

# The Concept of Border Security in the Schengen Area

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This article contributes to the discussion about border security in the Schengen Area, particularly regarding the dramatic increase of illegal immigration since 2013. It first outlines the competency of the European Union regarding protection of Schengen's external borders and identifies the objectives of EU policies. The article goes on to critically analyse the concept of 'EU Integrated Border Management,' showing that it is hardly applicable to strategic policy making. There is no official, comprehensive and up-to-date definition of the concept; moreover, it is used inconsistently across EU political and legal documents. Therefore, the article argues that the concept of a border security system should be adopted as both a framework for analysis and a conceptual structure for EU policymaking. The final section of the article defines the functions of a border security system as follows. In the area of prevention there are functions of (1) deterrence of the potential flow and (2) prevention of the attempted flow; in the area of interdiction there is the located function of (3) interdiction of the immediate attempted flow at the borders, either at border crossing points or in between them; lastly, in the area of removal, there are functions of (4) apprehension of the illegal flow and (5) apprehension of the illegal population for the purpose of (6) removal of these unauthorised immigrants or residents from the protected territory.

*Keywords: European Union, Schengen Area, border security  
illegal immigration*



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The Schengen Agreement is based on the principle that member states give up one of their core state powers—the authority to control their own national borders—in exchange for common protection of the external borders of the Schengen Area. However, since 2013, when the number of illegal border crossings into the Schengen zone started to rise considerably, and again after the 2015 upsurge to 1,822,337 illegal entries (in contrast to 282,962 in 2014, 107,365 in 2013 and 73,437 in 2012),<sup>1</sup> questions have arisen about whether the Schengen Border Security System is able to effectively combat illegal immigration and whether some core functions of border security have not been lost in delegating these national competences to the EU level. It is difficult to analyse the functionality of the Schengen system as there is no generally accepted concept of border security in the EU which could serve as both a framework for analysis and a conceptual structure for strategic policy making.

## **EU Competences in Border Security**

In order to determine the legal basis for EU competences in the area of border security, the following section will look into the founding treaties of the EU. Within the Treaty on the Functioning of the European Union, the most relevant is Title V: Area of Freedom, Security and Justice, in which the EU attempted to frame a common policy on external border control in order to ensure the absence of internal border controls of persons, regardless of their nationality.<sup>2</sup> Chapter Two of this title further stipulates that the EU should develop and gradually introduce ‘an integrated management system for external borders’—in other words, a border security system that would ensure border checks on persons and monitoring of border crossings<sup>3</sup>. Furthermore, the EU should seek to develop measures to combat illegal immigration and unauthorised residence, including actions such as removal and repatriation of persons residing without authorisation.<sup>4</sup>

The Treaty on European Union introduces the concept of an EU internal security system with the phrase ‘area of freedom, security and justice,’ placing border security as its primary policy aim over other policy areas such as internal markets, economic and monetary union, and external relations.<sup>5</sup> The absence of internal frontiers was seen as the main benefit of the EU internal security system, of which the main

components are supposed to be policies regarding external border controls, asylum, immigration and the prevention and combating of crime.

Since the implementation of the Amsterdam Treaty, respective policies and measures in the area of internal security and border security have been based on multi-annual programmes known as the Tampere Programme (adopted by the European Council in 1999),<sup>6</sup> the Hague Programme (2004)<sup>7</sup> and the Stockholm Programme (2009).<sup>8</sup> The current period is not covered by such a document, but only by strategic guidelines for legislative and operational planning that were adopted as part of the European Council conclusions of 26 and 27 June 2014.<sup>9</sup> These guidelines refer to a 'borders policy' which should enable 'tackling irregular migration resolutely and managing the EU's external borders efficiently.'<sup>10</sup> In order to ensure strong protection of the Schengen Area, it calls for modernisation of Integrated Border Management, including a smart border system, reinforcement and increase of Frontex activity and the possibility of setting up a European system of border guards.<sup>11</sup>

Following the June 2014 European Council request to review and update the Internal Security Strategy,<sup>12</sup> the Commission presented its communication entitled 'The European Agenda on Security',<sup>13</sup> which, however, deals with border security only marginally. It focuses on three main priorities for EU internal security: terrorism, organised crime and cybercrime. Border security is covered by the European Agenda on Migration,<sup>14</sup> which aims for better migration management through 'reducing the incentives for irregular migration' and 'border management—saving lives and securing external borders.'<sup>15</sup> In neither of these documents is the term 'border security' explicitly stated. The European Agenda on Security refers only to 'border management' as essential for the prevention of cross-border crime and terrorism.<sup>16</sup>

Two pieces of EU secondary law constitute the major building blocks of the Schengen Border Security System: the Schengen Borders Code and Frontex Regulation. The Schengen Borders Code was adopted in 2006 as an EC regulation 'establishing a Community Code on the rules governing the movement of persons across borders.'<sup>17</sup> Since then it has been amended several times; the current version was adopted in November 2013. Although it also deals with the internal frontiers of mem-

ber states, this article will focus only on its role in external Schengen border security.

Border control is supposed to be in the interest not only of front-line member states, but of all states that have abolished controls at their internal borders. The purpose of the controls is to combat illegal immigration and human trafficking and to prevent 'any threat to the Member States' internal security, public policy, public health and international relations.'<sup>18</sup> According to the code, border control comprises: checks on persons at border crossing points; surveillance between these border crossing points; analysis of the risks for internal security; and analysis of the threats that may affect the security of external borders.<sup>19</sup> Interestingly, neither 'border security,' nor 'protection' of borders is ever used in the text of the code.

National border and coast guard authorities, supported by Frontex, are responsible for the execution of border control. Frontex was born from a 2004 EC regulation for 'establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union.' It was last amended in June 2014.<sup>20</sup> According to the Frontex Regulation, the general aim of EU integrated border management is to contribute to the free movement of persons and internal security within the EU, while its specific objective is to ensure 'a uniform and high level of control and surveillance' at Schengen borders based on common rules.<sup>21</sup> Efficient implementation requires 'increased coordination of the operational cooperation between the Member States.'<sup>22</sup>

The main objective of the regulation is to create 'an integrated management of operational cooperation at the external borders of the Member States of the European Union.'<sup>23</sup> While responsibility for the control and surveillance of external borders lies with the member states, Frontex should facilitate their coordination.<sup>24</sup> Specific functions of Schengen border management include border checks, border surveillance and the return of unauthorised third-country nationals.<sup>25</sup> To this end, the agency is tasked with: providing risk analyses; training national instructors and officers; conducting research and education; compiling lists of material resources; preparing for crisis situations; providing assistance for return operations; and cooperating with other parties.<sup>26</sup> Frontex, nevertheless, is explicitly exempted from the devel-

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opment of policies and legislation on external border control and surveillance, a task which resides mainly with the EC.<sup>27</sup>

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## EU Integrated Border Management

While EU documents do not explicitly use the term ‘border security system,’ they often refer to ‘integrated border management.’ However, the concept of integrated border management is neither precisely defined nor coherently used and no official strategic document outlining the development of this policy exists. That is why it is not viable to use this concept when identifying and analysing EU border security functions.

Ferreira analysed the discursive or terminological shift in official EU documents from ‘border control’ to ‘border security’ after the 9/11 terrorist attacks in the US.<sup>28</sup> However, the Laeken European Council conclusions demonstrate that, already in 2001, the heads of states and governments had asked the council and the commission to develop a new integrated system of border management, which should help to ‘fight against terrorism, illegal immigration networks and the traffic in human beings.’<sup>29</sup> The new concept of EU integrated border management is useful in analysing both the present border security situation and a number of proposed measures and actions to be implemented at the EU level.<sup>30</sup> These conclusions also provided the first definition of ‘management of external borders,’ which comprises activities carried out by public authorities of the member states in order to execute checks and surveillance at external borders; gather, analyse and exchange any specific intelligence or general information posing a risk to EU internal security; analyse and propose response to threats to border and internal security; and anticipate capacity needs regarding staff and equipment at the external borders.<sup>31</sup>

Following the EC’s communication, the Justice and Home Affairs Council adopted a plan which included five main components of EU Integrated Border Management (IBM): (1) a common operational co-operation and co-ordination mechanism, (2) common integrated risk analysis, (3) personnel and inter-operational equipment, (4) a common corpus of legislation and (5) burden-sharing between member states and the Union.<sup>32</sup> Formulations based on these initial definitions can be found in the Hague Programme of 2004,<sup>33</sup> the Global Approach

to Migration of 2005<sup>34</sup> and the EC conclusions of October 2006 on reinforcing the southern external maritime borders.<sup>35</sup> A detailed account of IBM terminology, the origins of the concept, a broader context and its early evolution is provided by Hobbing.<sup>36</sup>

Although no EU IBM strategy has been officially adopted, one was drafted by the Finland Council Presidency on the basis of discussions in the Strategic Committee on Immigration, Frontiers and Asylum on 09 November 2006 and in the informal experts meeting on 15 November 2006. This draft strategy defines the overall aim of IBM as ensuring that entry into and exit from the territory of member states is made in a 'regulated and orderly fashion,' while the guiding principles should be 'solidarity, mutual trust and co-responsibility among member states' as well as 'full respect for human rights in both its actions and procedures.'<sup>37</sup>

The general aims of IBM, according to the draft document, are: (1) contributing to EU's immigration strategy in coordination with other policies, (2) easing of traffic movement and controls, (3) avoiding risks to the health and life of irregular immigrants, (4) preventing offences related to irregular immigration, (5) anticipating, preventing and facilitating prosecution of organised crime related to irregular immigration, (6) cooperating with third countries to prevent irregular immigrants from leaving their countries of origin or transit, (7) fostering cooperation with third countries on identification and return of irregular immigrants, (8) preventing entry of irregular immigrants, (9) detecting persons attempting irregular entry, (10) facilitating identification, location and expulsion of unauthorised persons and (11) contributing to the fight against terrorism and organised cross-border crime.<sup>38</sup>

The draft strategy was not adopted as a whole, yet in its December 2006 conclusions the JHA Council incorporated a definition of the IBM concept that consists of the following dimensions: (1) border control, including checks and surveillance (as defined in the Schengen Borders Code), as well as relevant risk analysis and crime intelligence, (2) detection and investigation of cross-border crime in coordination with all competent law enforcement authorities, (3) the four-tier access control model, including (a) measures in third countries, (b) cooperation with neighbouring countries, (c) border control, and (d) control measures within the area of free movement, together with return operations, (4) inter-agency cooperation for border management, including border

guards, customs, police, national security and other relevant authorities and (5) coordination and coherence of the activities of member states and institutions and other bodies of the community and the EU.<sup>39</sup>

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The EC's 2008 communication on the next steps in EU border management have not mitigated the fragmentation of the IBM concept. It nevertheless lists some of the problems with the Schengen external border system that were present at that time.<sup>40</sup> On the basis of identified problems regarding cross-border travel of third country nationals, the commission proposed as 'possible new tools for the future development of an integrated border management strategy': facilitation of border crossing for bona fide travellers; the introduction of entry/exit registration; and introduction of an Electronic System of Travel Authorisation (ESTA).<sup>41</sup>

Following the Stockholm Programme in March 2010, the council adopted in its Draft Internal Security Strategy in which it defines a European security model, which integrates actions on law enforcement, judicial cooperation, border management and civil protection.<sup>42</sup> Although it lists integrated border management among its ten strategic guidelines, it does not provide any clear and coherent definition of the concept and rather mentions topical initiatives including those referred to in commission's 2008 communication. The European Commission presented a more detailed version of the Internal Security Strategy in November 2010. Among its 'five steps,' or 'strategic objectives for internal security' is 'strengthening security through border management.'<sup>43</sup>

Although the document refers to 'integrated border management strategy,' it does not provide its definition. However, it introduces 'migration management' and the 'fight against crime' as twin objectives of the strategy and further denotes three strategic strands: (1) an enhanced use of new technology for border checks (the second generation of the Schengen Information System, the Visa Information System, the entry/exit system and the registered traveller programme), (2) new technology for border surveillance (the European Border Surveillance System, EUROSUR) with the support of Global Monitoring for Environment and Security services, and the gradual creation of a common information sharing environment for the EU maritime domain and (3) increased coordination of member states through Frontex.<sup>44</sup> The border management objective of the Internal Security Strategy

should be achieved through four actions: (1) exploitation of the full potential of EUROSUR, (2) enhancement of the contribution of Frontex at the external borders, (3) common risk management for movement of goods across external borders and (4) improvement of interagency cooperation at the national level.<sup>45</sup>

Strategic guidelines for the Area of Freedom, Security and Justice adopted by the European Council in its June 2014 conclusions call for modernisation of IBM in a cost-efficient way to ensure smart border management with an entry-exit system and a registered travellers programme, supported by the new Agency for Large Scale IT Systems.<sup>46</sup> The most recent political documents giving direction to the EU internal and border security policy are the commission's communications on security and migration. It is noteworthy that migration and border management have been separated from other internal security issues. The European Agenda on Migration never mentions 'integrated border management' and, despite declaring that 'rules on border control are in place,' openly acknowledges that 'border management today varies' and is 'based on a patchwork of sectorial documents and instruments.'<sup>47</sup> The commission then states that it will commit itself to consolidating this patchwork into a 'Union standard for border management' covering all aspects of the EU's external border management.

Although the concept of IBM has been used in official political (for example, in the Stockholm Programme of 2009) and legal documents (the Treaty on the Functioning of the European Union), as well as in academic<sup>48</sup> and analytical<sup>49</sup> literature, there does not exist any comprehensive IBM strategy or overall conceptual document. It should be noted that the IBM concept is very well developed in the EU's external policy, but is substantially different from the notion of IBM from the EU internal perspective.<sup>50</sup> An expert conference co-organised by Frontex concluded that '[a] major obstacle to the realisation of the potential of full cooperation lies in the absence of an up-to-date concept of integrated border management (IBM).'<sup>51</sup> In this light it is rather bizarre that the council, in a document on the legacy of Schengen written 15 years after its adoption, presents the IBM concept as one of its 'most valuable achievements' as part of 'soft acquis' in the form of the Schengen Catalogues of recommendations and best practices.<sup>52</sup>

It can be concluded that the EU's concept of IBM suffers from two deficiencies: (1) there is no official, comprehensive and up-to-date definition of the notion and (2) it is defined differently in different EU

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political and legal documents. Consequently, the concept can serve neither as a framework for analysis, nor as a conceptual structure for EU policymaking.

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## **Border Security**

Regardless of how frequently the term ‘border security’ is used in academic literature, no substantial discussion on defining the concept is provided.<sup>53</sup> It is a rather inconvenient situation, as border security can mean various things for different authors. However, more policy-oriented analytical reports, especially from the US, where border security continues to be a heated subject of public and legislative debate, can be of some help. Since the 9/11 attacks committed by foreign terrorists in 2001, controversies over both the meaning and the interpretation of border security as a policy goal and policy system have been reoccurring with intensity in the US. The terrorists’ multiple entries into the country were not prevented by US border security system, which was considered a failure.

The terrorist threat as a challenge to border security has not been the only subject of debate. Illegal immigration from across the US-Mexican border, and its implications for both the labour market and for crime, was at the centre of public concern in the mid-2000s. Later, the escalation of the Mexican drug war and its potential to increase violence in the US became a top concern.<sup>54</sup> Since 2013, and heading to the 2016 presidential elections, a major issue has been the prevention of unauthorised border crossings from Mexico. As copious financial and human resources have already been invested into the US border security system, devising a way to measure the effectiveness of the system has become a major focus of debate among policy experts.

Georgiev<sup>55</sup> (2010) attempted to analyse the EU’s border security system on the basis of a ‘comprehensive policy framework’ which he derived from Wasem et al., who, however, focused only on one aspect of border security—inspections of the people and material going through border checks. Wasem et al. found that, according to US law, the purpose of inspections at official ports of entry is primarily threefold: (1) immigration inspection—determining the admissibility of individual alien travellers seeking to enter the US, (2) customs inspection—preventing the entry of illegitimate goods or people into the US, chiefly terrorists and their weapons, illegal drugs and other smuggled con-

traband, and (3) animal and plant health inspection—preventing the entry of exotic plant and animal pests and diseases, especially those that might be used as bioterrorism or agro-terrorism agents.<sup>56</sup>

Aside from inspections at the actual physical border, US courts have given ‘border’ a more flexible interpretation; the law recognizes two legal constructs that allow border searches to be conducted beyond the geographical frontier. The first is the functional equivalent of a border, which is generally the first practical detention point after a border crossing or the final port of entry in the country interior (for example, international airports within the US or ports within US territorial waters.) Secondly, a warrantless ‘extended border search’ can be conducted beyond the border or its functional equivalent if government officials have reasonable certainty that a border was crossed, no change in the object of the search has occurred and they have ‘reasonable suspicion’ that criminal activity was occurring.<sup>57</sup> All in all, the analytical framework offered by Wasem et al. is too narrowly focused on border checks to provide assistance in determining a more general concept of border security.

A much more comprehensive conceptual model of border security was developed by Willis et al. as the foundation for measurement of security delivery. They define border security as ‘an effort to control cross-border movement, with the ultimate goal of reducing illegal flows and not (unduly) limiting legal flows.’<sup>58</sup> Whereas ‘cross-border’ flow is defined as the movement of people or material across the frontier, ‘illegal flow’ means the inbound movement of illegal drugs, illegal migrants and terrorist threat-posing individuals, materials or weapons as it is described in the core missions of the US Department of Homeland Security.

Willis et al. differentiate between different flows of illegal cross-border movements. The decision to cross a border illegally is influenced by many different factors including situations, motivations, perceptions and preconditions of both the crossing individuals and the smugglers. These factors are exogenous to border-security efforts and determine the ‘potential flow’—the number of people or amount of material intending to cross the border illegally. This number can be changed by border-security efforts focussed on deterrence. If a potential migrant, drug smuggler or terrorist perceives the passage as too costly or too dangerous they might change their intention. The corresponding reduction of cross-border movement is called ‘deterred flow’; individuals

and material that make it to the border are conceptualised as ‘attempted flow.’<sup>59</sup>

The objective of different border security operations conducted by various law enforcement agencies and supported by other public, private and international actors is to intercept the attempted flow. These interception operations can take place before the borders (for example, in international waters), at the border (at border-crossing points or between them), or after the border (such as traffic checkpoints.) Those people and material that are intercepted by these actions are called ‘interdicted flow’ and those that successfully avoid apprehension constitute ‘illegal flow.’ Willis et al. identify three core functions of border security activities: interdiction, deterrence, and exploitation of networked intelligence. These operations take various forms when applied to different mission such as the fight against illegal immigration, human trafficking, drug smuggling or counter-terrorism. Each of these border security operations contribute to broader internal security policy strategies.<sup>60</sup>

In general, the term ‘border security’ has two distinct meanings. The first meaning refers to a policy field—an area of public policy framework and activities including border controls, checks and surveillance. The second meaning refers to a policy objective which aims to achieve a certain level of security through border activities—in other words, to eliminate security threats that might arise due to lack of, or deficiencies in, a border security system. What precise activities, procedures and actions border security policy constitute, and how the exact level of security is defined and measured, is a matter of different interpretations in respective documents and political entities.

### Defining a border security system by its functions

On the basis of the brief conceptual review above, this article defines ‘border security system’ as an institutional framework designed to implement public policy with the objective of providing border security as a contribution to internal security of a country or territory. It is defined by its (a) objectives, (b) functions and (c) instruments. In order to analyse real life border security systems, all three aspects have to be determined.

The most general objective of any border security system is to control cross-border flow.<sup>61</sup> This control involves the prevention of the

entry of illegal immigrants and illicit materials, as well as detection of crossing of individuals or objects of interest, while allowing for facilitation of legitimate cross-border movement. In the next lines, precise definitions of these terms are provided. 'Flow' is defined as the movement of human individuals or physical objects. 'Illegal migrants' are persons without authorisation to enter or stay in a given territory; such an authorisation can be a valid visa or a residence permit, or a valid travel document, in the case of nationals exempted from visa requirements.

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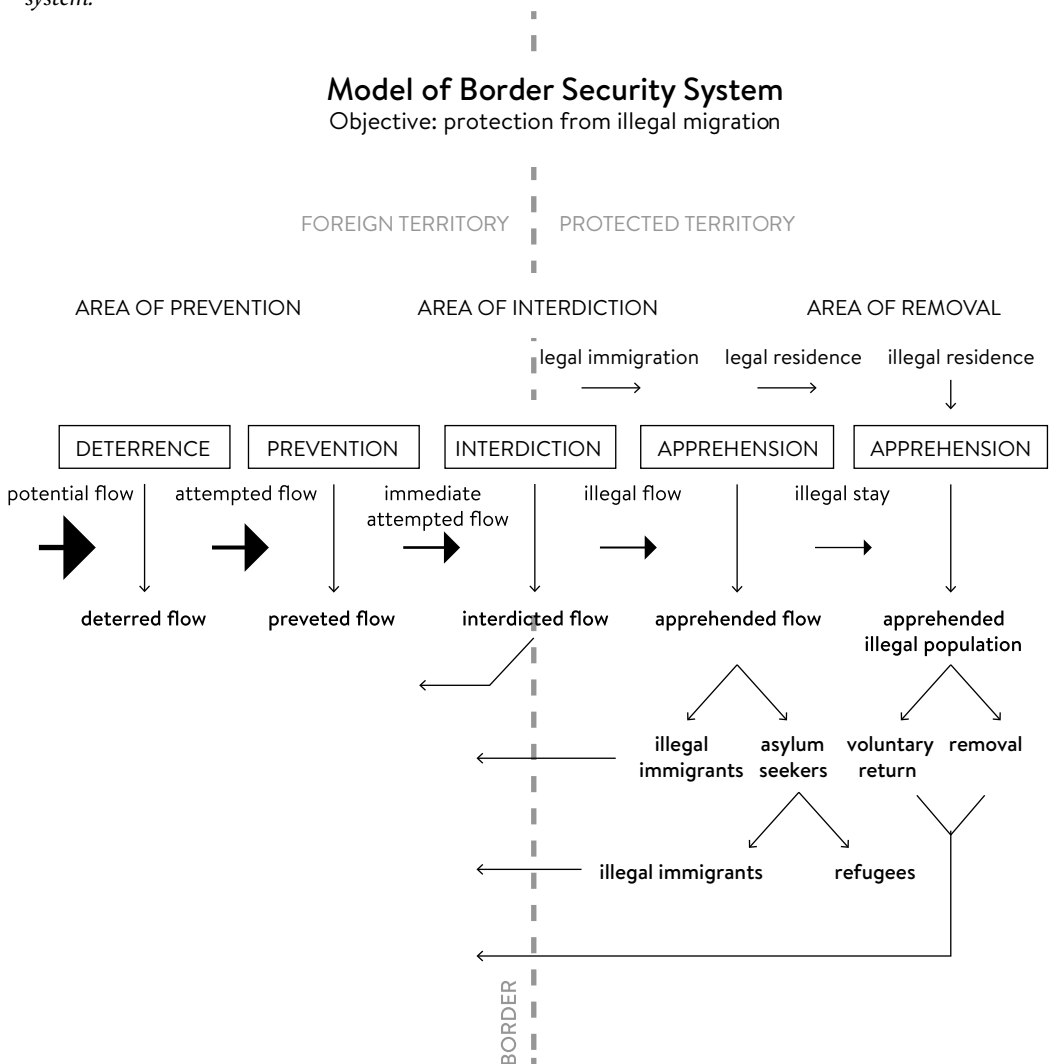
The term 'illegal migrants' has been criticised by some authors and organisations that work with migrants, who prefer the expression 'irregular migrants,' because 'illegal' supposedly 'carries a criminal connotation and is seen as denying migrants' humanity.'<sup>62</sup> However, 'illegal immigration' is commonly used in official legal documents of the EU, including the Schengen Borders Code, and it does not criminalise the migrating person, it only reflects the fact that the individual is acting contrary to the valid law and legal requirements. Moreover, 'illegal migrants' and 'illegal population' are used as technical terms in the fields of economics,<sup>63</sup> migration studies and demography.<sup>64</sup> Therefore, this article uses these terms with the awareness that they are considered controversial and still assumes human beings to have fundamental rights and liberties.

'Illicit materials' are any goods or objects that are forbidden by law to be moved across a border without proper authorisation—the most important examples are illegal drugs, weapons, nuclear material and forbidden plants and animals. A special category of these materials comprise goods which have not been properly declared to customs. The term 'individuals or objects of interest' refers to people or goods which are not prevented by any legal reason from crossing the border, however, they might be on alert lists of security services and their movement across the border check has to be reported. Such individuals may be citizens of the state they are attempting to enter. These can be suspicious persons secretly monitored by the police forces. In the case of objects of interest, we might consider secretly monitored vehicles or other goods.

'Prevention of entry' simply means stopping illegal migrants or illicit goods before they enter the protected territory. This can be realised at a border crossing point, which is usually the only place where the border can be legally crossed, or at any other point on the border. This is

why frontiers are patrolled in their entirety by border and coast guards. Restricting border security to activities conducted by border forces at the actual borders would be too limiting. Real life border security systems, including those of the US, Australia and the UK, conceive of border security more broadly.<sup>65</sup> Building mainly on the border security conceptualisation of Willis et al., which was developed for the US, the following section introduces a general model of border security system defined by its functions.

*Model of border security system.*



The model is based on the assumption that is impossible to stop every illegal immigrant or every piece of illicit material at the border, just as it is impossible to eradicate every illegal behaviour. Theoretically, it is conceivable to adopt measures at borders that would bring the likelihood for successful illegal crossing close to zero; however, this would come at a tremendous cost of both finances and human resources and would hamper all legitimate movement across the border. Societies of liberal democratic political systems are evidently unwilling to pay such a price. Yet, they are also unwilling to accept illegal immigration and imports or threats to internal security such as terrorism and organised crime.

With the intention of simplifying the model, the focus is on the concept of illegal flow and stay, primarily in regards to illegal immigrants, but also to illicit goods and to individuals and objects of interest. ‘Protected territory’ refers to the state or area of a common external border, such as the Schengen Area, which is the jurisdiction of a given border security system. In order to raise the level of effectiveness in the prevention of illegal flow or subsequent unauthorised stay, it is necessary to expand the reach of the border security system beyond the borders, both outside and inside the protected territory. This extends the concept of border security so that it consists of three major objectives: to prevent, stop and remove the illegal flow. Preventive activities take place outside the territory, stopping is conducted at the border and removal is executed from within the protected space. This brings about three distinct areas of border protection: the area of prevention, the area of interdiction and the area of removal. If we expanded the border security system to this level of complexity, it is obvious that no single security agency could be responsible for managing the entire system.

In the area of prevention—whether in the territory of immediately neighbouring countries, in more distant countries or in international waters—two distinct objectives of border security can be realised: (1) deterrence of the potential flow and (2) prevention of the attempted flow. ‘Potential flow’ constitutes all individuals who are considering finding an illegal way into the protected territory and all illegal material that is waiting to be transported. The decision to illegally cross a border is based on many factors including the perceived conditions in the place of origin, transit conditions and desired final destination. ‘If a migrant, drug smuggler, or terrorist believes that the effectiveness of border-security efforts make it too difficult or costly to cross the

border, he or she may be deterred from doing so.<sup>66</sup> Deterrence activities, including information campaigns conducted by consulates of the protected territory and in cooperation with the local authorities, can reduce the number of individuals who attempt illegal crossings. These deterrence methods are not considered actual border protection measures, but can be an important component in reducing the number of attempted illegal border crossings. Those people who change their intent due to such methods constitute the 'deterred flow.' The 'potential flow' minus the 'deterred flow' equals the 'attempted flow.'

However, individuals who have decided to cross over a border illegally can still be prevented from doing so, even before they reach the border. This can be realised by authorities of the neighbouring countries working in close cooperation with the border security services of the protected territory. Neighbouring countries—or even more remote ones—thus contribute to the border security of the protected territory. This can be carried out in the form of advanced security checks on roadways or coastlines and by actively fighting organised networks of illegal migrant traffickers and smugglers. An important role is also played by the consulates and visa procedures of the protected territory. People who have attempted to illegally cross a border but were prevented from doing so are referred to as 'prevented flow.' It should be mentioned that activities that attempt to interdict suspected illegal migrants before an actual border are questionable from both the legal and human rights points of view.

The second phase of a border security system or an area of border protection (area of interdiction) is about the interdiction of the immediate attempted flow—in other words, people (or material) who are actually trying to cross the border illegally. In order to interdict this flow, border security agencies perform border control functions, either at border crossing points or their equivalents, or between the ports of entry in the form of border surveillance. Patrol of the frontier can be realised by members of the border and coast guards, but also using technological devices and equipment such as cameras, sensors or drones. Physical barriers and fences constituted a special category of interdiction. People (or material) who are attempting enter illegally into the protected territory and are successfully stopped compose the 'interdicted flow.'

Search and rescue operations realised at sea are not an intrinsic function of the border security system, although they are very close-

ly linked to the reception of asylum seekers and the apprehension of illegal immigrants is usually conducted by coast guard forces. For example, the US Coast Guard, which carries out search and rescue operations, explicitly contributes to the US border security system, while the UK Maritime and Coastguard Agency, also responsible for the safety of sea vessels, is not considered part of border security.<sup>67</sup> In general, we could say that search and rescue is rather a function of the maritime safety system based on international law, rather than an essential component of border security.

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The third phase of border security is realised in the ‘area of removal,’ or within the space of free movement, and is concerned with the detection, apprehension and return of illegal individuals, or with the confiscation or destruction of illicit goods. Those individuals (and objects) that successfully make it across the frontier and enter the protected territory make up the ‘illegal flow.’

It is debatable to what extent law enforcement activities within the interior of the territory that is focused on the apprehension of people without valid stay permission can be considered a phase of the border security system. However, there are two good reasons supporting the inclusion of these functions. First, we know empirically that responsibility for coordinating return operations is entrusted to border security agencies, be it US Immigrations and Customs Enforcement, the Australian Border Force or Frontex. The second reason is conceptual: Since it is established that it is impossible to entirely eliminate irregular immigration and transport and there will always be a certain level of illegal flow, it is necessary that the border security system extend its activities to inside the protected territory. Moreover, a high level of detection, apprehension and removal of illegal immigrants has a tremendous deterrent effect on potential unauthorised migrants, if communicated properly. This also applies to the category of people known as ‘over-stayers,’ people who immigrated legally, but whose visa or residence permits have expired. Their knowledge of the effectiveness of immigration rules enforcement has an impact on their motivation and behaviour. It is therefore reasonable to consider enforcement activities within the territory as part of the border security system.

The activities of a border security system’s agencies in the area of removal is more complex. When individuals who are part of the illegal flow are detected and apprehended, there are different procedures for those applying for asylum versus those that aren’t. If an asylum appli-



cation is found admissible, the seeker is treated according to procedures consistent with the valid law, which differs by country, though it is based on the Geneva Convention. If an asylum application is rejected or found inadmissible, the seeker is subject to return or deportation, the same as illegal immigrants. Therefore, the apprehended flow consists of illegal immigrants and asylum seekers, who are then divided between successful applicants, who are granted some kind of international protection, and rejected applicants, who are subject to removal.

A distinction should also be made between those who arrive to the protected territory without prior authorisation ('illegal flow') and those who become part of the illegal population after their visa or residence permit expires, even though they arrived legally and were never part of the illegal flow. Conceptually, illegal immigrants who manage to stay in the territory longer than three months and those whose asylum applications were rejected and yet remain in the territory become part of the illegal population. The number of individuals who reside in the territory illegally and are detected and caught constitute the 'apprehended illegal population.'

To sum up, there are six distinct primary functions of a border security system. First, in the area of prevention, there is (1) deterrence of the potential flow and (2) prevention of the attempted flow. Second, in the area of interdiction there is (3) interdiction of the immediate attempted flow at the borders, either at border crossing points or in between them. Finally, in the area of removal, there is (4) apprehension of the illegal flow and (5) apprehension of the illegal population for the purpose of (6) removal of these unauthorised immigrants or residents outside the protected territory. There are also secondary functions of the border security system, such as notifying security services about individuals and objects of interest, receiving asylum seekers, facilitating legitimate movement and trade across the border and providing intelligence based on the execution of the primary functions.

## Conclusion

The dramatic upsurge of illegal immigration to the European Union is a test of the functionality of the Schengen Border Security System. The question remains how to analyse, measure and subsequently improve this functionality. For that, it is necessary to devise an applicable framework for analysis as well as a conceptual structure for EU poli-

cymaking. Neither of these can be provided by the concept of EU Integrated Border Management. Therefore, this article argues that the concept of a border security system defined by its functions—which can be analysed, measured and improved—should be adopted by the EU.



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