Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 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 and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (recast)

REGULATION (EU) No 603/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 26 June 2013

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 78 (2)(e), 87(2)(a) and 88(2)(a) thereof,

Having regard to the proposal from the European Commission

Having regard to the opinion of the European Data Protection Supervisor[(1)],

Acting in accordance with the ordinary legislative procedure[(2)],

Whereas:

(1) A number of substantive changes are to be made to Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention[(3)] and to Council Regulation (EC) No 407/2002 of 28 February 2002 laying down certain rules to implement Regulation (EC) No 2725/2000 concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of the Dublin Convention[(4)]. In the interest of clarity, those Regulations should be recast.

(2) A common policy on asylum, including a Common European Asylum System, is a constituent part of the European Union's objective of progressively establishing an

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area of freedom, security and justice open to those who, forced by circumstances, seek international protection in the Union.

(3) The European Council of 4 November 2004 adopted The Hague Programme which set the objectives to be implemented in the area of freedom, security and justice in the period 2005-2010. The European Pact on Immigration and Asylum endorsed by the European Council of 15-16 October 2008 called for the completion of the establishment of a Common European Asylum System by creating a single procedure comprising common guarantees and a uniform status for refugees and for persons eligible for subsidiary protection.

(4) For the purposes of applying Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 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[(5)], it is necessary to establish the identity of applicants for international protection and of persons apprehended in connection with the unlawful crossing of the external borders of the Union. It is also desirable, in order effectively to apply Regulation (EU) No 604/2013, and in particular Article 18(1)(b) and (d) thereof, to allow each Member State to check whether a third-country national or stateless person found illegally staying on its territory has applied for international protection in another Member State.

(5) Fingerprints constitute an important element in establishing the exact identity of such persons. It is necessary to set up a system for the comparison of their fingerprint data.

(6) To that end, it is necessary to set up a system known as 'Eurodac', consisting of a Central System, which will operate a computerised central database of fingerprint data, as well as of the electronic means of transmission between the Member States and the Central System, hereinafter the "Communication Infrastructure".

(7) The Hague Programme called for the improvement of access to existing data filing systems in the Union. In addition, The Stockholm Programme called for well targeted data collection and a development of information exchange and its tools that is driven by law enforcement needs.

(8) It is essential in the fight against terrorist offences and other serious criminal offences for the law enforcement authorities to have the fullest and most up-to-date information if they are to perform their tasks. The information contained in Eurodac is necessary for the purposes of the prevention, detection or investigation of terrorist offences as referred to in Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism[(6)] or of other serious criminal offences as referred to in Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States[(7)]. Therefore, the data in Eurodac should be available, subject to the conditions set out in this Regulation, for comparison by the designated authorities of Member States and the European Police Office (Europol).

(9) The powers granted to law enforcement authorities to access Eurodac should be without prejudice to the right of an applicant for international protection to have his or her

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application processed in due course in accordance with the relevant law. Furthermore, any subsequent follow-up after obtaining a 'hit' from Eurodac should also be without prejudice to that right.

(10) The Commission outlines in its Communication to the Council and the European Parliament of 24 November 2005 on improved effectiveness, enhanced interoperability and synergies among European databases in the area of Justice and Home Affairs that authorities responsible for internal security could have access to Eurodac in well defined cases, when there is a substantiated suspicion that the perpetrator of a terrorist or other serious criminal offence has applied for international protection. In that Communication the Commission also found that the proportionality principle requires that Eurodac be queried for such purposes only if there is an overriding public security concern, that is, if the act committed by the criminal or terrorist to be identified is so reprehensible that it justifies querying a database that registers persons with a clean criminal record, and it concluded that the threshold for authorities responsible for internal security to query Eurodac must therefore always be significantly higher than the threshold for querying criminal databases.

(11) Moreover, Europol plays a key role with respect to cooperation between Member States' authorities in the field of cross-border crime investigation in supporting Union-wide crime prevention, analyses and investigation. Consequently, Europol should also have access to Eurodac within the framework of its tasks and in accordance with Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol)[(8)].

(12) Requests for comparison of Eurodac data by Europol should be allowed only in specific cases, under specific circumstances and under strict conditions.

(13) Since Eurodac was originally established to facilitate the application of the Dublin Convention, access to Eurodac for the purposes of preventing, detecting or investigating terrorist offences or other serious criminal offences constitutes a change of the original purpose of Eurodac, which interferes with the fundamental right to respect for the private life of individuals whose personal data are processed in Eurodac. Any such interference must be in accordance with the law, which must be formulated with sufficient precision to allow individuals to adjust their conduct and it must protect individuals against arbitrariness and indicate with sufficient clarity the scope of discretion conferred on the competent authorities and the manner of its exercise. Any interference must be necessary in a democratic society to protect a legitimate and proportionate interest and proportionate to the legitimate objective it aims to achieve.

(14) Even though the original purpose of the establishment of Eurodac did not require the facility of requesting comparisons of data with the database on the basis of a latent fingerprint, which is the dactyloscopic trace which may be found at a crime scene, such a facility is fundamental in the field of police cooperation. The possibility to compare a latent fingerprint with the fingerprint data which is stored in Eurodac in cases where there are reasonable grounds for believing that the perpetrator or victim may fall under one of the categories covered by this Regulation will provide the designated authorities of the Member States with a very valuable tool in preventing, detecting or investigating

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terrorist offences or other serious criminal offences, when for example the only evidence available at a crime scene are latent fingerprints.

(15) This Regulation also lays down the conditions under which requests for comparison of fingerprint data with Eurodac data for the purposes of preventing, detecting or investigating terrorist offences or other serious criminal offences should be allowed and the necessary safeguards to ensure the protection of the fundamental right to respect for the private life of individuals whose personal data are processed in Eurodac. The strictness of those conditions reflects the fact that the Eurodac database registers fingerprint data of persons who are not presumed to have committed a terrorist offence or other serious criminal offence.

(16) With a view to ensuring equal treatment for all applicants and beneficiaries of international protection, as well as in order to ensure consistency with the current Union asylum acquis, in particular with Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted[9] and Regulation (EU) No 604/2013, it is appropriate to extend the scope of this Regulation in order to include applicants for subsidiary protection and persons eligible for subsidiary protection.

(17) It is also necessary to require the Member States promptly to take and transmit the fingerprint data of every applicant for international protection and of every third-country national or stateless person who is apprehended in connection with the irregular crossing of an external border of a Member State, if they are at least 14 years of age.

(18) It is necessary to lay down precise rules for the transmission of such fingerprint data to the Central System, the recording of such fingerprint data and of other relevant data in the Central System, their storage, their comparison with other fingerprint data, the transmission of the results of such comparison and the marking and erasure of the recorded data. Such rules may be different for, and should be specifically adapted to, the situation of different categories of third-country nationals or stateless persons.

(19) Member States should ensure the transmission of fingerprint data of an appropriate quality for the purpose of comparison by means of the computerised fingerprint recognition system. All authorities with a right of access to Eurodac should invest in adequate training and in the necessary technological equipment. The authorities with a right of access to Eurodac should inform the European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice established by Regulation (EU) No 1077/2011 of the European Parliament and of the Council[10] (the "Agency") of specific difficulties encountered with regard to the quality of data, in order to resolve them.

(20) The fact that it is temporarily or permanently impossible to take and/or to transmit fingerprint data, due to reasons such as insufficient quality of the data for appropriate comparison, technical problems, reasons linked to the protection of health or due to the data subject being unfit or unable to have his or her fingerprints taken owing to

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circumstances beyond his or her control, should not adversely affect the examination of or the decision on the application for international protection lodged by that person.

(21) Hits obtained from Eurodac should be verified by a trained fingerprint expert in order to ensure the accurate determination of responsibility under Regulation (EU) No 604/2013 and the exact identification of the criminal suspect or victim of crime whose data might be stored in Eurodac.

(22) Third-country nationals or stateless persons who have requested international protection in one Member State may have the option of requesting international protection in another Member State for many years to come. Therefore, the maximum period during which fingerprint data should be kept by the Central System should be of considerable length. Given that most third-country nationals or stateless persons who have stayed in the Union for several years will have obtained a settled status or even citizenship of a Member State after that period, a period of ten years should be considered a reasonable period for the storage of fingerprint data.

(23) The storage period should be shorter in certain special situations where there is no need to keep fingerprint data for that length of time. Fingerprint data should be erased immediately once third-country nationals or stateless persons obtain citizenship of a Member State.

(24) It is appropriate to store data relating to those data subjects whose fingerprints were initially recorded in Eurodac upon lodging their applications for international protection and who have been granted international protection in a Member State in order to allow data recorded upon lodging an application for international protection to be compared against them.

(25) The Agency has been entrusted with the Commission's tasks relating to the operational management of Eurodac in accordance with this Regulation and with certain tasks relating to the Communication Infrastructure as from the date on which the Agency took up its responsibilities on 1 December 2012. The Agency should take up the tasks entrusted to it under this Regulation, and the relevant provisions of Regulation (EU) No 1077/2011 should be amended accordingly. In addition, Europol should have observer status at the meetings of the Management Board of the Agency when a question in relation to the application of this Regulation concerning access for consultation of Eurodac by designated authorities of Member States and by Europol for the purposes of the prevention, detection or investigation of terrorist offences or of other serious criminal offences is on the agenda. Europol should be able to appoint a representative to the Eurodac Advisory Group of the Agency.

(26) The Staff Regulations of Officials of the European Union (Staff Regulations of Officials) and the Conditions of Employment of Other Servants of the European Union ('Conditions of Employment'), laid down in Regulation (EEC, Euratom, ECSC) No 259/68 of the Council[(11)] (together referred to as the 'Staff Regulations') should apply to all staff working in the Agency on matters pertaining to this Regulation.

(27) It is necessary to lay down clearly the respective responsibilities of the Commission and the Agency, in respect of the Central System and the Communication Infrastructure, and