

Coordinated Supervision of Eurodac
Activity Report 2005-2007

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Secretariat of the Eurodac Supervision Coordination Group
EDPS
Rue Wiertz, 60
B-1047 Brussels
email: eurodac@edps.europa.eu

Table of content

INTRODUCTION	3
1. SUPERVISION OF EURODAC: LEGAL ENVIRONMENT	4
1.A. A THREE-LAYERED SUPERVISION MODEL	4
1.B. THE AIM OF THE COORDINATED SUPERVISION	5
2. ORGANISATION OF COORDINATED SUPERVISION	5
2.A. MAIN PRINCIPLES	5
2.B. THE SUPERVISION COORDINATION MEETINGS	5
3. 2005-2007: ACHIEVEMENTS	6
3.A. 2005: GETTING STARTED.....	6
3.B. 2006: LAUNCHING THE FIRST COORDINATED INSPECTION	7
3.C. 2007: DELIVERING RESULTS	8
4. WHAT TO EXPECT IN 2008-2009	10
5. ANNEXES	10
5.A. COORDINATED INSPECTION REPORT	10
5.B. RULES OF PROCEDURE	10

Introduction

Eurodac is an information system established for the comparison of fingerprints of asylum applicants and illegal immigrants. It facilitates the application of the Dublin Convention¹ which aims at determining the State responsible for examining the asylum application². Eurodac has been created by Council Regulation (EC) [No 2725/2000](#) of 11 December 2000³ as completed by the Council Regulation (EC) [No 407/2002](#) of 28 February 2002⁴. Eurodac has been operational since 15 January 2003 in all EU-15 Member States (except Denmark), as well as in Norway and Iceland. Since then, the system has been joined by the new Member States following the 2004 enlargement, as well as by Denmark, Romania and Bulgaria. Agreements are being negotiated with Switzerland and Liechtenstein to allow these countries to join the system as well.

The Eurodac system consists of a Central Unit hosted within the European Commission which is equipped with an automated fingerprint identification system and an electronic data transmission application, allowing Member States to exchange information about asylum seekers and illegal immigrants.

The need for thorough data protection supervision of Eurodac becomes even more evident when one considers the category of persons affected by the Eurodac system: asylum seekers and (to a lesser extent) illegal immigrants. These are among the most vulnerable populations, faced with great difficulties when it comes to defending their rights. Therefore, it is crucial that an adequate level of data protection is embedded in the system, and that privacy rights are protected in a thorough and harmonised manner around Europe.

Data protection is also a key factor for the success of the operation of Eurodac, and consequently for the proper functioning of the Dublin system. Elements such as data security, technical quality of data and lawfulness of consultation of Eurodac data, all contribute to the smooth functioning of the system.

Finally, it should be noted that supervision is not only important for the enforcement of asylum seekers' rights to personal data protection, but also because this is to some extent a pilot exercise of great relevance for other upcoming large scale information systems, such as the new Schengen Information System (SIS II) or the Visa Information System (VIS). Even though the activities of the Eurodac Supervision Coordination Group partly

¹ The Dublin Convention has been replaced by Regulation (EC) N° 343/2003 of 18 February 2003 and Commission Regulation (EC) N° 1560/2003 of 2 September 2003. These two instruments are sometimes called "Dublin II".

² The Eurodac system enables Member States to identify asylum seekers and persons who have crossed an external frontier of the Community in an irregular manner. By comparing fingerprints Member States can determine whether an asylum seeker or a foreign national found illegally present within a Member State has previously claimed asylum in another Member State.

³ 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, hereinafter "Eurodac Regulation".

⁴ 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, hereinafter "the Eurodac Regulation".

build upon activities of the existing Joint Supervisory Authorities (JSA) of e.g. Europol or SIS, the layered approach to a coordinated supervision (see below, chapter 1.A.) is a new one.

As provided by Article 20 of the Dublin Convention, the supervision of Eurodac was at first ensured by a provisional Joint Supervisory Authority. The European Data Protection Supervisor replaced the JSA in 2004⁵. The first chapter of this report clarifies the legal environment of the Eurodac Coordinated Supervision.

Because of the evident need for coordinated supervision, the EDPS organised meetings with the national data protection authorities (DPAs) from 2005 on. Chapter II of this report gives details of the cooperation.

Achievements are the subject of Chapter 3. From 2005 to 2007, the Supervision Coordination Group has achieved considerable results. It developed both procedural aspects and actual supervisory actions, while at the same time keeping abreast of new developments in this area and exchanging relevant information.

Finally, this report also addresses the prospects for future activities in Chapter 4, in a time of intensive change in the field of Eurodac.

1. Supervision of Eurodac: legal environment

1.a. A three-layered supervision model

It follows from Article 19 and 20 of the Eurodac Regulation, that the data protection supervision of Eurodac is to be ensured at three levels: national, European Community (Central Unit), and in cooperation between both levels.

At national level, the national supervisory authorities (hereinafter “Data Protection Authorities” or “DPAs”) designated pursuant to Article 28(1) of Directive 95/46/EC are competent to monitor the lawfulness of the processing of personal data by the Member State in question, including their transmission to the Central Unit.

At EC level, the European Data Protection Supervisor (EDPS) has monitored the lawfulness of processing of personal data in the Central Unit, as well as of the transmission of personal data to the Member States by the Central Unit since 2004.

This structure means that the supervision must be exercised at both levels, in close cooperation. This cooperation is ensured through a system of coordinated supervision which started in 2005, as well as through bilateral contacts between DPAs and between DPAs and the EDPS when relevant.

⁵ Article 20, paragraph 11, lays down that: "The joint supervisory authority shall be disbanded upon the establishment of the independent supervisory body referred to in Article 286(2) of the Treaty. The independent supervisory body shall replace the joint supervisory authority and shall exercise all the powers conferred on it by virtue of the act under which that body is established".

1.b. The aim of the coordinated supervision

An active cooperation between national DPAs and the EDPS is an essential condition for guaranteeing the protection of individuals whose data are processed by such a large-scale system.

This cooperation is necessary, mainly in order to⁶:

- examine implementation problems in connection with the operation of Eurodac;
- examine possible difficulties during checks by the national supervisory authorities;
- draw up recommendations for common solutions to existing problems.

This philosophy, already prevailing in the work of existing joint supervisory authorities (of SIS, Europol or CIS) was also promoted in the context of Eurodac.

It has now been stated in Article 1 of the rules of procedure adopted by the Group on 19 December 2007, according to which:

“The Coordination Group shall:

- (a) examine implementation problems in connection with the operation of Eurodac;*
- (b) examine difficulties experienced during checks by the supervisory authorities;*
- (c) examine difficulties of interpretation or application of the Eurodac Regulation;*
- (d) draw up recommendations for common solutions to existing problems, and*
- (e) endeavour to enhance cooperation between the supervisory authorities.”*

2. Organisation of coordinated supervision

2.a. Main principles

The cooperation took the form of coordinated supervision meetings held on a regular basis with all DPAs in charge of supervising Eurodac at national level. The main purpose of these meetings was to discuss common problems related to supervision and find common solutions or approaches whenever possible.

DPAs participating in the meetings are all DPAs in charge of the supervision of Eurodac, i.e. at the date of publication of this report all EU Member States plus Norway and Iceland. In view of the future linking of Switzerland to the Dublin system, the Swiss DPA is also represented, with an observer status.

2.b. The supervision coordination meetings

So far, five supervision coordination meetings have taken place: 1 in 2005, 1 in 2006 and 3 in 2007, on the following dates:

- 28 September 2005,
- 28 June 2006,
- 6 March 2007,
- 28 June 2007,

⁶ Following the wording of Article 20(3) of the Eurodac Regulation.

- 19 December 2007.

The meetings were held in Brussels, usually back to back with meetings of the Joint Supervisory Authorities of SIS, CIS and Europol. They have proven so far a valuable platform for exchanging experiences and information about the functioning of Eurodac and its data protection related aspects.

Typically, the first part of the meeting is devoted to a presentation by the European Commission services involved in the management of Eurodac. The second part is devoted to discussion between DPAs around the issues which are in need of checking at national level or around new developments of interest for Eurodac supervisors.

3. 2005-2007: Achievements

3.a. 2005: Getting started

The first coordination meeting on the supervision of Eurodac took place on 28 September 2005. A list of issues had been prepared in advance in order to provide for some practical points to work on if the group thought it could be useful. The meeting prompted a welcome exchange of information and was an interesting occasion to discuss a common approach for supervision.

The discussion resulted in a plan of action for the future supervision of Eurodac. Among the topics mentioned in the “list of issues” which had been sent in preparation of the meeting, it was decided to select a short list of issues considered as having priority. Some of these topics were also cited by the Commission in its Eurodac Annual Reports as deserving special attention. The members agreed on three main issues for which they would investigate national practices. The results would be compiled by the EDPS and form the substance of a common report.

- Special searches

Special searches are queries in the Eurodac data which are legally limited to requests for access to personal data made by individuals (Article 18 of the Eurodac Regulation). However, the statistics provided by the Central Unit indicated that the number of special searches per country ranged from one special search query to more than 600 queries per year. It was concluded that, if the number of requests for access by individuals did not match the number of special searches actually performed, this discrepancy needed to be explained.

- Use for other purposes

In accordance with the Eurodac Regulation, Eurodac may only be used in the framework of the asylum policy. In some countries, the national unit is operated by police forces, which raised some questions as to a strict use limitation of the system. In other countries, on the contrary, there seems to be a very strict limitation of use of searches concerning undocumented aliens (“Cat.3 searches”), for fear of abuse by law enforcement or immigration services. It was considered interesting to assess the situation in Member

States, regarding the use of category 3 searches as well as access to the system by authorities other than asylum authorities.

- Quality of data

The Commission reported in its annual reports that the technical quality of data varied significantly from one member state to another. The data collection mechanism also varied. This has a number of consequences not only for the general working of the system, but also for the speed with which an asylum request is handled. The questions to be investigated at national level were the following: From a more technical point of view, which system is used to collect and send the data? How is the performance assessed by the national Eurodac authorities?

Other issues also presented in the “list of issues” were considered issues of lower priority, but would still be monitored in case new developments would increase their priority level, or in view of future investigation by the group.

3.b. 2006: launching the first coordinated inspection

The national investigations were conducted in the course of 2006 in most of the countries that participate in the Eurodac system.

On 28 June 2006, the EDPS organised a second coordination meeting for the national data protection authorities regarding the joint supervision of Eurodac.

During this meeting, it was underlined that the "special searches" were under scrutiny by different institutions (European Commission, European Parliament), which made the outcome of the national inspections highly relevant. It was also mentioned that a review of the Eurodac Regulation was foreseen in the coming months. This review was likely to address some issues of interest to the supervision group.

The EDPS presented the findings of his first inspection of the Eurodac central unit, and announced that a larger audit of the Central Unit would follow.

National investigations launched after the first coordination meeting were addressed and some interesting findings could already be shared.

The European Commission’s representative made a presentation on the use of the Eurodac Business Continuity System⁷. He underlined that the Eurodac Central Unit was not to be used for training or testing purposes: doing so would actually be a misuse of the system according to the Eurodac Regulation. Training and testing should be carried out using the BCS. However, it seems that until then this had not been explained clearly to many Member States, who used special searches for the purpose of training and testing. Therefore, it is useful to communicate this to the national authorities in charge of Eurodac. This has proved very helpful for some DPAs in their national inspections.

In 2006, EDPS staff also had bilateral contacts with different DPAs, either to provide guidance in the national investigation or to address the specific situation of different

⁷ The BCS will take over from the Central in case of failure and be used as an emergency system.

participants (new members, members or observers with a special status such as Norway or Switzerland).

3.c. 2007: Delivering results

The Group met three times in 2007, namely in March, June and December. It adopted some highly relevant documents for coordinated supervision⁸.

First coordinated inspection

The inspection was finalised in spring 2007. The report was published in July 2007.⁹

Three main issues - 'special searches', 'further use' and 'data quality' - were carefully scrutinised. The main results are summarised here:

- Use of 'special searches': the Group concluded that there had been initial mistakes in the use of special searches which have been corrected. The use of special searches should be monitored in the future, in order to avoid possible errors or abuse. The report also highlighted the need for raising awareness of the data subjects' rights.
- Eurodac fingerprints may only be used to determine the country responsible for an asylum application. No abuses were detected, despite the fact that some national Eurodac units are operated by police forces and despite the general increase of law enforcement authorities' access to databases. The Group also found that in some countries there were difficulties in identifying the entity responsible for personal data processing, and the report recommends that steps are taken to resolve this.
- The quality of fingerprints is a basic requirement. The European Commission has expressed concerns about the fact that 6% of the fingerprints have been rejected due to low quality. The Group concluded that the countries involved should take every step to ensure better quality, in terms of technology (live scans) as well as in terms of training.

The report has been communicated to the main institutional stakeholders at EU level, and to international organisations and NGOs dealing with asylum and immigration matters.

The inspection had a number of positive effects. The most noticeable impact was seen on the number of special searches, which has dropped significantly in all Member States. It has been noticed that the mere fact of conducting the inspection in national authorities made the inspected services realise that they did not comply with the Eurodac Regulation. Therefore, even before the report was issued, some errors or misuses of the system have been brought to a halt. It also increased awareness of data protection issues within the national authorities dealing with Eurodac.

⁸ While the EDPS completed a security audit on Eurodac's Central Unit during the same period (see EDPS Annual Report 2007).

⁹ http://www.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Supervision/Eurodac/07-07-17_Eurodac_report_EN.pdf.

On another point, several DPAs had experienced difficulties in their inspections because they found that the structure of the national Eurodac users was very complex. There was a plurality of data controllers, with different authorities collecting, processing, and communicating the data, and no clear overview of the system. The inspection allowed for clarification of this structure in most cases, while some national authorities are still working on it. It is important to get this right, since it allows for a better supervision and makes the exercise of the rights of the data subjects easier.

Finally, on a more general level, this coordinated inspection also provided evidence of the good cooperation of the Group and its ability to make a difference.

Formalisation of working methods

Initially, the Group dealt with the coordinated supervision of Eurodac in an informal manner, based on the Eurodac Regulation (mainly Article 20) and the experience in other bodies. A more structured approach was felt necessary, for two main reasons:

- The model of coordinated supervision in the framework of Eurodac will be used for other systems, such as SIS II and VIS. The legislative texts concerning these systems mention a coordinated supervision, where the authorities involved should define and develop their internal rules or working methods. Starting the reflection on these rules in the context of Eurodac can be seen as a learning exercise, which should benefit the upcoming supervision of other systems.
- Non-EU Member States (e.g. Norway, Iceland and Switzerland) have joined or are about to join the system, including its supervision. These countries are not covered *expressis verbis* by the Eurodac Regulation; their data protection authorities should be provided with a clear picture of the supervision model they enter into.

The EDPS tabled a list of key points for discussion at the March meeting. After discussion, a formal proposal for rules of procedure was analysed at the June meeting. It was agreed that the internal rules should at the same time provide clarity and flexibility. The rules of procedures should also avoid being unnecessarily heavy. They were adopted in December 2007.

Work programme

At the last meeting of 2007, the Group approved a Work programme for 2008. The objective of this work programme is to establish priorities and translate them into concrete actions.

The Group agreed that the programme should build on work already carried out successfully (mainly the first coordinated inspection) and adopt a more strategic and proactive approach for the future. This means that the Group should identify priorities in view of recent developments, taking into account its own capacity to bring added value. It also entails the necessity to be prepared for new developments; the Group should therefore endeavour to identify and address new issues in a timely manner.

Along these lines, the Group agreed to deal with three main categories of issues:

- Follow up of the first coordinated inspection report;

- New items of interest for coordinated supervision (with an emphasis on common sensitive issues, where the group can provide added value);
- Monitoring of developments relevant to supervisors.

4. What to expect in 2008-2009

There were several significant new developments in the field of Eurodac/Dublin in 2007. The Commission issued its report on the Dublin Evaluation in June, where the functioning of Eurodac was analysed and new perspectives were suggested. On the other hand, there has been a growing pressure to give law enforcement authorities some access to Eurodac data. Both happened in the context of ongoing development of large-scale IT systems.

The Group has identified its priorities among these developments: a work programme was adopted at the December 2007 meeting. The subjects for coordinated supervision are: information to data subjects, fingerprinting of children, and use of DubliNet. The advance deletion of data should also be examined later in 2008.

At the same time, developments such as those mentioned above (and especially law enforcement access to Eurodac) will be followed with great attention by the Group who is willing to contribute when necessary.

5. Annexes

5.a. Coordinated inspection report

5.b. Rules of procedure