Protection of EU external borders

SUMMARY

The unprecedented arrival of refugees and irregular migrants in the EU, which peaked in 2015, exposed a series of deficiencies and gaps in EU policies on external borders. It affected the functioning of the Schengen rules, leading to the re-introduction of border checks by several Member States. In response to these challenges, as well as the surge in terrorist and serious cross-border crime activities, the EU has embarked on a broader process of reform aimed at strengthening its external borders by reinforcing the links between border controls and security.

On the one hand, measures for protecting the EU’s external borders have focused on reinforcing EU border management rules, such as the Schengen Borders Code, and strengthening and upgrading the mandates of relevant EU agencies, such as Frontex, eu-Lisa, Europol and EASO. On the other hand, in connection with a number of key shortcomings in the EU’s information systems, efforts were made to improve use of the opportunities offered by information systems and technologies for security, criminal records, and border and migration management. This included strengthening existing IT systems (SIS II, VIS, Eurodac, ECRIS-TCN), establishing new ones (ETIAS, Entry/Exit System) and improving their interoperability.

The broader mandate and the increase of activities in the area of EU border management is also reflected in the growing amounts, flexibility and diversity of EU funds, inside as well as outside the current and future EU budget.
State of play

The objective of the European Union in the field of external border protection is to safeguard the freedom of movement within the Schengen area, an area without internal borders, and to ensure efficient monitoring of people who cross both external Schengen borders, as well as the EU’s external borders with countries that are not part of the Schengen area.

The Schengen Borders Code is the main instrument laying down common rules on external border crossings, entry requirements and duration of stays in the Schengen area, facilitating access for those who have a legitimate interest to enter EU territory. It also introduces increased checks on all people crossing the EU’s external borders (including EU nationals and others with the right to free movement), both on entry and on exit, in order to ensure that they do not pose a risk to public order, internal security or public health. Exit checks are also carried out on third-country nationals. The Schengen Borders Code also sets conditions on the temporary reintroduction of internal border checks in case of serious or immediate threat, or in exceptional circumstances.

The central pillar of the EU’s integrated border management is the European Border and Coast Guard, composed of the European Border and Coast Guard Agency (Frontex) and the national authorities of Member States responsible for border management. The Agency carries out border controls, border surveillance and return activities and carries out those tasks in cooperation with Member States’ authorities and non-EU countries. It also performs ‘vulnerability assessments’ to detect and mitigate weaknesses in the EU border protection system.

Figure 1 – Main migratory routes into Europe

Data source: Frontex.
Furthermore, national authorities and EU agencies, such as Frontex, Europol, EASO and Eurojust, active in the field of security, border and migration management, use several large-scale centralised information systems. The Schengen Information System (SIS) stores alerts and provides information on certain categories of wanted or missing persons, including children and vulnerable adults in need of protection, as well as objects (e.g. stolen or lost firearms, and identification documents). It also enables border guards and migration authorities to enter and consult alerts on third-country nationals for the purpose of verifying their right to enter or stay in the Schengen Area. The Visa Information System (VIS), which is connected to all visa-issuing consulates of the Schengen countries and to all their external border crossing points, enables border guards to verify that a person presenting a visa is actually the person who applied for it. It can also help identify persons found on Schengen territory with no or fraudulent documents and those who may not, or may no longer, fulfil the conditions for entry to, stay, or residence in the EU. The purpose of the European fingerprint database (Eurodac) is to help EU Member States to determine responsibility for examining an asylum application, by establishing the identity of applicants for international protection and of persons apprehended in connection with the unlawful crossing of the EU’s external borders. It also allows Member States’ law enforcement authorities and Europol to compare fingerprints linked to criminal investigations with those contained in Eurodac, for the purpose of the prevention, detection and investigation of serious crimes and terrorism.

Since the unprecedented migration flows in 2015, management of the EU’s external borders has been particularly tested by challenges that led to the uncontrolled arrivals of migrants and asylum-seekers to the EU and eventually to the temporary reintroduction of internal borders between several Member States. The measures have been justified on the basis of the ‘security situation in Europe and threats resulting from the continuous significant secondary movements’ of illegally staying third country nationals, or on the basis of a ‘persistent terrorist threat’. However, these measures have disrupted the functioning of the Schengen area and reduced EU citizens’ trust in the EU’s ability to tackle the deficiencies exposed by the refugee crisis, generating economic, social and political costs.

Uncontrolled migratory flows have also led to the adoption of a key element in the EU’s support for its Member States located on the external border. The operational support for improved border management provided under the hotspot approach includes identifying and registering the arrival of every asylum-seeker, as well as providing adequate reception conditions and capacity. Although fingerprinting of migrants has progressed and, according to European Commission figures, has reached close to 100 % coverage, reception conditions remain a serious concern, as the EU Agency for Fundamental Rights and several ONGs have pointed out. Although EU policies seem to have had an impact on the number of detected illegal border crossings along the EU’s external borders, with a significant fall in the years 2017 and 2018, mainly on the eastern and central Mediterranean migratory routes, the EU has been much criticised for prioritising border controls over migrant’s human rights and for externalising border controls in cooperation with third countries that have a poor record on human rights and might not respect the principle of non-refoulement.

An increasing number of Member States also set up fences and border walls at the external Schengen borders to prevent migrants and asylum-seekers’ access to their territory. These barriers have been a cause for concern, due to, for example, the poor human rights situation of migrants thereby refused entry. The European Court of Human Rights also delivered a judgment citing a violation of the right of third-country nationals to submit asylum claims and prohibition of collective expulsions when returning all asylum-seekers and migrants at the external borders.

The surge in terrorism and serious cross-border crime on EU territory also exposed gaps in, and fragmentation of, the EU’s information systems that provide border guards, police officers and other authorities with information on persons who cross EU external borders. Moreover, not all EU countries are connected to all existing systems and there are various institutional, legal and policy contexts in which these systems operate. In addition, different authorities have different access to data, which is stored separately in different systems that are usually not inter-connected.
As regards the future potential of protecting the external EU borders, the stakes for the free movement of persons and goods and for ensuring internal security in the Schengen area are high. The accomplishment of a single area without borders where persons and goods can circulate freely creates significant benefits, both for European citizens and European companies. The Schengen area is one of the main instruments through which EU citizens can exercise their freedoms, and the internal market can thrive and grow. It is one of the most important achievements of the Union, which needs to safeguard its integrity, especially in times of challenges posed by migratory and security challenges. Protecting the EU’s external borders, including by making better use of the opportunities offered by IT systems and technologies, is therefore crucial to maintaining a Schengen area without internal border controls.

For this purpose, the EU embarked on the gradual establishment and implementation of the European integrated border management (EIBM) at national and Union level, the aim of which is to facilitate legitimate EU external border crossings and prevent and detect cross-border crime, such as migrant smuggling, trafficking in human beings and terrorism. It also includes referring persons who are in need of, or wish to apply for, international protection to the appropriate authorities, and returning those who have no right to enter or stay in the EU.

Public expectations for EU involvement

According to a series of Eurobarometer surveys carried out for the European Parliament on ‘perceptions and expectations’, the support of EU citizens for stronger EU involvement in the protection of external borders decreased from 71 % in 2016 to 69 % in 2018. This is a two percentage point decrease in citizens’ expectations. There is a significant variation in support for increased EU involvement across the Member States. The highest expectations for more EU involvement are registered in Cyprus (92 % in 2018; 86 % in 2016), Portugal (84 % in 2018; 87 % in 2016) and Greece (81 % in 2018; 78 % in 2016). The weakest expectation for more involvement in the protection of external borders is in Sweden (52 % in 2018; 48 % in 2016), Croatia (57 % in 2018; 61 % in 2016) and Latvia (57 % in 2018; 66 % in 2016).

Despite the slight overall fall in the expectation for more EU action in protecting the Union’s external borders, in each individual Member State, a majority of citizens nevertheless do expect more EU involvement. The most prominent falls are registered in Estonia (a decrease of 12 percentage
This trend of improved evaluation of the European involvement in protecting its external borders is shared by citizens of all EU Member States. The most significant improvement is registered in Poland (an increase of 20 percentage points) and Bulgaria (an increase of 18 percentage points). The increase is least significant in Germany and Cyprus (only a three percentage point increase in each of those countries).

A significant gap persists between public expectations of the EU's involvement in the protection of external borders and the evaluation of its current involvement. Nevertheless, this has fallen significantly, due to the notable improvement in citizens' perception of what the EU delivers in the policy area of protection of its external borders.

**EU Framework**

**Legal framework**

According to Article 3(2) of the Treaty on European Union, the EU 'shall offer its citizens an area ... without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls [...]'..

The Treaty on the Functioning of the European Union (TFEU) recognises the EU’s powers to frame a common policy on external border control:

- based on solidarity between Member States (Article 67 TFEU), including financial implications (Article 80 TFEU), and
through the gradual introduction of an ‘integrated management system’ for EU external borders (Article 77(1)(c) and 77(2)(d) TFEU).

EU powers regarding common policy on border management are shared with the Member States. While Article 71 TFEU facilitates cooperation among Member States to strengthen internal security, Member States retain the competence:

- to exercise law-enforcement power when they enforce measures adopted pursuant to EU provisions on operational cooperation and border control (Article 72 TFEU) and on national security (Article 4(2) TEU)
- to engage in forms of administrative cooperation in matters of national security (Article 73 TFEU).

In the area of external border protection the main focus in recent years was devoted to Article 77(2)(b) and (d) and Article 79(2)(c) TFEU. These articles frame the role of the European Parliament and the Council as co-legislators when adopting measures on border control and surveillance, and represent a legal basis for the gradual establishment of an integrated border management system, the upgrading of information systems in the area of border checks and ensuring their interoperability, and the reinforcement of checks and prevention of illegal border crossings for persons entering the EU.

The EU Charter of Fundamental Rights also plays a role in framing EU policies on migration and border management, as it entrenches the right to asylum (Article 18), some guarantees that must be respected in the event of removal, expulsion or extradition (Article 19), as well as some other fundamental rights (right to life, right to integrity, prohibition of torture, right to liberty and security the rights of children), that are relevant from the point of view of the above-mentioned EU policies.

As regards international law applicable to this policy area, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the United Nations Convention on the Rights of the Child and the Convention Relating to the Status of Refugees, as well as obligations related to access to international protection in particular, require respect for fundamental rights and compliance with the principle of non-refoulement when conducting border procedures and admitting or returning people arriving in the EU. During border control activities at sea, Member States and EU actors are obliged to fulfil their tasks in full respect of the United Nations Convention on the Law of the Sea, the International Convention for the Safety of Life at Sea and the International Convention on Maritime Search and Rescue.

Financial framework

Most EU funds related to the protection of external borders are allocated under Heading 3 (Security and citizenship) of the multiannual financial framework (MFF). The main instrument is the Internal Security Fund (ISF), providing:

- support for the management of external borders and the common visa policy (ISF Borders and visa); and
- financial support for police cooperation, preventing and combating crime, including migrant smuggling (IFS Police).

The initial allocation under ISF for 2014-2020 increased slightly from €3.7 to €3.8 billion. In addition, over the same period, almost €0.17 billion were earmarked for IT systems (Visa Information System and Schengen Information System) that allow national authorities to cooperate on border management by sharing relevant information.

The EU also has decentralised agencies working on migration, notably the:

- European Border and Coast Guard Agency (Frontex), involved in external border management and control; and
Protection of EU external borders

European Union Law Enforcement Agency (Europol), assisting police cooperation between Member States, including in the area of migrant smuggling.

EU agencies operate under indirect management, meaning the Commission delegates budget implementation to those agencies. The total EU contribution from the 2014-2020 MFF to Frontex increased from the initial €628 to €1 638 million, and to Europol from €654 to €753 million.

Funding tools for other policy areas inside the Union may also concern measures relating to borders, such as the €0.55 billion Customs 2020 programme and the Horizon 2020 framework programme for research and innovation, whose secure societies strand has a budget of around €1.7 billion for 2014-2020 and finances, among other things, activities to improve border security. Copernicus, the EU earth-observation system, offers a specific service for security applications, which provides information in response to security challenges with a view to supporting relevant EU policies. Its objective is to improve crisis prevention, preparedness and response in key areas, including border and maritime surveillance.

Examples of the EU external-action funding tools funding measures related to border management in third countries include the:

- Instrument for Pre-accession Assistance (IPA), such as a €28 million contribution to a project that supported the implementation of the Integrated Border Management strategy and its action plan in Serbia; and
- EU Trust Fund for Africa financing support to integrated border and migration management in Libya with a budget of €46.3 million.

Under the EU's Common Foreign and Security Policy (CFSP), funds are committed through Council decisions based on different legal bases in the Treaty, depending on the measure being funded (for example, launching a CSDP border assistance mission).

Deliveries of the current parliamentary term

Refugees and irregular migrants arriving in the EU in unparalleled numbers exposed a series of deficiencies and gaps in EU policies on its external borders. In response to these challenges, the EU has embarked on a broader process of reform aimed at strengthening the EU’s external borders by reinforcing the links between border controls and security. The Commission therefore adopted the European agendas on migration and on security in order to address current EU migration and security challenges by improving the external border management, including by making better use of the opportunities offered by IT systems and technologies.
Main achievements

In this respect, a revision of the Schengen Borders Code as regards the reinforcement of checks against relevant databases at external borders was adopted in March 2016. The regulation obliges Member States to carry out systematic checks on all persons, including persons enjoying the right of free movement under EU law (i.e. EU citizens and members of their families who are not EU citizens) when they cross the EU’s external border. The transformation of Frontex into the European Border and Coast Guard Agency (EBCGA) was finalised in October 2016. The agency is in charge of monitoring the EU’s external borders and, together with Member States, identifying and addressing any potential security threats. After Commission President Jean-Claude Juncker’s State of the Union speech in September 2018, the Commission proposed strengthening the European Border and Coast Guard Agency with a new mandate and the means and powers to protect the EU external borders, to carry out returns more effectively, and to cooperate with third countries in the area of border protection.

Furthermore, the legal basis for the new Entry/Exit System (EES) that will register visa-obliged and visa-exempt travellers’ data (name, type of travel document, fingerprints, visual image, and the date and place of entry and exit) when crossing the Schengen external borders, and the new European travel information and authorisation system (ETIAS), that will help to identify any potential security or irregular migration risks associated with visa-exempt third-country nationals travelling to the Schengen area, were established in November 2017 and October 2018 respectively. They will not be operational before 2020. Furthermore, the Council and the Parliament are negotiating an upgrade of the eu-LISA mandate, to enable it to ensure the centralised operational management of existing EU information systems (SIS II, VIS and Eurodac), as well as of those that will begin operations in the near future (the EES, ETIAS), or are currently being discussed by the co-legislators, i.e., the ECRIS-TCN system (European criminal record information system for third-country nationals).

The internal and external dimensions of EU border surveillance measures have become increasingly interlinked, which resulted in the Member States’ naval forces taking part in a Common Security and Defence Policy (CSDP) operation, Operation Sophia, in the Central Mediterranean. Initially intended to fight smugglers, its mandate was later expanded to include training Libyan coastguards and navy, search and rescue operations at sea, and information-sharing on criminal activity with Frontex, EBCGA, Europol and national law enforcement agencies.

Future information systems

Work is ongoing on the revision and expansion of the Schengen Information System (SIS), a large-scale information system supporting external border control and law enforcement cooperation in the Schengen states. Responding to calls from the Council and Parliament with regard to the need to maximise the benefits offered by information systems, the Commission presented three legislative proposals in December 2016, aimed at reinforcing and extending the use of the SIS in the fields of police cooperation and judicial cooperation in criminal matters, border checks, and returns. The negotiations between the co-legislators on the three proposals on the revision of the SIS were concluded with an informal agreement on the text, which remains to be finally adopted.

As indicated in the European Commission’s communication of April 2016, on stronger and smarter information systems, making the EU’s information systems for borders and security more interoperable would contribute significantly to strengthening external borders and improving internal security. Interoperability refers to the ability of information technology systems and of the business processes they support to exchange data and to enable the sharing of information and knowledge. In December 2017, the Commission put forward two specific proposals on interoperability: one for a regulation establishing a framework for interoperability between EU information systems on borders and visas and another for a regulation establishing a framework for interoperability between EU information systems on police and judicial cooperation, asylum and migration. The interoperability proposals concern the three existing centralised EU information systems.
systems for security, border and migration management (the SIS, the VIS, and Eurodac) and three centralised systems that are in the course of development (the EES, ETIAS, and ECRIS-TCN).

Furthermore, the European Commission is proposing to upgrade the European Border Surveillance System (EUROSUR), a common framework for information exchange and cooperation among all border surveillance authorities as regards external land, air and sea borders in the EU. Thus, in the Commission’s words ‘the EU will be better equipped to better detect, anticipate and react to crisis situations at EU external borders and in non-EU countries’.

Total commitments for EU funds (ISF), decentralised agencies (Frontex, Europol) and other support systems (SIS, VIS) in the area of protection of external borders for the whole 2014-2020 MFF period have increased from €5.1 billion in the initial MFF allocation to €6.4 billion by April 2018.

As migration management rose in priority on the EU agenda, the amount, flexibility and diversity of EU funding for protection of EU borders, inside as well as outside the EU budget, have grown. In the course of 2015, the additional measures approved in line with the European Agenda on Migration had an immediate budgetary impact, as notably reflected in amending budgets 5/2015 and 7/2015. The change is a consequence of the unprecedented levels of migration flows in 2015, which put pressure on Member States’ capacities, especially those at the EU’s external border, and decentralised agencies in terms of material and human resources. The revised EU budget, which the EP also called for, is intended to help the Member States under most pressure to address new needs as regards, among other things, border control. Member States’ capacity is also being reinforced by experts and assets made available through funding of the decentralised agencies, such as Frontex and Europol.

Under the Common Foreign and Security Policy (CFSP), the Council may establish EU Integrated Border Management Assistance Missions (EUBAMs) in third countries. One such case is the EUBAM Libya, created in 2013 to support capacity-building for improved security on the country’s land, sea and air borders, and currently extended to 31 December 2018, with an operational budget of €17 million.

Some missions cannot be financed via the EU budget. One such example is the EU’s naval operation (Operation Sophia), established in 2015 and intended to disrupt the business model of human smugglers and traffickers in the Southern Central Mediterranean. The common budget was agreed by the Athena Committee of Member States and its mandate was extended to 31 December 2018, with a budget of €6 million for the 27 July 2017 to 31 December 2018 period.

According to the Commission, overall spending from the Internal Security Fund in the area of integrated border management has proved effective. The fund ‘contributed towards the effectiveness of external border controls by supporting measures focused on the purchase, modernisation, upgrade and replacement of border control and surveillance equipment’. The development of interoperable modern technologies improved the efficiency and speed of SIS and VIS, which further contributed to better border checks. It is likely that, without an EU intervention, the diversity of national IT systems would have continued, with an effect on the EU’s capacity to achieve the overall objectives of its border and visa policy.
Potential for the future

The European Council is gradually shifting focus to prioritising the strengthening of the EU’s external borders and preventing irregular migrants from reaching European shores and to extending Europe’s partnership with Africa, in order to tackle the migration problem at its core. The European Commission has therefore further tapped into the potential of the EU Treaties, especially Articles 77(2)(d) and 79(2)(c), by strengthening the European Border and Coast Guard Agency (EBCGA) and proposing to set-up an EU agency for asylum (EUAA), with a stronger mandate compared to the current European Asylum Support Office (EASO) mandate, and providing them with the means and powers to protect external EU borders. Regulation 2016/1624 on the EBCGA clearly stated, for the first time, that the 'objective of Union policy in the field of external border management is to develop and implement European integrated border management at national and Union level'. This is based on a four-tier control model which includes: (1) measures in third countries; (2) measures with neighbouring third countries; (3) border control measures at the external borders, risk analysis and; (4) measures within the Schengen area and return. A potential future EU strategy for integrated border management to address the gaps in EU cooperation should therefore result in the expected impacts on limiting irregular migrant flows, reducing organised crime and terrorist risks, whilst also respecting the fundamental rights and privacy of migrants and EU citizens.

Migration will remain a challenge for the EU for decades to come, providing technical and financial help to Member States will therefore be a key priority under future EU budgets. Accordingly, the next MFF (2021-2027) for migration-related issues will almost triple to reach more than €34.9 billion, compared to €14 billion for the 2014-2020 period.

The long-term budget will also address significant strengthening of EU external borders by creating a new instrument for financial support for border management and visa as part of a new Integrated Border Management Fund (IBMF), worth €9.3 billion, and through a significant increase in funding to the amount of €12 billion for the decentralised agencies, notably the EBCGA, and supporting Member States protecting the borders. The IBMF would provide funding towards building and enhancing Member States’ capacities in the area of common visa policy and in dealing with migratory challenges and potential future threats at external borders, as well as in addressing serious cross-border crime and ensuring a high level of internal security within the EU.
MAIN REFERENCES


1 This section has been drafted by Alina Dobreva, with graphics by Nadejda Kresnichka-Nikolchova.

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