

Fundamental rights at land borders: findings from selected European Union border crossing points

Summary



The Charter of Fundamental Rights of the European Union sets out rights that are of particular relevance during border checks, the most important of which are human dignity (Article 1); the prohibition of torture and inhuman or degrading treatment or punishment (Article 4); the prohibition of trafficking in human beings (Article 5); the right to liberty and security (Article 6); the right to asylum and protection in the event of removal, expulsion or extradition (Articles 18 and 19); non-discrimination (Article 21); the rights of the child (Article 24); the right to good administration (Article 41); and the right to an effective remedy (Article 47).

Millions of persons enter the European Union (EU) every year by land. At the borders, they are subject to checks. The authorities of the country they are leaving check them first, followed by those of the EU Member State they are entering. Checks cover persons as well as goods. The European Union Agency for Fundamental Rights (FRA) examined compliance with fundamental rights at land border crossing points (BCPs) when EU Member States check whether a passenger has the right to enter their territory.

In addition to the EU Charter of Fundamental Rights, fundamental rights safeguards relating to border checks are also spelled out in secondary EU law, particularly in the Schengen Borders Code, as well as in the EU asylum *acquis* and in other regulations and directives.

Border checks on persons carried out at EU external borders may be divided into two stages: every person undergoes a **first-line check** to verify entry requirements. As a general rule, persons may remain

inside their vehicle during such checks, unless circumstances require otherwise. At land and sea borders, Article 9 of Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community code on the rules governing the movement of persons across borders (Schengen Borders Code) encourages the creation of separate lanes, either designated for the EU, the European Economic Area (EEA) and Swiss nationals, or for travellers from other countries. If a more thorough verification is required, a passenger is referred for a **second-line check**, usually carried out in special rooms or offices. After a first- or a second-line check, travellers may be allowed to enter the country or be refused entry and told to return to the country from which they came.

Under EU law, on entry, third-country nationals must be subject to thorough checks, as described in the Schengen Borders Code. Nationals of the EU, the EEA and Swiss citizens usually undergo only a minimal check. The same applies to their family members, whatever their nationality. FRA research reviewed existing procedures and practices to identify whether third-country nationals are treated in accordance with applicable fundamental rights standards.

The resulting full report and this summary are part of the project on the treatment of third-country nationals at the EU's external borders included in FRA's 2010–2012 work programmes. They complement a report on the situation at Europe's southern sea borders (March 2013) and another on border checks at international airports (November 2014) (see 'Further information' box).

This FRA summary describes fundamental rights challenges relating to checks at official land BCPs. It does not deal with the situation of persons who

Data collection and coverage

The report examines the findings from research carried out at the following six land BCPs (Figure 1):

- El Tarajal at the Spanish–Moroccan border and Ceuta ferry port;
- Kapitan Andreevo/Kapikule at the Bulgarian–Turkish border (Kapitan Andreevo);
- Kipi/Ipsala at the Greek–Turkish border (Kipi);
- Medyka/Shegyni at the Polish–Ukrainian border (Medyka);
- Rösztke/Horgoš at the Hungarian–Serbian border (Rösztke);

- Vyšné Nemecké/Užhorod at the Slovak–Ukrainian border (Vyšné Nemecké).

In addition to the desirability of maintaining geographical spread, the BCPs were also chosen for their relevance as major land BCPs within their EU Member States and because different categories of traffic were represented at them. Table 1 shows the number of persons who have used the BCPs covered in this report to enter the EU in recent years.

Figure 1: BCPs examined



Note: The report deals only with border controls on the EU side of the border.
Source: Frontex, 2014

Table 1: Number of travellers entering at border crossing points

BCP	2011		2012		2013	
	Total	Third-country nationals	Total	Third-country nationals	Total	Third-country nationals
El Tarajal*	n.a.	n.a.	5,225,041	4,851,733	6,451,547	6,052,936
Kapitan Andreevo*	1,457,214	1,005,193	1,451,451	1,173,406	1,310,380	1,185,122
Kipi	726,986	277,824	745,848	318,527	852,639	389,011
Medyka	2,092,825	1,747,562	2,354,327	2,063,869	2,549,011	2,238,872
Rösztke	2,748,559	1,495,161	2,918,820	1,668,843	3,051,031	1,734,336
Vyšné Nemecké	538,117	328,863	556,004	353,407	571,554	392,627

Notes: * For Bulgaria and Spain, the figures listed under 'Third-country nationals' also include nationals from other EU Member States and Schengen associated countries (Iceland, Liechtenstein, Norway and Switzerland).
n.a. = not available.

Source: FRA, based on figures provided by national border management authorities, 2014

The FRA report is based on the findings from research carried out at six land BCPs, all of which are located on major roads entering the EU. None of the BCPs covered had shared BCPs, where officers of the authorities of the EU Member State and the neighbouring third country work together.

The research was carried out in 2012 and included desk research and non-participant observation, as well as qualitative and quantitative interviews with:

- border guards, including a survey of 208 front-line officers (158 men and 45 women; five respondents did not record their sex in the questionnaire) and semi-structured interviews with 30 mid-level officers, primarily shift leaders;
- semi-structured interviews with 119 third-country nationals who were selected following a short questionnaire with 579 travellers stopped at first-line checks; and
- semi-structured interviews with 56 other stakeholders, such as academics, non-governmental organisation (NGO) representatives, journalists, lawyers, employees at BCPs (e.g. waiters and cleaning staff) and some interest groups such as bus and truck drivers.

The research findings have to be read taking into account the size differences among the six BCPs and the legal regime applicable at El Tarajal (the Schengen Borders Code is not applied to Moroccans from Tétouan who remain in the enclave). The findings cannot be applied automatically to other land BCPs, although a number of considerations may also be relevant to other BCPs. As the research draws significantly on qualitative semi-structured interviews, the findings reflect personal experiences, and the persons interviewed did not systematically raise the same issues or provide the same degree of detail at all the BCPs.

The results of the surveys with travellers and with front-line border guards cannot be considered representative because of the sample sizes, which were, overall, small. The tables displaying survey results in the report thus also include precise numerical values. The results have, nevertheless, helped to pinpoint fundamental rights issues that affect travellers during border checks and shed light on how to integrate fundamental rights obligations into various operational tasks.

cross the land border in an irregular manner outside a BCP, for example in a forest or field, a so-called green border. The majority of irregular border crossings or border crossing attempts take place at such green borders. The 2011 FRA report on *Coping with a fundamental rights emergency: the situation of persons crossing the Greek land border in an irregular manner* illustrates the serious challenges relating to deprivation of liberty, access to asylum and

respect for the principle of *non-refoulement* that persons crossing the green border in an irregular manner may face. Whereas several international organisations and non-governmental organisations (NGOs) have analysed the fundamental rights situation of persons apprehended after an irregular green border crossing, there is limited literature that looks at respect for fundamental rights during border checks at regular crossing points.

This FRA research also does not cover checks on goods carried out by customs officials or checks undertaken for sanitary or public health reasons. As customs checks may also affect travellers' fundamental rights, they should be the subject of future research.

The research findings serve to inform practitioners as well as policymakers at EU level and in Member States of possible fundamental rights challenges that can emerge at land BCPs. By increasing their awareness, it intends to enhance fundamental rights compliance at the EU's external borders.

Key findings and evidence-based advice

From a fundamental rights point of view, the situation at land BCPs has received less attention than those at Europe's southern sea borders and the green border, where migrants' lives are at risk and where human rights actors regularly report violations of the principle of *non-refoulement*.

Although the field research showed that border checks are, overall, conducted routinely and take place without incident, a number of challenges do affect travellers' fundamental rights. They range from disrespectful treatment to a lack of protection of children from possible abuse or the non-identification of persons in need of protection. Such challenges must not be neglected. First, there is a need to disseminate and, where appropriate, duplicate promising practices for managing interactions with travellers and to adapt procedures to promote full compliance with fundamental rights. Second, gaps should be addressed through a concerted effort by all actors.

At EU level, this means that all EU action to support Member States in the field of border management, be it operational support, exercising oversight functions or providing funding, should promote compliance with fundamental rights as a core objective. This would also contribute to creating a shared understanding among border guards of what fundamental rights obligations mean for their daily work.

A stronger role for Frontex

Frontex, the EU agency set up to support Member States in border management, plays an important role in shaping this common understanding. Through its training activities and the provision of guidance and best practices, as well as the operational support it offers to Member States, it can encourage practices which better promote the fundamental rights of travellers and discourage those which increase the risk of fundamental rights violations. Frontex has developed a number of tools which promote fundamental rights in the daily work of border guards; however, up to now, there has been no specific document providing guidance for the particular issues that emerge at land BCPs.

FRA opinion

The operational support Frontex provides to Member States can be an important first avenue to assist staff working at BCPs in addressing many of the challenges this report describes. Building on this report's findings as well as on the experiences of border guards deployed at BCPs, Frontex is encouraged to draw up specific guidance for land BCPs, including suggestions on how to deal with the challenges that affect the fundamental rights of travellers. FRA stands ready to support such an initiative.

Enhance fundamental rights compliance through Schengen evaluations

The Schengen evaluation system is another important instrument for upholding fundamental rights at BCPs. Such an evaluation and monitoring mechanism has been set up to verify the application of the Schengen *acquis* in those EU Member States and Schengen associated countries which are part of the Schengen area. The Schengen governance system, as revised in 2013 through Regulation (EU) No 1053/2013, has a greater focus on fundamental rights. It requires that evaluations pay particular attention to fundamental rights (Recital 14). Evaluations are carried out by experts from the European Commission, relevant EU agencies and Member States according to a multiannual programme, although unannounced visits are also possible. Evaluations cover all aspects of the Schengen *acquis*, with border management a central component.

FRA opinion

All actors involved in Schengen evaluations should contribute to the mainstreaming of fundamental rights into the evaluation process. The European Commission, which is in charge of Schengen evaluations, and Frontex, which is responsible for the training of experts carrying out those evaluations, are encouraged to continue to make full use of the expertise FRA can offer in line with its mandate and within the limits of its resources.

Treatment with dignity

Border checks on persons may be divided into two stages. First, every person undergoes a first-line check to verify entry requirements. If a more thorough verification is required, the passenger is referred for a second-line check, usually carried out in special rooms or offices. Overall, the research shows that most border checks are conducted routinely and take place without incident. However, there are a number of challenges which affect the fundamental rights of travellers.

At borders, persons must be checked in a manner which respects human dignity, regardless of the volume of traffic or the behaviour of the travellers. The field research shows that, whereas most checks are conducted in a respectful manner, instances of disrespectful conduct or the use of inappropriate language towards travellers took place at all BCPs examined, although to varying degrees. Language obstacles may prevent effective communication with travellers, particularly at some BCPs. Interpretation arrangements at BCPs are typically ad hoc. Most border guards rely on the help of colleagues or even other persons crossing, which could potentially lead to misinterpretation or interference with the privacy of the person undergoing the check.

“Well, I do not really speak Arabic, let’s say that I can manage [...]. There are several shifts with Muslim police, so that is very helpful. Then [...] we often ask the cleaning ladies to give us a hand [...]. And in the worst situation, any passenger at the border, one of the Muslim Spanish who are crossing, we asked them to give us a hand many times [...] and we do that too often. The ideal would be to have an interpreter here. [...] There are interpreters in the central police station, so we can phone the interpreter there, ‘Hey, please, tell this person this and this.’”

(Shift leader, El Tarajal)

Some BCPs have established special procedures for checking vulnerable persons (for example, not requiring passengers with reduced mobility to get off the bus on which they are travelling). Others have not, making the treatment of vulnerable persons dependent on the sensitivity of individual border guards. When persons are waiting between different checks, which can take hours, water, basic food and toilets are not accessible at all BCPs.

Very few travellers file complaints concerning treatment by border guards. Although in theory they may file a complaint about inappropriate conduct by border guards at all BCPs, information on complaints is not easily available. Aside from judicial procedures, complaint mechanisms are usually managed by the authority in charge of border management, raising questions about their objectivity and impartiality.

FRA opinion

Member States should further promote basic and advanced foreign language skills by offering staff training opportunities and incentives. Emphasis should be placed on languages that border guards are most likely to use for their work, particularly English and the languages of the relevant neighbouring countries, especially when these are distinctly different from the border guards’ native languages. The Frontex advanced English-language tool for airports should be adapted for use at land BCPs and widely disseminated.

Member States that do not yet have them should consider setting up sustainable arrangements for effective interpretation, including by telephone or videoconference, to facilitate communication with travellers who speak less frequently encountered languages, thus avoiding ad hoc language solutions that carry undue risks. The use of suitable information technology tools to bridge interpretation gaps could also be explored.

Member States should take effective disciplinary or other appropriate measures to address serious forms of disrespectful conduct. They should ensure that all border guards receive regular refresher training on respectful and professional treatment of travellers. The training should stress the importance of remaining polite and formal in all situations, and pay attention to cultural and language differences when communicating with travellers. Such matters should also be discussed in regular briefings at individual BCPs.

Member States should put in place protocols to ensure that border checks take into account the special needs of vulnerable passengers, such as persons with reduced mobility.

Member States should instruct border guards to inform all those persons who undergo a thorough check about the possibility of complaining about inappropriate border guard treatment and, in such cases, offer effective complaint mechanisms.

Member States’ authorities working at BCPs should regularly review whether travellers’ essential needs are met. If gaps appear, they should adapt their procedures and BCP infrastructure to ensure that travellers can easily access water, sanitary facilities, emergency healthcare and, in case of a prolonged stay at the border, adequate food.

Procedural safeguards during checks: information provided to travellers

Travellers who are referred for more thorough second-line checks often do not receive information on the purpose of and procedure for the detailed check. Although standard forms have been developed for this purpose at four of the six BCPs examined, during the field visits it was observed that at one BCP they were not handed out systematically. Those refused entry are informed of this decision through the standard form annexed to the Schengen Borders Code – the EU legal instrument regulating border controls – but not necessarily in a language which the passenger can read. Information on the possibilities for legal assistance is not usually given, making it very difficult to appeal a refusal of entry before being returned.

FRA opinion

Member States should ensure that persons subjected to second-line checks and refused entry at their BCPs are provided with the information required by Articles 7(5) and 13(2) of the Schengen Borders Code. Proactive measures should be taken to provide information on where to find legal advice on challenging a refusal of entry, by sharing lists of lawyers with refused travellers or by posting such lists at visible points.

Treatment of children during checks

The Schengen Borders Code requires border guards to pay particular attention to children, whether they are travelling accompanied by an adult or not. This includes verifying parental care of the persons accompanying the child or parental consent if the child is travelling alone. Accompanied children play a rather passive role during border checks; virtually all interaction is with the accompanying adults, which reduces the possibility of identifying children at risk of, for example, being trafficked. Unaccompanied minors without documents are rare at land BCPs. When they do turn up, procedural steps, including age assessment tests, are often carried out without the presence of a temporary guardian or legal representative. Specific training on the protection of children is not yet available to all BCP officers, although many would welcome such training.

FRA opinion

Border guards should consider speaking to children at first-line checks as a proactive measure to identify children at risk of violence or abuse, including abduction. Border guard awareness of child protection should be enhanced, including through a systematic dissemination of Frontex's Vega children handbook – a tool for identifying children at risk – which could be adapted to land borders. Training opportunities should be offered, where possible, in collaboration with organisations specialising in child protection.

Access to asylum

The number of asylum applications at land BCPs is extremely low, although this changed in Poland after the civil unrest in Ukraine in 2014. Typically, however, it is difficult for undocumented persons coming from further afield to reach the EU border; they would not normally be allowed through the checkpoint of the neighbouring third country. Visible information on asylum is mostly lacking. Except in Poland, border guards have limited experience with asylum applications. At the first-line check, no substantial efforts are usually made to identify persons seeking international protection. Such cases would be addressed only if these persons explicitly declared that they were seeking protection.

"In case of potential asylum seekers, unless they declare that they are seeking asylum, the border guards have no responsibility in assessing him/her as a potential asylum seeker [...]" (Shift leader, Röske)

FRA opinion

At BCPs, Member States should display information on international protection at visible points and in a variety of languages. This is particularly important at BCPs where risk analyses indicate possible arrivals of asylum seekers and at all BCPs for all persons undergoing a second-line check. Whenever there are indications that a passenger may be in need of international protection, under Article 8 of the Asylum Procedures Directive (2013/32/EU) border guards must provide the person with relevant asylum information.

The European Asylum Support Office (EASO) and Frontex should develop tools to support border guards in identifying travellers in need of international protection. Such tools should build on the practical experience of Member States and globally of the United Nations High Commissioner for Refugees (UNHCR), which should be associated with this process.

Identification of presumed victims of trafficking in human beings

Identifying potential human trafficking victims at BCPs is difficult. Tools developed at EU level to help border guards recognise signs of human trafficking remain little known among front-line border guards, who see the identification of victims of human trafficking as a peripheral task. At the first-line check, no substantial efforts are usually made to identify potential victims of human trafficking. Such cases would be addressed only if these persons explicitly declared that they were victims of trafficking.

“We have not had a single case of human trafficking over the seven years that I’ve been here.”

(Shift leader, Kipi)

FRA opinion

Member States should ensure proactive dissemination and promote systematic use of tools developed at European and international level to assist border guards in identifying victims of trafficking in human beings.

Frontex should ensure that border guards use its anti-trafficking materials more systematically. They should target front-line officers deployed at BCPs, and especially those deployed within Frontex-coordinated operations.

The Europol-coordinated European Multidisciplinary Platform against Criminal Threats (EMPACT) is an opportunity to enhance Member States’ capacity to identify and protect suspected victims of trafficking at national level. Member States are encouraged to make full use of the opportunities offered by the project to enhance the capacity of BCPs to identify victims. They could, for example, make BCP staff aware of recent trends and provide feedback on the effectiveness of past BCP actions.

Deprivation of liberty at land borders

At land BCPs, non-admitted persons are either asked to return to the neighbouring country or accompanied back by border guards. If they need to be temporarily held, this is usually only for a short period, generally not exceeding 24 hours. Suspected criminal activity is the main reason for depriving a passenger of his or her liberty at the BCP, although persons may also be held for immigration or public health reasons.

Some BCPs have locked rooms where travellers can initially be held if criminal proceedings are initiated against them or when non-admitted persons cannot be immediately handed over to the neighbouring country from which they came. Such detention facilities are usually very basic and not equipped for overnight stays, although legally persons could be held there for several hours. Persons who need to be held for longer are transferred to other facilities.

FRA opinion

Where holding rooms exist at BCPs, Member States should ensure humane conditions and meet basic needs. They should make arrangements for food, water and toilets to be accessible to those held, and there should be rest facilities for those kept overnight. Persons suspected of criminal activity should be kept separate from persons held for immigration reasons.



The situation at land border crossing points into the EU has received less attention than Europe's southern sea borders, where migrants' lives are at risk. Although FRA research shows that land border checks of third-country nationals are generally conducted routinely and take place without incident, a number of challenges affect travellers' fundamental rights. These range from disrespectful treatment to the failure to identify persons in need of protection. Such challenges must not be neglected. Together with two FRA sister reports on the EU's air and southern sea borders, this summary, and the related full report, serve to inform EU and Member State practitioners and policymakers of fundamental rights challenges that can emerge at land borders. Increased awareness should also help to create a shared understanding among border guards of what fundamental obligations mean for their daily work, ultimately enhancing fundamental rights compliance at the EU's external borders.

Further information

For the full FRA report on border checks at land borders – **Fundamental rights at land borders: findings from selected European Union border crossing points** (2014) – see: <http://fra.europa.eu/en/publication/2014/fundamental-rights-land-borders-findings-selected-european-union-border-crossing> (English).

For the full report on border checks at airports – **Fundamental rights at airports: Border checks at international airports in the European Union** (2014) – see: <http://fra.europa.eu/en/publication/2014/fundamental-rights-airports-border-checks-five-international-airports-european> (English).

For the summary on airports – **Fundamental rights at airports: border checks at five international airports in the European Union: Summary** (2014) – see: <http://fra.europa.eu/en/publication/2014/summary-fundamental-rights-eu-international-airports> (English, French).

For the full report on sea borders – **Fundamental rights at Europe's southern sea borders** (2013) – see: <http://fra.europa.eu/en/publication/2013/fundamental-rights-europes-southern-sea-borders> (English).

For the summary on sea borders – **Fundamental rights at Europe's southern sea borders: Summary** (2013) – see: <http://fra.europa.eu/en/publication/2013/fundamental-rights-europes-southern-sea-borders-summary> (English, French, German, Greek, Italian and Spanish).

For the report on EU solidarity and Frontex – **EU solidarity and Frontex: fundamental rights challenges** (2013) – see: <http://fra.europa.eu/en/publication/2013/eu-solidarity-and-frontex-fundamental-rights-challenges> (English).

See also:

- FRA-ECtHR, **Handbook on European law relating to asylum, borders and immigration** (2013), <http://fra.europa.eu/en/publication/2013/handbook-european-law-relating-asylum-borders-and-immigration> (available in several EU languages);
- FRA, **Coping with a fundamental rights emergency – The situation of persons crossing the Greek land border in an irregular manner** (2011), <http://fra.europa.eu/en/publication/2011/coping-fundamental-rights-emergency-situation-persons-crossing-greek-land-border> (English).

An overview of FRA activities on asylum, borders and migration is available at: <http://fra.europa.eu/en/theme/asylum-migration-borders>.



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