

Fundamental rights at airports: border checks at five international airports in the European Union

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 right to liberty and security (Article 6); respect for private and family life (Article 7); the protection of personal data (Article 8); 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 a good administration (Article 41), and the right to an effective remedy (Article 47).

International airports are the biggest entry point for third-country nationals into the European Union (EU). More than 100 million third-country nationals arrive annually at five of the EU's largest international airports: Charles de Gaulle-Roissy airport in Paris (France), Fiumicino in Rome (Italy), Frankfurt Airport in Frankfurt am Main (Germany), Manchester Airport in Manchester (United Kingdom) and Schiphol in Amsterdam (the Netherlands). The European Union Agency for Fundamental Rights (FRA) report on *Fundamental rights at airports: border checks at international airports in the European Union* and this summary examine the treatment of third-country nationals during entry checks to the EU at those airports. They focus on the tasks of border guards and aim to give visibility to the fundamental rights issues that emerge in the context of entry checks, which have so far received little attention. The reports result from the FRA project on the treatment of third-country nationals at the EU's external borders included in its 2010–2012 work programmes.

The majority of the third-country nationals who arrive are admitted to the EU, although some only after undergoing extended second checks. Others may be in need of international protection and referred to protection services. A small number are rejected after a detailed check of the entry requirements. They may be held in transit or special facilities until all issues are verified, the decision to refuse entry is final and a return flight is available.

The EU Charter of Fundamental Rights sets out several rights that are relevant during various stages of border checks. They include the right to human dignity, the prohibition of torture and inhuman or degrading treatment or punishment, the right to liberty and security, the respect for private and family life, the protection of personal data, the right to asylum and protection in the event of removal, expulsion or extradition, non-discrimination, the rights of the child, the right to a good administration, and the right to an effective remedy. Many of these rights are also to be found in the European Convention on Human Rights (ECHR) and human rights instruments adopted at the United Nations level. EU and national legislation regulating border checks further detail fundamental rights obligations linked to border control tasks. Although EU law only applies in part at Manchester airport, fundamental rights remain guaranteed under the national law of the United Kingdom and of the human rights conventions to which it is a party.

Since fundamental rights compliance is part and parcel of the Schengen *acquis*, it must also be subject to regular Schengen evaluations. The meaning of fundamental rights obligations in relation to specific operational tasks, however, is not always clear. This summary report examines how fundamental rights obligations translate into practical border management tasks at airports. It points out challenges

as well as promising practices of integrating fundamental rights compliance into operational tasks that do not compromise but instead enhance the effectiveness of border checks.

The report and this summary look at fundamental rights at all stages of border checks: pre-border

checks based on information provided by airlines in advance of arrival, checks at the gate or on the aircraft upon arrival, first-line checks verifying the validity of compliance with entry requirements and second-line checks in case more thorough verification is needed.

Data collection and coverage

The following findings are based on fieldwork, including a questionnaire and interviews with third-country national passengers, border guards and other stakeholders, in addition to non-participant observation and desk research.

FRA contracted a research consortium, led by the International Centre for Migration Policy Development (ICMPD), to carry out most of the fieldwork. The consortium administered 274 questionnaires to third-country nationals who were subjected to second-line checks as they transited through or arrived at the airports (110 women and 164 men). It carried out 92 qualitative interviews of varying length with third-country nationals subjected to second-line checks (59 men, 32 women, one transgender), including 19 asylum seekers. It also conducted 28 qualitative interviews with border guard shift leaders and 40 qualitative

interviews with other stakeholders, such as airport companies or airport health services. The FRA administered 223 questionnaires to border guards (164 male and 59 female officers) and observed border checks. All fieldwork took place in 2012. Based on the initial reports provided by the contractor, which FRA reviewed and consolidated, FRA prepared a comparative report. Frontex, the EU agency charged with coordinating and developing European border management, also supported the research.

Due to the overall low sample sizes, the research results cannot be considered representative. The results have, however, been useful in pinpointing fundamental rights issues that may impact on passengers during airport border checks. Comparability is further limited as FRA was not allowed to interview passengers at Manchester airport.

Key findings and evidence-based advice

Human dignity

Passengers' dignity may be affected at several stages of the border check by the interaction with border officers and the facilities. In particular, searches can directly affect human dignity and possibly amount to degrading treatment if they are insufficiently justified or carried out unprofessionally. Passengers may have to spend several hours, and in exceptional cases days, at the airport for immigration procedures, depending on the number and complexity of issues to be verified. During this time, they must have regular access to food, water and a place to rest, also if they lack sufficient means.

Facilities

At some airports, inappropriate office conditions, resulting from insufficient office space, equipment or lighting, were found to discourage professional and

respectful behaviour, which the Schengen Borders Code requires from border guards. Where verification of entry requirements requires an exchange with other agencies, their location near airport immigration offices would accelerate procedures.

While waiting for first- or second-line checks, passengers are often confined to areas that lack direct access to toilets and water. In such cases, access depends on the responsiveness of border guards and may require escorting. If access is not facilitated or stays become extended, such conditions may adversely affect dignity. Facilities for personal hygiene and resting in transit areas are usually limited unless passengers can pay for them.

Special holding rooms for non-admitted passengers located within the airport usually lack showers and beds, and are inadequate for hosting families. Efforts to ensure that child-friendly areas respecting children's rights are available need to be increased.



Although the research did not systematically assess the respect of human dignity in short-term holding facilities connected to airports, it noted that the facilities for men and women are not always separate and that the facilities for children are limited in some cases.

Conduct

Border guards at all airports receive instructions on professional and respectful treatment. Some passengers, nevertheless, expressed dissatisfaction with incidents of unhelpfulness, non-responsiveness and verbal aggression. Language training has been subject to budget cuts affecting border guards at most airports, although improving officers' ability to communicate with passengers might help to ensure a correct initial referral of passengers and avoid unnecessary second-line checks. A number of officers considered the means available to them to resolve situations involving aggressive passengers as unsatisfactory.

Searches

Passengers may be searched at different stages of immigration procedures at airports. At EU level, little guidance exists for searches carried out for external border control purposes.

National law defines the rules for searches for immigration purposes. These laws leave the need

for a search to border guards' discretion. At some airports, the research detected a higher occurrence of searches.

Searches carried out during second-line checks or prior to placement in a holding facility appear generally to be justified and conducted professionally. This is not the case where persons are searched to an invasive extent without prior gradual escalation or are searched routinely and repeatedly while held by the police. Security reasons cannot automatically justify the removal and inventorying of all personal belongings. Strip searches must be a last resort and be proportionate in line with the strictly defined conditions applied to criminal offenders in this respect. Shortcomings could be identified with regard to the availability of facilities that ensure privacy, proper regard to sensitivity and information provided to passengers. Guidance regarding transgender persons is typically lacking.

Food and water

In case of non-admission, the airline responsible covers or can be charged with the costs related to food and beverages. If the airline is unknown, as the passengers either conceal or do not know how they arrived, or the check is taking a long time, the authorities are ultimately responsible for ensuring basic subsistence through other mechanisms. Officers may not have an adequate or any budget for these expenses. Existing rules concerning food arrangements are not always clear and appear to be implemented inconsistently in some cases.

FRA opinion

Border management authorities should ensure that adequate office space and waiting areas are available to facilitate the professional conduct of border checks. EU Member States may also remind airport companies in this respect that the impression of an airport hinges on passengers' first contact and experience with the authorities and encourage them to take fully into account the infrastructural needs for border checks based on EU requirements when planning premises. Where passengers are confined to transit areas for immigration reasons, border management authorities are encouraged to extend their cooperation with airport companies to ensure that adequate overnight facilities are available or, in case of emergency, field beds are distributed. Holding rooms at the airport should accommodate men and women in separate wards and need to be appropriate for families.

Border management authorities should clearly define 'professionalism' of interaction with passengers, which should be understood to include, at a minimum, respect and responsiveness to passenger questions. Such 'professionalism' should be included in training courses, in line with the subjects on professional ethics reflected in the Common Core Curriculum, the common standards for basic training of border guards prepared by Frontex (Chapter 1.6), and considered a criterion for promotion. Existing guidance on professional conduct of border checks should be implemented. To further encourage professional conduct in difficult situations, border management authorities may consider revising instructions and training on effective de-escalation.

In line with Article 15 (1) of the revised Schengen Borders Code, border management authorities are encouraged to maintain or increase offers of foreign language courses, including by promoting the use of the Frontex English-language self-study tools, in order to better enable officers to resolve cases early on, respond to questions and effectively identify protection needs.

Where rules for searches during second-line checks or prior to placement in a holding facility are not specifically defined, EU Member States are encouraged to formulate further guidance, including at least the same safeguards that apply to searches of suspected criminals. Border management authorities should ensure that searches of persons are carried out by same-sex officers and in a gender-sensitive manner. Although superficial safety checks may not have to be carried out by an officer of the same gender, as a good practice, border management authorities should encourage officers' sensitivity to passengers' concerns and ensure that separate facilities are available and sufficient women officers are on duty and trained in conducting searches. Before undergoing a search, passengers should receive an explanation of the procedure and, unless a crime is being investigated, the purpose of the search. Border guards carrying out searches for immigration purposes should receive training and practical guidance on the proportionality, incremental escalation and conduct of such searches, including gender sensitivity, in line with the Common Core Curriculum.

Arrangements need to be in place for persons who remain in transit zones for longer to provide food, water and hygiene items when these are not covered by the airline. Food provided should be culturally appropriate and take into account possible health needs. Information should be given about arrangements for food and water at the beginning of a second-line check or upon request. Border guards should respond to and accommodate requests for food and water to the extent possible and ensure access to toilets.

Non-discrimination

Prior to arrival, a risk analysis focusing on irregular migration and criminal activity plays a central role in determining whether or not border guards will subject a flight or a particular passenger to more thorough checks at the gate and/or first line. As described in the section on data protection, before the landing, border guards receive from the airline a list of passengers and their personal data. Such information is used to determine who may need further checks upon arrival. The risk analysis considers data from several sources, consolidated at national or EU (Frontex) level and covers multiple criteria, but these are not strong on risk factors indicating international protection needs. Flights from high-risk destinations frequently, however, also carry passengers needing protection.

At the first line, behavioural analysis while passengers approach the counter and during the check is a key factor for deciding to select individual passengers for more detailed, second-line checks. Ethnicity and nationality are important additional criteria, but are not necessarily more important than the destination and place of embarkation.

While systematic discriminatory patterns of profiling were not noted, some incidents of possible discriminatory treatment were observed and passengers said they perceived discrimination during second-line checks. The latter may be linked to insufficient information provided on the purpose and procedure of the check.

FRA opinion

Schengen evaluations should consider whether risk analyses are based on unlawfully discriminatory processes by examining whether or not they are based on factual evidence. To ensure correct referrals, risk factors indicating protection needs, in addition to the current focus on irregular migration and criminal activity, should be integrated into risk analyses. Shift leaders should help border guards to objectify their intuition, and evaluate and retain the usefulness of their experience in regular debriefings. Where profiling rules are used to identify possible facilitators or other potential criminal offenders, these should be targeted, specific, proportionate and fact-based, in other words based on educated assumptions derived from experience. They should be subject to regular reviews to ensure that they remain justified for the specific crime they are aimed to combat.

Border management authorities should encourage the use of training material on non-discriminatory ethnic profiling, as contained for example in the Frontex Common Core Curriculum.

To avoid discriminatory treatment or the perception of it, border guards should always explain the grounds for further checks to passengers. Border guards should be trained to do this in a manner that does not undermine a possible start to criminal investigations.

Access to protection

While verifying entry requirements, officers are in a position to identify legally stipulated protection needs requiring an initial passenger registration and referral.

Identification efforts appear to be most successful if pursued proactively at all stages of the border check, guided by standard procedures, following specific training and with the support of specialised teams within a realistic timeframe. Constraints relate to a low prioritisation of tasks related to identification and referral, insufficient assessment of individual circumstances, lack of training and lack of flexible (or any) identification procedures.

The FRA research shows that 41 % of border guards do not generally speak to all third-country national passengers during the first-line check. Not all of these (63%) would consider substantial signs of protection needs as a reason for addressing third-country national passengers. Interviews with shift leaders and passengers confirmed that, despite evident signs of protection needs, cases are not always sufficiently examined beyond the assessment of entry conditions, in particular if passengers arrive with false documents.

The research also finds that procedures applying to criminal offenders, including interviews at the airport, do not always pay sufficient attention to the fact that persons arriving with no or false documents may qualify for asylum or protection as victims of human trafficking. Protection grounds may go unnoticed.

Upon identification, border guards arrange the referral of persons needing protection to specific protection services provided by the state, NGOs or local networks. National procedures are standardised, but implementation depends on the airport. Persons identified as requiring protection are informed of the relevant procedures. This works particularly well at airports where border guards are able to rely on specialised teams or services to provide this kind of information. The responsiveness of officers to provide information on rights and procedures sooner or later differs significantly by airport.

Asylum seekers

Asylum seekers are generally expected to identify themselves as such, either during the border check or the procedures following refusal of entry. The research shows, however, that protection needs often surface only at later stages of immigration control or upon detention once passengers receive

more information and have had time to understand their options. They may also have already been referred to other procedures, for example, criminal investigation for irregular entry or the use of false documents. Border guards should maintain efforts to identify asylum seekers throughout the immigration procedure.

During gate checks, identification may be facilitated if officers inform passengers of the nature of the check, which may encourage those in need of protection to come forward. If document experts without training in identifying asylum seekers are the only ones performing the checks, persons in need of protection might pass unnoticed or receive an incorrect referral. This is a case in point for aligning officers' training with the Common Core Curriculum, which includes subjects on asylum (1.7.7, 1.8.7 and 5.3.3). Shift leaders and, where carried out regularly, visits by independent monitoring mechanisms, can further help to verify that procedures are followed during gate checks.

Expression of fear of serious harm if returned is sufficient to constitute a valid claim for international protection. Although a clear majority of officers said that they followed this approach, one in five surveyed (19 %) did not. This figure raises concerns considering the serious risks for individuals who may be returned to persecution or serious harm in violation of the principle of *non-refoulement*.

Asylum seekers at the three airports where airport asylum procedures exist can be kept in closed facilities connected to the airport. In other cases, they are admitted to the territory. Sometimes, delays may occur if, for example, space in reception centres is not available and transfers cannot be arranged on time. As a result, asylum seekers may be exposed to facilities in the transit area that are not intended, and are inappropriate, for longer stays and where their basic needs are not ensured.

Presumed victims of human trafficking

Difficulties in identifying victims of human trafficking are inherent to the nature of the crime. Victims may be unaware of their situation and the trip is often arranged with authentic travel documents and work permits in line with entry requirements. In addition, victims may not be able to disclose their situation during the check due to its short duration, their distrust of authorities and lack of awareness of victims' rights. As groups are handled without necessarily addressing all accompanying passengers, depending on the incidence of obvious risk factors and considering the time pressure during the check,

the scope for interaction and proactive identification of risks is limited, and a high number of victims can be expected to pass unnoticed. Successful identification thus hinges on officers' observation and communication skills, experience and the intelligence they have received.

Specific guidance and training available to officers on identifying potential victims of human trafficking is limited at most airports. At some, border management authorities cooperate with commercial carriers which provide airline staff training on identifying possible victims of trafficking.

Upon identification, presumed victims of trafficking are referred to protection services which arrange for shelter, legal counselling and medical and psychological care. In some cases, NGOs can provide immediate support at the airport. Challenges to effective referral at/from the airport chiefly arise from delayed identification as well as insufficient information provided to potential victims. The FRA study further showed significant differences among airports concerning procedures for informing protection services and the presumed victims.

Children at risk

Children travelling alone – without parental consent or the company of adults responsible for their care – may be at particular risk of exploitation including of human trafficking. Border guards must check systematically against such risks, including, among others, the verification of parental consent and, if relevant, minority of age. But while officers are able to use different tools for verifying parental consent or custody (calling the other parent, verifying authorisation letters, requesting birth certificates, consulting different databases), a recurrent difficulty at all airports is the initial assessment of

age, as one factor indicating vulnerability, during the border check. In some cases, officers appeared to rely too heavily on documentary evidence of adulthood, such as passports.

Border guards often pay special attention to children by visually verifying correspondence with their passports and by observing, listening and asking questions. Attention is not, however, always systematic or based on specific guidance or procedures. The FRA border guard survey confirmed the significance officers attribute to the child's statements and behaviour to indicate protection needs. Child-sensitive communication is thus a key factor for effective identification. But specific training in interacting with children, as foreseen by the Frontex Common Core Curriculum, is not yet available to officers at all airports.

Referral of separated children must be swift and give primary consideration to their best interests. The assistance of an independent person safeguarding best interests is required as early as second-line checks when important placement and procedural decisions are taken. At some airports, officers may arrange the appointment of a guardian, administrator or responsible adult as an initial safeguard. There are limitations, however, concerning the scope of the appointees' tasks, professional training, swift appointment, remuneration, access to files, availability and capacity and the continuity of assistance.

Children refused entry may become subject to return procedures, be held in transit like other non-admitted passengers and returned without prior access to an independent representative of their best interests at two airports. Although children are referred to special accommodation facilities within the territory, unless immediate return is possible, delays may occur whereby children are held at airports for extended periods of time.



FRA opinion

Schengen evaluations should examine whether identification and referral mechanisms for asylum seekers, victims of human trafficking and children are adequate and in line with the Schengen and the EU acquis. In particular, Schengen evaluations should consider whether border guards are applying appropriate safeguards for persons needing protection during gate checks.

Identification

Protection needs may emerge at different stages of border checks. To reduce the risk that persons seeking international protection, possible victims of human trafficking or children at risk, go unnoticed, border management authorities should clearly instruct border guards to maintain identification efforts proactively at all stages. This also means that whenever there are reasonable indications of grounds for international protection, instructions should include a duty to inquire proactively about the reasons for leaving the home country. These should also clearly state the duty to verify protection needs even if a passenger tried to enter with false or forged documents. As a good practice, gate checks could include asylum and child specialists.

Border management authorities should provide basic training on asylum, trafficking in human beings and on child-specific risk factors to all staff working at the border, making use of existing training materials, including those developed by Frontex, the European Asylum Support Office and UNHCR. As regards asylum seekers, all border guards should be trained to recognise implicit requests for international protection, including expression of fear of serious harm if returned, in line with the Schengen Handbook and the Frontex Common Core Curriculum. Regular guidance concerning developments in potential countries of origin could further facilitate this. As a good practice, border management authorities are encouraged to create a pool of expert officers with more advanced knowledge and skills in these fields to be deployed in a targeted manner, when checking high-risk flights and dealing with persons who are possibly at risk.

Border management authorities could further explore possibilities for cooperation with commercial carriers for identifying signs of human trafficking without endangering possible victims and in line with fundamental rights.

Frontex should continue to facilitate an exchange of experience among airports on effective ways of identifying children at risk and to develop guidance together with child protection experts on how to do this in full respect of fundamental rights.

Referral

Officers possibly coming into contact with persons in need of protection should have sufficient information and training to inform applicants on where and how to submit an application for international protection, as required by Article 6 of the Asylum Procedures Directive.

Referral systems for suspected victims of human trafficking must be in place at international airports. These should be developed involving all relevant actors and be linked to national referral systems. Border management authorities must ensure that each border guard knows what to do if they suspect someone to be a victim of human trafficking.

Border management authorities should ensure that procedures are in place and training available for speaking with children. As a good practice, each shift should include border guards specialised in speaking with children.

In line with Article 3 of the Convention on the Rights of the Child, mechanisms for a preliminary assessment and protection of children's best interests at airports must be in place. Guidance on the meaning of best interests from the UN Committee on the Rights of the Child in its General Comment No. 14 could be adapted to the specific context of border checks. The forthcoming best practice model on guardianship systems, provided in the EU Anti-trafficking Strategy, may offer useful guidance that could be adapted to the operational context of immigration tasks at airports. Age assessment should only be initiated where there are grounds for serious doubt of an individual's age, and follow the safeguards listed by FRA in its report on Separated, asylum-seeking children in EU Member States (2010).

Effective remedy

Persons affected by state action must have the option to complain and seek effective remedy. According to the Schengen Borders Code, passengers who are stopped for second-line checks or refused entry must be informed about the reasons and related procedures; the research, however, detected shortcomings in both cases.

In the context of entry checks at the airport, access to effective remedy is relevant mainly in four situations: complaints about the conduct of the border check, appeals against the decision to refuse entry, appeals against the rejection at the airport of an asylum claim and appeals against placement in a holding facility. The effectiveness of remedy at the airports, according to the research, largely depends on aspects of the appeal procedures, such as the timeframe for submission, suspensive effect and language requirements, and the accessibility of information and legal aid, including means of communication and interpretation.

Appeal procedures

Appeal procedures at the five airports are complex and differ depending on the applicant and subject of the appeal. The timeframe for appealing refusal of entry varies between two days and four months and may depend on whether the third-country national submits the appeal in-country or not, and the type of procedure applied. Appeals against refusal of entry usually do not have automatic suspensive effect, which further reduces the time window for an appeal, although interim measures providing suspensive effect may be requested at two airports.

Appeals against negative decisions taken within airport asylum procedures, which are available at three airports, address either decisions concerning the admissibility of the claim (Charles de Gaulle, Frankfurt) or its substance (Schiphol). Passengers whose claims are considered inadmissible are refused entry for the purpose of seeking asylum. The timeframe for appealing a negative asylum decision ranges between 48 hours and four weeks. Deadlines are usually tighter if the person launching the appeal has been subject to border procedures, or accelerated procedures, or detained. Suspensive effect may be automatic, possible upon request of an interim measure or not possible at all. Similarly, this may depend on whether the application has been considered inadmissible, repeated, coming from a national of a so-called safe third country, was processed in accelerated procedures, was submitted from detention or whether the applicant is to be transferred to another EU Member State based on the Dublin Regulation.

Provision of information

Upon a second-line check, many passengers do not understand why they are being checked, the next steps in the process and their related rights. This is confirmed by the border guards participating in the FRA study, almost half of whom say they do not usually inform passengers of the second-line check procedure.

Access to complaint procedures may be difficult due to the limited information available at the airports. Only a minority of border guards participating in the FRA survey would inform passengers on where and how to complain when carrying out a detailed check (10 %), refusing entry (36 %) and holding the passenger upon refusal of entry (27 %). Practice appears to differ on when to provide such information and in what format.

Passengers are not always informed of their appeal rights upon refusal of entry, rejection of their asylum claim or placement in a holding/waiting facility. Clarity of information, if any is given, may be affected by the form and language it is provided in, its limited scope and the timeliness and quality of interpretation.

Upon refusal of entry, most border guards interviewed say that they would always inform those passengers refused entry of their rights in general (78 %). There are, however, significant differences among airports, ranging from 94 % to 33 %. If passengers are held upon refusal of entry, less but still a majority of officers (60 %) say that they provide information on the rights of the person held, with discrepancies ranging from 86 % to 20 % depending on the airport. The research also observes cases when persons needing an interpreter are placed in a holding/waiting facility while awaiting the interpreter's arrival and before being informed of their rights.

Where the Schengen Border Code applies, passengers refused entry receive a form stating their right to appeal, in line with Annex V of part B of the code. In some cases, passengers may not receive a copy or do so only after they embark on the return flight. At some airports, border guards may not systematically provide information on appeal rights to all passengers concerned or provide information verbally only upon request.

Despite standardised forms on refusal of entry, third-country national passengers could not in many cases understand the information as it was given. A majority of the passengers interviewed say that they have not been informed of their right

to appeal a refusal of entry (69 %, 64/93).¹ While a majority of passengers who received information on their appeal right understood the language in which it was provided (89 %, 25/28), almost a third (32 %, 9/28) did not understand the procedure at all and only 21% (6/28) very well. Only four passengers of 93 said they received information on their appeal right in writing.

Legal assistance

Although free legal counselling is in principle and under certain conditions possible in all three cases of appeals – appeals against refusal of entry, a negative decision on an asylum claim and the placement in a holding facility – its availability and quality may be compromised due to several practical obstacles, such as: capacity limits; restrictions of visits to holding facilities; requirements of prior means and merit tests; time constraints; low remuneration given to *ex officio* lawyers; time pressure; lack of access to specialist lawyers; lack of office facilities; difficulties of obtaining a power-of-attorney from passengers in transit; procedures obliging passengers to request a lawyer through immigration authorities or communication difficulties in transit areas.

The research finds that information on legal assistance is more readily available at holding centres compared to transit areas or waiting rooms at the airport.

Upon refusal of entry, less than a third of officers (32 %) would refer passengers to contact points in organisations able to provide legal support as required by Article 13 (3) of the Schengen Borders Code. The majority of passengers interviewed (83 %, 68/82) confirms this, saying that they have not received such information. Even fewer officers (28 %) would inform persons held upon refusal of entry about where to get legal assistance, while results differ substantially among airports.

While the research did not look at information on legal assistance provided to asylum seekers at airports, such assistance will likely be necessary given appeal procedures' complexity and short timeframes. Asylum seekers rejected within fast-track procedures have a particularly small window to acquire such legal aid. As a good practice, the research notes that asylum seekers at Schiphol are appointed a lawyer systematically upon submission of their claim.

Passengers' access to communication with the outside world, such as mobile phones, may be limited. This can make it difficult for passengers to arrange a power-of-attorney or produce the documentation required for entry. Guidance on required format of missing documents (e.g. in form of standard samples) may not always be available.

Interpretation

Independent and professional interpretation may be needed at different stages: the second-line check, the communication of refusal of entry and the appeal process. The research took note of challenges relating to the quality, timeliness and availability of interpretation.

Official interpreters are adequately trained and have taken a public oath ensuring their independence. Resorting to other persons than official interpreters, which was noted as a practice in some cases, may possibly compromise the effective delivery of information on options for remedy and identification of protection needs.

Interpretation is usually only available for the hearing and not for the submission of the appeal. Article 12 (1) (b) of the Asylum Procedures Directive entitles applicants to an interpreter, this does not cover the consultation with the lawyer when submitting an appeal. Only in one of the EU Member States covered are interpretation and translations granted free of charge throughout the whole asylum procedure.

¹ The simple numbers following the percentages indicate the number of persons who responded affirmatively to the question and the total number of persons who responded to the particular question, which differs depending on non-response rates and the application of filter questions.

FRA opinion

Schengen evaluations should look at whether and how officers provide information in practice.

Access to information is a requirement for an effective remedy. Without information, complaints and appeals procedures are not accessible in practice. Information on complaint options should be made available systematically at the stage of second-line checks, possibly by providing it in a single step together with the information on second-line checks as per Article 7 (b) of the revised Schengen Borders Code. Information material on available remedies should be displayed at places visible to passengers at different stages of the border check. Regardless of the appeal procedure, information should be provided early on and consistently to all passengers concerned. In addition, border guards should be equipped to provide an oral explanation of the initial steps of the complaint or appeal procedures in each case. Forms for filing a complaint should be available in most common languages.

Information on further checks should be written in simple, non-legal language and be available at airports in the most common non-EU languages. Officers should be encouraged to reply and proactively explain the situation to passengers during second-line checks in a way that does not undermine a possible start of criminal investigations.

Pursuant to Article 5 (2) and 5 (4) of the ECHR, in no case should passengers be placed into holding facilities without prior notification, of the reasons they are being held and their rights in a language they understand. This may require revising and/or accelerating interpretation arrangements, for example relying on phone interpretation.

Where second-line checks require passengers to produce additional documents, border authorities could provide them with sample forms required for authorising entry, such as a standard invitation letter.

Legal assistance is another precondition for an effective remedy, considering the complexity of appeal procedures, timeframes and procedures. Member State authorities, including border guards where relevant, thus need to facilitate access to legal assistance to persons who could not otherwise access an effective remedy. Border guards should systematically refer passengers refused entry in writing to organisations able to offer legal advice and representation, in line with obligations set out in Article 13 (3) of the Schengen Borders Code.

Border management authorities are encouraged to cooperate with and support civil society organisations, by allowing them access to waiting and holding facilities to provide legal counselling and support. In order to determine the demand for and address possible obstacles to free legal assistance, NGOs familiar with protection issues and border control procedures could be invited to carry out needs assessments at airports in collaboration with national authorities.

Passengers who are stopped for an extended period of time or refused entry must be able to communicate with the outside world. Effective access to phone or internet should be regularly reviewed and possibly facilitated. As a good practice, in cases when passengers are not allowed to use their mobile phones, authorities could consider lending them mobile phones for use with their sim cards, as done at Manchester airport.

Agreements with interpretation services should ensure swift availability and high quality of services, exploring, for example, more use of phone interpretation and the exclusive use of publicly certified interpreters.

As a good practice, interpretation should be made available for preparing appeals against negative asylum decisions. Border management authorities should explore possibilities of extending interpretation to preparing appeals against refusal of entry in an effort to ensure the practical accessibility of procedures within existing timeframes.



Data protection

Checks at border crossing points necessarily entail the verification of personal data, which includes alphanumeric and possibly biometric data, such as fingerprints or facial images. The collection, use and storage of such data must be carried out in accordance with data protection principles including the right to private and family life, as contained in EU law and the ECHR.

Confidentiality of passenger data during first-line checks is generally ensured by the position of counters. Facilities for second-line checks could be improved even further in this respect at some airports. Privacy issues may also emerge at a later stage, for example at temporary holding facilities when passengers choose to contact a lawyer as their phone calls are monitored.

In advance of arrival, based on Council Directive 2004/82/EC on the obligation of carriers to communicate passenger data, carriers communicate Advance Passenger Information (API) to the border guards at the port of arrival, who may use this data for advance screening of passengers. Some EU Member States also have access to Passenger Name Record (PNR) data systems, which include the information a person provides when booking and purchasing the ticket and upon check-in.

In case communication problems arise at the first line, officers often resort to other passengers for help as interpreters. This may be problematic due to the detailed questions asked at this stage, and requires officers to know what personal data are and how to protect them during the check. Regular training on data protection, however, does not appear to be available at all airports. At European level, two databases, the Schengen Information System (SIS II in its upgraded version) and the Visa Information System (VIS), support the work at border crossing points. SIS II contains information on persons and objects for the purpose of refusing entry or stay. VIS includes personal information on each visa applicant. A future entry exit system would, if adopted, make it possible to identify persons who stay in the Schengen area longer than allowed. To do so, it would record, through the collection of biometric data, the movement of all third-country passengers into and out of the Schengen area. A Registered Traveller Programme, if adopted, will enable faster entry through Automated Border Control (ABC) gates for pre-vetted third-country national passengers.

At the first line, border guards scan and check the passenger's passport against the SIS II database, where available. An alert triggers a second-line

check, of which the passenger may not necessarily be informed. Upon refusal of entry, in line with the Convention on International Civil Aviation, Annex 9, Appendix 9, border guards share information on passengers with the airline companies, so that they organise and pay for the return flights. Previous inadmissibility would not necessarily bar passengers from entering at a later date unless an entry ban is recorded in SIS II.

In addition to EU-level databases, entries may also be made in national databases. Such national databases also need to respect EU data protection law. Entries that remain in the database forever and automatically trigger further checks any time a person crosses the border, for example, may raise the question of whether they adhere to the fundamental rights principle of proportionality.

Persons who are subject to an SIS II alert have to be informed, although some exceptions exist (SIS II Regulation, Article 42 (1) and (2)). Without this, they may not take the necessary steps before they travel again. Lack of information on database entries may also raise issues of effective remedy, especially considering that many of the border guards FRA interviewed said they experienced mistakes (41 % for SIS II and 32 % for VIS) in some cases.

If passengers challenge a database entry, officers would take different proactive steps depending on the airport. At two airports alone would a clear majority consider calling the institutions responsible for the entry. If passengers challenge a refusal of entry based on a database entry, a majority of border guards at all four airports where SIS II and VIS are operational would provide information about the procedure. However, at the same two airports only, passengers would most likely receive information on contact points for legal advice and for the institution responsible for verifying and correcting the entry.

FRA opinion

Border management authorities must ensure that passengers, upon request, are informed of the personal data that has been collected, the purpose of the collection, the use of the data, possibilities to have wrong data corrected, and on redress/appeal options, such as by displaying information on where to complain. To achieve this, border management authorities should ensure that border guards have clarity on rules concerning entering, storing, retaining, using and sharing personal data obtained for border control purposes.



Each year some 300 million third-country nationals arrive at European Union (EU) airports, where border guards conduct EU entry checks. The EU Charter of Fundamental Rights sets out several rights that are particularly relevant during such checks, including the rights to human dignity, non-discrimination, the prohibition of trafficking in human beings, the right to asylum, the rights of the child, effective remedy and the protection of personal data. This summary, and the related full report, look at how these fundamental rights obligations translate into practical border management tasks. The research was conducted at five of the EU's busiest airports: Charles de Gaulle-Roissy in Paris, Fiumicino in Rome, Frankfurt Airport in Germany, Manchester Airport in the United Kingdom and Schiphol in Amsterdam. The report points out challenges as well as promising practices of integrating fundamental rights compliance into operational tasks that do not compromise but instead enhance the effectiveness of border checks.

Further information:

For the full FRA report – **Fundamental rights at airports: Border checks at international airports in the European Union** – see: <http://fra.europa.eu/en/publication/2013/fundamental-rights-eu-international-airports>.

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>.

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> (also available in German, French, 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>.

See also:

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

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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