance between personal freedoms and collective security.***

³¹ Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol) (OJ L 121, 15.5.2009, p. 37).

³¹ Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol) (OJ L 121, 15.5.2009, p. 37).

Justification

Cooperation between Eurodac and Europol, which is motivated by the desire of the Commission to have tools which will help it to respond to the new security challenges, must be governed by strict conditions in order to avoid any abuse which might jeopardise the protection of civil and individual liberties.

Amendment 7

Proposal for a regulation

Recital 30

Text proposed by the Commission

(30) Member States should ***refer to*** the Commission's Staff Working Document on Implementation of the Eurodac Regulation as regards the obligation to take fingerprints adopted by the Council on 20 July 2015³⁴, which sets out a best practice approach to taking fingerprints of irregular third-country nationals. Where a Member State's national law allows for the taking of fingerprints by force or coercion as a last resort, those measures must fully respect the EU Charter of Fundamental Rights. Third-country nationals who are deemed to be vulnerable persons and minors should not be coerced into giving their fingerprints or facial image, except in duly justified circumstances that are permitted under national law.

Amendment

(30) Member States should ***comply with the best practices set out in Annex Ia to this Regulation, which are based on*** the Commission's Staff Working Document on Implementation of the Eurodac Regulation as regards the obligation to take fingerprints adopted by the Council on 20 July 2015³⁴, which sets out a best practice approach to taking fingerprints of irregular third-country nationals. Where a Member State's national law allows for the taking of fingerprints by force or coercion as a last resort, those measures must fully respect the EU Charter of Fundamental Rights. Third-country nationals who are deemed to be vulnerable persons and minors should not be coerced into giving their fingerprints or facial image, except in

duly justified circumstances that are permitted under national law.

³⁴ COM(2015) 150 final, 27.5.2015

³⁴ SWD(2015) 150 final, 27.5.2015

Justification

This amendment pertains to the new recital 30 proposed by the Commission, and is therefore covered by Rule 104(2), second subparagraph, of Parliament's Rules of Procedure. Instead of merely referring to the method set out in SWD(2015) 150, an obligation should be imposed on Member States in this regard.

Amendment 8

Proposal for a regulation Recital 33

Text proposed by the Commission

(33) In view of successfully preventing and monitoring unauthorised movements of third-country nationals or stateless persons who have no right to stay in the Union, and of taking the necessary measures for **successfully enforcing effective return and** readmission to third countries in accordance with Directive 2008/115/EC³⁵ and the right to protection of personal data, a period of five years should be considered a necessary period for the storage of fingerprint and facial data.

³⁵ OJ L 348, 24.12.2008, p.98

Amendment

(33) In view of successfully preventing and monitoring unauthorised movements of third-country nationals or stateless persons who have no right to stay in the Union, and of taking the necessary measures for **returning third-country nationals and enforcing effective** readmission to third countries in accordance with Directive 2008/115/EC³⁵ and the right to protection of personal data, a period of five years should be considered a necessary period for the storage of fingerprint and facial data.

³⁵ OJ L 348, 24.12.2008, p.98

Amendment 9

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

Text proposed by the Commission

(b) assist with the control of illegal immigration to and secondary movements within the Union and with the identification of illegally staying third-

Amendment

(b) assist with the control of illegal immigration to and secondary movements within the Union and with the identification of illegally staying third-

country nationals for determining the appropriate measures to be taken by Member States, including removal and repatriation of *persons* residing without authorisation.

country nationals for determining the appropriate measures to be taken by Member States, including removal and repatriation of *third-country nationals* residing without authorisation.

Amendment 10

Proposal for a regulation Article 2 – paragraph 3

Text proposed by the Commission

3. Member States *may* introduce administrative sanctions, in accordance with their national law, for non-compliance with the fingerprinting process and capturing a facial image in accordance with paragraph 1 of this Article. These sanctions shall be effective, proportionate and dissuasive. In this context, detention should only be used as a means of last resort in order to determine or verify a third-country national's identity.

Amendment

3. Member States *shall* introduce administrative sanctions, in accordance with their national law, for non-compliance with the fingerprinting process and capturing a facial image in accordance with paragraph 1 of this Article. These sanctions shall be effective, proportionate and dissuasive. In this context, detention should only be used as a means of last resort in order to determine or verify a third-country national's identity.

Amendment 11

Proposal for a regulation Article 2 – paragraph 5

Text proposed by the Commission

5. The procedure for taking fingerprints and a facial image shall be determined and applied in accordance with the national practice of the Member State concerned *and* in accordance with the safeguards laid down in the Charter of Fundamental Rights of the European Union, in the Convention for the Protection of Human Rights and Fundamental Freedoms and in the United Nations Convention on the Rights of the Child.

Amendment

5. The procedure for taking fingerprints and a facial image shall be determined and applied in accordance with the national practice of the Member State concerned, in accordance with the safeguards laid down in the Charter of Fundamental Rights of the European Union, in the Convention for the Protection of Human Rights and Fundamental Freedoms and in the United Nations Convention on the Rights of the Child, *and in accordance with the best practices for fingerprinting set out in Annex Ia.*

Justification

This amendment is in line with, and therefore directly linked to, amendment 6 (see Rule 104(2), third subparagraph, of Parliament's Rules of Procedure).

Amendment 12

Proposal for a regulation

Article 13 – paragraph 2 – point i a (new)

Text proposed by the Commission

Amendment

(ia) return decision taken, or removal order issued, by the Member State of origin;

Justification

This amendment is in line with, and therefore directly linked to, amendment 2 (see Rule 104(2), third subparagraph, of Parliament's Rules of Procedure). See also the detailed justification relating to amendment 2.

Amendment 13

Proposal for a regulation

Article 14 – paragraph 2 – point i a (new)

Text proposed by the Commission

Amendment

(ia) return decision taken, or removal order issued, by the Member State of origin;

Justification

This amendment pertains to the new Article 14 proposed by the Commission, and is therefore covered by Rule 104(2), second subparagraph, of Parliament's Rules of Procedure. See also the detailed justification relating to amendment 2.

Amendment 14

Proposal for a regulation

Article 14 – paragraph 2 a (new)

2a. Member States may derogate from paragraphs 1 and 2 in the case of illegally residing third-country nationals who entered the territory of the Union by lawfully crossing the external borders of the Schengen area and have overstayed the authorised period of stay by no more than 15 days.

Justification

This amendment pertains to the new Article 14 proposed by the Commission, and is therefore covered by Rule 104(2), second subparagraph, of Parliament's Rules of Procedure. See also the detailed justification relating to amendment 3.

Amendment 15

**Proposal for a regulation
Chapter 4 a (new)**

Chapter IVa

Third-country nationals for whom there is an ongoing resettlement procedure

Article 14a

Collection and transmission of fingerprint and facial image data, in accordance with Regulation (EU) No.../...^{1a}

- 1. Each Member State shall take, upon their identification, the fingerprints of all fingers and capture a facial image of every third-country national or stateless person of at least six years for whom there is an ongoing resettlement procedure.***
- 2. The Member State concerned shall record in the Central System the following data in relation to any third-country national or stateless person referred to in paragraph 1 who has not been turned back, within 72 hours of his or her identification:***

- (a) fingerprint data;*
- (b) a facial image;*
- (c) surname(s) and forename(s), name(s) at birth and previously used names and any aliases, which may be entered separately;*
- (d) nationality(ies);*
- (e) place and date of birth;*
- (f) Member State of origin;*
- (g) sex;*
- (h) type and number of identity or travel document; three letter code of the issuing country and validity;*
- (i) reference number used by the Member State of origin;*
- (j) date on which the fingerprints and/or facial image were taken;*
- (k) date on which the data were transmitted to the Central System;*
- (l) operator user ID;*
- (m) where applicable, in accordance with Article 13(6), the date when the person concerned left or was removed from the territory of the Member States*

3. By way of derogation from paragraph 1, where it is not possible to take the fingerprints and facial image of the apprehended person on account of measures taken to ensure his or her health or the protection of public health, the Member State concerned shall take and send such fingerprints and facial image as soon as possible and no later than 48 hours after those health grounds no longer prevail.

In the event of serious technical problems, Member States may extend the 72-hour time-limit in paragraph 2 by a maximum of a further 48 hours in order to carry out their national continuity plans.

4. Fingerprint data may also be taken and transmitted by members of the

European Border and Coast Guard teams when performing tasks and exercising powers in accordance with Regulation (EU) 2016/1624 of the European Parliament and of the Council^{1a}.

^{1a} Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC (OJ L 251, 16.9.2016, p.1).

Justification

This amendment is in line with, and therefore directly linked to, amendment 4 (Rule 104(2), third subparagraph, of Parliament's Rules of Procedure).

Amendment 16

**Proposal for a regulation
Article 41 – paragraph 1**

Text proposed by the Commission

1. The costs incurred in connection with the establishment and operation of the Central System and the Communication Infrastructure shall be borne by the general budget of the European Union.

Amendment

1. The costs incurred in connection with the establishment and operation of the Central System and the Communication Infrastructure shall be borne by the general budget of the European Union, ***in accordance with the principles of sound financial management.***

Justification

The EU budget must be used and administered in accordance with the general interest.

Amendment 17

**Proposal for a regulation
Article 42 – paragraph 2 a (new)**

Text proposed by the Commission

Amendment

2a. In order to enable interoperability between Eurodac and the EES, eu-LISA shall establish a secure communication channel between the EES Central System and the Eurodac Central System. It is necessary to connect the two systems so that the data of a third-country national registered in the EES can be automatically transferred to Eurodac where that third-country national exceeds the authorised period of stay by more than 15 days.

Justification

This amendment pertains to the establishment of procedures (Article 42(2), and the improvement of interoperability referred to in amendment 5. See also the detailed justification relating to amendment 5.

Amendment 18

Proposal for a regulation Annex I a (new)

Text proposed by the Commission

Amendment

Annex Ia

Practices as regards the obligation to take fingerprints

The following best practices, which are based on the Commission staff working document on Implementation of the Eurodac Regulation as regards obligation to take fingerprints^{1a}, and which are in line with the provisions of the Charter of Fundamental Rights of the European Union aim at facilitating systematic fingerprinting. In cases where a Eurodac data subject does not initially cooperate in the fingerprinting process, all reasonable and proportionate steps shall be taken to compel such cooperation. To that end, and in order to ensure that Union law is respected, Member States shall follow the

approach set out below:

1. The Member State shall inform the data subject of the obligation to be fingerprinted under Union law, and may explain to him/her that it is in his/her interests to fully and immediately cooperate and provide his/her fingerprints. In particular, it may be explained to the data subject that, if he/she applies for asylum in another Member State, according to Regulation (EU) [.../...] of the European Parliament and of the Council^{1b} (the Dublin Regulation) it will be possible to use either fingerprints or other circumstantial evidence as a basis for effecting his/her transfer to the Member State responsible for his/her asylum application. The Member State may also explain to the data-subject that, if he/she subsequently applies for asylum, there will likewise be an obligation to be fingerprinted.

2. If a data-subject who has not applied for asylum continues to refuse to cooperate in being fingerprinted, he/she can be considered to be an irregular migrant and Member States may consider, where other less coercive alternatives to detention cannot be applied effectively, detaining him/her in accordance with Article 15 of Directive 2008/115/EC of the European Parliament and of the Council^{1c} (the Return Directive). For as long as a data subject refuses to cooperate in the initial identification process, including in the taking of his/her fingerprints as required by Union law, national law or both, it is not normally possible to conclude whether or not there is a realistic prospect of his/her return being carried out and, as such, Member States may consider, where other less coercive alternatives to detention cannot be applied effectively, resorting to detention under the terms of the Return Directive.

3. In cases where the data subject has applied for asylum and refuses to

cooperate in being fingerprinted, Member States may consider detaining him/her in order to determine or verify his/her identity or nationality, including by the taking of his/her fingerprints as required by Union law.

4. If the Member State concerned has provided for the possibility of accelerated procedures, border procedures or both in its national legal framework, the Member States may inform the asylum applicant that their request for international protection may be subject to an accelerated procedure, a border procedure or both if they refuse to cooperate in being fingerprinted. The Member State may further explain that the consequence of their asylum application being dealt with via such an accelerated procedure, border procedure or both could be that the application, following an adequate and complete examination of its merits, may be considered as manifestly unfounded. Such a finding could, if provided for in the national law of the Member State and in line with Union and international law, result in a significant limitation of the rejected applicant's right to remain on the territory pending an appeal against the rejection, and may result in him/her being returned before the appeal has been decided. Furthermore, Member States can explain that, in such circumstances, an order to return may be accompanied by a Union-wide entry ban of up to five years.

5. The data subject shall only be detained for as short a time as possible and necessary, as provided by Union law.

6. Irrespective of whether or not it is decided to detain the data subject, Member States shall provide information and counselling to explain to the data subject his/her rights and obligations, including the right to an effective remedy, either as an irregular migrant or as an asylum seeker. This shall include an explanation of the Dublin Regulation and could include use of the common leaflets

under [Annex X to XII of the Commission Implementing Regulation (EU) No 118/2014^{1d}]. The explanation of the Dublin Regulation shall include elements that might be relevant should the data-subject apply for asylum, such as the rules on family reunification.

7. If the initial counselling does not succeed, the Member State may consider resorting, in full respect of the principle of proportionality and the EU Charter of Fundamental Rights, to coercion as a last resort. If a Member States chooses to do this the data-subject shall be informed that coercion may be used in order to take his/her fingerprints. If the data-subject still refuses to cooperate officials trained in the proportionate use of coercion may apply the minimum level of coercion required, while ensuring respect of the dignity and physical integrity of the data-subject, as specified in an approved procedure for taking fingerprints. This procedure shall include a clear explanation to the data-subject of the steps the official intends to take in order to compel cooperation. The official shall demonstrate that there was no other practicable alternative measure to using reasonable coercion. A case-by-case assessment shall always be made of whether there is no such alternative, taking into account the specific circumstances and vulnerabilities of the person concerned. Member States may consider that it is never appropriate to use coercion to compel the fingerprinting of certain vulnerable persons, such as minors or pregnant women. If some degree of coercion is used for vulnerable persons it shall be ensured that the procedure used is specifically adapted to such persons. The use of coercion shall always be recorded and a record of the procedure shall be retained for as long as necessary in order to enable the person concerned to legally challenge the actions of the authority.

8. Member States shall make an effort to avoid fingerprinting migrants twice. Therefore, Member States may consider carrying out identification for Asylum/Dublin purposes and identification of irregular migrants under national law for return and other lawful purposes, which are not incompatible with the Asylum/Dublin purposes, within one act ('uno actu'), thereby limiting the burden for both the administration and the migrants. Member States shall have systems in place in order to be able to use the same set of fingerprints both for storage in their national automated fingerprint identification systems and for transmitting to the Eurodac Central System. The identification and fingerprinting shall take place as early as possible in the procedure.

9. In cases where an applicant has damaged his/her fingertips or otherwise made it impossible to take the fingerprints, such as via the use of glue, and where there is a reasonable likelihood that within a short period of time it will be possible to take such fingerprints, Member States may consider that it is necessary that he/she be kept in detention until such time as his/her fingerprints can be taken. Attempts to re-fingerprint data subjects shall take place at regular intervals.

10. Following the successful taking of fingerprints, the data subject shall be released from detention unless there is a specific reason as specified in the Return Directive or under Union asylum law to detain them further.

^{1a} SWD(2015) 150 final

^{1b} Proposal for a Regulation of the European Parliament and of the Council of 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(2016)0270.

^{1c} Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ L 348, 24.12.2008, p. 98.)

^{1d} Commission Implementing Regulation (EU) No 118/2014 of 30 January 2014 amending Regulation (EC) No 1560/2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ L 39, 8.2.2014, p. 1).

Justification

This amendment is in line with amendments 6 and 7 pertaining to Commission Staff Working Document(2015) 150 final. It is therefore directly linked to those amendments.

PROCEDURE – COMMITTEE ASKED FOR OPINION

Title	Establishment of ‘Eurodac’ for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013, for identifying an illegally staying third-country national or stateless person and on requests for the comparison with Eurodac data by Member States’ law enforcement authorities and Europol for law enforcement purposes (recast)
References	COM(2016)0272 – C8-0179/2016 – 2016/0132(COD)
Committee responsible Date announced in plenary	LIBE 12.9.2016
Opinion by Date announced in plenary	BUDG 12.9.2016
Rapporteur Date appointed	Gérard Deprez 15.9.2016
Date adopted	6.3.2017
Result of final vote	+: 19 –: 13 0: 0
Members present for the final vote	Jonathan Arnott, Jean Arthuis, Richard Ashworth, Reimer Böge, Lefteris Christoforou, Gérard Deprez, José Manuel Fernandes, Eider Gardiazabal Rubial, Esteban González Pons, Ingeborg Gräßle, Monika Hohlmeier, Bernd Kölmel, Vladimír Maňka, Siegfried Mureşan, Liadh Ní Riada, Jan Olbrycht, Paul Rübig, Jordi Solé, Patricija Šulin, Indrek Tarand, Tiemo Wölken, Stanisław Żółtek
Substitutes present for the final vote	Jean-Paul Denanot, Anneli Jäätteenmäki, Louis Michel, Andrey Novakov, Tomáš Zdechovský
Substitutes under Rule 200(2) present for the final vote	Inés Ayala Sender, Olle Ludvigsson, Ulrike Rodust, Birgit Sippel, Kathleen Van Brempt

PROCEDURE – COMMITTEE RESPONSIBLE

Title	Establishment of ‘Eurodac’ for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013, for identifying an illegally staying third-country national or stateless person and on requests for the comparison with Eurodac data by Member States’ law enforcement authorities and Europol for law enforcement purposes (recast)		
References	COM(2016)0272 – C8-0179/2016 – 2016/0132(COD)		
Date submitted to Parliament	4.5.2016		
Committee responsible Date announced in plenary	LIBE 12.9.2016		
Committees asked for opinions Date announced in plenary	AFET 12.9.2016	BUDG 12.9.2016	
Not delivering opinions Date of decision	AFET 30.1.2017		
Rapporteurs Date appointed	Monica Macovei 3.10.2016		
Previous rapporteurs	Timothy Kirkhope		
Discussed in committee	26.5.2016	9.2.2017	30.5.2017
Date adopted	30.5.2017		
Result of final vote	+: –: 0:	35 10 8	
Members present for the final vote	Jan Philipp Albrecht, Malin Björk, Caterina Chinnici, Daniel Dalton, Rachida Dati, Agustín Díaz de Mera García Consuegra, Frank Engel, Tanja Fajon, Kinga Gál, Ana Gomes, Nathalie Griesbeck, Sylvie Guillaume, Jussi Halla-aho, Monika Hohlmeier, Filiz Hyusmenova, Sophia in ‘t Veld, Eva Joly, Dietmar Köster, Barbara Kudrycka, Cécile Kshetu Kyenge, Marju Lauristin, Monica Macovei, Claude Moraes, József Nagy, Soraya Post, Judith Sargentini, Birgit Sippel, Branislav Škripek, Csaba Sógor, Sergei Stanishev, Helga Stevens, Traian Ungureanu, Bodil Valero, Marie-Christine Vergiat, Udo Voigt, Josef Weidenholzer, Cecilia Wikström, Kristina Winberg		
Substitutes present for the final vote	Marina Albiol Guzmán, Anna Maria Corazza Bildt, Ignazio Corrao, Pál Csáky, Gérard Deprez, Anna Hedh, Teresa Jiménez-Becerril Barrio, Sylvia-Yvonne Kaufmann, Jeroen Lenaers, John Procter, Christine Revault D’Allonnes Bonnefoy, Barbara Spinelli, Jaromír Štětina, Axel Voss		
Substitutes under Rule 200(2) present for the final vote	Georg Mayer		
Date tabled	9.6.2017		

FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

35	+
ALDE	G�rard Deprez, Nathalie Griesbeck, Filiz Hyusmenova, Cecilia Wikstr�m
ECR	Daniel Dalton, Jussi Halla-aho, Monica Macovei, John Procter, Branislav Škripek, Helga Stevens
EFDD	Kristina Winberg
NI	Udo Voigt
PPE	Anna Maria Corazza Bildt, P�l Cs�ky, Rachida Dati, Agust�n D�az de Mera Garc�a Consuegra, Frank Engel, Kinga G�l, Monika Hohlmeier, Teresa Jim�nez-Becerril Barrio, Barbara Kudrycka, Jeroen Lenaers, J�zsef Nagy, Csaba S�gor, Jarom�r Št�tina, Traian Ungureanu, Axel Voss
S&D	Caterina Chinnici, Tanja Fajon, Ana Gomes, Sylvia-Yvonne Kaufmann, C�cile K�shetu Kyenge, Marju Lauristin, Claude Moraes, Sergei Stanishev

10	-
ENF	Georg Mayer
GUE/NGL	Marina Albiol Guzm�n, Malin Bj�rk, Barbara Spinelli, Marie-Christine Vergiat
S&D	Soraya Post
Verts/ALE	Jan Philipp Albrecht, Eva Joly, Judith Sargentini, Bodil Valero

8	0
ALDE	Sophia in 't Veld
EFDD	Ignazio Corrao
S&D	Sylvie Guillaume, Anna Hedh, Dietmar K�ster, Christine Revault D'Allonnes Bonnefoy, Birgit Sippel, Josef Weidenholzer

Key to symbols:

+ : in favour

- : against

0 : abstention