



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 26 July 2012**

**12207/12**

**Interinstitutional File:  
2008/0242 (COD)**

**LIMITE**

**EURODAC 12  
ENFOPOL 220  
CODEC 1841**

### **OUTCOME OF PROCEEDINGS**

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of::	Asylum Working Party
on::	12 July 2012
No. Cion prop.:	10638/12 EURODAC 3 ENFOPOL 157 CODEC 1503
Subject:	Amended proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the establishment of 'EURODAC' for the comparison of fingerprints for the effective application of Regulation (EU) No [.../...] (establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person) and to request comparisons with EURODAC data by Member States' law enforcement authorities and Europol for law enforcement purposes and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (Recast version)

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1. At its meeting of 12 July 2012, the Asylum Working Party examined the above-mentioned amended proposal, with the exception of Articles 2(k), 16(1), 25(4) and 35. Following an invitation by the Presidency, certain delegations submitted written contributions after the meeting.
2. The results of the discussions, as well as the above written contributions, are set out in the Annex to this Outcome of Proceedings, with delegations' comments in the footnotes.

## ANNEX

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↓ 2725/2000/EC (adapted)

⇒ new

2008/0242 (COD)

Amended proposal for a

### **REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on the establishment of 'EURODAC' for the comparison of fingerprints for the effective application of Regulation (EU) No [.../...] (establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person) and to request comparisons with EURODAC data by Member States' law enforcement authorities and Europol for law enforcement purposes and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice<sup>1</sup> (Recast version)**

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<sup>1</sup> **DE, EE, EL, ES, FI, FR, HU, LT, LV, AT, PT, RO, SE, SK, UK** : general scrutiny reservations and **NL** parliamentary scrutiny reservation on the proposal. **BE** expressed concerns about the preventive use of the EURODAC system, which might lead to abuses, as well as in relation to other issues such as the notion of "serious crimes", the independence of the verifying authority, the access conditions of EUROPOL to EURODAC (for this issue supported by **HU**) and the data-protection effects for the asylum seekers. **Cion** pointed out that there is no concrete reference to the EURODAC in the AMF proposal. **Cion** also underlined that a MS is entitled to consider that the Prüm check has taken place and proceed to use EURODAC for law enforcement purposes, even if this MS is connected within the Prüm system with only one other MS.

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union ~~establishing the European Community~~, and in particular Article 78 point (2)(e) ~~63 point (1)(a)~~ ⇨, Article 87 point (2)(a) and Article 88 point (2)(a) ⇐ thereof,

Having regard to the proposal from the Commission<sup>2</sup>,

Having regard to the opinion of the European Data Protection Supervisor<sup>3</sup>,

~~Having regard to the opinion of the European Parliament<sup>4</sup>~~

⊗ Acting in accordance with the ordinary legislative procedure, ⊗

Whereas:<sup>5</sup>

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<sup>2</sup> COM(2012) XXX.

<sup>3</sup> OJ L 92 10.04.2010, p. 1

<sup>4</sup> ~~OJ C 189, 7.7.2000, p. 105 and p. 227 and opinion delivered on 21 September 2000 (not yet published in the Official Journal).~~

<sup>5</sup> **FR, NL, SE, UK:** scrutiny reservations on all the Recitals.

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↓ new

- (1) A number of substantive changes are to be made to Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of the Dublin Convention<sup>6</sup> and Council Regulation (EC) No 407/2002 of 28 February 2002 laying down certain rules to implement Regulation (EC) No 2725/2000 concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of the Dublin Convention<sup>7</sup>. In the interest of clarity, those Regulations should be recast.

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↓ 2725/2000/EC recital 1

- ~~(1) Member States have ratified the Geneva Convention of 28 July 1951, as amended by the New York Protocol of 31 January 1967, relating to the Status of Refugees.~~

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↓ 2725/2000/EC recital 2 (adapted)

- ~~(2) Member States have concluded the Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities, signed in Dublin on 15 June 1990 (hereinafter referred to as "the Dublin Convention").~~

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<sup>6</sup> OJ L 316, 15.12.2000, p. 1.

<sup>7</sup> OJ L 62, 5.3.2002, p. 1.

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↓ new

- (2) A common policy on asylum, including a Common European Asylum System, is a constituent part of the European Union's objective of progressively establishing an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek international protection in the Union.
- (3) The European Council of 4 November 2004 adopted The Hague Programme which sets the objectives to be implemented in the area of freedom, security and justice in the period 2005-2010. The European Pact on Immigration and Asylum endorsed by the European Council of 15-16 October 2008 called for the completion of the establishment of a Common European Asylum System by creating a single asylum procedure comprising common guarantees and a uniform status for refugees and the beneficiaries of subsidiary protection.

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↓ 2725/2000/EC recital 3 (adapted)

⇒ new

- (4) For the purposes of applying ~~the Dublin Convention~~ ☒ Council Regulation (EU) No [.../...] [establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person]<sup>8</sup> ☒, it is necessary to establish the identity of applicants for ~~asylum~~ ⇒ international protection ⇐ and of persons apprehended in connection with the unlawful crossing of the external borders of the Community. It is also desirable, in order effectively to apply the ~~Dublin Convention~~ ☒ Council Regulation (EU) No [.../...] [establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person] ☒, and in particular points ~~(c) and (e)~~ (b) and (d) of Article ~~10(1)~~ 18(1)<sup>9</sup> thereof, to allow each Member State to check whether an ~~alien~~ ☒ third country national or stateless person ☒ found illegally ~~present~~ ☒ staying ☒ on its territory has applied for ~~asylum~~ ⇒ international protection ⇐ in another Member State.

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↓ 2725/2000/EC recital 4

- (5) Fingerprints 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 data.

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<sup>8</sup> COM(2008)XXX.

<sup>9</sup> SK pointed out that reference should rather be made to Art. 16(2)(b) and (d).

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↓ 2725/2000/EC recital 5

⇒ new

- (6) To this end, it is necessary to set up a system known as "~~Eurodac~~EURODAC", consisting of a Central ~~Unit~~ ⇒ System ⇐, ~~to be established within the Commission and~~ which will operate a computerised central database of fingerprint data, as well as of the electronic means of transmission between the Member States and the ~~central database~~ ⇒ Central System, hereinafter the "Communication Infrastructure". ⇐

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↓ new

- (7) The Hague Programme called for the improvement of access to existing data filing systems in the European Union. In addition, The Stockholm Programme called for well targeted data collection and a development of information exchange and its tools that is driven by law enforcement needs.
- (8) 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 and investigation of terrorist offences and other serious criminal offences. 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 Europol.

- (9) The Commission outlined in its Communication to the Council and the European Parliament on improved effectiveness, enhanced interoperability and synergies among European data bases in the area of Justice and Home Affairs<sup>10</sup> of 24 November 2005 that authorities responsible for internal security could have access to EURODAC in well defined cases, when there would be a substantiated suspicion that the perpetrator of a terrorist or other serious criminal offence has applied for asylum. In this Communication the Commission also found that the proportionality principle requires that EURODAC be queried for these purposes only once there is an overriding public security concern, that is, if the act committed by the criminal or terrorist to be identified is so reprehensible that it justifies querying a database that registers persons with a clean criminal record and it concluded that the threshold for authorities responsible for internal security to query EURODAC must therefore always be significantly higher than the threshold for querying criminal databases.
- (10) Moreover, Europol has 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 data within the framework of its tasks and in accordance with the Decision establishing the European Police Office (Europol) No (2009/371/JHA).<sup>11</sup>

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<sup>10</sup> COM(2005) 597, 24.11.2005.

<sup>11</sup> OJ L 121, 15.5.2009, p. 37



- (11) Since EURODAC has been established to facilitate the application of Council Regulation (EU) No [...] [establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person], access to EURODAC for the purposes of preventing, detecting or investigating terrorist offences and other serious criminal offences constitutes a change of the original purpose of EURODAC, which interferes with the right to respect the private life of individuals whose personal data are processed in EURODAC. 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 in a democratic society to attain a legitimate and proportionate interest and proportionate to the legitimate objective it aims to achieve.
- (12) Even though the original purpose for the establishment of EURODAC did not require the facility of requesting comparisons of data with the database on the basis of a latent which is the dactyloscopic trace which may be found at a crime scene, such a facility is a fundamental one in the field of police cooperation. The possibility to compare a latent with the fingerprint data which is stored in EURODAC will provide the designated authorities of the Member States with a very valuable tool in preventing, detecting and investigating terrorist offences and other serious criminal offences, when for example the only evidence available at a crime scene are latents.

- (13) 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 and 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.
- (14) In view of ensuring equal treatment for all applicants and beneficiaries of international protection, as well as in order to ensure consistency with current Union asylum *acquis*, in particular with Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted<sup>12</sup> and Regulation (EU) No [.../...] [establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person], it is appropriate to extend the scope of this Regulation to order to include applicants for subsidiary protection and persons enjoying subsidiary protection.

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<sup>12</sup> OJ L 304, 30.9.2004, p. 12. **SK:** This reference to the Qualifications Directive shall be updated as to cite amended Directive 2011/95/EU.

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↓ 2725/2000/EC recital 6 (adapted)

⇒ new

- (15) It is also necessary to require the Member States promptly to take ⇒ and transmit ⇐ fingerprints ⇒ data ⇐ of every applicant for ~~asylum~~ ⇒ international protection ⇐ and of every ~~alien~~ ⊗ third country national or stateless person ⊗ who is apprehended in connection with the irregular crossing of an external border of a Member State, if they are at least 14 years of age.

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↓ 2725/2000/EC recital 7 (adapted)

⇒ new

- (16) It is necessary to lay down precise rules on the transmission of such fingerprint data to the Central ~~Unit~~ ⇒ System ⇐, the recording of such fingerprint data and other relevant data in the Central ~~Unit~~ ⇒ System ⇐, their storage, their comparison with other fingerprint data, the transmission of the results of such comparison and the ~~blocking~~ ⇒ marking ⇐ and erasure of the recorded data. Such rules may be different for, and should be specifically adapted to, the situation of different categories of ~~aliens~~ ⊗ third country nationals or stateless persons ⊗.

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↓ new

- (17) Hits obtained from EURODAC should be verified by a fingerprint expert in order to ensure the accurate determination of responsibility under Regulation (EU) No [.../...] [establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person].

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↓ 2725/2000/EC recital 8 (adapted)

⇒ new

- (18) ~~Aliens~~ ⊗ Third country nationals or stateless persons ⊗ who have requested ~~asylum~~ ⇒ international protection ⇐ in one Member State may have the option of requesting ~~asylum~~ ⇒ international protection ⇐ in another Member State for many years to come. Therefore, the maximum period during which fingerprint data should be kept by the Central ~~Unit~~ ⇒ System ⇐ should be of considerable length. Given that most ~~aliens~~ ⊗ third country nationals or stateless persons ⊗ who have stayed in the ~~Community~~ ⊗ European 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 conservation of fingerprint data.

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↓ 2725/2000/EC recital 9 (adapted)

- (19) The conservation period should be shorter in certain special situations where there is no need to keep fingerprint data for that length of time. Fingerprint data should be erased immediately once ~~aliens~~  third country nationals or stateless persons  obtain citizenship of a Member State.

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↓ new

- (20) It is appropriate to store data relating to those data subjects whose fingerprints were initially recorded in EURODAC upon lodging their applications for international protection and who have been granted international protection in a Member State in order to allow data recorded upon lodging an application for international protection to be compared against them.

(21) The European Agency for the operational management of large-scale information systems in the area of freedom security and justice established by Regulation (EU) n° 1077/2011 of the European Parliament and of the Council of 25 October 2011<sup>13</sup> (the "Agency") has been entrusted with the Commission's tasks relating to the operational management of EURODAC in accordance with this Regulation and with certain tasks relating to the communication infrastructure as from the date on which the Agency takes up its responsibilities as of 1 December 2012. The Agency should take up the tasks entrusted to it under this Regulation and the relevant provisions of Regulation (EU) No 1077/2011 should be amended accordingly. In addition, Europol should have observer status at the meetings of the Management Board of the Agency, when a question in relation to the application of this Regulation concerning access for consultation of Eurodac 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 is on the agenda. Europol should be able to appoint a representative to the Eurodac Advisory Group of the Agency.

(22) The Staff Regulations of Officials of the European Union (Staff Regulations of Officials) and the Conditions of Employment of Other Servants of the European Union (Conditions of Employment), laid down in Regulation (EEC, Euratom, ECSC) No 259/68 (15) (together referred to as the 'Staff Regulations'), should apply to all staff working in the Agency on matters pertaining to this Regulation.

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<sup>13</sup> OJ L 286, 1.11.2011, p. 1.

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↓ 2725/2000/EC recital 10 (adapted)

⇒ new

- (23) It is necessary to lay down clearly the respective responsibilities of the Commission ⇒ and the Agency ⇐, in respect of the Central ~~Unit~~ ⇒ System ⇐ ⇒ and the Communication Infrastructure ⇐, and of the Member States, as regards data ~~use~~ processing, data security, access to, and correction of, recorded data.

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↓ new

- (24) It is necessary to designate the competent Member States' authorities as well as the National Central Access Point through which the requests for comparison with EURODAC data are done and to keep a list of the operating units within the designated authorities that are authorised to request such comparison for the specific purposes of the prevention, detection and investigation of terrorist offences as referred to in the Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism<sup>14</sup> and of other serious criminal offences as referred to in the Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States<sup>15</sup>.

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<sup>14</sup> OJ L 164, 22.6.2002, p. 3.

<sup>15</sup> OJ L 190, 18.7.2002, p. 1.

(25) Requests for comparison with data stored in the EURODAC central database shall be made by the operating units within the designated authorities to the National Access Point, through the verifying authority and shall be reasoned. The operating units within the designated authorities that are authorised to request comparisons with EURODAC data shall not act as a verifying authority. The verifying authorities should be responsible for ensuring strict compliance with the conditions for access as established in this Regulation. The verifying authorities should then forward the request for comparison through the National Access Point to the EURODAC Central System following verification of whether all conditions for access are fulfilled. In the exceptional case of urgency where early access is necessary to respond to a specific and actual threat related to terrorist offences or serious crime, the verifying authority should process the request immediately and only do the verification afterwards. <sup>16</sup>

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<sup>16</sup> **AT** reservation on this Recital, which it considers be without added value; **AT** pointed out that the verification authorities carry out in practice the tasks given to the operating units.



(26) For the purposes of protection of personal data, and to exclude systematic comparisons which should be forbidden, the processing of EURODAC data should only take place on a case-by-case basis and when it is necessary for the purposes of preventing, detecting and investigating terrorist offences and other serious criminal offences. In addition access should only be allowed when comparisons with the national databases of the Member State and with the Automated Fingerprint Databases of other Member States under the 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<sup>17</sup> have returned negative results. This condition requires prior implementation of the Council Decision as it shall not be permitted to conduct a EURODAC check for law enforcement purposes where these above steps have not been first undertaken.<sup>18</sup> A specific case exists in particular when the request for comparison is connected to a specific and concrete situation or to a specific and concrete danger associated with a terrorist or other serious criminal offence, or to specific persons in respect of whom there are serious grounds for believing that the persons will commit or have committed terrorist offences or other serious criminal offences. A specific case also exists when the request for comparison is connected to a person who is a victim of a terrorist or other serious criminal offence. The designated authorities and Europol should thus only request a comparison with EURODAC when they have reasonable grounds to believe that such a comparison will provide information that will substantially assist them in preventing, detecting or investigating a terrorist or other serious criminal offence.<sup>19</sup>

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<sup>17</sup> OJ L 210, 6.8.2008, p. 1.

<sup>18</sup> EL questioned the added value of the last part of this Recital (starting from "A specific case" until the end of it).

<sup>19</sup> LU: scrutiny reservation on this Recital.

(27) In case the requesting Member State establishes that EURODAC data pertains to a minor, these data may only be used for law enforcement purposes by the requesting Member State in accordance with that State's laws for minors and in accordance with the obligation to give primary consideration to the child's best interest.

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↓ 2725/2000/EC recital 11

(28) While the non-contractual liability of the Community in connection with the operation of the ~~Eurodac~~EURODAC system will be governed by the relevant provisions of the Treaty, it is necessary to lay down specific rules for the non-contractual liability of the Member States in connection with the operation of the system.

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↓ 2725/2000/EC recital 12

(29) In accordance with the principle of subsidiarity as set out in Article 5 of the Treaty, the objective of the proposed measures, namely the creation ~~within the Commission~~ of a system for the comparison of fingerprint data to assist the implementation of the Community's asylum policy, cannot, by its very nature, be sufficiently achieved by the Member States and can therefore be better achieved by the Community. In accordance with the principle of proportionality as set out in the said Article, this Regulation does not go beyond what is necessary to achieve ~~that~~ those objectives.

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↓ 2725/2000/EC recital 15 (adapted)

⇒ new

- (30) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data<sup>20</sup> applies to the processing of personal data by the Member States ~~⊗~~ carried out in application of this Regulation ~~⊗~~ ~~within the framework of the Eurodac system~~ ⇒ unless such processing takes place by Member States' designated authorities for the purposes of the prevention, detection and investigation of terrorist offences and other serious criminal offences ⇐.
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↓ new

- (31) Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial co-operation in criminal matters<sup>21</sup> applies to all<sup>22</sup> processing of personal data by Member States' designated authorities for the purposes of the prevention, detection and investigation of terrorist offences and other serious criminal offences pursuant to this Regulation.

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<sup>20</sup> OJ L 281, 23.11.1995, p. 31.

<sup>21</sup> OJ L 350, 30.12.2008, p. 60.

<sup>22</sup> **DE:** clarification is needed on whether Framework Decision 2008/977/JHA governs domestic data processing, along with the exchange of personal data between competent authorities in the MS (cooperation). **DE** also pointed out that, although the subject-matter of this proposal should be limited, the fact that the scope of the above Decision is not limited to terrorist offences and other serious criminal offences should be reflected in this Recital. **Cion** considers these suggestions reasonable.

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↓ 2725/2000/EC recital 16

~~(16) By virtue of Article 286 of the Treaty, Directive 95/46/EC also applies to Community institutions and bodies. Since the Central Unit will be established within the Commission, that Directive will apply to the processing of personal data by that Unit.~~

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↓ 2725/2000/EC recital 17

(32) The principles set out in Directive 95/46/EC regarding the protection of the rights and freedoms of individuals, notably their right to privacy, with regard to the processing of personal data should be supplemented or clarified, in particular as far as certain sectors are concerned.

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↓ new

(33) Transfers of data obtained pursuant to this Decision to third countries or international organisations or private entities should be prohibited, in order to ensure the right to asylum and to safeguard applicants for international protection from having their data disclosed to any third country. This prohibition shall be without prejudice to the right of Member States to transfer such data to third countries to which Regulation (EU) No [.../...] [establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person] applies, in order to ensure that Member States have the possibility of cooperating with such third countries for the purposes of this Regulation.

- (34) National competent authorities for the supervision of the processing of personal data should monitor the lawfulness of the processing of personal data by the Member States, and the supervisory authority set up by the Europol Decision should monitor the lawfulness of data processing activities performed by Europol.<sup>23</sup>
- (35) Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data<sup>24</sup> and in particular Articles 21 and 22 thereof concerning confidentiality and security of processing apply to the processing of personal data by Union institutions, bodies, offices and agencies carried out in application of this Regulation. However, certain points should be clarified in respect of the responsibility for the processing of data and of the supervision of data protection.
- (36) It is appropriate that national supervisory authorities monitor the lawfulness of the processing of personal data by the Member States, whilst the European Data Protection Supervisor, as referred to in Article 41 of Regulation (EC) No 45/2001, should monitor the activities of the Union institutions, bodies, offices and agencies in relation to the processing of personal data carried out in application of this Regulation.

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<sup>23</sup> **DE:** Recitals 34 and 36 should refer to the provisions on national supervisory authorities under Art. 28 Dir. 95/46/EC and Art. 25 Framework Decision 2008/977/JHA and their wording should be revised for consistency purposes. **Cion** referred to its comments with regard to Art. 33(5).

<sup>24</sup> OJ L 8, 12.1.2001, p. 1.

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↓ 2725/2000/EC recital 18

⇒ new

- (37) It is appropriate to monitor and evaluate the performance of ~~Eurodac~~EURODAC ⇒ at regular intervals ⇐.
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↓ 2725/2000/EC recital 19 (adapted)

⇒ new

- (38) Member States should provide for a system of ~~⊗~~effective, proportionate and dissuasive~~⊗~~ penalties to sanction the ~~processing use~~ use of data ~~⊗~~entered~~⊗~~ in the ~~central database~~ ⇒ Central System ⇐ contrary to the purpose of ~~Eurodac~~EURODAC.
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↓ new

- (39) It is necessary that Member States are informed of the status of particular asylum procedures, with a view to facilitating the adequate application of Regulation (EU) No [...] [establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person].
- (40) This Regulation respects and has to be applied in accordance with fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, this Regulation fully respects the individual's right to protection of his or her personal data and the right to asylum.

(41) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application. As regards Denmark, this Regulation, with the exception of the procedure for comparison and data transmission for law enforcement purposes laid down in Articles 5, 6, 19-22, 33, 36, 39(3), 40(8) and 43, constitutes amendment to the EURODAC Regulation within the meaning of the Agreement between the European Community and the Kingdom of Denmark on the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in Denmark or any other Member State of the European Union and 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention<sup>25</sup>. Consequently, in accordance with Article 3 thereof, Denmark is to notify the Commission whether it will implement the contents of this Regulation and when it does so, this Regulation creates mutual obligations under international law between Denmark and the European Union. Once this Recast Regulation is adopted and subject to a Commission recommendation for a Council Decision authorising the opening of negotiations, Denmark will be consulted as to whether it wishes to enter into negotiations on complementary agreements also covering the procedure for comparison and data transmission for law enforcement purposes laid down in Articles 5, 6, 19-22, 33, 36, 39(3), 40(8) and 43.

(42) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, the United Kingdom *[is not taking part in the adoption of this Regulation and is not bound by it or subject to its application / has notified its wish to take part in the adoption and application of this Regulation]*.

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<sup>25</sup> OJ L 66, 8.3.2006, p. 38.

- (43) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, Ireland *[is not taking part in the adoption of this Regulation and is not bound by it or subject to its application / has notified its wish to take part in the adoption and application of this Regulation]*.
- (44) As regards the Republic of Iceland and the Kingdom of Norway, this Regulation, with the exception of the procedure for comparison and data transmission for law enforcement purposes laid down in Articles 5, 6, 19-22, 33, 36, 39(3), 40(8) and 43, constitutes a new measure related to EURODAC within the meaning of the Agreement between the European Community and the Republic of Iceland and the Kingdom of Norway concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Iceland or Norway<sup>26</sup>. Consequently, subject to their decision to implement it in their internal legal order, this Regulation shall be applied between the Republic of Iceland and the Kingdom of Norway in their mutual relations and in their relations with the Member States of the European Union. Once this Recast Regulation is adopted and subject to a Commission recommendation for a Council Decision authorising the opening of negotiations, the Republic of Iceland and the Kingdom of Norway will be consulted as to whether they wish to enter into negotiations on complementary agreements also covering the procedure for comparison and data transmission for law enforcement purposes laid down in Articles 5, 6, 19-22, 33, 36, 39(3), 40(8) and 43.

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<sup>26</sup> OJ L 93, 3.4.2001, p. 40.



(45) As regards the Swiss Confederation, this Regulation, with the exception of the procedure for comparison and data transmission for law enforcement purposes laid down in Articles 5, 6, 19-22, 33, 36, 39(3), 40(8) and 43, constitutes a new measure related to EURODAC within the meaning of the Agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland<sup>27</sup>. Consequently, subject to its decision to implement it in its internal legal order, this Regulation shall be applied between the Swiss Confederation and the Member States of the European Union. Once this Recast Regulation is adopted and subject to a Commission recommendation for a Council Decision authorising the opening of negotiations, the Swiss Confederation will be consulted as to whether it wishes to enter into negotiations on complementary agreements also covering the procedure for comparison and data transmission for law enforcement purposes laid down in Articles 5, 6, 19-22, 33, 36, 39(3), 40(8) and 43, subject to a separate agreement on the application of relevant provisions of Council Decision 2008/615/JHA on the stepping up of cross-border cooperation.

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<sup>27</sup> OJ L 53, 27.2.2008, p. 5

(46) As regards the Principality of Liechtenstein, this Regulation, with the exception of the procedure for comparison and data transmission for law enforcement purposes laid down in Articles 5, 6, 19-22, 33, 36, 39(3), 40(8) and 43, constitutes a new measure related to EURODAC within the meaning of the Protocol between the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland<sup>28</sup>. Consequently, subject to its decision to implement it in its internal legal order, this Regulation shall be applied between the Principality of Liechtenstein, the Swiss Confederation and the Member States of the European Union. Once this Recast Regulation is adopted and subject to a Commission recommendation for a Council Decision authorising the opening of negotiations, the Principality of Liechtenstein will be consulted as to whether it wishes to enter into negotiations on complementary agreements also covering the procedure for comparison and data transmission for law enforcement purposes laid down in Articles 5, 6, 19-22, 33, 36, 39(3), 40(8) and 43, subject to a separate agreement on their application of relevant provisions of Council Decision 2008/615/JHA on the stepping up of cross-border cooperation.

↓ 2725/2000/EC recital 22 (adapted)

(47) It is appropriate to restrict the territorial scope of this Regulation so as to align it on the territorial scope of ~~the Dublin Convention~~  Regulation (EU) No [.../...] [establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person]  .

<sup>28</sup> OJ L 160, 18.6.2011, p. 39.

HAVE ADOPTED THIS REGULATION:

## CHAPTER I

### GENERAL PROVISIONS

#### *Article 1*

#### **Purpose of "~~Eurodac~~EURODAC"<sup>29</sup>**

1. A system known as "~~Eurodac~~EURODAC" is hereby established, the purpose of which shall be to assist in determining which Member State is to be responsible pursuant to ~~the Dublin Convention~~  Regulation (EU) No [.../...] [establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person]  for examining an application for ~~asylum~~  international protection  lodged in a Member State  by a third country national or a stateless person , and otherwise to facilitate the application of the Dublin ~~Convention~~  Regulation  under the conditions set out in this Regulation.

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<sup>29</sup> **NL**, supported by **BG, SI, UK**, suggested contemplating the possibility of providing for access to the EURODAC data in order to identify victims of natural disasters, etc (limited extension of the scope of the proposal), if there are no other means to do so. **Cion** recalled that victims of trafficking in human beings are covered by the scope of the proposal; however, victims of natural disasters, accidents, etc. are outside, also because the legal basis of the draft Regulation does not cover them. **NL** suggested, alternatively, putting this wording in a Recital.

~~2. Eurodac shall consist of:~~

~~(a) the Central Unit referred to in Article 3;~~

~~(b) a computerised central database in which the data referred to in Article 5(1), Article 8(2) and Article 11(2) are processed for the purpose of comparing the fingerprint data of applicants for asylum and of the categories of aliens referred to in Article 8(1) and Article 11(1);~~

~~(c) means of data transmission between the Member States and the central database.~~

2. This Regulation also lays down the conditions under which Member States' designated authorities and the European Police Office (Europol) may request the comparison of fingerprint data with those stored in the EURODAC central database for the purposes of the prevention, detection and investigation of terrorist offences and other serious criminal offences.<sup>30</sup>

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<sup>30</sup> **DE:** queried about which activities are covered by the word “detection” and whether “prevention” means averting a danger and “investigation” means law enforcement. It pointed out that such events and the authorities entitled to have access should be clearly identified. In the same context, **BE** pointed out that the term "prevention" may not be comprehensive enough, as it does not cover the administrative investigation and suggested replacing it by drawing on Arts 2(b) "criminal investigation" and (c) "criminal intelligence operation" of the Framework Decision 200-/960/JHA. **Cion:** these terms are standard language in the relevant acquis. **AT** suggested expanding the scope of the proposal in order to cover all crimes and entered a reservation on all the relevant provisions, i.e. Recitals 24 and 30, as well as Arts 1(2), 2(4) and 40(8). **Cion** could not agree with such expansions of the proposal's scope, also for the disproportionate additional cost it would entail.

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↓ 2725/2000/EC (adapted)

⇒ new

3. Without prejudice to the processing use of data intended for ~~Eurodac~~ 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~~ EURODAC only for the purposes set out in ⇒ this Regulation and ⇐ Article ~~15(1)~~ 32(1) of the Dublin ~~Convention~~ ⊗ Regulation ⊗ .
- 

↓ 2725/2000/EC (adapted)

⇒ new

## Article 2

### Definitions

1. For the purposes of this Regulation:
- (a) "the Dublin ~~Convention~~ ⊗ Regulation ⊗ " means the ~~Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities, signed at Dublin on 15 June 1990~~ ⊗ Regulation (EU) No [.../...] [establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person] ⊗;

- (b) an "applicant for ~~asylum~~ ⇒ international protection ⇐" means an ~~alien~~ ⇔ third-country national or a stateless person ⇔ who has made an application for ~~asylum or on whose behalf such an application has been made~~ ⇒ international protection as defined in Article 2(g) of Council Directive 2004/83/EC<sup>31</sup> in respect of which a final decision has not yet been taken ⇐;
- (c)<sup>32</sup> "Member State of origin" means:
- (i) in relation to an ~~applicant for asylum~~ ⇔ person covered by Article 6 ⇔, the Member State which transmits the personal data to the Central ~~Unit~~ ⇒ System ⇐ and receives the results of the comparison;
  - (ii) in relation to a person covered by Article ~~8~~ 11, the Member State which transmits the personal data to the Central ~~Unit~~ ⇒ System ⇐;
  - (iii) in relation to a person covered by Article ~~11~~ 14, the Member State which transmits such data to the Central ~~Unit~~ ⇒ System ⇐ and receives the results of the comparison;

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<sup>31</sup> **DE:** This reference to the Qualification Directive shall be updated as to cite amended Directive 2011/95/EU. **Cion:** the former Directive is cited due to the variable geometry issues. **HU** suggested reverting to the 2009 proposal for a Council Decision on requesting comparisons with EURODAC data by MS law enforcement authorities, in particular with regard to data protection objectives linked with the law enforcement authorities.

<sup>32</sup> **FI, LT:** cross-references in points (i)-(iii) should be updated as to cite Arts. 9, 14 and 17 respectively.

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↓ 2725/2000/EC (adapted)

⇒ new

- (d) "refugee" ⇒ "person granted international protection" ⇐ means a ☒ third country national or a stateless ☒ person who has been recognised as a refugee in accordance with the Geneva Convention on Refugees of 28 July 1951, as amended by the New York Protocol of 31 January 1967 ⇒ entitled to international protection as defined in point (a) of Article 2 of Council Directive 2004/83/EC ⇐;
- (e)<sup>33</sup> "hit" shall mean the existence of a match or matches established by the Central Unit ⇒ System ⇐ by comparison between fingerprint data recorded in the databank ☒ 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 ~~4(6)~~ 18(4);

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↓ new

- (f) "National Acces Point" means the designated national system which communicates with the Central System;
- (g) "Agency" means the Agency established by Regulation (EU) No 1077/2011;

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<sup>33</sup> **FI:** cross reference should be made to Art. 25(4).

- (h) 'Europol' means the European Police Office as established by Decision 2009/371/JHA;
- (i) 'EURODAC data' means all fingerprint data stored in the central database in accordance with Article 11 and Article 16(2);<sup>34</sup>
- (j) 'terrorist offences' means the offences under national law which correspond or are equivalent to the offences referred to in Articles 1 to 4 of Framework Decision 2002/475/JHA;
- (k) 'serious criminal offences' means the forms of crime which correspond or are equivalent to those referred to in Article 2(2) of Framework Decision 2002/584/JHA if they are punishable by a custodial sentence or a detention order for a maximum period of at least three years under national law;<sup>35</sup>
- (l) 'fingerprint data' means the data relating to fingerprints of all or at least the index fingers, and if those are missing, the prints of all other fingers of a person, or a latent.<sup>36</sup>

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<sup>34</sup> **FI:** cross reference should be made to Arts 11 and 14(2).

<sup>35</sup> **AT:** reservation and **SI:** scrutiny reservation on this definition; **AT** suggested including reference to Art. 2(1) of Framework Decision 2002/584/JHA; **SI** suggested including in the scope of the provision criminal offences committed in the context of illegal immigration cases.

<sup>36</sup> **SE:** suggesting a more flexible approach in fingerprint taking, including in the scope of the provision the deep-scan and flat fingerprints. **Cion:** it is intended to maintain the fingerprint form in the draft Regulation and in its Annex I. **Cion** further pointed out that flat fingerprints might not be recognisable by the EURODAC system, which identifies roll-up fingerprints. Certain IT modifications need to be done in order to take into account latent fingerprints from a crime scene; all these issues may be reconsidered in future evaluations of the EURODAC system.



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↓ 2725/2000/EC (adapted)

⇒ new

2. The terms defined in Article 2 of Directive 95/46/EC shall have the same meaning in this Regulation ⇒ unless the processing of personal data takes place by Member States' designated authorities for the purposes of the prevention, detection and investigation of terrorist offences and other serious criminal offences ⇐.

3. Unless stated otherwise, the terms defined in Article ~~1~~ 2 of the Dublin ~~Convention~~  Regulation  shall have the same meaning in this Regulation.

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↓ new

4. The terms defined in Article 2 of the Framework Decision 2008/977/JHA shall have the same meaning in this Regulation in so far as personal data are processed by Member States' designated authorities for the purposes of the prevention, detection and investigation of terrorist offences and other serious criminal offences pursuant to this Regulation.

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↓ 2725/2000/EC (adapted)

*Article 3*

~~Central Unit~~ ☒ **System architecture and basic principles** ☒

~~1. A Central Unit shall be established within the Commission which shall be responsible for operating the central database referred to in Article 1(2)(b) on behalf of the Member States. The Central Unit shall be equipped with a computerised fingerprint recognition system.~~

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↓ new

1. EURODAC shall consist of:

(a) a computerised central fingerprint database (Central System) composed of

– a Central Unit,

– a Business Continuity System.

(b) a communication infrastructure between the Central System and Member States that provides an encrypted virtual network dedicated to EURODAC data (Communication Infrastructure).

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

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↓ 2725/2000/EC (adapted)

⇒ new

2.3. Data on ~~applicants for asylum~~, persons covered by Articles ~~8~~ and persons covered by ~~Article 11~~ 9, 14 and 17 which are processed in the Central ~~Unit~~ ⇒ 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 ☒.

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↓ 2725/2000/EC Article 1(2) third subparagraph

⇒ new

4. The rules governing ~~Eurodac~~ EURODAC shall also apply to operations effected by the Member States as from the transmission of data to the Central ~~Unit~~ ⇒ System ⇐ until use is made of the results of the comparison.

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↓ 2725/2000/EC Article 4(1) second sentence

⇒ new

5. The procedure for taking fingerprints 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 ⇐ ~~the European Convention on Human Rights and~~ in the United Nations Convention on the Rights of the Child.
- 

↓ new

#### *Article 4*

### **Operational management**

1. The Agency, shall be responsible for the operational management of EURODAC. The Agency shall ensure, in cooperation with the Member States, that at all times the best available technology, subject to a cost-benefit analysis, is used for the Central System.
2. The Agency shall also be responsible for the following tasks relating to the Communication Infrastructure:
  - (a) supervision;
  - (b) security;

(c) the coordination of relations between the Member States and the provider.

3. The Commission shall be responsible for all other tasks relating to the Communication Infrastructure, in particular:

(a) tasks relating to implementation of the budget;

(b) acquisition and renewal;

(c) contractual matters.

4. Before the Agency takes up its responsibilities, the Commission shall be responsible for all tasks attributed to the Agency by this Regulation.

5. Operational management of EURODAC shall consist of all the tasks necessary to keep EURODAC functioning 24 hours a day, 7 days a week in accordance with this Regulation, in particular the maintenance work and technical developments necessary to ensure that the system functions at a satisfactory level of operational quality, in particular as regards the time required for interrogation of the Central System.

6. Without prejudice to Article 17 of Regulation No 31 (EEC), 11 (EAEC)<sup>37</sup>, the Agency shall apply appropriate rules of professional secrecy or other equivalent duties of confidentiality to all its staff required to work with EURODAC data. This obligation shall also apply after such staff leave office or employment or after the termination of their activities.

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<sup>37</sup> OJ 45, 14.6.1962, p. 1385.

*Article 5***Designated Authorities for the purpose of law enforcement access<sup>38</sup>**

1. Member States shall designate the authorities which are authorised to access EURODAC data pursuant to this Regulation. Designated authorities shall be authorities of the Member States which are responsible<sup>39</sup> for the prevention, detection or investigation of terrorist offences and other serious criminal offences.<sup>40</sup>

<sup>38</sup> **ES:** scrutiny reservation on the provision.

<sup>39</sup> **IT:** scrutiny reservation on the provision, suggested replacing "responsible" with the broader concept of "competent". **Cion** pointed out that the authority shall not be merely competent but specifically designated to request data from the EURODAC data base.

<sup>40</sup> **DE:** the following sentence, which was included in Art. 3(1) of the 2009 proposal for a Council Decision on requesting comparisons with EURODAC data by MS law enforcement authorities - and was agreed during those negotiations among delegations, should be added in this provision: "Designated authorities shall not include agencies or units dealing especially with national security issues". **NL, Cion** could agree with this suggestion. **BG, EE, EL, ES, FR, IE, IT AT, RO, SE, SI UK** scrutiny reservations on it, having concerns mainly about the exclusion of national security services. **IT, RO** pointed out that MS should be entitled to appoint the designated authorities of their choice; **SI:** such a suggestion would have additional administrative burden. **DE** stressed that intelligence service should not be given access to EURODAC expressly, although acknowledging that in certain national administrations intelligence services are also responsible for threat prevention.. **CZ** pointed out that the wording of the provision should be "... prevention, **or** detection, or investigation, ..." in order to make clear that all the competent units involved should be entitled to have access. In reply to **CZ** and **FR, Cion** pointed out that the designated authorities would not have to be the same person/entity responsible for all the tasks described in this provision and agreed to clarify it; it would be acceptable to have within the same authority entities with clearly separated functions. **Cion** also confirmed that a designated authority and a verifying authority should not be part of the same Unit, but could both belong to the same broader authority. **SE** queried whether it would be acceptable to continue having the Migration Authority as a contact point for the Central System and pointed out that in order to make clear the objective of this provision, either a definition of designated authorities should be added or alternatively, the following wording should be added in para. 1: "**Without prejudice to Art. 27(2),** Member States ... data, **for the purpose of law enforcement ...**". **Cion** welcomed this suggestion for clarification and pointed out that the designated authorities can request comparison with the EURODAC data only for law enforcement purposes.

2. Every Member State shall keep a list of the designated authorities.
3. At national level, each Member State shall keep a list of the operating units within the designated authorities that are authorised to request comparisons with EURODAC data through the National Access Point.

#### *Article 6*

#### **Verifying Authorities<sup>41</sup>**

1. Each Member State shall designate a single national body to act as its verifying authority. The verifying authority shall be an authority of the Member State which is responsible for the prevention, detection or investigation of terrorist offences and other serious criminal offences.<sup>42</sup>

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<sup>41</sup> **FR:** scrutiny reservation on the Article, in particular on the concept of verifying authority. **CZ, AT,** suggested deleting Art. 6 and relevant provisions in Art. 19, as it is against the verifying authority concept, which could create a disproportionate administrative burden. If this provision is kept, it should be titled "police - format authorities". In this context, **AT** suggested referring to the national contact points' prompt exchange of data. **EL:** District Attorneys could oversee the verification in order to ensure the independence of the verifying authorities. In the same context, **BE** points out that the verifying authority should be a distinct, judicial one (or with guarantees for a similar independence), and suggested to draw on the PNR relevant provisions. **Cion** would not oppose such suggestion, although it might cause operational problems.

<sup>42</sup> **DE:** the following sentence, included in Art. 4(1) of the 2009 proposal for a Council Decision on requesting comparisons with EURODAC data by MS law enforcement authorities and agreed then among delegations, should be added in this provision: "Verifying authorities shall not include agencies or units dealing especially with national security issues". **SE:** in order to make clear the objective of this provision, either a definition of verifying authorities should be added, or alternatively, the following wording should be added in para. 1: "Each MS shall **for the purpose of law enforcement access...**". **Cion** welcomed this suggestion (see the relevant comment under Art. 5). **LT:** due to the likely in most MS common administrative structure of law enforcement authorities, it considers that verifying authorities should be viewed as a unit, rather than "body" or "institution" (see also relevant commentary under Art. 5).

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

Only the verifying authority shall be authorised to forward requests for comparison of fingerprints to the National Access Point which communicates with the Central System.

#### *Article 7*

#### **Europol<sup>43</sup>**

1. Europol shall designate a specialised unit with duly empowered Europol officials to act as its verifying authority and 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 data to the Central System.
2. Europol shall designate an operating unit that is authorised to request comparisons with EURODAC data through its designated National Access Point.

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<sup>43</sup> **UK**, supported by **FR, HU, SE**, queried if there are any operational benefits of EUROPOL's access to the EURODAC data, given the primary strategic character of its remit. **Cion**: if all the conditions for its access are met, EUROPOL's access could be beneficial to its fighting against serious crime. **FI**: scrutiny reservation on the provision; given that EURODAC is a centralised system, EUROPOL could be given a direct access to it, instead of having access through the national access points of a MS. **Cion** recalled that in the context of the VIS, the direct access of EUROPOL has caused some problems.



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↓ 2725/2000/EC (adapted)

⇒ new

Article ~~8~~ 3

⊗ Statistics ⊗

3.1. <sup>44</sup> The ~~Central Unit~~ ⊗ Agency ⊗ shall draw up statistics on ~~its~~ ⊗ the ⊗ work ⊗ of the Central System ⊗ every ~~quarter~~ ⇒ month ⇐, indicating ⇒ in particular ⇐ :

- (a) the number of data sets transmitted on persons referred to in Articles 9(1), ~~8(1) and 11(1)~~ 14(1) and 17(1) ;
- (b) the number of hits for applicants for ~~asylum~~ ⇒ international protection ⇐ who have lodged an application for ~~asylum~~ ⇒ international protection ⇐ in another Member State;
- (c) the number of hits for persons referred to in Article ~~8(1)~~ 14(1) who have subsequently lodged an application for ~~asylum~~ ⇒ international protection ⇐;

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<sup>44</sup> **SI:** reservation on para. 1; it pointed out that additional statistics regarding the access of law enforcement authorities to the EURODAC, should be drawn up at the level of the Central Unit. In this logic - and taking Art. 40 into account - MS could assess, on the basis of the annual reports, the effectiveness of the access to EURODAC Central Unit. In the same vein, **FI**, supporting **SI**, suggested that statistics made on the comparisons under Art. 19 should also be drawn up at the level of the Central Unit. **Cion** welcomed this suggestion.

- (d) the number of hits for persons referred to in Article ~~11(1)~~ 17(1) who had previously lodged an application for ~~asylum~~ ⇒ international protection ⇐ in another Member State;
- (e) the number of fingerprint data which the Central ~~Unit~~ ⇒ System ⇐ had to ⇒ repeatedly ⇐ request ~~a second time~~ from the Member States of origin because the fingerprint data originally transmitted did not lend themselves to comparison using the computerised fingerprint recognition system;5
- 

↓ new

- (f) the number of requests for marking and unmarking transmitted in accordance with Article 18(1) and (2).
- (g) the number of hits for persons referred to in Article 18(1) for whom hits have been recorded under points (b) and (d) of this Article.

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<sup>45</sup> **FI, SI, SK** suggested adding two new points (h) and (i), which should read: "the number of requests for purposes referred to in Art. 20(1)" and " the number of requests for purposes referred to in Art. 21(1)" respectively. **Cion** welcomed this suggestion.

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↓ 2725/2000/EC

⇒ new

2. At the end of each year, statistical data shall be established in the form of a compilation of the ⇒ monthly ⇐ ~~quarterly~~ statistics ~~drawn up since the beginning of Eurodac's activities~~ ⇒ for that year ⇐, including an indication of the number of persons for whom hits have been recorded under ⇒ points ⇐ (b), (c), and (d). ⇒ The statistics shall contain a breakdown of data for each Member State. ⇐

~~4. Pursuant to the procedure laid down in Article 23(2), the Central Unit may be charged with carrying out certain other statistical tasks on the basis of the data processed at the Central Unit.~~

## CHAPTER II

# APPLICANTS FOR ~~ASYLUM~~ INTERNATIONAL PROTECTION

### *Article ~~9~~ 4*

#### **Collection, transmission and comparison of fingerprints**

1. Each Member State shall promptly take the fingerprints of all fingers of every applicant for ~~asylum~~  international protection  of at least 14 years of age and shall ~~promptly~~  as soon as possible and no later than 72 hours after the lodging of that application for international protection as defined by Article 20(2) of the Dublin Regulation  transmit  them together with  the data referred to in points ~~(a)~~ (b) to ~~(f)~~ (g) of Article ~~5(1)~~ 11 to the Central ~~Unit~~  System .

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↓ new

⇒ Non compliance with the 72 hours time limit does 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 to take the fingerprints in a quality ensuring appropriate comparison under Article 25 of this Regulation, the Member State of origin shall retake the fingerprints of the applicant and resend them as soon as possible and no later than 48 hours<sup>46</sup> after they have been successfully taken. ⇐

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↓ 2725/2000/EC

~~(2) The data referred to in Article 5(1) shall be immediately recorded in the central database by the Central Unit, or, provided that the technical conditions for such purposes are met, directly by the Member State of origin.~~

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↓ new

2. By way of derogation from paragraph 1, where it is not possible to take the fingerprints of an applicant on account of measures taken to ensure the health of the applicant or the protection of public health, Member States shall take and send the fingerprints of the applicant as soon as possible and no later than 48 hours after these grounds no longer prevail.

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<sup>46</sup> **SK:** suggested deleting the wording "and no later than 48 hours". **Cion** pointed out that in accordance with the 2007 Evaluation of the EURODAC and Dublin Regulations and in line with the Dublin recast proposal, fingerprints can be timely submitted to the Central System.

3. Fingerprint data within the meaning of point ~~(b)~~ (a) of Article ~~5(1)~~ 11, transmitted by any Member State, ~~☒~~ with exception to those transmitted in accordance with Article 10 point (b) ~~☒~~ shall be compared ~~⇒ automatically ⇐~~ with the fingerprint data transmitted by other Member States and already stored in the ~~Ce~~ntral ~~database~~ ~~⇒ System ⇐~~.<sup>47</sup>
4. The Central ~~Unit~~ ~~⇒ System ⇐~~ shall ensure, on the request of a Member State, that the comparison referred to in paragraph 3 covers the fingerprint data previously transmitted by that Member State, in addition to the data from other Member States.
5. The Central ~~Unit~~ ~~⇒ System ⇐~~ shall ~~forthwith~~ ~~⇒ automatically~~<sup>48</sup> ~~⇐~~ transmit the hit or the negative result of the comparison to the Member State of origin. Where there is a hit, it shall transmit for all data sets corresponding to the hit, the data referred to in Article ~~5(1)~~ 8(a)<sup>49</sup> to ~~(⇐ g ⇐)~~, ~~although in the case of the data referred to in Article 5(1)(b), only insofar as they were the basis for the hit~~ ~~⇒~~ along with, where appropriate, the mark referred to in Article 18(1) ~~⇐~~.

~~Direct transmission to the Member State of origin of the result of the comparison shall be permissible where the technical conditions for such purpose are met.~~

- ~~7. The implementing rules setting out the procedures necessary for the application of paragraphs 1 to 6 shall be adopted in accordance with the procedure laid down in Article ~~22(1)~~.~~

<sup>47</sup> **SI:** reservation, opposes the limitation of comparison only in an automatic manner on the central level; supports the current Regulation provision - i.e. delete the word “automatically”. **Cion** underlined that the system is capable only of automated check

<sup>48</sup> **SI:** reservation on the same grounds as for para.5 of this Article.

<sup>49</sup> **DE, FI, LT, RO:** reference should be made to Art. 11 -(a)-(k), as in the first paragraph of Art. 9. In the same vein, **FI** specified that the reference should be also made to Art 14(2), in order to include fingerprints from category 2 persons.

*Article 10***Information on the status of the data subject**

The following information shall be sent to the Central System in order to be stored in accordance with Article 9 for the purpose of transmission under Article 9(5):

- (a) When an applicant for international protection or another person as referred to in point (d) of Article 18(1) of the Dublin Regulation arrives in the responsible Member State following a transfer pursuant to a decision acceding to a request to take him/her back as referred to in Article 24 of the Dublin Regulation, the responsible Member State shall update its dataset recorded in conformity with Article 8 of this Regulation relating to the person concerned by adding their date of arrival.<sup>50</sup>
- (b) When an applicant for international protection arrives in the responsible Member State following a transfer pursuant to a decision acceding to a request to take charge of them<sup>51</sup> as referred to in Article 22 of the Dublin Regulation, the responsible Member State shall send a dataset in conformity with Article 11 of this Regulation relating to the person concerned and include their date of arrival.
- (c) As soon as the Member State of origin can establish that the person concerned whose data was recorded in EURODAC in accordance with Article 11 of this Regulation has left the territory of the Member States, it shall update its dataset recorded in conformity with Article 11 of this Regulation relating to the person concerned by adding the date when the person left the territory, in order to facilitate the application of Articles 19(2) and 20(5) of the Dublin Regulation.

<sup>50</sup> **LT, RO:** reference should be made to Art. 11(h) of the Dublin proposal, instead of Art. 8. **Cion** agrees with this submission.

<sup>51</sup> **RO:** "them" should be replaced by "him/her".

- (d) As soon as the Member State of origin ensures that the person concerned whose data was recorded in EURODAC in accordance with Article 11 has left the territory of the Member States in compliance with a return decision or removal order it issued following the withdrawal or rejection of the application as provided for in Article 19(3) of the Dublin Regulation, it shall update its dataset recorded in conformity with Article 11 relating to the person concerned by adding the date of his/her removal or when the person left the territory.
- (e) The Member State which assumes responsibility in accordance with Article 17(1) of the Dublin Regulation shall update its dataset recorded in conformity with Article 11 of this Regulation relating to that applicant by adding the date when the decision to examine the application was taken.

↓ 2725/2000/EC

⇒ new

*Article 11 ~~5~~*

**Recording of data**

~~1~~ Only the following data shall be recorded in the eCentral ~~database~~ ⇒ System ⇐ :

(~~a~~) fingerprint data;



- (b~~a~~) Member State of origin, place and date of the application for ~~asylum~~ ⇒ international protection; in the cases referred to in point (b) of Article 10, the date of application shall be the one entered by the Member State who transferred the applicant ⇐;<sup>52</sup>
- (c) sex;
- (d) reference number used by the Member State of origin;
- (e) date on which the fingerprints were taken;
- (f) date on which the data were transmitted to the Central ~~Unit~~ ⇒ System ⇐;
- ~~(g) date on which the data were entered in the central database;~~

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↓ new

- (g) operator user ID.<sup>53</sup>

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<sup>52</sup> **RO:** queried whether the noting of the date of the application for international protection as the date of the application in the second MS where this TCN was transferred as a result of a take charge procedure could affect the correctness of the statistical data. To this effect, **RO** suggested mentioning the actual date of the applicant's request in the responsible MS, indicating the fact that he/she was transferred, in accordance with Art. 11(h).

Furthermore, **RO** suggested for the sake of coherence with the Dublin proposal the deletion of the wording "in the cases... who transferred the applicant".

<sup>53</sup> **AT:** reservation; revealing such personal data could be dangerous for its competent officers.

~~(h) details in respect of the recipient(s) of the data transmitted and the date(s) of transmission(s);~~

(h) where applicable in accordance with Article 10 point (a) or point (b), the date of the arrival of the person concerned after a successful transfer;

(i) where applicable in accordance with Article 10 point (c), the date when the person concerned left the territory of the Member States;

(j) where applicable in accordance with Article 10 point (d), the date when the person concerned left or was removed from the territory of the Member States;

(k) where applicable in accordance with Article 10 point (e), the date when the decision to examine the application was taken.

~~2. After recording the data in the central database, the Central Unit shall destroy the media used for transmitting the data, unless the Member State of origin has requested their return.~~

*Article ~~12~~ 6*  
**Data storage**<sup>54</sup>

Each set of data, as referred to in Article ~~5(1)~~ 11, shall be stored in the ~~Central database~~ ⇒ System ⇐ for ten years from the date on which the fingerprints were taken.

Upon expiry of this period, the Central ~~Unit~~ ⇒ System ⇐ shall automatically erase the data from the ~~Central database~~ ⇒ System ⇐.

*Article ~~13~~ 7*  
**Advance data erasure**

1. Data relating to a person who has acquired citizenship of any Member State before expiry of the period referred to in Article ~~6~~ 12 shall be erased from the Central ~~Unit~~ ⇒ System ⇐, in accordance with Article ~~15(3)~~ 27(4) as soon as the Member State of origin becomes aware that the person has acquired such citizenship.

↓ new

2. The Central System shall inform all Member States of origin about the erasure of data for the reason specified in paragraph 1 by another Member State of origin having produced a hit with data which they transmitted relating to persons referred to in Article 9(1) or Article 14(1).

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<sup>54</sup> **RO:** in case of automatic deletion of fingerprints, without exceptions for (multiple) hits, the proper application of the Dublin Regulation may be hindered. In this context, it pointed out that Art. 13(2) of the EURODAC proposal provides for informing through the Central System all MS on the origin of the fingerprints which entailed the hit, whereas there is no such requirement for the more frequently used Art. 12 of the EURODAC proposal. **Cion** pointed out that in accordance with the 2007 Evaluation of the EURODAC Regulation the 10-year storage period was deemed sufficient and requested further evidence from **RO** related to its submissions.

## CHAPTER III

# ~~ALIENS~~ ☒ **THIRD COUNTRY NATIONALS OR STATELESS PERSONS** ☒ **APPREHENDED IN CONNECTION WITH THE IRREGULAR CROSSING OF AN EXTERNAL BORDER**

### *Article 14 <sup>g</sup>*

#### **Collection and transmission of fingerprint data**

1. Each Member State shall, ~~in accordance with the safeguards laid down in the European Convention on Human Rights and in the United Nations Convention on the Rights of the Child~~ promptly take the fingerprints of all fingers of every ~~alien~~ ☒ third country national or stateless person ☒ of at least 14 years of age<sup>55</sup> who is apprehended by the competent control authorities in connection with the irregular crossing by land, sea or air of the border of that Member State having come from a third country and who is not turned back ⇒ or who remains physically on the territory of the Member States and who is not kept in custody, confinement or detention during the entirety of the period between apprehension and removal on the basis of the decision to turn them back ⇐ .

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<sup>55</sup> **LV** (which suggested aligning this provision with the VIS Regulation), **SE, SI**: reservations, are in favour of a 12-year limit. **Cion** will further reflect on this issue.

2. The Member State concerned shall promptly <sup>56</sup> as soon as possible and no later than 72 hours from the date of apprehension <sup>56</sup> transmit to the Central Unit <sup>56</sup> System <sup>56</sup> the following data in relation to any alien <sup>56</sup> third country national or stateless person <sup>56</sup>, as referred to in paragraph 1, who is not turned back:

- (a) fingerprint data;
- (b) Member State of origin, place and date of the apprehension;
- (c) sex;
- (d) reference number used by the Member State of origin;
- (e) date on which the fingerprints were taken;
- (f) date on which the data were transmitted to the Central Unit <sup>56</sup> System <sup>56</sup>;

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↓ new

(g) operator user ID. <sup>57</sup>

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<sup>56</sup> **EL:** queried whether, in cases where after the notification the person concerned was not accepted by the country where had to be returned, the relevant data would need to be introduced in the EURODAC system. **Cion** stressed that the 72-hour deadline begins from the taking of the fingerprints. **EL** suggested that the deadline should start running from the positive answer of the third country to the readmission request.

<sup>57</sup> **AT:** reservation; revealing such data could be dangerous for its competent officers. **Cion** this data is collected in order to ensure that no inappropriate person is involved with the procedure.

3. By way of derogation from paragraph 2, as regards persons apprehended in the manner described in paragraph 1 who remain physically on the territory of the Member States but are kept in custody, confinement<sup>58</sup> or detention upon their apprehension for a period exceeding 72 hours, the transmission of the data specified in paragraph 2 relating to those persons shall take place before their release from custody, confinement or detention.
4. Non compliance with the 72 hours time limit referred to in paragraph 2 does 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 to take the fingerprints in a quality ensuring appropriate comparison under Article 25, the Member State of origin shall retake the fingerprints of such person and resend them as soon as possible and no later than 48 hours after they have been successfully taken.
5. By way of derogation from paragraph 1, where it is not possible to take the fingerprints of such person on account of measures taken to ensure the health of the person or the protection of public health, the Member State concerned shall take and send the fingerprints of the person, in accordance with the deadline set out in paragraph 2, once these grounds no longer prevail.

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<sup>58</sup> **FR:** scrutiny reservation on the term "confinement". **Cion** recalled that it is an acquis communautaire term and that it implies detention, not necessarily in prison.

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↓ 2725/2000/EC (adapted)

⇒ new

*Article 15 ~~9~~*

**Recording of data**

1. The data referred to ~~in Article 5(1)(g) and~~ in Article ~~8(2)~~ 14(2) shall be recorded in the ~~central database~~ ⇒ Central System ⇐.

Without prejudice to Article ~~3(3)~~8, data transmitted to the Central ~~Unit~~ ⇒ System ⇐ pursuant to Article ~~8(2)~~ 14(2) shall be recorded for the sole purpose of comparison with data on applicants for ~~asylum~~ ⇒ international protection ⇐ transmitted subsequently to the Central ~~Unit~~ ⇒ System ⇐.

The Central ~~Unit~~ ⇒ System ⇐ shall not compare data transmitted to it pursuant to Article ~~8(2)~~ 14(2) with any data previously recorded in the ~~central database~~ ⇒ Central System ⇐, nor with data subsequently transmitted to the Central ~~Unit~~ ⇒ System ⇐ pursuant to Article ~~8(2)~~ 14(2).<sup>59</sup>

2. ~~The procedures provided for in Article 4(1), second sentence, Article 4(2) and Article 5(2) as well as the provisions laid down pursuant to Article 4(7) shall apply.~~ As regards the comparison of data on applicants for ~~asylum~~ ⇒ international protection ⇐ subsequently transmitted to the Central ~~Unit~~ ⇒ System ⇐ with the data referred to in paragraph 1, the procedures provided for in Article ~~4(3), (5) and (6)~~ 9(3) and (5) and in Article 25(4) shall apply.

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<sup>59</sup> **LT:** drew attention to the fact that, whereas comparison with previously recorded data is not allowed by this provision, this comparison is possible under Art. 17(a)-(c). If it were possible also under Art. 15, it would help MS to indentify a person apprehended in connection with an irregular crossing of an external border and to determine the MS responsible.

Article ~~16~~ ~~10~~

**Storage of data**

1. Each set of data relating to an ~~alien~~  third country national or stateless person  as referred to in Article ~~8(1)~~ 14(1) shall be stored in the ~~central database~~  Central System  for  one year<sup>60</sup>  ~~two years~~ from the date on which the fingerprints of the ~~alien~~  third country national or stateless person  were taken. Upon expiry of this period, the Central ~~Unit~~  System  shall automatically erase the data from the ~~central database~~  Central System .
  
2. The data relating to an ~~alien~~  third country national or stateless person  as referred to in Article ~~8(1)~~ 14(1) shall be erased from the ~~central database~~  Central System  in accordance with Article ~~15(3)~~ 28(3)  as soon as  the Member State of origin becomes aware of one of the following circumstances before the ~~two~~  one -year period<sup>61</sup> mentioned in paragraph 1 has expired:
  - (a) the ~~alien~~  third country national or stateless person  has been issued with a residence ~~permit~~  document ;<sup>62</sup>

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<sup>60</sup> **CZ, DE, IE, LT, LV** (both **LT** and **LV** pointed out the risk of abuses, which would jeopardise the whole CEAS and recalled that the majority of delegations supported the two-year option in the discussions of the previous proposals), **AT, RO, SE, SI, UK:** reservations, stressing that the storage period should be two years instead of one. **FR:** scrutiny reservation on the provision. **SK:** supported the current one-year option. **Cion:** for asylum-linked (the main objective of the EURODAC Regulation is to facilitate the functioning of the Dublin Regulation), as well as for data-protection purposes, it would prefer the one-year period storage. **Cion** also recalled the EP position on this issue, in view of the future negotiations within the ordinary procedure.

<sup>61</sup> **SI:** reservation on the same grounds as for para.1 of this Article.

<sup>62</sup> In the same vein, **FI** pointed out that the data should not be erased if the TCN has been issued a residence permit, but rather mark this data in the same way with the data on person who have been granted international protection. This would also help the determination of the Member State responsible to examine the application for international protection.



- (b) the ~~alien~~ ☒ third country national or stateless person ☒ has left the territory of the Member States;
- (c) the ~~alien~~ ☒ third country national or stateless person ☒ has acquired the citizenship of any Member State.
- 

↓ new

3. The Central System shall inform all Member States of origin about the erasure of data for the reason specified in point (a) or (b) of paragraph 2 or by another Member State of origin having produced a hit with data which they transmitted relating to persons referred to in Article 14(1).
4. The Central System shall inform all Member States of origin about the erasure of data for the reason specified in point (c) of paragraph 2 by another Member State of origin having produced a hit with data which they transmitted relating to persons referred to in Article 9(1) or Article 14(1).

## CHAPTER IV

# ~~ALIENS~~ ⊗ THIRD COUNTRY NATIONALS OR STATELESS PERSONS ⊗ FOUND ILLEGALLY ~~PRESENT~~ ⊗ STAYING ⊗ IN A MEMBER STATE

### Article ~~17~~ ~~11~~

#### Comparison of fingerprint data<sup>63</sup>

1. With a view to checking whether an ~~an alien~~ ⊗ third country national or a stateless person ⊗ found illegally ~~present~~ ⊗ staying ⊗ within its territory has previously lodged an application for ~~asylum~~ ⇒ international protection ⇐ in another Member State, each Member State may transmit to the Central ~~Unit~~ ⇒ System ⇐ any fingerprint data relating to fingerprints which it may have taken of any such ~~alien~~ ⊗ third country national or stateless person ⊗ of at least 14 years of age together with the reference number used by that Member State.

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<sup>63</sup> **DE:** a period for transmitting fingerprints to the EURODAC Central System should be provided for in this Article, as is the case for Art. 9(1) on asylum applicants and Art. 14(4) on illegal entry. **Cion** recalled that there is no provision for data storage regarding the Category 3 people, (who are only checked if they have ever applied for international protection) as long as EURODAC is an asylum and not an illegal immigration instrument. In addition, it would not be appropriate to impose a deadline for sending data under this provision, as long as it is an optional one. **AT:** reservation, wants an extended scope for the provision, in order to cover cases where the removal operation is not imminent and/or are obstacles.

As a general rule there are grounds for checking whether the ~~alien~~ ☒ third country national or stateless person ☒ has previously lodged an application for ~~asylum~~ ⇒ international protection ⇐ in another Member State where:

- (a) the ~~alien~~ ☒ third country national or stateless person ☒ declares that he/she has lodged an application for ~~asylum~~ ⇒ international protection ⇐ but without indicating the Member State in which he/she made the application;
- (b) the ~~alien~~ ☒ third country national or stateless person ☒ does not request ~~asylum~~ ⇒ international protection ⇐ but objects to being returned to his/her country of origin by claiming that he/she would be in danger, or
- (c) the ~~alien~~ ☒ third country national or stateless person ☒ otherwise seeks to prevent his/her removal by refusing to cooperate in establishing his/her identity, in particular by showing no, or false, identity papers.

2. Where Member States take part in the procedure referred to in paragraph 1, they shall transmit to the Central ~~Unit~~ ⇒ System ⇐ the fingerprint data relating to all or at least the index fingers, and, if those are missing, the prints of all other fingers, of ~~aliens~~ ☒ third country nationals or stateless persons ☒ referred to in paragraph 1.

3.<sup>64</sup> The fingerprint data of an ~~alien~~ ☒ third country national or a stateless person ☒ as referred to in paragraph 1 shall be transmitted to the Central ~~Unit~~ ⇒ System ⇐ solely for the purpose of comparison with the fingerprint data of applicants for ~~asylum~~ ⇒ international protection ⇐ transmitted by other Member States and already recorded in the ~~central database~~ ⇒ Central System ⇐.

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<sup>64</sup> **SK:** reservation on this paragraph.

The fingerprint data of such ~~an alien~~  third country national or a stateless person  shall not be recorded in the ~~central database~~  Central System , nor shall they be compared with the data transmitted to the Central ~~Unit~~  System  pursuant to Article ~~8(2)~~ 14(2).

4. As regards the comparison of fingerprint data transmitted under this Article with the fingerprint data of applicants for ~~asylum~~  international protection  transmitted by other Member States which have already been stored in the Central ~~Unit~~  System , the procedures provided for in Article ~~4(3) (5) and (6)~~ 9(3) and (5) <sup>65</sup> ~~as well as the provisions laid down pursuant to Article 4(7)~~ shall apply.

~~5. Once the results of the comparison have been transmitted to the Member State of origin, the Central Unit shall forthwith:~~

~~(a) erase the fingerprint data and other data transmitted to it under paragraph 1; and~~

~~(b) destroy the media used by the Member State of origin for transmitting the data to the Central Unit, unless the Member State of origin has requested their return.~~

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<sup>65</sup> **SK:** reference to Art. 25(4) should be added.

## CHAPTER V

# ~~RECOGNISED REFUGEES~~ ☒ PERSONS GRANTED INTERNATIONAL PROTECTION ☒

### ~~Article 12~~

#### ~~Blocking of data~~

~~1. Data relating to an applicant for asylum which have been recorded pursuant to Article 4(2) shall be blocked in the central database if that person is recognised and admitted as a refugee in a Member State. Such blocking shall be carried out by the Central Unit on the instructions of the Member State of origin.~~

~~As long as a decision pursuant to paragraph 2 has not been adopted, hits concerning persons who have been recognised and admitted as refugees in a Member State shall not be transmitted. The Central Unit shall return a negative result to the requesting Member State.~~

~~2. Five years after Eurodac starts operations, and on the basis of reliable statistics compiled by the Central Unit on persons who have lodged an application for asylum in a Member State after having been recognised and admitted as refugees in another Member State, a decision shall be taken in accordance with the relevant provisions of the Treaty, as to whether the data relating to persons who have been recognised and admitted as refugees in a Member State should:~~

~~(a) be stored in accordance with Article 6 for the purpose of the comparison provided for in Article 4(3); or~~

~~(b) be erased in advance once a person has been recognised and admitted as a refugee.~~

~~3. In the case referred to in paragraph 2(a), the data blocked pursuant to paragraph 1 shall be unblocked and the procedure referred to in paragraph 1 shall no longer apply.~~

~~4. In the case referred to in paragraph 2(b):~~

~~(a) data which have been blocked in accordance with paragraph 1 shall be erased immediately by the Central Unit; and~~

~~(b) data relating to persons who are subsequently recognised and admitted as refugees shall be erased in accordance with Article 15(3), as soon as the Member State of origin becomes aware that the person has been recognised and admitted as a refugee in a Member State.~~

~~5. The implementing rules concerning the procedure for the blocking of data referred to in paragraph 1 and the compilation of statistics referred to in paragraph 2 shall be adopted in accordance with the procedure laid down in Article 22(1).~~

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*Article 18***Marking of data**

1. The Member State of origin which granted international protection to an applicant for international protection whose data were previously recorded pursuant to Article 11 in the Central System shall mark the relevant data in conformity with the requirements for electronic communication with the Central System established by the Agency. This mark shall be stored in the Central System in accordance with Article 12 for the purpose of transmission under Article 9(5).
2. The Member State of origin shall unmark data concerning a third country national or stateless person whose data were previously marked in accordance with paragraph 1 if his or her status is revoked or ended or renewal of his status is refused under Article 14 or 19 of Council Directive 2004/83/EC.<sup>66</sup>

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<sup>66</sup> **SK:** This reference to the Qualification Directive shall be updated as to cite amended Directive 2011/95/EU.

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## CHAPTER VI

# PROCEDURE FOR COMPARISON AND DATA TRANSMISSION FOR LAW ENFORCEMENT PURPOSES<sup>67</sup>

### *Article 19*

#### **Procedure for comparison of fingerprint data with EURODAC data**

1. The designated authorities referred to in Article 5(1) and Europol may submit a reasoned electronic request to the verifying authority for the transmission for comparison of fingerprint data to the EURODAC Central System via the National Access Point.<sup>68</sup> Upon receipt of such a request, the verifying authority shall verify whether the conditions for requesting a comparison referred to in Article 20 or Article 21, as appropriate, are fulfilled.

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<sup>67</sup> **DE, FI:** a provision along the lines of Arts 9(3)&(5) or 17(4) shall be inserted in this Chapter in order to provide for the transmission of data to designated authorities, for the purpose of law enforcement access. **RO** suggested adding language regarding the transmission of information for the person, who has been the subject of a hit (within the scope of this paragraph) and linking it with the corresponding category (1 or 2) to which he/she belongs. **IT** also suggested specifying whether the relevant marks for the above persons should constitute a special category or not.

**LT** pointed out that the definitions used in respect of the law enforcement access to EURODAC, as well as the conditions / purposes for this access, should reflect as closely as possible the relevant provisions of the Council Decision 2008/633/JHA concerning access for consultation to the VIS.

<sup>68</sup> **EL:** scrutiny reservation on the technical ramification of the procedure described in this provision. **Cion** pointed out that the transmission of data for law enforcement purposes shall be done in the same way as for the other objectives of the EURODAC Regulation and this should be clarified.



2. Where all the conditions for requesting a comparison are fulfilled, the verifying authority shall transmit the request for comparison to the National Access Point which will process it to the EURODAC Central System for the purpose of comparison with all the EURODAC data. <sup>69</sup>
3. In exceptional cases of urgency, 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 of Article 20 or Article 21 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.
4. Where the ex-post verification determines that the access was not justified, the information communicated from EURODAC shall be destroyed by all authorities that have accessed it and they shall inform the verifying authority of such destruction.

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<sup>69</sup> **FR:** it should be clarified that the request should not contain the reasons justifying it. **Cion** agreed that it would not be necessary to include the reasons for the request made to the Central System. **Cion** pointed out that the transmission shall be carried out in accordance with Arts 9(3) and (5).

*Article 20*

**Conditions for access to EURODAC data by designated authorities**

- 1.<sup>70</sup> Designated authorities may request the comparison of fingerprint data with those stored in the EURODAC central database within the scope of their powers only if comparisons of national fingerprint databases and of the Automated Fingerprint Databases of other Member States under Decision 2008/615/JHA return negative results<sup>71</sup> and where:
- (a) the comparison is necessary for the purpose of the prevention, detection or investigation of terrorist offences or other serious criminal offences;<sup>72</sup>

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<sup>70</sup> **AT:** reservation on the provision; **DE:** the meaning of the wording “comparisons that return negative results”, under Council Decision 2008/615/JHA, should be clearly defined; in this context, it queried whether negative results should be returned from a request to all MS, or requests to individual MS would be sufficient. **CZ:** it may not be possible to have clear negative results as long as the Prüm check cannot give all the necessary information. Thus, the access to EURODAC should be given after the national data comparison is done. **Cion** will further reflect on this issue.

<sup>71</sup> **FI, AT:** oppose the obligation to have national and Prüm comparisons as a precondition for the EURODAC comparison. **FI** recalled that such a precondition does not apply in the case of access to the VIS data base. **NL, DE** queried about the nature of a hit which does not allow identification of the TCN and whether such a hit would entitle MS to have access to EURODAC. In the same vein, **HU** questioned the added value of Prüm in the EURODAC legal framework. **Cion** recalled that this precondition is met, even if the Prüm procedure is in force with only one other MS. **HU** also suggested that as regards the Prüm-related questions a coordination with the DAPIX WP could be helpful.

<sup>72</sup> **FR:** this obligation for the designated authorities could be excessive.

(b) the comparison is necessary in a specific case; systematic comparisons shall not be carried out; and

(c) there are reasonable grounds<sup>73</sup> to consider that such comparison with EURODAC data will contribute to the prevention, detection or investigation of any of the criminal offences in question.<sup>74</sup>

2. Requests for comparison with EURODAC data shall be limited to searching with fingerprint data.<sup>75</sup>

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<sup>73</sup> **FR** deems as counterproductive the obligation for the designated authorities to prove that there are reasonable grounds to consider that the comparison with the EURODAC data would contribute to prevention, etc. of the offences in question. **ES:** point (c) should be deleted.

<sup>74</sup> **SI** queried whether the conditions laid down in points (a) - (c) are cumulative or not and asked for a clearer wording. **BE:** these conditions / guarantees are cumulative; the one in (c) is too widely drafted. **Cion:** all conditions set out in Art. 20 shall be met in order to have access to EURODAC.

<sup>75</sup> **FR** considers that other comparison based on the civil status of the person concerned or on external borders checks could be taken into account. **Cion:** the EURODAC comparison is done only through fingerprint data comparison. **CZ** considers this provision superfluous. **ES:** the scope of this paragraph should be broadened.

*Article 21*

**Conditions for access to EURODAC data by Europol<sup>76</sup>**

1. Requests for comparison with EURODAC data by Europol shall take place within the limits of its mandate and where necessary for the performance of its tasks pursuant to the Europol Decision and for the purposes of a specific analysis or an analysis of a general nature and of a strategic type.
2. Requests for comparison with EURODAC data shall be limited to comparisons of fingerprint data.
3. Processing of information obtained by Europol from comparison with EURODAC 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.

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<sup>76</sup> **CZ:** the conditions for access to EURODAC by EUROPOL should take into account the particular duties of EUROPOL. **FR:** reservation, **BE** scrutiny reservation on the Article; **FR:** granting direct access to EUROPOL does not tally with its role; one MS linked with the case, pursuant to Art. 20 should be making the comparison. **Cion:** this issue will be further reflected; at any rate EUROPOL has a limited mandate, within which is entitled to act. **BE:** the conditions for law enforcement authorities' access to EURODAC do not seem to apply to EUROPOL's access to EURODAC. **Cion:** it can be clarified that the same strict conditions apply to EUROPOL's access.  
**EE:** queried about the scope of the analysis on the basis of the fingerprints (specific or general) and the relevant added value of EUROPOL's intervention. **Cion:** EUROPOL has a mandate to process finger prints and other data in order to fulfill its objectives; in this sense, it can, if it turns out to be useful, request access to the EURODAC data.

*Article 22*

**Communication between the verifying authorities and the National Access Points<sup>77</sup>**

1. EURODAC Communication Infrastructure shall be used for the data transmission by the verifying authorities of Member States and Europol to the National Access Points and vice versa. All communications shall take place electronically.
2. Fingerprints shall be digitally processed by the Member State and transmitted in the data format referred to in Annex I, in order to ensure that the comparison can be carried out by means of the computerised fingerprint recognition system.

↓ 2725/2000/EC (adapted)

⇒ new

**CHAPTER ~~VI~~ VII**

**DATA PROCESSING ~~USE~~, DATA PROTECTION<sup>78</sup> AND  
LIABILITY**

*Article 23 ~~13~~*

**Responsibility for data processing ~~use~~**

1. The Member State of origin shall be responsible for ensuring that:

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<sup>77</sup> **CZ:** reservation on the Article. In reply to the **UK**, **Cion** confirmed that Recital defined the EURODAC Communication Infrastructure.

<sup>78</sup> **ES:** general scrutiny reservation on all data protection provisions.

- (a) fingerprints are taken lawfully;
  - (b) fingerprint data and the other data referred to in Article ~~5(1)~~ 11, Article ~~8(2)~~ 14(2) and Article ~~11(2)~~ 17(2) are lawfully transmitted to the Central ~~Unit~~ ⇒ System ⇐;
  - (c) data are accurate and up-to-date when they are transmitted to the Central ~~Unit~~ ⇒ System ⇐;
  - (d) without prejudice to the responsibilities of the ~~Commission~~ ⇒ Agency ⇐, data in the ~~central database~~ ⇒ Central System ⇐ are lawfully recorded, stored, corrected and erased;
  - (e) the results of fingerprint data comparisons transmitted by the Central ~~Unit~~ ⇒ System ⇐ are lawfully processed ~~used~~.
2. In accordance with Article ~~14~~ 34, the Member State of origin shall ensure the security of the data referred to in paragraph 1 before and during transmission to the Central ~~Unit~~ ⇒ System ⇐ as well as the security of the data it receives from the Central ~~Unit~~ ⇒ System ⇐.
  3. The Member State of origin shall be responsible for the final identification of the data pursuant to Article ~~4(6)~~ 25(4).
  4. The ~~Commission~~ ⇒ Agency ⇐ shall ensure that the Central ~~Unit~~ ⇒ System ⇐ is operated in accordance with the provisions of this Regulation ~~and its implementing rules~~. In particular, the ~~Commission~~ ⇒ Agency ⇐ shall:

(a) adopt measures ensuring that persons working ~~in~~ with ~~in~~ the Central ~~Unit~~  
~~System~~ ~~process~~ use the data recorded ~~in~~ therein ~~in the central database~~  
only in accordance with the purpose of ~~Eurodac~~EURODAC as laid down in Article  
1(1);

~~(b) ensure that persons working in the Central System comply with all requests from  
Member States made pursuant to this Regulation in relation to recording,  
comparison, correction and erasure of data for which they are responsible;~~

~~(b)~~ (e) take the necessary measures to ensure the security of the Central ~~Unit~~  
~~System~~ in accordance with Article ~~14~~ 34;

~~(c)~~ (d) ensure that only persons authorised to work ~~in~~ with ~~in~~ the Central ~~Unit~~  
~~System~~ have access ~~to~~ thereto ~~to data recorded in the central database,~~  
without prejudice to ~~Article 20 and the powers of the independent supervisory body  
which will be established under Article 286(2) of the Treaty~~ ~~to~~ the competences of  
the European Data Protection Supervisor ~~to~~.

The ~~Commission~~ ~~Agency~~ shall inform the European Parliament and the Council ~~as~~  
well as the European Data Protection Supervisor ~~of~~ of the measures it takes pursuant to the  
first subparagraph.

*Article ~~24~~ 2*

**Transmission**

1. Fingerprints shall be digitally processed and transmitted in the data format referred to in Annex I. As far as it is necessary for the efficient operation of the Central ~~Unit~~ ⇒ System ⇐, the ~~Central Unit~~ ⇔ Agency ⇔ shall establish the technical requirements for transmission of the data format by Member States to the Central ~~Unit~~ ⇒ System ⇐ and vice versa. The ~~Central Unit~~ ⇔ Agency ⇔ shall ensure that the fingerprint data transmitted by the Member States can be compared by the computerised fingerprint recognition system.
2. Member States ~~should~~ ⇔ shall ⇔ transmit the data referred to in Article ~~5(1)~~ 11(1), Article 14(2) and Article 17(2) of the Eurodac Regulation electronically. ⇒ The data referred to in Article 11(1) and Article 14(2) shall be automatically recorded in the Central System. ⇐ As far as it is necessary for the efficient operation of the Central ~~Unit~~ ⇒ System ⇐, the ~~Central Unit~~ ⇒ Agency ⇐ shall establish the technical requirements to ensure that data can be properly electronically transmitted from the Member States to the Central ~~Unit~~ ⇒ System ⇐ and vice versa. ~~Transmission of data in paper form using the form set out in Annex II or by other means of data support (diskettes, CD-ROM or other means of data support which may be developed and generally used in future) should be limited to situations in which there are continuous technical problems.~~



- <sup>79</sup>3. The reference number referred to in Article ~~5(1)(d)~~ 11(d) and Article 14(2)(d) and 17(1) ~~of the Eurodac Regulation~~ 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 ~~an asylum seeker or~~ a person referred to in Article ~~8 or Article 11 of the Eurodac Regulation~~9, Article 14 or Article 17.
4. The reference number shall begin with the identification letter or letters by which, in accordance with the norm referred to in Annex I, the Member State transmitting the data is identified. The identification letter or letters shall be followed by the identification of the category of person. "1" refers to data relating to ~~asylum seekers~~  persons referred to in Article 9(1) , "2" to persons referred to in Article ~~8~~ 14(1) ~~of the Eurodac Regulation~~ and "3" to persons referred to in Article ~~11~~ 17 ~~of the Eurodac Regulation~~.
5. The ~~Central Unit~~  Agency  shall establish the technical procedures necessary for Member States to ensure receipt of unambiguous data by the Central ~~Unit~~  System .
- 6~~4.~~ The Central ~~Unit~~  System  shall confirm receipt of the transmitted data as soon as possible. To this end the ~~Central Unit~~  Agency  shall establish the necessary technical requirements to ensure that Member States receive the confirmation receipt if requested.

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<sup>79</sup> **FI:** pointed out that technical provisions on the comparison of fingerprints for the purposes set out in Art. 1(2) should be added in paras (3) and (4) (obligation to use a reference number, letters identifying the requesting MS, identification of the category of the person concerned). These suggestions would serve statistical, logging and documentation purposes.

### Carrying out comparisons and transmitting results

1. Member States shall ensure the transmission of fingerprint data in an appropriate quality for the purpose of comparison by means of the computerised fingerprint recognition system. As far as it is necessary to ensure that the results of the comparison by the Central ~~Unit~~ ⇒ System ⇐ reach a very high level of accuracy, the ~~Central Unit~~ ⇒ Agency ⇐ shall define the appropriate quality of transmitted fingerprint data. The Central ~~Unit~~ ⇒ System ⇐ shall, as soon as possible, check the quality of the fingerprint data transmitted. If fingerprint data do not lend themselves to comparison using the computerised fingerprint recognition system, the Central ~~Unit~~ ⇒ System ⇐ shall, ~~as soon as possible,~~ ⇒ inform ⇐ the Member State. ⇒ The Member State concerned shall ⇐ transmit fingerprint data of the appropriate quality ⇒ using the same reference number of the previous set of fingerprint data ⇐.
2. The Central ~~Unit~~ ⇒ System ⇐ shall carry out comparisons in the order of arrival of requests. Each request must be dealt with within 24 hours. ~~In the case of data which are transmitted electronically, a~~ A Member State may for reasons connected with national law require particularly urgent comparisons to be carried out within one hour. Where these times cannot be respected owing to circumstances which are outside the ~~Central Unit~~ ⇒ Agency's ⇐ responsibility, the Central ~~Unit~~ ⇒ System ⇐ shall process the request as a matter of priority as soon as those circumstances no longer prevail. In such cases, as far as it is necessary for the efficient operation of the Central ~~Unit~~ ⇒ System ⇐, the ~~Central Unit~~ ⇒ Agency ⇐ shall establish criteria to ensure the priority handling of requests.
3. As far as it is necessary for the efficient operation of the Central ~~Unit~~ ⇒ System ⇐, the ~~Central Unit~~ ⇒ Agency ⇐ shall establish the operational procedures for the processing of the data received and for transmitting the result of the comparison.

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↓ 2725/2000/EC Article 4(6) (adapted)

⇒ new

4. The results of the comparison shall be immediately checked in the Member State of origin ⇒ by a fingerprint expert ⇐<sup>80</sup>. Final identification shall be made by the Member State of origin in cooperation with the Member States concerned, pursuant to Article ~~15~~ 32 of the Dublin ~~Convention~~ ⊗ Regulation ⊗<sup>81</sup>.

Information received from the Central ~~Unit~~ ⇒ System ⇐ relating to other data found to be unreliable shall be erased ~~or destroyed~~ as soon as the unreliability of the data is established.

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↓ new

5. Where final identification in accordance with paragraph 4 reveal that the result of the comparison received from the Central System is inaccurate, Member States shall communicate this fact to the Commission and to the Agency.

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<sup>80</sup> **CZ, FI** (suggesting deletion of the point) **FR** (querying about the profile of the "fingerprint expert"), **SI**: reservations on the term.  
**SI** opposes the strict obligation to compare fingerprints manually with a fingerprint expert at MS level, as it would require administrative burden for the MS and suggested maintaining the current Regulation's provision. **UK**: the fingerprint expert's role is useful, as the very limited number of false hits in the EURODAC Annual Report proves; he/she will be very important for the latent fingerprints taking. **Cion**: pointed out that the fingerprint expert should be someone able to verify whether there is a match between fingerprints, as MS do on national basis. **Cion** also recalled the EP position on this issue, in view of the future negotiations within the ordinary procedure.

<sup>81</sup> **RO**: has concerns that the information exchange, which should be made in accordance with Art. 32 of the draft Dublin Regulation, shall have a clear legal basis in the said instrument. However, the Dublin text does not provide for cases under Chapter VI of the EURODAC proposal. **Cion**: this provision is not linked with law enforcement access purposes.

↓ 407/2002/EC (adapted)

⇒ new

*Article ~~26~~ 4*

**Communication between Member States and the Central ~~Unit~~ ⇒ System ⇐**

Data transmitted from the Member States to the Central ~~Unit~~ ⇒ System ⇐ and vice versa shall use ~~IDA generic services referred to in Decision No 1719/1999/EC of the European Parliament and of the Council of 12 July 1999 on a series of guidelines, including the identification of projects of common interest, for trans-European networks for the electronic interchange of data between administrations (IDA)~~ ⇒ the EURODAC Communication Infrastructure ⇐. As far as it is necessary for the efficient operation of the Central ~~Unit~~ ⇒ System ⇐, the ~~Central Unit~~ ⊗ Agency ⊗ shall establish the technical procedures necessary for the use of ~~IDA generic services~~ ⇒ the Communication ⇐.

*~~Article 14~~*

**~~Security~~**

~~1. The Member State of origin shall take the necessary measures to:~~

- ~~(a) prevent any unauthorised person from having access to national installations in which the Member State carries out operations in accordance with the aim of Eurodac (checks at the entrance to the installation);~~

~~(b) prevent data and data media in Eurodac from being read, copied, modified or erased by unauthorised persons (control of data media);~~

~~(c) guarantee that it is possible to check and establish a posteriori what data have been recorded in Eurodac when and by whom (control of data recording);~~

~~(d) prevent the unauthorised recording of data in Eurodac and any unauthorised modification or erasure of data recorded in Eurodac (control of data entry);~~

~~(e) guarantee that, in using Eurodac, authorised persons have access only to data which are within their competence (control of access);~~

~~(f) guarantee that it is possible to check and establish to which authorities data recorded in Eurodac may be transmitted by data transmission equipment (control of transmission);~~

~~(g) prevent the unauthorised reading, copying, modification or erasure of data during both the direct transmission of data to or from the central database and the transport of data media to or from the Central Unit (control of transport);~~

~~2. As regards the operation of the Central Unit, the Commission shall be responsible for applying the measures mentioned under paragraph 1.~~

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↓ 2725/2000/EC

⇒ new

Article 27 ~~15~~

**Access to, and correction or erasure of, data recorded in ~~Eurodac~~ EURODAC**

1. The Member State of origin shall have access to data which it has transmitted and which are recorded in the ~~central database~~ ⇒ Central System ⇐ in accordance with the provisions of this Regulation.

No Member State may conduct searches in the data transmitted by another Member State, nor may it receive such data apart from data resulting from the comparison referred to in Article ~~4(5)~~ 9(5).<sup>82</sup>

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<sup>82</sup> **LU** queried if this provision contradicts para. 4 of this Article whereby a MS may advise against the proper recording of certain data, done by another MS. **Cion** pointed out that since this is not in the recast part of the proposal, therefore it could be considered to be amended following a future evaluation of the EURODAC function. **RO:** in relation to the comparison made on the basis of Art 9(5) reference should also be made to Arts 17(3), 20(1) and 21(1). **Cion:** will check this issue out.

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↓ 2725/2000/EC (adapted)

⇒ new

2. The authorities of Member States which, pursuant to paragraph 1, have access to data recorded in the ~~central database~~ ⇒ Central System ⇐ shall be those designated by each Member State ⇒ for the purpose of Article 1(1). This 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 the Agency ⇐ a list of those authorities ⇒ and any amendments thereto. The Agency shall publish the consolidated list in the Official Journal of the European Union. Where there are amendments thereto, the Agency shall publish once a year an updated consolidated list. ⇐
3. Only the Member State of origin shall have the right to amend the data which it has transmitted to the Central Unit ⇒ System ⇐ by correcting or supplementing such data, or to erase them, without prejudice to erasure carried out in pursuance of Article ~~6, Article 10(1) or Article 12(4)(a)~~ 12 or Article 16(1).

~~Where the Member State of origin records data directly in the central database, it may amend or erase the data directly.~~

~~Where the Member State of origin does not record data directly in the central database, the Central Unit shall amend or erase the data at the request of that Member State.~~

4. If a Member State or the ~~Central Unit~~ ⇒ Agency ⇐ has evidence to suggest that data recorded in the ~~central database~~ ⇒ Central System ⇐ are factually inaccurate, it shall advise the Member State of origin as soon as possible.

If a Member State has evidence to suggest that data were recorded in the ~~central database~~ ⇒ Central System ⇐ contrary to this Regulation, it shall ~~similarly~~ advise ⇒ the Agency, the Commission and ⇐ the Member State of origin as soon as possible. The latter shall check the data concerned and, if necessary, amend or erase them without delay.

5. The ~~Central Unit~~ ⇒ Agency ⇐ shall not transfer or make available to the authorities of any third country data recorded in the ~~central database~~ ⇒ Central System ⇐, unless it is specifically authorised to do so in the framework of a Community agreement on the criteria and mechanisms for determining the State responsible for examining an application for ~~asylum~~ ⇒ international protection ⇐.<sup>83</sup>

#### ~~Article 22~~

#### ~~Implementing rules~~

- ~~1. The Council shall adopt, acting by the majority laid down in Article 205(2) of the Treaty, the implementing provisions necessary for~~
- ~~laying down the procedure referred to in Article 4(7),~~
- ~~laying down the procedure for the blocking of the data referred to in Article 12(1),~~
- ~~drawing up the statistics referred to in Article 12(2).~~

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<sup>83</sup> **FR:** asked the **Cion** to provide clarification about the relation of this provision with Art. 35. **Cion** confirmed that this provision is focusing on Dublin associate countries.



~~In cases where these implementing provisions have implications for the operational expenses to be borne by the Member States, the Council shall act unanimously.~~

~~2. The measures referred to in Article 3(4) shall be adopted in accordance with the procedure referred to in Article 23(2).~~

*Article 28 ~~16~~*

**Keeping of records ~~by the Central Unit~~<sup>84</sup>**

1. The ~~Central Unit~~ ⇒ Agency ⇐ shall keep records of all data processing operations within the Central ~~Unit~~ ⇒ System ⇐. These records shall show the purpose of access, the date and time, the data transmitted, the data used for interrogation and the name of both the unit ~~putting~~ ⊗ entering ⊗ in or retrieving the data and the persons responsible.
2. Such records may be used only for the data-protection monitoring of the admissibility of data processing as well as to ensure data security pursuant to Article ~~14~~ 34. The records must be protected by appropriate measures against unauthorised access and erased after a period of one year ⇒ after the retention period referred to in Article 12 and in Article 16(1) ~~has expired~~ ⇐, if they are not required for monitoring procedures which have already begun.

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↓ new

3. Each Member State shall take the necessary measures in order to achieve the objectives set out in paragraph 1 and 2 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.

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<sup>84</sup> **DE:** pointed out that Article 36 covers only data processing operations for law enforcement purposes, while Article 28 applies to all other operations. However, the relationship between the two provisions should be clarified in order to confirm the requirements which must be fulfilled in each case.

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↓ 2725/2000/EC (adapted)

⇒ new

~~Article 23~~

~~Committee~~

~~1. The Commission shall be assisted by a committee.~~

~~2. In the cases where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply.~~

~~The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.~~

~~3. The committee shall adopt its rules of procedure.~~

Article 29 ~~18~~

### **Rights of the data subject**

1. A person covered by this Regulation shall be informed by the Member State of origin ⇒ in writing, and where appropriate, orally, in a language which he or she understands or may reasonably be presumed to understand ⇐ of the following:

(a) the identity of the controller and of his representative, if any;

- (b) ~~the~~ regarding ~~the~~ his or her ~~data~~ data will be processed within ~~Eurodac~~EURODAC ~~⇒~~ including a description of the aims of the Dublin Regulation, in accordance with Article 4 of that Regulation ~~⇐~~.
- (c) the recipients of the data;
- (d) in relation to a person covered by Article ~~4 9~~ or Article ~~8 14~~, the obligation to have his/her fingerprints taken;
- (e) the existence of the right of access to, ~~and the right to rectify,~~ the data ~~relating to~~ him/her ~~concerning him/her~~ ~~⇐~~ , and the right to request that inaccurate data relating to him/her be corrected ~~⇐~~ ~~⇒~~ or that unlawfully processed data relating to them<sup>85</sup> be erased, as well as the right to receive information on the procedures for exercising those rights including the contact details of the controller and the National Supervisory Authorities referred to in Article 31(1) ~~⇐~~.

In relation to a person covered by Article ~~4 9~~ or Article ~~8 14~~, the information referred to in the first subparagraph shall be provided when his/her fingerprints are taken.

In relation to a person covered by Article ~~11 17~~, the information referred to in the first subparagraph shall be provided no later than the time when the data relating to the person are transmitted to the Central ~~Unit~~ ~~⇒~~ System ~~⇐~~. This obligation shall not apply where the provision of such information proves impossible or would involve a disproportionate effort.

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<sup>85</sup> **RO:** the word "them" should be replaced by "him/her".

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↓ new

A common leaflet, containing at least the information referred to in paragraph 1 of this Article and the information referred to in Article 4(1) of the Dublin Regulation shall be drawn up in accordance with the procedure referred to in Article 40(2) of the Dublin Regulation. The leaflet should be "clear and simple, drafted in a language that the person understands or may reasonably be presumed to understand."<sup>86</sup>

Where a person covered by this Regulation is a minor, Member States shall provide the information in an age-appropriate manner.

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↓ 2725/2000/EC

⇒ new

2. In each Member State any data subject may, in accordance with the laws, regulations and procedures of that State, exercise the rights provided for in Article 12 of Directive 95/46/EC.<sup>87</sup>

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<sup>86</sup> **SI:** scrutiny reservation in relation to the obligation of providing a leaflet to persons who are not applicants for international protection. **Cion** clarified that the scope of this proposal covers all TCN whose fingerprints are in the EURODAC data base. It also clarified that Art. 29 applies only to asylum-related purposes.

**NL:** the folder should be in the most pertinent languages for its purposes. **Pres:** the language should be adapted to Art. 4 of the draft Dublin Regulation relevant provision. **UK** recalled that a leaflet is used for the EURODAC purposes and the only essential addition would be the information about the law-enforcement access. **Cion:** it would not be reasonable to ask the TCN to give fingerprints, without clearly explaining the reasons, in particular for law-enforcement purposes; a common leaflet among MS would cut the costs and could enhance practical co-operation. **Cion** also indicated that AMF might be used for financing the leaflet.

<sup>87</sup> **HU** pointed out this provision, as well as para. 10 of this Article, should also refer to the relevant provisions of the Framework Decision 2008/977/JHA (Arts. 17, 18, 25(3)), because Directive 95/46/4C does not apply to data processing for law enforcement purposes and Recital 31 of this proposal is not sufficient. **Cion** stressed that Art. 29 applies only to asylum-related elements of the proposal. **DE** suggested that this should be explicitly mentioned.

Without prejudice to the obligation to provide other information in accordance with point (a) of Article 12 of Directive 95/46/EC, the data subject shall have the right to obtain communication of the data relating to him/her recorded in the ~~central database~~ ⇒ Central System ⇐ and of the Member State which transmitted them to the Central ~~Unit~~ ⇒ System ⇐. Such access to data may be granted only by a Member State.

3. In each Member State, any person may request that data which are factually inaccurate be corrected or that data recorded unlawfully be erased. The correction and erasure shall be carried out without excessive delay by the Member State which transmitted the data, in accordance with its laws, regulations and procedures.
4. If the rights of correction and erasure are exercised in a Member State, other than that, or those, which transmitted the data, the authorities of that Member State shall contact the authorities of the Member State, or States, in question so that the latter may check the accuracy of the data and the lawfulness of their transmission and recording in the ~~central database~~ ⇒ Central System ⇐.
5. If it emerges that data recorded in the ~~central database~~ ⇒ Central System ⇐ are factually inaccurate or have been recorded unlawfully, the Member State which transmitted them shall correct or erase the data in accordance with Article ~~15(3)~~ 27(3). That Member State shall confirm in writing to the data subject without excessive delay that it has taken action to correct or erase data relating to him/her.

6. If the Member State which transmitted the data does not agree that data recorded in the ~~central database~~ ⇒ Central System ⇐ are factually inaccurate or have been recorded unlawfully, it shall explain in writing to the data subject without excessive delay why it is not prepared to correct or erase the data.

That Member State shall also provide the data subject with information explaining the steps which he/she can take if he/she does not accept the explanation provided. This shall include information on how to bring an action or, if appropriate, a complaint before the competent authorities or courts of that Member State and any financial or other assistance that is available in accordance with the laws, regulations and procedures of that Member State.

7. Any request under paragraphs 2 and 3 shall contain all the necessary particulars to identify the data subject, including fingerprints. Such data shall be used exclusively to permit the exercise of the rights referred to in paragraphs 2 and 3 and shall be destroyed immediately afterwards.
8. The competent authorities of the Member States shall cooperate actively to enforce promptly the rights laid down in paragraphs 3, 4 and 5.

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↓ new

9. Whenever a person requests data relating to him or her in accordance with paragraph 2, the competent authority shall keep a record in the form of a written document that such a request was made, and shall make this document available to the National Supervisory Authorities without delay, upon their request.

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↓ 2725/2000/EC (adapted)

⇒ new

~~9.~~ 10. In each Member State, the national supervisory authority shall ⇒ on the basis of his/her request, ⇐ assist the data subject in accordance with Article 28(4) of Directive 95/46/EC in exercising his/her rights.

~~10.~~ 11. The national supervisory authority of the Member State which transmitted the data and the national supervisory authority of the Member State in which the data subject is present shall assist and, where requested, advise him/her in exercising his/her right to correct or erase data. Both national supervisory authorities shall cooperate to this end. Requests for such assistance may be made to the national supervisory authority of the Member State in which the data subject is present, which shall transmit the requests to the authority of the Member State which transmitted the data. ~~The data subject may also apply for assistance and advice to the joint supervisory authority set up by Article 20.~~

~~11.~~ 12. In each Member State any person may, in accordance with the laws, regulations and procedures of that State, bring an action or, if appropriate, a complaint before the competent authorities or courts of the State if he/she is refused the right of access provided for in paragraph 2.

~~12.~~ 13. Any person may, in accordance with the laws, regulations and procedures of the Member State which transmitted the data, bring an action or, if appropriate, a complaint before the competent authorities or courts of that State concerning the data relating to him/her recorded in the ~~central database~~ ⇒ Central System ⇐, in order to exercise his/her rights under paragraph 3. The obligation of the national supervisory authorities to assist and, where requested, advise the data subject, in accordance with paragraph ~~10~~ 13, shall subsist throughout the proceedings.

*Article 30 ~~19~~*

**⊗ Supervision by the ⊗ National Supervisory Authority**

1. Each Member State shall provide that the national supervisory authority or authorities designated pursuant to Article 28(1) of Directive 95/46/EC shall monitor independently, in accordance with its respective national law, the lawfulness of the processing, in accordance with this Regulation, of personal data by the Member State in question, including their transmission to the Central ~~Unit~~ ⇨ System ⇐.
  2. Each Member State shall ensure that its national supervisory authority has access to advice from persons with sufficient knowledge of fingerprint data.
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↓ new

*Article 31*

**Supervision by the European Data Protection Supervisor<sup>88</sup>**

1. The European Data Protection Supervisor shall ensure that all the personal data processing activities concerning EURODAC, in particular by the Agency are carried out in accordance with Regulation (EC) No 45/2001 and this Regulation.

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<sup>88</sup> **FR:** scrutiny reservation on Arts 31-37.



2. The European Data Protection Supervisor shall ensure that an audit of the Agency's personal data processing activities is carried out in accordance with international auditing standards<sup>89</sup> at least every four years. A report of such audit shall be sent to the European Parliament, the Council, the Agency, the Commission and the National Supervisory Authorities. The Agency shall be given an opportunity to make comments before the report is adopted.

#### *Article 32*

### **Cooperation between National Supervisory Authorities and the European Data Protection Supervisor**

1. The National Supervisory Authorities and the European Data Protection Supervisor, each acting within the scope of its respective competences, shall cooperate actively in the framework of their responsibilities and shall ensure coordinated supervision of EURODAC.
2. They shall, each acting within the scope of its respective competences, exchange relevant information, assist each other in carrying out audits and inspections, examine difficulties of interpretation or application of this Regulation, study problems with the exercise of independent supervision or in the exercise of the rights of data subjects, draw up harmonised proposals for joint solutions to any problems and promote awareness of data protection rights, as necessary.

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<sup>89</sup> DE queried about the concept of the term "international auditing standards".

3. The National Supervisory Authorities and the European Data Protection Supervisor shall meet for that purpose 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 the Agency every two years.

### *Article 33*

## **Protection of personal data for the purposes of the prevention, detection and investigation of terrorist offences or of other serious criminal offences**

1. The Framework Decision 2008/977/JHA is applicable to the processing of relevant personal data for law enforcement purposes under this Regulation.<sup>90</sup>
2. The processing of personal data by Europol pursuant to this Regulation shall be in accordance with Decision 2009/371/JHA.<sup>91</sup>

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<sup>90</sup> **DE:** it should be clarified that this provision applies to all fields covered under Art. 1(2), because it is considered that for, example, the notion "law enforcement purposes" covers only repressive measures, but not the "prevention" of offences" as referred to in Art. 1(2). In general, **DE** asked for a clearer wording on when to apply the Framework Decision 2008/977/JHA and when other provisions of this proposal should be taken into account - in addition or as an alternative to the Framework Decision. **Cion** welcomed this suggestion.

<sup>91</sup> **DE:** the supervision of personal data-processing by EUROPOL should be addressed along the lines of Art 10(2) of the 2009 proposal for a Council Decision on requesting comparisons with EURODAC data by MS law enforcement authorities; to this effect, **DE** suggested the following wording: "and shall be supervised by the independent joint supervisory body established by Art.34 of that Decision". **Cion** expressed concerns about this suggestion and indicated that the EURODAC Regulation should not enter into such detail.

3. Personal data obtained pursuant to this Regulation from EURODAC shall only be processed for the purposes of the prevention, detection and investigation of terrorist offences or of other serious criminal offences.
4. Personal data obtained by a Member State or Europol pursuant to this Regulation from EURODAC shall be erased in national and Europol files after a period of one month, if the data are not required for a specific ongoing criminal investigation by that Member State, or Europol.<sup>92</sup>
5. The monitoring of the lawfulness of the processing of personal data under this Regulation by the Member States, including their transmission to and from EURODAC shall be carried out by the national competent authorities<sup>93</sup> designated pursuant to Framework Decision 2008/977/JHA.

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<sup>92</sup> **DE** pointed out that the one-month period for the deletion of the personal data is too short, given that the proceedings are usually long and complex. Moreover these data, once deleted, will not be available for the purpose of subsequent analysis, or data protection control. **Cion** stressed that if certain data are not required for a specific investigation it should be deleted as soon as possible.

<sup>93</sup> **DE:** the term “national supervisory authorities” should be used instead of “national competent authorities” for consistency with Art.25 of the Framework Decision 2008/977/JHA. **Cion** welcomed this suggestion.

*Article 34*

**Data security<sup>94</sup>**

1. The Member State of origin shall ensure the security of the data before and during transmission to the Central System.<sup>95</sup>
2. Each Member State shall, in relation to its national system, adopt the necessary measures, including a security plan, in order to:
  - (a) physically protect data, including by making contingency plans for the protection of critical infrastructure;<sup>96</sup>
  - (b) deny unauthorised persons access to national installations in which the Member State carries out operations in accordance with the purpose of EURODAC (checks at entrance to the installation);
  - (c) prevent the unauthorised reading, copying, modification or removal of data media (data media control);
  - (d) prevent the unauthorised input of data and the unauthorised inspection, modification or erasure of stored personal data (storage control);

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<sup>94</sup> **SK:** reservation on the Article, pointing out that MS should not be responsible for transferring data at national access points in the network sTesta.

<sup>95</sup> **DE:** this provision should also include the obligation to ensure data security for the reception of data from the Central System database and from other MS. **Cion:** every data from the Central System is covered by the data protection legislation.

<sup>96</sup> **CZ:** considers that this point is redundant because it is covered by point (b).

- (e) prevent the unauthorised processing of data in EURODAC and any unauthorised modification or erasure of data processed in EURODAC (control of data entry);
- (f) ensure that persons authorised to access EURODAC have access only to the data covered by their access authorisation, by means of individual and unique user identities and confidential access modes only (data access control);
- (g) ensure that all authorities with a right of access to EURODAC create profiles describing the functions and responsibilities of persons who are authorised to access, enter, update, erase and search the data and make these profiles available to the National Supervisory Authorities referred to in Article 25 of Framework Decision 2008/977/JHA without delay at their request (personnel profiles);<sup>97</sup>
- (h) ensure that it is possible to verify and establish to which bodies personal data may be transmitted using data communication equipment (communication control);
- (i) ensure that it is possible to verify and establish what data have been processed in EURODAC, when, by whom and for what purpose (control of data recording);
- (j) prevent the unauthorised reading, copying, modification or erasure of personal data during the transmission of personal data to or from EURODAC or during the transport of data media, in particular by means of appropriate<sup>98</sup> encryption techniques (transport control);

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<sup>97</sup> **CZ:** considers that this point is creating disproportionate administrative burden.

<sup>98</sup> **DE:** the following wording shall be added : « and state-of-the-art »

(k) monitor the effectiveness of the security measures referred to in this paragraph and take the necessary organisational measures related to internal monitoring to ensure compliance with this Regulation (self-auditing).<sup>99</sup>

3. The Agency shall take the necessary measures in order to achieve the objectives set out in paragraph 2 as regards the operation of EURODAC, including the adoption of a security plan.

#### *Article 35*

### **Prohibition of transfers of data to third countries or to international bodies or to private parties<sup>100</sup>**

Personal data obtained by a Member State or Europol pursuant to this Regulation from the EURODAC central database shall not be transferred or made available to any third country or international organisation or a private entity established in or outside the European Union. This prohibition shall be without prejudice to the right of Member States to transfer such data to third countries to which the Dublin Regulation applies.<sup>101</sup>

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<sup>99</sup> **CZ:** considers that this point is redundant.

<sup>100</sup> **BE:** scrutiny reservation on the Article, in relation to its concerns for the transfer of personal data to third countries. **BE** agreed with the **Cion**, which pointed out that the prohibition of transfer is related to data received from the Central System and it is an absolute prohibition.

<sup>101</sup> **DE:** the following wording should be added: “provided that the requirements of Art. 13 of the Framework Decision 2008/977/JHA are fulfilled and it is guaranteed that the receiving country ensures compliance with the requirements under the first sentence (thereof)”. **FR, AT:** reservation on this Article; **AT** considers it limiting the added value of the proposal. **FR, AT** suggested, alternatively, a ban of transfer of data to the countries of origin, or to provide that data from an asylum procedure cannot be passed. **Cion:** invoked Recital 33 and pointed out that third countries might transmit the data to the countries of origin. **CZ:** scrutiny reservation on the provision, asking for a more flexible wording. **BE:** scrutiny reservation on the Article, in relation to its concerns for the transfer of personal data to third countries.

*Article 36*

**Logging and documentation**

1. Each Member State and Europol shall ensure that all data processing operations resulting from requests for comparison with EURODAC data pursuant to this Regulation are logged or documented for the purposes of checking the admissibility of the request monitoring the lawfulness of the data processing and data integrity and security and for self-monitoring.

<sup>102</sup>2. The log or documentation shall show in all cases:

- (a) the exact purpose of the request for comparison, including the concerned form of a terrorist offence or other serious criminal offence and for Europol, the exact purpose of the request for comparison;
- (b) the respective national file reference;
- (c) the date and exact time of the request for comparison by the National Access Point to the EURODAC Central System;
- (d) the name of the authority having requested access for comparison, and the person responsible who has made the request and processed the data;

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<sup>102</sup> **CZ:** scrutiny reservation on this paragraph, as it would place disproportionate administrative burden on MS.

(e) where applicable the use of the urgent procedure referred to in Article 19(3) and the decision taken with regard to the ex-post verification;

(f) the data used for comparison;

(g) according to national rules or the rules of the Europol decision the identifying mark of the official who carried out the search and of the official who ordered the search or supply.

3. Such logs or documentation shall be used only for the data protection monitoring of the lawfulness of data processing as well as to ensure data security. Only logs containing non-personal data may be used for the monitoring and evaluation referred to in Article 38. The competent national supervisory authorities responsible for checking the admissibility of the request and monitoring the lawfulness of the data processing and data integrity and security, shall have access to these logs at their request for the purpose of fulfilling their duties.

↓ 2725/2000/EC

⇒ new

Article 37 ~~17~~

### **Liability**

1. Any person who, or Member State which, has suffered damage as a result of an unlawful processing operation or any act incompatible with the provisions laid down in this Regulation shall be entitled to receive compensation from the Member State responsible for the damage suffered. That State shall be exempted from its liability, in whole or in part, if it proves that it is not responsible for the event giving rise to the damage.



2. If failure of a Member State to comply with its obligations under this Regulation causes damage to the ~~central database~~ ⇒ Central System ⇐, that Member State shall be held liable for such damage, unless and insofar as the ~~Commission~~ ⇒ Agency or another Member State ⇐ failed to take reasonable steps to prevent the damage from occurring or to minimise its impact.
  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.
- 

↓ new

## **CHAPTER VIII**

### **AMENDMENTS TO THE REGULATION (EU) No 1077/2011**

#### *Article 38*

#### **Provisions amending Regulation (EU) No 1077/2011**

1. Article 5 is replaced by the following:

**“Article 5**

***Tasks relating to EURODAC***

**In relation to EURODAC, the Agency shall perform :**

- (a) the tasks conferred on the Agency by Regulation (EU) No ..../.... *[of the European Parliament and the Council on the establishment of 'EURODAC' for the comparison of fingerprints for the effective application of Regulation (EU) No {.../....}].***
- (b) tasks relating to training on the technical use of EURODAC.”**

**2. Article 12(1) is amended as follows:**

- (a) points (t), (u) and (v) are replaced by the following:**

**“(t) to adopt the reports on the technical functioning of SIS II pursuant to Article 50(4) of Regulation (EC) No 1987/2006 and Article 66(4) of Decision 2007/533/JHA respectively, of VIS pursuant to Article 50(3) of Regulation (EC) No 767/2008 and Article 17(3) of Decision 2008/633/JHA; and of EURODAC pursuant to Article 40(4) of Regulation (EU) No ..../... *[of the European Parliament and the Council on the establishment of 'EURODAC' for the comparison of fingerprints for the effective application of Regulation (EU) No {.../....} establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third country national or a stateless person]* and to request comparisons with EURODAC data by Member States' law enforcement authorities for law enforcement purposes;**

(u) to adopt the annual report on the activities of the Central System of EURODAC pursuant to Article 40(1) of Regulation (EU) No .../.... [of the European Parliament and the Council on the establishment of 'EURODAC' for the comparison of fingerprints for the effective application of Regulation (EU) No .../....];

(v) to make comments on the European Data Protection Supervisor's reports on the audits pursuant to Article 45 of Regulation (EC) 1987/2006 , Article 42(2) of Regulation (EC) No 767/2008 and Article 31 (2) of Regulation (EU) No .../.... [of the European Parliament and the Council on the establishment of 'EURODAC' for the comparison of fingerprints for the effective application of Regulation (EU) No .../....] and ensure appropriate follow-up of the audit;”

(b) point (x) is replaced by the following:

“(x) to compile statistics on the work of the Central System of EURODAC pursuant to Article 8(2) of Regulation (EU) No .../.... [of the European Parliament and the Council on the establishment of 'EURODAC' for the comparison of fingerprints for the effective application of Regulation (EU) No {.../....}]”

(c) point (z) is replaced by the following:

“(z) to ensure annual publication of the list of authorities designated pursuant to Article 27(2) of Regulation (EU) No .../.... [of the European Parliament and the Council on the establishment of 'EURODAC' for the comparison of fingerprints for the effective application of Regulation (EU) No .../....]”

3. In Article 15 paragraph (4) is replaced by the following:

“4. Europol and Eurojust may attend the meetings of the Management Board as observers when a question concerning SIS II, in relation to the application of Decision 2007/533/JHA, is on the agenda. Europol may also attend the meetings of the Management Board as observer when a question concerning VIS, in relation to the application of Decision 2008/633/JHA, is on the agenda or when a question concerning EURODAC, in relation with the application of Regulation (EU) No .../... [of the European Parliament and the Council on the establishment of 'EURODAC' for the comparison of fingerprints for the effective application of Regulation (EU) No .../...] is on the agenda.”

4. Article 17 is amended as follows:

(a) in paragraph 5 point (g) is replaced by the following:

“(g) without prejudice to Article 17 of the Staff Regulations, establish confidentiality requirements in order to comply with Article 17 of Regulation (EC) No 1987/2006, Article 17 of Decision 2007/533/JHA and Article 26(9) of Regulation (EC) No 767/2008 respectively and Article 4(6) of Regulation (EU) No .../... [of the European Parliament and the Council on the establishment of 'EURODAC' for the comparison of fingerprints for the effective application of Regulation (EU) No .../...];”

(b) in paragraph 6 point (i) is replaced by the following:

“(i) reports on the technical functioning of each large-scale IT system referred to in point (t) of Article 12(1) and the annual report on the activities of the Central System of EURODAC referred to in point (u) of Article 12(1), on the basis of the results of monitoring and evaluation.”

5. In Article 19 paragraph 3 is replaced by the following:

"3. Europol and Eurojust may each appoint a representative to the SIS II Advisory Group. Europol may also appoint a representative to the VIS and to the EURODAC Advisory Groups." <sup>103</sup>

↓ 2725/2000/EC (adapted)

⇒ new

## CHAPTER ~~VII~~ IX

### FINAL PROVISIONS

Article ~~39~~ ~~21~~

#### Costs

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

<sup>103</sup> SE has concerns for the participation of EUROPOL in the EURODAC Advisory Group and in this sense, the possible influence of EUROPOL on the Dublin Regulation system. **Cion:** the advisory role of the EUROPOL will be limited to law enforcement access' checks.

2. The costs incurred by national ~~access points~~ ~~units~~ and the costs for connection to the ~~central database~~ ~~Central System~~ shall be borne by each Member State.

3. Each Member State and Europol shall set up and maintain at their expense the technical infrastructure necessary to implement this Regulation, and be responsible for bearing its costs resulting from requests for comparison with EURODAC data for the purposes of the prevention, detection or investigation of any of the criminal offences defined in this Regulation.<sup>104</sup>

~~3. The costs of transmission of data from the Member State of origin and of the findings of the comparison to that State shall be borne by the State in question.~~

*Article ~~40~~ 24*

**Annual report: ~~m~~Monitoring and evaluation**

1. The ~~Commission~~ ~~Agency~~ shall submit to the European Parliament and the Council an annual report on the activities of the Central ~~Unit~~ ~~System~~. The annual report shall include information on the management and performance of ~~Eurodac~~ EURODAC against pre-defined quantitative indicators for the objectives referred to in paragraph 2.

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<sup>104</sup> **DE:** reference should also be made to the costs of EUROPOL activities pursuant to Art. 21 of this proposal. Currently, Article 39 (3) provides for the costs incurred in connection with the necessary infrastructure and for “costs resulting from requests for comparison with EURODAC data for the purposes of the prevention, detection or investigation of any of the criminal offences defined in this Regulation”. This provision also expressly covers Europol. However, **DE** considers that there is a loophole caused by the access rights granted to Europol in Article 21. According to this provision, EUROPOL may file requests for comparison with EURODAC data within the limits of its mandate for the purposes of a specific analysis or general and strategic analyses. This also covers cases where comparison does not serve the purposes of prevention, detection or investigation of specific criminal offences. Such cases would not be covered by Article 39 (3).

2. The Commission ⇨ Agency ⇨ shall ensure that ☒ procedures ☒ systems are in place to monitor the functioning of the Central Unit ⇨ System ⇨ against objectives ☒ relating to ☒ in terms of outputs, cost-effectiveness and quality of service.

3. ~~The Commission shall regularly evaluate the operation of the Central Unit in order to establish whether its objectives have been attained cost-effectively and with a view to providing guidelines for improving the efficiency of future operations.~~

4. ~~One year after Eurodac starts operations, the Commission shall produce an evaluation report on the Central Unit, focusing on the level of demand compared with expectation and on operational and management issues in the light of experience, with a view to identifying possible short-term improvements to operational practice.~~

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↓ new

3. For the purposes of technical maintenance, reporting and statistics, the Agency shall have access to the necessary information relating to the processing operations performed in the Central System.

4. Every two years, the Agency shall submit to the European Parliament, the Council, the Commission and the European Data Protection Supervisor a report on the technical functioning of the Central System, including the security thereof.

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↓ 2725/2000/EC

⇒ new

5. Three years after ~~Eurodac starts operations~~ ⇒ the start of application of this Regulation as provided for in Article 46(2) ⇐ and every ~~six~~ ⇒ four ⇐ years thereafter, the Commission shall produce an overall evaluation of ~~Eurodac~~EURODAC, examining results achieved against objectives and assessing the continuing validity of the underlying rationale, and any implications for future operations ⇒ , as well as make any necessary recommendations ⇐ . ⇒ The Commission shall transmit the evaluation to the European Parliament and the Council. ⇐

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↓ new

6. Member States shall provide the Agency and the Commission with the information necessary to draft the reports referred to in paragraph 4 and 5.
7. The Agency shall provide the Commission with the information necessary to produce the overall evaluations referred to in paragraph 5. <sup>105</sup>

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<sup>105</sup> **DE:** Para. 7 is redundant, as long as its contents are repeated in para. 9, therefore it should be deleted. **Cion** agreed with this remark.



8. Each Member State and Europol shall prepare annual reports on the effectiveness of the comparison of fingerprint data with EURODAC data for law enforcement access purposes, containing information and statistics on the exact purpose of the comparison, including the type of a terrorist offence or a serious criminal offence, number of requests for comparison, the number and type of cases which have ended in successful identifications and on the need and use made of the exceptional case of urgency as well as on those cases where that urgency was not accepted by the ex post verification carried out by the verifying authority. Such reports shall be transmitted to the Commission.
9. The Agency, Member States and Europol shall provide the Commission the information necessary to draft the evaluation reports referred to in paragraph 5. This information shall not jeopardise working methods nor include information that reveals sources, staff members or investigations of the designated authorities.

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↓ 2725/2000/EC (adapted)

⇒ new

Article ~~41~~ 25

**Penalties**<sup>106</sup>

Member States shall ~~take~~  take the necessary measures to ~~ensure~~  ensure that ~~any~~  any ~~processing use~~  ~~of data recorded~~  entered ~~in the~~  in the ~~central database~~  ~~Central System~~  ~~contrary to the purpose of Eurodac~~  ~~EURODAC~~ as laid down in Article 1(1)<sup>107</sup> ~~shall be~~  ~~subject to appropriate penalties~~  is punishable by penalties, including administrative and/or criminal penalties in accordance with national law, that are effective, proportionate and dissuasive ~~input checked="" type="checkbox"/>~~.

Article ~~42~~ 26

**Territorial scope**

The provisions of this Regulation shall not be applicable to any territory to which the Dublin ~~Convention~~  Regulation  does not apply.

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<sup>106</sup> **DE** suggested modifying the wording of the provision as follows: "The MS shall lay down the rules on penalties applicable to infringement of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive"; **DE** pointed out that the current wording penalises any use of data stored in the Central System that is contrary to the purpose of this database, which it considered it too broad and imprecise. **DE** stressed that it cannot agree with the obligation to punish (even with fines and administrative penalties) every infringement of the Regulation (principle of discretionary prosecution).

<sup>107</sup> **FI**: reference should be made also to Art. 1(2), in order to cover the entire scope of the proposal and be in line with the 2009 Commission proposal for a Council Decision on requesting comparisons with EURODAC data by MS law enforcement authorities. **Cion** will check it out.

*Article 43*

**Notification of designated authorities and verifying authorities<sup>108</sup>**

1. By [three months after the date of entry into force of this Regulation] at the latest each Member State shall notify the Commission of its designated authorities and shall notify without delay any amendment thereto.
2. By [three months after the date of entry into force of this Regulation] at the latest each Member State shall notify the Commission of its verifying authority and shall notify without delay any amendment thereto.
3. By [three months after the date of entry into force of this Regulation] at the latest Europol shall notify the Commission of its verifying authority and the National Access Point which it has designated and shall notify without delay any amendment thereto.
4. The Commission shall publish information referred to in paragraphs 1, 2 and 3 in the *Official Journal of the European Union* on an annual basis.

<sup>108</sup> SE suggested the following modifications to this Article (in relation to those it proposed for Arts 5 and 6):

1. "**Without prejudice to Art. 27(2), each MS shall at the latest... communicate to the Commission its designated authorities for the purpose of law enforcement access and shall communicate... any amendments thereto.**"
2. "**... each MS shall communicate to the Commission its ... for the purpose of law enforcement access and shall communicate... any amendments thereto.**"
3. "**... Europol shall communicate to the Commission its ... and shall communicate... any amendments thereto.**"

*Article 44*

**Transitional provision**

Data blocked in the Central System in accordance with Article 12 of Council Regulation (EC) No 2725/2000/EC shall be unblocked and marked in accordance with Article 18(1) of this Regulation on the date provided for in Article 46 of this Regulation.

*Article 45*

**Repeal**

Council Regulation (EC) No 2725/2000 of 11 December 2000 and Council Regulation (EC) No 407/2002 are repealed with effect from the date referred to in Article 46(2).

References to the repealed Regulations shall be read in accordance with the correlation table in Annex III.

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↓ 2725/2000/EC Article 27 (adapted)

⇒ new

Article ~~46~~ 27

**Entry into force and applicability**<sup>109</sup>

1. This Regulation shall enter into force on the ~~⊗~~ twentieth ~~⊗~~ day ~~⊗~~ following that ~~⊗~~ of its publication in the Official Journal of the European ~~Communities~~ ~~⊗~~ Union ~~⊗~~.
2. This Regulation shall apply ⇒ two years from the date of the entry into force of this Regulation. ⇐ ~~and Eurodac shall start operations, from the date which the Commission shall publish in the Official Journal of the European Communities, when the following conditions met:~~
  - ~~(a) each Member State has notified the Commission that it has made the necessary technical arrangements to transmit data to the Central Unit in accordance with the implementing rules adopted under Article 4(7) and to comply with the implementing rules adopted under Article 12(5); and~~
  - ~~(b) the Commission has made the necessary technical arrangements for the Central Unit to begin operations in accordance with the implementing rules adopted under Article 4(7) and Article 12(5).~~

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<sup>109</sup> **FI:** suggested providing for an earlier entry into force of this provision if all requirements are met before. **Cion:** the IT Agency has to be ready in order to have the necessary tests carried out.

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↓ new

3. Member States shall notify the Commission and the Agency as soon as they have made the technical arrangements to transmit data to the Central System, and in any event no later than two years from the date of the entry into force of this Regulation.
4. This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

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↓ 2725/2000/EC

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

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↓ 407/2002/EC

⇒ new

## ANNEX I

### **Data format for the exchange of fingerprint data**

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

~~ANSI/NIST-CSL-1-1993~~ ⇒ ANSI/NIST-ITL 1a-1997, Ver.3, June 2001 (INT-1) ⇐ and any future further developments of this standard.

### **Norm for Member State identification letters**

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

## Annex II

# EURODAC – Fingerprint form

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

105 mm from top of form  
195 mm from top of form  
205 mm from top of form

## ROLLED IMPRESSIONS

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

## PLAIN IMPRESSIONS

<b>LEFT HAND</b> Four fingers taken simultaneously 	<b>TWO THUMBS</b> Impressions taken simultaneously		<b>RIGHT HAND</b> Four fingers taken simultaneously 
	<b>LEFT</b>	<b>RIGHT</b>	





**ANNEX II**

**Repealed Regulations**  
**(referred to in Article 45)**

Council Regulation (EC) No 2725/2000/EC (OJ L 316, 15.12.2000, p. 1.)

Council Regulation (EC) No 407/2002/EC (OJ L 062, 05.03.2002 p. 1.)

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## ANNEX III

### Correlation table

<b>Regulation 2725/2000/EC</b>	<b>This Regulation</b>
Article 1(1)	Article 1(1)
Article 1(2), first subparagraph	Article 3(1)
Article 1(2), second subparagraph	Deleted
Article 1(2), third subparagraph	Article 3(4)
Article 1(3)	Article 1(3)
Article 2	Article 2
Article 3(1)	deleted
Article 3(2)	Article 3(3)
Article 3(3)	Article 8
Article 3(4)	Deleted
Article 4(1)	Article 9(1), 3(5)
Article 4(2)	Deleted
Article 4(3)	Article 9(3)
Article 4(4)	Article 9(4)
Article 4(5)	Article 9(5)
Article 4(6)	Article 25(4)
Article 5	Article 11
Article 6	Article 12

Article 7	Article 13
Article 8	Article 14
Article 9	Article 15
Article 10	Article 16
Article 11(1)-(4)	Article 17(1)-(4)
Article 11(5)	Deleted
Article 12	Article 18
Article 13	Article 23
Article 14	Deleted
Article 15	Article 27
Article 16	Article 28
Article 17	Article 37
Article 18	Article 29
Article 19	Article 30
Article 20	Deleted
Article 21	Article 39
Article 22	Deleted
Article 23	Deleted
Article 24	Article 40
Article 25	Article 24
Article 26	Article 42
Article 27	Article 46

**Regulation 407/2002/EC**

**This Regulation**

Article 2

Article 24

Article 3

Article 25

Article 4

Article 26

Article 5(1)

Article 3(3)

Annex I

Annex I

Annex II

Deleted

