



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 (Frontex). 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.

LEGAL BASIS

Articles 67 and 77 of the Treaty on the Functioning of the European Union (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 an international treaty, the so-called Schengen Agreement, near the Luxembourgish border town of Schengen, which was supplemented five years later by the Convention implementing the Schengen Agreement^[1]. The Schengen Area, the borderless zone created by the Schengen *acquis* (as the agreements and rules are collectively known), currently comprises 26 European countries.

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 (1.1.3), 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

[1]The Schengen *acquis* — Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, OJ L 239, 22.9.2000, p. 19.



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 2014–2020 financial period, this burden-sharing mechanism is known as 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 [4.2.2](#)). Fourthly, there is a set of measures (known as the Facilitators Package^[2]) 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 (Frontex).

1. The Schengen Information System (SIS)

The Schengen Information System, which entered its second generation in 2013, 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 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. 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, which is based in Tallinn, Estonia. As of 31 December 2016, there had been a total of 70.8 million alerts. The largest number of alerts concern lost or stolen documents (over 39 million) and stolen vehicles (around 5 million).

2. The Visa Information System (VIS)

The aim of the Visa Information System is to improve implementation of the common visa policy, consular cooperation and consultations between the central visa authorities. In 2014, the VIS processed approximately 8.5 million visas. It actually comprises two separate systems: the VIS central database and an Automated Fingerprint Identification System (AFIS), and 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. The purpose of the database is to identify any individuals who may not, or may no longer,

[2]See Council Directive 2002/90/EC and Council Framework Decision 2002/946/JHA.



fulfil the conditions for entry to, stay or residence on the territory of the Member States. Law enforcement authorities, Europol and, under specific circumstances, third countries and international organisations have access to the system. The use of VIS for asylum and law enforcement purposes is still fragmented across the Member States, while data quality problems can mostly be attributed to sub-optimal application of the database.

3. The European Border and Coast Guard Agency (Frontex)

Headquartered in Warsaw, the main role of the European Border and Coast Guard Agency (EBCGA), often still referred to as Frontex^[3], is to help provide integrated border management at the external borders (EIBM), a concept which is described as a fundamental component of the Area of Freedom, Security and Justice (4.2.1). The EBCGA is now entrusted with an enhanced operational mandate which touches upon all the main components of EIBM, by building on Frontex's operational tasks in border control and surveillance to ensure the effective management of migration flows, including the power to implement joint return flights, and to provide a high level of security and safeguard free movement within the EU, whilst always fully abiding by fundamental rights. The EBCGA is authorised to work both with national authorities within the EU and in cooperation with non-EU countries. Furthermore, it can carry out joint operations on the territory of, and in collaboration with, third countries which neighbour at least one EU Member State.

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

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 since September 2015. Prior to the outbreak of the European humanitarian refugee crisis, only three countries had resorted to erecting fences at external borders to prevent migrants and refugees from reaching their territories: Spain (where building work was completed in 2005 and extended in 2009), Greece (completed in 2012) and Bulgaria (in response to Greece, completed in 2014). Contrary to Article 14(2) of the Schengen Borders Code, which stipulates that 'entry may only be refused by a substantiated decision stating the precise reasons for the refusal', an increasing number of Member States have gradually embarked on the construction of border walls or fences with the aim of indiscriminately preventing migrants and asylum seekers from accessing their national territories. Moreover, without explicit EU rules on the erection of fences at external Schengen borders, Member States have also put up barriers with third countries (notably Morocco and Russia), including pre-accession candidates (the former Yugoslav Republic of Macedonia, Serbia and Turkey) and one EU Schengen candidate country — Croatia. Fences have also been constructed within the Schengen area, such as the fence between Austria and Slovenia, while Spanish practices in Melilla have come under scrutiny from the European Court of Human Rights in Strasbourg.

Under the EIBM, the internal and external dimensions of EU border surveillance measures are becoming increasingly intertwined. This trend is reflected in the increasingly prominent contribution of defence actors to the development of integrated

[3]Regulation (EU) 2016/1624 of 14 September 2016, OJ L 251, 16.9.2016, p. 1.



border management, in terms of both direct operational interventions (executive functions) and support provided to third countries in the field of border management (training, mentoring, and monitoring functions), while a key element of the common security and defence policy (CSDP) — EUNAVFOR MED, or Operation Sophia — is just one example of the operational involvement of Member States' navies in the implementation of the EIBM. The original mandate of the military players participating in this operation was to fight against smugglers. However, the scope of the mission was recently expanded and now formally involves IBM-related functions, and in particular surveillance activities, search and rescue operations at sea and information exchange with Member States' law enforcement agencies, as well as with the EBCG and Europol.

The 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 4.2.2), Europol (see 4.2.7) and Frontex — 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. 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.

The other key development in border policy centres on the 'Smart Borders' package, which is designed to modernise border management by automating border checks and enhancing exit and entry information, and to plug any information gaps left by the EU's three large-scale databases (SIS, VIS and Eurodac) in two areas relating to the management of external borders: cutting down irregular migration overstays and fighting terrorism and serious crime.

The main shortcomings that the Commission will further address are: the inadequate quality and speed of border controls involving third-country nationals, the inability to ensure systematic and reliable monitoring of third-country nationals' stay in the Schengen area, and difficulties identifying third-country nationals should they decide to destroy their official documentation after entering the Schengen area.

But the 2016 version of EU Smart Borders is not only limited to border management objectives, such as reducing waiting time at border controls, improving the quality of identity checks, and amassing more accurate information on 'overstayers', it now also serves a new purpose: law enforcement access and utilising travellers' data gathered during border controls. With a view to achieving these objectives, an Entry/Exit System (EES) and corresponding amendment of the Schengen Borders Code was recently



adopted^[4]. The regulation in question establishes a legal framework and the technical infrastructure for the automatic data collection and systematic recording of the external border-crossing movements of all third-country nationals (both visa-required and visa-exempt) visiting the Schengen area for a short stay (a maximum 90-day period in any period of 180 days), and for tracking the time spent by each third country national during his/her stay in the Schengen area. The EES is designed to calculate the length of stay of each and every third-country national by recording entry and exit information, and to raise an alert if it detects an overstay.

According to the regulation, the new centralised EU database is due to become operational in 2020. eu-LISA, in cooperation with the Member States, has been entrusted with the task of building the EES.

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 the EBCGA and 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. While Parliament's view of the EBCGA'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. 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'. 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 Court of Justice of the European Union ruling of April 2014 on the Data Retention Directive (see [4.2.8](#)). If no swift progress is made on the proposed reform of the Dublin

[4]Regulation (EU) 2017/2226 of the European Parliament and of the Council of 30 November 2017 establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third-country nationals crossing the external borders of the Member States and determining the conditions for access to the EES for law enforcement purposes, and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 767/2008 and (EU) No 1077/2011, OJ L 327, 9.12.2017, p. 20.



III regulation^[5], Parliament could freeze ongoing negotiations on all files which are of interest to justice and home affairs ministries, such as the recent interoperability proposal, the revision of the Eurodac system and other relevant files. It had already successfully adopted this approach in 2012 with the so-called ‘Schengen freeze’, when it decided to cease cooperation on the main JHA dossiers under negotiation in response to the Council’s decision to change the legal basis for the Schengen Governance Package. In its resolution on the annual report on the functioning of the Schengen area^[6], Parliament sought to draw attention to the fact that although the EU had adopted so many measures to strengthen its external borders, including border controls, there had been no corresponding reaction in terms of the removal of internal border controls.

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[5]Proposal for a regulation of the European Parliament and of the Council of 4 May 2016 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person.

[6]European Parliament resolution of 30 May 2018 on the annual report on the functioning of the Schengen area ([Texts adopted, P8_TA\(2018\)0228](#)).

