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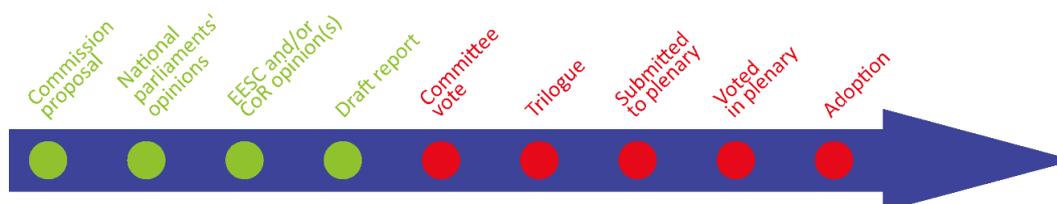
Recast Eurodac Regulation

Eurodac is a biometric database in which Member States are required to enter the fingerprint data of asylum-seekers in order to identify where they entered the EU. Established in 2000 and reviewed in 2013, its main purpose is to facilitate the application of the Dublin Regulation. The 2013 revision broadened the scope to enable law enforcement authorities too to access the Eurodac database. As part of the reform of the Common European Asylum System, the European Commission proposes a recast Eurodac Regulation. The proposal is now with the co-legislators, who need to ensure that the reinforcement of the system is in compliance with the fundamental rights of migrants as well as the principles of data protection.

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 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person], 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 (recast)

COM(2016) 272, 4.5.2016, 2016/0132(COD), Ordinary legislative procedure (COD), (Parliament and Council on equal Footing – formerly 'co-decision')

Committee responsible:	Civil Liberties, Justice and Home Affairs (LIBE)
Rapporteur:	Monica Macovei (ECR, Romania)
Shadow rapporteurs:	Jeroen Lenaers (EPP, the Netherlands) Sylvia-Yvonne Kaufmann (S&D, Germany) Gérard Deprez (ALDE, Belgium) Malin Björk (GUE/NGL, Sweden) Judith Sargentini (Greens/EFA, the Netherlands) Fabio Massimo Castaldo (EFDD, Italy)
Next steps expected:	Consideration of draft report



10 March 2017
First edition
The 'EU Legislation in Progress' briefings are updated at key stages throughout the legislative procedure. Please note this document has been designed for on-line viewing.

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Introduction

Eurodac stands for European Asylum Dactyloscopy (fingerprints) database. It is a computerised system consisting of a central unit, which operates the central database of biometric data, and of a communication infrastructure for transmitting the data between the Member States and the central unit. First established in 2000 under the Eurodac Regulation and subsequently reviewed in 2013, its main purpose is to facilitate the application of the Dublin Regulation, which determines the Member State responsible for processing an asylum claim. In many cases, it is the first country of entry and for that reason, it is essential to establish where the applicant entered the EU. This is the underlying logic for creating the Eurodac database, in which Member States are required to record the fingerprint data of all persons who are seeking asylum or who have been apprehended crossing the external border irregularly.

Context

Over the past two years, [migratory flows](#) into the EU have grown substantially, exhausting national reception capacities, revealing gaps in registration of arrivals and exacerbating [shortcomings](#) of the current migration management system.

According to Frontex's [annual risk analysis](#) for 2016, the majority of persons who entered through Greece, and many of those who entered through Italy, in 2015 moved on to other EU Member States, mostly Germany. Frontex estimates that around 1 million persons travelled through the EU without proper travel documents. This created new challenges for Member States, who had to find ways to register and transport large numbers of persons. It also led to fears of threats to internal security, as the identity and motivation of migrants remained undetermined. Following the high pressure at EU external borders in September 2015, when migrants tried to force their way to other countries, several Member States resorted to the temporary [reintroduction of internal border controls](#). Frontex notes that while reintroducing internal border control managed to regain a certain degree of order at the borders, it did not stem the migratory flows at external or internal borders between September and December 2015.

The European Commission, tasked under the [European Agenda on Migration](#) to find solutions to the migratory challenge, proposed a reform of the [legal framework](#) of the Common European Asylum System (CEAS) for the reception and recognition of persons in need of international protection. In the legislative package presented on 4 May 2016, aimed at reforming the CEAS, the Commission made three proposals for: [amending](#) the [Dublin Regulation](#), creating a [European Union Agency for Asylum](#), and reinforcing the [Eurodac](#) system for fingerprinting migrants. This first package was complemented on 13 July 2016 with the publication of three further proposals: to replace the [Asylum Procedures Directive](#) and the Qualification Directive with directly applicable regulations, and to reform the [Reception Conditions Directive](#).

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Existing situation

2013 Regulation

The current [Eurodac Regulation](#) applies to all EU Member States (the UK had opted in prior to adoption in 2013, while Ireland [opted in](#) in 2014) except Denmark. The latter does not participate in adoption of legislation in this area, but has a [separate agreement](#) with the EU to apply the [initial Eurodac Regulation](#) from 2000. It is also used in four associated countries (Iceland, Norway, Switzerland and Liechtenstein). Participating states are required to 'promptly' fingerprint all persons over the age of 14 who fall into one of the following two categories:

- > applicants for international protection;
- > third-country nationals or stateless persons found crossing the external border irregularly.

Authorities may also fingerprint third-country nationals or stateless persons found illegally staying *in* a Member State, but in contrast to the first two categories, registering their fingerprints is currently not mandatory. The regulation establishes common procedures and standards but does not deal with enforcement. Fingerprinting and Eurodac registration remain primarily a task for Member State authorities. This is regulated under national legislation, ensuring not only compliance with the regulation, but also with fundamental rights obligations resulting from EU and international law, in particular with the [European Convention on Human Rights](#) and the United Nations [Convention on the Rights of the Child](#).

The European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice ([eu-LISA](#)) is in charge of operational management of Eurodac as well as its maintenance in accordance with security and data protection law. The Agency also organises training on the use of Eurodac for national authorities, and [provides](#) statistics and reports.

Failure to fingerprint

The mass influx of migrants over the past two years revealed gaps in registration of migrants at the border, as required under the Eurodac Regulation. One of the reasons for the lack of systematic fingerprinting in some countries is the lack of capacity given the large flows of migrants. Greek authorities [estimated](#) in August 2015 that more than a third of migrants arriving on Lesbos, Kos and other islands are not fingerprinted. German police [deplored](#) in July 2015 that they lacked the resources to fingerprint all arriving migrants. [Frontline countries' difficulties](#) in meeting the legal requirement to fingerprint has led to a situation where unregistered asylum-seekers who move on within the Schengen area to reach other countries are not identified.

To address problems related to registering migrant arrivals, and to adapt reception capacities to the large influx, the Commission proposed a ['hotspot' system](#) as an immediate action under the European Agenda on Migration. The aim was to create a platform for EU agencies such as Frontex, EASO and Europol to intervene temporarily, and to provide operational support for identification, registration and fingerprinting of migrants at the sections of the external border characterised by specific and disproportionate migratory

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pressure, consisting of mixed migratory flows'.¹ In its February 2016 state-of-play [report](#), the Commission indicated that the hotspot approach had significantly increased the registration of fingerprints in the Eurodac database: the level had risen in Greece from 8% in September 2015 to 78% in January 2016, and in Italy from 36% to 87% over the same period. In its [sixth report on relocation and resettlement](#), published on 28 September 2016, the Commission observed that the close cooperation of Member States, EU agencies and international organisations in the hotspots has resulted 'in the achievement of close to 100% fingerprinting'.

Nevertheless, the difficulties of fingerprinting are not limited to the lack of reception and administrative capacity at the entry points. Another aspect is the high number of applicants refusing to have their fingerprints taken, or intentionally damaging their fingerprints to avoid identification, as evidenced by the 2014 [Annual Report](#) on Eurodac. Reasons vary, from fear and mistrust of authorities to the desire only to be registered in a specific country – with higher recognition rates or in which asylum-seekers have family and community ties. When migrants move onwards in the Schengen area without being registered, they effectively bypass the Dublin rules and put in jeopardy the overall functioning of the CEAS. A Council of Europe [report](#) from September 2015 takes note of this situation and comes to the conclusion that both Member States and migrants have incentives to evade the procedures.

Law enforcement access

As regards the fears for internal security following the arrival of large numbers of persons who remain unidentified, the 2013 Eurodac Regulation introduced the possibility for national police and Europol to access Eurodac data for the purposes of preventing, detecting and investigating serious crimes and terrorism. They can also check the database to match the fingerprints of irregular migrants for identification, but without storing that data. However, this access for law-enforcement purposes is not applicable to all countries. Participation in the Dublin and Eurodac Regulations, on the basis of [special agreements](#), by Denmark, as well as four Dublin associated countries (Norway, Iceland, Switzerland, and Liechtenstein), is currently only possible for asylum-related purposes.

Data protection supervision

The processing of data in the central unit of Eurodac is supervised by the European Data Protection Supervisor ([EDPS](#)) since 2004, while national data protection authorities are in charge of data processing and transmission in their respective Member States. The [Eurodac Supervision Coordination Group](#), comprising the EDPS and national authorities (from 27 Member States and Dublin associated countries), meets twice a year to discuss common problems related to the use of Eurodac, and to seek common solutions. In 2016, the Group met on [15 April](#) and on [23 November](#) in the European Parliament.

¹ [Explanatory note on the 'Hotspot' approach](#), European Commission, 2015.

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Parliament's starting position

In its [resolution](#) of 12 April 2016 on the situation in the Mediterranean and the need for a holistic EU approach to migration, the European Parliament stresses the importance of allocating technical and financial resources and support to the main countries of entry, to 'enable the swift and effective registration and referral to the competent authorities of all migrants arriving in the Union with full respect for their fundamental rights'. The Parliament observes that, while one of the main aims of creating the hotspots is to provide help to those in need, the proper identification of asylum-applicants at entry points should also contribute to the overall functioning of the CEAS.

Council and European Council starting position

The **European Council** of [25-26 June 2015](#) gave its green light to setting up hotspots in the frontline Member States, with operational support provided by EASO, Frontex and Europol, to 'ensure the swift identification, registration and fingerprinting of migrants'. The purpose of the hotspot approach was to reduce pressure at the borders, but also to determine those who need international protection and those who do not. The hotspot approach was approved at the [informal meeting](#) of Heads of State or Government on 23 September 2015 as part of the priority actions proposed by the Commission to offer short-term relief at the EU's external borders.



Proposal

Preparation of the proposal

The first Eurodac Regulation was adopted in 2000 and revised in 2013 to improve the compatibility of the system with the recast EU asylum *acquis*, including the Dublin III Regulation, and to help complete the CEAS.

The purpose and the scope of application of the Eurodac Regulation have been continually broadened since its creation. At the outset, the data were accessible only to immigration authorities to help them detect multiple asylum applications and prevent irregular entries. The scope of application was subsequently broadened in the 2013 regulation to enable law enforcement authorities access the Eurodac database.

In light of the developing migratory pressure, on 27 May 2015 the Commission published a [staff working document](#) on Implementation of the Eurodac Regulation, which was endorsed by the [Council](#) on 20 July 2015. This document provides [guidelines](#) for Member States to follow a common approach to fingerprinting, which encompasses counselling and informing applicants of their rights and obligations, but also specifies that ‘if applicants do not cooperate..., Member States should make use of specific and limited use of detention, and use coercion as last resort’. This suggestion is based on a 2014 [ad hoc query](#) on Eurodac fingerprinting published by the European Migration Network ([EMN](#)) on laws and practices used in Member States. While most (18 out of 28) do not allow the use of force or coercion for asylum-seekers (category 1), the situation is more varied for irregular migrants (categories 2 and 3), with several allowing for the use of coercion, detention or both.

The changes the proposal would bring

More data collected and stored for longer

The proposal introduces the obligation to store data on names, nationalities, place and date of birth, and travel document information. For asylum-seekers, the asylum application number and the Member State responsible under the Dublin Regulation will also be stored. The retention period for data on asylum-seekers will continue to be 10 years.

Currently, the Eurodac Regulation enables Member States to search for matches in the database to determine the identity of irregular migrants but does not require their data to be stored in the system. The new proposal introduces a requirement also to collect and store data on third-country nationals or stateless persons who have been found irregularly on EU territory (Article 14). Their personal data, and where relevant their date of removal would be introduced in the database and retained for five years (rather than 18 months under the current regulation). This information could then be used for the issue of a travel document for their return and readmission. The Commission explains that the aim is to track secondary movements within the EU and to strengthen the EU’s return policy. Commentators have [referred](#) in this regard to the Commission’s plans to expand the use of the Visa Information System (VIS) which already contains alerts on third-country nationals who should be refused entry to the EU, and have pointed to possible duplication.



Preparation of the proposal

The changes the proposal would bring

Fingerprinting age lowered to 6

Under the new proposal, the fingerprinting age is lowered from 14 to 6 years. The Commission explains this modification by stating that many families travel to Europe with very young children who may get separated from their parents on the way. Collecting children's fingerprints and facial images would help authorities to query the system to determine whether they have ended up in another Member State. The Commission also sees the modification as beneficial to unaccompanied minors, who might abscond from care institutions or child social services, and who cannot be identified under the current legal framework.

Facial images stored in addition to fingerprints

The new proposal introduces the requirement to store facial images in addition to fingerprints. The Commission refers to the fingerprinting difficulties reported by some Member States where applicants either refuse to have their fingerprints taken or damage their fingerprints. Use of additional biometrics was also one of the commitments made by the Commission under the European Agenda on Migration.

Possible access to third country authorities

Under the 2013 Eurodac Regulation, the police, public prosecutors and Europol could search the database alongside national immigration authorities. The new recast proposal goes even further, suggesting giving partial access to the authorities of third countries on certain conditions (Article 38). These authorities would not acquire direct access to the database but personal data could be transferred or made available for them to prove the identity of third-country nationals for return purposes. Their access would be subject to conditions, including the refusal to disclose if the person has applied for asylum. But [commentators](#) have already pointed out that this information is, nevertheless, already available to such third countries on certain conditions under the Asylum Procedures Directive.

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Views

Advisory committees

The Committee of the Regions (CoR) assessed the Eurodac proposal among other elements of the CEAS reform in its opinion, 'Reform of the Common European Asylum System' ([CDR3267/2016](#)), which was adopted on 8 December 2016. While supporting some objectives of the proposals, such as limiting unauthorised secondary movements, distributing asylum-seekers more evenly in the Member States and strengthening EASO, CoR considers the Commission's reform approach inadequate. More specifically regarding the Eurodac proposal, the Committee endorses lowering the fingerprinting age from 14 to 6 years to help find missing minors through sharing of data between EU agencies and Member States' authorities. However, CoR finds that the prohibition on sharing data with third countries should stay in effect.

The European Economic and Social Committee (EESC) adopted its opinion on 'Reform of the Common European Asylum System (CEAS) – 1st package' ([SOC/543](#)) on 19 October 2016. The EESC assesses that extending the scope of the Eurodac Regulation to include data on third-country nationals 'who have not applied for international protection and are residing in the EU irregularly' would need to be duly balanced by the necessity and proportionality of the measures, especially 'with regard to applicants for international protection and the confidentiality of the procedure'.

National parliaments

On 23 September 2015, the Civil Liberties, Justice and Home Affairs (LIBE) Committee organised an [Interparliamentary Committee Meeting](#) feeding into the Parliament's resolution on the situation in the Mediterranean and the need for a holistic EU approach to migration. It allowed members of national parliaments to hold an in-depth discussion with EU agencies such as EASO, Frontex and Europol on the 'hotspot' approach, including on the registration and fingerprinting of migrants.

For the [subsidiarity check](#) of the proposal, the deadline for submitting reasoned opinions was 27 October 2016.

The Chamber of Deputies of the Czech Parliament submitted a [reasoned opinion](#) on package of proposals for CEAS reform. However, as regards the proposed recast Eurodac Regulation, there was no subsidiarity concern, which was the case with the proposal for the revised Dublin Regulation.

The [Portuguese Parliament](#), and the Italian [Senate](#) and [Chamber](#) also made comments on the proposal.

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Stakeholders' views²

Data protection

One of the main concerns surrounding the Eurodac database is data protection. In its initial comments on the new proposal, ECRE [deplores](#) that 'data protection principles such as purpose-limitation, necessity and proportionality are at risk of being compromised from such a broad expansion'.

Data protection and privacy concerns, while already raised in respect of the initial regulation, were [considered](#) to have multiplied with the addition of law enforcement access in the 2013 Regulation. Departing from the premise that the risk of misuse of biometric data is increased when stored in a centralised database, commentators referred to the European Court of Human Rights (ECtHR) statement³ that centralised units should all be adequately protected against unauthorised access and attacks. Should this not be the case, the right to respect for private life under Article 8 [ECHR](#) would be violated.

The European Association for the Defence of Human Rights (AEDH) [finds](#) that the proposal significantly exceeds the initial scope of Eurodac and introduces coercive forms that are not necessarily accompanied by adequate safeguards. It emphasises that the European Parliament should be closely involved in the supervision of Eurodac, ensuring that its application respects data protection standards as well as the right to apply for international protection.

Law enforcement access

Concerning law enforcement access under the 2013 Eurodac Regulation, the EDPS had already [pointed](#) to difficulties in reconciling the proposals with the 'purpose limitation' principle and warned against function creep. He also questioned the necessity and proportionality of law enforcement access, and warned against potential unequal treatment between asylum-seekers and other individuals. This concern was shared by the United Nations High Commissioner for Refugees (UNHCR), [commenting](#) that it would 'further risk putting persons seeking international protection at risk of stigmatisation'.

The use of databases leading to potential discrimination for lack of proportionality has also been condemned by the ECtHR in 2008 in the [S. and Marper](#) case. With the scope of the regulation is expanded even further under the proposal, these concerns would only be amplified. In a [study](#), 'The Implementation of the Common European Asylum System', prepared for the Civil Liberties, Justice and Home Affairs Committee of the European Parliament in May 2016, experts question in particular the proportionality and necessity of extending 'the personal and material scope of the Regulation' and their compatibility with the purpose limitation principle. They also draw attention to the fact that, in storing such a significant amount of personal data and continually expanding the list of authorities who can access this data, a proper balance between competing public interests and the need to protect the rights of a highly vulnerable group is essential.

2 This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal. Additional information can be found in related publications listed under 'EP supporting analysis'.

3 Kindt, E. J. (2013), Privacy and Data Protection Issues of Biometric Application: A Comparative Legal Analysis, p. 360

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Use of detention and coercion

The above-mentioned Commission working document, which allows 'specific and limited use of detention, and use of coercion as last resort', has met with objections from human rights activists. The 2016 EP study, 'The Implementation of the Common European Asylum System', observes that the Eurodac proposal relies on the principle of coercion, and criticises it as seeking 'quick fixes' to save the Dublin system rather than attempting to address its reported fundamental deficiencies.

[Statewatch](#), as well as other [commentators](#), heavily criticise coercive fingerprinting of migrants, with the only potential exception being for children and pregnant women. The EU's Agency for Fundamental Rights ([FRA](#)) finds it 'difficult to imagine a situation where the use of physical or psychological force to obtain fingerprints for Eurodac would be justified'. The European Council on Refugees and Exiles (ECRE) [observes](#) that 'taking fingerprints is not necessarily a condition for applying the Dublin Regulation, since other circumstantial evidence can also be used'. In line with the practice in some countries which already use other methods of identification, such as [multispectral imaging](#), the new proposal provides for use of facial images in addition to fingerprinting.

Moreover, allowing detention of migrants who refuse to be fingerprinted also raises concerns. Article 8(3) (a) of the recast [Reception Conditions Directive](#), in force since 20 July 2015, specifically permits the use of detention to determine or verify the identity or nationality of an applicant. The proposal for a Reception Conditions Regulation, presented on 13 July 2016, goes even further by adding a new grounds for detention. The new Article 8(3)(c) specifies that 'in case an applicant has been assigned a specific place of residence but has not complied with this obligation, and where there is a continued risk that the applicant may abscond, the applicant may be detained ...'. Previously, ECRE had [noted](#), regarding the 2013 Eurodac system, that it only contains information on the applicant's set of fingerprints and sex, which on their own do not allow the applicant's identity or nationality to be established or verified, and found the use of detention for that purpose unnecessary. However, should the new Eurodac Regulation be adopted, this argument would lose its validity as the database would also store additional information, such as names, nationalities, place and date of birth, travel document information and EU asylum application number.

Legislative process

The legislative proposal ([COM\(2016\) 272](#)) was published on 4 May 2016. It falls under the ordinary legislative procedure ([2016/0132/COD](#)). In the European Parliament, the proposal has been assigned to the Civil Liberties, Justice and Home Affairs Committee where initial discussions have been held in committee. The rapporteur, Monika Macovei (ECR, Romania), published her [draft report](#), which now awaits committee decision, in late January 2017. The rapporteur has suggested amendments to the text of the proposal by extending the scope of the regulation to stateless persons in addition to third-country nationals, adding an option to make queries based on alphanumeric data, and simplifying and broadening Europol's access to the database.

The Council has achieved significant progress in the examination of the proposal, in line with the [three-track approach](#) suggested by the Slovak Presidency, which set the CEAS reform as a priority. The proposal for the recast Eurodac Regulation alongside the proposal for the EU Agency for Asylum regulation were the first to be examined.

At its meetings on 26 May, 14 June, 14 July and 11 October, the Asylum Working Party held detailed discussions on the proposal. The Justice and Home Affairs (JHA) Counsellors examined compromise suggestions from the Presidency at their meetings on 11 and 23 November and 5 December 2016. Delegations expressed broad support for the objectives of the proposal to extend its scope by including the possibility for Member States to store and search data belonging to persons who are not applicants for international protection so that they can be identified for return and readmission purposes. The issue of law enforcement access to Eurodac was discussed at the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA) meeting on 13 September, Friends of Presidency meeting on 11 October and by the JHA Council on 13 October 2016. On 30 November and 7 December, outstanding issues were examined in Coreper.

On 9 December 2016, the Council endorsed a [mandate for negotiations](#) with the European Parliament on the recast of the Eurodac Regulation.

While Slovenia has a parliamentary scrutiny reservation, some other delegations also indicated they still have reservations on certain parts of the text. Member States' delegations raised the following issues in the course of the discussions:

- > Some Member States have recommended that the Eurodac database should include copies of travel or identity documents, including a photo, to make the identification of third-country nationals easier during the return process. As this would entail additional costs, the option is being assessed by eu-LISA, which will communicate the results for further discussion.
- > The Slovak Presidency proposed to include the option to search Eurodac on the basis of alphanumeric data. Since the practical, technical and financial implications of this option need further analysis, certain delegations did not agree with the proposal, which was therefore excluded from the Council's partial general approach.

Ministers agreed the text on the understanding that some parts may need to be revisited in the light of the discussion on the other elements of the CEAS reform as well as of the discussion on the interoperability of information systems. On the basis of this mandate, the presidency will be able to start negotiations with the European Parliament as soon as the latter has adopted its position.



References

EP supporting analysis

EPRS At a Glance on '[Fingerprinting migrants: Eurodac Regulation](#)'

EPRS Briefing on '[Reform of the Dublin System](#)', February 2017

EPRS Implementation Appraisal on '[Regulation 604/2013 \(Dublin Regulation\) and asylum procedures in Europe](#)'

Policy Department C Study on '[Internal border controls in the Schengen area: is Schengen crisis-proof?](#)'

Policy Department C Study on '[The Reform of the Dublin III Regulation](#)'

Policy Department C Study on '[The Implementation of the Common European Asylum System](#)'

Other sources

[Eurodac system](#) for the comparison of fingerprints of applicants for international protection and for identifying illegally staying third-country nationals or stateless persons; requests for the comparison with Eurodac data. Recast, European Parliament, Legislative Observatory (OEL).

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