

**DIGNITY**



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



EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS



This report addresses matters related to 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) under the Chapters I 'Dignity', 2 'Freedoms', III 'Equality', IV 'Citizens' Rights' and V 'Justice' of the Charter of Fundamental Rights of the European Union.

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



# Foreword

Millions of people enter the European Union (EU) every year by land. Most of them do so at official border crossing points, travelling by private car or bus. This report deals with the work of border guards at such official border crossing points. It describes how border checks may affect the fundamental rights of passengers.

Several reports by international and non-governmental organisations analyse the fundamental rights implications for asylum seekers and undocumented migrants apprehended after having entered an EU Member State in an irregular manner, for example by crossing a forest, river or field that forms the borderline. Far less literature looks at respect for fundamental rights during border checks at regular crossing points. Many of the rights and principles included in the EU Charter of Fundamental Rights are relevant to border checks.

The EU provides Member States with considerable support in the field of border management. They can tap into funding mechanisms that enhance, for example, their infrastructure at border crossing points. Frontex, the EU agency set up to support Member States in border management, provides training, guidance materials and hands-on support through the operations they coordinate. All actions taken at EU level to support Member States' external border management should incorporate the promotion of fundamental rights compliance as a core objective.

This report appears as the EU is starting to implement the revised mechanism to evaluate compliance with the Schengen *acquis* by those EU Member States and Schengen Associated Countries which are part of the Schengen area. Evaluations cover all aspects of the Schengen *acquis*, with border management being a central component. As the revised Schengen evaluation mechanism gives more importance to fundamental rights, this report can serve to point to concrete fundamental rights issues impacting on border checks which may be looked at during evaluations.

Together with two European Union Agency for Fundamental Rights (FRA) sister reports resulting from its project on the treatment of third-country nationals at the EU's external borders, this report's findings serve to inform EU-level and Member State practitioners and policy makers of fundamental rights challenges that can emerge in particular at land border crossing points. Increased awareness should help to create a shared understanding among border guards of what fundamental rights obligations mean for their daily work, ultimately enhancing fundamental rights compliance at the EU's external borders.

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# Executive summary

This report examines 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. It draws on field research carried out in 2012 at six major land BCPs connecting the EU by road with a third country. It results from the project on the treatment of third-country nationals at the EU's external borders included in FRA 2010–2012 work programmes and complements two other reports, one on the situation at Europe's southern sea borders (March 2013) and a second on border checks at international airports (November 2014).

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.

Frontex, the EU agency set up to support Member States in border management, plays an important role in this regard. The Schengen evaluation system is a second important instrument for upholding fundamental rights at BCPs. This is a specific evaluation and monitoring mechanism set up to verify the application of the Schengen *acquis* by those EU Member States and Schengen Associated Countries which are part of the Schengen area. Evaluations cover all aspects of the Schengen *acquis*, with border management being a central component.

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. As this report illustrates, 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. 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, complaints mechanisms are usually managed by the authority in charge of border management, raising questions about their objectivity and impartiality.

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.

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. Unac-

accompanied 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.

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. 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 or persons seeking international protection. Such cases would be addressed only if these persons explicitly declared that they were victims of trafficking or were seeking protection.

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.



# FRA opinions

## A stronger role for Frontex

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

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

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

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

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

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

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 Project 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

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.



# Introduction

## Background of the report

Millions of persons enter the 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. This report describes checks carried out by border guards to verify if a person is entitled to enter the territory of an EU Member State. It does not concern 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.

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 EU, 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. This report focuses on third-country nationals, as their interaction with the authorities at the border is more intensive. It reviews existing procedures and practices to identify whether third-country nationals are treated in accordance with applicable fundamental rights standards.

This report results from the project on the treatment of third-country nationals at the EU's external borders included in FRA 2010–2012 work programmes. It complements a report on the situation at Europe's south-

ern sea borders (March 2013) and another on border checks at international airports (November 2014).<sup>1</sup>

## Aim of the report

This report describes fundamental rights challenges relating to checks at official BCPs. It does not deal with the situation of persons who 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 *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 report aims to fill this gap.

The EU Charter of Fundamental Rights, which applies to EU Member States when they implement EU law, spells out rights and principles many of which are relevant for border checks. The six chapters of this report describe the main findings from the research relating to selected Charter provisions: 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).

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. Selected provisions are detailed in Table 1 in the introduction to the FRA report *Fundamental rights at airports: border checks at five international airports in the European Union* (2014).

<sup>1</sup> FRA (2013); FRA (2014).

The report's findings serve to inform practitioners as well as policy makers 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.

## Description of border crossing points

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);
- Röszke/Horgoš at the Hungarian–Serbian border (Röszke); and
- 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

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
Röske	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

Note: \*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

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.

**El Tarajal** is the land BCP that connects the Spanish autonomous city of Ceuta in North Africa with Morocco. It has some specific differences from the other BCPs examined in this report. Although Ceuta is part of the Schengen area, access to Ceuta does not grant automatic access to the Spanish mainland. To reach the Iberian Peninsula or any other part of the Schengen area, travellers must undergo another document check at the seaport or airport. At El Tarajal, most of those crossing are frequent Moroccan travellers who walk to Ceuta every day. They undergo a simplified check based on special bilateral arrangements. Those who wish to move to the Spanish mainland and persons not covered by the local traffic arrangement undergo a full check at El Tarajal, conducted on the basis of the Schengen Borders Code. Approximately 25,000 persons, including cross-border workers, enter Ceuta at El Tarajal every day, some 10 % of them travelling on to the mainland through the port, according to 2013 figures provided by the Spanish national police. This makes it one of the EU's largest entry points. Ceuta also attracts a significant flow of irregular migrants, which has given rise to serious human rights and humanitarian concerns.

**Medyka** is the oldest and busiest road BCP at the Polish-Ukrainian border, serving both travellers and freight. In 2013, some 2.5 million persons, most of whom were non-EU nationals, crossed the bor-

der at this BCP. The BCP is close to several larger cities and constitutes a natural focal point for tourism as well as business, even more so since the 2009 establishment of a local border traffic agreement between Poland and Ukraine.

**Kapitan Andreevo** is the largest BCP at the Bulgarian-Turkish border, used by approximately three out of four travellers crossing this border. It handles all types of road traffic and serves as a railway BCP. Its location on one of the main road and rail corridors connecting Europe with the Middle East makes this BCP significant in terms of both passenger and cargo transport. Bulgaria's accession to the EU led to a gradual increase in traffic at this BCP; traffic is expected to increase further when the country joins the Schengen area. As shown in Table 1, some 1,185,000 non-Bulgarian nationals (including citizens of other EU Member States) entered the EU through this BCP in 2013. Border checks are carried out on the basis of the Schengen Borders Code, which, except for Title III on internal borders, applies to Bulgaria. After the 2012 strengthening of border controls at the Greek-Turkish land border, the Bulgarian-Turkish border near this BCP became more heavily affected by irregular migration. In response, Bulgarian authorities enhanced border measures, including taking steps against clandestine entry by persons hidden in vehicles or trucks.

**Kipi** is one of three land BCPs on the Greek-Turkish land border, which is formed here by the Evros river. It lies on the highway and serves all types of road traffic. With over 850,000 persons entering Greece at Kipi in 2013, it is the most popular BCP between the two countries. Irregular migration is

an issue at the Greek–Turkish border, but not at official BCPs.

**Röszke** is one of nine BCPs at the Hungarian–Serbian land and river border and handles approximately 65 % of all traffic at this border.<sup>2</sup> Located on a major road connecting the two countries' capitals, it operates as an international corridor. It also handles significant local traffic, as both border regions host minorities, including the Serbian minority in Hungary and the Hungarian minority in Serbia. It serves all types of road traffic, including trucks. Over three million persons entered the EU at this BCP in 2013. Because of the size of this BCP, more irregular migrants are apprehended at Röszke than at any other BCP on the Hungarian–Serbian border.

**Vyšné Nemecké** is the busiest road BCP at the Slovak–Ukrainian border, the Slovak Republic's only external EU land border. In 2013, 571,554 persons entered the EU at this BCP; most of them were non-EU nationals. Of the three road BCPs at the Slovak–Ukrainian border, Vyšné Nemecké is the only truck BCP. The BCP serves primarily local and regional traffic, as both countries' border regions, Eastern Slovakia and Transcarpatia, are relatively remote from their capitals. The historical and cultural backdrop (Transcarpatia having been part of Czechoslovakia before 1946) reinforces regional ties, as does a 2008 local border traffic agreement that simplifies border crossing conditions for inhabitants of nearby municipalities. Irregular migration near this BCP has decreased in recent years.

The field research was carried out before the 2014 civil unrest in Ukraine. Substantial changes have occurred since then, particularly in Poland, where an increasing number of asylum seekers have been registered at BCPs. These changes are discussed in the chapter on asylum.

## Methodology

This 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. Special arrangements were put in place at Medyka during the 2012 European football championship in Poland and Ukraine, but this report does not cover them.

The research for this report 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

Table 2: Number of interviews per border crossing point

BCP		Short initial interview with third-country nationals	Semi-structured interviews with third-country nationals	Front-line officers surveyed	Mid-level officers interviewed	Other stakeholders interviewed
El Tarajal/Ceuta port	Spain–Morocco	61	22*	40	5	3
Kapitan Andreevo	Bulgaria–Turkey	103	15*	47	5	22*
Kipi/Ipsala	Greece–Turkey	98	10*	10	6	20*
Medyka	Poland–Ukraine	99	34	46	5	3
Röszke	Hungary–Serbia	100	30	26	3	2
Vyšné Nemecké	Slovakia–Ukraine	118	8	39	6	6
<b>Total</b>		<b>579</b>	<b>119**</b>	<b>208</b>	<b>30</b>	<b>56</b>

Notes: \*Includes interviews carried out in third countries.

\*\*These persons were selected from among the 579 travellers subject to an initial interview.

At the Spanish BCP, interviews took place both at the El Tarajal BCP with Morocco and at Ceuta port, where ferries leave for the Spanish mainland.

Source: FRA, 2014

2 Dénes, A., Kiss, M. and Schwarcz, G. (2007), p. 8.

- semi-structured interviews with 56 other stakeholders, such as academics, NGO representatives, journalists, lawyers, employees at BCPs (e.g. waiters and cleaning staff) and some interest groups such as bus and truck drivers.

Questionnaires and interview guidelines were translated and interviews were carried out either in the native language of the interviewees or in another language spoken by them. Most interviews were carried out at the BCPs or nearby (for example at a café past the border); some interviews with experts took place in capitals or other locations. Interviews with experts and travellers were also carried out in third countries, particularly in Morocco and Turkey. See Table 2 for the numbers of interviews conducted at the BCPs. The questionnaire for front-line border officers is annexed to this report. Other research tools are available on the FRA website.

The field research was carried out by a consortium led by the International Centre for Migration Policy Development (ICMPD) and including the Hellenic Foundation for European and Foreign Policy (ELIAMEP) as well as individual experts recruited by ICMPD. The consortium carried out the interviews with travellers, shift leaders and other stakeholders, as well as non-participant

observation. The consortium submitted BCP-specific reports to FRA, which reviewed and consolidated them. FRA staff visited all the BCPs except Kipi to observe border checks and administer a questionnaire to border guards. This questionnaire, was developed in consultation with fundamental rights and border management experts. Frontex provided input into the development of the research tools. All six EU Member States covered provided input into the draft report. The Council of Europe, the European Commission, the European Asylum Support Office (EASO) and Frontex also commented, thus improving the report's accuracy.

Generally, those carrying out the fieldwork were able to rely on good cooperation with border guards at the various BCPs. The research did however, encounter a number of challenges. The different sizes of the BCPs resulted in different numbers of completed border guard questionnaires, ranging from 10 in Greece to 47 in Bulgaria, making comparability more difficult. The qualitative interviews with shift leaders compensated in part for this complication.

Research field visits were arranged in advance to obtain access to facilities. Border guards would thus have been aware of researchers' presence and this may have led border guards in some BCPs to adapt

Table 3: Visits to BCPs

BCP	Date of fieldwork
El Tarajal/Ceuta port	20–22 February 2012 (pilot visit) 17–24 May 2012 20–30 June 2012 (Moroccan side)
Kapitan Andreevo/Kapikule	November 2011 and March 2012 (pilot visit on the Turkish side) 6–11 March 2012 16–22 April 2012 8–20 May 2012 (Turkish side)
Kipi/Ipsala	November 2011 and March 2012 (pilot visits on the Turkish side) 20–30 April 2012 9–29 April 2012 (Turkish side)
Medyka	18–19 January 2012 (pilot visit) 21–22 March 2012 27–29 March 2012 1–4 April 2012 17–21 April 2012 23–26 April 2012 28 April 2012
Röszke	19–21 February 2012 (pilot visit) 23–29 April 2012
Vyšné Nemecké	22–24 February 2012 (pilot visit) 21–24 March 2012 15 April 2012 18–19 April 2012 8–9 August 2012

Source: FRA, 2014

their behaviour to the researchers' presence. To a certain degree, a longer field presence mitigated this risk: researchers usually visited the BCP more than once and stayed for several days (Table 3).

In general, it was difficult to find travellers willing to be interviewed. According to the research methodology, priority was to be given to those who were subjected to a more thorough check at the second line. However, none of the few identified during the field research in Greece and Spain agreed to be interviewed, although in Spain a few travellers who had been subjected to prior second-line checks were identified and interviewed. Many of them were not keen to speak to researchers, as they wanted to leave the border as soon as possible, particularly when they had been queuing for a long time. The researchers had anticipated this and kept the questionnaire for travellers short.

Travellers were often interviewed after passport control while still queuing for the customs check. The short time available made it difficult for interviewers to establish a relationship of trust with them. Sometimes, interviewers had the impression that travellers treated them as if they were border guards. Moreover, at some BCPs it was difficult to select travellers of different ages, nationalities and sexes. Persons crossing the border at El Tarajal, Medyka and Vyšné Nemecké are primarily frequent travellers, often crossing as part of a local border traffic arrangement. Finally, travellers sometimes could not distinguish which authority – border guards or customs officials – was responsible for

treatment deemed inappropriate, which made it difficult to use some of their statements.

Given the challenges encountered during the research, this report cannot constitute an exhaustive assessment of the fundamental rights situation at the BCPs covered. It does, however, pinpoint some of the more common challenges existing at BCPs. The report focuses on those fundamental rights issues which emerged recurrently or more prominently from the research and which could also be relevant for other land BCPs.

Other fundamental rights issues – such as, for example, the use of discriminatory ethnic profiling at borders – are not included because of the limited comparable information collected during the fieldwork. At one BCP, however, FRA learned that all nationals from countries considered 'exotic', meaning nationalities that rarely appear at that BCP, were referred for second-line checks.<sup>3</sup> In the absence of evidence pointing to a higher risk of unlawful border crossing, systematically subjecting every national from a list of countries to a second-line check appears questionable from a non-discrimination point of view.

### Local traffic regime

Travellers at three of the six BCPs studied, namely El Tarajal, Medyka and Vyšné Nemecké, are mainly persons living in the border area. Many of them cross the border on a daily basis for work, business or to study. To avoid making the border a barrier to trade, social

## COMPARABILITY LIMITATIONS

While presented in a comparative way, 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.

Respondents who did not answer a specific question in the questionnaires for travellers or border guards have been excluded when computing the results. For the border guard questionnaire, it was not always clear whether the respondent chose not to reply to the question or was ineligible to reply because of their response to a filter question. For this reason, and because of the application of filter questions, the total number of respondents varies by question and is noted in numerical terms. As the percentages do not include decimals, they may in some cases not add up to precisely 100 %. In the figures, references to Ceuta cover both the El Tarajal BCP and Ceuta port.

3 Buzalka, J. and Benč, V. (2007). This report, part of a Batory Foundation project, mentions discrimination against members of the Roma minority at particular Slovak BCPs (see pp. 6–7).

Table 4: Local border traffic agreements concluded under Regulation (EC) No. 1931/2006 (chronological order)

	Signature	Entry into force	Source
<b>Hungary–Ukraine</b>	18 September 2007	11 January 2008	Act CLIII of 2007, <i>Magyar Közlöny</i> of 11 December 2007, p. 12939
<b>Slovakia–Ukraine</b>	30 May 2008 (amended in 2011)	27 September 2008 29 December 2011 (amendments)	Official journal No. 441/2008, <a href="http://www.zbierka.sk/sk/predpisy/441-2008-z-z.p-32552.pdf">http://www.zbierka.sk/sk/predpisy/441-2008-z-z.p-32552.pdf</a> amended by OJ No. 529/2011, <a href="http://www.zbierka.sk/sk/predpisy/529-2011-z-z.p-34494.pdf">http://www.zbierka.sk/sk/predpisy/529-2011-z-z.p-34494.pdf</a>
<b>Poland–Ukraine</b>	28 March 2008	1 July 2009	<i>Journal of Law (Dziennik Ustaw)</i> , 2009, No. 103, item 858, <a href="http://isap.sejm.gov.pl/DetailsServlet?id=W-DU20091030858">http://isap.sejm.gov.pl/DetailsServlet?id=W-DU20091030858</a>
<b>Romania–Moldova</b>	13 November 2009	26 February 2010	Website of the Embassy of Moldova in Romania, Bilateral treaty No. 54, <a href="http://www.romania.mfa.md/bilateral-treaties-rom-ro/">http://www.romania.mfa.md/bilateral-treaties-rom-ro/</a>
<b>Poland–Belarus</b>	12 February 2010	Not in force	<i>Journal of Law (Dziennik Ustaw)</i> , 2010, No. 122, item 823, <a href="http://isap.sejm.gov.pl/DetailsServlet?id=W-DU20101220823">http://isap.sejm.gov.pl/DetailsServlet?id=W-DU20101220823</a>
<b>Latvia–Belarus</b>	23 August 2010	1 December 2011	Official journal ( <i>Latvijas Vēstnesis</i> ) 178 (4370), 10.11.2010, <a href="http://likumi.lv/doc.php?id=221011">http://likumi.lv/doc.php?id=221011</a>
<b>Norway–Russian Federation</b>	2 November 2010	29 May 2012	Regulation FOR-2009-10-15-1286 of the Kingdom of Norway, Appendix 19, <a href="http://lovdata.no/dokument/SF/forskrift/2009-10-15-1286/*#*">http://lovdata.no/dokument/SF/forskrift/2009-10-15-1286/*#*</a>
<b>Latvia–Russian Federation</b>	20 December 2010	6 June 2013	Official journal ( <i>Latvijas Vēstnesis</i> ) 115 (4921), 17.06.2013. Available at <a href="http://likumi.lv/doc.php?id=257587">http://likumi.lv/doc.php?id=257587</a>
<b>Poland–Russian Federation</b>	14 December 2011 (on Kaliningrad)	27 July 2012	<i>Journal of Law (Dziennik Ustaw)</i> 2012, item 814, <a href="http://isap.sejm.gov.pl/DetailsServlet?id=W-DU20120000814">http://isap.sejm.gov.pl/DetailsServlet?id=W-DU20120000814</a>

Source: FRA, 2014

and cultural interchange or regional cooperation, EU law allows for deviations to the rules governing checks of persons. At the time of the research, local traffic arrangements were in place at these three BCPs.

With the exception of those in place in the Spanish enclaves in North Africa, local border traffic arrangements with Member States are covered by Regulation (EC) No. 1931/2006 of the European Parliament and of the Council of 20 December 2006 laying down rules on local border traffic at the external land borders of the Member States and amending the provisions of the Schengen Convention (Local Border Traffic Regulation). This regulation authorises Member States to conclude or maintain bilateral agreements with neighbouring third countries. Under Article 7 of the regulation, a local border traffic permit may be issued to persons who have been residing for at least one year in a local district of the third country (geographically, it must not be further than 50 km away from the EU border, but an exception exists for the Kaliningrad region<sup>4</sup>). Local border traffic permits are issued regardless of visa requirements. The permit allows for simplified border crossing procedures, whereby passports are not stamped. Special BCPs or lanes may be set up. Holders of such permits may stay

in the border areas of the Member State for up to three months (Article 5), and this period restarts each time the person enters the EU.<sup>5</sup>

Implementation of the Local Border Traffic Regulation requires Member States to conclude bilateral agreements with their neighbouring countries. As shown in Table 4, as of September 2014, nine local border traffic arrangements had been concluded, one of which is not yet in force.

Modalities of access to Ceuta by residents of the Moroccan province of Tétouan are regulated bilaterally between Spain and Morocco, as clarified in a declaration to the Convention Implementing the Schengen Agreement.<sup>6</sup>

5 CJEU, C 254/11, *Szabolcs-Szatmár-Bereg Megyei Rendőrkapitányság Záhony Határrendészeti Kirendeltsége v. Oskar Shomodí*, 21 March 2013.

6 Spain, Declaration by the Kingdom of Spain on the cities of Ceuta and Melilla in the Final Act to the Agreement on the Accession of the Kingdom of Spain to the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (Convention Implementing the Schengen Agreement), OJ 2000 L 239/73, 22 September 2000.

4 Regulation (EU) No. 1342/2011, OJ 2011 L 347.

## THE SPECIFIC CASE OF CEUTA

Ceuta and Melilla became part of the Schengen area together with the Spanish mainland by virtue of the accession by Spain to the Convention Implementing the Schengen Agreement. Nevertheless, to maintain the facilitated visa regime for local traffic – affecting the inhabitants of the Moroccan provinces of Tétouan for Ceuta and Nador for Melilla – a declaration added to the agreement also stipulated that the Spanish authorities would continue to control goods and travellers between these towns and the Spanish mainland and conduct document and identity checks on sea and air connections from Ceuta and Melilla to other Schengen territories. It further permitted the issuance of visas applicable only to the two towns. As a consequence, third-country nationals travelling through Ceuta to the Spanish mainland are subject to checks both on entry and, even more thoroughly, at the port.



El Tarajal is Ceuta's only land BCP with Morocco. It serves vehicle and pedestrian traffic and is overwhelmingly used by Moroccans, many of whom are porters who cross the border on foot several times a day, mainly bringing goods from Spain to Morocco (see picture, provided by the Spanish National Police).

Women, often widowed or divorced, constitute the majority of Ceuta's porters ('porteadoras'), as men typically take up this job only when they cannot find other work. The porters often carry packs weighing up to 50 kg and enter and leave the city several times a day, as, under Moroccan law, any load that can be carried by a traveller is free of tax. In the past, there have been tragic incidents of porters being crushed by the crowds after collapsing under the weight of their load.\*

To reduce the risk of such incidents, the pedestrian crossing at El Tarajal has been divided into three lanes. There is a fast track lane for EU citizens and cross-border workers, and two lanes used by porters, one for women and one for men, as well as a corridor for persons who are denied access. The lanes are fenced in by railings which turn them into fully enclosed cages (see picture, provided by the Spanish National Police). They are crowded at rush hour, but one of the car lanes can be temporarily repurposed for pedestrians. Porters return to Morocco over the Buitz bridge, built in 2005 for porters to use as they leave Ceuta. It cannot be used to enter the city.



Because of heavy traffic at El Tarajal, porteadoras often face considerable waiting times. FRA research also indicates that they sometimes encounter discriminatory and degrading treatment from Spanish border guards. Some travellers interviewed testified that border guards do not treat this group with the proper respect. An interviewee who travels through El Tarajal daily reported that he had witnessed such police mistreatment regularly, stating that the police scream at the porters. In addition, a number of interviewees at El Tarajal said that border guards removed passports and stamped entry bans without a clear reason, and that this affects both the porteadoras and other travellers.

*\*For information on the situation of porters, see for example: El País (2009), Una avalancha humana provoca la muerte de dos porteadoras en Ceuta, [http://elpais.com/elpais/2009/05/25/actualidad/1243239421\\_850215.html](http://elpais.com/elpais/2009/05/25/actualidad/1243239421_850215.html). The article describes an incident in which two porters died and another 20 women were injured.*

# 1

## Treatment with dignity

### Charter of Fundamental Rights of the European Union

#### Article 1: Human dignity

Human dignity is inviolable. It must be respected and protected.

The EU Charter of Fundamental Rights calls for the respect and protection of human dignity (Article 1), which is to be considered part of the substance of the rights laid down in the Charter. Article 4 of the Charter prohibits torture and inhuman or degrading treatment or punishment.

Article 6 of the Schengen Borders Code specifically requires border guards to carry out border checks in such a way as to respect human dignity fully. Checks should be conducted “in a professional and respectful manner” and be “proportionate to the objectives pursued” (Recital 7). Border guards must “fully respect human dignity, in particular in cases involving vulnerable persons”. (Article 6 (1) as amended by Regulation (EU) No 610/2013 of the European Parliament and of the Council of 26 June 2013 amending Regulation (EC) No 562/2006 of the European Parliament and of the Council establishing a Community Code on the rules

governing the movement of persons across borders (Schengen Borders Code), the Convention implementing the Schengen Agreement, Council Regulations (EC) No 1683/95 and (EC) No 539/2001 and Regulations (EC) No 767/2008 and (EC) No 810/2009 of the European Parliament and of the Council).

This chapter examines selected issues for which the research has produced sufficient data. They primarily involve the duty to respect and protect human dignity, although they also relate to other rights, for example the right to healthcare, access to sanitary facilities, food and water, and the right to an effective remedy. The issues examined are:

- foreign language skills and interpretation;
- respectful conduct and professional treatment of travellers by border officers, particularly the use of appropriate language and tone;
- attention to possible vulnerabilities of travellers;
- access to food, water, medical care and sanitary facilities; and
- complaints about inappropriate treatment.

## WAITING TIMES AT BORDER CROSSING POINTS

This report does not analyse waiting times at the BCPs caused by long queues, which is the main concern for many travellers at land BCPs. Queues may be caused by checks on persons or on goods. An analysis would have required an extension to the research to cover other authorities whose activities might affect waiting times, notably customs authorities.

Article 9 of the Schengen Borders Code encourages EU Member States to provide separate lanes to facilitate border crossings for persons who enjoy the right of free movement and to further separate vehicle traffic into lanes for light and heavy vehicles and buses. According to Article 9 (4) of the Schengen Borders Code, the lane rules may be waived to eliminate “temporary imbalances in traffic flows”.

Separate lanes help to reduce waiting times for EU citizens, but they may at the same time contribute to longer waiting times for third-country nationals. Under certain circumstances, this may raise fundamental rights issues, ranging from discrimination to the creation of health risks, particularly in adverse weather conditions. FRA researchers observed a flexible system at Röszke, under which lane directions can be reversed, increasing the BCP’s capacity. By helping to manage queues, the system also contributes to ensuring travellers’ dignified treatment.

### 1.1. Foreign language skills and interpretation

Border guards must have adequate foreign language skills or interpretation available as a precondition for respectful treatment of third-country nationals. According to Article 15 (1) of the Schengen Borders Code, Member States must ensure that their border guards are properly trained professionals and encourage them to “learn languages, in particular those necessary for the carrying-out of their tasks”. Having a common language may be particularly important in tense situations: a border guard at Medyka, for example, threatened a traveller with imprisonment. Although the border guard raised his voice and acted unpleasantly, the traveller did not complain about the treatment. Instead, he told the researchers that he felt well treated, like a human being, perhaps because the officer addressed him in his native language, Ukrainian.

Effective communication is also indispensable for the application of procedural safeguards during checks (see Chapter 2), for the provision of information on possible remedies and for the identification of travellers who may be in need of protection (see Chapter 4).

At major airports examined in a parallel FRA report,<sup>7</sup> knowledge of major foreign languages plays a key role. At land BCPs, in contrast, knowledge of the languages of neighbouring countries, particularly of the country on the other side of a given BCP, is more important, as is knowledge of Russian at the EU’s eastern borders.

From the field research, language barriers appeared to be lower at the BCPs with Ukraine, as the vast majority of third-country nationals are Ukrainians, often crossing the border within the framework of local border traffic agreements. The similarities between the relevant languages and widespread border guard knowledge of Russian (79 % of border guards interviewed at Vyšné Nemecké and 61 % at Medyka reported having either fluent or satisfactory Russian) facilitate communication with travellers. Similarly, a high percentage of the border guards at Kapitan Andreevo and Kipi said that they knew at least a few words of Turkish (89 % and 70 %, respectively). Knowledge of Turkish does not, of course, equip them to deal with the other nationalities refused entry at these BCPs, such as Syrians and Georgians at Kipi, who must also receive procedural information.

*“We [border guards at the BCP] generally speak Turkish. Moreover, most Turkish nationals are bilingual and speak English, too.”*

(Shift leader, Kipi)

Language barriers are significantly more common at the BCPs at Ceuta and, to some extent, Röszke. At Ceuta, 44 % of border guards surveyed said that they knew a few words of Arabic. According to one shift leader, however, 80 % to 90 % of the border guards do not understand the dialect that most of the travellers at this BCP speak. In comparison with other BCPs, Ceuta had the fewest officers who said they spoke the language of the neighbouring country (Arabic) either fluently or satisfactorily (13 %), which may be due in part to high staff turnover. Limited foreign language skills restrict access to information during border checks at Ceuta, with the lack of written forms (see Chapter 2) being another key factor. This may explain why some travellers perceive the measures border guards take as unfair or arbitrary.

<sup>7</sup> FRA (2014).

The intensity of language training varies. Border guards at Kipi received no training in the year before the research; the greatest amount of language training was available at Röske, with one quarter (25 %) of border guard staff receiving training. A significant proportion of border guards undertaking first-line checks said that they would benefit from further language training (ranging from 33 % at Röske to 56 % at Medyka).

At all BCPs, border guards conducting second-line checks would benefit from more foreign language training. Second-line checks require a considerably higher level of interaction between border guards and travellers. Language barriers therefore create significant communication obstacles. At Röske, for example, the foreign language knowledge of border officers conducting first-line checks did not appear as a major gap. Border guards attempt to use the language that the passenger chooses to greet or respond to them in (mostly Serbian, complemented if need be by English or German). Some persons referred for a second-line check, however, spoke of feeling frustrated by the scarcity of information they received in a language they understood and the lack of responses to their questions.

There are no organisations at the BCPs or nearby providing professional interpretation. If communication problems were to arise, the majority of border guards would ask a colleague for help (from 75 % at Ceuta to 90 % at Vyšné Nemecké), whereas only a minority would call in a professional interpreter (from 7 % at Medyka to 20 % at Kapitan Andreevo and Kipi). Generally, professional interpreters are not available at BCPs and only some of the BCPs examined seemed to have arrangements in place to provide interpretation when needed. At Vyšné Nemecké, border police do not have interpreters on staff, but they do have a list of interpreters whom they can contact when needed. At Kapitan Andreevo, remote interpretation (via video conference) is available only for those detained at the police department in Svilengrad and against whom criminal proceedings have been initiated. The Bulgarian authorities consider that, according to the EU *acquis*, border guards do not need interpreters in order to perform their main duty, namely carrying out border checks. At the same time, a stakeholder noted the following difficulties:

*“The border police do not have interpreters available, nor do they have the financial means for that. I do not know how they perform their duties. When they stop someone, they have to identify him/her and only in the framework of criminal proceedings do they have the right to call an interpreter. In other cases, they give travellers forms to complete, but if they are illiterate someone else must complete them.”*

(Bulgarian NGO staff member working on migration)

At Medyka, officers have a list of interpreters who can be called in to attend an interview. At Röske, interpreters are called in only for third-country nationals apprehended at the green border or for those facing criminal interrogation.

Some 34 % of border guards surveyed (but some 60 % at Ceuta and Kipi) would consider asking other travellers to interpret. The use of such informal interpretation carries certain risks. Not only can it affect the quality of interpretation, which may have serious consequences if it leads to non-admission or other administrative decisions, it may also compromise the identification of possible protection needs. It can impact on the protection of personal data, as travellers may be asked detailed questions at this stage about the purpose and conditions of their stay and their financial situation. In addition, they may be asked to share related supporting documents. These risks also apply if officers resort to staff working at the BCP for help, as was the case at El Tarajal:

*“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)

## 1.2. Respectful conduct and use of appropriate language and tone

Another issue the research examined relates to border guards’ professional behaviour towards third-country nationals, including the use of appropriate language and tone. According to European Court of Human Rights (ECtHR) jurisprudence, treatment that “humiliates or debases an individual, showing a lack of respect for, or diminishing, his or her human dignity, or arouses feelings of fear, anguish or inferiority” capable of breaking an individual’s moral and physical resistance<sup>8</sup> constitutes inhuman and degrading treatment and is therefore prohibited.

The *Schengen handbook* refers to the right of all travellers to “professional, friendly and courteous

<sup>8</sup> ECtHR, *Pretty v. the United Kingdom*, No. 2346/02, 29 July 2002, para. 52; ECtHR, *Price v. the United Kingdom*, No. 33394/96, 10 October 2001, paras. 24-30; ECtHR, *Valašinas v. Lithuania*, No. 44558/98, 24 July 2001, para. 117.

treatment”.<sup>9</sup> The majority of border guards said they had received instructions or guidelines on the obligation to deal with travellers in a professional and respectful way during training. The percentages ranged from 80 % at El Tarajal to 100 % at Kipi and Röske. These figures should not, however, be considered in isolation. Representatives of the authorities met during the field visit at El Tarajal said they had not received any specific human rights training besides a superficial overview given during their general training to enter the police force.

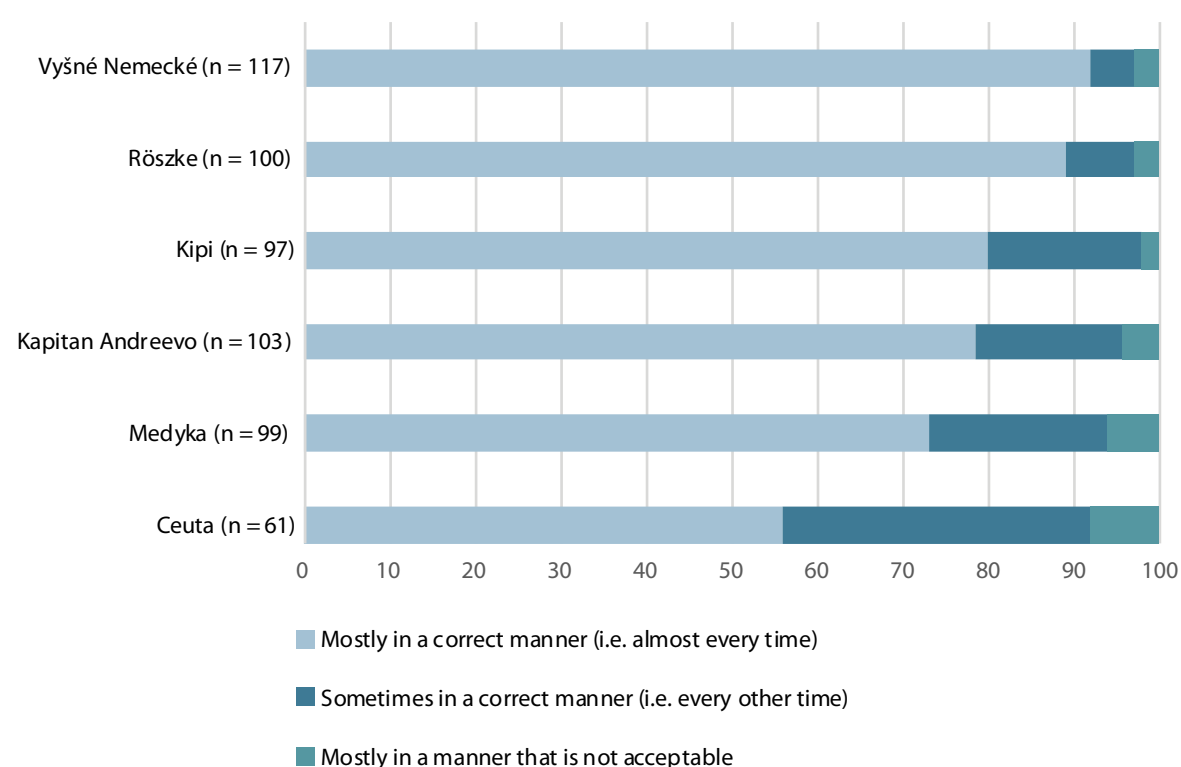
Findings also show that border guards frequently discuss third-country national checks, but that it is not always a topic covered at regularly organised briefings (responses range from 77 % at Vyšné Nemecké to 19 % at Ceuta), although these briefings would likely represent the most appropriate platform for establishing common standards of behaviour.

Overall, 80 % of third-country nationals surveyed in an initial interview said that officials had treated them

correctly during the first-line check almost every time they travelled through the BCP at which they were approached. A further 16 % said that they were treated correctly every other time they travelled. The remaining 4 % said that almost every time they travelled they were treated in an unacceptable manner. Figure 2 provides a breakdown of responses by BCP. Examples given by those who were sometimes or mostly subject to inappropriate treatment concerned impolite or offensive language (27 travellers), and intrusive or inappropriate questions (22 travellers). More aggressive behaviour, such as shouting or showing physical aggression, was mentioned less often (nine travellers).

Travellers were asked not only about their personal experience of inappropriate treatment but also whether they had witnessed border guards treating other travellers inappropriately. Ceuta had the highest proportion of travellers answering that they had witnessed such treatment: 59 % (36 of 61 travellers interviewed), compared with 22 % on average across all BCPs examined. Some travellers said they had witnessed screaming (11) and a few physical

Figure 2: Travellers’ replies to the question ‘How have you been treated by officials who checked your passports/ID’ (%)



Note: Respondents who did not provide an answer to a given item have been excluded when computing the results.

Non-response per BCP: Ceuta, n = 0; Kapitan Andreevo, n = 0; Kipi, n = 1; Röske, n = 0; Medyka, n = 0; Vyšné Nemecké, n = 1.

Source: FRA, interviews with third-country nationals, 2012

9 European Commission (2006), Part Two – Border Checks, Section 1.2.

aggression. In-depth qualitative interviews elaborate on this. At El Tarajal in particular, travellers frequently reported having observed mistreatment of others, including female porters, with border guards screaming and using physical force.

*"In the past three years, the situation at the border has worsened since now the Spanish police treat people like animals. I have seen how they scream and even hit other people in the queue."*

(Male, Moroccan national, El Tarajal)

As regards inappropriate language, the FRA research showed that in some cases the border guards might not make use of formal language conventions that certain languages use to show respect for others (for example 'Vous' instead of 'tu' in French). Such cases were also noted at Medyka (in Polish) and Vyšné Nemecké (in Russian). Using informal language might not be a deliberate sign of disrespect, but it may make travellers feel uncomfortable, particularly during the second-line check. In other cases, the researchers observed that border guards made unfounded insinuations:

*"Have you got any infectious diseases or wounds? [...] A lot of people with hepatitis have been sitting on that chair, you know."*

(A border guard speaking to a Moroccan man at Röszke)

Some of the travellers also report that border guards sometimes ask irrelevant questions that seem personal. Eight of the 103 travellers interviewed in Bulgaria noted that border guards asked them inappropriate questions. Since the travellers do not understand the purpose of such questions, they are considered intrusive, as the following quotes show:

*"'Why do you need to go to Slovakia? You have already been there twice in the last week.'"*

(Female, Ukrainian national travelling to Slovakia within the framework of a local border traffic agreement, Vyšné Nemecké)

*"They looked in my bag and asked me why I was carrying sugar – for the tea! What is the sugar for?!"*

(Female, Ukrainian national, Medyka)

Examples of shouting or even forms of physical aggression seem to occur less often, but travellers perceive them more negatively. In some cases, they were linked to the border guards' suspicion that the person had committed a criminal act.

*"They were rough and screamed at me while ripping my jacket off. They checked me as if I were a terrorist. Six to seven police officers were around me when they took my personal belongings. I didn't understand anything, as they were speaking Hungarian."*

(Male, national from Bosnia and Herzegovina, travelling in a car reported as stolen, Röszke)

## TREATING TRAVELLERS IN A PROFESSIONAL AND RESPECTFUL MANNER

- The overwhelming majority of border guards interviewed for this research say that they have received guidance on how to deal with travellers in a professional and respectful way.
- At Ceuta, Röszke and Vyšné Nemecké, however, some border guards say they either have not received instructions or guidelines or did not remember receiving any.
- The number of border guards who say they have not received any such instructions or guidelines was highest at Ceuta, at six out of 38 border guards who responded to the question.

Source: FRA, Border guard questionnaire, 2012 (question 14)

*"I really understand the [...] border guards. For them too, it is really difficult to work at the booths hours and hours! So, from time to time, they show negative attitudes, such as shouting, to people like us."*

(Male, Turkish national, truck driver frequently crossing the border, Kipi)

Some third-country nationals at El Tarajal also mentioned the use of physical force. An interviewee reported that she accidentally touched a police officer because someone in the queue had pushed her. In response, she said that the police pulled her hair, shouted at her and denied her entry to Ceuta.

Another interviewee said that the treatment is usually good, but "if someone gets nervous, the border guards use physical force".

Frequent travellers also noted improvements in the professional conduct of border guards in recent years, for example at Kapitan Andreevo, Kipi and Medyka. According to one of the stakeholders interviewed, border guard behaviour at Kapitan Andreevo during the first-line checks has changed substantially in recent years:

*“During the checks of the travellers, everybody wants to show themselves in the best possible light. During the last two to three years there have been significant improvements. Before, one could observe a more arrogant attitude, but now they are more disciplined.”*

(Representative of a Bulgarian think tank based in Sofia)

### 1.3. Attention to vulnerabilities

According to Article 3 (a) of the Schengen Borders Code (2013 amendments),<sup>10</sup> Member States should conduct border checks in full compliance with relevant EU law including the Charter, relevant international law and fundamental rights. Decisions are to be taken on an individual basis. Together with the emphasis on the human dignity of vulnerable persons contained in Article 6 (1) of the Schengen Borders Code, these requirements place an obligation on border guards to pay due attention to vulnerable travellers, whether these are children, older persons, persons with disabilities or others. Treatment of children and identification of asylum seekers and victims of trafficking in human beings are examined in Chapters 3, 4 and 5 of this report.

The border guard survey revealed that the majority of border guards did not receive any training on how to treat persons with disabilities. The Frontex Common core curriculum for border guards, which spells out EU-wide standards for the training of front-line border guards, does not cover this topic. Not a single officer interviewed at Ceuta or Röske indicated having received such training; one officer at Kipi and four officers at Kapitan Andreevo and Vyšné Nemecké did so.

The application of special protocols or procedures for older persons and persons with disabilities was observed only at some BCPs.

#### Promising practice

#### Allowing passengers with reduced mobility to stay on the bus during checks

At Kapitan Andreevo, bus passengers must leave the bus for the first-line check, unless they are older or have reduced mobility. In such cases, the border guard gets on the bus to carry out the check.

Source: FRA, field research, 2012

At El Tarajal, there is no procedure for persons with disabilities, and persons using a wheelchair have to wait in the same lane as motorcycles. At some BCPs, for example Kapitan Andreevo, toilets were difficult to access for persons with disabilities during the research, although renovations carried out in 2014 should address this issue. In addition, not all toilets offer a separate space for changing babies' nappies.

According to information from border guards at Medyka, persons with disabilities and families with children used to be treated as priority travellers and were not asked to leave their cars. However, this regulation was formally abolished as a result of perceived abuse, as some persons provided fake certificates of disability or travelled with children to get through the check more quickly. Border guards now initiate special procedures for children only when they are travelling with persons other than their parents. As a result of this development, the BCPs at the Polish-Ukrainian border, including Medyka, are reported to be unhelpful towards 'real tourist' and families, more generally. Queuing with children may be troublesome, particularly in the pedestrian lane and in bad weather. Border guards at Medyka nevertheless say that they still take into account the special needs of passengers with a disability or families with children, albeit informally.

Bus travellers are also in a delicate position at land BCPs. If they are not allowed to cross the border, they may encounter problems with travelling back to the next town or finding accommodation, particularly late in the evening or if they lack sufficient funds. This issue was encountered at Röske, where a woman with three children who was refused entry had used up most of her money on tickets to Vienna and lacked the funds to pay for the return journey. A sensitive and cooperative attitude by border guards can make an important difference in such cases. A border guard at Vyšné Nemecké, for example, assisted a non-admitted traveller by asking a driver going in the opposite direction to give the person a ride to the nearest major town. As a result, the third-country national had a fairly positive perception of the procedure:

*Question: “How do you classify the attitude of the border guards towards you?”*

*Answer: “They were sorry and polite, tried to help.”*

(Female, Ukrainian national, Vyšné Nemecké)

### 1.4. Access to food, water, medical care and sanitary facilities

The obligation to ensure basic subsistence under the Charter can be inferred from the right to life

<sup>10</sup> Regulation (EU) No. 610/2013, OJ 2013 L 182.

(Article 2) and the prohibition of inhuman and degrading treatment (Article 4). These rights must be interpreted in light of the case law of the ECtHR. The ECtHR has confirmed that states have a positive obligation with respect to the right to life. They must “take preventive operational measures to protect an individual whose life is at risk”.<sup>11</sup> As travellers may, depending on the nature and complexity of the check, have to spend a prolonged time at the BCP, their essential needs must be met, including access to food, water, medical care and sanitary facilities.

Access to healthcare for passengers requiring emergency treatment while at the BCPs represents a potential risk, as there is no permanent medical staff present there. For emergencies affecting personnel working at the borders, medical help must be called in from hospitals in nearby towns. Medyka and Röske have special rooms that medical staff can use when called in to assist with emergencies. Researchers observed that first-aid kits were available at Kapitan Andreevo, Kipi and Röske. Such kits may also be available at the other BCPs. Under the Frontex Common core curriculum, border guards must be trained in first aid, and several border guards at Vyšné Nemecké confirmed that they had received such training.<sup>12</sup> To deal with humanitarian emergencies, authorities may cooperate with civil society organisations, as, for example, at Kapitan Andreevo, which cooperates with the Bulgarian Helsinki Committee.

Some BCP procedures may result in greater risk of a health emergency. At Röske, for example, bus passengers are required to remain on the bus during the first-line check, which, especially during the hot summer months, may cause additional health risks for passengers. Where large numbers of pedestrians are involved, such as at Ceuta’s El Tarajal, effective management of queues becomes particularly important.

Furthermore, travellers who are separated from their luggage during a second-line check or detention may face difficulties in taking their regular medication. As observed at Vyšné Nemecké, they may have to ask border guards to retrieve their belongings from the car or bus in such cases

When a medical emergency does occur, foreign language skills may play a vital role. Researchers observed a south-eastern European man who had recently undergone kidney surgery asking for painkillers, but

neither the border guards nor the staff at the hospital to which he was subsequently taken understood him.

At the six BCPs examined, access to water, food and sanitary facilities varies according to the stage of the procedure, with differences between the first- and second-line checks and the holding facilities.

Access to toilets may depend on the stage of the border check, with access more difficult at the first-line check. At Röske, for example, persons awaiting or undergoing first-line checks do not have access to the sanitary facilities at the BCP administrative building. There is a pay toilet immediately after the BCP upon entering Hungary. Occasionally, a bus driver may ask permission for a passenger to leave the bus and use the BCP toilets. At El Tarajal, during the field research in 2012, FRA did not see any public toilets.

Research findings show that sanitary facilities are sometimes old and fail to meet basic hygienic standards (Kapitan Andreevo and Vyšné Nemecké for first-line checks, Röske for persons undergoing second-line checks and detained persons) or may be difficult to access for persons with reduced mobility (Kapitan Andreevo).

At some BCPs, food and water are available for travellers waiting for the first-line check (canteens and cafeterias at Ceuta Port, Kipi, Medyka and Vyšné Nemecké; at Röske, access to the canteen is limited to drivers and passengers at the truck terminal), but these facilities are not always ideally placed. For example, for security reasons travellers at Vyšné Nemecké who have undergone the border check and are awaiting the customs check, which according to stakeholders can take up to three hours, cannot access them.

Those sent for a second-line check can sometimes access the same facilities as at the first-line check (Kipi) or may be restricted in their movement. In the latter case, they are dependent on facilities available in the area reserved for second-line checks. Those seeking to cross at Medyka, for example, must therefore ask a border guard if they want to use a toilet. There is no water in the waiting area, although the border guards said that they provide travellers with water or tea if waits are long.

At Röske, travellers who are waiting for a second-line check and those who are detained are served food after every five hours, but the quantity and type is not always sufficient. During the research, guards were observed serving food that was not culturally suitable, such as pork to persons of Muslim faith. This may be in part because at

<sup>11</sup> ECtHR, *Osman v. The United Kingdom*, No. 87/1997/871/1083, 28 October 1998.

<sup>12</sup> Frontex (2012), subject 3.5.

two BCPs at least (Röszke and Vyšné Nemecké) border guards seem to have no dedicated budget for providing food.

*Question: "Did you get any food while here?"*

*Answer: "They gave me this. [pointing to two slices of dry bread lying directly on the tabletop]."*

*Question: "Is this all you have got since you arrived here?"*

*Answer: "Yes."*

(Male, Western Balkans, Röszke)

## 1.5. Complaints about inappropriate treatment

The EU Charter of Fundamental Rights sets out the right to good administration for every person (Article 41). This requires having effective complaint mechanisms in place. While Article 41 of the Charter refers only to EU institutions and bodies, the Court of Justice of the European Union (CJEU) has used it also to scrutinise actions taken by Member States.<sup>13</sup> Article 47 of the Charter provides for the right to an effective remedy. The possibility of filing a complaint about inappropriate conduct by border guards represents an element of the right to legal remedy, which the Member States are required to ensure.

In *Zakaria*, the CJEU was asked whether Article 13 (3) of the Schengen Borders Code requires an effective remedy against document checks carried out in an offensive manner. The CJEU first clarified that Article 13 (3) of the Schengen Borders Code obliges Member States to establish means of obtaining redress only against decisions to refuse entry. The CJEU did not take a position on whether EU law governs the offensive inspection of documents, but it noted that, if this were the case, Member States would have to provide "for the appropriate legal remedies to ensure, in compliance with Article 47 of the Charter, the protection of persons claiming the rights derived from Article 6 of Regulation No. 562/2006".<sup>14</sup> As a principle of good governance, Member State administrative law generally provides for the option to complain about state action. However, the objective nature and practical availability of such complaint mechanisms in relation to the conduct of border guards at land BCPs raises questions.

The ability to complain about the conduct of the check is dependent on whether the passenger is actually aware that he or she can complain and how to proceed. Frequent travellers may fear that such a complaint may have repercussions the next time they cross the border.

Language and communication obstacles may also make existing complaint mechanisms difficult to access.

According to the border guard survey, at Medyka (about half of the 27 border guards who responded to this question) and Vyšné Nemecké (seven of the 18 border guards who responded) a significant number of border guards give information about complaints automatically if a second-line check is undertaken. At other BCPs, only very few or no border guards would provide such information. At Medyka, this information is also available in writing in the form of posters at each checkpoint. It is usually given to travellers after the second-line check both orally and in writing. Although the majority of border guards at all six BCPs say that they would provide this information upon request, it is likely that some travellers would hesitate to ask for this information from the border guard against whose conduct they intend to complain.

*"There is a book of incidents in which complaints are filed. But he [the passenger] will not come to me to make a complaint about me. He will go elsewhere."*

(Shift leader, Kipi)

The effectiveness of complaint procedures is difficult to assess, as there had been no or only very few complaints in recent years, according to the management at some BCPs (Kapitan Andreevo, Röszke, Vyšné Nemecké). Often, complaints are examined either by superiors at the BCP or by the next higher body within the police service (Kipi, Kapitan Andreevo, Medyka).

*Question: "And if you would like to write a complaint about them? Do you know how to do it?"*

*Answer: "But I think that the complaint should have a result, and I'm convinced that one way or another this will not bring any results. So, there is no sense in writing this complaint."*

(Male, Ukrainian national, Medyka)

Similarly, at El Tarajal complaints about border guard conduct can be filed either directly at the BCP or at the central police station. Here also the BCP management stated that complaints are rare:

*"There are very few cases. Considering the workload and stress we have, the treatment here is good enough."*

(Shift leader, El Tarajal)

At Röszke and Vyšné Nemecké, travellers can also file a complaint directly with the competent ministries, in both cases the Ministry of the Interior, bypassing the direct superiors of the border guards against whose conduct they intend to complain. Under the Röszke system, for example, even a complaint filed with the Ministry of the Interior would be sent to the local police headquarters for investigation. However, it would first be registered with a

<sup>13</sup> CJEU, C 277/11, *M.M. v. Minister for Justice, Equality and Law Reform*, Ireland, Attorney General, 22 November 2012; CJEU, C 383/13 PPU, *M.G. and N.R. v. the Netherlands*, 10 September 2013; CJEU, C 604/12, *H.N. v. Minister for Justice, Equality and Law Reform*, Ireland, Attorney General, 8 May 2014.

<sup>14</sup> CJEU, C 23/12, *Mohamad Zakaria*, 17 January 2013, para. 36–41.

special division of the ministry, creating a certain degree of oversight.

## Conclusions

FRA research has shown that respect for human dignity needs to be improved, to varying degrees, at all of the BCPs examined. Human dignity must be respected regardless of the volume of traffic and despite the behaviour of travellers, including when they are suspected of or proven to be attempting to cross the border without proper documentation.

### Language skills and interpretation

Knowledge of foreign languages by border guards is essential to ensure clear communication with travellers, particularly where no interpretation options are readily available. Although a substantial number of border guards said they had basic knowledge of the neighbouring country's language, a large proportion of them admit that they would benefit from further language training. Interpretation arrangements at most BCPs are rather ad hoc and most border guards rely on the help of colleagues or even other travellers, which could potentially lead to misinterpretation or interference with their privacy.

#### 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.*

### Respectful conduct

Instances of disrespectful conduct or the use of inappropriate language emerged at all the BCPs examined. Examples of more aggressive behaviour, such as shouting or showing physical aggression, seem to be more fre-

quent at some BCPs than at others. Depending on their age, sex, ethnic or other background, travellers may have a different perception of behaviour that border guards consider adequate.

#### FRA opinion

*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.*

### Attention to vulnerabilities

Special groups of travellers, such as persons with reduced mobility, require special treatment. Without formal protocols in place to adjust regular procedures to suit their needs – for example to allow passengers with a disability to remain on the bus for checks – they might be fully dependent on the sensitivity of individual border guards.

#### FRA opinion

*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.*

### Access to basic needs

Access to water, food, toilets and medical care is a basic human need. Lack of access to them constitutes a clear violation of human dignity, as well as a potential health risk. Research results show that access to such essential items and services is not readily available to all travellers. When waiting between different checks, which can last for hours, water, basic food and toilets are not accessible at all BCPs, in part for security reasons. This is unjustifiable.

#### FRA opinion

*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.*

## Complaints mechanisms

The possibility of filing a complaint about border guard conduct which is in breach of human dignity is an element of the right to legal remedy, which Member States are required to ensure. FRA research has shown, however, that at the majority of the BCPs examined information on complaints is not readily available. One of the reasons why the complaints mechanisms are so rarely invoked might be that complaints are largely addressed

internally. This might give rise to questions about their objectivity and impartiality.

### FRA opinion

*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.*



# 2

## Procedural safeguards during checks: information provided to travellers



### Charter of Fundamental Rights of the European Union

#### Article 41: Right to good administration

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union.

2. This right includes:

- the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
- the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
- the obligation of the administration to give reasons for its decisions.

#### Article 47: Right to an effective remedy and to a fair trial

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

This chapter deals with information provided to travellers during the border check. It covers information provided to those who are referred for a more thorough check as well as information given to those refused entry. Information on asylum is covered in Chapter 4.

Informing travellers about the procedure for more thorough checks lets them know what to expect and how they can best cooperate with the authorities to resolve any outstanding issue preventing entry. Sim-

ilarly, being aware of the reasons for a more thorough check or for a refusal of entry is a precondition for exercising the right to an effective remedy. Take the example of a person subjected to a second-line check or refused entry as a result of inaccurate personal information contained in a database used at the border. If not informed, the passenger cannot request access to and rectification of the possibly erroneous information stored. The obligation of the administration to give reasons for its decision is, therefore, not only an important component of the right to good administration but also an essential element of the right to an effective remedy.

### 2.1. Provision of information on second-line checks

According to Article 7 (5) of the Schengen Borders Code, travellers subject to a second-line check must be informed of the purpose of and procedure for such a check. They further have a right to “request the name or service identification number of the border guards carrying out the thorough second line check”. With the 2013 revision of the Schengen Borders Code, travellers must be informed, in writing, of the fact that they may request such information.<sup>15</sup>

There are no comprehensive European statistics on the number of persons experiencing second-line checks. The number of persons refused entry (see Section 2.2) can be taken as an indication, although travellers may be refused entry at a first-line check or may be admitted following a second-line check. However, from the number of persons refused entry at land BCPs, it can be concluded that the

<sup>15</sup> Regulation (EU) No. 610/2013, OJ 2013 L 182, Art. 7 (5).

number of travellers subjected to second-line checks is not negligible. An exception may be Ceuta, as virtually no second-line checks take place at El Tarajal, where the majority of those crossing are Moroccan nationals covered by the local border traffic arrangement. Travellers are generally either admitted or refused at the first line. Undertaking second-line checks would be difficult, given the already heavy workload at El Tarajal.

The field research found that travellers are often not provided with information on second-line checks. Overall, around half of the border guards surveyed would inform travellers of the reasons for stopping them. Only some 38 % of all officers surveyed said they would inform travellers of the purpose of or the procedure for the second-line check, with considerable differences among BCPs (see Figure 3).

Some officers (35 % overall) said they would inform the passenger of the procedure and purpose of the check only if there was no risk that the person would destroy important evidence or change his or her story.

Communication barriers are an additional obstacle to the effective provision of information. As noted in Section 1.1, language barriers and limited availability of professional interpretation hinder communication with travellers during second-line checks at most of the BCPs, albeit to different extents.

According to interviews and observations, at Kapitan Andreevo, Kipi and Medyka travellers generally receive

information on the second-line check, but this is less often the case at Ceuta, Röske and Vyšné Nemecké. No forms or written information on the second-line check were found to be available at Ceuta or Vyšné Nemecké.

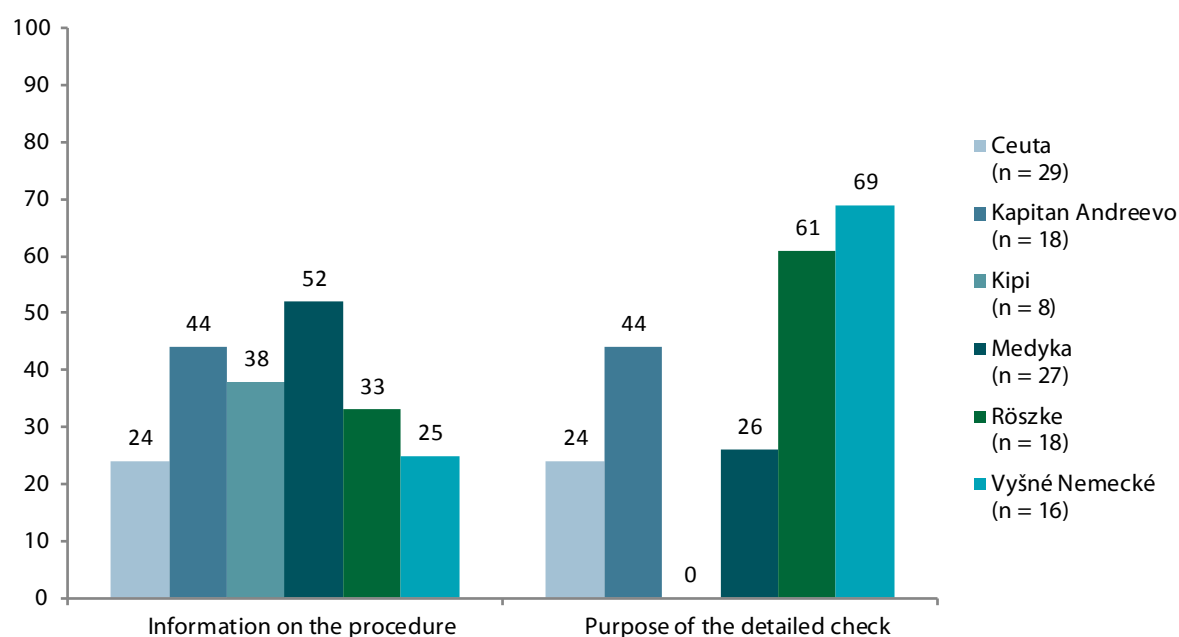
### Promising practice

#### Using forms to inform travellers of the purpose of and procedure for second-line checks

At four BCPs (Kapitan Andreevo, Kipi, Medyka and Röske) border guards are able to rely on the use of standard forms developed at national level to inform travellers of the purpose of and procedure for the second-line check. Although it was not required by the Schengen Borders Code at the time of the field research, the use of forms can facilitate communication with travellers, provided they are distributed with and supplemented by further oral explanations when necessary. At Medyka, for example, travellers receive a form on the purpose of and procedure for the check and their right to ask for the name and identification number of the officer performing the check. The form is provided either at the first line or immediately before the check at the main building. It is available in Polish and Ukrainian, which is sufficient for the majority of travellers, who are Ukrainian, but not for those from other countries.

Source: FRA, Field research, 2012

Figure 3: Information border guards provide when carrying out a detailed inspection (%)



Note: Border guards with no experience in second-line checks were instructed to skip this question.

Respondents who did not provide an answer to a given item have been excluded when computing the results.

Non-response per BCP: Ceuta, n = 2; Kapitan Andreevo, n = 2; Kipi, n = 0; Medyka, n = 0; Röske, n = 1; Vyšné Nemecké, n = 2.

Source: FRA, Border guard survey, 2012 (question 10; multiple responses possible)

Forms alone are, however, not enough. Researchers observed that travellers did not always understand the content of the form, in part as a result of the stress accompanying the check. For example:

*Question: "Did you clearly understand why the border guard stopped you from entry?"*

*Answer: "Not really, they told me to come, so I did."*

(Female, Ukrainian national, Medyka)

At Röske, the form is available in several languages (Albanian, English, Hungarian and Serbian). During the researchers' field visit, however, border guards did not hand it out to all travellers undergoing the procedure, even when checks lasted several hours. Persons travelling by private car or by bus referred for a second-line check did not receive an explanation of the reasons for the more detailed check.

*Question: "Was there anything in the behaviour of the border guard that you particularly liked/disliked?"*

*Answer: "[I didn't like] that he didn't give me any information. He just told me to wait."*

*Q: "Do you think that the questions asked by the border guard were appropriate?"*

*A: "The questions were, but I didn't get any response to the questions I asked."*

*Q: "In what language did the border guard address you?"*

*A: "He addressed me in Serbian, but there was no feedback to my questions. I understood only that he told me to wait and prepare €300 for a fine."*

(Male, Serbian national, Röske)

At Vyšné Nemecké, all second-line checks performed by customs are also observed by the border police. This makes it difficult for those trying to cross to distinguish the areas of responsibility of the two authorities. The lack of information provided during such checks is illustrated by the experience of two persons who were late for a business meeting in Budapest because of an extended check performed by customs with the participation of border guards.

*"They did not explain even the purpose of this check [...]. It took three hours to check the car."*

(Female, Ukrainian national, Vyšné Nemecké)

## 2.2. Information provided upon refusal of entry

Upon refusal of entry, travellers must be informed of the reason for the refusal by means of a standard form provided in Annex V, Part B of the Schengen Borders Code. This must include information on the right to appeal. According to Article 13 (3) of the code, travellers refused entry should also receive a list of contact points able to provide legal assistance.

Frontex publishes regular statistics on persons refused entry. According to it, 67,783 persons were refused entry at all EU land BCPs in 2012 and 80,112 in 2013. Most refusals stemmed from the lack of a valid visa.<sup>16</sup> At the BCPs covered by this research, some 9,500 persons were refused entry in 2012 and some 9,000 in 2013, as illustrated in Table 5. These figures do not include local border travellers refused entry at El Tarajal.

As Figure 4 shows, a majority of officers participating in the FRA survey (71 % on average) said they always inform travellers of their rights when entry is refused.

All BCPs have standard forms that detail the reasons for refusal and the right to appeal. At El Tarajal such forms are not used for those travelling on the basis of the local traffic arrangement, as they are not subject to the procedures of the Schengen Borders Code. Non-admitted persons interviewed for this research said that the border guards had not informed them why they had been refused entry.

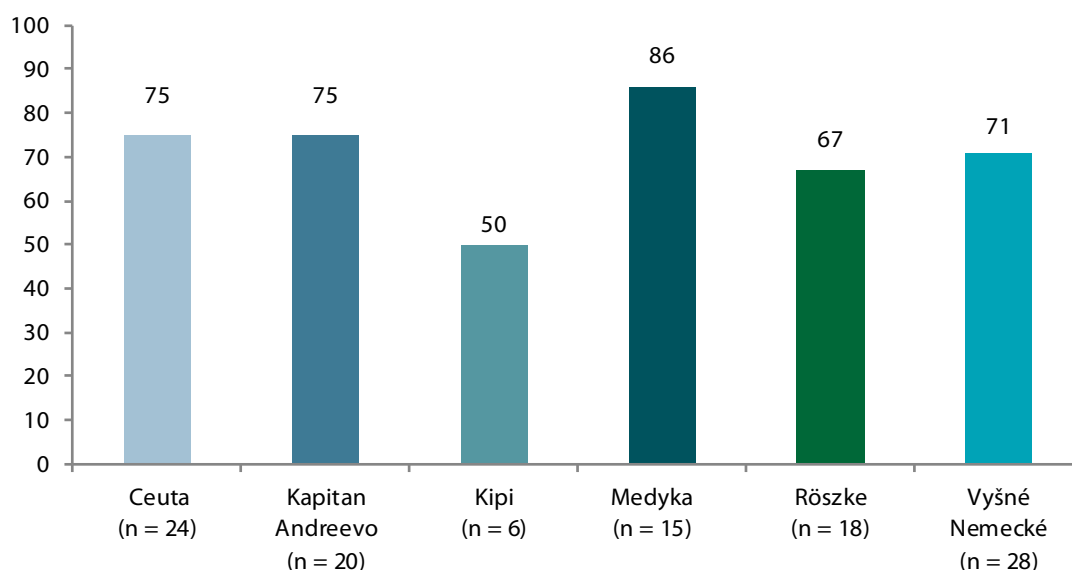
Table 5: Number of third-country national travellers refused entry at BCPs

BCP	2012	2013
El Tarajal	82,677 (local border traffic) 576 (Schengen)	106,010 (local border traffic) 816 (Schengen)
Kapitan Andreevo	736	856
Kipi	371	589
Medyka	4,793	4,510
Röske	2,535	1,928
Vyšné Nemecké	415	277

Source: FRA, compilation of national authority data, 2014

<sup>16</sup> Frontex (2014), p. 75.

Figure 4: Border guards always providing information on the rights of the person concerned when entry is refused (%)



Note: Border guards with no experience in second-line checks were instructed to skip this question.

Respondents who did not provide an answer to a given item have been excluded when computing the results.

Non-response per BCP: Ceuta, n = 0; Kapitan Andreevo, n = 1; Kipi, n = 0; Medyka, n = 5; Röszke, n = 3; Vyšné Nemecké, n = 1.

Source: FRA, Border guard survey, 2012 (question 19; multiple responses possible)

Other recurrent obstacles are limited foreign language versions of these forms and a lack of information on and availability of legal assistance, in addition to the limitations concerning interpretation and officers' foreign language skills mentioned in Chapter 1.

Decisions on refusal of entry are usually issued in the official language of the EU Member State (for example Polish at Medyka and Slovak at Vyšné Nemecké). At Medyka, officers try to explain the decision orally, but language barriers and traveller stress, disappointment and worry about the return trip may make effective communication difficult. Those who needed to cross the border at the BCP in question regularly feared that refusal of entry also meant a ban on entry in the future. At Kapitan Andreevo, forms for refusal of entry are bilingual, in Bulgarian and one of the following languages: English, French, German, Russian and the language of a neighbouring country. Several language versions of the form providing information on the decision to refuse entry are available at Röszke (Albanian, English, German and Hungarian), but travellers may not always receive the appropriate one. During the field visit, a passenger who spoke Albanian, English and German was given only the Hungarian version of the document. In such a case, the information available about appeals may be limited. According to a border police officer, no appeals against refusal of entry had been submitted in the previous few years.

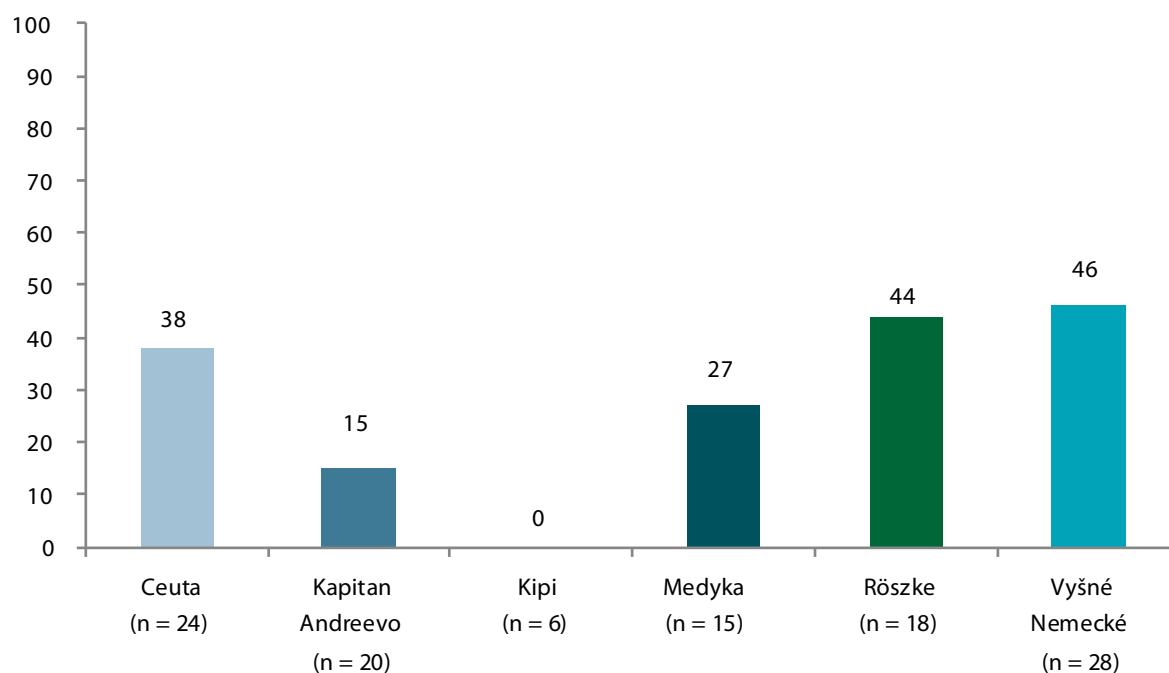
Access to legal assistance with challenging a refusal of entry is limited in practice at all BCPs. At the six land BCPs covered by the research, unlike at some airports, no organisation or entity providing legal assistance has a regular presence.

Less than a third of all front-line officers interviewed said they always would provide information on organisations able to offer legal advice, with significant differences among BCPs (Figure 5).

Observations confirmed that information on where to find legal assistance, such as a list of lawyers and their contact numbers, is not provided automatically on refusal of entry or may be available only to certain groups of persons. For example, at Vyšné Nemecké, information on legal assistance is available in a room for asylum seekers and vulnerable persons, which would not usually be accessible to persons who return immediately upon refusal of entry.

Appealing refusal of entry appears to be very difficult for those persons entering Ceuta at El Tarajal under the local travel arrangement. Non-admission decisions are not issued in writing, something which would require an increase in resources given the high volume of daily traffic and the number of refusals. In such cases, no explanation is provided to the passenger. Travellers interviewed reported that border guards removed passports without reason and entered entry bans in

Figure 5: Border guards always providing information on where to get legal assistance when entry is refused (%)



Note: Border guards with no experience in second-line checks were instructed to skip this question.

Respondents who did not provide an answer to a given item have been excluded when computing the results.

Non-response per BCP: Ceuta, n = 0; Kapitan Andreevo, n = 1; Kipi, n = 0; Medyka, n = 5; Röszke, n = 3; Vyšné Nemecké, n = 1.

Source: FRA, Border guard survey, 2012 (question 19; multiple responses possible)

them at the check at El Tarajal simply, for example, for not crossing quickly enough after being told to do so.

## Conclusions

Often, travellers referred for second-line checks 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 BCPs, at one of them they were not handed out systematically. Language obstacles further prevent effective provision of information.

Upon refusal of entry, travellers are informed through the standard form annexed to the Schengen Borders Code, but not necessarily in a language they can read. Information on the possibilities for legal assistance is

not usually given, making it very difficult to appeal a refusal of entry. At the land border at Ceuta, the procedure laid down in the Schengen Borders Code is not applied to local border traffic, meaning that no written decisions on refusal of entry are issued in such cases.

### 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.



# 3

## Treatment of children during checks

### Charter of Fundamental Rights of the European Union

#### Article 24: The rights of the child

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.

2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.

This chapter describes the procedures applied to children during borders checks. It looks at the steps taken to identify children at risk and to prevent child abduction. It deals first with “accompanied children”, meaning children who are accompanied by their parents or other authorised adults, and then with “unaccompanied children”, or those who arrive without an adult responsible for them by law.

The Schengen Borders Code requires border guards to pay particular attention to children, whether they are travelling accompanied or not (Annex VII). This includes verifying parental care of the persons accompanying the child or parental consent if

the child is travelling alone. EU law on asylum and human trafficking sets out further safeguards and protection measures applying to child applicants or victims, referring, for example, to counselling, appropriate representation and suitable accommodation, assessment of best interests and safeguards concerning age assessment.<sup>17</sup>

#### Promising practice

#### Providing guidance to border guards on identification of children at risk

Frontex has developed a tool – the Vega children handbook – to help identify children at risk and increase border guards’ awareness about children at risk at airports. The handbook provides guidance on how to identify children at risk, particularly those at risk of human trafficking. Although drafted for airports, many of its considerations are also applicable to land BCPs. The handbook is being piloted before its planned finalisation in 2015.

Source: Frontex, 2014

<sup>17</sup> Reception Conditions Directive (2013/33/EU), OJ 2013 L 180, Art. 21–24; Asylum Procedures Directive (2013/32/EU), OJ 2013 L 180, Art. 25 (5); Anti-Trafficking Directive (2011/36/EU), OJ 2011 L 337, Art. 14 and 15.

## IDENTIFYING CHILDREN AT RISK

FRA asked border guards to identify the criteria they consider most helpful in recognising children at risk. Those which were mentioned most often include:

- the behaviour of the child and/or the accompanying adult during the check (78 % of respondents);
- the behaviour of the child and/or the accompanying adult when approaching the checkpoint (72 %);
- the child's statements (72 %); and
- the fact that the child looks younger than the age mentioned in the passport (64 %).

*Source: FRA, Border guard survey, 2012 (question 27)*

### 3.1. Accompanied children

According to Annex VII of the Schengen Borders Code, with regard to accompanied children, the border guard must "check that the persons accompanying minors have parental care over them".

Accompanied children play a rather passive role during border checks. Virtually all interaction is with the accompanying adults. Children travelling with their family are generally not addressed separately at the first line, even though the border guards surveyed said that a child's statements are an important indicator for identifying children in need of protection. For persons travelling by private car, the driver usually presents the collected documents of everyone in the car. Officers briefly look inside the car to make sure that the number of passengers corresponds to the number of documents submitted, that family ties appear to be correct and that the faces of the passengers and the driver match those in the passports. Only at Vyšné Nemecké did border guards directly address children more frequently, although not systematically: out of the 15 persons interviewed who were travelling with children, three said that border guards directly addressed their children at the first-line check. The border guards asked their names in the presence of their parents. Otherwise, the researcher recorded only one case, at Medyka, where border guards spoke with a child.

Findings from the border guard survey corroborate that the interaction between border guards and accompanied children is very limited. Some 35 % of officers say they would address family members individually. One in four border guards surveyed at the six BCPs said that they would usually speak only with the person presenting the passport (with a higher number of border guards providing such an answer at Röszke, Kipi and Ceuta). Figure 6 shows the difference in border guard attitudes between BCPs. Most border guards at Vyšné Nemecké said they speak to each passenger individually, whereas at Kipi only one border guard surveyed would do so.

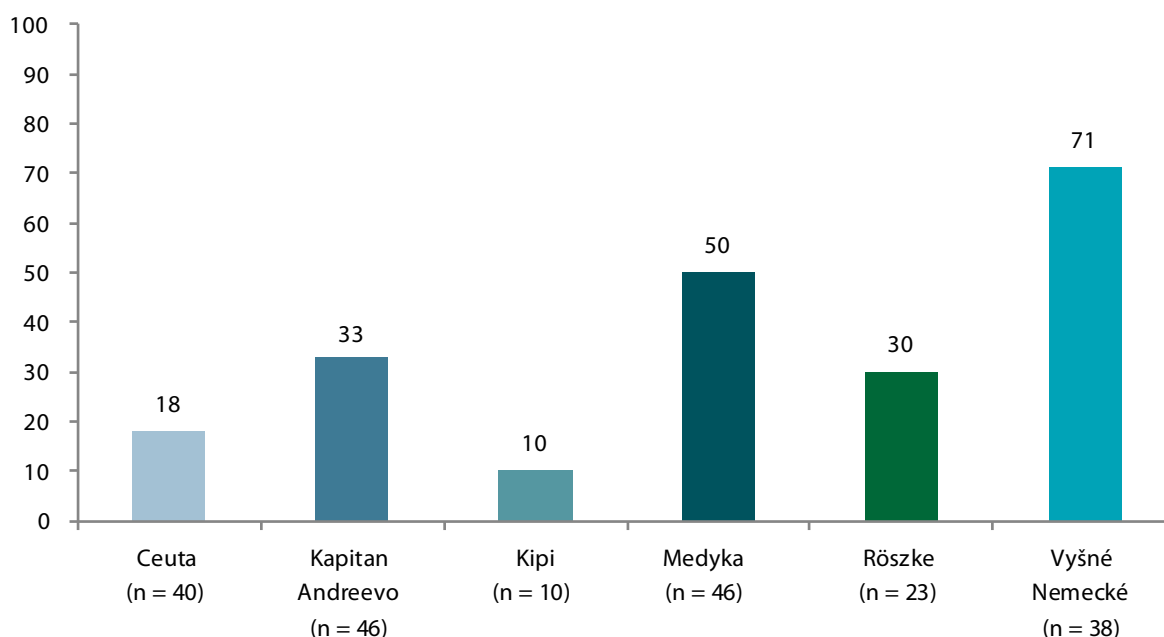
Many officers address family members individually only if they suspect a problem. They may request supporting documents. According to information provided by border guards at Kapitan Andreevo and Vyšné Nemecké, this may take place when only one parent travels with a child. Officers at Röszke reported that they would ask for supporting documents if the surnames of the accompanying adult and the child passenger differed.

In no cases did border guards mention that exchanging a few words with a child may be helpful in spotting indications of human trafficking or child abduction. Only one in four border guards who completed the FRA questionnaire said that they would address family members individually if there were signs that one person in the group was in need of protection.

When families undergo a second-line check, as observed at Röszke and Medyka, all information is communicated to the parents only. If the second-line check concerns the child's documentation, it may not be necessary for the child to be present during the check. At Medyka, for example, Ukrainian parents with residence permits in Italy tried to enter Poland with their six-month-old child, who had an Italian birth certificate. The mother was taken to the second-line check while the father waited with the child in the minibus. The case resulted in a refusal of entry for the child, and officers advised the mother on how to obtain the necessary documents for the child.

Bilateral cooperation with the authorities of the neighbouring country at local level may be helpful to clarify questions or doubts regarding the child or the accompanying parent. Researchers observed, for example, one instance in which border guards at Vyšné Nemecké had doubts about supporting documents in Ukrainian. They asked the authorities on the Ukrainian side to call the institution that had issued the child's documents. After verification of the documents, the border guards allowed the child and the accompanying adult to cross the border.

Figure 6: Border guards who always address members of a family individually (%)



Note: Respondents who did not provide an answer to a given item have been excluded when computing the results.

Non-response per BCP: Ceuta, n = 0; Kapitan Andreevo, n = 1; Kipi, n = 0; Medyka, n = 0; Röske, n = 3; Vyšné Nemecké, n = 1.

Source: FRA, Border guard survey, 2012 (question 11; multiple responses possible)

As observed at Röske, if one parent is referred for a second-line check, the rest of the family may be asked to wait outside the building or nearby. At Medyka, in contrast, the border guards reported that the family can decide whether to wait outside or to join the family member who is to be subjected to the second-line check. In this way, the family may remain together if they so wish. If the weather is bad, family members do not have to wait outside in the rain or cold.

According to shift leaders, at all BCPs studied, special attention is paid to children who are accompanied by adults other than their parents or legal guardian. There are instructions on what documents the child must carry to prove that both parents (or their legal guardian) have given their consent for the child to travel. If suspicions arise, the accompanying adult and, where appropriate, the child, are interviewed. Border guards may also check databases, including the Schengen Information System (SIS II), call the child's parents or contact the police in the child's country of origin to enquire if the child had gone missing. In the case of persons leaving the country, where there are serious suspicions of child abduction or unlawful removal from the custody of the person(s) legally exercising parental care, border guards would refuse exit and initiate investigations.

FRA could not collect more information on how verification of parental consent works in practice, because the

research encountered too few cases of children travelling with adults other than their parents. In the absence of concrete suspicions, border guards may not request particular documentation to verify parents' consent, as the example of a Moroccan national suggests. The man was allowed to enter Ceuta by car with a three- or four-year-old girl whom he reported was not his daughter but his wife's. In this case, as the girl held a Spanish passport, the police allowed the man to cross without any further verification. This points to important challenges regarding child protection at BCPs.

### 3.2. Unaccompanied children

Children travelling without parental consent or not in the company of adults responsible for them may be at particular risk of exploitation, including human trafficking. In the case of children travelling unaccompanied, Point 6.3 of Annex VII of the Schengen Borders Code requires border guards to ensure, "by means of thorough checks on travel documents and supporting documents, that the minors do not leave the territory against the wishes of the person(s) having parental care over them".

Officers generally rely on checking available databases, such as Interpol, the SIS II and, where available, the Visa Information System (VIS), as well as national databases, to see if a child is missing or abducted. Shift leaders at Röske also said that

they may contact the police in the child's country of origin to enquire if the child has been reported missing.

If doubts about the authenticity of family relations or the validity of consent cannot be resolved and a child is considered to be travelling alone, the most immediate reaction by front-line officers at all BCPs is to inform their shift leader, who will take further steps.

Under EU law, from the moment a child is identified as a victim of human trafficking a guardian or a representative must be assigned (Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (Anti-Trafficking Directive), Article 14 (2)). Unaccompanied children seeking international protection must be appointed a representative as soon as possible (Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) (Asylum Procedures Directive), Article 25 (1) (a)).

Article 10 (4) of the Council of Europe 2005 Convention on Action against Trafficking in Human Beings (CETS No. 197) provides that as soon as an unaccompanied child is identified as a victim, each Party shall provide for representation of the child by a legal guardian, organisation or authority who must act in the best interests of that child. They must also take the necessary steps to establish his or her identity and nationality and make every effort to locate his or her family when this is in the best interests of the child. The UN Committee on the Rights of the Child recommends that separated children should be appointed a guardian or adviser promptly, as soon as they are iden-

tified (and not only after the child is referred to international protection procedures or other procedures).<sup>18</sup>

If the child is travelling without valid consent from his or her parents or guardian, 64 % of border guards, on average, would initiate a guardianship application either right away or later, while 36 % would not do this at all, according to the survey.

Undocumented unaccompanied children rarely appear at BCPs, as children travelling without authorisation would be stopped while trying to leave the third country. Sometimes adolescent children are found hidden in a vehicle. Border guards at Kapitan Andreevo reported cases of 16–17-year-old Turkish children who are relatives of the travellers hiding them. Upon detection, the children are interviewed and sent to the holding facility at the BCP for up to 24 hours. In most cases, the children have Turkish identity cards and are subsequently returned to Turkey.

More frequently, undocumented unaccompanied children are apprehended after having crossed the stretch of border between BCPs, the green border. Depending on national procedures, such children may be brought for further processing to the BCP, as is the case, for example, at Röske, or referred to other domestic facilities. Where apprehended children are not brought to the BCP, which they normally are not in most locations covered by this report, the involvement of the BCP with undocumented unaccompanied children is limited. In the rare cases where undocumented children appear at the BCP, they are interviewed. The authorities may initiate age assessment procedures at some BCPs. Where this occurs – such as, for example, at Röske and Vyšné Nemecké – the assessment is usually carried out before a guardian is appointed or the domestic child protection services are contacted.

Border guards at the BCP may collaborate with organisations providing humanitarian, legal or social assistance to children. Officers at Kipi, for example, reported being in close contact with the Greek NGO Smile of the Child (Hamogelo tou Paidiou), which supports the Greek police in matters of missing and abducted children. At Kapitan Andreevo, an employee from the Children's Centre visits the unaccompanied child and the officers must act according to instructions issued by the regional police department.

### 3.3. Training

The protection of children, including the identification and referral of children at risk, is included as a subject in the Frontex Common core curriculum (subject 1.7.9), which spells out EU-wide standards for the training of front-line

#### FRA ACTIVITY

##### Focusing on child victims of trafficking



In 2014, FRA published a handbook on guardianship, which aims to strengthen the protection of children, specifically addressing the particular needs of child victims of trafficking. The handbook indicates that the prompt appointment of guardians for presumed victims of trafficking and for unaccompanied children at risk of exploitation and abuse is a key safeguard for a child's rights and overall well-being.

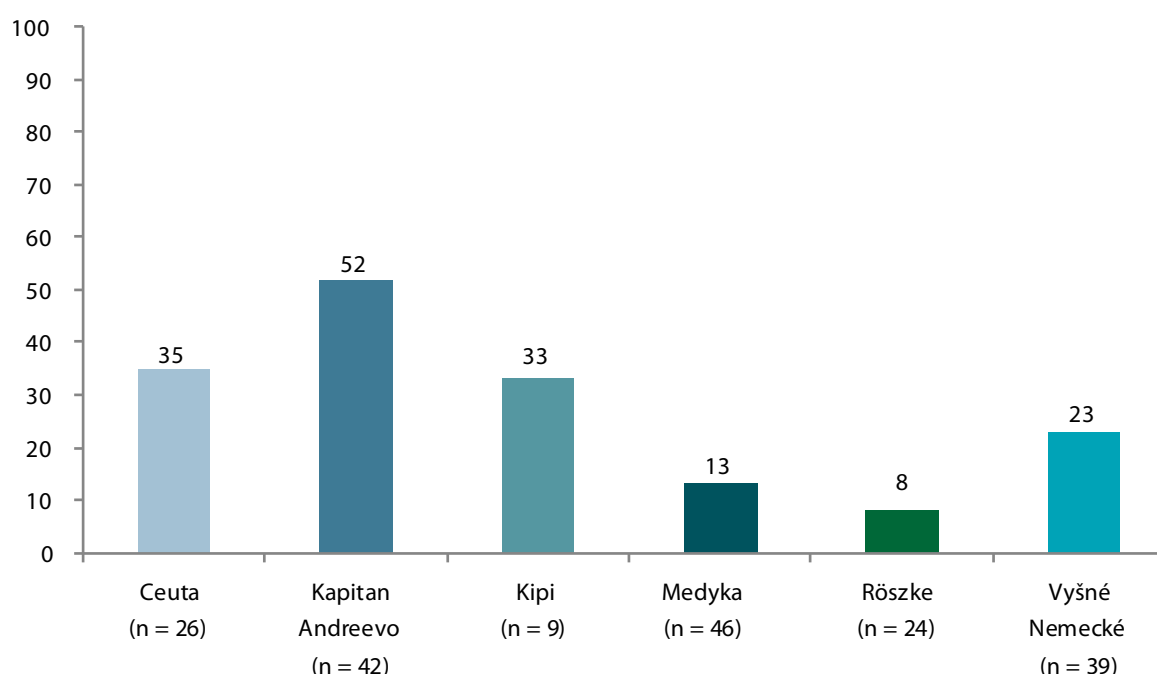
*FRA (2014), Guardianship for children deprived of parental care: a handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking, Luxembourg, Publications Office*

<sup>18</sup> UN, CRC (2005), points 21 and 33.

border guards. The availability of child protection training seems to differ by BCP. When asked if they had received training on dealing with children in 2011, only 27 % of bor-

der guards, on average, responded positively. There were significant differences among the BCPs, ranging between 8 % at Röszke to 52 % at Kapitan Andreevo (Figure 7).

Figure 7: Border guards who received training on dealing with children in 2011 (%)

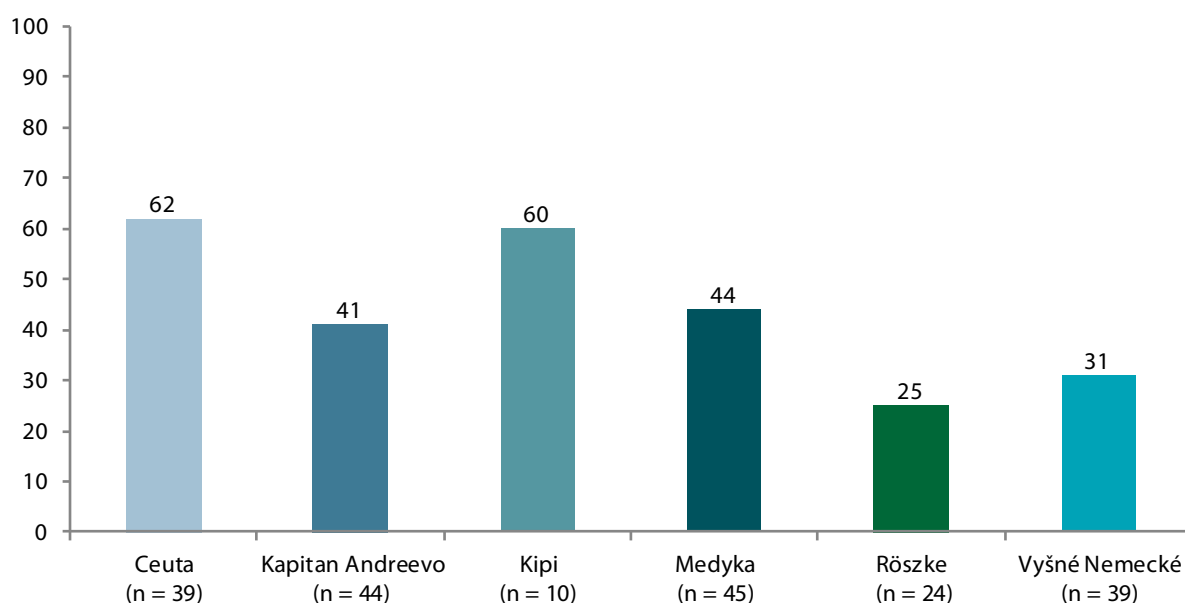


Note: Respondents who did not provide an answer to a given item have been excluded when computing the results.

Non-response per BCP: Ceuta, n = 14; Kapitan Andreevo, n = 5; Kipi, n = 1; Medyka, n = 0; Röszke, n = 2; Vyšné Nemecké, n = 0.

Source: FRA, Border guard survey, 2012 (question 35; multiple responses possible)

Figure 8: Border guards who consider that training on dealing with children would be helpful for their work (%)



Note: Respondents who did not provide an answer to a given item have been excluded when computing the results.

Non-response per BCP: Ceuta, n = 1; Kapitan Andreevo, n = 3; Kipi, n = 0; Medyka, n = 1; Röszke, n = 2; Vyšné Nemecké, n = 0.

Source: FRA, Border guard survey, 2012 (question 38; multiple responses possible)

The demand for training on dealing with children varies by BCP. Most interest was expressed by officers at Ceuta and Kipi, where some 60 % believed that further training on dealing with children would be useful for their work (see Figure 8).

## Conclusions

The Schengen Borders Code requires border guards to pay particular attention to children, whether they are accompanied or not. This includes verifying parental care of the persons accompanying the child or parental consent if the child is travelling alone.

Border guards pay special attention to children by visually verifying correspondence with their passports, but they do not often address children individually. Accompanied children play a rather passive role during border checks; virtually all interaction is with the accompanying adults. Unaccompanied

minors who are undocumented do not frequently arrive at land BCPs. When they do turn up, procedural steps, including age assessment tests, are often initiated and 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 officers at the BCPs.

### 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.*

# 4

## Access to asylum



### Charter of Fundamental Rights of the European Union

#### Article 18: Right to asylum

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty establishing the European Community.

#### Article 19 (2): Protection in the event of removal, expulsion or extradition

No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

Although no official statistics are available, it is generally acknowledged that only a small number of persons request international protection at land BCPs. At land borders, most applications for asylum are submitted by individuals who crossed the border without having the necessary papers and outside official BCPs. When applications are lodged at BCPs, this is mainly done at airports (see FRA's 2014 report Fundamental rights at airports: border checks at five international airports in the European Union). An exception are Polish land BCPs, where following civil unrest in 2014 a considerable number of Ukrainian nationals requested asylum.

FRA research confirmed that applications for international protection are only rarely submitted at land BCPs:

*"It is not [common] practice to apply for asylum at the BCP, because here those persons who cross are document holders."*

(Shift leader, Kapitan Andreevo)

At the time of the 2012 field research, border guards in most of the six BCPs covered told FRA that they were not aware of any applications for international protection submitted in recent years. Only at Medyka, at the Polish-Ukrainian border, was FRA told that four persons from Georgia applied for asylum in 2011 and 12 persons (from Georgia, Moldova, Belarus, Ukraine, Cameroon and Tunisia) applied in 2010.

In Poland, after the wave of demonstrations and civil unrest in Ukraine in 2014, the situation changed substantially. By the end of July 2014, more than 1,100 Ukrainian nationals had applied for asylum in Poland since 1 January that year. This includes some 250 persons who requested asylum at Medyka BCP.

In 2014, EASO embarked on an effort to collect a number of asylum indicators, including figures on where applications for international protection are lodged. Not all EU Member States, however, allow asylum requests to be registered formally at a BCP. In some Member States, border guards must refer the request to the national authority designated to register the application. In such cases, no statistics are available on how often border guards at a particular BCP receive requests for asylum and forward them. In spite of these limitations, initial figures received by EASO suggest that few claims for international protection are lodged at land BCPs, except in Poland.

There are several possible reasons why few asylum seekers submit claims at BCPs. These stem from practical difficulties in reaching the border for nationals from states other than the neighbouring country, and advice received from smugglers, friends or other persons. They also relate to the knowledge and skills of border guards at BCPs and the training they have received on how to handle asylum applications.

First, to reach the BCP of an EU Member State, an asylum seeker would need to pass successfully through the third country's checks. In many cases, asylum seekers do not possess identity documents or valid visas. In addition, the third country is likely to intercept undocumented asylum seekers before they reach its border. The third country may carry out police checks on the road to the BCP, and it would be difficult for undocumented persons to pass through these check-points. Where an undocumented person reaches the third-country BCP, it is very unlikely that he or she will be allowed to leave the country if his or her documents are not in order.

Second, persons holding valid documents for entry into the territory of an EU Member State usually first cross the border and submit an application for asylum once they are inside the country. At this point, there is no further risk of non-admittance.

Third, the set-up at BCPs may not be conducive to the submission of asylum applications. At the time of the research, there was limited information on asylum visibly displayed at the six BCPs. No organisation offering legal or social counselling to persons who might wish to apply for asylum had a presence there (this changed at Medyka in 2014). As asylum applications are generally a rare event, border guards have limited experience with them. Taken together, these circumstances may in practice form an obstacle to the identification of persons in need of international protection, posing a risk that persons in need of international protection are turned back to where they came from, leading to a possible violation of the principle of non-refoulement.

## 4.1. Identifying asylum seekers among travellers

Any expression of fear of suffering serious harm if returned to the country of origin constitutes an application for international protection (Article 2 (b) of the Asylum Procedures Directive (2013/32/EU) and Schengen handbook<sup>19</sup>). In order to comply with the principle of non-refoulement set forth in the Charter of Fundamental Rights and restated in Article 3 of the Schengen Borders Code, persons in need of international protection need to be identified when they reach the border. Amendments to the Schengen Borders Code made in 2013 have strengthened this duty by stressing that the Code must be applied "in full compliance with [...] obligations related to

access to international protection" (Article 1 (3), Regulation (EU) No. 610/2013 introducing new Article 3a into the Schengen Borders Code).

Most of the BCPs covered by the research displayed no visible information on asylum, even in areas where travellers wait for second-line checks. Providing basic information on asylum there could be a simple and effective way to reach those who are not immediately admitted and on whom further checks are being carried out. During the field research, such information was provided only at Röszke, where the Hungarian Helsinki Committee has developed and disseminated a leaflet called 'Asylum in Hungary' in nine languages (Albanian, Arabic, English, French, Hungarian, Pashto, Persian, Russian and Somali), containing all relevant information on the national asylum procedure. The leaflets are available on the information board in the waiting room for second-line checks, together with the phone numbers of persons and organisations who can be contacted for support.

With the increased number of asylum requests presented by Ukrainian nationals at Medyka, the authorities took significant steps to ensure that persons in need of international protection were identified.

### Promising practice

#### Providing information on asylum in Poland

Following civil unrest in the Ukraine and the resulting increase in asylum applications from Ukrainian nationals, the Polish authorities took several measures to facilitate access to international protection for asylum seekers at the Ukrainian land border. The Office for Foreigners established a dedicated phone line which people can call for information in Ukrainian on the asylum procedure and assistance for asylum seekers. At Medyka itself, information on asylum is posted in English, Polish and Russian on the wall in a place visible to persons refused entry. Finally, the border guards at the BCP give an information note in Ukrainian to each Ukrainian national who expresses the intention to apply for asylum. If, after having read the note, the person decides to lodge an asylum claim, the border guards register the claim and the asylum seeker is referred to the appropriate reception facility. In addition to Ukrainian nationals, persons of other nationalities have also requested asylum at Polish BCPs in recent times.

*See, for assistance to Ukrainian asylum seekers, <http://www.udsc.gov.pl/Sprawy,dotyczace,obywateli,Ukrainy,%E2%80%93,telefonu,informacyjne,UdSC,2273.html>*

*Source: United Nations High Commissioner for Refugees (UNHCR) (2014)*

<sup>19</sup> European Commission (2006), Sections 10.1. and 10.3; FRA (2014), Section 3.1.1.

Typically, at the first-line check, the focus is on checking the validity of entry documents. Asylum seekers would normally be recognised only if they explicitly declared that they were seeking protection. This means that implicit requests for asylum may be ignored and access to the asylum procedure denied:

*“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)

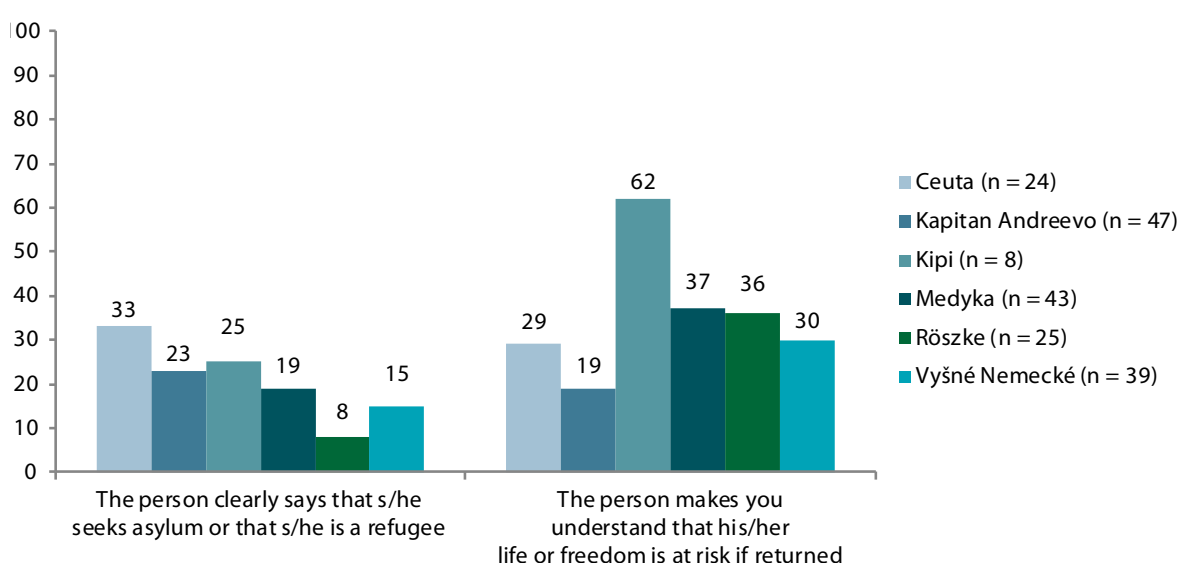
The research could not verify if border guards would provide information on asylum to travellers when there were indications, for example during a second-line check, that they might be in need of international protection. Such a proactive approach is required by Article 8 of the Asylum Procedures Directive (2013/32/EU).

The FRA survey shows that these front-line border guards at BCPs have only a limited understanding and knowledge of asylum. Border guards were asked to indicate in the questionnaire in what situations they would take steps to initiate an asylum procedure. The responses show that not every border guard would do so even if a passenger clearly stated that she or he was seeking asylum or that she or he was a refugee or said that his or her life

would be at risk if he or she were returned. Eight out of the 24 border guards interviewed at Ceuta and two out of eight at Kipi would not initiate an asylum procedure if a passenger expressly said they were seeking asylum (see Figure 9). The number of border guards who said they would not initiate an asylum procedure if they understood that the passenger's life was at risk if returned is even higher: five out of eight border guards interviewed at Kipi said so, as did some one out of three interviewed at Medyka and Röske. Although this may be explained by the lack of experience of such cases at BCPs, the responses are surprising and show that more Member State attention is required.

A particular situation was observed at Ceuta. At the time of the 2012 research, asylum seekers who submitted an application while in the enclave were obliged to stay there until a final decision on the asylum claim was taken. Applicants for international protection remain in the enclave until the authorities decide on their application, whereas migrants in an irregular situation are transferred to facilities in other parts of Spain pending removal. As a result, asylum seekers tend to stay longer in Ceuta than non-removed irregular migrants. If removal fails, migrants in an irregular situation, once released, have access to the Schengen area. This situation may also have contributed to discouraging submissions of asylum applications at the BCP.

Figure 9: Border guards who would not take steps to have an asylum procedure initiated in the situations listed in the graph (%)



Note: Respondents who did not provide an answer to a given item have been excluded when computing the results.

Non-response per BCP: Ceuta, n = 16; Kapitan Andreevo, n = 0; Kipi, n = 2; Medyka, n = 3; Röske, n = 1; Vyšné Nemecké, n = 0.

Source: FRA, Border guard survey, 2012 (question 21; multiple responses possible)

## 4.2. Treatment of applicants and referral

Applications for international protection submitted at BCPs have to be processed in line with the EU asylum *acquis*. The Asylum Procedures Directive (2013/32/EU), which lays down common standards for examining applications, expressly states that it applies to applications submitted at the border (Article 3). This means that all applications lodged at the border must be registered and referred to the designated authority (Asylum Procedures Directive (2013/32/EU), Article 6).

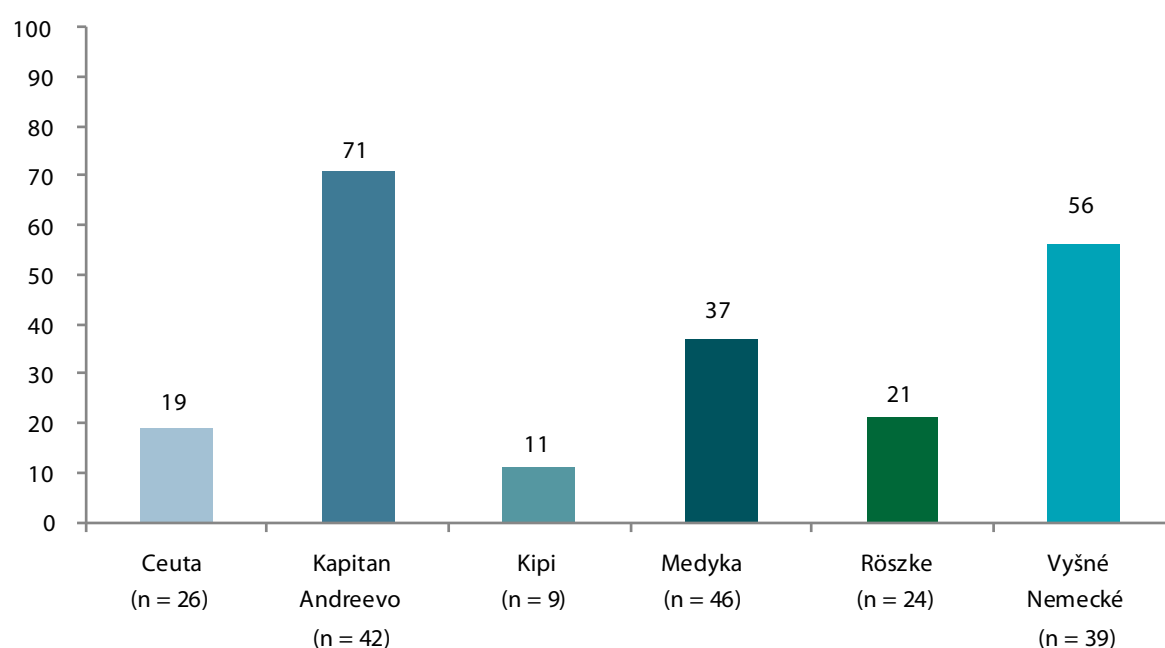
To ensure that applicants have effective access to the procedure, Article 6 of the directive establishes a three-day deadline within which an application for international protection must be registered. If border authorities are not competent to handle the registration, as may be the case with border guards, the deadline is extended to a maximum of six days. This means that border guards must forward the application or direct the applicant to the competent authorities as soon as is reasonably possible.

Applicants for international protection must be treated in accordance with the standards set by Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down stand-

ards for the reception of applicants for international protection (recast) (Reception Conditions Directive). They cannot be turned back at the border until a final decision on their application has been taken, as this would contradict the principle of non-refoulement set forth in Articles 18 and 19 of the EU Charter of Fundamental Rights.

In those rare cases where a person expressly applies for asylum at the first-line check, he or she would be referred to the supervisor or directed to a second-line check. In some EU Member States, asylum applications are registered directly at the BCP, whereas others have another authority handle this. At Medyka, for example, applications are registered at the BCP and photographs and fingerprints for the Eurodac database are taken. There are designated officers trained to handle asylum cases, in addition to those who normally conduct second-line checks. The applicant is assisted in completing the asylum application form which is to be filled out in Polish. If required, an interpreter of the language spoken by the applicant is called in (the border guards have at their disposal a list of potential interpreters who speak various languages). At the end of the submission process, each adult applicant should be informed in writing about the asylum procedure and the duties and rights of persons who submit an application. In contrast, in Greece, an asylum application cannot be lodged at the Kipi BCP, according

Figure 10: Border guards who received training on asylum in 2011 (%)



Note: Respondents who did not provide an answer to a given item have been excluded when computing the results.

Non-response per BCP: Ceuta, n = 14; Kapitan Andreevo, n = 5; Kipi, n = 1; Medyka, n = 0; Röszke, n = 2; Vyšné Nemecké, n = 0.

Source: FRA, Border guard survey, 2012 (question 35; multiple responses possible)

to shift leaders. It must be done at the border police unit in the nearby town of Feres, to which potential asylum seekers would be handed over.

### 4.3. Training

Article 6 of the Asylum Procedures Directive (2013/32/EU) obliges Member States to ensure that border guards receive training on asylum necessary for their tasks. Not all border guards surveyed at the BCPs, however, said that they had received training on asylum. Figure 10 shows that only at Kapitan Andreevo and Vyšné Nemecké had a substantial number of border guards recently received training on asylum.

## Conclusions

Except in Poland, the number of asylum applications made at land BCPs is extremely low compared with those submitted by persons who cross the land border between BCPs at green borders in an irregular manner. There are various reasons for this, including, first of all, the difficulty that undocumented persons would have in passing through checkpoints in the neighbouring third country. EU Member State authorities could, neverthe-

less, take certain steps to facilitate the identification of persons in need of international protection at land BCPs.

#### 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.*

*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.*



# 5

## Identification of presumed victims of trafficking in human beings

### Charter of Fundamental Rights of the European Union

#### Article 5: Prohibition of slavery and forced labour

3. Trafficking in human beings is prohibited.

Trafficking in human beings is “[the] recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation”.<sup>20</sup> It is a serious violation of human rights. The ECtHR held in *Rantsev v. Cyprus and Russia*<sup>21</sup> that trafficking falls within the scope of Article 4 of the ECHR, which prohibits slavery and forced labour.

### 5.1. Identification of potential victims of trafficking

Under the EU Anti-Trafficking Directive (2011/36/EU), Member States are under a positive obligation to put in place effective provisions to protect (potential) victims of trafficking and criminal provisions to punish traffickers. The same obligation follows from the 2005 Council of Europe Convention on Action against Trafficking in Human Beings.

Article 11 of the directive obliges Member States to “take the necessary measures to ensure that a person is provided with assistance and support as soon as the competent authorities have a reasonable-grounds indication for believing that the person might have been subjected” to trafficking in human beings. To provide such protection and support it is necessary to identify victims: Article 11 of the directive also obliges Member States to take the necessary measures to “establish appropriate mechanisms aimed at the early identification of, assistance to and support for victims, in cooperation with relevant support organisations”.

According to Article 10 (1) of the Council of Europe Convention on Action against Trafficking in Human Beings, each state party must have personnel who are trained and qualified in preventing and combating trafficking in human beings and in identifying and helping victims, including children. The convention also requires the different authorities to collaborate with each other and with relevant support organisations, so that victims can be identified, taking into account the special situation of women and child victims. Article 14 of the convention provides for the issuance of temporary residence permits to victims under certain conditions.

As noted in the EU Anti-Trafficking Strategy,<sup>22</sup> the identification of victims is difficult. At the border, victims of trafficking may not yet be aware that they are facing exploitation and abuse; they may instead simply believe that they are going to the EU to work. Unlike those entering the EU by air, at road crossing points, car drivers and their passengers are usually allowed to remain in their vehicles. Observing passengers’ behaviour while they queue at a booth and

20 Council of Europe, CETS No. 197, 2005, Art. 4; Anti-Trafficking Directive (2011/36/EU), OJ 2011 L 337, Art. 2 (1).

21 ECtHR, *Rantsev v. Cyprus and Russia*, No. 25965/04, 7 January 2010, paras. 282–286.

22 European Commission (2012), Section 2.1 (Priority A).

attempting to ascertain if there is anything suspicious is therefore not feasible, except for pedestrians and bus passengers, who must leave the bus and walk through the passport control booth.

Most of the shift leaders interviewed for this research did not recall any cases of victims of trafficking in human beings identified at their BCPs. At Vyšné Nemecké, for example, five of the six shift leaders had never dealt with suspected trafficking victims, although they had been working at the BCP for periods ranging from three to more than 10 years. A typical border guard response was:

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

(Shift leader, Kipi)

Only at Medyka did shift leaders remember any cases in which victims of trafficking in human beings were identified; they recalled three cases in the 2000s. One of the cases involved a Ukrainian woman who, while leaving Poland in the pedestrian lane, declared during the border check that she had overstayed in Poland because a Polish citizen for whom she had worked had taken her passport away. She revealed additional information at the second-line check, when the operational and investigating unit questioned her. She was identified as a victim of trafficking in 2006, when a special procedure for dealing with cases of trafficking in human beings was introduced at the BCP. The woman was handed over to a specialist police unit in Poland and the NGO La Strada was contacted to provide support.

Border guards are the first authorities whom victims trafficked through an external EU border meet. Sometimes they represent the only opportunity for any public authority to interact with the victim. Although their interaction with travellers at the BCP is usually very brief, this first encounter with EU Member State officials constitutes an initial opportunity to identify possible victims.

If potential victims of human trafficking are to be identified, border guards must be informed about recent criminal trends. Border guards should also be provided with feedback on the effectiveness of the actions they take, which requires inter-institutional cooperation. In 2010, the EU set up a policy cycle for organised and serious international crime to tackle the most important criminal threats in a coherent and methodical manner through better cooperation between the relevant actors at international, European and national levels, including between different services within a Member State.<sup>23</sup> Trafficking in

human beings featured as one of the priority crime threats in the first (2011–2013)<sup>24</sup> and the second (2014–2017)<sup>25</sup> EU policy cycle for organised and serious international crime. Since 2011, the policy cycle has been implemented through the European Multidisciplinary Project against Criminal Threats (EMPACT), which involves experts from the Member States and EU agencies, in particular Europol and Frontex.

The identification of victims of trafficking at first-line checks is difficult, but it also does not seem to be a priority at land BCPs. Shift leaders interviewed at Röszke indicated that border guards would take action only if a person explicitly declared that he or she was a victim.

*“If a suspicious case came up at the BCP, border guards can only conduct a very brief interview, but I personally believe that it would not have much result if the victims were afraid of the traffickers and would say what they had been instructed to.”*

(Shift leader, Röszke)

None of the BCPs had printed materials on human trafficking visibly displayed, although information materials were available. NGOs specialising in combating trafficking in human beings, for example, disseminated leaflets and posters at Medyka. At all BCPs, in the unlikely scenario that a person explicitly tells border guards that he or she is a victim of human trafficking, the person would be referred for a second-line check for more thorough interviewing, according to the established procedure. In general, indicators of trafficking are more likely to emerge during second-line checks, because of the more extensive interviews conducted at this stage.

In recent times, a number of tools have been developed at EU level to support authorities and others who are likely to come into contact with victims of trafficking.<sup>26</sup> Some of these tools specifically assist border guards in the identification of victims of human trafficking:

- Frontex (2012), *Vega handbook: practical handbook on the detection and disruption of criminal organisations involved in the trafficking of human beings and people smuggling at air borders* (restricted to law enforcement authorities); a specific version for child victims of trafficking is currently being developed.

<sup>24</sup> Council of the European Union (2011), p. 3.

<sup>25</sup> Council of the European Union (2013), p. 3.

<sup>26</sup> European Commission (2013). This publication highlights existing documents and projects on the identification of victims.

<sup>23</sup> Council of the European Union (2010).

- Frontex (2013), *EU risk profiles handbook* (restricted to law enforcement authorities); the handbook covers eight specific nationalities.
- UNICEF (2006), *Reference guide on protecting the rights of child victims of trafficking in Europe* (includes a checklist to help border officials assess whether a child is at risk of being trafficked).

These tools provide indicators or checklists which are intended to assist border guards in identifying victims of human trafficking. Border guard familiarity with trafficking indicators is essential to maximise opportunities to identify victims at BCPs. This also requires border guards to be informed on a regular basis about the traffickers' modus operandi and new cases of trafficking, particularly when it is known that their

BCP was the entry point for the victim. Such a regular flow of information was, however, mentioned only by Hungarian border guards at Röszke, although FRA does not rule out the possibility that this may now also take place at other BCPs.

In the survey, border guards were asked which indicators are most helpful in recognising possible victims of human trafficking. Travellers' statements were considered a very helpful indicator by 63 % of all the 190 border guards who responded to this question. They considered the other most helpful indicators to be behaviour during the check and behaviour approaching the check. Responses with regard to these two behavioural indicators varied substantially by BCP, however, with Röszke attaching less importance to them than the other BCPs did. Figure 11 provides a breakdown of responses by BCP.

Figure 11: Indicators considered very helpful in identifying possible victims of human trafficking (%)

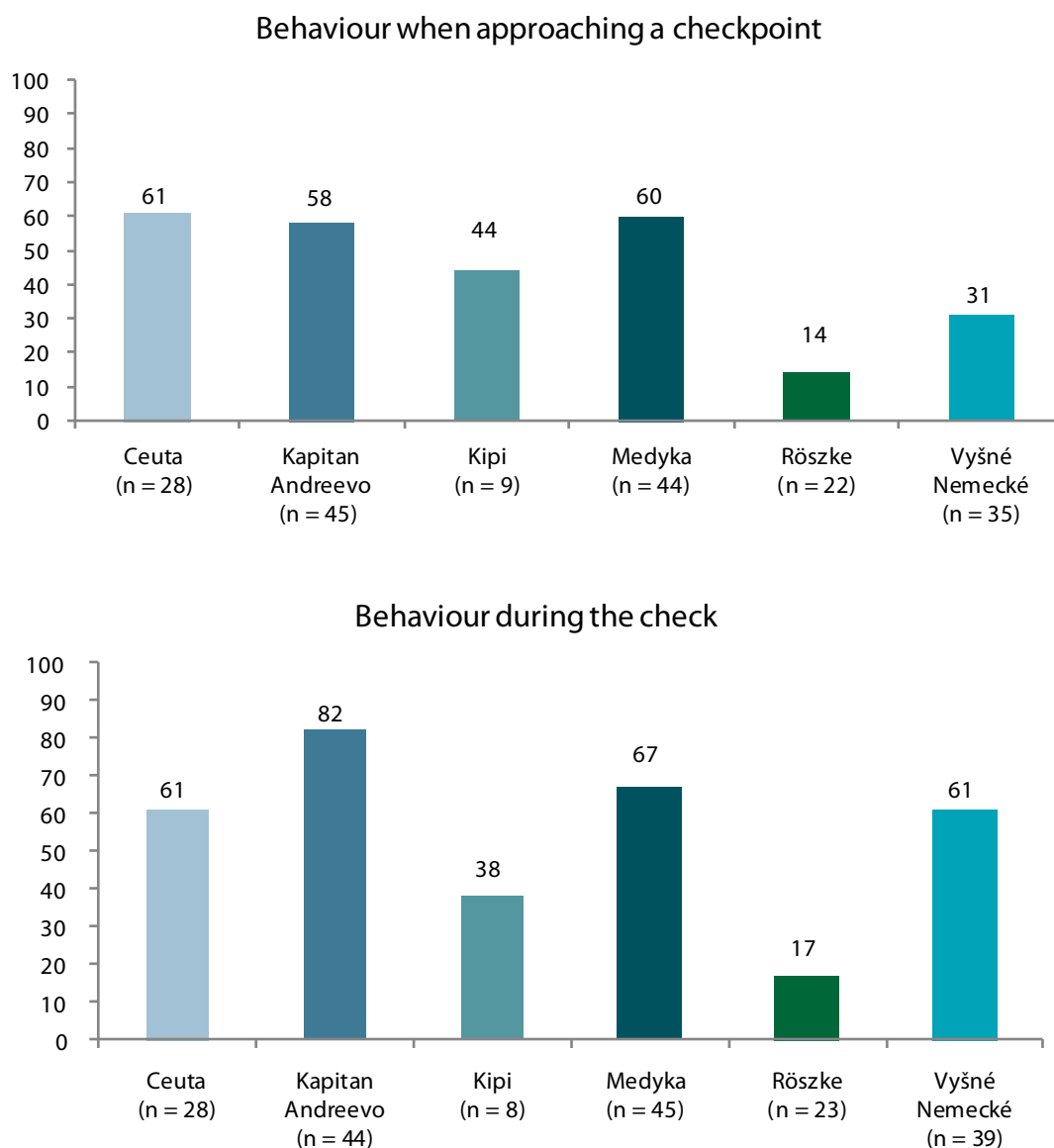


Figure 11 (continued)

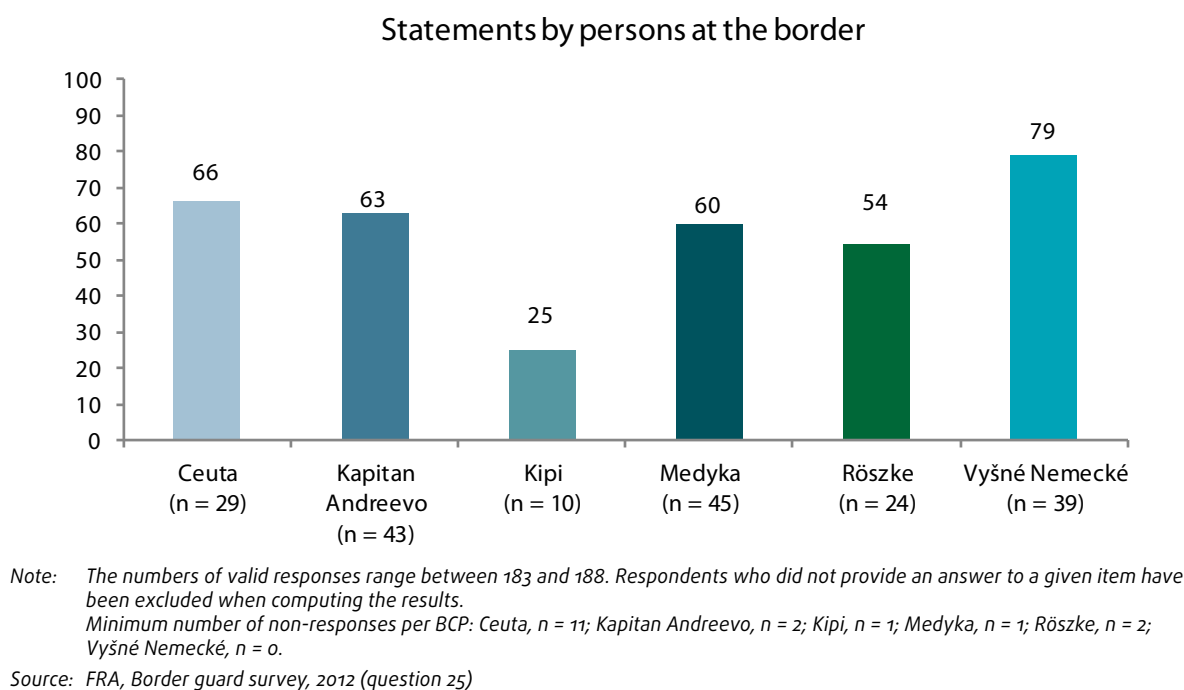
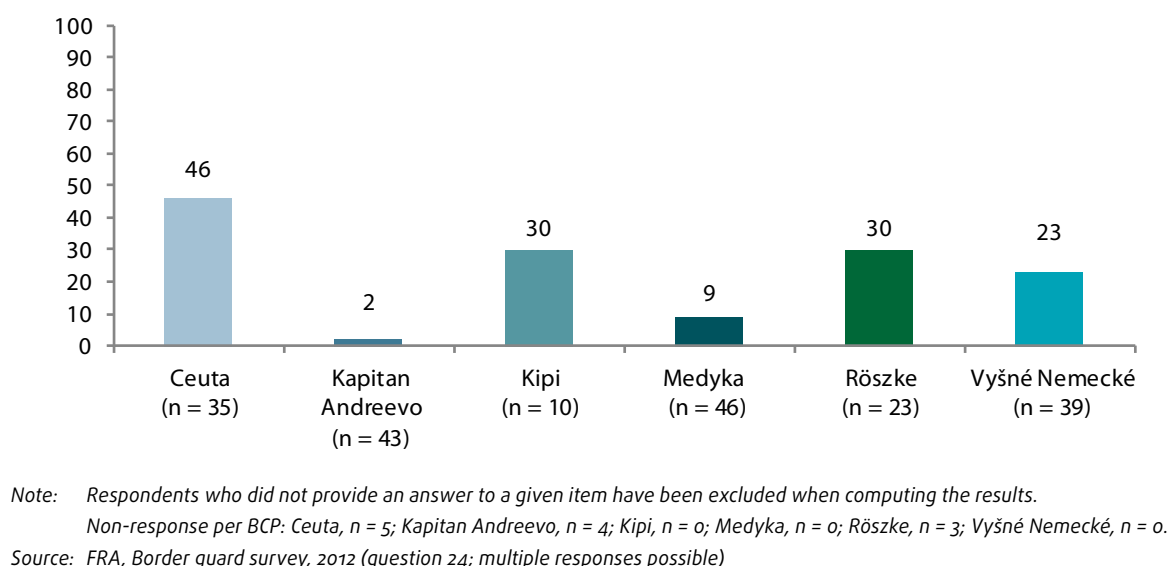


Figure 12: Border guards who had not received specific guidance on the identification of victims of human trafficking (%)



Border guards were asked by FRA what guidance they were given on identifying victims of human trafficking. Only one border guard, at Röszke, mentioned Frontex tools. At Ceuta, almost half of the bor-

der guards who responded to the question indicated that they had not received any guidance, whereas at Kapitan Andreevo most border guards had received guidance either in oral or written form (Figure 12).

## 5.2. Referral

All EU Member States covered have specialised police units or officers to whom cases of trafficking are referred. Once a person is identified at a BCP as a potential victim of human trafficking, he or she is handed over to these specialised officers and the work of the BCP on the case ends. Usually, the BCP would not be informed of further developments in the case.

Higher-ranking border guards at all BCPs are usually aware of instructions on how to deal with victims of trafficking. Typically, such instructions describe what to do and who to contact in case they believe they have identified such victims. The identification and referral procedure differs by country. Poland, for example, has developed a procedure with input from experts from different institutions which essentially consists of three steps:

- If border guards suspect that they have identified a victim of or witness to trafficking in human beings, they should try to learn all the circumstances of the crime.
- The border guard should guarantee the victim's safety, for example by separating him or her from potential offenders.
- The border guard should inform a trained and competent officer, who should take care of the suspected victim or witness and initiate the necessary steps to offer assistance to the victim and to launch an investigation.

Observations and informal discussions with border guards during the fieldwork at various BCPs showed that, although referral procedures exist and are known to more senior officers, front-line border guards may not be aware of them. This is likely to be the result of limited information materials combined with a lack of experience of identifying such cases.

## 5.3. Training

Pursuant to Article 18 of the EU Anti-Trafficking Directive (2011/36/EU), regular training must be provided to officials likely to come into contact with victims or potential victims of trafficking in human beings. This also includes border guards (Recital 25). According to the Frontex Common core curriculum, all border guards in the EU must possess knowledge and skills relating to the identification and referral of victims of human trafficking.<sup>27</sup>

<sup>27</sup> Frontex (2012), subject 1.7.8.



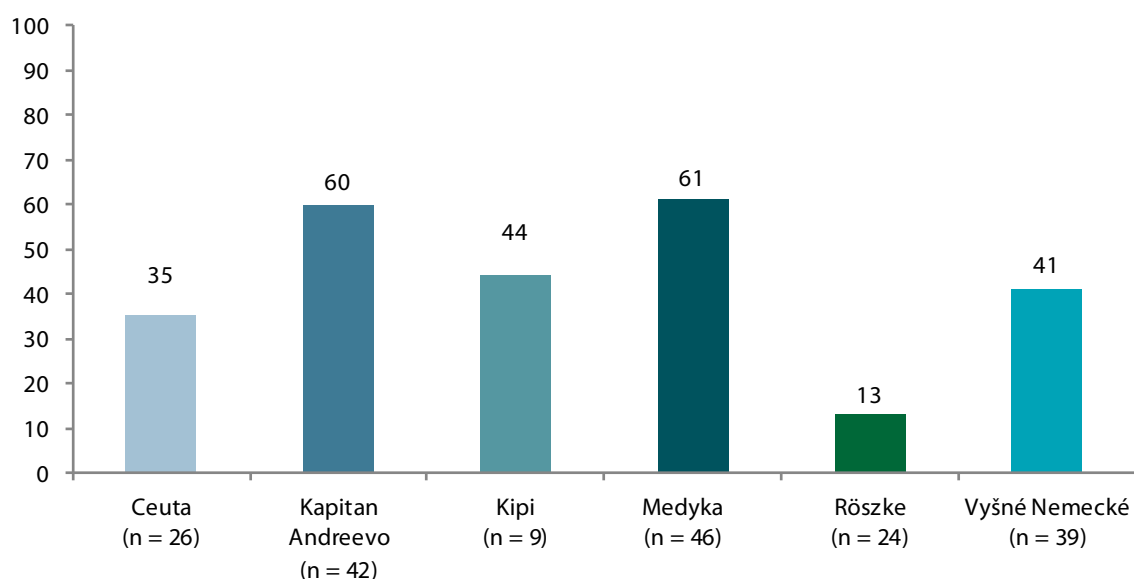
Together with several partners, Frontex developed the training manual Anti-trafficking training for border guards, which was published in 2012. Frontex told FRA that, by November 2014, it had organised six training courses to promote the manual at national level and had trained some 90 national trainers, some of them from third countries, on how to use it. Frontex is currently developing an e-learning tool, based on the manual, to support national trainers. Frontex has also appointed an anti-trafficking coordinator.

Front-line border guards were asked if in the past year they had received any training related to trafficking in human beings. Over half of the respondents at Kapitan Andreevo and Medyka indicated that they had received such training, but at Röske only three of 24 respondents said so (Figure 13). At Medyka, civil society experts confirmed that border guards are generally trained on how to apply the referral system for victims of human trafficking, noting, however, that border guards still need to enhance their knowledge and hone their intuition to identify potential victims.

The border guards surveyed considered the fundamental rights training they received useful, but over 60 % did not believe that it would have an impact on their career development.

Although cases of trafficking in human beings are seen as rare, many border guards consider that more training on it would be useful. When asked what kind of training they would consider useful to help deal with issues relating to third-country nationals, training on how to deal with victims of trafficking in human beings scores relatively highly.

Figure 13: Border guards who received training on victims of trafficking in 2011 (%)

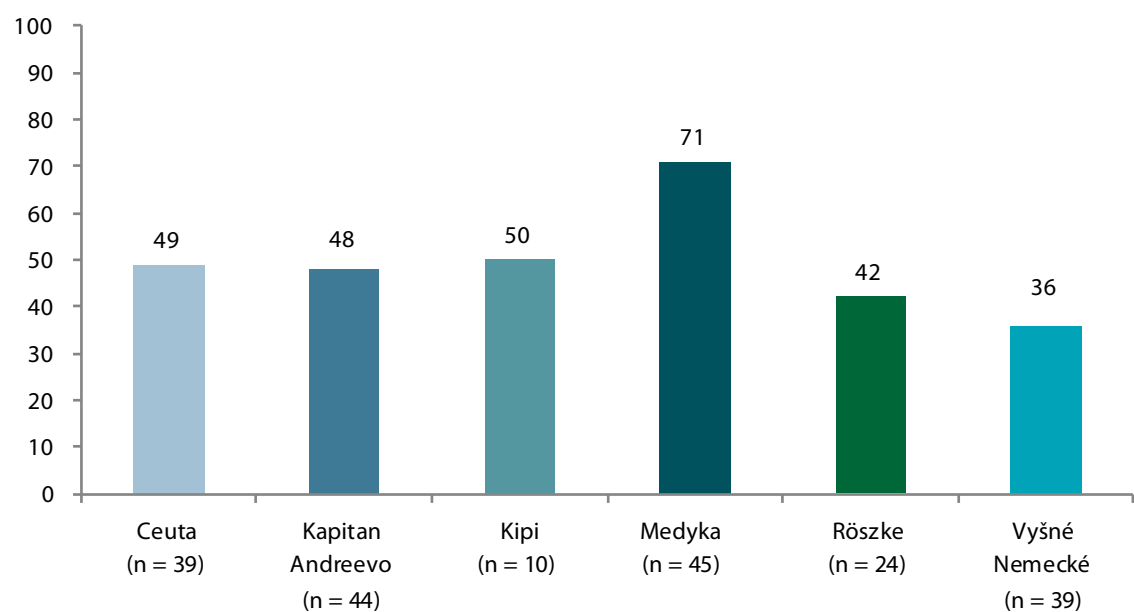


Note: Respondents who did not provide an answer to a given item have been excluded when computing the results.

Non-response per BCP: Ceuta, n = 14; Kapitan Andreevo, n = 5; Kipi, n = 1; Medyka, n = 0; Röszke, n = 2; Vyšné Nemecké, n = 0.

Source: FRA, Border guard survey, 2012 (question 35; multiple responses possible)

Figure 14: Border guards who consider that training on how to deal with presumed victims of trafficking would be helpful for their work (%)



Note: Respondents who did not provide an answer to a given item have been excluded when computing the results.

Non-response per BCP: Ceuta, n = 1; Kapitan Andreevo, n = 3; Kipi, n = 0; Medyka, n = 1; Röszke, n = 2; Vyšné Nemecké, n = 0.

Source: FRA, Border guard survey, 2012 (question 38; multiple responses possible)

The demand for training appears to be higher at BCPs where there is already a certain degree of knowledge about the phenomenon: at Medyka, over 70 % of the border guards surveyed said that they would appreciate more training on this matter (Figure 14). A substantial number of border guards at the other BCPs, however, also said they would like more training on trafficking in human beings.

## Conclusions

The identification of potential victims of human trafficking at BCPs is difficult. Interactions between travellers and border guards are usually very brief. Therefore, only very few victims had been identified in recent years at the BCPs covered by this report. Existing tools developed at EU level to help border guards recognise signs of human trafficking remain little known among front-line border guards at land BCPs, who still see the identification of victims of human trafficking as a peripheral task.

### 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 EMPACT project 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.*



# 6

## Deprivation of liberty at land borders



### Charter of Fundamental Rights of the European Union

#### Article 6: Right to liberty and security

Everyone has the right to liberty and security of person.

Detention represents a deprivation of liberty and is thus an exception to the fundamental right enshrined in Article 6 of the Charter. It is one of the core topics in the wider debate on the EU's overall approach to immigration.<sup>28</sup>

Deprivation of liberty at land BCPs may be based on Article 5 (1) (f) of the European Convention on Human Rights: "the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition".

At EU level, these grounds are treated separately and can be found in different EU legal instruments.<sup>29</sup> Special provisions exist in the EU asylum *acquis* for the detention of persons seeking international protection.<sup>30</sup> Article 15 (1) of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (Return Directive) permits detention – unless other sufficient but less coercive measures can be applied – when there is a

risk of absconding or the person hampers the preparation for removal.

Article 13 (4) of the Schengen Borders Code (on refusal of entry) states: "The border guards shall ensure that a third-country national refused entry does not enter the territory of the Member State concerned." The code, however, does not detail the coercive measures that Member States may take to keep persons refused entry from entering the Schengen area. This is regulated by national law, which may provide for short-term deprivation of liberty.<sup>31</sup> In practice, the need to hold a person arises more frequently at airports and seaports, where the non-admitted passenger has to wait for a return flight or ferry, although in certain cases such a need may also arise at land borders.

Finally, third-country nationals can also be detained at BCPs for criminal law purposes, if the border check gives rise to a suspicion of possible criminal activity, such as smuggling, vehicle theft or the use of false or altered documents. In such a case, deprivation of liberty would fall under Article 5 (1) (c) of the ECHR: "the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence".

Most persons detained at a land BCP are held there for only a very limited period before release or transfer to another domestic immigration detention centre or other facility. As the FRA research covered only the conditions at the BCPs, it goes beyond the scope of this report to assess the treatment of third-country nationals in those facilities.

<sup>28</sup> See, for example, UN, HRC (2013).

<sup>29</sup> FRA (2010), pp. 15–20.

<sup>30</sup> Asylum Procedures Directive (2013/32/EU), OJ 2013 L 180, Art. 8; Reception Conditions Directive (2013/33/EU), OJ 2013 L 180, Art. 8–11.

<sup>31</sup> Bulgaria, Ministry of Interior Act No. 17/2006, Art. 64; Slovakia, Act on the Police Force No. 171/1993, Art. 19.

Even when individuals are detained for only short periods, holding room conditions must still meet certain basic standards. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has elaborated standards for short-term police custody which can be used as guidance also for holding rooms at BCPs. According to the CPT, holding rooms “should be clean and of a reasonable size for the number of persons they are used to accommodate”, “have adequate lighting” and “be equipped with a means of rest (e.g. a fixed chair or bench), and persons obliged to stay overnight in custody should be provided with a clean mattress and clean blankets”. In addition, persons held “should have access to a proper toilet facility under decent conditions, and be offered adequate means to wash themselves. They should have ready access to drinking water and be given food at appropriate times”.<sup>32</sup>

### Persons refused entry

Persons who are refused entry because they do not fulfil entry requirements are generally not detained at the BCPs examined. The primary measure to ensure that they return to the other side of the border is a police escort that accompanies them back to the neighbouring country’s checkpoint (observed at Kipi, Röske and Vyšné Nemecké). In practice, however, their freedom may be restricted at some BCPs while awaiting the decision or the escort. The person is kept either in an area designated for this purpose under the supervision of border guards (as at Kapitan Andreevo and Kipi) or in a waiting room in the area for second-line checks which is isolated and cannot be exited (as at Medyka and Röske). In such cases, access to sanitary facilities may be an issue, as persons will need to be accompanied by a border guard, unless toilets are directly accessible from such rooms, as at Vyšné Nemecké. In addition, the sanitary facilities available may not adhere to basic hygienic standards, as mentioned in the Section 1.4 on human dignity.

The procedure, including the second-line check, that leads to a decision on non-admission and, where applicable, the resulting escort back, can take several hours. Stakeholders said that longer waiting times have been recorded in isolated cases.

### Irregular migrants and persons suspected of criminal activity

Persons suspected of criminal activity, such as smuggling, drug trafficking, vehicle theft or use of false or altered documents, and persons whose document

check reveals that there is an arrest warrant out on them usually face immediate short-term detention at the BCP.

Most BCPs examined have facilities where persons can be kept locked up for a short period of time, either at the BCP itself or nearby. At Ceuta, such facilities are available at the port but not at El Tarajal. At Kipi, there is no detention facility and detainees are taken to the local border police facility at Feres. For Kapitan Andreevo, the border police station at the nearby town of Svilengrad has three facilities that can accommodate up to 15 persons. With the renovation of the administrative building at Kapitan Andreevo, facilities have been created to accommodate women with children, who in the past were accommodated at a hotel in Svilengrad.

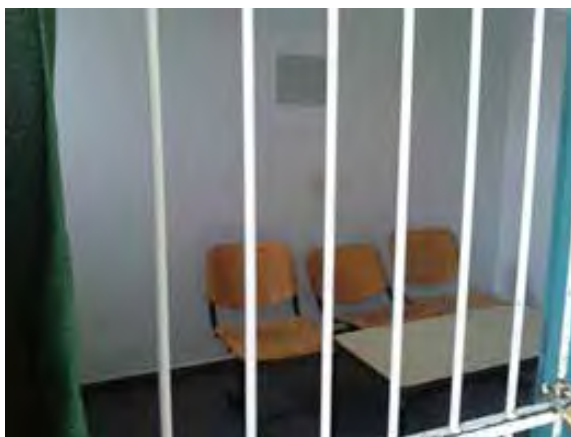
During the research at the BCPs, only a few cases of detention were observed. At all four land BCPs where detention facilities are available (Kapitan Andreevo, Medyka, Röske and Vyšné Nemecké), the maximum period of detention is 24 hours (although at Vyšné Nemecké persons who are to be readmitted can be held for longer), and the detention facilities reflect this purpose. At some BCPs, the cells have no toilets and persons held have to ask a guard to accompany them to a toilet. The provision of food and water depends on the local arrangements at each individual BCP. At Vyšné Nemecké, for example, food is provided to persons detained for longer than three hours, while at Röske detainees are given food only after five hours. In one case observed at Ceuta port, a detained woman was not offered any food or water although she was held for over six hours. Another traveller at El Tarajal said that he had been treated similarly in the past. Police arrested him while he was leaving Ceuta and kept him handcuffed for several hours without food or water. They subsequently released him without offering an explanation.

At Röske, there is only one cell and it can hold up to four or five detainees at a time. It has no beds, only chairs. The CPT criticised this as early as 2005.<sup>33</sup> The Hungarian government responded that no beds are necessary, as detainees wait in the cell only until the staff who are to transfer them to a different facility arrive. The establishment is thus not used as a proper detention facility.<sup>34</sup> This contrasts, however, with the fact that detention at the BCP can last for up to 24 hours.

<sup>32</sup> Council of Europe, CPT (2013), para. 47.

<sup>33</sup> Council of Europe, CPT (2006a).

<sup>34</sup> Council of Europe, CPT (2006b).



*Detention cell at Rösztke BCP (credit: Ivana Simić)*

The standard is higher at Vyšné Nemecké, which has five individual cells each for one detainee and each equipped with a toilet. This also enables the authorities to hold migrants on grounds of irregular entry separately from persons suspected of drug trafficking or other criminal activity.

### Persons seeking international protection

As mentioned in the Section 4 on asylum, applications for international protection are rarely filed at the BCPs examined and no such case was observed during the research. Holding facilities at the BCPs can, however, also be used for temporary detention of persons seeking international protection until they are transferred to an appropriate facility. This was, for example, confirmed by the BCP administration at Vyšné Nemecké. The administrators said that in such a case the rooms that otherwise serve as detention cells would be used. The doors to these rooms would not, however, be locked, so asylum seekers could use a kitchenette where the border guards boil water or heat up food for the detainees.

### Other cases of restriction of movement

Besides the above cases, there are other situations when travellers at the BCPs examined could have

their movements restricted. The BCP at Medyka, for example, is equipped with an isolation room where medical services can be provided. A person representing a public health risk could be placed there on a doctor's recommendation.

Furthermore, as described in Section 1 on human dignity, some persons have their movements restricted during the second-line check when it takes place in an isolated area of the BCP that can only be accessed or exited in the company of a border guard.

## Conclusions

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. Persons who need to be held for longer are transferred to other facilities. In addition to deprivation of liberty, travellers' freedom of movement is necessarily restricted at the BCP when they have to wait in designated spaces for checks.

#### 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 way forward

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. As this report shows, 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 actions taken by the EU to support Member States in the field of border management, be it operational support, exercising oversight functions or providing funding, should incorporate the promotion of 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.

Frontex, the EU agency set up to support Member States in border management, plays an important role in this regard. 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.*

A second important instrument for upholding fundamental rights at BCPs is the Schengen evaluation system. This is a specific evaluation and monitoring mechanism set up to verify the application of the Schengen *acquis* by those EU Member States and Schengen Associated Countries which are part of the Schengen area. Evaluations cover all aspects of the Schengen *acquis*, with border management being a central component.

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 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.

Article 16 of Regulation (EU) No. 1053/2013 lays down a procedure to follow up on recommendations resulting from the evaluations. Evaluated Member States are required to present an action plan to the European Commission and the Council to remedy any deficiencies identified in the evaluation report. The Member State must report to the European Commission on the implementation of its action plan within six months and thereafter continue to report every three months until the action plan is fully implemented. The Commission must inform the European Parliament and the Council on a regular basis about the implementation of the action plans. There are special provisions in case of serious deficiencies.

Schengen evaluators must have the necessary skills and knowledge to identify possible shortcomings relating to fundamental rights and address these in their evaluation reports in a concrete and constructive manner. Regulation (EU) No. 1053/2013 requires experts to have received appropriate training, including on respect for fundamental rights (Article 12). FRA is supporting the European Commission, Frontex and other actors responsible for the training of Schengen evaluators, with a view to incorporating fundamental rights into training tools and programmes.

Providing fundamental rights training to experts involved in the evaluations is important to raise their awareness of the issues to look at. Training alone, however, is not sufficient to ensure that fundamen-

tal rights are mainstreamed into Schengen evaluations. Checklists and other tools being developed also need to reflect fundamental rights adequately.

#### 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.*



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# Annex 1: Methodology

The fieldwork included interviews, administration of questionnaires and non-participant observations, which took place in the course of 2012 at all five airports. In total, 274 questionnaires<sup>35</sup> were administered to third-country nationals subjected to second-line checks as they transited through or arrived at the airports (110 women and 164 men). For the research, 92 qualitative interviews of varying length were carried out with third-country nationals subjected to second-line checks (59 men, 32 women, one transgender person), including 19 asylum seekers. Border guards completed 223 questionnaires (164 male and 59 female officers). Researchers contracted by FRA conducted 28 qualitative interviews with border guard shift leaders and 40 qualitative interviews with other stakeholders, such as airport companies, airport health services, airlines, airport security companies and NGOs. In addition to this, substantial desk research focused on the procedures applicable to border checks.

All the fieldwork took place in the first half of 2012, except for that carried out at Manchester, where data were collected at the end of October and the beginning of November 2012. The field visits took place over approximately one week and, in the case of Fiumicino, included several visits during several months.

FRA contracted a consortium to provide country-level research. The ICMPD led the consortium of subcontracted experts and partners, which included the Université Libre de Bruxelles. The contractor carried out interviews with passengers, shift leaders and other stakeholders, a survey of passengers and non-participant observation. FRA joined the field visits at all five airports, observing border checks and conducting the border guards survey. FRA received initial reports from the consortium, which it reviewed and consolidated as input for this report.

Generally, those carrying out the fieldwork enjoyed good cooperation with airport border police, which helped the research teams to understand the border check procedures and identify passengers and border guards for interviews. The main challenge concerned research authorisation and access to airport facilities, which was delayed at Charles de Gaulle and not granted at Heathrow, subsequently replaced by Manchester. This delay reduced the time available to prepare for the field visit and the interviews. At Manchester, authorisation was given neither for inter-

views with third-country nationals nor for access to the temporary detention centre. Passenger opinions have therefore not been addressed. At Fiumicino, the research was not able to observe checks after landing/at the gate or to include interviews with persons found with false documents or stopped without documents – the category of passengers who might be held overnight at the second line.

The sampling strategy for the survey of passengers aimed to include:

- only those third-country nationals subjected to second-line checks;
- third-country nationals admitted to the territory, third-country nationals refused entry and classified as inadmissible, and third-country nationals refused entry and admitted to the asylum procedure;
- an approximately equal number of men and women;
- no unaccompanied minors or people over 60;
- 10–20 passengers travelling with their family or in a larger group;
- passengers from at least five international flights and three continents.

Researchers guided respondents through the questionnaire. In most cases, the interviews were carried out immediately after the second-line check or, as at Frankfurt, begun in the waiting rooms and finalised after the second-line check. This approach was considered the optimal one to increase the number of interviewees and decrease the number of non-responses resulting from passengers' lack of time.

The questionnaire pertained only to the border check on the day of the interview, not to previous experiences of crossing the EU external border. Respondents were identified while waiting for or after a second-line check or while waiting at the luggage belt after a second-line check. In the latter case, only flights coming from destinations considered to be 'high risk' were targeted, given the greater likelihood of more thorough checks. Overall, 108 passengers who were refused entry and 33 asylum seekers responded to the survey. The majority of survey respondents were classified as inadmis-

<sup>35</sup> The structured questionnaire will be published on the FRA website.

sible (44 out of 64 and 45 out of 59) at Charles de Gaulle and Fiumicino airports.

Qualitative interviews focused on the topics covered in the survey but included open questions that allowed for detailed and contextualised replies. They were carried out either immediately following the completion of the survey or elsewhere and at a different time. The majority of qualitative interviews were conducted with passengers who had been refused entry and informed of this decision.

In addition to the limitations mentioned in the report concerning the representativeness and comparability of passenger data, specific challenges for the passenger survey and interviews related to communication difficulties, the limited number of second-line checks and the interview setting. Although the researchers were multilingual, some passengers spoke only their home language or dialect, and thus researchers either could not interview them or could not finish the interview because of the poor quality of communication.

At some airports (Charles de Gaulle, Fiumicino, Frankfurt), only a few second-line checks took place during the field research. Researchers had to depend heavily on the experiences of those interviewed at holding facilities to retrieve information on second-line checks. In other cases, the researchers combined qualitative questions with the survey's structured questionnaire; while travellers were filling out the questionnaire, researchers also asked them follow-up questions based on their responses. If travellers were in a hurry, researchers often accompanied them to their gate or to baggage claim to ask them open-ended questions about their experiences from the qualitative interview guidelines.

Interview times and settings affected respondents' replies. At the holding facilities, for example, it was more difficult to guarantee respondents'

anonymity, which may have made them hesitant in fully sharing their experiences. For those kept waiting for a long time, the situation was difficult and in some cases there was resentment towards the border police. Many passengers were not willing to be interviewed; many were upset or afraid. When researchers conducted interviews in the waiting room for second-line checks, it was at times difficult for them to gain passengers' trust and distance themselves from the border police. To overcome these issues, researchers tried various strategies, such as conversing with passengers in a common language other than English; waiting for passengers outside the police station; and avoiding as far as possible the use in front of the passengers of the magnetic entry cards which enabled researchers to move freely between transit and non-transit areas.

Non-participant observations mainly took place at first- and second-line check facilities. They focused on the organisation of and facilities for border checks and on the officers' behaviour. Limitations encountered related to the sheer size of some airports and the exclusion of certain facilities from observation.

Shift leaders and border guards cooperated with the research, making themselves available and sharing their experiences. FRA researchers conducted shift leader interviews one on one in separate interview rooms. Border guards filled in the questionnaire reproduced below, distributed by FRA, during their breaks or between shifts, in their break rooms or at their desks. FRA staff were available to answer questions. As a result of the self-completion by participating officers, FRA staff did not verify whether or not the instructions on filling in the questions were followed. The shift leaders encouraged officers to participate in the survey. The questionnaire was developed in consultation with fundamental rights and border professionals, including Frontex, and was piloted.



## Annex 2: Border guard questionnaire

1. Gender:      1. Male ☐      2. Female ☐

2. Age:

- 1. 20–30 years ☐
- 2. 31–40 years ☐
- 3. 41–50 years ☐
- 4. 51+ years ☐

3. How long have you worked as a border guard carrying out border checks?

- 1. Less than one year ☐
- 2. 1–3 years ☐
- 3. 3–9 years ☐
- 4. 10 years or more ☐

4. How long have you worked at [BCP]?<sup>36</sup>

- 1. Less than one year ☐
- 2. 1–3 years ☐
- 3. 3–9 years ☐
- 4. 10 years or more ☐

5. At which post do you work [BCP]? (IF NECESSARY, TICK MORE THAN ONE BOX)

- 1. First-line check in the booth ☐
- 2. First-line checks carried out on/near the aircraft ☐
- 3. Second line ☐
- 4. Other (specify): \_\_\_\_\_

IF YOU HAVE EXPERIENCE OF WORKING AT THE FIRST-LINE CHECK, PLEASE CONTINUE WITH QUESTION 6.  
IF YOU HAVE **NO** EXPERIENCE OF WORKING AT THE FIRST-LINE CHECK, PLEASE PROCEED WITH QUESTION 9.

6. When in contact with third-country nationals at the first-line checkpoint, do you generally speak to:

- 1. Every one of them ☐ (→ PROCEED WITH QUESTION 8)
- 2. Most of them ☐
- 3. Every one except in cases of families when I speak with one member of the family ☐
- 4. Some of them ☐
- 5. None of them ☐ (→ PROCEED WITH QUESTION 9)

7. Based on which criteria do you speak with passengers who are third-country nationals? (IF NECESSARY, TICK MORE THAN ONE BOX)

- 1. Random/systematic (every N:th passenger) ☐
- 2. Suspicion of not fulfilling entry conditions ☐
- 3. Suspicion of having committed a crime ☐

<sup>36</sup> Border crossing point (BCP).

4. Substantial signs of protection needs (children, victims of trafficking, asylum seekers) ☐
5. Other criteria, please specify: \_\_\_\_\_
6. I don't have any specific criteria ☐

**8. What do you usually say to or ask a person? (IF NECESSARY, TICK MORE THAN ONE BOX)**

1. Greeting the person ☐
2. Passport/ID, please ☐
3. Ask about name ☐
4. Ask about travel destination ☐
5. Ask about purpose of travel ☐
6. Other (specify): \_\_\_\_\_

IF YOU HAVE NO EXPERIENCE IN SECOND-LINE CHECKS, PLEASE PROCEED WITH QUESTION 11.

**9. How do you usually conduct more detailed (second-line) checks?**

9. a) 1. Alone ☐
2. Sometimes with a colleague ☐
3. Always with a colleague ☐
9. b) 1. At a separate place ☐
2. In a place visible to other passengers ☐
3. Other (specify): \_\_\_\_\_

**10. What kind of information do you give passengers when you carry out a detailed inspection? (IF NECESSARY, TICK MORE THAN ONE BOX)**

1. Nothing, in order to prevent that s/he destroys important evidence or changes the story ☐
2. Reasons for stopping them ☐
3. Information on the procedure ☐
4. Purpose of the detailed check ☐
5. Information on the procedure and purpose of the detailed check only if there is no risk that the person destroys important evidence or changes the story ☐
6. Information on how to complain about the performance of the check ☐
7. Something else, please specify: \_\_\_\_\_
8. I do not need to provide them with any information ☐

**11. Do you address members of a family individually? (IF NECESSARY, TICK MORE THAN ONE BOX)**

1. Always ☐
2. I usually speak with the person presenting the passports only ☐
3. I usually speak with the person able to speak in a language I can understand ☐
4. Yes, if I suspect that (a member of) the group does not fulfil the entry conditions ☐
5. Yes, if there are signs that a person of the group is in need of protection ☐
6. Generally yes, but depending on the origin and culture of the family I speak only to the person who responds immediately ☐
7. I do not need to address them individually ☐
8. Other (specify): \_\_\_\_\_



**12. If a passenger has problems communicating with you what do you usually do first? (IF NECESSARY, TICK MORE THAN ONE BOX)**

1. Call in a professional interpreter ☐
2. Ask a colleague to help ☐
3. Ask other passengers for help ☐
4. Look for help only if the person seems suspicious or seeking protection ☐
5. Process the person anyway if there is no suspicion of illegal entry or a crime ☐
6. Other (specify): \_\_\_\_\_ ☐

**13. What tools do you use most commonly to verify whether the language used corresponds to the citizenship of a passenger? (IF NECESSARY, TICK MORE THAN ONE BOX)**

1. Hand out a test form to be filled in ☐
2. Call an interpreter ☐
3. Ask a colleague for help ☐
4. Ask other passengers arriving from the same destination for help ☐
5. I do not test passengers' language skills ☐
6. I refer the passenger to colleagues for language testing ☐
7. Other (specify): \_\_\_\_\_ ☐

**14. In the course of your training, have you been given any instructions or guidelines on the obligation/ need to deal with passengers in a professional and respectful way?**

1. Yes ☐      2. No ☐      3. Don't remember ☐

**15. Which of the following options do you apply if a passenger complains about the treatment during a border check? (PLEASE GIVE AN ANSWER FOR EACH OPTION)**

	1 Always	2 Often	3 Sometimes	4 Rarely	5 Never
1. Refer the person to a superior	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Explain that you are only doing your job	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Provide a form with information about where and how to complain	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Orally provide information about where and how to complain	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Ignore the complaint and continue with your work	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Other (specify): _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

IF YOU HAVE NO EXPERIENCE IN SECOND-LINE CHECKS, PLEASE PROCEED WITH QUESTION 17.

## IRREGULAR ENTRY

**16. Select three reasons for refusing entry that are most common according to your experience and rank them from 1 to 3, where 1 = most frequent reason, 2 = second-most frequent reason, 3 = third-most frequent reason for refusing entry**

1. Invalid documents or lack of documents \_\_\_\_\_
2. Invalid visa or lack of visa \_\_\_\_\_

3. Insufficient means \_\_\_\_\_
4. SIS hit \_\_\_\_\_
5. Arrest warrant \_\_\_\_\_
6. Other (specify): \_\_\_\_\_

**17. In your experience, which of the following indicators are most helpful for effectively recognising persons attempting to enter the country illegally before you speak to them? (PROVIDE AN ANSWER IN EACH ROW)**

	1 (very helpful)	2 (helpful)	3 (not very helpful)
1. Validity of documents	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Ethnicity	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Type of airline or transportation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Destination	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Place of embarkation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Nationality	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Clothing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. The way people behave when approaching a checkpoint	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. The way people behave during the check	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10. Type of luggage	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11. Amount of luggage	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12. Age	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
13. Gender	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14. Appearance and behaviour of co-travellers	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
15. Criminal history, if accessible/applicable	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
16. Other (specify):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

IF YOU HAVE NO EXPERIENCE IN SECOND-LINE CHECKS, PLEASE PROCEED WITH QUESTION 21.

**18. Do you take any of the following actions, either as the first step or later on, when denying entry? (GIVE AN ANSWER FOR EACH ACTION)**

	1. First step	2. Later	3. Not at all
1. Organise the return of the passenger, e.g. informing the institution responsible for preparing the return	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Inform the passenger about the decision	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Inform the shift leader	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Inform the passenger about the procedure and his/her rights	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Refer the passenger to somebody who can provide legal support	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Stop the passenger	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Other: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**19. When entry is refused what kind of information do you always provide to the passenger concerned? (IF NECESSARY, TICK MORE THAN ONE BOX)**

1. Reasons for refusal ☐
2. Rights of the person refused entry ☐
3. Where to complain ☐
4. Where to get legal assistance ☐



5. What will happen next ☐
6. That s/he has the right to seek asylum ☐
7. Nothing, as communication is done by my supervisor/colleagues ☐
8. Other (specify):

**20. In case a person is stopped and held upon refusal of entry what actions do you normally take? (IF NECESSARY, TICK MORE THAN ONE BOX)**

1. Inform about the reasons for stopping the person ☐
2. Inform about the rights of the person held ☐
3. Inform about where to complain ☐
4. Inform about where to get legal assistance ☐
5. Inform about what will happen next ☐
6. Inform the person that s/he has the right to seek asylum ☐
7. Establish contact to the embassy ☐
8. Call in an interpreter if necessary ☐
9. Nothing as communication is done by my supervisor/colleagues ☐
10. Other (specify): \_\_\_\_\_

## REQUESTS FOR ASYLUM

**21. In which of the following situations do you take steps to have an asylum procedure initiated? (TICK AS MANY AS APPLY)**

1. The person clearly says that s/he seeks asylum or that s/he is a refugee ☐
2. The person holds a certificate that s/he is an asylum seeker or refugee in another country ☐
3. The person makes you understand that his/her life or freedom is at risk if returned ☐
4. The person does not have valid documents, but does not want to return ☐
5. Other (specify): \_\_\_\_\_

**22. Which indicators have been most helpful in recognising asylum seekers in your experience before you speak to them? (GIVE AN ANSWER FOR ALL INDICATORS)**

	1 (very helpful)	2 (helpful)	3 (not very helpful)
1. Statement by the passenger	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Type of travel documents	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Ethnicity	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Type of airline or transportation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Destination	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Place of embarkation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Nationality	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. Clothing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. The way people behave when approaching a checkpoint	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10. The way people behave during the check	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11. Type of luggage	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12. Amount of luggage	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
13. Age	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14. Gender	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
15. Appearance and behaviour of co-travellers	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
16. Other (specify) _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**23. Which actions do you usually undertake immediately when you consider that a person subject to a border check is a potential asylum seeker? (GIVE AN ANSWER FOR EACH ACTION)**

	1. Right away	2. Later on	3. Not at all
1. Call an interpreter if necessary	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Call in a colleague	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Provide information on rights	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Provide information on what will happen	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Inform the asylum authority	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Inform the supervisor	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Inform a specialised NGO	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. Inform organisations providing legal assistance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. Other (specify): _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

## HUMAN TRAFFICKING

**24. What guidance has been given to you in order to identify victims of human trafficking among passengers?**

1. No specific guidance given ☐
2. A checklist has been given ☐
3. Received written guidance material during training ☐
4. Received oral guidance during training ☐
5. Received oral guidance during meetings or briefing ☐
6. Other (specify): \_\_\_\_\_

**25. Which indicators have been helpful in recognising possible victims of human trafficking? (GIVE AN ANSWER FOR ALL INDICATORS)**

	1 (very helpful)	2 (helpful)	3 (not very helpful)
1. Statement by the passenger	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Type of documents	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Ethnicity	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Type of airline or transportation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Destination	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Place of embarkation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Nationality	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. Clothing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. The way people behave when approaching a checkpoint	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10. The way people behave during the check	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11. Type of luggage	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12. Amount of luggage	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
13. Age	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14. Gender	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
15. Appearance and behaviour of co-travellers	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
16. Other (specify) _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**26. What actions do you usually take when you consider that the person subject to a border check is a possible victim of human trafficking? (GIVE AN ANSWER FOR EACH ACTION)**

	1. Right away	2. Later on	3. Not at all
1. Call an interpreter if necessary	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Call in a colleague	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

	1. Right away	2. Later on	3. Not at all
3. Provide information on rights	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Provide information on what will happen	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Inform protection services (established by national law)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Inform the supervisor	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Inform a specialised NGO	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. Inform organisations providing legal assistance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. Other (specify): _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

## CHILDREN

**27. Which indicators have been helpful in recognising children potentially in need of protection who approach the checkpoint together with an adult person? (GIVE AN ANSWER FOR ALL INDICATORS)**

	1 (very helpful)	2 (helpful)	3 (not very helpful)
1. Statement by the child	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Type of documents	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Ethnicity of the child	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Type of airline or transportation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Destination	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Place of embarkation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Nationality of the child	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. Nationality of accompanying person	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. Clothing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10. The way the child or accompanying person behaves when approaching a checkpoint	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11. The way the child or accompanying person behaves during the check	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12. Type of luggage	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
13. Amount of luggage	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14. Age	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
15. Gender of the child	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
16. Gender of the accompanying person	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
17. Child looks younger than age according to passport	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
18. Other (specify) _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**28. What actions do you usually take when you consider that the child accompanied by an adult travels without a valid consent of his/her parents or guardian? (GIVE AN ANSWER FOR EACH ACTION)**

	1. Right away	2. Later on	3. Not at all
1. Call an interpreter if necessary	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Call in a colleague	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Provide information on rights in a way that can be understood by the child	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Provide information on what will happen	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Inform protection services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Inform the supervisor	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Inform a specialised NGO	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. Process application for a guardian	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. Inform organisations providing legal assistance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10. Other (specify): _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

## DATABASES

### 29. Have you experienced cases where SIS or VIS databases provided incorrect information about persons?

#### 29.a) SIS

1. Often ☐
2. Sometimes ☐
3. Never ☐
4. Do not use SIS databases ☐
5. SIS is not available ☐

#### 29.b) VIS

6. Often ☐
7. Sometimes ☐
8. Never ☐
9. Do not use VIS databases ☐
10. VIS is not available/operational ☐

### 30. In case a passenger disputes the database entry, which initial actions do you take? (IF NECESSARY, TICK MORE THAN ONE BOX)

1. Call the institution responsible for the entry ☐
2. Ask a colleague to call the institution responsible for the database entry ☐
3. Call in the shift leader or colleague ☐
4. Stop the person until the entry is verified ☐
5. Initiate a detailed check ☐
6. Initiate a non-admission or return procedure ☐
7. I do not need to take any action ☐
8. Other (specify): \_\_\_\_\_ ☐

IF YOU HAVE NO EXPERIENCE IN SECOND-LINE CHECKS, PLEASE PROCEED WITH QUESTION 32.

### 31. What kind of information do you give passengers who challenge the decision on entry refusal that is made on the basis of information contained in a database? (IF NECESSARY, TICK MORE THAN ONE BOX)

1. Information about the procedure of challenging the refusal of entry ☐
2. Contact points for legal advice ☐
3. Contact details of specialised NGOs ☐
4. Contact details for institution responsible for verifying and correcting the entry ☐
5. I do not need to give any information ☐
6. Nothing, I refer the passenger to my supervisor ☐
7. Other (specify): \_\_\_\_\_ ☐

## HANDLING AGGRESSIVE PASSENGERS

### 32. Have you been given clear instructions in the course of your training on how to handle aggressive passengers?

1. Yes ☐
2. No ☐
3. Don't remember ☐



**33. In situations in which a passenger becomes aggressive, what are the measures that you take? (IF NECESSARY, TICK MORE THAN ONE BOX)**

1. Call a colleague ☐
2. Call assistance, e.g. airport security ☐
3. Give a warning and explain what the consequences are ☐
4. Take the passenger into custody at an early stage ☐
5. Ignore the passenger ☐
6. Indicate to the passenger that s/he may be refused entry ☐
7. Other measures (specify): \_\_\_\_\_ ☐

**34. According to your experience, how often, if at all, have there been situations in which such measures were insufficient and did not help to resolve the situation?**

1. Never ☐      2. Seldom ☐      3. Sometimes ☐      4. Often ☐

## TRAINING

**35. Did you maybe receive any training in the past year related to the following topics? (TICK AS MANY AS APPLY)**

1. Children (e.g. identification, communication, referral procedures) ☐
2. Asylum seekers (e.g. identification, communication, referral procedures) ☐
3. Victims of trafficking (e.g. identification, communication, referral procedures) ☐
4. Persons with disabilities ☐
5. Handling aggressive passengers ☐
6. Data protection ☐
7. Language training ☐
8. I have not received any training in the past year ☐ (→ CONTINUE WITH QUESTION 38)
9. Other: \_\_\_\_\_ ☐

**36. Did the training help you in your work?**

1. Yes, a lot ☐      2. Yes, a bit ☐      3. No ☐

**37. Do you expect an impact on your career (e.g. promotion) from this training?**

1. Yes ☐      2. No ☐      3. Don't know ☐

**38. What kind of training would you consider useful to help you deal with issues related to third-country nationals? Training on (TICK AS MANY AS APPLY):**

1. Non-admission procedures ☐
2. Children ☐
3. Asylum seekers ☐
4. Presumed victims of trafficking ☐
5. Criminal groups ☐
6. Profiling ☐
7. Data protection ☐
8. Foreign languages ☐
9. None of the above ☐
10. Other (specify): \_\_\_\_\_ ☐

**39. What languages do you speak in carrying out your tasks and at which level?**

	<b>1 Fluently</b>	<b>2 Satisfactorily</b>	<b>3 A few words</b>
1. Native language(s) only Specify:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Other EU language Specify:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Language of neighbouring country (in case of land borders)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Arabic	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Russian	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Turkish	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Chinese	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. Other non-EU language Specify:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**40. How often are experiences related to the check of third-country nationals discussed among border guards?**

1. Often ☐
2. Sometimes ☐
3. Rarely ☐
4. Never ☐ (→ IF NEVER GO TO QUESTION 42)

**41. How are experiences related to the check of third-country nationals discussed?**

1. In regularly organised debriefings ☐
2. In ad hoc meetings ☐
3. In informal discussions with colleagues ☐
4. Other (specify): \_\_\_\_\_

**42. As far as you are aware, do any of the following organisations have a right to get access to certain groups of persons (e.g. persons stopped upon refusal of entry, asylum seekers)?**

	<b>1 Organisation has a right to get access</b>	<b>2 Organisation does not have right to get access</b>	<b>3 Don't know</b>
1. UNHCR (United Nations High Commissioner for Refugees)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. IOM (International Organisation for Migration)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Council of Europe Committee Against Torture	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Red Cross	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Consulate staff	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Amnesty International	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. ICAO (International Civil Aviation Organization)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. National authorities and human rights bodies such as National Preventive Mechanisms under the Optional Protocol to the Convention against Torture	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. Others, specify: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

These three reports look at fundamental rights challenges at the EU's external borders.



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## HELPING TO MAKE FUNDAMENTAL RIGHTS A REALITY FOR EVERYONE IN THE EUROPEAN UNION

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 report's findings serve to inform EU and Member State practitioners and policy makers 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.



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