

EURODAC Supervision Coordination Group

Recommendations on the use of DubliNet

Introduction

The Work Programme of the EURODAC Supervision Coordination Group (hereinafter *Group*) refers to the use of DubliNet as a possible subject for further investigation. The DubliNet system has also been dealt with in the Dublin Evaluation of the Commission.¹

On this basis, the Group has decided to examine some aspects of the use of DubliNet in the different Member States, focussing on the observations made in the Dublin Evaluation. The objective of the Group was to issue recommendations addressing these issues, rather than to conduct an in-depth investigation (which might well be done in the future by the Group).

More specifically, the objective of this exercise was based on the fact that given sensitive information which is transmitted by the Member States via DubliNet, the exchange of data in this network should be adequately regulated (in particular in terms of access rights, security, conservation of national papers or electronic files) and regularly assessed. This does not always seem to be the case nowadays.

Although certain aspects of the exchange of data have already been addressed in the Commission Regulation (EC) No 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member States responsible for examining an asylum application lodged in one of the Member States by a third country national (hereinafter *Regulation (EC) No 1560/2003*)², the current legislative framework does not seem to cover all practical aspects of the exchange of personal information via DubliNet, which is regrettable³.

In this context, it is also worth mentioning that on 3 December 2008 the Commission presented a proposal for a revised "Dublin Regulation"⁴. In this proposal, some

¹ Paragraph 2.3.1 of the report: "*Another issue concerns the non systematic use by certain member states of the secured bilateral communication tool, called DubliNet. Due to the nature of the information transmitted, this might raise some data protection problems.*"

² Official Journal L 222 , 05/09/2003 P. 0003 - 0023.

³ This becomes even more evident when one compares it with the extent to which the exchange of information has been regulated in the framework of the Schengen Information System (SIRENE).

⁴ SEC(2008) 2962, Proposal for a Regulation of the European Parliament and of the Council 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.

aspects of the exchange of data through DubliNet have also been addressed (i.e. exchange of sensitive/health data). Therefore, a closer examination by the Group could contribute to the practical implementation of the new framework in the future.

Content of the Questionnaire

The Group decided that the purpose of this coordinated exercise, based on a questionnaire sent to the members of the Group, should be twofold at this stage:

- **provide a description and a state of play of the rules concerning DubliNet at national level (or the absence thereof); and**
- **indicate whether it is desirable to adopt a more comprehensive set of rules for DubliNet, with possibly some recommendations for precise subjects to be covered.**

The following questions were asked in the questionnaire:

- For which purpose is DubliNet used?
- Which categories of data are exchanged using DubliNet?
- Which specific (written/formal) procedures are established in this regard at national level?
- Which authorities are entitled to use DubliNet?
- What are the measures taken to ensure the security of data in the context of an exchange of information?
- Are the data deleted once the purpose of the exchange is achieved?

Recommendations

On the basis of a thorough analysis of the information gathered in the context of the inquiry on the use of DubliNet, the Group decided to adopt the following recommendations:

I. Need for systematic use of DubliNet

The Group encourages the Member States to systematically and regularly use the DubliNet secure channel rather than less secure channels of communication. The Group is convinced that the use of the system as foreseen in Article 18 of Regulation (EC) No 1560/2003 contributes to a secure and efficient exchange of information between the States as well as to the more effective functioning of EURODAC as such. The security of the network is of a high level and can be audited. A systematic use of DubliNet also increases the level of data protection in the system, by making transactions traceable. This

contributes to a better data protection supervision of the system rather than unofficial channels which might be used as an alternative.

II. Need for complementary rules at national level (technical manuals, best practice guides) on how to use the system

On the basis of the information gathered in the context of the questionnaire on DubliNet, the Group came to the conclusion that in general the use of the system at national level seems to be in conformity with the legal framework laid down by the Council Regulations 343/2003 and 1560/2003. This conclusion also applies to the categories of data exchanged via DubliNet (based on Annexes to the Regulation).

In this context, it should however be noted that only a few Member States have adopted complementary rules at national level containing supplementary information on how to use the system in practice, such as best practice guidelines or technical manuals.

The Group considers this situation regrettable as it might have an impact on the regularity of the use of the system by national authorities as well as its effective functioning.

The Group recommends that practical technical manuals, including relevant emergency plans, be drafted in all Member States as soon as possible.

The Group also encourages those Member States which adopted internal complementary rules to exchange best practices on the use of DubliNet with other Member States.

III. Need for clearer and harmonised rules on the deletion of data once the purpose of the exchange has been achieved

The Group has also come to the conclusion that there is a need for **clearer and more detailed** (and preferably **EU harmonised**) rules regarding the deletion of data once the purpose of the exchange has been achieved. It is surprising to notice that some Member States do not have such rules at all.

This issue is closely related to the correct implementation of data protection in the system. More specifically, account should be taken of the fact that a deletion procedure is part of the implementation of the purpose limitation principle stipulating that *data should in principle only be used for the purpose for which they have been collected and kept for no longer than required by the purpose of processing*.

Consequently, the way (both legal and technical) in which such deletion is performed at national level should, according to the findings of the Group, be subject to a more uniform and harmonized set of rules at EU Level.

Against this background, the Group encourages the Commission to reflect on more harmonised rules regarding the deletion of data once the purpose has been achieved, which could be adopted at EU level in the future. This would result in a more regular use of the system and would increase the protection of personal data.

IV. Conclusion on the question regarding the authorities using DubliNet

The DubliNet system, in the majority of cases, is used by the authorities competent for determining the State which has the jurisdiction to examine asylum applications, the so called Dublin authorities. No significant differences between Member States have been detected in this regard. The Group considers this satisfactory.