



## **Ad-Hoc Query on EURODAC Fingerprinting**

**Requested by COM on 10<sup>th</sup> July 2014**  
**Compilation produced on 22<sup>nd</sup> September 2014**

**Responses from 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 plus Norway (26 in Total)**

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### **1. Background Information**

The European Commission is aware that some Member States may occasionally face difficulties in transmitting fingerprint data sets to Eurodac because data subjects do not cooperate by agreeing to be fingerprinted. The EURODAC Regulation (2725/2000) requires Member States to transmit to Eurodac the fingerprints of all asylum applicants (Article 4) and all persons apprehended crossing an external border irregularly (Article 8). The Commission would like to establish what law and practices exist in Member States in order to take fingerprints for transmission to the Eurodac database, both of asylum applicants and of irregular migrants.

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**We would like to ask the following questions:**

**Collation of Fingerprints (including use of force / coercion)**


1. Do you permit or require the use of force or coercion in your law or practice in order to take the fingerprints of:
  - a. Applicants for international protection (asylum – Eurodac Category 1);
  - b. Persons apprehended crossing a border irregularly (Eurodac Category 2);
  - c. Persons found illegally present in a Member State (Eurodac Category 3).
2. If you do permit / require the use of force or coercion, what level of force / coercion is deemed appropriate and proportionate?
3. Do you have any other penalties in place for Eurodac data subjects who refuse to cooperate in the taking of their fingerprints?
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)?

**Dealing with irregular migrants who successfully avoid being fingerprinted**


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

We would very much appreciate your responses by **7<sup>th</sup> August 2014**.

**2. Responses**

		Wider Dissemination?	
	Austria	No	1. For all three categories the use of force is permissible according to Austrian law. The person must be informed of his duty to cooperate and is given an info sheet, which explains the rules under which he is fingerprinted. In practice there are only sometimes problems with the second and third category.

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			<p>2. The principle of proportionality is always taken into account by Austrian police. In cases of Eurodac Category 2-3 the person may be detained for the amount of time necessary to take his fingerprints and as long as there is reasonable protect that he can be fingerprinted. First the procedure is explained and persons are asked and then told to cooperate. This is usually sufficient to achieve cooperation. If force is to be used, the police authority has to issue an administrative instruction (Bescheid) that a person has to provide his fingerprints, before force may be applied by police officers in case of Category 2 and 3. If a person absolutely refuses to cooperate (eg makes a fist so the fingerprinting is not possible), it would however be deemed inappropriate to forcefully open his hands in order to fingerprint him. This however rarely happens.</p> <p>3. See above.</p> <p>4. No.</p> <p>5. The non-cooperation can be taken into account in the asylum procedure. The refusal of the capture of fingerprints is not a reason for pre-deportation detention per se.</p> <p>Source: Federal Ministry of the Interior.</p>
	<b>Belgium</b>	<b>Yes</b>	<p>1.</p> <p>a. Applicants for international protection who oppose the fingerprinting are rather exceptional in Belgium. If an asylum applicant is reluctant towards the fingerprinting, it is clarified that an application for international protection implies that the applicant is cooperative for taking fingerprints. It is not specified in the law what force or coercion can be used in order to take the fingerprints of asylum applicants.</p> <p>b. Since Belgium has no external EU land border, the number of persons apprehended when irregularly crossing a border is limited. According to the Schengen Agreement, only the airports, seaports and Eurostar station in Brussels qualify as external borders. It is the border inspectorate of the Immigration Office, in close cooperation with the Federal Police who organises and sets up the border controls and takes the fingerprints. Article 37 of the Law on police services specifies that a police officer can use force, taking into account the risks that this entails, to pursue a legitimate aim that cannot be achieved otherwise (see question 2).</p> <p>c. The Police is authorised to apprehend a person in irregular stay and to identify the person (name, age, nationality), taking fingerprints and photographs and to seize the documents the person is carrying. Article 74/7 of the Immigration Act prescribes that the Police can put a person in administrative detention for 24 hours for identification purposes. This possibility to put a person in administrative detention could be seen as a “coercive measure” to convince the person to cooperate with the identification and fingerprinting.</p>

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			<p>2.</p> <p>Article 37 of the Law on police services<sup>1</sup> specifies that a police officer can use force, taking into account the risks that this entails, to pursue a legitimate aim that cannot be achieved otherwise. The law prescribes that any use of force must be reasonable and proportionate to the objective pursued. A warning should precede every use of force, unless such warning would make the use of force ineffective.</p> <p>However no legal provision prescribes in detail what “reasonable and proportionate” force could be used in the particular case of fingerprinting.</p> <p>In practice, the Police can bring someone to the device and try to convince him to cooperate; but the Police cannot physically force the person to be fingerprinted, if he is determined not to collaborate. However, usually there are no real difficulties in taking the fingerprints (also because most persons are not aware of the fact they can refuse this, or because it is not in their interest to oppose).</p> <p>3.</p> <p>No</p> <p>4. In the framework of an asylum application, the Immigration Office can invite the asylum applicant to come back on a later date if the quality of the fingerprints is insufficient. This procedure can be repeated up to four times until the quality of the fingerprints is good enough for a Eurodac-check. If no fraud seems involved, the asylum procedure can be continued without fingerprints. If the person has damaged his fingertips, the person may be placed in a closed centre and his asylum application can be accelerated.</p> <p>For what concerns the identification of irregular migrants by the Police, the three-factor identification on the basis of the Ministerial Circular MFO-3<sup>2</sup> consists out of fingerprints, photo-comparison and an individual description.</p> <p>5.</p> <ul style="list-style-type: none"> <li>a. A person in irregular stay can be detained for the purpose of (forced) removal. To be able to return a person he must be identified. Fingerprinting is an important step in this identification process, also to find out if the person is making use of multiple identities. Nevertheless, when there are no usable fingerprints, but the person is in possession of a valid travel document or when he has been issued a laissez-passer, it can be presumed that the person in question has been adequately identified to be returned to his country of origin.</li> <li>b. If there is no reasonable prospect of removal, for instance because the Immigration Office is unable to identify a person illegally present on the territory or if his identity cannot be confirmed by the country of origin and no laissez-passer can be</li> </ul>
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<sup>1</sup> Wet op het Politieambt : [http://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=nl&la=N&cn=1992080552&table\\_name=wet](http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=1992080552&table_name=wet)


<sup>2</sup> 14 JUNI 2002. - [Gemeenschappelijke richtlijn MFO-3](#) van de Ministers van Justitie en van Binnenlandse Zaken betreffende het informatiebeheer inzake gerechtelijke en bestuurlijke politie, *B.S.*, 18 juni 2002.

## Ad-Hoc Query on EURODAC Fingerprinting

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			issued, the person in question must be released. However, that does not mean that the person in question is given permission to remain in the country. He remains a migrant in irregular stay and is expected to leave the territory under his own steam (order to leave the territory).
	<b>Bulgaria</b>	Yes	<p>The Bulgarian legislation doesn't provide use of force or coercion in the fingerprinting of asylum seekers in category 1. However, the cases in which the asylum seekers refused to be fingerprinted are isolated.</p> <p>Regarding the asylum seekers who refused to be fingerprinted, their applications won't be registered and therefore won't be considered.</p> <p>According to the Law for the Ministry of Interior the persons apprehended crossing illegally the border of Republic of Bulgaria (category 2) and illegally present in the country (category 3) are obliged to cooperate, not to obstruct or hinder the police in order to take their fingerprints. In case of refusal of those actions they are forced out with the permission of a judge of the respective first instance court.</p> <p>With regard to persons with damaged prints up to a degree of inability to send the Central base in Luxembourg they are recorded in the national database in the Research Institute of Forensic Science and Criminology (RIFSC) - MoI. If possible to restore skin relief within a few weeks they have been taken again. We do not use other techniques such as scanning for deep scanning the skin surface because we have not such and they are not yet approved for use by the Agency for large-scale IT systems.</p>
	<b>Croatia</b>	Yes	<p>1 a.No</p> <p>1.b YES, Law on foreigners, art. 128 (OG130/11, 74/13)</p> <p>1.c YES, Law on foreigners, art. 128 (OG 130/11, 74/13)</p> <p>2. Appropriate and proportionate level of coercion is prescribed in Law on police duties and powers (OG 76/09, 92/14)</p> <p>3. To the person who expressed his intention to seek asylum in Croatia and who refuses to be fingerprinted, the provisions of Foreigners Act will apply. (article 37 of Act on Amendments of Asylum Act, OG 43/13).</p> <p>4. NO. In case of temporary impossibility to take fingerprints for medical or other reasons, asylum seeker will be fingerprinted afterwards, after the circumstances who made fingerprinting impossible have ceased (article 37 of Act on Amendments of Asylum Act, OG 43/13).</p> <p>5. If the identity of foreigner has not been established fingerprints will be taken by force (category 2 and 3) according to Law on foreigners, art. 128 (OG 130/11, 74/13)</p>
	<b>Cyprus</b>	Yes	1. No use of force or coercion is foreseen by the Cypriot Refugee Laws in order to take the fingerprints.

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			<p>2. N/A</p> <p>3. Currently, no penalties for Eurodac data subjects who refuse to cooperate in the taking of their fingerprints are foreseen by the Cypriot Refugee Laws. However the draft of the bill which transposed article 31(8)(i) of the Directive 2013/32/EU foresees an accelerated procedure of examination in such cases.</p>
	<b>Czech Republic</b>	<b>No</b>	<p><b>1.-3.</b></p> <p>The Directorate of the Foreign Police has not encountered cases of foreigners who would refuse to be fingerprinted.</p> <p>The Police are authorized to take fingerprints according to Asylum Act (Act No. 325/1999 Coll.) and Act on the Residence of Foreign Nationals in the Czech Republic (Act No. 326/1999 Coll.).</p> <p>According to Act on Asylum, the foreigner who makes a statement on international protection, is obliged to comply with the requirement to provide fingerprints and also taking of facial image in order for his identity to be verified or determined. If the foreigner does not fulfil this obligation, a fine of up to 2 000 CZK can be imposed for this offense.</p> <p>According to Act on the Residence of Foreign Nationals the foreigner is obliged to comply with the requirement to provide fingerprints and also taking of facial image, inter alia, for the purpose of identity determination and the fulfilment of obligations arising from international agreements.</p> <p>Before being fingerprinted for the purpose of Eurodac database, the foreigner is properly instructed (according to Council Regulation (EC) No 2725/2000).</p> <p>Pursuant to Police Act (No. 273/2008 Coll.), the police are entitled to request for proof of identity of the person staying in the area, where there could be reasonably expected people without a residence permit in the Czech Republic. If such a person refuses to prove his identity or is unable to do so even after providing necessary assistance (cooperation) to the police or through the available registers, the police are entitled to obtain information necessary for identity determination by means of fingerprint scanning. If it is not possible to carry out this act due to the resistance of the person, the police are entitled to overcome this resistance. Ways of overcoming resistance must be adequate to the intensity of resistance.</p> <p><b>4.</b></p> <p>The Directorate of the Foreign Police has not encountered cases of foreigners who would intentionally damage papillary lines with the aim of affecting collation of fingerprints. Due to the fact that quite often it is not possible to scan fingerprints electronically, it is proceeded to scan the fingerprints using fingerprint black.</p> <p><b>5.</b></p> <p>The Directorate of the Foreign Police has not encountered cases of foreigners who would refuse to be fingerprinted.</p>

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	<b>Estonia</b>	<b>Yes</b>	<p>1. a The Act on Granting International Protection to Aliens does not foresee any use of force or coercion in order to take the fingerprints</p> <p>1. b. According to the Obligation to Leave and Prohibition on Entry Act fingerprints may be collected and if the person does not co-operate use of force or restraints may be applied;</p> <p>1.c According to the Obligation to Leave and Prohibition on Entry Act fingerprints may be collected and if the person does not co-operate use of force or restraints may be applied</p> <p>2. Use of force and/or restraints is a last option and must be applied proportionately</p> <p>3. No</p> <p>4. No</p> <p>5. a You could detain under the provisions of the Return Directive (2008/115/EC);</p> <p>5.b You cannot detain because there is, from the outset, no "reasonable prospect of removal" according to Article 15(4) of the Return Directive.</p> <p>Irregular migrants are not detained only for the mere reason of lack of cooperation in giving fingerprints. Refusal to cooperate may serve as a factor in assessing abscondment possibility which is a ground for detention.</p>
	<b>Finland</b>	<b>Yes</b>	<p>1. YES - for all cases, permitted, not required: under the provision of Police Act (Chapter 2 Section 17). This is only theoretical since it is almost impossible to take fingerprints by using force.</p> <p>2. See above. So far cases have been solved by using negotiation.</p> <p>3. An alien may be ordered to be held in detention (Aliens Act, Section 121), but this is not a penalty.</p> <p>4. No. Depending on a case. After 2-3 weeks in detention the police will try to take fingerprints.</p> <p>5. a. Irregular migrant who has been detained for a long period and repeatedly damages his or her fingers to avoid fingerprinting may be released. The Police will then try fingerprinting on another occasion and will use force/coercion if necessary.</p>
	<b>France</b>	<b>Yes</b>	<p>1. No, the use of force or coercion is not permitted in French law. In France, the proportion of foreign nationals who refuse to cooperate in the</p>

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			<p>taking of their fingerprints is not significant. By contrast, damaging fingerprints is a recurrent problem.</p> <p>2. N/A</p> <p>3. No. Regarding asylum seekers who damage their fingerprints, the application for asylum is examined under accelerated procedure.</p> <p>4. In the first half of 2014, damaged fingerprints' rate is up two points from the first half of 2013 (10.5% against 8.6%). It is 52% in the Calais region.</p> <p>As an experiment, France is testing the multispectral imaging that allowed to detect many irregularities (obtaining international protection in France or in another Member State, application for asylum under multiple identities in France and/or in one or more Member States, etc.) The information thus obtained is confirmed during the interview of the asylum applicant under consideration of his first statements about his migratory journey and his situation.</p> <p>Essentially, the persons who are concerned are nationals from the Horn of Africa. For some of them, it is about multiple identifications, particularly in France. These persons also come from Italy (category 1 or 2), or from Sweden, Norway, Switzerland, but to a lesser extent. However, asylum seekers begin to develop a new strategy to escape identification, including with this technique: they affix a thick layer of a durable product (professional glue or varnish) on their fingers. Coercive measures seem necessary to overcome these difficulties.</p> <p><b><u>Dealing with irregular migrants who successfully avoid being fingerprinted</u></b></p> <p>Fingerprinting and querying the EURODAC database is a means of determining the identity of the person and searching existing records which implement the European procedure for determining the Member State responsible for a potential application for asylum.</p> <p>In case of refusal of fingerprinting, the use of other methods such as analysis of documents in the possession of the person is possible.</p> <p>If the foreign national persists in refusing to produce identification elements, the use of coercive procedure is possible only on the basis of a procedure for identity verification under Article 78-3 of the Code of Criminal Procedure and under the control of the judiciary authority. If as part of this procedure, the apprehended person continues to refuse to identify himself or provides obviously inaccurate elements of identity, verification operations can result, when authorized by the Public Prosecutor, in the taking of fingerprints or photographs when it is the only way to establish the identity of the person.</p> <p>Once the identity of the person is known, the obligation to leave French territory (OQTF = Obligation de Quitter le Territoire Français) may be established, except in the case where identification establishes that the foreign national must be given to the authorities of another Member State under the Dublin procedure.</p> <p>a) In both cases, if it appears that this illegally-staying foreign national is a national of a country to which removal within a reasonable period of time is possible, the person may be placed in administrative detention. Refusal of fingerprinting can be interpreted as indicating a risk of absconding from removal, justifying a refusal of voluntary departure and, if applicable, detention.</p> <p>However, it should be noted that detention should be subject to insufficient guarantees of representation to prevent a risk of absconding from</p>
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			<p>removal. In case of guarantees of representation, the foreign national can be left free or under house arrest on the basis of Article L. 561-2 of the CESEDA.</p> <p>In addition, an illegally-staying foreign national can be subject to a readmission procedure, in accordance with bilateral agreements concluded by the EU with third countries, or concluded by France with third countries or with EU Member States before the entry into force of Directive 2008/115/EC ("return"). As such, instructions to prefects were sent to search for clues that might allow the readmission of irregular migrants in the countries through which they arrived in France, notably through Italy, under the bilateral readmission agreement signed in Chambéry in 1997.</p> <p>If the conditions are met, detention can be applied for the execution of this surrender procedure.</p> <p>It is to be noted that, if the illegally-staying foreign national, held in detention, applies for asylum, the fingerprinting will not be made against his will even if it is the only means of identifying him. The examination of his application for asylum will be made in respect of the right to an individual examination of his situation, and subject to Article L 741-4 of the CESEDA (deliberate fraud or abusing appeal), without automatic application of the priority procedure.</p> <p>If the reasonable prospect of removal of the illegally-staying foreign national remains long term, a device of postponement of removal can be implemented within the framework of Article L 561-1 of the CESEDA. This procedure can be taken for a maximum of six months and renewed once or more in the same time limit, by a motivated decision. The illegally-staying foreign national in that case is under house arrest and is authorized in this context to remain on the territory. When the maximum duration of this measure expires, if no reasonable prospect of removal appears, it is necessary for the competent authority to reconsider the individual situation. Depending on circumstances, the removal order (OQTF = Obligation de Quitter le Territoire Français) can be maintained and the illegally-staying foreign national must comply, or the right to stay will be reviewed.</p>
	<b>Germany</b>	<b>Yes</b>	<p>1. Yes</p> <p>The legal basis is laid down in Section 81b of the German Code of Criminal Procedures (StPO), Section 49 of the German Residence Act (AufenthG) and in Section 16 of the German Asylum Procedure Act (AsylVfG).</p> <p>2. Identification measures can be enforced also against the will of the person concerned using direct coercion.</p> <p>Sanctions and measures here are the use of direct coercion, i.e. the taking of finger- prints by using force.</p> <p>When using direct coercion, it is compulsory to maintain the principle of reasonableness.</p> <p>That means: the measure employed must be suitable, necessary and appropriate. The measure constitutes an encroachment of the fundamental rights, the physical integrity and potentially also of the freedom of an individual.</p> <p>Direct coercion must, as far as possible, first be announced. This may be done addressing the person orally or using clear gestures.</p>


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			<p>3. No</p> <p>4. No</p> <p>5. Please refer to the explanations above.</p>
	<b>Hungary</b>	<b>Yes</b>	<p>1. Hungarian law/practice does not permit/require the use of force or coercion in order to take fingerprints of data subjects of Eurodac Category 1, 2, 3.</p> <p>2. Hungarian law does not allow the use of force/coercion in any case.</p> <p>3. In case Eurodac data subjects refuse to cooperate in the taking of their fingerprints, their procedure shall be terminated.</p> <p>4. No other techniques are used to take fingerprints.</p> <p>5a Irregular migrants who refuse to be fingerprinted will be handed over to the aliens policing authority which will decide about the possibility of detention.</p> <p>5b Fingerprints are not the only means in use to establish one's identity; this is why refusal of being fingerprinted does not automatically mean that no "reasonable prospect of removal" may be in place.</p>
	<b>Ireland</b>	<b>No</b>	<p>1 (a) The Office of the Refugee Applications Commissioner (ORAC) takes Category 1 fingerprints – those of applicants for asylum aged over 14 years. ORAC does not permit or require the use of coercion.</p> <p>2. (a) Not applicable.</p> <p>3. (a) Section 9A(5) of the Refugee Act 1996, as amended, states that "An applicant who refuses to permit his or her fingerprints to be taken .....shall be deemed not to have made reasonable efforts to establish his or her true identity....and to have failed to comply with the requirements of 11C. Section 11C(1) provides that "It shall be the duty of an applicant to co-operate in the investigation of his or her application...". Section 11(11) of the 1996 Act provides that where it appears that an applicant is failing in his or her duty to co-operate, the Refugee Applications Commissioner shall send a notice in writing inviting the applicant to indicate in writing within 15 working days whether he or she wishes continue with his or her application. If an applicant fails to reply within the specified period, his or her application shall be deemed to be withdrawn. In practice, incidents of non-cooperation in relation to the taking of fingerprints are very rare.</p> <p>4. (a) No other techniques are used in ORAC.</p> <p>5. There is no provision under Irish law for the detention of irregular migrants who refuse to be fingerprinted. The legislative basis for the taking of fingerprints in respect of foreign nationals who enter the State is provided for as far back as the Aliens Order of 1946. This Order imposed, subject to a small number of exceptions, a registration requirement on foreign nationals which included a requirement to provide</p>


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			<p>fingerprints when so required by a registration officer. The limited number of exceptions to the registration requirement includes those aged under 16 years and those whose visit is for a period of not more than three months. Since that time the registration process, including the fingerprint requirement, has been preserved, in respect of non-EEA nationals, in subsequent legislation, most recently in the Immigration Act 2004.</p> <p>The obligations on a non-national to register are set out in section 9 of the Immigration Act, 2004 and pursuant to section 9(2)(a) of the Immigration Act 2004, a non national is required to furnish certain particulars to a Registration Officer for the Registration District in which he or she is resident. These particulars are set out in the <i>Second Schedule</i>, to the Act of 2004. Paragraph 11 of the said Schedule sets out a requirement regarding the provision of “signature and fingerprints”, if required by the Registration Officer.</p> <p>Section 11 of the Immigration Act, 2004 -</p> <p>11.—(1) Every person (other than a person under the age of 16 years) landing in the State shall be in possession of a valid passport or other equivalent document, issued by or on behalf of an authority recognised by the Government, which establishes his or her identity and nationality to the satisfaction of an immigration officer.</p> <p>(2) Every person landing in or embarking from the State shall furnish to an immigration officer such information in such manner as the immigration officer may reasonably require for the purposes of the performance of his or her functions.</p> <p>(3) A person who contravenes this section shall be guilty of an offence.</p> <p>(4) This section does not apply to any person (other than a non-national) coming from or embarking for a place in the State, Great Britain or Northern Ireland.</p> <p>If a person is charged with a criminal offence, they can be compelled by the Courts to provide fingerprints for the purpose of the criminal investigation.</p>
	Italy	Yes	<p><b>1. Do you permit or require the use of force or coercion in your law or practice in order to take the fingerprints of:</b></p> <ul style="list-style-type: none"> <li><b>a. Applicants for international protection (asylum – Eurodac Category 1);</b></li> <li><b>b. Persons apprehended crossing a border irregularly (Eurodac Category 2);</b></li> <li><b>c. Persons found illegally present in a Member State (Eurodac Category 3).</b></li> </ul> <p>Even though the use of force is not explicitly provided for in domestic legislation, it is allowed by virtue of interpretations by the courts. In particular, in 2008, as regards being escorted to the office, passive resistance and the use of force, the Court of Cassation clarified that “... <i>even simply refusing ... to give one’s personal particulars justifies escorting the subject coercively... and, therefore, the use of force if the subject resists being escorted, even when it is ..., a merely passive resistance, without prejudice,...that the actual use of force must be strictly</i></p>



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			<p>proportionate to the type and degree of the mounted resistance;... ”:</p> <p>Refusal to cooperate in the taking of fingerprints constitutes the following violations:</p> <ul style="list-style-type: none"> <li>- Article 4 of the Consolidated Law on Public Security: “If the person is not able or refuses to prove his/her identity or if there is suspicion on his/her identity, Police Authorities may require the taking of fingerprints”. This specific violation is punished with a fine.</li> <li>- Articles 650 and 651, Criminal Code punishing, respectively, failure to comply with the measures taken by the authorities and the refusal to provide information on personal identity, with apprehension.</li> </ul> <p><b>2. If you do permit/require the use of force or coercion, what level of force/coercion is deemed appropriate and proportionate?</b></p> <p>The use of force responds to the principles of necessity, appropriateness and proportionality, with reference to the person’s behaviour, as specified in point 1) above. However, when force is used, the dignity of the person to be identified and the individual situations in the case of vulnerable categories must always be respected.</p> <p><b>3. Do you have any other penalties in place for Eurodac data subjects who refuse to cooperate in the taking of their fingerprints?</b></p> <p>See point 1. Moreover, domestic regulation provides for a criminal offence (Article 495-ter, Criminal Code) which – with an indirect reference to the refusal to cooperate in the taking of fingerprint - punishes those who alter part of their bodies or of another person’s body in order to prevent identification. Article 381(2) (m) <i>quater</i> of the Code of Criminal Procedure expressly provides for optional arrest in flagrancy.</p> <p><b>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)?</b></p> <p>No. No other techniques are used.</p> <p><b>5. What do you do with irregular migrants who refuse to be fingerprinted whom:</b></p> <p><b>a. You could detain under the provisions of the Return Directive (2008/115/EC);</b></p> <p>The measures to adopt are assessed on a case-by-case basis, in compliance with the provisions contained in Directive 2008/115/EC, according to the personal situation of the person concerned.</p> <p><b>b. You cannot detain because there is, from the outset, no "reasonable prospect of removal" according to Article 15(4) of the Return Directive.</b></p> <p>See 5.a above.</p>
	Latvia	Yes	<p>1. According to the Asylum Law of the Republic of Latvia, an official of the State Border Guard in order to identify an asylum seeker has the right to take the fingerprints of an asylum seeker. An asylum seeker has an obligation to 1) co-operate with the State Border Guard so that it could take his or her fingerprints. According to the Immigration Law of the Republic of Latvia an official of the State Border Guard or State Police shall establish the identity of the detainee, also irregular migrant, take his or her fingerprints. A foreigner has a duty, if it is requested by a State institution in accordance with the competence thereof, to allow his or her fingerprints to be taken. In law or practice there is no permission or requirement to use force or coercion in order to take the fingerprints.</p>


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			<p>2. Not applicable</p> <p>3. There are no penalties, only conversation with a person is done.</p> <p>4. There are no other techniques as well as such technique as MSI is not used.</p> <p>5. a) Refusal given by illegal immigrant to be fingerprinted is not a ground for detention of irregular immigrant. A foreigner can be detained if there are grounds to believe that he or she will avoid the removal procedure or will impede the preparation thereof or there is a risk of absconding of the foreigner, and it is substantiated by the circumstances mentioned in the Immigration law. In accordance with Immigration law a foreigner has a duty, if it is requested by a State institution in accordance with the competence thereof, to present the documents, as well as allow their fingerprints to be taken. National legislation does not specify penalties for not compliance with the duty mentioned.</p> <p>b) While transposing the provisions of Article 15(4) of the Return directive into national legislation it was defined in the Immigration law that a detained foreigner shall be released if:</p> <ul style="list-style-type: none"> <li>- the period of detention has reached the end;</li> <li>- there is a Court decision refusing to extend the detention period;</li> <li>- after the forced expulsion took place;</li> <li>- in accordance with the decision of the State Border Guard to release a detained foreigner on the grounds that the circumstances which served as the basis for detention are no longer valid or it is not possible to obtain the necessary documents to carry out the forced expulsion procedure.</li> </ul> <p>Taking into account that there are no "reasonable prospect of removal" of irregular migrant and in accordance with national legislation refusal given by illegal immigrant to be fingerprinted is not a ground for his/her detention, detention cannot be applied to the irregular immigrant.</p>
	<b>Lithuania</b>	<b>No</b>	<p>1. No. There is no practice nor legal base to use coercion or force in order to take fingerprints.</p> <p>2. N/A</p> <p>3. In practice, there has never been such case that asylum seekers refused to give fingerprints. But in theory, yes. If an asylum seeker refused to cooperate in taking fingerprints it would be considered that he does not aid the investigation therefore his application would be examined under the accelerated international protection procedure.</p> <p>4. No.</p> <p>5. If the irregular migrants refuse to give fingerprints, it is noted in their personal files, and the fingerprints are not entered into the Eurodac. Further procedures are carried out, and in individual cases the fact that the migrant refused to give fingerprints might be taken into account while making decisions related to his or her status.</p>



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	<b>Luxembourg</b>	<b>Yes</b>	<ol style="list-style-type: none"> <li>1. <ol style="list-style-type: none"> <li>a. NO.</li> <li>b. NO.</li> <li>c. NO.</li> </ol> <p>In Luxembourg the only situations in which the Grand-ducal police can obtain the fingerprints of an individual without their consent is in the framework of a criminal investigation, a flagrant felony, preliminary investigation, a rogatory commission (letters rogatory) or the execution of a warrant issued by a judicial authority (articles 33 (8) and 39 (4) of the Criminal Procedure Code). The police should have to be authorised by the public prosecutor office and/or by the investigating judge (article 45 (6)).</p> </li> <li>2. N/A</li> <li>3. Yes. Article 8 of the amended law of 5 May 2006 (Asylum law) says that the judicial police must take the fingerprints of the applicant for identification purposes. As article 9 (1) establishes the obligation of the applicant of collaborating with the authorities to establish his/her identity, the refusal of the applicant for not allowing the police to take his/her fingerprints is sanctioned by treating the application in the “fast-track” procedure (article 20 (1) m).</li> <li>4. No.</li> <li>5. <ol style="list-style-type: none"> <li>a. The third country national who avoids being fingerprinted is considered not cooperating in the establishment of his/her identity. For this reason, an applicant for international protection can be put in detention in accordance with article 10 (1) b) and c) of the Asylum law. This detention is for three months but can be extended up to 12 months (article 10 (2)). The irregular migrant can also be put in detention in accordance with article 120 (1) of the amended Law of 29 August 2008 in Free Movement of persons and immigration (Immigration Law) in preparation of his/her removal, especially if, inter alia, the person prevents or avoids the preparation of the return. This detention is for one month but can be extended up to 4 months. If the enforcement of the decision to removal is not possible because of a lack of cooperation of the concerned person (inter alia), the detention period can be extended up to 2 supplementary months (6 months in total) (article 120 (2) of the Immigration Law). However, if the person has an order to leave and is placed in detention and after the maximum period of detention is freed and remains in the territory without justified ground of non-return, the person can be subject to imprisonment from 8 days up to a year and/or a fine of 251 up to 1250 euros (article 140 of the Immigration Law, modified by law of 26 June 2014. See memorial A-113 of 1 July 2014)</li> </ol> <p>Articles 125 and 120 of the Immigration law are applicable. Third country nationals can only be put in detention if there is a "reasonable prospect of removal" (and if alternatives, such as “assignation à résidence” are not applicable).</p> </li> </ol>
	<b>Malta</b>	<b>Yes</b>	<ol style="list-style-type: none"> <li>1. <ol style="list-style-type: none"> <li>a.</li> <li>b.</li> <li>c.</li> </ol> </li> </ol>

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			<p>In practice no force or coercion is required to take fingerprints for all three categories. However some migrants may make attempts to avoid their fingerprints being taken by various means such as applying glue to the fingertips. In such occasions, a note is taken and the migrant is recalled for fingerprinting at a later stage when the effects of the glue would have subsided.</p> <p>2. N/A</p> <p>3. N/A</p> <p>4. Measures are taken to ensure that a good copy is available, even if this requires several attempts over a period of time.</p> <p>5. MT cannot report having any experience with such cases as explained above.</p>
	Netherlands	Yes	<p>1. Apart from the willful mutilation of the fingers, as mentioned in question 4, the issue very seldom arises as aliens as a rule do cooperate. Police officers and officers of the Royal Constabulary can use force on grounds laid down in the Instruction for Police, Royal Constabulary and other investigation Officers (Ambtsinstructie voor politie, Koninklijke Marechaussee en andere opsporingsambtenaren.) Force can only be used when it is necessary and it must be proportionate. In fact physical force would not be used when an alien does not cooperate with taking fingerprints. Not cooperating will in fact mean:</p> <p>a. The application for international protection would be rejected because the applicant has made it impossible to establish his identity and nationality and to establish if he has made an application for international protection in an other Member State.</p> <p>b. Persons apprehended crossing the border irregularly would first of all be held in detention at the border. When it is not possible to establish if an other Member States responsibility the person will be removed to his country of origin;</p> <p>c. Persons found illegally present would be detained, as non cooperation with establishing necessary identity markers will be seen as proof that a risk of absconding exist.</p> <p>2. The use of physical force or coercion is normally not deemed necessary. See answer question 1.</p> <p>3. All above mentioned categories are obliged to cooperate with the police authorities on recording data such as fingerprints on behalf of identification (Article 54 par 1c Aliens Act 2000 and Section 4.45 under b Aliens Decree 2000). A person who does not comply with this requirement shall be liable to detention not exceeding six months or a category 2 fine.</p> <p>However, it is much more likely that Aliens Detention is applied first. After all, in case the identity of a person can not be established it will not be clear if the alien has legal or illegal stay. Moreover, in that case it might be possible that the person has no legal stay and has to be removed.</p>

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			<p>During the (general) process of forced removal a person can be detained for in 6 months. In some cases the detention can be extended for another 12 months in accordance with article 15 of the return directive.</p> <p>4. The (purposely) damaged fingers will lead to aliens detention. In a later stage, fingerprints can usually be taken (because the fingers have healed).</p> <p>5 Answer: In case the identity of a person can not be established it will not be clear if the alien has legal or illegal stay. Moreover, in that case it might be possible that the person has no legal stay and has to be removed. During the (general) process of forced removal a person can be detained for in 6 months. In exceptional cases the detention can be extended for another 12 months.</p> <p>This applies both to the situation mentioned above under 5a and 5b.</p>
	<b>Poland</b>	<b>Yes</b>	<p>a) 1. According to Polish regulations, the asylum seeker is required to give his/her fingerprints. So far, no cases of refusing to provide fingerprints by an applicant have been reported.</p> <p>b) and c) A foreigner apprehended crossing border illegally or found illegally present in Poland is also required to give his/her fingerprints. So far, no cases of refusing to provide fingerprints have been reported. According to Polish regulations, there is however a possibility (if necessary) to use direct coercive measures in the form of restraining lock.</p> <p>2. In every case, the use of coercive measures in the form of overpowering force is used as necessary to achieve the objectives of its use in a manner that causes least damage possible.</p> <p>3. No.</p> <p>4. In every case, apart from collecting the fingerprints, a photo is taken which is then attached to the foreigner's files (also in electronic format) and a document which is issued to the foreigner.</p> <p>5. So far, there were no cases in which detained irregular migrants did not want to have their fingerprints taken. There is no a direct relation between refusing to provide fingerprints by a foreigner and applying alternative measures to detention.</p>
	<b>Portugal</b>	<b>Yes</b>	<p>1. No.</p> <p>2./3. According to the Procedure Directive, in those cases, Portugal uses an acceleration procedure. Therefore the application will be considered unfounded.</p> <p>4. No.</p> <p>5. a.) Yes.</p>





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	<b>Romania</b>	<b>Yes</b>	<p>1. a. National legislation in the area of asylum does not provide for the use of force in order to take fingerprints of the asylum seekers who refuse to fulfil this legal obligation.</p> <p>b. N/A</p> <p>c. National legislation in the area of immigration does not provide for the use of force in order to take fingerprints of the persons detected in illegal situations and who refused being fingerprinted.</p> <p>2. Not the case</p> <p>3. According to the provisions of art. 19 (a) of Law no. 122/2006 on asylum in Romania, during the asylum procedure the applicant for international protection is obliged to be photographed and fingerprinted. Fingerprinting is not performed in when the applicants are less than 14 years old.</p> <p>Art. 75 (1) of the same law provides for the applications which can be object of accelerated procedure. Among these are listed the manifestly unfounded applications. An asylum application can be considered manifestly unfounded also in the situation when the applicant has not respected the obligations provided for by art. 19 from the law on asylum, when the disrespect has been done repeatedly and seriously.</p> <p>Even so, the above mention provisions are not applied when the applicant justifies granting of international protection.</p> <p>4. There are no other techniques used in case the asylum applicant has damaged fingerprints that do not allow a successful transmission to Eurodac. Subsequently will be attempts for a correct fingerprinting.</p> <p>5. a. According to national legislation refusal of being fingerprinted does not represent a reason to be taken into public custody (detention).</p> <p>When refusal of being fingerprinted accompanies other reasons for taking into public custody, the person could be taken into public custody, but the main reason is not the refusal of being fingerprinted.</p> <p>b. See 5.a</p>
	<b>Slovak Republic</b>	<b>Yes</b>	<p>1. In accordance with the national legislation (Article 20 of the Act No. 171/1993 Coll. on the Police Force), the Police Officer has right to collect fingerprints of the foreigner:</p> <ul style="list-style-type: none"> <li>• who illegally crossed the external border of the Slovak Republic</li> <li>• who illegally resides in the territory of the Slovak Republic</li> </ul>

## Ad-Hoc Query on EURODAC Fingerprinting

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			<ul style="list-style-type: none"> <li>• against whom legal proceedings were instituted on administrative expulsion from the territory of the Slovak Republic or proceedings on entry ban to the territory of the Slovak Republic</li> <li>• who is undesirable person</li> <li>• for the purpose of determining the age in case it is disputable whether the foreigner is a minor</li> <li>• older than 14 years of age for the purpose of asylum procedure</li> </ul> <ol style="list-style-type: none"> <li>2. If a person rejects to be fingerprinted, the Police Officer has right to use force or coercion (Article 51 (2a) of the Act No. 171/1993) in order to reach the desired purpose and at the same time in such a way that the intensity of the use of force and coercion is appropriate (Article 50. of the Act No. 171/1993)</li> <li>3. No.</li> <li>4. If a person has damaged fingertips, it is not possible to enter the fingerprints into EURODAC.</li> <li>5. The fact that a person rejects to be fingerprinted is not a reason for his/her detention. At the same time, it has no impact on the process of his/her return.</li> </ol>
	<b>Slovenia</b>	<b>Yes</b>	<p>1.Q.</p> <p>a.) No. Our legislation and practice do not permit/require/allow to use any kind of force or coercion in case when applicants refuse to cooperate in taking of their fingerprints or photos.</p> <p>b.) No. According the legislation (the International Protection Law, article 55, the Alien Act) fingerprints and photo of applicants are one of several conditions which needs to fulfils in order to get any kind of legal status which allowed them to legally reside in Slovenia (refugee status, residence permit, etc).</p> <p>c.) No. In case that fingerprints of applicants are damaged according to the practice we are repeating procedure (usually a period of one week) of taking of applicant's fingerprints until at least several "hits" are successful.</p>
	<b>Spain</b>	<b>No</b>	<ol style="list-style-type: none"> <li>1. So far, we have had no problems in taking fingerprints in Eurodac cases. On the other hand, according to our experience with criminal cases, the use of force is not effective since it is almost impossible to obtain an acceptable fingerprint quality when somebody resists. Thus, although according to general principles of law we would be allowed to use coercive measures in a proportionate way, once it became obvious the person does not cooperate, no further attempts would be made.</li> <li>2. See above.</li> <li>3. Disobedience and resistance to law enforcement agents is punished by the Criminal Code, either as a crime or a misdemeanour.</li> <li>4. No</li> </ol>


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			5. As explained above, we are not encountering such cases.
	<b>Sweden</b>	<b>Yes</b>	<ol style="list-style-type: none"> <li>1. According the Swedish Aliens Act, applicants for international protection, applicants for residence permits and persons unable to prove their identity are required to leave fingerprints.</li> <li>2. According the Swedish Aliens Act, a person may be detained in order to establish identity or while investigating the right to stay on the territory.</li> <li>3. No.</li> <li>4. All fingerprints captured are sent to Eurodac regardless of quality issues such as damage or wear. Only if a fingerprint transaction is rejected by Eurodac due to poor quality MSI may be used. The use of MSI is closely monitored by fingerprint experts.</li> <li>5. a.) Detention can be used; however in practice this is seldom taking place. If a person is considered to deliberately avoid being fingerprinted this might constitute a crime according to the Swedish Aliens Act (for withholding information), and this might be reported to the police for criminal investigation. For asylum seekers, the daily allowance might be reduced if he/she is considered not to participate in order to clarify his/her identity. b.) The measures mentioned under a.) can be taken, except detention. A residence permit is, as a main rule, not granted before fingerprinting has succeeded.</li> </ol>
	<b>United Kingdom</b>	<b>Yes</b>	<ol style="list-style-type: none"> <li>1. Fingerprinting of immigration offenders and asylum seekers (anyone seeking international protection is considered an asylum seeker) is covered primarily by Section 141 to 143 of the Immigration and Asylum Act 1999 (1999 Act).  It is not common that someone refuses to voluntarily provide fingerprints. Every individual to be fingerprinted should be served with a form (IS86) notifying the individual that he is to be fingerprinted, explaining why he is to be fingerprinted and also explaining when the fingerprints will be destroyed. If however an individual refused to be fingerprinted then trained immigration officers (those trained to exercise the existing power of arrest and the powers of entry, search and seizure) can use reasonable force. If such an officer is not a police officer, they may be tasked to fingerprinting if the individual refuses to be fingerprinted. Force however cannot be used on pregnant women or children to take fingerprints.</li> <li>2. Section 146 (1) of the 1999 Act, as amended by paragraph 5 to Schedule 1 of the IA14, states that an IO exercising any power conferred on him</li> </ol>

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			<p>by the Immigration Acts may, if necessary, use reasonable force. However, IOs must not exercise their power to use reasonable force unless they have been trained in its use. Only those IOs designated to exercise the existing power of arrest and the powers of entry, search and seizure are suitably trained.</p> <p>Non-designated IOs must rely on the police to take fingerprints where the use of force is necessary to take fingerprints or where it has been assessed that there is a realistic threat of violent behaviour, but only with the authority of a police inspector.</p> <p>Force may only be used on a pregnant woman, child or young person to prevent harm to themselves or another person. Force must not be used to take their fingerprints.</p> <p>For any use of force to be lawful it must be:</p> <p><b>Proportionate.</b> Any force used must have been the minimum level required to achieve the legitimate objective. This must include consideration of impact factors and the officer must demonstrate that he/she understands the effect of his/her actions. Any force used must be via an approved technique as taught during arrest team officer safety training or shown in some other way to be reasonable.</p> <p><b>Lawful.</b> Force can only be used to enable an arrest-trained officer to carry out a legal function. The officer must be able to demonstrate either:</p> <ul style="list-style-type: none"> <li>a. (For criminal arrests), that the officer had reasonable grounds to suspect the subject of having committed a relevant immigration offence for which there is a power of arrest.</li> <li>b. (For administrative arrests), that the subject is a person for whom removal directions are in place or that the officer believes or suspects the person is someone for whom removal directions may be given.</li> </ul> <p><b>Auditable.</b> Any use of force must be recorded and that record kept for seven years in case there is a legal challenge or complaint.</p> <p><b>Necessary.</b> The officer must demonstrate that there was no practicable alternative to using reasonable force.</p> <p>3. Someone may be required to attend at a specified place for fingerprinting (section 142 of the 1999 Act). Those who fail to comply may be arrested without warrant by a police constable or IO (unless the requirement has ceased to have effect). Before such a person is released, they may be moved to a place where their fingerprints can be taken.</p> <p>4. When encountered the applicant is initially managed by a small team who will regularly re-fingerprint, the individual may be detained whilst the applicant's identity is established, providing a period of time so their fingerprints may recover. Where it is determined that the damage is due to age or a medical condition, that will not reasonable clear, the individual will fall out of the damaged fingerprint process into the normal asylum process.</p>
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			5. The UK did not opt into the Return Directive (2008/115/EC). As noted at 1. and 2., reasonable force will be used to capture an individuals fingerprints.
	Norway	Yes	<p>1. Yes, Norwegian Immigration Act of 2008 § 100 authorizes the use of fingerprints. Should the foreigner not willingly consent to being fingerprinted, this law also allows for the use of force. The chief of police or the person authorised by the chief of police may decide that fingerprints and photographs shall be taken forcibly. The foreign national may demand that the question of the lawfulness of such coercive intervention be brought before the court. The police shall ensure that the foreign national is made aware of this right.</p> <p>a. Norwegian authorities take fingerprints of all asylum seekers over the age of 14 in keeping with the Norwegian Immigration Act, § 100.</p> <p>b. In accordance with the Norwegian Immigration Act § 101, fingerprints are taken of persons over 14 years old who are taken into custody in connection with illegally crossing the outer Schengen border.</p> <p>c. The Norwegian Immigration Act § 100 and § 101 authorize taking fingerprints of persons who are in Norway illegally.</p> <p>2. The chief of police or the person authorised by the chief of police may decide that fingerprints and photographs shall be taken forcibly if the foreigner doesn't willingly consent (Norwegian Immigration Act § 100). A coercive measure may only be applied where there is sufficient reason to do so. A coercive measure may not be applied where doing so would constitute a disproportionate intervention in light of the nature of the case and other factors. In some cases, it might be necessary to imprison a foreigner who is not willing to cooperate with fingerprinting, or who has manipulated/alterd fingerprints according to Norwegian Immigration Act § 99 and §106.</p> <p>3. No</p> <p>4. Yes, if fingerprints are rejected when using the ordinary equipment, we can also use the MSI.</p> <p>5. a If a foreigner for example manipulates their fingerprints, they would risk imprisonment in order to enable the authorities to get fingerprints. This would be done in order to determine the person's identity so that they could be returned. The Norwegian Immigration Act, § 100 authorises use of force to get fingerprints.</p> <p>b. In these cases, fingerprints would be taken by force according to Norwegian Immigration Act § 100.</p>

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