



Eurodac SCG

## **Activity Report 2016-2017**

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## 1. Introduction and background

Eurodac is an information system established for the comparison of fingerprints of asylum applicants and irregular migrants. It facilitates the application of the Dublin Regulation<sup>1</sup>, which aims at determining the Member State responsible for examining an application for asylum.

Eurodac was originally created by Council Regulation (EC) No 2725/2000 of 11 December 2003<sup>2</sup>, as completed by Council Regulation (EC) No 407/2002 of 28 February 2002<sup>3</sup>. In the interest of clarity, those two texts were recast in Regulation (EU) No 603/2013 of 26 June 2013<sup>4</sup> ('the Eurodac Regulation'), which became applicable on 20 July 2015. The system has been operational since 15 January 2003 and is currently used by the 28 EU Member States as well as Iceland, Liechtenstein, Norway and Switzerland.<sup>5</sup>

As established in the Eurodac Regulation, data protection supervision of the Eurodac system is carried out at national level by the national Data Protection Authorities ('DPAs'), while for the central (EU) level, the European Data Protection Supervisor ('EDPS') is competent. The coordination between the two levels is ensured by the Eurodac Supervision Coordination Group (hereinafter 'the Eurodac SCG' or 'the Group') composed of representatives of the DPAs and the EDPS.

The need for thorough data protection supervision of Eurodac is evident when considering the category of persons affected by the Eurodac system: asylum seekers and (to a lesser extent) irregular migrants. This need is also reinforced by the evolution of policies in the area of freedom, security and justice in recent years. Asylum policies need to be better coordinated, and, as a result, so does the protection of the rights and freedoms of asylum seekers.

Data protection is also a key factor for the success of the operation of Eurodac, and consequently for the proper functioning of the Dublin system. Elements such as data security, quality of data and lawfulness of consultation of Eurodac data all contribute to the smooth functioning of the system.

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<sup>1</sup> Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities, signed in Dublin on 15 June 1990, OJ L 316, 15.12.2000, p. 1 -12.

<sup>2</sup> 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 , 15/12/2000, p. 1 - 10.

<sup>3</sup> Council Regulation (EC) No 407/2002 of 28 February 2002 laying down certain rules to implement Regulation (EC) No 2725/2000 concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of the Dublin Convention, OJ L 62, 5/3/2002, p. 1 - 5.

<sup>4</sup> Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice, OJ L 180, 29.6.2013, p. 1 - 30.

<sup>5</sup> When Eurodac was established, it was used in the then EU-15 Member States (except Denmark), as well as in Norway and Iceland. Since then, the system has been joined by the ten new Member States following the 2004 enlargement, by Denmark (2006), Bulgaria and Romania following the 2007 enlargement, as well as Switzerland (2008). Finally, a protocol between the European Union, Switzerland and Liechtenstein, allowing the latter to join the system, entered into force on 1 April 2011.

In May 2016, the Commission presented another proposal that extends the scope of Eurodac for the purposes of identifying irregularly staying third-country nationals and contribute to the return procedure. Other main changes brought by this proposal to the Eurodac Regulation are: the lowering of the minimum age from which fingerprints must be taken from fourteen to six years old; the storage of the facial images in the Central System to allow the use of facial recognition software in the future; the possibility to transfer Eurodac data to third countries for return purposes.

Every two years the Eurodac SCG elects a Chair and a Vice-Chair among the members of the Group in accordance with the Group's Rules of Procedure. The Group has been chaired by Ms Elisabeth Jilderyd (from the Swedish DPA), with Mr Andres Ojaver (from the Estonian DPA) as Vice-Chair until June 2017, when Ms Mariya Mateva (from the Bulgarian DPA) was elected as Vice-Chair. Meanwhile, the Secretariat of the Group is provided by the EDPS.

In accordance with Article 32 of the Eurodac Regulation, the Eurodac SCG is also to draw up a report of activities every two years that shall be sent to the European Parliament, the Council, the Commission and the European Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice ('eu-LISA'). The present document reports on the activities of this Group for the period from 2016 to 2017.

Section 2 of this report presents the main principles of the coordinated supervision for Eurodac and summarises the four meetings that took place during the reporting period.

Section 3 describes in more details the preparation for the entry into force of the Eurodac Regulation.

Section 4 concludes the report by giving a brief general overview of activities to come in the next reporting period to the extent they can already be anticipated.

## **2. Organisation of coordinated supervision**

### ***2.1. Main principles***

As in previous years, the cooperation took the form of meetings held on a regular basis with all DPAs in charge of supervising Eurodac at national level and the EDPS, acting together as the Eurodac SCG. The main purpose of these meetings is to discuss common problems related to supervision and find common solutions or approaches whenever possible. In practice, these meetings take place at least twice a year in accordance with Article 32(4) of the Eurodac Regulation. The Commission and eu-LISA are also invited to parts of the meetings in order to update the Group on new developments regarding Eurodac.

### ***2.2. The supervision coordination meetings***

In the period 2016-2017, four supervision coordination meetings have taken place in Brussels on the following dates:

- 15 April 2016
- 23 November 2016

- 14 June 2017
- 15 November 2017

The four meetings were held at the European Parliament. As usual, they were organised back-to-back with the VIS and SIS II SCG meetings in order to reduce the financial, travel and administrative burdens and to ensure consistent, horizontal supervision policies of those large-scale IT systems where possible.

Typically, the first part of the meeting is devoted to a presentation by the European Commission and eu-LISA on recent developments regarding Eurodac that impact data protection. This helps to ensure that the Group is always kept up-to-date in order to ensure effective supervision. The second part is devoted to discussions between DPAs on issues that are in need of checking at national level or on new developments of interest for Eurodac supervisors.

The following paragraphs quickly recapitulate the topics discussed and actions taken at the four meetings.

### **Meeting of 15 April 2016**

eu-LISA informed the Group of the status of operation of the Eurodac system following the entry into force of the new Eurodac Regulation in July 2015, including regarding the storage capacity of the system, the response time to requests and challenges encountered due to the increase of persons seeking international protection. The Group discussed the general migration situation in Europe and a recent Commission Communication on the reform of the Common European Asylum System, in which the Commission envisages bringing new changes to the Eurodac system. The Group finalised its Report on the preparation for the national implementation of the new Eurodac Regulation. In addition, the Members of the Group reported in turn on the national implementation of the new Eurodac rules, in particular regarding specific articles of the new Eurodac Regulation relating to access to advice of persons with sufficient knowledge of fingerprint data and a specific audit regarding access by law enforcement authorities to the system foreseen in the Regulation. Finally, the Group discussed its draft Eurodac Activity Report for the period 2014-2015.

### **Meeting of 23 November 2016**

The Commission gave a presentation on a new proposal tabled by the Commission in May 2016 for another recast of the Eurodac Regulation focusing on the main changes brought by the proposal, which was followed by a discussion with the Members of the Group. The Group adopted its Activity Report for the period 2014-2015 which includes dedicated national reporting chapters from each Member State and which will be sent to the Commission, the European Parliament, the Council and eu-LISA. The Group adopted an update of its existing Standardised Inspection Plan in order to introduce the changes brought by the new Eurodac Regulation which entered into force in July 2015. The Members of the Group finally updated their colleagues with information about their national inspections or other relevant developments at national level.

### **Meeting of 14 June 2017**

eu-LISA informed the group of the overall performance of the Eurodac system and the latest developments related to the quality of data stored by the system. The Commission updated the

Group on the state of play of the proposal of May 2016 for another recast of the Eurodac Regulation and answered further questions of the Members regarding the proposal. The Group reflected on its future work and the exercises that the Group could carry out in order to move forward with its Work Programme for the period 2015-2018. Finally, The Group re-elected Ms Elisabeth Jilderyd (from the Swedish DPA) as Chair of the Eurodac SCG and elected Ms Mariya Mateva (from the Bulgarian DPA) ) as Vice-Chair for term of office of two years.

### **Meeting of 15 November 2017**

eu-LISA updated the group on the overall performance of the Eurodac system and the latest developments related to the quality of data in the system. The Group started working on a new exercise and discussed a draft questionnaire on data subjects' rights. Based on answers to this questionnaire, the Group intends to adopt a report with main findings and specific recommendations. Furthermore, the Group discussed the advanced erasure of data of asylum seekers who have acquired the nationality of the responsible Member State and the special searches carried out through Eurodac. Finally, the Members of the Group updated their colleagues with information about their national inspections or other relevant developments at national level.

## **3. 2016-2017: Issues discussed and main achievements**

### ***3.1. National preparation for the implementation of the new Eurodac Regulation***

The new Eurodac Regulation became applicable on 20 July 2015. Several new topics have become prominent under these new Eurodac rules but the most relevant change in terms of data protection implications is the access of law enforcement authorities (including Europol) to Eurodac data.

In order to prepare the stage for the new Eurodac rules, the Eurodac SCG decided in 2014 to carry out a twofold exercise: a visit to eu-LISA's premises and a questionnaire aiming at checking how national Eurodac authorities were preparing to implement the Eurodac Regulation but also to investigate possible law enforcement access issues, the exercise of data subjects' rights and the marking of data.

The visit to eu-LISA's premises took place in September 2015, while the final Report on the national preparation for the implementation of the new Europol Regulation that is based on answers to the questionnaire was adopted in April 2016. Based on the analysis of the answers received and the outcome of the visit to eu-LISA's premises in September 2015, the Eurodac SCG welcomed the efforts made both by competent national authorities and eu-LISA in order to ensure the implementation of the new Eurodac rules and a smooth transition to the new Eurodac system by 20 July 2015. The Group also encouraged Member States to go further to ensure full compliance with the new Eurodac Regulation in every detail, and drew attention to some specific features of the system for which several Members States should take some necessary steps to ensure implementation.

### ***3.2. Update of the Eurodac Standardised Inspection Plan***

The Eurodac SCG updated its Standardised Inspection Plan to inspect Eurodac that had been adopted in 2012 in order to align it to the new Eurodac rules that entered into force in July 2015, notably as regards law enforcement access, information to data subjects, follow-up of special searches and marking of data. The Eurodac SCG adopted an Updated Eurodac Standardised Inspection Plan, which could be an important basis for the work of national DPAs that are planning inspections of Eurodac, in particular as regards law enforcement access to the system.

## **4. Members' Reports**

### ***4.1. Austria***

- Overview: state of play and developments
- Inspections

The Austrian DPA has not carried out inspections.

- Complaints

The Austrian DPA has not received any complaints regarding Eurodac.

- Remarks

The Austrian DPA formally approached the Austrian Federal Ministry of Internal Affairs concerning the high number of "category 4 requests" in Eurodac. According to the Ministry, Austria has been one of the first member states to finalise the technical implementation (interconnection with the national AFIS) and thus had a longer time period to request data. Furthermore it was stated that (at that point of time) many member states have not finalised the technical implementation and therefore the number of "category 4 requests" is yet to be compared to the actual number of requests (benchmark) that are to come once the system is in actual use by all member states.

### ***4.2. Belgium***

- Overview: state of play and developments

From the information received from the Belgian Federal Police at the beginning of 2018, the law enforcement access to Eurodac is not yet in place.

- Inspections

The Eurodac Regulation requires (in its article 32(2)) that DPAs should yearly conduct an audit on the national Eurodac system and more particularly on the aspect "*law enforcement access*". The audit did not happen in 2016-2017 because the law enforcement access to Eurodac did not yet exist in practice.

The Act of December 3<sup>rd</sup> 2017 establishing the Data protection Authority entrusts the Belgian DPA with investigative powers. Currently the Belgian DPA is in a transition phase and it is starting up a methodological work plan that will include also inspections or audits for which the Belgian DPA is competent. The inspection service will be led by the Inspector General and will consist of inspectors.

- Complaints

Statistics are kept of all complaints, but the Belgian DPA has not received any complaints relating to Eurodac so far.

- Remarks

### *4.3. Bulgaria*

- Overview: state of play and developments

The competent authorities with regard to the national system Eurodac are the State Agency for Refugees with the Council of Ministers and the Research Institute of Criminology and Forensics at the Ministry of Interior. The latter provides the technical support and the network of the system. The Commission for Personal Data Protection is the supervisory authority with regard to personal data processing in the national system Eurodac. All the commitments regarding the compliance with Regulation (EU) No 603/2013 have been fulfilled. The national system Eurodac is fully compliant with the provisions laid down in the Eurodac Regulation.

- Inspections

The Bulgarian DPA carries out inspections of the national system Eurodac on a regular basis. The Bulgarian DPA carried out a full audit of the national Eurodac system in 2016, as well as of national competent authorities (State Agency for Refugees with the Council of Ministers and Research Institute of Criminology and Forensics at the Ministry of Interior) operating it.

Inspections at the Research Institute of Criminology and Forensics at the Ministry of Interior and the State Agency for Refugees with the Council of Ministers were carried out in 2016. The main points of concern were:

- the new legal framework of the Eurodac System;
- examination of the rules and procedures concerning the processing of personal data;
- establishing the technical and organisational measures taken to protect personal data;
- the ways of exchanging information from the system with other authorities in the country and with countries in the European Union.

Based on the statement of findings, the Bulgarian DPA issued a decision with binding recommendations to the Research Institute of Criminology and Forensics and the State Agency for Refugees. The deadlines for implementation of the recommendations were respectively 6 months for the Research Institute of Criminology and Forensics and 1 month for the State

Agency for Refugees. Further to these binding recommendations, information, as well as evidence was provided that the recommendations made were fully implemented within the fixed deadlines.

- Complaints

No complaints regarding personal data processing in the Eurodac system have been submitted to the Bulgarian DPA during the reporting period. The State Agency for Refugees with the Council of Ministers has not been referred with complaints either.

- Remarks

The Bulgarian DPA carried out specific trainings for the staff of the State Agency for Refugees with the Council of Ministers regarding the new European data protection framework.

#### *4.4. Croatia*

- Overview: state of play and developments

The establishment of the national Eurodac system in the Republic of Croatia started in 2012 and the National Access Point has been in operation since 1 July 2013. All “hit” results received for Eurodac have been verified by the Forensic Science Centre Ivan Vucetic. The National Access Point is established within the Ministry of Interior, in the Department for Asylum. Croatia has 32 Eurodac workstations with fingerprint live-scan equipment which are placed in all of 20 police administrations, Reception Centre for Foreigners Ježevo, as well as in asylum services (including both locations of the Reception Centre for Asylum Seekers, Kutina and Zagreb). The supply of equipment is financed by the Transition Facility. Eurodac workstations are used for processing and transmitting of fingerprints to the National Access Point.

All transmissions to the Eurodac Central Unit are done through the Department for Asylum. The law enforcement authorities are not authorized to request comparisons with Eurodac since they do not have access to the VIS and Prüm databases.

- Inspections

In the reporting period initial supervision activity was started by the national DPA (Croatian Personal Data Protection Agency) at the Centre for Asylum Seekers, Zagreb.

- Complaints

In the reporting period there were no complaints on the processing of personal data in Eurodac.

- Remarks

#### *4.5. Cyprus*

- Overview: state of play and developments

The Refugees Law has been amended to incorporate implementing provisions for the retention criteria referred to in Article 28 of the Dublin Regulation.

- Inspections

No inspection has been carried out.

- Complaints

No complaints have been submitted to the DPA insofar.

- Remarks

#### *4.6. Czech Republic*

- Overview: state of play and developments

The Czech DPA actively participated in activities connected to the supervision of the Eurodac system. The Czech DPA monitored independently the lawfulness of personal data processing and ensured compliance with the relevant legislation, in particular with respect to data subject rights. These obligations were thoroughly assessed during an audit in 2017.

- Inspections

An audit of the processing of personal data according to Article 32 (2) of the Eurodac Regulation was carried out in 2017 through three on-the-spot inspections. The audit did not show any breach of the data protection rules and found that the controller is processing the data in the Eurodac in accordance with applicable EU and national law.

- Complaints

The Department for Asylum and Migration Policy of the Ministry of Interior of the Czech Republic is the responsible authority for handling requests and complaints of data subjects regarding their personal data processing in the Eurodac system. The Czech DPA has not received any complaints in relation to data processing within the Eurodac system.

- Remarks

The Eurodac Standardized Inspection Plan was successfully used as of the key tools during the inspection.

#### **4.7. Denmark**

- Overview: state of play and developments

Due to the fact that part of the recast Eurodac Regulation is not covered by the existing special agreement, a new agreement making it possible for Denmark to participate in the law enforcement part of the Eurodac Regulation is under negotiations. The national legislation is already in place.

- Inspections

The Danish DPA has not carried out any inspections during the reporting period. The Danish DPA expects to carry out an inspection in 2019.

- Complaints

The Danish DPA has received no complaints regarding registration in the Eurodac during the reporting period.

- Remarks

#### **4.8. EDPS**

- Overview: state of play and developments

As the EDPS is the supervisory authority for eu-LISA, which has the role of management authority of Eurodac, the EDPS has been in contact with eu-LISA on a number of occasions.

In further developments during the reporting period, the European Commission issued a proposal for updating the Eurodac Regulation (legislative procedure reference 2016/0132(COD) – see also section 1 above). The EDPS replied to this proposal with Opinion 7/2016, dealing with the three proposals of the First reform package on the Common European Asylum System (Eurodac, EASO and Dublin regulations). In that Opinion, the EDPS recommended among others conducting an assessment of the need to collect and use the facial images and of the situation of minors.

- Inspections

During the reporting period, the EDPS has conducted an inspection of the central system managed by eu-LISA. The report containing findings and recommendations was sent to eu-LISA, as well as to the European Parliament, the Council and the Commission, as well as to the national DPAs, in line with Article 31(2) of the Eurodac Regulation.

- Complaints

The EDPS has received no complaints relating to Eurodac during the reporting period. Given the role of the central system, complaints against the processing of personal data in Eurodac will

most likely be directed against processing under the responsibility of the Member States. If this were to happen, complainants would be referred to the relevant national DPAs. Only complaints related to processing by the central unit would be relevant for the EDPS.

- Remarks

#### ***4.9. Estonia***

- Overview: state of play and developments

The Estonian Police and Border Guard Board is the national access point for Eurodac.

- Inspections

The Estonian DPA started an inspection in November 2016.

- Complaints

The Estonian DPA did not receive complaints during the reporting period.

- Remarks

#### ***4.10. Finland***

The Finnish DPA did not report for this period.

#### ***4.11. France***

- Overview: state of play and developments
- Inspections

During the period 2016-2017, the French DPA (Commission Nationale de l'Informatique et des Libertés -CNIL) carried out 2 inspections related to Eurodac.

- Complaints

During the period 2016-2017, no complaint has been received.

- Remarks

The CNIL updated on its website the dedicated page with information about Eurodac, its functioning, the information it contains, the information available to data subjects, as well as

information on the exercise of data subjects' rights. The webpage also includes links to the Eurodac SCG activities and publications.

#### ***4.12. Germany***

- Overview: state of play and developments

In Germany, the Federal Office for Migration and Refugees functions as the central authority for the Eurodac system. The Federal Criminal Police Office provides technical support.

The Federal Commissioner for Data Protection and Freedom of Information, together with the responsible Data Protection Supervisory Authorities of the federal states ("Länder Data Protection Commissioners), monitors the lawfulness of the processing of personal data by the German authorities and the transfer of the data to the Central Unit. In addition, data subjects receive support in exercising their rights of correction or deletion of data.

Technical improvements for a better cooperation of authorities having access to Eurodac were implemented.

- Inspections

From 2016 to 2017 inspections were carried out, mainly with regard to the access of law enforcement authorities to personal data stored in Eurodac. Room for improvement was found in the context of documentation and selecting relevant data sets.

- Complaints

There were no complaints lodged.

- Remarks

#### ***4.13. Greece***

- Overview: state of play and developments

The Informatics Division of the Hellenic Police under the Ministry of Citizen's Protection is the National Access Point for the Eurodac system.

- Inspections

No inspection was carried out during the specified time frame.

- Complaints

The Hellenic DPA has not received any complaints in relation to data processing within the Eurodac system.

- Remarks

#### ***4.14. Hungary***

- Overview: state of play and developments
- Inspections

No inspection was carried out during the reporting period. However an inspection is planned to take place during the first semester of 2019 so as the DPA will be able to check the operation of the EURODAC System.

- Complaints

The Hungarian National Authority for Data Protection and Freedom of Information (Hungarian DPA) did not receive any complaint from individuals regarding EURODAC System in the 2016-2017 period.

- Remarks

Links to information regarding Eurodac on the Hungarian DPA's website:

<http://www.naih.hu/eurodac-rendszer.html> (in Hungarian) and <http://www.naih.hu/european-dactyloscopy-system---eurodac.html> (in English)

#### ***4.15. Iceland***

The Icelandic DPA did not report for this period.

#### ***4.16. Ireland***

- Overview: state of play and developments

The International Protection Office (IPO) is an office within the Irish Naturalisation and Immigration Service (INIS) responsible for processing applications for international protection under the International Protection Act 2015. The two forms of international protection are refugee status or subsidiary protection. The IPO also considers whether applicants should be given permission to remain. Applications may be examined under the EU Dublin Regulation in order to determine the state responsible for examining an application for international protection made by a third country national or a stateless person.

- Inspections

The Irish DPA conducted an inspection in 2016 based on 3 complaints received in December 2015 regarding the submission of 'Article 34 checks' to the UK. There were no data protection

issues arising from the checks made and all data examined was considered to be in line with the provisions of Regulation (EU) No 604/2013 (Dublin III).

The Irish DPA also carried out a desk audit in 2017 where they submitted to the data controller the questions of the Eurodac SCG '*Standardised Inspection Plan*' regarding data subjects' rights. The audit findings of the DPC concluded there is clear and transparent information provided to applicants for international protection at the International Protection Office (IPO) on their rights to access and/or rectify their personal data as required under the Dublin Regulation (EU) No 604/2013.

- Complaints

The Irish DPA received 3 complaints in December 2015 regarding the submission of 'article 34 checks' to the UK. Investigation commenced in 2016 and included an inspection.

- Remarks

#### **4.17. Italy**

- Overview: state of play and developments

The designated access point (NAP – National Access Point) is still the Scientific Police Service within the Direzione Centrale Anticrimine della Polizia di Stato. The aforementioned Service is also the SPoC (Single Point of Contact) for the activities related to the management of the IT structure dedicated to communication with the EU central system.

- Inspections

The Italian DPA did not carry out inspections regarding the Eurodac system. There are no fingerprints experts within the DPA.

- Complaints

The Italian DPA did not receive any complaint from individuals regarding data processing in the Eurodac system.

- Remarks

#### **4.18. Latvia**

The Latvian DPA did not report for this period.

#### ***4.19. Liechtenstein***

- Overview: state of play and developments
- Inspections

The Liechtenstein DPA did not carry out inspections during the reporting period.

- Complaints

No complaints were received during the reporting period.

- Remarks

#### ***4.20. Lithuania***

- Overview: state of play and developments
- Inspections

The Lithuanian DPA did not carry out inspection regarding Eurodac.

- Complaints

The Lithuanian DPA did not receive complaints concerning Eurodac.

- Remarks

#### ***4.21. Luxembourg***

- Overview: state of play and developments
- Inspections

The Luxembourgish DPA has not carried out any inspections during the period covered by this report.

- Complaints

No complaints have been received during the period under review.

- Remarks

## 4.22. Malta

- Overview: state of play and developments

During the period under review, the Maltese DPA held discussions with the Eurodac National Access Point and also the relevant stakeholders involved in the asylum procedure. These discussions were initially held as part of a working group set up by the DPA, which incorporates major stakeholders in the area of law enforcement and migration. This working group serves as the ideal forum to discuss data protection matters in the field and also to enhance information exchange and coordination between the various stakeholders. The working group is chaired by the Commissioner himself and consists of representatives from the Police (N-SIS, Immigration & Border Control, National Access Point – Eurodac), the relevant Ministries (Justice, Home Affairs and Foreign Affairs), Visa Authority, Citizenship and Expatriates, and the Refugee Commission.

Subsequent meetings also took place on a bilateral level with the National Access Point and the Refugee Commission. The scope of these meetings was to identify and discuss problematic areas which could have an impact on the lawfulness of data processing in the Eurodac system.

One particular aspect relates to the different forms and patterns in which irregular migrants are entering the Maltese territory. This is constantly evolving and logistically, it may be problematic since individuals may be apprehended in places where fingerprint machines are not readily available. This may result in delays both when taking fingerprints or transmitting them to the system.

The Maltese DPA intends to hold additional discussions to ensure that logistics do not have a negative impact on the lawful transmission of fingerprint data in the Eurodac system.

- Inspections

No onsite inspections were carried out during the period under review. However, the Maltese DPA intends to conduct inspections in the near future. The main focus of these inspections will be to assess the main problematic areas, in particular those matters which have been flagged in previous exchanges or following statistics made available by eu-LISA.

- Complaints

No complaints have been received.

- Remarks

## 4.23. Netherlands

- Overview: state of play and developments

In the Netherlands, responsibility for both the functional and technical part of the Eurodac system is divided between the Immigration and Naturalisation Service and the Directorate-

General for Immigration of the Ministry of Justice and Security. The SPOC for the Eurodac system is hosted by the ICT service of the Dutch National Police. During the reporting period the Dutch DPA maintained regular contacts with the competent authorities.

- Inspections

No inspections have been carried out during the reporting period.

- Complaints

The Dutch DPA has not received any complaints relating to Eurodac in the reporting period.

- Remarks

#### ***4.24. Norway***

- Overview: state of play and developments
- Inspections

The Norwegian DPA has not carried out any inspections during the reporting period.

- Complaints

The Norwegian DPA has not received any complaints regarding Eurodac during the reporting period.

- Remarks

#### ***4.25. Poland***

- Overview: state of play and developments

In 2016 the Polish DPA sent inquiry to Central Forensic Laboratory of the Police. The aim of that letter was to verify if authorities mentioned in the article 5 of Regulation 603/2013 were comparing biometric data with data stored in central system. On the basis of provided clarifications, the Polish DPA decided to carry out inspections in relevant police units. In 2017 inspections covering the field of biometric data were continued.

- Inspections

In reported period the Polish DPA carried out 5 inspections.

- Complaints

The Polish DPA did not receive complaints concerning the Eurodac system.

- Remarks

#### ***4.26. Portugal***

- Overview: state of play and developments

There was no legislative developments in this period. The asylum legal framework is regulated by Law 27/2008, of 30 June, amended by Law 26/2014, of 5 May, which transposed Directives 2011/95/EU, 2013/32/EU and 2013/33/EU, and implemented at national level Regulation (EU) 603/2013 and Regulation (EU) 604/2013.

- Inspections

No inspections were carried out.

- Complaints

The DPA did not receive any complaints.

- Remarks

#### ***4.27. Romania***

- Overview: state of play and developments

Law no. 122 of 4 May 2006 on asylum in Romania regulates the legal status of aliens who apply for a form of protection in Romania, the legal status of aliens who hold a form of protection in Romania, the procedures for granting, termination and annulment of a form of protection in Romania, as well as the procedure for determining the responsible EU Member State for examining the asylum application.

In 2014, Ordinance no. 22/2014 for the amendment and completion of Law no. 122/2006 on asylum in Romania was adopted, which provides for the introduction of certain provisions that refer directly to Dublin Regulation III (Regulation no. 604/2013) and to Eurodac Regulation (Regulation no. 603/2013).

The asylum request template provided in the Guidelines of 13 September 2006 for the implementation of Law no. 122/2006, amended and supplemented in 2016 provides that the processing of personal data is carried out in accordance with the provisions of Law no. 677/2001 on the protection of individuals with regard to the processing of personal data and the free movement of such data, amended and completed.

- Inspections

The Romanian DPA did not carry out inspection of the Eurodac system.

- Complaints

The Romanian DPA did not receive complaints concerning the Eurodac system.

- Remarks

#### ***4.28. Slovak Republic***

- Overview: state of play and developments

The Ministry of Interior of the Slovak republic is competent authority for system Eurodac in Slovak republic. Data Protection Office of the Slovak republic performed 2 inspections of personal data processing with regard to National Access Point at the Ministry of Interior of the Slovak republic of 2016 and 2017.

- Inspections

Inspections were focused on fulfilling obligations laid down by Article 29 (1) Regulation (EU) No 603/2013– procedure of notifying about rights of the data subject; clayiming data subjects rights; keeping a list of the designated authorities according Article 5 and designating a single national authority or a unit of such an authority to act as its verifying authority according Article 6 of Regulation (EU) No 603/2013; keeping of records according Article 28 of this Regulation. With regard to abovementioned inspection did not identify any inadequacies.

- Complaints

The Slovak Republic DPA did not receive complaints concerning the Eurodac system.

- Remarks

#### ***4.29. Slovenia***

- Overview: state of play and developments

The Slovenian DPA has good and constant relations with the Eurodac National Contact Point.

- Inspections

The Slovenian DPA did not carry out inspections during the reporting period.

- Complaints

During the reporting period, the Slovenian DPA did not receive any complaint regarding data processing in the Eurodac system.

- Remarks

### ***4.30. Spain***

The Spanish DPA did not report for this period.

### ***4.31. Sweden***

- Overview: state of play and developments

Processing of data by Swedish Migration Authorities is regulated in a specific Act, the Swedish Aliens Act. This Act exempts processing that falls under other legislation, such as processing that falls under the Eurodac Regulation 603/2013. In 2017, the Swedish Aliens Act has been reviewed in order to adapt to the EU General Data Protection Regulation 2016/679. The exemption for processing that falls under other specific legislation will remain.

- Inspections

The Swedish Data Protection Authority has not carried out any inspections of processing in the Eurodac system by Swedish authorities in 2016-2017.

- Complaints

The Swedish Data Protection Authority has not received any complaints regarding the Eurodac system in 2016-2017.

- Remarks

### ***4.32. Switzerland***

- Overview: state of play and developments

Switzerland not being a member of the EU and not participating (yet) in the Prüm cooperation, the law enforcement aspects of the Eurodac Recast do not apply to Switzerland. In order to get such an access, Switzerland is negotiating an agreement with the EU. Switzerland took part in all meetings of the Eurodac SCG in 2016 and 2017.

- Inspections

No inspection took place in 2016 and 2017 (as mentioned above, the law enforcement authorities of Switzerland do not have access to Eurodac).

- Complaints

The Swiss federal DPA did not receive any complaints concerning Eurodac.

- Remarks

### **4.33. UK**

- Overview: state of play and developments

The designated competent authority for the Eurodac system in the UK is the Home Office Immigration Fingerprint Bureau. During the reporting period, the UK DPA maintained regular contacts with the designated competent authority.

- Inspections

During the reporting period, no inspection of the system was conducted. However, the UK DPA maintained regular contacts with the designated competent authority to ensure that due processes were put in place to facilitate access for law enforcement purposes in compliance with the Data Protection Act 1998 and the new Data Protection Act 2018.

In addition, the UK DPA followed and contributed to the analysis within the SCG of the new Eurodac proposal tabled by the European Commission on 4 May 2016.

- Complaints

The UK DPA has received one complaint relating to Eurodac during the reporting period involving the handling of a request for deletion of data.

- Remarks

## 5. What to expect next

The Eurodac SCG Work Programme for 2015 to 2018 aims to ensure the follow-up to the activities already started by the Group, but it also envisages other new issues to be explored with specific activities to be carried out. It allows at the same time sufficient flexibility to add new exercises when needed.

Therefore, the themes that will need further discussion and assessment from the Group are the following:

- the access of law enforcement authorities (including Europol) to the system;
- data subject rights;
- the information given to data subjects;
- the issue of advance erasure of Eurodac data;
- the follow-up of special searches;
- the follow-up of marking of data;
- the implementation of the new Eurodac Regulation once adopted, especially in relation to the fingerprinting minors and transfer of Eurodac data to third countries for return purposes.

Besides these foreseen activities, the Eurodac SCG will work on a permanent basis on the follow-up of policy and legislative developments, any ongoing issues, exchange of experiences and mutual assistance.