

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) - 05/09/2012 - 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 (EU) No [.../...] (recast)

The EDPS regrets that the Commission services did not ask the EDPS to provide informal comments to the Commission before the adoption of the Proposal, according to the agreed procedure in relation to Commission documents relating to the processing of personal data. He considers that the evidence provided until now is **not sufficient and up to date** to demonstrate the necessity and proportionality of granting access to EURODAC for law enforcement purposes.

In this context the EDPS recommends that the Commission **provides a new impact assessment** in which all relevant policy options are considered, in which solid evidence and reliable statistics are provided and which includes an assessment in a fundamental rights perspective.

Given that it relates to applicable data protection legislation, the EDPS stresses the need for clarity on how the provisions of the Proposal specifying certain data protection rights and obligations relate to [Council Framework Decision 2008/977/JHA](#), as well as to [Council Decision 2009/371/JHA](#).

To demonstrate that law enforcement access to EURODAC as such is necessary and proportionate, the EDPS recommends:

- clarifying that the transfer of EURODAC data to **third countries** is prohibited also in case of use of EURODAC data for law enforcement purposes;
- ensuring unequivocally that access by designated authorities to EURODAC data is **limited to law enforcement purposes**;
- submitting the access to EURODAC data for law enforcement purposes to a **prior judicial authorisation**;
- adding the criterion of the '**need to prevent an imminent danger associated with serious criminal or terrorist offences**' as exceptional case justifying the consultation of EURODAC data without prior verification by the verifying authority;
- adding, for example, as a condition of access, a '**substantiated suspicion that the perpetrator of a terrorist or other serious criminal offences has applied for asylum**';
- describing, in a recital, the kind of situations justifying a **direct access by Europol** to the EURODAC Central Unit;
- ensuring that comparison of fingerprints for law enforcement purposes shall in any case be subject to at least **the same safeguards foreseen for Dublin Regulation purposes**;
- specifying more clearly the rules on **retention or deletion of data**.

- providing an access for the EDPS and Europol's supervisory authority to the **records** kept by the Agency and Europol respectively as well as the obligation to store records also for conducting regular self-auditing of EURODAC.