Council of the European Union

Brussels, 28 March 2023
(OR. en)

7619/23

Interinstitutional File:
2016/0132(COD)

LIMITE

ASILE 31
ENFOPOL 119
EURODAC 5
IXIM 56
CODEC 425

COVER NOTE

From:	General Secretariat of the Council
To:	JHA Counsellors (Asylum)
No. prev. doc.:	WK 3169/2/23 REV 2
Subject:	Amended proposal for a Regulation of the European Parliament and of the Council on the establishment of 'Eurodac' for the comparison of biometric data for the effective application of Regulation (EU) XXX/XXX [Regulation on Asylum and Migration Management] and of Regulation (EU) XXX/XXX [Resettlement Regulation], for identifying an illegally staying third-country national or stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes and amending Regulations (EU) 2018/1240 and (EU) 2019/818 - compilation of replies by Member States

Following the meeting of the JHA Counsellors on 13 March 2023 and the subsequent request for written contribution on the above-mentioned proposal (CM 2087/23), delegations will find in Annex a compilation of the comments by Member States.

ANNEX

Written replies submitted by the Member States

Amended proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the establishment of 'Eurodac' for the comparison of biometric data for the effective application of Regulation (EU) XXX/XXX [*Regulation on Asylum and Migration Management*] and of Regulation (EU) XXX/XXX [*Resettlement Regulation*], for identifying an illegally staying third- country national or stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes and amending Regulations (EU) 2018/1240 and (EU) 2019/818 –

AUSTRIA

- The text in line 57 can be accepted. However we do not see a real added value in listing fundamental rights in Art. 1. A Recital would be a better place for such statements.

- The deletion of the access of the EUAA to EURODAC data in Art. 8ca is not welcomed but can be accepted as a compromise.

- Art. 10 Par 4a and 4b should remain in the text for clarity reasons. Transferring the provisions to the Recitals could be accepted, as proposed.

- On the protection of minors we would like to uphold the Council text. Without questions the best interest of the child should always be a prime consideration. However in the framework of EURODAC we just talk about the taking of fingerprint. It is very unlikely that the taking of fingerprints will have a negative impact on the minor.

BULGARIA

Line 58, Art 1 (2b)

We confirm our position of flexibility on the text proposed by the EP. The principle of benefit of the doubt is applicable in the current practice regarding minors. In this context, it should also apply to minors under the age of six years.

Line 59, Art. 1 (2c)

We can be flexible on the EP proposal. In order for the principle of the best interests of the child to be applied, it is appropriate for law enforcement authorities to have access to the data of persons under the age of 14 only in cases where serious offences are involved. The grounds for access should also include *'threat to the national security of an EU Member State'*. The contentious element in the text is the wording "*additional evidence*", i.e. more clarity is needed on the content of the evidence to be provided. The wording "*additional evidence*" is rather general. Another open question is the lack of clarity on the procedure, respectively the institution which will assess the additional evidence and its applicability.

Line 60, Art. 2d

Regarding the EP proposal to include a text that regulates the prohibition of detention of minors, Article 1 (2d), we maintain our position that the Eurodac Regulation is not the appropriate legal instrument to regulate this issue. The legal framework on detention in the framework of the international protection procedure is already in place in the Reception Conditions Directive.

Regarding **law enforcement authorities access to the Eurodac system**, we consider that we should stick as closely as possible to the Council's position in the negotiations with the EP. Accordingly, we support a simplified procedure for law enforcement authorities to access the Eurodac system.

Concerning the text on the **access of national asylum institutions to the Entry-Exit system**, we can support the text from 2017 as provided in document 10113/1/17 REV 1, as a compromise.

On the fundamental rights provisions, Article 1(2a), line 57; line 91, Article 5(1), we support the texts which the Council and the EP have agreed.

Regarding the texts agreed by the co-legislators on system architecture and interoperability, we have scrutiny reservation. We will provide an opinion once the necessary analysis has been carried out.

CROATIA

Line 58 - Purpose of "Eurodac"- paragraph 1, point 2b –

we support the best interest of the child, but we think that the wording is rather awkward, and it could result in the abuse of the entire system if each person who just claims to be a child and who does not have the documents to prove it, would be treated as a child. We would like to point out that the purpose of this Regulation is registration and identification of persons and we believe that, when it comes to children, this is always in their best interest (e.g. finding an unaccompanied child later on).

What we find unacceptable is the wording in the second sentence: "**person who declares that he or she is a child".** We believe that the word "child" is used here very generally since it covers all persons/children between the ages of 0 and 18. We are of the opinion that the focus here is not on the person that is making the declaration or the actual declaration that they are a child but rather on whether they are a child that is 6 years old or younger. We would therefore find it acceptable if this provision were adjusted accordingly in the second and third sentence.

The wording "**person who declares that he or she is a child"** could be interpreted to mean that even persons who are e.g. 22 years old can claim that they are children and would be treated as such regardless of whether they have documents to prove it.

Line 59, conditions for law enforcement access to data of minors –

we believe that the Council position should be maintained in order to ensure efficient protection of children. We are sceptical as regards the following wording: "**where there is additional evidence**" since it is not clear how this will be implemented in practice and there is a risk that it would significantly limit the area of implementation.

Line 60 - prohibition of detention of minors –

we still consider this provision to be redundant in this Regulation since detention is regulated by the Reception Conditions Directive (RCD).

We think that practice has shown it is important to keep the possibility of detention of minors during the international protection procedure if the conditions for detention are met, in line with RCD. The practice shows that there is a large number of individuals for whom it will be difficult to assess their age without the relevant documents. When we talk about age, we also need to keep in mind the fact that it is impossible to establish someone's age with 100% certainty. We can only assume whether the person in question is a minor or an adult. As we mentioned earlier, it is difficult to accurately assess whether a person is an adult when they are e.g. 17.5 years old which implies that ultimately, in practice, most cases will require the benefit of the doubt. Accordingly, we are concerned that this would become a pull factor and result in the abuse of the system by adults who would claim that they are minors in order to avoid detention and thus enter more quickly into the territory of MS.

Line 122 –

we cannot accept the EP proposal on the reintroduction of the cascade principle as a condition for law enforcement authorities to access Eurodac data. We believe that direct access to Eurodac is an added value in the new Eurodac Regulation, especially in the context of interoperability.

As regards the access to the Entry/Exit system, Croatia believes that it is necessary to ensure direct access to EES for asylum authorities in order to reduce administrative burden, accelerate the asylum procedure and increase efficiency, but in the spirit of compromise we can support the compromise text on the EES agreed upon in the Council (doc.10113/1/17).

THE CZECH REPUBLIC

Line 50

We agree with amendments presented.

Line 57

We consider this recital as redundant with no added value. It could lead to misunderstandings. We would prefer to delete the sentence, where grounds are mentioned.

Line 60

The CZ is strictly against provision relating to detention of minors to be set up in EURODAC regulation.

Line 83

We agree with amendments presented.

Line 84

We would appreciate the clarification of this provision, in which the concrete data should be expressively mentioned. Scrutiny reservation

Line 89

We agree with amendments presented.

Line 97

We agree with amendments presented

Line 212 and 230

Scrutiny reservation. We are not sure whether *central system and CIR* is the same as *Eurodac,* however we understand that the CIR is perceived as a part of Eurodac, it is also part of other systems, we are not sure if this does not negatively affect interoperability.

Cascade approach

The CZ does not support this cascade principle. The system EURODAC should be completely the part of interoperability, therefore there is no reason for this principle.

Access of asylum authorities to EES

The CZ is of the opinion that the competent asylum and dublin authority should have an access to EES to verify the information whether the person has left the territory of MS. This reason is relevant for examination of responsibility of the MS and also could be relevant for consideration of asylum application where grounds for granting international protections are met.

DENMARK

1. Protection of minors

DK suggest to delete the sentence below (in strikethrough) from line 58 as we don't find it suitable for the specific situation. The proposal suggests that a person who declares to be a minor must be treated as a minor if it is possible that the person in question may be a minor. We find that it is in the best interest of the child to establish the right age and record biometrics, including for the child's own safety to track the child's movements, which can, among other situations, be useful in relation to possible trafficking in human beings.

2 b. *The best interests of the child shall be a primary consideration in the application of this Regulation. That includes implementing the relevant provisions and child rights safeguards when applying this Regulation to a person who declares that he or she is a child or, depending on the case, a person regarding whom there are reasons to believe that he or she is 24 a child and for whom no supporting proof of age is available. In the event of uncertainty in relation to the age of a child, the authorities shall accord to that person the benefit of the doubt.* ~~*That means that if it is possible that that person is under 6 years old, the authorities shall treat that person as such.*~~

As background we note that when the Danish Institute of Forensic Medicine (RI) conducts age investigations, they will indicate an age or an age range of the most likely age, e.g. that the foreigner is most likely to be 18-20 years old. In addition to this, the RI will indicate 2-3 standard deviations (uncertainty). According to the medical examination, the foreigner can thus be 17 years old (approx. 17%), 16 years old (approx. 2.5%), or 15 years old (approx. 0.5%).

If the foreign national has stated his age to be less than 1 year from the most likely age, the Danish Immigration Service will not change the age (with reference to the benefit of the doubt principle). The Danish Immigration Service will, however, change the age if the alien's alleged age differs by more than 1 year from the most probable age - provided that there is no other information in the case that documents or makes the age probable.

2. **Amendments to the Entry/Exit System (lines 509-530) as well as the possible compromise of 2017**

It is Denmark's assessment that these proposed amendments to the EES Regulation constitute a solution to the Danish concerns about the access of the Asylum Authorities (first instance) to the EES-system. Therefore, Denmark fully supports the amendment.

Denmark cannot support the proposed compromise from 2017, as this will not give the Asylum Authorities the correctly and needed access to the EES-system.

The lack of access for the Asylum Authorities to the EES-system is challenging for a number of different reasons. The Asylum Authorities needs to have access to the system to check the identity of individuals which apply for asylum. The Asylum Authorities also needs access to the EES-system prior to granting an individual asylum because they need to check if the individual is registered in the EES-system and therefore needs to be erased. This is required in both the EES-system and the ETIAS.

3. **The DK suggestion for the inclusion of Denmark in the TPD category in Eurodac (WK 3523/2023)**

It is important to establish a legal possibility for all countries offering national schemes of temporary protection to be able to register those applications and resident permits in Eurodac.

If registration in Eurodac would only be possible for the countries bound by the Temporary Protection Directive it would create a huge data gap and not serve the purpose of Eurodac. It will also create security blind spots with regard to identification and cross data checks and will hamper search for family members, including unaccompanied minors.

Blind spots could also cause secondary movements with the intention of committing social fraud.

FINLAND

Finland wishes to comment points 4 to 6.

4) Protection of minors (line 58, article 1(2b)

Benefit of the doubt is ok for us. We can also accept emphasizing consideration of the child's interest, but the wording proposed by the EP should be slightly modified. It can't be the case that just announcing that one is a child is enough. We propose the following:

> The best interests of the child shall be a primary consideration in the application of this Regulation. That includes implementing the relevant provisions and child rights safeguards when applying this Regulation ~~to a person who declares that he or she is a child or, depending on the case, a person regarding whom there are reasons to believe that he or she is a child and for whom no supporting proof of age is available~~. In the event of uncertainty in relation to the age of a child, the authorities shall accord to that person the benefit of the doubt. That means that if it is possible that that person is under 6 years old, the authorities shall treat that person as such.'

5) Access for law enforcement authorities

With the regulation on the interoperability of information systems, time has passed the cascade-type rules. By approving the IO regulations, we have accepted that law enforcement authorities can make an inquiry to the CIR get an answer about in which information system information is registered about the person. If the conditions for access are met, the law enforcement authorities get access to the information itself. There is thus no longer a need to consider separately about which system the information could be in.

This serves both the purpose of minimizing the use of personal data and the possibility of law enforcement authorities to respond to new security threats. We need to keep in mind that access to information contained only in one/some system does not give a complete picture of the person's identity –to correctly identify a person it is necessary to know what information he/she has provided to various registers. This allows the competent authorities to consider the case in light of all available information which also increases the legal certainty for the person concerned.

6) Amendments to the Entry/Exit System

It would be important for access to be granted in the manner now proposed.

It is in the interest of both the applicant ant the asylum authorities that all up-to-date information, including about the identity and travel route, about the applicant's situation is available as early as possible in the asylum procedure (and thus also, for example, during the asylum interview). In this way, the information is the most useful for the asylum investigation, which serves the fulfillment of the applicant's rights. Retrospective revision "to clarify possible inconsistencies" does not provide this possibility. It but would still be better than nothing, so we are willing to be flexible if needed.

FRANCE

1) **Les points de compromis du tableau 4 colonnes**

Considérant 14 (point 25bis du tableau 4 colonnes)

La France soutient ce considérant.

Considérants 24aa et 24ab en remplacement des propositions du Conseil à l'article 10, paragraphes 4a et 4b (points 188 et 189 du tableau 4 colonnes)

La France remercie la Présidence d'avoir conservé le sens de ces dispositions et soutient leur déplacement dans des considérants.

Considérant 24ac (point 30 du tableau 4 colonnes) et article 10, paragraphe 4d (point 192 du tableau 4 colonnes)

La France remercie la Commission d'avoir rappelé, lors de la réunion des conseillers JAI, que la « *may clause* » proposée par le Conseil à l'article 10, paragraphe 4ac, relatif à la réutilisation des données déjà prises, vise à prendre en compte la situation de certains États membres. De ce fait, la France demande à la Présidence de maintenir la rédaction du Conseil (point 192) et de ne pas accepter la rédaction du Parlement européen (point 30).

Article 1, paragraphe 1, point d (point 50 du tableau 4 colonnes), article 4, paragraphe 7 (point 89 du tableau 4 colonnes), article 12, paragraphes 1 et 1a (points 212 et 230 du tableau 4 colonnes)

La France remercie la Présidence et la Commission d'avoir précisé que ces rédactions n'ont aucune incidence sur l'architecture d'Eurodac prévue à l'article 4, paragraphe 1. Par suite, la France soutient les propositions, mais précise qu'elle préfère conserver la mention du CIR et du système central Eurodac, comme l'avait proposé la Commission initialement, et acceptée dans le mandat du Conseil.

Article 1, paragraphe 2a (point 57 du tableau 4 colonnes)

La France soutient le paragraphe dans un esprit de compromis, bien qu'il n'ait pas de plus-value comme l'a rappelé le Service juridique du Conseil.

La France regrette toutefois que ce paragraphe conduise à la suppression du considérant 61 qui avait été validé dans le tableau 4 colonnes wk-1761-2019 de février 2019. Afin d'éviter que l'ensemble du règlement Eurodac III ne soit rouvert à la discussion, la France appelle la Présidence à la plus grande vigilance quant à toute modification réalisée sur les articles déjà considérés comme validés lors des précédents trilogues.

Article 3, paragraphe 1, point p (point 70 du tableau 4 colonnes), article 4, paragraphe 1, point c (point 82 du tableau 4 colonnes) et article 4, paragraphe 2 (point 84 du tableau 4 colonnes)

La France soutient les propositions pour les points 70 et 82 du Tableau 4 colonnes.

La France remercie la Présidence d'avoir précisé que l'article auquel il sera fait référence au point 84 n'a pas encore commencé à être négocié avec le Parlement européen. De ce fait, la France ne soutient pas la rédaction du point 84 tant qu'il n'est pas complété avec les renvois pertinents.

Article 4, paragraphe 1, point c (point 83 du tableau 4 colonnes)

La France remercie la Commission d'avoir précisé que les suppressions proposées sont en cohérence avec le fait qu'il n'y a pas de communication sécurisée pour le service de concordance des données biométriques et le détecteur d'identité multiple. Par suite, la France soutient la proposition.

Article 5, paragraphe 1 (points 90 et 91 du tableau 4 colonnes)

La France soutient la proposition.

Article 8a, paragraphe 2, deuxième sous-paragraphe (point 97 du tableau 4 colonnes)

La France estime que la proposition rédactionnelle du Parlement européen, tendant à prévoir que les données Eurodac sont en format « lecture seule » lorsqu'une vérification est réalisée comme prévue par l'article 20, paragraphe 2, sous k), du règlement 2018/1240 ETIAS, est sans effet juridique du fait d'un renvoi erroné, et sans valeur ajoutée. Cette proposition rédactionnelle ne peut pas être soutenue.

En effet, l'article 20 est relatif au « traitement automatisé » des demandes : lors de cette étape, aucun agent n'est consulté ; ce n'est qu'en cas de « réponse positive » (au sens du règlement 2018/1240 ETIAS) que l'unité centrale ETIAS et, le cas échéant, les unités nationales ETIAS ont accès aux données. Il est important que l'unité centrale ETIAS puisse conserver sa capacité d'accéder à l'ensemble des données contenues dans la « réponse positive » et, le cas échéant, supprime la « fausse donnée positive » (article 22, paragraphe 4, du règlement 2018/1240 ETIAS). S'agissant des unités nationales ETIAS, la France rappelle qu'elles n'ont accès aux autres systèmes d'information qu'en lecture seule selon l'article 25bis du règlement 2018/1240 ETIAS. En outre, les modifications prévues dans Eurodac III à l'article 8b, paragraphe 2, (point 102 du tableau 4 colonnes) prévoient déjà que la consultation de la base de données Eurodac par les unités nationales ETIAS s'effectue en « lecture seule ».

Article 8ca (points 107 à 111 du tableau 4 colonnes), article 10, paragraphe 3 (point 186 du tableau 4 colonnes) et article 13, paragraphe 7 (point 294 du tableau 4 colonnes)

La France soutient les propositions, notamment la possibilité que les données biométriques et alphanumériques soient également recueillies par des agents de Frontex et d'EUAA.

La France n'est cependant pas favorable à la mention superfétatoire « *specifically trained* » pour les experts de Frontex et d'EUAA :

- **Le règlement 2019/896 Frontex prévoit que les « *membres du contingent permanent, satisfont aux exigences de formation spécialisée et de professionnalisme* » (article 54, paragraphe 3) et que « *les membres du personnel statutaire destinés à être déployés en tant que membres des équipes suivent une formation nécessaire de garde-frontière […]* » (article 55, paragraphe 3) ;**
- **Le règlement 2101/2303 EUAA prévoit que « l'Agence prend les initiatives nécessaires pour vérifier et, si nécessaire, garantir que les experts, y compris ceux qu'elle n'emploie pas elle-même, qui prennent part aux équipes d'appui « asile » ont reçu la formation pertinente pour leurs tâches et leurs fonctions et qui est nécessaire pour pouvoir participer aux activités opérationnelles organisées par l'Agence » (article 8, paragraphe 6).**

Article 8d (point 114 du tableau 4 colonnes)

La France soutient la proposition.

Article 10, paragraphe 1 (point 178 du tableau 4 colonnes), article 13, paragraphe 1 (point 268 du tableau 4 colonnes) et article 14, paragraphe 1 (point 300 du tableau 4 colonnes)

La France soutient les propositions.

2) **<u>Les points sur lesquels la PRSE souhaite que les délégations montrent de la flexibilité</u>**

<u>La protection des mineurs</u>

La France propose de soutenir la proposition de paragraphe 2b du Parlement européen, mais rappelle qu'il n'a pas de plus-value opérationnelle : l'intérêt supérieur de l'enfant doit être pris en compte dans tous les cas et le bénéfice du doute bénéficie toujours au mineur que ce soit ou non prévu dans Eurodac. Pour la France, accepter ce paragraphe permettrait d'obtenir des concessions du Parlement européen sans changer le contenu du règlement Eurodac III.

Concernant le paragraphe 2c, la France pourrait soutenir l'inclusion de ce paragraphe qui ne ferait qu'encadrer l'utilisation des données des mineurs de moins de 14 ans par les autorités répressives. Toutefois, au regard de l'intervention de la Commission lors de la réunion des conseillers JAI, la France souhaite davantage de précisions sur l'aspect opérationnel de ce paragraphe 2c et sur la notion d'« *additional evidence* ».

Pour le paragraphe 2d, la France rappelle que les conditions de la rétention sont prévues dans la directive Accueil qui doit être le seul instrument encadrant ce régime de privation de liberté. Les conditions de rétention des mineurs prévues dans la refonte de la directive sont par ailleurs particulièrement strictes et sont suffisantes pour que l'intérêt supérieur de l'enfant soit préservé.

<u>L'accès des autorités répressives à la base de données Eurodac</u>

La France ne peut afficher aucune flexibilité sur ce sujet compte tenu des enjeux opérationnels. Une telle procédure en cascade entravera l'accès solide aux données pour les services répressifs définis comme les services en charge de la prévention, détection et enquête sur les crimes terroristes et autres crimes graves. Or, la base de données Eurodac, pourra être un outil indispensable pour les services d'enquêtes tant dans le domaine judiciaire qu'administratif : lorsque les données biométriques des individus inscrits auront été liées à leurs données alphanumériques, cette base contribuera à la fiabilisation des données relatives aux demandeurs d'asile et aux migrants (après l'adoption du règlement Filtrage).

Les autorités françaises estiment que pour une question d'efficacité opérationnelle, il est essentiel que l'accès des services à Eurodac soit le plus simple possible et avec une motivation la plus réduite possible. La vérification préalable (« *prior check* ») des bases nationales et européennes n'est pas adaptée car l'ensemble de ces bases devrait pouvoir être consulté en parallèle lors de recherches sur un individu dans un cadre administratif comme judiciaire. L'interrogation successive des bases nationales et européennes ralentirait le travail des autorités et apparait ainsi contraire au principe même de l'interopérabilité qui vise à renforcer les contrôles biométriques en privilégiant une approche horizontale plutôt que celle en silo, devenue difficilement praticable pour les forces de l'ordre tant en termes de moyen d'identification rapide d'une personne lors d'un contrôle, que pour une consultation durant une enquête. En outre, effectuer les vérifications préalables dans les bases de données nationales et européennes (vérifications en cascade) dans le cas où il y aurait un hit dans le CIR impliquerait des délais, incompatibles avec les nécessités de terrain et le temps des enquêtes.

En outre, la consultation préalable de Prüm n'est pas une condition pertinente, car elle ne peut se faire que dans un cadre judiciaire : « (*35a) For Eurodac purposes, lodging should be understood in the sense of Article 20(2) of Regulation (EU) No 604/2013 as interpreted/clarified by the relevant case-law of the European Court of Justice* ». Or, le renseignement au titre de la lutte antiterroriste peut également trouver à s'exercer dans un cadre administratif.

La France rappelle que l'article 22 du règlement 2019/818 établissant un cadre pour l'interopérabilité permet déjà l'interrogation du CIR par les forces de sécurité aux fins de prévention d'infractions graves ou terroristes, ou dans le cadre d'enquêtes. Par ce biais les services peuvent déjà savoir que les données de la personne sont contenues dans Eurodac. Dès lors, imposer la consultation d'autres bases de données ne peut que mener à une perte de temps.

Pour mémoire, cette procédure « en cascade » a constitué une ligne rouge des autorités françaises, portée tout au long de la négociation du chantier interopérabilité comme de l'ensemble des systèmes sous-jacents.

Enfin, cette demande de mise en cohérence des modalités d'accès aux données pour les services en charge de la prévention, détection et enquête sur les crimes terroristes et autres crimes graves entre les différents systèmes européens créés n'est pas nouvelle. La délégation française avait déjà porté cette demande de mise en cohérence des textes lors du COREPER du 22 janvier 2021 relatif à l'adoption du compromis final sur la réforme du VIS. À cette occasion, il avait été signalé à la Commission la nécessité de mettre en cohérence, le moment venu, les différents textes relevant de l'interopérabilité. En l'absence de cette mise en cohérence, les services d'enquête pourraient ne pas pouvoir accéder aux données d'Eurodac, situation sous-optimale pour les enquêtes opérationnelles et le travail d'exploitation intéressant tous les aspects du domaine de la sécurité, y compris la sécurité nationale.

La France souhaiterait recevoir des précisions concernant les motifs avancés aujourd'hui par le Parlement pour le maintien de la cascade dans le cadre de ce système Eurodac.

L'accès des autorités de l'asile à EES.

La France rappelle que cette consultation sera notamment très utile pour vérifier l'identité, la date, le lieu et le point de passage frontalier qui a été utilisé par un demandeur pour entrer sur le territoire des États membres en court séjour et qui provient d'un État exempté de l'obligation de visa lors du franchissement des frontières extérieures des Etats membres et dont les informations ne sont donc pas contenues dans VIS.

La France recommande de faire preuve de fermeté en soulignant, d'une part, que la rédaction de 2017 est trop restrictive quant à l'accès des autorités de détermination à EES (article 25a, paragraphe 1, du document du 15 juin 2017) et que, d'autre part, cette proposition n'ayant pas été acceptée par le Parlement européen à l'époque, il ne parait pas pertinent de la reprendre. En conséquence, la France propose de continuer à soutenir la rédaction proposée par le Conseil dans son article 40c.

La possibilité d'enregistrer les protections équivalentes dans Eurodac

En réponse à la demande de modification du Danemark, suggérée dans le document wk03523.en23, la France soutient la possibilité pour le Danemark d'enregistrer les personnes relevant d'un « *equivalent system of protection under national law* » si les conditions d'accès à cette protection (et de retrait) sont strictement similaires à celles prévues par la directive 2001/55.

GERMANY

Reference: WK 3169/2023 REV 2

- We thank the Presidency for carrying out the trilogue.
- Germany still thinks that progress with the CEAS legislative acts is urgently needed. We therefore very much welcome the trilogue with the European Parliament and support the swift adoption of the EURODAC Regulation.
- Germany stands by the agreed upon version of the EURODAC Regulation. However, we know that agreement must be reached with the European Parliament.

1. Articles endorsed at the trilogue

a) Recital 14 (line 25bis)

We have no objections to the addition.

b) Recital 24 (aa) and (ab) (lines 28 and 29)

We have no objections to moving the lines from Articles 10 (4b) and (4c) (lines 188 and 189).

c) Recital 24 (ac) (line 30)

We enter a scrutiny reservation. The question of mandatory use of biometric data once collected is currently the subject of intense scrutiny on the national level.

d) Article 1 (2a) (line 57)

We have no objections to referring to general principles.

e) Article 3 (1) (p) (line 70)

No objections to the definition.

f) Article 4 (1) (c) (line 82)

No objections.

g) Article 4 (2) (line 84)

No objections.

h) Article 5 (1) (line 91)

No objections.

i) Article 8ca (lines 107–111)

No objections.

j) Article 8d (line 114)

No objections

k) Article 10j (line 178)

No objections

l) Article 10 (4b) and (4c) (lines 188 and 189)

We have no objections to moving these lines to the recitals (see above, lines 28–29)

m) Article 10 (4d) (line 192)

We enter a scrutiny reservation. The question of mandatory use of biometric data once collected is currently the subject of intense scrutiny on the national level.

n) Article 13 (1) (line 268)

No objections

o) Article 14 (1) (line 300)

No objections

2. Protection of minors

a) Article 1 (2b) (line 58)

We welcome the added provision that the well-being of the child must be considered when applying this Regulation. We maintain a scrutiny reservation on the European Parliament's proposal in paragraph 2b to accord the benefit of the doubt in case of uncertainty in relation to the age of a person who has declared that he or she is a child. Does this provision apply to uncertainty about age in general or only to the age limit of 6 years? We therefore ask for explanation.

b) Article 1 (2c) (line 59)

We object to paragraph 2c added by the European Parliament if it means that data of children aged between 6 and 14 years cannot be used for the purposes specified in the EURODAC Regulation. The proposal is not clear on the cases in which the data may be used. Therefore, the European Parliament should be asked to clarify which data may be used for which purposes.

3. Access for law enforcement authorities to Eurodac, Article 21 (1a) (line 422)

Germany is in favour of allowing security authorities to access Eurodac without the previous sequence of steps. Since the VIS Regulation does not require a particular sequence to be observed, the same should apply to Eurodac. The Council mandate should therefore be maintained in this respect.

4. Amendments to the Entry/Exit System, Article 40c (lines 509-530)

We can support the compromise proposal of 2017 (doc. 10113/1/17 REV 1) on Article 25b in principle. However, we are concerned about the proposed Article 25a as we are not convinced that such access is necessary.

5. Provisions agreed upon during the technical trilogue on 9 March 2023:

a) Article 1 (1) (d) (line 50)

No objections.

b) Article 4 (1) (d) (line 83)

No objections.

c) Article 4 (7) (line 89)

No objections.

d) Article 8a (2) (line 97)

No objections.

e) Art. 10 Abs. 3 (Zeile 186)

No objections.

f) Article 12 (1) (line 212)

No objections.

g) Article 12 (1) (l) (1a) (line 230)

Why was “promptly” deleted?

h) Art. 13 Abs. 7 (Zeile 294)

No objections.

6. DK suggestion (WK 3523/2023)

No objections.

IRELAND

Line 25bis –

We can accept the compromise text.

Line 28:

We can agree to move Article 10(4a) to a recital. However, we think that the last line, which states, "does not exempt Member States to register those persons first in accordance with this Regulation" is not clear and needs to be more specific. The Article it is replacing specifically provided persons to be registered first in accordance with Article 13 (irregular crossings), We would suggest the following text

> "….does not exempt Member States to first register those persons as persons apprehended in connection with the irregular crossing of the external border"

Line 29:

Similar comment to line 28. We can agree to move Article 10(4b) to a recital. However, we think that the last line, which states, "does not exempt Member States to register those persons first in accordance with this Regulation" is not clear and needs to be more specific. The Article it is replacing specifically provided persons to be registered first in accordance with Article 14 (illegal stayers). We would suggest the following text

"…..does not exempt Member States to first register those persons as person found to be illegally staying on the territory of Member States"

Line 57:

We do not think that the expansion of the text here and the inclusion of a non-exhaustive list of grounds on which discrimination cannot take place is necessary; however, in the interest of compromise we can accept the proposed wording.

Line 70:

We think the Council text is more correct here. The CIR is **established by** Article 17(1) of the Interoperability Regulation (2019/818) it is not **defined** in Article 17(1)**.** While we prefer the Council wording, we can be flexible.

Line 82:

We would welcome some clarity on why the reference to the specific point of Article 3 been delete here?

Line 84:

We thank the Presidency for their explanation of why the reference to the specific articles have been deleted here. We look forward to further updates on this.

Line 91:

We can agree to the compromise text.

Line 107-111:

We can support the deletion of these paragraphs.

Line 178:

We don't think it is necessary to include a reference to Article 2(2) here. The requirement under Article 2(2) to respect the dignity and physical integrity of the person during the fingerprinting procedure and when capturing his or her facial image applies even if Article 2(2) is not referenced here. However, in the interest of compromise we can agree to the text.

Line 188 and 189:

We can agree to these paragraphs being moved to a recital subject to the comments above in relation to line 28 and 29.

Line 268 and 300:

See comment in relation to line 178.

Line 59:

Law Enforcement access to data of minors. We continue to support the Council text here. Our national police force (An Garda Síochána) have advised that the age of criminal responsibility in Ireland in 12 years of age, however, there is an exception for children aged 10 or 11 who can be charged with some serious crimes against the person. The Parliament's amendment could restrict AGS to effectively investigate serious crimes against the person.

We also have concerns about the reference to "additional evidence" here. What would that mean in practice?

Line 60:

Prohibition of Detention of minors: Our national legislation already prohibits the detention of minors therefore we could support in principle such a provision. However, it is our strong view that the Eurodac Regulation is not the appropriate place to regulate for this.

Line 58:

We have concerns about the reference to "a person who declares that he or she is a child" therefore we would suggest deleting the last part of the first sentence.

Cascade principle:

We continue to support the Council text and the elimination of the 'cascade principle' for law enforcement access to Eurodac where the CIR has been consulted in accordance with the Interoperability Regulation and the search indicated that the person is stored on Eurodac.

Line 50, 89, 212 and 230:

While we consider the Council text which refers to the CIR and the Central System to be more accurate we can agree to replacing these references with a reference to Eurodac.

Line 186 and 294:

We can accept the proposed compromise text.

ITALY

On DK proposal, we prefer to keep national forms of protection out of the scope of Eurodac.

We are flexible on the provisions proposed by EP concerning minors but we prefer to stick to the CNS mandate on the other issues raised.

POLAND

1. Results of the negotiations held so far - these are highlighted with orange colour in the 4-column document (please indicate also if the inclusion in the operative part of the text in line 57 is not acceptable for your delegation);

- **Line 57 :** Consideration should be given to whether the line should not be included in the recitals of the Regulation. In our opinion - the content of the line is not controversial, but if the declaration applies to the entire regulation and does not refer to individual procedures, e.g. more appropriate to the recitals and not the procedural part.

2. Provisional outcome of the technical meeting held on 9 March 2023 reflected in lines 50, 83, 89, 97, 186, 212, 230 and 294 (please note that a new version of the WK document (REV 2) has been issued, in which additions were made in lines 186 and 294);

Lines 50, 83, 89, 212 i 230.

- In PL opinion, doubts as to the storage of biometric data from Eurodac, in particular whether they would be part of the Shared BMS or whether they would be stored only in the Eurodac central system, have not been resolved. This issue is essential for the practical implementation of the system and the workload of biometric experts, in particular fingerprints.
- In our opinion, in order to avoid serious problems in the construction of executive and delegated acts that will be used to implement Eurodac Recast, the regulation should maintain mechanisms identical to the ECRIS-TCN regulation, so that it is clear what will be queried using the ESP.
- It should be noted that due to the regulations on the access of asylum authorities to other large-scale systems, this will result in a virtual inability to detect false identities at the level of biometric data comparison, which may have a significant negative impact on the security of the EU Member States.

Line 90 – acceptable

Lines 186/294

Generally acceptable, but we note that *specifically trained* appears in line 186 - both lines should have the same wording (and we have no objection to the potential use of this wording in line 294).

3. Feasibility of reusing the data previously taken (lines **30** and **192**);

In terms of general direction, there are no objections to the purposefulness of the rule. In our opinion, however, it is worth considering introducing a time limit for the possibility of reusing previously downloaded data - it should be underlined that if a foreigner submits an asylum application at the end of the return procedure (in the phase of court appeals) - a relatively long period of time may pass.

4. Protection of minors (lines **58, 59** and **60**);

We still maintain the reservation about "possible" - we propose "likely". It should be borne in mind that the exact age of children to whom the provisions of the regulation will apply, especially in the case of malnutrition and disorders in physical and mental development caused by being in a war zone or a humanitarian disaster - will not be possible without subjecting them to thorough examinations, for which their guardians may not consent.

- In addition, given the potential lack of trust of the above-mentioned persons to state authorities - there is a high risk that this age will be underestimated by the above-mentioned guardians in order to avoid fingerprinting.
- In view of the above, there is a high probability that the "possible" provision will contribute to the fact that the effective age for fingerprinting minors without credible documents will be well above the cases indicated in the regulation.

Line 59 – acceptable

Line 60

- Poland consistently does not support the wording of this provision. EU law allows for the detention of minors in specific cases, including unaccompanied minors (only unaccompanied minors applying for international protection are excluded). Of course, we agree that alternative measures should always be considered first, but the phrase "shall not be detained for the purpose of determining or verifying their identity" is unacceptable.

5. Access for law enforcement authorities (line 422)

Line 422

In terms of interoperability and law enforcement access to Eurodac, Poland, like many Member States, advocate simplified and faster access to data which can be used to prevent terrorism and other serious security crimes in the most efficient way. Especially since Eurodac is a large-scale system and is intended to be part of interoperability.

- Looking at the current use of law enforcement access to Eurodac, it can be said that it is negligible. One of the reasons for such a low number of checks in Eurodac for law enforcement purposes is precisely the complicated procedure (“cascading principle”) and conditions for access by designated authorities to Eurodac, too complicated and slowing down the entire process.

6. Amendments to the Entry/Exit System **(lines 509-530)** as well as the possible compromise of 2017.

With regard to the access of asylum authorities to the EES, from Poland's point of view, such access could contribute to increasing the efficiency of procedures for granting and withdrawing international protection, although it is not a necessary element to carry them out. For this reason, at the current stage of negotiations with the EP, taking into account the high degree of flexibility in the above-mentioned scope, we propose to maintain a compromise position taking into account at least limited access of asylum authorities to the EES.

7. The **DK suggestion** presented at the meeting (WK 3523/2023).

Proposals for changes in art. 1 and art. 14c are to be considered in order to have complete data on persons covered by the TPP.

Regarding the changes to the recital (4d):

Persons enjoying the protection conferred by Council Directive 2001/55 or any equivalent national system of protection under national law may apply for asylum at any time. In such case the criteria and mechanisms for deciding which Member State is responsible for considering the asylum application apply.

The statement is problematic in the case of the Republic of Poland due to the fact that national law provides that obtaining temporary protection is automatic when a person who meets the conditions for obtaining temporary protection crosses the borders of Poland, and possible residence titles and alternative documents issued only confirm their status. In this case, the submission of an asylum application by a person covered by the TPD should not trigger procedures for determining the country responsible for examining the application (and possibly the subsequent Dublin procedure).

ROMANIA

With regard to the topics on which certain compromise suggestions have been made (highlighted in orange in the fourth column of the working document), we would like to point out that we agree with the suggestions, with a single mention of the preference for the re-examination of the compromise solution in rows 107-111/art. 8ca, with a view to preserving the provisions of the CONS mandate regarding the granting of access rights to the Eurodac system to the EU agencies for the purpose of recording and transmitting biometric and alphanumeric data in the system for the fulfilment of tasks arising from operational support missions.

With regard to the topics relating to the protection of minors, we support the SE's PRES approach to seek flexibility in order to reach a compromise on the benefit of the doubt when a minor is likely to be less than 6 years old – row 58/art. 1(2b), and also, regarding the conditions of access of the law enforcement authorities to the data of minors under 14 years old – row 59/art. 1(2c). With regard to the detention of minors – row 60 – art.1 (2d), we indicate the preference for maintaining the mandate of the CONS.

With regard to the Council's suggestion to simplify law enforcement access to Eurodac by eliminating the so-called 'principle of cascade access', we support the initiative of the PRES to find flexibility on the part of the Council in this regard.

We also support the efforts of the PRES find flexibility on the part of the Council regarding the access of the asylum authorities to the EES system and we consider that the previous negotiations on the EES Regulation, as presented in document 10113/1/17 REV 1, can be a starting point in the discussions with the EP.

THE SLOVAK REPUBLIC

WK 529/2023 INIT

SK can agree with the proposed compromise text regarding lines 25bis, 50, 70, 82, 84 (depending on the completed text), 90, 91,97, 107,111, 114,178, 188,189, 268, 300. We can also support EP's wording in lines 186 and 294 respectively.

As far as lines 28, 29, 58, and 83 are concerned, **SK is flexible**. In regards to **line 57,** even though we do not see the need for such a detailed description, in addition to the guarantee that already appears in Article 2 par.2, we understand the negotiation strategy and will be able to be flexible as a result.

As for line 59, we believe that more extensive access by LEA to minors' data will provide a greater level of protection to the children. In this way, the process will be expedited without adding any additional administrative burden; therefore, if MEP's objective is to protect the best interests of children, access by LEAs should not be restricted.

To regulate the conditions of detention, **line 60**, we believe that a different legislative act would be a more appropriate place to do so. However, this is not our red line, as Slovak law does not permit the detention of unaccompanied minors and has a strict regulation in case of minors with family members.

Regarding **line 230**, we are of the opinion that setting the word “promptly” in lines 268, 284, 300, 360, 334, 350, 376 is not sufficient to justify its deletion in this line (230). This is primarily due to the different contexts in which the word "promptly" is used: in lines 268, 300, 334, 376 it refers to biometric data collection; line 360 specifies exact deadlines. Another argument for keeping the word "promptly" in line 230 is that it is already used for different categories in lines 284 and 350.

Lastly, **the only red line** concerns cascade access; we oppose any changes to the Council's mandate. As a result of the modifications proposed by the EP, one of the added benefits of the revision of EURODAC regulation will be hindered

For the record, we have no objections to providing DK with access to the EURODAC in relation to TPD data; provided that all legal aspects are observed.

SLOVENIA

Results of the negotiations held so far - these are highlighted with orange colour in the 4-column document (please indicate also if the inclusion in the operative part of the text in line 57 is not acceptable for your delegation);

Slovenia could support the text highlighted with orange color and the inclusion of the text in line 57 in the operative part of the document. Nevertheless, according to the purpose of the mentioned provision, it would be better if the relevant text were included in the recitals.

Provisional outcome of the technical meeting held on 9 March 2023 reflected in lines 50, 83, 89, 97, 186, 212, 230 and 294 (please note that a new version of the WK document (REV 2) has been issued, in which additions were made in lines 186 and 294);

Slovenia could support the text in the above mentioned provisions.

Feasibility of reusing the data previously taken (lines 30 and 192);

Slovenia agrees with the European Parliament that it is useful to reuse the data, i.e. if there are already fingerprints taken by police officers in the Eurodac system, they can be re-used as category 1 upon request. This works effectively in the existing Eurodac system, but with the proposal of the new Eurodac system we can expect implementation issues, as the system will work via online services, and also regarding the use of personal data.

Therefore, Slovenia supports the "may" option and does not agree with the mandatory provision ("should").

Protection of minors (lines 58, 59 and 60);

As was already mentioned at the JHA Counsellors meeting, we agree with the opinion of the European Parliament, namely that the best interest of the child shall be the primary consideration (Article 1(2b)). Nevertheless, we would like to point out that the proposal of the Eurodac Regulation is not a suitable legislative act to regulate the aforementioned. The same opinion can be expressed regarding Article 1(2d), since the detention of minors is regulated by the Reception Directive.

In connection with Article 1(2c), we believe that the provision is too restrictive and should be more flexible, especially in the case that it remains in the proposal of the regulation. Given the best interests of the child, law enforcement authorities may need access also in some other cases regarding the security reasons.

For the Republic of Slovenia, none of the aforementioned provisions represent a red line and could be accepted in the spirit of a compromise.

Access for law enforcement authorities (line 422);

The Republic of Slovenia has no major reservations regarding the provision in line 422. In our opinion the aforementioned provision enables a more efficient and faster search for persons in the Eurodac system.

Amendments to the Entry/Exit System (lines 509-530) as well as the possible compromise of 2017;

In the spirit of a compromise, the Republic of Slovenia could support the compromise text from the EES Regulation, which is stated in document no. 10113/1/17 REV1. Nevertheless, we believe that a more flexible approach than the one proposed could contribute to the effectiveness of the prevention of secondary migrations and to a better functioning of the interoperability of the system.

The DK suggestion presented at the meeting (WK 3523/2023).

The Republic of Slovenia is flexible as regards the proposal of DK, although we have some concerns in connection with what the equivalent national systems are in practice, especially in terms of the duration of the mentioned protection. We would like to point out that the system must clearly indicate the category - i.e. whether it is temporary protection or for e.g. residence permit for humanitarian reasons.