



24.1.2017

DRAFT 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

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.

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.

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 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 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 10 a (new)

Text proposed by the Commission

Amendment

(10a) The European Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA) should conduct a study to ascertain whether the combinations of biometric identifiers in the EU's various justice and home affairs databases need to be harmonised and, more specifically, whether Eurodac should limit its identification data to four fingerprints and a facial image, like the entry/exit system provided for in Regulation (EU) .../... of the European Parliament and of the Council^{1a}.

^{1a} Proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) 2016/399 as

¹ SWD(2015)150 final.

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 2

Proposal for a regulation

Recital 11 a (new)

Text proposed by the Commission

Amendment

(11a) With a view to stepping up cooperation between Member States in managing irregular migration, illegally staying nationals should give the name of the removal measure taken by the Member State which entered the data in Eurodac instead of the asylum request number.

Justification

Il existe de nombreuses mesures d'éloignement de personnes en séjour irrégulier, par exemple: le retour volontaire, l'ordre de quitter le territoire, l'ordre de reconduire, le renvoi, l'expulsion, ... Chaque mesure contient des procédures et des délais d'application différents. Il est donc important qu'un Etat membre puisse avoir connaissance des mesures d'éloignement prise à l'encontre d'un ressortissant en séjour irrégulier par un autre Etat membre et ainsi améliorer leur coopération. Cet amendement s'insère logiquement dans la série des nouveaux considérants 9 à 14 proposés par la Commission et est donc couvert par le 2ème alinéa de l'article 104, par. 2 du règlement du PE.

Amendment 3

Proposal for a regulation

Recital 12 a (new)

(12a) Member States should have a reasonable deadline of 15 days after the end of authorised stays for fulfilling their obligations under this regulation in respect of comparing, collecting and transmitting fingerprint and facial image data of illegally staying third-country nationals who entered by legally crossing the external border of the Schengen area.

Or. fr

Justification

Les données de ressortissant de pays tiers en séjour irrégulier seront enregistrées pour une période de 5 ans dans Eurodac. C'est pourquoi, les personnes qui sont entrées légalement sur le territoire de l'UE et qui font l'objet d'un dépassement très court de la durée de séjour autorisée et pour lesquels soit un retour volontaire est imminent soit une procédure de régularisation est en cours et qui ne présentent aucun risque de fuite, les Etats membres devrait disposer d'une marge d'appréciation et leur octroyer un délai raisonnable pour quitter le territoire ou se régulariser avant d'enregistrer leur données pour une si longue durée. Il convient donc que pour les personnes entrées illégalement sur le territoire d'un Etat membre, ces données soient directement enregistrées dans Eurodac mais que pour celles entrées légalement un délai raisonnable de 15 jours leur soit laissé. Cet amendement s'insère logiquement dans la série des nouveaux considérants 9 à 14 proposés par la Commission et est donc couvert par le 2ème alinéa de l'article 104, par. 2 du règlement du PE.

Amendment 4

**Proposal for a regulation
Recital 13 a (new)**

(13a) Article [10] of 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. Article [6] of that regulation provides that persons whom Member States have refused to resettle in the past five years shall be excluded from EU resettlement

schemes. Information regarding third-country nationals for whom there is an ongoing resettlement procedure must therefore be collected and added to 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.

Or. fr

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 5

**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 to enable interoperability between them. The two systems need to be connected in order for the data of a third-country national registered in the EES to be automatically transferred to Eurodac if a third-country national exceeds the authorised period of stay by more than 15 days.

Or. fr

Justification

Le système d'entrée/sortie aura pour objectif d'enregistrer la date d'entrée et de sortie des ressortissants tiers entrant dans l'espace Schengen pour un court séjour et de signaler tout

dépassement de délai de séjour autorisé. Un ressortissant de pays tiers après avoir dépassé son délai de séjour se retrouve donc en séjour irrégulier et devrait donc être enregistré dans Eurodac conformément à l'article 14. L'interopérabilité entre les deux systèmes permet d'éviter les doublons. Cet amendement vise ainsi l'amélioration de l'interopérabilité tel que préconisé dans le nouveau considérant 14 proposé par la Commission et est donc une suite logique de celui-ci.

Amendment 6

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.

³⁴ COM(2015) 150 final, 27.5.2015

Amendment

(30) Member States should **abide by** 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 – **annexed hereto** – 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 SWD(2015) 150 final, 27.5.2015

Or. fr

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 7

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 with the best practices for fingerprinting appended in Annex 1a.**

Or. fr

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 8

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;

Or. fr

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 9

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;

Or. fr

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 10

Proposal for a regulation

Article 14 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Member States may waive the obligations laid down in paragraphs 1 and 2 in respect of illegally residing third-country nationals who entered by legally crossing the external border of the Schengen area and have overstayed the legal period of residence by no more than 15 days.

Or. fr

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 11

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 data and facial image data, in accordance with Regulation (EU) No.../... of the European Parliament and of the Council^{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 add to the central system the following data on any third-country nationals or stateless persons in the circumstances outlined in paragraph 1 and who have not been turned back, within 72 hours of their 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 paragraph 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^{1b}.

^{1a} 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.

^{1b} 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

Or. fr

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 12

Proposal for a regulation

Article 42 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. eu-LISA shall establish a secure communication channel between the EES central system and the Eurodac central system to enable interoperability between them. The two systems need to be connected in order for the data of a third-country national registered in the EES to be automatically transferred to Eurodac if a third-country national exceeds the authorised period of stay by more than 15 days.

Or. fr

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 13

Proposal for a regulation

Annex I a (new)

Text proposed by the Commission

Amendment

Annex Ia

***Recommendations on forced
fingerprinting***

***[Concerning implementation of the
Eurodac Regulation as regards the
obligation to take fingerprints adopted by
the Council on 20 July 2015.]***

Or. fr

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.