



**CONTACT COMMITTEE 9 October 2014
"Eurodac Regulation" (EU/603/2013)**

Subject: Minutes of the meeting

Summary:

In 2013 there were two "didactic" Contact Committee meetings where the Commission made detailed presentations to Member States and Associated Countries (hereafter "MS") on the content of the recast Eurodac Regulation and problems identified in the application of the current Eurodac Regulation (2725/2000). The intention of the meeting on 9 October 2014 was to discuss two matters of concern to the Commission, namely on difficulties faced by some Member States in fingerprinting Eurodac data subjects who refuse to cooperate in being fingerprinted; and on ensuring that MS are ready to apply the recast Regulation from 20 July 2015. The remainder of the meeting was used to answer MS' questions on both the asylum and law enforcement elements of the recast Regulation.

Asylum

1. BEST PRACTICES IN ORDER TO FULFIL THE OBLIGATION TO SEND FINGERPRINTS

COM presented its discussion paper with suggested best practices concerning the fingerprinting of Eurodac data subjects (mainly irregular migrants who had chosen not to apply for asylum). The discussion paper was itself based on MS responses to the EMN enquiry that COM had launched over the summer. COM noted that the paper set out three phases in the process, and suggested possible measures that MS could take to ensure that fingerprints are taken:

- i. Information phase – informing the data subject that it is in their interests to cooperate; and explaining that if they apply for international protection, the Dublin Regulation applies even if they are not fingerprinted;

- ii. For those who do apply for asylum but refuse to be fingerprinted, explaining to the data subject that their asylum case may be accelerated and, following an examination on the merits, may be considered manifestly unfounded;
- iii. If the data subject continues to refuse to cooperate, explain to them that persons still refusing to cooperate in being fingerprinted could be detained for a short period of time in order to ensure such cooperation. If considered necessary, as a last resort, proportionate coercive measures could be taken in order to ensure that their fingerprints are taken. It can be expected that this last point will act mainly as a deterrent and will, in practice, very rarely need to be used.

Most MS did not make interventions following on from COM's presentation. Subsequently to the meeting, COM requested the Presidency to table a point at the 14 November 2014 SCIFA meeting to discuss the paper as it was considered that the Eurodac Contact Committee had not been the appropriate forum for such a political discussion.

2. MEMBER STATES' QUESTIONS RELATING TO THE ASYLUM ELEMENTS OF THE EURODAC RECAST REGULATION

MS had been invited to send through questions relating to the asylum elements of the Eurodac Recast Regulation. These had been shared with other delegations in advance of the meeting. In each case an MS was invited to explain their question; other delegations were invited to intervene; and then COM provided its opinion. For all of the questions listed below there appeared to be general agreement as to the answers provided. Many of the technical details can be found in the "Interface Control Document" [ICD] that has been developed by eu-LISA together with a steering group of MS to clarify elements relating to the technical transmission of data.

[NB the numbering of the questions below is not identical to those from the origin agenda as several similar questions have been collated together, plus some further questions were asked in the meeting that were not available prior to the meeting.]

- i. If a person transferred to the member state responsible (following an acceptance to a request for taking charge) does not want to apply for asylum there, what data set, if any, is then sent to Eurodac?*

According to Article 10(b) it is therefore necessary to take send a data set in conformity with Article 11 including the date of the person's arrival.

- ii. Where a person has been issued a removal order following a rejection of an application for international protection, and the return takes place as a supervised departure and the person needs to transit through an international airport of another member (no direct flights available): How, in practice, can we ensure that the person has actually left the EU area and when the Eurodac data set can and should be updated?*

It is necessary to have proof that the data subject has left the EU. This can be obtained from confirmation from the airline that the data subject boarded the final plane (in the case of an indirect flight); or from confirmation from the MS' embassy in the country of origin that the person has reported back that they have returned to their home country; or from confirmation by the police in the transit country that the person was escorted onto

their final plane / mode of transport. In cases where the evidence is not clear cut, the dataset should not be updated.

- iii. *Art. 25.4: checking the result of comparison by a fingerprint expert: would it be sufficient that the results are double-checked electronically following the criteria set by a national fingerprint expert? In cases there is an error, the comparison would be checked manually.*

This would not be acceptable. The Regulation is clear that the fingerprint expert is someone "as defined in accordance with its national rules, specifically trained in the types of fingerprint comparisons provided for in this Regulation." The clear presumption is therefore that the fingerprint expert is a person rather than a machine.

- iv. *What are the time limits for sending data as required under Articles 13 and 18? Would a weekly batch be acceptable?*

It was agreed that there is no official timescale to define the term "immediately", but that weekly updates from MS would be acceptable. Slower timescales, such as every six months, would not be acceptable. Under Article 13, the Central System will send a "broadcast" message to all other MS that have linked datasets in order to remind those MS of the need to undertake the required follow-up actions (e.g. to erase their linked datasets). The Central System will continue to send weekly reminders to MS until the follow-up action has been carried out.

- v. *If an asylum applicant disappears from MS "A" during the Dublin process, but then appears in MS "B" where they were due to be transferred to anyway, what date should be added to the Eurodac data-set?*

In cases where there is an intention to carry out a Dublin transfer, but this never happens because the applicant moves by themselves to the responsible MS, it would be appropriate to add the date that MS "B" became aware that the data-subject was in their territory to the Eurodac data-set.

- vi. *Scenario: a third country national has a residence permit from MS "A". They were never a Eurodac data-subject because they were legally present. They apply for asylum in MS "B" and give no indication that they have a residence permit in MS "A". MS "B" therefore makes no attempt to contact MS "A" to arrange a Dublin transfer. Is MS "A" expected to update any Eurodac data-sets?*

No. MS "B" became the responsible MS at the point that it decided to examine the asylum application. If it subsequently becomes known that the person had a residence document for MS "A", it is too late to undertake a Dublin transfer. There is also no need to update the information in Eurodac concerning the residence permit from MS "A", unless the data-subject had been initially recorded as a CAT 2 irregular migrant by MS "B".

- vii. *What data should be erased pursuant to Article 25 (5) in case the Central System sends out a "false-hit"?*

Any data received from the Central System relating to a "false-hit" should be deleted from national files.

- viii. *In the various cases listed in Article 10 requiring that datasets are updated pursuant to Dublin transfers or a data-subject leaving the EU, how many linked datasets need updating?*

There was some discussion on this point.

One option was that only the final dataset needs to be updated by the MS specified in Article 10. As Eurodac datasets are linked, it is clear from the history of the linked datasets what the situation is as regards the data-subject.

Scenario: A person arrives in MS "A" as an irregular entrant and does not apply for asylum. "A" transmits a CAT 2 dataset. The person moves to MS "B" and applies for asylum. MS "B" sends a CAT 1 dataset. The person is subject to a Dublin transfer back to MS "A". MS "A" must update its CAT 2 dataset to note that the person has been taken back. MS "A" must also transmit a new CAT 1 dataset. If the person's asylum application is unsuccessful and they are returned to their country of origin, MS "A" must update their dataset with the date that the person was returned. However, MS "B" is not expected to update their dataset as all of this information is apparent from the datasets updated by MS "B".

However, after further discussion, it was decided to adopt an alternative approach that, as there is always a risk that one dataset will not be as clear as another, it would be better to ensure that all linked datasets were updated to avoid the risk that the Central System would fail to generate a hit because the fingerprint dataset was of a poor quality.

- ix. *Scenario: MS "A" sends a dataset within 72 hours of a person applying for international protection on 1 January. The person is subject to a Dublin transfer to MS "B" on 1 March. Pursuant to Article 10 of the Eurodac recast Regulation, within 72 hours of the Dublin transfer, MS "B" sends a new CAT 1 dataset to the Central System including the date that the person arrived via the Dublin transfer. However, the date of the asylum application was 1 January. MS "B" does not want to be seen to have been late in sending the appropriate dataset to Eurodac. What will happen in terms of the statistics concerning MS "B's" dataset?*

It was agreed that the fingerprint form in the Annex to the Eurodac recast Regulation does not cover this situation, but that eu-LISA could make a work-around so that MS "B" would declare the date and time that it sent its dataset in relation to the arrival of the data-subject following on from the Dublin transfer. The timings for statistical purposes relating to MS "B's" actions would therefore not relate to the date of application of asylum, but rather the date of the Dublin transfer. There would be no implication, from the scenario above, that MS "B" was two months late in sending its dataset when in fact it had transmitted its dataset within 72 hours.

3. STATE OF READINESS BY MEMBER STATES TO APPLY THE RECAST EURODAC REGULATION FROM 20 JULY 2015

COM noted the critical importance of all MS being ready to apply the recast Eurodac Regulation from 20 July 2015. It would be essential for the integrity of the Dublin system for MS to be able to fully apply the Regulation. The date of 20 July 2015 has been fixed in law. COM presented a draft statement of readiness table for MS to fill in. MS made minor suggestions for changes to this table and it was agreed that the table could be sent out for MS to fill in. COM and eu-LISA called on MS to provide detailed responses.

One MS noted that it was concerned that it may not be ready in time for budgetary reasons; another MS in terms of technical readiness or in terms of not having all back-office processes in place to carry out all of the new functionalities.

eu-LISA noted that there would be regular Project Management Forum meetings to prepare the recast beginning on 3 November 2014.

4. FOLLOW-UP TO 2013 QUESTIONNAIRE ON APPLICATION OF THE CURRENT EURODAC REGULATION

COM reminded delegations about the questionnaire that MS had responded to the previous year concerning the application of Regulations 2725/2000 and 407/2002 (the current Eurodac Regulation and its Implementing Regulation). The questionnaire covered:

- Advance data erasure of data-subjects who become EU citizens, including because their State accedes to the EU;
- Third country nationals who cease to have an *irregular* status i.e. because they are granted a residence permit; they become a citizen of the EU; or they leave EU territory;
- Blocking of data of persons granted refugee status;
- Amending data sets;
- "Special searches" which are only supposed to be used when a data-subject requests to find out information about themselves stored in the Eurodac database;
- Delays in transmitting data to Eurodac.

The results had shown that most MS had some problems in at least one of the areas listed above. Following on from the questionnaire, COM had worked on an individual basis with each MS that had identified problems. The results of this work were impressive. All identified problems had either already been resolved or there were projects in place to resolve them. For example, some MS realised that they had not been erasing the data of data-subjects who had become citizens and had undertaken projects to ensure that this would always happen in future and also to ensure that historical data-sets were erased.

COM noted that its intention was to ensure that the current Regulation was running in order so that the transition to the recast Regulation could be undertaken without there being any on-going legacy problems.

Law Enforcement

5. PREPARING THE ANNUAL REPORT ON LAW ENFORCEMENT ACCESS TO EURODAC (ARTICLE 40(7))

COM reminded delegations of the obligations relating to the Annual Report on law enforcement access to Eurodac, as laid down in Article 40(7) of the recast Eurodac Regulation. COM explained that MS would find these reports easier to compile if they used the indicative, non-binding law enforcement access form that had been agreed at a previous Eurodac Contact Committee in 2013. COM called upon MS to present their annual reports in English if possible, noting that COM will have annually to adopt a synthesis report covering all law enforcement activities across the EU.

6. MEMBER STATES' QUESTIONS RELATING TO THE LAW ENFORCEMENT ELEMENTS OF THE EURODAC RECAST REGULATION

MS had been invited to send through questions relating to the law enforcement elements of the Eurodac Recast Regulation. These had been shared with other delegations in advance of the meeting. In each case an MS was invited to explain their question; other delegations were invited to intervene; and then COM provided its opinion. For all of the questions listed below there appeared to be general agreement as to the answers provided.

Many of the questions were of a technical nature and, as per agenda item 2 above, the responses were to be found in the new ICD that had been developed.

The main non-technical question concerned the follow-up stages to receiving a hit from the Eurodac Central System. COM noted that it had provided an explanation for this in the Explanatory Memorandum to the 2012 Eurodac recast proposal: COM(2012)254. The follow-up to a Eurodac hit is not regulated via the Eurodac Regulation but, rather, will rely on using other cooperation mechanisms, notably the "Swedish Initiative" (Framework Decision 2006/960/JHA on simplifying the exchange of information and intelligence between law enforcement authorities). Some MS noted that it could be difficult for MS "A's" law enforcement authorities to get further information from MS "B's" immigration authorities concerning a Eurodac data-subject. COM explained that there was nothing further in the recast Eurodac Regulation to assist in the follow-up elements pursuant to a hit, but that the Swedish Initiative covered cooperation between MS and therefore they ought to be able to collect the necessary information in the same way that a national police force might contact its own immigration service for further particulars about a data-subject.

COM took the opportunity to remind those MS that had not already done so of their obligation to provide COM with the details of their law enforcement designated and verifying authorities.