

Léa Lebon

Cities and migrants' rights in the era of digitalisation

Implications of the digital regulations in the new Pact on Migration and Asylum



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PREFACE

The EU's new Pact on Migration and Asylum was passed in April 2024, one of the most significant initiatives announced by Commission President Ursula von der Leyen during her tenure. Reaching an agreement on the new Pact proved difficult and contentious.

The new Pact includes ten different legislative packages, several of which concern migration management and asylum procedures at the EU's outer border, including a pre-screening procedure and reform of the Eurodac biometric database. These policy changes must be understood in a larger context of more restrictive migration and border management policies and their nexus with digital policies and the use of digital technologies.

This approach raises questions regarding the situation of people on the move, including refugees, asylum applicants and undocumented migrants who have been living in cities for different periods of time. In particular, the new Pact's provisions have the potential to further affect migrants' right to privacy, fundamental liberties, and protection from the risk of disproportionate discrimination.

Léa Labon's paper looks at two of the ten legislative packages in more detail and discusses the impact of the pre-screening procedure and Eurodac reforms on the digital rights of migrants, as well as the implications for the authorities in charge of integration policies at the local level, as cities have a role in protecting migrants' digital rights.

Main findings:

- The paper argues that the new Pact on Migration and Asylum harbours a significant risk of strengthening disproportionate surveillance, discriminatory procedures based on technology and violations of data protection.
- The use of digital surveillance mechanisms and potentially biased technologies for migration policies can create serious risks to individual fundamental freedoms and access to essential public services.
- Yet digital tools such as databases and accessible digital services, when used within a strict framework, can also ease the inclusion of migrants and refugees in the host country.
- Analysing these impacts with a local perspective in mind can help administrations to develop initiatives to manage the arrival of migrants.

This timely paper provides reflections on how the combination of more restrictive legislation and the digitalisation of policy instruments can further push vulnerable communities into isolation or create new forms of poverty in cities, but also offers recommendations to cities and local authorities that can play a role in protecting migrants' digital rights. ←

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SHORT SUMMARY/ABSTRACT

This paper seeks to explore the impacts of the pre-entry screening procedure and Eurodac reforms on the digital rights of migrants, as well as the digital policy implications of local authorities in charge of integration policies at the local level. The paper also provides more general reflections on how a combination of more restrictive legislation and the digitalisation of policy instruments can further push vulnerable communities into isolation or create new forms of poverty in cities. It also formulates a number of recommendations. The paper takes an exploratory approach to analysing how the current use of digital technologies in migration policy is impacting migrants' rights and local authorities' behaviour.

The digitalisation of migration policy processes, at all levels of governance, has a real impact on cities' ways of working and migrants' rights. As municipalities try to leverage the opportunities provided by digital tools to implement their policies, they must consider the implications of these tools for refugee and migrant rights. The new Pact on Migration and Asylum poses a significant risk of strengthening disproportionate surveillance, promulgating discriminatory procedures based on technology and boosting data protection violations. Cities have a role to play in the protection of migrants' digital rights. By being in direct contact with migrants and refugees through their integration policies, they have the opportunity to support them by defending their rights and raising their awareness of the existing protections regarding privacy and data protection at EU, national and local level. However, the current legal and policy frameworks regulating the use of digital technologies in migration policy do not involve cities, even though the biggest social impacts of migration are felt most strongly at the local level. Moreover, data-sharing arrangements between public services and immigration enforcement are raising serious concerns about undocumented migrants' access to public services and the degradation of their living conditions. To reduce these risks and ensure that digital technologies benefit all, the following recommendations need to be considered during implementation of the new Pact for Migration and Asylum:

- Involve cities in the digitalisation of migration policy processes.
- Build up cities' capacities to ensure the digital human rights of migrants and refugees.
- Ensure data-sharing firewalls between key public services and immigration enforcement.
- Develop a coherent and transparent interoperability framework between the different levels of governance.

1) Main arguments of the paper

- The digitalisation of migration policy processes, at all levels of governance, has a real impact on cities' ways of working and migrants' rights.
- Local authorities are trying to leverage the opportunities provided by digital tools to implement their policies, and they are considering the implications of these tools for refugees' and migrants' rights.
- The new Pact on Migration and Asylum harbours a significant risk of strengthening disproportionate surveillance, discriminatory procedures based on technology and violations of data protection.

2) Why is it important?

- The current legal and policy frameworks regulating the use of digital technologies in migration policy do not involve cities, even though the biggest social impacts of migration are felt most strongly at the local level.
- The data-sharing arrangements between public services and immigration enforcement raise concerns regarding undocumented migrants' access to public services and the degradation of their living conditions.
- Cities have a role to play in the protection of migrants' digital rights. They are in direct contact with migrants and refugees through their integration policies and can support them in defending their rights in the EU, national and local contexts.
- Cities and other local stakeholders therefore need to be better informed about the impact of the digital regulations in the new Pact on Migration and Asylum in order to understand their room for manoeuvre and legal obligations under the new framework.

3) Common European Asylum System reform

- The new Pact concludes years of negotiations on reform of the CEAS and the future of the EU's migration policies.
- While governance of the EU's migration and asylum systems is managed at the national and EU levels, the implications of the different regulations are felt at the local level, at which cities welcome, support and provide for the inclusion of migrants and refugees who experience these migration management processes first hand.
- Cities as main integration stakeholders need to be better involved in multi-governance discussions and policy spaces concerned with migration in Europe in order to better tailor policies to realities on the ground.

1 INTRODUCTION

On 10 April 2024, after almost five years of negotiations and intense debate in both public and political spaces, the European Parliament voted on the final text of the new Pact on Migration and Asylum, which constituted the latest reform of the Common European Asylum System (CEAS). The latest European Union (EU) policy framework on asylum, migration and border management policies contains ten legislative items aimed at establishing ‘seamless migration processes and stronger governance’.¹ More precisely, the new Pact on Migration and Asylum (New Pact) includes a reform of the asylum procedures and asylum management regulations, stating that asylum procedures are to be carried out at the EU’s external borders. To this end, asylum centres are to be set up near the border, although their locations are yet to be determined. The crisis and force majeure regulation sets exceptional rules for Member States and the European institutions in times of rapid surges in migration or situations in which migrants are instrumentalised by third parties aiming to destabilise the EU. The renewed solidarity mechanism is aimed at clarifying the Member States responsible for examining applications for international protection and setting different requirements on solidarity between Member States, such as relocation, financial contributions, and operational and financial support.

To implement these provisions, the EU plans to leverage the potential of digital tools, putting technology at the centre² of the New Pact. More precisely, the New Pact introduces a pre-entry screening procedure to collect the biometric data of third-country nationals arriving at the border of a Member State. It also proposes a reform of the Eurodac database, which extends the type of data stored and makes the objectives of control and reduction of irregular immigration more explicit. These regulations, like the New Pact in general, illustrate how policies have gradually been transposed to a more restrictive context, aimed at combatting irregular immigration. For example, the Screening Regulation and the Eurodac database will prevent people with little chance of receiving asylum protection from entering or staying in the EU, and monitor them.

In a context of techno-solutionism, digital technologies for the implementation of migration policies are used at each level of governance, including at city level. Local au-

thorities are deploying digital solutions such as data-sharing systems, applications and artificial intelligence (AI) to support the implementation of their integration policies towards refugees and undocumented migrants. The municipality of Espoo is currently designing a pilot project called ‘Trust-M’ to improve the accessibility of digital public services. Using an AI Large Language Model (LLM) system, the city is developing a conversational chatbot that will help refugees and migrants navigate the integration service website.

This use of technologies is embedded in a political context in which the role of the local level in the integration of refugees and migrants has progressively increased. Across Europe, migration issues have dominated national and EU level debates in recent years, but it is at the local level that migration-related challenges – from a lack of affordable housing to pressures on public services – need to be faced. The progressive increase in the arrivals of migrants and refugees from 2015–2016 pushed many local authorities into emergency mode to find solutions to tackle the needs of vulnerable groups, including refugees with a range of physical and mental health conditions and unaccompanied children.³ Cities had to face these challenges with restricted budgets and existing pressures on housing and labour markets, in a global context of political polarisation around migration and integration policies. With the arrival of four million Ukrainians since 2022, municipalities have to deal with two asylum reception systems (the refugees fleeing from Ukraine being protected by the Temporary Protection Directive). This context has required that cities further structure their migration policies, as migrants coming from within and without the EU equally need housing, public and health services.

This paper aims to explore the digital policy implications of local authorities in charge of integration policies at the local level, as well as the impacts of the pre-entry screening procedure and Eurodac reforms on migrants’ digital rights. Such impacts will be analysed with a local perspective in mind, given cities’ role at the forefront of integration policies and cities’ competences in terms of essential service provision, generating a strong incentive to meet migrants’ needs. Indeed, urban areas are the preferred geographical settlement for migrants, leading city administrations to develop initiatives to manage their arrival and stay.

¹ https://home-affairs.ec.europa.eu/policies/migration-and-asylum/pact-migration-and-asylum_en#timeline-and-main-achievements.

² Salgado, Lucía and Beirens, Hanne (2023): What Role Could Digital Technologies Play in the New EU Pact on Migration and Asylum? Brussels: Migration Policy Institute Europe. Available at: <https://www.migrationpolicy.org/research/digital-technologies-eu-pact-migration>.

³ Patuzzi, Liam (2020): European Cities on the Front Line: New and emerging governance models for migrant inclusion. Brussels and Geneva: Migration Policy Institute Europe and International Organization for Migration. Available at: <https://www.migrationpolicy.org/research/european-cities-governance-migrant-inclusion>.

It is therefore important to understand the linkages between migration management and integration policies, enabling cities to better estimate how the national and EU levels of decision-making can impact their ability to fulfil their legal duties and to drive their political agendas. The paper also provides more general reflections on how the combination of more restrictive legislation and the digitalisation of policy instruments creates conflicting goals between, for example, freedom and security, data protection and interoperability. In this setting, digitalisation can further push vulnerable communities into isolation or create new forms of poverty in cities.

The paper will first outline the political and legislative context of the research topic. It will then analyse the consequences of collecting and processing data on migrants' digital rights by focusing on two legislative changes as part of the CEAS reform: the pre-entry screening procedure and the Eurodac reform. Discussing the pre-entry screening procedure can help us to understand the general consequences of the New Pact on Migration and Asylum for migrants' arrival and stays in cities. The paper will then explore the implications of the Eurodac reform in the different challenges and opportunities raised by migrants' data-sharing practices. It will provide a space for reflection on cities' involvement in the interoperability of data systems and the data-sharing of migrants at every level of governance.

This paper deals with a complex topic, and therefore takes an exploratory approach to analyse how the current use of digital technologies in migration policies is impacting migrants' rights and local authorities. That is why the third section will focus on explaining this complexity, from both a legislative and a technical point of view. The overall purpose of the paper is to address the nexus of migration and digital policymaking.

2 METHODOLOGY

This exploratory paper is based on three different types of sources:

- The regulatory texts of the new Pact on Migration and Asylum after the European Parliament's vote on 10 April 2024, in particular the Parliament's amendments of Regulation (EU) 2024/1352 of the European Parliament and of the Council of 14 May 2024 amending Regulations (EU) 2019/816 and (EU) 2019/818 for the purpose of introducing the screening of third-country nationals at the external borders and of Regulation (EU) 2024/1358 of the European Parliament and of the Council of 14 May 2024 on the establishment of 'Eurodac' for the comparison of biometric data in order to effectively apply Regulations (EU) 2024/1351 and (EU) 2024/1350 of the European Parliament and of the Council and Council Directive 2001/55/EC and to identify illegally staying third-country nationals and stateless persons and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, amending Regulations (EU) 2018/1240 and (EU) 2019/818 of the European Parliament and of the Council and repealing Regulation (EU) No 603/2013 of the European Parliament and of the Council.
- The existing literature developed by academic researchers, think tanks and specialised non-governmental organisations (NGO).
- Five interviews with officers from city departments and the EU institutions, as well as the analysis of Data Protection Impact Assessments (DPIA).

3

POLITICAL AND LEGISLATIVE CONTEXT

3.1 THE SCREENING PROCEDURE OF THIRD-COUNTRY NATIONALS AT EU BORDERS AND THE REFORM OF EURODAC, TWO ILLUSTRATIONS OF TECHNO-SOLUTIONISM USED FOR MIGRATION MANAGEMENT PURPOSES

The new Pact on Migration and Asylum is considered a renewed opportunity to define a comprehensive European approach to migration policy. It proposes a reformed and structured solidarity system between Member States that aims to put in place concrete solutions for relocation decisions, including in times of crisis, and to establish common rules for asylum procedures. The New Pact is also a significant product of the current political circumstances that aims to combat irregular immigration. Based on far-right discourses about the supposed dangers of immigration, and within a context of pressured and dysfunctional migration systems, the phenomenon of migration in Europe is now at the heart of electoral debates. This is reflected in EU and national immigration laws. Since 2000, the European Union, while still promoting some initiatives for the inclusion of regular migrants, has voted restrictive laws oriented towards migration control that aim at removing irregular migrants from EU territory. The purposes were to:

- reinforce EU's external border surveillance to avoid irregular border crossings (Return directive, 2008);
- impose sanctions on third parties (facilitators, employers, carriers) facilitating the entry and stay of irregular migrants (Employers' Sanctions Directive, 2009);
- make more effective decisions on who can enter and reside in their territory and return those who are unauthorised to stay⁴ (Facilitation Directive, 2002).

In this context, the New Pact focuses on establishing a border procedure that should be more efficient in identifying those who can directly be the subject of a return procedure and those who have more chance of acquiring protection status. To implement these provisions, the EU plans to leverage the potential of digital tools, with technology at its centre.⁵ More precisely, the two regulations are based on digital mechanisms. The first one introduces a pre-entry screening procedure at external EU borders, applying to people who do not meet the conditions to enter an EU Member State, who have applied for international protection during border checks or have been disembarked after a search and rescue operation. The pre-entry screening procedure will also concern third-country nationals staying irregularly within the territory of a Member State and who have not been controlled at external borders.⁶

The screening of third-country nationals involves identifying and registering their biometric data. The main purpose is to reduce the presence of irregular migrants within the EU while increasing the efficiency of the asylum procedure for those who seek international protection. Changes in the reform include lowering the age of pre-screening from fourteen to six years old and extension of the capture of biometric data, adding facial images, decisions to remove and return a person or relocate them, name, surname, nationality, date and place of birth.⁷

Moreover, the national authorities will be responsible for carrying out health and security checks. The purpose of the legislator is to assess whether people face any risks to their safety and well-being, as well as to record whether a person represents a national threat, is violent, or harmed⁸ in the Europol database. Each Member State will nominate a competent authority to carry out the pre-entry screening procedure at the border or in any appropriate location designated by the Member State. Third-country nationals will have to be 'available to authorities to perform the above

⁴ Delvino, Nicola (2018): The European Union and migrants with irregular status: opportunities and limitations in EU law and policy for European local authorities providing assistance to irregular migrants. University of Oxford: Centre on Migration, Policy and Society (COMPAS). Available at: <https://www.compas.ox.ac.uk/wp-content/uploads/City-Initiative-on-Migrants-with-Irregular-Status-in-Europe-CMISE-report-November-2018-FINAL.pdf>.

⁵ Salgado and Beirens (2023). See n 2.

⁶ European Parliament Regulation 2024/Euratom of 10 April 2024 introducing the screening of third-country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817, ELI: available at: https://www.europarl.europa.eu/doceo/document/A-9-2023-0149-AM-210-210_EN.pdf.

⁷ Press releases: Asylum and migration: deal for more solidarity and responsibility sharing, 20 December 2023. The European Parliament. Available at: <https://www.europarl.europa.eu/news/en/press-room/20231214IPR15929/asylum-and-migration-deal-for-more-solidarity-and-responsibility-sharing>.

⁸ European Parliament Regulation 2024/Euratom of 10 April 2024, ELI: https://www.europarl.europa.eu/doceo/document/A-9-2023-0149-AM-210-210_EN.pdf, op. cit.

checks and may be detained to ensure it.⁹ In practice, this means that authorities will have the authorisation to detain people or restrict their freedom of movement for a period of up to seven days. To ensure that migrants' fundamental rights will be respected, each Member State will need to implement a monitoring mechanism.

The capture of biometric data will support the migration management solidarity mechanism and asylum procedures. It will provide information regarding which Member State should be responsible for analysing the asylum demands of an application for international protection and by giving usable information for administrative and judicial review during any ensuing asylum or return procedure. The biometric data will be stored in different databases, including Eurodac, the second digital system to be the object of reform in the new Pact on Migration and Asylum.

Established in 2003, Eurodac is an EU database storing the fingerprints of three categories of people:

- Asylum seekers' fingerprints used to determine the Member State responsible for an asylum application (category 1).
- Individuals apprehended in connection with irregular border-crossings ('Category 2'), to facilitate the 'Dublin' rules on determining the Member State responsible for processing applications for international protection. Capturing and comparing fingerprints makes it possible for national authorities to determine whether another Member State, in which the individual has already been registered, should be responsible for handling their application.
- Fingerprints can also be taken from third-country nationals or stateless persons found to be staying in a Member State ('Category 3') irregularly, in order to 'reduce and deter irregular immigration'.¹⁰

In 2019, the EU stored almost 6 million people's datasets including fingerprints, gender, date and location of registration and nationality.¹¹

Eurodac is based on the interoperability of different information-sharing systems. According to the EU, interoperability is the 'ability of information systems to exchange data and enable sharing of information to improve the efficiency and effectiveness of Europe-wide information-

sharing tools by ensuring the technical processes, standards and tools that allow EU information systems to work better together'.¹² For authorised users (such as police officers, migration officials and border guards), the purpose is to 'have faster, seamless and more systematic access to the information they need to do their jobs'.¹³

Focus on the Eurodac database

The 'Eurodac' system is a database introduced in 2003 to support the application of the Dublin Regulation, particularly the allocation mechanism. It helps to identify which Member State is responsible for conducting a person's asylum procedure. The database, by storing the fingerprints of asylum-seekers, allows national authorities to better monitor migrants' border crossings. The information stored was originally restricted to: fingerprints, gender, registration data and Member State of origin. However, according to the European Digital Rights network (EDRI), the tool has quickly come to be used as a 'quasi-identification tool because authorities were authorised to exchange more personal information about the person and cross-check their Eurodac fingerprints against national databases in order to identify them'.¹⁴ In 2016, a reform of the regulation widened the purposes of the database, serving EU policies on asylum, resettlement and irregular migration.

Eurodac is interconnected with other EU home and justice databases, the Visa and Information System (VIS), the Schengen Information System (SIS), which includes data from Interpol and Europol, the Entry-Exit System, the European Criminal Records Information System for Third-Country Nationals (ECRIS-TCN) and the European Travel Information and Authorisation System. These six EU databases are now part of the same overarching EU information system called the Common Identity Repository (CIR), which can be used, for example, by police officers from a Schengen Area country to access the personal data of non-EU na-

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⁹ Press releases: MEPs approve pre-entry screening procedure. 10 April 2024. The European Parliament. Available at: <https://www.europarl.europa.eu/news/en/press-room/20240410IPR20338/meps-approve-pre-entry-screening-procedure>.

¹⁰ European Parliament Regulation 2024/Euratom of 10 April 2024 on the establishment of 'Eurodac' for the comparison of biometric data in order to effectively apply Regulations (EU) 2024/Euratom and (EU) 2024/Euratom of the European Parliament and of the Council and Council Directive 2001/55/EC and to identify illegally staying third-country nationals and stateless persons and on requests for comparison with Eurodac data by Member State law enforcement authorities and Europol for law enforcement purposes, amending Regulations (EU) 2018/1240 and (EU) 2019/818 of the European Parliament and of the Council and repealing Regulation (EU) No 603/2013 of the European Parliament and of the Council, ELI: available at: https://www.europarl.europa.eu/doceo/document/A-8-2017-0212-AM-158-158_EN.pdf, p. 15.

¹¹ Berthélémy, Chloé (2021): Eurodac database repurposed to surveil migrants. European Digital Rights (EDRI), 10 March. Available at: <https://edri.org/our-work/eurodac-database-repurposed-to-surveil-migrants/>.

¹² Platform for International Cooperation on Undocumented Migrants (PICUM) (2023): Data protection and the firewall: advancing safe reporting for people in an irregular situation. Available at: https://picum.org/wp-content/uploads/2023/08/PICUM-Briefing_Data-protection-and-the-firewall_safe-reporting.pdf.

¹³ Ibid.

¹⁴ Berthélémy (2021). See n 11.

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tionals and proceed to verify their identity. The purpose of this centralisation is to extract information from different contexts and construct new systems, allowing data to be made accessible to a wider number of authorities. Based on the pre-entry screening procedure, the reform of Eurodac is aimed at more effectively identifying people arriving irregularly to EU territory by expanding the biometric data collected on asylum applicants and irregular migrants from fingerprints to facial images, name, surname, nationality, date and place of birth, information on decisions to remove from EU territory and return the person or relocate them. The data of a person who has been disembarked in an EU Member State following a rescue operation will be recorded separately and will also include people taking part in national and EU resettlement schemes. The reform introduces a ten-year limit on data storage. Authorities will also be able to record whether someone could present a security threat or was violent or armed.¹⁵

Eurodac and the pre-entry screening procedures are two significant examples of techno-solutionism, which sees governments, supported by tech companies, resorting to hi-tech solutions for implementing policies in a wide range of areas, from climate change to migration.¹⁶ Indeed, the use of digital technologies in European migration and asylum systems has been increasingly favoured to improve the management of migration policies. A range of technologies, such as AI and machine learning, blockchain, biometrics and data systems have helped border surveillance identification, registration for asylum and return procedures, decision-making and service delivery.¹⁷ For example, the AI-based lie-detector *IBorderCtrl* is used to support monitoring systems on EU borders by establishing the truthfulness of testimony of people trying to cross those borders to seek asylum.¹⁸ The tool categorises data gathered during interviews into levels of deceptiveness that will help, or even decide, whether a migrant's account can be trusted or not.¹⁹ This has been intensively criticised by NGOs such as *Amnesty International*²⁰ on ethical grounds and because of its built-in biases.

IBorderCtrl is not the only technology criticised for its infringements of non-discrimination, data protection and privacy rights. While internet and digital services are particularly promising for connecting people on the move and easing their access to vital services and reliable information,²¹ such innovations in digital technology also carry the risk that they will be used for disproportionate and unlawful surveillance and other profiling measures, creating a context of human rights violations and social exclusion.²² According to the *Migration Policy Institute*, without a clear vision behind technological development, emerging risks can outweigh the benefits, endangering migrants and refugees, as well as the credibility of the asylum and migration systems.²³

3.2 THE INCREASING USE OF DIGITAL TECHNOLOGIES BY LOCAL AUTHORITIES TO SUPPORT THE IMPLEMENTATION OF THEIR INTEGRATION POLICIES

To support the implementation of their integration policies regarding refugees and migrants, local authorities are increasingly deploying digital solutions such as data-sharing systems, applications and AI. In addition to the example of Espoo mentioned in the Introduction, the city of Amsterdam is using a database to share information between partner organisations to implement its LVV Programme. This initiative provides undocumented migrants with shelter, legal and social support. In Berlin, to ease the interactions between refugees and administrative officers, the city is using digitalised video and audio translation. The municipality is also currently developing an app aimed at providing relevant and user-friendly information for third-country nationals and facilitating their access to further digital services of the city.

As explained in the Introduction, the use of technologies by local authorities is due to the increasing role they have been given in the integration of refugees and migrants, especially since the 2015–2016 migration crisis. Cities have developed long-term policies to manage the stays and integration of refugees. Amsterdam and Espoo recently acquired more legal competencies in this area. Indeed, the Dutch Civic Integration Act of 2022 transferred new competencies to municipalities, which are now responsible for the integration of newcomers who need to follow the civic inte-

¹⁵ European Parliament Regulation 2024/Euratom of 10 April 2024, ELI: https://www.europarl.europa.eu/doceo/document/A-9-2023-0149-AM-210-210_EN.pdf, op. cit.

¹⁶ Amnesty International. 2024. Primer: defending the rights of refugees and migrants in the digital age. Available at: <https://www.amnesty.org/en/documents/pol40/7654/2024/en/>.

¹⁷ Salgado and Beirens (2023). See n 2.

¹⁸ Amnesty International, Primer: defending the rights of refugees and migrants in the digital age. See n 16.

¹⁹ For example, frequency of eye-blinking, direction of sight, movement of facial muscles, and changes in tone of voice.

²⁰ See n 16.

²¹ Ibid.

²² Ibid.

²³ Ibid.

gration pathways.²⁴ In 2025, Finland will implement its new Integration Act, which provides that migration services related to integration will become the responsibility of Finnish municipalities. Each municipality will have to create its own integration programme for migrants.²⁵

Focus on two local case studies

Espoo and the *Trust-M* project

Launched in 2023, the *Trust-M* research project is a six-year project funded by the Academy of Finland and driven by the city of Espoo, in collaboration with three Finnish universities. The project came into being partly because of an OECD report highlighting the lack of trust between migrants and digital public services. The project brings together different academic disciplines and the municipal aspect, gathering knowledge on service design, policy, legal, ethical, sociological and technical considerations. It aims at understanding the implications of technology, digitalisation and artificial intelligence for this gap, so that the city can subsequently create alternatives to promote and maintain trust.

In parallel, the municipality of Espoo is designing a pilot project to make its digital services inclusive for migrants. Using an AI Large Language Model (LLM) system, the city is developing a conversational chatbot that will help refugees and migrants navigate the integration service website. To make sure it improves the accessibility of digital public services, the municipality is using participatory methods, as well as introducing language diversity to design this service.

Amsterdam and the *LVV Programme*

Amsterdam has been driving the *LVV Programme* since 2014. It is a shelter and legal counselling project supporting people whose asylum applications have been rejected. With five hundred places, the initiative allows undocumented migrants to receive protection and support with their asylum procedure or to prepare their return to their country of origin. Each person in the programme also receives an anonymous bank card to receive financial support from the city council. Alongside the municipality, this project involves various partners, such as local NGOs, the Dutch government and the police. The partners share a database to exchange the personal data of the programmes' participants. When starting the programme, participants need to go to the police to give their information and fingerprints, so that police officers can verify their identity and check whether they entered another European country, using databases such as Eurodac.

Cities are also navigating within the legal context to further develop initiatives on undocumented migrants. Some cities are adopting 'security frame' policies, discouraging irregular migrants from living in their territory and pushing them to move to other areas. By contrast, a lot of local authorities are adopting measures on human rights grounds, based on their prerogatives and duties in the socio-economic domain related to the provision and management of services at local level, including education, social assistance, health care, housing, police, care services, and public transport.²⁶ Many cities consider such initiatives necessary because irregular migrants are often found in vulnerable situations that come within the remit of their ethical and humanitarian obligations. It is also necessary to achieve the general goals of the city, such as public health, public order and cohesion.²⁷ These actions are based on the real presence of undocumented migrants in urban areas: it is estimated that irregular migrants represent between 3 and 6 per cent of the population in cities such as Ghent, Genoa and Rotterdam.²⁸

²⁴ <https://www.denhaag.nl/en/integration-and-naturalisation/civic-integration/#civic-integration-requirement-before-2013>

²⁵ https://migrant-integration.ec.europa.eu/news/finland-comprehensive-reform-integration-act_en#:~:text=Overall%2C%20the%20newly%20reformed%20Integration,sections%20of%20the%20Finnish%20population.

²⁶ Delvino, Nicola (2018). See n 4.

²⁷ Delvino, Nicola (2017): The challenge of responding to irregular immigration: European, national and local policies addressing the arrival and stay of irregular migrants in the European Union. University of Oxford: Centre on Migration, Policy and Society (COMPAS). Available at: <https://www.compas.ox.ac.uk/wp-content/uploads/AA17-Delvino-report-FINAL-1.pdf>.

²⁸ Ibid.

4

THE PRE-ENTRY SCREENING PROCEDURE AND ITS CONSEQUENCES FOR MIGRANTS' ARRIVAL AND STAY IN CITIES

4.1 CONSIDERATION OF MIGRANTS' FUNDAMENTAL RIGHTS TO PRIVACY AND NON-DISCRIMINATION

FACIAL RECOGNITION, A SENSITIVE PROCEDURE THAT MAY INFRINGE FUNDAMENTAL RIGHTS

The pre-entry screening procedure regulation is part of a legislative tendency, also visible in other national and international agencies, to build biometric databases aimed at cross-checking people against watchlists, identifying migrants' origins and transit countries, and verifying their identities.²⁹ By extending the scope of the biometric data that EU Member States can collect and store in databases, the pre-screening procedure confirms the prominence of data collection in driving immigration policies focused on control and return practices. Some uses of these technologies have been discussed in relation to their proven and potential risks of disproportionate surveillance of migrants, which has consequences for their rights to privacy and freedom.

For example, by authorising the capture of facial images during the screening procedure, the reform promotes the use of facial recognition technologies for identification purposes. This was strengthened by the recently adopted *Artificial Intelligence Act*, which refrained from prohibiting the use of AI systems for facial recognition. Indeed, the prohibitions and safeguards on AI systems do not apply to the migration context and the exemption provision on national security gives flexibility for Member States to bypass the protective provisions while implementing their migration enforcement procedures.³⁰ In a White Paper on AI published in February 2020, however, the European Commission (EC) recognised that the 'gathering and use of biometric data for remote identification purposes, for instance through the deployment of facial recognition in public places, carries specific risks for fundamental rights'.³¹

Moreover, according to NGOs such as *Amnesty International* and *EDRi*, the current use of facial recognition technology for identification poses risks to privacy rights as it cannot satisfy the requirements of limitation, necessity, and proportionality stated under international human rights law. For example, international human rights law and standards set out a three-part test to determine whether an interference with the right to privacy is legitimate: firstly, any interference must be prescribed by and respect the law (legality); secondly, it must be pursuing a legitimate aim; thirdly, it must be strictly necessary to meet a legitimate aim, such as protecting national security or public order (necessity) and be conducted in a manner that is proportionate to that aim and non-discriminatory, which entails balancing the nature and extent of the interference against the reason for it (proportionality).³²

The screening procedure provisions carry the risk of not satisfying those requirements. For example, the regulation allows national authorities to detain migrants apprehended within EU territory for a period of up to three days. This provision can open a window for arbitrary arrest and restriction of freedom as undocumented people, including families and children, could at any time be apprehended in any public place and detained in designated facilities within the territory of a Member State if they have not already been subjected to screening in a Member State.³³

THE THEORETICAL IMPROVEMENT OF MIGRANTS' RIGHTS TO INFORMATION

The regulation will also have consequences regarding migrants' control and right to information over their data. On a positive note, the regulation will improve the rights to information by including requirements on transparency and protection. Thus, a person subject to the screening procedure should have the possibility to indicate to the screening authorities that the information contained on the form is incorrect. The information related to the

²⁹ Amnesty International, Primer: defending the rights of refugees and migrants in the digital age. See n 16.

³⁰ Joint Statement: A dangerous precedent: how the EU AI Act fails migrants and people on the move. 13 March 2024. Access Now. Available at: <https://www.accessnow.org/press-release/joint-statement-ai-act-fails-migrants-and-people-on-the-move/>.

³¹ Platform for International Cooperation on Undocumented Migrants (PICUM) (2023): Digital technology, policing and migration – what does it mean for undocumented migrants? Available at: <https://picum.org/wp-content/uploads/2023/08/Digital-technology-policing-and-migration-What-does-it-mean-for-undocumented-migrants.pdf>.

³² Amnesty International, Primer: defending the rights of refugees and migrants in the digital age. See n 16.

³³ Joint Civil Society Statement on Article 5 of the EU Screening Regulation. November 2023. Platform for International Cooperation on Undocumented Migrants (PICUM). Available at: https://picum.org/wp-content/uploads/2023/12/Joint-Statement_Art5-Screening_1Dec.pdf.

screening should also be available either on paper or digitally to the person concerned, an exception being made for information related to the consultation of relevant databases for security checks.³⁴

However, ensuring effective implementation of such principles will require investment by the public authorities to tackle the existing challenges of data protection and privacy rights. Analysis of the existing databases carried out by the *European Council for Refugees and Exiles* highlighted the fact that migrants rarely exercise their rights to access, rectify and delete personal data.³⁵ The use of individuals' faces as input data to improve facial recognition algorithms is often done without the individual's knowledge or consent, and a migrant's refusal to undergo fingerprinting is often used as justification for the collection of additional biometric data.³⁶

DISPROPORTIONATE SURVEILLANCE, A REALITY IN CITIES' PUBLIC SPACES

Facial recognition surveillance systems based on biometric databases are increasingly becoming a reality in cities' public spaces. While not necessarily implemented directly by local city councils, such practices are giving rise to questions and concerns within city territory. Cities will need to engage in dialogue with municipal police and law enforcement authorities to find a balance between, on one hand, ensuring people's safety and the security of their goods, and on the other hand, respecting their fundamental rights.

More and more cases of facial recognition implementation and experimentation in cities are coming to light in various legal and political contexts, including an attempt by a French regional authority to use facial recognition in schools. Such systems have been classified by national data protection authorities³⁷ as particularly intrusive and dangerous to the private life and freedoms of citizens as they contribute to the creation of a feeling of disproportionate surveillance, control and distrust.

Migrants are particularly vulnerable to the use of facial recognition surveillance. The pre-entry screening regulation shows that a wide range of personal data will be 'screened' and collected, making migrants a prime target of surveillance and control. In the United Kingdom, Metropolitan Police Live Facial Recognition (LFR) trials have shown that the technology is used not only to track criminals and tackle seri-

ous crimes but also to detect individuals on a mental health watchlist, thus demonstrating the risk that facial recognition systems, combined with the collection of mental health data, as planned by the pre-entry screening regulation, could be used to identify and return undocumented migrants.³⁸ This risk has also been highlighted by a consortium of leading NGOs working on digital rights who, following analysis of existing practices of targeted surveillance, observed that mass surveillance measures are disproportionately impacting migrants.³⁹ This shows a need to push for fundamental rights impact assessments to evaluate the risks of using new technologies for surveillance and immigration enforcement purposes in cities.

EXISTING BIASES IN TECHNOLOGY LEADING TO DISCRIMINATORY PROCEDURES

The collection and use of biometric data raise concerns in terms of direct and indirect forms of discrimination based on race, ethnicity, national origin and religion that can lead to racial and ethnic profiling. Indeed, the methodology behind the development of technology using biometric data for surveillance purposes is not neutral. According to research published by the *Migration Policy Institute*, algorithmic decision-making is vulnerable to system failure, errors and biases. Regarding the last point, the analysis reported that social groups are disproportionately represented in facial image datasets, while algorithms for migration management systems may result in de facto exclusion based on criteria of national origins.⁴⁰ Indeed, the algorithm is built with the assumption that individuals of certain nationalities or with certain characteristics – such as race, ethnicity, and religion – pose a risk with regard to compliance with immigration policies or 'threats' to national security.⁴¹

Such methodology leads facial recognition technology to perform differently depending on key characteristics including skin colour, ethnicity and gender. It also has concrete consequences for people on the move and racialised communities. For example, digital technologies are prone to errors in the recognition of black people, leading them to be targeted more by law enforcement and immigration practices and creating a climate of unsafety and criminalisation. Furthermore, algorithmic decision-making systems have an impact on family separation, deportation and denial of asylum or visas.⁴²

³⁴ European Parliament Regulation 2024/Euratom of 10 April 2024, ELI: https://www.europarl.europa.eu/doceo/document/A-9-2023-0149-AM-210-210_EN.pdf, op. cit.

³⁵ Berthélémy, Chloé (2021). See n 11.

³⁶ Amnesty International, Primer: defending the rights of refugees and migrants in the digital age. See n 16.

³⁷ Expérimentation de la reconnaissance faciale dans deux lycées : la CNIL précise sa position. 29 October 2019. CNIL. Available at: <https://www.cnil.fr/fr/experimentation-de-la-reconnaissance-faciale-dans-deux-lycees-la-cnil-precise-sa-position>.

³⁸ People, not experiments: why cities must end biometric surveillance. 14 October 2020. European Digital Rights (EDRI). Available at: <https://edri.org/our-work/people-not-experiments-why-cities-must-end-biometric-surveillance/>.

³⁹ Jakubowska, Ella and Naranjo, Diego. 2020. Ban Biometric Mass Surveillance A set of fundamental rights demands for the European Commission and EU Member States. Brussels: European Digital Rights (EDRI). Available at: <https://edri.org/wp-content/uploads/2020/05/Paper-Ban-Biometric-Mass-Surveillance.pdf>.

⁴⁰ Salgado and Beirens (2023). See n 2.

⁴¹ Amnesty International, Primer: defending the rights of refugees and migrants in the digital age. See n 16.

⁴² Ibid.

There is a strong risk that the pre-screening procedure will strengthen the current discriminatory policing and racial profiling targeting communities of colour in Europe.⁴³ Indeed, the pre-entry screening procedure will apply to all suspected undocumented migrants at the external borders and within the EU, meaning that people could be apprehended in a Member State for identity verification and detained for up to three days for data collection and be registered in databases (such as Eurodac). This may heighten the risk that people of colour will be targeted by controls based on their alleged nationality and be subject to arbitrary detention without adequate safeguards. Therefore, the reform risks reinforcing a hostile environment for minorities and people of colour, whether they are EU citizens or persons with regular residence status.⁴⁴

DISCRIMINATORY PRACTICES, A LIVED REALITY IN CITIES

The increasing deployment of facial recognition in cities' public spaces (detailed in the previous section) is exacerbating the risk of racial profiling in urban areas. Research has shown that black, brown and Muslim communities are disproportionately over-policed. With the introduction of facilitated access to a larger quantity of biometric data, levels of surveillance and the risk of discrimination may increase. **Local authorities have a significant role to play in reducing these risks by supporting equality impact assessments before using facial recognition systems within their territory.** Such assessments are necessary to better understand the sensitivity of the technology and the foreseeable risks of discrimination. However, **assessments need to be accompanied by measures that effectively enhance non-discriminatory practices and avoid feelings of exclusion and discrimination.** In that sense, **cities, due to their proximity to residents and associations, are at a level of governance well suited to engaging in dialogue and consulting marginalised communities on their experiences with surveillance and control.**⁴⁵

4.2 THE OPPORTUNITIES AND CHALLENGES OF TECHNOLOGIES FOR RELOCATION MATCHING SYSTEMS IN CITIES

THE PRE-ENTRY SCREENING PROCEDURE, A TOOL FOR THE SOLIDARITY MECHANISM OF THE NEW PACT ON MIGRATION AND ASYLUM

Digital tools are increasingly being brought to the fore to facilitate migration procedures. In that sense, it is envisaged that the pre-entry screening procedure shall provide data to the relevant authorities that can be used for any further migration procedures, including to implement the new solidarity mechanism.⁴⁶ Collection of and access to refugees and asylum applicants' data will facilitate the determination of the Member State responsible for examining an application for international protection. Concretely, authorities will be able to record the first entry of a migrant at an external border of the EU and cross-check with the Visa Information System to support the relocation decision. While asylum applicants will not be able to express a preference concerning which Member State shall be responsible for examining their applications, they will be able to indicate the presence of family members in a Member State for family reunion purposes. The identification process will also identify specific vulnerabilities, which will determine whether there is a need for special reception.⁴⁷

Technologies are already being used to facilitate settlement decisions made by the authorities. Digital case management systems for information sharing among national authorities, mobile applications to allow displaced persons to carry key documents with them across borders, and matching algorithms to relocate asylum seekers within a country, all represent significant examples of how digitalisation is becoming a viable solution for immigration authorities to increase efficiency and to adapt to specific vulnerabilities of asylum seekers.⁴⁸ AI-based algorithms are also increasingly being used by national authorities during migration management procedures, including to analyse the visa applications of third-country nationals.⁴⁹ This growing tendency raises the question of how this technology will be used by national authorities to implement the solidarity mechanism, and to what extent the biometric data gathered during the pre-entry screening procedure will feed the algorithm.

⁴³ PICUM, Digital technology, policing and migration – what does it mean for undocumented migrants? See n 31.

⁴⁴ PICUM, Joint Civil Society Statement on Article 5 of the EU Screening Regulation. See n 33.

⁴⁵ EDRI, People, not experiments: why cities must end biometric surveillance. See n 38.

⁴⁶ Press releases: EU Regulation on Asylum and Migration Management endorsed. 10 April 2024. The European Parliament. Available at: <https://www.europarl.europa.eu/news/en/press-room/20240410IPR20336/eu-regulation-on-asylum-and-migration-management-endorsed>.

⁴⁷ European Parliament Regulation 2024/Euratom of 10 April 2024, ELI: https://www.europarl.europa.eu/doceo/document/A-8-2017-0212-AM-158-158_EN.pdf, op. cit.

⁴⁸ Salgado and Beirens (2023). See n 2.

⁴⁹ European Migration Network (2022): The use of digitalisation and artificial intelligence in migration management: Joint EMN-OECD Inform. Brussels: European Migration Network. Available at: <https://www.oecd.org/migration/mig/EMN-OECD-INFORM-FEB-2022-The-use-of-Digitalisation-and-AI-in-Migration-Management.pdf>.

DIGITAL TOOLS AS AN OPPORTUNITY TO BETTER MEET THE NEEDS OF CITIES AND REFUGEES

The combination of the pre-entry screening procedure and existing databases with the renewed criteria for relocation decisions could represent an opportunity for municipalities to make their voice heard. Indeed, recent reforms reinforced cities' legal obligations regarding the integration of refugees and asylum applicants, based on the fact that the relocation of asylum applicants and refugees has increasingly become dependent on urban reception capacities. Moreover, cities are concerned by the digitalisation of the relocation matching process as it is based on algorithms using past data of cities and refugees to make an optimal placement recommendation.⁵⁰ The algorithms use a range of data, based mainly on local capacity and job opportunity criteria.

The digital tools used for the relocation matching process have proven to be useful in achieving the best 'match-making' between asylum seekers and municipalities. For example, the *Berlin Governance Platform* has developed the *Re:Match programme*,⁵¹ which uses the *Pairity* matching algorithm to help assign and relocate Ukrainians across different municipalities in Germany. *Pairity's* preference-matching algorithm uses biographical and preference-ranking data from beneficiaries and data provided by cities, including on available services, labour markets, diaspora organisations and availability in refugee reception centres. The algorithm seeks to make the best possible matches given cities' resources and the beneficiaries' preferences (for example by factoring in whether they assign more importance to work opportunities in given sectors, higher education opportunities, schools for children, or medical care).⁵² These solutions have been made possible due to the development of data spaces, which gather precise information on cities and refugees. Improving the type of data collected, as planned by the pre-entry screening procedure, represents an opportunity to enhance this relocation matching process by providing further information on individuals' specificities and vulnerabilities.

Moreover, **data sharing by authorities responsible for the relocation decision to city administrations could reinforce the latter's capacity to fulfil their integration duties.** Having more rapid access to the number of migrants arriving on their territory could help cities make the best allocation of their services' resources and capacities. For example, knowing when, how many and which groups of new arrivals will be transferred to a city by national authorities in the near future (something local authorities receiving large numbers of new arrivals do not always know) could

be one of the best approaches to enhancing planning of public services for refugees.⁵³ **However, such data-sharing would require the implementation of strong data safeguards, such as data anonymisation and security systems resilient against data breaches.**

THE EXISTING RISKS AND LIMITS OF THE RELOCATION MATCHING PROCESS

The opportunities offered by the digital tools mentioned in the section above will only reach their full potential if governments address the existing challenges and risks around the use of these solutions. Algorithmic decision-making and matching software are not neutral as they are based on political decisions that influence the type of criteria that should be used and prioritised when making matches. Besides the German example mentioned in the previous section, analysis of existing relocation mechanisms shows that decision-making is often based on the location of available housing, thereby leaving aspects such as employment and education opportunities, social connections, or access to support services out of the equation, even though they can have decisive consequences for the longer-term integration of migrants and refugees.⁵⁴ As shown by the new EU relocation system, the preferences of refugees and asylum seekers are taken into account inadequately or not at all, which may, in turn, undermine their capacity to integrate into their new living place. Moreover, the legal and policy framework dealing with irregular migrants is set for, and not with, European cities, even though the greatest social impacts of their presence are felt most strongly at the local level. These gaps have consequences for both refugees and cities.

Indeed, prioritising local housing and reception capacity can also reinforce inequalities between cities. The cities offering more available housing are often those that failed to become 'competitive cities', a concept supported by the World Bank which involves developing the attractiveness of a local authority to increase economic growth and boost jobs.⁵⁵ This lack of attractiveness results in a certain degree of depopulation, poor health infrastructure, high unemployment and exclusion from centres of activity. Relocating migrants and refugees arriving with specific vulnerabilities in cities already dealing with such social and economic difficulties will put further pressure on their constrained financial, human and infrastructure capacities.

Following the same logic, such prioritisation over other criteria that could foster refugees' and asylum seekers' long-term inclusion means that they could end up living in areas where there is a clear lack of education facilities, public services, employment opportunities and social con-

⁵⁰ Salgado and Beirens (2023). See n 2.

⁵¹ <https://rematch-eu.org/>

⁵² *Ibid.*

⁵³ Patuzzi, Liam (2020). See n 3.

⁵⁴ Salgado and Beirens (2023). See n 2.

⁵⁵ *Competitive Cities: A Local Solution to a Global Lack of Growth and Jobs*. 10 December 2015. The World Bank. Available at: <https://www.worldbank.org/en/topic/trade/publication/competitive-cities-a-local-solution-to-a-global-lack-of-growth-and-jobs>.

nections.⁵⁶ Indirectly, algorithmic decision-making may perpetuate inequality if refugees with specific vulnerabilities are matched with locations where they might face worse employment opportunities and poor social and health facilities, thereby putting them at risk of social exclusion and poverty.

To mitigate those risks, several considerations need to be taken into account. First, while cities cannot decide on who can migrate and reside regularly in their territory (no legal competencies on relocation decisions), **cities should be involved in the development of the relocation mechanisms' digital systems. By taking part in defining the criteria helping the decision-making, cities could ensure that matching algorithms improve the fit between asylum seekers or refugees and receiving communities.**⁵⁷ Secondly, the *Migration Policy Institute* highlighted the danger that authorities will rely blindly on algorithmic recommendations which, consequentially, raise the risks of unnoticed machine errors. It is necessary to consider digital solutions not as sole decision-makers but as supportive tools which can help facilitate the work of staff by proposing recommendations that should be constantly verified, approved and modified by trained professionals.⁵⁸

Finally, while collecting and storing refugees' and asylum applicants' data can improve the decision-making related to their relocation, these practices are sensitive and not without risks that can have severe consequences for the data owners. The anonymisation of data at a large scale is still at an early stage, meaning that personal data would be shared between authorities. Based on the EU Charter of Fundamental Rights and the General Data Protection Regulation (GDPR), refugees should have full control and rights over their data, meaning the right to access, rectify and delete their data. Authorities will need to drive the necessary investments to implement strong data safeguards and data security systems, avoiding data breaches. The need for this is demonstrated not least by the fact that cases have shown refugees being found and persecuted by the country they originally fled from because of data breaches.⁵⁹ These points of attention will be further detailed in the next section, focusing on the reform of Eurodac and the questions raised regarding the involvement of cities in the interoperability of data systems.

⁵⁶ Salgado and Beirens (2023). See n 2.

⁵⁷ Delvino, Nicola (2018). See n 4.

⁵⁸ Salgado and Beirens (2023). See n 2.

⁵⁹ Amnesty International, Primer: defending the rights of refugees and migrants in the digital age. See n 16.

THE EURODAC REFORM AND THE QUESTION OF CITIES' INVOLVEMENT IN THE INTEROPERABILITY OF DATA SYSTEMS

5.1 LOCAL AUTHORITIES AS PROMOTERS OF MIGRANTS' DIGITAL RIGHTS IN OPPOSITION TO THE EURODAC PROVISIONS

A DIFFERENCE IN DATA PROTECTION STANDARDS BETWEEN THE EU AND LOCAL AUTHORITIES

The new Pact on Migration and Asylum shows the different standards of data protection between the EU and local authorities. Indeed, the Eurodac regulation is an example of legal differentiation between EU citizens' data protection rights and those of migrants, whose biometric data is collected in migration databases that are increasingly interconnected and used with the explicit objective of tracing migrants and combating irregular immigration. Such a practice goes against the GDPR, which protects individuals' rights to privacy and data protection without distinction based on nationality, place of residence, or residence status.

For example, the Eurodac reform, by adding new categories of persons, such as persons disembarked from search and rescue missions or eligible for resettlement inside the EU, creates an incentive to introduce differentiated treatment depending on the category in which people are registered.⁶⁰ Moreover, the GDPR prohibits the processing of personal data beyond what is strictly needed to achieve the purposes for which the data was initially collected. The Eurodac database, by being open to consultation by any undefined national 'competent authority', creates a high risk of violating the principle of necessity as it is unclear how the database will be accessed and for what specific reason.

On the contrary, numerous cities have shown the importance they ascribe to data protection of refugees and migrants in the digitalisation of their processes and policies. For example, Amsterdam conducted a DPIA to evaluate the risks and measures needed to implement the new Dutch Immigration Act that entered into force on 1 January 2022. With the new act, municipalities play an important role as they are responsible for coordinating the integration obligation process and tests that all newcomers will need to pass. To implement its new legal duty, the city of Amsterdam will be involved in a lot of personal data-sharing. That is why the city conducted a DPIA to identify potential data breaches and disproportionate data-sharing. The assess-

ment also provides transparency, guidelines and alerts regarding the use of data required by the new Act. Lastly, Amsterdam has written a privacy statement, which guides its actions in terms of the protection of individuals' information.⁶¹

Consequently, with the reformed Eurodac, national and European levels will not need to meet the same requirements as before, endangering the data protection of refugees and migrants who cities are trying to protect at their level. As mentioned by an officer of a city administration, the new legal context might bring general confusion in cities by questioning the relevance and necessity of the efforts that many of them are putting into respecting the privacy and data protection of refugees and migrants.

EURODAC SECURITY PURPOSES AND THE IMPORTANCE OF DATA PROTECTION POLICIES AT LOCAL LEVEL

The Eurodac reform is a significant example of how interoperability between databases serving different purposes blurs the lines between migration policies and security goals. For example, after entering into force, the renewed Eurodac database should inform whether a person could be considered a 'security threat', which will influence the migration authorities' decision to accept or reject their application for international protection. But the current text does not provide clear and objective criteria to determine what constitutes a security threat. It means that this assessment is left to the discretion of the law enforcement agent responsible for doing the checks.⁶²

The justification of national security allows European and national authorities to benefit from the safeguards and exceptions provided by the GDPR regarding compliance with its principles. Indeed, authorities can deviate from GDPR if they can justify the need for national security and/or prevention, investigation, detection or prosecution of criminal offences. By introducing facial images in Eurodac, the legislators increased the sensitive characteristics of the database, which will store data that can reveal racial or assumed ethnic origin. However, data revealing racial, ethnic origin, and/or data concerning health or residence status can be processed only with the consent of the person or, in exceptional circumstances, when necessary for reasons of

⁶⁰ Berthélémy, Chloé (2022): Warnings against arbitrariness and mass surveillance in EURODAC. European Digital Rights (EDRI), 30 November. Available at: <https://edri.org/our-work/warnings-against-arbitrariness-and-mass-surveillance-in-eurodac/>.

⁶¹ <https://www.amsterdam.nl/en/general-items/items-footer/privacy-city-of-amsterdam/>

⁶² Ibid.

substantial public interest under national or EU law.⁶³ Such circumstances mainly concern the tracking of criminals and the prevention of serious crimes. The Eurodac reform thereby provides an additional legal basis for the criminalisation of migrants, who are being grouped under the same type of ‘exceptional circumstances’ as the most punishable judicial sanctions.

Thus, the renewed Eurodac regulation allows more extensive data collection and interoperability potential between authorities within the EU, under the arguments of national security and public order interest. This development shows that the protection and management of data at the local level, while not directly affected by the new Pact on Migration and Asylum, will become an increasing point of attention for cities. To implement their integration policies, cities already need to use a considerable number of refugees’ and migrants’ data. For example, the city of Amsterdam collects data on citizen service numbers, names, addresses, contact details, and all information relevant to the integration classes and tests passed by all refugees (as stated by the new Immigration Act). This data is shared with other stakeholders, including national ministries.

Due to the lack of transparency on data-sharing and interoperability systems, it is very difficult for cities to understand whether the data that they originally collected is part of a data-sharing ‘chain’ and accessed by national authorities that was not originally foreseen by the city. While extensive research would have to be conducted to understand whether the data collected by cities could end up in the Eurodac database, or cross-checked against it, such a context highlights **the need to drastically improve the transparency behind data-sharing and to clarify the structure and different layers of the interoperability systems**. As we will see in the next section, a hostile data-sharing environment can have severe consequences and unknown side effects for migrants’ fates and cities’ capacities.

Furthermore, the questions triggered by the Eurodac regulation highlight the importance of local data protection policies. **Cities, within their defined capacities, have the possibility of building protective measures that can act as a shield and reduce the risks of a hostile data-sharing environment**. For example, an officer from the city of Espoo reported that the increase in negative connotations associated with migration has led the new Finnish national government to push drastic changes towards migrants, which makes integration harder than before. At the same time, the new Integration Act, which will enter into force in 2025, has improved the autonomy of municipalities, allowing Espoo to have some flexibility despite the restrictive government regulations. According to the officer, the City of Espoo intends to use this margin of manoeuvre to continue fostering its inclusion initiatives towards mi-

grants, in particular to make its public services accessible and user-friendly for all.

CITIES AS AN INTERMEDIARY TO RAISE MIGRANTS’ AWARENESS REGARDING THEIR DIGITAL RIGHTS

As explained above, databases such as Eurodac need to be treated carefully as collecting biometric data is a sensitive business, allowing for the identification of an individual through a record of their immutable personal characteristics.⁶⁴ According to the NGO *PICUM*, the Eurodac regulation reinforces a complex and opaque system of interoperability that increases the likelihood of errors and makes it difficult to inform people about the use of their data and to exercise their rights of rectification in case of errors or abuses.⁶⁵

Therefore, the new regulation highlights the importance of the voluntary initiatives led by cities, which often engage in public campaigns that target undocumented migrants and refugees to make them aware of their entitlements and rights.⁶⁶ Such roles could now be expanded to inform refugees and undocumented people on how digital technologies concern and affect them. The current lack of transparency around the use of data, and digital technology in general, combined with their complexity and migrants’ vulnerable status, make it very hard for migrants to understand where and how technology is being used. Cities are increasingly involved in data systems and digital transformation processes, an opportunity they need to take to understand the practical consequences of such processes for migrants. Cities are also in direct contact with migrants and refugees through their integration policies, thus allowing them to support them in defending their rights and making them aware of the existing safeguards regarding privacy and data protection at EU, national, and local levels.⁶⁷

5.2 THE PURPOSES AND CONSEQUENCES OF DATA-SHARING PRACTICES FOR MIGRANTS’ ACCESS TO PUBLIC SERVICES

EURODAC AS A TOOL USED FOR DETECTING IRREGULAR MIGRANTS

The EC proposed, through Eurodac, a New Pact on Migration and Asylum with a strong focus on combatting illegal immigration by detecting undocumented migrants living within EU territory and increasing the number of migrants to be returned to their countries of origin.⁶⁸ This objective is not recent, and authorities are already using different interoperable migration databases for enforcement pro-

⁶³ *PICUM*, Data protection and the firewall: advancing safe reporting for people in an irregular situation. See n 12.

⁶⁴ Amnesty International, Primer: defending the rights of refugees and migrants in the digital age. See n 16.

⁶⁵ *PICUM*, Digital technology, policing and migration – what does it mean for undocumented migrants? See n 33.

⁶⁶ Delvino, Nicola (2017). See n 26.

⁶⁷ *PICUM*, Digital technology, policing and migration – what does it mean for undocumented migrants? See n 33.

⁶⁸ See n 67.

cedures. The nature and extent of these data-sharing practices within the EU are very diverse. Some Member States require public authorities and service providers to report irregular migrants to immigration authorities, using data systems as a supporting tool, while other Member States impose, by contrast, an approach based on firewalls between immigration authorities and service providers in fundamental areas of service provision.⁶⁹

However, the likelihood that migrants' data will be shared between public services and immigration authorities is increasing with the current legislative tendency to extend the scope and use of interoperability systems in the implementation of immigration policies. Based on the information requested by the European Parliamentary Research Service to the EU Member States, the Swedish Parliament has found that Belgium, Bulgaria, Estonia, Croatia, Lithuania, Poland, Slovenia, and Germany have national provisions that require civil servants to inform about persons residing without authorisation. In Hungary, Austria, Finland and Ireland, there is a strong incentive under national rules to report undocumented people.⁷⁰ Germany is a significant example of this type of practice. Section 87 of Germany's Residence Act, titled 'Transfer of data and information to foreigners' authorities', obliges public authorities to report undocumented people to immigration enforcement (schools and other educational and care establishments being the only exception). The Residence Act also mandates social welfare offices to report undocumented people to immigration authorities when they approach them to request health care coverage.⁷¹

According to PICUM, the absence of a formal requirement to report undocumented migrants does not mean that reporting, including through the transfer of data, does not happen informally or in an ad hoc manner. While it is difficult to monitor informal data-sharing arrangements or practices among authorities, there is still some evidence that cross-sector data-sharing is increasing. For instance, in the Netherlands, a digital welfare fraud detection system – *Systeem Risico Indicatie (Syri)* – used 'migration background' to uncover alleged fraud. Similarly, Sweden and Finland

recently announced their intention to enhance data-sharing between immigration enforcement and a wide range of service providers, including educational facilities.⁷²

Furthermore, the European Commission has, in the past, already supported monitoring activities and a higher degree of information-sharing between Member States through existing databases.⁷³ Moreover, the Commission has proposed to set up smart borders with new information systems, such as the European Travel Information and Authorisation System (ETIAS) and the Entry-Exit System (EES), to automatically identify people who have overstayed their visas. The Eurodac reform reinforces the digital tools aimed at detecting and returning irregular migrants. As stated in the regulation, 'Its purpose is to (...) assist with the control of irregular immigration⁷⁴ to the Union, with the detection of secondary movements within the Union and with the identification of illegally staying third-country nationals and stateless persons⁷⁵ with the purpose of addressing 'migration in a fair and efficient way and, in particular, to reduce and deter irregular immigration.'⁷⁶

The Commission's Return Handbook has also provided guidelines on apprehension to provide consistency amongst Member State practices and to ensure respect for fundamental rights.⁷⁷ However, the potential impact on migrants' lives, especially for undocumented people, is of such magnitude that it is fundamental, first and foremost, to protect their personal information from this kind of data-sharing.

CITIES' CAPACITIES TO MITIGATE MIGRANTS' RISK OF MARGINALISATION

While all EU Member States must respect international and European obligations regarding the possibility for everyone to exercise their fundamental rights, national policies concerning irregular immigration tend to restrict access to public services and welfare at minimal levels. The EU legislation is following this approach on the premise that irregular migrants must be returned and should not be present on EU territory. Accordingly, the EU considers

⁶⁹ Delvino, Nicola (2017). See n 26.

⁷⁰ Bonneau, Louise (2023): Migration status: A key structural social determinant of health inequalities for undocumented migrants. Brussels: Platform For International Cooperation on Undocumented Migrants (PICUM). Available at: https://picum.org/wp-content/uploads/2023/12/Migration-status_A-key-structural-social-determinant-of-health-inequalities-for-undocumented-migrants_EN.pdf.

⁷¹ PICUM, Digital technology, policing and migration – what does it mean for undocumented migrants? See n 33.

⁷² Bonneau, Louise (2023). See n 70.

⁷³ For example, the Integrated Return Management Application (IRMA), the Schengen Information System (SIS), and the Visa Information System (VIS).

⁷⁴ According to the European Commission, irregular migration means 'movement of persons to a new place of residence or transit that takes place outside the regulatory norms of the sending, transit and receiving countries'. Available at: https://home-affairs.ec.europa.eu/networks/european-migration-network-emn/emn-asylum-and-migration-glossary/glossary/irregular-migration_en

⁷⁵ European Parliament Regulation 2024/Euratom of 10 April 2024, ELI: https://www.europarl.europa.eu/doceo/document/A-8-2017-0212-AM-158-158_EN.pdf, op.cit, p. 51.

⁷⁶ European Parliament Regulation 2024/Euratom of 10 April 2024, ELI: https://www.europarl.europa.eu/doceo/document/A-8-2017-0212-AM-158-158_EN.pdf, op.cit, p. 15.

⁷⁷ Delvino, Nicola (2017). See n 26.

public assistance measures, such as access to services such as health care, education and housing, as an encouraging or so-called ‘pull’ factor for migrants to come and stay in Europe, which goes against the purpose of incentivising voluntary return and measures aimed at dissuading people from coming to Europe.⁷⁸

However, the presence of irregular migrants in Europe remains a reality, most prominently in urban areas. Their return is not always possible, and the ambitious return policies are not always a viable solution as they require robust and complex infrastructure and capacities on the part of Member States. The fact is that in European cities the proportion of marginalised people with no formal access to labour income or social assistance is increasing. This phenomenon has an impact on undocumented people’s living conditions, cities’ capacities to implement inclusive policies for undocumented migrants and public welfare in general.⁷⁹

Impacts on migrants’ living conditions

The expansion of interoperability systems between public agencies and authorities exacerbates the fear felt by undocumented migrants of being detected and expelled from the host country if they try to access public services. Officers from both Amsterdam and Espoo highlighted similar problems. In Finland, an OECD report showed that migrants’ trust towards Finnish public services is much lower than that of Finnish citizens. More precisely, there is a clear gap or separation between the digitalisation of these services and migrants, who do not find the digital public services accessible, inclusive and trustworthy. In the Netherlands, the digitalisation of vouchers for food aid created a problem for migrants who are scared to share their information, even with NGOs. The same has been observed regarding access to health care: undocumented migrants refrain from going to the doctor because they fear disclosing any personal information. This situation of fear leads them to weigh carefully whether or not their level of need is sufficiently critical to make it worth taking the risk of being detected.

Excluding undocumented people from services for social assistance and from the labour market reinforces their conditions of marginalisation and vulnerability by increasing the risks of exposure to violence and exploitation perpetrated with impunity, as well as risks of poverty, homelessness and poor health conditions (for example, communicable and non-communicable diseases, mortality, sexual and reproductive diseases or psychological health).⁸⁰ For example, the strict conditions on staying in the EU often

put undocumented migrants in dependency situations towards an employer or a spouse, thereby making them vulnerable to exploitation and abuse. The lack of residence permits combined with explicit data-sharing arrangements between law enforcement and immigration services discourages victims from reporting potential abuses and exploitation.⁸¹ In the case of refugees and asylum seekers, there is a risk that their information might be shared – either intentionally (for example, as a matter of state policy) or inadvertently (for example, through data breaches/insecure systems) – with authorities in the country from which they have fled, which in turn increases the risks of further abuse and persecution of them and their family members.⁸²

Furthermore, undocumented people face a risk of immigration enforcement while using public services, which undermines their fundamental rights to access health care and education, as well as the right to security and physical integrity. Civil society and the EU Fundamental Rights Agency have raised concerns regarding the apprehensions of migrants close to service providers, such as schools or hospitals.⁸³ Consequently, the explicit data-sharing arrangements between health or social services and immigration services that exist in some Member States (as mentioned above) can discourage migrants from seeking health care. Even where such formal arrangements do not exist, experts report that migrants risk ad hoc reporting by medical staff or administrators.

Impact on cities’ capacities to drive inclusive policies on undocumented migrants

Even if municipalities do not have legal competencies regarding migration management policies, they have a range of prerogatives and duties in the socio-economic domain related to the provision and management of services at local level. This includes education, social assistance, health, housing, police, caring services, and public transport. Such competencies, combined with the general autonomy of city administrations, allow them to take municipal measures that facilitate the inclusion of undocumented migrants in the provision of local services. They also have legal duties of care towards the most vulnerable individuals in their territory, and, in many cases, this scope is flexible enough to include marginalised irregular migrants.⁸⁴

More specifically, cities are involved mainly in ensuring access to mainstream or targeted health care and education, and in providing for basic needs, such as shelter and food for particularly vulnerable individuals, irrespective of their migration status. In some cases, local practices aim to provide irregular residents with general access to all the

⁷⁸ Delvino, Nicola (2017). See n 26.

⁷⁹ Ibid.

⁸⁰ Ibid.

⁸¹ PICUM, Data protection and the firewall: advancing safe reporting for people in an irregular situation. See n 12.

⁸² Amnesty International, Primer: defending the rights of refugees and migrants in the digital age. See n 16.

⁸³ Delvino, Nicola (2017). See n 26.

⁸⁴ Delvino, Nicola (2018). See n 4.

different services offered within a municipality, rather than addressing a specific area of service provision. Barcelona, for instance, facilitates registration of its irregular residents without fixed addresses in the local municipal census (*padrón municipal*). This is made possible by national legislation on accessing public services.⁸⁵

However, migration management policies, such as the Eurodac regulation, have concrete consequences for cities' capacities to meet their legal or moral obligations. As explained above, extensive data-sharing arrangements and interoperable systems aggravate the risk that undocumented migrants will be apprehended while trying to access essential services. These types of situations dissuade – and are intended to dissuade – undocumented migrants from getting in contact with essential services and with the municipality where they are located. **By doing so, migration management policies, such as Eurodac, can curtail cities' room to manoeuvre, adding another layer of difficulty for the local administration to reach the most excluded groups living within its territory.**

As already mentioned, Amsterdam is driving the *LVV Programme*, a shelter and legal counselling scheme that allows undocumented migrants to receive protection and support with their asylum procedure or preparing their return to their country of origin. When starting the programme, participants need to go to the police to give their information and fingerprints, so that police officers can verify their identity and check whether they entered another European country, using databases such as Eurodac. While the city of Amsterdam tries to protect migrants' data as much as possible by limiting access to relevant workers only and by restricting the extraction of data, some aspects are still out of its control. For example, if a participant decides to leave the programme, its data are stored and remain accessible for a period of up to five years, leaving open whether they will be detected by the police. The EU's New Pact includes a security check in the pre-entry screening procedure, as well as storage of the data in the Europol database, to establish whether someone may pose a threat to national security. These provisions risk reinforcing migrants' fear of applying for shelter programmes that require the collection of data and data-sharing involving police authorities. It will therefore become more difficult for cities to reach excluded and vulnerable undocumented migrants, even though they are eligible to apply for international protection.

It is therefore up to local authorities to go beyond what is provided by EU and national policy. This will entail providing, through their own municipal budget, basic services for irregular migrants. For example, the City of Espoo is implementing its *Trust-M* research project (mentioned in the Introduction) because of the lack of trust between migrants and digital public services. The project aims at under-

standing the implications of technology, digitalisation and artificial intelligence for the existence of this gap, so that the city can subsequently create alternatives to promote and maintain trust. A too tight legislative framework, in the context of restricted public resources, will deepen the challenges cities face. If they want to continue providing for undocumented migrants and mitigate the social consequences of restrictive policies, they will have to put further resources and efforts into it. In most cases, undocumented migrants will not be able to ask for support from other levels of government precisely because the EU and national policies are pushing for more dissuasive measures, which tend to neglect the tasks that cities need to carry out.⁸⁶

Impacts on public welfare in cities

Legal and practical obstacles that result in migrants being denied access to essential services not only affect their lives and living conditions. They also affect the lives of citizens and the operations of public administration. For example, the lack of accessibility to medical care can create problems in managing the provision of services. Studies show that excluding undocumented migrants from accessing non-emergency health care services can provoke congestion in local hospitals, which are forced to hospitalise undocumented patients needing medical attention instead of referring them to appropriate and less costly treatments.⁸⁷

Neglecting the needs of undocumented migrants leads to the embedding of social exclusion and poverty in cities. It can cause social challenges regarding public health and public safety if irregular migrants refrain from reaching out to medical staff because of deportation fears and face homelessness because housing is inaccessible. It can also increase the crime rate as undocumented people are exposed to street violence and criminal exploitation that cannot be reported to the police for fear of detection and expulsion. Moreover, the fact that they cannot work for long periods and are left in a condition of destitution may incite migrants to join irregular organisations or resort to unlawful actions in order to survive.⁸⁸

5.3 BALANCING BETWEEN THE OPPORTUNITIES OF DATA-SHARING AND THE PROTECTION OF FUNDAMENTAL RIGHTS

OPPORTUNITIES OF DATA-SHARING IN LOCAL INTEGRATION POLICIES FOR PUBLIC SERVICE ACCESSIBILITY

Data-sharing systems, used correctly, can present opportunities for local authorities to drive their integration policies and improve migrants' access to public services. Digi-

⁸⁵ Delvino, Nicola (2017). See n 26.

⁸⁶ As explained in the legislative context, cities have socio-economic prerogatives and duties related to the provision and management of services at local level, including education, social assistance, health care, housing, police, caring services, and public transport.

⁸⁷ Delvino, Nicola (2018). See n 4.

⁸⁸ *Ibid.*

tal identity systems and digital IDs can help people on the move to access services without a physical identity document through digital wallets storing and managing identity credentials. For example, to address capacity constraints during the arrival of large numbers of displaced Ukrainians, several countries, such as Estonia, Lithuania and Poland, have also provided digital identities to Ukrainian newcomers, allowing them to access public services and have their documents at hand without having to carry physical copies.⁸⁹ Allowing refugees to store and carry key documents, such as identity documents and education certificates, facilitates refugees' access to education, employment and health services. It can improve continuity of care if asylum seekers or refugees have access to their health records directly on their phones. A transfer of data regarding employment and educational qualifications received in another country could help overcome the barriers many refugees face in having these qualifications recognised in a new country.

Similar initiatives also concern undocumented migrants. In 2016 Madrid City Council, inspired by practices in US cities, including New York and San Francisco, approved the creation of a Municipal ID card that people with no other documentation (mainly irregular migrants) can obtain and use to identify themselves when requesting the provision of a municipal service, including education or health care, but also public transportation, municipal cultural and sport centres and even the local employment agency.⁹⁰ Other local governments are attaching entitlements to local residency, rather than immigration status, thus providing some form of complementary urban citizenship. This local form of belonging is a pragmatic attempt to solve practical challenges to social cohesion and general well-being. A relevant example is the municipal ID cards issued by local authorities (particularly in northern Europe).⁹¹

Such initiatives will become real opportunities only if they are not reinforcing the social exclusion of persons lacking basic digital skills or with only limited access to the internet. The developer's digital systems would have to implement strong data protection and security mechanisms to prevent hacking and identity theft and to ensure that identity credentials cannot be tracked.⁹² To this end, municipalities will need support from the national and European levels. Without the necessary legal and technical structures, it can be difficult for cities to implement good data-sharing systems that are safe for migrants and do not compromise their rights. In Amsterdam, for instance, the possibility of deploying a digital ID wallet is still at an early stage, and raises several issues. The main one is the need to clarify where responsibility lies with such an initiative.

NGOs have neither 'the competencies or the capacities to coordinate, and local government faces the difficulty of offering such a service to undocumented migrants under national legislation that actively tries to return them.

IMPLEMENTING DATA FIREWALLS AT CITY LEVEL

Data-sharing practices based on legal obligations and formal or informal agreements are putting local administrations in a difficult position. Their capacity to fulfil their duty of ensuring universal access to essential services is undermined by a hostile data-sharing environment for undocumented migrants. **In order not to compromise the accessibility of public services, many organisations are (re) calling the necessity to implement data-sharing firewalls between public services and immigration enforcement.** A firewall constitutes a commitment to ensure that personal data held by essential public services will not be shared with the migration authorities for immigration enforcement purposes.⁹³

By delinking the provision of key services, including justice, education, health care, social and civil services, from the data-sharing procedure for enforcement of immigration rules, a firewall ensures that undocumented people who are trying to access those services will not be detected and put at risk of expulsion in a vulnerable situation.⁹⁴ Such safeguards are also vital for cities, which, not being constrained by additional administrative burdens, will have more capacity to ensure their core functions.⁹⁵ **Firewalls represent a realistic solution to mitigate the risks posed by Eurodac to create a context of extensive and hostile data-sharing between public authorities from every level of governance.**

MITIGATING THE RISKS OF DATA-SHARING THANKS TO INTEGRATION AND SOCIAL POLICIES AT THE LOCAL LEVEL

Three layers of initiatives developed by cities to protect undocumented migrants from being detected and apprehended while accessing public services can be observed. The first involves tackling the general challenges posed by irregular status by providing legal counsel to help undocumented migrants to regularise their immigration status or secure help for voluntary returns.

The second focuses on finding ways to bypass immigration enforcement laws, by:

⁸⁹ Salgado and Beirens (2023). See n 2.

⁹⁰ Delvino, Nicola (2018). See n 26.

⁹¹ Ibid.

⁹² Salgado and Beirens (2023). See n 2.

⁹³ Bradley, Gracie Mae (2020): Care don't share. London: Liberty. Available at: <https://www.libertyhumanrights.org.uk/wp-content/uploads/2020/02/Liberty-Care-Dont-Share-Report-280119-RGB.pdf>

⁹⁴ PICUM, Data protection and the firewall: advancing safe reporting for people in an irregular situation. See n 12.

⁹⁵ PICUM, Digital technology, policing and migration – what does it mean for undocumented migrants? See n 33.

- cooperating with local law enforcement authorities to find practical solutions that allow undocumented migrants to access public services undetected if they want to report offences they have been victims of or witnesses to;
- developing unofficial internal guidelines to mitigate law enforcement by ensuring that undocumented migrants are not excluded from a service for fear of being reported;
- engaging in strategic litigation before international or national courts to find a judicial basis for their inclusive practices.⁹⁶

For example, the city of Amsterdam tries to limit the amount of data collected through informal cooperation with health-care providers and local libraries. This ‘deal’ allows undocumented migrants to access services without having to share information or provide a social security number.

The third initiative promotes cooperation between different local stakeholders, especially with external actors who are not legally bound to report irregular migrants. Cities will therefore help NGOs (but also others) to play the role of intermediaries between public authorities and undocumented migrants. Local city councils will act as funders of organisations providing a service normally provided by a municipality that is not able to offer it directly without being obliged to report irregular migrants, collect their data or expose the city council to political pressures. These practices are favoured by the municipalities of Berlin and Amsterdam, which fund many NGOs offering shelter, free health care and psychological assistance. This solution also has the advantage of reinforcing the capacities of cities, which can rely on an ecosystem of stakeholders to drive inclusive policies in the area of service provisions towards undocumented migrants.⁹⁷

⁹⁶ Delvino, Nicola (2017). See n 26.

⁹⁷ Ibid.

6

AN INCREASINGLY COMPLEX SYSTEM OF NORMS AND MECHANISMS

6.1 NAVIGATING IN A COMPLEX LEGAL FRAMEWORK CHARACTERISED BY THE STACKING OF STANDARDS

First, to develop a ‘smart border’, the new Pact on Migration and Asylum is planning to deploy a complex infrastructure under constant normative reorganisation. This complexity is due in particular to the difficulties involved in finding structural solutions to migration systems under pressure and to the political tensions around migration that are now dominating electoral debates across Europe. In this context, the EU and Member States will have to translate a complex legal framework into practice, which will require both time and sufficient capacity, funding and operational changes in how asylum and migration systems are run.⁹⁸ Based on the common implementation plan issued by the EU, each Member State will have to develop its own national implementation plan by December 2024. The plans will assess gaps, operational steps and actions needed to ensure that Member States are ready by mid-2026, the date of the New Pact’s entry into force.⁹⁹

The level of investments anticipated to implement the New Pact means that public authorities will need to make some choices in the allocation of their finances, which will most likely restrict cities’ capacities to fund and drive their inclusion measures.¹⁰⁰ However, the EU legislators are neglecting the fact that undocumented migrants are still a social challenge that cities must face, leading them to adopt inclusive measures to provide for their basic needs. Moreover, the New Pact is strengthening a legislative and political context that endangers the legal basis and public discourse that allow cities to pursue inclusion measures. This raises the risk of curtailing cities’ room to manoeuvre in implementing their inclusion measures.

Secondly, the Eurodac reform offers an opportunity to reflect on the problems raised by the increase in contradictory and complex legislation. In many ways, the new regulation is creating confusion regarding the application and scope of the General Data Protection Regulation (GDPR). This legal phenomenon has consequences for cities. The EU has adopted regulations to ensure the data protection of its citizens, providing a general human rights framework that is, to some extent, applicable to everyone. The GDPR required a lot of changes and adaptation from all organisations, in particular public administrations. The Eurodac regulation by adopting backstop provisions tar-

getting more specifically undocumented migrants is a significant example of recent legislation that creates areas of contradiction and clashes. Such contradictions between protective and restrictive laws can put local administrations in difficulties on two levels. First, cities will face the challenges of understanding the consequences of new and more complex provisions, namely which regulations should be prioritised. Secondly, cities will need to adapt their practices and structures to the new legislative framework, which may require capacities and resources they do not necessarily have.

6.2 THE CHALLENGES RAISED BY THE OPACITY OF INTEROPERABILITY SYSTEMS

It is difficult to provide clear answers to the questions explored by this working paper as it delves into a legislative framework based on much intricate legislation, which is expected to produce indirect consequences. This legislative framework reflects the tortuous operations behind interoperability systems and data-sharing arrangements. Indeed, the technicality of interoperability systems raises questions that need a more ambitious analysis to fully understand their scope and extent. It is, however, possible to offer some reflections, particularly on the increasing risk of seeing migrants’ data initially collected by cities become part of databases that can be cross-checked against other watchlists.

Interoperability is triggering new challenges regarding the efficiency, transparency and reliability of the new information systems. Interoperability mechanisms give information systems the capacity to exchange data and enable the sharing of personal information. Regarding migration policies, we can observe an increasing tendency to interconnect databases in migration and criminal law through centralised servers. In practice, it means that a competent officer working in a law enforcement agency can access the data gathered and stored by an officer working in an immigration office, including from another EU country. As mentioned in the introduction, at EU level, several home and justice databases are interconnected, including Eurodac, the Visa Information System, the Schengen Information System, the Entry-Exit System, the ECRIS-TCN and the European Travel Information and Authorisation System. These six EU databases are now part of the Common Identity Repository, which can be used, for example, by police

⁹⁸ Salgado and Beirens (2023). See n 2.

⁹⁹ https://reform-support.ec.europa.eu/tsi-2025-flagship-supporting-member-states-implementation-new-pact-migration-and-asylum_en

¹⁰⁰ Ibid.

officers from a Schengen Area country to access the personal data of non-EU nationals and proceed to verify their identity. The purpose of this centralisation is to extract information from different contexts and construct new systems, allowing data to be made accessible to a wider number of authorities. Eurodac extends the scope of this global system as it will now be possible to collect and extract different types of data with the explicit purpose of identifying irregular migrants and launching a return procedure.¹⁰¹

This complex architecture makes it difficult to understand the sublayers of interoperability, as it provides an opaque view of the governance and policies of each database system, and raises various questions, such as:

- Who has *legal* and *practical* access to which data?
- How can we ensure the security of the data, given the multimodal infrastructure built at national and European levels?

How is the Regulation interpreted by law enforcement authorities and what indirect impact does Eurodac have on their practice? **From the point of view of cities, it is most important to understand whether migrants' data gathered by the relevant department can be shared with national authorities, extracted and incorporated or checked against an EU database.** Legally and operationally, the scope and control of a database such as Eurodac are very strict and include a lot of safeguards. Having said that, it is clear that the Eurodac database is increasingly being used for surveillance purposes, with constant extension of the type of data collected and the interoperability with other databases. This double-edged situation raises the question of direct and indirect data-sharing between EU databases and local authorities. Deeper research would be needed, however, to analyse the effective use of these practices. The question becomes more tangible at the national level, however. The pre-entry screening procedure states that it 'should also be possible for the screening authorities to check the relevant national databases in the context of identification or verification of identity or of security checks in accordance with national law'.¹⁰² The term 'relevant national databases' is vague and shows how data protection and data-sharing procedures are largely defined by the rules of Member States. **Thus local authorities should be mindful of whether their databases might be interconnected with other national information-sharing systems used for purposes they did not intend.**

¹⁰¹ Jones, Chris. 2019. Data Protection, Immigration Enforcement and Fundamental Rights: What the EU's Regulations on Interoperability Mean for People with Irregular Status. Brussels: Platform For International Cooperation on Undocumented Migrants (PICUM). Available at: <https://www.statewatch.org/media/documents/analyses/Data-Protection-Immigration-Enforcement-and-Fundamental-Rights-Full-Report-EN.pdf>.

¹⁰² European Parliament Regulation 2024/Euratom of 10 April 2024, ELI: https://www.europarl.europa.eu/doceo/document/A-9-2023-0149-AM-210-210_EN.pdf, op. cit., p. 37.

7

CONCLUSIONS

This paper has highlighted that **cities, as the level in closest proximity to EU residents, are in direct contact with migrants and refugees. Through their integration policies, they are launching initiatives to meet the needs of migrants and refugees arriving on their territory.** They are coordinating ecosystems of stakeholders working together to answer the urban challenges related to migration. The digitalisation of migration policy processes, at all levels of governance, has a real impact on their way of working. Cities are also trying to leverage the opportunities of digital tools to implement their policies.

Indeed, cities are driving the digital transformation of their territory. They are increasingly involved in the implementation of digital services, data spaces and digital twins. They are acquiring expertise on cybersecurity and the use of artificial intelligence. **By being in direct contact with migrants and refugees through their integration policies, they have the opportunity to support them in defending their rights and making them aware of the existing protections regarding privacy and data protection at EU, national and local levels.**¹⁰³ Their role in ensuring equal treatment for all their residents gives them a privileged role in the mainstreaming of fundamental rights monitoring systems and impact assessment to evaluate the risks of using new technologies for surveillance and immigration enforcement purposes in cities.

However, the **current legal and policy frameworks regulating the use of digital technologies in migration policies do not involve cities, even though the biggest social impacts of migration are most strongly felt at the local level.** Moreover, the data-sharing arrangements between public services and immigration enforcement are raising serious concerns regarding undocumented migrants' access to public services. There is a general fear among migrant communities that sharing data with local public services will increase the risk of being detected and returned to their countries of origin. Without sufficient measures to regulate the collection and use of migrants' and refugees' data, there is a risk that personal data will be accessible to authorities at different levels of governance without clear requirements in terms of limitations and transparency, thereby – potentially – leading to data misuse and abuse. This situation is impacting cities' ability to reach out to the most vulnerable people in communities who need to access health care and education or to seek protection from abuse.

¹⁰³ PICUM, Digital technology, policing and migration – what does it mean for undocumented migrants? See n 33.

8

POLICY RECOMMENDATIONS

Based on these arguments, and to ensure respect for the fundamental rights of migrants in the digital context, as well as the capacities of cities to carry out their duties, the paper proposes four policy recommendations. These recommendations need to be considered during implementation of the new Pact for Migration and Asylum by national and European authorities:

- 1 Involve cities in the digitalisation of migration policy processes.** Cities should participate in defining the strategic vision for the use of new technologies in migration and asylum policies. They should be involved in the design of digital systems – such as artificial intelligence, algorithmic decision-making tools or interoperability – supporting integration or migration management policies (relocation mechanisms) that have consequences for cities. Being part of this governance system is necessary to ensure that they can continue to meet their obligations. It is also an opportunity for cities to improve their understanding of new and complex legislation.
- 2 Build up cities' capacities to ensure the digital human rights of migrants and refugees.** As stated by the pre-entry screening procedure and the Eurodac reform, Member States will have to ensure the fundamental rights of migrants and refugees while implementing the new provisions. To do so, the national and European levels must support the infrastructure, human and financial resources of local administrations so that they are able to ensure migrants' and refugees' digital rights in cities. European and national institutions also have the responsibility to support cities, which need to adapt their practices and structures to the new legislative framework.
- 3 Ensure a data-sharing firewall between key public services and immigration enforcement.** In order not to compromise their capacities and to establish trust between cities' administrations and migrants, it is necessary to ensure that data-sharing for immigration enforcement is kept separate from the delivery of local services. These safeguards must be widely publicised and rigorously implemented. Protection from data-sharing abuses will also allow cities to leverage the opportunities of information-sharing systems while not being afraid of the risks that it can pose, including the risk of migrants' data becoming part of databases that can be crossed-checked against other watchlists.
- 4 Develop a coherent and transparent interoperability framework between the different levels of governance.** European, national and local authorities should be involved in developing a coherent and harmonised legislative framework regulating the interoperability mechanisms between the different levels of governance. Such a framework needs to establish clear requirements with regard to the transparency and accessibility of information in terms of the type of data shared, the different chain levels of data-sharing, the interconnection between different databases and the authorities allowed to access the data. Civil servants working in migration and social affairs should be equipped with the necessary skills and awareness to understand the extent and operations of interoperability systems.

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Background interviews

Four interviews were carried out with civil servants working for the city administration in Amsterdam, Berlin and Espoo. Two interviews were carried out with employees of the Committee of the Regions and the European Parliament.

OTHER PUBLICATIONS

The new screening and border procedures

→ [Policy Study](#) June 2024 [LINK](#)

The Crisis and Force Majeure Regulation

→ [Policy Study](#) June 2024 [LINK](#)

With open arms – the cooperative reception of Ukrainian war refugees in Europe

→ [FES diskurs](#) March 2023 [LINK](#)

Ohne sie geht nichts mehr – welchen Beitrag leisten Migrant_innen und Geflüchtete zur Sicherung der Arbeitskräftebedarfe in Fachkraftberufen in Deutschland?

→ [FES diskurs](#) Mai 2024 [LINK](#)

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The EU's new Pact on Migration and Asylum was passed in April 2024. This paper looks at two of the ten legislative packages in more detail and discusses the impact of the pre-screening procedure and Eurodac reform on migrants' digital rights, as well as the implications for the authorities in charge of integration policies at the local level.

On one hand, the use of digital surveillance mechanisms and potentially biased technologies in the implementation of migration policies can create serious risks to individual fundamental freedoms and access to essential public services. On the other hand, however, digital tools such as databases and accessible digital services, when used within a strict fundamental rights framework, can ease the inclusion of migrants and refugees in the host country.

Such impacts are analysed with a local perspective in mind, given cities' role at the forefront of integration policies. Urban areas are the preferred geographical settlement for migrants, leading city administrations to develop initiatives to manage their arrival and stay. Moreover, cities' competences in terms of providing essential services is paired with a strong incentive to meet migrants' needs. It is also important for cities to better estimate how higher levels of decision-making can impact their ability to fulfil their legal duties and to drive their own policy agendas.

This research paper provides more general reflections on how the combination of more restrictive legislation and the digitalisation of policy instruments can further push vulnerable communities into isolation or create new forms of poverty in cities. It also formulates recommendations.

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