

Asylum: Eurodac system for the comparison of fingerprints of third-country nationals or stateless applicants; requests for comparison with Eurodac data. Recast

2008/0242(COD) - 11/10/2010 - Modified legislative proposal

This proposal seeks to put forward an amended proposal for a Regulation of the European Parliament and of the Council on the recast of the EURODAC system for the comparison of fingerprint for the effective application of the so-called “Dublin Regulation”.

Background: in December 2008, the Commission adopted a proposal to recast Regulation (EC) No 2725/2000 which was designed to ensure a more efficient support to the application of the Dublin Regulation and to properly address data protection concerns. It also aligned the IT management framework to that of the SIS II and VIS Regulations by providing for the taking over of the tasks of the operational management for EURODAC by the future Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (i.e. the IT Agency). For further details of the content of the initial proposal, please refer to the summary dated 03/12/2008.

The European parliament was consulted on this proposal and the Commission presented, in September 2009, a first amended proposal in order, on the one hand, take into account the resolution of the European Parliament and the results of negotiations in the Council, and, on the other hand, introduce the possibility for Member States' law enforcement authorities and Europol to access the EURODAC central database for the purposes of prevention, detection and investigation of terrorist offences and other serious criminal offences. In particular, that proposal introduced a bridging clause to allow access for law enforcement purposes as well as the necessary accompanying provisions. It was presented at the same time as the [proposal for a Council Decision](#) on requesting comparisons with EURODAC data by Member States' law enforcement authorities and Europol for law enforcement purposes, spelling out the exact modalities of such access.

The European Parliament did not issue a legislative resolution on either the first amended proposal for the recast of the EURODAC Regulation or on the proposal for a Council Decision outlined above. With the entry into force of the Treaty on the Functioning of the European Union (TFEU) and the abolition of the pillar system, the proposal for a Council Decision lapsed and therefore needed to be replaced with a new proposal to take account of the new framework of the TFEU.

However, with a view to progressing on the negotiations on the asylum package and facilitating the conclusion of an agreement on the EURODAC Regulation, the **Commission considers it more appropriate at this stage to withdraw from the EURODAC Regulation those provisions referring to the access for law enforcement purposes**. Enabling the swifter adoption of the new EURODAC Regulation will also facilitate the timely set up of the IT Agency which will also be responsible for the management of EURODAC.

As a result, the Commission is presenting a second amended proposal on which Parliament is to be consulted.

LEGAL BASE: Article 78 point (2)(e) of the Treaty on the Functioning of the European Union (TFEU) which is the TFEU provision that corresponds with the legal base of the initial proposal (Art 63, point 1) under the Treaty establishing the European Community..

CONTENT: the amended proposal amends the original amended proposal of the proposal for the recast of the EURODAC Regulation.

While the present amended proposal introduces two technical provisions, its main purpose is to amend the previous proposal (i.e. from September 2009) by deleting from it the option of access for law enforcement purposes.

Territorial measures: Title V of the TFEU is not applicable in the UK or in Ireland, unless these two countries decide otherwise, in accordance with the provisions of the Protocol on the position of the UK and Ireland annexed to the Treaty on the European Union (TEU) and the TFEU. The UK and Ireland are bound by Council Regulation (EC) No 2725/2000 following their notice of their wish to take part in the adoption and application of that Regulation. The position of these Member States with regard to the current Regulation does not affect their possible participation with regard to the amended Regulation.

On the other hand, Denmark is not participating in the adoption of this Regulation and is therefore neither bound by it nor subject to its application. This country, however, is required to notify the Commission of its decision whether or not to implement the content of the amended Regulation, given that it already applies the Dublin Regulation.

FINANCIAL IMPACT: this proposal has important savings on the budgetary planning compared to the previous proposal, which provided for the possibility to carry out comparisons for law enforcement purposes. This proposal retains from the 2009 proposal the improvements of the system as regards new, asylum-focused functionalities regarding information on the status of the data subject (which were the outcome of negotiations in the Council) and, at the same time, deletes the functionality of law enforcement searches.

The cost estimate of **EUR 230 000** replaces the EUR 2 415 000 asked for in the 2009 proposal.

The cost estimate of EUR 230.000 consists of IT-related services, software and hardware and would cover the customisations required to the EURODAC central system.