



EUROPEAN COMMISSION  
IMPACT ASSESSMENT BOARD

Brussels, ~~24-03-2009~~ 23<sup>98</sup>  
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## Opinion

**Title**                      **Impact Assessment on: Access to Eurodac for law enforcement authorities**  
  
(draft version of 20 February 2009)

**Lead DG**                      **DG JLS**

### 1) Impact Assessment Board Opinion

#### **(A) Context**

The Hague Programme stated that the exchange of information to strengthen security should be improved. The Programme suggests to provide direct (on-line) access for law enforcement authorities, including Europol, to existing central EU databases. The current absence of this possibility was also reported as a shortcoming in a 2005 Commission Communication. The Council in 2007 considered that under certain conditions access to the Eurodac database of fingerprints of asylum seekers should be granted to national law enforcement authorities and Europol, in the course of their duties in relation to the prevention, detection and investigation of terrorist offences and other serious criminal offences. The Council invited the Commission to present as soon as possible the necessary proposals to achieve this aim.

#### **(B) Positive aspects**

The report provides a clear overview of the possibilities and limitations of existing EU instruments which permit consultation of fingerprints and other law enforcement data held in another Member State.

#### **(C) Main recommendations for improvements**

*The recommendations below are listed in order of descending importance. Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report.*

**General recommendation: The report needs to be improved on the following issues: given the implications of actions in this area for fundamental rights, it should present more evidence to show that access to Eurodac would help to prevent (and**

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**protect victims of) terrorism and other serious crime and is a necessary and proportionate measure; highlight how such access compares in terms of data protection to the access that law enforcement authorities already have to similar databases; analyse whether enhanced use of the Prüm Council Decision to locate and access fingerprints could be an option; and clarify the impact on national data protection provisions.**

**(1) Enhance the evidence base to demonstrate the necessity and proportionality of the proposed action.** The Board notes that the report provides minimal evidence to demonstrate that giving access to Eurodac will significantly contribute to fighting terrorism and serious crime and to protecting its victims, and that two of the conditions for a derogation from the right to data protection are necessity and proportionality. While recognising that it may not be easy to do so, the Board would therefore welcome further efforts to provide more data on the extent to which asylum-seekers are involved in terrorist offences or other serious offences. As a minimum, the report needs to explain better how the proportionality of individual consultations will be ensured and how it is avoided that the data are not only used for fighting terrorism and serious crime but also for regular crimes. In order to do this, the report needs to explain the procedural steps and safeguards that law enforcement authorities need to go through before they can consult Eurodac, and specify how a Member State that according to Eurodac has data on an asylum seeker will examine the proportionality and relevance of an information request from another Member State.

**(2) Compare access to Eurodac to the access that law enforcement authorities have to other databases.** The report should better explain to what extent the proposed access to Eurodac is fundamentally new, and to what extent it is essentially comparable to the access that law enforcement authorities already have to other databases or is merely helping them to consult more efficiently the databases to which they already have access. The report should also explain whether under the proposal asylum seekers would have to endure a bigger infringement of privacy than others.

**(3) Analyse whether enhanced use of the Prüm Council Decision to locate and access fingerprints could achieve the objectives.** The report should explain whether enhancing the consultation by Member States of each others' Automated Fingerprint Identification Systems (AFIS) using the Prüm Council Decision could be an option to achieve the set objectives. As part of this, the report should state how many Member States already store finger prints of asylum seekers in a national AFIS, and whether the remaining Member States could be persuaded to follow.

**(4) Clarify impacts on national data protection provisions.** The report should explain which data protection standards apply to information which is obtained through a consultation of Eurodac. It should also clarify the references in the report that this initiative will help to harmonise national provisions on safeguarding data protection.

#### **(D) Procedure and presentation**

In order to avoid duplication, the tables in section 5 of the report could be moved to an annex, after ensuring that all important information contained in these tables (notably on stakeholder views) is presented in other sections of the report.

An executive summary should be drafted using the standard template. A disclaimer about the status of the documents should be added to both report and the summary.

## 2) IAB scrutiny process

Reference number	2008/JLS/143 (Catalogue initiative)
Author DG	JLS-F-3
External expertise used	The Commission's Legal Service provided the Board with written advice.
Date of Board Meeting	18 March 2009
Date of adoption of Opinion	24-03-2009