CHAPTER 8

The Recast Eurodac Regulation
Are Asylum Seekers Treated as Suspected Criminals?

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1 Introduction

In June 2013, the European Union (EU) completed the second phase of the Common European Asylum System (CEAS), one ‘important tool’ of which is the operation of Eurodac.¹ Eurodac is a biometric database which primarily stores the fingerprints of asylum seekers² and its rules were recently amended by Regulation 603/2013 (Recast Eurodac Regulation).³ Compared to the legal instruments adopted in the field of asylum, the Eurodac system attracts rather modest interest, perhaps due to its inherently technical nature. However, the new Regulation introduces a notable and controversial change in the operation of the database; from 20 July 2015, law enforcement authorities and Europol will be granted access to Eurodac data for the purpose of preventing, detecting and investigating terrorist offences and other serious crimes.

By critically analysing EU legislation and relevant material including articles, reports, policy briefs and accompanying documents, the present contribution explores how law enforcement access to Eurodac data may affect the fundamental rights of asylum seekers and the extent to which this new functionality signifies that asylum seekers are treated as a population suspected of criminality. For the purposes of this Chapter, the focus is specifically on asylum seekers

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² See (n 12).
³ Regulation No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of ‘Eurodac’ for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 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 and on requests for the comparison with Eurodac data by Member States’ law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (recast), OJ L 180/1, 29 June 2013.
rather than on those irregular migrants whose data may also be stored in the database.

The Chapter is divided into six main sections. The second section outlines the original purpose and operation of Eurodac. The third sets out the historical background behind the adoption of the recast Regulation and follows the debates regarding access by law enforcement agencies. The fourth section then examines the main rules of the recast Regulation concerning the use of the database for the purposes of criminal law. The fifth section assesses this new functionality by explaining the concerns regarding the fundamental rights of asylum seekers and how the Regulation attempts to address these concerns. It is argued that as the legislation in question contains certain problematic features and the necessity of these new measures concerning access by law enforcement agencies has not been adequately demonstrated, it appears that asylum seekers are a priori considered a group of people suspected of committing criminal offences. This analysis is followed by a conclusion summarising the main findings of the Chapter.

2 What is the Eurodac Database?

Eurodac, which stands for European Dactyloscopy, was created by Regulation (EC) 2725/2000 and supplemented by Regulation (EC) 407/2002. The database became operational in 2003. Its original objective was to facilitate the application of the Dublin Convention (which was later replaced by the Dublin Regulations) in order to determine which country is responsible for considering

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6 Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities, OJ C 254/1, 19 August 1997 (entry into force: 1 September 1997).

7 Regulation No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the State responsible for examining an asylum application lodged in one of the Member States by a third-country national, OJ L 50/1, 25 February 2003 (Dublin II Regulation); Regulation No 604/2013 of the European Parliament and of the Council of 26 June 2013 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), OJ L 180/31, 29 June 2013 (Dublin III Regulation).