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EUROPEAN INTELLIGENCE AND MIGRATION REASONS: REASONS FOR A LACK OF COOPERATION

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Abstract

Europe is implementing common security systems, but does not seem that they are well-functioning and integrated. Beyond of the technical difficulties, we believe that problems of poor cooperation between the States are present and that a cause of this stems from the concerns about migration and its regulation at European level. After reporting on the major issues on European security agencies, Europol, SIS and VIS, we dwell on the Eurodac system, created for the control of asylum seekers arriving in Europe. We argue that some European regulation, like the Dublin agreement on asylum seekers, puts improper incentives, dampening a cooperative behaviour of the participants to the European Union. We argue that this, among other things, derives from rival interests of the various States, and that this has negative implications on the construction of an European intelligence system.

Keywords: national security, cooperative security, EU security, migration, risk, vulnerability, threat, EU intelligence system.

Introduction: the European Security System, Accomplishment Delays and Lack of Cooperation

The European security system is based on multiple information systems, which creates networks linking the national systems. Most important are the Information System SIS in the Schengen area, the VIS, the centralization of residence visas¹ and the Europol system.

Apart from the need, mentioned by the European Council, to integrate across the different security systems, individual systems are still far from a functional integration and many questions have emerged, both by scholars and by the same European governmental bodies², questioning even their completion.

¹ By European Parliament's Decision 633/2008, was also established the Visa Information System, VIS. This database allows closer scrutiny both at the external borders and within the Member States, using biometric data disclosed to anyone requiring a visa. The system allows to easily identify any person who no longer meets the conditions for entry or residence in a Member State.

² Brussels European Council, Presidency Conclusions of 4 and 5 November 2004. DOC 15226/04 of 5 November 2004.

Shortcomings were found, like technical and computer problems, but what needs to be highlighted is the lack of cooperation manifested by the States participating in each program.

The SIS (Schengen Information System) is an automatic database, which gives access to data on individuals and ‘objects’ to Police and Consular officials in the 13 Schengen countries. The C – SIS Network contains up to 10 million items, including information on ‘undesirables’ and asylum seekers. Once resolved some problems related to the technology to work the system, SIS started in 1995. It is considered one of the ‘compensatory measures’ introduced to compensate for the creation of the free movement area. The EU is currently carrying out the extension of its content as to hold more a wider range of information in order to create a ‘European Information System’: the new SIS – NET II³. Despite independent supervision from the JSA (Joint Supervisory Authority), there are worries about the problems that may emerge as to privacy and human rights. The current system, started in 1995, contains information about thefts and about missing people. SIS II will contain biometric data, as fingerprints and digital photographs, and would enable member states to exchange European Arrest Warrants. It would also include data-security devices.

As to 2009, however, the state of completion of SIS-II is far to be advanced. According to statements of the interior minister of the Czech Republic, Ivan Langer, released at an informal meeting of EU ministers in Prague, 2009, the project is “at a critical stage” and, he added, “it may be that SIS II won't work”⁴.

The European Parliament has from his side, expressed concerns about both the SIS and VIS projects⁵.

³ Regulation (EC) n. 1104/2008 and Council Decision 2008/839/JHA of 24 October 2008.

⁴ However, Jacques Barrot, the European commissioner for freedom, justice and security, declared that “It has not been proved that SIS II is not viable”. As to the new entries in the Schengen area, Barrot said that “it is not essential to have SIS II in place to carry out further enlargements of the Schengen area”.

⁵ European Parliament resolution of 22 October 2009 on progress of Schengen Information System II and Visa Information System:

C. whereas numerous problems and delays have meant that the new system has still not come into operation, and whereas doubts have been cast on the viability of the project,

D. whereas a number of countries, including Ireland, the United Kingdom, Cyprus, Bulgaria, Romania and Liechtenstein, will not be incorporated into the SIS system until a solution is found,

G. whereas the current forecast is that SIS II will not be able to come into operation until the last quarter of 2011,

J. whereas the VIS is also being delayed, given that the date of deployment at the end of 2009 will not be met and that the start of operations might be delayed beyond September 2010 owing to certain problems in setting up the central VIS by the Commission and with regard to preparations at national level in the Member States,

2. *Expresses deep concern at the delays in the start of operations of both the SIS II and the VIS systems.*

Problems also arose about the extension of the Schengen area to new entries, like Bulgaria and Romania, both of which have aspirations to join the Schengen area in 2011. This made clear that a serious problem for individual member States is the control of migration flows, both from the outside and the inside of Europe. We'll argue that this is a cause of mis-cooperation for the member States.

Similar concerns exist for the Europol System⁶. Europol is based on a database management system (DBMS for short) that is powered directly by the Member States and is directly accessible to the consultation of the national units, liaison officers, the Director, the Deputy Directors and duly empowered officials of Europol. Whereas somebody believes that Europol will supplement the SIS system, let's observe that the extension of the last is to a smaller number of member States, namely to those of the Schengen area, this highlighting homogeneity problems both for technical link and for cooperation.

As a matter of facts⁷, there are serious concerns about Europol's implementation. Some member States' police forces are clearly reluctant to cooperate with Europol in the way that the Convention envisaged, preferring to cooperate through traditional bilateral channels. The whole process of integration is clearly hampered by a lack of quality of the intelligence systems of some of the member States. However, we believe once more that the problem lies in the handling of the flows of migrants by the proper States of EU. A critical look at some of the issues that surround this vast topic, such as illegal immigration (Europol estimates put illegal immigrants in the EU at 500,000 people per annum), will add light to the topic, especially as the EU is continuously revising its immigration policy.

As a first attempt to explore this issue, we'll review in the next sections the problems related to Eurodac, the fingerprints European information system, created with the aim to regulate, among the member States, the burden of the asylum seekers coming into Europe. We'll argue that Eurodac malfunction is due to the scarce cooperation by the States in the field of refugees' reception and we'll explain the reasons why this is taking place. Among the latter, we'll highlight the States' unwillingness to assume the burden of asylum seekers, this causing a conflict between control and respect for human rights. To conclude, we'll draw some remarks on the future of an European intelligence system.

⁶ Europol (short for European Police Office) is the *European Union's Criminal Intelligence Agency*. It became fully operational on 1 July 1999. As of 2007, Europol covers all 27 member states of the European Union.

Europol was reformed as a full *Eu Agency* on 1 January 2010. This gave Europol increased powers to collect criminal information and *European Parliament* more control over Europol activities and budget.

⁷ Quoting from Statewatch: www.statewatch.org

Eurodac and Its Malfunctioning

The Eurodac system was created as a support to the so called Dublin system⁸, which governs the burden sharing of asylum seekers among the European States.

Recall that Eurodac detects fingerprint and records the date, place and other general information of three categories of people: cat 1, those who have applied for asylum; cat 2, those who have crossed the border illegally and cat 3, those who were found in irregular circumstances within the territory of a Member State.

Referring to the European Commission's Report for the year 2009⁹, we identified several factors of inefficiency that plague the Eurodac system.

The Report notes with full evidence, that the number of hits of cat 2 is surprisingly low. In fact, 46.000 positions in 2006 seem very few. Examining the annual specific reports on Eurodac, presented by the Commission at the European Parliament and the Council, it is noted that after an initial increase, although not significant, of these hits, in 2009 they were reduced. They went down especially from Italy, due to well-known Government's measures, and are now the majority those from Greece. However the total number (65,000 approx.) seems low compared to the perception of the phenomenon that is obtained from other statistical sources, e.g. from Eurostat. In addition, some countries (Romania, Portugal etc) exhibit zero reports of category 2 in 2009.

The other problem, indicated by the 2009 Report on Eurodac, is that of the delays in the registered transactions, which may even reach to 36 days in some cases.

Another problem is that of rejected transactions, because they do not meet the technical requirements of the Eurodac operating system.

Quoting from the Report: The Commission must reiterate that a delayed transmission can result in the incorrect designation of a Member State by way of two different scenarios outlined in previous annual reports¹⁰.

Well, evidently missed or delayed transactions makes inoperative the division of responsibilities underlying the Dublin Regulation. The Commission criticizes these omissions and delays, threatening retaliation (in the form of reduced European funding, fines etc.) for those countries that show major deficiencies.

Let's now quote a table extracted from the Report:

⁸ The Dublin Convention (Council Regulation 2725/CE/2000, then amended by Regulation 407/CE 2002) merged in 2003 in the European Regulation 343/2003/EC, the so-called Dublin II Regulation.

⁹ European Commission Brussels, 2.8.2010 COM(2010)415, *Annual report to the European Parliament and the Council on the activities of the EURODAC Central Unit in 2009*.

¹⁰ The Report highlight the two possibilities of "wrong hits" and "missed hits", namely the two different situation where a hit may be attributed improperly to a State, thus disattending the Dublin dictate (for details and reference, see the 2009 Commission's Report).

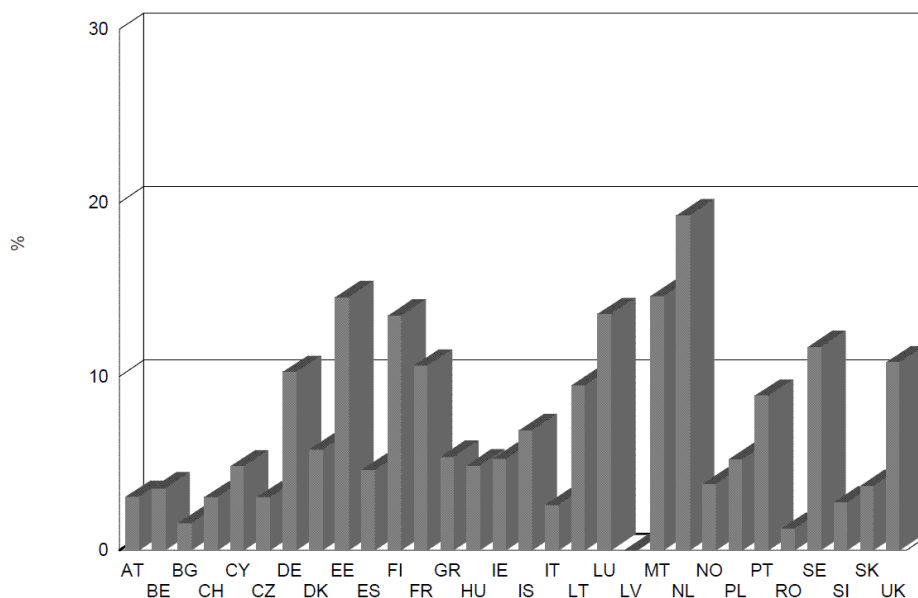


Table: Rejected transactions, percentage in 2009
 Source: Report on Eurodac
 by the European Commission, 2009

(Quoting from the Report): The average rate in 2009 of rejected transactions for all Member States was 7,87%, which is a slight increase from the previous years. 9 Member States had rejection rates of over 10%: the Netherlands (19,28%), Malta, Estonia, Luxembourg, Finland, Sweden, United Kingdom, France and Germany.

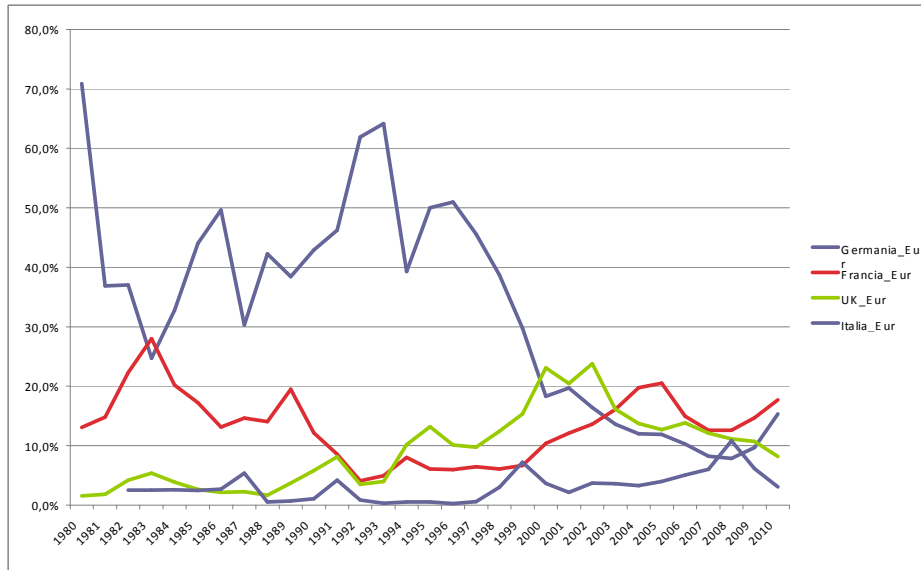
The Report shows that the poor quality of the transaction is not dependent on the technology used or deficiencies in the system. It refers instead to human error and misconfigured systems of individual countries. As a comment, let's observe that it is surprising that some advanced countries in terms of technology are in the list. We may suspect that rejections, delays and other deficiencies are the consequence not of inefficiency, but of smart behavior, in order to avoid the burdens of the Dublin system. We must therefore explore the question of cooperation in the European asylum system.

Reasons for the Lack of Cooperation

The Dublin system isn't cooperative. It expresses the will of the States to not assume the burden of physical presence of refugees, except those who cross their borders in the first place. The Eurodac system has primarily the task of

identifying these States. Its deficiencies represent, in our view, the attempt of some States to circumvent those obligations.

As to understand the evolution of the reception of refugees in Europe, we recur to the following graph:



Graph: Quotas of refugees in some European States 1980-2010
 (% refugees received on total refugees in Europe)
 Source: CREG-Tor Vergata, based on UNHCR data

It's easy to recognize that things have notably changed after year 2000, that is, more or less, from the starting of the Dublin system. The graph clearly shows how, for example, Germany went to a smaller number of refugees than before, and now France is like the one that takes the greater load.

All this was done by restrictive measures taken not only from Germany, but in different ways by many European countries. The restrictive measures include, for example in the classification of Thielemann (2004), especially the clause of "country of origin or safe passage" in the examination of applications, lower standards of treatment as to reception and integration, with deterrence purposes.

The restrictive measures, as is visible, cause a transfer of responsibility for the arrival State to its neighbours. They are taken bilaterally with the countries of origin and transit, outside of any concerted European scheme¹¹.

¹¹ In France, recent legislation has limited the granting of asylum by introducing the concept of "internal asylum" to indicate individuals which are eligible for political asylum in a part of their country and whose claim is rejected by the French authorities. The OFPRA (French Office

Bilateral agreements are incentivised in the Stockholm program as a tool to streamline the migration process, but there are concerns about the compliance of these States. We have little information about the fairness of the examination of asylum applications in the “safe third countries”, as well as on the material conditions of reception and integration possibilities offered to refugees in those countries. They are often African countries, subject of criticism by international bodies. Restrictive measures have dramatically changed the distribution of refugees among the States, increasing the degree of mutual mistrust and encouraging non-cooperative attitudes.

In conclusion, the Community instruments, the current ones and those of the Stockholm program, do not seem to be sufficient to promote major improvements in the European asylum system, for what regards the cooperation level.

Conclusion: Finding Cooperative Agreements

To examine the reasons for this lack of cooperation, we consider, in an ongoing research¹², the costs linked to the reception of the refugees by the States. According to the data and the comments contained in a study made by the European Parliament in 2010, we can also say that the direct and tangible costs, that are purely monetary, are negligible. Even the number of refugees in Europe is very low, if compared to the population, the territory and the GDP. Other direct costs are the social costs of reception in terms of utilization of health and school structures and similar. Even here, however, relating to European populations, the figures don't seem to be relevant. Instead, there emerge, even in the evaluation of studies commissioned by the European Parliament (THIELEMANN *et al.*, 2010), the political costs linked to the negative perception that European populations and governments have of the migratory phenomenon. Some studies (NEUMAYER, 2004; THIELEMANN, 2004) relate the restrictive policies on refugees with such negative perceptions. However, we argue that the fears of some countries of being more attractive, because of their

for the Protection of Refugees) that , since 2005, has drawn a list of “safe countries” which, according to many observers ,is overly broad, since it includes countries such as Benin, Ghana, Mali, India, Senegal, Georgia, Ukraine, Bosnia and Croatia. The Asylum seeker who come from these countries, which is believed to respect human rights and freedoms of individuals, are expelled from French territory within 15 days after entry. The result was a drastic reduction (approximately 80%) of asylum applications from these countries. Even in the United Kingdom, the adoption of restrictive measures for the grant of protection of asylum seekers was based on the introduction of accelerated procedures and the principle of safe country of origin and especially of “safe third country” under which the application for seekers should be tried in the “safe” country first reached by the migrant.

¹² Such research was later published in a book: “I rifugiati in Italia e in Europa Procedure di asilo fra controllo e diritti umani” by Enzo Rossi e Luca Vitali, Giappichelli, Torino, 2011.

richness and width, are excessive for those who ask for asylum. As to asylum seekers, the factors of geographical nearness and human smuggling organizations prevail (see also THIELEMANN, 2004).

In conclusion, the aim of migration control prevails, most of all for political internal reasons, and this first results in a reduction of the human rights for asylum seekers. Until the States look at the problem of asylum as a national problem, a real cooperation can't be possible.

However, it's perceptible that the not optimal function and the inefficiencies of the current Dublin system constitute a loss of benefits for all, even in terms of control. A major symptom of this lack of cooperation is the inefficiency of the Eurodac system. On the contrary, a fully functional Eurodac system provides advantages not only in terms of general migration control but also in the intimately related fronts of the fight against crime and terrorism, fronts to whose the Eurodac has been recently extended. In fact, the European Council of Brussels, held in November 2004, raised the matter of a link of the Eurodac system to other security devices such as SIS – Schengen Information System – and Europol. The recent evolution of Frontex, which obtained, in limited terms, a supranational autonomy, may be the first example of this awareness extended to the field of the whole migration policy.

Our remarks may constitute a first approach to the analysis of the inadequacy of the common European migration system, which are the very cause also for a lack of a common intelligence. So that cooperation is possible, it is necessary that the States gain knowledge, based on relative and objective data, that the political costs of migration are not as high as believed and that the benefits of a common control system prevail. This would allow cooperative and incentive compatible agreements and constitute a first step towards building a common European Intelligence.

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