



Ad-Hoc Query on Interpretation of the Article 12 of EURODAC Regulation

Requested by PT EMN NCP on 16th June 2011

II Compilation produced on 4th August 2011

Responses from [Austria](#), [Estonia](#), [Finland](#), [Germany](#), [Hungary](#), [Italy](#), [Latvia](#), [Lithuania](#), [Luxembourg](#), [Netherlands](#), [Romania](#), [Slovak Republic](#), [Sweden](#), [United Kingdom](#) (14 in Total)






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1. Background Information

In 2000, the EU adopted a Regulation on the establishment of 'EURODAC' for the comparison of fingerprints for the effective application of the so called Dublin II Regulation. According to article 12, n.1, the data related to an applicant asylum which have been recorded pursuant to article 4°, n°2 shall be blocked in the central database, if that person is recognised and admitted as a refugee in a Member State.










The Asylum and Refugees Department of the Portuguese Immigration Service has some questions regarding the application of this article after the adoption of the EU Qualification Directive and the concept of international protection defined there (refugee status and subsidiary protection status).

2. Responses¹


		Wider Dissemination?²	1. How do Member States interpret Article 12 of the EURODAC Regulation in the light of the Qualification Directive, namely if an applicant for asylum who came to be recognized with subsidiary protection, is blocked in the central data base under Article 12? 2. If yes, from what date?
	Austria	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	Estonia's Police and Border Guard Board do not see any contradictions between Article 12 of the EURODAC Regulation and the Qualifications Directive.
	Finland	Yes	1. The Article 12 is located under the chapter V of the Eurodac regulation (2725/2000/EC), which concerns only recognised refugees. Article 2 of the regulation defines refugee as a person who has been recognised as a refugee in accordance with the Geneva Convention on Refugees of 28 July 1951, as amended by the New York Protocol of 31 January 1967. Therefore, we regard that the Article 12 cannot be applied to persons that have been granted subsidiary protection in a member state. Also, the purpose of the Eurodac regulation is against that the Article 12 could be applied to persons granted subsidiary protection. As the Dublin regulation (343/2003/EC) is applied to persons with subsidiary protection status, applying the Article 12 to these persons ie. blocking the data in the central database, would be against the purpose of the Eurodac regulation as it is laid down in the Article 1. In our opinion the Qualification directive does affect the application of the Eurodac regulation, as the Eurodac regulation itself has not yet been revised. 2. See answer 1.
	Germany	Yes	Art. 12 of the EURODAC Regulation, just like the EURODAC Regulation as a whole, clearly refer only to asylum seekers and refugees within the meaning of the Geneva Convention. The later adoption of Council Directive 2004/83/EC of 29 April 2004, which introduced the concept of international protection, cannot result in changes to the scope of the EURODAC Regulation. There is therefore no deviating national administrative practice in Germany with regard to persons who have a right to subsidiary protection. However, the proposal for an amendment to the EURODAC Regulation, which is currently being negotiated in Brussels, will extend the Regulation's scope to international protection.
	Hungary	Yes	1. According to our practice, Hungary does not apply Article 12 of the EURODAC Regulation to persons recognized as beneficiaries of subsidiary protection

¹ If possible at time of making the request, the Requesting EMN NCP should add their response(s) to the query. Otherwise, this should be done at the time of making the compilation.

² A default "Yes" is given for your response to be circulated further (e.g. to other EMN NCPs and their national network members). A "No" should be added here if you do not wish your response to be disseminated beyond other EMN NCPs. In case of "No" and wider dissemination beyond other EMN NCPs, then for the Compilation for Wider Dissemination the response should be removed and the following statement should be added in the relevant response box: "This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further."

			2. Not applicable.
	Italy	Yes	Within the framework of the national network, the following information has been gathered: Italy interprets Article 12 of the EURODAC Regulation in accordance with its literal meaning. Therefore, data referring to holders of subsidiary protection status are NOT blocked in the central database, as on the contrary occurs to data belonging to refugee status holders.
	Latvia	Yes	1. The Republic of Latvia blocks an access to data relating to an applicant for asylum in case if that person is recognized as a refugee or gained the subsidiary protection status. 2. From 10th October 2006.
	Lithuania	Yes	1. No. 2. N/A.
	Luxembourg	Yes	1. Luxembourg does not block the data of a person who receives subsidiary protection. In fact, Luxembourg only blocks the data of persons who were granted the refugee status. 2. Not applicable.
	Netherlands	Yes	It is true that in the Netherlands only the asylum applicants who are recognized with a refugee status are blocked in the central data base under article 12 of the Eurodac regulation. Please note that in the negotiations concerning the new Dublin regulation and the new Eurodac negotiation the different approach to beneficiaries of a refugee status and subsidiary protection status will be eliminated. In the future therefore both categories shall be blocked in the central data base. But this is for the future being, not reality at the moment.
	Romania	Yes	1. The fingerprints in Eurodac are blocked only for the beneficiaries of the refugee status. The explanation is that the Eurodac regulation was adopted before the qualification directive which introduced the form of protection named subsidiary protection. Thus, the aspects referring to the subsidiary protection from the Eurodac regulation perspective will be taken into consideration when the regulation will be modified. 2. See above.
	Slovak Republic	Yes	Blocking of data pursuant to Article 12 of the EURODAC Regulation is not applied to asylum applicants who were granted subsidiary protection. The system keeps the records of these persons.
	Sweden	Yes	No. Only asylum seekers given refugee status are blocked in EURODAC
	United Kingdom	Yes	1. The UK interprets Article 12 of the current EURODAC Regulation as requiring only the data of a person recognised as a refugee in accordance with the Refugee Convention to be blocked. We believe this to be consistent with the historic interpretation of the Dublin Regulation such that its procedures do not apply to those recognised as refugees, whereas Dublin does apply to those granted other forms of residence document. For example if a person claims asylum in one Member State (Member State A), but is allowed to remain there on an alternative basis short of being recognised as a refugee, then it is important in the Dublin context that the asylum seeker data remains visible in EURODAC, as despite having an alternative residence document (e.g. a subsidiary protection permit) the subject might move to

			another Member State (Member State B) to make another claim for asylum. Being able to receive notification of the “hit” against the earlier asylum claim allows Member State B to initiate a Dublin procedure to request Member State A to acknowledge responsibility for examining the claim lodged with B.
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		Wider Dissemination? ³	<i>[Ad-Hoc Query 2 or all Queries together in one Table – Requesting EMN NCP to decide most appropriate Format]</i>
	United Kingdom	Yes	2. Not applicable.

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