



Ad-Hoc Query on Implementation of Council Regulation 380/2008

Requested by FI EMN NCP on 10th September 2009

Compilation produced on 8th December 2009

Responses from Austria, Belgium, Denmark, Estonia, Finland, Germany, Hungary, Ireland, Latvia, Lithuania, Netherlands, Portugal, Slovak Republic, Slovenia, Sweden, United Kingdom (16 in Total)










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1. Background Information

The Migration Department of the Finnish Ministry of the Interior is considering different models of implementing Council Regulation 380/2008 of 18 April 2008 amending Regulation (EC) No 1030/2002 laying down a uniform format for residence permits for third-country nationals and would like to invite MS to provide us with any information or steps taken on the matter.









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2. Responses

| | | Wider Dissemination? | 1. Do you plan to store fingerprints taken for residence permit cards in a national database? If so, how will these fingerprints be used? (For example catastrophes [such as tsunami], crime investigation, immigration purposes, other?). |
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|  | Austria | No | This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further. |
|  | Belgium | Yes | <p>1. Storage of biometric data in a national database? Usage of these data? Belgium has not take any position yet on this subject.</p> <p>In case Belgium would to proceed with this, a change in legislation would be required. However, the usage of these data would only be permitted in case they would be necessary:</p> <ul style="list-style-type: none"> - For the establishment or verification of the identity of the foreigner - For the investigation of whether the foreigner would constitute a danger for the public order or national security - To respect the obligations foreseen by the regulations and directives adopted by the Council of the European Union <p>Additionally, the collections and treatment of these data would have to be dealt with under the supervision of an independent institution. In Belgium this is the Commission for the Protection of Privacy.</p> |
|  | Denmark | No | This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further. |
|  | Estonia | Yes | Fingerprints taken for residence permit cards will be stored in a separate national database and used for the purposes of verifying the authenticity of the document and identity of the holder. |
|  | Finland | Yes | Decision in this is yet to be made, but there are discussions going on (and information gathered from other MS, including this EMN questionnaire) on storing the fingerprints in a national database (Aliens´register). If a decision on storing is made, the purpose of using the fingerprints will be well defined in the legislation (Aliens´Act, Aliens´ Registration Act). There will probably be a provision in the Aliens Act that allows using fingerprints for verifying the authenticity of the document and identity of the holder (as in the EU Regulation). Verifying the identity will most probably cover also cases of catastrophes and immigration purposes (whether the person has applied before with another identity?) but exclude crime investigation. |
|  | Germany | Yes | Germany does not store the fingerprint data of the future electronic residence permit in a national database. |
|  | Hungary | Yes | The Council Regulation 380/2008 says that for the purposes of the Regulation, the biometric features in residence permits shall only be used for verifying the authenticity of the document; or the identity of the holder by means of directly available comparable features when the residence permit is required to be produced by national legislation. |
|  | Ireland | No | This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further. |
|  | Latvia | Yes | Yes. Latvia has a special law stipulating use of biometric data (Law on Biometric data processing system), including data taken for issuing residence permits. Purpose: to identify the person and to prevent use of false identity. |

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|  | Malta | Yes | |
|  | Netherlands | Yes | Yes. The biometrics stored in that database will be used for purposes connected with the implementation of the Dutch Aliens Act (immigration purposes). Furthermore, we are also planning to use the biometrics stored in that database for crime investigation purposes, but only when certain specific criteria are fulfilled. |
|  | Portugal | Yes | Yes, we plan to store fingerprints taken for residence permit cards in a national database. Date has not been settled. In effect PT has always been taking fingerprints for the purpose of issuing a Residence Permit; however those were never recorded in an AFIS database, but manually processed. This data will be used for all purposes legally defined in accordance of 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. |
|  | Slovak Republic | Yes | In the Slovak Republic fingerprints are stored in the information system of the Police Corps – so called “Register of Foreigners”. At present, they are personalised into the travel documents issued to foreigners and are used for verification of travel documents and identification of their holders. At present, conditions for introducing biometry also into the residence permits are being prepared. |
|  | Slovenia | Yes | The Republic of Slovenia plans to delete fingerprints after personalization of a card. For now, we don't plan to store fingerprints in our database. |
|  | Spain | Yes | In general terms, new documentation for foreigners is adapted to the common model of the EU since 2003 though the modifications set forth in Regulations 380/2008 have not yet been introduced due to the fact that we are still within the <u>two year</u> transition period for including the new technical specifications as of their approval. These specifications have been recently approved by the Committee of Article 6, therefore the obligation is inexistent at the moment. The use of biometrics shall be adapted to the requirements set forth in Regulations 380/2008 |
|  | Sweden | Yes | The question is being discussed. The fingerprints will probably only be stored on the residence permit card. |
|  | United Kingdom | Yes | Yes. We currently store ten fingerprints on the Immigration and Asylum Fingerprint System (IAFS), which is due to be replaced in 2012 by the National Identity Assurance Service (NIAS). Fingerprints recorded for the purpose of issuing a card are currently retain so long as there is a purpose, including immigration, preventing and detecting crime, in an event of a catastrophe, national security reasons. The uses are set out in regulations made under the UK Borders Act 2007. Those issued with cards are not required to carry them on them at all times, but can be required to produce them along with comparative information in specified circumstances. |






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| | | Wider Dissemination?¹ | 2. Are you going to introduce both biometric identifiers (scanned photograph, 2 fingerprints) at the same time? (at the latest in May 2011) |
|  | Austria | No | This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further. |



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|  | Belgium | Yes | 2. Simultaneous introduction of the two data ? The Immigration Department and the Population Register are for the moment analysing the new technical specifications. A concrete timetable has not been established yet, but Belgium will strive for a simultaneous introduction whenever possible. |
|  | Denmark | Yes | Denmark is currently issuing both residence permit cards and residence permit in sticker format. By May 2011 there will no longer be issued residence permits in sticker format – only residence permit cards with biometrics included on a chip will be issued. Denmark is considering whether a residence card with biometric identifiers also should be introduced for residence permits valid for residence in the areas of Greenland and the Faroe Islands (the two countries are not members of Schengen) and in situations where non-EU-citizens mentioned in article 5, Council regulation (EC) No 1030/2002 apply for residence in Denmark. Denmark has not yet decided whether there will be storage of both photograph and finger prints on the chip by may 2011, but it seems likely that Denmark will have this as an objective. |
|  | Estonia | Yes | The decision is not finalized yet, but biometric identifiers will most likely be introduced subsequently, first the face biometrics and later on the fingerprints. |
|  | Finland | Yes | Finland is planning to introduce a residence permit card including a chip and both biometric identifiers at the same time (May 2011). Finland is currently issuing residence permits as stickers. |
|  | Germany | Yes | Germany intends to introduce two biometric identifiers (fingerprints and photographs) at the same time (May 2011). |
|  | Hungary | Yes | The Republic of Hungary follows the orders of the Council Regulation 380/2008, thus the storage of the facial image (digital photograph) as primary biometric identifier will be implemented at the latest two years (by 25 th May 2011), and the storage of the two fingerprint images at the latest three years (by 25 th May 2012). |
|  | Ireland | No | This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further. |
|  | Latvia | Yes | Yes. Since infrastructure for 2 nd generation passports is in place it makes sense to start with 2 nd generation cards as well. |
|  | Lithuania | Yes | Yes, it is planned to introduce both biometric identifiers at the same time by May 2011. |
|  | Netherlands | Yes | Yes. |
|  | Portugal | Yes | In PT, issuance of Resident Permit [RP] for third-country nationals always comprised fingerprints taking. As mentioned before that procedure was, however, manual and it keeps as such currently, with the exemption of a few sites (4), where the capture is made digitally, using an enrolment Kiosk, also used for the ePassport. The Residence Permit for third-country national [electronic version] was first issued, as a pilot, on 22 December 2008. Full |









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| | | | implementation took place in January 2009. Both identifiers (scanned photo and manual fingerprinting in most of the places; live photos and scanned fingerprints in 4 pilot sites) are being captured, but the fingerprints are not recorded in the chip, as PT plans to introduce EAC protocol for the RP, only in 2010. |
|  | Slovak Republic | Yes | The Slovak Republic is planning to introduce scanned photograph as a primary biometric identifier as well as two fingerprints (according to the Art. 2 subsect. 1 lett.d) and e) of the Decision) into the residence permits within the timeframe set up in the Art. 9, subsection 3 of the Decision – i.e. till May 2011. At present, in case of permitted stay in the SR, a residence permit is issued in the format of a polycarbonate card and a sticker which is placed into the travel document of a foreigner. Documents issued are in line with all security features and requirements of the mentioned Decision. After introducing the secondary biometry into the residence permits, for all foreigners with permitted stay, documents in the format of ID card will be issued. |
|  | Slovenia | Yes | Yes. |
|  | Spain | Yes | |
|  | Sweden | Yes | Sweden plans to introduce a residence permit card, including a chip, and with both biometric identifiers at the same time, by May 2011. Sweden is currently issuing Schengen Residence Permits in the uniform sticker format according to Council Regulation (EC) 1030/2002. |
|  | United Kingdom | Yes | The UK has already started to issue residence permits in the new format which contain both facial and fingerprints in certain categories of application. Over the next few years we will phase out the older vignette format residence permit. |

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| | | Wider Dissemination?² | 3. According to legislation in effect do you already collect fingerprints from some categories of aliens? If so, do you store the fingerprints and for what purpose? |
|  | Austria | No | This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further. |
|  | Belgium | Yes | 3. Collection of biometric data under the current legislation ? Belgian legislation allows collection of biometric data in the following cases: <ul style="list-style-type: none"> - visa application or application for authorisation to reside, introduced in diplomatic or consular posts (except for foreigners who come to Belgium in the light of family reunification). - Application for a residence permit for 3 months or more to the municipal authorities (except for foreigners coming to Belgium in the light of family reunification) - When a foreigner is removed (apprehended in the transit zone without being in the possession of required documents; tentative to enter the territory without being in the possession of required documents; not being able to provide documents justifying the purpose and conditions of the planned stay; not have adequate means of subsistence; being flagged for non-admission; considered to be a possible threat the international relations or the national security or public order; in case he/she has been sent |












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| | | | <p>back or expelled since less than 10 years) or when an order to leave the territory has been notified to him/her</p> <ul style="list-style-type: none"> - A ministerial Decision concerning removals or a Royal Decree concerning expulsion <p>These date are kept during 10 years and can only by used in accordance with the conditions set in question 1.</p> |
|  | Bulgaria | Yes | |
|  | Cyprus | Yes | |
|  | Czech Republic | Yes | |
|  | Denmark | Yes | <p>Denmark takes finger prints from aliens who apply for asylum and uses them in the Eurodac/Dublin procedure. Aliens who are apprehended trying to enter Denmark illegally from a country which is not an EU member state and is refused entry in Denmark will have to supply finger prints. These finger prints may be registered in a data base managed by the Danish National Commissioner of Police. The Police and the Danish Immigration Service may use the finger print database when assessing immigration cases.</p> <p>In some cases finger prints is taken in connection with an application for visa in accordance with the EU legislation.</p> <p>Biometric information includes fingers and not a picture of the alien. Biometrics is stored in the central European C-VIS database and is not currently used by any public entity in Denmark.</p> |
|  | Estonia | Yes | <p>On the basis of the council regulation no 2252/2004 fingerprints are collected from persons (with unidentified citizenship) who apply for the alien's passport issued by Estonia. Fingerprints are stored and used for the purpose of verifying the authenticity of the document and identity of the holder. In addition fingerprints are collected on the basis of council regulation no 2725/200 and they are stored in national fingerprint database.</p> |
|  | Finland | Yes | <p>According to legislation in effect, fingerprints are already taken from certain groups of aliens. Police and border check authorities may take fingerprints for purpose of identifying of asylum seekers, persons who apply for residence permit on the basis of family ties, quota refugees, from whom the authorities have decided to refuse entry into or deport from the country or whose identity is unclear. These fingerprints are stored in a register maintained by the police. The purpose of taking and using these fingerprints are different from the one in question (for the residence permit card).</p> |
|  | France | Yes | |
|  | Germany | Yes | <p>Fingerprints of asylum applicants will be centrally stored at the Federal Criminal Police Office (the BKA). Fingerprints of visa applicants, in future, will be centrally collected in the EU Visa Information System, in accordance with the type and scope described in the relevant EU Regulation. In both cases, the aim is to prevent illegal entry.</p> |



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|  | Greece | Yes | |
|  | Hungary | Yes | <p>According to legislation in effect, fingerprints are already taken from certain groups of aliens, however, the purpose of taking and using these fingerprints are different.</p> <p>The Office of Immigration and Nationality collects fingerprints under the Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals Section 53: "the authority ordering the obligation to leave the territory of the Republic of Hungary, ordering expulsion under immigration laws, compulsory confinement, exclusion, detention under immigration laws or carrying out the expulsion ordered by the court shall take the fingerprint and photograph of the third-country national affected." These are collected in the AFIS system.</p> <p>Fingerprints are also collected from the asylum seekers in order to identify them and to establish the multiple submission of applications. These fingerprints are also stored. The proceeding authority shall, without delay, forward the fingerprints recorded, together with the natural identification data and nationality verified by the person seeking recognition or, in the absence of verification, stated by the person seeking recognition, as well as the designated place of accommodation, to the data processing agency.</p> <p>According to the Act XXXIV of 1994 on the police the police has the opportunity to take fingerprints from those whose identity is unclear without taking their nationality into consideration.</p> |
|  | Ireland | No | This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further. |
|  | Italy | Yes | No, except asylum seekers (EURODAC) and illegal immigrants. |
|  | Latvia | Yes | Yes. Latvia has a special law stipulating use of biometric data (Law on Biometric data processing system), including data taken for issuing residence permits. Purpose: to identify the person and to prevent use of false identity. |
|  | Lithuania | Yes | Yes. Fingerprints are taken from asylum seekers and illegal immigrants and sent to the EURODAC system according to the EU regulations. |
|  | Luxembourg | Yes | |
|  | Malta | Yes | |
|  | Netherlands | Yes | <p>In the current situation fingerprints are taken in two situations:</p> <ul style="list-style-type: none"> - all asylum seekers (from the age of 4) have to give their fingerprints when applying for asylum. These fingerprints are stored and used to check whether the asylum seeker has been in the Netherlands before or in another Memberstate (Eurodac). Furthermore, the fingerprints are used to check whether the asylum seeker has committed any crimes before. - when an alien is obliged to pass a Dutch integration examination as one of the conditions for getting a long stay visa, the alien has to give his/her fingerprints to check whether the person who has passed the examination is really the person that is granted a long stay visa (verification). |
|  | Poland | Yes | |
|  | Portugal | Yes | <p>Please refer to the answers given before.</p> <p>In short, according to legislation in effect, PT does collect fingerprints from aliens, requesting a RP.</p> |




















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| | | | For asylum applicants, according EURODAC regulation. |
|  | Romania | Yes | |
|  | Slovak Republic | Yes | In the Slovak Republic fingerprints are taken from asylum seekers (according to the Act on Asylum No. 480/2002 Coll., as amended) for the purpose of identification of these persons. According to the Act on Residence of Foreigners No. 48/2002 Coll., as amended, subsection 80, letter c); fingerprints are taken: <ul style="list-style-type: none"> - to the foreigners who have permitted stay in the SR; - to the foreigners who are detained or will be administratively removed; - in the proceeding related to stay of EEA citizens - in the proceeding related to granting of visas. Fingerprints are stored in the databases of the Police Corps of the SR and are used in line with regulations which define their usage. |
|  | Slovenia | Yes | For purposes of residence permits fingerprints are not taken from any category of aliens. |
|  | Spain | Yes | |
|  | Sweden | Yes | Fingerprints are enrolled for persons lodging application for asylum, i.e for use in the Eurodac and Dublin processes. Enrolment and use of the fingerprints are regulated by national legislation already in place. The fingerprints are stored in a national database, and can be used in migration cases. Other use, e.g. by the Swedish Police, is restricted to a case-by-case clearance process. |
|  | United Kingdom | Yes | The UK records and retains the fingerprints of other categories of migrants including asylum seekers, those required to apply for entry clearance overseas, persons in the UK without authorisation and those it seeks to remove from the country. The purposes are similar to those taken for the residence permit. |

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| | | Wider Dissemination?³ | 4. Are you planning to introduce a biometric card upon Regulation 380/2008 also for EU citizens' family members? |
|  | Austria | No | This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further. |
|  | Belgium | Yes | 4. Biometric data for EU citizens family members ? The Regulation 1030/2002 as modified by Regulation 380/2008 excludes in its field of application this category of foreigners: family members of an EU citizen. As a consequence, in case a Member State wishes to collect biometric data from these foreigners, it will have to do this on basis of national legislation and not on basis of these two Regulations. For Belgium, no position has yet been taken on this subject. |







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|  | Bulgaria | Yes | |
|  | Cyprus | Yes | |
|  | Czech Republic | Yes | |
|  | Denmark | Yes | Denmark has not made a decision on this area yet, see answer to the second question. |
|  | Estonia | Yes | Yes. |
|  | Finland | Yes | Finland will introduce a biometric card according to the Regulation also to EU citizens' family members. The heading of the card will be "Residence card of the family member of a Union citizen" in accordance with Article 10 of the Free Movement Directive 2004/38/EC. Finland is aware of the fact that the heading is long and will probably not fit in the card. If so, we will probably put "residence card" (not residence permit) as a heading and in the additional field of the card refer to the above mentioned Directive. |
|  | France | Yes | |
|  | Germany | Yes | Yes, it is planned to issue for family members (third countries) of EU citizens also a residence card with biometric data. |
|  | Greece | Yes | |
|  | Hungary | Yes | In our opinion, the Council Regulation 380/2008 will not cover the introduction of biometric cards also for EU citizens' family members, but Hungary will introduce the biometric identifiers for the Hungarian citizens' family members, as the are under the scope of the Council Regulation 1030/2002. |
|  | Ireland | No | This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further. |
|  | Italy | Yes | |
|  | Latvia | Yes | Yes, we are planning to introduce a biometric card upon Regulation 380/2008 also for EU citizens' family members. |
|  | Lithuania | Yes | Yes. |
|  | Luxembourg | Yes | |
|  | Malta | Yes | |
|  | Netherlands | Yes | Yes. |
|  | Poland | Yes | |
|  | Portugal | Yes | Yes. PT intents to introduce a biometric card according to Regulation 380/2008, also to EU citizens' family members. Date is not settled |

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| | | | yet. The issue raised by FIN about the heading being too long is also being considering by us. |
|  | Romania | Yes | |
|  | Slovak Republic | Yes | In the Slovak Republic a polycarbonate card is issued for the family members of EU citizens with marking the heading in the note "A Family member of an EEA citizen". The Slovak Republic is planning to introduce a biometric card upon Regulation 380/2008 also for EU citizens' family members. |
|  | Slovenia | Yes | No decision yet. |
|  | Spain | Yes | |
|  | Sweden | Yes | Sweden will introduce a biometric card also to EU citizens' family members, in accordance with the Regulation. |
|  | United Kingdom | Yes | This is currently under consideration. The UK would be interested to know how other member states intend operating their schemes. |
