POLICY BRIEF

Crossing borders in the next 15 years:
How should and will border management develop?

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EXECUTIVE SUMMARY

Key Points:

- *Border management will face key challenges in the next 15 years related to facilitation, security and fundamental rights*

- *Action is required now to make border management more efficient and protection-sensitive*

- *In the medium and longer-term, improving the coherency of related policy fields will be instrumental in improving border management*

Border management is a complex and challenging field, whose aims are as varied as they are vital. In a world where passenger numbers are increasing, large numbers of goods are crossing borders and serious security issues have arisen, border management is tasked with contributing to a high level of security and facilitating legitimate cross-border flows (of both people and goods). In recent years, the large-scale collection of information and the implementation of technology for border management tasks have been key developments aimed at supporting these goals. At the same time, these developments have elicited challenges from fundamental rights defenders who have outlined the potential ways such information could be misused or lead to detrimental consequences on fundamental rights. Moreover, the impact of forced displacement and the knock-on effects large-scale flows had on the EU (especially on the integrity of the Schengen area) have underlined how such a crisis can reverberate from a border management issue across other policy areas and into the political arena.

As such, border management has been and will continue to be a touchstone in a debate on how to equally ensure both security needs and fundamental rights. This policy brief outlines the main issues that have arisen in this debate, and provides a number of potential policy options for future border management strategies. While this brief is based on information collected in the European context, the findings can be applied at a global scale.

CONTEXT[1]

Recent estimates suggest that by 2030, 1.8 billion travellers will cross international borders, a 3.3% increase per year from 2010.[2] For a sector already struggling with limited human resources and infrastructure constraints, this will be a huge challenge in the coming years. For Europe, the impact on airports will be particularly heavy,[3] with an estimated 1.9 million flights potentially unaccommodated.[4]

EU external border crossing points with the largest passenger flows, 2014
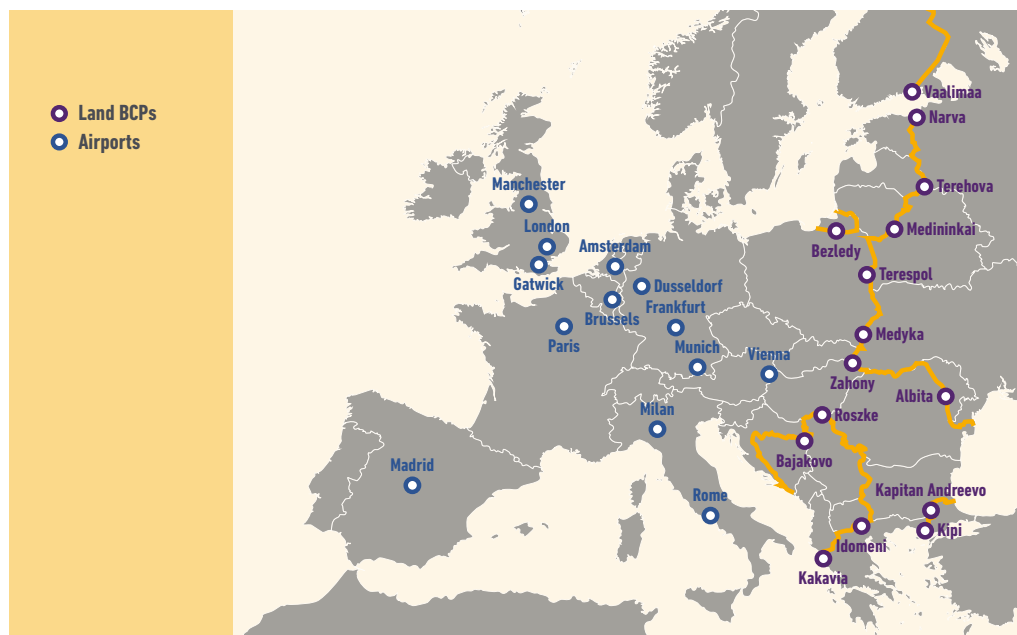
Increasingly border management stakeholders are also tasked with new security objectives in addition to migration management ones.

Identifying and appropriately responding to those who will be crossing the borders also presents a current and future challenge. While the majority of travellers will remain of low risk for traditional border management stakeholders (citizens or residents of the country, tourist or business travellers), a small proportion will continue to be of higher risk. Traditionally this latter group implies risks of irregular migration status: those who enter irregularly on a temporary or longer-term basis, or enter regularly and overstay the terms of their visa. However, increasingly border management stakeholders are also tasked with new responsibilities related to security objectives, in addition to their traditional migration management ones, assessing risks to the broader security of their country or region, whether related

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1   This policy brief bases its findings on discussions that took place during the ICMPD Border Management Symposium 2018 "Crossing Borders in the next 15 years: Visions, Realities and Constraints", which convened experts and stakeholders from academia, civil society, EU agencies, intergovernmental organisations, private industry and state representatives. Findings are also based on the Background Paper prepared for the symposium. Information on both is available at: https://www.icmpd.org/news-centre/events/calendar-detail/?no_cache=1&tx_calender_pi2%5Bentry%5D=1223.

2   UNWTO (2016). "UNWTO Tourism Highlights, 2016 Edition." Madrid: UNWTO.

3   Current estimates for Europe suggest 14.4 million flights in 2035, a 50% increase from 2012. Eurocontrol (2017). "Forecasts". Available at: http://www.eurocontrol.int/articles/forecasts.
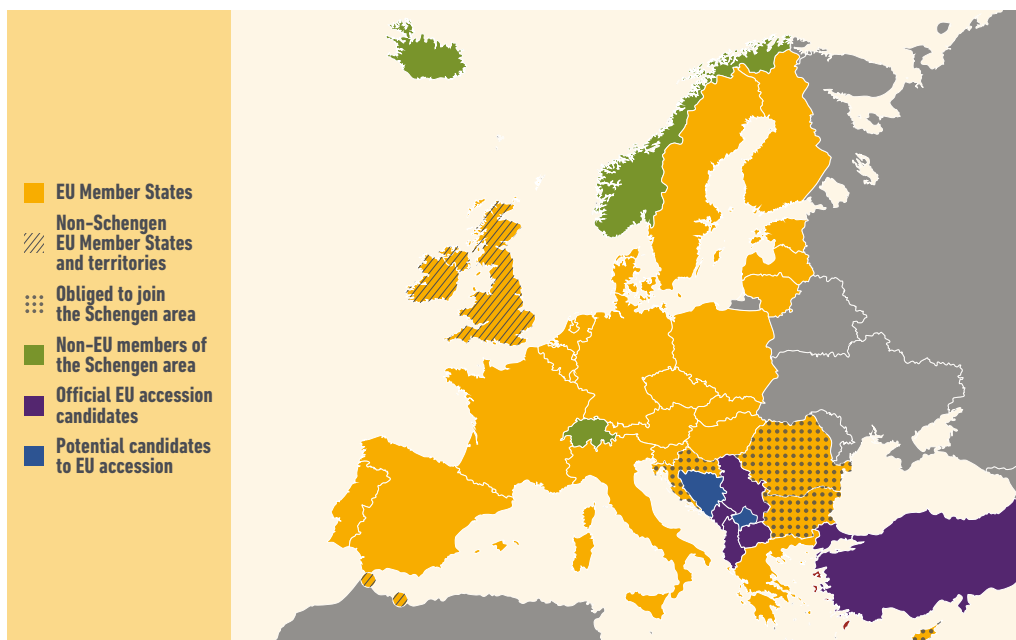
4   Eurocontrol (2017). "Forecasts". Available at: http://www.eurocontrol.int/articles/forecasts.

to health, international relations or terrorism, among others. Global migration trends and particularly global forced displacement will also continue to impact cross-border trends, both in terms of who crosses the border, but also where and whether they use a criminal network to do so (e.g. migrant smuggling and human trafficking networks).[5]

For Europe, there is also the specific issue of changing areas of border management, for both border and customs agencies, as well as the ability to ensure Schengen's integrity in a context of increased pressure. The temporary reintroduction of border checks within Schengen and challenges to the integrity of the Schengen area in recent years represents a serious challenge and highlights the overarching need to ensure uniform border control across the EU's external borders and for shared responsibility among Member States in maintaining the EU's external borders. EU and Schengen enlargement, as well as the UK's exit from the EU, will also change where border and customs checks will take place over the next 15 years. In addition, information collection and checks will increasingly be conducted before arrival to the physical border, even before departure. Pre-departure checks, information-sharing and even border controls in third countries outside the EU have been identified as currently and potentially in the future improving border management, although critics highlight the potential impact this may have on access to protection and other rights.

For Europe, the physical areas of border management, for both border control and customs, will change.

EU and Schengen borders, current and potential future

Legend:
- EU Member States
- Non-Schengen EU Member States and territories
- Obliged to join the Schengen area
- Non-EU members of the Schengen area
- Official EU accession candidates
- Potential candidates to EU accession

5   See for example those trends outlined in: European Political Strategy Centre (2017). "10 Trends Shaping Migration." Brussels: European Political Strategy Centre.

EUROPEAN POLICY APPROACH

For Europe but also across the globe, new border management information systems are being touted as a solution to many of these challenges, for their ability to collect new data and/or make connections between existing data, with the aims of improving security, facilitating legitimate movements and identifying potential threats. In recent years and in the coming ones, all three currently existing European databases used for migration- and border management-related purposes (Schengen Information System II, Eurodac, Visa Information System) have been amended or amendments expanding their scope have been proposed. Moreover, three additional large-scale databases have been proposed or already approved (Entry/Exit System (EES), European Travel Information and Authorisation System (ETIAS), European Criminal Record Information System for third country nationals), with the aim to fill the gaps in information needed for both migration and security purposes.[6] In addition, a new proposal from the European Commission[7] aims to improve interoperability among all existing and future databases, to provide all relevant data (related to border control and security purposes) on travellers across the various databases to authorised users, including also law enforcement authorities within the country and not just at the border. Lastly, the mandates of European agencies (Frontex, eu-LISA and Europol) have recently or will soon be expanded, to improve coordination of people across and information systems deployed at the EU's external borders and the prosecution of cross-border crimes across the EU.

Some of these new approaches, however, have elicited strong critique from EU institutions such as the EU Agency for Fundamental Rights and the European Data Protection Supervisor and from civil society in terms of their potential impact on fundamental rights and the European principles enshrined in the Treaty of the EU, according to which any EU action must be proportional and necessary to reach the stated aim. These rights include: the right to dignity, the prohibition of inhuman and degrading treatment or punishment, the right to liberty and security, respect for private and family life, protection of personal data, right to asylum, right to non-discrimination, rights of the child and right to an effective remedy.[8] Moreover, the difficulties in ensuring data accuracy and minimisation, as well as the importance

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6   Two of these systems are modelled after existing non-European examples, particularly from the United States (EES and ETIAS). The objectives of the United States' US-VISIT (United States Visitor and Immigration Status Indicator Technology) programme are strongly mirrored in the EU's EES. The US-VISIT programme faced implementation issues and was the subject of a number of critical reports from the US Government Accountability Office and civil society. Subsequently, the programme has been re-tooled with tasks separated across the Office of Biometric Identity Management, US Immigration and Customs Enforcement and the US Customs and Border Protection. The United States' ESTA (Electronic System for Travel Authorization) programme is also very similar in approach to the EU's ETIAS.

7   See COM(2017) 793 final and COM(2017) 794 final.

8   See the Charter of Fundamental Rights of the EU, Articles 1, 4, 6, 7, 8, 18, 19, 21, 24, 47. These same rights are also enshrined in international legal instruments such as the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.

of safeguards needed and the concern about function creep,[9] represent just some of the main concerns. However, it must be noted that the implementation of new information systems and the collection of more data does not necessarily mean an infringement on fundamental rights – in some cases it may contribute to the protection of certain fundamental rights (e.g. non-discrimination through the use of automated processing, or identification of child victims of trafficking).

FUTURE POLICY PRIORITIES[10]

Looking ahead to the future of border management, but also recognising the lessons learned and the positive developments in past years, a number of policy priorities come to the fore as particularly salient for the coming years:

- In the context of increased challenges (related to security and facilitation), policy responses should focus on building a more **robust and lasting migration and border control system**, maximising opportunities for cooperation and improvement while guaranteeing the full respect of fundamental rights.

- Facilitation and security aspects of border management should remain focused on **both people and goods crossing the border**, the two being integral aspects of managing borders and the concept of Integrated Border Management.[11] The challenges, as well as the promising practices, in the customs field can provide new approaches to improve border control and management (and vice versa). Yet at times they are still dealt with as separate – rather than interlocking – fields.

- Border management overlaps with a number of distinct policy areas, all of which can impact each other: asylum, irregular migration, labour migration and visa regulations, security, return and readmission, etc. There is a need for **coherency across these policy fields**, both in terms of overarching goals but also distinction among the fields. The lack of coherency across policy fields can lead to large-scale impacts on related fields: the lack of

Lack of coherency across policy fields can lead to large-scale impacts on the field of border management.

9   Function creep is the concept that a technology or system is used for a purpose beyond its original intention, often related to concerns about the impact on the right to privacy. For example, some critics have pointed to the widening in purpose of the Eurodac database as an example of function creep: the broadened scope in the 2013 recast directive permits access of law enforcement authorities to the database; and the 2016 proposed changes (see COM(2016) 272 final) would expand the scope to collect and store information on third country nationals identified as irregularly staying in the EU, with the aim to facilitate returns and readmissions. The Eurodac database's original aim was solely to collect data on asylum seekers for use by immigration authorities with the purpose of ensuring that the country of first entry was where the asylum processing took place (i.e. ensuring the functioning of the Dublin Regulation).

10   These policy priorities are based on our discussions across a wide range of stakeholders (academia, civil society, EU agencies, intergovernmental organisations, private industry and state representatives) at the Border Management Symposium, as well as the analysis within the Background Paper prepared for that event. For more information, see: https://www.icmpd.org/news-centre/events/calendar-detail/?no_cache=1&tx_calender_pi2%5Bentry%5D=1223.

11   In general, this concept suggests that the broad range of agencies (e.g. border police, customs) involved in border management need to coordinate their work at the national and international level, in order to improve their responses and work more effectively. For Europe, the European Border and Coast Guard Regulation (Regulation (EU) 2016/1624) provides a European Integrated Border Management Strategy with a four tier access control model and 11 strategic components.

a comprehensive functioning protection system, for example, can change the way border control is implemented, as demonstrated by the European experience of 2015 and in the years since. Additionally, there is a need for distinction across policy fields. For example, protection objectives, security objectives and migration objectives are distinct, thus should be dealt with as such and not intermingled or interchanged. Application of legal instruments related to specific objectives at the border must uphold the rules and regulations of those policy fields.

- **Monitoring, evaluation and follow-up are major areas for future work.** This applies both to implementation of basic border control measures ensuring the security of the border, as well as to the assurance of fundamental rights protections during border control activities. Where there is not yet systematic monitoring, identification and mapping of practices are needed, in order to ensure that legal principles are upheld in practice and to improve their application. Where monitoring has already been implemented, concrete follow-up action is required, and should be outlined clearly in terms of a state's or (EU) agency's individual and shared responsibilities.

- **Joint responsibility and cooperation** are consistently touted as fundamental principles to be honoured in order for border management to be successful, and are integral aspects of the concept of Integrated Border Management. Shared responsibility is required across different national institutions and responsibility levels, in the EU case: the European Commission, in terms of communication across EU agencies and Member States on broad approach and potential cooperation with third countries outside the EU; Frontex, the European Border and Coast Guard Agency, as the newly mandated agency engaged in border control; and Member States, who can tailor their approach across national institutions in line with their own needs, yet base them on guidance provided by Frontex and the European Commission. Cooperation, particularly with third countries, needs to also be more tangible and reciprocal, rather than a one-way information flow.

- **The human element** needs to be balanced against new technological advances. This applies to all those impacted by or the focus of the use of new technology: travellers, vulnerable persons (e.g. asylum seekers or irregular migrants) and border guards. Fundamental rights assessments have been fairly streamlined across the board for new and existing policy instruments and legal frameworks; yet it is important, as mentioned previously, to monitor their application in the field and the actual impact on people subject to new policies or approaches. For border guards as well, the use of new technology and additional tools or responsibilities should be balanced against the capacities and skills of border guards themselves. Increasing passenger numbers should not put undue burden on border guards. Instead, authorities and relevant stakeholders can take steps to assure the most efficient use of resources – of both man and machine:

Assure the most efficient use of resources – both man and machine.

an appraisal of what tasks can be automated, how to better train border guards for new tasks involving technology and communication with border guards to assure them of the support technology can provide to their work.

- Three main policy-relevant questions should govern future approaches to border management: **Can we? May we? Should we?** In other words: can we technically implement this new approach, system or technological tool, in both financial and operational terms? May we, according to the legal framework under which we operate, including according to fundamental rights law, implement a new approach? Should we, ethically and morally speaking, implement this new approach? What would the implementation of this approach mean for the principles and values we hold dear? Quite simply put, these three questions can and should govern border management approaches of the future, not only in the EU, but also across the globe.

Can we? May we? Should we?

POLICY RECOMMENDATIONS

While these policy priorities provide us with broad approaches, concrete actions are also needed in order to better support future border management policy development and implementation.

Recommendation 1: Additional resources should be allocated for monitoring practices at the border (as related to security, migration and fundamental rights) and must be linked concretely with a responsible authority tasked with tangible follow-up. This could be at the institutional level (whether national or international, in the case of EU agencies), the national level or the international level (for example EU-wide). This should be applied to actions taking place at the physical external border locations, as well as in terms of collection, use, sharing and storing of (new) data in large-scale databases, where not already implemented.

Recommendation 2: Implementation of new approaches or technological tools must be accompanied by an assessment of how this will impact the travellers or subjects of these new tools, as well as the border guards and their work. Such an assessment should also examine whether the new tool or approach ensures the most effective use or division of resources. Considering that technological tools are increasingly used and integrated into border control, training programmes for border guards should be modified to better inform, prepare and build the skills of border guards on the technology itself, as well as how to use it most efficiently and appropriately for the task.

Recommendation 3: Bilateral and multilateral cooperation should be strengthened in the area of border management (both at the border and beyond), but with due attention to fundamental rights (e.g. as related to data sharing and access to protection). However, such cooperation should require that the sharing of resources, skills or expertise be reciprocal, based on the needs and skill sets of each engaged

party. For example, study visits of Country X to Country Y to learn Y's approach to border management in the maritime context could be exchanged with a training workshop on identification of fraudulent documents from Country X's region.

Recommendation 4: For the EU, an EU-wide assessment could be done on border management policies and those in related fields, analysing both their coherency and efficiency. Such an assessment could guide future migration policy work at the EU level to ensure both the robustness of the EU's migration and border control system, as well as its coherency. Indeed, the upcoming assessment and radical overhaul of the EU's visa code purports to do just that, but for a narrower purpose: the current organisation of the visa code, as well as where its weak points are, in general and specifically as related to the EU's overarching migration management aims, are the crux of that upcoming analysis.

The above policy priorities and recommendations do not necessarily present a radical new approach to border management of the future, but rather offer a realistic approach based on the areas and actions key stakeholders have identified as needing work in the short- and mid-term. Moreover, they represent a merger of the concerns and pressing needs as identified by policy makers, border agencies and non-governmental entities whose priorities, while often presented as opposing or conflicting factions, clearly identify overlapping areas for future work. In the short- and mid-term, then, these policy priorities and recommendations are clearly actionable and should be achievable, if given appropriate backing and precedence in the policy field.

RELATED PUBLICATIONS

Hendow, M. (2018). "Crossing EU Borders in the Next 15 Years: Visions, Realities, Constraints." January, Background Paper. Vienna: ICMPD.

Kraler, A., Hendow, M., Pastore, F., Eds. (2016). *Multiplication and Multiplicity – Transformations of Border Control.* Journal of Borderlands Studies 31(2).

Schengen Borders Code: Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code).

European Border and Coast Guard and Frontex Regulation: 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.

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