

Summary of EMN Ad-Hoc Query No. 588

Eurodac Fingerprinting

INTRODUCTION

This summary highlights the main findings of the EMN Ad-Hoc Query on EURODAC Fingerprinting launched by the European Commission on 10th July 2014. It is based on contributions from 25 EU Member States and Norway¹.

1. Do you permit or require the use of force or coercion in your law or practice in order to take the fingerprints of persons in the following categories:

Category of persons	Yes (list of MS)	No (list of MS)
Applicants for international protection (asylum – Eurodac Category 1);	AT, CZ, DE, ES, FI, SK, UK, NO	BE, BG, CY, FR, HR, HU, EE, IE, LV, LT, LU, MT, NL, PL, PT, RO, SE, SI
Persons apprehended crossing a border irregularly (Eurodac Category 2);	AT, BE, BG, CZ, DE, EE, ES, FI, HR, PL, SK, UK, NO	CY, FR, HU, IE, LV, LT, LU, MT, NL, PT, RO, SE, SI
Persons found illegally present in a Member State (Eurodac Category 3)	AT, BE, BG, CZ, DE, EE, ES, FI, HR, PL, SK, UK, NO	CY, FR, HU, IE, LV, LT, LU, MT, NL, PT, RO, SE, SI

- ★ A majority of Member States (18 – see Table 1 above) do not permit or require use of coercive measures to take fingerprinting of applicants for international protection (Eurodac category 1). In **Spain**, although allowed in theory by law, the use of force is not permitted in practice because it was proved that it would lead to a bad quality fingerprints.
- ★ Laws and practices differ among (Member) States with regards to categories 2 and 3 of Eurodac data subjects: half of reporting Member States allow responsible authorities to use coercive measures, whilst the other half do not provide for this possibility.
- ★ Many Member States have reported that the use of coercive measures for fingerprinting in practice is quite unlikely because third-country nationals usually cooperate with the authorities (e.g., **BE, BG, CZ, FR, LT, NL, PL, UK**). In particular, asylum applicants do cooperate during their identification process to facilitate the processing of their application (see also question 3 below).
- ★ Some Member States have reported that intentional damaging of fingerprints by applicants is a recurrent problem (e.g., **FR, MT, NL**).

¹ Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, United Kingdom and Norway.

2. If you do permit / require the use of force or coercion, what level of force / coercion is deemed appropriate and proportionate?

- ★ In 11 (Member) States the principle of proportionality is taken into account when taking fingerprints of the concerned person (**AT, BE, BG, CZ, DE, EE, HR, PL, SK, UK and NO**). The use of force or coercive measures has to be legitimate, reasonable and proportionate to the objective pursued. For example, in **Austria** the person may be detained for the necessary time if there is reasonable possibility that he/she can be fingerprinted. In some (Member) States the use of force, if applied, would require a specific administrative decision (**AT, NO**) or the authorization of a judicial authority (**BG**).
- ★ Forcing the concerned person to be fingerprinted is considered inappropriate by 4 Member States (**AT, BE, ES, FI**); however, several Member States do provide for such a possibility (e.g. **BG, CZ, DE, EE, SK, UK and NO**). In all those (Member) States providing for the possibility of using coercive measures, the principle of proportionality has to be respected, and only reasonable force may be exercised, proportionate to the intensity of the resistance encountered.

3. Do you have any other penalties in place for EURODAC data subjects who refuse to cooperate in the taking of their fingerprints?

- ★ The majority of Member States do not have other penalties in place for EURODAC data subjects who do not cooperate in the taking of their fingerprints (**BE, CY, DE, EE, FI, FR, HR, HU, IE, LT, LU, LV, MT, PL, PT, RO, SI, SK**). However, with regard to applicants for international protection, the refusal to cooperate may render the application unsuccessful, either because it would be examined under the accelerated procedure as manifestly unfounded (**LT, LU, RO**), or because it would be deemed as withdrawn (**IE**) or because it would not be possible to continue to process it (**HU, NL**). In **Finland** all cases where the concerned person initially refused to cooperate in the taking of their fingerprints were eventually resolved through negotiation.
- ★ Seven (Member) States do impose penalties on EURODAC data subjects who refuse fingerprinting (**AT, CZ, ES, NL, SE, UK and NO**). In particular, in 5 Member States detention measures may be imposed following the refusal (**ES, NL, SE, UK and NO**) or if there is reason to believe that the person will cooperate, for the time necessary to achieve this (**AT**). In **Czech Republic** refusal to provide fingerprints may be punished with a fine.

4. If a person has damaged fingerprints meaning that a EURODAC transmission would be unsuccessful, do you use any other technique, such as multispectral images (MSI)?

- ★ In these circumstances, the majority of Member States do not use other techniques (**AT, BE, BG, DE, EE, ES, HR, HU, FI, IE, LT, LU, LV, MT, NL, PT, RO, UK**). Some complete the identification through the taking of a picture and an individual description without transmission of fingerprints (**BE, FR, LT, PL, SK**). Eight Member States reported that the concerned person may be invited several times to take his/her fingerprints if the first attempt is unsuccessful (e.g., **BE, BG, HR, FI, MT, NL, RO, UK**) and coercive measures may be imposed, under certain circumstances (see question 2).
- ★ Three (Member) States have adopted other techniques (**FR, SE and NO**). **France** is currently testing multispectral imaging (MSI) due to the fact that in the first half of 2014, cases of intentional fingerprint damage were found in 10.5% of cases, compared to 8.6% in the first half of 2013. In **Sweden** the use of MSI technique is closely monitored by fingerprints experts.
- ★ **Czech Republic** has not yet experienced cases of intentional fingerprint damage.

5. What do you do with irregular migrants who refuse to be fingerprinted whom:

a. You could detain under the provisions of the Return Directive (2008/115/EC);

- ★ Refusal to release fingerprinting does not constitute per se a reason for imposing detention under the Return Directive in most Member States which have experienced this problem (**AT, BE, FR, HU, LV, LU, NL, PL, RO, SE, SK**). Imposition of any detention measure will be therefore decided on a case by case basis, for example, on the ground of the risk of absconding (e.g., **EE, FR, LV, LU**).
- ★ **Portugal** and **Norway** may apply detention as a consequence of the refusal to be fingerprinted.

★ **Ireland** and **United Kingdom**, which are not bound by the Return Directive, adopt different solutions. In the **UK** coercive and detention measures may be adopted in case of refusal until when fingerprints are captured.

★ Four Member States report that they have never experienced in practice cases of refusal to be fingerprinted (**CZ, ES, MT, PL**).

b. You cannot detain because there is, from the outset, no "reasonable prospect of removal" according to Article 15(4) of the Return Directive.

★ The situation varies among Member States with regard to this category. If there is no "reasonable prospect of removal" the person will be released and the return procedure will start (e.g. **BE, FI, LT, LU, LV, SK**). In other Member States other measures restricting liberty may be adopted depending on the grounds (**FR, HU, NL, RO, SE**), for example house arrest (**FR**).

6. FURTHER INFORMATION

You may obtain further details on this EMN Ad-Hoc Query Summary and/or on any other aspect of the EMN, from: HOME-EMN@ec.europa.eu

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