Asylum: requests for comparisons with EURODAC data by Member States' law enforcement authorities and Europol for law enforcement purposes

2009/0130(CNS) - 08/07/2009 - Legislative proposal

PURPOSE: to lay down the conditions under which Member States' designated authorities and the European Police Office (Europol) may request the comparison of fingerprint data with those stored in the EURODAC central database.

PROPOSED ACT: Council Decision.

BACKGROUND: the usefulness of fingerprint databases in fighting crime is a fact that has been repeatedly acknowledged. Fingerprint data of asylum seekers are collected and stored in the Member State in which the asylum application was filed, as well as in EURODAC. However, while Member States successfully access asylum seekers fingerprints on a national level, it seems that access to asylum seekers fingerprint databases of other Member States is more problematic. The reason is that there is a gap in information and verification since there is currently no single system that is accessible to law enforcement authorities which enables the latter to determine the Member State that has information on an asylum seeker. Law enforcement officials will only know whether information is available in a database of another Member State if their judicial authorities issue a request for mutual legal assistance requesting the other Member State to query their databases and send the relevant information. Existing instruments on exchange of law enforcement information do not allow timely determination about whether a Member State actually holds fingerprint data of an asylum seeker.

The Hague Programme stated that the exchange of information to strengthen security should be improved. One of the ideas contained in the Programme is to make full use of new technology, inter alia - where appropriate - by direct (on-line) access for law enforcement authorities, including for Europol, to existing central EU databases. The conclusions of the Mixed Committee of the JHA Council of 12-13 June 2007 considered that, in order to fully achieve the aim of improving security and to enhance the fight against terrorism, access under certain conditions to EURODAC should be granted to Member States' police and law enforcement authorities, as well as Europol, in the course of their duties in relation to the prevention, detection and investigation of terrorist offences and other serious criminal offences. It therefore invited the Commission to present as soon as possible the necessary proposals to achieve this aim.

IMPACT ASSESSMENT: the Impact Assessment considered three options, and a number of sub-options. The options were:

1. **no action**;
2. a legislative option for making it possible to **request the comparison with EURODAC data for law enforcement purposes**;
3. a legislative option for making it possible to **request the comparison with EURODAC data for law enforcement purposes while at the same time regulating the exchange of supplementary information following a successful 'hit' from EURODAC**.

Between the "no action" option and the legislative proposal options, the legislative proposal options present clear advantages. Access of law enforcement authorities to EURODAC is the only timely,

accurate, secure and cost-efficient way to identify whether and, if so, where data about asylum seekers are available in the Member States. No reasonable efficient alternative exists to EURODAC to establish or verify the exact identity of an asylum seeker that allows law enforcement authorities to obtain the same result. This unique identification is essential for law enforcement authorities in order to prevent and combat terrorism and serious crime involving third country nationals, as well as to protect victims of terrorism or serious crime. Access to 'Eurodac' cannot be considered disproportionate to the aims to be achieved.

Even though the achievement of the objectives would be more effective under the third option, it is considered that the costs of implementing the third option would be higher compared to the second option. Therefore, the Commission accepts option two.

CONTENT: the proposal establishes the right of Member States as well as Europol to request a comparison of fingerprint data or a latent with EURODAC data. A successful comparison with result in a 'hit' reply from EURODAC, which will be accompanied by all data that is held in EURODAC regarding the fingerprint. Requests for supplementary information following a hit would not be regulated in the proposed Council Decision but rather be covered by existing instruments on the exchange of law enforcement information.

Scope: the scope of the proposal will be the fight against terrorist offences and serious criminal offences, such as trafficking in human beings and drugs. Even though currently EURODAC does not provide the possibility to search the database on the basis of a latent, this search facility can be added to the EURODAC system under the Biometric Matching System (BMS) project. This search facility is very important from a law enforcement point of view, since in most cases it is only possible to find latents at a crime scene under investigation.

Designated authorities:the proposal determines theauthorities which are authorised to access EURODAC data pursuant to this Decision. Designated authorities shall be authorities of the Member States which are responsible for the prevention, detection or investigation of terrorist offences and other serious criminal offences. Designated authorities shall not include agencies or units dealing especially with national security issues. Every Member State shall keep a list of the designated authorities. At national level, each Member State shall keep a list of the operating units within the designated authorities that are authorised to request comparisons with EURODAC data through the National Access Point.

Moreover, each Member State shall designate a single national body to act as its verifying authority which shall be responsible for the prevention, detection or investigation of terrorist offences and other serious criminal offences. The verifying authority shall ensure that the conditions for requesting comparisons of fingerprints with EURODAC data are fulfilled. Only the verifying authority shall be authorised to forward requests for comparison of fingerprints to the National Access Point which communicates with the Central System.

As regards Europol, it shall designate a specialised unit with duly empowered Europol officials to act as its verifying authority and shall designate in agreement with any Member State the National Access Point of that Member State which shall communicate its requests for comparison of fingerprint data to the Central System.

Procedure for comparison and data transmission: the proposal lays down the procedure for comparison of fingerprint data with EURODAC data as well as the conditions for access to EURODAC data by designated authorities. It also lays down provisions as regards the EURODAC Communication Infrastructure. It shall be used for the data transmission by the verifying authorities of Member States and Europol to the National Access Points and vice versa . All communications shall take place electronically.

Data security: for the purposes of protection of personal data, and in particular to exclude mass comparisons which should be forbidden, the processing of EURODAC data should only take place on a case-by-case basis and when it is necessary for the purposes of preventing, detecting and investigating terrorist offences and other serious criminal offences. In addition access should only be allowed when comparisons with the national databases of the Member State and with the Automated Fingerprint Databases of other Member States under the Council Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime (Prüm Decision) have returned negative results.

The Framework Decision 2008/977/JHA on the protection of personal data processed in the framework of police and judicial co-operation in criminal mattersapplies to the personal data which are processed pursuant to this Decision

The proposal stipulates that national competent authorities for the supervision of the processing of personal data should monitor the lawfulness of the processing of personal data by the Member States, and the Joint Supervisory Body set up by the Europol Decision should monitor the lawfulness of data processing activities performed by EUROPOL. Each Member State and Europol shall ensure that all data processing operations resulting from requests for comparison with EURODAC data pursuant to this Decision are logged or documented for the purposes of checking the admissibility of the request monitoring the lawfulness of the data processing and data integrity and security and for self-monitoring.

Transfer of data to third countries: personal data obtained by a Member State or Europol pursuant to this Decision from the EURODAC central database shall not be transferred or made available to any third country or international organisation or a private entity established in or outside the European Union. This prohibition shall be without prejudice to the right of Member States to transfer such data to third countries to which the Dublin Regulation applies.

Monitoring and evaluation: each Member State and Europol shall prepare annual reports on the effectiveness of the decision. It shall contain information and statistics on the exact purpose of the comparison, including the type of a terrorist offence or a serious criminal offence. Three years after the entry into force of this Decision and every four years thereafter, the Commission shall produce an overall evaluation of this Decision.

BUDGETARY IMPLICATIONS: the proposal would entail a technical amendment to EURODAC in order to provide the possibility of carrying out a comparison on the basis of a latent. Each Member State and Europol shall set up and maintain at their expense, the technical infrastructure necessary to implement this Decision, and be responsible for bearing its costs resulting from requests for comparison with EURODAC data for the purposes of this Decision.