



**BVMN Submission to the
European Commission Consultation**

Security-Related Information Sharing



Have Your Say Initiative: Security Related Information Sharing

Introduction:

The Commission's initiative for a 'Security-related information sharing system between frontline officers in the EU and key partner countries'¹ is a further development along the path of problematic border externalisation, and a trend of increasing use of large-scale processing of the personal data of non-EU citizens for combined criminal law and immigration control purposes, that civil society has been speaking out against for years.² The proposal cites strengthened security measures within EU borders in the form of new interoperable IT architecture, and puts forward its plans to expand this to non-EU Member States (MS). There have already been a number of initiatives at the EU level to increase the availability of personal and biometric data to border guards and law enforcement officers,³ which brings into question the necessity and proportionality of yet another interoperability initiative. Further to this, the aim of the initiative, to facilitate increased police identity checks and to repurpose the data collected for other means such as readmissions and deportations, is not met with sufficient safeguards for people on the move. The initiative will expand the already problematic Safe Third Country (STC) "system" that has seen people on the move expelled, pushed and/or pulled back to countries like Turkey⁴ and Libya⁵ where their fundamental rights are at substantial risk of being further violated. In light of this, and based on the information expanded upon below, we (the undersigned organisations) believe that this initiative should not proceed and that there is no legal basis under which the sharing of sensitive personal information between EU and non-EU authorities should be pursued.

¹ European Commission. Security-related information sharing - reciprocal access for frontline officers in the EU and key partner countries. January 2023. Available at:

https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13243-Security-related-information-sharing-%E2%88%92-reciprocal-access-for-frontline-officers-in-the-EU-and-key-partner-countries_en

² PICUM. How do the new EU regulations on interoperability lead to discriminatory policing? April 2020. Available at:

https://picum.org/wp-content/uploads/2020/04/INFOGRAPHIC.-Interoperability-Systems-and-Access-to-Data_WEB_RGB.pdf

³ Balkan Insight, Luděk Stavinoha, Apostolis Fotiadis and Giacomo Zandonini. EU's Frontex Tripped in Its Plan for 'Intrusive' Surveillance of Migrants. July 2022, Available at:

<https://balkaninsight.com/2022/07/07/eus-frontex-tripped-in-plan-for-intrusive-surveillance-of-migrants/>

⁴ BVMN. Pushback from Greece to Turkey: Visual Analysis. March 2023. Available at:

<https://borderviolence.eu/app/uploads/Pushback-from-Greece-to-Turkey-Visual-Analysis.pdf>

⁵ Human Rights Watch. Italy Reups Funding to Force Migrants Back to Libya. February 2023.

Available at: <https://www.hrw.org/news/2023/02/01/italy-reups-funding-force-migrants-back-libya>

Policy Analysis and Ongoing Initiatives:

The call for evidence makes no attempt to demonstrate the necessity of the proposal to increase “security-related information sharing.” It does refer to initiatives by “e.g. the United States,” but provides no detail as to what those initiatives involve, how they function, and what effects they have had. It is likely that the UK is one of the countries of interest to the EU, and the UK Home Office has said that it hopes to “engage and influence EU partners” to ensure the Commission’s proposal “is aligned with UK requirements.”⁶

At the same time, the call for evidence says that terrorism and organised crime “are not constrained by borders.” If this is indeed the case, it does not say much for existing EU initiatives in this field, and one has to wonder what benefit will result from making greater amounts of personal data available to border guards in the EU and elsewhere.

The call for evidence refers to existing EU initiatives that seek to increase the availability of personal data to border guards and law enforcement officers, but does not name them specifically. At the very least, the call could have made reference to the changes to the legislation governing Europol, the Schengen Information System, and the ‘Prüm II’ proposal, as these initiatives are set to introduce changes in the area targeted by the “security-related information sharing” plans. The first two of these new legal frameworks are still being implemented, and thus have not been subject to any form of evaluation; the ‘Prüm II’ proposal is still under negotiation.

The changes to the **Europol Regulation** that came into force in June significantly loosen restrictions on international data transfers. The Europol Management Board is now able to directly authorise transfers of personal data to third states and international organisations, so long as “appropriate safeguards with regard to the protection of personal data are provided for in a legally binding instrument,” or where there is no law in place but where Europol concludes “that appropriate safeguards exist with regard to the protection of personal data.”⁷ Thus, it has become far easier for Europol to share information with partner countries for the purposes of investigating and combating crime, therefore increasing the availability of that data to MS authorities.

At the same time, changes to the **SIS II legislation** have given Europol the power to propose that the member states create “information alerts on third-country nationals in the interests of the Union” in the SIS. These are to be based on data shared with Europol by third states, and should relate to individuals suspected of being involved in terrorism or serious crime. A Member State can decide not to enter an information alert upon Europol’s proposal, but if the authorities wish they may still enter another type of alert on the same person. Thus, the new legislation provides a way in which “partner-country sourced information” can be made directly available to the Member States. The law is currently being

⁶ UK Home Office. International Law Enforcement Alerts Platform (I-LEAP) Programme. February 2023. Available at:

<https://www.gov.uk/government/publications/home-office-major-programmes-accounting-officer-assessments/international-law-enforcement-alerts-platform-i-leap-programme>

⁷ See Article 25(4a)(b), Regulation 2016/794 (consolidated version). Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32016R0794>

implemented, but an ongoing informal process seeks to achieve the same goal specifically with regard to alleged or suspected jihadist terrorists.⁸

The **‘Prüm II’ proposal** is currently under negotiation, but if agreed as proposed they will allow member states to use the Prüm network to search “third country-sourced biometric data held at Europol,”⁹ while Europol will be able to compare “third country-sourced data” against national biometric, vehicle registration and police records databases.¹⁰ They thus provide a third way in which data originally obtained from non-EU states can be accessed by Europol and member state authorities. However, the legislation has not been agreed, let alone implemented, and there has therefore been no evaluation of its functioning. Prior to the creation of any new information-sharing mechanism, then, time should be allotted for the implementation and evaluation of these existing mechanisms.

As *European Digital Rights* (EDRi) network remarked in its position paper on the Prüm II proposal, the provisions allowing the searching and comparison of third country-sourced biometric data raise the possibility that MS authorities may “penalise dissidents or other people who are facing politically-motivated persecution from third countries.” It may also impact asylum adjudication procedures by making it possible for third states to label people as security threats.¹¹ The paper pointed out that there is “absolutely no guarantee that the biometric data concerns only convicted and suspected terrorists and other serious criminals,” and “this assessment may be made by third countries with questionable human rights records, increasing the risk to individuals’ rights.”¹²

The same problems apply to other types of data that may be shared with EU MS by non-EU states. The areas of asylum, immigration, and police and judicial cooperation are particularly sensitive with regard to fundamental rights. Erroneous decisions can have drastic effects upon individuals – particularly so in the case of individuals fleeing persecution by hostile governments. There should therefore be the utmost caution in any sharing of personal data between EU MS and non-EU states. It is hard to see how any “mechanism” to “systematically make critical and actionable partner-country sourced information available directly and in real time to frontline border guards or police officers” can be implemented with any such degree of caution.

While the call for evidence appears to justify the need for new measures given the perceived inadequacies of how criminal justice data is currently shared via INTERPOL’s systems, it fails to acknowledge that these perceived barriers exist to minimise the very real risks of

⁸ The process is entitled “Coordinated approach – Evaluating information on third-country nationals suspected to be jihadist terrorists received from third parties or a Member State for possible processing in the Schengen Information System (SIS)”.

⁹ Article 49, Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on automated data exchange for police cooperation (“Prüm II”), COM(2021) 784 final, 8 December 2021. Available at:

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2021:784:FIN>

¹⁰ See Article 50, COM(2021) 784 final. Available at:

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021PC0784>

¹¹ EDRi. Respecting fundamental rights in the cross-border investigation of serious crimes. September 2022, p.11, Available at:

<https://edri.org/wp-content/uploads/2022/10/EDRi-position-paper-Respecting-fundamental-rights-in-the-cross-border-investigation-of-serious-crimes-7-September-2022.pdf>

¹² Ibid

such systems being abused. INTERPOL has internal systems for checking data for compliance with international standards on human rights and political neutrality, including through a dedicated team of experts who are tasked with screening every incoming formal request for police cooperation.¹³ However, even with such processes, there have been numerous incidents of third countries abusing INTERPOL's systems to target their critics residing in the EU, including political dissidents and journalists who are recognised refugees in Member States.¹⁴ The flaws in INTERPOL's systems were recently recognised and discussed by the Parliament, which echoed civil society findings that the agency needed to adopt further reforms.¹⁵

The potential for INTERPOL's systems to be misused for political purposes and in ways that violate human rights should serve as a potent reminder of the need to ensure better checks and safeguards on criminal justice and security data from third countries. By making data even more accessible to relevant authorities in Member States, the EU would not only be removing the limited safeguards that INTERPOL provides through its internal procedures, it might also remove opportunities for Member States to carry out further checks to ensure the lawfulness of data.

It must be further observed that EU law provides for some of the most stringent data protection standards in the world, whereas many states with which the EU is interested in pursuing law enforcement cooperation have no legal framework for data protection whatsoever.¹⁶ At the same time, the authorities in the EU responsible for enforcing data protection law are systematically underfunded and overworked.¹⁷ The mechanism foreseen by the call for evidence should not even be considered before it can be ensured that the protections afforded by EU law are meaningfully available in practice, rather than theoretically available on paper.

Case Study: MENA

Countries in the **Middle East and North Africa (MENA)** region have long been listed among the key partners in EU policies aimed to interdict migratory movements. Member States and the EU have signed multiple bilateral agreements with countries such as Libya, Morocco or Egypt to curb migration, in exchange for large sums of money, equipment, training and support. The latest developments in the EU all but confirm this trend, with the European Council calling for more action to prevent irregular departures, increasing returns by using all

¹³ [About Notices \(interpol.int\)](#)

¹⁴ See for example Vicdan Özerdem's story in Fair Trials' 'Dismantling the Tools of Oppression: Ending the Misuse of INTERPOL' (2018), <https://www.fairtrials.org/app/uploads/2022/01/Dismantling-the-tools-of-oppression.pdf>

¹⁵ European Parliament. Negotiations for a cooperation agreement between the EU and Interpol. September 2022. Available at: https://www.europarl.europa.eu/doceo/document/TA-9-2022-0275_EN.pdf

¹⁶ Statewatch. EU; Warnings over proposed new Europol partners in the Middle East and North Africa. May 2018. Available at: <https://www.statewatch.org/news/2018/may/eu-warnings-over-proposed-new-europol-partners-in-middle-east-and-north-africa/>

¹⁷ Statewatch, Data protection: 80% of national authorities underfunded, EU bodies 'unable to fulfil legal duties'. September 2022. Available at: <https://www.statewatch.org/news/2022/september/data-protection-80-of-national-authorities-underfunded-eu-bodies-unable-to-fulfil-legal-duties/>

possible means, including trade and access to visas as leverage, and mobilising more EU funds and means to boost border control capabilities and infrastructure, means of surveillance, and other kinds of equipment.¹⁸

Countries such as **Libya** have long been on the recipient side of these externalisation agreements. Libya has been receiving funds, equipment, training and support through different projects both managed bilaterally by Italy (such as operation Miasit, operation Mediterraneo Sicuro, and the direct training to the so-called Libyan Coast Guard),¹⁹ by the EU (project EBAM²⁰ and EUNAVFOR MED) and by the UN (Mission Unsmil). Due to the multiplicity of contracts and the lack of transparency typical of externalisation deals, it is complicated to fully track the total amount of money spent on projects aimed to reinforce border control in Libya, but Action Aid estimates that Italy alone has spent about 124 million EUR in the last six years for reinforcing Libya's border control machinery.²¹ Recently, Italy handed over to Libya the first of five more patrol boats, in an official ceremony that also saw the participation of EU Commissioner for Neighbourhood and Enlargement, Olivér Várhelyi.²² Also, under the new EU financial instruments 2021-2027, the EU and its Member States are planning to allocate several funds to North African countries, such as Libya and Egypt, for border management, e.g. at least EUR 580 million for 2021-2023 under NDICI-Global Europe for migration related support to partners in North Africa,²³ including 46 million EUR for border management in North Africa.²⁴ Besides this, other actors play a crucial role in the Central Mediterranean scheme to block migration, starting from Frontex. The EU agency is present with aircrafts and drones which surveil the Central Mediterranean and communicate migrants' boats position to the Libyan authorities to facilitate unlawful interceptions.²⁵

From this brief overview, it is clear how Libya is a key country in the EU and Member States' policies of border control, which means Libya could also be one of the "key partner countries" included in the proposal for the development of a new system for sharing

¹⁸ European Council. Special Meeting of the European Council (9 February 2023) - Conclusions. February 2023. Available at:

https://www.consilium.europa.eu/media/61997/2023-02-09-euco-conclusions-en.pdf?utm_source=dsms-auto&utm_medium=email&utm_campaign=European+Council+conclusions%2c+9+February+2023&utm_source=POLITICO.EU&utm_campaign=44e456a7fd-EMAIL_CAMPAIGN_2023_02_10_05_56&utm_medium=email&utm_term=0_10959edeb5-44e456a7fd-%5BLIST_EMAIL_ID%5D

¹⁹ The Big Wall. The Libyan Campaign. February 2023. Available at:

<https://www.thebigwall.org/la-campagna-di-libia/>

²⁰ In the framework of this project, recently EUBAM Libya and the Spanish National Police conducted a "specialized training on intelligence, particularly on how to gather, analyse & distribute intelligence and information".

²¹ The Big Wall. Renewal of the Memorandum of Understanding between Italy and Libya. February 2023. Available at: <https://www.thebigwall.org/rinnovo-memorandum-d-intesa-tra-italia-e-libia/>

²² European Commission. Commissioner Olivér Várhelyi attends the handover ceremony of EU-financed Search and Rescue vessels to Libya. February 2023. Available at: https://neighbourhood-enlargement.ec.europa.eu/news/commissioner-oliver-varhelyi-attends-handover-ceremony-eu-financed-search-and-rescue-vessels-libya-2023-02-06_en

²³ European Commission. Migration routes: Commission proposes Action Plan for Central Mediterranean to address immediate challenges. November 2022. Available at: https://ec.europa.eu/commission/presscorner/detail/en/IP_22_7068

²⁴ Migration Control Info. Schengen Data 2022. March 2023. Available at: https://migration-control.info/?sfid=68604&_sft_category=leaked-document

²⁵ Human Rights Watch. Airborne Complicity: Frontex Aerial Surveillance Enables Abuse. December 2022. Available at: <https://www.hrw.org/video-photos/interactive/2022/12/08/airborne-complicity-frontex-aerial-surveillance-enables-abuse>

security-related information for frontline officers. This is problematic in many ways. First of all, it would pose serious harms to asylum-seekers and migrants trying to escape the country by strengthening the systematic practice of pullbacks and interceptions taking place in the Central Mediterranean. This new system would make “security-related information available [...] to frontline border guards and police officers in partner countries” with the goal to fight smuggling and trafficking in human beings, amongst other things. These are the same authorities who are now financed and equipped to carry out pullbacks at sea, and with the constant interest to make these interceptions more “effective”, one can see how this new system could potentially be used in this way. However, these systemic pullbacks violate the right to seek asylum, the prohibition of collective expulsions and the right to non-refoulement. As widely reported, people intercepted and pulled-back to Libya are arbitrarily detained in official and unofficial detention centres, often run by militias groups, where they are systematically subjected to human rights violations, including torture, rape, and killings.²⁶ On top of that, people are also forcibly returned towards unsafe situations in countries of origin.²⁷ Therefore, any new system – including information-sharing systems – that ultimately facilitates these violations should not be deployed in such contexts where it would violate the human rights of vulnerable people.

Moreover, it is important to question which authorities would have access to such an information sharing system, especially in a country where border control and law enforcement authorities are interlinked with militias and armed groups. First of all, Libya does not have one single Coast Guard: it has multiple actors, including the so-called Libyan Coast Guard, the General Administration of Coastal Security (GACS) and more recently, the Stabilisation Support Authority (SSA) which emerged as another actor performing sea interceptions and violent pullbacks. An overwhelming amount of evidence²⁸ has shown how these actors are deeply interlinked with militias and armed groups and involved in the smuggling of oil, arms and people. This implies that the actors who would have access to this security information sharing system would be those involved in criminal networks in the country.

However, Libya is not the only country where such a system would pose severe risks of human rights violations against vulnerable people. **Egypt** is another example of how a system that aims to increase security could actually facilitate human rights violations against people on the move, activists and human rights defenders. Egypt’s regime led by President Abdel Fattah El-Sisi is notorious for the repression of human rights defenders, civil society

²⁶ UN Human Rights Council. Report of the Independent Fact-Finding Mission on Libya (A/HRC/48/83). October 2021. Available at:

<https://reliefweb.int/report/libya/report-independent-fact-finding-mission-libya-ahrc4883-enar>

²⁷ UN High Commissioner for Human Rights. Nowhere but Back: Assisted return, reintegration and the human rights protection of migrants in Libya. November 2022. Available at:

<https://www.ohchr.org/sites/default/files/2022-12/Report-on-assisted-return-and-reintegration.pdf>

²⁸ See, for instance: AP News. A new Libyan force emerges, accused of abusing migrants. July 2022. Available at:

<https://apnews.com/article/middle-east-africa-libya-migration-7ec5d993bffc1dff597ccd1697a85b5d;>

Libya Update. Dbeibeh’s government honors human trafficker sanctioned by UN Security Council. October 2022. Available at:

<https://libyaupdate.com/dbeibehs-government-honors-human-trafficker-sanctioned-by-un-security-council/>

and activists.²⁹ The Egyptian government systematically commits human rights violations, including extrajudicial killings, enforced disappearances, torture, life-threatening prison conditions including medical negligence, arbitrary and political detentions, transnational repression, widespread media censorship, and significant restrictions on the right to free expression, assembly, and association.³⁰ The Egyptian authorities even refuse essential documents to Egyptian dissidents living abroad, to pressure them to return to Egypt to near-certain persecution.³¹ Nonetheless, Egypt is emerging as a key partner for the EU cooperation on border control and police cooperation: in a recent answer to a parliamentary question, of EU Commissioner for Neighbourhood and Enlargement Olivér Várhelyi [stated](#) that *“The current project pipeline on migration cooperation with Egypt amounts to EUR 160 million (...) In addition, Egypt will also benefit from multi-country actions for returns and reintegration, legal migration, support to cross-border cooperation and international police cooperation against migration smuggling in North Africa. The specific amounts are still to be determined for these actions. Lastly, under the EU Emergency Trust Fund for Africa — North Africa Window, Egypt currently benefits with a total of nearly EUR 91 million in bilateral and regional actions, including the bilateral package of EUR 60 million for ‘Enhancing the response to Migration Challenges in Egypt.’”*³²

Egypt is therefore a key country in the EU policies of border control, which means that it could also be one of the “key partner countries” included in the new information sharing system. However, one should question how this system could assess whether reported security-warnings from third countries such as Egypt could refer to activists, human rights defenders or people on the move who advocate against the regime, rather than people involved in activities that pose a risk to security. At the same time, this flow of information where third countries’ authorities would have access to information from Europe would equally be dangerous for those activists and human rights defenders who escaped from regimes such as the Egyptian one, and whose data could potentially be accessible by these countries’ authorities.

The MENA region is an example of how the deployment of such an information sharing system could lead to severe harms – including grave human rights violations – against vulnerable populations like people on the move, activists and human rights defenders. Given the unclear and likely insufficient safeguards foreseen by this system on the one hand, and the very concrete risks of renewed human rights violations on the other, we believe that this initiative should not proceed.

²⁹ A notorious and emblematic case is that of Alaa Abd El-Fattah, a British-Egyptian activist, blogger, and software developer imprisoned several times by the Egyptian authorities for taking part in peaceful protests and for advocating for free speech. Alaa was arrested again in September 2019, kept in pre-trial detention for over 2 years, and was sentenced to 5 years of imprisonment on charges of spreading fake news and joining a terrorist organisation. Access Now’s Campaign #FreeAlaa at <https://euromedrights.org/publication/egypt-in-crisis-following-cop27-ngos-call-for-urgent-action-by-the-un-to-address-the-worsening-crisis-in-egypt/>

³⁰ Amnesty International. Egypt: Amnesty International’s statement to the United Nations Human Rights Committee on the occasion of the review of Egypt, 28 February 2023. Available at: <https://www.amnesty.org/en/documents/mde12/6498/2023/en/>

³¹ Human Rights Watch. Egypt: Dissidents Abroad Denied Identity Documents. March 2023. Available at: <https://www.hrw.org/news/2023/03/13/egypt-dissidents-abroad-denied-identity-documents>

³² Parliamentary Question E-002741/2022. Available at: https://www.europarl.europa.eu/doceo/document/E-9-2022-002741-ASW_EN.pdf

Case Study: WB

The Western Balkan states have become first transit countries, and then buffer zones to manage and interdict the arrivals of people-on-the-move seeking to enter the EU through the so-called Balkan Route. The route, which was popularised in 2012, peaked in May 2015 when - with rising tensions and violence in Syria, Iraq and Afghanistan - it represented the quickest and safest route to take, not only for people on the move and asylum seekers from the Middle East and Central and South Asia, but also for hundreds of people who, in order to stop risking their lives in the Central Mediterranean, travelled from Africa to Turkey and then tried through Greece to make their way to central Europe. In 2022, the route peaked again when almost every state along it saw a significant rise in numbers and it became the most used path to reach the EU. The number of 'irregular entries' into Europe increased by 82% during the first half of the year compared to the same period the previous year and more than half of those came through the so-called Western Balkan route.³³

Western Balkan states such as Croatia and Serbia have seen a large spike in arrivals sparking new practices to emerge. Croatia introduced expulsion orders that are now issued en masse by the Croatian police, ordering the people on the move to leave the European Economic Area within the seven days, but at the same time granting them a 7-day stay in Croatia.³⁴ At the same time, Serbia recorded a 170% rise in new arrivals, many of them coming into the country regularly, thanks to the liberal visa regime with countries such as Cuba, Morocco, Tunisia, Egypt, Burundi, India and Turkey, and then irregularly crossing into the neighbouring EU countries. Increase of arrivals from Croatia and Serbia triggered a harsh response from the EU, which claimed that Serbia was fueling an increase in the number of people on the move entering the bloc.³⁵ Following weeks of diplomatic pressure from Brussels, Serbian authorities halted visa-free travel from Tunisia and Burundi, and announced potential visa restrictions to 18 other countries.

In late 2022, as a response to these shifts in movement and practice, the European Commission proposed the Western Balkans Action Plan to further legitimise the EU's interventions in the region.³⁶ It identifies 20 operational measures structured along five pillars including: (1) strengthening border management along the routes; (2) swift asylum procedures and support reception capacity; (3) fighting migrant smuggling; (4) enhancing readmission cooperation and returns as well as (5) achieving visa policy alignment. Western involvement, however, is not aiming at creating safe, legal pathways for the people on the move: it is externalising the EU's border management in a way that encourages the Western

³³ Frontex. EU External borders in June: Western Balkan Route most active. July 2022. Available at: <https://frontex.europa.eu/media-centre/news/news-release/eu-external-borders-in-june-western-balkan-route-most-active-oPV0mM>

³⁴ BVMN. Rule of Law Report: Croatia. February 2023. Available at: <https://borderviolence.eu/reports/rule-of-law-report-croatia/>

³⁵ Euro News. EU sounds the alarm over rise in illegal border crossings via Serbia and abuse of visa-free travel. October 2022. Available at: <https://www.euronews.com/my-europe/2022/10/14/eu-sounds-the-alarm-over-rise-in-illegal-border-crossings-via-serbia-and-abuse-of-visa-free>

³⁶ European Commission. Migration routes: Commission proposes Action Plan for cooperation with Western Balkans to address common challenges. Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7447

Balkan countries to do the dirty work of pushbacks, readmissions and deportations for the EU.

The Commission's proposal to enhance security-related information sharing cannot be understood outside of this context and plays into a wider trend that seeks to turn the Western Balkan states into hotspots, reminiscent of the failed 2015 approach taken with frontline countries Greece and Italy.³⁷ Countries such as Serbia, Bosnia-Herzegovina, North Macedonia, Montenegro and Albania are at the centre of the EU's attempt to outsource migration management due to their candidacy status. This allows them to access funding tools and other operational support such as the Instrument for Pre-Accession Assistance (IPA) to strengthen their capacities to help them meet accession criteria. These funds are being used not to enhance reception and accommodation facilities and to streamline access to asylum procedures, but rather to enhance capacities for illegal pushbacks through new technological equipment, to strengthen return and readmission operations, and to fortify their borders and reduce migration.³⁸³⁹ One key aspect of this is the money that is currently being poured into the interoperability of national biometric registration and data-sharing systems on asylum applicants and irregular arrivals in Western Balkan states.⁴⁰⁴¹

Between 2017 and 2019, 216 million euros have been allocated to Western Balkan states in the field of migration management and a particular focus of these has been to build the capacity of Balkan countries to collect and exchange data with EU bodies and institutions.⁴²

Data systems operationalised within EU MS such as the SIS, VIS and EURODAC were originally envisaged to operate independently, without the possibility of interacting with one another. However, in recent years the European Commission has framed a series of terrorist attacks and the arrival of over one million refugees as security threats that required the creation of a comprehensive digital identity architecture for non-EU nationals.⁴³ This was to be achieved by interconnecting existing databases and setting up new ones, to close

³⁷ ECRE. The implementation of the hotspots in Italy and Greece: A study. December 2016. Available at: <https://www.ecre.org/wp-content/uploads/2016/12/HOTSPOTS-Report-5.12.2016.pdf>

³⁸ Transnational Institute. Expanding the fortress: The policies, the profiteers and the people shaped by EU's border externalisation programme. May 2018. Available at: <https://www.tni.org/en/publication/expanding-the-fortress>

³⁹ European Commission. EU increases support for border and migration management in the Western Balkans. October 2022. Available at: https://ec.europa.eu/commission/presscorner/detail/en/IP_22_6276

⁴⁰ Statewatch. Blackmail in the Balkans: how the EU is externalising its asylum policies. June 2021. Available at:

<https://www.statewatch.org/analyses/2021/blackmail-in-the-balkans-how-the-eu-is-externalising-its-asylum-policies/>

⁴¹ Privacy International. Borders Without Borders: How the EU is Exporting Surveillance in Bid to Outsource its Border Controls. November 2020. Available at:

<https://privacyinternational.org/long-read/4288/borders-without-borders-how-eu-exporting-surveillance-bid-outsource-its-border>

⁴² European Commission. Progress report on the implementation of the European agenda on migration. October 2019. Available at:

<https://eur-lex.europa.eu/legal-content/FR/TXT/PDF/?uri=CELEX:52019DC0481&rid=1>

⁴³ "In the past three years, the EU has experienced an increase in irregular border crossings into the EU, and an evolving and ongoing threat to internal security as demonstrated by a series of terrorist attacks." See: European Commission, COM(2017) 794 final, 12 December 2017, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52017PC0794>

“information gaps” and “blind spots”⁴⁴ – a framing that provides a continual justification for expanding surveillance and data collection schemes.⁴⁵ The EU’s interoperable migration initiative has itself been sharply criticised for, among others, its unjustified conflation of immigration and criminal law purposes, its weak anti-discrimination safeguards, and its skirting of key data protection principles like data minimization and purpose limitation, which are applicable to data subjects regardless of their citizenship or nationality.⁴⁶ Under the Commission’s proposal for security-related information sharing, it seems this system will be integrated with states outside of the EU that have not necessarily ratified the same conventions for upholding the fundamental rights of people on the move.

In line with this, under the IPA II and IPA III, Western Balkan states have received support from the Commission in establishing IT systems for registration and identification in line with EURODAC standards.⁴⁷ Various testimonies report that regional databases are being set up on the model of and compatible with EURODAC databases with a mind to merge these as one interoperable system.⁴⁸ Under EU laws, there is no specific legal basis authorising the integration of regional and EU-level fingerprinting systems prior to accession as those would be governed by different legal systems and safeguards.⁴⁹ However Bosnia-Herzegovina (BiH), which does not even have candidacy status, has already received 17 million euros for this purpose and the Serbian Ministry of Interior (MoI) has indicated that it will implement the Dublin and EURODAC regulations two years prior to accession. The reality for people on the move will be devastating; if they manage to enter EU MS such as Austria, Germany, Italy etc. and seek to apply for asylum, upon being fingerprinted in the EURODAC system their prints will show up in Western Balkan states that have not yet met the fundamental requirements to accede to the EU, including compatibility to the Common European Asylum System (CEAS). Nevertheless, these Western Balkan states have been designated as Safe

⁴⁴ European Commission, ‘Stronger and Smarter Information Systems for Borders and Security’, COM(2016) 205 final, 6 April 2016, <https://www.statewatch.org/media/documents/interoperability/interoperability/commission/eu-com-205-communication-on-stronger-and-smart-borders-06-04-16.pdf>

⁴⁵ Statewatch. Interoperable EU databases. February 2023. Available at: <https://www.statewatch.org/frontex-and-interoperable-databases-knowledge-as-power/2-interoperable-eu-databases/>

⁴⁶ PICUM, Statewatch. Data Protection, Immigration Enforcement and Fundamental Rights: What the EU’s Regulations on Interoperability Mean for People with Irregular Status. November 2019. Available at: <https://picum.org/wp-content/uploads/2019/11/Data-Protection-Immigration-Enforcement-and-Fundamental-Rights-Full-Report-EN.pdf>

⁴⁷ Council of the European Union. Council conclusions on enhancing cooperation with Western Balkans partners in the field of migration and security. June 2020. Available at: <https://data.consilium.europa.eu/doc/document/ST-8622-2020-INIT/en/pdf>.

⁴⁸ See Annex I of the Commission Implementing Decision on the financing of the individual measures to strengthen border management capacities in favour of the Western Balkans for 2022; General Secretariat of the Council Conclusions on enhancing cooperation with Western Balkans in the field of migration and security. June 2020. Available at: <https://data.consilium.europa.eu/doc/document/ST-8622-2020-INIT/en/pdf>.

⁴⁹ ECRE. Dr Niovi Vavoula. ECRE Working Paper: Transforming Eurodac from 2016 to the New Pact: From the Dublin System’s Sidekick to a Database in Support of EU Policies on Asylum, Resettlement and Irregular Migration. January 2021, pg. 17. Available at: <https://ecre.org/ecre-working-paper-transforming-eurodac-from-2016-to-the-new-pact-from-the-dublin-systems-sidekick-to-a-database-in-support-of-eu-policies-on-asylum-resettlement-and-irregular-migration/>.

Third Countries (STCs) and therefore will count as the person's 'first country of asylum' where their claim must be processed. Asylum seekers can then be readmitted back to countries like Serbia and Bosnia-Herzegovina for their asylum claims to be processed despite these countries, due to their status as non-EU MS, holding deportation agreements with countries like Pakistan, which are not considered Safe Countries of Origin (SCOs) in EU MS. Just as Turkey and Libya before them, the Western Balkan states will become hotspots for outsourcing the detention and deportation of people on the move in service of the European Union (EU), aiding them to circumvent fundamental rights guarantees that are provided for in EU legislation.

Another problematic element of this development is the role of Frontex. Through the formalisation of Status Agreements allowing Frontex to operate in Western Balkan States, and the establishment/deployment of the Frontex corps, Frontex's mandate and presence within the region has expanded significantly within the last years. Frontex, in this context, has a crucial role: active on the ground through Status Agreements with Western Balkan States, as the leading actor in helping to implement EURODAC compatible systems in the Western Balkans training local staff and assisting in the establishment of National Coordination Centres (NCCs), and with access (per the status agreements) to both EU and national biometric databases. While national systems being established cannot be connected to the EURODAC before states join the EU, it was suggested that Frontex serve as a bridge between EU biometric data systems and the Western Balkans. This is particularly concerning due to the evidence that has recently emerged which evidences Frontex's engagement in human rights violations in EU MS,⁵⁰ as exposed by last year's OLAF investigation.⁵¹ Furthermore, testimonies from the BVMN have been gathered that indicate Frontex's direct involvement in pushbacks from Member States like Hungary and Greece, and in non-EU MS operational areas such as Albania.⁵²

BVMN data shows that practices of gathering biometric data has already been fully implemented in a number of Western Balkan states with accession status that have also received IPA funds to increase their interoperability with EU databases. Eight testimonies from Serbia indicate the processing of biometric information of people on the move in the context of an illegal pushback, none of the respondents were informed as to how this information would be stored, shared or used, violating the rights of the individual data subject.⁵³ 36 testimonies collected from North Macedonia indicated that fingerprints had been collected by authorities prior to an illegal pushback⁵⁴ and one of these incidents has even been documented in a recent BVMN visual investigation.⁵⁵ The frequency with which this trend is reported has increased in more recent testimonies, suggesting a standardisation of the practice. This is particularly concerning given the recent Status Agreement signed

⁵⁰ Spiegel International. EU Border Agency Frontex Complicit in Greek Refugee Pushback Campaign. October 2020. Available at: <https://www.spiegel.de/international/europe/eu-border-agency-frontex-complicit-in-greek-refugee-pushback-campaign-a-4b6cba29-35a3-4d8c-a49f-a12daad450d7>

⁵¹ FragDenStaat. OLAF Final Report on Frontex. 2021. Available at: <https://fragdenstaat.de/dokumente/233972-olaf-final-report-on-frontex/>

⁵² See testimony annex.

⁵³ See testimony annex.

⁵⁴ See testimony annex.

⁵⁵ BVMN. Pushback from North Macedonia: Visual Analysis. November 2022. Available at: <https://borderviolence.eu/reports/pushback-from-north-macedonia-visual-analysis/>

between North Macedonia and Frontex which will allow Frontex to operate on North Macedonian territory and have access to their databases, potentially facilitating the exchange of information. Again, it is important to note that under current Union law there is no legal basis to allow for sharing of this information between EU MS and non-EU MS. We are particularly concerned that the initiative for security-related information sharing outlined in this Commission proposal is laying the groundwork for a shift that would allow for biometric data of people on the move to be shared between states where laws around data protection, asylum procedures, and fundamental rights guarantees have not yet been harmonised. Further to this, even when harmonised, these laws do not offer sufficient levels of protection for guarantees of meaningful access to remedies in cases where the rights of the data subject are being violated.

The “trap” of European border externalisation through the increasing interoperability of biometric databases, and ensuing violations of personal data protection and fundamental human rights is a burgeoning issue likely to only become more central as countries in the Western Balkans implement biometric systems following the Eurodac template and accession talks continue to link funding with adherence to EU priorities regarding border management, ignoring those of fundamental rights. Returning to the testimonies of respondent’s biometric information being taken prior to a pushback, having been denied access to asylum procedures, there are serious concerns as to how this could potentially in the long run make it difficult for respondents to seek international protection in EU Member States, and therefore further frustrate the right to asylum.

Conclusion

As we have outlined extensively above, there are already a number of initiatives by the Commission seeking to facilitate the sharing of information between EU and non-EU states. A number of these have been extensively criticised by civil society for posing threats to asylum procedures and the safety of third-country nationals who have sought protection from corrupt regimes in EU Member States. This raises doubts as to the necessity of this new initiative as well as the sufficiency of the safeguards proposed with it. Case studies from the MENA and Western Balkan regions clearly elucidate how such interoperability mechanisms are playing out on the ground and have devastating effects on the fundamental rights of people on the move. In light of the analysis presented above we, the undersigned organisations, call for the Commission’s initiative not to proceed and for attention to be focussed on sufficient safeguards around the current mechanisms that have already been unsatisfactorily implemented.

Signed by:

Border Violence Monitoring Network (BVMN)

Statewatch

Euromed Rights

European Digital Rights (EDRi)

Access Now

Privacy International (PI)

Refugee Law Lab, York University

Homo Digitalis

Platform for Undocumented Migrants (PICUM)

European Network Against Racism (ENAR)

Dr Niovi Vavoula, Queen Mary University of London

Dr Derya Özkul, University of Oxford



**Border Violence
Monitoring Network**



**refugee
law
lab**



**Homo
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Annex I: Testimonies from the Border Violence Monitoring Network (BVMN)

Number:	Link:	Perpetrating Country:	Notes
1	https://borderviolence.eu/testimonies/august-24-2022-1000/	Hungary	Reported involvement of Frontex officers in an illegal pushback.
2	https://borderviolence.eu/testimonies/september-6-2019-2000-near-rozke-border-crossing-hungary/	Hungary	Reported involvement of Frontex officers in an illegal pushback.
3	https://borderviolence.eu/testimonies/september-26-2020-2300-near-orestiada/	Greece	Reported involvement of Frontex officers in an illegal pushback.
4	https://borderviolence.eu/testimonies/june-14-2021-1500-uzunkopru/	Greece	Reported involvement of Frontex officers in an illegal pushback.
5	https://borderviolence.eu/testimonies/january-18-2021-0600-albanian-greek-border-south-eastern-albania/	Albania	Reported involvement of Frontex officers in an illegal pushback.
6	https://borderviolence.eu/testimonies/june-1-2020-0700-trestenik-albania/	Albania	Reported involvement of Frontex officers in an illegal pushback.
7	https://www.borderviolence.eu/violence-reports/august-21-2022-2300-near-madarasz-to-reservoir-area-hungary/	Serbia	Reported collection of biometric data.
8	https://www.borderviolence.eu/violence-reports/may-22-2021-0500-military-border-crossing-close-to-subotica-serbia/	Serbia	Reported collection of biometric data.
9	https://www.borderviolence.eu/violence-reports/february-27-2021-0005-near-kelebija-serbia/	Serbia	Reported collection of biometric data.

10	https://www.borderviolence.eu/violence-reports/february-7-2021-1500-near-horgos-serbia/	Serbia	Reported collection of biometric data.
11	https://www.borderviolence.eu/violence-reports/january-18-2021-1400-horgos-border-crossing/	Serbia	Reported collection of biometric data.
12	https://www.borderviolence.eu/violence-reports/november-17-2020-0000-horgos-serbia/	Serbia	Reported collection of biometric data.
13	https://www.borderviolence.eu/violence-reports/burgenland/	Serbia	Reported collection of biometric data.
14	https://www.borderviolence.eu/violence-reports/july-20-2019-0000-border-crossing-near-roszke-hungary/	Serbia	Reported collection of biometric data.
15	https://borderviolence.eu/testimonies/february-23-2019-1600-close-to-gradets-macedonia/	North Macedonia	Reported collection of biometric data.
16	https://borderviolence.eu/testimonies/july-13-2019-0000-close-to-gevgelija-north-macedonia/	North Macedonia	Reported collection of biometric data.
17	https://borderviolence.eu/testimonies/july-22-2019-0930-gevgelija-north-macedonia/	North Macedonia	Reported collection of biometric data.
18	https://borderviolence.eu/testimonies/august-4-2019-0000-gevgelija-train-station-macedonia/	North Macedonia	Reported collection of biometric data.
19	https://borderviolence.eu/testimonies/september-26-2019-0000-nearby-gevgelija-train-station/	North Macedonia	Reported collection of biometric data.
20	https://borderviolence.eu/testimonies/january-27-2020-1845-gevgelija-north-macedonia/	North Macedonia	Reported collection of biometric data.
21	https://borderviolence.eu/testi	North	Reported collection of

	monies/april-19-2020-0000-lojane/	Macedonia	biometric data.
22	https://borderviolence.eu/testimonies/april-26-2020-1700-gevgelija-n-macedonia/	North Macedonia	Reported collection of biometric data.
23	https://borderviolence.eu/testimonies/may-30-2020-0000-gevgelija-n-macedonia/	North Macedonia	Reported collection of biometric data.
24	https://borderviolence.eu/testimonies/august-14-2020-0200-gevgelija-area-near-the-border-north-macedonia/	North Macedonia	Reported collection of biometric data.
25	https://borderviolence.eu/testimonies/august-17-2020-1330-gevgelija-north-macedonia/	North Macedonia	Reported collection of biometric data.
26	https://borderviolence.eu/testimonies/february-12-2021-0200-idomeni-greece/	North Macedonia	Reported collection of biometric data.
27	https://borderviolence.eu/testimonies/april-10-2021-0100-idomeni-greece/	North Macedonia	Reported collection of biometric data.
28	https://borderviolence.eu/testimonies/may-4-2021-0400-idomeni-greece/	North Macedonia	Reported collection of biometric data.
29	https://borderviolence.eu/testimonies/may-7-2021-0014-gevgelija-north-macedonia/	North Macedonia	Reported collection of biometric data.
30	https://borderviolence.eu/testimonies/may-8-2021-2330-gevgelija-north-macedonia/	North Macedonia	Reported collection of biometric data.
31	https://borderviolence.eu/testimonies/may-10-2021-0000-near-idomeni-greece/	North Macedonia	Reported collection of biometric data.
32	https://borderviolence.eu/testimonies/may-11-2021-2200-gevgelija-north-macedonia/	North Macedonia	Reported collection of biometric data.
33	https://borderviolence.eu/testimonies/may-18-2021-1900-near-idomeni-greece/	North Macedonia	Reported collection of biometric data.
34	https://borderviolence.eu/testimonies/may-28-2021-0000-near-idomeni-greece/	North Macedonia	Reported collection of biometric data.

35	https://borderviolence.eu/testimonies/august-6-2021-0000-gevgelija-north-macedonia/	North Macedonia	Reported collection of biometric data.
36	https://borderviolence.eu/testimonies/october-22-2021-2200-gevgelija-north-macedonia/	North Macedonia	Reported collection of biometric data.
37	https://borderviolence.eu/testimonies/november-15-2021-0000-near-guevguelia-north-macedonia/	North Macedonia	Reported collection of biometric data.
38	https://borderviolence.eu/testimonies/november-28-2021-1100-gevgelija-north-macedonia/	North Macedonia	Reported collection of biometric data.
39	https://borderviolence.eu/testimonies/november-29-2021-0500-close-to-gevgelija/	North Macedonia	Reported collection of biometric data.
40	https://borderviolence.eu/testimonies/december-7-2021-0000-near-gevgelija/	North Macedonia	Reported collection of biometric data.
41	https://borderviolence.eu/testimonies/december-8-2021-0000-near-gevgelija-north-macedonia/	North Macedonia	Reported collection of biometric data.
42	https://borderviolence.eu/testimonies/december-16-2021-0000-near-gevgelija-north-macedonia/	North Macedonia	Reported collection of biometric data.
43	https://borderviolence.eu/testimonies/january-25-2022-0000-gevgelija-north-macedonia/	North Macedonia	Reported collection of biometric data.
44	https://borderviolence.eu/testimonies/march-25-2022-0000-41-128306-22-517528/	North Macedonia	Reported collection of biometric data.
45	https://borderviolence.eu/testimonies/april-19-2022-0000-gevgelija-north-macedonia/	North Macedonia	Reported collection of biometric data.
46	https://borderviolence.eu/testimonies/april-23-2022-0000-gevgelija-north-macedonia/	North Macedonia	Reported collection of biometric data.
47	https://borderviolence.eu/testimonies/april-23-2022-0000-gevgelija-north-macedonia/	North Macedonia	Reported collection of biometric data.

	evgelija-north-macedonia-2/		
48	https://borderviolence.eu/testimonies/april-24-2022-0000-gevgelija-north-macedonia/	North Macedonia	Reported collection of biometric data.
49	https://borderviolence.eu/testimonies/june-26-2022-0000-gevgelija/	North Macedonia	Reported collection of biometric data.
50	https://borderviolence.eu/testimonies/november-2-2022-0200-close-to-gevgelija/	North Macedonia	Reported collection of biometric data.
51	https://borderviolence.eu/testimonies/november-3-2022-0300-near-valandovo-north-macedonia/	North Macedonia	Reported collection of biometric data.