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EXPLANATORY STATEMENT

to the draft updated mandate on the proposal for a Regulation of the European Parliament and of the Council on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013, 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

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Jorge Buxadé Villalba

In May 2016, the Commission proposed, as part of the CEAS reform, a recast of the existing Eurodac Regulation No (EU) 603/2013. LIBE Committee adopted its report and the decision to enter into negotiations on 30 May 2017, and the plenary of the European Parliament confirmed this mandate in June 2017. Between September 2017 and June 2018 six trilogues were held with a partial provisional agreement reached under Bulgarian Presidency. However, the Bulgarian Presidency did not submit the text to Coreper. Between September 2018 and February 2019, most recitals as well as the resettlement-related parts were discussed at technical level and relevant drafting work was carried out under the Austrian and Romanian Presidencies, in parallel to technical negotiations on the so called “white” parts of the resettlement file. However, no political confirmation of the text negotiated at technical level has been possible, as it proved impossible to resume political trilogues despite the efforts of the Romanian Presidency. Given the 2019 election recess, the file became part of previous Parliament’s ‘unfinished business’ (Rule 240). In September 2019, the LIBE Committee requested that the CoP take a decision that “all unfinished LIBE legislative procedures (OLP, NLE, APP and CNS) that fall under Rule 240 of the Rules of Procedure were to be resumed or continued in the IXth legislature”. This request was granted in October 2019.

The Rapporteur and Shadows on the Eurodac file were subsequently confirmed, but no substantial work has taken place at technical or political level. On 23 September 2020, as part of the New Pact on Migration and Asylum, the Commission tabled an 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.

According to the explanatory memorandum, “[t]he proposal amending the 2016 proposal builds on the provisional agreement between co-legislators, complements these changes and aims at transforming Eurodac into a common European database to support EU policies on asylum, resettlement and irregular migration.” It is to be noted that the amended proposal is no more a recast, and that goes henceforth for the original proposal as well.

Very few precedents are known to the European Parliament, of an amended Commission proposal being submitted under the same procedure number after the point where Parliament had already adopted its mandate. In this case, the amended Commission proposal comes more than two years after a provisional agreement has been reached. The Rapporteur consulted the Shadows on the procedural path to be followed in this case, on the basis of a note provided by relevant services. The Rapporteur therefore put forward a procedural proposal of drafting an updated negotiating mandate, as the procedural option supported by a majority of the Shadows. This proposal entails that the future LIBE report on the file would, in general terms, leave the original Commission proposal untouched and also respect the provisional agreement. The Rapporteur notes, however, that, given the time that has lapsed between the provisional agreement and the amended proposal, notably in view of the election of a new Parliament in the meantime, and also in view of the fact that the amended Commission proposal brings elements that alter the balance struck in the provisionally agreed text between the co-legislators, there is a need to revise the agreement on the principle that biometric data should be taken outside the EU territory, as far as resettlement-related provisions are concerned, which was also struck in June 2018; any subsequent technical work conducted on this premise should also be considered as obsolete.

For this purpose, the updated mandate simply reiterates, for reasons of transparency, the original EP mandate.

This key point, on which a broad agreement has been reached, is already reflected in the Rapporteur's draft updated mandate (PE661.979v01-00), namely in Amendments 9, 27, 28 and 33; the rest of the amendments contained in the draft updated mandate bear on issues strictly related to the new text included in the amended proposal.

In particular, the Rapporteur is of the opinion that the Commission's proposal of creating a new category for persons disembarked following a search and rescue (operation) lacks of substantial justification and would ultimately create a pull-factor. Moreover, since the responsibility rules for this proposed category are the same as the rules for persons who enter illegally the EU territory, these persons should remain under the category provided for in Article 1(c). For this reason, the Rapporteur proposes to delete Chapter IVa and its corresponding provisions.

The Rapporteur welcomes the new provision that would allow to produce cross-system statistics and which should not only include Eurodac, EES and ETIAS but also SIS, because of the particular interest to analyse the SIS alerts issued on the basis of return decisions. This would provide with a more complete picture and lead to more accurate analysis for more evidence based operational and policy decisions. These statistics should be available to the relevant JHA agencies, including Europol.

For the purpose of efficiently implementing the tasks laid down in Regulation (EU) 2019/1896 and to provide operational support for the implementation of the Regulation introducing a screening of third country nationals at the external borders, the Rapporteur considers that it is important that the European Border and Coast Guard (standing corps) team members can access and may consult Eurodac through a technical interface which should be developed and maintained by eu-LISA in cooperation with Frontex.

Also, it is important that EBCG members and Coast Guard teams or expert of asylum support teams should be allowed, where requested by the Member State concerned, to take and transmit not only biometric data but also alphanumeric one, which should be collected during the TCN screening process. This would allow for a more operational support and added value to the frontline Member States

The Rapporteur hopes that a broad consensus can be achieved on the basis of this draft updated mandate, in view of a speedy adoption of the updated mandate and the future re-opening of inter-institutional negotiations.