Large-scale information systems and interoperability: will litigation soon increase?

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EU IT systems for migration and security

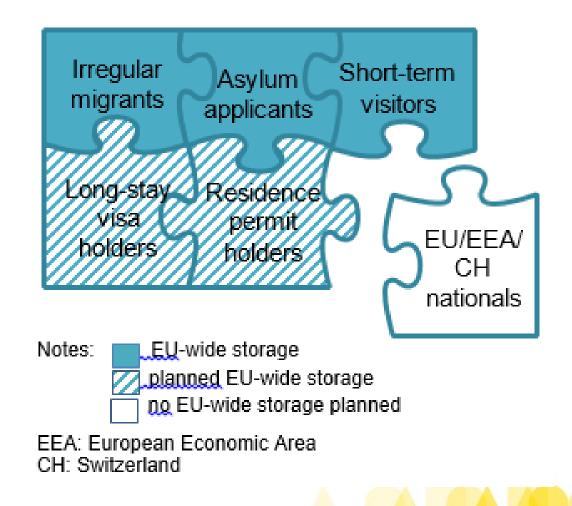
Existing IT systems:

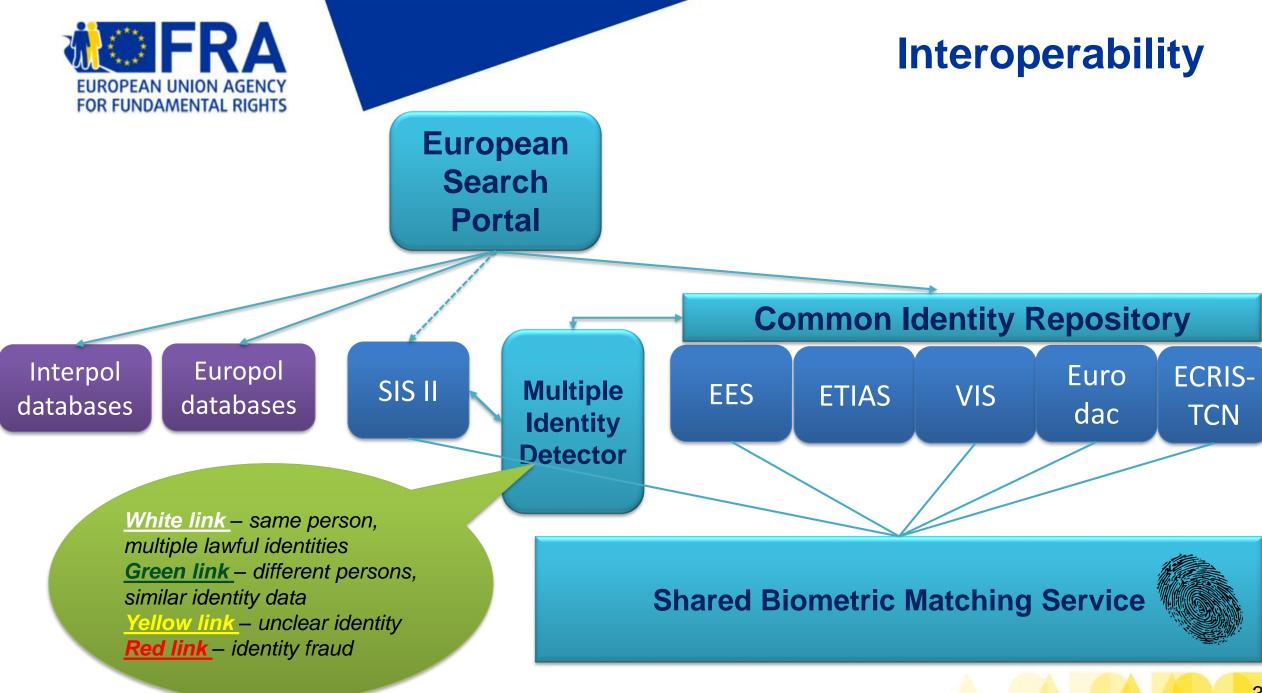
- Eurodac
- **SIS** (Schengen Information System)
- VIS (Visa Information System)

Planned IT systems:

- **EES** (Entry-Exit System)
- **ETIAS** (European Travel Information Authorisation System)
- ECRIS-TCN (Criminal Records third country nationals)
- + Interoperability

People in the EU with data stored in an EU-wide IT systems:







1. Right to dignity, risk for inhuman and degrading treatment

- Physical inability to provide fingerprints
- Unwillingness to provide fingerprints
- Incidents of use of force and detention when fingerprinting



Right to human dignity (Art. 1 of the Charter)

Prohibition of torture and inhuman or degrading treatment or punishment (Art. 4 of the Charter)



2. Data quality and remedies

- Spelling mistakes, insufficient information provided by the person, instructions not followed, naming cultures, cultural norms for reporting age, lack of interpretation → Strain on staff increases risk for mistakes
- Accuracy issues in national databases, if data taken from these
- Flawed administrative decisions
- First registration considered correct

Art. 5 (1) (d) of the GDPR (Data accuracy)



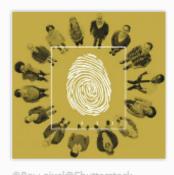
Trust in biometric matches

High degree of credibility attached to **biometrics** – but false matches can occur

- Reliability of matches based on biometric data
 - \rightarrow reduces over time for **children**
 - \rightarrow people older than 70 years
- Higher quality requirements for Eurodac than for VIS

Do travellers to the EU trust fingerprinting?

Published At: 14/12/2015



At a time when biometrics are increasingly being viewed as a potential solution to improving EU border management, around 4 out of 10 non-EU nationals at border crossing points said they were very comfortable with being fingerprinted, according to the results of a survey carried out by the EU Agency for Fundamental Rights (FRA). However, concerns over difficulties when there is wrong data, point to the need to ensure that such situations can be dealt with and that travellers are adequately informed about the use of biometrics,

including what to do in case of errors.

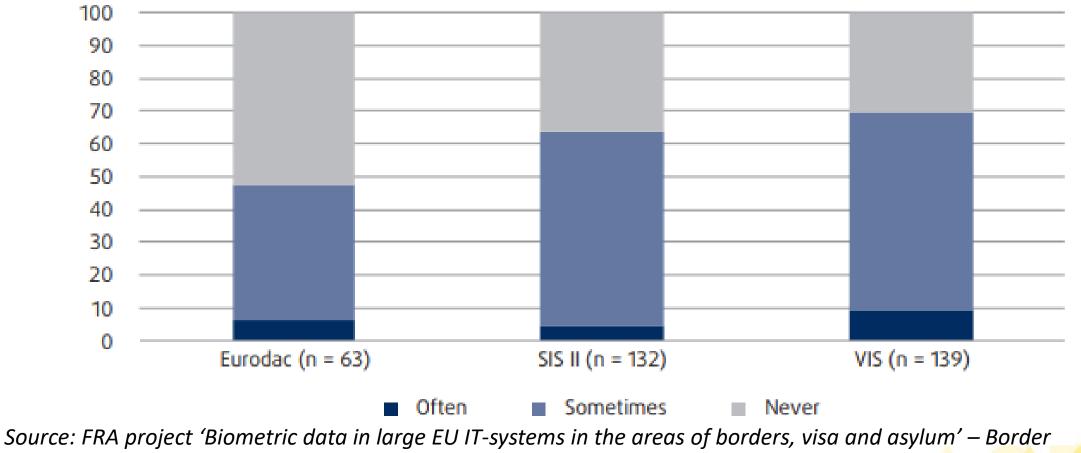
Biometrics, such as fingerprints, are being used in the EU's existing large-scale IT border management systems, Eurodac and the Visa Information System (VIS). They

FRA, Passengers Survey at border crossing points (2015), n =1234



FRA survey at Border Crossing Points:

"Have you or one of your colleagues ever experienced that some of the personal data – such as name, sex, nationality or age – inserted in VIS, SIS II or Eurodac was inaccurate/incorrect/not updated?"



crossing points (BCP) survey 2016

7



- Low numbers of complaints
- Lack of awareness
- Complex procedures, administrative hurdles, language barriers, lack of specialised lawyers

Art. 8 (2) of the Charter Art. 15-17 of the GDPR Art. 8 of Council of Europe Convention No. 108



3. Purpose limitation and data minimisation

- Many actors can access data \rightarrow instances of unauthorised access
- Access by law enforcement agencies and use of IT systems for immigration control purposes
- Data sharing with Interpol and third countries

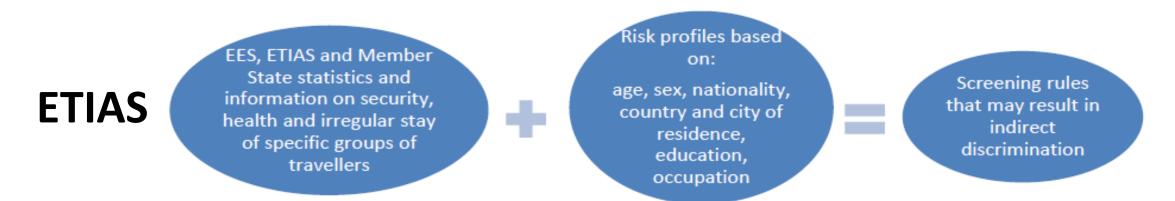
Art. 8 of the Charter Art. 5 (1) (b) and (c) of the GDPR; Art. 4 (1) (b)and (c) of the Police Directive (principle of purpose limitation)



4. Risks for (indirect) discrimination

• Risk with interoperability

• ETIAS and VIS: risk indicators operationalised into screening rules or algorithms; discriminatory profiling?



Arts. 20 and 21 of the Charter: equality and non-discrimination



5. Rights of the child, older persons and persons with disabilities

- Collection of biometrics
- Persons with disabilities ability to provide fingerprints (risk for disadvantageous treatment)
- Reliability of biometric matches
- Ensuring the effective provision of information; right to access, correction and deletion of personal data

Art. 24 of the Charter (the rights of the child) Art. 25 (the rights of the elderly) Art. 26 (integration of persons with disabilities)



Relevant FRA publications

Reports:

- Under watchful eyes biometrics, EU IT-systems and fundamental rights, 2018
- <u>Fundamental rights and the interoperability of EU information</u> systems: borders and security, 2017

Opinions on:

- Security features in IDs, 2018
- <u>VIS</u>, 2018
- <u>Interoperability</u>, 2018
- <u>ETIAS</u>, 2017
- Eurodac Regulation, 2016
- <u>Dublin Regulation</u>, 2016
- <u>ECRIS-TCN</u>, 2015

A CALCAR AD A FRA Opinion - 2/2017 [ETIAS] Vienna, 30 June 2017 **M**FRA HELPING TO MAKE FUNDAMENTAL RIGHTS 05/2015 REALITY FOR EVERYONE IN THE EUROPEAN U pact on fundamental rights of the proposed ion on the European Travel Information and **Fundamental rights implications** Authorisation System (ETIAS) of the obligation to provide fingerprints for Eurodac Opinion of pean Union Agency for Fundamental Rights **FRA Focus** Processing biometric data for in poses has become common. This for o enforce the obligation of newly i ular situation to provide finger of fingerprints the European Unit n system, a mechanism establi examining an asylum application. EU institutions and agencies in an ng compliance with the duty to p mpact of refusing to give fing FREEDOMS to liberty and security, and the pre ontains a checklist to guide aut take fingerprints. This focus paper is the first public information technologies systems in included in its Annual Work Program will review in case of new research law develops further. Although for in this focus paper also apply to oth Main conclusions of this fo · Compliance with the obligation to provide s for Eurodac should acimarily be see gerprints for Europas should primarily be see through effective information and course carried out individually as well as through reach actions targeting migrant communiti be effective, information should be provid a language people understand and takin unt gender and cultural con Refusal to provide fingerprints does not a Member States' duty to respect the princip Under watchful eyes: biometrics, EU IT systems and fundamental rights

TRA EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS

Focus papers:

• <u>Fundamental rights implications of the obligation to provide</u> <u>fingerprints for Eurodac</u>, 2015

Thank you for your attention



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