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**COMMISSION STAFF WORKING PAPER**

**Second annual report to the Council and the European Parliament  
on the activities of the EURODAC Central Unit**

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## 1. INTRODUCTION

### 1.1. Scope of this report

Council Regulation EC/2725/2000<sup>1</sup> of 11 December 2000 concerning the establishment of 'EURODAC' for the comparison of fingerprints for the effective application of the Dublin Convention stipulates that the Commission shall submit to the European Parliament and the Council an annual report on the activities of the Central Unit<sup>2</sup>. The present annual report, which is the second such report, includes information on the management and the performance of the system from date to date. It assesses the outputs and the cost-effectiveness of EURODAC as well as the quality of its Central Unit's service.

Three years after its launch, the Commission will, in accordance with Article 24(5) of the same Regulation produce an overall evaluation of EURODAC, "examining results achieved against objectives and assessing the continuing validity of the underlying rationale and any implications for future operations". This exercise will go parallel with an evaluation of the application of Council Regulation EC/343/2003 of 18 February 2003 (Dublin Regulation)<sup>3</sup>.

### 1.2. Legal Background

Some new developments complement the legal background as presented in the first annual report on the activities of the EURODAC Central Unit<sup>4</sup>.

The Dublin Regulation and the EURODAC Regulation do not apply to Denmark, in accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community. However, the agreement with Norway and Iceland concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Iceland or Norway<sup>5</sup>, foresees in its Article 12 the possibility for Denmark to request to participate in the agreement. On this basis and following a request from Denmark, the Commission negotiated on behalf of the Community an agreement with Denmark extending to it the application of the Dublin and EURODAC Regulations and their implementing rules. This agreement was signed by the European Community and Denmark on 10 March 2005. In parallel, the Commission also negotiated with Iceland and Norway a protocol extending to Denmark the application of the agreement with Norway and Iceland. Proposals for Council decisions on respectively the signature and the conclusion of this protocol are on the Council table. Awaiting the conclusion of both these agreements, the Dublin Convention continues to remain applicable to Denmark. Switzerland also requested to take part to the Dublin and EURODAC Regulations. On 26 October 2004, an agreement between the European Community and the Swiss

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<sup>1</sup> OJ L 316, 15.12.2000, p.1.

<sup>2</sup> Article 24(1) Eurodac Regulation

<sup>3</sup> OJ L 50, 25.2.2003, p.1

<sup>4</sup> See Commission Staff Working Paper First annual report to the council and the European Parliament on the activities of the EURODAC Central Unit, SEC(2004)557, p.4.

<sup>5</sup> O.J. L93/40 of 3.4.2001

Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland was signed. By reason of this, certain provisions of the agreement are now provisionally applied. However, it is to be noted that by the terms of the agreement, neither the Dublin Regulation nor the EURODAC regulation will be applicable to Switzerland until the application of the Schengen acquis by Switzerland has been positively evaluated.

### **1.3. Enlargement of the European Union**

The enlargement of the EU to 10 new Member States has had a significant impact on the application of the EURODAC Regulation. This regulation was immediately applicable to those states. Commission services actively supported the technical preparation of Member States to link up to the EURODAC central unit through technical seminars and coordination meetings. Most new Member States notified the Commission that they were technically ready to start on 1st May 2004, while two of them had to delay the application for purely technical reasons until July 2004. The accession to the system implied prior operational testing, which for each state involved a series of 69 tests. All new Member States have notified the Commission of the Authorities responsible for fulfilling the obligations under the EURODAC Regulation, as required.

## **2. THE EURODAC CENTRAL UNIT**

### **2.1. General Description**

A general description of the EURODAC Central Unit as well as the definitions of the different types of transactions processed by the Central Unit and of the hits they can create can be found in the first annual report on the activities of the EURODAC Central Unit<sup>6</sup>.

### **2.2. Management of the system**

#### *2.2.1. Direct management by the Commission in consultation with the Member States.*

The management of the EURODAC Central Unit by the Commission continued in 2004, with no major changes<sup>7</sup>.

#### *2.2.2. Control by the European Data Protection Supervisor (EDPS)*

In accordance with Article 20(11) of the EURODAC Regulation, the Joint Supervisory Authority was replaced, on 17 January 2004, by the independent supervisory body referred to in Article 286(2) of the EC Treaty, i.e. the European Data Protection Supervisor (EDPS). The EDPS is the competent authority as regards

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<sup>6</sup> See Commission Staff Working Paper First annual report to the council and the European Parliament on the activities of the EURODAC Central Unit, SEC(2004)557, p.6.

<sup>7</sup> For more information, see Commission Staff Working Paper First annual report to the council and the European Parliament on the activities of the EURODAC Central Unit, SEC(2004)557, p.8.

the monitoring of the activities of Central unit to ensure that the rights of data subjects are not violated by the processing or use of the data held by the Central Unit.

Although meetings and informal contacts were held between the European Data Protection Supervisor and Commission services, there were no specific requests for information or advice, nor were any implementation problems raised by the EDPS in accordance with Article 20 of the Regulation and Regulation EC/45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data<sup>8</sup>.

### **3. FIGURES AND FINDINGS**

#### **3.1. Introductory remarks**

The first annual report, issued in May 2004, produced and analysed figures for the period 15.1.2003 – 15.1.2004, representing exactly one year of activities.

For the sake of clarity, the present and future annual reports on the activities of the Central Unit of EURODAC will produce “calendar annual” figures, running from 1 January to 31 December.

The present annual report will therefore compare similar periods: 1.1.2003 – 31.12.2003 and 1.1.2004 – 31.12.2004.

The annexes contain tables with factual data produced by the Central Unit for the period 1.1.2004 – 31.12.2004. The EURODAC statistics are based on records of fingerprints from all individuals aged 14 years or over who have made applications for asylum in the Member States, who were apprehended when crossing their borders irregularly or who were found illegally present on their territory, if they judge it necessary to check a potential prior asylum application.

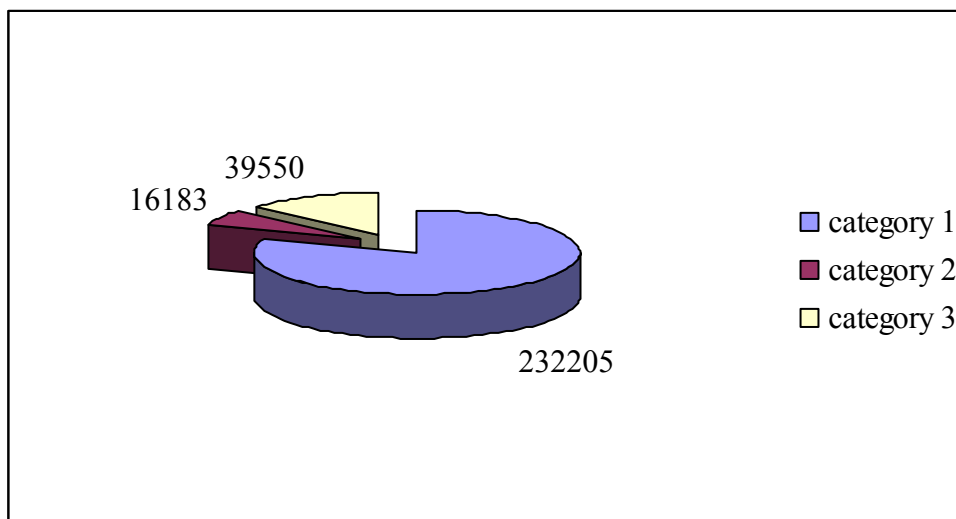
It should be noted that EURODAC data on asylum applications are not comparable with those produced by Eurostat, which are based on monthly statistical data returns from the Ministries of Justice and of the Interior. There are a number of methodological reasons for the differences. The Eurostat definitions include all asylum applicants (of whatever age), with a distinction between first and repeat applications. In practice, Member States differ in terms of whether the dependants of asylum applicants are included in their asylum data. There are also differences in how repeat applications are accounted for in the statistics. Commission services are working on methodological solutions to make the data more comparable, and will aim to address and solve these anomalies in the forthcoming legislative proposal for a regulation of the European Parliament and the council on Community statistics on international migration and asylum and the subsequent implementing measures.

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<sup>8</sup> OJ L 008, 12.1.2001, p.1

### 3.2. Successful transactions

A “successful transaction” is a transaction which has been correctly processed by the Central Unit, without rejection due to a data validation issue, fingerprint errors or insufficient quality.



In 2004, the Central Unit received a total of 287.938 successful transactions: 232.205 of asylum seekers (category 1), 16.183 of illegal border-crossers (category 2) and 39.550 of persons apprehended when illegally residing on the territory of a Member State (category 3).

Between 1 January and 31 December 2004 the average response time of processed requests was: 98,50% within 4 minutes, 99,94% within 60 minutes and 99,98% within 24 hours<sup>9</sup>.

The total annual figure of “category 2” transactions (third country nationals illegally crossing a Member State’s border and who cannot be turned back) for all Member States, has more than doubled in 2004 (from 7.312 in 2003 to 16.183 in 2004). The monthly transactions for this category have always been higher than in 2003 (over 1.100) except for an exceptionally low number in May 2004 (765), the month of Accession. No “category 2” transactions were sent by seven member States

The Commission services cannot make any definitive assessment of the actual situation of illegal border crossing, given that there are no statistical data against which to accurately compare the figures. However, the concerns for high illegal migratory pressure, in particular at the southern and eastern EU borders, and the broad interpretation of the cases covered by article 8 that the Council made in the

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<sup>9</sup> The remaining 0,02% were sent out after 24 hours. This represents 16 cases over the year. These cases were queued because of empty images inside the NIST file which prevents the CU from processing the cases. These cases were finally dropped by the CU and the Member States were requested to resend the prints. As long as this occurs during normal working hours, an action can be promptly taken by the Help Desk to resolve the issue. Unfortunately when this occurs during a week-end the delay in response is increased drastically due to not being able to check the CU queue status. A solution has, therefore, been implemented to monitor transactions that are queued for longer than 20 minutes, and to give an appropriate warning.

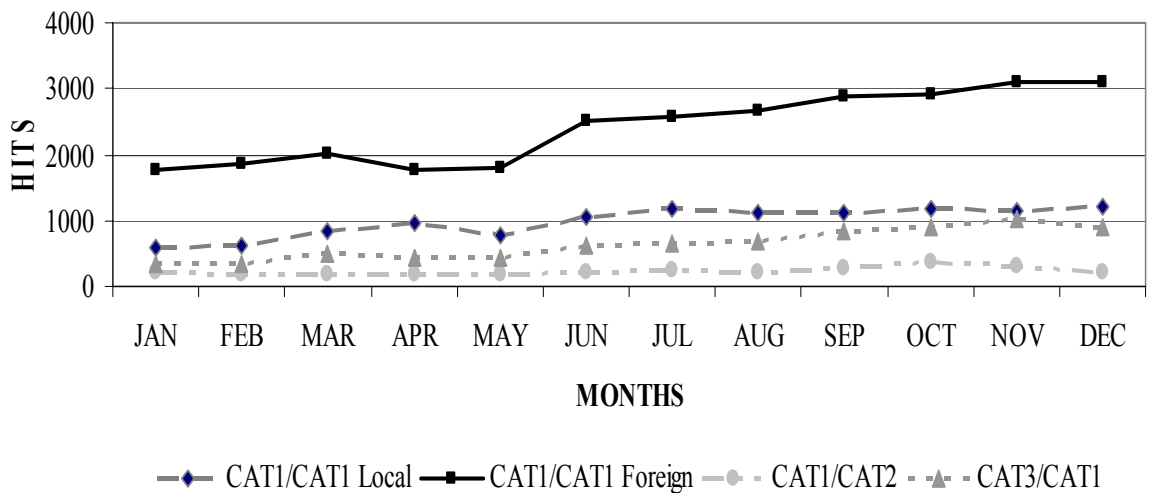
form of a statement entered in its minutes<sup>10</sup>, indicates that a large number of cases of illegal border crossing may be missing from the EURODAC Central Unit.

The facility of “category 3” transactions (optional searches for third country nationals apprehended when illegally staying on the territory) has been far more used in 2004 (39.550) than in 2003 (16.053), particularly in the second half of the year. One reason is the accession of 10 new Member States and another is the increasing interest in this facility among some Member States. However, five Member States never used that type of category 3 transaction in 2004.

Annex 1 details the successful transactions per Member State, with a breakdown by category and by month, between 1 January 2004 and 31 December 2004.

### 3.3. “Hits”

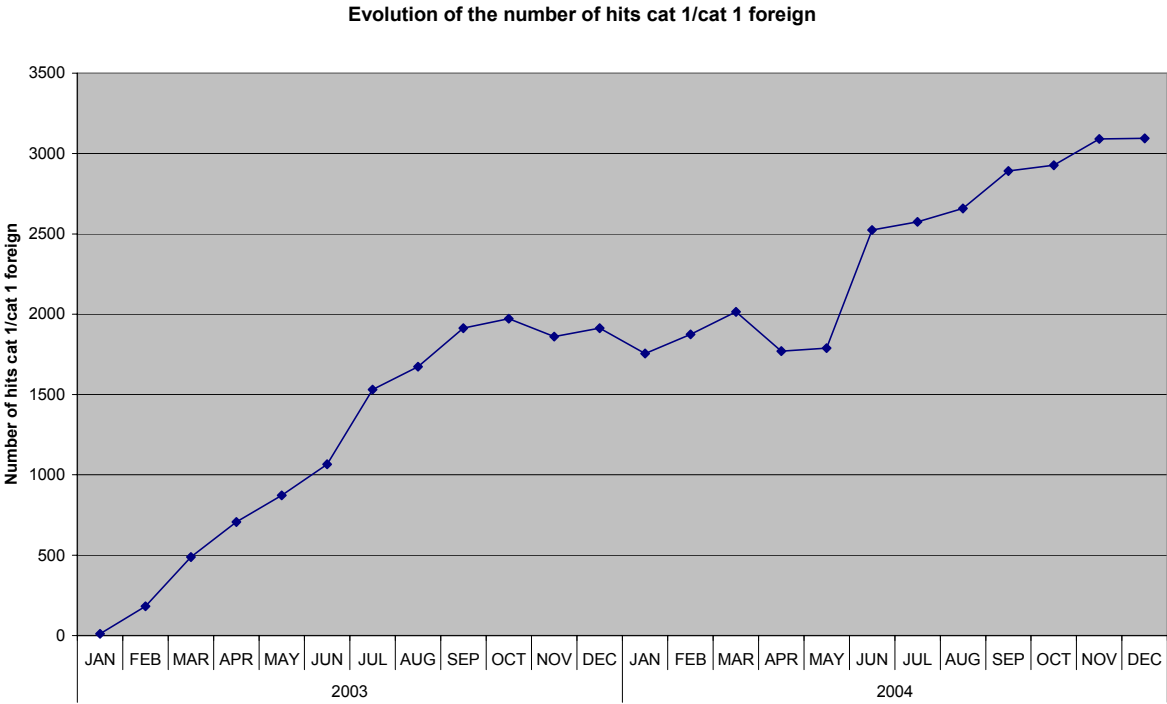
#### 3.3.1. General trends of the hits



Since the Central Unit started in 2003 with an empty database, the logical trend is still an increasing number of hits, especially of category 1 against category 1 data. The most significant increase has taken place – also logically – in June 2004, one month after Accession.

<sup>10</sup> Council document No 14497/00 "The Council declares that the obligation to take fingerprints of aliens apprehended "in connection with the irregular crossing of an external border" is not limited to the situation where an alien is apprehended at or close to the external border itself. This provision also covers cases where an alien is apprehended beyond the external border, where he/she is still en route and there is no doubt that he/she crossed the external border irregularly. This could be the case, for example, where, subsequently to the crossing of the external border, an alien on board a (high speed) train is detected during on board checks, or where an alien transported in a sealed commercial vehicle is apprehended at the moment of disembarkation from the vehicle."

3.3.2. "Category 1 against category 1" hits





Introductory remarks: The statistics concerning local hits shown in the table in annex II may not necessarily correspond to the hit replies transmitted by the Central Unit and recorded by the Member States. The reason for this is that Member States do not always use the option, provided by Art. 4(4), which requests the Central Unit to search against their own data already stored in the Central Unit database. However, even when Member States do not make use of this option, the Central Unit must, for technical reasons, always perform a comparison against all data (national and foreign) stored in the Central Unit. In these concrete cases, even if there is a match against national data, the Central Unit will simply reply “no hit” because the Member State did not ask for the comparison of the data submitted against its own data.

The above graph shows very clearly the increasing trend of foreign hits between data of asylum applicants and stored data of asylum applicants. Since the EURODAC database started empty and due to the Accession of 10 states in May, this trend is still within expectations. It should be hoped, however, that this trend will eventually level out or even decrease, which will confirm the efficiency of the Dublin system.

The table in annex 2.1 shows the distribution of hits among Member States. It also gives an indication of the secondary movements of asylum seekers in the EU. Some routes are much more clear-cut than others, e.g. between Austria and Slovakia in both directions, or between the Scandinavian states. Compared to last year, it is interesting to note that some hit-patterns have reversed direction, e.g. Sweden – Italy.

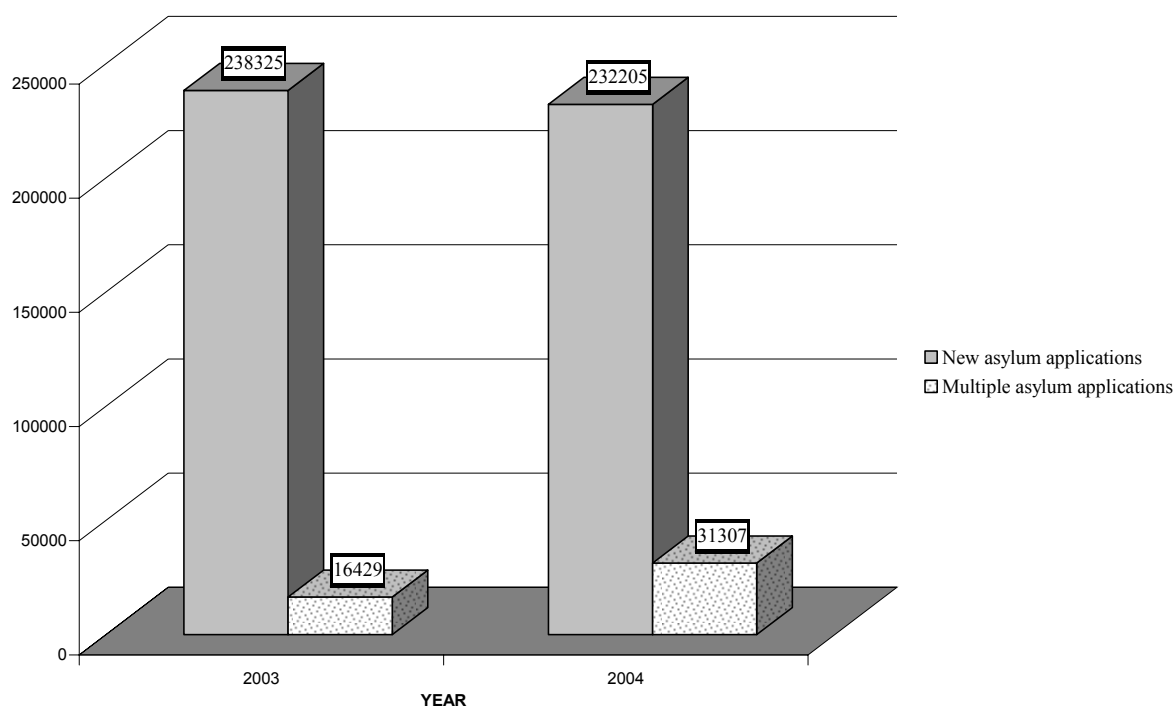
### 3.3.3. *“Category 1 against category 2” hits*

The table in annex 2.2 gives an indication of routes taken by persons who illegally enter the European territory, before applying for asylum. Most hits appear against data sent by Greece, Italy and Spain. In Greece and Spain, about one third of the persons who entered illegally subsequently asked for asylum. In Italy, this profile appears in 72,5% of the cases. A large section of those who entered the European territory via Spain and Greece, are headed for mainly UK and France.

### 3.3.4. *“Category 3 against category 1” hits*

The table in annex 2.3 gives a first indication as to where illegal migrants first applied for asylum before travelling to another Member State. For instance, persons apprehended when illegally residing in Germany, often had previously claimed asylum in Austria or Sweden. It has to be borne in mind, however, that not all Member States use this check possibility. It is interesting to note that very often, persons who first applied for asylum in a Member State, do not move to another Member State.

### 3.3.5. Multiple asylum applications

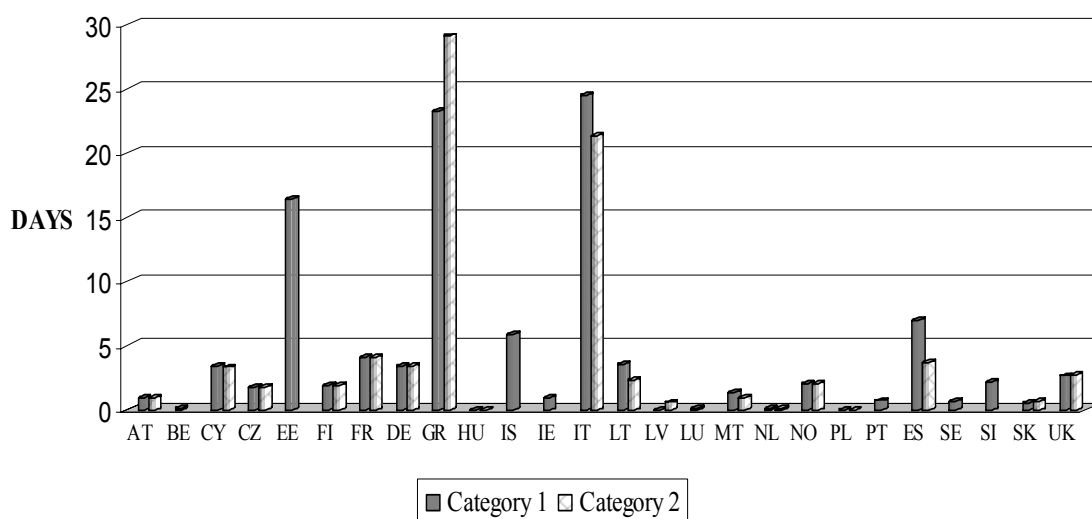


From a total of 232.205 asylum applications, recorded by EURODAC in 2004, 31.307 cases show that the same person has already made at least one asylum application before (in the same or in another Member State). In other words, in 13,48% of cases, national asylum authorities are confronted by a multiple application.

The table in annex 3 also gives an indication on the “asylum shopping” phenomenon.

The EURODAC Central Unit has registered a high number of multiple hits (i.e. two or more hits). For instance, 6.052 cases of third application were registered. In 3 cases, a person applied 8 times for asylum since EURODAC started storing data.

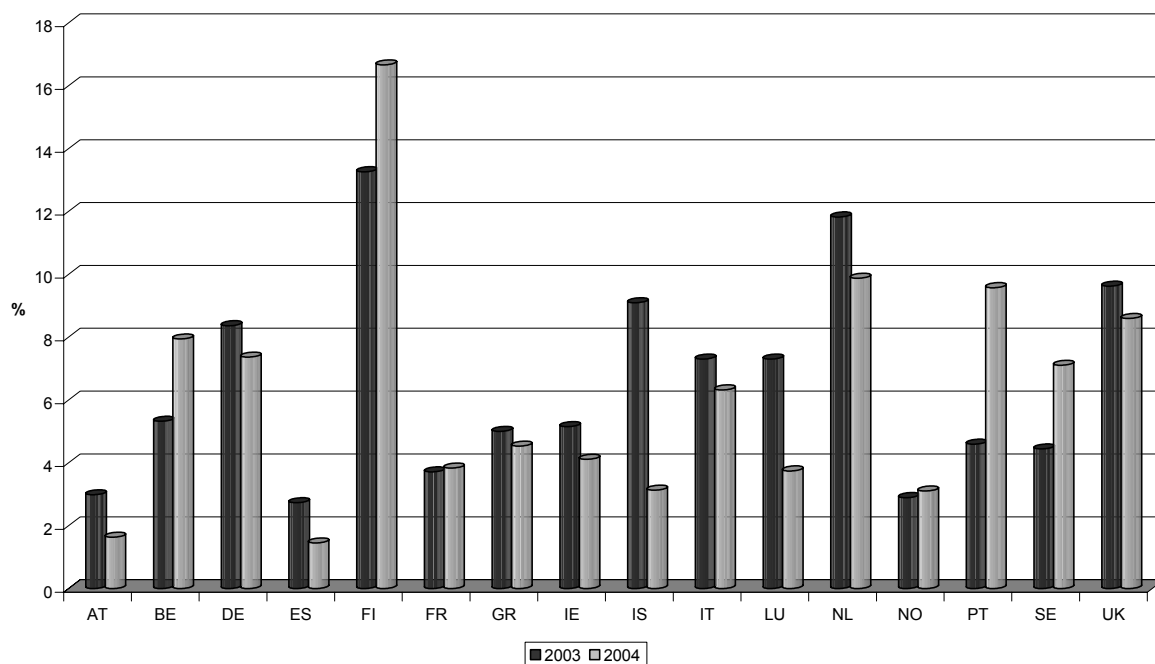
### 3.4. Average time in days between the date of the prints and the date of sending



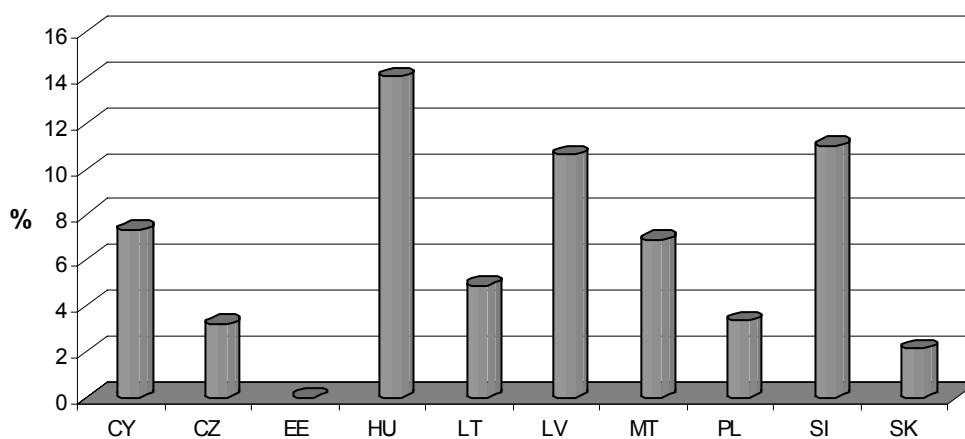
Some Member States are much faster (less than 1 day) than others (over 29 days) in sending fingerprints to the Central Unit. Member States which were slow in sending data in 2003 were even slower in 2004. The Commission services must remind Member States of the consequences of a delay in the transmission for the proper application of EURODAC and the Dublin II Regulation. For example: while the fingerprints of an alien who illegally crossed a border (category 2) are still on their way to the central Unit, the same person could already present himself in another Member State and ask for asylum (category 1). If this second Member State sends the fingerprints faster than the first Member State, the Central Unit would register a category 1, and the second Member State would handle the application instead of the first one. Indeed, when category 2 arrives later on, a hit will be missed because category 2 is not searchable. Exaggerated delays in transmission are a reason for concern to the Commission services, as this may lead to results contrary to the underlying principles of the Regulation. Therefore, the Commission services urge the Member States to make all necessary efforts to send in their data promptly, in accordance with Articles 4 and 8.

### 3.5. Rejected transactions

Percentage of rejected transactions 2003 and 2004



Percentage of rejected transactions by the new Member States in 2004



The average rate in 2004 of rejected transactions for all Member States (EU 25) is 5, 82%. Some experience a much higher (over 16%) rejection rate than others (less than 2%). The rejection rate does not depend on technology or system weaknesses. The causes of this rejection rate are mainly due to the low quality of the fingerprints images submitted by the Member States, to human error or wrong configuration of the Member State's equipment. The situation has improved in most of the EU 15 Member States, thanks to the implementation of more efficient ways of gathering data. Six EU 15 Member States, however, had a higher rejection rate than last year. Specific training of national EURODAC operators as well as a correct configuration of the Member States' equipment would still help to reduce this rejection rate.

## **4. EVALUATION OF THE CENTRAL UNIT**

### **4.1. Cost-effectiveness**

The Community budget allocated for EURODAC was 8,5 million € in 2000, 1,075 million in 2001, 1,1 million in 2002, 1 million in 2003 and 2 million in 2004, a total of 13,67 million €. Since the EURODAC Central Unit runs extremely stably, some of the allocated budget did not have to be spent. After two years of operations, Community expenditure on all externalised activities specific to EURODAC totals 7,5 millions €. The expenditure for maintaining and operating the Central Unit in 2004, totals 257.163 €.

Also, savings could be made by the efficient use of existing resources and infrastructures managed by the Commission such as the use of the TESTA network.

With regard to the national budgets, the EURODAC Central Unit enables the Member States to use the Central Unit for comparing the data submitted with their own data already stored in EURODAC in order to find out whether the applicant has already applied for asylum before in their own country. This represents important savings for the national budgets as Member States do not have to procure a national system (AFIS) for that purpose. The Community also provided via the IDA Programme the communication and security services for exchange of data between the Central and National Units. These costs initially to be borne by each Member State, in accordance with Article 21 (2) and (3) of the Regulation, were finally covered by the Community making use of common available infrastructures and generating savings for national budgets.

### **4.2. Quality of service**

The Commission services have taken the utmost care to deliver a high quality service to the Member States which are the final end-users of the EURODAC Central Unit. These services do not only include those provided directly by the Central Unit (e.g. matching capacity, storage of data, etc), but cover also communication and security services for the transmission of data between the Central Unit and the national access point.

Regarding the Central Unit, the Commission has set out very stringent availability requirements in the public procurement of the system (cf. point 2.1) and very short deadlines (maximum of 2 to 4 hours) have been foreseen for intervention of the contractor in case of an incident. Since the development and running of the system is also the result of the combined efforts of several services in the Commission, the appropriate services level agreements were signed between these services ensuring the availability of EURODAC. There was no unscheduled down-time for 2004. However, the Central Unit was unreachable for about 7 hours due to a technical problem linked to a network device. Following appropriate arrangements, this type of issue will be avoided in the future. Moreover, the Central Unit had 32 hours of scheduled unavailability due to its move to new premises and an exceptional electrical maintenance in the new premises building during the reporting period. Consequently, the system was available 99.9% of the time.

Regarding the communication and security services for the transmission of data between the Member States and the Central Unit, the EURODAC implementing rules have foreseen the use of the IDA generic services. TESTA provides networking and cryptographic services for EURODAC with very high service level agreements that guarantee a minimum availability of 99.7% monthly and 99.9% yearly and with maximum delays for service restoration from 2 to 6 hours depending on the situation. The support covers 24 hours for 7 days a week.

No Member State has notified to the Commission the existence of a false hit, i.e. a wrong identification performed by the AFIS, in accordance with Article 4 (6) of the Regulation.

#### **4.3. Data Protection issues**

In 2004, the Central Unit registered a surprisingly high number of “special searches” as defined in the technical documentation provided by the Commission to the Member States for the setting-up of their NAP’s. The number of “special searches” ranges from 1 to 611 across all Member States. This category of transactions is intended for the implementation of Article 18 (2 and following) of the Regulation, i.e. for data protection purposes in order to safeguard the rights of the data subject to access his/her own data. The important increase compared to last year was mainly due to two Member States while a few other Member States continued to apply this provision frequently.

As in 2003, some Member States continued to use almost always the same or a very short range of user identifiers for performing the electronic transactions with the Central Unit. Existing data protection rules require that each Member State can identify the persons or bodies responsible for the processing (controllers) of the personal data exchanged within EURODAC. In the same context, Member States must keep an up-to-date list with the designated authorities that have access to data from EURODAC and communicate it to the Commission in accordance with Article 15(2) of the Regulation.

### **5. CONCLUSIONS**

The Dublin Regulation and the application of the EURODAC system constitute one of the fundamental building blocks in the construction of a Common European Asylum System, which, thanks to the political agreement of April 2004 on the Procedures Directive, is about to enter its second phase. With a view to achieving the ambitious objective to create a common asylum system by 2010, as set in the Hague Programme, it is now important to further consolidate and improve fairness and efficiency of the system.

After two years of operation, the EURODAC Central Unit has proven its efficiency and quality in terms of speed, output, security and cost-effectiveness. Statistical data support this assessment. The EURODAC system, as a part of the overall “Dublin system”, aiming at determining which Member State is responsible for examining an asylum application, is functioning well as regards the number of requests to take back or to take charge of an asylum seeker submitted by Member States to other Member States which is based on a EURODAC hit. A pilot project managed by the

Commission services aiming at collecting data related to the application of the Dublin Regulation shows, on an indicative basis, that these requests constitute around 67% of the total requests to take back or to take charge of an asylum seeker<sup>11</sup>.

An overall evaluation of the Dublin system, including the application of EURODAC, in the context of the first stage of the Common European Asylum System, should assess the real impact of the system on migration flows and the European asylum policy. EURODAC has established itself as an essential tool for a faster and more efficient application of the Dublin Regulation as well as a good indicator of the phenomenon of “asylum shopping” in Member States. While the number of multiple applications appears to be on the rise, the impact of EURODAC should ensure an eventual decline in these figures.

The main concerns remain the excessive delay in some Member States in transmission of fingerprints to the Central Unit and the high a rate of rejection due to insufficient quality for certain Member States. Commission services call upon Member States to continue their efforts of speeding their internal procedures and improve the quality of their transmissions.

Questions arise on analysis of the types of transactions sent by Member States. The “category 2” transactions (illegal border-crossers) are still low as a fraction of the total migratory flow. It should be stressed that the registration of these persons is compulsory under Community law.

Commission services have noted how frequently Article 18 (“special searches” for data protection purposes) has been used in some Member States. While a number of these requests could be attributed to raise awareness of data protection principles in the early days of EURODAC, it should be remembered that the use of Article 18 is legally limited to requests for access to personal data made by individuals. Commission services will continue to monitor the application of the EURODAC regulation in this respect.

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<sup>11</sup> The total of requests based on a EURODAC hit, submitted by 12 Member States in the period July-December 2004, was 6152 (on a total of 9155)

## Annexes

### Annex 1: Successful transactions per Member State and per month

The tables in annex 1 show the number of transactions which have been sent by each Member State to the EURODAC Central Unit and successfully processed by the Central Unit.

#### Successful transaction:

A “successful transaction” is a transaction which has been correctly processed by the Central Unit, without rejection due to a data validation issue, fingerprint errors or insufficient quality.

#### Types of categories:

- Category 1: data of **asylum applications**. Fingerprints (full 10 print images) of asylum applicants sent for comparison against fingerprints of other asylum applicants who have previously lodged their application in another Member State. The same data will also be compared against the “category 2” data (see below). This data will be kept for 10 years with the exception of some specific cases foreseen in the Regulation (for instance an individual who obtains the nationality of one of the Member States) in which cases the data of the person concerned will be erased;
- Category 2: data of **aliens apprehended in connection with the irregular crossing of an external border and who were not turned back**. This data (full 10 print images) are sent for storage only, in order to be compared against data of asylum applicants submitted subsequently to the Central Unit. This data will be kept for two years with the exception that cases are deleted promptly when the individual receives a residence permit, leaves the territory of the Member State or obtains the nationality of one of them;
- Category 3: data relating to **aliens found illegally present in a Member State**. These data, which are not stored, are searched against the data of asylum applicants stored in the central database. The transmission of this category of data is optional for the Member States.

### Annex 2: Distribution of hits

#### Annex 2.1. Category 1 against Category 1

A “category 1 against category 1” hit means that the fingerprints of an asylum seeker have been recognised by the Central Unit as a match against the stored fingerprints of an existing asylum applicant. This hit is ‘local’ when the asylum seeker has already applied for asylum in the same Member State and ‘foreign’ when he/she has already applied for asylum in another Member State.



### Annex 2.2. Category 1 against Category 2

A “category 1 against category 2” hit means that the fingerprints of an asylum seeker match the stored fingerprints of an alien who has illegally crossed the border and who could not be turned back.

### Annex 2.3. Category 3 against Category 1

A “category 3 against category 1” hit means that the fingerprints of an alien found illegally present within a Member State are being recognised by the Central Unit as a match against the stored fingerprints of an asylum seeker.

### **Annex 3: Multiple asylum applications**

Multiple asylum applications: applications which indicate that the applicant has already made at least one asylum application before (in the same country or in other Member State).