

Fingerprinting migrants: Eurodac Regulation

Eurodac is a biometric database in which Member States are required to enter the fingerprint data of irregular migrants or asylum-seekers in order to identify where they entered the EU, and whether they have previously made asylum applications. Its main purpose is to facilitate the application of the Dublin Regulation, which determines the Member State responsible for processing an asylum claim. The recast Eurodac Regulation has been applicable since 20 July 2015.

Part of the Dublin system

The Eurodac Regulation was first [adopted](#) in 2000 and revised in 2013 to improve the compatibility of the system with the recast EU asylum *acquis*, including the [Dublin III Regulation](#), and to help complete the Common European Asylum System ([CEAS](#)). The recast Regulation applies automatically to 25 EU Member States (all except UK, Ireland and Denmark). However, the UK opted in prior to adoption, while Ireland [opted in](#) in 2014. Denmark does not participate in adoption of legislation in this area, but has a [separate agreement](#) with the EU to apply the original Eurodac Regulation.

Participating states are required to 'promptly' fingerprint all persons over the age of 14 who fall into one of the following three categories:

- 1) applicants for international protection (Art. 9);
- 2) third country nationals or stateless persons crossing the external border irregularly (Art. 14);
- 3) third country nationals or stateless persons found illegally staying in a Member State (Art. 17).

In contrast to the first two categories, registering fingerprints of migrants from the third category is not mandatory. The Regulation establishes common procedures and standards but does not deal with enforcement. This is regulated under national legislation, ensuring not only compliance with the Regulation, but also with fundamental rights obligations resulting from EU and international law, in particular with the [European Convention on Human Rights](#) and the United Nations [Convention on the Rights of the Child](#).

Among other modifications, the recast Eurodac Regulation [No 603/2013](#) now allows national police forces and Europol to access Eurodac data for the purposes of preventing, detecting and investigating serious crimes and terrorism. However, the [special agreements](#) on the basis of which Denmark, as well as four Dublin Associated Countries (Norway, Iceland, Switzerland and Liechtenstein), participates in the Dublin and Eurodac Regulations currently only cover asylum-based purposes, although the Commission has proposed opening [negotiations](#) with the countries concerned to also allow law enforcement access to their data.

In response to the increasing migratory pressures in frontline Member States, the Commission has proposed a so-called '[hotspot](#)' system engaging the European Asylum Support Office ([EASO](#)), [Frontex](#) and [Europol](#) to provide operational support for identification, registration and fingerprinting of migrants on the ground. In June 2015, the European Council gave its green light to setting up the reception facilities which are already under way: six 'hotspots' have been addressed in Italy and five in Greece. The Commission asserts that setting up the facilities will be completed by the end of November 2015.

Failure to fingerprint

The lack of systematic fingerprinting in some countries can be related to the lack of capacity in view of large flows of migrants. Greek authorities [suggest](#) that more than a third of migrants arriving on Lesbos, Kos and other islands are not fingerprinted. German police also [confirm](#) they lack resources to fingerprint all arriving migrants. Arrival countries' [inability or unwillingness](#) to meet the legal requirement of fingerprinting has led to a situation where asylum-seekers who move on within the Schengen area to reach other countries may not be identified. An additional aspect is the high number of applicants refusing to have their fingerprints

taken, or intentionally damaging their fingerprints to avoid identification, as evidenced by the 2014 [Annual Report](#) on Eurodac. The reason could be either fear and mistrust of authorities, or a wish only to be first registered in a country with higher recognition rates or in which they have family and community ties. Such secondary movements undermine the proper functioning of the CEAS, but it can be considered that both Member States and the migrants have [incentives](#) to evade the procedures.

Contentious aspects

Use of detention and coercion

In light of the developing migratory pressure, on 27 May 2015 the Commission published a [staff working document](#) on Implementation of the Eurodac Regulation, which was endorsed by the [Council](#) on 20 July 2015. The document [provides guidelines](#) for Member States to follow a common approach for fingerprinting, which encompasses counselling and informing applicants of their rights and obligations, but also specifies that 'if applicants do not cooperate..., Member States should make use of specific and limited use of detention, and use coercion as last resort'. This suggestion is based on a 2014 [ad hoc query](#) on Eurodac fingerprinting published by the European Migration Network ([EMN](#)) on laws and practices used in Member States. While most (18 out of 28) do not allow the use of force or coercion for asylum-seekers (category 1), the situation is more varied for irregular migrants (categories 2 and 3), with several allowing for the use of coercion, detention or both.

The recommendation has met with objections from human-rights activists. [Statewatch](#), as well as other [commentators](#) heavily criticise coercive fingerprinting of migrants, with the only potential exception in the guidelines for children and pregnant women. The EU's Agency for Fundamental Rights ([FRA](#)) finds it 'difficult to imagine a situation where the use of physical or psychological force to obtain fingerprints for Eurodac would be justified'. The European Council on Refugees and Exiles ([ECRE](#)) observes that 'taking fingerprints is not necessarily a condition for applying the Dublin Regulation, since other circumstantial evidence can also be used'. Some countries have, indeed, already resorted to other methods of identification, such as [multispectral imaging](#). It should be noted that the Commission [working document](#) does envisage exploring the use of other biometric identifiers in the future.

Moreover, allowing detention of migrants who refuse to be fingerprinted also raises concerns. Article 8(3)(a) of the recast [Reception Conditions Directive](#), in force since 20 July 2015, specifically permits the use of detention to determine or verify the identity or nationality of an applicant. However, [ECRE](#) remarks that Eurodac only contains information on the applicant's set of fingerprints and sex, which on their own do not allow the applicant's identity or nationality to be established or verified.

Data protection

Concerning law enforcement access under the recast Eurodac Regulation, the European Data Protection Supervisor (EPDS) [points](#) to possible purpose limitation and function creep. He also questions the necessity and proportionality of law enforcement access, and warns against potential unequal treatment between asylum-seekers and other individuals. This concern is shared by the United Nations High Commissioner for Refugees (UNHCR), which [comments](#) that it would 'further risk putting persons seeking international protection at risk of stigmatisation'. The use of databases leading to potential discrimination for lack of proportionality has also been condemned by the European Court of Human Rights ([ECtHR](#)) in 2008 in the [S.and Marper](#) case.

Parliamentary analysis

Seeking solutions to the growing migratory pressure, a [study](#) for the Civil Liberties, Justice and Home Affairs (LIBE) Committee, on 'Enhancing the Common European Asylum System and alternatives to Dublin', was published in June 2015. The study notes that 'coercive methods for securing fingerprinting raise serious legal, practical, and ethical concerns', and refers to the findings of a previous 2014 [study](#), which considered it also to be a 'source of costs, delay and avoidance'.

On 23 September 2015, the LIBE Committee organised an Interparliamentary Committee Meeting feeding into the Parliament's work on the strategic own-initiative [report](#) on 'The situation in the Mediterranean and the need for a holistic EU approach to migration' (co-rapporteurs: Roberta Metsola, EPP, Malta, and Kashetu Kyenge, S&D, Italy). The meeting allowed members of the national parliaments of all Member States to hold an in-depth discussion with EU agencies such as EASO, Frontex and Europol on the 'hotspot' approach, including on the registration and fingerprinting of migrants.