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To: Members of the European Parliament

DD-04-2024

## **Legal experts representing and defending migrants' rights call on EU legislators to reject the EURODAC reform**

We, the undersigned lawyers, caseworkers, academics and researchers, write to you, as lead negotiators, to urge you to reject the reform of the EURODAC Regulation.

We are concerned that the current version of the EURODAC reform would undermine EU Member States' compliance with their obligations under international refugee and human rights law, as well as under EU data protection laws. It would also put at risk many of the individuals that some of us represent in their asylum claims or other procedures, exacerbating concrete cases of harm. These include pushbacks, unjust criminalization, excessive surveillance, coercion, arbitrary detention and flawed administrative decisions.

### **The right to seek asylum**

The reform will likely contribute to the extensively documented illegal push-back practices of Member States at the external borders of the EU. One of the main objectives of the EURODAC reform is to draw statistics in order to forecast border crossings and migration patterns. This data could be used to interdict, curtail and prevent access to international protection procedures, in breach of the right to seek asylum and the principle of non-refoulement, and may lead people to follow more dangerous routes to Europe.

We also observe with great concern that the EURODAC model is being pushed to third countries, as illustrated by the ongoing plans for the creation of a "Balkandac" that would support the EU's externalisation, detention and expulsion objectives.<sup>i</sup>

### **The rights to non-discrimination and to the presumption of innocence**

The reform foresees the insertion of a security flag in EURODAC indicating that a person could pose a threat to internal security following security checks through searches of other EU, international and national databases with biometric, identity or travel document data - which will also be facilitated through interoperability with other large-scale EU IT systems. However, no criteria are provided to guide officers' decisions to carry out a security check, nor what the data in EURODAC will show as a result. Not

only it would be contrary to the principle of legality because it does not fulfill the requirement of precision and clarity established by the Court of Justice of the EU<sup>ii</sup>, but also against the data accuracy obligation in the General Data Protection Regulation (GDPR).<sup>iii</sup>

This may also fill the database of the results of arbitrary and discriminatory checks, with a long-lasting impact on affected persons' files. Given that race, ethnicity or skin colour are still viewed as proxies for an individual's migration status, as demonstrated by the EU Fundamental Rights Agency<sup>iv</sup>, racialised communities will be disproportionately targeted, surveilled, questioned and detained. EURODAC may thereby enable discriminatory and illegal practices of ethnic and racial profiling.

While the original purpose of EURODAC was to register asylum seekers and assign responsibilities to Member States for processing their claims to international protection under the Dublin Regulation(s), the subject group is now expanded to target people in an irregular migration situation, and to identify anyone connected to human trafficking, organised crime, or any other "security threat". The added purpose of identification might encourage law enforcement and migration control authorities to perform routine queries without having to demonstrate necessity for a specific investigation or case assessment. As provided by the EDPS, "the identification of a person is not an end in and of itself but needs to serve a specific objective."<sup>v</sup> The latest reform will thereby further achieve populists' and nationalists' desire to draw immediate links between migration and crime. On top of reinforcing discriminatory bias, this runs counter to many EU and Member States' public law principles that distinguish clearly between administrative/civil and criminal law matters and require the presumption of innocence.

### **The rights to privacy and data protection**

The expansion of the scope of EURODAC to more categories of people and data for longer retention periods runs counter to the purpose limitation and data minimisation principles of data protection law, as set out in the GDPR.<sup>vi</sup> No data or evidence has been provided to justify the need to collect and retain such amounts of personal data, including sensitive data. For example, conditions for access by law enforcement have been weakened without any proof that the previous modalities were impracticable. Proposed retention periods do not rest on any solid evidence either.<sup>vii</sup> This has significant impacts on migrants' rights to privacy and data protection, and questions the necessity and proportionality of the reform.

### **The rights to human dignity and to liberty**

As the co-legislators refuse to reopen the 2018 Interinstitutional Agreement, it means that the EURODAC reform warrants administrative sanctions against individuals obstructing the capturing of biometric data,

including the use of coercive means like detention or force. Gathering data through manipulation, pressure or coercion goes against the fundamental right to dignity, and the GDPR's legality principle.

### **The rights of the child**

The reform lowers the age limit for collecting data of children from 14 to 6 years old. The justification is to prevent cases of child trafficking, but there is no evidence that biometrics can act as a child protection mechanism in the EU. Again this challenges the necessity and proportionality of the reform, and raises suspicions as to its actual ultimate objectives which we fear may include tracking in view of expulsion, detention or claim refusal.

### **The right to an effective remedy**

The forthcoming interoperability of EURODAC with other EU databases will mean that individuals will be identified through their biometric data. As we know of persisting data quality issues and the millions of records that will be stored in the system, and of biometrics more generally, we can expect a high number of false positive hits. This will violate the rights of individuals who will be wrongly identified, detained, treated as security threats, experience delays in accessing the asylum system, and be subject to transfers, or worse to expedited returns. The EURODAC reform and the interoperability project will make it harder to spot and correct errors, understand and question the origin of the data, defend people's rights, challenge immigration authorities' decisions and obtain effective remedies in the event of abuses.

### **Reject the EURODAC reform**

Considering these significant harms to people and threats to their fundamental rights, we urge you to reject the proposed reform of EURODAC. The premise upon which the reform rests, that migration and crime are intrinsically connected, must urgently be abandoned.

Instead, the European legislators must uphold the principles and state obligations in international refugee, human rights law and data protection law, and work towards a policy that treats all migrants with dignity and respect, irrespective of status.

Yours sincerely,

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- i <https://www.statewatch.org/analyses/2021/blackmail-in-the-balkans-how-the-eu-is-externalising-its-asylum-policies/>
- ii If no indication as to the nature and scope of the information to be communicated is included, it will likely go against the jurisprudence of the Court of Justice of the European Union, paragraphs 160 and 163 of the Opinion 1/15 on the draft Canada-EU PNR Agreement <https://curia.europa.eu/juris/document/document.jsf?text=&docid=193216&doclang=EN>
- iii Article 5(1)(d)
- iv [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2018-preventing-unlawful-profiling-guide\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-preventing-unlawful-profiling-guide_en.pdf)
- v [https://edps.europa.eu/sites/edp/files/publication/2018-04-16\\_interoperability\\_opinion\\_en.pdf](https://edps.europa.eu/sites/edp/files/publication/2018-04-16_interoperability_opinion_en.pdf)
- vi Article 5(1)(b) and (c)
- vii <https://ecre.org/wp-content/uploads/2021/01/ECRE-Working-Paper-Transforming-Eurodac-from-2016-to-the-New-Pact-January-2021.pdf>