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Accompanying the

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]

Summary of the Impact Assessment

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1. INTRODUCTION

The Dublin Regulation (Council Regulation 343/2003/EC of 18 February 2003) aims at establishing a clear and workable mechanism for determining responsibility for asylum applications lodged in the EU MS and, in an area without controls at the internal borders. It was conceived to address the phenomenon of **asylum shopping**, by preventing abuse of asylum procedures in the form of multiple applications for asylum submitted simultaneously or successively by the same person in several Member States. It also aims to avoid the phenomenon of **refugees in orbit** (ie. a situation where all MS claim *not* being responsible for examining an asylum application).

Thus, Council Regulation 2725/2000/EC of 11 December 2000 for the establishment of 'EURODAC' (hereinafter: EURODAC Regulation) came into force on 15 December 2000 and the Community-wide information technology system for the comparison of the fingerprints of asylum seekers, started operations on 15 January 2003.

The Dublin *acquis* is implemented by all MSs of the EU, as well as by Norway and Iceland. International agreements on the accession of Switzerland and Liechtenstein to the Dublin *acquis* were signed on 28 February 2008, and will enter into force as soon as they start applying the Schengen *acquis*. (In the present IA, the term "Member States" is used to cover all states applying the Dublin *acquis*.)

The Commission services conducted a comprehensive evaluation of the Dublin system (hereinafter: Evaluation Report), covering the first 3 years of its operation of the EURODAC central system (2003-2005). The report has acknowledged the positive elements of the operation of the Dublin system, while at the same time has pointed out shortcomings and problems in transposition.

Beyond the Evaluation Report, a number of other reports fed into the IA. A technical evaluation of DubliNet was carried out in 2005. The European Data Protection Supervisor (hereinafter: EDPS) has been inspecting the application of the EURODAC Regulation from a data protection point of view and issued an inspection report in July 2007¹ as well as an Activity Report covering the period 2005-2007.² Additional input was received from Member States during and as a follow up to the meeting of the EURODAC expert committee 4-5 October 2007.

The Commission's Impact Assessment Board (IAB) was consulted on the draft final Impact Assessment report and issued its opinion on 26.09.2008. The recommendations of the IAB were duly taken into account.

¹ Eurodac Supervision Coordination Group, Report of the first coordinated inspection, Brussels, 17 July 2007.

² Coordinated Supervision of Eurodac – Activity Report 2005-2007, 21 April 2008.

2. PROBLEM DEFINITION

In accordance with the *Policy Plan on Asylum – an integrated approach to protection across the EU*³ the present Impact Assessment (IA) deals with the following problems identified in the Evaluation Report.

2.1. Continuing late transmission of fingerprints

The Regulation in force only provides a very vague deadline for the transmission of fingerprints to the CU: MS are required to "promptly take the fingerprints" and "promptly transmit them". In practice, in the absence of a strict deadline, and without any sanction as to the non-respect of the already vague deadline, delay of fingerprints reached 30 days in some MSs in the past, while in 2007 the longest delay was almost 12 days. In some Member States, little progress has been observed since the installation of EURODAC, despite regular reminders by the Commission services through the annual activity reports and the meetings of the EURODAC expert committee. A delay in transmissions may lead to results contrary to the responsibility principles laid down in the Dublin Regulation ("wrong hits" and "missed hits", explained in the annual reports on the activities of the EURODAC Central Unit).

2.2. Impossibility to filter asylum claims by persons already enjoying international protection in a MS

Under the Regulation in force, 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 since the start of its activities (until 31.12.2007), 24.464 out of 1.005.323 data of asylum seekers (2,4%) was blocked. 414 out of the 24.464 have produced hits with blocked data. This means that 414 recognised refugees lodged a second asylum application, in the same Member State as the one which granted the refugee status or in another Member State.⁴ 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.

³ COM(2008) 360.

⁴ From the point of view of the asylum-seeker or refugee, asylum shopping could in theory have the advantage of multiplying his/her chances of getting a certain level of protection. It has to be underlined though, that nevertheless, moving from one Member State to another entails financial costs for the asylum-seeker, as well as distress and uncertainty. The actual deterring effect of the Dublin system from asylum shopping is largely dependent on the quality and level of information asylum-seekers are provided with.

2.3. Inefficient management of deletions of data

Under the Regulation in force, deletion of data is automatic from the database after 10 (CAT1) or 2 years (CAT2) respectively. *Advance erasure* of data by the Member State of origin (i.e. the Member State which entered the data of an asylum seeker or of a person apprehended when irregularly crossing an external border in the EURODAC Central database) is obligatory as soon as they become aware that a data subject has *acquired citizenship* of any Member State (both CAT1 and CAT2) and as soon as they become aware that the person has *left the territory* of the Member States or that he/she has been issued a *residence permit* (CAT2).

Another concern relates to the fact that Member States of origin are *often not aware that another MS of origin deleted data* which corresponded to the fingerprint data it also entered into EURODAC at some point, and therefore should be subject to advance data erasure by all MSs of origin. This is a serious breach of data protection principles, which require data to be deleted when their storage is no longer necessary, and raises doubts about the compliance of MSs with data protection obligations.

2.4. Unclear specification of national authorities having access to EURODAC which hinders the monitoring role of the Commission and the EDPS

The EURODAC Regulation requests that Member States communicate to the Commission the **list of authorities having access to data recorded in the EURODAC central database**, for the purposes laid down in the EURODAC Regulation. From a data protection point of view, the relevant provisions in force can be considered too vague, since Member States may communicate an indefinite list of "authorities" without any detail on the exact nature of the authority's national competences and on the relevant departments. The Commission can only take note of the notifications and administer the list of authorities but cannot properly exercise its monitoring role.

This issue was raised on several occasions by the EDPS and national data protection authorities (DPAs) which rightly fear they cannot correctly assess whether all data protection rules are correctly applied in the context of the EURODAC Regulation, as they do not know who exactly is accessing data in each Member State.

3. POLICY OBJECTIVES

3.1. General objectives

3.1.1. *Enabling more efficient determination of the Member State responsible for the assessment of asylum applications*

3.1.2. *Better addressing data protection concerns*

3.2. Specific objectives

3.2.1. *Ensuring truly prompt transmission of fingerprints*

3.2.2. *To prevent asylum shopping by avoiding processing of asylum claims of refugees*

3.2.3. *Improving the compulsory deletion of data*

3.2.4. *Enabling effective monitoring by the Commission, the EDPS and national data protection authorities of management of access to data in EURODAC by national authorities designated for the implementation of the EURODAC Regulation*

3.3. Fundamental rights

Positive and negative impacts on relevant fundamental rights have also been considered.

The EURODAC Regulation being a technical instrument providing for the effective implementation of some criteria of the Dublin Regulation, impacts on fundamental rights have been assessed as regards the right to asylum and protection of personal data.

4. THE PREFERRED POLICY OPTION

Given the level of complexity of the proposed policy sub-options, this summary is limited to an enumeration of the main elements composing the preferred policy option. The preferred policy option is made both of **legislative options** and of options focused on **fostering practical cooperation** between Member States.

4.1. Problem 1: Continuing late transmission of fingerprints

Option C) Legislation – specifying a clearer deadline in the Regulation

Drawing upon the consultation of MSs in the framework of the EURODAC expert committee on 4-5 October 2007, the possible solution could be to keep the time-limit somewhat flexible but at the same time strike an end date. Proposing a wording referring to the obligation to send data as soon as possible, but not later than a certain number of days (the exact number of which is to be determined) could accommodate the need to find a final deadline but at the same time ensure that MSs which are currently sending data in a shorter period than the number of days which would be agreed upon as a deadline would still keep up their good performances.

4.2. Problem 2: Impossibility to filter asylum claims by persons already enjoying international protection in a MS

Option Bb) Store and attribute a mark to data previously submitted as CAT1

Upon action of the MS having granted international protection to a third country national whose data has been stored in EURODAC as a CAT1, the CU could attribute a mark meaning that the person was recognised as eligible for international protection.

4.3. Problem 3: Inefficient management of deletions of data

Option C) Automated information provided by the CU

When a MS deletes fingerprints (along with the other data recorded with it) which produce hits with the fingerprints that were introduced to EURODAC by the other MSs of origin, an automated message could be sent to these latter MSs.

4.4. Problem 4: Unclear specification of national authorities having access to EURODAC which hinders the monitoring role of the Commission and the EDPS

Option A) Legislation on obligation to notify relevant details on the designated authority to the Commission

Legislation granting the Commission the chance to monitor the designation of authorities by requiring MSs to provide in their official notification details on the exact nature of the authority's national competences and on the relevant departments within the authority which deal with the application of the EURODAC Regulations.

A combination of **policy options 1C, 2Bb, 3C, 4A** has been identified as the preferred policy option through the comparative analysis.

Preferred option: combination of policy options 1C, 2Bb, 3C and 4A		
Assessment Criteria	Rating	Motivation of the rating and aspects of the policy option necessary to achieve the impact
Relevance		
<i>Ensuring truly prompt transmission of fingerprints</i>	√√	With a precise deadline established by the Regulation, MSs shall better conform to their obligations to take and transmit fingerprints in time in order to allow appropriate determination of the MS responsible. Since the deadline would be clear and objective, the Commission would have the possibility to follow-up on eventual mass delays by MS by launching infringement procedures.
<i>To prevent asylum shopping by avoiding processing of asylum claims of refugees</i>	√√	Knowing that a person is already enjoying international protection in a MS is decisive for national asylum authorities, which can therefore spare time and resources on the assessment of these claims. .

Preferred option: combination of policy options 1C, 2Bb, 3C and 4A		
Assessment Criteria	Rating	Motivation of the rating and aspects of the policy option necessary to achieve the impact
<i>Improving the compulsory deletion of data</i>	√√√	When a MS deletes fingerprints (along with the other data recorded with it) which produce hits with the fingerprints that were introduced to EURODAC by the other MSs of origin, an automated message would be sent to these latter MSs. This way it is expected to ensure that the data to be deleted is effectively deleted by MSs, therefore no data would be kept longer in the database than justified.
<i>Enabling effective monitoring by the Commission, the EDPS and national data protection authorities of management of access to data in EURODAC by national authorities designated for the implementation of the EURODAC Regulation</i>	√√√	Specification by MSs in their official notification of the details on the exact nature of the authority's national competences and of the relevant departments within the authority which deals with the application of the EURODAC Regulations would enable proper monitoring of MSs activities concerning EURODAC.
Transposition feasibility		
- Under existing treaty	√√√	No difficulties or risks are foreseen regarding the combination of the preferred suboptions.
- Under new treaty	√√√	No difficulties or risks are foreseen regarding the combination of the preferred suboptions.
Implementation costs	√√√	C.f. Annex 2.

5. MONITORING AND EVALUATION

The monitoring of the fulfilment of operational objectives as described in 3.3.1. (avoiding "wrong hits" and "missed hits"), 3.3.2. (ensuring that asylum applications of refugees are not processed) and 3.3.3. (ensuring deletion of data in circumstances foreseen by the current EURODAC Regulation) is to be performed by the statistics drawn up by the EURODAC CU. Concerning the first two points, relevant statistics are already being produced at present as a well-established practice, every month. Concerning 3.3.3., the preferred solution consists of action by the CU, therefore monitoring of the automated provision of information will be equally unproblematic.

The fulfilment of operational objective 3.3.4. (enabling the Commission and EDPS to know who exactly is accessing data in each Member State) will be regularly monitored by the Commission.

Moreover, in order to monitor if the revised Regulation is effectively followed by Member States, regular evaluation within the framework of the overall assessment of the Dublin system is suggested. With a view to enhance the effects of the combination of the preferred suboptions, organisation of further regular EURODAC expert meetings are foreseen.