MANAGEMENT OF THE EXTERNAL BORDERS

> Border management policy has witnessed considerable developments, with the creation of instruments and agencies such as the Schengen Information System, the Visa Information System and the European Border and Coast Guard Agency. The challenges linked to the increase in mixed migration flows into the EU, as well as heightened security concerns, have triggered a new period of activity, with a shift towards more direct operational support and the Europeanisation of border management policy.

LEGAL BASIS

Articles 67 and 77 TFEU.

OBJECTIVES

A single area without internal border checks — the Schengen Area — requires a common policy on external border management. The Union therefore sets out to establish common standards with regard to controls at its external borders and to gradually put in place an integrated system for the management of those borders.

ACHIEVEMENTS

The first step towards a common external border management policy was taken on 14 June 1985 when five of the then ten Member States of the European Economic Community signed the Schengen Agreement, supplemented five years later by the Convention implementing the Schengen Agreement. The Schengen Area, the borderless zone created by the Schengen *acquis* (as the agreements and rules are collectively known), currently comprises 26 European countries (for more details on the Schengen Area, see 2.1.3).

A. The Schengen external borders acquis

The rules that make up today's Schengen external borders acquis, which builds on the original acquis incorporated into the EU legal order by the Treaty of Amsterdam, are to be found across a broad range of measures, which can be roughly divided into five categories.

Firstly, the central pillar of external border management is the Schengen Borders Code, which lays down rules on external border crossings and conditions governing the temporary reintroduction of internal border checks. Secondly, as not all Member States have external borders to control and not all are equally affected by border traffic flows, the EU uses its funds to attempt to offset some of the costs for Member States at the external borders. For the 2007–2013 period, this financial burden-sharing mechanism came in the form of the External Borders Fund. For the 2014–2020 period this has been replaced by the Internal Security Fund: Borders and Visa. The third category of measures relates to the establishment of centralised databases for the purposes of migration and border management: the Schengen Information System (SIS), the Visa Information System (VIS), and Eurodac, the European fingerprint database for identifying

asylum seekers and ensuring the proper implementation of the Dublin Regulation (for more details on Eurodac and the Dublin Regulation, see 5.12.2). Fourthly, there is a set of measures (known as the Facilitators Package[1]) designed to prevent and penalise unauthorised entry, transit and residence. Lastly, there are measures geared towards operational cooperation in border management, centred on the European Border and Coast Guard Agency (the former European Agency for the Coordination of Operational Cooperation at the External Borders of the Member States (Frontex), with expanded tasks).

1.   The Schengen Information System (SIS)

Now in its second generation, the Schengen Information System provides the information management infrastructure to support border control and the related security tasks of police and judicial cooperation. Participating states feed 'alerts' on wanted or missing persons, lost or stolen property and entry bans into the database, which is directly accessible to all police officers and law enforcement officials and authorities who need the information in the database to carry out their work. Where additional information on alerts in the Schengen Information System is required, this information is exchanged via the national network of Sirene (Supplementary Information Request at the National Entry) offices established in all Schengen states. These offices coordinate responses to alerts in the SIS and ensure that appropriate action is taken, for example if a wanted person is arrested, a person who has been refused entry to the Schengen Area tries to re-enter, or a stolen car or ID document is seized. The introduction of the second-generation Schengen Information System (SIS II), with new functionalities and features such as biometric data and the interlinking of alerts, was significantly delayed owing to the system's complexity. Initially due to come on stream in 2007, it eventually became operational on 9 April 2013. It is managed — together with the VIS and Eurodac databases — by the agency for the operational management of large-scale IT systems in the area of freedom, security and justice, eu-LISA.

2.   The Visa Information System (VIS)

The aim of the VIS is to improve the implementation of the common visa policy, consular cooperation and consultations between the central visa authorities. The VIS is connected to all visa-issuing consulates of the Schengen states and to all their external border crossing points. At these border points, the VIS allows border guards to check whether the person in possession of a biometric visa is actually the person who applied for it. This is done by cross-checking fingerprints both against the biometric record attached to the visa and across the whole VIS database. High levels of security are built into the system to ensure that it remains robust and available at all times and that data are only accessed by authorised persons and for authorised purposes. Law enforcement authorities and Europol have access to the system for the purposes of detecting and investigating terrorist offences and other serious crimes. The VIS began operations in all Schengen states' visa-issuing consulates in North Africa in October 2011 and has now been rolled out across the world.

3.   The European Border and Coast Guard Agency (the former Frontex agency with expanded tasks)

The former Frontex agency has been expanded to become the European Border and Coast Guard (EBCG) Agency under the European Border and Coast Guard Regulation[2]. The EBCG's main role is to help provide integrated border management at the external borders. Its tasks

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[1]See Council Directive 2002/90/EC and Council Framework Decision 2002/946/JHA.
[2]Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC.

are also to ensure the effective management of migration flows and to provide a high level of security for the EU. At the same time it helps safeguard free movement within the EU and fully respects fundamental rights. It consists of a European Border and Coast Guard Agency and the national authorities responsible for border management. The main focus of its activities is the establishment of an operational strategy for border management and the coordination of assistance from all the Member States. It is headquartered in Warsaw.

B. Developments in the EU's management of its external borders

Since the creation of Frontex, several practical steps have been taken towards more integrated external border management: some significant upgrades to technical infrastructure; a raft of joint border management operations; and the development of rapid response capability (initially through rapid border intervention teams (RABITs), and, since 2011, also through European Border Guard Teams). The pace of change has quickened with the large-scale loss of life in the Mediterranean over recent years coupled with the huge influx of refugees and migrants. Joint Operation Triton — launched in late 2014 and substantially scaled up in 2015 — is tasked with patrolling the sea border, primarily between Libya and Italy, and brings together staff and equipment from a number of Member States to provide frontline operational support to Italy. In Greece, the existing Joint Operation Poseidon was significantly scaled up in December 2015 to become a rapid intervention operation, with more staff and technical equipment deployed to deal with the external border management challenges. In a similar vein, EBCG, together with other relevant EU agencies, has played an important role in another dimension of the response to the challenges facing some Member States: the creation of 'hotspots' and the deployment of what are termed Migration Management Support Teams. These teams bring together the European Asylum Support Office (see 5.12.2), Europol (see 5.12.7) and the EBCG — in partnership with national authorities and other agencies - to identify, screen and register migrants on entry into the EU, and to organise return operations for those who have no right to stay. The EBCG is the lead agency in the EU Regional Task Forces, which are headquartered in Catania for the 'hotspots' in Italy and in Piraeus for those in Greece. Both the maritime operations and the direct support to Member States at the 'hotspots' represent a tangible European response to what is both a humanitarian crisis and a border management challenge.

Both the ongoing influx of refugees and migrants as well as a heightened terrorist threat are leading to the further Europeanisation of border management. In particular, to address the phenomenon of so-called 'foreign fighters' the proposal to introduce mandatory checks on EU citizens entering or exiting the Schengen Area at land, sea or air borders through a targeted amendment of the Schengen Borders Code was recently adopted. Under this change, citizens would systematically be checked against the SIS II database and the Interpol Stolen and Lost Travel Documents Database.

The other key development in border policy centres on the 'Smart Borders' package, designed to modernise border management by automating border checks and enhancing exit and entry information. In October 2011 the Commission presented a communication on Smart Borders, following this up with a legislative proposal in February 2013. The package comprised two components: an Entry/Exit System (EES), a database to record time and place of entry and the length of authorised short stays, and a Registered Traveller Programme (RTP) to simplify and automate border checks for certain categories of travellers, such as businesspeople. In view of doubts surrounding the Commission's initial costing of the Smart Borders package, question marks over the technical feasibility of the system and misgivings over the projected benefits, the Commission decided to commission a further technical study, completed in October 2014.

A series of practical and operational tests followed in 2015, under the auspices of eu-LISA. In April 2016 the Commission tabled a fresh proposal, this time for the EES alone.

Though the new EES pursues the same central aim of speeding up, facilitating and reinforcing border check procedures for third-country travellers, it nonetheless has some significant changes compared with the 2013 proposal. Firstly, it reduces the amount of data (e.g. fingerprints) to be collected and stored, and proposes a substantial reduction in costs from an initial EUR 1.1 billion to EUR 408 million. Furthermore, under the Commission proposal there would be interoperability between the Visa Information System (see above) and the EES, and law enforcement bodies would have access under certain conditions. The new proposal is currently being considered by Parliament and the Council.

In addition, in November 2016 the Commission presented a legislative proposal for the establishment of a European Travel Information and Authorisation System (ETIAS). Creation of a system with similar objectives to the well-known US 'ESTA' system would provide an additional layer of control over visa-exempt travellers. ETIAS would determine the eligibility of all visa-exempt third-country nationals to travel to the Schengen Area, and whether such travel poses a security or migration risk. Information on travellers would be gathered prior to their trip.

ROLE OF THE EUROPEAN PARLIAMENT

The European Parliament has had mixed reactions to the development of external border management policy. It has broadly supported the upgraded organisational role of EBCG, as well as of the other relevant Union agencies, often calling for their role to be further enhanced as the EU grapples with the migration crisis in the Mediterranean. In its resolution of 12 April 2016 on the situation in the Mediterranean and the need for a holistic EU approach to migration, Parliament acknowledged the role of Frontex in rescuing and saving lives in the Mediterranean. Moreover, as regards the 'hotspot' approach, it recalled that this requires EBCG, EASO, Europol and Eurojust to provide operational assistance to Member States, and pointed out that the agencies require the resources necessary to allow them to fulfil their assigned tasks.

While Parliament's view of EBCG's development has been largely positive, its stance on smart borders has been far warier. After the 2013 Commission proposal, it voiced misgivings over the vast technological build-up and the mass processing of personal data proposed for the external borders. Moreover, the anticipated costs of the Smart Borders technology, coupled with doubts surrounding its benefits, left Parliament with a number of concerns. Indeed, in its 12 September 2013 resolution on the second report on the implementation of the Internal Security Strategy, Parliament asserted that 'new IT systems in the area of migration and border management, such as the Smart Borders initiatives, should be carefully analysed, especially in the light of the principles of necessity and proportionality'. More recently, it followed this up with an oral question to the Commission and the Council in September 2015, asking for their stance on law enforcement access to the system and their views on the relevance of the European Court of Justice ruling of April 2014 on the Data Retention Directive (see 5.12.8). It remains to be seen how Parliament responds to the revised proposals.

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