

Asylum: Eurodac system for the comparison of fingerprints of third-country nationals or stateless applicants; requests for comparison with Eurodac data. Recast

2008/0242(COD) - 15/12/2010 - Document attached to the procedure

Opinion of the European Data Protection Supervisor on the Amended proposal for a Regulation of the European Parliament and of the Council on the establishment of ‘Eurodac’ for the comparison of fingerprints for the effective application of Regulation (EC) No (.../...) (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).

On 11 October 2010, the European Commission adopted an Amended proposal for a Regulation of the European Parliament and of the Council on the establishment of ‘Eurodac’ for the comparison of fingerprints for the effective application of the future Regulation 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.

Focus of the opinion of the EDPS: the EDPS has already contributed several opinions in this area, as mentioned above. The purpose of the present opinion is to recommend improvements to the proposal; these recommendations are either based on new developments or on recommendations previously made and not yet taken on board, in situations where the EDPS finds that his arguments have not been met adequately or that these recommendations are supported by new arguments. The present opinion will focus on the following points:

- the withdrawal of the provisions related to law enforcement access to Eurodac,
- the position of the individual whose fingerprints are not usable,
- information of the data subject,
- use of best available techniques as a way to implement ‘Privacy by Design’,
- consequences of subcontracting (a part of) the development or management of the system to a third party.

Main conclusions: the EDPS welcomes the fact that the possibility to give law enforcement an access to Eurodac has been left out of the current proposal.

The collection and further processing of fingerprints occupy a central place in the Eurodac system. The EDPS emphasizes that the processing of biometric data such as fingerprints poses specific challenges and creates risks which have to be addressed. In particular, the EDPS underlines the problem of so-called ‘failure to enrol’- the situation in which a person finds him/herself if for some reason, their fingerprints are not usable. Failure to enrol on its own should not lead to a denial of rights for asylum seeker.

The EDPS recommends adding to Article 6a of the proposal a provision along the following line: ‘Temporary or permanent impossibility to provide usable fingerprints shall not adversely affect the legal situation of the individual. In any case, it can not represent sufficient grounds to refuse to examine or to reject an asylum application’.

The EDPS notes that effective implementation of the right to information is crucial for the proper functioning of Eurodac, so as to ensure that information is provided in a way that enables the asylum seeker to fully understand his situation, as well as the extent of the rights, including the procedural steps he/she can take as follow-up to the administrative decisions taken in his/her case. The EDPS suggests that the wording of Article 24 of the Proposal should be reformulated to clarify the rights to be given to the asylum applicant.

The EDPS recommends amending Article 4(1) of the Proposal, using the expression 'Best Available Techniques' instead of 'Best Available Technologies'. Best Available Techniques include both the technology used and the way in which the installation is designed, built, maintained and operated.

The EDPS recommends as regards on the issue of subcontracting a part of the Commission tasks to another organisation or entity (such as a private company) that safeguards should be put in place to ensure that the applicability of Regulation (EC) No 45/2001, including the data protection supervision by the EDPS remains entirely unaffected by the subcontracting of activities. Furthermore, additional safeguards of a more technical nature should also be adopted.