COUNCIL OF THE EUROPEAN UNION

Brussels, 20 December 2011

18885/11

EURODAC 18

COVER NOTE

from:	Mr Peter HUSTINX, Supervisor, European Data Protection Supervisor
date of receipt:	16 December 2011
to:	Mr Herman Van Rompuy, President of the Council of the European Union
Subject:	Eurodac Coordinated Supervision Group report on advance deletion

Delegations will find attached the report of the European Data Protection Supervisor on above subject.

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Brussels, 16 December 2011
PH/OL/mch/D(2011)2297 **C 2005-0156**

Subject: Eurodac Coordinated Supervision Group report on advance deletion

Dear Mr President,

Eurodac, a large scale information system for the comparison of fingerprints of asylum applicants for the facilitation of the application of the Dublin II Regulation, is supervised by the national Data Protection Authorities at national level and the EDPS at European level. This structure implies that the supervision must be exercised at both levels, in close cooperation. We have therefore organised several coordination meetings with the DPAs where a common approach to supervision has been discussed.

The report enclosed with this letter was adopted following the last meeting of the Eurodac Supervision Coordination Group. It is the result of the third coordinated inspection, which focused on the issue of "advance deletion" of data in Eurodac, that is deletion of data before the end of the retention period due to a change of status of data subjects. The report contains findings from the inspections based on the replies received from the Member States, as well as recommendations on how to ensure the efficient implementation of the obligation on advance deletion.

We hope that this report will contribute to the ongoing discussions on the reform of the Eurodac framework and to ensuring that the system will be used with due respect for the rights of the individual.

Yours sincerely,

Peter HUSTINX

Annex: Eurodac Supervision Coordination Group Coordinated Inspection Report on Advance Deletion of Data, December 2011

Cc: Mr Uwe Corsepius, Secretary-General
Mr Jan Tombinski, Ambassador, Head of Polish Permanent Representation

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EUROPEAN DATA PROTECTION SUPERVISOR

EURODAC Supervision Coordination Group

COORDINATED INSPECTION REPORT ON ADVANCE DELETION OF DATA

December 2011

Introduction

The Work Programme of the EURODAC Supervision Coordination Group (hereinafter *the Group*) refers to the advance deletion of data, that is, the deletion of data before the end of the retention period due to status changes of data subjects, as a possible subject for further inquiry by the Group. This issue had already been identified as a matter of concern in the answers to the first coordinated inspection of EURODAC. It was also recalled in the Commission's evaluation report on the Dublin System, which notes that Member States often do not exchange sufficient information to ensure advance deletion.[1] In the context of the EURODAC regulation revision, it is planned to introduce an obligation for improved information exchange on status changes that trigger advance deletion of fingerprint data.[2]

Based on this, the Group decided to investigate the matter further. The goal of this exercise was to gain an overview of practices related to the advance deletion of data in Member States and identify best practices in order to promote efficient ways of advance deletion. Given these objectives, the Group did not launch an in-depth investigation, but aimed at getting a broad picture. This is of course without prejudice to possible further investigations in the future.

More specifically, the fact that there seems to be an implementation deficit regarding the advance deletion of fingerprint data of persons who for different reasons - such as having acquired the nationality of a Member State or having left the Dublin Area - must no longer be included in the EURODAC database prompted this exercise. As mentioned above, implementation deficits have been noted on multiple occasions. Advance deletion is important as it ensures that data is not stored longer than

[1] COM(2007) 299 final, p. 10: "Unfortunately, such deletion is not done routinely, namely because the Member State that introduced the data is not aware of the change of status."

[2] See COM(2010) 555 final, Article 10(2): "The Central System shall inform all Member States of origin about the erasure of data for the reason specified in paragraph 1 [naturalisation] by another Member State of origin [...]." This had already been suggested in the evaluation report mentioned earlier.

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necessary for achieving the purpose for which it was collected, one of the basic data protection principles. It is also part of the sound management of large-scale IT databases, contributes to data quality, and helps to avert negative consequences to data subjects due to faulty information.

The questionnaire was designed on the basis of the legal framework in force at that time. The discussion on a revision of the EURODAC regulation did not yield definitive conclusions yet. For the time being, the old framework[3], on the basis of which the questionnaire was drafted, stays in force. The results of this exercise can feed into the revision process.

Content of the Questionnaire

The Group decided that the purpose of this coordinated exercise should be rather exploratory. Its main purposes were to:

- provide a state of play of the application of advance deletion rules in the Member States; and
- explore whether there is a need for new solutions, e.g. technical modifications in the system.

This could then lead to the identification of best practices - be they technical features, administrative practices, or internal guidelines - and recommendations to use them as widely as possible.

To collect information on these subjects, the following questions were asked:

General questions

1. Are the Eurodac authorities aware of advance deletion of data?
2. If so, is advance deletion carried out on request by the individual or following information otherwise communicated to the authorities?
3. Which category (ies) of data is (are) concerned?
4. Are there reliable figures? If so, please attach them.

On category 1 data (when the alien is granted citizenship of a Member State):

5. Which authorities deal with applications for and granting of citizenship?
6. Is there an established mechanism available in your country whereby the authorities managing Eurodac are informed of the identity of those applicants for asylum who have obtained the citizenship?
7. Do they exchange these data with the relevant Member State (the "country of origin")?
8. Is the new citizen citizen informed about his/her right to ask for deletion of his/her data in Eurodac?

[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, OJ L 316/1, 15.12.2000

On category 2 data (when the alien receives a residence permit, leaves the territory of the Member State or has acquired the nationality of any Member State):

9. Is there an established mechanism available in your country whereby the authorities managing Eurodac are informed of the identity of those illegal aliens who have obtained a residence permit or citizenship?
10. Is there any systematic registration of cases where a person leaves the country (eg, the move has to be declared to the local authorities)?
11. Is this information exchanged with the other Member States?

In general

12. Do the Eurodac authorities of your countries feel that the legislation is correctly applied?
13. If not, to which factors do they attribute that (inadequate legislation, lack of applicable mechanisms for data transfer, no need for it, etc.)?
14. Have there been any complaints based on this issue?

Conclusion

15. What is your general assessment of the situation? Please state any specific comments, remark or recommendation which you would find useful.

This questionnaire was sent out to the members of the Group via e-mail on 15 December 2010. Replies were received throughout the first half of 2011.

Methodology

The choice between desk work or on-the-spot visits was left up to the members, though it is acknowledged that often on-the-spot visits may allow for more extensive information. Most Member States gathered and processed information from national authorities based on the forwarded questionnaire but there were also contributions received following inspections.

Findings

The Secretariat received 25 responses.[4] These do not represent the entirety of the 30 Member States[5] but still a sufficient number to draw conclusions.

Some Member States indicated that due to their recent joining of EURODAC, some of the issues inquired into were not yet relevant for them, for example because the required residency periods for naturalisation are longer than the time elapsed since joining.

In some cases, the answers were not complete because of issues at the national level, for example in federal states, where regional authorities had to be consulted.

[4] AT, BE, BG, CH, CY, CZ, DE, DK, EE, EL, ES, FI, HU, IE, IS, LT, LU, LV, MT, NL, PL, PT, SE, SI, UK.
[5] EU-27 plus CH, IS, NO.

In a big majority of Member States, advance deletion is effected based on information communicated between authorities; some Member States replied that deletions can occur both on the basis of such information and upon request by the data subject. Five Member States indicated that so far no advance deletion has taken place, two of which already have a procedure for future advance deletions; another of these Member States indicated that the competent authorities plan to establish procedures

About half of the Member States reported to only or predominantly deal with category 1 cases. Also, about half of the Member States indicated that they had both category 1 and category 2 cases.

Only some Member States included detailed statistics in their answers; from these, it can be gathered that the number of advance deletions is relatively low in most Member States, sometimes in the single digits. Furthermore, in some instances, there have been inconsistencies between the numbers received from Member States and the Central Unit's numbers supplied by the Commission but that could be explained by the fact that different criteria were used.[6] One Member State suggested that an obligation to maintain better statistics ought to be included in the reform of the legal framework.

Category 1

The authorities responsible for granting citizenship and the procedures involved vary widely between Member States, so no general conclusions can be drawn here.

Most Member States have established and implemented procedures for advance deletion. In those answers that included information on how quickly deletion is effected, the timeframe ranged from "immediately" or "daily" to "one month". A majority of Member States, however, did not mention deadlines. Five Member States do not yet have complete procedures in place; two of them also informed that to their knowledge so far no situation has arisen in which a category 1 advance deletion would have been necessary, pointing out that the required residency periods to obtain citizenship are longer than the time elapsed since joining EURODAC. In another of these Member States, the residency period required to apply for citizenship used to be ten years, so that the fingerprints of new citizens would be deleted in any case at the end of the retention period; however, a recent legislative change reduced the required residency period, so a procedure is needed for advance deletion.

So far, only two Member States exchange information on category 1 advance deletions. Moreover, one Member State indicated that so far it has never received information on such status changes from any other Member State. Three Member States indicated that such exchanges could be useful or that they were looking into the matter. Two Member States suggested that the Member State which grants citizenship should be able to delete the fingerprints and associated data themselves, overriding the principle that only the Member State of origin can change data in the central system.

[6] Some MS apparently included cases in their numbers which are not related to Eurodac as such (e.g. resettled refugees).

Four Member States supply information regarding advance deletion of fingerprints in EURODAC to all data subjects upon acquisition of citizenship. Some Member States point out that the fingerprints will be deleted automatically as part of the naturalisation procedure in any case and that thus no information is needed. Other Member States also mentioned that information about the possibility of advance deletion is supplied upon enrolment in EURODAC.

Category 2

Not all Member States have procedures for notifying the authorities managing EURODAC of status changes in category 2 cases. This reflects the numbers of cases the different Member States face: those which experience no or very few category 2 cases often have not adopted procedures to deal with advance deletion in this regard. One Member State replied that such a procedure was only in force for residence permits, but not for naturalisation. In those Member States that have such procedures in force, they usually mirror those for category 1 advance deletion.

Some Member States do not register leaving persons at all. Other Member States have procedures in place aiming to register all leaving persons, while some others only do so in certain cases, such as withdrawn asylum applications, deportations, or when the leaving person herself notifies the authorities. Some Member States exchange this information, either in single cases or upon request. Only one Member State does so systematically.

General Assessment

Apart from some practical problems, for example regarding the deadlines for deletion of data, most Member States felt that the legislation was correctly applied. Most Member States which indicated problems also noted that these would be addressed by the current proposal for a reform of the EURODAC regulation. Five Member States mentioned a lack of coordination between citizenship authorities and the EURODAC national unit as a problem. One Member State mentioned the intention to automate the procedure for advance deletion, but encountered technical problems in doing so. One DPA announced that it was planning enforcement action to ensure correct advance deletion.

Commenting on the general situation, several Member States point out that there is a need for improved exchange on persons who have been granted citizenship in a Member State different than the Member State which first entered this person's data. One Member State also pointed out that blocking under Article 12 of the EURODAC Regulation seems to be implemented differently in the Member States and that similar problems might be encountered in this regard. Another Member State cautioned that even with strict deadlines for communicating this information, implementation would still depend on Member State capabilities.

Recommendations

I. Efficient procedures for automatic advance deletion

The Group encourages those Member States that have not yet done so to **(a)** include a procedure for automatic advance deletion in the workflow of their competent authorities and **(b)** to set clear and short deadlines in the procedure, in order to be compliant with the Regulation.

(a) Integrating a notification for advance deletion to the EURODAC authority in the procedures for granting citizenship (and other reasons for advance deletion) allows for a more efficient implementation of the legal requirements. A request by data subjects could trigger advance deletion as well, but given that they may not be aware of their rights it is more effective - and also less burdensome for the data subject - to integrate deletion into the administrative workflows. As this increases data quality, leading to less false positive matches, this is also in the interest of the EURODAC national units and immigration officers in the field.

(b) The Group urges the Member States to include clear and short deadlines in their procedures on the advance deletion of fingerprints and associated data. This is in accordance with the EURODAC Regulation, which in Article 7 stipulates that the data shall be erased "as soon as" the Member State of origin becomes aware of the fact that the data subject has acquired citizenship. Similarly, Article 10 of the Regulation requires deletion "immediately" for category 2 cases when one of the reasons mentioned there applies. Both these provisions require immediate deletion. In the light of these requirements, some suggestions in the answers to the questionnaire and also Recital 9, which stipulates that fingerprint data should be erased immediately once aliens obtain citizenship of a Member State, the Group encourages Member States to explore ways to improve information sharing for in terms of informing other Member States when citizenship is granted to a data subject, where necessary including rules, practical guidelines, and/or agreements

In addition, the Group encourages Member States to develop practical guidelines at national level in order to clarify the information exchange between institutions. Moreover, the Group should discuss further if a manual with general guidelines for practitioners would be useful and how best practices already identified could benefit.

II. Information given to data subjects

The Group also encourages Member States to provide effective information to data subjects as regards the right to advance deletion, in line with the applicable legislation on data protection.

Informing data subjects about their rights is crucial for them to effectively exercise those rights. It is not sufficient to only supply this information upon enrolment in EURODAC; it should also be given upon applying for and/or acquiring citizenship or other status changes that require advance deletion. As best practice, such a notice could be included in the workflows of the relevant authorities.

In those Member States that have not put in place a procedure for automatic advance deletion so far, this is even more important, as here a request by the data subject is the only way to trigger advance deletion.

III. Better statistics

Adequate, reliable and comparable statistics are a necessary prerequisite, *inter alia*, for decisions on actions and evaluating their effectiveness. They are an essential ingredient of evidence-based policy. The Group should thus invite the Commission and the Member States to explore ways of improving statistics on advance deletion of data (e.g. for reasons entered for advance deletion) and making them more comparable, which could include the establishment of common criteria.

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