

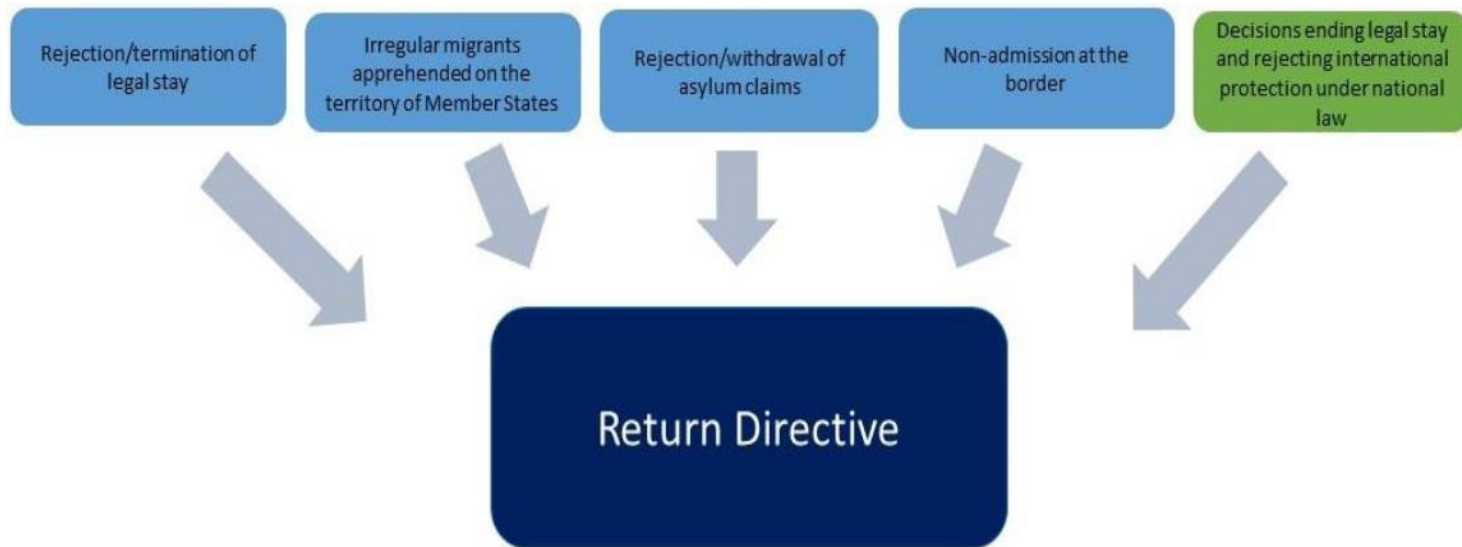
Large-scale EU IT systems and the rights of irregular migrants



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Categories of irregular migrants in EU law



Notes: Blue = governed by EU law, Green = regulated under national law

Source: FRA, 2019

The landscape: EU IT systems for migration and security

Existing IT systems:

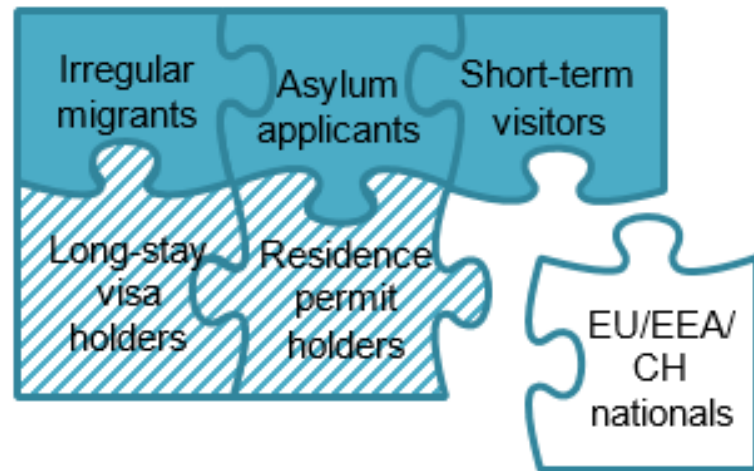
- **Eurodac** (European Dactyloscopy)
- **SIS** (Schengen Information System)
- **VIS** (Visa Information System)

Upcoming IT systems:




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

+ Interoperability

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

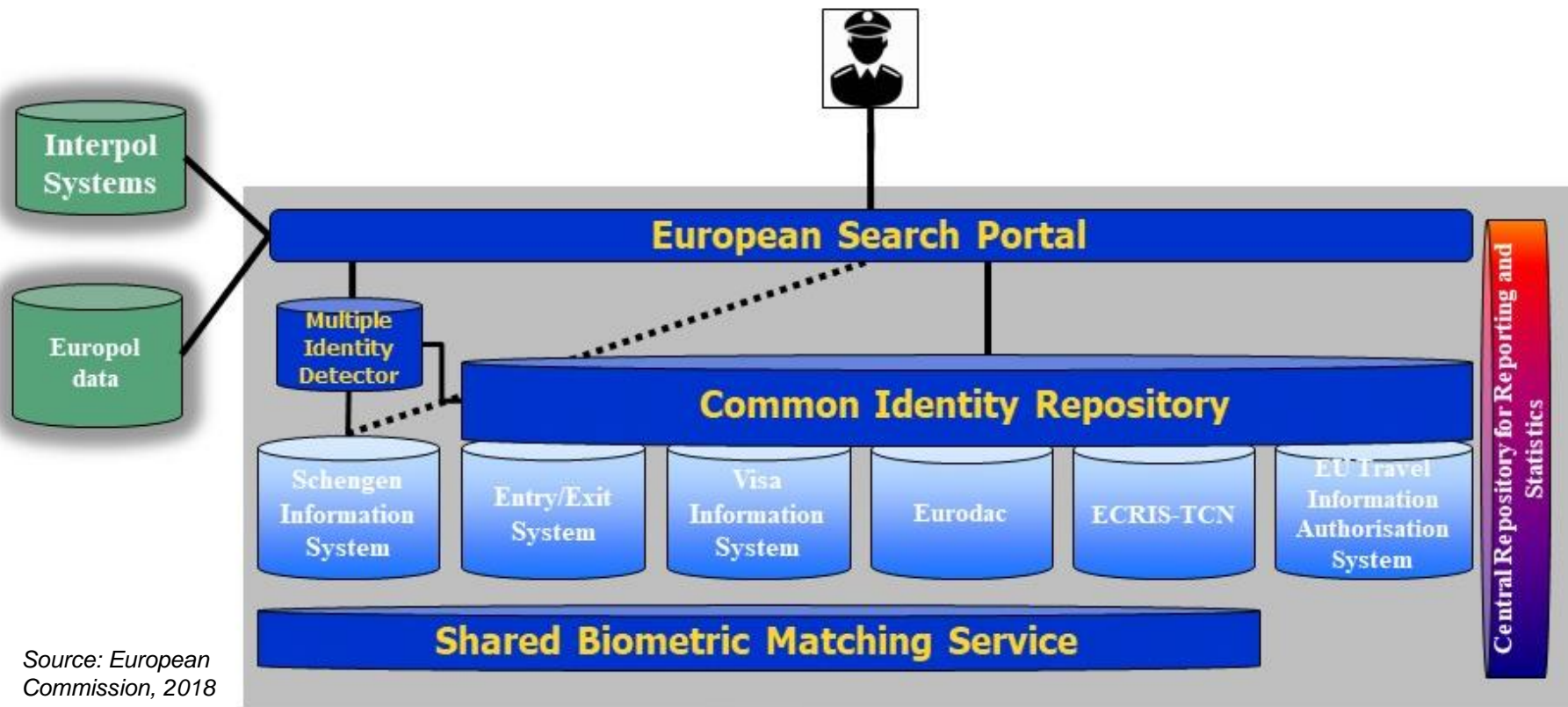


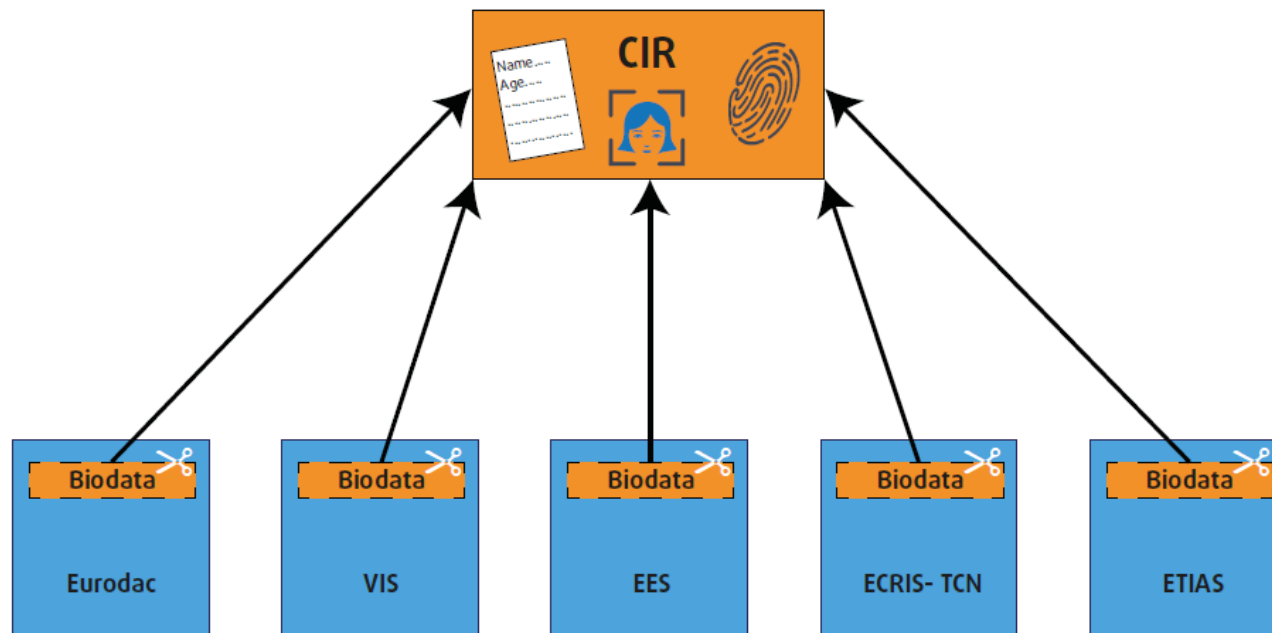
Notes:

-  EU-wide storage
-  planned EU-wide storage
-  no EU-wide storage planned

EEA: European Economic Area
CH: Switzerland

EU IT system	Main purpose	Persons covered	Biometric identifiers	Applicability
Eurodac	Determining the state responsible for examining an application for international protection	Applicants and beneficiaries of international protection	Fingerprints	27 EUMS + SAC
	Additional purpose: law enforcement	Migrants who crossed the external borders irregularly		
VIS	Facilitating the exchange of data between Schengen Member States on visa applications	Visa applicants and sponsors <i>[visa holders can become overstayers]</i>	Fingerprints	24 EUMS (not CY, HR, IE) + SAC
	Additional purpose: law enforcement			
SIS	Facilitating law enforcement cooperation to safeguard security in the EU and Schengen Member States	Missing, vulnerable and wanted persons	Fingerprints, palm prints, facial image, DNA profile	25 EUMS (not CY, IE) + SAC
SIS – border checks	Entering and processing alerts for the purpose of refusing entry into or stay in the Schengen Member States	Third-country nationals convicted or suspected of an offence subject to custodial sentence of at least 1 year	Fingerprints, palm prints, facial image	25 EUMS (not CY, IE) + SAC
		Migrants in an irregular situation		
SIS – return	Entering and processing alerts on third-country nationals subject to a return decision	Migrants in an irregular situation subject to a <u>return decision</u>	Fingerprints, palm prints, facial image	25 EUMS (not CY, IE) + SAC
EES	Calculating and monitoring the duration of authorised stay of third-country nationals and identifying overstayers	Third-country national travellers coming for a short-term stay <i>[can become overstayers]</i>	Facial image, fingerprints	24 EUMS (not CY, HR, IE) + SAC
ETIAS	Pre-travel assessment of whether or not a visa-exempt third-country national poses a security, irregular migration or public health risk	Travellers coming from visa-free third countries <i>[can become overstayers]</i>	None	26 EUMS (not IE) + SAC
ECRIS-TCN	Sharing information on previous convictions of third-country nationals	Third-country nationals with a criminal record	Fingerprints, facial image	25 EUMS (not DK, IE)
EIS	Storing and querying data on serious international crime and terrorism	Persons suspected or convicted of serious organised crime and terrorism	Fingerprints, facial image, DNA profile	27 EUMS





CIR = Common Identity Repository

EU databases & risks for irregular migrants

1. Data quality
2. Respecting dignity when collecting biometric data
3. Sharing personal data with third countries
4. The impact of past convictions
5. List of overstayers
6. Consulting Interpol databases

1. Quality of personal data stored



Data entry mistakes

Difficulties to correct or delete inaccurate data

High trust in biometrics = Difficulty to challenge data

About 50% of European border and visa officials spoke of data entry mistakes

[@FRA Infographic](#) – based on FRA,
[Under Watchful eyes- biometrics, EU IT-systems and
fundamental rights](#)

Reliability of fingerprint matches **decreases over time** (older people, children)

Limited experience on reliability of facial images of children

2. Respecting human dignity when fingerprinting

Taking fingerprints (particularly for Eurodac):

- Unwillingness to give fingerprints
- Impossibility to give fingerprints



Under watchful eyes: biometrics, EU IT systems and fundamental rights

Table 5: The right to dignity in EU legal instruments

Eurodac Regulation and <i>proposal</i>	VIS	SIS II Decision and <i>police proposal</i>	SIS II Regulation and <i>border proposal</i>	<i>SIS II return proposal</i>	EES Regulation	<i>ECRIS-TCN proposal</i>	<i>Interop. proposals</i>
no	yes	no	no	no	yes	yes	yes

Note: *Proposed legislation in italics*

Source: FRA, based on existing and proposed legislation (2017)

3. Sharing information with third countries

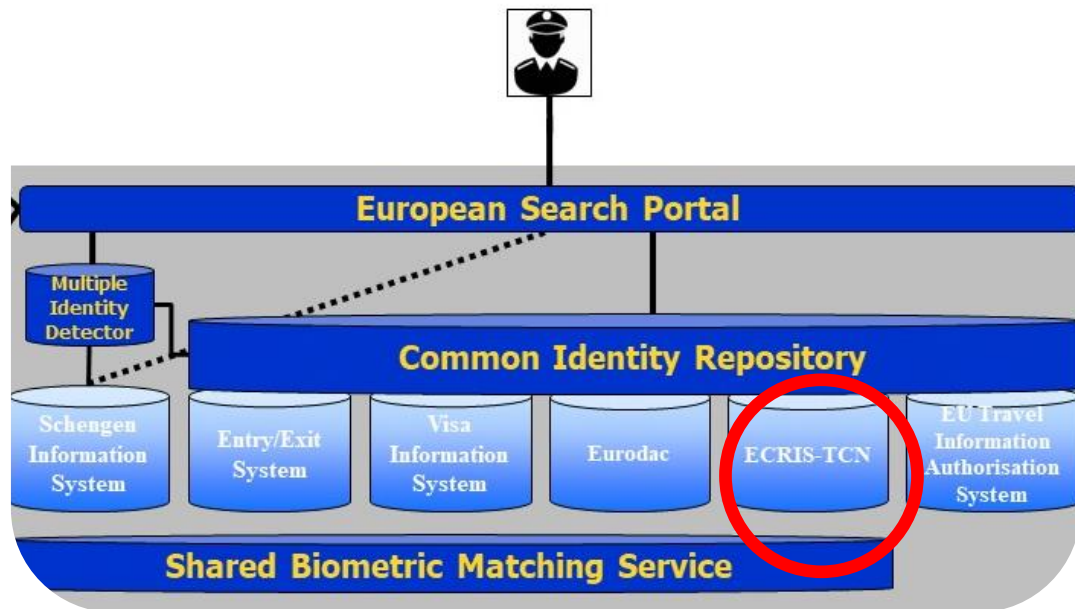
IT system	Purposes allowing sharing data with third parties
VIS	For return purposes
SIS	No sharing, except by Europol and Eurojust with the consent of the Member State who issued the alert, under certain conditions
SIS – borders	No sharing, except by Europol with the consent of the Member State who issued the alert
SIS – return	For return purposes
EES	For return purposes
ETIAS	For return purposes
	For checks against Interpol databases
ECRIS-TCN	No sharing, except by addressing Eurojust who will contact the EU Member State holding information
Interoperability	No sharing

Sharing information with country of origin on rejected asylum applicants: possible protection risks

4. Impact of past convictions

ECRIS-TCN = identity data of third-country nationals with past convictions in the EU

- Access to criminal record systems: strictly regulated at national level
- Through interoperability, officers who normally would not be able to access criminal record systems may know if a person was convicted in the past somewhere in the EU



5. List of overstayers

The **Entry/Exit System** (end of 2022) will produce a list of overstayers (Art. 12(3))

- Will asylum applicants be in the list?
- How will the use of the list of overstayers impact on basic rights of irregular migrants?

[MS “to adopt appropriate measures” – Art. 12(3)]



[FRA \(2012\)](#) Apprehension of migrants in an irregular situation – fundamental rights considerations

6. Consulting Interpol databases

Interoperability Regulations, Art. 9 (5): Any queries of the Interpol databases launched via the ESP shall be performed in such a way that **no** information shall be revealed to the owner of the Interpol alert

Automated queries will not be visible to country of origin but if further information is accessed, country of origin is **likely to know**.



- Stolen and Lost Documents Database (SLTD)
- Travel Documents Associated with Notices Database (TDAWN)

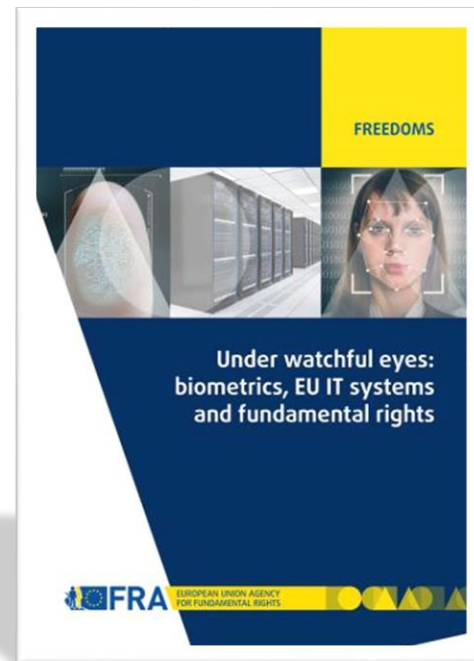
Law enforcement access to EU databases [*horizontal issue*]



- Constitutes limitation on right to privacy and protection of personal data
- Should remain an exceptional measure
- Must comply with the principle of necessity and proportionality
- Bears particular risks for children

Relevant FRA work

- ✓ FRA – ECtHR, [Handbook on European law relating to asylum, borders and immigration. Edition 2020](#), Dec. 2020 – **Ch. 2 [large-scale EU IT systems & I/O]**
- ✓ FRA – Eurodac SCG leaflet, [Right to information when taking fingerprints for Eurodac](#), Jan. 2020
- ✓ FRA focus paper, [Facial recognition technology: fundamental rights considerations in the context of law enforcement](#), Nov. 2019
- ✓ FRA opinion, [The revised Visa Information System and its fundamental rights implications](#), Sept. 2018
- ✓ FRA Opinion on [Fundamental rights implications of storing biometric data in identity documents and residence cards](#), Sept. 2018
- ✓ FRA [legal opinion on proposed Interoperability Regulations](#), April 2018
- ✓ FRA report, [Under watchful eyes – biometrics, EU IT-systems and fundamental rights](#), March 2018
- ✓ FRA opinion [on the proposed ETIAS regulation](#), June 2017
- ✓ FRA, [Fundamental rights implications of the obligation to provide fingerprints for Eurodac](#), Oct. 2015
- ✓ FRA [survey](#) on travellers' perceptions 'eu-LISA Smart Borders Pilot' (2015)





**Thank you for your kind
attention!**

? Questions ?

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