

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



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Existing IT systems:

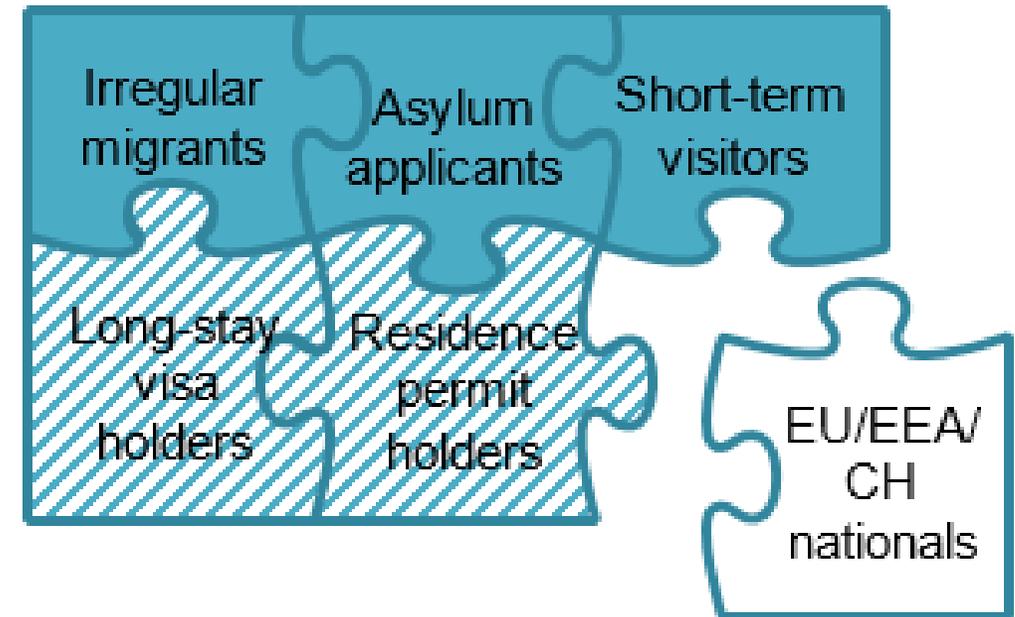
- Eurodac
- SIS (Schengen Information System)
- VIS (Visa Information System)

Planned IT systems:

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

+ **Interoperability**

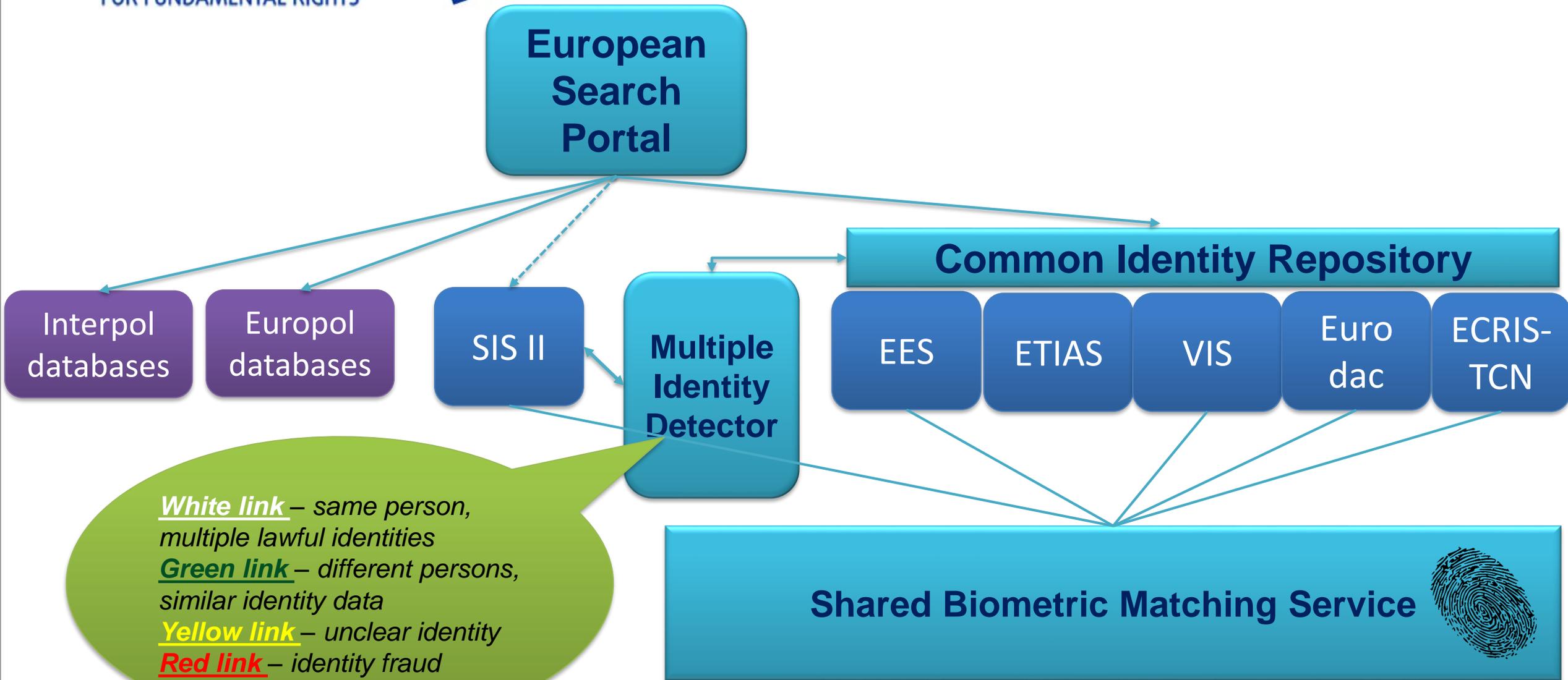
People in the EU with data stored in an EU-wide IT systems:



Notes:

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

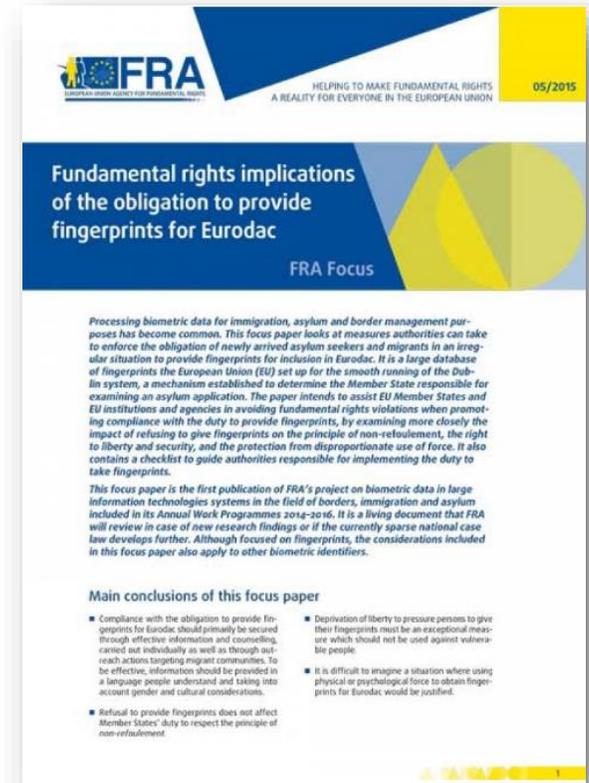
EEA: European Economic Area
CH: Switzerland



White link – same person, multiple lawful identities
Green link – different persons, similar identity data
Yellow link – unclear identity
Red link – identity fraud

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)

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

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

Do travellers to the EU trust fingerprinting?

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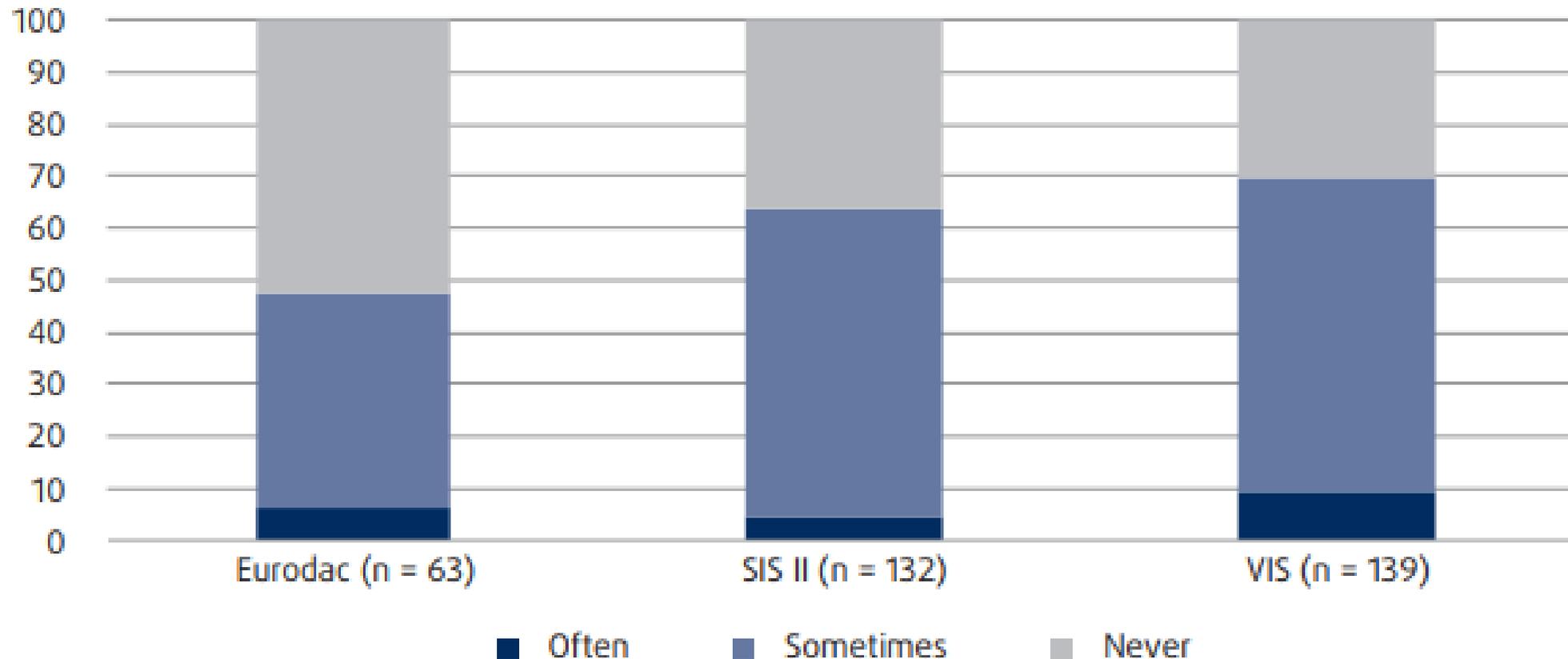
At a time when biometrics are increasingly being viewed as a potential solution to improving EU border management, around 4 out of 10 non-EU nationals at border crossing points said they were very comfortable with being fingerprinted, according to the results of a survey carried out by the EU Agency 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?”



Right of access, correction and deletion of personal data stored

- 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 → 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)

Reports:

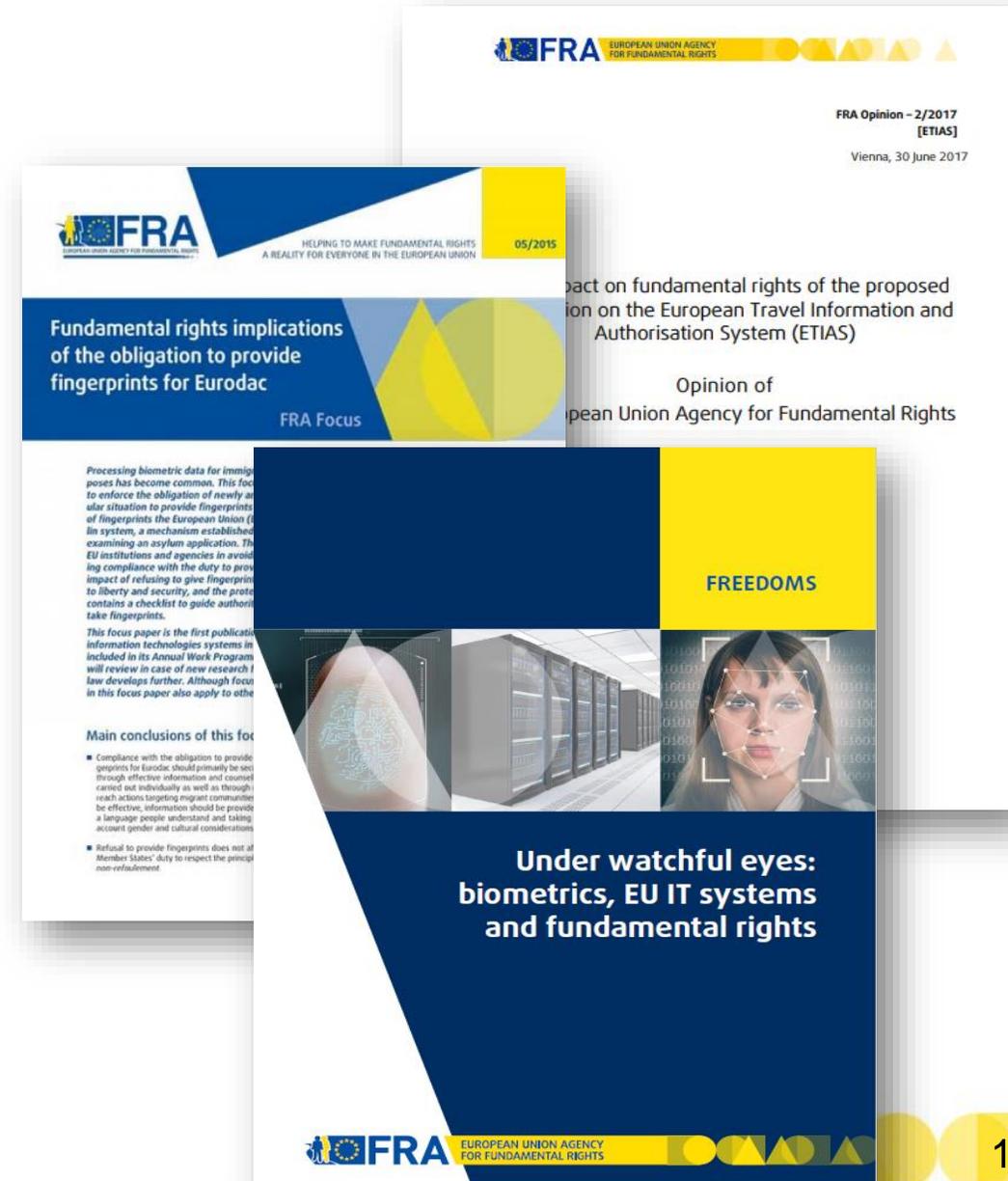
- [Under watchful eyes – biometrics, EU IT-systems and fundamental rights](#), 2018
- [Fundamental rights and the interoperability of EU information systems: borders and security](#), 2017

Opinions on:

- Security features in IDs, 2018
- [VIS](#), 2018
- [Interoperability](#), 2018
- [ETIAS](#), 2017
- [Eurodac Regulation](#), 2016
- [Dublin Regulation](#), 2016
- [ECRIS-TCN](#), 2015

Focus papers:

- [Fundamental rights implications of the obligation to provide fingerprints for Eurodac](#), 2015



Thank you for your attention



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