

## INFORMATION ON THE PROCESSING OF PERSONAL DATA IN THE CONTEXT OF THE LODGING OF AN APPLICATION FOR INTERNATIONAL PROTECTION WITH THE IMMIGRATION OFFICE <sup>1</sup>

**PLEASE NOTE:** this information does not concern the processing of your personal data in the waiting register and in the national register of natural persons.<sup>2</sup>

For more information on this topic : <https://dofi.ibz.be/nl/themes/about-us/processing-personal-data/rijksregister>

### 1. DEFINITIONS:

#### 1.1. WHAT IS PERSONAL DATA :

It is any information relating to a natural person that can be identified, directly or indirectly. It includes, for example: a name, a photograph, a fingerprint, a postal address, an e-mail address, a telephone number, an identification number, an IP address, login details, a voting record, etc. It is immaterial whether this information is public or confidential.

For a piece of data to cease to be considered personal data, it must be anonymised in such a way that the person concerned cannot be identified. This might include, for example, a shielded name, a blurred face, etc.

PLEASE NOTE: if, by comparing several pieces of information (age, gender, city, degree, etc.) or by using various technical means, it is possible to identify a person, the data are still considered personal data.

#### 1.2. WHAT IS A PROCESSING OF PERSONAL DATA:

It involves any operation involving personal data, regardless of the method used, for example: recording, organising, storing, modifying, linking personal data with other data, forwarding, etc.

It is not just about files, databases, Excel tables. It can also be a video surveillance system, a biometric recognition system, a smartphone application, etc.

A processing of personal data may or may not be computerised. A paper file organised on the basis of a filing plan, paper forms by name, files filed alphabetically or chronologically are also processing of personal data.

---

<sup>1</sup> This information is provided to you pursuant to Article 13 of the Regulation (EU) No 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation) and Article 29 of the Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 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 and concerning requests by Member States' law enforcement authorities and Europol for comparisons of EURODAC data for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (recast).

<sup>2</sup> Law of 8 August 1983 regulating a State register of natural persons. Act of 19 July 1991 on population registers, identity cards, foreigners' cards and residence documents. Royal Decree of 3 April 1984 on the exercise of the right of access and rectification by persons recorded in the National Register of Natural Persons. Royal Decree of 1 February 1995 establishing the information data listed in the waiting register and designating the authorities authorised to enter these data in the waiting register.

## **2. CONTROLLER:**

The controller of the personal data collected in the context of the lodging of your request for international protection is the minister responsible for the entry, residence, establishment and removal of foreigners, represented by the Director General of the Directorate General Immigration Office.

For any contact with the controller, one can contact the data protection officer (" DPO ") whose contact details are listed in section 8 below.

## **3. LAWFULNESS OF PROCESSING YOUR PERSONAL DATA:**

The personal data collected in the context of lodging your request for international protection are necessary for the fulfilment of a mission of general interest or a mission in the exercise of public authority entrusted to the Immigration Department, namely: the application of international, European and Belgian migration legislation. These are the main texts of this legislation:

- International Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951;
- Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation);
- Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 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 and concerning requests by Member States' law enforcement authorities and Europol for comparisons of EURODAC data for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice;
- Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 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 (recast);
- Act of 15 December 1980 on the entry into the territory, residence, establishment and removal of foreigners;
- royal decree of 8 October 1981 on access to the territory, residence, establishment and removal of foreigners;
- Royal Decree of 11 July 2003 establishing certain elements of the procedure to be followed by the Immigration Office department responsible for examining asylum applications on the basis of the Act of 15 December 1980 on access to the territory, residence, establishment and removal of foreigners.

## **4. PURPOSES OF PROCESSING YOUR PERSONAL DATA:**

Your personal data collected in the context of lodging your request for international protection will be processed for the following purposes:

- identify you;
- control your entry into the Schengen area and the territory of the Kingdom of Belgium;

- ensure the processing of your application for international protection, including the determination of the State responsible for examining your application for international protection and your possible transfer to that State. In this regard, see also the box below;
- monitor your stay in the territory of the Kingdom of Belgium, including your possible detention and removal from the territory of the Kingdom;
- ensure the defence of the Kingdom of Belgium before the courts before which you can lodge an appeal against the decisions taken against you by the Immigration Office;
- detect, identify and follow up the criminal and administrative offences stipulated in the legislation on the entry, residence, establishment and removal of foreigners, and in the legislation on the employment of foreign workers.

**DETERMINATION OF THE STATE RESPONSIBLE FOR EXAMINING THE APPLICATION FOR INTERNATIONAL PROTECTION AND THE "EURODAC" SYSTEM;**

With regard to the purpose of determining the State responsible for examining your application for international protection, the European Union has implemented a fingerprint comparison system called "Eurodac".

In the context of your application for international protection, the Immigration Office takes your fingerprints. The fingerprints are forwarded to the "Eurodac" system so that they are automatically compared with fingerprints forwarded by other member states and kept in the system.

In addition to your fingerprints, the following data are also recorded in the "Eurodac" system: the Member State of origin, the place and date of your application for international protection, your sex, the reference number assigned to you by the Member State of origin, the date on which your fingerprints were transmitted to the Central System, the operator identification code, the date of your arrival after a successful transfer, the date on which you left the territory of the Member States or the date on which you were expelled from it, the date on which the decision to examine your application was taken.

**5. RECIPIENTS OF YOUR PERSONAL DATA:**

Without prejudice to other further processing carried out in accordance with Article 6(4) of the GDPR, personal data collected and processed by the Immigration Office in the context of the lodging of your application for international protection may be communicated to the following categories of recipients:

- the office of the Commissioner-General for Refugees and Stateless Persons ("CGRS"), to ensure the processing of your application for international protection if Belgium is the Member State responsible for processing your application and to monitor your stay on the territory of the Kingdom;
- the Federal Agency for the Reception of Asylum Seekers ("Fedasil"), to provide you with reception throughout the procedure of your request for international protection (right to material assistance), to ensure your resettlement in a third country or to accompany you in the context of voluntary return;
- the United Nations High Commissioner for Refugees so that, with your consent, he may consult the documents in the file of your request for international protection, in order to provide, where appropriate, his opinion regarding your request;
- the Belgian municipalities, to identify you and to issue to you the residence documents/residence permits to which you are entitled;
- the lawyers appointed by the Immigration Office to ensure the defence of the Belgian State before the courts to which you may appeal against the decisions taken against you by the Immigration Office;
- the administrative courts (including the Council for Alien Law Litigation and the Council of State) and the judicial courts, to ensure the defence of the Belgian State in the context of the

appeals that you may file against the decisions taken against you by the Immigration Office or in the context of the appeals that the Immigration Office may file against you;

- the Guardianship Service under the Federal Public Service for Justice, for the purpose of determining your age, recognising your status as an unaccompanied foreign minor and the designation of any (provisional) guardian;
- police forces, to identify you;
- federal ombudsmen, to investigate complaints relating to the operation of the Immigration Office and, at the request of the House of Representatives, to conduct any investigation related to the operation of the Immigration Office;<sup>3</sup>
- the schools, to facilitate the school excursions in another Member State of schoolchildren who are third-country nationals residing in Belgium;<sup>4</sup>
- the Federal Public Service Foreign Affairs, Foreign Trade and Development Cooperation, to verify information regarding the issuance of any visa;
- the other European Union member states, to ensure the application of the Dublin and Eurodac regulations;
- third countries, with a view to the removal of those foreigners whose application for international protection has not yielded a positive result or those who no longer have refugee status or subsidiary protection status.

In view of the strict European provisions, the following authorities have access to the data recorded in the "Eurodac" system:<sup>5</sup>

- authorities designated by Member States as responsible for the prevention or detection of terrorist offences or other serious criminal offences, or investigations on this matter;
- The European Union Agency for Law Enforcement ("Europol").

## **6. RETENTION PERIOD OF YOUR PERSONAL DATA:**

### **6.1. RETENTION PERIOD OF YOUR PERSONAL DATA BY THE IMMIGRATION DEPARTMENT :**

Regarding the retention period of your personal data: they will be kept for seventy-five years, subject to special provisions, in accordance with the instructions given by the State Archives. After this seventy-five-year period, the data will be transferred to the State Archives or, with the permission of the General State Archivist, destroyed.

---

<sup>3</sup> Act of 22 March 1995 establishing federal ombudsmen.

<sup>4</sup> Council Decision of 30 November 1994 on a Joint Action adopted by the Council on the basis of Article K.3(2)(b) of the Treaty on European Union concerning travel facilities for school pupils from third countries resident in a Member State.

<sup>5</sup> Articles 5 and 7 of Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of Regulation (EU) No. 603/2013 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 and on requests by Member States' law enforcement authorities and Europol for comparisons of EURODAC data for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (recast).

## 6.2. RETENTION PERIOD OF YOUR PERSONAL DATA IN THE "EURODAC" SYSTEM :<sup>6</sup>

Regarding the retention period of your data in the "Eurodac" system: they will be kept for a period of ten years from the date on which your fingerprints are taken. Upon expiry of this ten-year period, your data will be automatically deleted by the Central System.

However, if you acquire the nationality of a Member State or if you receive a residence document or leave the territory of the Member States, your data will be deleted from the "Eurodac" system, provided that the Member State of origin is informed.

However, if the Member State of origin grants you international protection, it will "mark" your data. The effect of this flagging is that your data recorded in the EURODAC system may be compared for law enforcement purposes for three years from the date on which international protection was granted to you. However, until your data are deleted, the comparison remains possible for the purpose of determining the Member State responsible for examining an application for international protection.

## 7. TRANSFERS OF YOUR PERSONAL DATA TO THIRD COUNTRIES AND INTERNATIONAL ORGANISATIONS:

Within the framework of its missions, the Immigration Office may need to transfer some of your personal data to countries outside the European Union and to international organisations. To the extent possible, the Immigration Office ensures that the agreements it concludes with third countries and international organisations include clauses guaranteeing an appropriate level of protection of your personal data. These agreements can be obtained from the DPO of the Immigration Office.

However, in the absence of adequacy decisions and the possibility of being able to conclude agreements guaranteeing an adequate level of protection of your personal data, the Immigration Office may, in exceptional cases, transfer some personal data to third countries and international organisations, and this because the implementation of the European migration policy and national migration policy constitutes a weighty reason of public interest, as referred to in Article 49 of the GDPR.

**ATTENTION** : IT SHOULD BE EMPHASISED, however, that the Immigration Office cannot pass on information regarding your application for international protection or the fact that you have lodged an application for international protection to the alleged actors of persecution or serious harm mentioned by you. Nor can the Immigration Office obtain information from them in a manner that would lead them to learn that you have lodged an application for international protection or that would endanger your physical integrity and that of your dependants, or the safety of your family members still residing in your country of origin.

As regards the "Eurodac" system, personal data obtained from the Central System cannot be communicated to a third country or to an international organisation or a private law entity, whether or not the latter is located in the Union. Nor can such data be made available to them. <sup>7</sup>

---

<sup>6</sup> Articles 12, 13 and 18 of Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of Regulation (EU) No. 603/2013 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 and on requests by Member States' law enforcement authorities and Europol for comparisons of EURODAC data for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (recast).

<sup>7</sup> Article 35 of Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of Regulation (EU) No. 603/2013 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 and on requests

Data communicated to Member States following a positive result will not be transferred to third countries if there is a serious risk that, because of such transfer, you may be subjected to torture or other inhuman and degrading treatment, or any other violation of your fundamental rights.

**PLEASE NOTE** : these two prohibitions apply only subject to the right to transfer them to third countries to which the "Dublin Regulation" applies.<sup>8</sup>

## **8. DATA PROTECTION OFFICER AND EXERCISE OF YOUR RIGHTS REGARDING THE PROTECTION OF YOUR PERSONAL DATA:**

The Data Protection Officer (hereinafter "DPO") is the person within the General Directorate Immigration Office whom you can contact for any question about the processing of your personal data and the exercise of the rights granted to you by the General Data Protection Regulation (hereinafter "GDPR"). These are the rights of inspection, rectification, restriction, erasure, objection and portability.

Exercising these rights is in principle free of charge. However, for applications that are clearly unfounded or excessive, the Immigration Office may charge a reasonable fee or refuse to act on your application.

### **8.1. RIGHT OF ACCESS :**

You have the right to ask the Immigration Office whether it processes personal data about you. If so, you have the right to request a copy of that data and receive information about the purposes of the processing, the categories of recipients to whom the data have been communicated, the storage period of the data, the sources of the data (when they have not been collected from you).

### **8.2. RIGHT TO RECTIFICATION:**

The Immigration Office is obliged to process accurate data and, if necessary, take measures to improve it. In doing so, you have the right to request and obtain from the Immigration Office rectification of personal data about you that is allegedly incorrect.

**ATTENTION** : in this regard, it should be stressed that the right of rectification does not allow an applicant for international protection to "correct" a posteriori the answers he has given to the questions put to him when his application for international protection was registered and submitted to the Immigration Office.<sup>9</sup>

The correct and complete nature of personal data must be assessed in view of the purpose for which it was collected. Regarding an applicant for international protection's responses, the first purpose is to assess the veracity of his/her story. The veracity of his/her story is reflected by any "errors" and inconsistencies in these replies. Consequently, such "errors" and inconsistencies are not inaccuracies that would open a right of rectification.

---

by Member States' law enforcement authorities and Europol for comparisons of EURODAC data for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (recast).

<sup>8</sup> Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 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 (recast).

<sup>9</sup> Court of Justice of the European Union, C-434/16, 20 December 2017.

### 8.3. RIGHT TO RESTRICTION OF PROCESSING :

In the following cases, you have the right to request and obtain from the Immigration Office the restriction of the processing of your personal data:

- if you dispute the accuracy of your personal data, for the period that allows the Immigration Office to check the accuracy of the data; or
- where the processing is unlawful and you oppose the erasure of your personal data and request instead that their use be restricted ; or
- when the Immigration Office no longer needs your personal data for the purposes of processing, but you still need it for the establishment, exercise or substantiation of a legal claim; or
- when you oppose the processing of your personal data, and for the period of time that allows the Immigration Office to check whether its legitimate grounds outweigh your legitimate grounds (see point 4 above).

Where processing is restricted, your personal data, with the exception of their storage, may only be processed with your consent or for the establishment, exercise or defence of legal claims, or for the protection of the rights of another natural or legal person, or for important public interest reasons for the European Union or one of its Member States.

### 8.4. RIGHT TO ERASURE (" RIGHT TO OBLIVION " ) :

As the processing of your personal data is necessary for the fulfilment of a task in the exercise of public authority vested in the Immigration Office, you do not have the right to request and obtain the erasure of your personal data unless you can prove that they are being processed unlawfully.

### 8.5. RIGHT TO OBJECT:

You have the right to object at any time to the processing of your personal data by the Immigration Office for reasons relating to your particular situation. The Immigration Office may object if there are compelling legitimate grounds for the processing which outweigh your interests, rights and freedoms or which are related to the establishment, exercise or substantiation of a legal claim.

### 8.6. RIGHT TO PORTABILITY:

As the processing of your personal data by the Immigration Office is not based on your consent or the performance of a contract, the right to portability does not apply. Consequently, you do not have the right to obtain from the Immigration Office your personal data in a structured, common and machine-readable form in order to transfer them to another controller.

The DPO's contact details are:

*Federal Public Service Home Affairs*

*General Directorate Immigration Office*

*For the attention of the data protection officer*

*Avenue Pacheco 44, 1000 Brussels, Belgium.*

*E-mail: [dpo.dvzoe@libz.fgov.be](mailto:dpo.dvzoe@libz.fgov.be)*

*Telephone: + 32 2 488 80 00*

*Form available on FPS Home Affairs website : <https://ibz.be/>*

## 9. COMPLAINT TO THE DATA PROTECTION AUTHORITY :

If you consider that the Immigration Office has not processed your personal data in accordance with the provisions of the GDPR and/or Belgian legislation on the subject, you have the possibility to lodge a complaint with the Data Protection Authority (hereinafter "DPA").

The contact details of the DPA are:

*Data protection authority*

*Press Street 35*

*1000 Brussels*

[contact\[at\]apd-qba.be](mailto:contact[at]apd-qba.be)

+32 2 274 48 00

[www.gegevensbeschermingsautoriteit.be](http://www.gegevensbeschermingsautoriteit.be)