

Table of Contents

Abbreviations	19
A. Introduction	23
I. Background: Externalisation, Digitalisation and the Intertwining of Migration and Security	25
II. A Vision: Interoperability and Automated Digital Identities	33
III. Research Questions and Structure	38
IV. Method	41
V. Limitations	42
B. Access to Justice	45
I. Human Dignity as the Basis of a Universal Understanding of Privacy and Data Protection	45
1. Human Dignity, Privacy and Data Protection in Europe	45
2. Human Dignity in a Globalised World	48
a) <i>Why a Universal Concept of Human Dignity Is Important</i>	48
b) <i>A Universal Core to Human Dignity</i>	49
c) <i>Universalist Human Rights Theories</i>	58
d) <i>Conclusions</i>	62
3. Privacy as a Personal Right	64
4. Conclusions	69
II. Access to Justice	69
1. What Is Access to Justice?	71
2. Access to Justice in International Law	74
3. Access to Justice in European Law	74
4. Access to Justice in the Digital Age	77
5. Access to Justice in the Context of the Interoperable Eurodac Information System	81
a) <i>Access to Information</i>	83
b) <i>Legal Certainty</i>	83
c) <i>Compliance with the Law and Prevention of Abuse</i>	84

Table of Contents

d) <i>Independence of the Judiciary</i>	85
e) <i>Equality and Non-Discrimination</i>	85
f) <i>Effective Remedies and Fair Trial</i>	86
g) <i>Effectiveness of Judicial Decisions</i>	88
III. <i>Conclusions</i>	88
C. <i>Eurodac and Interoperability</i>	91
I. <i>The European Union’s Interoperable Information Systems</i>	91
II. <i>Eurodac</i>	92
1. <i>Remodelling Eurodac as a Comprehensive Biometric and Biographic Information System</i>	92
2. <i>Eurodac Regulation (EU) 2024/1358</i>	95
a) <i>Legal Basis and Purpose</i>	95
b) <i>Affected Persons</i>	96
c) <i>Structure and Procedures</i>	98
aa) <i>Components of Eurodac</i>	98
bb) <i>Taking of Biometric Data</i>	99
cc) <i>Transmission of Data</i>	100
dd) <i>Marking of Data</i>	102
ee) <i>Processing and Comparing of Data</i>	102
d) <i>Collection and Storage of Data</i>	104
aa) <i>Collection of Data</i>	104
bb) <i>Storage and Erasure of Data</i>	104
cc) <i>Keeping of Records</i>	105
dd) <i>Statistics</i>	106
e) <i>Access to Eurodac Data</i>	107
aa) <i>Access to Data in the CIR</i>	107
bb) <i>Access to Data in Eurodac</i>	107
aaa) <i>Member States of Origin</i>	107
bbb) <i>Designated Authorities</i>	108
ccc) <i>Europol</i>	110
ddd) <i>ETIAS Central System and ETIAS National Unit</i>	111
eee) <i>VIS</i>	112
fff) <i>Third Countries, Private Entities and International Organisations</i>	113
ggg) <i>eu-LISA</i>	114

III. Interoperability	114
1. Connecting the European Union's Migration Information Systems	114
2. Legal Basis and Purpose: Regulation (EU) 2019/818	116
3. Components of the Interoperability System	116
a) <i>European Search Portal (ESP)</i>	118
b) <i>shared Biometric Matching Service (sBMS)</i>	119
c) <i>Common Identity Repository (CIR)</i>	120
d) <i>Multiple-Identity Detector (MID)</i>	123
4. Common Provisions	126
a) <i>The Web Portal</i>	127
b) <i>The Central Repository for Reporting and Statistics (CRRS)</i>	127
c) <i>Security, Data Controllers and Processors</i>	128
D. Access Rights under the Interoperable Eurodac	131
I. The Right to Information	131
1. What Is the Right to Information?	131
a) <i>International Human Rights Law Applicable in Europe</i>	132
b) <i>EU Human Rights Law: European Charter of Fundamental Rights</i>	135
aa) Rights to Privacy	135
bb) Good Administration, Effective Remedy and Fair Trial	139
c) <i>EU Law: GDPR, Police Directive and Data Protection Directive for EU Institutions and Bodies</i>	139
aa) General Data Protection Regulation	139
bb) Police Directive	144
cc) Data Protection Regulation for EU Institutions and Bodies	144
d) <i>Eurodac Regulation and AMMR</i>	145
e) <i>Interoperability Regulation</i>	147
2. Scope and Limitations	148
a) <i>Informed about What?</i>	148
aa) Eurodac Regulation	148
aaa) <i>Purposes</i>	148
bbb) <i>Security Flags</i>	149
ccc) <i>Recipients</i>	152

Table of Contents

ddd) <i>Transfer of Data to Third Countries</i>	154
eee) <i>Data Breach</i>	157
bb) <i>Interoperability Regulation</i>	157
aaa) <i>The Interoperability System and Automated Processing in the MID</i>	160
bbb) <i>Cross-Checking Data</i>	163
ccc) <i>Encompassing Access by the Police</i>	165
ddd) <i>Controllers with Regard to Eurodac Data</i>	165
eee) <i>New Functions</i>	166
b) <i>Informed When?</i>	167
aa) <i>Asylum, Resettlement, Temporary Protection or Apprehension in an Irregular Situation</i>	167
bb) <i>Take-Back Procedures</i>	170
cc) <i>Law Enforcement Access and Hits</i>	172
aaa) <i>Eurodac Regulation</i>	172
bbb) <i>Interoperability Regulation</i>	180
c) <i>Informed How?</i>	182
aa) <i>The Leaflets</i>	182
bb) <i>Receiving Information on the Ground</i>	185
cc) <i>Children or Persons with Disabilities</i>	190
aaa) <i>Children</i>	190
bbb) <i>Persons with Disabilities</i>	192
3. <i>Consequences of a Violation: What Does This Right Do for Access to Justice?</i>	193
a) <i>Commentary and Scholars' Opinions</i>	194
b) <i>EU Case Law</i>	196
c) <i>National Case Law</i>	198
4. <i>Conclusions</i>	200
II. <i>The Right to Access Personal Data and Information</i>	202
1. <i>What Is the Right to Access Personal Data and Information?</i>	202
a) <i>International Human Rights Law Applicable in Europe</i>	203
b) <i>EU Human Rights Law: European Charter of Fundamental Rights</i>	205
c) <i>EU Law: GDPR, Police Directive and Data Protection Directive for EU Institutions and Bodies</i>	206
aa) <i>General Data Protection Regulation</i>	206
bb) <i>Police Directive</i>	208

cc) Data Protection Regulation for EU Institutions and Bodies	209
d) <i>Eurodac Regulation</i>	209
e) <i>Interoperability Regulation</i>	211
2. Scope and Limitations	212
a) <i>Who Can Access Data?</i>	212
aa) Data Subjects	212
bb) Children	213
aaa) <i>Use of Children's Data (Accompanied and Unaccompanied Minors)</i>	213
bbb) <i>Access to Children's Data</i>	214
cc) Persons with Disabilities	218
dd) Persons outside the Schengen Area	219
aaa) <i>Applicability of the Interoperability Regulation</i>	219
bbb) <i>Applicability of the Eurodac Regulation</i>	219
ccc) <i>Access from outside the EU: Is an Ineffective Right Still a Right?</i>	221
b) <i>How to Access Personal Data</i>	225
aa) Eurodac Data in Eurodac	225
aaa) <i>Requesting Access or Contesting a Decision</i>	225
bbb) <i>Addressee for the Access Request</i>	226
ccc) <i>Identification of the Data Subject</i>	228
ddd) <i>Form of the Access Request</i>	229
eee) <i>Fee for the Access Request</i>	232
fff) <i>Restriction of the Right to Access</i>	233
ggg) <i>Time Limit for an Answer to the Request</i>	234
hhh) <i>Form of the Data Provided</i>	234
bb) Eurodac Data in the Interoperability System	236
cc) Conclusions	239
c) <i>What Information Can Be Accessed?</i>	240
aa) Under the Eurodac Regulation	240
aaa) <i>Personal Data Relating to Him or Her</i>	241
aaa) <i>Eurodac Hit</i>	244
bbb) <i>Security Flag</i>	246
ccc) <i>Logs and Records on Recipients of Data</i>	255
ddd) <i>Reasons for Rejection</i>	260
eee) <i>Information Regarding Sharing of Data</i>	261
fff) <i>Anonymised Data</i>	263

Table of Contents

bb) Under the Interoperability Regulation	265
aaa) <i>Data in the CIR and sBMS</i>	265
bbb) <i>Data in the MID and Automated Processing</i>	267
ccc) <i>Logs Documenting Access</i>	268
ddd) <i>Statistical Data</i>	270
cc) Conclusions	272
3. Case Law: Access to Personal Data and Information in National Case Law	273
a) <i>Access to Information on Law Enforcement Access</i>	274
b) <i>Access to Eurodac Data in Migration Procedures</i>	275
c) <i>Access to Eurodac by Authorities</i>	276
4. Conclusions	277
III. The Right to Rectification, Completion, Erasure and Restriction of Processing of Personal Data and Information	280
1. What Is the Right to Rectification, Completion, Erasure, and Restriction of Processing?	280
a) <i>International Human Rights Law Applicable in Europe</i>	281
b) <i>EU Human Rights Law: The European Charter of Fundamental Rights</i>	283
c) <i>EU Law: GDPR, Police Directive and Data Protection Directive for EU Institutions and Bodies</i>	285
aa) General Data Protection Regulation	285
bb) Data Protection Regulation for EU Institutions and Bodies	288
cc) Police Directive	288
d) <i>Eurodac Regulation and AMMR</i>	288
e) <i>Interoperability Regulation</i>	290
2. Scope and Limitations	292
a) <i>Who Can Request Rectification, Completion, Erasure and Restriction of Data?</i>	292
b) <i>Which Data Can Be Rectified, Completed, Erased or Restricted for Processing?</i>	292
aa) Eurodac Regulation	292
aaa) <i>Personal Data and Information</i>	293
bbb) <i>Eurodac Hit</i>	294
ccc) <i>Security Flag</i>	296
ddd) <i>Data Retrieved from Eurodac</i>	304
eee) <i>Completion of Data Sets</i>	307

bb) Interoperability Regulation	308
aaa) <i>Data in the CIR and sBMS</i>	308
bbb) <i>Logs and Data Retrieved from the Interoperability Systems</i>	310
ccc) <i>Links Indicating Deleted Data</i>	311
c) <i>How to Rectify, Complete, Erase or Restrict Processing of Personal Data: Grounds for a Request</i>	311
aa) Eurodac Regulation	312
aaa) <i>Inaccurate Data</i>	312
bbb) <i>Unlawfully Recorded Data</i>	314
ccc) <i>Retention Periods</i>	316
ddd) <i>Not-Ongoing Investigations</i>	317
bb) Interoperability Regulation	319
aaa) <i>Data Quality</i>	319
bbb) <i>Retention Periods</i>	321
ccc) <i>The Web Portal and its Limits</i>	322
cc) Standard of Proof	322
3. Rectification and Erasure in Practice: Accessibility, Justiciability and Consequences of a Violation	323
a) <i>Numbers</i>	324
b) <i>Studies</i>	325
c) <i>European Case Law</i>	329
d) <i>National Case Law</i>	332
4. Conclusions	350
IV. The Right to an Effective Remedy	354
1. What Is the Right to an Effective Remedy?	354
a) <i>International Human Rights Instruments</i>	354
b) <i>Regional Human Rights Instruments: ECHR and CFR</i>	355
aa) ECHR	355
bb) CFR	359
2. Judicial Remedies in the Eurodac and Interoperability Regulations	364
a) <i>Claims for Compensation</i>	365
aaa) <i>Eurodac Regulation</i>	365
bbb) <i>Interoperability Regulation</i>	367
ccc) <i>Conditions for Compensation Claims in the EU</i>	368

Table of Contents

b) <i>Indirect Judicial Review</i>	372
aa) National Level: Art. 43 AMMR, Asylum and Return Procedures	372
bb) EU Level: Preliminary Ruling	375
3. Extrajudicial Remedies in the Eurodac and Interoperability Regulations	376
a) <i>Complaints before the Data Protection Authorities</i>	377
aa) Eurodac Regulation	378
bb) Interoperability Regulation	379
b) <i>Tasks of the Data Protection Authorities under the GDPR</i>	380
4. Penalties	382
5. Remedies According to the GDPR	383
6. Scope and Challenges of Effective Remedies under Eurodac and the Interoperability Systems	385
a) <i>Reviewing Acts by Other Member States</i>	385
aa) Composite Procedures within the EU	386
bb) Reviewing Preparatory Acts or ‘Factual Conduct’ (by Other Member States)	391
aaa) <i>Qualifying Information Sharing, Hits and Security Flags</i>	391
bbb) <i>Reviewing Preparatory Measures</i>	397
ccc) <i>Reviewing ‘Purely Factual Conduct’</i>	401
b) <i>Mutual Trust</i>	404
aa) Conditions for Mutual Trust – and its Loss	404
bb) Trust in the Age of Automated Administrative Systems	413
c) <i>Intensity of Review</i>	418
d) <i>Burden and Standard of Proof</i>	423
aa) With Regard to Biometric or Biographic Data and Eurodac Hits	423
bb) With Regard to Security Flags	429
7. Remedies against Specific Acts under the Eurodac Regulation	434
a) <i>Remedy against a Transfer of Data</i>	435
aa) Data Transfer to Third Countries	435
bb) Data Transfer within the Schengen Area	439
b) <i>Remedy against Access of Law Enforcement Authorities</i>	441
c) <i>Remedy against Decisions with Help of EUAA and EBCG Agency Officers</i>	444

8. Conclusions	449
E. Beyond the EU: The Expansion of Eurodac and Interoperability	453
I. Schengen/Dublin-Associated Countries: The Case of Switzerland	454
1. Schengen/Dublin-Associated Countries	454
2. Applicability of the Relevant EU Law in Switzerland	455
a) <i>Bilateral Agreements between the EU and Switzerland</i>	455
aa) Development of Bilateral Relations	455
bb) Applicability and Interpretation of the Bilateral Agreements	459
aaa) <i>Schubert-Practice</i>	459
bbb) <i>Direct Applicability</i>	463
ccc) <i>Parallel Interpretation</i>	464
cc) Dispute Resolution According to the Bilateral Agreements	469
dd) Differences for Data Subjects in Switzerland and the EU	470
b) <i>Applicability of the Eurodac and the Interoperability Regulations</i>	473
aa) Eurodac Regulation	474
bb) Interoperability Regulations	476
cc) Conclusions	481
c) <i>Applicability of the General Data Protection Regulation</i>	481
d) <i>Applicability of the Charter of Fundamental Rights of the European Union</i>	488
aa) Differences between the ECHR and the CFR	488
bb) References to the CFR in the Eurodac and Interoperability Regulations	490
cc) Practice of the Courts in Switzerland and the EU	491
aaa) <i>Highest Courts in Switzerland</i>	491
bbb) <i>Court of Justice in the EU</i>	496
dd) Arguments by Legal Scholars	498
ee) Conclusions	499
3. Access to Justice Rights in Switzerland	500
a) <i>The Right to Information</i>	501
b) <i>The Right to Access, Rectification and Erasure</i>	503
c) <i>Invoking Swiss Rights in the EU</i>	507

Table of Contents

d) <i>Conclusions</i>	508
II. Beyond the Schengen Area: The Example of Balkandac	510
1. How Eurodac and Interoperability Are Expanded beyond the Schengen Area	510
2. Conclusions	519
F. Conclusions	521
1. Where Do We Stand	521
2. The Dignity of the Data Subject	523
3. Opportunities in the Implementation Process	525
a) <i>Implementing the Right to Information</i>	526
b) <i>Making the Right to Access Data and Information Robust</i>	527
c) <i>Facilitating the Right to Rectification and Erasure</i>	528
d) <i>Ensuring an Effective Remedy</i>	528
4. Looking Ahead: Rethinking Migrants' Data in Europe	530
5. Final Thoughts	534
Bibliography	535
Case Law	559
European Courts and Bodies	559
CJEU	559
European Ombudsman	565
ECtHR	565
National Courts	568
Belgian Courts	568
Courts of the United Kingdom	568
Dutch Courts	569
French Courts	569
German Courts	570
Irish Courts	570
Italian Courts	571
Slovenian Courts	571
South African Courts	571
Swiss Courts	571