Free movement threatened by terrorism: an analysis of measures proposed to improve EU border management

Author: Willemijn Tiekstra

It is key to consider terrorism and migration as two separate policy fields. However, one has to acknowledge that these two fields can, in some exceptional cases, overlap. From 2015 onwards, a new wave of terrorist attacks has hit the European Union (EU). Combined with amplified fears of uncontrolled irregular migration movements, the EU's free movement area has been put under strain. There are systems in place providing information to border authorities and law enforcement officers on individuals that cross EU external borders and on the movement of persons within the EU. Still, border management in the EU is considered a significant challenge while safeguarding the internal security of the EU and preserving Schengen. By describing three terrorism case studies, this Policy Brief illustrates that in the current operational landscape of EU border management, there are gaps in the information exchange between authorities. Subsequently, the paper analyses whether the new measures proposed to improve European border management remedy the identified flaws in border management systems and discusses whether the measures proposed are necessary and proportional to the objective pursued; namely, ensuring the safety of the EU and its citizens. It concludes by illustrating that, despite the newly introduced measures, the operational landscape of EU border management remains just as complex and that the required justification on infringements on fundamental rights cannot be established for all of the measures proposed.

ICCT International Centre for Counter-Terrorism - The Hague

Introduction[1]

The Schengen Borders Code ensures the absence of border controls at the internal borders between European Union (EU) Member States.[2] It guarantees the EU's fundamental right to free movement, and is perceived as one of the main accomplishments of the EU project.[3] However, the rise of international terrorism, amplified fears of uncontrolled irregular migration movements, and the fear that terrorists might misuse these routes to travel, have put the EU's free movement area under strain.[4] As a response to migratory movements in 2015 and 2016, Member States situated along the Western-Balkan migration route unilaterally decided to impose internal border controls in the Schengen zone to improve the sense of control on who was entering their country. At the same time, the European Commission, considering the restoration of Schengen to be of paramount importance, published a 'Back to Schengen Roadmap', that focused on addressing deficiencies in external border management, aiming to restore a Schengen area without internal borders.[5]

Despite these efforts, European citizens still consider EU border management a significant challenge to the internal security of the EU.[6] This paper identifies gaps in EU border management systems by discussing three terrorism case studies: the 2015 Paris Attacks, the 2016 Brussels Airport bombings, and the 2016 Berlin Christmas Market attack. Subsequently, it elaborates on the measures introduced to remedy the identified challenges. This discussion will limit itself to the interoperability of border management systems and the three newly introduced centralised information systems: the European Travel Information and Authorisation System (ETIAS), the Entry-Exit System (EES), and the European Criminal Record Information System for third-country nationals (ECRIS-TCN). Finally, it elaborates on the hotspot approach as it has been implemented in Italy and Greece to assist local authorities in coping with the disproportionate pressure of migrants arriving irregularly on their shores.[7] Although the hotspot approach may not at first glance appear to be relevant from a CT-perspective, a closer look at the implementation of this approach reveals relevant aspects, such as the role of Europol and the screening of migrants residing at the camps.

....

[1] There are other measures implemented by EU countries limiting the free movement of people for the purposes of public order and national security, such as the United Nations (UN) designation and targeted sanctions regimes (e.g. UNSC resolution 1267, 1373), the entry ban (accompanying the Return Decision) or the pronouncement of undesirability of a particular person. These measures are not discussed in this paper.

[2] European Parliament, Council of the European Union, Regulation (EU) 2016/399 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code), 9 March 2016, art. 1.

[3] European Union, Consolidated version of the Treaty on European Union (TEU), 13 December 2007, art. 3(2); European Union, Consolidated version of the Treaty on the Functioning of the European Union (TFEU), art. 13 December 2007, art. 21, 77; Special Eurobarometer 474, Europeans' perceptions of the Schengen Area, December 2018, p.6.

[4] João Estevens, "Migration Crisis in the EU: developing a framework for analysis of national security and defence strategies", Comparative Migration Studies, Vol. 6, No. 28, 2018, p. 1.

[5] European Commission (EC), Communication from the Commission to the European Parliament, the European Council and the Council, Back to Schengen – A Roadmap, COM(2016) 120 final, Brussels 4 March 2016.

[6] Special Eurobarometer 464b, Europeans' attitudes towards security, December 2017, p. 21.

[7] A hotspot refers to a closed reception facility where European agencies such as EASO, Frontex, Europol and Eurojust cooperate with local authorities of the host member state facing disproportionate migratory pressures at the EU external border, to help to identify, register and fingerprint incoming migrants, EC, The Hotspot Approach to Managing Exceptional Migratory Flows, Factsheet.

The European border management patchwork

There are several systems in place providing information to border authorities and law enforcement officers on individuals that cross EU external borders and on movements of persons within the EU.[8] The sharing of relevant information between law enforcement authorities in different member states is key to ensuring appropriate detection and follow-up where a particular individual is considered a security risk. Currently, national authorities face a complex and fragmented landscape regarding the governance, geographical coverage, and management of data storage of these information systems. This hampers the exchange of information between national authorities, leading to blind spots where information on persons perceived as a security risk—including those that are suspected of involvement in terrorist activities—may be overlooked. Taking a closer look at three cases of terrorist attacks in the EU where there appeared to be failure of detection or lack of follow-up on the travel movements of particular persons, makes clear that in the current operational landscape of the EU border management information systems there are gaps in the information exchange between authorities. The case studies highlighted below illustrate that this can have grave consequences.

The 2015 Paris attacks are often mentioned as an example of the need to enhance cooperation between law enforcement authorities across Europe.[9] Abdelhamid Abaaoud, suspected planner of the 2015 Paris attacks, carrying a Belgian passport, was able to travel between the EU and Syria several times prior to the attack, despite being the subject of a European arrest warrant.[10] At least one of the other Paris attackers was registered in Greece, his fingerprints taken at the hotspot on the island of Leros. Later, the attacker sought asylum in Serbia.[11] This case illustrates a lack of detection and follow-up based on information that was supposed to be stored in the Eurodac system.[12] In addition, the case leads to serious questions on the efficiency of the European arrest warrant.

Ibrahim el-Bakraoui, one of the suicide bombers of the 2016 Brussels Airport bombings, had an extensive criminal record in Belgium. In June 2015, el-Bakraoui was detained in Gaziantep,

....

[8] For example, the Visa Information System (VIS), the Schengen Information System (SIS), Eurodac, the Advance Passenger Information (API), Passenger Name Record (PNR), Europol data, Interpol's International Alerts and the Stolen and Lost Travel Documents database (SLTD), and Travel Documents Associated with Notices (TDAWN) database.

[9] European Parliamentary Research Service (EPRS), Counter-terrorism funding in the EU budget, Briefing, April 2016, p.3; Jorge Valero, "Paris attacks show flawed use of Schengen rules, ministers confess", *Euractiv*, 20 November 2015, https://www.euractiv.com/section/justice-home-affairs/news/paris-attacks-show-flawed-use-of-schengen-rules-ministers-confess/; Griff Witte and Loveday Morris, "Failure to stop Paris attacks reveals fatal flaws at heart of European Security", The Washington Post, 28 November 2015, https://www.washingtonpost.com/world/europe/paris-attacks-reveal-fatal-flaws-at-the-heart-of-european-security/2015/11/28/48b181da-9393-11e5-befa-99ceebcbb272_story.html?utm_term=.d075759dfd47

[10] Jon Henley, Ian Traynor, and Warren Murray, "Paris attacks: EU in emergency talks on border crackdown", *The Guardian*, 20 November 2015, https://www.theguardian.com/world/2015/nov/20/paris-attacks-france-launches-un-push-for-unified-declaration-of-war-on-isis

[11] Gavin Hewitt, "Paris attacks: Impact on border and refugee policy", *BBC News,* 15 November 2015, https://www.bbc.com/news/world-europe-34826438

[12] The Eurodac System refers to an EU asylum fingerprint database. Based on the Eurodac Regulation, fingerprints of asylum seekers are taken once they apply for asylum. The Eurodac is linked to the Dublin Regulation, as it provides assistance to determine the member state responsible for examining an asylum application made in the EU.

Turkey and deported to the Netherlands.[13] Since el-Bakraoui carried a passport of a Schengen state, he could lawfully be deported to any of the Schengen countries. At that time, el-Bakraoui was not signaled as a terrorist threat by Belgian authorities, nor was he placed on lists of fugitives sought by Europol and Interpol.[14] Turkish authorities, not having access to the Schengen Information System (SIS II), did send a notification to the Netherlands mentioning that el-Bakraoui was a suspected foreign terrorist fighter, but this notification was sent without the appropriate categorisation. Hence, this message went unnoticed. Consequently, there was no cause for the signalling or arrest of el-Bakraoui upon his deportation. However, El-Bakraoui was added to a watchlist by the Terrorist Screening Center of the FBI on 25 September 2015.[15] This case points to problems in the exchange of information, not just between Schengen countries, but also with non-Schengen partners, leading to a gap in proper exchange of crucial information.

The case of Anis Amri further underlines the gaps in security of the Schengen-zone. In addition, it illustrates the challenges faced in the return procedure of an asylum seeker whose request for asylum has been rejected. Amri, perpetrator of the 2016 Berlin Christmas market attack, was a petty criminal in Tunisia before he left to seek asylum in Italy in 2011. His asylum claim was rejected but, due to missing travel documents, he could not be deported to his country of origin. He moved to Germany in 2015, where he applied for asylum identifying himself as a politically-persecuted Egyptian. Since his identity could not be verified, his asylum claim was rejected, but he could not be deported for the same reason as in Italy. During the year he spent in Germany, Amri allegedly used 14 different identities.[16] This caused difficulties in tracking him down. After the Berlin attack on 19 December, Amri was able to travel through the Netherlands, Belgium, and France to Italy. Four days after the attack, Amri was found by coincidence when local officers in Sesto San Giovanni fatally shot him following a regular check for identity papers.[17]

These cases point out that in the current operational landscape of EU border management information systems, there are gaps in the information exchange between authorities. In addition, the cases show difficulties with detecting identity fraud, failure in registration systems (Eurodac), and challenges in the return procedures of rejected asylum seekers. The current centralised and decentralised information systems vary in their geographical coverage; they maintain different criteria for data storage, and they designate different responsible authorities for processing or transmitting information. The Commission, with support from the Council and the European Parliament, is pushing for reforms to increase the interoperability of border management systems.[18] What does this entail? And are the measures proposed fully aligned with fundamental rights?

....

[13] Angelique Chrisafis, "The men in the top floor flat who sowed terror in Brussels", *The Guardian*, 24 March 2016, https://www.theguardian.com/world/2016/mar/23/brussels-attacks-schaerbeek-flat-coordinated-atrocities-plotted-el-bakraoui
[14] Dutch Ministry of Justice and Security, Beantwoording vragen over brief (24 mrt 2016) dat een van de plegers van aanslagen Brussel naar Nederland is uitgezet, Nationaal Coördinator Terrorismebestrijding en Veiligheid (NCTV), 29 March 2016, p 5.
[15] Ibid, p 12.
[16] N.a., "Berlin Truck killer Amri 'had 14 identities' in Germany" *BBC News*, 5 January 2017, https://www.bbc.com/news/world-europe-38516691
[17] Elisabetta Povoledo, Gaia Pianigiani and Rukmini Callimachi, "Hunt for Berlin Suspect Ends in Gunfire on an Italian Plaza", *The New York Times*, 23 December 2016, https://www.nytimes.com/2016/12/23/world/europe/berlin-anis-amri-killed-milan.html
[18] European Commission, Proposal for a Regulation of the European Parliament and of the Council on establishing a framework for interoperability between EU information systems (police and judicial cooperation, asylum and migration), COM (2017) 794

A potential solution: interoperability of information systems

In December 2017, the Commission proposed a regulation for the interoperability of centralised information systems within the framework of police and judicial cooperation in the field of asylum and migration.[19] Interoperability refers to the ability to crosscheck data stored in different information systems in order to eliminate blind spots in the identification of persons and to combat identity fraud.[20] Briefly stated, interoperability facilitates access to information by competent authorities. In addition to existing centralised information systems, the Commission has proposed three new centralised EU information systems: the European Travel Information and Authorisation System (ETIAS), the Entry-Exit System (EES), and an update of the European Criminal Record Information System so that it would include information on Third Country Nationals (ECRIS-TCN).[21] Before discussing these systems, this section will briefly expand on what interoperability of centralised information systems entails.

With the proposed interoperable border management framework, personal data (e.g. travel documents or biometric data) is checked with other information systems by entering a search term in a central search portal. This European Search Portal (ESP) will simultaneously consult the (now still separated) information systems: the Entry/Exit System (EES), the European Travel Information and Authorisation System (ETIAS), the Visa Information System (VIS), Eurodac, the European Criminal Record Information System for third-country nationals (ECRIS-TCN), the Schengen Information System (SIS), as well as Europol and Interpol data.[22] According to the proposal, access to the ESP is reserved to member state authorities and EU bodies that already have access to the existing information systems, or, regarding the information systems that are being developed, that will have access to the newly established centralised information systems.[23] Both law enforcement and non-law enforcement authorities (e.g. border guards, immigration officers) are allowed to make use of the ESP. Therefore, one may argue that interoperability of centralised information systems seems to blur the distinction in rights of access between non-law enforcement and law enforcement authorities.

To illustrate, systems such as Eurodac, VIS, EES, and ETIAS do not serve law enforcement as a primary objective. Still, interoperability would imply that law enforcement officers would have access to this data once they have submitted a query in the ESP. However, some safeguards have been included in the proposal to avoid the sharing of information to those authorities that originally should not have access to it. For example, law enforcement officers can have

....

access to non-law enforcement information systems for the purpose of prevention, investigation, detection, or prosecution of terrorism or other serious criminal offences.[24] In this case, a special procedure (two-step approach) needs to be adhered to: following their query in the ESP, law enforcement officers will not have direct access to the data, but will be informed of the information system in which the entered data is stored. Subsequently, the officer concerned has to request access to the system in question via a designated authority.[25] The proposal does not elaborate on the designated authority, indicating that it is for the Member States to decide which body will process these requests for access. Interviews have indicated that some EU Agencies or national competent authorities have these bodies integrated within their own organisation structure, whereas other Member States will have independent organs processing the requests for access. In principle, the procedure should not be time-consuming, but that remains dependent upon the staff available and number of requests submitted.[26] Nevertheless, the grounds based on which law enforcement officials could be granted full access to the data retrieved following their query in the ESP remain broadly defined.

Facilitating broad access to personal data raises concerns for infringements on fundamental rights, such as the right to a private life and the right to protection of personal data.[27] The Commission's proposal on interoperability acknowledges this infringement, but states that the interference is justified for the "effective management of the Union's borders, EU internal security, and the fight against irregular migration".[28] The proposal adds as justification that the existing EU information systems were established pursuing the same objectives.[29] However, this seems to be circular reasoning, effectively neglecting the reason why different systems were developed to pursue different objectives in the first place. The case-studies underline that sharing of information between national authorities is an urgent necessity, but the interoperability proposal does not sufficiently address the arguments raised in respect of the concerns on violation of one's fundamental rights.

Have the principles of necessity and proportionality been accounted for in the newly developed information systems? And do the proposed measures truly remedy the operational challenges identified in the case studies? Taking a closer look at the ETIAS, the EES, and the ECRIS-TCN, the next section discusses whether these measures adequately address the problems while maintaining respect for fundamental rights.

....

[24] COM 2017 794 final, p. 8.
[25] COM (2017) 794 final, p. 9.
[26] Interview Europol ECTC, 17 April 2019.
[27] European Union, *Charter of Fundamental Rights of the European Union,* 26 October 2012 (EU Charter of Fundamental Rights), art. 7, art. 8.
[28] Regulation (EU) 2019/818, recital (40).
[29] Ibid.

ICCT

Newly established centralised information systems: ETIAS, EES and the ECRIS-TCN

Obtaining a valid travel authorisation will become a new condition of entry for the Schengen zone. To be implemented in 2021, the ETIAS will pre-screen travellers from visa-exempt countries in order to identify a "security, illegal immigration or high epidemic risk".[30] Before their journey, travellers need to fill in the ETIAS application form, providing a range of personal details including education and occupation.[31] The system is similar to the U.S. Electronic System for Travel Authorization (ESTA). In case the ETIAS application file does not trigger any 'hits', the travel authorisation will be issued automatically.[32] In case there is a corresponding hit with data in the related information systems, the information on the application is verified by the ETIAS Central Unit and forwarded to the relevant ETIAS National Unit for manual processing.[33] If granted, ETIAS travel authorisation remains valid for three years or until the end of validity of the travel document used for the application.[34] To approve or refuse a travel authorisation remains within the discretion of the ETIAS national unit.

That a travel authorisation system can have adverse effects is illustrated by a recent case where lawyers defending terrorist suspects in the Netherlands have stopped representing their clients, out of fear of being refused entry to the US. According to the Dutch Association for Criminal Lawyers, several lawyers from Belgium and the Netherlands have been denied access to the US because of their occupation, in this case the representation of terrorist suspects in a criminal litigation procedure.[35] Regarding ETIAS, this only underlines the need for transparency of the criteria based on which access to EU territory can be ultimately denied by the ETIAS national unit. As it now stands, no guiding criteria will be provided by EU institutions. This runs the risk of different decision criteria per Member State leading to potential discrepancies in approving or refusing access of travellers to EU Member States.

There are several other controversies regarding the ETIAS Regulation. First of all, the grounds for refusal (security, illegal immigration, high epidemic risk) are broadly defined in the Regulation. Out of the three grounds for refusal, a 'public health risk' has been defined most clearly. The ETIAS Regulation refers to the definition provided in the Schengen Borders Code, stating diseases with epidemic potential as listed by the International Health Regulations of

....

[30] European Parliament, Council of the European Union, Regulation (EU) 2018/1240 establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 1077/2011, (EU) No 515/2014, (EU) 2016/399, (EU) 2016/1624 and (EU) 2017/2226, 12 September 2018 (ETIAS Regulation), art. 1.

[31] Art. 17 ETIAS Regulation

[32] The application file is checked with data stored in SIS, EES, VIS, Eurodac, Europol data and Interpol's SLTD and TDAWN, art. 20(2) ETIAS Regulation.

[33] The ETIAS Central Unit will be established within the European Border and Coast Guard Agency, whereas the ETIAS National Units will be located in each Member State, art. 7, 8, 20, 22 ETIAS Regulation.

[34] Art. 36(5) ETIAS Regulation. A refused travel authorization application does not automatically lead to a refusal of a new application, art. 37(4) ETIAS Regulation. The data of applicants will be stored in a file within the ETIAS Central System for the period of validity of the travel authorization or five years upon the decision to refuse, annul or revoke travel authorization, art. 54 (1) ETIAS Regulation.

[35] N.a., "Advocaten weg bij terreurverdachten uit angst voor inreisverbod VS", NOS, 4 April 2019, https://nos.nl/artikel/2278938-advocaten-weg-bij-terreurverdachten-uit-angst-voor-inreisverbod-vs.html

the World Health Organization can be a threat to public health.[36] The same diseases would thus be a 'public health risk' as defined in the ETIAS Regulation. However, for the other two categories, no such reference or clarification has been provided. In particular, an illegal immigration risk is difficult to explain as a valid ground for refusal; as will be explained below, the EES would monitor the authorised stay of third country nationals (TCNs). As such, the 'illegal immigration risk' as a ground for refusal within ETIAS appears to be redundant.

Second, ETIAS screening rules are developed to automatically identify visa-exempt travellers potentially posing an irregular migration, security, or epidemic risk. The regulation refers to the process as profiling, based on an algorithm comparing the data of the application file to risk indicators as set by the ETIAS Central Unit.[37] The risk indicators, to be elaborated upon by the ETIAS Central Unit in the near future, will include data of a person's age, sex, nationality, country and city of residence, level of education and his/her occupation.[38] This kind of profiling raises legal and ethical concerns, considering the far-reaching consequences the screening rules may have on an individual: refusal of travel authorisation. Indeed, the European Data Protection Supervisor (EDPS) has warned for the risks of generalisation and uncertainty regarding the correctness and accuracy of predicted behaviour and linking a set of risk indicators to the features of a particular person when using profiling. Likewise, the EDPS expressed its concerns on interference with the fundamental rights in the EU Charter.[39] The perils of dependency on automated processing and algorithms is illustrated by a recent case where it appeared that the Netherlands had wrongly distributed visas to persons that were involved in criminal activities, due to a malfunction in the system caused by an error in the software update. The omission was discovered during manual follow-up checks.[40]

Third, the ETIAS system will include an ETIAS watchlist, listing persons suspected of having committed or taken part in terrorism or other criminal offences. Persons who are likely to commit a terrorist offence or other serious criminal offence can be added to the ETIAS watchlist as well.[41] Both Member States and Europol are able to add or withdraw individuals from the ETIAS watchlist. Once added to this watchlist, a person faces an increased risk of being denied entry to the EU.[42] The regulation does not provide for an independent body that monitors the implementation of the ETIAS watchlist, but states that Europol and the Member States themselves are responsible for keeping the watchlist up to date. This raises concerns on

....

[36] Art. 3 (1)(e), art. 2 (21) Schengen Borders Code.

[37] According to art. 33 ETIAS Regulation, the algorithm enables profiling as described in Regulation (EU) 2016/679, art. 4 (4): "any form of automated processing of personal data consisting of the use of personal data to evaluate certain personal aspects relating to a natural person, in particular to analyze or predict aspects concerning that natural person's performance at work, economic situation, health, personal preferences, interests, reliability, behavior, location or movements".

[38] Art. 33 (4) ETIAS Regulation. In addition, the Commission will adopt a delegated act to further define the risks associated with security, illegal immigration or high epidemic risk based on statistics generated by the EES and ETIAS and information provided by Member States, art. 33 (2) ETIAS Regulation.

[39] Respect for private life, art. 7, protection of personal data, art. 8, non-discrimination, art. 21, EU Charter of Fundamental Rights; European Data Protection Supervisor (EDPS), Opinion 3/2017, *EDPS Opinion on the Proposal for a European Travel Information and Authorisation System* (ETIAS), 6 March 2017, pp. 10 – 12.

[40] N.a., "Criminelen kregen visum door fout in informatiesysteem", NOS, 8 June 2019, https://nos.nl/artikel/2288109-criminelen-kregen-visum-door-fout-in-informatiesysteem.html

[41] Art. 29(1) ETIAS Regulation.

[42] If there is a 'hit' (correspondence) in the automatic processing of the ETIAS application form with the ETIAS watchlist, the application should be processed manually. The ETIAS National Unit of the responsible Member State issues the decision to allow or deny the travel authorization, recital (24) ETIAS Regulation.

monitoring standards when adding or withdrawing someone from the ETIAS watchlist. In addition, the added value of the ETIAS watchlist compared to other watchlists and UN sanction regimes already in place is not explained in the ETIAS Regulation. Interviews conducted for this paper indicated that, considering the broad range of reasons to be included on the watchlist, it would be easier for countries (and Europol) to add or withdraw people from a watchlist.[43] If that would be the case, it would underline the need for objective monitoring of the functioning and implementation of the ETIAS watchlist.

Although ETIAS would enable a prior risk assessment on persons suspected of posing a threat to national security, the system entails some aspects of which the necessity and proportionality have not been established. Indeed, the proposal for the regulation was not accompanied by an impact assessment provided by the Commission.[44] Therefore, the necessary justification for the infringement on fundamental rights cannot properly be assessed. Will ETIAS help address the information gaps in the new border management landscape? The case studies have illustrated that the main difficulties lie within the lack of swift access and a (timely) exchange of information between competent authorities. ETIAS does not remedy this, but rather adds an additional layer of monitoring individuals seeking to come to the EU, as far as visa-exempt travellers are concerned.

The other two centralised information systems to be developed appear less intrusive than the proposed ETIAS. In order to identify individuals remaining in the Schengen area when the duration of their authorised stay has expired, an EU Entry Exit System (EES) will be established.[45] The EES will store the date, time, and place of entry and exit of Third Country Nationals (TCNs), it will calculate the duration of authorised stay and will send an alert to the Member State concerned in case the duration of authorised stay of a TCN has expired. In contrast to the ETIAS, the EES will apply to visa-required and visa-exempt TCNs travelling into the Schengen zone. Data will be stored in the EES for three years following the date of exit of the individual concerned.[46] By keeping track of the duration of authorised stays of TCNs in the Schengen zone, the EES aims to combat identity fraud and misuse of travel documents.[47]

The proposed European Criminal Record Information System for third-country nationals (ECRIS-TCN) builds on the European Criminal Records Information System (ECRIS) that is already in place since 2012. ECRIS is a decentralised system to facilitate the exchange of information between EU Member States on criminal records of EU citizens convicted in an EU Member State. ECRIS can be accessed by judicial and police authorities of EU Member States.[48]

....

[43] Interview NCTV, November 2018.
[44] Thereby not adhering to the Better Regulation Guidelines. The Better Regulation Guidelines aim to 'ensure that political divisions are prepared in an open, transparent manner', based on available evidence and backed by stakeholders, European Commission, Commission Staff Working Document, Better Regulation Guidelines, SWD (2017) 350, Brussels, 7 July 2017, p.4.
[45] European Parliament, Council of the European Union, Regulation (EU) 2017/2226 establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third-country nationals crossing the external borders of the Member States and determining the conditions for access to the EES for law enforcement purposes, and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 767/2008 and (EU) No 1077/2011 (EES Regulation), 30 November 2017.
[46] Art. 34 EES Regulation.
[47] Art. 6 EES Regulation.
[48] European Commission, EU Information Systems, Security and Borders, Factsheet, December 2017, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-security/20171212_eu_information_systems_security_and_borders_en.pdf

ECRIS only applies to EU citizens; there is no central platform where the convictions and criminal records of non-EU nationals are stored once they are convicted in an EU Member State. However, the ECRIS-TCN enables Member States to check whether other Member States hold criminal records on a particular third country national concerned. The EDPS has acknowledged the importance of the measure and its recommendations do not stretch further than underlining the need of adherence to the data protection principle of purpose limitation and, similar to the concerns expressed in relation to the ETIAS and EES, meeting the standards of the EU Charter, referring to the required justification to establish a lawful limitation on fundamental rights.[49]

For the EES and ECRIS-TCN, a separate impact assessment has been conducted, assessing the necessity and proportionality of the measures proposed, and weighing alternative policy options against the infringement on fundamental rights. For these systems, the added value is easier established than the ETIAS. However, the ETIAS, EES, and ECRIS-TCN all focus on third-country nationals (visa-exempt or not) that intend to travel to the EU through regular fora. How to monitor those individuals that arrive on EU territory irregularly?

A critical reflection on the hotspot approach

Since the increase in migratory movements towards Europe in 2015-2016, and catalysed by the 2015 Paris attacks, there have been speculations that terrorists will arrive on EU soil travelling along migration routes.[50] This is a delicate issue that is prone to exploitation by populist and far-right political parties and thus requires a nuanced approach. Europol has consistently stated that there is no evidence that this would be a systematic approach used by terrorists.[51] However, aside from the case studies mentioned above, the case of Abdelaziz al H. and his brother Abdelfatah al H. illustrate that terrorists have (to some extent) used migratory routes to travel to Europe. These brothers, fulfilling significant positions within Jabhat al-Nusra–and suspected of money laundering and of being actively involved with the war in Syria–used their contacts to travel to Turkey and then to the EU posing as refugees. Both brothers received residence permits in the Netherlands in 2014.[52] The Dutch intelligence service monitored the brothers for years, until they were arrested in 2018. Since 2014, the situation at national borders and EU external borders has changed, with additional security measures being implemented. Nevertheless, the external border of the EU remains the first point of entry for the majority of migrants arriving irregularly in the EU and the first place to

....

[49] EDPS, Opinion 11/2017, Opinion on the proposal for a Regulation on ECRIS-TCN, 12 December 2017

[50] Anthony Faiola, and Souad Mekhennet, "Tracing the path of four terrorists sent to Europe by the Islamic State", *The Washington Post*, 22 April 2016, https://www.washingtonpost.com/world/national-security/how-europes-migrant-crisis-became-an-opportunity-for-isis/2016/04/21/ec8a7231-062d-4185-bb27-cc7295d35415_story.html?utm_term=.038cc202b525; Hannah Roberts, "ISIS threatens to send 500,000 migrants to Europe as a 'psychological weapon' in chilling echo of Gaddafi's prophecy that the Mediterranean 'will become a sea of chaos'", *Daily Mail Online*, 18 February 2015, https://www.dailymail.co.uk/news/article-2958517/The-Mediterranean-sea-chaos-Gaddafi-s-chilling-prophecy-interview-ISIS-threatens-send-500-000-migrants-Europe-psychological-weapon-bombed.html; M. Funk and R. Parkes, "Refugees versus Terrorists", Alert 6, Brussels: European Union Institute for Security Studies [EUISS], January 2016, p. 1

[51] Europol, European Union Terrorism Situation and Trend Report 2018 (Tesat), also Europol Tesat 2016, Europol Tesat 2017; Interview Europol ECTC November 2018.

[52] Ana van Es and Anneke Stoffelen, Wat hebben Fatah en Aziz in Syrië gedaan? [What Have Fatah and Aziz done in Syria?], *De Volkskrant*, 5 April 2019, https://www.volkskrant.nl/kijkverder/v/2019/wat-hebben-fatah-en-aziz-in-syrie-gedaan

screen whether there are any individuals among them with malevolent intentions. For that reason, Europol is present at the hotspots to conduct secondary security checks.

To assist Member States in meeting challenges presented by disproportionate migratory pressures at the EU's external borders, the European Commission adopted the hotspot approach in May 2015 in the European Agenda on Migration. Following the request of a Member State, European agencies such as Frontex, EASO, Europol and Eurojust can provide assistance to the authorities of that Member State whose border management and asylum systems are struggling or not able to cope with the challenges that they face.[53] The hotspot approach is implemented in Greece and Italy.[54] To prevent secondary migration movements, the hotspots turned into closed detention facilities.

Based upon a selection of criteria (such as behaviour or belongings), local authorities can ask the Europol officer present in the hotspot to cross-check the individual concerned with relevant data in the Europol databases. These enhanced security checks are not conducted on every arriving migrant, but only target those individuals that hotspot authorities see as representing an elevated risk. The decision to conduct an enhanced security check is based upon a set of decision criteria. The criteria based on which the enhanced security checks are conducted are not publicly accessible. Therefore, no reflection on the decision criteria can be provided. Approximately 15% of arriving refugees and migrants are referred to the secondary security check.[55] In case the secondary security check provides a hit within one of Europol's information systems, all available information is shared in full with the local police authorities of the host member state concerned. The decision on follow-up action lies with the authorities of the host member state.

In October 2018, German broadcaster Deutsche Welle reported supporters of the Islamic State (IS) were actively present at the hotspot Moria on Lesbos, Greece.[56] In 2016 Europol has acknowledged the risk of infiltration of terrorists in refugee camps albeit stating that the extent to which this happens is unknown.[57] When asked on this specific case, the Europol European Counter Terrorism Centre (ECTC) reflected that there was no confirmation on IS operating in Moria, nor on the potential recruiting of fellow residents of the camp.[58] Still, the issued report signalled the risks involved when vulnerable individuals (refugees) need to live in closed facilities, without monitoring (or addressing) concerns as to with whom they have to live with.

....

[53] European Commission, Communication from the Commission to the European Parliament, the Council the European Economic and Social Committee and the Committee of the Regions, A European Agenda on Migration COM (2015) 240 final, 13 May 2015, p.6.
[54] Greece: Lesbos, Chios, Samos, Leros, Kos, Italy: Taranto, Trapani, Messina, Pozzallo, Lampedusa, European Parliamentary Research Service (EPRS), Hotspots at EU external borders – State of Play, Briefing, June 2018 http://www.europarl.europa.eu/RegData/etudes/BRIE/2018/623563/EPRS_BRI(2018)623563_EN.pdf
[55] These numbers are based only on the locations where Europol Guest Officers are stationed, Interview Europol ECTC November 2018.
[56] N.a., "Refugees at Camp Moria on Lesbos report IS gang violence", *DW News*, 2 October 2018, https://www.dw.com/en/refugees-at-camp-moria-on-lesbos-report-is-gang-violence/av-45722733; N.a., "IS-sympathisanten actief in vluchtelingenkamp Moria", *DW News* [IS sympathizers active in Moria Camp], NOS, 2 October 2018, https://nos.nl/nieuwsuur/artikel/2253109-is-sympathisanten-actief-in-vluchtelingenkamp-moria.html
[57] Europol, Changes in Modus Operandi of Islamic State (IS) revisited, The Hague, November 2016, p. 9.
[58] Europol ECTC interview November 2018.

Different approaches are applied when it comes to the management of European external borders in the EU Mediterranean Member States. Since implementation of the hotspot approach is dependent upon the request of a Member State, the approach is implemented in Italy and Greece, but not in Spain. Looking at the 2018 numbers, most of the migrants arrived through the Western Mediterranean Route in Spain.[59] However, numbers of 2019 indicate that Greece is the main country of arrival for refugees and migrants coming to the EU.[60] Still, based on the current situation, migrants arriving in Italy and Greece are subjected to different procedures than those who arrive in other EU member states such as Spain, causing a discrepancy in the management of EU's external borders: an element that has not been addressed while developing the hotspot approach.

Conclusion

It is important to consider terrorism and migration as two separate policy fields. Refugees and asylum-seekers are individuals seeking protection—that is the reason why they are on the move.[61] Terrorists, when on the move, have a different motivation to do so. Because of this fundamental difference in purpose, objective and intent, it is key that a different (policy) approach is applied to these fields. However, as the case studies in this paper have illustrated, it is important to acknowledge that these two fields can in some exceptional cases overlap. The 2015 Paris Attacks, the 2016 Brussels Airport bombings, and the 2016 Berlin Christmas Market attack illustrate serious deficiencies in the operational landscape of European border management. The case studies show examples of forged and fraudulent travel documents, identify fraud, lack of Eurodac registration and gaps in information exchange between national authorities in the EU. This paper has elaborated on the elements introduced to improve European border management: interoperability of information systems, the introduction of ETIAS, the EES, and the ECRIS-TCN and the hotspot approach. In general, the measures proposed contribute to detection of security risks and enhancement of controls at the EU external borders provides safeguards for the preservation of Schengen. But do the measures proposed remedy the specific deficiencies as illustrated by the case studies? And are the measures proportional to the objectives pursued?

The proposal for interoperability between EU information systems is the main measure introduced aiming to detect identity fraud and to facilitate the access and exchange of information by relevant authorities in order to fulfil their tasks. Based on interoperability of information systems, practitioners can be easily informed in which system they are able to find information. This addresses the alleged ´blind spots´ in EU border management. However, the

....

[59] 65,400 arrivals in Spain compared to 50,500 in Greece and 23,400 in Italy, United Nations High Commissioner for Refugees (UNHCR), *Refugees & migrants arrivals to Europe in 2018 (Mediterranean)*, Factsheet, https://data2.unhcr.org/en/documents/download/68006

[60] 18,400 arrivals in Greece, compared to 13,300 in Spain and 2,800 in Italy, UNHCR, *Refugees & migrants arrival to Europe in 2019 – Jan – June 2019*, Factsheet, https://data2.unhcr.org/en/documents/download/70494

[61] A refugee is a person who, owing to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his/her nationality and is unable, or, owing to such fear, unwilling to avail him/herself of the protection of that country, United Nations (UN) General Assembly, Convention Relating to the Status of Refugees, 28 July 1951 (1951 Refugee Convention), art.1, and its 1967 Protocol, art. 1. For a detailed glossary see Tiekstra, W., Zweers, W., Innovation in EU Migration Policy: towards a truly comprehensive approach to migration, Clingendael Report, September 2018, Annex I.

proposal has raised concerns regarding the infringement on fundamental rights. In addition, the interoperability of EU information systems does not address the risk of miscommunication between Schengen and non-Schengen countries, as was the case with el-Bakraoui.

With implementation foreseen for 2021, visa-exempt travellers would need to obtain approval before entering the EU according to the ETIAS regulation. This paper has elaborated on the controversies of ETIAS. The grounds for refusing access to the EU have not been clearly defined in the proposal leaving a broad discretionary power to the ETIAS national units (to be established in every member state). More guidance in this field would be required, as grounds for adding individuals to the ETIAS watchlist are broadly formulated in the ETIAS regulation. In addition, the added value of the ETIAS watchlist compared to similar lists already in place has not been made sufficiently clear. This would have been a crucial element to establish, as being listed on the ETIAS watchlist increases the risk of refusal of the travel authorisation and thus being denied entry to the EU. Although ETIAS is intended to facilitate preventive risk assessments of persons suspected to be a threat to national security, this risk assessment only targets travellers from visa exempt countries. This raises the question whether the same pre-emptive (security) analysis is conducted for visa applicants. To put it bluntly: if someone would overstay his/her duration of the visa, wouldn't this lead to an illegal immigration risk? Furthermore, since the proposal was not accompanied by an impact assessment, no proper analysis of the necessity and proportionality of this measure could be carried out. Finally, ETIAS does not seem to target the deficiencies in EU border management as illustrated by the case studies. It rather adds another layer of preventive screening of travellers from visa-exempt countries traveling to the EU.

The EES and ECRIS-TCN have also been touched upon in this paper. Briefly stated, the EES would facilitate identification of persons residing without valid permission on EU soil. The EES monitors the entry and (expected) departure of all third-country nationals traveling to the EU (with or without a visa). The ECRIS-TCN would inform member state authorities on the criminal records of third-country nationals convicted in the EU. Within the current ECRIS system, there is no such central platform where such data can be found. Currently, all member states need to be individually consulted, which is a time-consuming process. These measures would contribute to the detection of persons residing in the EU illegally and would facilitate swift assessment of the (potential) criminal background of a third country national.

The 2015 Paris attacks and the case of Abdelaziz and Fatah al H. in the Netherlands illustrate that some terrorists have indeed travelled via migratory routes. These cases provide a plea for better screening at the EU external border of those persons who arrive irregularly. The hotspot approach can be considered such an attempt. Registration in Eurodac has improved with the implementation of the hotspot approach, as well as the information exchange between Europol and officers of the host-country. However, since the implementation of the hotspot approach is dependent upon a request of a member state, this has caused a discrepancy in the management of EU's external borders.

Despite the newly introduced measures, the operational landscape of EU border management remains just as complex. By introducing three additional information systems (EES, ETIAS,

ECRIS-TCN), the overview of the systems in place has not become clearer. It adds to the existing jungle of information systems, without clarifying the relationship between central and decentral (national) information systems. Justification of the infringements on fundamental rights has not been established for all the measures proposed. In addition, not all challenges indicated in the case studies will be remedied by the measures proposed. For example, the measures proposed do not address the challenges in the exchange of information between EU and non-EU countries. In addition, the measures proposed mainly target third country nationals arriving to the EU via regular means. The hotspot approach has increased security checks on migrants arriving irregularly on EU shores, but is not applied along all the EU external borders leading to a different treatment of migrants arriving in Greece, Italy or Spain.

The case studies have illustrated that the EU border management patchwork needs to be improved but, in the end, the efficiency of screening of those travellers arriving in the EU still depends on the capacity of national authorities (e.g. the ETIAS national unit). Instead of adding new information systems to the existing jungle of systems, why not focus on building the required operational capacity in all member states, ensuring that all information is properly uploaded in the signalling systems and that thereupon the information can be exchanged properly?

Bibliography

Treaties

United Nations (UN) General Assembly, Convention Relating to the Status of Refugees, 28 July 1951 (1951 Refugee Convention), and the 1967 Protocol.

European Union, Consolidated version of the Treaty on the Functioning of the European Union, 13 December 2007.

European Union, Consolidated version of the Treaty on European Union, 13 December 2007.

European Union, Charter of Fundamental Rights of the European Union, 26 October 2012.

EU Regulations and Proposals for EU Regulations

European Parliament, Council of the European Union, Regulation (EU) No. 603/2013 on the establishment of 'Eurodac' (Eurodac Regulation)*,* 26 June 2013.

European Parliament, Council of the European Union, Regulation (EU) 2016/399 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code), 9 March 2016.

European Parliament, Council of the European Union, Regulation (EU) 2016/679 *on the protection of* natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 96/46/EC (General Data Protection Regulation), 27 April 2016.

European Commission, Proposal for a Regulation of the European Parliament and of the Council for the identification of Member States holding conviction information on third country establishing a centralized system nationals and stateless persons (TCN) to supplement and support the European Criminal Records Information System (ECRIS-TCN system) and amending Regulation (EU) No 1077/2011, COM (2017) 344 final, Brussels June 2016.

European Commission, Proposal for a Regulation of the European Parliament and of the Council establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) no. 515/2014, (EU) 2016/399, (EU) 2016/794 and (EU) 2016/1624, COM (2016) 731 final, Brussels November 2016.

European Parliament, Council of the European Union, Regulation (EU) 2017/2226 establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third-country nationals crossing the external borders of the Member States and determining the conditions for access to the EES for law enforcement purposes, and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 767/2008 and (EU) No 1077/2011, 30 November 2017.

European Commission, Proposal for a Regulation of the European Parliament and of the Council on establishing a framework for interoperability between EU information systems (police and judicial cooperation, asylum and migration), COM (2017) 794 final, Brussels, December 2017.

European Parliament, Council of the European Union, Regulation (EU) 2018/1240 establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 1077/2011, (EU) No 515/2014, (EU) 2016/399, (EU) 2016/1624 and (EU) 2017/2226, 12 September 2018.

European Parliament, Council of the European Union, Regulation (EU) 2019/818, establishing a framework for interoperability between EU information systems in the field of police and judicial cooperation, asylum and migration and amending Regulations (EU) 2018/1726, (EU) 2018/1862 and (EU) 2019/816, 20 May 2019.

Directives

Council of the European Union, Directive 2004/82/EC, on the obligation of carriers to communicate passenger data (API Directive), 29 Aril 2004.

European Parliament, Council of the European Union, Directive (EU) 2016/681, on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime (PNR Directive), 27 April 2016.

Impact Assessments

European Commission, Commission Staff Working Document, Impact Assessment accompanying the document [ECRIS-TCN proposal], SWD (2016) 5 final, January 2016.

European Commission, Commission Staff Working Document, Impact Assessment Report on the establishment of an EU Entry Exit System accompanying the document [EES proposal], SWD (2016) 115 final, part 1/3, Brussels April 2016.

European Commission, Commission Staff Working Document, Impact Assessment accompanying the document [interoperability proposal], SWD (2017) 473 final, Part 1/2, Strasbourg, December 2017.

Journals

Avdan, N., "Do asylum recognition rates in Europe respond to transnational terrorism? The migration-security nexus revisited", *European Union Politics,* Vol. 15, No. 4, 2014.

Ceccorulli, M., "Back to Schengen: the collective securitization of the EU free-border area", *West European Politics*, Vol. 42, No. 2, 2018.

Choi, S., "Does restrictive immigration policy reduce terrorism in Western Democracies?" *Perspectives on Terrorism*, Vol. 12, No. 4, 2018.

Eleftheriadou, M., "Refugee Radicalization/Militarization in the Age of the European Refugee Crisis: A Composite Model", *Terrorism and Political Violence*, 2018.

Estevens, J., "Migration Crisis in the EU: developing a framework for analysis of national security and defence strategies", *Comparative Migration Studies*, Vol. 6, No. 28, 2018.

Guild, E., Garlick, M., "Refugee Protection, Counter-terrorism, and exclusion in the European Union", *Refugee Survey Quarterly*, Vol. 29, No.4, 2011.

Parkes, R., "Migration and terrorism: the new frontiers for European solidarity", *EUISS policy brief,* December 2015.

Schmid, A., "Links between terrorism and migration: an exploration", *International Centre for Counter-Terrorism - The Hague*, May 2016.

Other

Official Journal of the European Union, Initiative of the Kingdom of Spain with a view to adopting a Council Directive on the obligation of carriers to communicate passenger data, 2003/C, 82/08, 5 April 2003.

Official Journal of the European Union, Notices from Member States, List of competent authorities which are authorized to search directly the data contained in the second generation Schengen Information System, 2015/C, 208/01, 24 June 2015.

Dutch Ministry of Justice and Security*,* Beantwoording vragen over brief (24 mrt 2016) dat een van de plegers van aanslagen Brussel naar Nederland is uitgezet, Nationaal Coördinator Terrorismebestrijding en Veiligheid (NCTV), 29 March 2016, p 5.

Danish Institute for International Studies, Europe's Refugee Crisis and the Threat of Terrorism: An Extraordinary Threat?, Copenhagen 2017.

European Commission

European Commission, Communication from the Commission to the European Parliament, The European Council and the Council, Seventh progress report towards an effective and genuine Security Union, COM (2017) 261 final, Strasbourg, May 2017.

European Commission, Communication from the Commission to the European Parliament and the Council, Stronger and Smarter Information Systems for Borders and Security, COM (2016) 205 final, Brussels, April 2016.

European Commission, The hotspot approach to managing exceptional migration flows, Factsheet, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/2_hotspots_en.pdf

European Commission, EU Information Systems, Security and Borders, Factsheet, December 2017, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-security/20171212_eu_information_systems_security_and_borders_en.pdf

European Commission, Communication from the Commission to the European Parliament, The Council, The European Economic and Social Committee and the Committee of the Regions, A European Agenda on Migration, COM(2015) 240 final, Brussels, 13 May 2015.

European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, The European Agenda on Security, COM(2015) 185 final, Strasbourg, 28 April 2015.

European Commission, Communication from the Commission to the European Parliament, the European Council and the Council, Back to Schengen – A Roadmap, COM(2016) 120 final, Brussels 4 March 2016.

European Commission, Commission Staff Working Document, Better Regulation Guidelines, SWD (2017) 350, Brussels, 7 July 2017.

European Commission, Migration and Home affairs, *Visa Information System* (VIS) via WWW https://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/visa-information-system_en

European Commission, Migration and Home Affairs, *Schengen Information System*, via WWW https://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/schengen-information-system_en

European Commission, *The Schengen Information System*, Factsheet, November 2018, via WWW https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-security/20181119_update-factsheet-sis_en.pdf

European Commission, Migration and Home Affairs, *PNR: List of Member States who have decided to apply the Directive (EU) 2016/681 to intra-EU flights,* 1 June 2018, via WWW https://ec.europa.eu/home-affairs/news/list-member-states-applying-pnr-directive-intra-eu-flights_en

European Parliament

European Parliament, Directorate-General for Internal Policies, Policy Department Citizens' Rights and Constitutional Affairs, European Travel Information and Authorisation System (ETIAS): Border management, fundamental rights and data protection, study for the LIBE Committee, 2017.

Council of the European Union

Council of the European Union, Presidency Document, Roadmap to enhance information exchange and information management including interoperability solutions in the Justice and Home Affairs Area, Brussels, June 2016.

Council of the European Union, Outcome of the Council Meeting, 3546th Council Meeting Justice and Home Affairs, Luxembourg 8 and 9 June 2017.

European Council

European Council, Council Conclusions European Council meeting 22 and 23 June 2017, Brussels, June 2017.

European Council, Council Conclusions European Council meeting 28 June 2018, June 2018.

European Data Protection Supervisor (EDPS)

European Data Protection Supervisor (EDPS), Opinion 6/2016 on the Second EU Smart Border Package, Recommendations on the revised proposal to establish an Entry/Exit System, 21 September 2016.

EDPS, Opinion 3/2017, Opinion on the Proposal for a European Travel Information and Authorisation System (ETIAS), 6 March 2017.

EDPS, Opinion 11/2017, Opinion on the proposal for a Regulation on ECRIS-TCN, 12 December 2017.

EDPS, Opinion 4/2018 on the Proposals for two Regulations establishing a framework for interoperability between EU large-scale information systems, April 2018.

European Parliamentary Research Service (EPRS)

European Parliamentary Research Service (EPRS), Hotspots at EU external borders – State of Play, Briefing, June 2018, http://www.europarl.europa.eu/RegData/etudes/BRIE/2018/623563/EPRS_BRI(2018)623563_EN.pdf

European Parliamentary Research Service (EPRS), Counter-terrorism funding in the EU budget, Briefing, April 2016,

http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/580904/EPRS_BRI%282016%29 580904_EN.pdf

Europol

Europol, Changes in Modus Operandi of Islamic State (IS) revisited, The Hague, November 2016.

Europol, European Union Terrorism Situation and Trend Report 2018 (Tesat).

Europol, Tesat Report 2017.

Europol Tesat Report 2016.

Eurobarometer

Special Eurobarometer 474, Europeans' perceptions of the Schengen Area, December 2018.

Special Eurobarometer 464b, Europeans' attitudes towards security, December 2017.

Thinktank reports

Funk, M., Parkes, R., Refugees versus terrorists, European Union Institute for Security Studies (EUISS), Alert, January 2016.

Tiekstra, W., Zweers, W., Innovation in EU Migration Policy: towards a truly comprehensive approach to migration, Clingendael Report, September 2018.

Media

Boffey, Daniel and Smith, Helena "Oxfam condemns EU over 'inhumane' Lesbos refugee camp", *The Guardian*, 9 January 2019, https://www.theguardian.com/world/2019/jan/09/oxfam-criticises-eu-inhumane-lesbos-refugee-camp-moria

Callimachi, Rukmini, Pianigiani, Gaia, and Povoledo, Elisabetta. "Hunt for Berlin Suspect Ends in Gunfire on an Italian Plaza", *The New York Times*, 23 December 2016, https://www.nytimes.com/2016/12/23/world/europe/berlin-anis-amri-killed-milan.html

Connolly, Kate, "Anis Amri: from young drifter to Europe's most wanted man", *The Guardian*, 23 December 2016, https://www.theguardian.com/world/2016/dec/23/anis-amri-from-young-drifter-to-europes-most-wanted-man

Chrisafis, Angelique. "The men in the top floor flat who sowed terror in Brussels", *The Guardian*, 24 March 2016, https://www.theguardian.com/world/2016/mar/23/brussels-attacks-schaerbeek-flat-coordinated-atrocities-plotted-el-bakraoui

Es, Ana van and Stoffelen, Anneke, "Wat hebben Fatah en Aziz in Syrië gedaan?" [What Have Fatah and Aziz done in Syria?], *De Volkskrant*, 5 April 2019, https://www.volkskrant.nl/kijkverder/v/2019/wat-hebben-fatah-en-aziz-in-syrie-gedaan

Henley, Jon, Murray, Warren and Traynor, Ian. "Paris attacks: EU in emergency talks on border crackdown", *The Guardian*, 20 November 2015, https://www.theguardian.com/world/2015/nov/20/paris-attacks-france-launches-un-push-for-unified-declaration-of-war-on-isis

Hewitt, Gavin. "Paris attacks: Impact on border and refugee policy", *BBC News,* 15 November 2015, https://www.bbc.com/news/world-europe-34826438

Mekhennet, Souad and Faiola, Anthony. "Tracing the path of four terrorists sent to Europe by the Islamic State", *The Washington Post*, 22 April 2016, https://www.washingtonpost.com/world/national-security/how-europes-migrant-crisis-became-an-opportunity-for-isis/2016/04/21/ec8a7231-062d-4185-bb27-cc7295d35415_story.html?utm_term=.038cc202b525;

Morris, Chris, "Paris attacks 'ringleader' Abdelhamid Abaaoud evaded Athens police", *BBC News*, 8 December 2015, https://www.bbc.com/news/world-europe-35044182

Morris, Loveday and Witte, Griff, "Failure to stop Paris attacks reveals fatal flaws at heart of European Security", The Washington Post, 28 November 2015, https://www.washingtonpost.com/world/europe/paris-attacks-reveal-fatal-flaws-at-the-heart-of-european-security/2015/11/28/48b181da-9393-11e5-befa-99ceebcbb272_story.html?utm_term=.d075759dfd47

N.a. "Paris attacks: Who were the attackers?", *BBC News*, 27 April 2016, https://www.bbc.com/news/world-europe-34832512

N.a., "As police raid Malakasa migrant camp, Moria struggles with bad weather", *Ekathimerini*, October 3 2019, http://www.ekathimerini.com/233182/article/ekathimerini/news/as-police-raid-malakasa-migrant-camp-moria-struggles-with-bad-weather

N.a. "Berlin Truck killer Amri 'had 14 identities' in Germany" *BBC News*, 5 January 2017, https://www.bbc.com/news/world-europe-38516691

N.a. "Advocaten weg bij terreurverdachten uit angst voor inreisverbod VS", *NOS*, 4 April 2019, https://nos.nl/artikel/2278938-advocaten-weg-bij-terreurverdachten-uit-angst-voor-inreisverbod-vs.html

N.a. "Criminelen kregen visum door fout in informatiesysteem", *NOS*, 8 June 2019, https://nos.nl/artikel/2288109-criminelen-kregen-visum-door-fout-in-informatiesysteem.html

N.a., "Refugees at Camp Moria on Lesbos report IS gang violence", *DW News*, 2 October 2018, https://www.dw.com/en/refugees-at-camp-moria-on-lesbos-report-is-gang-violence/av-45722733; N.a., "IS-sympathisanten actief in vluchtelingenkamp Moria", *DW News* [IS sympathizers active in Moria Camp], NOS, 2 October 2018, https://nos.nl/nieuwsuur/artikel/2253109-is-sympathisanten-actief-in-vluchtelingenkamp-moria.html

Roberts, Hannah. "ISIS threatens to send 500,000 migrants to Europe as a 'psychological weapon' in chilling echo of Gaddafi's prophecy that the Mediterranean 'will become a sea of chaos'", *Daily Mail Online*, 18 February 2015, https://www.dailymail.co.uk/news/article-2958517/The-Mediterranean-sea-chaos-Gaddafi-s-chilling-prophecy-interview-ISIS-threatens-send-500-000-migrants-Europe-psychological-weapon-bombed.html

Valero, Jorge, "Paris attacks show flawed use of Schengen rules, ministers confess", *Euractiv*, 20 November 2015, https://www.euractiv.com/section/justice-home-affairs/news/paris-attacks-show-flawed-use-of-schengen-rules-ministers-confess/

Interviews

Institution	Date
Europol European Counter Terrorism Centre (ECTC)	27 November 2018
Europol ECTC	27 November 2018
Europol ECTC	17 April 2019
Ministry of Justice and Security of the Netherlands, National Coordinator for Security and Counterterrorism (NCTV)	19 November 2018
Ministry of Justice and Security of the Netherlands, representative of the Border and Security Programme	18 April 2019

About the Authors

Willemijn Tiekstra

Willemijn Tiekstra is a research fellow at ICCT. Her work focuses on the symbiosis of counter-terrorism measures, criminal law provisions and immigration powers, with a particular emphasis on the impact on human dignity and individual rights. Previously, she was a research assistant at the Clingendael institute. Her work at the Clingendael Institute focused on the implementation of European migration policies: implementation of internal EU policies as well as third country cooperation in the field of migration. Prior to working at the Clingendael Institute, Willemijn has worked as a Policy Officer at the Ministry of Foreign Affairs in The Hague and at the Netherlands Embassy in Athens, where her activities were also related to analyzing and feeding into the development of migration policies.

Free movement threatened by terrorism: an analysis of measures proposed to improve EU border management

Willemijn Tiekstra
October 2019

About ICCT

ICCT The International Centre for Counter-Terrorism – The Hague (ICCT) is an independent think and do tank providing multidisciplinary policy advice and practical, solution-oriented implementation support on prevention and the rule of law, two vital pillars of effective counterterrorism.

ICCT's work focuses on themes at the intersection of countering violent extremism and criminal justice sector responses, as well as human rights-related aspects of counterterrorism. The major project areas concern countering violent extremism, rule of law, foreign fighters, country and regional analysis, rehabilitation, civil society engagement and victims' voices.

Functioning as a nucleus within the international counter-terrorism network, ICCT connects experts, policymakers, civil society actors and practitioners from different fields by providing a platform for productive collaboration, practical analysis, and exchange of experiences and expertise, with the ultimate aim of identifying innovative and comprehensive approaches to preventing and countering terrorism.

Contact ICCT

T: +31 (0)70 763 0050
E: info@icct.nl