



## **EMN Ad-Hoc Query on Mobile device information**

Requested by Rainer LUKITS on 9th May 2017

### **Miscellaneous**

Responses from Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, United Kingdom, Norway (26 in total)

#### *Disclaimer:*

*The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.*


### **Background information:**




Many asylum seekers own mobile devices . The Austrian Federal Office for Migration and Asylum is convinced that a lot of useful information for the asylum or Dublin proceedings (especially for Identity-identification purposes) could be found on the refugees' or asylum seekers' mobile device. For the moment there is no basis for that in the Austrian Foreign Police Act or Asylum Act. Only in special cases in the criminal law (eg. commercial human smuggling) analysis of mobile data is allowed and the device can be secured forcibly by police or justice department. In Asylum proceedings analysis of mobile data is only allowed if the refugee or asylum seeker hands over his mobile device voluntarily.




### **Questions**




1. Is mobile device information, especially information on mobile phones, being retrieved as part of asylum proceedings?
2. If yes, is the analysis being done only if the mobile device is handed over voluntarily or as well if the mobile device has to be secured forcibly by police?
3. If yes, which kind of data is being retrieved; only data concerning location, contacts, call lists or also picture and video recordings which may contain sensitive material in regard to data protection?





### **Responses**





	<b>Country</b>	<b>Wider Dissemination</b>	<b>Response</b>
	Austria	Yes	<p><b>1.</b> For the moment, there is no legal basis in Austria for retrieving information on mobile phones as part of the asylum proceeding. Source: Federal Ministry of the Interior.</p> <p><b>2.</b> Because question 1 was answered with no, question 2 cannot be answered. Source: Federal Ministry of the Interior.</p> <p><b>3.</b> Because question 1 was answered with no, question 3 cannot be answered. Source: Federal Ministry of the Interior.</p>


	Belgium	Yes	<p><b>1.</b> For the moment, there is no legal basis in the Belgian Immigration Act which allows the Immigration Office to examine mobile phones, laptops etc. with a view to retrieving information relating to the identity, country of origin or itinerary of applicants for international protection. Source: Immigration Office</p> <p><b>2.</b> /</p> <p><b>3.</b> /</p>
	Bulgaria	Yes	<p><b>1.</b> The available data from the mobile devices of TCNs could be used without their agreement in strictly specified cases only for the purposes of prosecution by the empowered authorities in compliance with the lawful procedures. Neither Migration Directorate nor State Agency for Refugees have powers to carry out investigative actions.</p> <p><b>2.</b> The information from the mobile devices of the TCNs accommodated in the special homes of Migration Directorate can only be used as an aid in connection with the alien's identification when it is voluntary provided.</p> <p><b>3.</b> N/A</p>
	Croatia	Yes	<p><b>1.</b> According to the Croatian legislation as part of the asylum procedure the mobile device information is not retrieved unless the request to access the information to support the asylum application does not voluntarily come from the applicant. The only case when the mobile devices can be seized and data retrieved by a police is in an ongoing criminal investigation (e.g. human smuggling, human trafficking, etc.). In case the applicant wants to share some information from the mobile device, the information can be used in asylum case (for example; Identity documents photos, photos of family members or videos related to the asylum claim).</p> <p><b>2.</b> Please refer to answer Q 1.</p> <p><b>3.</b> Please refer to answer Q 1.</p>

	Cyprus	Yes	<p><b>1.</b> Access to mobile data is performed only with the applicant's consent and if the applicant has vital information relating to his/her claim of international protection.</p> <p><b>2.</b> Once such evidence come to the competent officer's attention, then the applicant is requested to transfer the data in a USB or CD device so to be used accordingly by Asylum Service in the examination of the claim (as mentioned above, after the applicant's consent). The Asylum Service does not confiscate the applicant's mobile.</p> <p><b>3.</b> We had cases where applicants had evidence in their mobiles such as: 1. Identity documents photos 2. Videos concerning their claim 3. Photographs of their houses and death certificates of relatives 4. Photos of family members</p>
	Czech Republic	No	
	Estonia	Yes	<p><b>1.</b> Yes it is possible to retrieve information from the applicants' mobile phones, but only in the case an applicant for international protection voluntarily agrees to it. There are no direct legal basis to allow the Police and Border Guard Board to confiscate and scan the mobile phones in asylum proceedings. However, it is the duty of an applicant to provide elements relevant to his/her claim and the duty of the official to assess the materials. So far, the applicants have been cooperative and have allowed to scan the mobile phones if necessary.</p> <p><b>2.</b> The analysis in asylum procedures is only being done if the mobile device is handed over voluntarily. In case the applicant submits an evidence that he/she claims to have gotten from his/her mobile phone, the Police and Border Guard Board asks to investigate the phone. If the applicant refuses to hand over the phone, it will be taken account of when assessing the evidentiary value of the information provided.</p> <p><b>3.</b> If the applicant hands the mobile device over voluntarily, on the bases of the written consent, then the Police and Border Guard Board shall look for contacts (names and area codes), pictures, social media accounts, videos, downloads and messages.</p>





	Finland	Yes	<p><b>1.</b> No. Finnish Immigration Service is in charge of asylum examination and there is no legal basis to conduct a search or analysis to mobile devices. Police has no role in asylum investigation and thus police authority cannot be used to investigate the phone. If there is an ongoing criminal investigation (eg. human smuggling, violation of border, human trafficking), the mobile device may be investigated by police. In case the applicant wants to share some information from the mobile device, the information can be used in asylum case. There is no limitation what kind of data may be used, but mostly it would be photos or videos related to the asylum claim.</p> <p><b>2.</b> Please see answer to Q1.</p> <p><b>3.</b> Please see answer to Q1.</p>
	France	Yes	<p><b>1.</b> NO</p> <p><b>2.</b> na</p> <p><b>3.</b> na</p>
	Germany	Yes	<p><b>1.</b> We have no legal basis as yet for the analysis of data media, such as mobile phones. The Federal Government has drafted a bill containing a provision to this end. According to this bill, the analysis of data media is to be permissible for the purposes of establishing a person's identity and nationality where this is necessary and such verification is not possible by simpler means. Consequently, it will not be permissible to read out mobile phone data when a valid passport is presented. The foreigner will be obliged to present corresponding data media and to surrender them for analysis. Where a data medium is not handed over voluntarily, it may be analysed without the foreigner's consent. It is not yet foreseeable when this law will enter into force.</p> <p><b>2.</b> n/a</p> <p><b>3.</b> n/a</p>



	Hungary	Yes	<p><b>1.</b> Only if the asylum seeker agrees. The applicant can give his/her mobile device voluntarily if the data can support his asylum application.</p> <p><b>2.</b> Voluntarily.</p> <p><b>3.</b> No. Only in criminal proceeding can sensitive data be retrieved and used.</p>
	Ireland	No	
	Italy	Yes	<p><b>1.</b> No, information on mobile phones cannot be retrieved as part of asylum proceedings. These kind of analysis are possible only in criminal cases with the intervention of the judicial authorities. When applying for international protection, asylum seekers have to provide documents and evidences explaining the reasons they are asking for protection (art. 3 Legislative Decree 251/2007). Thus, on voluntary basis asylum seekers could allow the access to their mobile devices as evidence.</p> <p><b>2.</b> see answer 1</p> <p><b>3.</b> see answer 1</p>
	Latvia	Yes	<p><b>1.</b> Information on mobile phones is not retrieved as a part of asylum proceedings conducted by authorities involved in asylum procedure as Latvia has no legal basis for it. Information on the mobile phone could be used when applicant hands it over voluntarily, for example, to show incoming/outgoing calls and messages (as we have experienced), but evaluation of this kind of evidence needs to be done critically taking into account individual circumstances of concrete asylum case.</p> <p><b>2.</b> N/A</p> <p><b>3.</b> N/A</p>

	Lithuania	Yes	<p><b>1.</b> No. If asylum seeker himself would provide the information from the mobile phone which would substantiate to asylum seeker's propositions, it would be taken into consideration.</p> <p><b>2.</b> Only voluntarily. See answer to question number one.</p> <p><b>3.</b> N/A</p>
	Luxembourg	Yes	<p><b>1.</b> No, the Law of 18 December 2015 on international protection and temporary protection does not allow the authority to access mobile device information in an asylum procedure if it is not handed voluntarily by the applicant. In Luxembourg, the mobile device information can only be retrieved as part of a criminal investigation (i.e. smuggling, drug trafficking), except if the mobile is surrendered voluntarily. The mobile device be seized in case of flagrante delicto (article 31 (3) of the Criminal Procedure Code)) or by order of the investigation judge (article 33 (1)).</p> <p><b>2.</b> N/A. If the applicant surrenders voluntarily his/her phone the authorities (principally the police) can exploit all the information contained in the device. If it is seized by the police, the exploitation will be handled by the forensic team of the Judicial Police.</p> <p><b>3.</b> N/A. If the mobile device is surrendered voluntarily all the information contained in the device can be used (explicit consent).</p>
	Malta	Yes	<p><b>1.</b> The Office of the Refugee Commissioner does not provide any information in relation to the asylum procedure via mobile devices.</p> <p><b>2.</b> N/A</p> <p><b>3.</b> N/A</p>
	Netherlands	Yes	<p><b>1.</b> Yes, the identification process for asylum seekers is carried out by the Police (AVIM) and the Royal Netherlands Marechaussee (KMar). Retrieving information from the mobile phones is part</p>

			<p>of the identification process (of the asylum procedure). The research conducted on the mobile devices helps to find indications for the asylum seekers identity and signals for terrorism, human smuggling or trafficking. There is a so called ‘‘quick-check’’ wherein the data carries (i.e. mobile devices) are manually viewed on photos, email messages, contact lists, message services and applications in relation to origin, itinerary, travel and identity documents and national security issues. On the basis of any signals, an advice is followed to retrieve more (or completely) information from the data carrier (i.e. mobile devices).</p> <p><b>2.</b> In both cases the mobile device will be subject for a quick-check. If there are any signals related to terrorism, human smuggling or trafficking the mobile device will go through an analysis. There is no differences between voluntarily or involuntarily hand over.</p> <p><b>3.</b> Please see Q1. Sources of the entire ad-hoc query: - Evaluatie van de Wet Biometrie; Rijksuniversiteit Groningen iov WODC; 2 maart 2017 - Brief aan Tweede Kamer Beleidsreactie Minister van Justitie op Vervolgonderzoek van IV&amp;J De Identificatie van asielzoekers in Nederland; 21-12-2016 - De identificatie van asielzoekers in Nederland; rapport van de Inspectie Veiligheid en Justitie; Vervolgonderzoek naar de registratie en identificatie door politie en Koninklijke Marechaussee; november 2016 - De identificatie van asielzoekers in Nederland; rapport van de Inspectie Veiligheid en Justitie; april 2016</p>
	Poland	Yes	<p><b>1.</b> According to the polish law asylum seekers have a duty to deliver all evidence which could confirm their statements, but there are no specific rules how the foreigner should fulfil those duties. This is why in practice asylum authorities can get an access to data storage on mobile devices only if the foreigners will voluntarily agree on this.</p> <p><b>2.</b> Asylum authorities can get an access to data storage on mobile devices only if the foreigners will voluntarily agree on this. Without their consent only police or border guard can use such evidence in the criminal proceedings.</p> <p><b>3.</b> Usually they show messages, pictures and videos which are stored on such devices.</p>



	Portugal	Yes	<p>1. PT does not analyse data from asylum applicants' mobile devices.</p> <p>2. N/a</p> <p>3. N/a</p>
	Slovak Republic	Yes	<p>1. Mobile device information has not currently been obtained and used by the Migration Office of the Ministry of Interior of the Slovak Republic during asylum proceedings. Obtaining such information is not defined by the Slovak law. However, it is planned to include this issue in the next amendment to the Act on Asylum. The only way to obtain this information is if the applicant submits it voluntarily or it is obtained in other procedures (e.g. criminal procedure).</p> <p>2. N/A</p> <p>3. N/A</p>
	Slovenia	Yes	<p>1. NO</p> <p>2. N/A</p> <p>3. N/A</p>
	Spain	Yes	<p>1. No, mobile device information is not being retrieved as part of asylum proceedings.</p> <p>2. -</p> <p>3. -</p>
	Sweden	Yes	<p>1. No</p>

			<p>2. NA</p> <p>3. NA</p>
	United Kingdom	Yes	<p>1. No, the UK does not retrieve this data.</p> <p>2. N/A</p> <p>3. N/A</p>
	Norway	Yes	<p>1. Yes, but not necessarily in all cases.</p> <p>2. Both, but mainly based on the participation by the asylum seeker, as the Immigration Act states that every asylum seeker has a duty to cooperate to document their identity in any way possible that is not in violation of their right to safeguards from their national authorities during case consideration procedure.</p> <p>3. All forms of information that may shed light on the applicant's identity and nationality.</p>