



Council of the
European Union

Brussels, 18 May 2022
(OR. en)

9103/22

LIMITE

ASILE 56
EURODAC 8
ENFOPOL 261
IXIM 121
CODEC 692

**Interinstitutional File:
2016/0132(COD)**

NOTE

From:	General Secretariat of the Council
To:	Delegations
No. prev. doc.:	CM 3014/22, 8562/22
No. Cion doc.:	11205/20 + ADD 1
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 - Comments from the delegations

Following the JHA Counsellors' (Asylum) meeting on 6 May 2022, delegations will find attached a compilation of replies received from Member States on the abovementioned subject.

Written comments 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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AUSTRIA

AT written comments on

Amended proposal for Eurodac-Regulation (doc. Nr 8562/22)

1. General remarks:

- AT **welcomes the efforts** made by the Presidency for a quick adoption of the amended Eurodac-Regulation, which should go hand in hand with the adoption of the Screening Regulation.
- AT **supports adding beneficiaries of temporary protection in line with Directive 2001/55/EG as a separate category in the regulation**. This is necessary due to the Ukraine crisis and will also solve the issue of registration and exchange of data in the future. The storage of biometric data via Eurodac would enable a swift registration process of beneficiaries of temporary protection.
- AT **opposes a separate category of persons disembarked following SAR operations**. AT emphasises that there should no special data category related to the way of arrival, as this may be the starting point of a special treatment for this group, which we consider as problematic. In contrast to the newly added category of beneficiaries of temporary protection, we do not see any legal basis for a different categorization of SAR cases. Therefore, CHAPTER IV a and all corresponding recitals (such as but not exclusively 4aa) regarding SAR cases should be deleted.
- AT **welcomes the inclusion of travel documents** in the EURODAC system, especially in the current version where documents are not only to be entered into the system but also a scanned copy is to be uploaded.

2. Comments on the separate articles:

Recital 4aa:

We still believe that this recital should be deleted, notably in the context of the envisaged solidarity measures. Special categories for SAR may create pull factors.

Recital 4b and 4d:

Austria welcomes the prioritisation of the implementation of the assessment of the security-related grounds for exclusion for beneficiaries of temporary protection under the EU Temporary Protection Directive (2001/55/EC).

Article 9:

Austria sees no need for the special listing of SAR cases in the monthly statistics, especially the statistics mentioned in Art 9(1)(ba), (d)(iv), (e)(iv), (f)(iv), (g)(iv) and (ga)(iv). Including persons in relation to temporary protection is welcomed.

Article 10:

We would appreciate the deletion of paragraph 4c for already mentioned reasons.

Article 13:

Austria welcomes the inclusion of identity documents that are not only entered into the EURODAC system but of which a copy can also be scanned into the system (see Art. 13 para. 2 lit. ha & hb), but opposes mentioning of disembarkations as a result of a SAR operation in the EURODAC system for the reasons already mentioned (Art. 13 para. 2 lit. m).

Article 14:

Austria again welcomes the inclusion of identity documents in the EURODAC system (Article 14 Paragraph 2 letters ha & hb).

Chapter IVa – Article 14a:

Chapter IVa regulates third-country nationals or stateless persons who are disembarked after SAR operations. Referring to the general statements, Austria calls for the deletion of the entire chapter.

Chapter IVc – Article 14c:

Austria welcomes Chapter IVc on beneficiaries of temporary protection and the collection and transmission of their biometric data.

BULGARIA

Bulgarian comments on Presidency's compromise proposals on Eurodac Regulation, doc. st 8562/22

General comment

Bulgaria supports the step-by-step approach and the proposal for making progress in finalizing asylum reform.

What is important for us in the context of the future work is to guarantee that all steps and separate elements linked to the responsibility and solidarity should be well balanced.

Taking into account the links between separate legal acts part of the whole package for asylum reform we hope that the step by step approach will not affect the balance between the acts of the package from 2016 and the new one from 2020. In this regard, Bulgaria takes note on the explanations of the Commission and the Presidency regarding the Article 17, but nevertheless we still believe that the final content of Article 17 of the Eurodac Regulation depends on the final agreement on the solidarity under the Regulation for asylum and migration management. Currently the content of Art. 17, as provided for in the general approach from 2018, is not balanced neither with the provision from the current legal framework, nor with the provisions of the proposal for Regulation for asylum and migration management and the flexible solidarity, suggested as an element of the step-by-step approach.

Comments on the compromised proposal

Considering that the main elements of the Bulgarian position has been taken into account we are positive on the compromise proposal of the Presidency in doc. st 8562/22. Since the balance in the step by step approach on Migration and Asylum is important for us our final agreement depends on the content of the solidarity mechanism.

On Art. 14a

We would like that approach provided in Paragraph 2 to be applicable to all categories of persons, including to land borders.

On Art 14 c

Referring to the inclusion in the scope of Eurodac of the beneficiaries of temporary protection, we can agree that there is legal gap and would be appropriate to find a solution in Eurodac. At the same time, it's essential that the functionalities be developed in compliance with the temporary protection particularities. It should be taken into account that it concerns an emergency situation, characterized by the influx of significant number of third country nationals, particularly in the Member states, most affected by a similar crisis.

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) No 604/2013 and Directive 2001/55/CE [...], 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

(...)

(4b) Furthermore, for the purposes of **improving the support to the asylum system through speeding up the examination of an asylum application by prioritising the assessment of the security-related exclusion ground for the beneficiaries of subsidiary protection under Article 17(1)(d) or the possibility of not granting refugee status under Article 14(5) of Directive 2011/95/EU or by facilitating the application of accelerated or border procedures under Article 31(8)(j) of Directive 2013/32/EU, [...] it is necessary to record [...] whether, following any security checks [...], it appears that a person could pose a threat to internal security.** **For the purposes of facilitating the implementation of Directive 2001/55/EC the assessment of the security-related exclusion ground for the beneficiaries of temporary protection should also be prioritized, in accordance with Article 28 of the same Directive ;**

(4c) Registration of persons resettled via resettlement schemes should have a positive indirect effect on the smooth functioning of Regulation 604/2013, as it should help Member States identify secondary movements and facilitate the determination of the Member State responsible for a person who has already been subject to a concluded resettlement scheme. It is therefore appropriate that Eurodac may be used for such schemes.

(4d) Council Directive 2001/55/EC provides an obligation for Member States to register persons enjoying temporary protection on their territory and to exchange information on these persons for the purpose of the effective implementation of the directive.

From a technical point of view, exchanging information on persons via Eurodac is the most appropriate as it limits data registrations to this database and as it minimises the number of both possible points of failure and exchanges between Member States compared to an alternative peer-to-peer system. Furthermore, biometric data are an important element in establishing the exact identity of such persons, especially where they do not possess any identity documents.

(...)

HAVE ADOPTED THIS REGULATION:

(9) Article 1 is replaced by the following:

Article 1

Purpose of "Eurodac"

1. A system known as "Eurodac" is hereby established, the purpose of which shall be to:

- (a) **improve the support to the asylum system, including by assisting** [...] in determining which Member State is to be responsible pursuant to Regulation (EU) **No 604/2013** [...] for examining an application for international protection **lodged** [...] in a Member State by a third-country national or a stateless person, and otherwise to facilitate the application of Regulation (EU) **No 604/2013** [...] under the conditions set out in this Regulation;
- (b) assist with **resettlement schemes** [...];
- (c) assist with the control of **irregular** [...] immigration to the Union and with the detection of secondary movements within the Union and with the identification of illegally staying third-country nationals and stateless persons for determining the appropriate measures to be taken by Member States [...];
- (d) lay down the conditions under which Member States' designated authorities and the **European Union Agency for Law Enforcement Cooperation** [...] (Europol) may request the comparison of biometric or alphanumeric data with those stored in **the CIR**

and the Central System for law enforcement purposes for the prevention, detection or investigation of terrorist offences or of other serious criminal offences;

- (e) assist in the correct identification of persons registered in Eurodac under the conditions and for the objectives referred to in Article 20 of Regulation (EU) 2019/818 by storing identity data, travel document data and biometric data in the [...] CIR established by that Regulation;
- (f) support the objectives of the European Travel Information and Authorisation System ('ETIAS') established by Regulation (EU) 2018/1240;
- (g) support the objectives of the Visa Information System (VIS) referred to in Regulation (EC) No 767/2008.

(h) assist with the implementation of the Directive 2001/55/EC.

2. Without prejudice to the processing of data intended for Eurodac by the Member State of origin in databases set up under the latter's national law, biometric data and other personal data may be processed in Eurodac only for the purposes set out in this Regulation, in Regulation (EU) No 604/2013, in Regulation (EU) 2019/818, in Regulation (EU) 2018/1240 and in Regulation (EC) No 767/2008 [...].';

(10) Article 3 is amended as follows:

[...]

(a) in paragraph 1, point b), point (vii) is added :

(vii) in relation to a person covered by Article 14c(1), the Member State which transmits the personal data to the Central System and to the Common Identity Repository and receives the results of the comparison;

(b) in paragraph 1, the following points (ea), (t), (u) and (v) [...] are added:

(ea) 'beneficiary of temporary protection' means a person who enjoys temporary protection as defined in Article 2(a) of Directive (EC) 2001/55 [Temporary Protection Directive]

- (t) “CIR” means the common identity repository as **established by [...]** Article 17 (1) of Regulation (EU) 2019/818;
- (u) “identity data” means the data referred to in Article 12(1)(c) to (f) and (h), Article 13(2) (c) to (f) and (h) , ~~and~~ Article 14(2) (c) to (f) and (h) [...], **Article 14a(2)(c) to (f) and (h), and Article 14c(2) (c) to (f) and (h);**
- (v) “dataset” means the set of information recorded in Eurodac on the basis of Articles 12, 13, ~~or~~ 14, **14a or 14c** [...], corresponding to one set of fingerprints of a data subject and composed of biometric data, alphanumeric data and, where available, a scanned colour copy of an identity or travel document.’;

(...)

(19) [...] **the following Chapter is inserted after Article 14:**

‘CHAPTER IV a

THIRD-COUNTRY NATIONALS OR STATELESS PERSONS DISEMBARKED FOLLOWING A SEARCH AND RESCUE OPERATION

Article 14a

Collection and transmission of biometric data

1. Each Member State shall promptly take the biometric data of every third-country national or stateless person of at least six years of age who is disembarked following a search and rescue operation as defined in [Regulation (EU) XXX/XXX [Regulation on Asylum and Migration Management]].

2. The Member State concerned shall, as soon as possible and no later than 72 hours after the date of disembarkation which may by way of derogation be extended to a maximum 120 hours in case of sudden influx, transmit to the Central System and to the CIR, as appropriate in accordance with Article 4(2), the following data in relation to any third-country national or stateless person, as referred to in paragraph 1:

(a) fingerprint data;

(b) a facial image;

(c) surname(s) and forename(s), name(s) at birth and previously used names and any aliases, which may be entered separately;

(d) nationality(ies);

(e) date of birth;

(f) place of birth;

(g) Member State of origin, place and date of disembarkation;

(h) sex;

[...]

(i) reference number used by the Member State of origin;

(j) date on which the biometric data were taken;

(k) date on which the data were transmitted to the Central System and to the CIR as appropriate;

(l) operator user ID;

2a. Additionally, where applicable and available, the following data shall be promptly transmitted to the Central System and the CIR, as appropriate in accordance with Article 4(2) as soon as available:

(a) type and number of identity or travel document; three letter code of the issuing country and expiry date;

(b) a scanned colour copy of an identity or travel document along with an indication of its authenticity or, where unavailable, another document which facilitates the identification of the third-country national or stateless person along with an indication of its authenticity;

(c) [...] in accordance with paragraph 6, the date when the person concerned left or was removed from the territory of the Member States;

(d) [...] the fact that assistance for voluntary return and reintegration (AVRR) has been granted,

(e) [the fact that the person could pose a threat to internal security following any security checks.

3. Non-compliance with the time-limits referred to in paragraph 2 of this Article shall not relieve Member States of the obligation to take and transmit the biometric data to the CIR. Where the condition of the fingertips does not allow the taking of fingerprints of a quality ensuring appropriate comparison under Article 26, the Member State of origin shall retake the fingerprints of persons disembarked as described in paragraph 1 of this Article, and resend them as soon as possible and no later than 48 hours after they have been successfully retaken.

4. By way of derogation from paragraph 1, where it is not possible to take the biometric data of the disembarked person on account of measures taken to ensure his or her health or the protection of public health, the Member State concerned shall take and send such biometric data as soon as possible and no later than 48 hours after those health grounds no longer prevail.

In the event of serious technical problems, Member States may extend the 72-hour time-limit in paragraph 2 by a maximum of a further 48 hours in order to carry out their national continuity plans.

5. As soon as the Member State of origin ensures that the person concerned whose data was recorded in Eurodac in accordance with paragraph 1 has left the territory of the Member States in compliance with a return decision or removal order, it shall update its data set recorded in conformity with paragraph 2 relating to the person concerned by adding the date of his or her removal or when he or she left the territory.

6. Where requested by the Member State concerned, the biometric data may also be taken and transmitted on behalf of that Member State by members of the European Border and Coast Guard Teams or experts of the asylum support teams when exercising powers and

performing their tasks in accordance with Regulation (EU) 2019/1896 and [Regulation (EU) XXX/XXX [EU Agency for Asylum Regulation]].

7. Each data set collected and transmitted in accordance with paragraph 1 shall be linked with other sets of data corresponding to the same third country national or stateless person in a sequence as set out in Article 4(6).

8. A data set pursuant to paragraph 2 [...] is considered created within the meaning [...] of Article 27(1) of Regulation (EU) 818/2019 when all the data in points (a) to (f) and (h) are recorded.’;

(20) [...] the following Chapter is inserted after Article 14a:

‘CHAPTER IV c

BENEFICIARIES OF TEMPORARY PROTECTION

Article 14c

Collection and transmission of biometric data

1. Each Member State shall promptly take the biometric data of every third-country national or stateless person of at least six years of age who enjoys temporary protection in the territory of that Member State pursuant to Directive 2001/55/EC [Temporary protection].

2. The Member State concerned shall, as soon as possible and no later than 72 hours the registration as beneficiary of temporary protection, transmit to the Central System and to the CIR, as appropriate in accordance with Article 4(2), the following data in relation to any third-country national or stateless person, as referred to in paragraph 1:

(a) fingerprint data;

(b) a facial image;

(c) surname(s) and forename(s), name(s) at birth and previously used names and any aliases, which may be entered separately;

(d) nationality(ies);

(e) date of birth;

(f) place of birth;

(g) Member State of origin, place and date of registration as beneficiary of temporary protection;

(h) sex;

(i) where available, the type and number of identity or travel document, the three letter code of the issuing country and expiry date;

(j) where available, a scanned colour copy of an identity or travel document along with an indication of its authenticity or, where unavailable, another document

(k) reference number used by the Member State of origin;

(l) date on which the biometric data were taken;

(k) date on which the data were transmitted to the Central System and to the CIR as appropriate;

(l) operator user ID;

(m) the fact that the person could pose a threat to internal security following any security checks, thus justifying the exclusion of the benefit of the temporary protection based on security-related exclusion grounds, as provided by Article 28 of Directive 2001/55/CE;

3. Non-compliance with the 72 hour time-limit referred to in paragraph 2 of this Article shall not relieve Member States of the obligation to take and transmit the biometric data to the CIR. Where the condition of the fingertips does not allow the taking of fingerprints of a quality ensuring appropriate comparison under Article 26, the Member State of origin shall retake the fingerprints of the beneficiary of temporary protection as described in paragraph 1 of this Article, and resend them as soon as possible and no later than 48 hours after they have been successfully retaken.

4. By way of derogation from paragraph 1, where it is not possible to take the biometric data of the beneficiary of temporary protection on account of measures taken to ensure his or her health or the protection of public health, the Member State concerned shall take and send such biometric data as soon as possible and no later than 48 hours after those health grounds no longer prevail.

In the event of serious technical problems, Member States may extend the 72-hour time-limit in paragraph 2 by a maximum of a further 48 hours in order to carry out their national continuity plans.

5. Where requested by the Member State concerned, the biometric data may also be taken and transmitted on behalf of that Member State by members of the European Border and Coast Guard Teams or experts of the asylum support teams when exercising powers and performing their tasks in accordance with Regulation(EU) 2019/1896 and Regulation (EU) 2021/2303 *EU Agency for Asylum Regulation*.

6. Each data set collected and transmitted in accordance with paragraph 1 shall be linked with other sets of data corresponding to the same third country national or stateless person in a sequence as set out in Article 4(6).

7. The fact that the registration as a beneficiary of temporary protection follows the apprehension of the third-country national or stateless person in connection with the irregular crossing of the external borders does not exempt Member States to register those persons first in accordance with Article 13 of this Regulation.

8. The fact that the registration as a beneficiary of temporary protection follows the apprehension of the third-country national or stateless person illegally staying on the territory of Member States, does not exempt Member States to register those persons first in accordance with Article 14 of this Regulation.

9. The fact that the registration as a beneficiary of temporary protection follows the disembarkation following a search and rescue operation of the third-country national or stateless person does not exempt Member States to register those persons first in accordance with Article 14a of this Regulation.

10. In the cases foreseen in paragraphs 7 to 9, the Member State may reuse the biometric data previously taken in accordance with Articles 13, 14 and 14a of this Regulation for the recording in the Central System and in the CIR made pursuant to paragraph 1.

11. A data set pursuant to paragraph 2 is considered created within the meaning of Article 27(1) of Regulation (EU) 818/2019 when all the data in points (a) to (f) and (h) are recorded.

(21) Article 17 is amended as follows:

[...]

3c. For the purposes laid down in Article 14a(1), each set of data relating to a third country national or stateless person as referred to in Article 14a(2) shall be stored in the Central System and in the CIR as appropriate for five years from the date on which his or her biometric data were taken.

3d. For the purposes laid down in Article 14c(1), each set of data relating to a third country national or stateless person as referred to in Article 14c(2) shall be stored in the Central System and in the CIR as appropriate for [three/five]¹ years from the date on which his or her biometric data were taken.

(b) paragraph 4 is replaced by the following:

‘(4). Upon expiry of the data storage periods referred to in paragraphs (1) to **(3d)** [...] of this Article, the data of the data-subjects shall be automatically **erased** [...] from the Central System and from the CIR [...].’;

(...)

¹ **The precise period is to be discussed, taking into account the principle that data should only be retained for the length of time strictly necessary. The Presidency intends to reflect the results of the discussions in an appropriate recital.**

GERMANY

Germany thanks the French presidency for their efforts to advance the Eurodac reform by way of a step-by-step approach and for presenting a compromise proposals of the Eurodac regulation for this purpose.

A progress on the CEAS legal instruments is urgently needed. Therefore, Germany continues to advocate for an early adoption of Eurodac and we remain in favour of moving forward to reaching a general approach or a Council position.

We continue to adhere to our previous proposed amendments, but we do not make our agreement conditional with regard to an early adoption of Eurodac. Therefore, we support the amendments proposed by the French presidency by way of compromise. We reserve the right to make further comments.

1. Art. 8 Eurodac-Recast:

- **Art. 8b:** We would like to ask to insert the following wording after "shall have access to and may consult":

„ ... data in Eurodac collected on the basis of Articles 12, 12c, 12f, 13, 14, 14a and 14 c limited to the data categories listed in Annex I of this Regulation as well as the facial images, scanned color copies of an identity or travel document, Member States of origin, Member States responsible, reference numbers and dates when the person concerned left or was removed from the territory of the Member States. This data is provided”.

The text then continues with „in a read-only format ...“.

2. Art. 9 Eurodac-Recast

- **Art. 9:** We would like to ask whether the corresponding legal acts (VIS, EES, ETIAS) as well as Regulation 2019/818 should be evaluated as they might require an additional amendment to permit the usage of stored data for cross-system-statistics (as interoperability usually requires congruent permissions in both legal acts). Can the question of a cross-system-statistics be regulated solely in one isolated legal act?
- **Art. 9 para. 1 (d) (i):** We would like to ask for a clarification on the deletion of "*in another Member State*". Why was this deleted?
- **Art. 9 para. 1 (ga):** We would like to ask for an explanation of the cases/constellations, which as we understand cannot arise in this context.

3. Art. 10 Eurodac-Recast

- Germany thanks the French Presidency for the clarifying regulations, which regulate the sequence of registrations in case different registration categories coincide.
- **Art. 10 para. 4b:** Germany supports the amendment of the part "*or is made simultaneously with*", as this clarifies that illegal residents should be registered by the member states in which they reside, even in the case of a simultaneous asylum application under Art. 14 Eurodac.

Further, we would like to ask for clarification with regard to Art. 23a SBC COM proposal. How does Art. 10 para. 4b relates to the current proposals of the SBC?

- **Art. 10 para. 4c:** Germany supports the clarification on the SAR category, which clarifies that a registration with a SAR category shall take place even in the case of a simultaneous asylum application.
- **Art. 10 para. 4ca, 4e:** We support the clarification that the registration of an application for temporary protection in case of an contemporaneous or subsequent application for asylum should be carried out primarily.

4. **Art. 14a Eurodac-Recast**

- We support the extension of the Eurodac scope to a SAR category as well as the extension of the deadline of max. 120 h for registration after SAR missions in exceptional cases of "*sudden influx*" by way of compromise. We would like to ask for a clarification if a sudden influx should be reported to EU COM beforehand. Further, we would like to suggest replacing the reference to the AMMR in Art. 14a para. 1 Eurodac by an addition in Art. 3 Eurodac.
- Germany supports the possibility to ask for assistance from the EU agencies, (Frontex and the EUAA) which then may collect and forward the biometric data for the member state in need.
- We also ask for a review of the references to data categories from Art. 14a, as they in particular do not mention the cited paragraphs of the regulations.

- We can support the consequential changes introduced by the inclusion of the SAR category. There are no objections to this as it is only a parallel design. This applies in particular to the following consequential amendment: **recital (4aa), Art. 4 para. 5, Art. 8a und Art. 8b, Art. 9 para. 1 (c), Art. 9 para. 1 (d) (iv), (e) (iv), (f) (iv), (g), Art. 19 para. 1, para. 3, para. 4, Art. 19 para. 1, 3, 4, Art. 40a, Art. 40b.**

5. Art. 14c Eurodac-Recast

- We support the inclusion of the category on the Temporary Protection Directive (2001/55/CE) in Art. 14c.
- We consider the extension of the scope to the Temporary Protection Directive as necessary in order to be able to cope with situations such as the current situation with Ukraine and to ensure the registration of protection seekers in a common European database.
- Art. 14c para. 7 - 9: No objections
- We also ask for a review of the references to data categories from Art. 14c, as the citations are not fully comprehensible.
- We support the consequential changes introduced by the inclusion of the category on temporary protection. This applies to the caption, **recital (4b), recital (4d), Art. 1 para. 1 (h), Art. 3 para. 1 (b) (vii) und lit (u), Art. 3 para. 1 (ea), Art. 4 para. 2, Art. 8a, Art. 8b, Art. 9 para. 1 (c), Art. 9 para. 1 (c), Art. 9 para. 1 (d) (v), (e) (v), (f) (v), (ga), (j), Art. 19 para. 1, 3, 4, Art. 40a, Art. 40b.**

6. Art. 17 Eurodac-Recast

- **Art. 17 para. 3c:** We consider a storage period of five years to be appropriate for the SAR category.
- **Art. 17 para. 3d:** We consider a storage period of four years to be appropriate for the category on temporary protection.

7. Art. 21 Eurodac-Recast

- Art. 21 para. 1a: Germany supports the conditions for access to Eurodac by designated authorities as set out in Art. 21 para 1a.

8. Art. 40c Eurodac-Recast

- **Art. 25c:** It is unclear, why the comparisons carried out via the interoperability mechanisms, which also include the EES, are not sufficient. Therefore, we would like to ask to delete Art. 25c as the necessity of data access for the substantive asylum examination is not sufficiently demonstrated.

- **Art. 25d para. 1:** We request the adoption of the following wording:

"For the sole purpose of determining the Member State responsible for an application for international protection in accordance with Articles 12 (4), 14 (1) and 19 (2) and (3) of Regulation (EU) 604/2013, the asylum authorities referred to in Article 3 (1) (34) (i) shall have access to search in the EES with the data referred to in Article 16 (1), and Art. 17 (1)(a), (b) and (c)."

The amendment serves to clearly define the categories of cases in which the EES might be necessary for the examination of responsibility for asylum applications.

HUNGARY

Hungary has always considered the reform of the Eurodac system a priority in order to prevent abuses of the EU's asylum system. However, Hungary maintains its strong position on the package approach, as the issue is closely linked to other proposals such as the draft AMMR Regulation providing for mandatory relocation. We also maintain our strong objection to creating a separate category for the registration of persons disembarked after search and rescue operations. We remain convinced that migrants crossing the sea borders illegally should be treated in the same way as those who commit similar attempts at other types of borders thus, those arriving by sea should not be subject to more favorable procedural rules.

With regards to the registration of beneficiaries of temporary protection, we would like to highlight that the text of the proposal shall make clear that the persons recognized as beneficiaries of temporary protection due to the current war in Ukraine will be exempted from the personal scope of this Regulation.

As for the data storage of beneficiaries of temporary protection, Hungary supports a five-year-long period.

IRELAND

Article 4

2. The CIR shall contain the data referred to in Article 12 **(1)** (a) to (f) **and** (h) and **(ha)**, [...] Article 13(2) (a) to (f), (h) and **(ha)** [...], Article 14(2) (a) to (f), (h) and **(ha)** [...] **Article 14a(a) to (f), (h) and (i), and Article 14c (2) (a) to (f), (h) and (i)**. The remaining Eurodac data shall be stored in the Central System.

The data referred to in relation to Article 12(1), 13(2) 14(2) and 14c(2) is the same with (ha) and (i) in relation to Article 14c referring to the type and number of identity or travel document... However, in Article 14a para 1 point (i) refers to the reference number used by the MS of origin. Is this deliberate or should the reference here also be to type and number of identity or travel document. If so the correct reference should Article 14a(2) (a) to (f) and (h) and (2a)(a)

Article 10 par graph 4ca and 4e

4c. The fact that the application for international protection follows or is made simultaneously with the disembarkation following a search and rescue operation of the third-country national or stateless person does not exempt Member States to register those persons first in accordance with Article 14a of this Regulation.

4ca. In the cases an application for international protection is made simultaneously with the registration of the beneficiary of temporary protection shall not relieve Member States from their obligation first to register a beneficiary of temporary protection.

4d. In the cases foreseen in paragraphs 4a and to 4ca [...], the Member State may reuse the biometric data previously taken in accordance with Articles 13, and 14 and 14a [...] of this Regulation for the recording in the Central System and in the CIR made pursuant to paragraph 1.

4e. The fact that the application for international protection follows the registration as beneficiary of temporary protection, does not exempt Member States to register those persons first in accordance with Article 14c of this Regulation.

Is there a need for two separate paragraphs 4ca and 4e? Paragraph 4ca could be changed to refer to “in the cases an application for international protection follows or is made simultaneously” in line with the wording in para 4c. If para 4e is to be kept should a reference to 4e also be included in para 4d. (Wording in 4ca generally could be refined).

Article 12(2)(m) – not new text

(m) where applicable, the fact that the person was disembarked following a search and rescue operation

We think this text was put in here when the separate category for SARs was deleted. With the reintroduction of the SARs category it would appear that this is no longer necessary.

Article 14a(1)

1. Each Member State shall promptly take the biometric data of every third-country national or stateless person of at least six years of age who is disembarked following a search and rescue operation as defined in [Regulation (EU) XXX/XXX [*Regulation on Asylum and Migration Management*]].

Given that AMMR is still under negotiation consideration will have to given to how this definition can be addressed.

Article 14a(2a)(c)

2a. Additionally, where applicable and available, the following data shall be promptly transmitted to the Central System and the CIR, as appropriate in accordance with Article 4(2) as soon as available

(c) [...] in accordance with paragraph 6, the date when the person concerned left or was removed from the territory of the Member States;

We think the reference here should be to paragraph 5 and not paragraph 6.

Article 14c(2)

This sets out the data to be registered in Eurodac in respect of beneficiaries of temporary protection.

CLS seem to have addressed questions raised on the legal basis to register all the information proposed in this Article. Article 10 of the TPD requires MS to register the data referred to in point (a) of Annex II attached to the Directive. This only refers to personal data of the person concerned (name, nationality, date and place of birth, marital status, family relationship). This would be covered by points (c)-(f) and (h)

Articles 15 and 26 of the TPD requires MS to share all the data referred to in Annex II for the purposes of family reunification or transfer to another MS. This includes ID and travel docs, docs establishing family ties e.g. marriage cert. There is no requirement to register this information but as MS are required to share it (i) and (j) may be ok

The data proposed under Eurodac that is not included in the Annex II includes fingerprint and facial image (although not explicitly referred to in Annex II this could be considered personal data). The fact that the person could pose a threat to security (m) is not referred to in the annex at all.

We think some consideration needs to be given to alignment of what is proposed here and the obligations to register certain information in the Temporary Protection Directive.

Article 17(3d) – Page 45

For the purposes laid down in Article 14c(1) each set of data relating to a third country national or stateless person as referred to in Article 14c(2) shall be stored in the Central System and in the CIR as appropriate for three/five years from the date on which his or her biometric data were taken

Our preference is for the data to be retained for five years. A person may be granted TP for a period of three years after which they might apply for international protection in the same or another MS, or permission to remain on other ground or return home. It would be helpful to still have the information that the person was a beneficiary of TP and what MS granted that protection. Also note new next in para 4 in relation to marking data of an illegally staying TCN who is issued with a residence doc and who had previously been a beneficiary of TP. This data may not be available to mark if it is deleted just after TP ends.

THE NETHERLANDS

In addition to the written comments of the Netherlands on the amended proposal for the Eurodac Regulation, **NL** still finds it somewhat unclear what the difference is between ‘lodging’ in article 10a and ‘making’ in article 10b. **NL** would be very grateful if could get an (additional).

In addition to the interventions made by the Netherlands during the JHA Counsellors meeting on 6 May 2022 and the scrutiny reservation we placed and that currently still stands, please find below our written contribution.

Separate registration category for persons disembarked following a SAR operation

The Netherlands has concerns with regards to the proposed separate registration category for persons disembarked following a SAR operation and the application of article 13(1) of the Dublin Regulation. The Netherlands would like to underline the importance of making sure that there will be no ‘mismatch’ between Eurodac and Dublin in the situation where the revised Eurodac Regulation is adopted before the new Asylum and Migration Management Regulation (AMMR). In order to fall under the scope of article 13 of the current Dublin Regulation, persons disembarked following a SAR operation, despite their separate registration category in Eurodac, must be regarded as having irregularly crossed the external border of the Member State of disembarkation. We have shared this concern with the Commission on an earlier occasion. The Commission at that time acknowledged that there will be a need to make some further adaptations to the Eurodac Regulation in case it is adopted before the AMMR. The Netherlands stresses the need for this issue to be taken into account and stands ready to discuss this matter in more detail if needed.

Article 11

With regard to article 11, the Netherlands wishes to reiterate some earlier comments.

Firstly, the Netherlands is of the opinion that the distinction between article 11 paragraph 1 (which refers to determining responsibility) and article 11 paragraph 3 (which refers to a shift in responsibility after responsibility has been established) is important and needs to be upheld.

Therefore, it seems more logical to only state that, if the Member State conducting the procedures for determining the responsible Member State meets the deadline established in article 21, that Member State registers its responsibility. From this it follows that article 11 paragraph 3 needs to be adapted accordingly.

Secondly, the Netherlands suggests to turn around subparagraphs c and d of article 11 paragraph 2. This would bring the text more in line with the current Eurodac Regulation.

Article 14C

With regard to article 14C, the Netherlands takes the view that it is necessary to be able to, by way of derogation, extend the deadline for transmitting data in the case of sudden influx. Registration costs time and resources, which there is often not enough of in times of crisis. However, in the view of the Netherlands, it is important that registration takes place as swiftly as possible.

POLAND

Please find below PL comments on Eurodac:

- Poland maintains its scrutiny reservation and reiterates its previous comments.
- Poland continues to support the package approach, which is the only way that allows for a holistic and coherent approach to the reform of the EU's asylum and migration system. Additionally, the introduction of a new category – beneficiaries of temporary protection, which refers to the proposal for a regulation addressing situations of crisis and force majeure in the field of migration and asylum, confirms the necessity of this approach.
- In our opinion, it would be more appropriate that information on persons disembarked as a result of SAR operations appear as a subcategory in paragraph 14a and not as a strongly accentuated new category. For a complete picture of the migratory situation it is important to have data and statistics on SAR operations, but we still believe that migrants from SAR operations should not receive any privileges - which could be a pull factor.
- Therefore, concerning the SAR category, we are also in favour to restore the provisions on statistical purposes under the recital 4aa.
- Regarding the proposal to register persons benefiting from the temporary protection under the Directive 2001/55 / EC, it should be clearly stipulated that it does not apply to the refugees from Ukraine. We believe that appropriate provisions should be added with an information that also in case of subsequent decisions on temporary protection for people fleeing the war in Ukraine, these changes will not apply to this category of persons.

- In the context of the experience resulting from Russia's aggression against Ukraine and the flow of people to countries bordering Ukraine, the Presidency's proposals should be considered as unrealistic.
- The introduction of a new category of persons - beneficiaries of temporary protection in Eurodac, in the event of a sudden and mass influx of foreigners, with legal deadlines for data registration in Eurodac, is practically impossible to be performed due to the limited human resources of NAP Eurodac, which process data within Eurodac, and the AFIS system, under which the Eurodac Interface operates, which is not intended to allow such volume of data to flow.
- In addition, assuming that the data concerning persons enjoying temporary protection will be stored in Eurodac - it should be noted that due to the fact that the launching of temporary protection procedures should only take place in crisis situations where the use of traditional migration mechanisms (asylum, legal migration for humanitarian reasons) cannot take place due to the pace and scale of the phenomenon - it should be emphasized that maintaining the basic deadlines for collecting and transferring data (72 hours + 48 hours) will be physically unfeasible for the Member States most affected by the crisis. It is irrational to not make a distinction between the time of data transfer in ordinary situations (asylum applications, illegal border crossing) and in extraordinary situations. From the experience of the war in Ukraine, it seems that the period of 7 days (with the possibility of extending it to 30) seems to be the most rational.

- The explanations of the Commission and the Presidency regarding the doubts raised regarding the place of registration of the protection, although important, do not solve the most important logistical problems. Firstly, the visa, asylum and border control authorities have, in principle, devices enabling the easy fingerprinting of all fingers. Therefore, it should be considered whether there should be a derogation from the general rules of the Eurodac Regulation for the registers related to the data of beneficiaries of temporary protection. Polish experience related to the war in Ukraine shows that in order to ensure the quick and efficient registration of persons benefiting from the temporary protection and not to lead to a complete paralysis of the asylum and border authorities - registration of beneficiaries should be made at the level of communes or migration authorities, typically equipped only with scanners for simultaneous fingerprint collection of one or two fingers (for the purpose of issuing passports, residence or identification documents).
- However, we agree that ultimately - a single database of persons benefiting from the temporary protection in the Member States is a correct idea and aims to close a significant system gap - the question should be asked whether placing the above-mentioned database in the Eurodac system is the most appropriate solution. Admittedly, this solution has its advantages - it applies to all Member States, but considering the fact that the temporary protection status should result in the issuance of residence permits or other equivalent - it should be considered whether it would not be a better solution to include this database in the VIS in order to avoid multiple entering data into large-scale systems, or at least introducing interoperability rules that allow importing some data to the above-mentioned system.

SWEDEN

General comment

Sweden would like to thank the Presidency for the work on the amended proposal. We would like to see an adoption of a revised Eurodac Regulation as soon as possible and we are generally positive towards a new category of beneficiaries of temporary protection and a category of persons disembarked following SAR operations. However, we need some more time to review the proposal, so for the time being Sweden needs to keep our general scrutiny reservation.

Specific comments

Article 14a 2. and 4.

In our view short time-limits for the transmission of data supports good management of secondary movements, and the time-limit should be extended to 120 hours only in exceptional cases.

Therefore we would like some clarification of what is considered to be a "sudden influx" that would constitute grounds for extending the time-limit to 120 hours. In any case, and for the sake of coherence, such a provision regarding an extension beyond 72 hours should be placed in section 4 of article 14a.

Article 14c 2.

There seems to be a word missing in Article 14c 2., suggestion to include "after" in the wording.

The Member State concerned shall, as soon as possible and no later than 72 hours after the registration as beneficiary of temporary protection, transmit to the Central System and to the CIR, as appropriate in accordance with Article 4(2), the following data in relation to any third-country national or stateless person, as referred to in paragraph 1:

SLOVAKIA

DRAFTING SUGGESTIONS – possible mistakes in references

- **Art 10 para 4d)** SK suggest to make the reference also to the Art. 14c
- **Art 10** SK would like to suggest to merge **4ca and 4e** into one paragraph similarly as in 4c
- **Art. 19 para 3** – SK would like to make reference also to Art 14c to make the data available for comparison until they are erased
- Chapter VIIla
- **Art 40b** *Amendments to Regulation EU 2019/818*
Article 13 para 3 letter c) - instead of reference to 14a(1) points (a) and (b); reference should be to Art 14 a(**2**) which consists of points a and b; similarly as concerns 14c(**2**) instead of 14c(1)
- **Art. 14 para 6** *Searching biometric data*– In line with the same logic as above *changes in the Art. 18* should be instead of new wording - Article 14a, points (a) to (f), (h) and (1a) point (a) and Article 14c, points (a) to (f), (h) and (i) as follows Article 14a (**2**), points (a) to (f), (h) and (~~1a~~ **2a**) point (a) and Article 14c(**2**), points (a) to (f), (h) and (i)?
- The doc. 8562/22 does not contain **Articles 15, 16 and 18 (of the Chapter V)** – SK considers as necessary to make the reference to the new category 14c **also in these Articles**

QUESTIONS & CLARIFICATION

- **Art. 9 para 1 letter d) (i) and letter f (i)-** SK is interested to know the reasoning behind deletion of the wording **in another Member State**;
- It is not clear to understand what is the content of the Chapter IVb to which the reference is made in the Article 24 of the **Chapter VIIIa /Amendments to (EU) 2019/818**. Is it the previous Chapter IVc? (with no links to relocation etc.?)
- SK would like to have more clarity as concerns the time limits within which MS shall transfer biometric data to the CIR; at the one hand is „72 hours” versus “promptly” = a term which is not defined; furthermore it would be appreciate to understand the reason for disparities between various categories (Article 13 till Article 14c), for instance regarding Article 14a para 2a letter a) and b) versus Art 14 para 2 letter ha and hb
- **SK would also like to know if a new category 14c will be searchable against all 3 Cat. in EURODAC.**

To end I would like to recall the SK Position on SAR category

SK do not see the need to create a new specific category of SAR; as the option to mark SAR under the Cat2. seems to be sufficient. SK can support SAR category only if it is clearly indicated that the only aim is statistical reason; e.g. as in the previous wording in the recital 4aa "by enabling the production of statistical data for this category of persons". We understand the existence of the Art 9, yet we cannot see any constraints to have the wording in recital, too. This position doesn't implicate the final decision on Eurodac Regulation.

Finally, regarding the Art. 17 para 3c, SK prefers period of 5 years.

JOINT CONTRIBUTION – CY, ES, IT, MT AND EL (MED5)

The following amendments relate to the PCY compromise proposal in doc ST 8562/22.

Final position of the MED 5 delegations remains subject to the progress on the solidarity mechanism.

Article 14

Collection and transmission of biometric data

1. Each Member State shall promptly take the [...] biometric data of every third-country national or stateless person of at least six years of age who is [...] illegally staying within its territory.

2. The Member State concerned shall, **as soon as possible and no later than 5 days** after [...] establishing that the third-country national or the stateless person is illegally staying, transmit to the Central System and to the CIR as appropriate in accordance with Article 4(2) the following data in relation to any third-country national or stateless person, as referred to in paragraph 1:

The replacement of 72 hours with “**no later than 5 days**” is accordingly to be done in articles 10.1, 13.2, 13.4, 14.2, 14.3, 14a.2, 14a.4. As a consequence, the second subparagraph of articles 10.2, 14.4 and 14A.4 would be deleted.