NOTE

from: Presidency

to : Working Party on Eurodac

Subject: Implementing rules for the procedure for the transmission, communication and comparison of data in Eurodac

Delegations will find attached a draft of the implementing rules revised by the Presidency on the basis of the Working Party’s discussions on 16 and 17 February 1999. Although the discussions covered only the provisions in Articles 2 to 4(2), amendments to Articles 1, 5 and 7 are also incorporated. In the Presidency’s view those amendments are either logical or necessary as a result of the amendments made to the Articles discussed.
THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Convention concerning the establishment of “Eurodac” for the comparison of fingerprints of applicants for asylum (Eurodac Convention),

Having regard to the Protocol extending the scope of the Eurodac Convention to cover aliens who have entered irregularly or who are present illegally in order to ensure effective application of the Dublin Convention [more precise title of the Protocol pending],

Recalling the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data,

Recalling Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data,

Has, in application of Article 4(7), Article 5(1), point 2, and Article 8(3) of the Eurodac Convention, adopted the following implementing rules:

Article 1

Definitions

For the purposes of these implementing rules:

(a) “databank” shall mean the computerised central database as referred to in Article 1(2) of the Convention,

(b) “comparison” shall mean the procedure of checking whether fingerprints recorded in the databank match those transmitted or communicated by a Member State,
"hit" shall mean the existence of a match established by comparison between fingerprints recorded in the databank and those transmitted or communicated by the Member State,

"Convention" shall mean the Convention pursuant to Article K.3 of the Treaty on European Union concerning the establishment of "Eurodac" for the comparison of fingerprints of applicants for asylum of ..., 

"Protocol" shall mean the Protocol extending the scope of the Eurodac Convention to cover aliens who have entered irregularly or who are present illegally in order to ensure effective application of the Dublin Convention of ..., 

"Geneva Convention" shall mean the Geneva Convention of 28 July 1951, as amended by the New York Protocol of 31 January 1967 relating to the Status of Refugees,

"aliens who have entered irregularly" shall mean the persons referred to in Article 3 of the Protocol,

"aliens who are present illegally" shall mean the persons referred to in Article 7 of the Protocol,

Article 2
Taking, transmission and communication

1. Member States shall take fingerprints of all fingers of asylum applicants and aliens who have entered irregularly persons referred to in Article 3 of the Protocol and shall communicate them to the Central Unit.

2. Member States may notify the Central Unit of fingerprints of all or some at least the index fingers, and if those are missing, the prints of all other fingers of aliens who are present illegally referred to in Article 7 of the Protocol.
3. Fingerprints shall be digitally processed and transmitted or communicated in accordance with the various forms of technology in the individual Member States in a data format or formats determined by the Council. The Central Unit shall ensure that the fingerprint data transmitted or communicated by the Member States can be compared by the computerised fingerprint recognition system.

4. Member States should transmit or communicate the data referred to in Article 5(1) of the Convention electronically by data communications line. Transmission or communication of data in paper form or via electronic media should be limited to situations in which there are continuous technical problems.

5. The reference number referred to in Article 5(1), point 4 of the Convention must make it possible to relate data and the Member State which is transmitting or communicating the data unambiguously to one particular person. In addition, it must make it possible to tell whether they relate to an asylum seeker or a person referred to in Article 3 or Article 7 of the Protocol. The first two numbers shall indicate the Member State of origin. The reference number shall begin with the identification letters in accordance with the list in the Annex, by which the Member States transferring or communicating the data are identified in accordance with the standards of the International Civil Aviation Organisation (ICAO). The order shall be determined by that in the list of Member States in Article 138(2) of the Treaty establishing the European Community in the version in force at the time when these implementing rules are adopted and shall begin with 01. The identification letter or letters is/are followed by the identification of the category of person. 1 refers to data relating to asylum seekers, 2 to persons referred to in Article 3 of the Protocol and 3 to persons referred to in Article 7 of the Protocol.

6. Data on aliens who have entered irregularly shall be referenced as such when they are recorded.
7. Receipt of data transmitted or communicated by data communications line shall be confirmed by the Central Unit no later than the end of the day of arrival without delay. Receipt of data transmitted or communicated in paper form or on electronic data supports shall be confirmed with the transmission of the result. If the data mentioned in the second sentence relate to persons referred to in Article 3 of the Protocol, receipt shall be confirmed at the end of the day of arrival. If these data arrive after 16.00 local time, receipt shall be confirmed at the end of the day following the day of arrival. If, owing to circumstances which the Central Unit need not justify, the Central Unit cannot respect those deadlines, it shall confirm receipt immediately after such circumstances cease to prevail.

Article 3
Carrying out comparisons and transmitting results

1. Member States are obliged to transmit or communicate fingerprints or data concerning fingerprints in an appropriate quality for the purpose of comparison by means of the automatic recognition system. The Central Unit shall immediately, i.e. when not more than three hours have elapsed, check the quality of the fingerprints transmitted and communicated. If fingerprints do not lend themselves to comparison using the computerised recognition system, the Central Unit shall immediately request the Member State to transmit or communicate fingerprints of the appropriate quality.
2. The Central Unit shall carry out comparisons in the order of arrival of requests. Each request must be dealt with within 24 hours. In the case of data which are transmitted or communicated by data communications line, a Member State may require particularly urgent comparisons to be carried out within one hour. Where these times cannot be respected owing to circumstances which the Central Unit need not justify, the Central Unit shall process the request as soon as those circumstances no longer prevail. The number of comparisons classified as particularly urgent may not exceed five (1) per cent of the average monthly figure for requests by the Member State. The average monthly figure for requests is determined from the total number of requests in the previous calendar year. From the commencement of the work of the Central Unit until the end of the year, Member States shall ensure that the number of requests classified as particularly urgent is kept to a minimum. The Central Unit is obliged to give priority to processing those particularly urgent requests which cannot be processed within one hour.

3. Data on asylum applicants shall be compared with already recorded data on asylum applicants and persons referred to in Article 3 of the Protocol. Data on aliens who have entered irregularly will merely be recorded without this resulting in any comparison with already data. Data on aliens who are present illegally shall only be compared with data on asylum applicants. The comparison shall check for matching data on no more than two fingerprints.

4. If comparison using the computerised fingerprint recognition system shows that fingerprints in different data records match, the Central Unit shall decide whether this constitutes a hit.

(1) Percentage still to be decided.
5. 3. The Central Unit shall transmit the hit or the negative result of the comparison to the Member State. If the data have been transmitted or communicated in paper form, the Central Unit shall transmit the result no later than at the end of the day on which the comparison was carried out. If the data were transmitted or communicated electronically, the result shall be transmitted immediately. In the case of a hit, the data referred to in Article 5(1), points 1, 3 to 8, of the Convention shall also be transmitted. The Central Unit shall transmit the result of the comparison and the data referred to in Article 5(1) of the Convention to the Member State without delay, although in the case of the data referred to in Article 5(1), point 2 of the Convention, only insofar as they were the basis for the result of the comparison. If the comparison shows that the data on one particular person have been recorded more than once, the Central Unit shall transmit all data records pursuant to point 1. The Member State may further ask for transmission of those data referred to in Article 5(1), point 2, which indicate the hit.

4. As long as the Council has not yet taken any Decision pursuant to Article 8(2) of the Convention, hits concerning persons who have been recognised and admitted as refugees in a Member State pursuant to the Geneva Convention shall not be transmitted. The Central Unit shall inform the requesting Member State that no matching fingerprints could be found. The manner or content of the communication must not imply that the person on whose data the request was based has been recognised and admitted as a refugee in a Member State pursuant to the Geneva Convention.

Article 4
Erasure and destruction

1. Data on asylum applicants shall be erased by the Central Unit after ten years and data on aliens who have entered irregularly on persons referred to in Article 3 of the Protocol after two years. The period shall run from the day the fingerprints were taken, and in the case of data on asylum applicants from the time at which fingerprints were last taken. If fingerprints are again taken from asylum applicants and recorded, the Central Unit shall update the data records found to match when compared in accordance with Article 4(3) of the Convention by adding the new deletion date.
2. If the Council takes a decision by the Council pursuant to Article 8(2)(b) of the Convention, the Central Unit shall erase data on persons who have been recognised and admitted as refugees pursuant to the Geneva Convention.

3. In other cases, the Central Unit shall make arrangements for the data to be erased by the Member States or shall itself erase the data at the request of the Member States.

4. After data on asylum applicants and aliens who have entered irregularly persons referred to in Article 3 of the Protocol have been recorded, or after there has been a comparison of data on aliens who are illegally present persons referred to in Article 7 of the Protocol, the Central Unit shall destroy the information media used for transmission or communication including the fingerprint forms, unless the Member State has requested their return.

**Article 5**

**Other tasks of the Central Unit**

1. The Central Unit shall make the technical arrangements to ensure that data on asylum applicants and data on aliens who have entered irregularly persons referred to in Article 3 of the Protocol are kept separately in the data bank.

2. If so instructed by a Member State, the Central Unit shall give an appropriate distinguishing mark to data on persons who have been recognised and admitted as refugees pursuant to the Geneva Convention and shall use appropriate technical means to separate them from other data recorded in the data bank. If the Council has taken a decision in accordance with Article 8(2)(a) of the Convention, the first sentence shall no longer apply. The Central Unit shall remove existing distinguishing marks and cancel separation of the data.

3. The Central Unit shall draw up statistics on its work every three months in order to show

   (a) the quantity of data transmitted and communicated on asylum applicants and aliens who have entered irregularly and aliens who are illegally present, persons referred to in either Article 3 or Article 7 of the Protocol, as appropriate.
5. The Central Unit shall ensure that, pursuant to Article 4(4) of the Convention, comparisons carried out at the request of a Member State can also cover the data transmitted by that particular State at an earlier time.

Article 6
Obligation to keep records

1. The Central Unit shall keep records of all procedures involved in the processing of data in the data bank. These records must show the purpose of access, the date and time, the data transmitted, the data used for interrogation and the name of both the unit putting in or retrieving data and the persons responsible.

2. Such records may be used only for the data-protection monitoring of the admissibility of data processing by the Joint Supervisory Authority pursuant to Article 15 of the Convention and for data-protection monitoring by the national supervisory authorities as well as to ensure data security pursuant to Article 10 of the Convention. The records must be protected by appropriate measures against unauthorised access and erased after a period of one year, if they are not required for monitoring procedures which have already begun.

Article 7

With effect as from the decision of the Council pursuant to Article 8(2) of the Convention, Article 3(7) shall no longer apply. If the Council takes a decision pursuant to Article 8(2)(a) of the Convention, Article 5(2) shall no longer apply. Any existing distinguishing marks are to be removed and the data no longer kept separately.

Article 8
Supervision of implementation

The first sentence of Article 18 of the Convention shall apply mutatis mutandis.
Article 9
Entry into force

1. These implementing rules shall enter into force at the time of adoption by the Council.

2. The Council shall check application of these implementing rules within four years following the start of Eurodac's activities.

Annex:

<table>
<thead>
<tr>
<th>Country</th>
<th>Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>Belgium</td>
<td>BEL</td>
</tr>
<tr>
<td>Denmark</td>
<td>DNK</td>
</tr>
<tr>
<td>Germany</td>
<td>D</td>
</tr>
<tr>
<td>Greece</td>
<td>GRC</td>
</tr>
<tr>
<td>Spain</td>
<td>ESP</td>
</tr>
<tr>
<td>France</td>
<td>FRA</td>
</tr>
<tr>
<td>Ireland</td>
<td>IRL</td>
</tr>
<tr>
<td>Italy</td>
<td>ITA</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>LUX</td>
</tr>
<tr>
<td>Netherlands</td>
<td>NLD</td>
</tr>
<tr>
<td>Austria</td>
<td>AUT</td>
</tr>
<tr>
<td>Portugal</td>
<td>PRT</td>
</tr>
<tr>
<td>Finland</td>
<td>FIN</td>
</tr>
<tr>
<td>Sweden</td>
<td>SWE</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>GBR</td>
</tr>
</tbody>
</table>