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COVER NOTE

From:	General Secretariat of the Council
To:	JHA Counsellors (Asylum)
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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 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 29 March 2023 and the subsequent request for written contribution on the above-mentioned proposal (CM 3259/23), delegations will find in Annex a compilation of the comments by Member States.

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 –

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BULGARIA

Line 28 and 29

Line 28 (24aa)

Bulgaria can support the compromise in the last sentence as long as the expression “*encourage*” should confirm the dispositive character of the provision.

Line 29 (24ab)

We can support the compromise in the last sentence on the same principle as in the previous provision - if “*encourage*” confirms the dispositive character of the text.

Line 49

We can in principle accept the text, which is in connection with para 2c of Art 1. However, the formulation is too general. In our view, it is appropriate “*protection*” to be replaced with “*identification*” or „*detection*”. A short reference should be made to the authorities, which will use the data for these purposes. As a whole if the text should remain, it is necessary to be re-formulated. We could be flexible and use it for a deal with the European Parliament.

Regarding security flags

Line 240 (security flag)

We are flexible and can accept the text of the EP. The formulation “*could pose a security threat*” means that the check does not provide certain evidence that the person poses a threat to security.

Line 244 (security flag)

We are flexible and can accept the text of the EP.

Line 288 (security flag)

We can accept the position of the EP for deletion of the text. The formulation “*could pose a security threat*” means that the check does not provide certain evidence that the person poses a threat to security.

Lines 321, 356 (security flag)

Same as the above.

Regarding the SAR category Line 10,68, 190

We support the compromise made within the Council regarding the SAR category.

Lines 329-346 (SAR)

We support the compromise made within the Council. More clarity is needed regarding the amendments to which the EP refers and regarding what is the main issue from their perspective.

Line 73

In general, it is not expedient to introduce a definition of a “child” in the draft Regulation having in mind its purposes and scope. We cannot see the added value but could be flexible.

Lines 193, 194

We can support the agreed with EP deletion of the text. The text repeats provisions regarding procedural guarantees for persons set in other legal acts in the field of asylum.

Regarding the proposition of Denmark on inclusion of persons granted temporary protection

As far as the granted temporary protection is part of the whole migratory situation and therefore part of the balance we could be flexible. Yet, in order to have more detailed position we should further analyze the proposition in all its aspects (for instance the terms of responsibility).

Regarding the re-linking the Eurodac Regulation with the other proposals of the Pact

We could be flexible regarding the re-linking of the references to the draft legislation as long as the legislative package of the Pact will not be separated and the Eurodac Regulation will not enter into force separately from the other legislative proposals of the Pact.

CROATIA

Lines 28 and 29

(related to amendments in lines 188/189 and 192) - we can support this since this is the current practice in the application of the Eurodac Regulation.

Line 49 –

we can generally support the EP amendment but we do not want this provision to refer exclusively to children when it comes to the purpose of the Eurodac Regulation by having it be the only legal basis for taking biometric data from children since we cannot accept this. The EP amendment restricts the purpose of Eurodac with regard to Article 1(1)d which allows access to data for law enforcement, detecting or investigating terrorism and other serious crimes.

Line 73 –

we think that the definition of a child primarily has to be harmonised horizontally with the other legislative proposals of the Pact (e.g. AMMR introduces the definition of a minor: minor' means a third-country national or a stateless person below the age of 18 years, for the same reason indicated here - need to align with other asylum instruments). We think that the term child is very broad and that it exclusively pertains to the parent-child relationship according to which a child remains a child to his parents throughout their lives and not only during the first 18 years. This is why we would rather support the definition of a minor.

Line 193 –

two terms are used at the same time: child-friendly and child-sensitive manner - we do not see any added value in this wording. Moreover, the same sentence ends with “and in full respect of the best interests of the child”. The best interest of the child is a dynamic concept that covers many issues which continuously evolve depending on the situation. This means that the Eurodac Regulation cannot be used to assess a single general framework of the best interest of the child. Rather, it should be linked exclusively to how biometric data is taken and to regulate it accordingly.

Line 16 (interoperability) –

we support it

Line 21 –

we think that scanning of documents (travel or identity) will represent a huge administrative burden, and it is not clear whether this provision covers only original documents or also falsified.

Lines 11, 240, 244, 288, 321, 350 - security flags –

we support the Council mandate but we are concerned about the EP amendment and the understanding of security flags.

Re-linking Eurodac with the other proposals of the Pact –

MS gave the mandate for the Eurodac Regulation to be discussed separately from the Pact and provided certain arguments. These arguments are now being questioned and MS are asked to consider re-linking Eurodac with the other proposals of the Pact. HR can be flexible so that MS have a common position - a single voice. Although there are no legal obstacles to apply Eurodac from the moment of adoption, if Eurodac is de-linked from the Pact, the references in the Regulation should be exclusively to the regulations in force. However, we think that it is necessary to realistically consider the situation and arguments for the “prompt” adoption of other legislative proposals.

DK amendment (WK 3523/2023)

relating to the introduction of a new category of persons who have been granted temporary protection into Eurodac - we understand DK’s interest but we would like to point out that HR has very specific organisational structures: access to Eurodac is granted to the Dublin Section (applicants for international protection) and border police (irregular migrants) whereas temporary protection is granted by police administrations and stations which currently do not have access to Eurodac. There is also the issue of what happens with the current platform for temporary protection (Eurodac should be expanded in line with the other functionalities according to the ones on the platform).

THE CZECH REPUBLIC

Security flags

As regards provisions on security flags CZ supports the position of the Council as the majority of delegations. Concerning provision in line 244, CZ could accept EP proposal.

Re-linking Eurodac with the other proposals of the Pact

CZ considers the proposal made by RO colleagues to postpone this decision interesting. We support this approach. However, Member States should also decide when Council will take a decision on references to relevant proposals of the Pact or on the current acquis.

In case of re-linking Eurodac with the other proposals of the Pact, it is necessary to require the assurance from EP, that it will not discontinue the dialogues on Eurodac proposal, even if the Council's positions on AMMR and Crisis Regulation will not be adopted by June.

DK proposal (WK 3523/2023)

DK proposal is generally acceptable for CZ. However, several amendments should be made. In our view, it is especially necessary to add a clarification, that the possible obligation to register to Eurodac system covers only the holders of adequate protection, which is comparable to temporary protection according to Temporary protection Directive. Any possible future amendment should not be confusing.

Other issues discussed (e.g. SAR category)

- CZ is flexible on the possible inclusion of separate SAR category.
- Minors – As regards possible definition of “child” in the regulation, CZ believes that the current EP proposal to define “child” in Eurodac Regulation in line with Convention on the rights of the Child may be confusing. In other words, we can support the definition of minor in Eurodac Regulation, but the same as in the other proposals, e. g. APR or AMMR.

As regards line 49 – it is not necessary, but we can accept in the spirit of compromise.

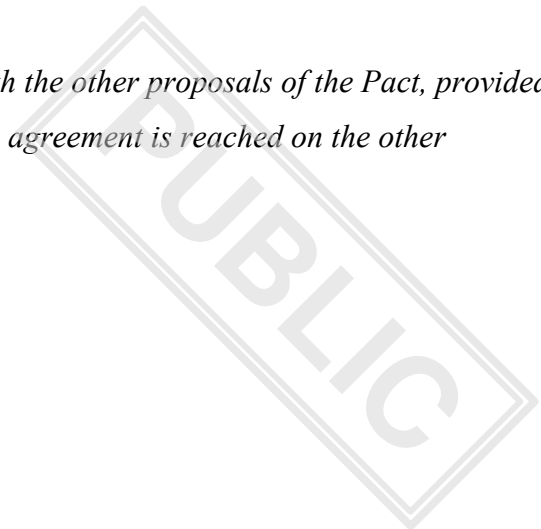
Lines 193 and 194 are acceptable for CZ.

- Interoperability-all discussed compromise proposals on interoperability are acceptable for CZ.
- lines 28 and 29 are acceptable for CZ

PUBLIC

DENMARK

DK support the re-linking of the Eurodac-regulation with the other proposals of the Pact, provided that the negotiations of Eurodac will continue even if no agreement is reached on the other proposals.



ESTONIA

Security flags

In relation to lines 11, 240, 244, 288, 321, 356 in the 4-column document (WK 4099/2023)
Estonia firmly supports Council position.

Re-linking Eurodac with the other proposals of the Pact

Estonia can be flexible on delinking or relinking Eurodac with the Pact if it allows the process with the file.

DK proposal (WK 3523/2023)

DK proposal raises some concerns and we would welcome additional clarifications:

- On the proposed wording of „any equivalent system of protection under national law“ what that holds and how does that relate to „the adequate protection under national law“ as in Art 2(2) of the Council Decision.
- On whether the current influx of all the displaced UA persons covered by adequate protection would be covered

Other issues discussed (e.g. SAR category).

No comments.

FRANCE

Les changements étant nombreux dans le tableau 4 colonnes, les commentaires écrits sont répartis comme suit :

1) Les articles passés en orange

2) Sur les mineurs

3) Sur l'interopérabilité

4) Sur les statistiques

5) Autres modifications dans le tableau 4 colonnes

6) Sur les alertes de sécurité

7) Sur la catégorie SAR

8) Sur les renvois aux autres instruments du Pacte sur la migration et l'asile

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1. Les articles passés en orange

Article 1, paragraphe 1, points (f) et (g) (points 52 et 53 du tableau 4 colonnes)

La France soutient le maintien de la version de la Commission validée par le Conseil, mais précise qu'il manque un mot dans l'encadré de la quatrième colonne (« the objectif of the [...] »).

La suppression des mentions du système central et le CIR

La France demande pourquoi le terme « *promptly* » a été retiré (points 284 et 316 du tableau 4 colonnes) et indique qu'il est important que les données concernées soient transmises le plus rapidement possible à la base de données Eurodac.

2. Sur les mineurs (lignes 49, 58 à 60, 73, 193 et 194 du tableau 4 colonnes)

Article 1, paragraphe 1, point ca) (point 49 du tableau 4 colonnes)

La France remercie la Commission pour son intervention et émet une réserve d'examen sur la formulation utilisée dans le nouvel objectif d'Eurodac qui ne doit pas limiter l'accès aux autorités répressives aux seules fins de la protection des enfants victimes de traite des êtres humains.

L'enregistrement dans Eurodac des mineurs de 6 ans à moins de 14 ans provenant de pays tiers vise à garder leur trace, à les protéger de situations d'exploitation, à permettre leur identification, à contribuer à la recherche des familles en cas de séparation, et à renforcer la protection des mineurs non accompagnés qui ne sollicitent pas toujours une protection internationale et qui s'échappent souvent des institutions d'accueil ou des services sociaux d'aide à l'enfance auxquels ils ont été confiés.

L'inclusion des mineurs dans Eurodac présente ainsi plusieurs finalités. La proposition du Parlement ne doit pas limiter l'utilisation des données de mineurs de 6 ans à moins de 14 ans aux seules fins de la protection des enfants victimes de traite des êtres humains, et laisser de côté les autres utilisations qui pourraient également bénéficier aux mineurs.

Article 3, point ra) (point 73 du tableau 4 colonnes)

La France soutient la proposition du Parlement européen à l'Article 3, point ra), de renvoyer à la définition donnée par la convention relative aux droits de l'enfant.

Article 10, paragraphe 4a (points 193-194 du tableau 4 colonnes)

La France soutient la proposition de supprimer l'article 10, paragraphe 4a, étant entendu que ces dispositions importantes sont prévues à l'article 2a, paragraphe 1, déjà validé.

3. Sur l'interopérabilité (lignes 16, 21, 57 à 97, 102, 106, 118, 422, 426, 436, 479, 494 à 499, 501, 509 à 530 du tableau 4 colonnes)

Considérants 5bis et 49bis (lignes 16, 34bis et 34ter du tableau 4 colonnes)

La France remercie la Présidence pour son travail sur l'accès aux données et rappelle l'importance de ne pas prévoir d'entrave à l'accès aux données, qui iraient au-delà des modalités prévues par le règlement 2016/679 (RGPD).

Considérant 6 (ligne 21 du tableau 4 colonnes)

La France soutient la rédaction proposée.

Article 8a, paragraphes 1 et 2 (seuls les deux premiers alinéas du paragraphe 2 sont compris) (points 95 à 97 du tableau 4 colonnes)

La France regrette que la mention du format « lecture seule » ait été conservée malgré ses explications détaillées dans ses commentaires écrits : cette mention n'a aucun intérêt dans un article qui traite du traitement des données et non de l'accès à celles-ci.

Article 8b, paragraphe 2 (point 102 du tableau 4 colonnes)

La France comprend l'intérêt d'aligner la rédaction sur celle de l'article 8c, mais précise qu'il convient de faire référence à l'article pertinent du règlement 2018/1240 ETIAS et non à l'ensemble du règlement, de la même manière que l'article pertinent du règlement 767/2008 VIS est mentionné à l'article 8c.

Article 8c (point 106 du tableau 4 colonnes), article 9, paragraphe 1, (point 118 du tableau 4 colonnes), article 21, paragraphe 1a, (point 422 du tableau 4 colonnes), article 22, paragraphe 3a, (point 426 du tableau 4 colonnes), article 39, paragraphe 2, point i) (point 436 du tableau 4 colonnes), article 40b, modification de l'article 24 du règlement 2019/818 Interopérabilité (point 479 du tableau 4 colonnes), article 40b, modification de l'article 29, paragraphe 1, ajout d'un point a du règlement 2019/818 Interopérabilité (point 494-499 du tableau 4 colonnes) et article 40b, modification de l'article 39, paragraphe 2, du règlement 2019/818 Interopérabilité (point 501 du tableau 4 colonnes)

Pas d'observation.

La France rappelle ses positions exposées lors de la précédente réunion des conseillers JAI du 13 mars 2023 et dans ses commentaires écrits :

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 États 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, d'autre part, que cette proposition n'ayant pas été acceptée par le Parlement européen à l'époque, il ne paraît pas pertinent de la reprendre. En conséquence, la France propose de continuer à soutenir la rédaction proposée par le Conseil dans son article 40c.

4. Sur les statistiques

Concernant les demandes du Parlement tendant à mettre en place des statistiques sur l'octroi de la protection internationale et sur les mineurs, la France y est favorable en tant qu'élément de concession envers le Parlement, mais également afin de tendre à la complétude des données.

5. Autres modifications dans le tableau 4 colonnes (points 57a, 88, 186, 243 et 294 du tableau 4 colonnes)

Sur le chainage et l'adjudication manuelle

La France remercie la Présidence d'avoir conservé les termes « *where necessary* » s'agissant de l'adjudication manuelle systématique (point 88 du tableau 4 colonnes). Cette rédaction était très importante pour la France.

La France remercie la Présidence pour sa rédaction de compromis concernant le chainage des données afin de permettre de chaîner des données à partir d'images faciales uniquement dans certains cas, comme précisé au considérant 10 de la proposition de règlement : « *fingerprints should always be preferred over facial images* ». Elle considère que ce compromis est acceptable.

Sur les demandes d'asile simultanées à un enregistrement pour franchissement ou séjour irrégulier et la réutilisation des données

La France soutient les propositions en cours de discussion et notamment le fait que la réutilisation des données soit encouragée et non imposée.

Sur l'intervention des Agences

La France remercie le service juridique du Conseil pour ses éléments d'appréciation sur la mention « *specifically trained* » (points 186 et 294 du tableau 4 colonnes) s'agissant des experts de Frontex et d'EUAA. Elle indique être prête à accepter le maintien de ces termes.

6. Sur les alertes de sécurité (lignes 11, 240, 244, 288, 321 et 356 du tableau 4 colonnes)

La France demande le maintien de la rédaction du Conseil sur les alertes de sécurité pour la catégorie 1 (demandeur d'asile) : il ne faut pas se limiter à la seule menace constatée dans le cadre de l'article 8, paragraphe 4 d'AMMR (point 240 du tableau 4 colonnes).

La France exprime sa franche opposition à la suppression des alertes de sécurité pour les catégories 2 et 3 et demandera à ce qu'elles soient maintenues (points 288 et 321 du tableau 4 colonnes).

La France remercie la Commission pour ses explications sur la position du Parlement européen qui considère que la durée courte de la procédure de Filtrage peut porter préjudice au ressortissant de pays tiers et à l'évaluation de la menace à l'ordre public qu'il pourrait constituer. La France estime qu'il ne faut pas raisonner en termes de durée de procédure, mais d'accès à l'information sur la menace à l'ordre public concernant une personne enregistrée dans Eurodac, qui peut représenter une menace pour la sécurité d'un ou de plusieurs Etats membres, et ce, à tous les stades de la procédure.

7. Sur la catégorie SAR (lignes 10, 68, 190, 329 à 364 du tableau 4 colonnes)

La France demande le maintien de cette catégorie dans Eurodac, nécessaire pour suivre le parcours des personnes arrivées à la suite d'un débarquement SAR sans préjudice des procédures postérieures, vers lesquelles pourraient être orientées ces personnes.

8. Sur les renvois aux autres instruments du Pacte sur la migration et l'asile

La France n'est pas favorable à ce que les renvois d'Eurodac III se fassent par référence aux instruments du RAEC en vigueur. Elle soutient une harmonisation à partir des instruments du Pacte en cours de négociation dans la perspective d'une adoption d'ici mars 2024 de l'ensemble de ces instruments.

GERMANY

- We thank the Presidency for organising the trilogue.
- Germany stands by the agreed upon version of the Eurodac Regulation. However, we know that an agreement must be reached with the European Parliament. It is very important to us that the Eurodac Regulation is adopted swiftly.

1. Security flags

- **Recital 4b) (line 11):** We are in favour of maintaining the agreed Council recital.
- **Article 12 (v) (line 240):** We are in favour of maintaining the agreed Council proposal to promptly transmit data to the Central System and the CIR following any security checks.
- **Article 12 (3) (line 244):** We are critical of the European Parliament's proposal to delete the security flag if a security threat no longer applies. The amendment requires further scrutiny.
- **Article 13 (2) (r) (line 288), Article 14 (2) (s) (line 321) and Article 14a (2) (line 356):** We suggest maintaining the agreed Council proposal to promptly transmit data to the Central System and the CIR following any security checks.

2. Re-linking of Eurodac from the rest of the Pact

- We agree that flexibility is required, depending on how the negotiations on the Pact progress.

3. DK proposal (WK 3523/2023)

- No objections.

4. Other issues discussed

b) SAR

- **Recital 4aa) (line 10), Article 3 (1) (ea) (line 68), Article 10 (4) (c) (line 190), Chapter IV (a), Article 14 (a) (lines 329-364):**

We are in favour of maintaining the agreed Council proposal.

a) Recitals 24aa) and ab) (lines 28 and 29)

- We have no objections to moving the lines from Articles 10 (4b) and (4c) (lines 188 and 189) to a recital.
- The issue of reusing data is currently being scrutinised at national level. We agree to the proposed wording in sentence 2, in which the Member States are (merely) encouraged to reuse the data.

c) Provisions on minors

- **Article 1 (1) (ca) (line 49)**

We welcome the European Parliament's intention by broadening the scope of application. However, this should not have the effect of limiting the competence of law enforcement authorities regarding the protection of minors.

- **Art. 3 (1ra) (line 73)**

No objections. However, it should be ensured that the definitions used in the different legal acts are consistent.

- **Article 10 (4a) (line 193 et seq.):**

We agree that registration must be carried out in a child-friendly manner. However, the European Parliament's proposal in line 193 that registration of minors from the age of six should be carried out only by specially trained officials seems difficult to implement in practice. The same applies to the amendment in line 194 that minors must be accompanied by "*a person trained to safeguard the best interests of the minor*".

d) Provisions related to interoperability

- **Recital 5a) (line 16)**

No objections. We also agree with the PRES suggestion in **line 34 tris**, but we are also open for the EP-suggestion in this point with a view to compromise.

- **Recital 6 (line 21)**

No objections.

- **Art. 9 (1) (line 118)**

No objections.

- **Article 28 (3a) (line 426):**

No objections.

- **Article 39 (2i) (line 436):**

(EP to consider the Council text)

- **Art. 24 (line 479):**

No objections.

- **Art. 29 (1) (lines 494-499):**

(EP to confirm the Council text)

- **Art. 39 (2) (line 501):**

Why was the reference to Art. 42 (8) deleted?

HUNGARY

Hungary still considers that the reform of the Common European Asylum System has to be carried out in a prudent manner by taking into account that the decisions on the individual legislative files will have long-term consequences for the proper and effective functioning of the Common European Asylum System as well as on the national practices.

Hungary pays attention to the protection of child victims of trafficking and the identification and protection of missing children. Nevertheless (and in the light of the Commission's explanation) we are not entirely convinced that the amendment made by the EP is necessary. Furthermore, we stress the need to align the definition of the in the relevant legislative proposals.

We still have a scrutiny reservation on lines 16, 21 and 118.

We insisted on keeping the Council mandate in line 436.

We have a reservation on line 498, as it relates to the issue of search and rescue.

The Hungarian side insists on maintaining the Council mandate for lines 11, 244, 288, 321 and 356.

We cannot accept, even for statistical purposes, the separate treatment of persons rescued from the sea from persons who have illegally crossed the external border.

In our view the link between the Eurodac Regulation and the Pact is the separate treatment of the SAR category. In this regard as far as we see the Eurodac Regulation is already linked to the Pact.

IRELAND

Security Flags

Lines 11, 240, 244, 288, 321, 356:

We continue to support the Council text and the inclusion of a security flag for all categories and following any security checks.

Re-Linking Eurodac with the other Proposals

We have previously supported the adoption of Eurodac outside of the package approach, however, we recognise that if the other measures are to be adopted within the timeframe set out in the Roadmap this would mean that Eurodac would have to be amended almost immediately, therefore we can be flexible on relinking Eurodac with the other measures.

DK Proposal

We can support the Danish proposal to broaden the inclusion of beneficiaries of Temporary Protection to also cover individuals benefitting from an equivalent provision under national law.

SAR

Line 10, 68, 190, 329-364:

In the interest of compromise we supported the inclusion of a separate category for statistical purposes. We continue to support the Council position on the inclusion of a separate category for SARs.

Minors

Line 73: This definition should be better aligned with the other instruments which define a minor and not a child. The current definition which refers to the 1989 Convention on the Rights of the Child would result in a difference between a minor in the other measures and a child in the Eurodac Regulation. In the APR “minor” is defined as a third country national or stateless person below the age of 18. In Ireland, in line with the UN Convention on the Rights of the Child, a person under the age of 18 attains legal majority on marriage.

LATVIA

Security flags

Line 240, 288, 321

We strongly believe, the fact that the person could pose a threat to internal security should be promptly recorded following any security checks. Accordingly, Latvia cannot support the proposals of the Parliament as regards Article 12(v), Article 13(2)(v) and Article 14(2)(s) and we believe that the position of Council should be maintained as regards these provisions.

Line 356

Taking into account abovementioned, we believe that the position of Council should be maintained as regards Article 14a(2)(r) as well.

Re-linking Eurodac with the other proposals of the Pact

It is our view that the files of the Pact that are successfully agreed upon between the co-legislators at an earlier stage than other proposals of the Pact, can be approved sooner and separately from the Pact. However, Latvia's position is flexible as regards re-linking Eurodac with the other proposals of the Pact. The result is the most important at the moment, therefore we do not oppose the re-linking of Eurodac if in Presidency's view it helps to advance negotiations.

DK suggestion (WK 3523/2023)

Latvia can support the suggestion made by the Danish delegation to amend Recital (4d), Article 1 and Article 14c, introducing additions to make the respective provisions clearer.

Protection of minors

Line 60

We believe the Eurodac Regulation is not an appropriate legal basis for regulating the prohibition of detention of minors. In addition, this aspect is currently already provided for

in the proposal for a Reception Conditions Directive. Therefore, Latvia cannot support Article 1 (2d), as added by the Parliament.



LITHUANIA

Security flags –

we support the mandate of the Council. For us safety is extremely important. There is always a risk of absconding (within the screening or later), so data registered in Eurodac is a matter of security for all the MS.

Re-linking Eurodac with the other proposals of the Pact –

we would not oppose to the re-linking, but would suggest rather to move with the current mandate of the Council up to the max and to accept the EP offer only in the final stages of negotiations.

DK proposal (WK 3523/2023) –

we are rather skeptical on the DK proposal for the following reasons:

- due to the deletion of the reference to Council Implementing Decision 2022/382, it is not clear whether the current influx of the displaced persons from Ukraine would be covered by the regulation. Our position is that the Eurodac regulation should not be applied to the Ukrainian influx which fall under the current Council Implementing Decision and any further Council implementing decisions taken after 2024. Applying the regulation to the displaced persons from Ukraine would not have any added value, only a huge administrative burden: Dublin rules are not applied to this influx, a dedicated TP platform has been created for them, and the number of asylum applicants in this influx is small;

- it is neither clear what the meaning of *'equivalent system of protection under national law'* means. This particular formulation seems to be incomplete and modified when we compare it with the one already in the text: '<...> or any other equivalent national protection introduced in response to the same event as that Council Implementing Decision'. So, it is not clear if have in mind the adequate protection under national law, which is close to the temporary protection standards and is created for the occasion, or any other national measures like humanitarian statuses which differ from MS to MS with regard to the protection scope and services provided. Our position is that in the context of temporary protection, only the concept of *'adequate protection'* or *'equivalent national protection introduced in response to the same event as that Council Implementing Decision'* could be applied.

Other issues discussed (SAR category) –

we support the mandate of the Council (as a compromise it was agreed to keep this category for statistical goals).

POLAND

I. minors (lines 49, 73, 193 and 194)

Line 49 : we can support the new wording of this article.

Line 73 : adding a definition of a child is redundant - this understanding results directly from the international obligations of the Member States.

Line 193 : no remarks

Line 194 : no remarks

II. interoperability provisions (lines 16, 21, 118, 426, 436, 479, 494-499 and 501).

Line 16 : we can support the proposal of the Presidency.

Line 21 : we can support the new wording of this article.

Line 118 : no remarks

Line 426 : we can support the new wording of this article.

Line 436 : no remarks

Line 497 : no remarks

Lines 494-499 : no remarks

Line 501 : no remarks

III. new compromise proposals to consider (lines 28, 29, 49).

Line 28 : we can support the proposal of the Presidency.

Line 29 : we can support the proposal of the Presidency.

Line 49 : we can support the new wording of this article.

IV. Security flags (lines 11, 240, 244, 288, 321, 356) **and SAR** (lines 10, 68, 190, chapter IV a)/lines 329-364).

General remark

- On the issue of "Search and Rescue" data and security flags, we believe that the position of the Council should be maintained, but when it comes to the security flags, we can agree to some flexibility, e.g. through the possibility of introducing a new type of SIS alert or such a modification of the regulation (EU) 2018/1862 to enable the use of Art. 36.
- Poland would like to remind that from the statistical point of view we see the legitimacy of including persons disembarked as a result of SAR operations, but we were against creating a separate category for this purpose.

Security Flags:

For practical reasons, it is necessary to address the issue of security checks in Eurodac comprehensively and no separate procedures for flagging persons who pose or may pose a threat to the security of the Member States should be introduced for each category of persons who will be placed in Eurodac.

This aspect should be viewed horizontally - the authorities of other Member States responsible for security (or for examination of asylum application) should have access to information that persons who may pose a threat to the security of Member States or public order have appeared on the territory of the EU (or in the border procedure).

This also applies to persons who are subject to a screening or border procedure, even if these persons receive a return decision that will be enforced, accompanied by a ban on entry into the territory of the Member States and an alert in the SIS, given that the risk of another attempt to illegally cross of the border of the Member States with changed identities is high.

Of course, alternative solutions can be imagined, such as creating a separate subcategory of Art. 36 of Regulation (EU) 2018/1862, however, it should be noted that the possibility of linking a given person posing a particular security risk with his/her previous presence on the territory of the EU or in the screening / border procedure will certainly constitute a very important information.

Line 11: in favour of maintaining the Council's position.

Line 240: in favour of maintaining the Council's position.

Line 244: in favour of maintaining the Council's position.

Line 288: in favour of maintaining the Council's position.

Line 321: in favour of maintaining the Council's position.

Line 356: in favour of maintaining the Council's position.

SAR

Line 10: in favour of maintaining the position of the Council.

Line 68 : no remarks

Line 190 : no remarks

Lines: 329 - 364 : in favour of maintaining the position of the Council

V. Re- linking Eurodac with the other proposals of the Pact

From the beginning, Poland opted for the package approach. The consent to disconnect Eurodac from the Pact was a compromise from our side. At the moment, we do not see any objections to the re- linking of Eurodac with the Pact.

VI. DK proposal:

PL does not support the Danish proposal.

PORTUGAL

Concerning some of issues discussed during the last meeting on Eurodac, please find bellow our comments:

Security flags:

- One of the essential changes brought about by the new Eurodac Regulation is the facilitation of access by security forces to this database, allowing them to register security alerts, when a certain person is considered to constitute a danger to internal security. We believe that the amendments proposed by the EP could jeopardize the added value of this possibility regarding security alerts, and will prevent, in some cases, the authorities from having all the information regarding the asylum seeker, which could entail security risks. For this reason, we believe that PT will not be able to support the amendments proposed by the EP in this context, particularly with regard to articles 12, 13, 14 and 14a (lines 240, 288, 321, 356) defending the possibility of inserting alerts as foreseen in the text approved by the Council.

SAR: PT

- has defended the possibility of a separate category to cases resulting from search and rescue operations, considering that the autonomy of this category is part of the balance between solidarity and responsibility, in addition to providing a more accurate overview of migratory flows in the EU. For the sake of coherence with the position defended in the Council negotiations, we believe that it is necessary to reject the EP proposal and maintain support for the text agreed by the Council.

Re-linking Eurodac with the other proposals of the Pact :

- we can be flexible to this, to move swiftly with the negotiations.

ROMANIA

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 – WK 4099/2023

We support the compromise suggestions in **rows 28 and 29**, the Presidency proposal being more explicit as regards the timeline of the activities carried out in the situations described in the two points. We could also support the wording proposed by the EP in **row 49**.

As regards the provisions on the SAR category and the category of beneficiaries of temporary protection, we support keeping the provisions of the Council mandate in **rows 10, 68, 190, chapter IVa/rows 330-364**, specifying that a possible compromise solution in order to accept the SAR category by the EP, could be that the SAR category to be marked in Eurodac in a separate field within the already existing categories.

Regarding the provisions on security alerts (**rows 11, 240, 244, 288, 321, 356**), we support the mandate of the Council in view of the negotiations with the EP, in which sense we cannot support the amendments proposed by the EP.

With regard to the separation of the Eurodac Regulation from the other proposals of the Pact on Migration and Asylum, as has been shown on other occasions, we can support this approach given that the Eurodac Regulation is of great relevance in implementing interoperability, its adoption as soon as possible is desirable.

As regards the suggestion of DK (WK 3523/2023) concerning the completion of Articles 1(1)(h) and 14c (1) and recital (4d) of the Eurodac Regulation Proposal, by inserting references to *any other equivalent system of protection under national law*, we specify that we can agree with this proposal, taking into consideration the aim pursued, namely to facilitate the application of Regulation (EU) No. 604/2013 (Dublin Regulation). At the same time, we wonder whether it would not be appropriate to define this phrase “*any other equivalent system of protection under national law*”, in relation to the activation of temporary protection, given that the definition is not provided for in Directive 55/2001.

THE SLOVAK REPUBLIC

- **Security flags**

We insist on wording as in the Council mandate for negotiation with EP (9670/22)

- **Re-linking Eurodac with the other proposals of the pact**

Without prejudice to the final political decision Slovakia is flexible as concerns incorporating other proposals' links to the EURODAC. Likewise, we are in favor of the suggestion made during the meeting (29 March 2023) not to open this discussion at this time as a strategic approach

- **DK proposals (WK 3523/2023)**

It seems, that in the event that DK is provided with access to the EURODAC, some legal issues may arise. As a result, we prefer not to accept changes proposed in this regard

- **Other issues**

In accordance with Slovak longstanding position regarding separate SAR category in EURODAC, which we do not deem necessary, we do not object to the proposal of the EP to delete references to SAR.

Accordingly, Slovakia agrees with those MS that registering migrants as CAT2 upon the SAR operation seems to be an effective solution.