ReSOMA

RESEARCH SOCIAL PLATFORM ON MIGRATION AND ASYLUM

DISCUSSION BRIEF

September 2019

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ASYLUM

Secondary movements of asylum seekers in the EU

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The **ReSOMA Discussion Policy Briefs** aim to address key topics of the European migration and integration debate in a timely manner. They bring together the expertise of stakeholder organisations and academic research institutes to identify policy trends, along with unmet needs that merit higher priority. Representing the second phase of the annual ReSOMA dialogue cycle, nine Discussion Briefs were produced covering the following topics:

- Secondary movements within the EU
- Implementation of the Global Compacts on Refugees (GCR)
- SAR and Dublin: Ad hoc responses to refusals to disembarkation
- Funding a long-term comprehensive approach to integration at the local level
- Public opinion on migrants: the effect of information and disinformation about EU policies
- Integration outcomes of recent sponsorship and humanitarian visa arrivals
- Strategic litigation of criminalisation cases
- Implementation of the Global Compacts on Migration (GCM)
- The increasing use of detention of asylum seekers and irregular migrants in the EU

Under these nine topics, ReSOMA Discussion Briefs capture the main issues and controversies in the debate as well as the potential impacts of the policies adopted. They have been written under the supervision of Sergio Carrera (CEPS/EUI) and Thomas Huddleston (MPG). Based on the Discussion Briefs, other ReSOMA briefs will highlight the most effective policy responses (phase 2), challenge perceived policy dilemmas and offer alternatives (phase 3).

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Discussion Policy Brief

Secondary movements of asylum seekers in the EU

By Roberto Cortinovis & Marco Stefan, Centre for European Policy Studies

1. SCOPING THE DEBATE

The phenomenon of refugees, whether they have been formally identified as such or not (asylum-seekers), who move from countries in which they had or could have sought a form of international protection in order to seek asylum or permanent resettlement elsewhere, is a matter of persisting policy relevance both in Europe and elsewhere (UNHCR, 2019).

As underlined by UNHCR 2019), while States have a sovereign right to manage and control their borders, and to define the rights of individuals to enter and stay, this prerogative is subject to international legal obligations, which States are required to respect in good faith by ensuring that national legislation, policies and practices are consistent with international law. In addition, the fact that a refugee or an asylum-seeker has moved onward does not affect his or her right to treatment in conformity with international human rights law, or his or her potential need for international protection and associated rights under international refugee and human rights law.

In the EU context, secondary movements of asylum seekers refer to movements of third-country nationals between EU countries for the purpose of seeking international protection in a member state other than the one of first arrival to the EU (Radjenovic 2017). [1]

Secondary movements have represented a key political issue in debates on the reform of the Common European Asylum System (CEAS) during the last three years, as well as the Schengen system. Since the unfolding of the so-called EU refugee crisis in 2015, a group of EU member states (Austria, Germany, Denmark, Sweden, Norway and France) have introduced and repeatedly prolonged internal border controls citing fear of 'secondary movements of asylum seekers as a key motivation for their choice. A 2018 study commissioned by the LIBE Committee of the European Parliament called into question the proportionality, necessity and 'last resort nature' of internal border checks, and criticized the instrumental use of secondary movements of asylum seekers inside the EU as a ground to justify member States'

[1] In this regard, it is important to mention that while the term secondary movements is commonly used in the EU context, UNHCR prefer to use the expression 'onward movement' to refer to the movements of refugees from the state of first protection, to reflect the fact that such movements may be driven by numerous different factors, and others involve tertiary or multiple stages (UNHCR, 2019).

decisions to maintain internal border controls (Carrera et al., 2018).

The objective of preventing secondary movements is also a key priority of the "asylum package" presented by the Commission in 2016, which include seven legislative proposals with a view to carry out a comprehensive reform of the CEAS. In particular, the Commission's proposals for reforming the Dublin Regulation and the Reception Conditions Directive include a number of provisions aimed at reducing incentives for asylum seekers to engage in secondary movements and apply for asylum in the first country of arrival into the EU (European Commission, 2016a, 2016b).

The Commission proposals include a set of punitive measures to discourage secondary movements, which include restrictions to asylum seekers' freedom of movement and the withdrawal of reception conditions for applicants who abscond and engage in secondary movements. These provisions have found the opposition of the European Parliament, which during the negotiation process has stressed the need to focus on the underlying reasons that push people in seek of protection to move to other member states. These include the existence of dysfunctional asylum systems and inadequate reception conditions in member states and, most of all, the structural unfairness of the Dublin system, which do not take adequately into account the preferences and legitimate reasons that asylum seekers may have (including the existence of family links) for choosing to seek protection in a member state different from that of first arrival (European Parliament, 2017).

After almost three years of negotiations, none of the proposals for the reform of the CEAS presented by the Commission in 2016 could be finalised before the expiry of the 2014-2019 parliamentary term due to the decision of the member states to discuss the CEAS reform as a 'package' and the choice to decide on the legislative files by consensus (Carrera and Cortinovis, 2019). Provisions on the prevention of secondary movements, as well as provisions of allocation of responsibility under the Dublin regulation and solidarity have proven to be among the most controversial issues during negotiations among the co-legislators (Pollet, 2019).

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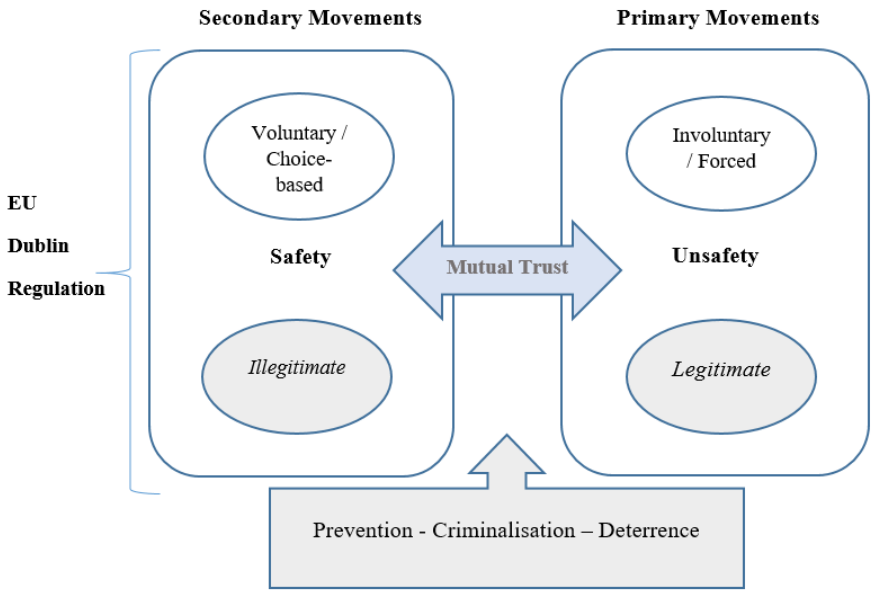
2. KEY ISSUES AND CONTROVERSIES

2.1. Conceptualizing the Framing of intra-EU mobility of Asylum Seekers as 'Secondary Movements' in the EU

The EU concept of 'secondary movements' lays upon a model presuming a clear-cut differentiation between 'primary' and 'secondary' movements of asylum seekers inside the Schengen territory. The label of 'primary movements' relies on the idea of *involuntariness* by the individual to look for international protection and safety elsewhere in another country; for EU purposes, this usually corresponds with the country of first irregular entry into the Schengen territory according to the criteria laid down in the EU Dublin Regulation. The notion of 'secondary', on the other hand, assumes *voluntarism* and an illegitimate agency by individuals involved. It considers that asylum seekers choose voluntarily or without solid justifications to move – or exercise intra-EU mobility - to an EU Schengen member state different from the one declared to be responsible for assessing their asylum claim.

As Graph 1 below illustrates, the EU conceptualisation of secondary movements relies on the presumption of 'mutual trust', according to which the responsible EU Schengen state is considered to be 'safe' for asylum seekers. The EU Dublin Regulation system takes for granted that there are no legitimate reasons why a person may decide to move to another EU country to seek asylum. As a consequence, those movements are considered as 'irregular'. The idea is that 'protection' had already been found elsewhere. This brings individuals' agency into a terrain of irregularity, and even criminal suspicion, which in turn justifies restrictive policies focused on prevention, criminalization and deterrence of mobility.

Graph 1: Intra-EU Mobility by Asylum Seekers: primary vs secondary movements



Source: Author's own elaboration

The relationship between legitimacy and mobility for purposes of international protection, and what is 'primary' and 'secondary' mobility, however, need to be re-interrogated. The current EU notion of 'safety' is flawed as It does not fully capture the entirety of insecurities and additional set of risks that individuals can and do still face in several EU countries formally labelled as 'safe', but which in reality are in fact 'unsafe' and non-protective for them. In these circumstances, 'choice' is in fact illusory for individuals, and the decision of 'moving elsewhere' is legitimate. These often extend beyond the narrow understanding of the 1951 Geneva Convention standards on 'safety', and may also include other equally legitimate grounds for international protection.

These include, first, degrading reception and living conditions leading to destitution (lack of decent housing), exclusion from social assistance or cases of extreme material poverty, which constitute violations of the absolute prohibition of inhuman and degrading treatment; second, cases of systemic and institutionalized discrimination and xenophobia (FRA, 2017) against asylum seekers and foreigners; third, insecure residency status, the lack of life opportunities and long-term (permanent) solutions; or fourth, the existence of family and private links (Zimmermann, 2009).

Mutual trust in the Common European Asylum System (CEAS) has progressively developed as a principle of no 'blind trust'. The Court of Justice of the EU (CJEU) has confirmed that the automatic presumption of safety among EU countries is rebuttable. Several instances have shown that in practice a Member States may experience major operational problems in the functioning of its domestic asylum system. Therefore, trust "must be earned" (Mitsilegas et al. 2019). A Dublin transfer (take-back or take-charge requests) can be successfully challenged by individuals on wider fundamental rights grounds (Case C-578/16 PPU, CK, HF and AS, 2017; or Cases C-411/10 and C-493/10, N.S. and Others, 2011).

For EU law purposes, 'safety' needs to be read in light of the right to seek asylum enshrined in Article 18 EU Charter of Fundamental Rights. This EU right includes not only the 1951 Geneva Convention benchmark, but also all additional protection standards laid down in the EU asylum secondary legislation, including those related to subsidiarity and complementary protection (EASO, 2018), as well as those developed by the CJEU[2] and in Strasbourg Court-case law.[3]

2.2. Data and statistics on secondary movements

In spite of the salience and relevance attached to secondary movements in EU debates, so far there is no EU-wide clear picture when it comes to the scale of this phenomenon. As recently recognized by the Council of the EU (2018), efforts to make secondary movements more measurable have only recently started, including through the involvement and cooperation between EU agencies, the European Border and Coast Guard Agency (EBCG) and EASO. In spite of these efforts, however, a EU-wide coherent approach to shed light on the real scale and nature of this issue has not materialised yet.

[2] https://curia.europa.eu/jcms/upload/docs/application/pdf/2019-03/cp190033en.pdf

[3] https://www.echr.coe.int/Documents/FS_Dublin_ENG.pdf

Data stored in the EURODAC database can give an indication of the travel routes related to onward migration of asylum seekers. Eurodac is a large-scale IT system that helps with the management of European asylum applications since 2003, by storing and processing the digitalised fingerprints of asylum seekers and irregular migrants who have entered a European country, thus enabling the implementation of the Dublin system.

The European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA) produces Eurodac statistics based on the different categories of data stored in the database. The 2018 Eurodac Report shows that out of 551,253 asylum applications recorded in EURODAC in 2018, 43% (236,098) had already made a previous application in another Member State. Alike to 2017, France (33%), Germany (28%) and Italy and the Netherlands (7% each) were the member states receiving the majority of asylum requests from asylum seekers who had previously applied in another member state (eu-LISA, 2019).

EURODAC statistics, however, do not provide an accurate picture of secondary movements of asylum seekers across the EU. This is due first to the possibility of multiple "hits" for the same person in a different or the same Member State, which may result in double counting and thus, as testified by previous research, in 'inflating' the phenomenon of secondary movements (Guild, 2007). Others limitations of EURODAC statistics include no registration in EURODAC of minors and the fact that data of persons found illegally staying in EU territory is not stored and member states have no obligation to submit this category of data to EURODAC (Council of the EU, 2018).

2.3. The impact of punitive approaches on fundamental rights standards

In its 2016 Communication *Towards a Reform of the Common European Asylum System and Enhancing legal avenues to Europe*, which laid down the roadmap of the third phase of harmonisation of the EU asylum acquis, the Commission identified preventing secondary movements and ensuring that the functioning of the Dublin mechanism is not disrupted by abuses and asylum shopping[4] by applicants for and beneficiaries of international protection as a priority to be pursued by the envisaged reform process (European Commission, 2016c).

Accordingly, the proposal for reforming the Dublin Regulation presented on May 2016 (European Commission 2016a) introduces a new obligation that foresees that an applicant for international protection must apply in the Member State of first irregular entry (Art. 4). Aim of this amendment is to clarify that an applicant neither has the right to choose the Member State of application nor the Member State responsible for examining the application. In case of non-compliance with this obligation by an applicant, the Member State responsible must examine the application in an accelerated procedure without an

[4] In the EU context, asylum shopping refers to the phenomenon where an asylum seeker applies for asylum in more than one EU State or chooses one EU State in preference to others on the basis of a perceived higher standard of reception conditions or social security assistance.

automatic right to remain pending the appeal. In addition, the Commission proposes to exclude asylum seekers from reception conditions, with the exception of emergency health care, during the Dublin procedure in any Member State other than the one in which he or she is required to be present (Art. 5).

In parallel, the proposal on the recast of the reception conditions directive presented in July 2016 include a number of other provisions to reduce "reception-related incentives for secondary movements within the EU" (European Commission, 2016b). These include a restriction on free movement of asylum seekers by requiring member states to assign a specific place of residence to applicants, to impose reporting obligations and to make subject the provision of material reception conditions to the actual residence by the applicant in a specific place, if this necessary for the swift processing of the Dublin procedure, or in order to effectively prevent the applicant from absconding (Art. 7.2).

The proposal also includes additional circumstances for scaling back or altering the form of material reception conditions in the member state responsible for an application, in particular non-compliance with the obligation to apply for international protection in the member state of first irregular entry or legal stay under the proposed Dublin Regulation and when an applicant has been sent back to the responsible member state after having absconded to another member state (Art. 19 (g)(h)).

In order to tackle secondary movements, and absconding of applicants, an additional detention ground has been added. In case an applicant has been assigned a specific place of residence but has not complied with this obligation, and where there is a continued risk that the applicant may abscond, the applicant must be detained in order to ensure the fulfilment of the obligation to reside in a specific place (Art.8.3(c)).

Stakeholders have raised concerns as to the restrictive and punitive character of measures aimed at addressing secondary movements advanced by the Commission. In particular, the range of preventive and punitive restrictions to the fundamental right of free movement and liberty of asylum seekers create tension with international law, including the principle of non-penalisation of refugees and asylum seekers included in Article 31 of the 1951 Geneva Convention, as well as fundamental rights standards included in the European Convention of Human Rights (ECHR) and the EU Charter of Fundamental Rights (EU CFR).

ECRE has underlined how the exclusion of applicants who engage in secondary movements from an entitlement to reception conditions in a member state other than the one responsible under Dublin contradicts the principle of entitlement to reception conditions as a corollary of asylum seeker status elaborated by the CJEU (ECRE, 2016). In *Cimade and Gisti*[5], the CJEU found that the rights to dignity and asylum under Articles 1 and 18 of the Char-

[5] CJEU, Case C-179-12 Cimade and Gisti v Ministre de l'Intérieur, Judgment of 27 September 2012.

ter implies that the Directive should be applicable to all asylum seekers who have a right to remain on the territory of the member states. Therefore, introducing limitations on the applicability of the Directive on the basis of the Dublin Regulation undermines compliance with fundamental rights. Second, the inclusion of restrictions on asylum seekers' freedom of movement on the basis of administrative reasons, namely the effective monitoring of the asylum procedure or the Dublin Procedure, contravenes the fundamental right to free movement under the EU CFR and the ECHR. Third, the proposed grounds for detention included in the Commission proposal are incompatible with the right to liberty under the EU CFR, as they are not connected to a concrete obligation incumbent on the applicant or are punitive in nature.

In its report on the Recast of the reception conditions directive, the LIBE Committee of the European Parliament has included a number of amendments that limit the scope of the punitive measures described above. The Report, while sharing the objective of tackling secondary movements, argues that this should be done through an approach based on positive incentives and not punitive measures, first of all by promoting high quality reception conditions at the same level throughout the EU (European Parliament, 2017b).

2.4 Understanding the 'drivers' of secondary movements

The assumption on which punitive measures to address secondary movements is based, namely that asylum seekers move to other member states to "avoid the applicable asylum procedures", disregard the fact that asylum seekers may have very legitimate reasons for seeking asylum in a country other than that which the Dublin system has assigned him or her, including escaping from a dysfunctional asylum process or substandard living conditions or because they can be escaping inhuman and degrading treatment - such as destitution or lack of housing and access to basic social rights - emerging from lack of reception conditions in first country of entry.

Dublin transfers to Greece, in particular, have been suspended since 2011, after the CJEU recognized in its judgment *NS/ME* of December 2011 that transfers to Greece could breach Art. 4 of the EU Charter of Fundamental Rights, which prohibits inhuman or degrading treatment or punishment, due to systemic deficiencies in the asylum procedure and in the reception conditions of asylum seekers of that member state.[6] The suspension of transfers to Greece has proved a particularly critical weakness in the Dublin system, in particular given the large number of migrants arriving in Greece during the refugee crisis in 2015-2016.[7]

Structural deficiencies of the EU asylum system have also been recognized by the Commission. In the already mentioned

[6] CJEU - C-411-10 and C-493-10, Joined cases of N.S. v United Kingdom and M.E. v Ireland.

[7] In December 2016, the Commission issued a recommendation to EU member states calling for the resumption of transfers to Greece (European Commission, 2016d).

Communication *Towards a reform of the Common European Asylum System and enhancing legal avenues to Europe*, the Commission recognized that the CEAS is characterised by differing treatment of asylum-seekers, including in terms of the length of asylum procedures and reception conditions across Member States. Such divergences result in part from the often discretionary provisions contained in the current Asylum Procedures Directive and Reception Conditions Directive (European Commission, 2016c).

In the same Communication, the Commission also recognized that, while the Qualification Directive sets out the standards for recognition and protection to be offered at EU level, in practice recognition rates vary between Member States. There is also a lack of adequate convergence as regards the decision to grant either refugee status or subsidiary protection status or applicants coming from the same country of origin. These divergences can encourage asylum seekers to move onward, together with variations in the duration of residence permits, access to social assistance and family reunification.

As regards the Dublin Regulation, a report on its evaluation, published by the Commission in 2015, concludes that the hierarchical criteria used for determining the responsible Member State do not sufficiently take into account the interests/needs of applicants, which partly causes secondary movements and the lodging of multiple applications. Given that family criteria and the humanitarian and discretionary clauses are seldom used in practice, allocation of responsibility is usually based on which Member State the applicant first enters, which is an irrelevant factor in relation to the person's needs/interests (Maas et al. 2015).

A number of studies carried out by academics and independent researchers have also shed light on the underlying non-policy related causes of secondary movements, highlighting how these factors pose a fundamental challenge to the containment logic on which the Dublin system is based, namely that asylum seekers should have their cases processed in the member state of first entry. Brekke and Brochmann (2015), which analysed onward movements of Eritrean asylum seekers from Italy to Norway, conclude that persistent institutional differences in reception conditions and integration efforts in the EU countries, together with conditions that go beyond migration policies (such as labour-market conditions, economic recession, and general welfare provisions) motivate asylum-seekers to move on from the first country of asylum to other EU countries with better conditions.

A review of research undertaken since 1997 looking at the factors determining asylum seekers destination choice underlines the factors which draw asylum seekers to destination countries are less often related to public policies than to other factors such as the presence of social networks and histories of colonialism (James and Mayblin, 2016). Along the same line, Takle and Seeberg (2015) conclude that decisions to undertake onward migration within Europe do not just depend on asylum procedures, outcomes and standards of reception but also on individual, transnational and national factors such as the location of existing social networks, knowledge of and familiarity with different European languages and cultures, and

which European country is likely to recognise their competencies and labour skills.

2.5 Data-driven policing of secondary movements: the role of Interoperability and its impact of non-discrimination and fundamental rights

The current policy debate on secondary movements of asylum seekers is closely interlinked with other AFSJ's legislative, institutional and infrastructural developments, in particular those related to the use of data for the monitoring and policing of human mobility (Mitsilegas 2007). Data-based technology has progressively become a key component of the so-called Integrated Border Management Strategy (IBM) offering new means and avenues to identify and track people on the move (including migrants and asylum seekers), in particular through the collection, collation, and sharing of massive amount of personal information, including biometrics.

On 11 June 2019, after expeditious inter institutional negotiations, the EU adopted two interoperability Regulations.[8] The main objective of these regulations on interoperability is to connect several IT systems originally created for different purposes, serving specific policy objectives, and presenting different technical features (Alegre, Jeandesboz, Vavoula, 2017). The operationalisation of interoperability will thus entail, in the words of Vavoula (2019), a 'de-compartmentalisation' of existing EU information systems and most notably: The Entry/Exit System (EES); the European Travel Information and Authorisation System (ETIAS); the European Criminal Records Information System for Third-Country Nationals (ECRIS-TCN); the Schengen Information Systems (SIS); the Visa Information System (VIS); and Eurodac. The latter, which constitutes the EU database serving the purpose of collecting, coordinating and managing the biometric data of asylum seekers for the purpose of assisting in determination of the state responsible for processing an asylum application,[9] will thus become interconnected with other large scale information system previously used exclusively for law enforcement and immigration control functions.

Interoperability will change the ways in which a wide range of EU and Member States' first-line authorities involved in processing of asylum and international protection applications, border control and migration management tasks, and law enforcement functions perform their daily work. It will do so, mainly, through the creation of information management and exchange tools enabling both 'multiple horizontal interactions between authorities in different Member States' as well as 'vertical interactions between national authorities and EU agencies' (Galli, 2019). These interactions will rely on a number of new

[8] Regulation (EU) 2019/817 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of borders and visa and amending Regulations (EC) No 767/2008, (EU) 2016/399, (EU) 2017/2226, (EU) 2018/1240, (EU) 2018/1726 and (EU) 2018/1861 of the European Parliament and of the Council and Council Decisions 2004/512/EC and 2008/633/JHA; Regulation (EU) 2019/818 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of police and judicial cooperation, asylum and migration and amending Regulations (EU) 2018/1726, (EU) 2018/1862 and (EU) 2019/816.

9 European Commission on Migration and Home Affairs. "Identification of applicants (EURODAC)." Updated July 12, 2018.

instruments that allow for the aggregated use of data inputted by different executive actors and bodies in the already existing data-bases mentioned above. In particular, interoperability is designed to enable checks on whether data on an individual is stored in one of the six EU databases.

Interoperability will attach new purposes to the uses that not only border and migration authorities, but also law enforcement actors currently make of personal data. For instance, Eurodac data will no longer be used exclusively to transmit asylum seekers' fingerprints to a central system, but also to detect persons having 'multiple identities'. A general feature of the interoperability initiatives is the in fact the creation of links between data sets which until now had to be stored and used for sector-specific goals (Curtin 2017).

The envisaged system of EU interoperable databases and information exchange systems will play an increasingly crucial role in controlling and managing of human mobility. Data collected and collated through the existing databases will allow to conduct check on individuals, regardless of their status, along the entirety of their journeys, from the time prior to the entry into the Schengen area to the moment when they cross the border, but also during their stay within the Schengen area, and until their (voluntary or forced) departure and beyond.

In light of the new interoperability rules, it appears that identity checks by police authorities and other security actors at the EU and national level, may fuel discriminatory practices. Recent field research has shown that on the spot identification checks targeting third-country nationals solely on the basis of 'extensive profiling', rendering their status on the territory particularly precarious (Latonero and others, 2019). The authors also found that technologies that rely on identity data introduce a new sociotechnical layer that may exacerbate existing biases, discrimination, or power imbalances. Normative, technological and bureaucratic bias have been identified in respect of the ways in which identity systems are fed and utilised, including with regard to the classification of vulnerable communities and the inconsistent collection of migrants' identity information.

These risks might be further exacerbated in a context where more personal data on a new category of persons are included in Eurodac. To date, this database includes the fingerprints of asylum seekers, and individuals apprehended in connection with irregular border-crossings, with the aim of facilitating the 'Dublin' rules on determining the Member State responsible for processing applications for international protection. Capturing and comparing fingerprints makes it possible for national authorities to determine whether another member state should be responsible for handling an individual's application. Fingerprints can also be taken from third-country nationals or stateless persons found illegally staying in a member state.[10] Data falling in this last category is not currently stored in the central database but are compared to the other datasets to es-

[10] As noted by De Brouwer, E. (2019), Regulation EU 603/2013 extended the use of Eurodac for law enforcement purposes.

tablish whether an individual has previously applied for asylum or irregularly crossed an external border.

The 2016 Eurodac reform proposals would change this by storing fingerprint and other data pertaining to third-country nationals or stateless persons found illegally staying in a member state for five years. As the proposal explains: "Extending the scope of EURODAC will allow the competent immigration authorities of a Member State to transmit and compare data on those illegally staying third-country nationals who do not claim asylum and who may move around the European Union undetected. The information obtained in a hit result may then assist competent Member State authorities in their task of identifying illegally staying third-country nationals on their territory for return purposes. It may also provide precious elements of evidence for re-documentation and readmission purposes."[11] The age limit for data collection in Eurodac (for all three categories) would furthermore be lowered from 14 to six, while new categories of data are also to be stored in the system, including facial images. This, the Commission noted in its proposal, "will prime the system for searches to be made with facial recognition software in the future."[12]

The proposed expansion of the scope of Eurodac, coupled with its interconnection with other EU databases is a source of concerns. During the identification process of migrants and refugees, the protection of privacy, informed consent and data protection are often compromised, not only for minors. The specific problems of children in registration procedures for immigration purposes were also established in a recent FRA Report.[13] When looking at practices related to the collection of data during visa applications or for the purpose of the Dublin system, the FRA found that rights of children were affected in different ways, dealing with child-unfriendly treatment, doubts with regard to the quality and reliability of fingerprints, and risk of re-traumatization. Where interoperability might be a tool to trace missing children, the FRA underlined rightfully that this is only the case if Member States will make more use of the existing possibility to report missing children into SIS II and improve cooperation between their national authorities.[14] The FRA also warned against the secondary effects deriving from the possibility given by existing technologies to take decisions based national convictions adopted on the ground of previous irregular entry or stay, specifically for refugees and children and referred to the differentiated practices in the Member States with regard to criminalization of irregular stay and entry (de Brouwer, 2019).

[11] Proposal for a Regulation of the European Parliament and of the Council on the establishment of 'Eurodac', COM(2016) 272 final, 4 May 2016, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52016PC0272

[12] Ibid.

[13] https://fra.europa.eu/en/publication/2018/biometrics-rights-protection

[14] https://fra.europa.eu/sites/default/files/fra_uploads/fra-2017-interoperability-eu-information-systems_en-1.pdf

References

Brekke, J., Brochmann G. (2015). 'Stuck in Transit: Secondary Migration of Asylum Seekers in Europe, National Differences, and the Dublin Regulation'. *Journal of Refugee Studies*, 28(2), 145–162.

Carrera, S., Cortinovis, R. (2019). *Search and rescue, disembarkation and relocation arrangements in the Mediterranean Sailing Away from Responsibility?* CEPS Paper Liberty and Security in Europe, No. 2019-10, June 2019, https://www.ceps.eu/wp-content/uploads/2019/06/LSE2019-10_ReSoma_Sailing-Away-from-Responsibility.pdf

Carrera, S., Stefan, M., Ngo Chun Luk, Vosyliūtė, L. (2018). The *Future of the Schengen Area: Latest Developments and Challenges in the Schengen Governance Framework since 2016*, study for the LIBE Committee of the European Parliament, https://www.consilium.europa.eu/en/press/press-releases/2018/06/29/20180628-euco-conclusions-final/

Curtin, D. (2017) "Security of the interstice and inter-operable data sharing: a first cut," in S. Carrera and V. Mitsilegas, constitutionalising the Security Union: effectiveness, rule of law and rights in countering terrorism and crime, Brussels: CEPS, 2017, pp. 65-72.

De Brouwer, E. (2019), Interoperability and Interstate Trust: a Perilous Combination for Fundamental Rights, in EU Immigration and Asylum Law and Policy, https://eumigrationlawblog.eu/interoperability-and-interstate-trust-a-perilous-combination-for-fundamental-rights/

EASO (2918). EASO Practical Guide: Qualification for international protection, https://www.easo.europa.eu/sites/default/files/easo-practical-guide-qualification-for-international-protection-2018.pdf

ECRE (2016). *ECRE Comments on the Commission Proposal for a Dublin IV Regulation COM(2016) 270*, http://www.ecre.org/wp-content/uploads/2016/10/ECRE-Comments-Dublin-IV.pdf

Eu-LISA (2019). Eurodac – 2018 annual report, https://www.eulisa.europa.eu/Publications/Reports/2018%20Eurodac%20Annual%20Report.pdf

European Commission (2016a). Proposal for a regulation of the European Parliament and of the Council 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), COM(2016) 270 final.

European Commission (2016b). Proposal for a directive of the European Parliament and of the Council laying down standards for the reception of applicants for international protection (recast), COM(2016) 465 final, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-

package/docs/20160713/proposal_on_standards_for_the_reception_of_applicants_for_international_protection_en.pdf

European Commission (2016c). Towards a Reform of the Common European Asylum System and Enhancing legal avenues to Europe, COM(2016) 197 final.

European Commission (2016d). Commission recommendation (EU) 2016/2256 of 8 December 2016 addressed to the Member States on the resumption of transfers to Greece under Regulation (EU) No 604/2013, C(2016) 8525 final.

European Council (2018). Conclusions June 2018, https://www.consilium.europa.eu/en/press/press-releases/2018/06/29/20180628-euco-conclusions-final/

European Parliament (2017a). Report on the proposal for a regulation of the European Parliament and of the Council 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), (COM(2016)0270 – C8-0173/2016 – 2016/0133(COD), A8-0345/2017.

European Parliament (2017b). Report on the proposal for a directive of the European Parliament and of the Council laying down standards for the reception of applicants for international protection (recast (COM(2016)0465 – C8-0323/2016 – 2016/0222(COD)), A8-0186/2017

FRA (2017). Second European Union Minorities and Discrimination Survey Main results. https://fra.europa.eu/sites/default/files/fra_uploads/fra-2017-eu-midis-ii-main-results_en.pdf

Galli, F. (2019) Interoperable Law Enforcement Cooperation Challenges in the EU Area of Freedom, Security and Justice Robert Schuman Centre for Advanced Studies, RSCAS 2019/15, https://cadmus.eui.eu/bitstream/handle/1814/61045/RSCAS_2019_15.pdf?sequence=1&isAllowed=y

Guild, E. (2007). 'Unreadable papers?'. In: *Are you who you say you are? The EU and Biometric Borders,* Wolf Legal Publishers.

James P., Mayblin, L. (2016). Factors influencing asylum destination choice: A review of the evidence, Working paper: 04/16.1 Asylum migration push/pull factors, The University of Sheffield, https://microsites.hays.co.uk/jobs/the-university-of-sheffield/

Latonero, M., Hiatt, K., Napolitano, A., Clericett, G., Penagos, M. (2019) Digital Identity in the Migration & Refugee Context: ITALY CASE STUDY,

Maas, S., Jurado, I., Capdevila, M., Labayle, M., Hayward L. (2015). Iena Jurado, Mathieu Capdevila, Maylis Labayle, Laura Hayward. Evaluation of the Dublin III Regulation DG Mi-

gration and Home Affairs Final report, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/asylum/examination-of-applicants/docs/evaluation_of_the_dublin_iii_regulation_en.pdf

Mitsilegas, V., di Martino, A., Mancano, L. (2019). The Court of Justice and European Criminal Law. Leading Cases in a Contextual Analysis. Hart Publishing.

Pollet, K. (2019). All in vain? The fate of EP positions on asylum reform after the European elections, EU Immigration and Asylum Law and Policy Blog, http://eumigrationlawblog.eu/all-in-vain-the-faith-of-ep-positions-on-asylum-reform-after-the-european-elections/

Radjenovic, A. (2017). Secondary movements of asylum- seekers in the EU asylum system, Briefing October 2017, http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/608728/EPRS_BRI(2017)608728_EN.pdf

Takle M., Seeberg M. L. (2015). All European countries are not the same! The Dublin Regulation and onward migration in Europe. NOVA Report 12/15, http://www.hioa.no/eng/About-HiOA/Centre-for-Welfare-and-Labour-Research/NOVA/Publikasjonar/Rapporter/2015/All-European-countries-are-not-the-same!

UNHCR (2019). Guidance on responding to irregular onward movement of refugees and asylum seekers, https://www.refworld.org/docid/5d8a255d4.html

Vavoula N. (2019), Interoperability of European Centralised Databases: Another Nail in the Coffin of Third-Country Nationals' Privacy? https://eumigrationlawblog.eu/interoperability-of-european-centralised-databases-another-nail-in-the-coffin-of-third-country-nationals-privacy/

Zimmermann (2009). Irregular Secondary Movements to Europe: Seeking Asylum beyond Refuge. Journal of Refugee Studies, Volume 22, Issue 1

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ReSOMA - Research Social Platform on Migration and Asylum is a project funded under the Horizon 2020 Programme that aims at creating a platform for regular collaboration and exchange between Europe's well-developed networks of migration researchers, stakeholders and practitioners to foster evidence-based policymaking. Being a Coordination and Support Action (CSA), ReSOMA is meant to communicate directly with policy makers by providing ready-to-use evidence on policy, policy perceptions and policy options on migration, asylum and integration gathered among researchers, stakeholders and practitioners.

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