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Law enforcement access to EURODAC: EDPS expresses serious doubts about the legitimacy and necessity of proposed measures

Yesterday, the European Data Protection Supervisor (EDPS) adopted an opinion on two Commission proposals aiming at providing the basis for the right of law enforcement authorities to have access to EURODAC under specific conditions. These two proposals, adopted on 10 September 2009, allow access to the EURODAC system – which is meant to facilitate the application of the Dublin Regulation by comparing fingerprints of asylum seekers and illegal immigrants - for the prevention, detection and investigation of terrorist offences and other serious offences under the conditions set out in the proposals.

The EDPS analyses the proposals in the light of their legitimacy, while taking as a starting point the need to strike a right balance between the need for public security and the fundamental right to privacy and data protection, in compliance with Article 8 of the European Convention on Human Rights (ECHR). **The analysis leads to the conclusion that the necessity and proportionality of the proposals, which are both crucial elements to legitimate privacy intrusion, are not demonstrated.** As a result, the EDPS has serious doubts whether the proposals are legitimate and whether legislative instruments should be adopted on this basis.

Peter Hustinx, EDPS, says: "*The fight against terrorism can certainly be a legitimate ground to apply exceptions to the fundamental rights to privacy and data protection. However, to be valid, the necessity of the intrusion must be supported by clear and undeniable elements, and the proportionality of the processing of personal data must be demonstrated. This is all the more required in case of an extensive intrusion in the rights of individuals constituting a vulnerable group in need of higher protection because they flee from persecution*".

The EDPS recommends assessing the legitimacy of the proposals in a wider context, notably:

- the tendency of granting law enforcement access to personal data of individuals that are not suspected of any crime and that have been collected for other purposes;
- the need for a case-by-case assessment of every proposal of this kind and for a coherent, comprehensive and future-oriented vision, preferably related to the next five-year framework programme for justice and home affairs ("Stockholm programme");
- the need to first implement and evaluate the application of other new EU instruments, such as the Prüm Decision, that permit consultation by one Member State of fingerprints and other law enforcement data held by another Member State;
- the opportunity to postpone the proposals, in the light of the changing legal and policy environment (e.g. entry into force of Lisbon Treaty, current discussions about the recast of EURODAC and Dublin Regulations).

Finally, the EDPS emphasises that the necessity of the proposals should be proven by the demonstration of substantial evidence of a link between asylum applicants and terrorism and/or serious crime.

The opinion ([pdf](#)) is available on our website.

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