

EQUALITY



Age assessment and fingerprinting of children in asylum procedures

Minimum age requirements concerning
children's rights in the EU



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Contents

INTRODUCTION	5
Why this report?	5
KEY FINDINGS AND FRA OPINIONS	7
1 AGE ASSESSMENT OF CHILDREN IN ASYLUM PROCEDURES	9
2 FINGERPRINTING CHILDREN UNDER MIGRATION AND ASYLUM LAW PROCEDURES	13

Introduction

Asylum or migration procedures may affect children's lives in several ways. However, it is often a challenge to find the right balance between ensuring their protection from harm and their participation in these procedures. Persons below the age of 18 years are frequently considered to lack the necessary knowledge, experiences and maturity to decide responsibly. They are therefore assumed to require a protective framework for their wellbeing, and exercise their rights through their parents or other representatives.

However, this should not compromise the perception that children are also rights holders able to exercise certain rights on their own. In Article 24, the Charter of Fundamental Rights of the European Union (Charter)¹ identifies children as rights holders and persons in their own right. In particular, the Charter specifies "age and maturity" as criteria for balancing the protection of children's rights and child participation.

"Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity."

Article 24 (1) of the Charter of Fundamental Rights of the European Union

Since the adoption of the UN Convention on the Rights of the Child (CRC),² ratified by all European Union (EU) Member States, there has been an emerging need to combine child protection with child participation, particularly the right for children to be heard and participate in important decisions affecting their lives. The concept of a minimum age is of crucial importance for balancing protection and participation. Legal minimum ages define when a child is considered an adult before the law, or whether children may exercise certain rights independently and without the authorisation of their parents or other representatives.

Why this report?

The European Union Agency for Fundamental Rights (FRA) mapped national legislative provisions on age requirements in various situations relating to children's protection and participation in asylum and migration procedures. These include issues such as:

- the age at which a child has legal capacity to submit an asylum application in his or her own right;
- the age at which unaccompanied asylum-seeking children could be accommodated in non-specialised facilities, together with adults;
- the age at which the consent of unaccompanied children is required for the age assessment procedure when x-rays or other medical tests are used;
- the age as of which children can be sponsors for or beneficiaries of family reunification procedures; and
- the age as of which fingerprinting children is required under migration and asylum law.

EU secondary law lays down common rules for all Member States, although exceptions, derogations and a certain margin of appreciation exist for national authorities. This is especially the case with the age assessment for children requesting international protection (Directive on common procedures for granting and withdrawing international protection, Asylum Procedures Directive).³ On the contrary, in the case of collecting fingerprints, the age at which children are asked to comply with such an obligation is directly set out by the relevant EU legislation (Regulations on the uniform format for residence permits,⁴ Eurodac⁵ or Visa Code⁶).

MINIMUM AGE REQUIREMENTS: FRA RESEARCH ON CHILDREN'S RIGHTS ACROSS THE EU

This report is one of two FRA reports outlining the agency's opinions on minimum age requirements in particular fields:

- *Children's rights and justice* examines minimum age requirements for children in the area of justice.
- *Age assessment and fingerprinting of children in asylum procedures* looks at age assessments for children in asylum procedures and other minimum age requirements in the asylum field.

The full data on which these reports are based on can be accessed on [FRA's website](#).

In addition, information published on [FRA's website](#) analyses comparative data on age requirements in nine thematic areas across EU Member States: legal capacity; political participation; health; religion; asylum and migration; access to justice; children in the digital world; social and economic rights; and LGBTI issues.



FRA’s aim is to identify eventual inconsistencies and protection gaps and help Member States and the EU address these issues in the scope of their competencies, in line with EU legislation. The substantial dataset is available on [FRA’s website](#), to be read as an accompanying publication to this report.

The present report focuses on issues related to age assessment and child fingerprinting, taking into consideration the work already undertaken at the EU level, especially by the European Asylum Support Office (EASO). In addition, the forthcoming reform of the Common European Asylum System (CEAS) also affects the age at which a child in the asylum procedure is called on to provide fingerprints.

Fingerprinting – particularly children as young as six years old – should be carried out in full respect of fundamental rights and the rights of the child. From a rights perspective, age assessment procedures are even more challenging. Namely, the methods used to determine the age of a child may include “invasive” medical tests, directly interfering with the rights of the child, including their right to dignity, integrity and privacy. Furthermore, the age assessment of a person may have crucial repercussions on their treatment, as according to such an assessment, a person may be considered a child or an adult and therefore (not) entitled to special child protection measures.

Related work by the European Commission and EASO

In May 2016, the **European Commission** submitted a [proposal for a revised Eurodac Regulation](#) (COM(2016) 272 final), for comparing fingerprints in order to effectively apply the Dublin III Regulation (No. 604/2013). The purpose is to identify “an illegally staying third-country national or stateless person and on requests for the comparison with Eurodac data by Member States’ law enforcement authorities and Europol for law enforcement purposes”.

In 2018, the **European Asylum Support Office (EASO)** published a [practical guide on age assessment](#). After stressing that all age assessment methods include a margin of error, the guide particularly addresses the intrusiveness of these methods.

For more information, see the websites of the European Commission and the European Asylum Support Office.

FRA ACTIVITY

Children in asylum procedures: FRA’s guidance tools

It is important to establish a person’s age because it determines their treatment in asylum and migration procedures. Such procedures implicate a wide range of fundamental rights. FRA regularly collects data and provides fundamental rights expertise to EU institutions on these matters, [assisting Member States such as Greece and Italy on the ground](#) and providing [practical guidance tools](#). Its publications and opinions delivered to the European Parliament include:

- the [FRA Opinion on the impact on children of the proposal for a revised Dublin Regulation](#);
- the [FRA Opinion on the impact of the proposal for a revised Eurodac Regulation on fundamental rights](#);
- the [report on the European legal and policy framework on immigration detention of children](#);
- the [report and handbook on guardianship for children deprived of parental care](#); and
- [regular overviews of migration-related fundamental rights concerns](#).

Furthermore, see the following FRA publications:

- [European legal and policy framework on immigration detention of children](#), Publications Office, Luxembourg, 2017
- [Guardianship systems for children deprived of parental care in the European Union](#), Publications Office, Luxembourg, 2015.
- [Guardianship for children deprived of parental care](#), Publications Office, Luxembourg, 2014.

For more information, see FRA’s webpage on the agency’s asylum work.

Key findings and FRA opinions

The following FRA opinions build on these main key findings:

- In all EU Member States, when a medical test is decided to establish whether a person seeking international protection is under or above the age of 18, the consent of the person concerned and/or their representative (including guardians) is necessary, and no such medical test can be carried out against their will.
- Five EU Member States require the consent of both children and their legal representatives for an age assessment medical procedure.
- In eight Member States, an age assessment medical procedure can only proceed with the consent of the child.
- In five Member States, age assessment medical procedures exclusively require the consent of the child's legal representative.
- In only two EU Member States, age assessment procedures are carried out exclusively through interviews, without the use of any type of medical test.
- In general, EU Member States collect the fingerprints of children in asylum and migration procedures as of the age provided in the relevant EU legislation. However, a few Member States collect fingerprints for national purposes, often from children below the minimum age laid down in the EU legislation.
- The minimum age ranges from six years (according to the Regulation on the uniform format for residence permits for third-country nationals) to 12 years for children applying for a Schengen Visa, and 14 years (according to Eurodac Regulation for children in international protection procedures or in irregular situations, although the recast Eurodac proposal lowers the minimum age to six years).

In the context of this report, age assessment is the process used to establish the age of an asylum seeker and, more specifically, whether that person is a child or an adult (over 18 years). Establishing whether an asylum seeker is a child results in significantly different treatment in a number of fields related to child protection. In accordance with EU legislation, EU Member States often use medical tests to establish the age of a person. FRA evidence shows that in all EU Member States, when a medical test is used, the consent of the

person concerned and/or their representative (including guardians) is necessary, and no such medical test can be carried out contrary to their will. However, in some EU Member States, only the consent of the legal representative of the child suffices for an age assessment to be carried out by competent national authorities.

If there are doubts as to a child's age, Article 25 (5) of the Asylum Procedures Directive provides that Member States may use medical examinations to determine their age, leaving a margin of appreciation for Member States to decide which type of medical test to apply. In addition, Article 25 (5) of the directive allows Member States a margin of appreciation to regulate the issue of consent. Member States may decide whether the consent of the child is necessary, or the consent of their representative is sufficient, or if both the consent of the child and the representative is needed before carrying out a medical test. However, in exercising their margin of appreciation, EU Member States are bound by the Charter of Fundamental Rights and provisions, such as those enshrining human dignity, the integrity and privacy of the person, and the rights of the child. In addition, the Asylum Procedures Directive defines that the tests used must be "the least invasive" and carried out by qualified medical professionals. If such a medical test is carried out, Member States are obliged to inform the person beforehand about the meaning and the consequences of the test regarding their treatment as international protection seekers. In addition, they must secure the consent of the child concerned and/or their representative (including guardians or parents in the case of accompanied children).

The rules set out in Article 25 (5) of the Asylum Procedures Directive are essentially incorporated in the proposal of the European Commission for an Asylum Procedures Regulation, which is currently under negotiation.

FRA opinion 1

In conducting an age assessment medical test, EU Member States should consider seeking the explicit consent of both the person concerned and their legal representative.

FRA opinion 2

EU Member States should use age assessment procedures only where there are grounds for doubting an individual's age. They should only use medical tests if they cannot base their age assessment on other, less invasive methods, such as documents or an interview by specialised social workers. Medical tests, especially involving radiation, should be a method of last resort to

establish the age of a person seeking international protection, whereas sexual maturity tests should be prohibited. Medical tests should always be carried out by qualified medical staff, adhering to all relevant medical protocols and in a gender-sensitive way, taking into consideration the cultural background of the person concerned. If Member States still have doubts about the age of the person after a medical assessment test, they should decide in favour of the person being under the age of 18 years (presumption of minority), as provided in Article 25 (5) of the Asylum Procedures Directive.

FRA opinion 3

Persons having to undergo an age assessment medical test should be informed about the nature of the medical test and the possible health and legal consequences, especially as regards their legal status as international protection seekers. This information should be provided by competent national authorities in a child-friendly manner and in a language that they understand. To ensure that the rights of the child are respected, it is essential that before an age assessment procedure, national authorities appoint a guardian to support and represent the person undergoing the assessment.

In its research, FRA looks at minimum age requirements relating to the rights of children in asylum and migration procedures, as well as the impact of EU-wide Information Technology systems (IT systems) on fundamental rights. FRA points out that children in asylum and migration procedures are not excluded from the obligation to provide fingerprints. In general, EU Member States collect the fingerprints of children of the age provided in the relevant EU legislation. However, a few Member States collect the fingerprints of children below the minimum age laid down in the EU legislation for national purposes. These fingerprints are kept in national databases and are not inserted in EU-wide information systems. The age at which a child must give their fingerprints in a migration or asylum related procedure varies, since the EU legislation does not lay down a uniform minimum age. The minimum age ranges from six years (according to the Regulation on the uniform format for residence permits for third-country nationals) to 12 years for children applying for a Schengen Visa and 14 years (according to Eurodac Regulation, although the

recast Eurodac proposal lowers this minimum age to six years). Furthermore, the EU legislation provides that EU Member States collect fingerprints with full respect of the right to human dignity and the rights of the child, in accordance with the safeguards laid down in the Charter of Fundamental Rights of the European Union and other international human rights instruments.

FRA opinion 4

EU Member States taking fingerprints of very young children should always aim to fulfil a child protection objective such as identifying missing children and assisting family unity procedures. This objective should be reflected in concrete and measurable actions, such as raising awareness of police and border authorities about missing children, alerting newly arriving children and the wider public about the issue and systematically recording missing children in SIS II.

To ensure that the data stored is used for child protection purposes – and not only for law enforcement – EU Member States should put in place effective cooperation mechanisms between police and child protection authorities, as well as guardians. This should be complemented by tailor-made training for practitioners who may encounter children at risk.

FRA opinion 5

EU Member States should ensure that children are fingerprinted in a child-friendly, and gender-sensitive manner. They should be assisted by their parents (or guardians if they are unaccompanied) and provided with child-friendly information on the purpose and modalities of fingerprinting. Under no condition should EU Member States use force against children or deprive them of their liberty, in order to obtain their fingerprints. Instead, officers should build up a relationship of trust with the child.

FRA opinion 6

In case there are doubts as to whether a child has reached the age to legally be asked to provide their fingerprints, the competent authorities should refrain from collecting them.



1

Age assessment of children in asylum procedures



KEY FINDINGS

Consent of unaccompanied children in age assessments

In all EU Member States, when a medical test is decided to establish whether a person seeking international protection is under or above the age of 18, the consent of the person concerned and/or their representative (including guardians) is necessary and no such medical test can be carried out against their will. Besides, in the vast majority of countries, the person concerned and/or their representative's refusal to undergo the medical test does not automatically lead to the child being treated as an adult (exception of three Member States).

- In eight Member States, an age assessment medical procedure can only proceed with the consent of the child. The consent of the legal representative is not required and cannot substitute the consent of the child.
- In eight Member States, an age assessment medical procedure requires either the consent of the child or of their legal representative.
- In five Member States, age assessment medical procedures exclusively require the consent of the legal representative of the child.
- In five Member States, the consent of both the child and the legal representative is needed.
- In two Member States, no medical tests are used. Age assessment is carried out through interviews.

Age assessment is the process used to establish the age of an asylum seeker and more specifically, whether they are a child or an adult. Establishing this results in significantly different treatment in a number of fields related to child protection. For instance, special procedural guarantees (e.g. provision of a legal representative), more favourable accommodation arrangements, enhanced protection against return, family unity tracing and family unity maintaining procedures or access to schooling. As underlined by the European Commission in its Action plan on unaccompanied children, age assessment is of "critical" importance, "triggering a number of procedural and legal guarantees in relevant EU legislation".⁷ The negative impact of age assessment

on the treatment of children is clearly revealed where, for example, restrictive or inappropriate age assessment procedures result in child detention, as pointed out in a FRA report on the detention of migrant children.⁸

A new challenge for age assessment processes will arise, should the age for taking fingerprints or other biometric data be lowered from 14 to six years, as proposed under the recast Eurodac Regulation. As pointed out in FRA's 2016 Opinion on the revised Eurodac Regulation, FRA does not have data on age assessment processes for young children from the age of six. It can be assumed, however, that the age assessment methods used to establish whether a child is over six years is no

more reliable than the methods used to define whether or not a person is over the age of 18 years.

In its Handbook on European law relating to asylum, borders and immigration,⁹ FRA pointed out that “the age assessment issue has become increasingly contentious throughout Europe”. While there is a certain number of asylum seekers who falsely claim to be under 18 years so as to take advantage of special protection offered to children, some persons below the age of 18 years pretend to be adults so as to avoid protective measures that would prevent them from migrating to their final destination country. Reports even refer to traffickers especially instructing young girls to declare themselves as adults, convincing them that otherwise they will be repatriated or that the centres for children are prisons. Their aim is that the victims will be transferred to adult reception centres, where it is easier to reach them and recruit them into prostitution.¹⁰ In such cases, the responsibility falls on national authorities to decide to apply age assessment procedures that often include x-ray tests or other medical examinations.¹¹

Article 25 (5) of the Asylum Procedures Directive, referring to unaccompanied children, provides that Member States may use medical examinations to determine the age of children. The same provision sets out the framework for carrying out such examinations, as well as the guarantees in place to safeguard the rights of the child. The guiding principle is that of respecting the integrity and dignity of the person. Although the legislation does not specify the type of medical tests permitted, it defines that the tests used must be “the least invasive” and carried out by qualified medical professionals.

If such a medical test is carried out, Member States are obliged to inform the person beforehand about the meaning and the consequences of the test regarding their treatment as international protection seekers and ensure that the child concerned and/or their representative (including guardians) gives their consent.¹² In this respect, before carrying out a medical test, Member States have a margin of appreciation to decide whether the consent of the child is necessary in any event, or the consent of their representative is sufficient, or if both the consent of the child and the representative is needed. Using their margin of appreciation, however, Member States are still bound by the Charter of Fundamental Rights and the obligation to respect human dignity, the integrity and the privacy of the person and the rights of the child.

A person’s refusal to undergo the test cannot be the sole basis for rejecting the relevant international protection application. In case the authorities are still in doubt, even after the medical test, they have to decide in favour of the minority of the person (presumption

of minority). The presumption of minority principle is also provided under Article 13 of the Directive on preventing and combatting trafficking in human beings and protecting victims.¹³ Although Article 25 (5) applies merely to unaccompanied children, it reflects common principles for age assessment in asylum or migration procedures, based on the due respect of the right of the child to physical integrity and human dignity. These principles should be taken into account regardless of whether the person in question is unaccompanied or accompanied by parent(s).

The rules set out in Article 25 (5) of the Asylum Procedures Directive are essentially incorporated in the proposal of the European Commission for an Asylum Procedures Regulation, which is currently under negotiation.¹⁴

National authorities carrying out an age assessment procedure should take into consideration that the accuracy and therefore the reliability of existing relevant medical tests is widely contested. As acknowledged by the European Commission, “age assessment procedures and techniques vary and concerns on their reliability and proportionality often arise”.¹⁵ Similarly, the EASO 2018 practical guide on age assessment points out: “As yet, there is no age assessment method that can provide accurate results on the chronological age of the person”, whereas “all methods have a margin of error”.¹⁶ For instance, as regards carpal maturity tests, which are the most practiced age assessment tests among Member States, EASO stresses that “socioeconomic status is a key factor that affects the rate of ossification” leading to underestimating a person’s age.¹⁷ Concerning other non-x-ray medical tests, dental observation is considered “not designed to estimate the chronological age”, whilst physical development assessment is “the least accurate”.¹⁸

The EASO practical guide also points out the issue of the “intrusiveness” of the methods in use and the need to conduct age assessments using the “least intrusive method”.¹⁹ Referring, in particular, to medical tests, it underlines that all x-ray tests are “physically intrusive” since they use ionising radiation that may be harmful. There is opposition on ethical grounds for using radiation, if not serving medical purposes. Sexual maturity examinations, on the other hand, are of a “highly intrusive” nature, conflicting with the right to dignity, integrity and privacy and should be precluded for age assessment purposes.²⁰

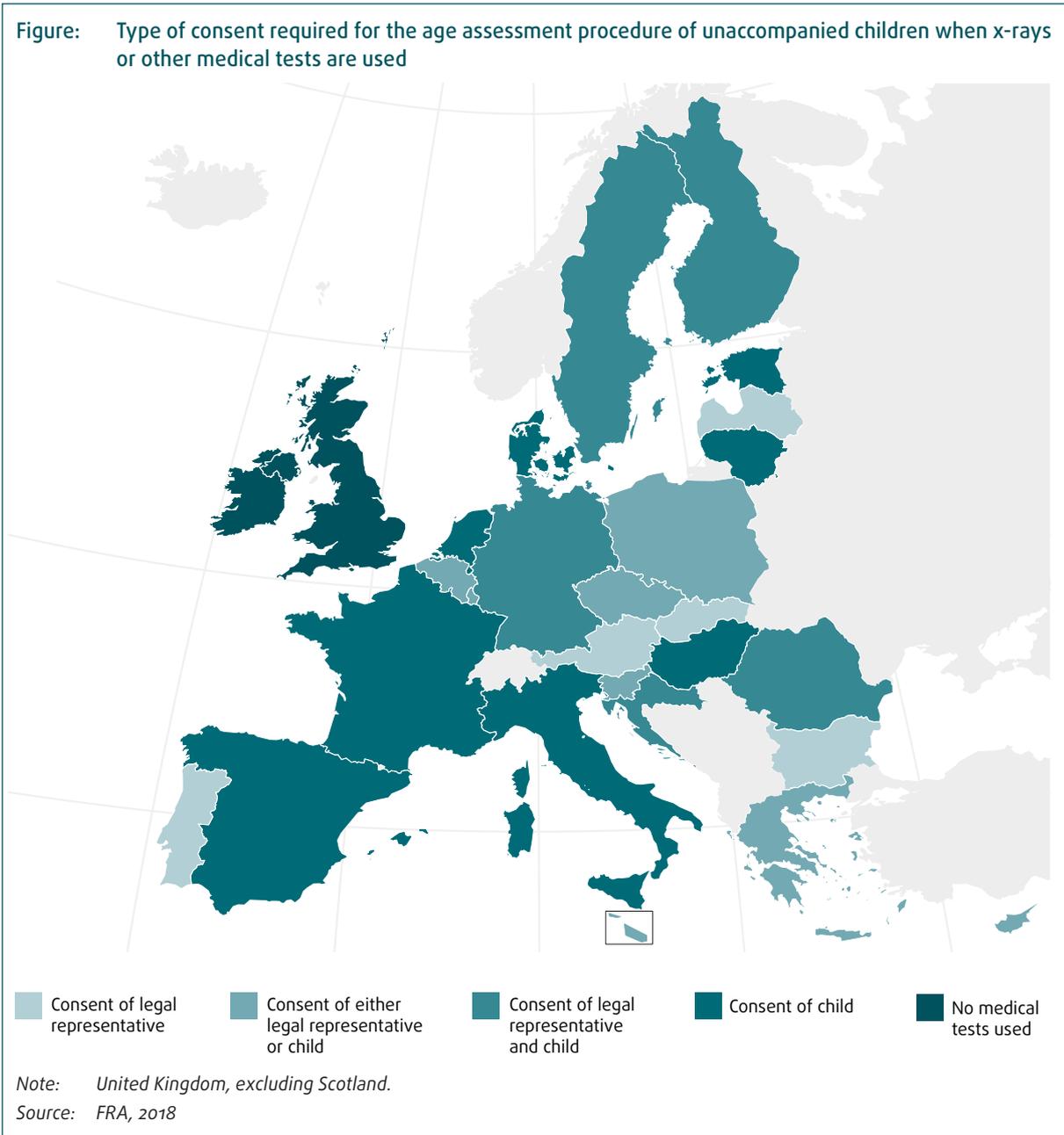
Similar findings are reflected in the report on age assessment prepared for the Ad hoc Committee for the Rights of the Child (CAHENF) of the Council of Europe and published in September 2017.²¹ For instance, there is an emphasis on the fact that the medical methods used are criticised for their scientific reliability and their high



risk of producing arbitrary results. Moreover, some of these methods are found to be invasive and may cause physical and mental harm to the persons involved. Referring to medical examinations, it concludes that they should only be used as a measure of last resort and under strict conditions. Taking into consideration all these aspects and the legal framework, the question addressed by FRA focuses on the age at which

a child’s consent is required for the age assessment procedure when x-rays or other medical tests are used. In past publications, FRA has already pointed out that “if medical examinations are considered essential, the child must give his/her informed consent to the procedure after any possible health and legal consequences have been explained in a simple, child-friendly way and in a language that the child understands”.²²

Figure: Type of consent required for the age assessment procedure of unaccompanied children when x-rays or other medical tests are used



2

Fingerprinting children under migration and asylum law procedures



KEY FINDINGS

Visas (VIS) and entering the EU for a short stay (EES)

- The Visa Code sets out the minimum age for fingerprinting visa applicants at 12 years. This rule is directly applied by all Schengen Member States. The fingerprints collected are stored in VIS (Visa Information System). The same minimum age applies for children entering the EU for a short stay under the EES, once it is set up.

International protection procedures or irregular situations (Eurodac)

- Eurodac includes fingerprints of children who apply for asylum, apprehended at the external border of the EU. According to the Eurodac proposal, those apprehended within the territory of Member States will also be included. The Eurodac Regulation sets out the minimum age for fingerprinting at 14 years, whereas the Eurodac proposal foresees to lower the minimum age to 6 years. This rule is directly applied in those EU Member States bound by the Regulation.
- However, for national purposes the fingerprints of younger children are collected, but not included in Eurodac. For instance, Denmark sets the minimum age at 6 years old in cases of unaccompanied children, while other Member States, such as Slovakia, take fingerprints of unaccompanied children at the age of 10.

Residence permits

- The Regulation on the uniform format for residence permits for third-country nationals provides for fingerprinting children who are as young as six years. Fingerprints collected when residence permits are issued are not stored in an EU-wide searchable database. Some Member States include these only in the residence permit, whereas others store them in a national database.

Regarding third-country nationals, fingerprints are collected in the context of a number of migration and asylum procedures. Fingerprints constitute a biometric identifier unique to the person and link the person to other personal data stored by EU Member State authorities, which helps to identify them. The collection of fingerprints as part of registration procedures is therefore considered to contribute to a number of objectives, ranging from processing asylum applications,

to fighting irregular immigration and easing public security concerns.²³

According to EU legislation, the fingerprints of third-country nationals are collected when they apply for a visa,²⁴ asylum²⁵ or a residence permit,²⁶ or if they are apprehended as an irregular migrant at the external border,²⁷ in the future also within the EU territory.²⁸ According to the Entry-Exit (EES) Regulation²⁹ adopted

at the end of 2017, the fingerprints of third-country nationals will also be collected at border checks at entry. Furthermore, the Schengen Information System (SIS II)³⁰ set up for security purposes foresees to include fingerprints for crime investigation purposes, for those who have been issued an entry ban, and for missing and abducted persons.

Children are not excluded from the obligation to provide fingerprints. The age at which a child must give their fingerprints in a migration or asylum-related procedure varies, since the EU legislation does not lay down a unique minimum age. The Regulation on the uniform

format for residence permits for third-country nationals imposes the obligation on Member States to capture the fingerprints for every person from six years of age.³¹ Children who are at least 12 years of age are fingerprinted when they apply for a Schengen visa³² and in the future when they cross the border for a maximum stay of three months, according to the EES Regulation.³³ The Eurodac (European Dactyloscopy) Regulation obliges Member States to collect fingerprints of children who are at least 14 years old,³⁴ and the recast proposal lowers the minimum age to six years.³⁵ In the context of SIS II, there is no minimum age concerning the obligation to provide fingerprints.

Table 1: Minimum age for the collection of fingerprints of children

Eurodac Reg. and proposal	VIS	SIS II Dec. and police proposal	SIS Reg. and borders proposal	SIS II: return proposal	EES Regulation	ETIAS proposal	ECRIS –TCN proposal	Interop. proposals (BMS)
14 years old; <i>6 years old</i>	12 years old	<i>No minimum age</i>	<i>No minimum age</i>	<i>No minimum age</i>	12 years old	<i>n/a</i>	<i>n/a</i>	<i>As in corresponding IT systems</i>

Note: *Proposed changes and legislation in Italics*

Source: *FRA, 2018, based on existing and proposed legal instruments*

However, taking the biometric data of very young children impacts on the quality and reliability of a future match. Fingerprints evolve over time, as the child grows. Present technologies for fingerprinting guarantee a reliable match if the child was at least six years old at the time when biometrics were taken and the match happened within a time frame of five years.³⁶ If more than five years have lapsed, the reliability of a match is questionable. In the context of Eurodac, given that the fingerprints of children applying for international protection may remain in the database for up to ten years, the margin of error when comparing children’s fingerprints may be higher than for adults.

Concerning the proposal to lower the minimum age for fingerprinting, FRA has underlined that *“this measure can only be justified if it expressly pursues a child protection objective. More specifically, it should serve to protect child victims of trafficking and support the identification and protection of unaccompanied children who go missing, disappear or abscond [...]”*³⁷ Such a low minimum age could otherwise raise doubts about its necessity and proportionality. Thus, its lawfulness regarding the rights of the child can be called into question, if the purposes of a lower minimum age are limited to implementing the Dublin system more effectively, combating irregular immigration and fighting serious crime. Moreover, when establishing the necessity and proportionality of setting a particular minimum age requirement for fingerprinting children, the interference with the fundamental rights of the child need to

be assessed, taking into consideration the vulnerability of the child. Long retention periods³⁸ may increase the risks for false matches, which is of particular concern, as there is the tendency for authorities to rely on data in IT systems.³⁹ Meanwhile, a child would be in a weak position to exercise their right of access, correction and deletion of data.

EU Member States can search fingerprints stored in Eurodac and VIS (Visa Information System). In the future this will apply to fingerprints stored in SIS II and EES as well. On the other hand, as an EU-wide IT system for residence permits has not been set up, the fingerprints of residence permit holders are not searchable EU wide.

The actual fingerprinting of children may impact on a number of fundamental rights, such as the respect for human dignity, the right to physical and mental integrity, and the right to information, or good administration which is a general principle of EU law. However, storing and further processing the fingerprints in searchable IT systems may also impact on the protection of personal data and may affect a whole range of other fundamental rights, such as the right to asylum, the right to liberty and security of person and the right to private life.

EU legislation already acknowledges that taking the fingerprints of children, while ensuring their fundamental rights, could be a challenging task for national authorities. In this respect, Article 13 (1) of the Visa Code Regulation, Article 3 (5) of the Eurodac Regulation, as well as

Article 10 of the Entry/Exit System Regulation foresees that Member States collect fingerprints in accordance with the safeguards laid down in the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms, in the Charter of Fundamental Rights of the European Union and in the United Nations Convention on the Rights of the Child. In its proposal for the amendment of the Eurodac Regulation, which lowers the minimum age for children to give fingerprints from 14 years to six, the European Commission points out that the obligation to take fingerprints have to be implemented in full respect of the right to human dignity and of the rights of the child. According to Article 2 (2) of the proposed Eurodac Regulation, children must be informed appropriately about the procedure, whilst the collection of their fingerprints must be carried out in a child-friendly manner by officials specifically trained in enrolling child fingerprints, respecting their dignity and physical integrity. Moreover, the principle of the best interests of the child is reflected in both the

Eurodac Regulation and the recast proposal as a primary consideration for Member States.

From a rights of the child perspective, the collection of child fingerprints, together with optimising the use of other IT systems such as SIS II, could help identify missing and separated children and assist family unity procedures.⁴⁰ This is of critical importance for the well-being of children in the context of the current migration and refugee situation, where a large number of unaccompanied and separated children arrive and stay in the EU, whilst only a small number of them is estimated to rejoin their families.⁴¹

Taking into consideration the challenges raised by fingerprinting procedures for children as regards their rights in migration or asylum procedures, the question addressed by FRA aimed to map the age as of which fingerprinting children is required under the migration and asylum laws of Member States.

FRA ACTIVITY

Scrutinising the fundamental rights implications of large-scale IT systems and biometric data

FRA's report on biometrics, [Under watchful eyes: biometrics, EU IT systems and fundamental rights](#) analyses how the right to asylum and the rights of the child are affected by collecting biometric data, particularly considering recent and upcoming developments regarding large-scale IT systems and interoperability.

IT systems set up by the EU, initially for asylum and migration management purposes, increasingly serve internal security purposes as well. Virtually all large-scale European IT systems have provisions allowing their use for immigration control purposes and for fighting serious crime and terrorism.

The EU has set up three large-scale IT systems in the areas of asylum, borders and visa:

- SIS II – the Schengen Information System to aid police and border checks;
- Eurodac – standing for European Dactyloscopy to support the application of the Dublin Regulation;
- VIS – the Visa Information System for visa processing.

There are advanced plans to set up three new systems:

- EES – the Entry-Exit System for registering travel in and out of the EU Regulation (EU) No. 2017/2226 (already adopted);
- ETIAS – the European Travel Information and Authorisation System for conducting pre-border checks for visa-free travellers (Commission proposal under negotiation);
- ECRIS-TCN – the European Criminal Records Information System being extended to third country nationals (Commission proposal under negotiation).

At the end of 2017, the European Commission tabled legislative proposals to make these systems “interoperable”, by creating a common search portal. The proposal also suggests to establish a common identity repository (CIR) with core biographic data of persons whose data are stored in the different IT systems, and adding a multiple identity detector (MID) to create links between different identities of the same person stored in the CIR.

These systems increasingly rely on biometric data – fingerprints and facial image – in processing the data. The biometric identifier serves to connect the individual to the information stored.

The impact of large-scale IT systems on fundamental rights remains largely unexplored territory. FRA’s [biometrics report](#) analyses how IT systems affect different rights enshrined in the Charter, both negatively and positively. IT systems can offer more robust and timely protection – for example, for missing children and victims and witnesses of crime – and can help prevent identity fraud and identity theft. At the same time, there are many fundamental rights challenges which result from collecting and storing an individual’s data in large-scale IT systems. They range from respect of human dignity when taking fingerprints, challenges in correcting or deleting inaccurate data or unlawfully stored information, to the risk of unlawful use and sharing of personal data with third parties. Based on research findings, the report formulates suggestions for the European Union and its Member States on how to reduce the risk of IT systems undermining fundamental rights; such as the right to good administration, the respect for human dignity, protection of personal data, the right to privacy and family life, the right to asylum, and the rights of the child.

For more information, see FRA (2018), [Under watchful eyes: biometrics, EU IT systems and fundamental rights](#), Publications Office, Luxembourg.



Endnotes

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- 18 *Ibid.* pp. 52-59.
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HELPING TO MAKE FUNDAMENTAL RIGHTS A REALITY FOR EVERYONE IN THE EUROPEAN UNION

The lives of children are affected by migration procedures which determine their status and whether they are treated as a minor or an adult, and therefore not entitled to special child protection measures. The methods used to determine the age of an applicant may include “invasive” medical tests which interfere with the rights of the child, including their right to dignity, integrity and privacy. It is often a challenge to find the right balance between protecting children from harm and promoting their participation in these procedures. This report provides important insights and identifies the implications of collecting children’s biometric data and conducting age assessments.

The report is one of two FRA reports addressing minimum age requirements in particular fields. The second report outlines age requirements and limits regarding child participation in judicial proceedings; procedural safeguards for, and rights of, children involved in criminal proceedings; as well as issues related to depriving children of their liberty. In addition, FRA has published on its website comparative data on age requirements in nine thematic areas: legal capacity; political participation; health; religion; asylum and migration; access to justice; children in the digital world; social and economic rights; and LGBTI issues. Taken together, the reports and published data provide a comprehensive overview of minimum age requirements in the EU.

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