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From: Presidency
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No. prev. doc.: 14710/16 EURODAC 21 CODEC 1705 ENFOPOL 428 ASILE 81
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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, and amending Regulation (EU) 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (recast)

As a follow-up to the discussion at Coreper on 30 November 2016 on the proposal for the Eurodac Regulation, delegations will find in Annex compromise suggestions from the Presidency on Chapter VII, recital 22 and an addition in Article 3(q), to be discussed at the JHA Counsellors meeting on 5 December.

In the new version of the text, several technical changes will also be introduced compared to its previous version¹, notably:

¹ 14710/16

- the definition of 'residence document' in Article 3(q) has been fully aligned with the definition in the Dublin Regulation (this definition has not been amended in the proposal for the recast Dublin Regulation currently under discussion) and will read as follows: "'residence document' means any authorisation issued by the authorities of a Member State authorising a third-country national or a stateless person to stay on its territory, including the documents substantiating the authorisation to remain on the territory under temporary protection arrangements or until the circumstances preventing a removal order from being carried out no longer apply, with the exception of visas and residence authorisations issued during the period required to determine the Member State responsible as established in this Regulation or during the examination of an application for international protection or an application for a residence permit";
- on a EL suggestion, a minor amendment will be made in Articles 10(3) and 13(7). These paragraphs will thus start as follows: "Where requested by the a Member State concerned, ..."
- in order to simplify the text, the fourth and fifth subparagraphs of Article 47 will be replaced by the following wording: "Directive 95/46/EC will continue to apply until Regulation (EU) 2016/679 and Directive (EU) 2016/680 are applicable in their entirety.".

Recital 22:

- (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 or alphanumeric** [...] data of persons who are not presumed to have committed a terrorist offence or other serious criminal offence.

In Article 3, the following letter will be added (current letters (q) and (r) will become (r) and (s)):

"(q) 'alphanumeric data' means data represented by letters, digits, special characters, space and punctuation marks;"

CHAPTER VII

PROCEDURE FOR COMPARISON AND DATA TRANSMISSION FOR LAW ENFORCEMENT PURPOSES

Article 20

Procedure for comparison of biometric or alphanumeric data with Eurodac data

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 **biometric or alphanumeric** [...] data to the Central System via the National Access Point. Upon receipt of such a request, the verifying authority shall verify whether all the conditions for requesting a comparison referred to in Articles 21 or 22, as appropriate, are fulfilled.

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), 13 (1) and 14(1).
3. A comparison of a facial image with other facial image data in the Central System pursuant to Article 1(1)(c) may be carried out in accordance with Article 16(1), if such data is available at the time the reasoned electronic request is made pursuant to Article 21(1).
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.
5. Where an ex-post verification determines that the access to Eurodac data was not justified, all the authorities that have accessed such data shall erase the information communicated from Eurodac and shall inform the verifying authority of such erasure.

Article 21

Conditions for access to Eurodac by designated authorities

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 **a prior check has been conducted in [...]**:

- national **biometric** [...] databases; **and**
- 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 where the following cumulative conditions are met:

- (a) the comparison is necessary for the purpose of the prevention, detection or investigation of terrorist offences or of other serious criminal offences, which means that there is an overriding public security concern which makes the searching of the database proportionate;
- (b) the comparison is necessary in a specific case **or to specific persons** [...]; and
- (c) there are reasonable grounds to consider that the comparison will substantially contribute to the prevention, detection or investigation of any of the criminal offences in question. Such reasonable grounds exist in particular where there is a substantiated suspicion that the suspect, perpetrator or victim of a terrorist offence or other serious criminal offence falls in a category covered by this Regulation.

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

Article 22

Conditions for access to Eurodac by Europol

1. For the purposes laid down in Article 1(1)(c), Europol's designated authority may submit a reasoned electronic request for the comparison of **biometric or alphanumeric** [...] data with the data stored in the Central System within the limits of Europol's mandate and where necessary for the performance of Europol's tasks only if comparisons with **biometric or alphanumeric** [...] data stored in any information processing systems that are technically and legally accessible by Europol did not lead to the establishment of the identity of the data subject and where the following cumulative conditions are met:
 - (a) the comparison is necessary to support and strengthen action by Member States in preventing, detecting or investigating terrorist offences or other serious criminal offences falling under Europol's mandate, which means that there is an overriding public security concern which makes the searching of the database proportionate;
 - (b) the comparison is necessary in a specific case **or to specific persons** [...]; and
 - (c) there are reasonable grounds to consider that the comparison will substantially contribute to the prevention, detection or investigation of any of the criminal offences in question. Such reasonable grounds exist in particular where there is a substantiated suspicion that the suspect, perpetrator or victim of a terrorist offence or other serious criminal offence falls in a category covered by this Regulation.

2. Requests for comparison with Eurodac data shall be limited to comparisons of **biometric or alphanumeric** [...] data.
3. Processing of information obtained by Europol from comparison with Eurodac data shall be subject to the authorisation of the Member State of origin. Such authorisation shall be obtained via the Europol national unit of that Member State.

Article 23

Communication between the designated authorities, the verifying authorities and the National Access Points

1. Without prejudice to Article 27, all communication between the designated authorities, the verifying authorities and the National Access Points shall be secure and take place electronically.
2. For the purposes laid down in Article 1(1)(c), biometric data shall be digitally processed by the Member States and transmitted in the data format as set out in the agreed Interface Control Document, in order to ensure that the comparison can be carried out by means of the computerised fingerprint and facial recognition system.