



**COUNCIL OF  
THE EUROPEAN UNION**

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**Interinstitutional File:  
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**LIMITE**

**EURODAC 29  
CODEC 2296  
ENFOPOL 311**

**NOTE**

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from:: General Secretariat of the Council of the EU  
to:: Asylum Working Party

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No. Cion prop.: 10638/12 EURODAC 3 ENFOPOL 157 CODEC 1503

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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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Delegations will find attached a joint letter from the German, Finnish and Austrian delegations to the Chair of the Asylum Working Party.



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AZ ÖS 13-625 400 5/6

BETREFF **EURODAC - German, Austrian and Finnish position on Article 20 (1) of the draft  
EURODAC Regulation**

To the Chair,

As explained previously in the Asylum working group, the JHA-counselors meeting and in bilateral talks, Germany, Austria and Finland are very concerned about Article 20 (1) and the necessity of a Prüm query as prerequisite for access to EURODAC stated therein.

Germany, Austria and Finland see a strong need to clearly define in Article 20 (1) what is meant by comparisons that "return negative results" according to Council Decision 2008/615/JHA.

Requiring a prior Prüm comparison is seen critical, because Prüm queries require a great deal of technical and staff effort. At the same time, Germany, Austria and Finland accept the idea of EURODAC as last resort as expressed in the draft Regulation.

Germany, Austria and Finland therefore believe that a compromise is advisable: The prerequisite for access to EURODAC should not be a prior comprehensive Prüm query of all operational Member States. Rather, targeted Prüm queries should suffice where advisable in the specific case (for example a query in Italy and France, if the weapon comes from Italy and the perpetrator's vehicle is registered in France). Re-

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quiring a comprehensive search of Prüm databases in every Member State regardless of the circumstances of the individual case would create an unnecessary but major bureaucratic hurdle in practice and a burden on the limited capacity for Prüm searches.

In view of the complexity of the procedure, a mandatory Prüm search in all accessible Member States would create an additional, avoidable burden that would likely exceed current staff and technical capacities: The search capacities in the Prüm procedure are limited. Further, such "broadcasting" requires a great deal of effort for the (manual) verification of possible matches. Overall, there is a danger that the technical and personnel limits to Prüm searches already apparent today would impact on EURODAC, and that the increase in the number of Prüm searches likely to result from Article 20 (1) would have a negative impact on Prüm searches conducted independently of EURODAC under Council Decision 2008/615/JHA. Because the fingerprint data of persons fingerprinted and photographed in accordance with asylum law – if they have not committed any crimes in the relevant Member State in the meantime – are often not stored in the national police AFIS of the Member States, which are accessible via the Prüm procedure, and because numerous Member States do not allow access via the Prüm procedure to fingerprint data stored under asylum law, Prüm searches required in Article 20 (1) would as a rule return negative results. They would nonetheless tie up limited resources in the Prüm procedure.

We therefore ask that Article 20 (1) should make clear that a targeted Prüm search conducted on the basis of information already gathered in the specific case is sufficient as a prerequisite for access to EURODAC data, and that it is not necessary to request comparisons of all national fingerprint databases and all automated fingerprint databases of all Member States having operational status, if this is viewless.

Article 20 (1) should thus be amended as follows:

"In individual cases, the comparison of fingerprint data according to decision 2008/615/JI with one Member State may suffice, if comparisons with further Member States would evidently be without success."

Only in case that this amendment does not find (enough) support, Germany, Austria and Finland could agree to a clarifying amendment of recital 26 (after: "...did not lead to the establishment of the identity of the data subject.") as follows:

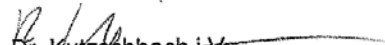
"This condition requires the Member State to conduct all necessary and technically available comparisons with the Automated Fingerprint Databases of other Member States under the Council Decision. The comparison with the reference data in the Automated Fingerprint Database of more than one Member State is



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only necessary insofar as there are reasonable grounds to consider that the comparison will contribute to the prevention, detection or investigation of any of the criminal offences in question."

Yours sincerely

  
Dr. Kutzschbach i.V.