



Converging and conflicting ethical values in the
internal/external security continuum in Europe

European Commission, 7th Framework Programme

M.6.4: Comparative Assessment of Border Security Practices of the European Union in Its Eastern and Southern Neighborhoods

**Milestone report submitted September 2011 (M36) in fulfillment of requirements of the
FP7 Project, Converging and Conflicting Ethical Values in the Internal/External
Security Continuum in Europe (INEX)**

**M.6.4: Comparative Assessment of Border Security
Practices of the European Union in Its Eastern and Southern Neighbourhoods**

Workpackage 6

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1. Introduction

This milestone report offers a comparative assessment of border security practices of the European Union (EU) in its Eastern and Southern neighbourhoods. The findings in this report are derived from previous deliverables of the project, namely: *D.6.3 A Comprehensive Evaluation Report of the Implications of the European Security Practices vis-à-vis Algeria, Egypt, and Morocco*, submitted by Work Package 6 and *D.5.3 A Comprehensive Evaluation Report of the Implications of the ENP Implementation in the Three Eastern Neighbourhood Countries*, submitted by Work Package 5. The report also benefited from information provided by the reports of fact-finding workshops of Work Package 5 with FRONTEX and experts.¹

The report starts with providing an account of the similarities between EU border security practices in the two neighbourhoods. Four such *similarities* can be identified.

- 1) In both neighbourhoods, bilateral cooperation (country to country) in the area of migration started before cooperation at the EU level. Bilateral relations between neighbours still constitute an important part of cooperation by virtue of high level of cross-border mobility.
- 2) The EU aims at increasing the capacity of law enforcement agencies and border guards in both neighbourhoods as policy of border security. Technologized and sometimes militarized tools to tackle unwanted migration are commonly used.
- 3) In relation to the EU's highly technologized approach to migration control, FRONTEX is operational in the Mediterranean and in Eastern Europe. In the former, annual FRONTEX-coordinated operations have become common.
- 4) The EU asks for legal reforms from countries in both neighbourhoods to keep up the EU standards in the areas of asylum and border management.

In what follows, two significant *differences* between the Eastern and Southern neighbourhoods will be discussed. These are:

- 1) The high level of institutionalization of cooperation in the area of border security in Eastern neighbourhood.
- 2) Differing visa facilitation policies of the EU.

The report concludes by offering recommendations for policy practice.

2. Key Findings

The EU has conducted multilateral border policies in its neighbourhood under the framework of European Neighbourhood Policy (ENP) since 2004.ⁱⁱ The Union has concluded Action Plans with the neighbouring countries (with the exceptions of Algeria in the Southern and Belarus in the Eastern neighbourhood). In these Action Plans, the expectations from neighbours of the EU are defined in terms of different sectors so that they can develop closer relations with the Union.

The primary finding of our comparative assessment of border practices of the EU in Southern and Eastern neighbourhood is that although the Union, through the Action Plans, has adopted similar policies in two neighbourhoods, in practice, particularly the level of institutionalization and visa facilitation policies have differed significantly.

2.1 Similarities between EU Border Security Practices in Eastern and Southern Borders

2.1.1 From Bilateral to the EU Level Cooperation in Migration Control

In both the Southern and Eastern neighbourhoods, bilateral cooperation between neighbours and EU Member States started in the early 2000s. Such country to country cooperation can be traced to the establishment of ‘Area of Freedom, Security and Justice’ with the Tampere Presidency Conclusions of 1999. In the Tampere document, the external dimension of migration control was emphasised. At the same time, bilateral agreements between EU Member States and Southern Mediterranean states (such as those between Spain-Morocco, Italy-Libya and Italy-Tunisia) on ‘Readmission and Surveillance Technology Export’ were signed during the early 2000s. Spain and Morocco initiated their first joint naval patrols in 2003. In the Eastern neighbourhood, Ukraine has had a Justice and Home Affairs Action Plan with the EU since 2001. Current border practices of the EU are built upon the experience of such bilateral cooperation between neighbours that started before the ENP.

Bilateral cooperation is still in effect and remains important. For instance, Spain-Morocco cooperation to halt irregular border crossings has been financed by the EU. The Commission and FRONTEX scrutinized the suitability of camps established through Italy’s financial help in Libya. Border guards of these countries are organizing joint workshops. In

the Eastern neighbourhood, cooperation between the Polish Border Guards and Ukrainian, Moldovan, and Belarusian Border Guards is well-developed.

The major dynamics behind such intensive bilateral cooperation has been the high level of mobility in both neighbourhoods. In the Southern neighbourhood, mobility is somewhat hindered by the Mediterranean Sea (except in the case of Morocco and Spain). However, in the Eastern neighbourhood, cross-border mobility has been a part of daily-life. That is why Ukraine and the Slovak Republic signed a Local Border Traffic Agreement in 2008 (see below Recommendations for a detailed discussion of this scheme).

2.1.2 Capacity-Building in the Area of Border Management

Capacity-building towards managing migration and tackling the trafficking and smuggling of individuals has been prioritized by the EU in both regions. In the Southern neighbourhood, the EU has given priority to modernizing law enforcement agencies. Since 2000, the EU has allocated €10 million in Algeria to improve the capacity of the Algerian police to tackle irregular migration. According to the Morocco Action Plan, a border surveillance system is to be launched in Morocco. As a part of capacity-building, the EU has sent immigration liaison officers to the neighbouring countries toward increasing cooperation between border agencies and facilitating information exchange. Libya and Morocco are frontrunners in this area. In the Eastern neighbourhood, the Moldovan government has adopted a plan to improve border infrastructure in 2008. In Ukraine, however, progress in this area has so far been far from meeting the expectations of the EU.

In the area of asylum, capacity-building has been pursued through implementing Regional Protection Programmes (RPPs) in the two neighbourhoods. In Moldova and Ukraine, RPPs have been effective since 2007. In 2009, the Commission proposed the initiation of RPPs in Libya, Tunisia and Egypt as well.

The introduction of technologized and sometimes militarized tools to tackle migration is observable in both neighbourhoods. Increasing the capacity of border guards has been a crucial part of this approach. In the Mediterranean neighbourhood, the EU has signed working agreements with Morocco and Egypt in order to increase the level of cooperation between border guards whose practices are co-ordinated through FRONTEX. In the Eastern neighbourhood, a similar trend can be observed. In 2008, a working agreement between FRONTEX and the Moldovan border guard service was signed. EU assistance to increase the capacity of Moldovan border guards has been continuing under the framework of the

European Union Border Assistance Mission to Moldova and Ukraine (EUBAM). The Ukraine's State Border Guard Service was also supported by the EU. In 2007, the education and training of border guards were re-organized based on EU Core Curriculum for Border Guard Services. The State Border Guards of Ukraine also established a risk analysis unit with the help of EUBAM.

2.1.3 FRONTEX's role

FRONTEX (the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union), which was established in 2004, has been active in both neighbourhoods. As noted above, working agreements between FRONTEX and the neighbouring states have already been signed. Within these agreements, FRONTEX is tasked with conducting joint operations with border guards of signatory states. It also improves the border guards' capacities.

In the Eastern neighbourhood, FRONTEX conducted 'Five Borders' joint operation along the EU-Ukraine border with the Ukraine's State Border Guards. Another such example of cooperation was the JUPITER 2009 to apprehend irregular entries at the EU's Eastern border. However, this type of joint operations is becoming less common in the Eastern neighbourhood. In contrast, the number of FRONTEX operations is increasing by the year in the Southern neighbourhood. Since the first joint operation in territorial waters of third states (HERA II), FRONTEX-coordinated operations have become regular in the Mediterranean. In 2009, the EU conducted six operations: HERA 2009, Nautilus 2009, HERMES 2009, MINERVA 2009, INDALO 2009, and Alpha Reinforcement 2009.

2.1.4 Legal Changes in relation to Migration

In all the Action Plans, the EU asks for legal reforms to adopt national asylum systems in accordance with the international standards defined by the 1951 Refugee Convention. In the Southern neighbourhood, Morocco has reformed its national asylum system in accordance with the expectations of the EU. In 2006, both Moldova and Ukraine made the necessary reforms.

The EU has also asked for legal changes to criminalize irregular migration as a condition of signing readmission and visa facilitation agreements. As a part of this process Algeria has recently criminalized irregular migration. In the Eastern neighbourhood, as the criminalization of irregular migration was already completed, the EU has focused on laws to increase the effectiveness of the Border Guards. In Moldova, a new border guard law was

passed by the Parliament in 2007 to increase cooperation with Ukraine. In 2008, A Code of Ethics for Border Guards was legalized. In Ukraine, in order to approximate to EU standards, a number of amendments were made in State Border Guard law in 2007. The Ukrainian Parliament passed a legislation which allows for biometric control of foreign nationals in the processing of visa application in 2009.

2.2 Differences between EU Border Security Practices in Eastern and Southern Borders

2.2.1 Different Levels of Institutionalization of Cooperation in Border Security

The first important difference between border policies of the EU in the two neighbourhoods is the high level of institutionalization of cooperation in the Eastern neighbourhood. Institutions created either by the EU itself or with the financial help of the EU have no equivalency in the Southern neighbourhood. The most striking example of this is the European Union Border Assistance Mission to Moldova and Ukraine (EUBAM) set up in 2005. EUBAM's annual budget is currently €12 million under the framework of European Neighbourhood Partnership Instrument (ENPI). EUBAM organizes border management between the EU, Moldova and the Ukraine and enables dialogue and cooperation in different areas including risk assessment and cross-border illegal activities. The body also provides updated information about irregular migration in the region. Such an institution was not set up in the Southern neighbourhood. Another sign of high institutionalized cooperation between the EU and the Eastern neighbours is the Common Visa Application Centre in Chisinau opened in 2007.

Financial help under the framework of ENPI is allocated for capacity and institution building for the Southern Mediterranean states. In the Eastern neighbourhood, ENPI is also allocated for cross-border cooperation programmes such as 'Latvia-Lithuania-Belarus' and 'Poland-Belarus-Ukraine' cooperation programmes. Such EU-funded cross-border programmes do not exist in the Southern neighbourhood.

2.2.2 The Issue of Visa Facilitation

Another important difference between EU border practices in its two neighbourhoods is the policy of visa facilitation for the nationals of ENP partner countries. The issue of visa facilitation in particular and higher mobility in the Euro-Mediterranean region in general has

been frequently mentioned by different EU bodies since the launch of Euro-Mediterranean Partnership (EMP) in 1995. Institutions such as ‘Euro-Med Youth’ were founded and programs such as ‘Museums without Frontiers’ were launched in order to increase mobility and cross-border interactions in the Euro-Mediterranean region. In addition, the Southern Mediterranean states have been insistent on obtaining visa facilitation for and further integration of their own nationals in the EU in exchange for better cooperation with the EU in the area of migration control. However, visa facilitation was mentioned in rather vague terms in Action Plans with Southern Mediterranean states.

In contrast, visa facilitation was strongly stated in the Actions Plans of the Eastern neighbours generally in relation to the completion of Readmission Agreements with the EU. For example, in the EU-Ukraine Action Plan, a perspective for starting a political dialogue on visa facilitation was stated. Visa facilitation and readmission agreements between Ukraine and Moldova and the EU were signed in 2007 and entered into force in 1 January 2008. Moreover the EU and Moldova started a dialogue for discussing the conditions of visa-free travel for Moldovan citizens in 2010. However, such progress has not been made in the Southern neighbourhood – not even with Morocco, which has been the most cooperative state in the area of border policies. From the EU’s perspective, the slow progress and failure to sign readmission agreements can be a reason for stalling visa facilitation. Interviews conducted by WP6 in the three Southern Mediterranean countries have found that the EU’s reluctance in this area has been received highly negatively. Interviewees often questioned the differing attitude of the EU vis-à-vis two neighbourhoods.

3. Recommendations for policy

Avoiding new dividing lines: Visa facilitation for neighbours is made conditional by the EU on the conclusion of readmission agreements. This explains why the Southern Mediterranean nationals are still deprived of a facilitated mobility in the Euro-Mediterranean region, as no Southern Mediterranean state has so far signed a readmission agreement, whereas in the East, two partners (Moldova and Ukraine) signed them. However, this differing attitude has created discontent in the Southern Mediterranean. The problem is exacerbated by the issue of the EU membership perspective. Discussions inside the EU about creating a membership perspective for the current Eastern neighbours (especially Moldova) are continuing, whereas, this perspective was shut down clearly in 1987 for Southern Mediterranean states. One of the

rationales of the ENP was to avoid ‘new dividing lines’. Considering the differing attitude of the EU in relation to visa facilitation and membership perspective issues, this rationale can be questioned, especially by the societies in the Southern Mediterranean.

Setting up Local Border Traffic Schemes: The Local Border Traffic scheme was regulated by the Council in 2006 in order to facilitate mobility in the border regions. This regulation only covers the land borders. In 2008, Ukraine and the Slovak Republic signed the Local Border Traffic Agreement which provides a residence permit for nationals in both sides of the border (within 50 km area) for 90 days. A revised version of this scheme can be regulated for the Southern neighbourhood as well. This could work for (1)reducing irregular crossings and, (2)addressing the feeling of being treated differently by the EU in the Southern Mediterranean societies.

Better Protection of the Rights of the Migrants: The European Union’s border security policies have had implications for the rights and well-being of migrants. Global human rights organizations such as the Human Rights Watch and Doctors without Borders have reported serious human rights violations in detention centres, migrant guesthouses and camps in both the Eastern and Southern neighbourhoods. Still, the EU is pushing for RPPs in both regions without guaranteeing desired consideration for human rights standards. On the one hand, RPPs can be very useful for providing protection to those in the regions. On the other hand, as both the United Nations High Commissioner for Refugees (UNHCR) and the Amnesty International stated in various reports, RPPs can easily become an alternative to the asylum system defined by the 1951 Refugee Convention. Through the RPPs, EU Member States can claim to offer protection to asylum-seekers outside the EU borders in neighbouring countries where neither human rights nor refugee rights are effectively promoted. Therefore, there is a possibility that those in need of protection can be subjected to more human rights violations outside the EU borders. The EU should define and implement policies to prevent this outcome.

ⁱ These reports are D.5.7. Fact-finding Workshop: Second Feedback and Control to Partners, Researchers, and Political Class from the Case Countries and D.5.9. INEX-FRONTEx Workshop II (Mobility and Security at the EU’s External Borders).

ⁱⁱ The participants of ENP are Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Israel, Jordan, Lebanon, Libya, Moldova, Morocco, Occupied Palestinian Territory, Syria, Tunisia, and Ukraine.