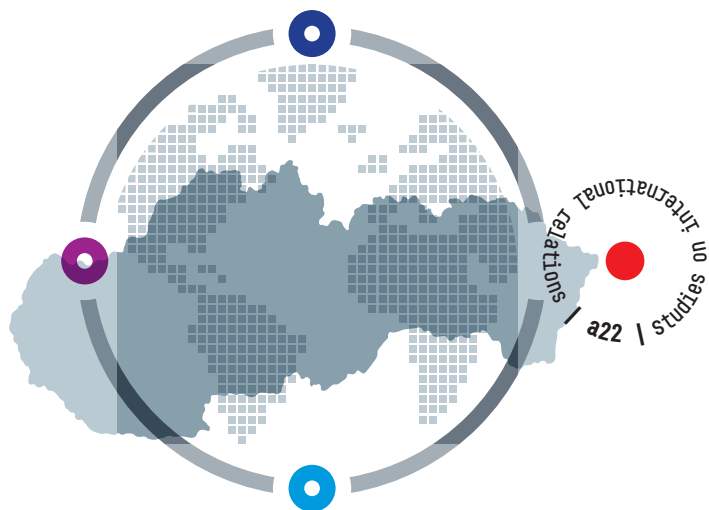




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Toward integrated border management

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Svitlana Mitryayeva
Thibault Rabussier
& Stein Ulrich

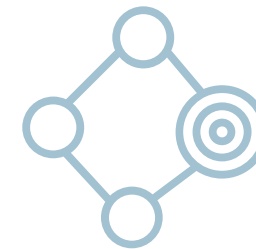
Iceland
Liechtenstein
Norway grants



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The overall goal of the SIBSU project is to facilitate the exchange of ideas, knowledge, information and experience among border and custom services of Slovakia, Ukraine and Norway. The aim is to analyze the opportunities for deepening integrated border management and increase awareness and understanding about the work of the border police and custom services in border regions and municipalities in Slovakia and Ukraine. The project also includes an analysis of the impact of the border on the socio-economic development of the border regions, as well as on opportunities for further cross-border cooperation on both sides border.



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State Border Guard
Service of Ukraine



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Bilateral Framework for cross-border cooperation

The signing of the EU–Ukraine Association Agreement, along with the establishment of a visa-free regime, have increased Ukraine’s readiness and ability to undertake the activities required for EU integration. European integration, defined in the Ukrainian Constitution as a strategic foreign policy objective, would best be demonstrated by inclusion in the Schengen Area and the consequent removal of internal borders. The Schengen Area comprises European countries, including the associated countries of Iceland, Norway, Switzerland, Liechtenstein. Other countries, such as Romania, Bulgaria, Croatia and Cyprus apply the Schengen *acquis* in border management, while derogating to its provisions in maintaining border controls at their internal borders. However, the EU–Ukraine cooperation under the Schengen *acquis* depends on Ukraine’s readiness to implement European values and standards in terms of ensuring effective and inclusive border management.

When assessing Ukraine’s perspective for inclusion in the Schengen Area the future external borders of the Schengen Area, i.e. the borders Ukraine shares with Belarus, Russia and eventually Moldova, should be taken into consideration. Under the perspective, its borders with Slovakia, Poland, Hungary, and Romania will be deemed internal borders. As such, they hold no relevance to this particular issue. Nonetheless, we think it important and useful to assess the potential for facilitating the movement of persons across borders with EU member states, especially Slovakia, at the time of joining the Schengen Area.

One of the main objectives of the EU in protecting the common area of freedom, security and justice is to gradually introduce an integrated management system for its external borders.¹ The original model of integrated border management was adopted as part of the “Justice and Home Affairs Council conclusions” in 2006² as a key tool for safeguarding the internal security of member states and, in particular, for preventing and exposing illegal immigration and related crimes as well as other cross-border crimes. The Regulation on the European Border and Coast Guard from 2016³ rendered the European integrated border management (IBM) legally binding in relation to the previous model of integrated border management from 2006. It was composed of 11 components. In 2019, the new Regulation on the European Border and Coast Guard⁴ (EBCG 2.0) was adopted.

¹ Article 77 (1) (c) of the “Treaty on the functioning of the of the European Union,” *Official Journal of the European Union* 2016/C 202/01, 2016. Available online: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12016ME%2FTXT> (accessed on February 24, 2023).

² “Council Conclusions of 4–5 December 2006 on Integrated Border Management (2768th Justice and Home Affairs Council meeting in Brussels),” Council of the European Union, 2006. Available online: https://ec.europa.eu/commission/presscorner/detail/en/PRES_06_341 (accessed on February 24, 2023).

³ “Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC,” *Official Journal of the European Union*, L 251/1, 2016. Available online: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016R1624> (accessed on February 24, 2023).

⁴ “Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624,” *Official Journal of the European Union*, L 295/1, 2019. Available online: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019R1896> (accessed on February 24, 2023).

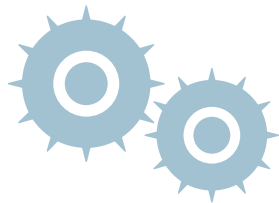


The Commission and the EBCG⁵ are responsible for the effectiveness of European IBM through a multiannual strategic policy cycle. In order to implement the multiannual strategic policy for European integrated border management, Frontex is responsible for establishing a technical and operational strategy for European integrated border management, decided by the management board, based on a proposal submitted by the executive director, prepared in close cooperation with the member states and the Commission. The member states have to establish national strategies for European integrated border management through close cooperation between the national

⁵ The EBCG is composed of the national authorities of member states responsible for border management, including coast guards – to the extent that they carry out border control tasks – the national authorities responsible for returns and Frontex.

authorities responsible for external border management and returns. These national strategies are governed by Article 3 of the regulation, the multiannual strategic policy for European IBM and the technical and operational strategy.⁶

Article 15 of the Schengen Borders Code⁷ states that member states have to deploy the appropriate staff and resources in sufficient numbers to carry out border control at the external borders, while ensuring an efficient, high and uniform level of control at the external border (Articles 7 to 14). Under Article 16 of the Schengen Borders Code, border guards have to be specialized and properly trained professionals in accordance with the common core curricula for border guards established and developed by Frontex. The training includes specialized training for detecting and dealing with situations involving vulnerable persons, such as unaccompanied minors and victims of trafficking. With the support of the agency, member states should encourage border guards to learn the languages necessary for carrying out their tasks.



⁶ See Article 8 para 6 of the European Border and Coast Guard Regulation. See "Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624," *op. cit.*

⁷ "Regulation (EU) 2016/399 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code)," *Official Journal of the European Union*, L 77/1, 2016. Available online: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32016R0399> (accessed on February 24, 2023).

The main document regulating Schengen standards on border management is the Updated EU Schengen Catalog on External Borders Control, Return and Readmission⁸ (Schengen catalog). The purpose of the Schengen catalog is to give recommendations and highlight best practices for implementing the regulations and other border management documents. The Schengen catalog serves as a reference tool for future evaluations undertaken in candidate countries and for monitoring the correct application of the Schengen *acquis* by Schengen states.

Border management requires a high level of professionalism. Each member state is expected to grant one public civil authority primary responsibility for implementing Integrated Border Management, especially with regard to border control, preventing illegal immigration along external borders and combating illegal immigration inside the member state's territory. There should be a centralized command, control, supervision and instructions for border control, risk analysis and criminal investigation as well as for inter-agency and international cooperation with regard to preventing and combating illegal immigration.

The responsible authority, typically the Border Guard or Border Police, should be centralized and have a clear structure. There should be a direct chain of command between the units of the responsible authority at the central, regional and local level to ensure a common approach to border control, a unified planning and training system and an extensive and fast data flow at all levels of the organization. In Ukraine, integrated border management is being implemented in accordance with the "Integrated

⁸ "Updated EU Schengen catalog on external borders control, return and readmission," No. 7864/09, SCH-EVAL 48, FRONT 21, COMIX 252, March 19, 2009. Available online: <https://data.consilium.europa.eu/doc/document/ST-7864-2009-INIT/en/pdf> (accessed on February 24, 2023).



Border Management Strategy for the period till 2025.”⁹ IBM is defined as the coordinated activity of the competent state bodies and military formations with the aim of creating and maintaining a balance between the adequate provision of border security and maintaining the openness of the state border for legal cross-border cooperation and travelers.

The State Border Guard Service of Ukraine (SBGS) is responsible for border control and its duties are performed in accordance with Ukrainian law regulations as well as international agreements. Where necessary the State Phytosanitary Service and the State Ecological Inspectorate may be involved in border control. The SBGS coordinates activities at border crossing points. It is subordinated to the Ministry of Internal Affairs of Ukraine.

⁹ “Розпорядження Про схвалення Стратегії інтегрованого управління кордонами на період до 2025 року,” [Order on approval of the Integrated Border Management Strategy for the period up to 2025] 687-2019-r, July 24, 2019. Available online: <https://zakon.rada.gov.ua/laws/show/687-2019-%D1%80#Text> (accessed on February 24, 2023).

Ukraine has adopted its national “Integrated Border Management Strategy for up to 2025” which is in line with the Schengen *acquis*. This strategy has a supplementary “Action plan for 2020–2022.” The strategy takes account of the 11 components of European Integrated Border Management (regulation EU 2016/1624), the technical and operational strategy for European IBM and the recommendations of the Compendium of the Coordinated Border Management of the World Customs Organization. It covers the three horizontal (common) areas (human rights, staff training, technology and research development).¹⁰

The main goal of the strategy is to fulfill the national obligation to implement the Association Agreement between Ukraine, on the one hand, and the EU, the European Atomic Energy Community and their member states, on the other. The strategy and action plan follow the Schengen *acquis* standards, are well structured and identify clear and perspicuous goals for IBM up to 2025. According to the strategy one of the main threats is the sectors of the Ukrainian border that are temporarily not under Ukrainian control (following the Russian invasion of Ukraine on February 24, 2022). Moreover, its geographical location makes Ukraine an attractive country for illegal migration and drug smuggling.

The second part of the strategy contains strategic objectives, and together with the specific activities in the action plan, it clearly sets out plans for IBM in Ukraine. The action plan sets out detailed actions along with the responsible authorities, period and budget. The Russian invasion has had a significant impact on the IBM system. The implementation of the activities will therefore depend on the ongoing situation in Ukraine.

¹⁰ Ibid, see the page 7 of the Strategy for Integrated Border Management up to 2025.

Border control is in the interest not only of the Schengen member states, at whose external borders it is carried out, but of all member states that have abolished or will be abolishing border controls at their internal borders. Therefore, it is worth remembering that when implementing border management, member state control of the external border benefits both the member state and the remaining Schengen member states (under the principle of solidarity). Effective border controls should therefore be maintained constantly and cover all illegalities, including those with no impact on local security.

The Schengen *acquis* is the part of EU law expressed directly in primary law. The protocol (No 19) on the Schengen *acquis*, integrated into the legal framework of the EU, stipulates that the *acquis* comes from agreements on the gradual abolition of checks at internal borders.¹¹ The Schengen *acquis* was integrated into the framework of EU primary law by the Treaty of Amsterdam of October 2, 1997.

Border management is also integrated into primary legislation, as stipulated in Article 77 of the Treaty on the Functioning of the EU. In secondary law, there are many regulations, directives and decisions regulating border management. The most important regulations are the Schengen Borders Code and the European Border and Coast Guard regulation. The regulations have general application and are binding in their entirety and directly applicable in all member states. That means they are not transposed into member state national law, but automatically and directly integrated. As such, these regulations would apply immediately upon Ukraine's inclusion into the Schengen Area.

¹¹ Agreement of June 14, 1985, and of June 19, 1990, as well as related agreements and the rules adopted on the basis of these agreements.

The EU directives form the Schengen *acquis* relating to IBM. These are, for example, the return directives,¹² directives on the obligations of carriers,¹³ removal by air of third-country nationals¹⁴ and travel and residence of EU citizens¹⁵. Under European Law, the directive is binding upon all the member states it applies to, but leaves the form and methods applied down to the national authorities. In practice, all directives relating to IBM will have to be transposed into Ukrainian national law before it can become a member of the Schengen Area.

¹² "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," *Official Journal of the European Union*, L 348/98, 2008. Available online: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32008L0115> (accessed on February 24, 2023).

¹³ "Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985," *Official Journal of the European Union*, L 187, 2001. Available online: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32001L0051> (accessed on February 24, 2023); and "Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data," *Official Journal of the European Union*, L 261/24, 2004. Available online: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32004L0082> (accessed on February 24, 2023).

¹⁴ "Council Directive 2003/110/EC of 25 November 2003 on assistance in cases of transit for the purposes of removal by air," *Official Journal of the European Union*, L 321, 2003. Available online: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32003L0110> (accessed on February 24, 2023).

¹⁵ "Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the member states amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (Text with EEA relevance)," *Official Journal of the European Union*, L 158/77, 2004. Available online: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32004L0038> (accessed on February 24, 2023).

The approximation of Ukrainian legislation to the Schengen *acquis* is primarily the task of the government institutions and the parliament (Verkhovna Rada of Ukraine). At the political level, planning and monitoring the process of the approximating Ukrainian legislation to European law lies within the competence of the Cabinet of Ministers of Ukraine – Prime Minister of Ukraine, Deputy Prime Minister for European and Euro-Atlantic Integration of Ukraine. At the operational level, the Government Office for Coordination on European and Euro-Atlantic Integration coordinates the activities of the executive bodies in drafting and implementing measures aimed at implementing the EU *acquis*.

The Support Group for Ukraine and the EU Advisory Commission in Ukraine were created to support Ukraine in improving its legislation (and implementation of the Schengen *acquis*). Their task is to provide advice and training to support the reform of the state bodies (including the border guard service). Several agreements were concluded



between the Ukrainian government and the governments of the Schengen countries. These agreements have been ratified by the Ukrainian parliament and form part of Ukrainian legislation. In particular, they relate to local border traffic¹⁶ and joint border patrolling.¹⁷

¹⁶ Local Border Traffic Agreements between Ukraine and Schengen Area's member states: Poland – “Угода між Кабінетом Міністрів України та Урядом Республіки Польща про правила місцевого прикордонного руху,” [Agreement between the Cabinet of Ministers of Ukraine and the Government of the Republic of Poland on the rules of local border traffic] No. 616_138, 2009. Available online: https://zakon.rada.gov.ua/laws/show/%20616_138 (accessed on February 24, 2023); Slovak Republic – “Угода між Україною та Словацькою Республікою про місцевий прикордонний рух,” [Agreement between Ukraine and the Slovak Republic on local border traffic] No. 703_076, 2008. Available online: https://zakon.rada.gov.ua/laws/show/%20703_076#Text (accessed on February 24, 2023); Hungary – “Угода між Кабінетом Міністрів України та Урядом Угорської Республіки про правила місцевого прикордонного руху,” [Agreement between the Cabinet of Ministers of Ukraine and the Government of the Republic of Hungary on the rules of local border traffic] No. 348_072, 2007. Available online: https://zakon.rada.gov.ua/laws/show/348_072#Text (accessed on February 24, 2023).

¹⁷ Joint Border Patrolling Agreements between Ukraine and Schengen Area's member states: Slovak Republic – “Угода між Адміністрацією Державної прикордонної служби України і Міністерством внутрішніх справ Словацької Республіки про спільне патрулювання українсько-словацького державного кордону,” [Agreement between the Administration of the State Border Guard Service of Ukraine and the Ministry of the Interior of the Slovak Republic on Joint Patrolling of the Ukrainian-Slovak State Border] No. 703_093, 2013. Available online: https://zakon.rada.gov.ua/laws/show/703_093#Text (accessed on February 24, 2023); Hungary – “Протокол між Адміністрацією Державної прикордонної служби України та Поліцією Угорщини про спільне патрулювання українсько-угорського державного кордону,” [Protocol between the Administration of the State Border Guard Service of Ukraine and the Police of Hungary on Joint Patrolling of the Ukrainian-Hungarian State Border] No. 348_089, 2013. Available online: https://zakon.rada.gov.ua/laws/show/348_089#Text (accessed on February 24, 2023); Poland – “Протокол між Адміністрацією Державної прикордонної служби України та Головним Комендантом Прикордонної варти Республіки Польща про спільне патрулювання,” [Protocol between the Administration of the State Border Guard Service of Ukraine and the Chief Commandant of the Border Guard of the Republic of Poland on joint patrolling] No. 616_150, 2010. Available online: https://zakon.rada.gov.ua/laws/show/616_150#Text (accessed on February 24, 2023).

Nevertheless, one can agree with the experts of the Ukrainian NGO Europe Without Barriers¹⁸ that one of the main problems is the incompatibility of Schengen and Ukrainian legislation, particularly regarding the legal interpretation of the phrase “territory of a common checkpoint.” Within the framework of the Schengen legislation, the “territory of a common checkpoint” is a place where only EU laws and regulations apply. There is a need for consultations on this in the EU–Ukraine format.

Ukraine’s prospects for Schengen integration, as well as the absence of internal borders and institutional readiness to cooperation with EU depend on its ability to undertake the necessary steps:

- a. to continue implementing the National Integrated Border Management Strategy, including the components outlined in the new European Border and Coast Guard Regulation (2019);
- b. to further bolster the institution responsible for controls at the state borders, focusing on the future Schengen external borders;
- c. to adapt the national legislation to the Schengen *acquis* relating to border management and facilitate the movement of persons across the border.



¹⁸ P. Kravchuk, I. Sushko “Solution roadmap. Current problems of Ukraine–Schengen border,” Europe without Barriers, February 10, 2021. Available online: <https://europewb.org.ua/wp-content/uploads/2021/02/Dorozhnia-karta-web.pdf> (accessed on February 7, 2022)

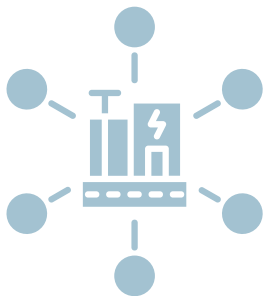
The following actions are also important:

- consistently implement the actions and regularly assess and update the Action Plan;
- update the parts of the Action Plan relating to the Russian invasion of Ukrainian territory;
- when drafting the new strategy for the next period, more attention should be paid to the strict content (components), as stated in Article 3 of the Regulation (EU) 2019/1896. For example, the current strategy lacks provisions on “technical and operational measures within the Schengen area which are related to border control and designed to address illegal immigration and to counter cross-border crime better”, and the management of these is not clearly defined at the national level;
- similarly, the next strategy should pay more attention to future external borders (with Belarus, Russia and Moldova, as well as international airports), depending on the situation in the temporarily occupied territory).

Concerning the institutional model on which the controls at the state (external) borders rest, the focus should be on building the institutional capacity, mainly at the future external Schengen borders, which means:



- creating enough positions (staff) for border check and border surveillance activities;
- continue building the border crossing-point infrastructure in line with the Schengen standards given in the Schengen catalog;
- upgrading infrastructure at future Schengen airports, namely the infrastructure for separating passengers on Schengen and non-Schengen flights;
- creating an IT infrastructure that is compatible with EU and international information systems (namely the Schengen Information System, visa information system, entry/exit system, ETIAS System, Interpol systems);
- adopting the necessary measures for the correct application of EU legislation (the main part of the legislation on border control is covered in the regulations);
- providing sufficient technical means for carrying out first-line and second-line checks (common Schengen entry–exit stamps, document check devices, etc.);
- creating a national coordination center for border surveillance for the timely exchange of information and timely cooperation among the national authorities responsible for land and sea border surveillance;



- providing sufficient technical and other means of border surveillance (e.g., portable technical systems, surveillance vehicles, patrol cars, night vision devices, helicopters, airplanes, patrol dogs etc.).
- analyze the national legislation and Schengen *acquis* relating to IBM. The analysis could be provided through organized discussions with experts (e.g., focus groups). Experts involved in the discussion should identify the main directions for adapting the national legislation to the Schengen *acquis*;
- the facilitation of the movement of persons across the common border could be improved by extending the infrastructure and building new border crossing-points at the common border. Pressure should be exerted on the state authorities by municipal authorities in particular, as the negative impacts visibly affect the quality of life of citizens in villages along the border (traffic queues in villages, etc.).

About SFPA

Slovak Foreign Policy Association (SFPA), founded in August 1993, is an independent, non-partisan and non-profit organization whose activities are devoted to active contribution to the integration of the Slovak Republic to the community of democratic states and their political and security structures. It is the oldest foreign policy think-tank in Slovakia. Through its programs of meetings, seminars, workshops and publications, the SFPA spreads objective information about international relations from primary sources. Its research center (RC) was established in 1995. In accordance with its status, the RC SFPA provides:

- independent expert analyses on crucial issues of international relations and foreign policy;
- publishes periodical and non-periodical expert publications serving to increase awareness in the field of international relations and foreign policy and to serve as a source of qualified information for both, the expert and general public;
- organizes expert events and participates in international scientific cooperation in the field of international relations and security;
- contributes to the fostering of the expert discourse on international relations and foreign policy;
- creates a favorable environment for the growth of the new generation of the Slovak experts in the field of international relations; and
- stimulates the interest of wider Slovak public in the global events as well as a deeper understanding of the significance of foreign policy and its link to the domestic policy.

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