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# European instruments for the deportation of foreigners and their uses by France and Switzerland: the application of the Dublin III Regulation and Eurodac

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**ABSTRACT**

The European Union put in place instruments for the deportation of foreigners that gained much importance. This article describes the multiplicity and diversity of these instruments. To analyse them more clearly, it distinguishes three types: legal, organisational and technological. The article equally points to the increasing relevance of technological tools, especially the use of biometrics. It also looks at how a founding member of the EU, France, and an associated country, Switzerland, utilise these European instruments to deport foreigners by focusing on the Dublin III Regulation as well as the Eurodac database, jointly referred to as the Dublin System. Grounding on a comparative study combining documentary analysis and semi-structured interviews and participant observation, this article describes the similarities and differences in the use of the Dublin System in these two countries. Moreover, it also reveals these countries' specificities with regard to the roles played by local and national administrative bodies, and associative actors. The paper ends by concluding that to fully understand the deportation process in the European context as well as in certain countries, a multifaceted approach is required to make sense of the various interactions taking place between local, national and supranational frameworks, actors and practices.

**KEYWORDS**

Deportation; Dublin Regulation; Eurodac; biometrics; European Union; France; Switzerland

## 1. Introduction

In the wake of the 'refugee crisis' which reached its peak in 2015, restrictive policies in the area of European migration were pushed forward. On the one hand, because of the difficulty to put in place an efficient European system for the distribution of refugees, this crisis has reflected the persistent controversy that prevents the implementation of a coherent and effective European Union (EU) reception policy with regard to new asylum seekers arriving in Europe. On the other hand, the EU made huge efforts to contain migration flows, and moreover to increase the deportation of unwanted migrants in European countries. In this context, the EU's increasingly important role in the area of deportation quite clear. Confronted with the fact that most migrants who arrived in Europe could stay despite deportation orders,[1] the European Commission gave a new impetus for the development of European instruments to overcome the relative

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inefficiency of deportation practices. Understanding how these instruments are used by Member States is of significant relevance for social sciences; although related studies are rather scarce.

This paper aims to contribute filling the gap in this area. The first section proposes a theoretical framework that combines a historical perspective on the growing importance of deportation in migration policies at the European level, as well as an analytical approach that underlines the emergence of technologies as instruments for migration control and surveillance. We define the deportation of foreigners as a temporally and spatially multi-layered process (local, national, international and transnational) involving many actors. It is implemented by states, on the basis of their sovereignty, against foreigners unwanted for different reasons, by using various measures that may include assistance to return but also the use of physical force (Soysüren 2018).

After a short methodological discussion, we describe and analyse the diversity of European instruments for deportation and propose a classification differentiating legal, organisational and technological instruments. Next, we examine the way in which France and Switzerland make use of these EU instruments and highlight differences and similarities, by focusing in particular on the Dublin III Regulation, as well as the Eurodac database. This study also unveils a specific form of *technological mediation* the introduction of this special issue points out (Nedelcu and Soysüren 2020). In the conclusion, we emphasise on the one hand the limitations of what is called the Dublin System to govern asylum seekers' movements in Europe (Tazzioli 2020). On the other hand, we argue for the necessity to develop comparative and interdisciplinary research to analyse the complexity of a multi-scale legal framework, processes and actors regarding the deportation of foreigners in different European countries.

## 2. European migration policy, deportation, and technologisation of migration control

Even though it is not yet possible to speak of a coherent European migration policy (Boswell and Geddes 2011; Geddes, Hadj-Abdou, and Brumat 2020), Huysmans (2006) emphasises that certain aspects of migration control have been well addressed at the European level, such as the fight against irregular migration, including visa regulations, readmission agreements, deportation, management of external borders and relations with third countries. Indeed, the deportation of foreigners is one of the areas where the construction of a European migration policy has most progressed. The EU has created multiple instruments to help its Member States deport more people. In this regard, the role of the European Commission has been particularly important. The Commission published a green paper (European Commission 2002a), laying down the foundations of 'a community return policy on illegal residents'. Thus, it aimed to improve cooperation amongst Member States and proposed organising joint flights to return irregular migrants (European Commission 2002b). It also published other non-binding texts such as 'Common Standards on Return' (05/288). As demonstrated by the programme on return (European Commission 2015), the Commission proposed political and practical objectives for the deportation of foreigners. It also set up the necessary funding to meet these targets. The Return Fund, followed by the Asylum, Migration and Integration Fund (AMIF) are amongst the most important financial European instruments used for deportation. Moreover, the Commission has been particularly

active in what is called the external dimension of European migration policy by increasing the number of readmission agreements to enable member countries to deport irregular migrants more easily to their country of origin or to a third country where they were, before crossing EU external borders and entering its territories.

Concomitantly, at an international level, the terrorist attacks of 11 September 2001 represented a turning point towards a highly security-focused approach within migration policies. This approach required the development of sophisticated technological tools to control migration flows (Dijtelbloem, Meijer, and Besters 2011; Ferreira 2019). A process of 'digitalisation of the European borders' (Broeders 2007) has pushed forward the Europeanisation of migration control through technology-assisted procedures (entry visas, asylum demands, etc.).

Concurrently, within 'the present "technologisation" of migration policy' (Van der Ploeg and Sprenkels 2011, 69–70), new 'migration technologies' (Dijtelbloem, Meijer, and Besters 2011, 6) become central to the processes of migration control. These technologies treat the human body 'as if it were an information storage device' (Dijtelbloem, Meijer, and Besters 2011, 13). Different instruments, such as the Schengen Information System (SIS), Eurodac and the Visa Information System (VIS) databases were conceived to strengthen Member States' migration control capacities and, more broadly security. They also serve as 'identification technologies' (Van der Ploeg and Sprenkels 2011), reflecting 'renewed efforts to technologise the process of identification by enlisting biometric methods' (Bigo and Guild 2005, 255). The term biometrics refers 'to any and all of a variety of identification techniques which are based on some physical and difficult-to-alienate characteristic' (Clarke 1994, 17). Biometric techniques give 'the body unprecedented relevance over the mind. Now, the body itself becomes the source of information. The coded body can "talk"' (Aas 2006, 154). Their extensive uses by states pushed some authors to consider them as an institutionalised method of registering and recognising persons (Grünenberg et al. 2020). Based on this logic, at the European level, great effort went into the creation of efficient identification tools with a strong emphasis on biometrics. This is particularly possible through a renewed capacity of 'tracing' migrants' movements so that these tools 'can re-identify apprehended irregular migrants and link them to a migration history and country of origin' (Broeders 2011, 59–60). Broeders (2011) argues that these instruments generate different forms of exclusion, but he points out especially their specific purpose for gathering personal data intended to facilitate the identification of deportable persons.

This brief state of the art allows us to suggest that the European level has become crucial to understanding deportation processes within nation-States, both EU Members States and associated countries such as Switzerland. In addition, deportation tools created at supranational level are embedded, and transform legal frameworks, the function of administration, as well as deportation practices at the national level. However, although research on European migration policy, deportation and its related instruments has gained significant importance, a systematic classification and comprehension of these instruments and their uses by European members and associated States is still lacking. This paper addresses this gap by classifying and analysing European instruments for deportation of foreigners, as well as their application in two different countries.

## 3. Methodological considerations

By adopting a comparative approach, this study took France and Switzerland as two relevant cases in point. The choice of these two countries relies on, besides their accessibility, an 'explicit comparative strategy' based on the 'most different' cases instead of the 'most similar' ones (Przeworski and Teune 1970). Several characteristics render this comparison heuristically relevant. France can be considered as an 'exemplary' nation-State case. It is a founding member of the EU, with decision-making powers within EU institutions. It has been influential in setting up European immigration policies and instruments for deportation of foreigners. The French State's structure is centralised. *Préfets,* heads of local governorships (*préfectures*) are appointed by the central administration to represent the French state in their departments. Switzerland is an associated country of the EU. This federal state has a decentralised structure with twenty-three cantons that are sovereign. Their sovereignty is nevertheless restricted when it comes to asylum issues.

This paper grounds on qualitative research that has combined documentary analysis with observations and semi-structured interviews. First, the analysis of a corpus of documents made up of European and national legal texts, newspaper articles, case law and secondary data allowed us to describe existing instruments created at the European level which can be used by Member States as well as associated countries for the deportation of foreigners. In particular, in order to push further a comprehensive analysis of the most significant European instruments and their use at national level, we have focused on the Dublin III Regulation and the Eurodac database, which aim to determine which European countries are responsible for asylum applications. We conducted – between 2016 and 2018 – 86 recorded semi-structured interviews with administrative officers, lawyers, social workers, representatives of migrant rights organisations, as well as migrants themselves in France and Switzerland. In addition, the collection of data was supplemented by participatory observations from migrant rights' organisations, and analysis of administrative documentation.

## 4. European instruments for the deportation of foreigners and their uses in the cases of France and Switzerland

In order to gain a better understanding of European instruments for deportation, we begin with a description of these instruments by proposing a classification that distinguishes different, but interconnected types. Then, we look at how they are influencing deportation law, policy and practices in France and Switzerland, with a particular focus on the Dublin System. Finally, by exposing several significant differences in these two countries, we highlight the positions taken by institutional and civil society actors, as well as the roles they play in deportation processes.

### *4.1. The centrality of cutting-edge technologies within EU instruments for deportation*

The analysis of European instruments for deportation in the framework of European migration governance allow us to define three specific types that we categorise as legal, organisational, and technological tools.

#### 4.1.1. Legal instruments

As a result of intergovernmental negotiations, the Schengen Agreement[2] is the first legal landmark text for the development of European instruments. It was signed on 14 June 1985, but was implemented ten years later through the Convention of Implementation of Schengen Agreement. It created the Schengen area, where the free movement of people was established. Currently, it consists of twenty-seven States including four non-EU States (Iceland, Norway, Switzerland and Liechtenstein). The Schengen Agreement created the Schengen Information System (SIS), to which we shall return below.

The second European legal instrument is the Dublin Convention that sets out to define the State responsible for processing asylum applications, and enables the deportation of asylum seekers from one European country to another. Signed in 1990, it is the key element of the future common European asylum system, which has yet to be created. It came into force in 2003, but it was already amended as a regulation, and this version was called 'Dublin II'. Ten years later, in 2013, the current version, 'Dublin III Regulation', was accepted. It is currently applied in all Schengen countries as well as Bulgaria, Croatia, Cyprus, Romania, and the United Kingdom. A new amendment, called 'Dublin IV', is under negotiation. The successive amendments to this regulation show on the one hand its importance as an instrument of the European asylum policy; on the other hand, they point out limitations of this European-wide system. Chapter III of this regulation sets out complex and numerous criteria to define the European country whose responsibility it is to process an asylum application. These criteria are hierarchised as follows:

(1) minors: children's asylum applications are normally processed by the same country in which their parents made their application for asylum, or where their family members reside. As for unaccompanied minors, their application must be processed in the country where they are based; that being said, the decision must be taken on the basis of the best interests of the child (article 8);
(2) family links: the asylum application of all members of a family must be handled by a single Dublin State (articles 9, 10 and 11);
(3) visa/residence document: countries that issued a visa or a temporary residence permit to asylum seekers have to process their asylum application even six months after expiry and two years at latest (articles 12 and 14);
(4) irregular entry from a third country: the State of first arrival is responsible (article 13).

If none of these criteria are valid, the country where asylum is requested must process the application. The assessment must be made when the first asylum application is introduced and the hierarchy of criteria put in place by the Dublin Regulation must be respected (article 7). According to Article 17/1 of the Regulation, known also as sovereignty clause, a Member State 'may decide to examine an application […] even if such examination is not its responsibility'. In fact, this means when another country is responsible for an asylum application, any Member State of the Dublin System can decide to examine this application itself.

The binding text of crucial importance for deportation outside the EU is the Directive of 16 December 2008 on common standards and procedures in Member States for returning irregular third-country nationals. Known as the 'Return Directive', it 'sets out common standards and procedures to be applied in Member States for returning irregularly staying

third-country nationals' (article 1).[3] Another directive transposed into national law by Member States is the Directive of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals. We should also mention the EU Council Decision of 29 April 2004 on the organisation of joint flights for removals from the territory of two or more Member States, of third-country nationals who are subjected to individual removal orders.

### 4.1.2. Organisational instruments

In its efforts to reinforce external borders through the Schengen Agreement, the EU has set up some specific organisational tools to deport foreigners.

In order to strengthen cooperation in border management, the EU created the External Border Practitioners Common Unit, which coordinated national projects of Ad-Hoc Centres on Border Control. Later, in 1999, through European Council Regulation (EC) 2007/2004, the EU founded the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, called Frontex. This organisation has become the most important European operational instrument. Even though the abbreviation Frontex is still used, EU Regulation of 14 September 2016 (2016/1624) changed its name to European Border and Coast Guard Agency. A quick comparison between the two regulations shows the growing importance of the role of Frontex in the deportation of foreigners. In the first regulation, the term 'return' is used eleven times and its Article 9 ('Return operations') is the only one dedicated entirely to deportation. The second article enumerating the Agency's 'Main Tasks' stipulates that it must 'provide member States with the necessary support in organising joint return operations'. In contrast, the second regulation uses the term 'return' 283 times. Alongside its expanding mandate, budget as well as operational capacity, the number of deportations assisted by Frontex substantially increased. For instance, in 2018, it 'substantially strengthened its activities aimed at returning irregular migrants to their countries of origin' and 'helped Member States return 13 729 people who do not have the right to remain in the EU to their countries of origin' (Frontex 2019, 7).

In parallel, other organisational instruments have been developed. The European Integrated Return Management Initiative (EURINT), a network including twenty-seven European countries, acts to improve cooperation with migrants' countries of origin in the field of deportation and to develop and share 'best' deportation practices. The objective of the European Reintegration Instrument Network (ERIN) is to facilitate the return and reintegration of third-country nationals. The European Return Liaison Officers Network (EURLO) was created to assist the deployment of European Migration Liaison Officers in key third countries, as requested by the European Council of 23 April 2015. Its role was then defined in the European Agenda on Migration and the EU Action Plan against Migrant Smuggling adopted on 27 May 2015.

In the long run, the European Commission aims to create an integrated system of return management. This system is supposed to be based on the connection of 'all EU-funded networks and programmes focusing on return and readmission' (European Commission 2015, 10).

#### 4.1.3. Technological instruments

Since March 1995, when the very first European database, the Schengen Information System (SIS) became operational, important developments have taken place. The first is the growing number of databases. The SIS was followed by the *Euro*pean *Dac*tylographic system (Eurodac), then the Visa Information System (VIS) and the SIS II. Another trend is the increasing use of biometrics, especially accelerated after 11 September 2001. In this regard, the EU followed in the footsteps of the United States of America (Mitsilegas 2007). For several years, the European Commission (2005) has been pushing for European databases interoperability which aims to compare data stored in different databases and obtain more precise information to facilitate identification and increase surveillance.

The Schengen Agreement has acted as a laboratory for setting up databases for migration control (Boswell and Geddes 2011). Article 96 of the Convention implementing this Agreement enables the introduction of European-wide entry bans against foreigners (see, Majcher 2020). The EU decided to replace it by the SIS II which contains biometric data and is supposed to be more flexible.

The second database, Eurodac is the first European Automated Fingerprint Identification System (Tsianos and Kuster 2016). It has been operational since 15 January 2003, a dozen years after the decision to set it up in 1991. Just as the SIS II, it is a *hit/no hit* system. It contains the fingerprints of asylum seekers over 14 years old and people who irregularly crossed external EU borders. Established to ensure the implementation of the Dublin Convention, it was designed to prevent multiple asylum applications in various Member States ('asylum shopping'). Due to the subsequently widened scope of Eurodac backed by some Member States (especially Germany), it is also possible to search data on irregular migrants arrested by Member States. The difference with other categories is that their fingerprints are introduced only for comparison purposes but not stored. Its last version, following the Dublin III Regulation, pushed a step further its creeping function and 'the erosion of the principle of purpose limitation' (Queiroz 2019, 180) by allowing the use of Eurodac for law enforcement purposes.

When a state considers that another country is responsible for an asylum application on the basis of the Dublin III Regulation, it can introduce a request to push this state to accept its responsibility. This request is called 'take charge' when it concerns an asylum seeker who has irregularly entered into a Dublin country, and 'take back' if a previous asylum application has already been made in another country. In the case of the former, the request must be introduced within two months after the asylum application if it is based on Eurodac, if not three months; the country considered to be responsible has two months to give a decision. When it comes to a 'take back' request, the deadline is the same. However, the response periods are shorter: one month without a Eurodac hit and fifteen days if the request is based on this database. All Dublin requests must be introduced via DubliNet, a secure electronic transmission system linking the national units of the Dublin countries.

The VIS contains data of foreigners who applied for, or obtained a visa from a Schengen area member State, and can be used for identification purposes. In the European Council's conclusions of Seville in 2002, the VIS was designed as an instrument to fight irregular migration because most irregular migrants are over-stayers, meaning that they entered the EU on a Schengen visa, and then stayed on after its expiry. However, the data we collected indicates that the VIS is also used to verify if an asylum seeker has already obtained a

Schengen visa. This means that, after a new asylum application, countries do not only check Eurodac, but also the VIS.

The vast majority of deportations of third-country nationals between European countries on the basis of the Dublin III Regulation[4] has been made possible as a result of these databases, especially Eurodac. In the case of irregular entry, the country of first arrival can be determined on 'elements of proof and circumstantial evidence' (article 22 of Dublin III Regulation). In practice, these proofs are mostly obtained from asylum seekers themselves through their declarations, documents or body searches. However, in the vast majority of cases, they cannot oblige a country to take in an asylum seeker. Therefore, biometric data stored in Eurodac and/or the VIS is crucial in Dublin procedures. In the case of a person who has already applied for asylum Eurodac is sufficient. The use of the VIS is more recent, and increasingly important. Its data may show if the person has already obtained a visa or a residence document from another country.

These three databases are under the responsibility of the European Commission which has delegated their governance to the European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (eu-LISA). Although they make up the main body of European technological instruments, others are under construction. The Entry-Exit System (EES) is designed as a component of the European Commission's smart borders package (Sontowski 2018). Data of people who have crossed European borders (entry and exit) will be stored in this database. The Registered Traveller Programme (RTP), for its part, will contain data of those travellers considered to be reliable to facilitate their cross-border movements. Finally, we should mention that the EU Regulation of 20 May 2019 (2019/818) has established a framework for interoperability between EU information systems in the field of police and judicial cooperation, asylum and migration. This means that it will in future be possible to use these technological instruments 'to supplement each other in order to facilitate the correct identification of persons'.

### 4.2. The use of EU instruments for deportation in France and Switzerland: a comparative analysis of the Dublin III Regulation and Eurodac

Having displayed the diversity of European instruments for deportation and proposing their classification, in this section we focus on the Dublin III Regulation and Eurodac as two significant instruments used routinely in Member States' asylum systems.

#### 4.2.1. The French case

As a principal founding member of the EU, France has actively participated in the construction of European immigration policy, European institutions for immigration control, and in the creation of all above-mentioned European databases. It is also part of European organisations or networks that aim to increase the number of deportations, such as the EURINT and the ERIN. France's participation in joint return flights organised by FRONTEX must also be mentioned. In addition, France is also one of the leading European states involved in setting up the Dublin Convention. It integrated the text of the Dublin Convention into its national legislation on 24 August 1993, and the Dublin III Regulation on 29 July 2015. Its Code on the Entry and Residence of Foreigners and the

Right of Asylum defines the conditions of application of these regulations. Accordingly, it is possible to make an appeal against a Dublin deportation order (*arrêté de transfert*) within fifteen days and the judge also has the same period of time to pronounce his judgement.[5] However, in the cases of house arrest (*assignation à residence*)[6] or administrative detention (*rétention administrative*), asylum seekers have only forty-eight hours to introduce their appeal against a Dublin deportation order and the judge must make his decision within seventy-two hours. During the appeal period and until the judge makes his decision, foreigners cannot be deported, as the appeal is suspensive.

Dublin procedures are handled by local governorships (*préfectures*). This includes registration of asylum seekers and their identification. Thus, fingerprints are taken and checked against those in the Eurodac database. Asylum seekers' data is also searched for in the VIS to determine if they have already been given a visa by a Schengen country. Requests are transmitted to the Department of Access to the Asylum Procedure of the Ministry of the Interior and it sends them via DubliNet to the country or countries[7] who are considered to be responsible. Their answer, if there is any, is received by the same department which notifies local governorships. Then, decisions to deport an asylum seeker to the responsible country are taken by local governorships. According to a head of the above-mentioned service:

> there are also applications that are lodged on the basis of family ties invoked in other European States, when these family ties are of course established and are those that are well established in the Dublin Regulation. After that, we can introduce requests on the basis of residence permits or other elements, but we have to bear in mind that in 99.9% of cases we do not have these elements. This means that asylum seekers do not present these documents. What happens very often is that they do not present these documents at the prefecture. Therefore, they are not known on Eurodac, so there is nothing. (interview of 24 May 2018)

As applications are handled at a local level, significant differences exist between French departments with regard to the management of Dublin procedures. This situation pushed migrant rights organisations, such as *Cimade*, to warn asylum seekers about these differences and advise them on how to take advantage of them in the Île-de-France region.[8]

The order formulated by the former French Interior Minister Bernard Cazeneuve on 19 July 2016,[9] urging local governors to systematically introduce Dublin requests, was a turning point in the application of the Dublin III Regulation in France.[10] Emmanuel Macron's government has also encouraged local governorships to apply the Dublin system more restrictively. The result has seen a surge in deportations. In 2016, France deported only 1293 asylum seekers to other European countries. In 2017, their number increased to 2633, and one year later to 3533. Despite the sustained increase of Dublin deportations, there is still a considerable gap between the number of French Dublin requests as well as deportation orders, and the number of Dublin deportations from this country. France's deportation rate was only 12.1% in 2018.

The relatively small number of Dublin deportations before the above-mentioned ministerial order, and the fact that the Dublin procedures were not systematically enforced in every region of France were probably the main reasons behind the general lack of interest in the Dublin System that we observed in a previous study conducted in 2014 (Soysüren 2018). However, the situation has changed since the above-mentioned order. This major change in French deportation practices has sparked the sustained interest of migrant rights

organisations. Migrant support groups have become more active regarding Dublin procedures. Within a few years their membership as well as activists specialised in Dublin procedures have significantly grown. Their publications and press releases stress the 'unjust' and 'wrong' consequences of the Dublin System, and the suffering it provokes. A platform created by some of these organisations, *Coordination française pour le droit d'asile* (French Coordination for the Asylum Right) calls for its abolition.

It should be added that, in France, associative actors and lawyers extensively use courts at national and European levels against Dublin deportation orders, even though it is difficult for most asylum seekers to obtain legal assistance in many regions of the country. When the French administration began to systematically use Dublin procedures, it was relatively easy to cancel administrative decisions due to procedural flaws. However, according to our observations and several lawyers interviewed, it has become increasingly difficult to cancel Dublin deportation orders via courts as local governorships have learnt to manage the Dublin procedures without committing any major judicial errors.

More recently, Dublin procedures have begun to be regionalised to improve their efficiency. This is called 'régionalisation' and means that only one department is responsible for the application of the Dublin III Regulation in a region.[11] The regionalisation of Dublin procedures was instigated by the Department of Access to the Asylum Procedure according to a high-ranking civil servant (interview of 1 June 2018, Paris).

#### 4.2.2. The Swiss case

After a referendum in 1992 to join the European Economic Area and rejected by the Swiss people, Switzerland has committed to what is known as the 'bilateral path'. This involves building special relations with the EU through specific agreements, without becoming a member state. As an associated country, Switzerland participates in different ways in immigration control at the European level. With regard to issues related to the Schengen Agreement and the Dublin Regulation as well as the SIS and Eurodac, it takes part in decision-making without having the right to vote. Switzerland is engaged in various European networks connected to the deportation of foreigners such as the EURINT. It also participates in joint flights coordinated by Frontex.

Switzerland has taken part in the Dublin system since 21 December 2008. According to Eurostat data, it was the country which deported the most asylum seekers on the basis of Dublin III Regulation in 2015, more precisely 2417 deportations compared to a total of 13348 Dublin deportations across Europe. In 2018, Switzerland deported only 1313 persons to other European countries while it received 1292 persons from other countries. This means that, even though the deportation rate of this country (36.1%) is higher than that of France, the Dublin system does not allow Switzerland to substantially diminishing the number of asylum seekers.

The Dublin III Regulation was transposed into Swiss national legislation and these changes became law as of 1 July 2015. Even though it is a federal state, the Swiss asylum system is centralised. This centralisation is most apparent in Switzerland's implementation of the Dublin rules. Asylum applications are introduced in federal asylum centres in different regions in the country. Identification of asylum seekers is made by the federal authorities through the comparison of fingerprints in Eurodac and by searching for them in the VIS. The State Secretary for Migration (SSM) collects information about asylum seekers likely to be deported based on the Dublin III Regulation, in

federal asylum centres. Then, through DubliNet, it sends requests to the countries considered to be responsible for asylum applications of persons who irregularly entered or who asked for asylum in a Dublin country. If one of these countries accepts to take charge of or take back a person, a Dublin deportation order is issued by the SSM. Otherwise, the asylum application is processed by Switzerland. Asylum seekers have only five days to appeal against the federal non-consideration decision (*Nichteintretensentscheid/ decision de non-entrée en matière*) regarding their asylum application to the Federal Administrative Tribunal (FAT), which has to make a decision within five days. According to a director of a federal asylum centre, Swiss authorities overwhelmingly rely on biometric databases, especially Eurodac:

> [After a person arrives at the centre asking for asylum] the security personnel give these people a personal data sheet to write in their personal information: surname, first name, date of birth, and such like. Fingerprints are taken from two fingers and checked to verify that the person isn't already a known asylum seeker in Switzerland […] That's the first security check, if you like. Once this part is completed, the person will go through a health check and then all ten fingers will be fingerprinted. That is when fingerprints are compared, mainly with the Eurodac database, to be precise. (interview of 27 November 2017)

In this centralised application of Dublin rules, cantons must handle deportation processes on the basis of orders issued by the federal authority.[12] They have to respect the fixed deadline, otherwise since 1 October 2016 they can be fined according to Article 89b of the Federal Law on Asylum. This situation puts cantons between a rock and hard place, especially when civil society mobilise to defend people to be deported on the basis of the Dublin III Regulation. Cantons usually justify their actions by saying that they have to respect deadlines and that they do not have any flexibility. This was the case of this cantonal officer:

> When you talk about Dublin, you think about the asylum procedure. You should know that the asylum procedure is in the hands of the Confederation. The cantons have no competence in asylum matters, whether it is Dublin or not, because Dublin is only a part of the asylum procedure. Therefore, the Confederation has jurisdiction. They make the decisions. […]. If the decision is positive, the person remains in the canton with a status and the canton continues to take care of him. But if the decision is negative, as it often is in the Dublin cases, it is because states recognise [their responsibility] in Dublin [cases]. If people have to go back to the Dublin state, […] the canton has to put in place the[ir] departure. (interview of 30 October 2017)

The role of cantons as the entities that carry out decisions made by the federal authority is subject to sharp criticism from migrant rights organisations. At the same time, the central role of the federal authority also seems to increasingly push some of these protest groups to oppose Switzerland's application of the Dublin rules on a national rather than a cantonal level. A call to action, published on 3 May 2017[13] against the 'blind application' of the Dublin Regulation was launched by the Association *Solidarité Tattes*, based in Geneva. According to a leader of this association, they wanted to 'have a unifying discourse to rally as many people as possible' (interview of 13 April 2017). Therefore, the petition only asked for a 'more humane' application of the Dublin Regulation, not for its abolition.

This campaign was backed by more than two hundred organisations as well as 33000 people, and several meetings between associative actors and the federal authorities took

place. During these meetings, campaigners presented several cases of vulnerable people and asked the federal authorities not to deport them. However, according to some of our interviewees, the federal authorities carried on applying the Dublin Regulation in a restrictive way. Nowadays, they are more concerned by the new accelerated asylum procedures in federal asylum centers which give asylum seekers little chance of getting access to appropriate support.

Contrary to France where local administrative courts have to take into account appeals against Dublin, in Switzerland, the FAT has this ability. As it is considered very restrictive, associative actors encourage asylum seekers not to appeal against decisions made by the federal authority'. Nevertheless, the FAT does sometimes cancel some of the Dublin deportation procedures. It has also made it less easy to deport asylum seekers to countries such as Hungary. In a ruling of principle of 31 May 2017 (D-7853/20151), it accepted appeals against Dublin deportation to Hungary and asked the SSM to reconsider its implementation of it. Some migrant rights organisations are also active at an international level. For example, they introduced a series of requests to the European Human Rights Court (EHRC) in Strasbourg against the application of the Dublin III Regulation. In a ruling of 4 November 2014, in the case of *Tarakhel v. Switzerland,* the Court's decision has made it difficult to deport families to Italy.[14]

### 4.3. Insights from the comparative analysis of French and Swiss practices

The two countries studied in this article have different relations with the EU. As a founding member of this Union, France has actively participated in the creation, development and the modification of European instruments for deportation. With regard to European instruments, their importance was strongly emphasised during interviews we conducted with various French officials. For example, a high-ranking French civil servant at the Interior Ministry gave the following explanation:

> We play a fundamental role in the European framework, the directives, finally the agreements, the Dublin Regulation, the Return Directive, everything concerning the directives on posted workers. […] We have Frontex, we have what we call in our jargon the SOPI, the standard operating systems, which negotiate readmission agreements with the countries of origin. But readmission agreements are signed by the [European] Commission and then applied to each European country. So, we work bilaterally with a certain number of countries. (interview of 12 April 2018)

After a referendum in which it rejected becoming a member of the European Economic Area, Switzerland carefully constructed a 'bilateral way', a specific form of relationship with the EU. Its participation in the Schengen Area and the Dublin System is part of this 'way'. Thus, it has promoted the use of European instruments to improve the efficiency of its migration policy, and its deportation practices. Swiss authorities emphasised several times that Switzerland's participation in the Schengen Area and the Dublin System was beneficial to the country. For instance, according to a Swiss federal government report, Switzerland saved 270 million Swiss Francs per year between 2012–2016. Without the Dublin System, asylum applications would significantly increase, and it would be impossible to deport some of the applicants to other European countries. Furthermore, people whose applications have been rejected by other European countries could apply again for asylum, this time in Switzerland (Conseil fédéral 2018).

The comparison of the use of the Dublin III Regulation in the French and Swiss cases highlights some striking insights. Even several years after the Dublin Regulation became operational in France, the administration has up until recently viewed its utility with some scepticism. Switzerland on the other hand, after protracted negotiations and preparations, voluntarily became part of the Dublin system, and applied it from the beginning in a more restrictive and systematic manner. Moreover, as shown in the statistics we have mentioned, the use of Dublin rules has led to higher deportations rates in the Swiss case.

Comparison of the two countries' practices revealed several dissimilarities regarding the application of the Dublin rules. Although a centralised state, France implements the Dublin Regulation in a relatively decentralised way, whereas Switzerland as a federal state has a highly centralised implementation. As a result, local administrations take on different responsibilities. Although French local governorships, as part of the central administration, carry out French government policy and instructions, there are local differences in their procedures in areas such as identification, registration of asylum applications, decision making and the execution of Dublin deportation orders. In the Swiss case, the implementation of Dublin rules operates at a federal level. Divergence in cantons' practices can be observed in the way asylum seekers are treated and the execution of Dublin deportation orders.

With regard to French civil society, associative actors have up until recently shown limited interest in the Dublin Regulation. This changed after its systematic application. They vigorously criticise its inefficiency and bring to attention the frequent return of asylum seekers after deportation. In Switzerland, in some cantons such as Vaud or Geneva, Dublin deportations have become a cause for mobilisation by some associations calling for a less restrictive application of the Dublin III Regulation. While the frequency of return after deportation is known, associative actors stress the difficulties of fighting against Dublin deportation orders and the suffering of asylum seekers after deportation to certain countries, for instance to Italy. In the same way as their French counterparts, they criticise the fact that even vulnerable people are deported to other European countries. In both countries, associative actors are highly critical of courts, which approve a very restrictive application of this European regulation by rejecting most appeals against deportation orders. Therefore, they appeal to the European Court and other international bodies such as the United Nations against the application of the Dublin III Regulation in their country. In so doing, they may sometimes influence not only their country' practices but also those of others.

## 5. Concluding remarks

This paper has illustrated the multiplicity and the diversity of European instruments for the deportation of foreigners, and classified them in three types: legal, organisational and technological. Moreover, it has emphasised the increasing relevance of the technological ones, which are based on the storage of biometric data, and allowed us to better understand the importance of *mediation* by technology in migration control processes. Databases coupled with biometrics at the European level are among the most prominent instruments used for the deportation of foreigners. In many cases, identification is possible as fingerprints are stored in Eurodac or other data in the VIS. However, migrants manage

to deploy different strategies to avoid being deported. In this respect, more empirical evidence is needed to take this analysis further.

Besides making the best use of these sophisticated technological instruments, the European Commission and some Member States are also pushing for new functionalities, as well as data of new categories of people, to already existing databases. For example, Eurodac was built to store asylum seekers' data. Later, it was also possible to check fingerprints of arrested irregular migrants in Eurodac. The current version of Eurodac regulation permits the use of this database for law enforcement. The European Commission's Eurodac regulation proposal (COM/2016/0272 final), which is still under negotiation, intends to include in this database facial recognition and digital photos, in addition to digital fingerprints. More recently, the VIS database gained importance by being able to identify the country responsible for asylum application by people who entered the Schengen area with a visa.

At the same time, despite extensive use of these instruments by Member States of the Dublin System, the deportation rate of asylum seekers is relatively low. >In 201>, according to Eurostat, on the basis of the Dublin III Regulation, EU Member States deported only 27.9% (25'960[15]) of people to be returned to another European country (93'066). Moreover, this rate is no higher than that of deportations outside Europe.[16] This is a particularly striking fact as European countries must ask third countries to recognise migrants who have no identity documents as their nationals and to provide travel documents in order to be able to deport them. This does not apply in the case of asylum seekers whose data is stored in Eurodac or the VIS.

There are multiple reasons behind the low deportation rates based on the Dublin III Regulation. For instance, France and Switzerland deport people to countries such as Italy where reception conditions are considered to be worse by asylum seekers, and migrant rights organisations. In such circumstances, resistance or avoidance strategies are put in place to avoid deportation. Other reasons relate to the high complexity of Dublin procedures. For example, state authorities must respect several deadlines, which cannot always be met. Some of their decisions are cancelled by judicial courts. Several factors complicate their application, including the countries receiving the asylum seekers. The comparison of France and Switzerland allows us to advance that their administrative organisation should also be considered in regard to the low deportation rates. France's deportation rate is only 12,1% while it is 36,1% in the case of Switzerland. The latter is a small country where, as stated before, the implementation of the Dublin III Regulation is highly centralised, whereas in France it is handled by local governorships. In other words, even though recent regionalisation is a step towards centralisation, France still applies the Dublin III Regulation in a decentralised way. This difference suggests that a centralised administration highly specialised in the application of the Dublin procedures is more successful than local governorships which sometimes lack the means and/or expertise. Moreover, our study suggests that the level of civil society organisation and asylum seekers' ability to maintain their anonymity whilst irregularly living in a country are among the reasons that account for the difference and relatively low levels of deportation rates in both countries.

By way of conclusion, the study of these instruments and the detailed analysis of the implementation of the Dublin III Regulation and the use of Eurodac database by France and Switzerland allow us to formulate the following arguments. Firstly, to

understand the deportation processes in the European context as well as particular countries, it is necessary to adopt a multi-level approach to comprehend the various interactions between local, national and supranational frameworks, actors and practices. As the French and the Swiss cases demonstrate, local and national administrative actors can share responsibility for the implementation of European instruments for deportation in varying ways. Thus, while these instruments were created to provide a common core for migration control on the European level, their use leads to variations in national contexts. Secondly, the study of existing European instruments and their uses by countries should take into account that they are inherently embedded among themselves. For instance, as we have pointed out, the implementation of the Dublin III Regulation (as a legal instrument) in France and Switzerland necessarily needs to be observed in relation to the use of the Eurodac database and to some extent of the VIS (as technological tools). Legal, organisational and technological instruments complement each other and together they form the European migration control *dispositif* (Foucault 2004). Nevertheless, to refine these arguments, it is necessary to take comparative and interdisciplinary research further to explain the complexity of multi-scale legal frameworks, actors' configurations and practices with regard to the deportation of foreigners.

## Notes

1. See for example European Commission (2015).
2. The Amsterdam Agreement in 1997 incorporated this agreement into European community *acquis*.
3. The European Commission published a proposal for a more restrictive recasting of this Directive on 12 September 2018.
4. This Regulation uses the term 'transfer' as it is based on the assumption of a European common asylum system. We prefer the term *deportation* as it corresponds better to the current reality of States' practices and our definition the deportation of foreigners.
5. In some regions, such as Île-de-France, courts do not respect this limitation because of heavy workload. Asylum applications must wait sometimes several weeks to know the outcome of their appeal.
6. Despite its translation into English, the limitation of freedom of movement by *assignation à residence* of the French Law can be much larger, as big as a neighbourhood, a municipality or a department.
7. As Swiss authorities, French prefectures can introduce Dublin requests to several countries, for a same person, if Eurodac or VIS data show they irregularly entered, overstayed and/or asked for asylum in these countries.
8. See, https://www.lacimade.org/dublin-etat-des-lieux-et-conseils-pratiques-en-ile-de-france/ last retrieved on 5 February 2018.
9. The translation of its title is: Instruction on the application of Regulation (EU) No. 604/2013, known as Dublin III – Use of house arrest and administrative detention in the context of transfer decisions.
10. It is, however, necessary to point out that the situation regarding the use of the Dublin procedure was not similar in all regions before this directive. Some local governorships, such as the Rhône Department, were already systematically applying Dublin procedures, according to a lawyer (interview of 17 April 2017).
11. For example, according to the decree for the *Hauts-de-France* of 20 December 2017, the Dublin procedures are henceforth handled by the *Département du Nord*.
12. According to the accelerated procedure of asylum applications entered into force in March 2019, Dublin deportation orders are henceforth made in one of eight federal asylum centres

which are managed by the SSM. Cantons where these centres are situated are responsible for handling the execution of deportation orders made by this federal authority.

13. https://solidaritetattes.ch last retrieved on 14 June 2017.
14. Even though some of this court's decisions limit States' restrictive application of the Dublin III Regulation, this does not invalid Dembour's (2015) argument according to which the EHRC put forward State rights to deport people instead of migrants' rights.
15. 28 EU members excluding Czechia
16. Which was more than 51% in 2018 according to deportation statistics of the Frontex (Frontex 2019).

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