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COMMISSION OF THE EUROPEAN COMMUNITIES

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ANNEXE

2008/0242 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EC) 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]

(Recast version)

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{SEC(2008) 2982}

DETAILED EXPLANATION OF THE PROPOSAL

Article 1

For the sake of clarity, provisions of paragraph 1 dealing with the structure of the system are shifted to Article 3 ("System infrastructure") which groups together the provisions previously dispersed regarding the infrastructure of the system. Furthermore, "Dublin Convention" is replaced by "Dublin Regulation" (this change is introduced in all relevant articles of the proposal).

Article 2

The definitions are updated to reflect the terminology of 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. "Applicant for asylum" is replaced by "applicant for international protection", "Central Unit" is replaced by "Central System" (see explanation at Article 3) and "aliens" is replaced by "third country nationals or stateless persons"; these terminology changes are introduced in all relevant articles of the proposal.

Article 3

This new Article 3 ("System architecture and basic principles") contains the description of the elements of the system. The aim of this change is to reflect the difference between the technical platform ensuring data flows and performing automated actions (ie. the Central System) and the personnel (Management Authority or Commission). In Council Regulation 2725/2000/EC, the term "Central Unit" was used to mean both of the above.

Horizontal rules on fingerprinting are also grouped in this Article from Article 4.

Article 4

This new Article 4 provides for a Management Authority, which will be in charge of the operational management of the Central System and the Communication Infrastructure. This also allows for a policy choice at the Community level to entrust the operational management of IT systems in the field of Justice, Freedom and Security to a dedicated, independent body that would guarantee the availability of adequate resources and professional expertise, while at the same time benefitting from considerable synergies. Until such a body is established, the Commission takes up the role of the Management Authority.

Article 5

Previously part of Article 3 ("Central Unit"), it is renamed "Statistics", as the remaining part of the amended article concern only statistics. The frequency of the production of statistics is changed from "quarterly" to "monthly" (to reflect current practice).

Article 6

This Article is based on the wording of the previous Article 4. It provides for a more specific deadline for the taking and sending of fingerprints by Member States to the Central System ("no later than within 48 hours"), in order to ensure the accuracy of hits and therefore facilitate the just determination of the responsible Member State.

A paragraph is added regulating the practice of fingerprinting upon take back, in order to avoid the distortion of the statistics on multiple applications: instead of taking and transmitting again the fingerprints of the applicant upon arrival after a transfer under the Dublin Regulation, falsely indicating that the applicant applied again for asylum, Member

States are required to indicate only the fact of the arrival. This will also allow for the monitoring of successful transfers.

Article 7

This Article is based on the wording of the previous Article 5. It amends the order of the enumeration of data to be transmitted (for the sake of easier reference in Article 6), excludes the data not sent in practice for reasons related to the evolution of the technical platform and includes the data necessary for the better identification of the personnel having access to the data (ie. operator user ID).

Article 8

This Article is based on the wording of the previous Article 6. It includes adjustments of terminology.

Article 9

This Article is based on the wording of the previous Article 7. A paragraph is added in order to ensure better management of advance data erasure by informing other Member States of origin (in the terminology of the Regulation, ie. Member State which entered data into EURODAC) that one of them deleted data on a person whose fingerprints they also entered in the database (deletion by the Central Unit is not possible according to the Regulation, since the data handled in EURODAC is the property of the Member States.)

Article 10

This Article is based on the wording of the previous Article 8, but, in conformity with Article 6, provides for a more specific deadline for the taking and sending of fingerprints by Member States to the Central System ("no later than within 48 hours"), in order to ensure the accuracy of hits and therefore facilitate the just determination of the responsible Member State.

It amends the order of the enumeration of data to be transmitted, excludes the data not sent in practice for reasons related to the evolution of the technical platform and includes the data necessary for the better identification of the personnel having access to the data (ie. operator user ID).

Article 11

This Article is based on the wording of the previous Article 9. It includes adjustments of terminology.

Article 12

This Article is based on the wording of the previous Article 10. It is proposed that data relating to a third country national or stateless person apprehended in connection with the irregular crossing of an external border be stored in EURODAC for one year instead of the two years provided for by the current Regulation. The reason for this change is that after one year of storage, the data loses its relevance for the purpose of the facilitation of the Dublin Regulation, since according to Article 10(1) of that Regulation, take charge responsibility ceases 12 months after the date on which the irregular border crossing took place.

Two paragraphs are added in order to ensure better management of advance data erasure by informing other Member States of origin that one of them deleted data on a person whose fingerprints they also entered in the database.

Article 13

This Article is based on the wording of the previous Article 11. Its paragraph 2 is amended and its 5 is repealed according to current practice of managing fingerprints.

Article 14

This Article is based on the wording of the previous Article 12, according to which Member States have to request the Central Unit to block the data of persons who are recognised as refugees. (If a hit occurs against data of a person who was fingerprinted as an asylum seeker but whose data was later on blocked by a MS because it recognised her/him as a refugee, the Central Unit records the hit for statistical purposes but sends a "no-hit" reply to the Member State of origin.) The Regulation in force stipulates however, that five years after EURODAC starts operations, a decision would 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 be stored and compared against CAT1 or should be erased in advance once they were recognised as refugees.

Statistics gathered by the EURODAC CU reveal that some recognised refugees do apply again for asylum. This phenomenon goes against the underlying principles of the Dublin system, since without being able to see the hits against the presently blocked cases, a new asylum procedure might start in another (or indeed the same) MS consuming additional resources concerning a person who has already received protection from a MS. The information that MS can obtain with the unblocking of these cases can of course be decisive in an asylum procedure.

The Article is therefore amended (and renamed "Marking of data") in order to reflect the policy choice that was made answering the call of the Regulation itself, ie. that data on persons granted international protection will become searchable. Therefore Member States will receive the information in case the applicant they fingerprinted is in fact already enjoying international protection in an EU Member State.

Article 15

This Article is based on the wording of the previous Article 13. The reference to the implementing rules is repealed. The "the independent supervisory body which will be established under Article 286(2) of the Treaty" is replaced by "the European Data Protection Supervisor".

Article 16

This new Article 16 is inserted from the repealed Implementing Regulation (ex-Article 2, "Transmission") and modified as to reflect the new management structure (Central System, Management Authority).

Article 17

This new Article 17 is inserted from the repealed Implementing Regulation (ex-Article 3, "Carrying out comparisons and transmitting results") and modified as to reflect the new management structure (Central System, Management Authority).

A paragraph was added on the management of the assumption of responsibility on the basis of Article 17 ('Discretionary clauses') of the Dublin Regulation.

Article 18

This new Article 18 is inserted from the repealed Implementing Regulation (ex-Article 4, "Communication between Member States and the Central System") and modified as to reflect the new management structure (Central System) and the new applicable transmission infrastructure (IDABC).

Article 19

This new article replaces the one on Security in the EUODAC Regulation, based on the similar article of the VIS and SIS Regulations. It reflects the new management structure (Central System, Management Authority).

Article 20

This Article is based on the wording of the previous Article 15. Specification of the exact unit responsible via the designation of responsible national authorities, reference to the link with the purpose of the Regulation, as well as the requirement of publication of the list of authorities in the Official Journal, were added. Paragraph 3 is deleted due to the fact that the initially foreseen option of sending data to the Central Unit by means other than digital transmission is now obsolete.

Article 21

This Article is based on the wording of the previous Article 16 and is amended based on the similar article of the VIS and SIS Regulations, introducing a longer retention period for the archives of the system and obligation for Member States to take similar measures for data protection on the national level than those required from the Central System. It is renamed "Keeping of records by the Central System". The previous Article 22 ("implementing rules") is repealed.

Article 22

This Article is based on the wording of the previous Article 17. The previous Article 23 ("Committee") is repealed.

Article 23

This Article is based on the wording of the previous Article 18. The rules on providing information to the data subject are specified and linked to the obligation to provide information as stipulated by the Dublin Regulation. "Joint supervisory authority set up by Article 20" is replaced by "European Data Protection Supervisor" (this change is introduced in all relevant articles of the proposal).

According to EU data protection legislation, namely Directive 95/46/EC, Article 18(2) any data subject, in each Member State, shall have the right to obtain communication of the data relating to him/her recorded in the central database. Access to such data can only be given by a Member State, upon the request of the data subject. The annual reports on the activities of the Central Unit of EUODAC noted that there were a large number of such 'special searches' being made without the national supervisory authorities being able to confirm that these were indeed cases in which persons requested access to their own data. To avoid this phenomenon, the proposal requires Member States to keep requests from data subjects in the form of a written document for the purposes of data protection supervision.

Article 24

This Article is based on the wording of the previous Article 19.

Article 25

This new Article ("Supervision by the European Data Protection Supervisor") takes note of the creation of the EDPS since the adoption of the EUODAC Regulation. It is in conformity with Article 42 of the VIS Regulation.

Article 26

This new article is inspired by Article 43 of the VIS Regulation.

Article 27

This Article is based on the wording of the previous Article 21 and includes adjustments of terminology.

Article 28

This Article is based on the wording of the previous Article 24 and includes adjustments of terminology. The tasks of the Management Authority and the Commission regarding monitoring and reporting are spelled out.

Article 29

This Article is based on the wording of the previously Article 25 and includes adjustments of terminology.

Article 30

This Article is based on the wording of the previous Article 26 and includes adjustments of terminology.

Article 31

This new article provides for the marking of previously blocked data as a transitional provision.

Article 32

This new Article provides for the repeal of Council Regulation 2725/200/EC and of the implementing Council Regulation 407/2002/EC.

Article 33

This Article is based on the wording of the previous Article 27 and includes adjustments of terminology. It also sets a 12-month time limit (after the entry into force of the new Regulation) for Member States to comply with the new technical requirements of EURODAC based on the new Regulation. The reference to the Implementing Regulation is repealed.

Annex I

This new annex is inserted from the repealed Implementing Regulation ("Annex I – Data format for the exchange of fingerprint data").