



BORDER SECURITY AND MANAGEMENT

European Union's approach to internal and border security management.
Fundamental rights as horizontal component of border security management



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1. European Union's approach to internal and border security management. Fundamental rights as horizontal component of border security management Author: Inge Lindsaar

1. European Union's strategic approach to internal security

1.1 Union Security Strategy about the complexity of security threats

As far as border security forms a part of internal security, an attention should be paid to European Union (EU) overall security policies and concepts. Security issues nowadays need to be managed in a much complex manner than during the past decade as the EU has to respond to new **global threats and challenges**.

The latest **EU Security Union Strategy** covers the period from 2020 to 2025. It brings together the range of security needs that were absolutely relevant in 2020, before Russian invasion to Ukraine. It focuses on the most critical areas to EU security that time, with the view to the years to come. It also acknowledges that security threats do not respect geographical borders, as well as the increasing **inter-connection between internal and external security** (European Commission 2020, p. 26).

The **strategy addresses political instability** beyond our borders and terrorism, organised crime, the drugs trade and human trafficking, that represent direct threats to citizens and European way of life. It mentions that cyber-attacks and cybercrime continue to rise. „Security threats are also becoming **more complex**: they exploit the blurring of the boundaries between the physical and digital world; they exploit vulnerable groups. Attacks can come at a moment's notice and may leave little or no trace; both state and non-state actors can deploy a **variety of hybrid threats**; and what happens outside the EU can have a critical impact on security inside the EU” (European Commission 2020, p. 1).

The EU Security Union Strategy 2020 to 2025 focuses on priority areas where the EU can help Member States in fostering security for all those living in Europe, while respecting our European values and principles (European Commission 2020, p. 27).

„The threat analysis points to four inter-dependent strategic priorities to be taken forward at the EU level, in full respect of fundamental rights: (i) a future proof security environment, (ii) tackling evolving threats, (iii) protecting Europeans from terrorism and organised crime, (iv) a strong European security ecosystem” (European Commission 2020, p. 6).

1.2 Threats of hybrid nature that affect EU internal security

„The Commission's Political Guidelines made clear that we can leave no stone unturned when it comes to protecting our citizens. Security is not only the basis for personal safety, it also protects fundamental rights and provides the foundation for confidence and dynamism in our economy, our society and our democracy” (European Commission 2020, p. 1).

In terms of hybrid threats, Union security strategy mentions first time ever in EU policy documents **the definition of hybrid threats**. According to this strategy, hybrid threats aim to capture the mixture of coercive and subversive activity, conventional and unconventional methods (i.e. diplomatic, military, economic, technological), which can be used in a coordinated manner by state or non-state

actors to achieve specific objectives (while remaining below the threshold of formally declared warfare) (European Commission 2016, p. 2).

It addresses an important tool for enhancing security, namely cooperation. That is mentioned as a cross-cutting issue throughout the strategy. „Building on our strengths to work together has never been more essential, and the EU has never had more potential to make a difference. It can lead by example, by enhancing its **overall crisis management** system and **working within and outside its borders** to contribute to global stability. While primary responsibility for security lies with Member States, recent years have brought an increasing understanding that the security of one Member State is the security of all. The EU can bring a multidisciplinary and integrated response, helping security actors in Member States with the tools and the information they need” (European Commission 2020, p. 1).

It is well known that one of the recent hybrid crises was caused by the COVID-19. It was seen how several state and non-state actors were aiming to instrumentalise the pandemic - in particular through **manipulation of the information environment** and **challenging core infrastructures**. It was focused on weakening social cohesion and undermining trust in EU institutions and Member States’ governments.

Although the definition of hybrid threats was first time and officially provided in Union Security Strategy 2020-2025, the EU approach to hybrid threats was set out in the 2016 Joint Framework and the 2018 Joint Communication on bolstering **hybrid resilience**. These documents focused on actions at EU level and underlined that these actions are underpinned by a sizeable toolbox covering the internal-external nexus, based on a whole-of-society approach and on close cooperation with strategic partners, notably NATO and G7.

EU policy documents foresee the establishment of an EU approach to hybrid threats that integrates the external and internal dimension in a seamless flow and brings the national and EU-wide considerations together. The full spectrum of action – from **early detection, analysis, awareness, building resilience and prevention through to crisis response** and consequence management will be defined. In addition to reinforced implementation, with hybrid threats in constant evolution, a particular focus will be to mainstream **hybrid considerations** into policy making, to keep up to speed with dynamic developments and to ensure that no potentially relevant initiative is overlooked. The effects of new initiatives will also be assessed through hybrid lenses, including initiatives in areas that have so far been outside the remit of **the counter hybrid framework such as education, technology and research**. This approach would benefit from the work done on the **conceptualisation of hybrid threats**, which provides a comprehensive view of the various tools that adversaries may use. The aim should be to ensure that the decision-making process is underpinned by **regular, comprehensive intelligence-based reporting on the evolution of hybrid threats**. This will rely heavily on Member States’ intelligence and on further enhancing intelligence cooperation with Member States’ competent services through the EU Intelligence and Situation Centre (EU INTCEN) (European Commission 2020, pp. 15-16).

2. European Union border security

2.1. Historical development of European Integrated Border Management

External borders and their crucial role for the smooth working of the Single Market, the Area of Freedom, Justice and Security and other basic objectives of the Union have long been recognised. Union and (common) border have formed an inseparable pair of notions since the early days of the common market and the European Economic Community customs union in the 1960s. Of course, there

was always discussion on how well the borders were operated. It took a little longer, until the act of managing such borders (jointly or not) became a separate issue under the spotlight of public attention.

First milestone in European Integrated Border Management (IBM) development was *Tampere Council Conclusions 1999* that mentioned, *inter alia*, the need for consistent control of external borders to stop illegal immigration and to combat those who organise it and commit related international crimes. It concentrated also on offering guarantees to those who seek protection in or access to the European Union.

Next remarkable milestone in the development of European IBM was a meeting in Laeken on 14 and 15 December 2001, where the European Council, in its Conclusion No. 42, stated that "better management of the Union's external border controls will help in the fight against terrorism, illegal immigration networks and the traffic in human beings. The European Council asks the Council and the Commission to work out arrangements for cooperation between services responsible for external border control and to examine the conditions in which a mechanism or common services to control external borders could be created." (European Council 2001, p.13).

In accordance with this conclusion, on 7 May 2002 the European Commission approved a Communication to the Council and the European Parliament concerning "an integrated border management of the external borders of the Member States of the European Union" that included an analysis of the situation in this field, at both the operational and normative levels and proposed a number of measures and actions to be implemented at the European Union level (European Commission 2002, pp. 6, 12-22).

Following that Communication, on 13 June 2002 the Council adopted a "Plan for the management of the external borders of the Member States of the European Union" (doc. 10019/02) containing five main components of a common integrated border management system: a common operational co-ordination and co-operation mechanism, common integrated risk analysis, personnel and inter-operational equipment, and a common Corpus of legislation and burden sharing between the Member States and the Union (Council of the European Union 2002, pp.11-27).

The entering into force of the Regulation on the European Border and Coast Guard (Regulation (EU) 2016/1624, amended by the Regulation (EU) 2019/1896, marked the start of a new era of an integrated management of the European borders as it provided all components of European IBM.

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 77(2)(b) and (d) and Article 79(2)(c) thereof, 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, which is a necessary corollary to the free movement of persons within the Union and is a fundamental component of an area of freedom, security and justice.

European integrated border management, based on the four-tier access control model, comprises measures in third countries, such as the common visa policy, measures with neighbouring third countries, border control measures at the external borders, risk analysis and measures within the Schengen area and return. It is necessary to monitor the crossing of the external borders efficiently, to address migratory challenges and potential future threats at the external borders, to ensure a high level of internal security within the Union, to **safeguard the functioning of the Schengen area** and to respect the overarching principle of solidarity. Those actions and objectives should be accompanied by the proactive management of migration, including the necessary measures in third countries. To that end, it should be mentioned that unfortunately the concept of IBM has sometimes been

misinterpreted. Europe has witnessed migration crisis in Mediterranean area in 2015 and use of migrants as tools in hybrid attack against Latvia, Lithuania and Poland (read below under this Session).

Article 3 Regulation (EU) 2019/1896 defines **European integrated border management**. European integrated border management shall consist of the following components:

- (a) **border control**;
- (b) **search and rescue** operations for persons in distress at sea;
- (c) **analysis of the risks** for internal security and analysis of the threats that may affect the functioning or security of the external borders;
- (d) **information exchange and cooperation between Member States and the European Border and Coast Guard Agency**;
- (e) **inter-agency cooperation** among the **national authorities in each Member State** where appropriate, **cooperation with national bodies in charge of protecting fundamental rights**;
- (f) **cooperation among the relevant Union institutions, bodies, offices and agencies**;
- (g) **cooperation with third countries**;
- (h) **technical and operational measures within the Schengen area** which are related to border control and designed to address illegal immigration and to counter cross-border crime better;
- (i) the **return of third-country nationals**;
- (j) the use of **state-of-the-art technology** including large-scale information systems;
- (k) a **quality control mechanism**, in particular the Schengen evaluation mechanism, the vulnerability assessment and possible national mechanisms;
- (l) **solidarity mechanisms**, in particular Union funding instruments.

Fundamental rights, education and training, as well as research and innovation shall be **overarching components** in the implementation of European integrated border management (European Parliament and the Council of the European Union 2019 Article 3).

EUROPEAN INTEGRATED BORDER MANAGEMENT as provided in Article 3 of Frontex Regulation

Border control	FU	EDU	RE
Search and rescue	NDA	CA	SEA

Risk analysis	MEN	TION	RCH
Cooperation between Member States	TAL	&	&
Inter-agency cooperation		T	INN
Cooperation among the relevant Union institutions, bodies, offices and agencies	R	R	O
Cooperation with third countries	I	A	V
Technical and operational measures within the Schengen area	G	I	A
Return	H	N	T
State-of-the-art technology	T	I	I
Quality control	S	N	O
Solidarity mechanisms		G	N

Figure 1. European Integrated Border Management (Figure by the author)

The latest EU policy documents addressing European Integrated Border Management (EIBM) covers all **15 components of EIBM** for years 2023-2027. Although these documents do not address hybrid threats, they reiterate the importance of *constant readiness to respond to emerging threats* and provide the necessary **tools to respond to and manage any such threats** at the external borders. It establishes the **common framework** that guides the daily work of more than 120 000 European Border and Coast Guard officers of the national authorities of Member States and of Frontex with a view to achieving effective and efficient European integrated border Management. It mentions the Russian war of aggression against Ukraine that has reconfirmed the reality of a hostile geopolitical context at Europe's Eastern borders and highlights the **new reality of instrumentalisation of migration for political purposes**, as a novel trend. Lastly, and this is important, especially from the point of view of combatting hybrid threats - on a more operational level it is necessary to understand that the growth in complexity and sophistication of integrated border management also risks leading to a **fragmented and uncoordinated** approach with **too many actors** duplicating efforts and loopholes that can be exploited by criminal networks. Coordination between all players in the framework of the EIBM will be required to prevent this from happening (European Commission 2023, pp.2-5).

Annexes to the Communication from the Commission to the European Parliament and the Council establishing the multiannual strategic policy for European Integrated Border Management (European Commission 2023) explain the content and scale of activities under each component of EIBM in detail. This document is of a very high value as no other EU policy document published so far opens the full extent of EIBM by providing policy priorities and strategic guidelines for EU and its' Member States for upcoming years.

3. Fundamental rights as horizontal component of border security management

Fundamental rights as enshrined in the Charter of Fundamental Rights of the European Union **must be embedded in all activities of the border and coast guard**. Following this, the subsequent actions therefore need to ensure, besides this general respect, especially the referral and protection of vulnerable groups, particularly children. Considerations of fundamental rights in activities in the Third Country dimension and the protection-sensitive management of migration flows. It further implies the need to continuously train personnel in the respect of **fundamental rights in border management**, not only in operational response activities where fundamental rights play a key role but also in strategic planning, training, and in all other IBM activities. Finally, it is essential to have the necessary processes in place to ensure transparency and accountability in all operational activities, including the protection of personal data.

Often being the first point of contact for third-country nationals reaching their country, and in many cases the EU as a whole, **border guards have a crucial role** to play in the timely identification of migrants, addressing their basic needs, guaranteeing their fundamental rights, providing them with information, and directing them to adequate procedures and to the competent authorities.

However, categorising different groups of arrivals should not detract from the development of measures to protect the fundamental rights of all persons without differentiation, including the right for asylum. Thus, for example, in the case of victims of trafficking and unaccompanied children, adequate protection mechanisms need to be activated as soon as possible. However, their right to asylum has to be guaranteed as well, and the required steps within the asylum context have to be conducted simultaneously.

Any measure taken by an official of a Member State of the European Union, whether at the **external border or within the territory of the Member State**, must be proportionate to the objectives pursued, **non-discriminatory**, and should fully respect key fundamental rights, such as:

- human dignity, that stipulates that a human being has an innate right to be valued, respected, and to receive ethical treatment;
- the right to life, prohibiting the death penalty or execution and stipulating a duty to take preventive measures in situations where there is a real and immediate risk to the life of an individual;
- the prohibition of torture, that stipulates that no one can be subjected to torture or to inhuman or degrading treatment or punishment;
- the principle of non-refoulement, referring to the obligation of states to refrain from expelling or returning a person in any manner whatsoever to a situation where she/he may face persecution and/or torture, inhuman or degrading treatment or punishment;
- the right to asylum, that gives everyone the right to seek and to enjoy in other countries protection from persecution. Member States shall ensure that every person, whether an adult or a child, has the right to make an application for international protection on his or her own behalf or through his or her relative or representative;
- non-discrimination, that prohibits any unfair treatment or arbitrary action or distinction based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation.

Every person is entitled to these rights, whether she/he has explicitly applied for international protection or not.

Member States must also ensure that their authorities respect the confidentiality principle, as defined in national law and imposed by EU law, in relation to any information they obtain during their work. Information regarding the fact that a person has applied for international protection cannot be disclosed to the authorities of the person's country of origin.

The Communication from the Commission to the European Parliament and the Council establishing the multiannual strategic policy for European Integrated Border Management sets the clear task to the European Border and Coast Guard which is required to guarantee the **protection of fundamental rights in the performance of border management tasks** as an **overarching component**. The actions of EU and national actors within the European Border and Coast Guard should be carried out, including in third countries, in full compliance with relevant EU law, including the Charter of Fundamental Rights of the European Union and with international law.

According to the Communication from the Commission, Frontex and the Member States should foster an EIBM culture characterised by its compliance with EU and international law, including **the principle of non-refoulement**, by the **full respect for fundamental rights**, and they should integrate fundamental rights safeguards throughout all their activities (European Commission 2023, p. 8).

Annexes to the Communication from the Commission to the European Parliament and the Council establishing the multiannual strategic policy for European integrated border Management (European Commission 2023, pp. 25-26) provides under the component **Fundamental rights** that „The respect for, and protection and promotion of, fundamental rights are at the heart of European integrated border management.“

EIBM pursues different **goals** in parallel, and has to ensure the swift **registration and provision of care to persons in need of, or applying for, international protection**.

In the Communication from the Commission it is summarised that European integrated border management must contribute to a high level of internal security within the Union, in a manner that **fully respects fundamental rights** and safeguards the free movement of persons within the Union (European Commission 2023, p. 3).

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