

**DIGNITY**



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



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



# Foreword

International airports are the main entry point for third-country nationals to the European Union (EU). Every year hundreds of million passengers arrive at international airports in the EU. At the border, all passengers undergo entry checks which must comply with fundamental rights. These checks are also an important opportunity to identify persons requiring protection.

This FRA report is about the treatment of third-country national passengers during entry checks to the EU at five large international airports. It covers the tasks of border guards, who are the first point of contact with passengers coming to the EU. The report deals with the main fundamental rights issues that may emerge in the context of entry checks. It highlights a number of concrete measures that border management authorities can take to address specific challenges identified by this research.

With its findings, the report draws attention to the fact that fundamental rights safeguards are part and parcel of EU legislation on border checks and thus subject to regular evaluations, such as the Schengen evaluation mechanism. It also points out issues that border management authorities could pursue in their cooperation with Frontex. More generally, it is intended to give practitioners at borders ideas on how to deal with the fundamental rights challenges affecting passengers at airports.

**Morten Kjaerum**  
*Director*



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# Executive summary

This report focuses on the tasks of border guards during entry checks of third-country national passengers at five international airports in the European Union (EU). It aims to give visibility to the fundamental rights issues that emerge in the context of border checks at airports, which have so far received little attention.

The majority of third-country nationals who arrive at international airports are admitted to the EU, although some only after undergoing extended second-line checks. Others may be in need of international protection and are referred to protection services. A small number are rejected after a detailed check of the entry requirements. They may be held in transit or in a special facility until all issues are resolved, the decision to refuse entry is final and a return flight is available. These operational border management tasks raise questions about how fundamental rights – such as the right to human dignity, non-discrimination, the prohibition of trafficking in human beings, the right to asylum, the rights of the child, the right to an effective remedy and the right to the protection of personal data – are applied in practice.

Passengers' **human dignity** may be affected at several stages of the border check: for example, while waiting for first- or second-line checks, while being held in holding rooms or short-term holding facilities, upon refusal of entry or during searches. Airport facilities to accommodate passengers are not always available or appropriate, particularly for families with children. Facilities ensuring privacy during detailed checks are not always at hand either, which presents a challenge when searches are necessary. The conduct of searches did not raise strong concerns, although sensitivity to gender issues could be improved. At EU level, little guidance on the proportionality and conduct of searches exists. Language training for officers at most airports has been subject to budget cuts, although such training would improve their ability to communicate with passengers, facilitate correct initial referrals and avoid unnecessary second-line checks.

The right to **non-discrimination** prohibits the use of systematic discriminatory patterns of profiling. At the first line, behavioural analysis is a key factor in deciding which individual passengers to select for more detailed second-line checks. Ethnicity and nationality are important additional criteria, but they are not necessarily more important than destination and place of embarkation. The research

shows that passengers may, nonetheless, perceive discrimination, particularly if they do not know the purpose of and procedure for the check. Risk analyses focus on irregular migration and include few indicators related to persons at risk.

The identification of **persons in need of protection** is a crucial element of border checks. Identification appears to be most successful if pursued proactively at all stages of the border check. Efforts should therefore be made to improve the prioritisation of tasks related to identification and referral, for example by improving the assessment of individual circumstances and providing additional training and guidance on identification procedures. Officers' responsiveness to signs of protection needs which passengers do not explicitly state appears to be low and they tend to rely on specialised teams or services to identify such needs.

**Asylum seekers** are generally expected to identify themselves as such. Unless officers are adequately trained and on the alert, persons in need of protection may pass unnoticed or be referred incorrectly, particularly if they receive insufficient information during the checks.

Ensuring access to protection for **victims of trafficking** is still more difficult, as victims may distrust the authorities or be unaware of their situation and/or rights. In addition, entry requirements (work permit, visa, etc.) are often in order. Successful identification thus hinges on officers' observation and communication skills, their experience and the intelligence received. At several airports, however, officers do not receive specific guidance on the identification of human trafficking victims. Referral of presumed victims may be difficult if there is no referral mechanism at national level to which the airport can connect.

The issue of **children** at risk raises many concerns. For border guards, the child's behaviour and statements are crucial indicators of his or her protection needs. Identification thus depends on the quality of a guard's interaction with the child. The research also found that not all officers inform children of their rights in a way that they can understand, nor do they contact protection services immediately or, in some cases, at all. Initial decisions regarding the child – concerning applicable procedures and immediate placement, for example – are usually taken at the second line. Therefore, effective mechanisms to safeguard the child's best interests must be in place

at this stage. Regular training on dealing with children is limited at most airports although a majority of officers would consider this useful for their work.

The right to **effective remedy**, in other words to lodge a complaint and challenge a decision, is relevant in four airport entry check situations: complaints about the conduct of a border check, appeals against a decision to refuse entry, appeals against the rejection at the airport of an asylum claim and appeals against placement in a holding facility. Access to information is an essential prerequisite and was often found to be compromised. Many officers do not inform passengers of the purpose and procedure of the second-line check, meaning that many passengers do not understand why they are being checked, the next steps in the process or their related rights. Where passengers' access to communication with the outside world, for example through the use of a mobile phone, is limited, this often makes it more difficult for them to produce the documentation required for entry. Interpretation is not always available on time and provided by publicly certified interpreters. Even leaving aside language difficulties, information on appeals options is limited and/or hard to understand because of difficult legal language and the complexity of the

procedures. This prevents third-country nationals from fully exercising their rights. Although free legal counselling for appeal procedures is available in principle under certain conditions, its availability and quality may be compromised as a result of practical obstacles such as capacity limits, restrictions on visits to holding facilities or requirements for prior means and merit tests.

Border checks necessarily entail the verification of personal data, including alphanumeric and possibly biometric data, such as fingerprints or facial images. The collection, use and storage of such data must be carried out in accordance with **data protection** principles, including the right to private and family life. The use of several databases at different stages of the border check increases the risk of data protection violations. Passengers may not always be aware of the type of data processed, the purpose of this processing or how to have their data corrected. Moreover, officers often rely on other passengers as interpreters if they encounter first-line communication difficulties. All this requires that officers understand what constitutes personal data and how to protect them. Regular training on data protection is, however, available to differing extents at the airports.



# FRA opinions

## Human dignity

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

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

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

Where rules for searches during second-line checks or prior to placement in a holding facility are not specifically defined, EU Member States are encouraged to formulate further guidance, including at least the same safeguards that apply to searches of suspected criminals. Border management authorities should ensure that searches of persons are carried out by same-sex officers and in a gender-sen-

sitive manner. Although superficial safety checks may not have to be carried out by an officer of the same gender, as a good practice, border management authorities should encourage officers' sensitivity to passengers' concerns and ensure that separate facilities are available and sufficient women officers are on duty and trained in conducting searches. Before undergoing a search, passengers should receive an explanation of the procedure and, unless a crime is being investigated, the purpose of the search. Border guards carrying out searches for immigration purposes should receive training and practical guidance on the proportionality, incremental escalation and conduct of such searches, including gender sensitivity, in line with the Common Core Curriculum.

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

## Non-discrimination

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

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

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

## Identification and referral of persons in need of protection

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

### Identification

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

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

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

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

### Referral

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

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

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

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

### Right to an effective remedy

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

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

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

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

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

Legal assistance is another precondition for an effective remedy, considering the complexity of appeal procedures and the time frames for those procedures. Member State authorities, including border guards where relevant, thus need to facilitate access to legal assistance to persons who could not otherwise access an effective remedy. Border guards should systematically refer passengers refused entry, in writing, to organisations able to offer legal advice and representation, in line with

the obligations set out in Article 13 (3) of the Schengen Borders Code.

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

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

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

As a good practice, interpretation should be made available for the preparation of appeals against negative asylum decisions. Border management authorities should explore the possibility of providing interpretation for the preparation of appeals against refusal of entry in an effort to ensure the practical accessibility of procedures within existing time frames.

## Data protection

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



# Introduction

## Aim of the report

International airports are the biggest entry point into the EU for third-country nationals. In 2012, international air passenger transport in the EU Member States amounted to hundreds of million passengers with more than 220 million using the five airports covered by this report:<sup>1</sup> Charles de Gaulle, France; Fiumicino, Italy; Frankfurt am Main, Germany; Manchester, United Kingdom; and Schiphol, the Netherlands.

This report examines the procedures for and conduct of checks carried out by border guards or border officers on third-country national passengers entering EU territory at the five airports. Third-country nationals undergo more thorough checks than EU/EEA (European Economic Area) and Swiss citizens at the border. Entry checks may be divided into four stages: pre-border checks based on information provided by airlines in advance of arrival; checks at the gate or on the aircraft upon arrival; first-line checks verifying compliance with entry requirements; and second-line checks if more thorough verification is needed. In case of non-compliance with entry requirements, the passenger is refused entry and/or, depending on the circumstances, referred for protection procedures.

This report is an outcome of the research project on the treatment of third-country nationals at the external borders in the European Union Agency for Fundamental Rights (FRA) 2010–2012 work programmes; it examines the fundamental rights issues arising during border checks at these airports. It complements a March 2013 report on the situation at Europe's southern sea borders. An additional report on fundamental rights issues arising at land border crossing points will follow.

The EU Charter of Fundamental Rights spells out rights that are of particular relevance during border checks, the most important of which are human dignity (Article 1); the prohibition of torture and inhuman or degrading treatment or punishment (Article 4); the right to liberty and security (Article 6); respect for private and family life (Article 7); the protection of personal data (Article 8); the right to asylum and protection in the event of removal, expulsion or extradition (Articles 18 and 19); non-discrimination

(Article 21); the rights of the child (Article 24); the right to good administration (Article 41); and the right to an effective remedy (Article 47). Many of these rights are also to be found in United Nations (UN) human rights instruments.

The Charter applies to EU Member States when they are implementing EU law. Border management in the EU is principally regulated by the Schengen Borders Code, which lays down the criteria and procedure for entry into the Schengen area. Table 1 provides a list of the most relevant EU legal instruments. As an integral part of EU law regulating border checks, fundamental rights must also be taken into account by regular evaluation of the Schengen *acquis*.

The European Court of Human Rights (ECtHR) has repeatedly stressed the obligation of signatory states to ensure that every person within his or her own territorial jurisdiction enjoys the rights and freedoms guaranteed in the European Convention on Human Rights (ECHR). In *Amuur v. France* (1996), the ECtHR emphasised that applicants held in the transit zone of a Paris airport did indeed fall within French jurisdiction. The court concluded that the domestic law provisions in force at the time did not sufficiently guarantee the applicants' rights to liberty under Article 5 (1) of the ECHR.<sup>2</sup>

At four of the airports covered by the research, the EU external border coincides with the Schengen area border. The exception is Manchester airport, where the Schengen Borders Code and other parts of EU law are not applicable. Nevertheless, fundamental rights remain guaranteed under the national law of the United Kingdom and the human rights conventions to which it is a party.

The meaning of fundamental rights obligations in relation to specific operational tasks is not always clear. This report examines how fundamental rights obligations translate into practical border management tasks at airports. It points out challenges to, as well as promising practices for, integrating fundamental rights compliance into operational tasks that enhance rather than compromise the effectiveness of border checks. By comparing promising practices, the report also aims to encourage an exchange among border professionals and policy makers on the usefulness and replicability of such practices.

<sup>1</sup> Eurostat (2014), Database download on 24 September 2014 (last update 18 August 2014): Air passenger transport by reporting country [avia\_paoc], Total transport, and Air passenger transport by main airports in each reporting country [avia\_paoa], Total transport.

<sup>2</sup> ECtHR, *Amuur v. France*, No. 19776/92, 25 June 1996, paras. 52–54.



Table 1: Main EU legal instruments regulating fundamental rights relevant during border checks

EU legal source	Selected relevant provisions
Schengen Borders Code (Regulation (EC) No. 562/2006), last amended by Regulation (EU) No. 610/2013)*	Human dignity at border checks (Article 6 (1)), non- <i>refoulement</i> and access to asylum (Article 3a), non-discrimination (Article 6 (2)), access to information and procedural safeguards in case entry is refused (Article 13), safeguards concerning children (Annex VII)
Dublin Regulation (EU) No. 604/2013; Eurodac Regulation (EU) No. 603/2013; Reception Conditions Directive 2013/33/EU;** Asylum Procedures Directive, 2013/32/EU;** Qualification Directive, 2011/95/EU;** Temporary Protection Directive 2001/55/EC	Access to asylum procedures at borders and in transit zones (Directive 2013/33/EU, Articles 3, 6 and 43, and Dublin Regulation, Article 3); treatment of applicants for international protection (Directive 2013/32/EU, Article 3); right to information on asylum and other procedural guarantees (Directive 2013/33/EU, Article 12, and Dublin Regulation, Article 4); confidentiality of personal data (Directive 2013/33/EU, Article 48); safeguards for applicants in need of special procedural guarantees and unaccompanied children (Directive 2013/33/EU, Articles 24 and 25; Directive 2013/32/EU, Articles 21–24, and Dublin Regulation, Article 6)
Return Directive, 2008/115/EC*	Non- <i>refoulement</i> (Article 4); limitations on the use of coercive measures (Article 8 (4) and (5)); healthcare and taking into account the needs of vulnerable persons (Article 14 (1)); safeguards concerning deprivation of liberty (Article 16) in particular in relation to children (Article 17)
Human Trafficking Directive, 2011/36/EU	Availability and scope of support services (Article 11); access to legal counselling (Article 12); safeguards applying to children (Articles 13–14)
Victims' Directive, 2012/29/EU	Obligation of recognition of victims of crime and non-discriminatory treatment (Article 1); right to receive information (Article 4); right to access victim support services (Article 8)
Data Protection Directive, 95/46/EC	Processing of sensitive data (Article 8); right of access to and possible rectification of data (Article 10) and security of processing (Article 17)
VIS Regulation (EC) No. 767/2008*	Non-discrimination and respect of human dignity (Article 7); access to data processed in the Visa Information System (VIS) must be limited to authorised staff (Article 29); right of access, correction and deletion of personal data (Article 38)
SIS II Regulation (EC) No. 1987/2006*	Training of staff on data security and data protection rules (Article 14); prohibition to process sensitive data (Article 40); right of access, correction of inaccurate data and deletion of unlawfully stored data (Article 41); right to information (Article 42); remedies (Article 43)
Racial Equality Directive, 2000/43/EC	Prohibition of direct or indirect discrimination based on racial or ethnic origin (Article 3); does not cover difference of treatment based on nationality (Article 4)
Free Movement Directive, 2004/38/EC	Right of entry for third-country national family members (Article 5)

Notes: \* Instruments not applicable to the United Kingdom (SIS II Regulation is partly applicable).

\*\* Instruments applicable to the United Kingdom only in their original and not in their recast version.

Source: FRA, 2013

The report uses the Schengen Borders Code definitions of terminology. Thus, 'border guards' are understood to be any public officials who are assigned border control responsibilities, including immigration-related tasks. Border guards are part of the police, except in the United Kingdom, where 'immigration officers' belong to a separate operational command within the Home Office and also have, since March 2012, customs functions. 'Second-line checks' are understood as further checks, which would be referred to as 'detailed examination' in the United Kingdom. 'Third-country national' means any person who is not an EU citizen and does not enjoy the right of free movement.

The report focuses on border guard tasks and does not look at the performance of airport customs, veterinary or health checks. Nor does it examine the treatment of third-country national family members enjoying freedom of movement, either under Directive 2004/38/EC applying to EU citizens' family members or under other applicable agreements, such as for Swiss nationals.

After a brief description of the airports covered and the different types of border checks to which a passenger may be subjected, this report analyses, in the five following chapters, fundamental rights-related issues:



- respect for human dignity during border checks, examining both the infrastructure available to officers and passengers (covering access to food, water and a place to rest) and the interaction between officers and passengers, including searches (Chapter 1);
  - respect for the principle of non-discrimination, when selecting passengers for more thorough checks (Chapter 2);
  - access to protection mechanisms for asylum seekers, victims of human trafficking and children, particularly if they are unaccompanied (Chapter 3);
  - the possibility of complaining about treatment during the border check and seeking effective remedy if entry is refused, an asylum claim rejected or placement in a holding facility ordered, including access to information on second-line check procedures and purpose as well as upon refusal of entry (Chapter 4); and
  - the application of safeguards when using, collecting and storing personal data at borders (Chapter 5).
- third-country national passengers who were referred for more thorough checks; and
  - other stakeholders, such as airport companies, airport health services, airlines, airport security companies and non-governmental organisations (NGOs).

All fieldwork was carried out in 2012. Table 2 provides an overview of the interviews. FRA was not authorised to interview passengers at Manchester airport.

Of the 274 passengers surveyed, 164 were male and 110 were female. Of this total, 30 % were residents of the Americas, 24 % of Africa, 14 % of Asia, 14 % of the Middle East and Maghreb countries, 12 % of EU Member States and 7 % of non-EEA Europe or Switzerland. The majority of respondents were travelling for holidays or visiting friends or relatives. Approximately one quarter were travelling for work, 15 % were seeking asylum and 2 % were travelling for study. The sampling attempted to cover a large variety of cases among third-country national passengers who were subjected to second-line checks. Overall, more than one third (108 passengers) had been classified as inadmissible. Passengers were approached for the survey based on border guards' indications, usually upon completion of the second-line check. At Frankfurt airport, in contrast, many interviews started before and were completed after the second-line check. The majority of qualitative interviews were conducted with passengers who had been refused entry and informed of this decision, because of the challenges described below and in more detail in the Annex.

FRA contracted a consortium to provide country-level research. The International Centre for Migration Policy Development (ICMPD) led the consor-

## Methodology

The research, as explained in more detail in the Annex, adopts a socio-legal approach, analysing the findings of the field research in relation to the applicable fundamental rights framework. In addition to non-participant observation and desk research, the field research included qualitative and quantitative research with:

- border guards (front-line officers as well as shift leaders);

Table 2: Number of interviews per airport

	Third-country national passengers surveyed	Third-country national passengers interviewed	Border guard surveyed	Shift leaders interviewed	Other stakeholders interviewed
Charles de Gaulle	63	22	45	5	9
Fiumicino	58	21	40	7	10
Frankfurt	59	26	49	5	5
Manchester	-	-	45	6	7
Schiphol	94	23	44	5	9
<b>Total</b>	<b>274</b>	<b>92</b>	<b>223</b>	<b>28</b>	<b>40</b>

Source: FRA, Border guard survey, 2012; FRA, Third-country national survey, 2012

tium of subcontracted experts and partners, which included the Université Libre de Bruxelles. The contractor carried out interviews with passengers, shift leaders and other stakeholders, a survey of passengers and non-participant observation. The consortium submitted initial reports to FRA, which reviewed and consolidated them. FRA visited all five airports, observing border checks and administering a questionnaire to border guards. The questionnaire was developed in consultation with fundamental rights and border professionals. The research was also supported by Frontex.

The draft report was shared with the authorities in the Member States concerned, as well as with Frontex, the United Nations High Commissioner for Refugees (UNHCR) and the European Council on Refugees and Exiles; these bodies provided feedback, helping to improve the report's accuracy.

Generally, those carrying out the fieldwork were able to rely on good cooperation with airport border police, cooperation which helped the research teams to understand the complex border check procedures. The main challenges encountered (see Annex) related to research authorisation, which was delayed at Charles de Gaulle airport and could not be granted for Heathrow airport. This latter airport was finally replaced by Manchester.

At some airports (Charles de Gaulle, Fiumicino, Frankfurt), only a few second-line checks took place during the field research and researchers had to rely significantly on the experience of people interviewed at holding facilities for retrieving information on second-line checks.

The challenges presented in the report concern more than one but not necessarily all airports. To illustrate promising practices, the report refers to practices at a specific airport, which others may also have implemented.

Although they are presented in a comparative way, the research findings take into account the differences among the five airports in terms of size and applicable legal regime. The findings cannot be applied automatically to other airports, although a number of considerations may be relevant also to other, smaller EU airports. Comparability is further limited because FRA was not authorised to interview passengers at Manchester airport. Considering that English is widely spoken, the language barriers between passengers and border officers can also be expected to be lower at Manchester airport, as English-speaking passengers are able to make themselves understood there, which would not necessarily be the case at the other airports.

As the research draws significantly on qualitative, semi-structured interviews, the findings reflect personal experience, and the people interviewed did not systematically raise the same issues or provide the same degree of detail at all the airports.

The results of the surveys cannot be considered representative because of the small sample sizes. The tables displaying survey results in the report thus also include the precise numerical values. The results have nevertheless helped pinpoint fundamental rights issues that affect passengers during airport border checks and shed light on how to integrate fundamental rights obligations into different operative tasks.

Non-respondents who did not provide an answer to a specific question in the questionnaires for passengers and border guards have been excluded when computing the results. As a result of this and the application of filter questions, the total number of respondents varies per question and is spelt out also in numerical terms (n). Where non-response rates were high, this is mentioned and considered in the analysis. Because of the closed nature of questions in both questionnaires, however, few conclusions can be drawn concerning the reasons behind the missing values.

As the percentages have been rounded, they may in some cases not add up to precisely 100 %.

## Airports covered

The report focuses on five of the 25 largest airports in Europe in terms of passenger and freight traffic (Table 3). Manchester replaced the original choice of London Heathrow. They are all international airports and are used by between 18.9 million passengers (Manchester) and around 61 million passengers (Charles de Gaulle) each year. In the context of implementing the Schengen *acquis*, the four airports allowing entry into the Schengen area were required to create at least one separate terminal for passengers arriving from outside the Schengen area.

At all five airports, the number of border guards present at passport control varies in accordance with passenger flows. Border guards work in shifts, the number of which depends in part on whether the airport is open or closed at night. There are normally two shifts per day at Charles de Gaulle and Manchester, three at Frankfurt and Schiphol and four at Fiumicino.

Border guards are organised in teams, with a shift leader supervising the work. Team sizes vary. In Fiumicino, for instance, the national border police is

Table 3: Top 25 airports in Europe for average daily arrival traffic (plane movements) in 2012

Number	Airport	Country	Daily arrival traffic expressed in number of flights
1	Charles de Gaulle (Paris)	France	680
2	Frankfurt	Germany	659
3	Heathrow (London)	United Kingdom	650
4	Schiphol (Amsterdam)	Netherlands	592
5	Munich	Germany	540
6	Madrid	Spain	509
7	Istanbul	Turkey	483
8	Fiumicino (Rome)	Italy	429
9	Barcelona	Spain	396
10	Vienna	Austria	357
11	Zurich	Switzerland	357
12	Gatwick (London)	United Kingdom	337
13	Copenhagen	Denmark	332
14	Oslo	Norway	322
15	Orly	France	320
16	Brussels	Belgium	298
17	Dusseldorf	Germany	296
18	Stockholm	Sweden	287
19	Geneva	Switzerland	247
20	Milan	Italy	239
21	Palma de Mallorca	Spain	237
22	Helsinki	Finland	235
23	Berlin	Germany	231
24	Manchester	United Kingdom	230
25	Dublin	Ireland	222

Source: Eurocontrol (2013)

made up of five units, each of which has 28 people spread out over transit and international arrivals. In Charles de Gaulle, there are usually between five and 10 first-line officers and a shift leader present at each of the nine terminals.

In addition, there is support staff, sometimes with specific thematic functions. At Frankfurt airport, for example, a specific team (Inspection V) is responsible for asylum cases. This team is available to support the other teams as needed.

Only a small proportion of the large number of third-country nationals arriving by air is refused entry. Frontex statistics indicate that in 2013 at all airports of the 28 EU Member States and the Schengen Associated Countries just 44,782 people were refused entry.<sup>3</sup> According to information the border

guard services involved in the fieldwork provided to FRA, in 2012 the number of people refused entry at the five airports covered ranged from some 500 at Manchester to some 2,500 at Schiphol.

For security reasons, access to certain parts of airports is restricted. Special permits are necessary in order to work in these areas. At all five airports, certain NGOs are granted access to restricted areas to provide humanitarian, social and/or legal assistance to third-country nationals or other persons in need. At Charles de Gaulle, for example, 13 NGOs are allowed to access the waiting area and the holding centre ZAPI 3 (*Zone d'attente pour personnes en instance No. 3*). The main actors are the French Red Cross and the National Association of Border Assistance for Foreigners (*Association nationale d'assistance aux frontières pour les étrangers*, Anafé). The former provides humanitarian assistance and runs the holding centre, while the latter provides legal assistance to non-ad-

<sup>3</sup> Frontex (2014).

Table 4: Access allowed to and services provided by NGOs at the airports

Airport	NGO(s)	Access areas	Services provided
<b>Charles de Gaulle</b>	13 NGOs including the Red Cross and Anafé	Transit area, waiting room, holding centre ZAPI 3	Humanitarian and legal assistance
<b>Fiumicino</b>	Cooperativa Badia Grande, Red Cross	Transit area	Information on asylum procedures, humanitarian assistance
<b>Frankfurt</b>	Church-run services	Transit area and asylum seekers' reception centre	Information on asylum procedures, humanitarian assistance, social and legal counselling
<b>Manchester</b>	Church-run services, Manchester Immigration Detainee Support Team; Greater Manchester Immigration Advice Unit	Residential shortterm holding facility Pennine House	Social and emotional support, legal advice
<b>Schiphol</b>	Dutch Council for Refugees	Airport	Advice and practical support for asylum seekers

Source: FRA, 2013

mitted persons and ensures compliance with human rights safeguards. Table 4 provides an overview of the NGOs working at the airports.

NGOs have free access to holding centres (Charles de Gaulle, Manchester) or may even be based there (Frankfurt, Schiphol). In practice, however, they may face obstacles to delivering support, such as the lack of dedicated NGO office space at the airport (Charles de Gaulle, Manchester, Schiphol) or an office located in a public area reached after the border check (Frankfurt).

### Promising practice

#### Locating NGOs in transit areas

At Fiumicino, third-country national passengers can speak to NGO staff members before the border check. The Information Office, managed by the NGO Cooperativa Badia Grande, is located in the transit area, as suggested by Article 11 (6) (1) of the Italian immigration law. Information Office staff provide passengers intending to claim asylum with information on international protection and provide them with hot meals as well as first humanitarian assistance.

Source: Cooperativa Badia Grande, 2014

### Types of checks covered by the research

The research examines the procedures for and conduct of checks border guards or border officers carry out on third-country national passengers entering EU territory at the five airports. It therefore focuses on the verification of entry conditions and the identification and initial referral of persons in need of protection. It looks at how border guards translate fundamental rights obligations into opera-

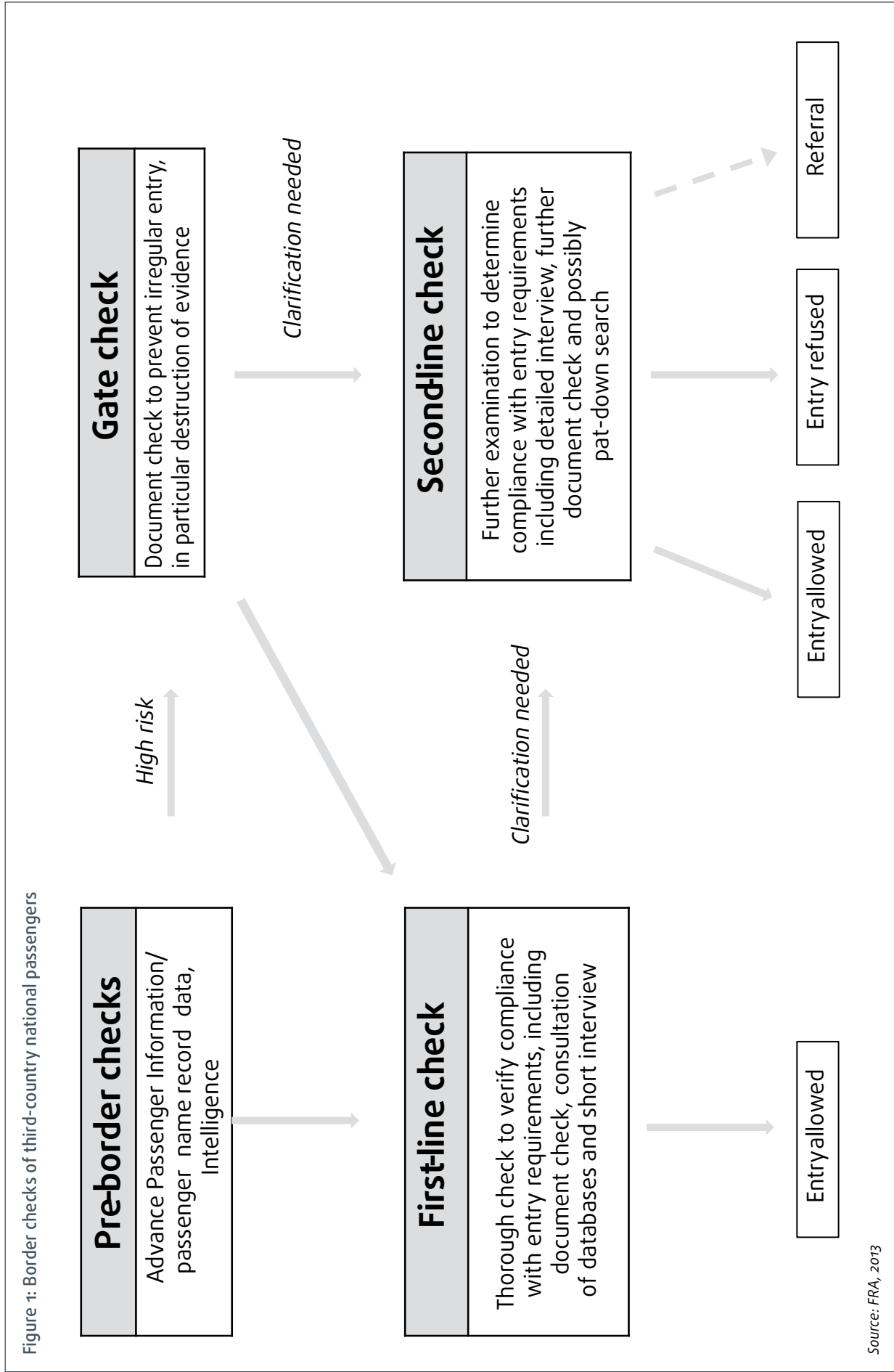
tional tasks at different stages of the border check: at the gate, during first- and second-line checks and upon refusal of entry. It does not consider security checks at departure or customs, or veterinary or health checks required upon entry.

Checks may be divided into up to four stages (Figure 1): pre-border checks based on information provided by airlines in advance of arrival; checks at the gate or on the aircraft upon arrival; first-line checks verifying the validity of compliance with entry requirements; and second-line checks in case more thorough verification is needed. If compliance with entry requirements cannot be confirmed during a second-line check, the passenger is refused entry and/or, depending on the circumstances, referred for protection procedures. The report looks at fundamental rights at all stages of border checks.

### Pre-border checks

Pre-border checks are normally based on intelligence, past experience and information provided by airlines in advance of arrival. In this context, two different sets of information need to be distinguished.

Under Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data (Air Carriers Passenger Data Directive), after check-in is completed, airlines are obliged to transmit to the authorities of the Member State of arrival a set of basic information on each passenger. This information is usually referred to as 'advance passenger information' (API) and is primarily used for border management purposes. It includes the number and type of travel documents used, nationality, full name, date of birth, border-crossing entry point into Member State territory, code of transport,



departure and arrival time of transport, total number of passengers carried on that transport, and initial point of embarkation (Article 2). This information helps authorities to better target checks on arriving passengers, who can be checked against watchlists or indicators of possible risk of irregular entry.

In addition, some Member States may have access to a second source of information, passenger name record (PNR) data, which are designed to help combat serious crimes and terrorism. These data are collected by air carriers for commercial and operational purposes in providing air transport. They may include information such as travel dates, travel itinerary, ticket information, contact details, the travel agent at which the flight was booked, the means of payment, seat number and baggage information. Passengers provide these data, which are unverified and not necessarily accurate. The information collected is not necessarily the same for each passenger.

## Gate checks

At all five airports, checks may take place at the aircraft doors or the gate for selected high-risk flights potentially carrying high-risk individuals. According to the Schengen Borders Code, such checks must be 'justified on the basis of an assessment of the risks related to internal security and illegal immigration'.<sup>4</sup> If doubts arise concerning some passengers' compliance with entry requirements, they are usually sent directly to a second-line check. The other passengers continue through the regular first- and, where required, second-line checks.

The main purpose of gate checks is to prevent irregular entry and specifically the destruction of travel and other documents. A lack of travel documents makes it more difficult to determine a person's identity and nationality. It complicates determining the port of embarkation if the person must return. Additionally, a lack of travel documents makes it difficult for the police to identify the carrier in order to hold it liable for the return of a passenger refused entry. Gate checks thus concentrate on checking documents and are not necessarily border checks in a narrow sense. They rely on a variety of intelligence sources and are usually carried out in cooperation with teams specialised in document fraud (Charles de Gaulle, Fiumicino), preventing human trafficking and smuggling (Schiphol),<sup>5</sup> asylum issues (Frankfurt) or criminal intelligence (Manchester).

Gate checks are generally based on two levels of risk analysis, the first concerning the selection of flights for gate checks and the second involving individual passengers on the flight targeted by such a check.

All the airports researched can, if necessary, use closed-circuit television to identify passengers by the flight on which they arrived. Closed-circuit television can also help them identify a passenger's companions and see whether a trafficker or smuggler might have travelled with the person.

## First-line checks

First-line checks usually take place at two-person counters at the entry areas to EU territory, including transit points from a non-Schengen country to a Schengen country, and vice versa. The number of counters installed and/or used varies depending on the flow of passengers. The first-line area is usually overseen from a control room behind or to the side of the counters, where the duty shift leader may sit to oversee the checks. Officers may come to the control room to seek guidance or use the data systems there. At all five airports, separate lanes exist for EU/EEA/Swiss citizens and non-EU citizens, the latter being signposted 'all passports'.<sup>6</sup> Four airports also have automated first-line checks, which at the time of the research were restricted to adult EU passengers holding electronic passports (Frankfurt, Manchester, Charles de Gaulle, Schiphol). Schiphol has plans to extend automated checks to pre-registered passengers, including third-country nationals.

As a general rule, third-country nationals undergo more thorough first-line checks than EU citizens or other persons enjoying the right of free movement. According to Article 5 (1) of the Schengen Borders Code,<sup>7</sup> for stays not exceeding three months, a third-country national must:

- have a travel document which is valid until at least three months after the intended date of departure and has been issued within the previous 10 years;
- have a valid visa, if required;
- justify the purpose of his or her intended stay and prove sufficient means of subsistence;
- not have an alert issued for him or her in the Schengen Information System (SIS) for the purpose of refusing entry; and

<sup>4</sup> Regulation (EC) No. 562/2006, Annex VI, 2.1.3.

<sup>5</sup> As of 1 July 2013, the specialised Border Control Unit, which was created after the FRA field research was concluded, carries out gate checks.

<sup>6</sup> Regulation (EC) No. 562/2006, Art. 9 and Annex III.

<sup>7</sup> Regulation (EC) No. 562/2006.



- not be considered a threat to public policy, internal security, public health or the international relations of EU countries.

Verification of these requirements is usually swift. Passengers participating in the survey said they waited on average between five and 15 minutes for the check. There were, however, significant variations, and passengers may not have been able to distinguish clearly between first- and second-line checks. The duration of the check itself is on average between one and five minutes.

Given the short duration of the checks, officers may not be able to speak with passengers in much detail. A clear majority of officers participating in the survey (59 %) would generally talk to all or most third-country national passengers during the first-line check. They ask for a passport and possibly a landing card, as well as more detailed information on the purpose of the visit, the estimated length of stay, the last visit, final destination and family relations. If a visa is required, additional questions may be asked, about the sponsor of the trip, a letter of invitation, means of subsistence, hotel reservations and place of study. Officers cross-check the information the passenger provides with information in the person's visa or residence permit. They also examine the passport for authenticity under an ultraviolet light. If the passport is from an uncommon nationality, they can look up a sample of the country's passport and ultraviolet light stamps in a database of all passports.

At all five airports, border guards pay particular attention to children, accompanied and unaccompanied, during first-line checks. At Manchester airport, for example, Border Force officers may ask additional questions if the child is not related to or has a different surname from the accompanying adult or is accompanied by only one parent. Passengers receive a leaflet, 'Children travelling to the UK', which explains why officers ask such questions.<sup>8</sup>

If uncertainties about compliance with entry requirements remain, for example if a visa from a different Schengen country or an uncommon passport has to be verified, officers may ask a colleague at the first-line check or call a superior or colleague at the second-line check. If no issues are identified, the passenger continues into the EU. If further clarification is needed and the passenger does not speak the country's native language sufficiently or another language spoken by the officer doing the check, they are brought to the second-line check.

## Promising practice

### Reducing waiting time at the first-line check

At Manchester airport, a Manchester Airports Group employee assists the border force. The employee, called a 'presenter', supports the immigration procedure by allocating passengers to the correct queues and desks, thereby cutting down on waiting times. A similar practice was observed at Frankfurt. The presenter is employed by the airport company and his/her desk can usually be found at the beginning of the immigration hall. MAG employees meet with border force representatives regularly to discuss issues at the intersection of immigration controls and customer service, for example the functioning of e-Gates and the organisation of MAG-staff to direct travellers through the checks.

*Source: UK Border Force, 2013*

## Second-line checks

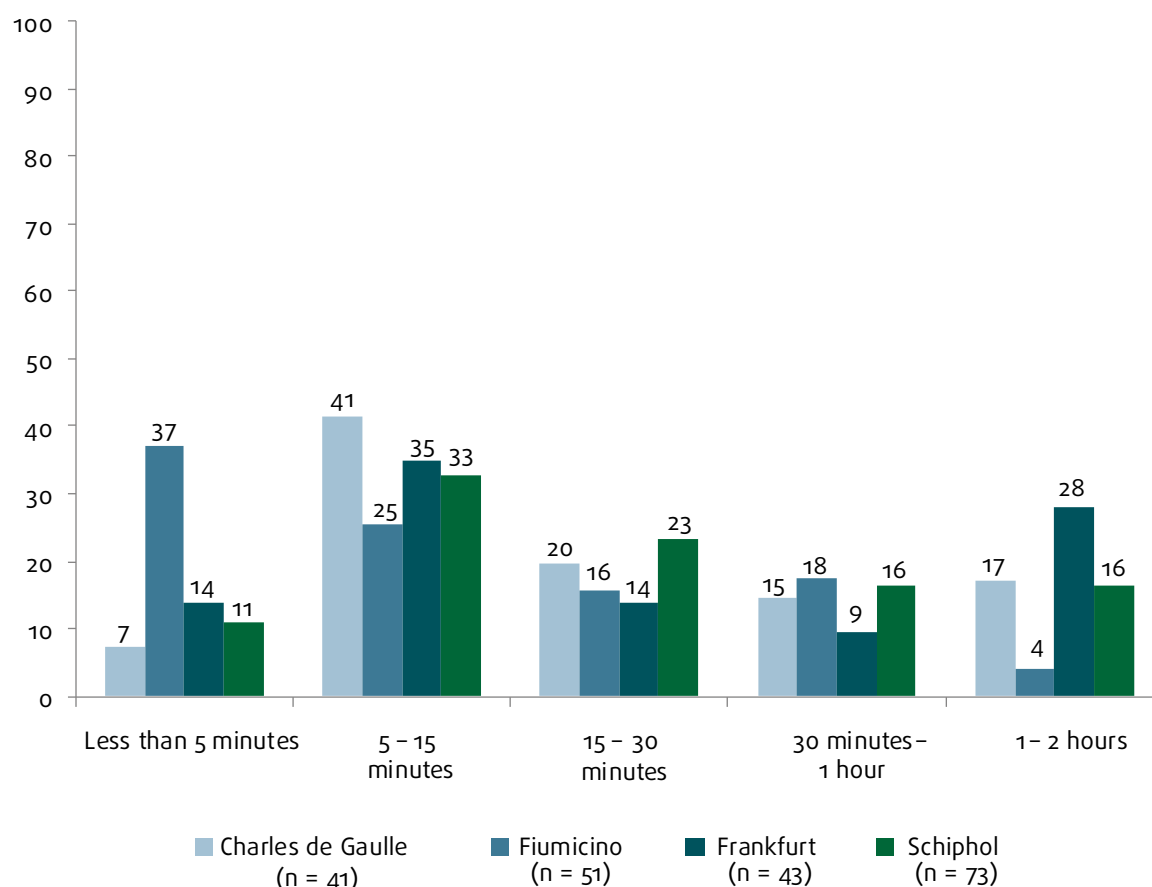
Second-line checks are more detailed inspections, required when doubts concerning entry requirements or possible protection needs cannot be resolved within a reasonable time at the first line. If necessary, interpretation is usually arranged at this stage. Second-line checks are triggered, for example, by communication difficulties, irregularities in documentation, signalisation in databases, mismatches between information available in databases, or other inconsistencies. Risk management may also prompt the more extensive checks. The second line may also receive referrals from gate checks.

Second-line checks primarily aim to verify entry requirements. The scope of the check may be limited to an interview. However, checks can also extend to verifying the authenticity of documents or frisking a person, also known as a hand search, if hidden clues to an offence or crime are suspected. During the interviews, protection needs may also be identified, leading to an initial referral of asylum seekers, presumed victims of human trafficking and children (see Chapter 4).

Facilities for second-line checks are generally located near the main first-line counters (for example, the immigration offices at Charles de Gaulle and interview rooms at Manchester), which reduces waiting times. At Fiumicino, however, passengers may have to be taken to several offices, depending on how many interviews need to be conducted.

<sup>8</sup> United Kingdom, Border Force (2013).

Figure 2: Duration of second-line checks according to passengers by airport (%), four airports



Note: Respondents who did not provide an answer to a given item have been excluded when computing the results. Non-response per airport: Charles de Gaulle, n = 10; Fiumicino, n = 3; Frankfurt, n = 7; Schiphol, n = 4.

Source: FRA, Third-country national survey, 2012 (question 3.4)

Second-line checks can last from five minutes up to several hours; this is reflected in the passenger survey results, as Figure 2 illustrates.

If the person is admitted and missed a connecting flight as a result of the delay caused by the check, their ticket may be changed free of charge. Generally, the duration of the check depends on the number of passengers waiting to be checked, the reasons for the check, the procedure and the time needed to receive answers from external offices. Checks are particularly likely to take a longer time when third parties such as local authorities, consulates, banks, hotels, organisations or people need to confirm an invitation, or if interpretation has to be arranged.

The research observed no predetermined pattern of or rules for sending passengers to second-line checks. At three airports (Charles de Gaulle, Manchester, Frankfurt), the same officer conducts both the first and the second line check. Whenever a

second-line check is necessary, the officer leaves the booth at the first line, asks the passenger to follow and proceeds with them to the second-line check. This means that there is no waiting time between the two checks, although for other passengers waiting in line this procedure may cause a delay while the officer is replaced. At Fiumicino and Schiphol, in contrast, a first-line border guard calls a colleague to pick up the passenger and conduct a second-line check, which may help to ensure the check's objectivity. At all airports, the majority of passengers waited less than 30 minutes for the second-line check to begin, according to the FRA passenger survey (see also Figure 3).

### Refusal of entry or initial referral

If entry requirements are not met, the passenger is refused entry into the territory. At all five airports, shift leaders or higher-ranking officers take the decision to refuse entry. They become involved



once evidence is found in the second-line check that the passenger may be refused entry. Depending on the circumstances, an initial referral may be accompanied by a refusal of entry, which may be reversed later if an asylum application is accepted, for example. A person may also be temporarily allowed entry.

As an illustration of this process, at Schiphol airport, doubts emerging from the second-line check are first discussed with the shift leader and then with the Chief Immigration office (Hoofd doorlaatpost). This office reviews each case, asks probing questions, compares similar situations and takes the final decision. The aim of this procedure is to check the border guard's subjective impressions against criteria that are as objective as possible.

Common reasons for refusing entry as perceived by interviewed border guards – and therefore not necessarily corresponding to official statistics – appear to differ across airports. At Schiphol, Charles de Gaulle and Fiumicino airports, border guards surveyed considered insufficient means the most common reason. At Frankfurt and Manchester, they rated invalid visas or the lack of a visa as the most common reason. Inconsistency surrounding the plausibility or credibility of the purpose of travel was mentioned as another reason at Schiphol (32 %), Frankfurt (20 %) and Manchester (20 %).

At Manchester, officers determine the credibility of the passenger using a so-called 'balance of probabilities', in other words the likelihood that a person's story at immigration is truthful. Based on the entirety of the information given during the first- and second-line checks, the officer decides whether or not to grant entry. A chief immigration officer provides input throughout the process and gives the final authorisation. Entry can be refused for a variety of different reasons. Problems with student visas,<sup>9</sup> given the large number of foreign students, are a common reason for denying entry. Amid claims that 'bogus students' were being granted visas, for example, Border Force cracked down on university and school sponsors of foreign students. In addition, schools and universities face restrictions on sponsoring foreign students and must be registered to do so.<sup>10</sup>

The officer or shift leader notifies the passenger, if necessary with the help of an interpreter, of the refusal of entry. They provide the passenger with a standard form, giving the reasons for the refusal and outlining the passenger's rights, which the passenger then signs. After the notification, passengers refused entry are searched and put into a waiting room (Charles de Gaulle) or released into the transit area, where they need to report regularly to the border police who hold their passports and return tickets (Schiphol, Frankfurt, Fiumicino). If removal is not imminent or there are criminal charges, passengers are transferred to a detention centre (Schiphol, Manchester). The waiting time between refusal of entry and removal varies depending on how soon a flight can be booked, when the next return flight is, and whether or not the person refuses to leave or applies for asylum.

At Manchester, officers and shift leaders in coordination consider several options at this stage. First, passengers may be removed within 24 hours and remain in the airside holding room in the transit area of Terminal 2 until departure. Second, they may be refused entry but granted temporary admission. Third, they are detained temporarily in the short-term holding facility, Pennine House, located in Terminal 2. When a passenger is moved from one area of the airport to another, either for transfer or removal, private security firm Reliance, which also manages Pennine House, carries out all escort services.

<sup>9</sup> See, for example BBC (2012).

<sup>10</sup> Only registered Tier 4 sponsors may sponsor students; see <https://www.gov.uk/apply-for-a-tier-4-sponsor-licence> for more information on the system.



# 1

## Human dignity

### Charter of Fundamental Rights of the European Union

#### Article 1: Human dignity

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

The EU Charter of Fundamental Rights calls for the respect and protection of human dignity, which is explicitly laid down in the Charter. The Charter also sets out the obligation to ensure basic subsistence, which can be inferred from the right to life (Article 2) and the prohibition of inhuman and degrading treatment (Article 4). These rights must be interpreted in the light of ECtHR case law. The ECtHR has confirmed that the right to life requires states 'to take preventive operational measures to protect an individual whose life is at risk'.<sup>11</sup> The prohibition of torture, inhuman and degrading treatment or punishment is an absolute right. To fall under this prohibition, however, ill-treatment must attain a minimum level of severity and involve actual bodily injury or intense physical or mental suffering.<sup>12</sup> This is considered to include treatment that 'humiliates or debases an individual, showing a lack of respect for, or diminishing, his or her human dignity, or arouses feelings of fear, anguish or inferiority' capable of breaking an individual's moral and physical resistance.<sup>13</sup>

The Schengen Borders Code specifically requires border guards to carry out border checks 'in such a way as to fully respect human dignity', 'in a professional and respectful manner', 'proportionate to the objectives pursued' (Recital 7), and to 'fully respect human dignity, in particular in cases involving vulnerable persons'. (Article 6 (1)). Thorough checks should be carried out in a private area 'where facilities exist and if requested by the third-country national' (Article 7 (4)). The Return Directive further lays down the obligation to ensure full respect for human dignity. It refers to the use of coercive measures 'in accordance with fundamental rights and with due respect for the dignity and physical integrity of the third-country national concerned' in Article 8 (4).

Additional fundamental rights safeguards come into play when passengers are stopped for further checks. If a person is held while his or her situation is clarified, this may amount to a deprivation of liberty.<sup>14</sup> The ECtHR ruled that obliging a person to stay in a Baku airport border guard room for several hours while officials carried out searches and other administrative formalities did not constitute a deprivation of liberty. In contrast, an overnight stay in a small locked room in Moscow's Sheremetyevo airport's transit hall did.<sup>15</sup>

Deprivation of liberty, even if short term, is a major interference with the right to liberty as presented in Article 6 of the Charter of Fundamental Rights. Such deprivation must respect the procedural and substantial safeguards set forth in Article 5 of the ECHR. Particular attention must be paid to the needs of specific

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

<sup>12</sup> See in particular ECtHR, *Ireland v. the United Kingdom*, No. 5310/71, 18 January 1978, para. 167; ECtHR, *V. v. the United Kingdom*, No. 24888/94, 16 December 1999, para. 71; ECtHR, *Iwańczuk v. Poland*, No. 25196/94, 15 November 2001, para. 50.

<sup>13</sup> ECtHR, *Pretty v. the United Kingdom*, No. 2346/02, 29 July 2002, para. 52; see also ECtHR, *Price v. the United Kingdom*, No. 33394/96, 10 October 2001, paras. 24–30; ECtHR, *Valašinas v. Lithuania*, No. 44558/98, 24 July 2001, para. 117.

<sup>14</sup> See ECtHR, *Gahramanov v. Azerbaijan*, No. 26291/06, 15 October 2013, paras. 44–46.

<sup>15</sup> *Ibid.*; ECtHR, *Nolan and K. v. Russia*, No. 2502/04, 12 February 2009, paras. 93–96.

categories of persons such as children, women, vulnerable persons or other persons with specific needs, who might be at risk under certain conditions.

This chapter examines four different situations which have been grouped together because they relate to the duty to respect and protect human dignity, while at the same time being related to other rights, namely those listed in the previous paragraphs, as well as social rights, such as healthcare and access to sanitation, food and water. The four situations examined are:

- facilities available to passengers and officers;
- professional treatment of passengers by border officers;
- conduct of searches on persons;
- access to food, water and healthcare.

## 1.1. Facilities

This section deals with four different issues relating to infrastructure. It examines office space, describes the rooms where passengers not (yet) admitted have to wait and deals with facilities available for overnight stay (in the transit area or connected to the airport). The conditions in, location of and services provided in these facilities affect the way passengers are treated.

### 1.1.1. Office space

Article 7 (4) of the Schengen Borders Code requires thorough checks to be carried out in a private area 'where facilities exist and if requested by the third-country national'. In the FRA survey of border guards, 70 % indicated that they conduct more detailed checks in a separate place not visible to other passengers.

Adverse office conditions are not conducive to encouraging respectful treatment. Inappropriate office conditions, including a lack of space, light, air conditioning or sufficient equipment, are also likely to increase officers' stress levels, potentially affecting how they treat passengers.

Immigration authorities have to negotiate with airport companies for office space and facilities for conducting checks. In comparison with the overall space and in relation to other, commercial actors at airports, such as airlines, shops and restaurants, the space made available for border checks is often limited.

The field research revealed such difficulties in Paris and Rome. At Charles de Gaulle, the space available for border checks varied by terminal. When visited in 2012, the border police (*police aux frontières*) offices at terminals 2C, 2E and 2F, where second-line checks took place, were small, without natural light or air conditioning. The majority of offices were old and very few rooms were available for interviews. Several officers had to share a 20-square-metre office, where second-line checks were conducted, and in some cases, they had to queue to access a shared computer. Meanwhile, the French Ministry of the Interior informed FRA in April 2014 that offices at terminals 2A and 2C had been renovated, substantially improving working conditions.

The second-line checks performed at Fiumicino take place in the border police offices next to the first-line check counters in the arrivals and transit areas. In both offices, border guards have access to databases, an internal intranet and a landline. Internet access is not available, but some police officers may use their personal mobile phones to connect to the internet, as FRA also observed officers doing in Frankfurt. Fax machines and scanners are scarce. The office located in the arrivals area has five small rooms, including a windowless waiting room with eight chairs. The border police offices located in the transit area were opened in April 2012. They are spacious and equipped with good furniture, which represents a major improvement for border police and clerks. There are no spaces designated for border guards' breaks on airport premises.

To verify entry requirements, documents and information may have to be exchanged with other agencies such as the police, asylum authorities or healthcare service's office. This exchange is facilitated and found to be swifter if the relevant agencies are located near border check offices. Positive practices were reported from Fiumicino, where an airport branch of the police headquarters in Rome manages some of the administrative procedures required during airport border checks. Furthermore, where airport procedures for asylum applicants exist, the asylum authorities have an office at the airport (the French Office for the Protection of Refugees and Stateless People (*Office Français de Protection des Réfugiés et Apatrides*, OFPRA) at Charles de Gaulle, the Federal Office for Migration and Refugees (*Bundesamt für Migration und Flüchtlinge*, BAMF) at Frankfurt, the Immigration and Naturalisation Service (*Immigratie en Naturalisatiedienst*, IND) at Schiphol).

## Promising practice

**Accelerating further checks at Fiumicino**

The Immigration Office at Fiumicino, which includes two to three officers from the Rome police headquarters, manages, with the border police, some of the administrative procedures concerning asylum requests and refusal of entry at the airport. It also assists in the procedures for asylum seekers and expulsions. The existence of this office means that passengers who need special checks do not need to be transferred. The office thus helps to reduce waiting times and provides a better service for people needing thorough checks.

Source: Italian National Police, 2013

**1.1.2. Waiting rooms for persons not (yet) admitted**

During the border check and upon refusal of entry, passengers may be restricted to waiting facilities at the airport until entry requirements are verified or the next return flight is available.

According to passengers, waiting times for first-line checks are generally short, amounting to five to 15

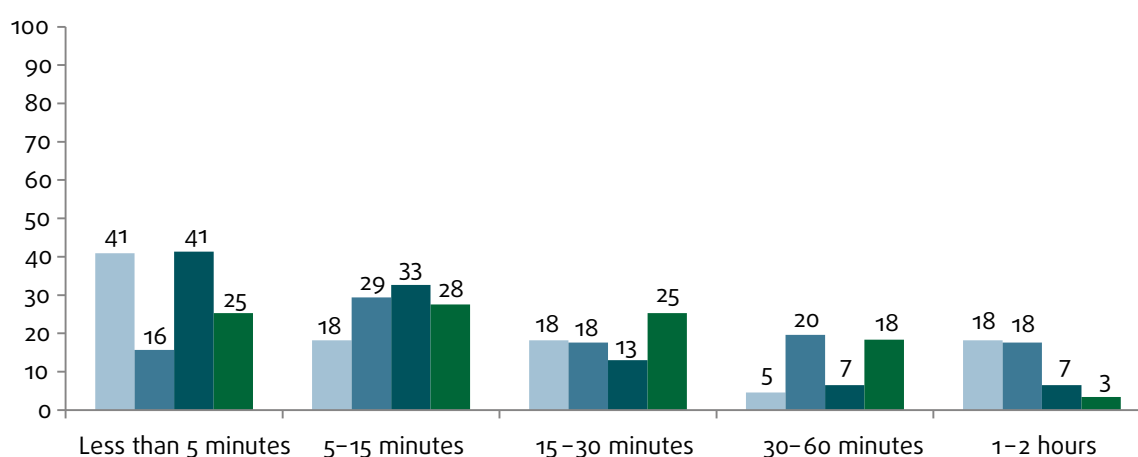
minutes on average. Where available, toilets are wheelchair accessible.

Passengers referred for second-line checks may have to wait in confined areas. At Manchester airport's Terminal 1, for example, passengers wait in an open, windowless space, visible to passengers waiting in line for the first-line check and restricted by a sensor alarm. If passengers need to undergo further examination, they may not be held for longer than four hours in this waiting area.

While a majority of passengers interviewed had access to washrooms during the waiting time and the second-line check (156/238),<sup>16</sup> 34 % said that they did not (82/238). Where direct access is impossible – as was observed at Charles de Gaulle, Frankfurt, Schiphol's Terminal 4 and Manchester's Terminal 1 – passengers may have to be escorted to washrooms for security purposes. Passengers are not escorted at Fiumicino, where separate toilets are directly accessible from the Immigration Office.

Seating facilities during second-line checks were generally sufficient but might become problematic in case of extended waiting times. At Schiphol, for example, 13 % of passengers interviewed (12/89) said that they had nowhere to sit while waiting for the second-line check. At Frankfurt, too, passengers are confined to small offices without windows. Officers try to

Figure 3: Waiting time for second-line checks according to passengers (%)



Note: Respondents who did not provide an answer to a given item have been excluded when computing the results. Non-response per airport: Charles de Gaulle, n = 9; Fiumicino, n = 0; Frankfurt, n = 12; Schiphol, n = 5.

Source: FRA, Third-country national survey, 2012 (question 3.1)

<sup>16</sup> The numbers in parentheses indicate the number of persons who responded affirmatively to the question and the total number who responded to that particular question, which differs depending on non-response rates and the application of filter questions.

carry out second-line checks quickly, but long waiting times, extending to several hours, are not uncommon if an interpreter for a particular language is difficult to find. Before the check, passengers are taken to a larger waiting area, which is completely empty save for a few chairs. If travellers need to use the bathroom, a border guard escorts them into the station.

As Figure 3 shows, most passengers at all airports participating in the survey reported having waited on average 15 minutes or less for a second-line check, which this research corroborates. Longer waiting times may be due to several factors, including difficulties in finding an interpreter for a specific language. Passengers who indicated that they had waited for an hour or longer may not have been aware when the check began, as they were not spoken to while documents were checked. At Frankfurt and Charles de Gaulle, where the same officers conduct first- and second-line checks, passengers confirmed that waiting times were reduced.

Difficulties were noted upon refusal of entry at Charles de Gaulle. Non-admitted passengers reported that officers ignored them when they knocked on the waiting room door. Manchester has an airside holding room in Terminal 2 for people waiting for immediate removal, passengers being interviewed (unless they wait in the first-line check area or the interview rooms) and people awaiting transport to Pennine House, the short-term holding facility. There is direct access to toilets for men and women.

### 1.1.3. Facilities for overnight stay in the transit zone

Passengers who are required to stay overnight may either remain in the transit zone, where special rooms may exist, or be taken to holding facilities connected to the airport (see Section 1.1.4). At Charles de Gaulle, Manchester and Schiphol, passengers refused entry who cannot be returned within a short time period are transferred to short-term holding facilities near the airport. In Frankfurt and Fiumicino, depending on the circumstances, they may stay in the transit zone. At Frankfurt, the stay in transit may last up to 30 days,<sup>17</sup> but removal usually takes place within a few days to up to one week, according to the border guards interviewed.

Transit areas serve largely commercial purposes. Facilities for personal hygiene and resting are limited, unless passengers have means to access a special lounge or use facilities for which they have to

pay. In the transit area at Frankfurt, for example, are no beds are available, although inadmissible passengers often wait overnight for their return flight. Sometimes the police and the Frankfurt airport operator, Fraport, provide folding beds for passengers stranded overnight. Showers are available for a fee.

The transit area at Fiumicino provides only limited resting facilities. Rejected passengers waiting for their return flights generally sleep in the transit area, on chairs without blankets. Women are in a particularly vulnerable position overnight, despite 24-hour video surveillance.

*Question: Where did you sleep last night?*

*Reply: Here in these chairs.*

*Q: Did you have a blanket?*

*R: Nothing!*

*Q: Did you have a sweater?*

*R: No, I did not.*

*[The passenger was wearing a shirt and a light jacket; our translation.]*

(Turkish passenger, male, interviewed at Fiumicino)

*It happened, years ago, that one night a woman was harassed. With the help of the video, the guilty person was subsequently identified. [Our translation.]*

(Shift leader, Fiumicino)

At Fiumicino, two windowless rooms equipped with two sofas are available in the international arrivals area for asylum-seeking passengers, one for families and another for large groups.<sup>18</sup> The facilities are not suitable to accommodate for families. A mother with five children, all seeking asylum, pointed out problems after a first night at the airport:

*We did not have a proper space to sleep. We have slept on these two two-person sofas and there are six of us. My little one could not sleep properly. We were not given blankets, even though we asked for them. My children were very cold. There are no windows in here. We are waiting to be placed in an asylum seeker centre. It is difficult to find a place for the six of us [...] We're very tired of staying here [...]. This is my plan now [...] to get out of this room, of this airport.*

(Asylum-seeker from Jordan, woman with five children, interviewed at Fiumicino)

At Fiumicino, a children's playground is available in the transit area as well as a room – seldom used – for feeding and changing babies. It is the only airport where FRA noted that such facilities were offered.

<sup>17</sup> Germany, Residence Act (Aufenthaltsgesetz), Art. 15, para. 6.

<sup>18</sup> FRA observations and <http://blog.ilmanifesto.it/babel/tag/lasciatecientrare-fiumicino>.



## Promising practice

**Providing aid to passengers in need**

The Church Social Service (*Kirchlicher Sozialdienst*) offers counselling, support and information to destitute passengers who are stranded at Frankfurt airport. This may include providing food and sanitary items to passengers whose check is taking an unusually long time or who are refused entry. The Service may also arrange and possibly advance the costs for onward travel, transfer to the airport's Asylum Centre or a social service centre or the use of public showers at the airport. The service is offered to all passengers who find themselves in an emergency, who have incomplete travel documents, have been pickpocketed, have no way of getting home and the like. More than 100 passengers per month seek these services. The Church Social Service cooperates closely with the police, social services and institutions, consulates and security services, and is supported by the work of volunteers and by in-kind and financial donations, for example from airport operator Fraport.<sup>19</sup> The service, located at Terminal 1, is available Monday to Thursday, 9.00 to 16.00 and Friday, 9.00 to 15.00.

Source: *Kirchlicher Sozialdienst*, 2014

**1.1.4. Holding facilities connected to airports**

At Charles de Gaulle, Manchester and Schiphol, passengers refused entry who cannot be returned quickly are transferred to short-term holding facilities nearby. At Frankfurt, a reception centre is available only to certain categories of asylum seekers. No holding facilities connected to the airport exist at Fiumicino airport.

This subsection limits itself to a brief description of these facilities. In all four facilities, people are deprived of their liberty. The reader may consult other sources, such as reports by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT),<sup>20</sup> for information about detention conditions and respect for human rights standards. Table 5 provides an overview of the four airports' facilities, indicating for whom they are used.

At Charles de Gaulle, non-admitted passengers who cannot be removed immediately, including victims of human trafficking and persons in need of international protection, are transferred to the ZAPI 3 holding centre. The maximum stay in ZAPI 3 is 20 days.<sup>21</sup> Located in a separate building at the airport, ZAPI 3 has a capacity of 164. Women, men and families share the

Table 5: Conditions at temporary holding facilities connected to airports

Airport	Who	Men and women separated?	Maximum time	Comments
<b>Charles de Gaulle: ZAPI 3</b>	Non-admitted passengers, asylum seekers at the border	Yes	20 days	-
<b>Frankfurt: Asylum Centre</b>	Asylum seekers from 'safe countries', asylum seekers with false documents who are undergoing airport procedure	Yes	19 days	No holding facilities for non-admitted passengers connected to the airport
<b>Manchester: Pennine House</b>	Inadmissibles, usually not asylum seekers	No	7 days	Centre is not wheelchair accessible
<b>Schiphol: Schiphol Judicial Complex</b>	Asylum seekers with pending procedures, foreign nationals who have exhausted all legal remedies	Yes	18 months	-

Source: FRA, 2013

<sup>19</sup> <http://www.youtube.com/watch?v=SK3huii-ucY> and <http://www.youtube.com/watch?v=PQoQA2V1rZA>.

<sup>20</sup> For documents on CPT visits, see <http://www.cpt.coe.int/en/states.htm>.

<sup>21</sup> France, Code of Entry and Residence for Foreigners and of the Right to Asylum (Code de l'entrée et du séjour des étrangers et du droit d'asile, Céseda), Art. L 221-3, L 222-1, L 222-3, R 221-1.

building's facilities but are accommodated in separate dormitories. As regards children, in July 2011, a specific building was opened, but it can accommodate only six children. Because of the space restrictions, the area is reserved for children under 13 years of age, while other children are accommodated with adults, in a separate dormitory. A garden with a playground is accessible until 20.00. The border police run ZAPI 3, but the Ministry of the Interior has outsourced care services to the French Red Cross.

At Schiphol airport, those who are detained are accommodated at Schiphol Judicial Complex (*Justitieel Complex Schiphol*).<sup>22</sup> Different wards house third-country nationals refused entry to Dutch territory; asylum seekers with pending procedures; drug smugglers; and foreign nationals who have exhausted all legal remedies. Families with minor children are detained for a maximum of 14 days. They stay in a separate wing of the centre. Unaccompanied children are, in principle, not detained with unrelated adults, although this may occur if there are doubts about their age. The average stay is 39 days.<sup>23</sup> Opened in early 2013, the detention centre accommodates around 450 people.

At Frankfurt airport, asylum seekers from 'safe countries of origin' or with false documents undergo the airport asylum procedure and are held in the Asylum Centre until a decision is taken on their case. Although separate from the main airport premises (approximately 10 minutes away by car), the centre is still considered part of the transit zone. Up to 100 persons can be accommodated in different wards, with separate bathing facilities for women, men and families with children. Several recreational areas, including a grassy central open space, a basketball court, a television room and a library, are available. Asylum seekers may stay in this facility until a decision is taken on their application, which must be done within 19 days, and, if the application is rejected, until their removal.<sup>24</sup> The research revealed, however, that some asylum seekers interviewed had stayed at the centre for months because of delays in return implementation. Unaccompanied minors seeking asylum may be accommodated in a separate ward at the airport's Asylum Centre. Special staff members ensure 24-hour care for children under the age of 16. Hesse

municipality runs the centre and supplies it with medical and teaching staff. The Church Social Service provides further support to asylum seekers.

When there is no imminent removal flight available at Manchester, non-admitted persons are transferred to Pennine House.<sup>25</sup> The maximum stay at this facility is seven days. Located landside at Manchester airport's Terminal 2 and managed by a private security company on behalf of the Home Office, the centre has 32 beds in eight rooms, a dining room and an association room. The centre includes a four-bed room for women, but it cannot be locked from the inside, according to a report on an unannounced inspection of Pennine House by Her Majesty's Chief Inspector of Prisons. This makes the women staying there feel more vulnerable.<sup>26</sup> Male and female toilets and shower facilities are not clearly separated. Those staying have access to the kitchen, dining rooms, association room, showers and toilets. Families and children are not housed at Pennine House. Although Pennine House is considered a short-term residential facility, those held are under a closed regime and are not free to leave.

## 1.2. Treatment of third-country national passengers

This section examines the interaction between passengers and border guards. It focuses first on the level of professionalism and respect border guards employ during border checks.

### 1.2.1. Respectful conduct

The non-binding *Schengen Handbook* recommends professional, friendly and courteous treatment of passengers during border checks.<sup>27</sup> A majority of border guards participating in the FRA survey said that they had received instructions or guidelines on the obligation to deal with passengers in a professional and respectful way (Figure 4). The results differ, however, by airport and range from 55 % (Frankfurt) to 93 % and 95 % (Schiphol and Manchester).

<sup>22</sup> During the FRA research, the complex had not yet opened; people refused entry were sent to the detention centre Schiphol-Oost.

<sup>23</sup> European Council on Refugees and Exiles (ECRE) (2013), Asylum Information Database (AIDA), p. 49; Dutch Council for Refugees and UNHCR (2013).

<sup>24</sup> Germany, Federal Office for Migration and Refugees (BAMF) (2013), p. 11.

<sup>25</sup> See <https://www.gov.uk/immigration-removal-centre/pennine-house-manchester>.

<sup>26</sup> United Kingdom, Her Majesty's Chief Inspector of Prisons (2013).

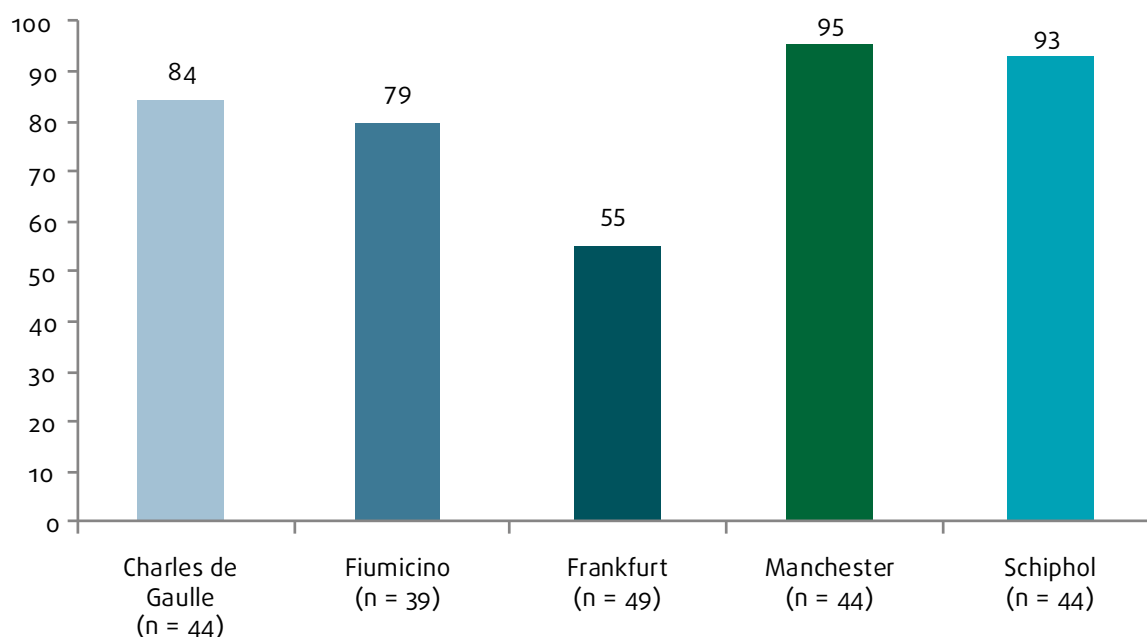
<sup>27</sup> European Commission (2006).



These differences are not reflected in the passenger survey, in which a majority of passengers (74 %) expressed overall satisfaction with the first-line check, considering it appropriate (Figure 5). This was also the case at airports where fewer officers said that they had received instructions, such as Frankfurt.

Incidents of inappropriate conduct reported in interviews with passengers mainly concerned airports where many officers confirmed having received instructions on professional treatment. This may mean that more instructions do not necessarily remedy negative performance. Instead, better implementation is needed.

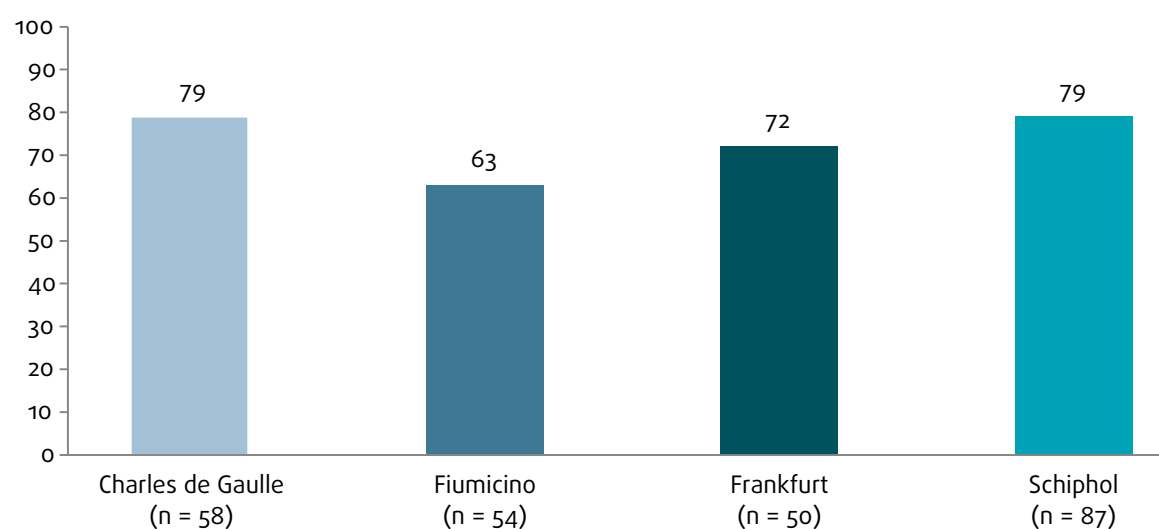
**Figure 4: Border guards confirming having received instructions or guidelines on professional and respectful treatment of passengers (%)**



*Note:* Respondents who did not provide an answer to a given item have been excluded when computing the results. Non-response per airport: Charles de Gaulle, n = 1; Fiumicino, n = 1; Frankfurt, n = 0; Manchester, n = 1; Schiphol, n = 0.

*Source:* FRA, Border guard survey, 2012 (question 14)

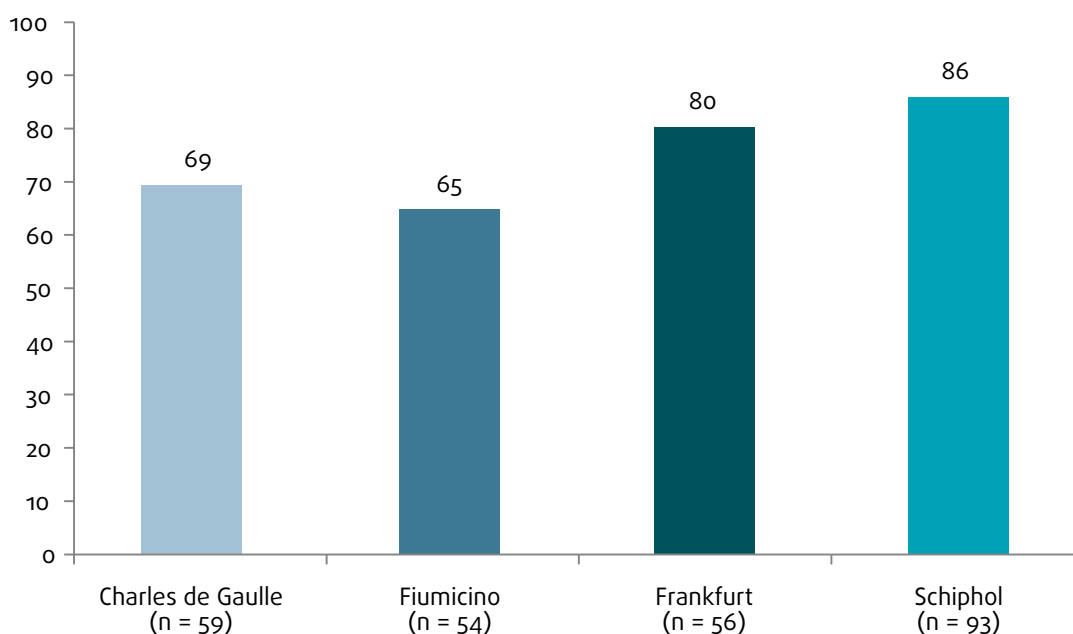
**Figure 5: Passengers considering border guards' behaviour towards them during first-line checks appropriate (%)**



*Note:* Respondents who did not provide an answer to a given item have been excluded when computing the results. Non-response per airport: Charles de Gaulle, n = 4; Fiumicino, n = 4; Frankfurt, n = 9; Schiphol, n = 7.

*Source:* FRA, Third-country national survey, 2012 (question 2.4)

Figure 6: Passengers considering border guards' behaviour towards them during second-line checks friendly or neutral (%)



Note: Respondents who did not provide an answer to a given item have been excluded when computing the results. Non-response per airport: Charles de Gaulle, n = 2; Fiumicino, n = 4; Frankfurt, n = 3; Schiphol, n = 1.

Source: FRA, Third-country national survey, 2012 (question 3.15)

The 41 passengers across all airports who considered the treatment at the first line inappropriate generally referred to impoliteness (18 passengers), aggression (17 passengers) and intrusive questions (six passengers). This perception may stem in part from the passenger being given no or insufficient information about the procedure. Of the 36 passengers who considered the behaviour of guards during the second-line check aggressive, 23 also claimed not to have received any or a clear explanation of the check. The following quote illustrates these complaints:

Question: How do you think the treatment was at the first-line check?

Reply: I think it was not good. It was humiliating. He treated me badly. He just took my passport, looked at it and then just called immigration. He asked some questions and raised his voice, but I didn't understand anything. They took me out of the line but they did not respect me and they made me scared. Q: Why did you feel scared or humiliated?

R: Because I didn't know what was going to happen and they couldn't explain anything. And a lot of people were around and the guard talked with the other guards without talking to me. Then I had to wait and I still didn't know why I was there. [Emphasis ours.]

(Passenger from Angola, male, interviewed at Schiphol)

A majority of passengers, 77 % (201 out of 262), also found officers' behaviour during second-line checks either friendly or neutral, as Figure 6 shows.

Question: So, when you came here [second-line check] you had to wait a little, but how were the police? Were they friendly?

Reply: Yes, they were friendly. They were nice. No problem about that.'

(Passenger from Turkey, male, interviewed at Schiphol)

The majority of passengers at all airports (167 out of 272) considered that the questions during second-line checks were justified by the checks' purpose. Many of these passengers (27) did not, however, respond to this particular survey question. Although as seen above, most considered officers' behaviour friendly or neutral, 36 passengers said they had a negative experience; these negative experiences were mainly related to aggressive language and tone of voice. Passengers reported officers raising their voices (Schiphol) as well as verbal abuse and abuse of power (Charles de Gaulle). In one case, for example, officers were observed accusing a pregnant woman of coming to France only to give birth. In other cases, passengers were bullied by being refused a glass of water while they waited for second-line checks.

Perceptions of aggressive or threatening behaviour may also result from the pressure put on passengers during questioning, as observed during the field visits.

*Even when [the border guard] brought me to [the] second line, he said, 'If you think I am mean, now I will take you to people who are even worse than me.'*

(Passenger from Angola, male, interviewed at Charles de Gaulle)

In addition, some of those surveyed perceived border guards' behaviour as unhelpful. They found guards unwilling to respond to questions in some cases (Fiumicino, Charles de Gaulle, Schiphol). Although it was not a uniform behaviour, observations and interviews confirmed that officers in some cases did not respond to passengers' enquiries about the status of their check. Nor did they always respond to passengers' requests to use a toilet or a telephone or for food or water. Instead, they told them to wait. A passenger who failed to request a telephone call to his family in the Netherlands while waiting for 20 hours noted:

*As soon as you try to talk you are silenced.*

(Passenger from Libya, male, interviewed at Fiumicino)

Persistently ignoring passengers' requests may be perceived as degrading. Passengers without strong language skills, in particular, often said they were scared and worried about what the police would decide. Passengers reported mocking and condescending behaviour, possibly intended to express sarcasm or disbelief.

*I was sitting here because he had said to just wait here. And he had my passport and I was sitting here and he was calling a number I gave him from [country omitted]. And I was sitting and my name is Angelina and he called me but by shouting 'Angiiiee' [like the song] as if he knew me or something [...] and so I stood up and he said, 'Come here,' and they started making fun of me. [...] They were laughing so I'm not really sure if they were making fun of me or something else, since I didn't get what they said, but it felt as if they were [...] making fun of me. [...] and I was feeling bad, uncomfortable.*

(Passenger from Paraguay, female, interviewed at Schiphol)

*I was scared to ask anything because at first when I entered I was greeted politely, but then I saw how they treated others: they were angry [...] as if they had done something and they looked down on them as if they were criminals.' [Our translation.]*

(Passenger from El Salvador, female, interviewed at Fiumicino)

Some passengers refused entry at Charles de Gaulle reported that they received incorrect information. Guards told them that they would be sent to a hotel where they could resolve their situation with the relevant police authorities. However, the hotel was in fact the ZAPI 3 holding facility.

## 1.2.2. Language skills

According to the border guards survey, several officers are able to say at least a few words in a non-EU language: 12 % say they speak Arabic or Russian, 9 % Chinese, 8 % Turkish and 19 % another non-EU language. At the four airports where English is not the native language, a large number of border guards consider foreign language training to be necessary (more than 88 % at Frankfurt, 79 % at Schiphol, but only 56 % at Charles de Gaulle).

A majority of passengers (82 %) confirmed that they had a language in common with the officer carrying out their check or that an interpreter was used. A significant number (17 %, 46 out of 265), however, reported that the border guard at the second-line check spoke to them in a language they could not understand, with proportions ranging from 7 % at Charles de Gaulle and Frankfurt airports to 43 % at Fiumicino.

When communication problems arise at the first line, a majority of the border guards surveyed favoured consulting a colleague for help, although preferred strategies differ by airport. At Frankfurt and Manchester, border guards would first ask other passengers for help if communication problems arose (98 % and 87 %), which requires them to understand personal data protection safeguards. Officers at Schiphol would prefer to call a professional interpreter in such situations (89 %).

Where no common language exists, interaction becomes brusquer, which may affect the amount of information provided to passengers:

*In my view, the police's behaviour was very bad, very bad [...]. The police officer in the booth was shouting [...] and all the border guards in the office were bad, too. [...] They didn't tell me anything about my problem. I don't know what they said, as they were talking Italian [...] and I didn't understand.*

(Passenger from Bangladesh, male, interviewed at Fiumicino)

When language difficulties arose during second-line checks at Frankfurt airport, for example, some passengers demanded to know what was going on and why the process was taking so long. In response, border police showed them a document available in the languages of all EU and EU-neighbouring countries which said that they were being checked in accordance with the Schengen Borders Code, Article 7 (3). They received the document while they were in the waiting area, rather than during the official interview, the normal procedure. Alternatively, border police gave short, relatively vague answers ('We're checking your passport/visa'). People who

were unable to communicate with the officers generally received very little information and needed to wait for an interpreter.

At Schiphol airport, given the prevalence of arrivals from Latin America categorised as high risk, the research found that the lack of Spanish language skills in particular was an obstacle to adequately informing passengers about the check. At Fiumicino airport, passengers noted officers' lack of communication and language skills. For example:

*The border guard did not explain anything to me. He just called a colleague who accompanied me to the nearby office.*

(Passenger from Venezuela, male, interviewed at Fiumicino)

Improved language skills would better enable border guards awaiting an interpreter to explain the check's purpose and procedure and the basic next steps. They could then retrieve information directly from passengers, which could help to resolve cases earlier on. Budget cuts have curbed language training for border guards at most airports, but improving officers' ability to communicate with passengers might help to ensure correct initial referrals of passengers and thus avoid unnecessary second-line checks.

## Promising practice

### Developing English-language tools

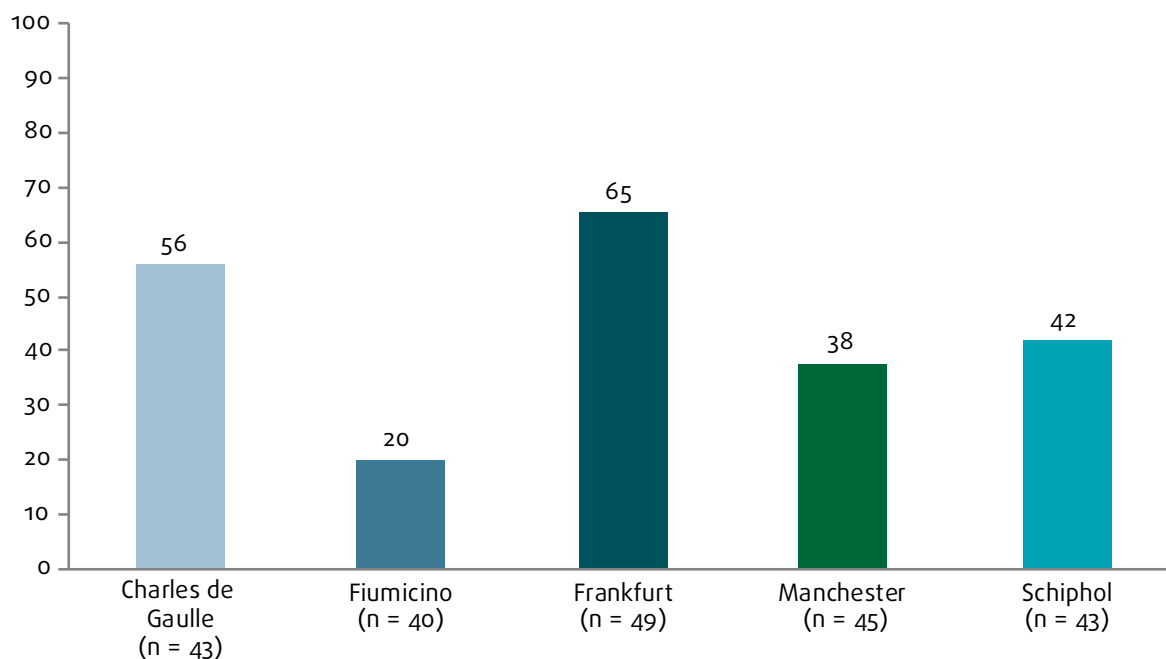
Frontex developed an English-language-learning tool for border guards to enhance their language skills and thus harmonise the level and effectiveness of EU external border management. The CD-ROM-based tool provides video and audio scenarios, combined with reading texts, vocabulary, phrases and exercises, that cover situations guards regularly encounter while on duty. The training focuses on four main topics (border check, joint operations, security and communicating), as well as specific issues such as trafficking in human beings and asylum.

Source: Frontex, 2014

### 1.2.3. Dealing with aggressive passengers

Officers' professionalism is put to an acute test when passengers are or become openly confrontational, for example in reaction to negative perceptions of the border check. Such situations require quick de-escalation measures.

Figure 7: Officers having received clear instructions on how to handle aggressive passengers (%)



Note: Respondents who did not provide an answer to a given item have been excluded when computing the results. Non-response per airport: Charles de Gaulle, n = 2; Fiumicino, n = 0; Frankfurt, n = 0; Manchester, n = 0; Schiphol, n = 1.

Source: FRA, Border guard survey, 2012 (question 32)

Overall, 44 % of the officers participating in the FRA survey said that they had received instruction during training on how to handle aggressive passengers, with above average results at Charles de Gaulle and Frankfurt (Figure 7). On average, however, 40 % of the officers at all airports said they had not received such training or did not remember receiving it.

*Question: In regard to handling aggressive passengers, do you have clear instructions how to handle them?*

*Reply: Some officers have personal safety training. I haven't had that since arriving at Manchester, but I have had it in the past. So if they're violent towards you, some officers have had the training, some haven't.*

(Chief immigration officer, Manchester)

FRA also asked officers if they had received specific training on handling aggressive passengers during the year preceding the survey, i.e. in 2011. Overall, some 30 % of officers interviewed confirmed that they had received such training, with Schiphol clearly above average (67 %) and Manchester, Charles de Gaulle and Fiumicino clearly below average (13 %, 16 % and 18 %).

When a passenger becomes aggressive, border guards typically resort to de-escalation measures, call in support or take the passenger into custody at an early stage. De-escalation measures may consist of a warning and explanation of the consequences of aggressive behaviour. A majority of officers confirmed that this would be their first response (83 %). At Charles de Gaulle, for example, a large number of officers (47 %) indicated in particular that they would inform the passenger that he or she might be refused entry as a consequence. At four airports, officers would also call a colleague for help (72 %); this is less likely at Manchester, where officers indicated that they would call airport security for assistance (69 %). Of the officers interviewed at Fiumicino, Frankfurt and Charles de Gaulle 25 %, 18 % and 16 %, respectively, said that they would take the passenger into custody.

Officers also mentioned other possible responses, including calming the passenger down and explaining the situation, being calm and firm themselves, calling the police and ignoring the passenger.

More than 30 % considered these measures to be sometimes or often insufficient to resolve the situation; this figure was above average at Manchester (58 %), Fiumicino (43 %) and Schiphol (38 %). This may indicate a need for further guidance and/or practical training.

## 1.3. Searches

Border guards may search passengers and their baggage at different stages of border procedures. Unless applied proportionately and carried out professionally, searches can amount to degrading treatment. This section looks at the use and conduct of searches during airport immigration procedures.

Searches of people and luggage may be carried out for the following purposes:

- to verify identity, nationality or place of embarkation of asylum seekers or undocumented passengers;
- to prevent passengers from carrying weapons or dangerous objects, thereby ensuring safety upon admission to a holding facility; and
- to search for dangerous objects (drugs or other concealed items) or evidence in cases where the person is suspected of committing a crime.

The Council of Europe's CPT has persistently stressed the need for searches to be carried out by officers of the same gender as the person searched.<sup>28</sup> Furthermore, searches requiring the passenger to undress must be conducted out of sight of people of the opposite gender; a mere pat-down, however, would be permissible in public. Intimate body searches can be justified only in very exceptional circumstances because of their potentially degrading and intimidating effect and the risk of (further) traumatising people who may already be traumatised.<sup>29</sup>

ECtHR rulings on violations of Articles 3, 8 and 13 in the context of detention have established some guidance on what constitutes necessity, appropriate conduct and proportionality of strip searches. In various judgments, the court has criticised:

- the presence of persons of the opposite gender during searches;<sup>30</sup>
- verbal abuse and derision during searches;<sup>31</sup>
- insufficient justification of security-based searches in general<sup>32</sup> and systematic strip searches in particular;<sup>33</sup>

<sup>28</sup> CPT (2002).

<sup>29</sup> CPT (2011).

<sup>30</sup> ECtHR, *Valašinas v. Lithuania*, No. 44558/98, 24 October 2001, paras. 115–117.

<sup>31</sup> ECtHR, *Iwańczuk v. Poland*, No. 25196/94, 15 November 2001, para. 59.

<sup>32</sup> ECtHR, *Yankov v. Bulgaria*, No. 39084/97, 11 March 2004, para. 110; ECtHR, *Khider v. France*, No. 39364/05, 9 July 2009, para. 129; ECtHR, *Khider v. France*, No. 56054/12, 1 October 2013, para. 50–51.

<sup>33</sup> ECtHR, *Van der Ven v. Netherlands*, No. 50901/99, 4 May 2003, para. 61.

- insufficient efforts by authorities to look for a proportionate solution, necessary in a democratic society;<sup>34</sup>
- the absence of accountability mechanisms, affecting redress;<sup>35</sup> and
- excessive full body searches conducted by masked men.<sup>36</sup>

EU secondary law provides few standards for searches. Some guidance may be derived from legislation concerning aviation security staff. This legislation refers to the proportionality of person searches ('hand searches'), requiring them to be carried out so as to 'reasonably ensure' that the person is not carrying prohibited articles.<sup>37</sup> Searches of asylum applicants must be carried out with respect for human dignity and by a person of same sex.<sup>38</sup> The Common Core Curriculum of Frontex further encourages Member States to enhance the ability of border guards to choose the appropriate type of search, proportionate to the objective pursued, and apply the appropriate diversity considerations (Module 3.1.14).<sup>39</sup>

National legislation provides guidance and safeguards on searches. The German Federal Law on Police (*Bundespolizeigesetz*), for example, limits the purpose of the search to ascertaining the passenger's identity.<sup>40</sup> In the United Kingdom, the Immigration Act likewise restricts the purpose of the search, in this case to establishing if a person is carrying any documents relevant to his/her stay.<sup>41</sup> Searches may be allowed only if the purpose cannot be achieved in other ways, or only with excessive difficulty,<sup>42</sup> or in the case of non-cooperative passengers.<sup>43</sup> Searches should be intensified only incrementally and special training for officers may be required.<sup>44</sup> Legislation may prohibit the retention of any irrelevant documents found<sup>45</sup> or require prior

authorisation by a shift leader or police inspector in special cases such as body searches.

In general terms, based on the intensity of the intrusion, three types of searches on persons can be distinguished:

- A **person search** consists of a hand search (pat-or rub-down) examining the clothes and the surface of the body.<sup>46</sup> This may or may not include visual inspection of certain body orifices such as mouth, ears or nose, or of the hair, as long as the search does not require medical expertise. A person search may be a targeted search for objects or traces, or simply a palpation of the body. Persons seeking asylum or with unclear identity or provenance generally undergo such searches.
- A **strip search** involves the removal of more than outer clothing, even partial nudity. Such searches are not authorised routinely.
- A **search of body orifices** looks at the insides of the body and requires medical expertise. Such searches are authorised only under limited circumstances, which usually do not apply to border procedures. An example of such circumstances might be if there were reasonable grounds to believe that certain drugs or damaging objects were concealed that could not otherwise be retrieved.

Of 265 passengers interviewed following second-line checks, a minority of 84 (32 %) said that they had been subjected to a person search, with results above average at Charles de Gaulle airport (Figure 8).

A majority of these passengers considered the search to be justified by the check's purpose (48 out of 76 searched passengers; eight declined to answer). Results at Schiphol, where only very few passengers said that they underwent a search, are below average (three of nine passengers). Thirty of the 43 passengers responding to the question at Charles de Gaulle (70 %) considered the search proportionate. Asylum seekers interviewed during the research generally understood the need for a search and in some cases even expressed appreciation for the officers' assistance in filing their claim.

*It's normal to search me, I understand.*

(Asylum seeker from the Democratic Republic of the Congo, male, interviewed at Frankfurt)

34 ECtHR, *Wainwright v. the United Kingdom*, No. 12350/04, 26 December 2006, paras. 34–35.

35 *Ibid.*, para. 55.

36 ECtHR, *El Shennawy v. France*, No. 51246/08, 20 April 2011, paras. 43–46.

37 European Commission, Regulation (EU), No. 185/2010, OJ L 55, 5.3.2010.

38 Asylum Procedures Directive 2013/32/EU, OJ 2013 L 180/60, Art. 13 (2) (d).

39 Frontex (2012b), Common Core Curriculum, EU Border Guard Basic Training.

40 Germany, Federal Law on Police, paras. 23 (3), 43 and 44 (1) 1.

41 United Kingdom, Immigration Act 1971, para. 4, chapter 3, and Asylum and Immigration Act 2004.

42 Germany, Federal Law on Police, paras. 23 (3), 43 and 44 (1) 1.

43 United Kingdom, Border Agency (2009).

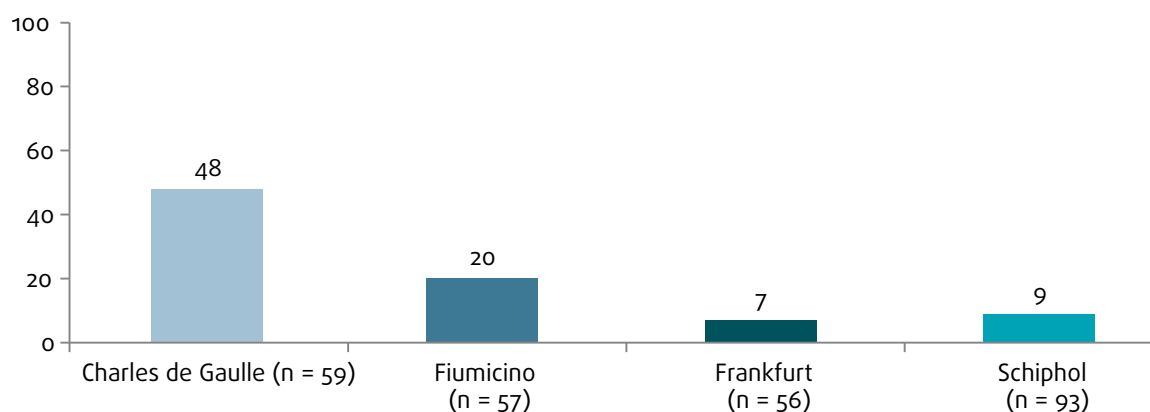
44 *Ibid.* and United Kingdom, Immigration Enforcement and Visas and Immigration (2013).

45 United Kingdom, Border Force (2011), Operations Manual (2011), 'Arriving passengers', 6.3.

46 See, for example, Germany, Asylum Procedure Act (*Asylverfahrensgesetz*), Chapter 15 (4); United Kingdom, Border Agency (2012b); United Kingdom, Border Agency (2009).



Figure 8: Number of passengers having been subjected to a person search



Note: Respondents who did not provide an answer to a given item have been excluded when computing the results. Non-response per airport: Charles de Gaulle, n = 2; Fiumicino, n = 1; Frankfurt, n = 3; Schiphol, n = 1.

Source: FRA, Third-country national survey, 2012 (question 3.8)

When asked how they considered the conduct of the search, a clear majority of passengers (66 out of 84 passengers searched) said that it was carried out professionally, although sample sizes at Frankfurt and Schiphol were very low. Results at Fiumicino and Charles de Gaulle are above average at 89 % (16/18) and 87 % (41/47), respectively (Figure 9).

In some cases, the searches conducted for safety reasons upon admission to a holding facility to prevent passengers from carrying weapons or dangerous objects appear to take place repeatedly, as a standard security measure. Each time a person is moved from one facility to another he or she is searched again, even if the person is escorted and there therefore appears to be no new justification for it. At Charles de Gaulle, some passengers refused entry appear to be searched every time they are brought from ZAPI 3 to the airport waiting room for possible removal.

The proportionality of such searches may be questioned. In a comparable situation involving removals by air, the CPT found the need for a second rub-down search debatable considering that 'detainees had been kept under close surveillance by their escort(s) throughout the whole journey'.<sup>47</sup> Searches do not always appear to be proportionate, given that the purpose is essentially to verify that the person is not carrying any dangerous objects.

In other cases, searches can be more invasive, as the following quote illustrates:

*Question: Was the search correct or professional?*

*Reply: No, just a little aggressive. Because they moved the jeans and checked also my boxers. They also asked me: 'Are you sure that you have nothing? You don't have money?'*

(Asylum seeker from Sierra Leone, male, interviewed at Charles de Gaulle)

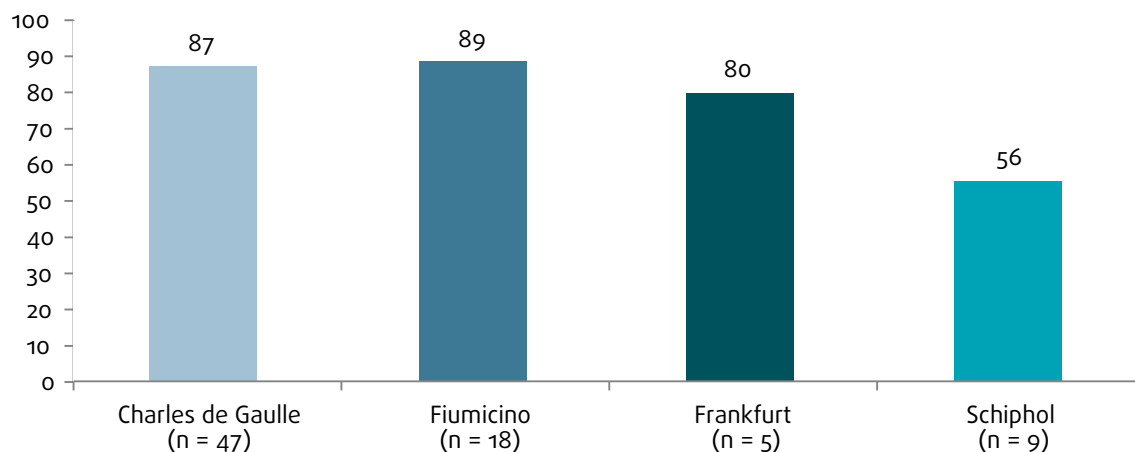
Unless required by the specific circumstances of the case, strip-searching people upon intake to a holding facility is disproportionate given the reasons for detention, the conduct of searches (squatting, spreading legs) and the distressing effect such searches may have on people who have had negative experiences with the police in their countries of origin. At Schiphol-Oost, where persons refused entry were sent before the Judicial Complex opened in 2013, several rejected asylum seekers reported having to squat and spread their arms and legs during the strip search, without understanding why they were being subjected to such intrusive checks. In one case, this was reported to have taken place also in the context of a second-line check at the airport:

*They also behaved terribly. I just had to sit, stand up, sit, stand up. Why do you think they had to do that? What was going on? I did not want to take off my underwear, but they obliged me. I was completely naked and then I had to sit, stand up. Why do you think they did this to me? Three women were standing here in a corner and I was naked and I just had to sit and stand up. But why? [...] I was in an application centre for ten days and nothing happened there. But then they eventually took me here [Schiphol-Oost]. [...] I had to take all my clothes off. I had nothing on me. Then I just had to sit, and stand up, and sit, [...] I am also only human, why did they do this to me? It is such a humiliation. My head still turns. [...].*

(Asylum seeker from Bangladesh, female, interviewed at Schiphol)

47 CPT (2013).

Figure 9: Passengers who considered that the search was carried out professionally (%)



*Note:* Respondents who did not provide an answer to a given item have been excluded when computing the results. Non-response per airport: Charles de Gaulle, n = 1; Fiumicino, n = 2; Frankfurt, n = 2; Schiphol, n = 0.

*Source:* FRA, Third-country national survey, 2012 (question 3.8.3)

Intrusive searches should be used only as a last resort, if people refuse to cooperate. They should be intensified incrementally. Where a more superficial palpation above clothes or a detector would suffice, more extensive searches cannot automatically be considered necessary for security reasons.

Searches going beyond a superficial examination of outer garments need to be carried out outside of public view and ensure privacy. Separate rooms for searches are not, however, always available. Observations at Charles de Gaulle airport found, for example, that passengers were searched in the corridor of the immigration office outside the 'waiting room' and in front of the toilets, which might stem from the border police's lack of space and/or inadvertence. At Manchester airport, the United Kingdom Border Force *Operations Manual* sets out the scope and limits of search powers at the operational level. Additional standard operating procedures, which apply to suspects facing arrest, detail minimum standards for implementing searches. They specify which information to provide prior to and during the search, efforts to minimise embarrassment and ensure cooperation,

religious and cultural considerations, ways of incrementally escalating searches and the use of reasonable force if necessary.<sup>48</sup>

There also appears to be room to improve the information provided to passengers. People who are subjected to searches are not always informed of the purpose of the search, the procedure and their rights, and, if they are, they often do not understand. Upon refusal of an asylum claim and intake into a holding facility at Schiphol-Oost, for example, people interviewed during the research did not understand why they were searched again, this time as part of a security procedure. Nor did they understand the need for a strip search after the search at the airport application centre, from where they arrived directly. Searches during second-line checks may also not be explained to passengers in full, as was observed and confirmed through interviews at Frankfurt airport. Information on how to complain or alternatives to a search is not provided proactively. This may also concern luggage searches, creating tension and possible overreactions which could be easily avoided by a neutral explanation with proper sensitivity:

<sup>48</sup> United Kingdom, Border Agency (2009); United Kingdom, Border Agency (2012b), points 36–40 referring to children; United Kingdom, Border Agency (2012c).



*[...] they closed the curtain and they started searching me. When they got to my personal belongings, my money, one of them started looking through it and I said: 'Wait a minute, I have to know how much money I have.' So he started yelling at me, talking loudly and a third person arrived. Question: So, according to you, was [the search] carried out professionally?*

*Reply: No, he was not very courteous. There was a loud verbal exchange. A third person arrived, I think he was the boss. When he arrived he opened the curtain and said things I did not understand, but he said things, words that sounded like insults, rude things of which I did not know the meaning. [...].*

(Passenger from Peru, male, interviewed at Charles de Gaulle)

A final issue relates to gender sensitivity. A few passengers indicated that the search was carried out by an officer of a different gender. At Frankfurt airport, for example, a male officer asked a woman wearing a headscarf to remove it so that he could take a picture in the public waiting area. Although this did not constitute a search, a more sensitive approach might include presenting alternative options, such as choosing a female officer and a private area for the procedure.

At Charles de Gaulle airport, mockery was observed. Border guards laughed amongst themselves in front of a passenger at a discrepancy between the name on the passport and the passenger's gender. Focus group participants also reported a case where male officers strip-searched a transgender female passenger. Indeed, according to Anafé, border police officers only take into consideration the sex indicated in a transgender passenger's civil status,<sup>49</sup> which may impinge on human dignity under certain circumstances.<sup>50</sup>

## 1.4. Access to food, water and basic healthcare

Depending on the number and complexity of issues to be verified, passengers may spend several hours or, in exceptional cases, days at the airport. During this time, they must have regular access to food and water, even if they lack sufficient means. The following section examines to what extent this is ensured during border checks at the five airports, in particular during second-line checks and upon refusal of entry.

Medical centres are available at Charles de Gaulle, Fiumicino, Frankfurt and Schiphol. First aid equipment is generally available at the immigration offices of all five airports; border guards have

usually received some first aid training. At Charles de Gaulle, for example, whenever medical help is needed, guards call both the terminal's fire department and the medical centre. Usually, the fire brigade provides immediate first aid and the medical team comes only for emergencies.

### 1.4.1. Pending outcome of further checks

In exceptional cases, the overall border check may take several hours, as noted by passengers at all four airports. Persons undergoing further checks fall under the responsibility of border management authorities. The costs related to food and beverages may be claimed from the responsible airline only if the passenger is eventually refused entry. Officers may have a limited or no specific budget for advancing or covering the costs for food and water. The rules for distributing food and water during further checks – upon request or offer – are not always clear and differ.

Of the 75 respondents to the passenger survey who requested food while awaiting the check, 40 said that they received something, 15 were told to look for something to purchase and a further 20 (27 %) said that they did not receive anything at all (Figure 10).

At Frankfurt, border guards can purchase food for passengers without resources in the canteen, either upon passenger request or, after two to three hours, police request. The police cover costs that cannot be charged to an airline later on. On a case-by-case basis, the police refer passengers to the Church Social Service, which has an office in Terminal 1 (see Chapter 1, Promising practice box on 'Providing aid to passengers in need').

At Fiumicino, the Information Office provides food and water for asylum seekers until they are transferred to a reception centre (*Centri Accoglienza Richiedenti Asilo*). Other passengers reported not getting food regularly while waiting for the outcome of further checks, especially when border guards were busy interviewing many passengers. Meal vouchers for sandwiches and a beverage were distributed but not to all those entitled to them.

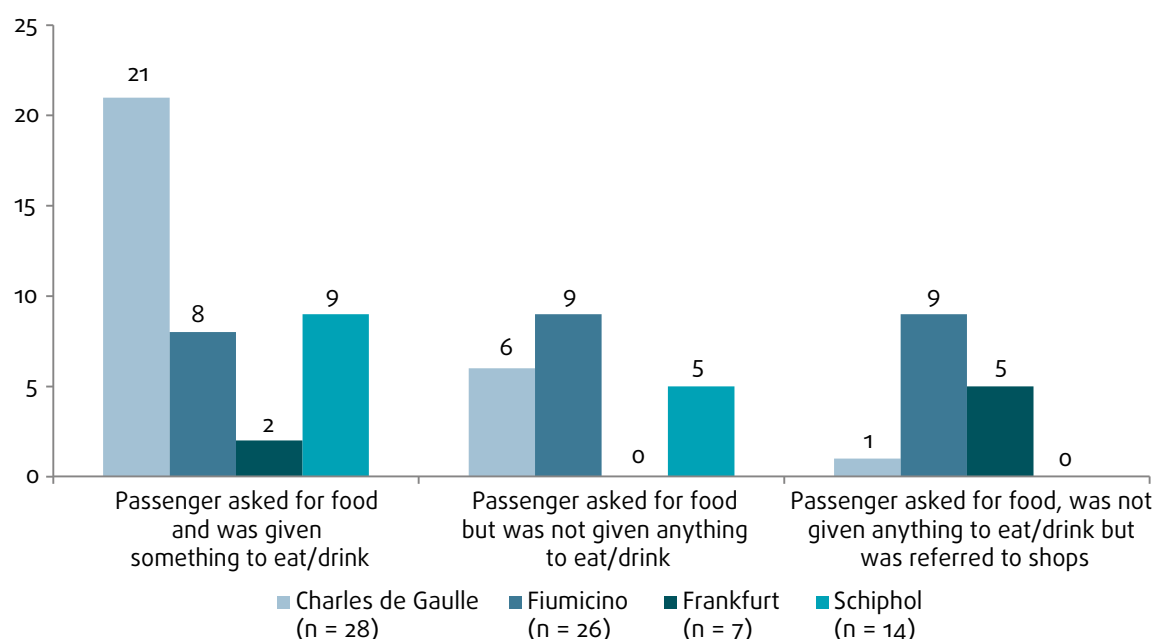
At Charles de Gaulle, passengers receive a plastic bag with orange juice and a small snack. The distribution did not seem to relate to waiting time, immigration status or lack of means.

At Manchester, there are no commercial facilities in the direct vicinity of the second-line check area at Terminal 1. Passengers would need to ask a border officer for food or water, which are in principle

<sup>49</sup> National Association of Border Assistance for Foreigners (*Association nationale d'assistance aux frontières pour les étrangers*, Anafé) (January 2013), pp. 58, 67.

<sup>50</sup> ECtHR, *Christine Goodwin v. the United Kingdom*, No. 28957/95, 11 July 2002, para. 77.

Figure 10: Number of passengers who received and did not receive food upon request



Note: Respondents who did not provide an answer to a given item have been excluded when computing the results. Non-response per airport: Charles de Gaulle, n = 2; Fiumicino, n = 3; Frankfurt, n = 7; Schiphol, n = 5.

Source: FRA, Third-country national survey, 2012, (question 3.14)

available from the airside holding room. Similarly, at Schiphol, the head of the border crossing point, a member of the border police, may provide meals from the holding area.

### 1.4.2. Upon refusal of entry

The International Air Transport Association's rules oblige the responsible aircraft operators to pay all costs incurred for the custody and care of improperly documented passengers from the moment they are found inadmissible and returned to the airline for removal.<sup>51</sup> All other categories of inadmissible persons, including persons refused entry because of 'document problems beyond the expertise of the aircraft operator or for reasons other than improper documents' or persons in need of international protection remain the responsibility of the state.<sup>52</sup>

Specific agreements between airport operating companies and airlines detail the obligations of carriers either to cover the costs for passengers refused entry directly or to reimburse the authorities or airport company later on. At Fiumicino, for example, the airlines provide police with food vouchers, which

the police then administer. Passengers are entitled to the vouchers upon signature of a non-admission order. For passengers requiring special assistance, for example children, pregnant women or people with disabilities, the police call the responsible airline staff to take care of them directly.

Such agreements, however, work only if border management authorities are able to identify the airline which transported the passenger. If they cannot, either because passengers conceal or do not know how they arrived, then they are ultimately responsible for ensuring basic subsistence through other mechanisms. They must ensure that destitute passengers receive food and water during their stay in transit.

In practice, not all passengers receive food and water while waiting for the outcome of further checks, their return or the processing of an asylum application. Difficulties reported recurrently by passengers concern long waiting times before food is received (Charles de Gaulle, Fiumicino, Schiphol), lack of provision for alternative diets (Charles de Gaulle) and poor-quality food (Charles de Gaulle). Passengers made this judgement although the technical specifications of the French border police's call for tender required the contractor to provide food responsive to the largest number of international culinary standards.<sup>53</sup> While each food

<sup>51</sup> Chicago Convention on International Civil Aviation (2006), point 5.9, Chapter 5, 'Inadmissible persons and deportees', Annex 9.

<sup>52</sup> *Ibid.*

<sup>53</sup> Information provided by the French Ministry of the Interior, April 2014.

product is packaged separately, so that meat can be excluded for vegetarians, no proper alternative meals are offered. In one case, a consul had to negotiate for vegetarian food.

*Yesterday, for example, I demanded that they change my food because we had made an agreement with the consul. Only today, Monday, did they give me only vegetarian food to eat. And the police went: 'Are you happy? Are you happy with your food?' But yesterday they did not serve 12 people. We asked the police [to serve them] and they said: 'No. [...] If you want it, eat it, otherwise there is nothing.' So I went to the Red Cross, the Red Cross spoke to the policeman and the policeman came to say: 'OK, yes'. They had served chicken and rice, so the police took the chicken away and gave me more rice. [...] Today they did not bring me anything.*

(Passenger from Peru, male, interviewed at Charles de Gaulle)

*I have not been given either food or water since I was stopped. This means that in the last 15 hours I have not had anything to eat or drink. And I'm hungry, cold and sleepy.*

(Passenger from Venezuela, male, interviewed at Fiumicino)

In some cases, passengers seemed to hesitate, afraid to ask for food, preferring to wait in silence.

*Question: Have you had anything to eat?*

*Reply: No.*

*Q: Did you ask for something?*

*R: No, as I don't have rights.*

*Q: Why?*

*R: Because here there is no law: I arrived yesterday, I slept on those chairs, there are no rights here [...] Since yesterday I haven't eaten anything.*

*Q: Do you have money to eat?*

*R: Yes, but only 50 euro. What can I do if I need it [the money] later? [Our translation.]*

(Passenger from Mauritania, male, interviewed at Fiumicino)

## Conclusions

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

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

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

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

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

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

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

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

National law defines immigration search rules. These laws leave the need for a search to border guards' discretion. It appears that officers conduct searches more frequently at some airports than at others.

Searches carried out during second-line checks or prior to placement in a holding facility appear generally to be justified and conducted professionally. This is not the case where persons are searched to an invasive extent without prior gradual escalation. Nor is it the case when police routinely and repeatedly search persons being held. Security reasons cannot

automatically justify the removal and inventorying of all personal belongings. Strip searches must be a last resort and proportionate, as per the strictly defined conditions applied to criminal offenders in this respect. Shortcomings could be identified with regard to the availability of facilities that ensure privacy, proper regard to sensitivity and information provided to passengers. Guidance regarding transgender people is typically lacking.

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

#### FRA opinion

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

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

*In line with Article 15 (1) of the revised Schengen Borders Code, border management authorities are encouraged to maintain or increase offers of foreign language courses, including by promoting the use of the Frontex English-language self-study*

*tools, in order to better enable officers to resolve cases early on, respond to questions and effectively identify protection needs.*

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

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



# 2

## Non-discrimination

### Charter of Fundamental Rights of the European Union

#### Article 21: Non-discrimination

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.

For border check purposes, the risks of irregular migration and criminal activity are analysed before a passenger arrives. Flights are categorised in advance according to their presumed risk. This impacts on gate and first-line checks when border guards visually and verbally assess passengers individually. Based on their assessments, border guards may consider second-line checks necessary. This chapter looks at the processes and criteria used for triggering referrals to second-line checks at the five airports, and analyses whether they can be considered discriminatory.

In the context of external border control, Article 6 (2) of the Schengen Borders Code requires border guards not to 'discriminate against persons on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation'. According to the Racial Equality Directive, discrimination 'shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of racial or ethnic origin'.<sup>54</sup> It allows for differences in treatment on grounds of nationality for strictly defined immigration-related procedures.

The ECtHR has found that discrimination based on one's actual or perceived ethnicity constitutes a form of racial discrimination, regulated in Article 14 of the ECHR.<sup>55</sup> It states that: 'no difference in treatment which is based exclusively or to a decisive extent on a person's ethnic origin is capable of being objectively justified in a contemporary democratic society built on the principles of pluralism and respect for different cultures'.

The European Code on Police Ethics emphasises non-discrimination and impartiality as guiding police principles.<sup>56</sup> The Frontex Common Core Curriculum ensures practical training of border guards in distinguishing legitimate and discriminatory forms of profiling (subject 1.7.10). The use of specific and objective criteria to better plan and implement border checks is not unlawful. Nor is differentiated treatment by nationality necessarily discriminatory. It becomes discriminatory and therefore unlawful if based predominantly on race, ethnicity or religion. In preparing the FRA ethnic profiling report,<sup>57</sup> FRA also noted that discriminatory profiling may alienate certain communities and thus undermine police efficiency.

National case law has further underlined the unlawfulness of discriminatory profiling. In Germany, for example, a court overruled a decision of the Administrative Court of Koblenz that had justified the triggering of further checks based merely on foreign looks, ruling instead that any form of ethnic profiling is inconsistent with Article 3 of the German constitution.<sup>58</sup> Similarly, the Constitutional Council

<sup>55</sup> ECtHR, *Timishev v. Russia*, No. 55974/00, 13 March 2006, para. 58.

<sup>56</sup> Council of Europe, Committee of Ministers (2001), para. 40.

<sup>57</sup> FRA (2010a).

<sup>58</sup> Germany, Higher Administrative Court of Rhineland-Palatinate (Oberverwaltungsgericht Rheinland-Pfalz) (2012).

<sup>54</sup> Council Directive 2000/43/EC, OJ L 180/22, Art. 2.



in France prohibited immigration police stops motivated by any discriminatory indicators such as skin colour, body type or clothing style.<sup>59</sup>

## 2.1. Selection of flights

Flights are categorised according to the risk of arrivals of passengers with insufficient documentation and, to a lesser extent, groups at risk, including asylum seekers and victims of trafficking. National intelligence services process information relevant to risk categorisation, such as travel routes, production of forgeries and arrests of traffickers. On this basis, they produce regular alerts and guidance for border guards. Through Frontex, such information is continuously exchanged among airports.

Frontex and national reports focus on irregular migration benchmarks, such as numbers of refusals, asylum applications and visa and document abuse, mainly by specific nationalities. But this categorisation is always complemented by other criteria, such as Member State, airport of destination, place of embarkation and/or airline. The definition of 'risk' is limited primarily to irregular immigration and criminal networks, although many 'risk flights' may arrive with persons needing protection.

According to the risk category, flights may be selected for gate checks. Police at Frankfurt airport, for example, distinguish flights from highest to lowest risk as A, B, C or low risk/uncategorised. For those flights categorised as A, they always conduct a gate check. For B flights, such a check is sometimes conducted, for C flights, rarely, and for low risk/uncategorised, a gate check is never done. At Fiumicino, on the other hand, police generally carry out pre-screening controls for flights that run only once or twice a week. They want to ensure that they can immediately embark passengers rejected entry on the same plane's return flight and avoid long waits in the transit zone. At Manchester airport, border force officers also use indicators for determining persons at risk, including children, when determining the flights and passengers to be examined more closely. Intelligence teams update trafficking guidance every six months, supplying information on, for example, behaviour, dress, company, clothing in baggage, route, nationalities or links with forgeries.

Officers at the first line are organised according to the needs foreseen. Other measures, depending on the risk category, include having interpreters on stand-by. For flights to Manchester from Pakistan, for example, border force officers always have an interpreter present at first-line checks, not only because

of language difficulties but also because past experience shows that these flights carry greater numbers of under- or undocumented passengers (for example passengers with problematic visas).

*It is no secret when I say that a flight from Tokyo with approximately 95 % Japanese citizens on board is a non-critical flight from a border control perspective, whereas a flight from Beijing, where currently many migration-relevant cases exist, is of greater importance. For this reason the first control line is asked to conduct more extensive border checks and interviews based on profiles.*

(Border guard, Frankfurt)

## 2.2. Selection of passengers

Border guards rely on various sources of intelligence, behavioural analysis, document control and past experience when selecting passengers for further checks. Particular attention is paid to those nationalities that uncommonly arrive via a certain flight, for example, a passenger from Namibia arriving via Bahrain. If national intelligence centres have received information that a person of interest is arriving on a particular flight, officers will inspect those passengers in greater detail or issue an alert on that flight.

At airports, border guards know in advance who is arriving on which flight. According to the Air Carriers Passenger Data Directive, applicable in all Member States, airlines are obliged to share details of passengers with the authorities of the Member State of arrival. This must be done as soon as check-in is completed. This information is usually referred to as API. It includes the number and type of travel documents used, nationality, full name, date of birth, border-crossing entry point into Member State territory, code of transport, departure and arrival time of transport, total number of passengers carried on that transport and initial point of embarkation (Article 2). Border guards may use these data to screen passengers in advance of the border check and usually take the lists with them to gate checks.

In addition, in some cases, Member States may have access to PNR data, which they use primarily as a criminal intelligence tool to combat serious crimes and terrorism. They are collected by air carriers for commercial and operational purposes in providing air transport services. They contain information such as travel dates, travel itinerary, ticket information, contact details, the travel agent who booked the flight, means of payment used, seat number and baggage information. The passengers provide these data, which are unverified and therefore not necessarily accurate. In 2011, the European Commission proposed a directive on the use of PNR data within the EU. EU legislators, who are considering the necessity

<sup>59</sup> France, Constitutional Council (1993).

Table 6: Information shared through advance passenger information (API) and passenger name record (PNR) systems

	Personal data included	Retention period
API	Name, date of birth, nationality, passport number, point of embarkation and border-crossing entry point for passengers travelling to the EU from third countries	Normally deleted within 24 hours
PNR	All information passengers provide when booking and purchasing a ticket and upon check-in, for example, where the ticket was bought, how it was paid for, how much luggage was checked-in	Not regulated at EU level

Sources: Air Carriers Passenger Data Directive; International Civil Aviation Organization (2010), Doc 9944, Guidelines on Passenger Name Record (PNR) Data; International Air Transport Association, Control Authorities Working Group (2009)

and proportionality of the use of these data, have not yet adopted the directive. Meanwhile, Member States are establishing national PNR systems.

Table 6 provides an overview of the personal data included in the API and PNR systems.

Where the police or border management authorities have access to PNR data, such as in the United Kingdom, booking details, luggage checked in and information on where and how the ticket was bought may help to identify individuals who require more detailed checks. Specialised teams, such as the anti-human-smuggling and -trafficking squad at Schiphol, for example, may provide further information on passengers with a history of false documents or passports with similar, and therefore suspicious, numbers.

Any inconsistencies in documentation are further examined at the second-line check. An inability to communicate with the border guards usually also triggers referral to a second-line check. According to observations, referrals to second-line checks were requested more frequently for passengers of certain nationalities and those travelling on certain routes.

Shift leaders said that border guards take a variety of factors into consideration when selecting passengers for further checks, with a particular emphasis on behavioural analysis.

indicators were most helpful for effectively recognising persons attempting to enter the country in an irregular manner before speaking to them. They rated ethnicity less frequently as a helpful indicator (79 %) than the way people behave when approaching a checkpoint and during the check (96 % and 98 %), destination (85 %) and nationality (90 %) (Figure 11). Results concerning ethnicity as a helpful indicator were above average at Schiphol airport (100 %) and below average at Manchester airport (57 %). On average, the importance of ethnicity as an indicator of irregular entry seems to be on a par with indicators such as place of embarkation (84 %), amount of luggage (80 %), appearance and behaviour of co-travellers (82 %) and clothing (72 %).

In addition to past experience, shift leaders at most of the airports covered (Fiumicino, Frankfurt, Manchester, Schiphol) referred to intuition as an element in officers' screening:

*Question: The persons arrive [at the booth], they hand over their passports: how can one guess, or how can one see, that this person needs help?*

*Reply: This is always a matter of feeling. [...] I cannot give a concrete answer, but when you simply have a gut feeling [...] for someone, or several persons, you then have – as a first-line border guard – a reason for sending someone to the second line; and when the second-line border guard comes to pick up the person concerned, you can explain and say: 'This does not seem right. Can you check into this more?'*

(Shift leader, interviewed at Schiphol)

*It's very subjective. It's your feelings about a person and a case, but there's also evidential issues of discrepancies in what they're saying, inconsistencies between them and what their sponsor says, inconsistencies between what they're saying and their paperwork, between what they're saying and all the stuff they might have in their bags. So there's evidence, but [these things alone would not] completely go against someone. It's the whole picture that the officer has to build about a person.*

(Chief immigration officer, Manchester)

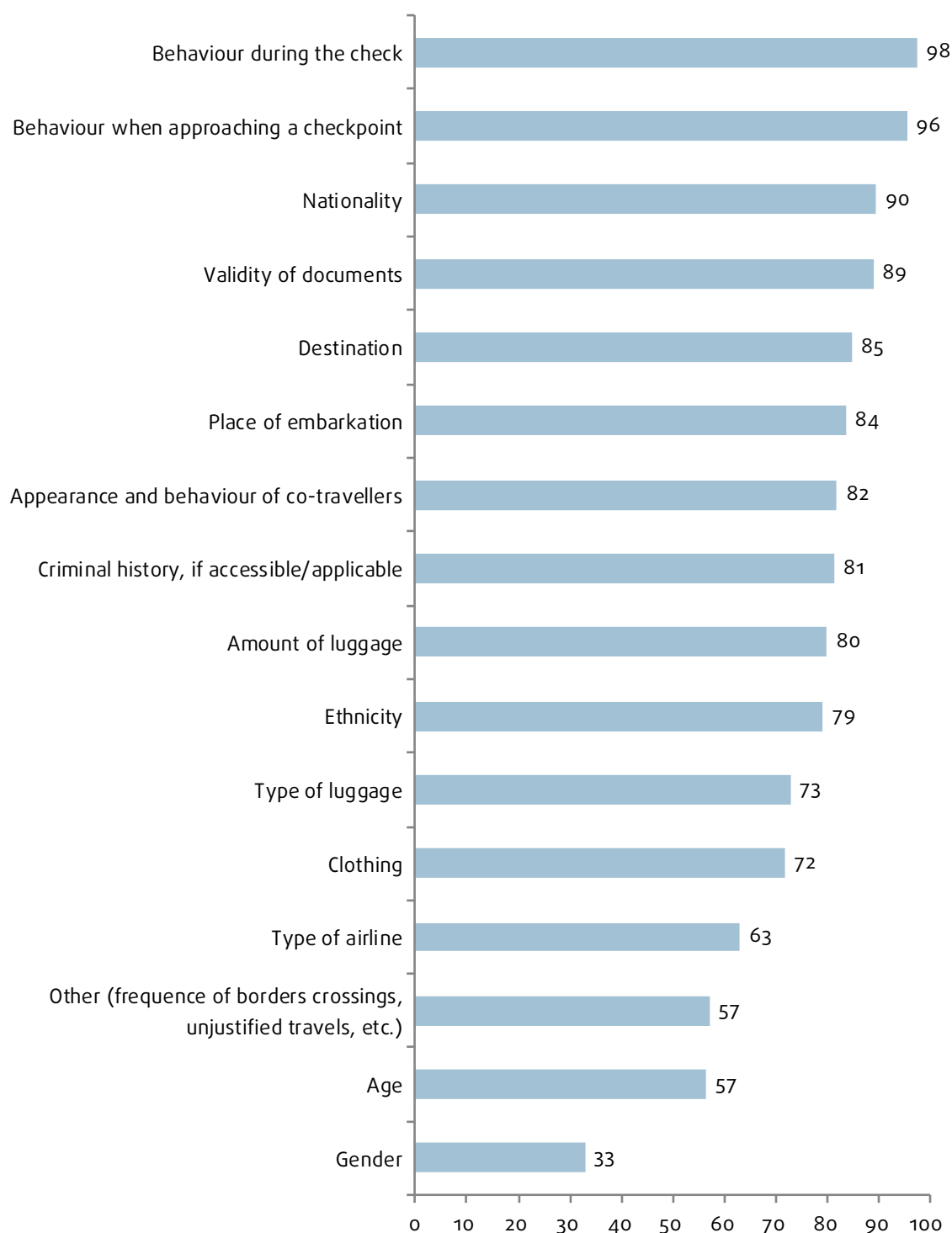
Officers are indeed able and expected to recognise alert signs at first contact with the passenger

*It's how they are on the control. It's how they're dressed. It's how they're acting. It's who they're travelling with. It's the questions that they answer, how they answer them, the clothing in their baggage, the route that they've taken, just any of those type of things, really. A hundred and one things that can lead you to begin to ask a few questions. What nationality they are. Obviously in the trafficking of young girls, there tends to be more eastern Europeans.*

(Chief immigration officer, Manchester)

The survey of border guards confirmed the importance of behavioural analysis. The border guards also made clear that several factors are considered roughly equally important and looked at in combination. The survey asked border guards which

Figure 11: Indicators considered helpful or very helpful for effectively recognising persons attempting to enter the country in an irregular manner before officers speak to them (%)



Note: Valid responses range between 206 and 216 out of 223. Respondents who did not provide an answer to a given item have been excluded when computing the results. Non-responses range from seven to 17 persons, depending on the item.

Source: FRA, Border guard survey, 2012 (question 17)



because of their experience, training and continuous exposure to international passengers. While feelings may be based on experience they are, however, more difficult to objectify and explain as legitimate grounds for further checks. They are not, however, unlawful if inferred from several factors and not the only reason for further checks. If the situation is not explained well to the passenger, selection for further checks based on unreasoned impressions may lead to perceived discrimination.

## 2.3. Perceptions of discriminatory treatment

While the research did not observe discriminatory patterns of referring passengers for second-line checks, several passengers felt that they were being checked unfairly because of their ethnic or national background. When asked about the presumed reasons for border guards' behaviour, many passengers did not reply because they were satisfied overall with the treatment. Of the passengers who thought the behaviour of the border guard was unacceptable during the first-line check (18 %, 44), however, almost half (18) attributed this to their nationality and almost a third to their ethnic or racial origin (12). Similarly, at second-line checks, 40 passengers attributed the behaviour of officers to their nationality and 15 to their ethnic or racial origin; only 36 passengers (13 %) indicated having experienced verbal or physical aggression. For example:

*I understand why he stopped me but he didn't have to send me here [second-line check/police station], or treat me like a criminal. They do this with all Eastern Europeans.*

(Passenger from Serbia, male, interviewed at Frankfurt)

At Fiumicino, one passenger assumed that policemen were rude to her because she was a woman travelling alone. In another case, a transgender woman reported that policemen made fun of her, which the passenger considered 'typical of Italians'.

Many of those passengers who complained about unacceptable treatment (23 out of 35 passengers interviewed) also felt they were not sufficiently informed as to why they were being checked, which may be a source of negative perceptions (see Chapter 4.1).

## Conclusions

Prior to arrival, a risk analysis focusing on irregular migration and criminal activity plays a central role in determining whether or not border guards subject a flight or a particular passenger to more thorough checks at the gate and/or first line. As described in

the section on data protection, before a landing, border guards receive from the airline a list of passengers and their personal data. This information is used to determine who may need further checks upon arrival. The risk analysis considers data from several sources, consolidated at national or EU (Frontex) level, and covers multiple criteria, but these are not strong on risk factors indicating international protection needs. Flights from high-risk destinations frequently, however, also carry passengers needing protection.

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

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

### FRA opinion

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

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

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



# 3

## Identification and referral of persons in need of protection



### 3.1. Persons seeking international protection

#### Charter of Fundamental Rights of the European Union

##### Article 18: Right to asylum

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

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

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

In addition to the provisions of the EU Charter of Fundamental Rights listed in the box, which refer to the Geneva Convention, the ECtHR has stressed that signatory states are obliged not to extradite or expel an alien, including an asylum seeker, to another country where substantial grounds have been shown for believing that he or she, if expelled, would face a real risk of being subjected to treatment contrary to Article 3 of ECHR, i.e. torture or other inhuman or degrading treatment or punishment.<sup>60</sup>

<sup>60</sup> ECtHR, *Shamaev and Others v. Georgia and Russia*, No. 36378/02, 12 October 2005, para. 335; ECtHR, *Chahal v. the United Kingdom*, No. 22414/93, 15 November 1996, paras. 73–74; ECtHR, *Soering v. the United Kingdom*, No. 14038/88, 7 July 1989, paras. 88–91; ECtHR, *Cruz Varas and Others v. Sweden*, No. 15576/89, 20 March 1991, paras. 69–70.

The EU asylum *acquis* regulates the treatment of asylum seekers and the procedure to follow when a person applies for asylum. The asylum *acquis* also applies when applications are submitted at the border and in transit zones.<sup>61</sup> Detailed rules stipulate how to deal with a person from the moment he or she submits an application for international protection, some of which are mentioned in this report. The legal provisions quoted in this chapter reflect the revised post-June 2013 EU asylum *acquis*, which, as the introduction indicated, is not applicable in part in the United Kingdom. This approach has been chosen because this report's purpose is not to identify gaps between the EU law in force and the practices observed but rather to identify issues which may need to be addressed in future.

In principle, the EU asylum *acquis* applies only from the moment a person makes an application for international protection. Some provisions, however, such as the prohibition of *refoulement*, apply to any refugee, from the moment he or she arrives at the border. There is only limited legislative guidance in EU asylum law (for example on provision of information and training of border guards) on how to deal with persons who are in need of international protection but who have not yet expressed a wish to apply for asylum.

This section examines the identification of asylum claims at airports and the transfer of asylum applicants to the competent authorities. It does not analyse the asylum procedure itself, although it provides some basic information on airport procedures.

<sup>61</sup> Asylum Procedures Directive 2013/32/EU, OJ 2005 L 326/13, Article 3; and Reception Conditions Directive 2013/33/EU, OJ 2013 L 180/96, Article 3.

### 3.1.1. Identification of asylum claims

Article 3 (a) of the Schengen Borders Code, as revised by Regulation 610/2013, requires Member States to act in full compliance with the 1951 Convention Relating to the Status of Refugees, obligations related to access to international protection and, in particular, the principle of non-*refoulement*. While the person concerned must request asylum (see the definition of 'application' in Article 2 b of the Asylum Procedures Directive), any expression of fear of serious harm if returned qualifies as such a request. Moreover, if there are indications that a person wishes to seek international protection, border guards are duty bound to provide information on asylum. Identifying an asylum request hinges on the initiative of and information available to officers, effective communication, including proactive and sufficient probing, and the training provided to officers, as suggested by Recital 26 of the Asylum Procedures Directive.

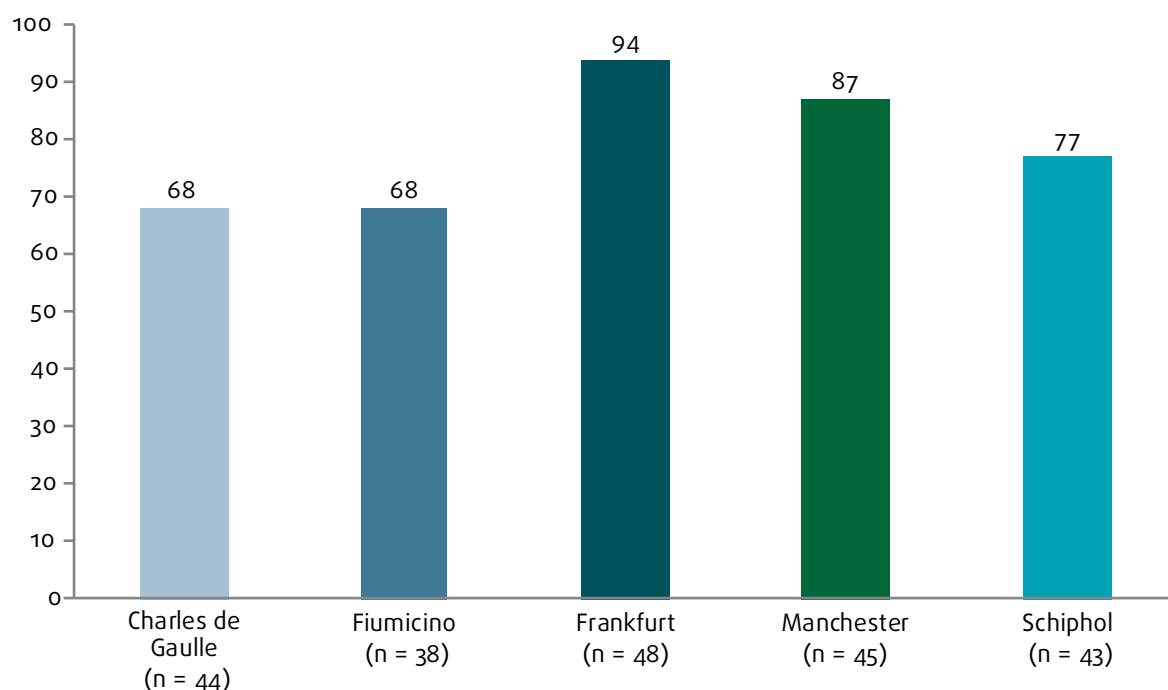
#### Defining asylum applications

An application for international protection includes any request which 'can be understood to seek ref-

ugee status or subsidiary protection status' (Asylum Procedures Directive, Article 2 b). The non-binding Schengen Handbook provides a more detailed explanation on how this definition should be understood. The handbook states that any passenger who expresses, 'in any way, fear of suffering serious harm if he/she is returned to his/her country of origin or former habitual residence' must be referred to the national authority designated to examine asylum applications.<sup>62</sup> This authority is defined in Article 4 of the Asylum Procedures Directive. There is no need for the passenger to utter the word 'asylum'; what counts is the expression of fear of what might happen upon return. If in doubt, border guards must consult with their relevant national authority.<sup>63</sup> According to the Frontex Common Core Curriculum (subject 1.7.7), border guards must have the skills to identify persons in need of protection, which includes identifying implicit asylum requests.

In practice, the border guards interviewed by FRA refer passengers for the asylum procedure if they clearly say that they are seeking asylum or are refugees. If passengers simply express fear that their life or freedom is at risk if returned, a majority of officers, but fewer overall, would still consider refer-

Figure 12: Border guards taking steps to have an asylum procedure initiated if made to understand that a passenger's life is at risk if returned (%)



Note: Respondents who did not provide an answer to a given item have been excluded when computing the results. Non-response per airport: Charles de Gaulle, n = 1; Fiumicino, n = 2; Frankfurt, n = 1; Manchester, n = 0; Schiphol, n = 1

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

<sup>62</sup> European Commission (2006).

<sup>63</sup> *Ibid.*, Section 10.1.

ral, as Figure 12 shows. Even if just a few officers fail to act upon such requests (19 % on average) that is a concern, considering that when a person is returned to persecution their most basic fundamental rights are at risk.

In addition to passenger statements, border guards participating in the survey consider certain criteria particularly helpful for recognising potential asylum seekers. These are, for example, nationality (47 %), the way people behave when approaching the counter (39 %) and during the check (46 %), their ethnicity (35 %) and place of embarkation (28 %).

Asylum seekers are, however, primarily expected to identify themselves as such, either during the border check or the procedures following refusal of entry. Interviews with shift leaders and passengers confirmed that, despite evident signs of protection needs, border guards first and foremost assess entry conditions, in particular if passengers arrive with false documents. During first-line border checks, taking initiative to identify international protection needs is generally not considered a main task, as the following statement exemplifies:

*Generally one can say that everyone who wishes to ask for asylum could do so to one of my [border police] colleagues.[...] But I generally think that the task of the police is not directed towards identifying asylum seekers among the group of travellers, but to exclusively clarify the question whether the documents provided by the traveller are correct and sufficient to enter the borders according to the legal requirements.*

(Shift leader, Frankfurt)

## Providing information to potential asylum seekers

Provision of information on asylum is one precondition for the effective identification of persons in need of international protection. Article 8 of the Asylum Procedures Directive requires Member States to provide information on asylum to persons in transit zones when there are indications that they may wish to make an asylum application.

While the Asylum Procedures Directive obliges Member States to provide information on asylum only when there is an indication that a person wishes to seek international protection, such indications

may be more or less evident. In some cases, proactively probing passengers' fears and wishes to apply for asylum, in cooperation with asylum authorities, would facilitate an accurate identification and referral at an earlier stage. There is, however, little evidence that this takes place in practice. When asked whether a person fitting the profile of an asylum seeker would be informed of his/her right to claim asylum, border officers replied along these lines:

*No, I would say that at the airport we do not inform the people; it is not our role either. And, anyway, they are assisted in the detention centre by various organisations [...].*

(Shift leader, Charles de Gaulle)

*We do not ask someone explicitly, 'Do you want asylum?' We don't do that. [...] They have to come up with it themselves [...]. Of course, from the moment someone says, 'My family has been butchered in Sudan,' OK, then we do not have to look any further at what is going on. In that case we say, 'Ok, sit calmly, we will call our asylum desk, do you want something to drink?' and so on.*

(Shift leader, Schiphol)

## Gate checks

Gate checks (see Introduction) are mainly aimed at obtaining proof where an airline has transported a person who does not fulfil entry requirements, not at identifying persons needing protection. People intercepted at the gate are normally referred to the second line; however, the following challenges may arise in the context of identifying protection needs.

The short duration of the screening process may leave insufficient time for potential asylum seekers to understand the option of seeking asylum and express a claim, and for officers to notice and react to signs of protection needs. Systematic referral for a second-line check will partly allay this risk. However, if express removal without a more detailed check is possible, this will create a risk of *refoulement*.

During gate checks, passengers are not usually informed of the reasons for the check at the aeroplane. Misunderstandings might be prevented if the nature of the check were explained during or in advance of the check, for example through an aircraft crew announcement. Such information might also encourage persons in need of protection to come forward with their claim more immediately, facilitating correct initial referrals.

### Promising practice

#### Involving experts in identifying protection needs

At Frankfurt airport, border guards specialised in asylum cases (Inspection V) are present during gate checks and conduct the follow-up interviews. Their presence ensures that potential asylum seekers are dealt with from the beginning by airport border guards with asylum expertise. Their work facilitates swift identification as well as correct referral. It also helps to ensure that persons in need of international protection are adequately informed of the option of seeking asylum and related procedures.

The inspection with the most experience in identifying and processing asylum seekers arriving via Frankfurt airport is consistently and purposefully involved in processing arrivals from high-risk flights with a higher probability of arrivals of groups at risk. The FRA research did not observe any mechanisms during gate checks to identify any other groups at risk, for example victims of human trafficking or children at risk.

Source: German border police, 2013

Independent external monitoring mechanisms, such as ombudspersons or inspectorates, could play an important role in verifying practices at gate checks. In some cases, however, they face limitations in accessing gate controls. These may relate, for example, to limitations to their mandate.<sup>64</sup> requirements of prior notification or practical difficulties such as short advance warning of controls, distance to the airport or staff availability.

### 3.1.2. Referral to the designated asylum authority

Article 6 of the Asylum Procedures Directive requires that asylum requests be registered within three working days if they are made to the designated authority for registering asylum claims. If the wish to request asylum is stated before another authority, for example the border guards, the applicant must be referred to the competent authority and the claim registered within six working days.

Of a total of 29 asylum seekers interviewed who responded to the question, 17 applied for asylum during the second-line check and 12 at the first line or the aircraft exit. Typically, passengers requesting asylum before or during the first-line check are referred for a second-line check. Indications of a wish to apply for

asylum often emerge during investigations into inaccurate or missing travel documents.

Asylum seekers may hesitate to seek protection at the check. The Dutch border police, the Royal Netherlands Marechaussee (*Koninklijke Marechaussee*), for example, regularly identifies asylum seekers in Schiphol's international zone because they look lost or have no travel documents, according to interviews with the Royal Marechaussee's anti-human-smuggling and -trafficking squad. Protection needs may also surface only during other border check stages, other immigration-related tasks, upon detention or once passengers have received more information and have had time to understand their options. Identification efforts should therefore be maintained at all stages of the immigration process, from gate checks to non-admittance and temporary holding.

#### Providing information to passengers who request asylum

Pursuant to the Asylum Procedures Directive (Article 6) border guards must be instructed to inform applicants about where and how to lodge applications for international protection. They must have received the relevant information and training to do this.

Overall, 85 % of the border guards surveyed indicated that they provide information on rights either right away or subsequently, while 89 % said they would provide information on what happens next. Only at Fiumicino did a significant share of officers (43 %) say they would inform potential asylum seekers on the next steps 'not at all'. This may be compensated for to some extent by immediate referral to the Information Office. Border police at Fiumicino accompany asylum seekers to the Immigration Office to register their claims. The Information Office then takes charge of them. It provides information and language and legal assistance, as well as meals for their entire airport stay, until the Ministry of the Interior identifies a place at a reception centre for asylum seekers or another centre elsewhere in Italy.

*I did not ask for protection right away but after several hours. Once I was informed about the possibility, I met with a very gentle person from another office [Information Office/Arciconfraternita], who explained the full procedure to me. I then decided to apply for it. [...] Yes, I did understand it. I was also given written material to read on how the procedure works.*

(Asylum seeker from Jordan, female, interviewed at Fiumicino)

<sup>64</sup> See, for example, France, Law 2007-1545.



## Promising practice

### Referring asylum seekers

The Information Office, available at all Italian air and sea border-crossing points, refers asylum seekers from the border police to the prefecture and Ministry of the Interior.<sup>65</sup> At Fiumicino, the office is run by an NGO (Cooperativa Badia Grande). Referral relationships are well established.

The office provides information and counselling on legal and language assistance and cultural mediation. Where necessary, it supports asylum seekers needing local services for primary care and social housing. It also provides support to asylum-seekers who are transferred based on the Dublin Regulation. As has already been mentioned as a promising practice, the office's counter is located before passport control, in a visible place, and is marked with a sign reading 'Information Office' in English, Arabic and Italian. Asylum seekers can directly access the office after their arrival.

*Source: Cooperativa Badia Grande, 2014*

From an asylum-seeker perspective, only 10 of 32 asylum-seeking passengers interviewed at the four airports said a border guard informed them about asylum procedures, and only five said they understood the information well. Results at Frankfurt, where a specialised inspector is in charge of asylum cases, are above average. At the other three airports, more (or all) asylum seekers interviewed said border guards had not given them information on the procedure. Considering that asylum claims may emerge at different stages of the border check, expertise and training should also extend to non-specialised officers. A clear majority (63 %) of border guards and shift leaders at Frankfurt confirmed the need for training on asylum issues.

### Asylum procedures at the border

Typically, asylum seekers are referred for second-line checks, where border guards conduct document searches and carry out interviews regarding their identity, origin, travel and papers. At this stage, asylum procedures are typically described in general. For information about airport asylum procedures, the reader may consult detailed studies by ICMPD and UNHCR.<sup>66</sup>

The Asylum Procedures Directive envisages the possibility for border procedures to decide on the admissibility or the substance of the claim (Article 43). In these cases, a decision must be taken within four weeks, otherwise the applicant must be admitted into the territory. Asylum requests may be processed at the border at three of the five airports (Charles de Gaulle, Frankfurt and Schiphol), but not at Manchester or Fiumicino. National asylum authorities (OFPRA, BAMF and IND) have airport offices to facilitate the processing of requests. In Charles de Gaulle and Frankfurt, OFPRA and BAMF assess whether the claim for international protection is admissible, whereas at Schiphol the IND decides on its substance.

At Charles de Gaulle, OFPRA initially examines whether the claim is manifestly unfounded or not and submits an opinion to the Ministry of the Interior, which decides whether or not to allow entry for the purpose of seeking asylum. No time frame is defined, but in practice the procedure is completed within an average of one to two days.<sup>67</sup> Similarly, the BAMF office at Frankfurt airport assesses within two days whether claims submitted by persons arriving from 'safe countries' or in possession of false documents are manifestly unfounded or not, leading federal police either to refuse entry or to admit for asylum purposes.<sup>68</sup>

In contrast, asylum seekers at Schiphol are initially refused entry and, like other non-admitted passengers, referred to the claims, identification and Article 4 unit. This unit tries to establish within six hours their origin and the airline that transported them, conducts a search and takes fingerprints. Asylum seekers are then sent to the Judicial Complex.<sup>69</sup> There, after a six-day rest and preparation period, the IND examines the substance of their claim within eight working days in a 'general procedure'. Cases requiring further research are referred for an 'extended procedure'.

Referral of asylum seekers generally works according to standard procedures. Where airport procedures exist, the border guards who initially interviewed the asylum seeker (border police; Inspection V; claims, identification and Article 4 unit) may notify the asylum authorities at the airport (OFPRA, BAMF, IND) and/or directly arrange the transfer of applicants to the holding facilities connected to the airport (ZAPI 3, Asylum Centre, Judicial Complex/ formerly Schiphol-Oost).

65 For passengers seeking international protection, the Legislative Decree (1998), among other texts, stipulates in Art. 11, Clause 6, the creation of Information Offices at all airport and seaport border points.

66 ICMPD (2009); UNHCR (2010), Part 2.

67 OFPRA (2012), p. 68.

68 Germany, Asylum Procedure Act, para. 18a.

69 Or, at the time of the research visits, to the Application Centre.

Sometimes, delays may occur if, for example, space in reception centres is not available and transfers cannot be arranged on time or further in-depth verifications are needed before a reception facility placement decision can be issued. This may result in asylum seekers being kept longer at the airport in facilities which are not intended and inappropriate for longer stays and where their basic needs are not ensured. At Schiphol, for example, if it was after 18.00 and the holding facility centre was closed, asylum seekers had to wait in the international zone lounge and report the following day. At Fiumicino, asylum seekers may wait for days in the transit area before referral to a reception centre for asylum seekers can be arranged. Asylum seekers at Charles de Gaulle are initially kept in the waiting room pending their transfer to ZAPI 3. Although police try to keep waiting room times to a minimum, FRA observed that some passengers spent over five hours in the transit zone. Differing factors may be at work here, including the size and set-up of the airport, the officers' workload and in particular the fact that verification procedures can sometimes be complex and lengthy, according to information the French Ministry of the Interior provided to FRA in April 2014.

At Manchester airport, border officers conduct a screening of personal details, journey and possible prior or pending asylum applications within 24 hours. Reasons for seeking asylum in the United Kingdom are not examined at this stage. Based on the initial screening, people are referred for either the regular or the fast-track procedure; in the latter case they are detained. Applications are fast-tracked if 'a quick decision' appears possible, depending on the credibility of the person's account.<sup>70</sup>

*Basically they are screened. They don't have to have a lawyer at that stage. [...] There's no real interview involved in screening at the [air]port. It all goes to the asylum directorate to deal with. We don't actually interview them about their asylum claims any more. We literally just – what's your name? What's your date of birth? What flight have you arrived on? Have you got any family in the UK? It's really just a very simple processing form. [...] Once it's gone to the asylum directorate, they will deal with the full asylum interview and direct them to any organisations or whatever.*

(Chief immigration officer, Manchester)

After this initial screening, asylum seekers are handed over to the asylum authorities for a further decision on detention or temporary admission. For passengers arriving with dependent children who have a severe disability or serious illness, local authorities need to be informed to prepare for appropriate accommodation and care.<sup>71</sup>

## 3.2. Presumed victims of human trafficking

### Charter of Fundamental Rights of the European Union

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

3. Trafficking in human beings is prohibited.

Under both EU and Council of Europe law, trafficking of persons is '[the] recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation'.<sup>72</sup> There is an element of compulsion and intimidation involved in trafficking.

At EU level, the Human Trafficking Directive (2011/36/EU) provides the framework for the protection of and assistance to victims of human trafficking. Its Article 11 (4) requires Member States to 'take the necessary measures to establish appropriate mechanisms aimed at the early identification of, assistance to and support for victims, in cooperation with relevant support organisations'. Assistance must be provided as soon as there are reasonable grounds for considering that a passenger may be a victim of human trafficking (Article 11 (2)). There are specific guarantees for child victims of trafficking.

This section describes the challenges involved in identifying victims of human trafficking at the border and measures taken to overcome them. It then examines border guards' actions relating to presumed victims.

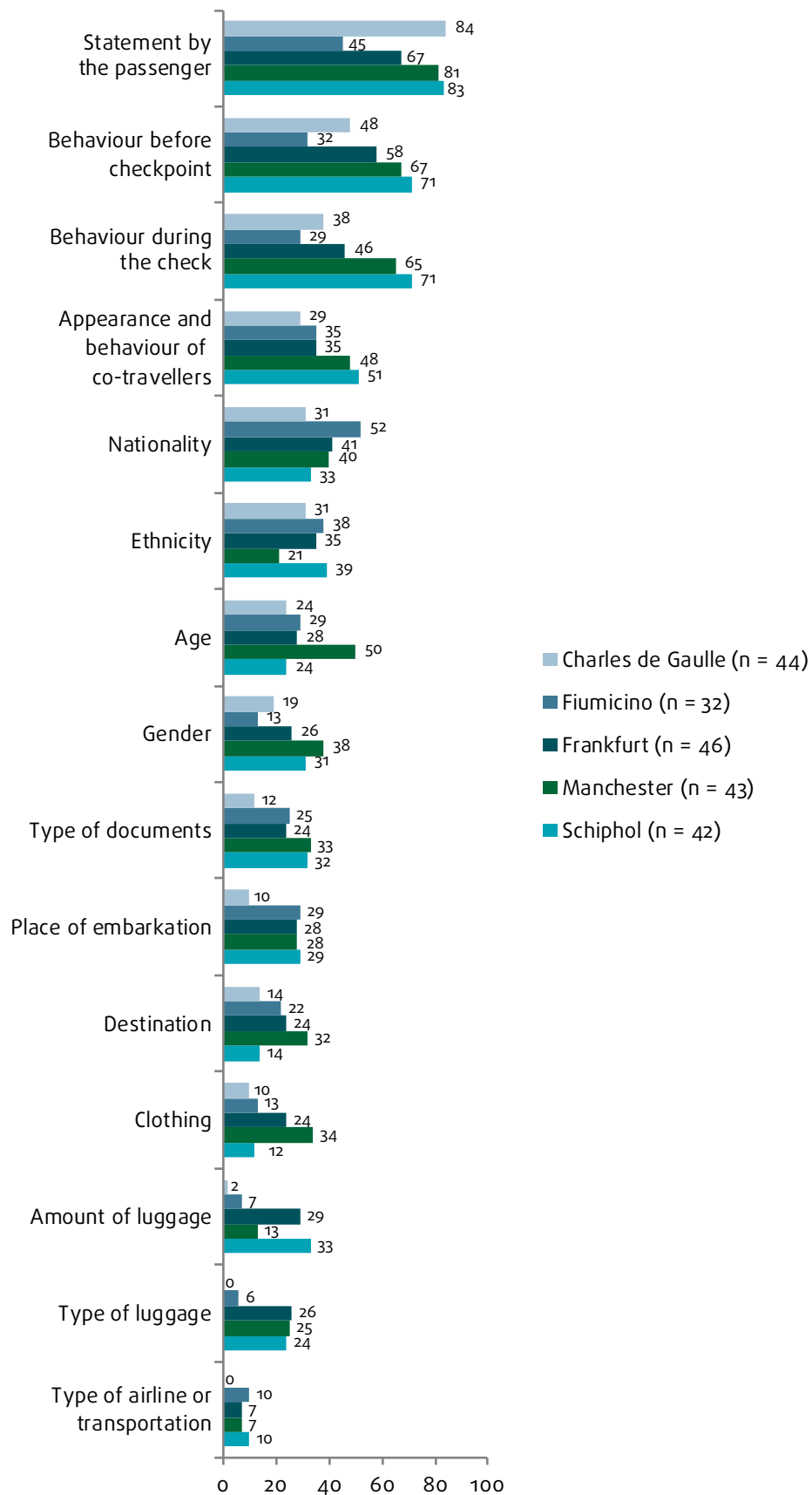
70 United Kingdom, Visas and Immigration (2013a).

71 United Kingdom, Border Agency (2004).

72 Council of Europe, CETS No. 197, Art. 4; Human Trafficking Directive 2011/36/EU, OJ 2011 L 337/9, Art. 2 (1).



Figure 13: Indicators considered most helpful for identifying potential victims of trafficking in human beings (%)



Note: Valid responses ranged between 196 and 206. Respondents who did not provide an answer to a given item have been excluded when computing the results. Non-response per airport: Charles de Gaulle, n = 1; Fiumicino, n = 8; Frankfurt, n = 3; Manchester, n = 2; Schiphol, n = 2.

Source: FRA, Border guard survey, 2012 (question 25)

### 3.2.1. Identification of presumed victims of human trafficking

According to Article 11 of the Human Trafficking Directive, assistance and support must be provided from the moment authorities have reasonable grounds to believe a person might have been trafficked. The standard of proof required is therefore relatively low.

Difficulties in identifying victims of human trafficking are inherent to the nature of the crime. Victims may be unaware of their situation, and the trip is often arranged with authentic travel documents and work permits in line with entry requirements. In addition, victims may not be able to disclose their situation during the check because of its short duration, distrust of the authorities and/or a lack of awareness of victim rights. Passengers at risk of trafficking may thus be channelled to removal or other procedures, with the risk that their situation goes unnoticed.

In practice, border guards do not speak to every passenger. Of the border guards FRA interviewed, 41 % said that they do not generally speak to all third-country national passengers during the first-line check. Of this 41 %, only a third (35 %) would consider substantial signs of protection needs (to be understood in the broad sense, also including asylum) a reason for addressing third-country national passengers. As groups are handled without necessarily addressing all accompanying passengers, according to shift leaders, the scope for interaction and proactive identification is limited during the check, and a large number of victims can be expected to pass unnoticed, particularly if risk factors are not obvious.

FRA asked border guards what indicators they consider helpful in identifying victims of human trafficking. Officers surveyed (72 %) identified the passenger's statement as the most helpful (Figure 13: Indicators considered most helpful for identifying potential victims of trafficking in human beings (%)). How people behave when approaching a counter (55 %) and during the check (50 %) are the next most helpful indicators at all airports, except at Fiumicino, while 40 % of officers also considered the appearance and behaviour of co-travellers to be very helpful. Successful identification thus hinges significantly upon observation and communication skills in addition to officers' experience and the intelligence available to them.

These challenges can be overcome by, for example, ensuring that guidance is available to border guards, training courses are offered regularly and identification efforts do not end once a person is channelled into another procedure. Cooperation with commer-

cial carriers could also be useful, as long as this does not result in outsourcing immigration decisions.

#### Promising practice

#### Cooperating to uncover potential victims and traffickers

The work of the Mobile Research Brigade (*Brigade Mobile de Recherche*) at Charles de Gaulle consists of tailing potential victims and traffickers in close cooperation with the Mobile Immigration Brigade (*Brigade Mobile d'Immigration*) – which provides (historical) records of passengers, flight details and risk profiles – and with the liaison officers, who provide similar information. This may help to uncover essential protection-related information, which may have been impossible to substantiate during the check, and thus facilitate access to protection. The cooperation between the teams allows in principle for an effective exchange between Mobile Research Brigade staff and first- and second-line officers, who, if well trained to detect cases of smuggling and trafficking, are able to provide up-to-date information from the front line on a regular basis to help identify new trends of importance for investigations.

Source: Stakeholders at Charles de Gaulle

#### Training and guidance

According to the Human Trafficking Directive (Recital 25), border guards should be trained to identify and deal with victims or potential victims of trafficking. At an operational level, the Frontex Common Core Curriculum requires border guards to have the necessary skills to fulfil their duty to identify and refer victims of trafficking. Frontex has also developed specific training materials on trafficking.<sup>73</sup> In practice, the amount of training on trafficking victims varies among airports, as Figure 14 shows. A clear majority of officers at all airports agree that further such training would help them in their work.

The European Commission<sup>74</sup> and Frontex, among others, have published guidance for identifying victims of human trafficking at borders. Frontex plans to expand on its practical guide for border guards (Vega Handbook)<sup>75</sup> with a specialised version on child trafficking.

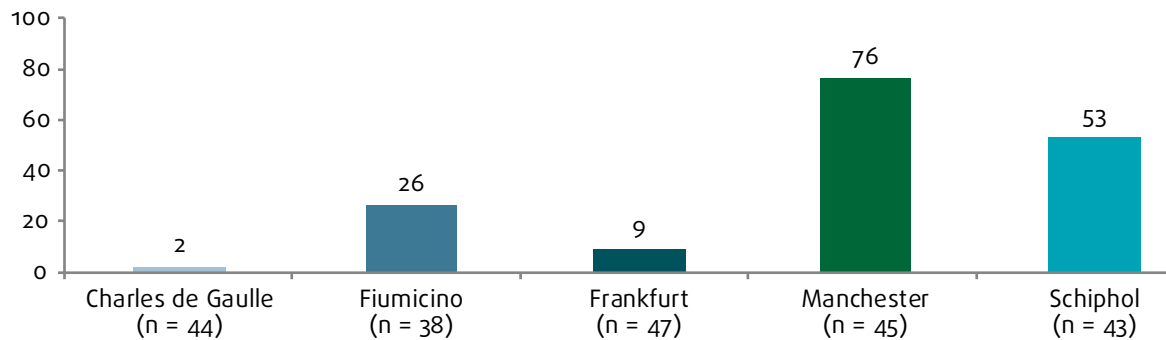
Nonetheless, specific guidance for officers on identifying potential victims of human trafficking appears not to be available at all airports. Whereas all United Kingdom officers surveyed confirmed having received specific guidance, high percentages of

<sup>73</sup> Frontex (2012a).

<sup>74</sup> European Commission (2013a).

<sup>75</sup> Frontex (2012c).

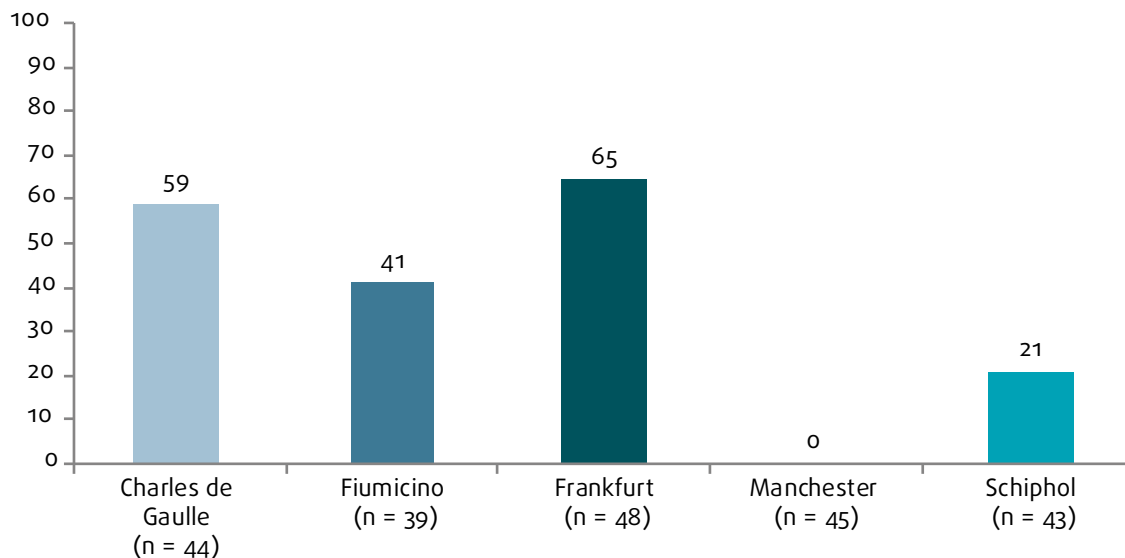
Figure 14: Border guards having received training on victims of trafficking in 2011 (%)



Note: Respondents who did not provide an answer to a given item have been excluded when computing the results. Non-response per airport: Charles de Gaulle, n = 1; Fiumicino, n = 2; Frankfurt, n = 2; Manchester, n = 0; Schiphol, n = 1.

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

Figure 15: Border guards who received no specific guidance to identify victims of human trafficking (%)



Note: Respondents who did not provide an answer to a given item have been excluded when computing the results. Non-response per airport: Charles de Gaulle, n = 1; Fiumicino, n = 1; Frankfurt, n = 1; Manchester, n = 0; Schiphol, n = 1.

Source: FRA, Border guard survey, 2012 (question 24)

officers at Frankfurt and Charles de Gaulle said that they had not. Fiumicino also lacks specific protocols for identifying trafficked people if they do not ask for international protection. A distinct minority of officers at the airports (22 %) said they had received written guidance, except at Manchester, where 87 % said that they had (Figure 15).<sup>76</sup>

The instructions provided in the United Kingdom include a list of hints considered useful for identifying victims of human trafficking, in particular child victims. An e-learning course on identifying potential victims is available, but it is not mandatory for all officers.

Officers who had received guidance indicated that this came in the form of a checklist, in writing during training or orally during training or meetings. Methods differed by airport. Oral guidance was provided during training according to 60 % of officers at Schiphol and 23 % at Charles de Gaulle and Frankfurt.

### Cooperation with airlines

A resolution by the Parliamentary Assembly of the Organization for Security and Co-operation in Europe (OSCE) encourages collaboration between border authorities and commercial carriers. This work aims

<sup>76</sup> United Kingdom, Visas and Immigration (2013c).

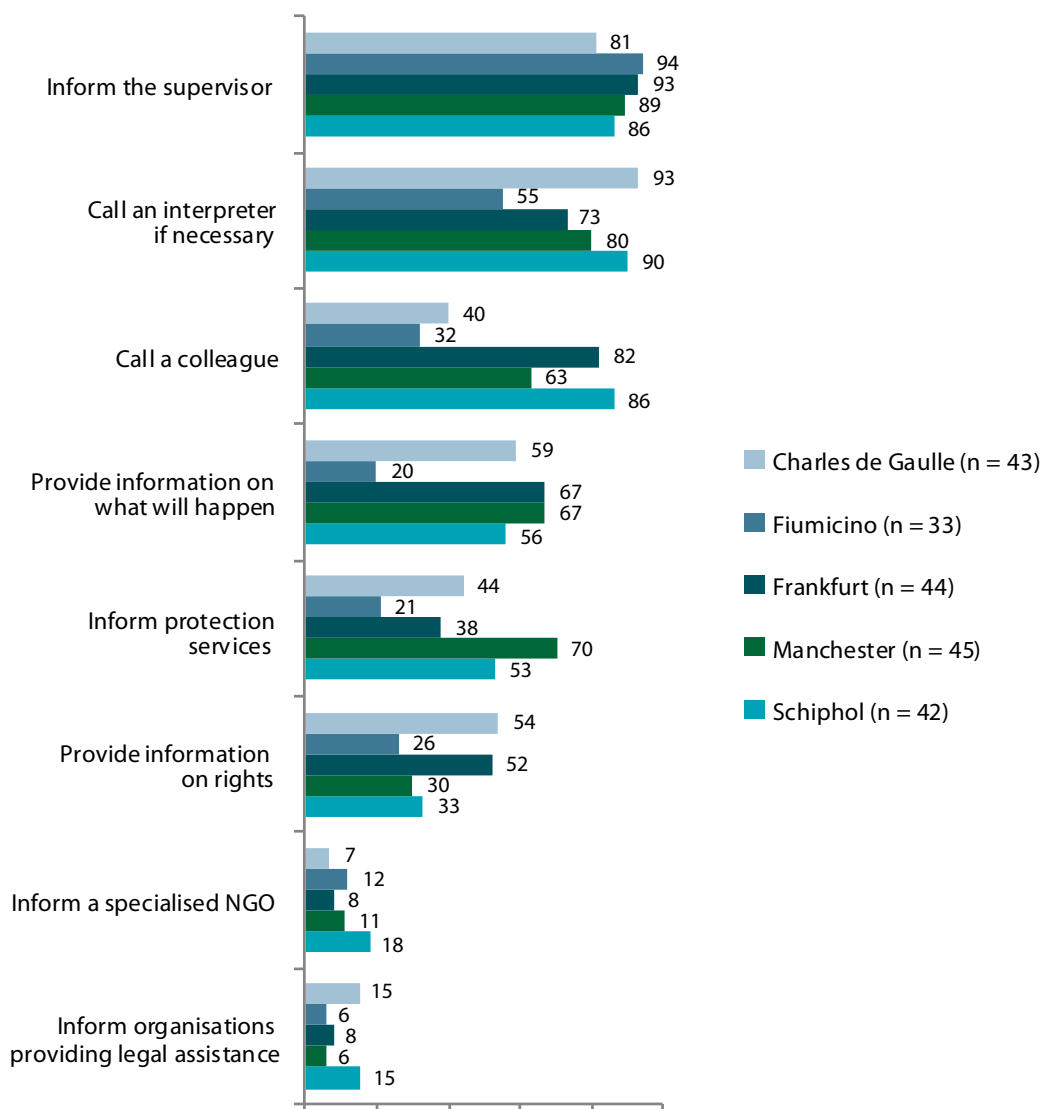
to ensure that crew members who may come into contact with a trafficking victim are trained to identify the victim and respond according to a protocol established with law enforcement.<sup>77</sup> Some airports cooperate with commercial carriers, with border guards training airline staff to identify possible victims of trafficking.

### Promising practice

#### Cooperating with airlines to combat trafficking

The United Kingdom Home Office rolled out an initiative in conjunction with budget airlines to help cabin crews spot signs of human trafficking. The initiative developed a special training package to help crew identify those who may be engaged in trafficking and their potential victims. It also established a 24-hour confidential telephone line so that airline concerns can be reported before the plane lands.

Figure 16: Actions taken right away by border guards when considering that a person subject to a border check is a possible victim of human trafficking (%)



Note: Respondents who did not provide an answer to a given item have been excluded when computing the results.  
Non-response per airport: Charles de Gaulle, n = 1; Fiumicino, n = 1; Frankfurt, n = 1; Manchester, n = 0; Schiphol, n = 1

Source: FRA, Border guard survey, 2012 (question 24)

The initiative acknowledges that airline travel is one of the most economical and easily accessible forms of transport to the United Kingdom. Since trafficking is underpinned by profit, traffickers usually choose the cheapest and lowest-risk routes possible. This poses a number of ethical challenges for the travel industry. Most importantly, travel industry experts may be unaware of, or not know how best to deal with, how human traffickers use legitimate travel services to support their trade. Whilst completing their usual flight duties, flight attendants might have the chance, during often long flights, to observe traffickers and their victims. They have unique opportunities to notice and report unusual behaviour and thus facilitate a quick and targeted law enforcement and protection response on arrival.

The Dutch border police also actively encourage airline staff to be attentive to signs of trafficking. Together with the NGO La Strada, the Royal Marechaussee prepared a bulletin for airline personnel on signs of human trafficking; this booklet is handed out to participating staff during their training by the Marechaussee (since October 2011). Cooperation with private partners is considered part of an integrated approach to identifying victims of human trafficking and involves the Prosecutor General, the police, the Marechaussee and other public actors.<sup>78</sup>

Source: UK Home Office, 2012, and the Royal Netherlands Marechaussee, 2013

### 3.2.2. Referral to protection services

Upon identification, victims of trafficking must be referred to protection services to arrange for accommodation, ensure their safety and provide legal advice and medical and psychological care. Special services must be available to child victims.

Border guards at the five airports agree that their first, spontaneous reaction is to inform their supervisor (and arrange interpretation arranged if necessary) whenever they think they are dealing with a potential victim of human trafficking.

However, procedures for alerting protection services and informing the potential victims seem to differ significantly by airport. Only at Manchester

and to a lesser extent at Schiphol and Charles de Gaulle airports would a large number of officers inform the relevant protection services immediately (70 %, 53 % and 44 %, respectively) rather than later (25 %, 40 % and 41 %) of the presence of a suspected trafficking victim (Figure 16). At Frankfurt and Fiumicino airports, most officers said this would happen later, not right away. A discrepancy among the airports also appears in the number of officers who would not inform protection services at all (48 % at Fiumicino, 5 % at Manchester).

High non-response rates at Fiumicino, Frankfurt and Charles de Gaulle correlate with low rates of officer training on human trafficking, which may indicate limited guidance or lack of protocols concerning referral.

On average, 90 % of the border guards who responded to the FRA survey question on providing information to the presumed victim indicated that they would provide information on the next steps right away (54 %) or later on (36 %). Responsiveness seems to be highest at Frankfurt and Manchester airports, where 67 % of officers would immediately inform the passenger of the next steps. Results at Fiumicino alone are below average, with a significant number of officers saying they would inform possible victims about the procedure 'not at all' (43 %). Non-responses to the question were also highest at Fiumicino, at 10 of the 40 officers asked the question.

NGOs usually provide immediate support at the airport. At Manchester airport, for example, the Salvation Army steps in to provide safe housing for women victims of trafficking. The airport chaplaincy also provides accommodation for vulnerable people, using their own database to put them into contact with the proper networks.

*The airport police division contacted us, because what they needed immediately was accommodation. We have a [...] kind of paper version of a database of people that we can call on for accommodation and assistance.*

(Manchester airport chaplaincy staff member)

At Schiphol, border guards would refer the passenger to the specialised anti-human-smuggling and trafficking squad, and ask the Coordination Centre Human Trafficking (CoMensha) for practical assistance. The referral system at the airport is thus connected to the national referral system.

<sup>78</sup> Netherlands, Staatscourant (2013).

## Promising practice

**Referring potential trafficking victims to a specialised team and NGO**

Whenever doubts arise at Schiphol about whether a person might be a victim of human trafficking, the anti-human-smuggling and -trafficking squad of the Royal Marechaussee is informed. It sends experts trained in approaching and informing potential victims of the danger they are in. These experts offer assistance and the possibility of cooperating in dismantling the trafficking network. At the same time, as per the guidelines of the Public Prosecution Service (*Openbaar Ministerie*) on trafficking in human beings,<sup>79</sup> border guards inform CoMensha, which registers presumed victims in a central record bank and provides assistance if needed.

Source: Royal Netherlands Marechaussee, 2013, and CoMensha, 2014

As airport border checks may not immediately identify human trafficking victims, referral often takes place at a later stage. Protection grounds may only emerge when a person is detained or facing removal. Besides border management authorities, other actors may also initiate referrals. In some Member States (for example, Italy, the Netherlands and the United Kingdom),<sup>80</sup> this is organised at national level within a national referral mechanism, which facilitates cooperation among a number of agencies in the identification and referral of potential trafficking victims.

**Compatibility of protection schemes**

Compatibility and flexibility of protection schemes prevents gaps between the schemes, which are governed by separate legal instruments. In this sense, Article 11 (6) of the Human Trafficking Directive requires that victims of trafficking be informed that they may seek asylum.

A change in the Netherlands Aliens Act (*Vreemdelingenwet*) has acknowledged that asylum seekers may also be victims of trafficking. Victims collaborating with the authorities to dismantle a trafficking network no longer have to choose between a permit authorising them to stay for the duration of the investigation (a B9 permit) or an asylum request. However, the asylum referral mechanism does not guarantee that victims of trafficking can be identified at every stage in the border procedure.<sup>81</sup>

79 Netherlands, Information provided to the European Commission (2012); Netherlands, Staatscourant (2013).

80 Netherlands, Information provided to the European Commission (2012).

81 Sondejker, M. (2013).

## Promising practice

**Ensuring compatible protection schemes for asylum seekers and victims of human trafficking**

Victims of human trafficking seeking asylum fall under two compatible protection schemes in the Netherlands: permits authorising residence pending the examination of a request for asylum and permits authorising residence for victims collaborating in a human trafficking investigation (B9 permits).

When reporting human trafficking to the Dutch border police, the person can either request a B9 permit immediately or await the decision on their asylum request. In the first case, the asylum request will be closed initially<sup>82</sup> but can be reopened and processed after the B9 permit ends. The Aliens Circular stipulates that such cases are not to be treated as repeat applications.<sup>83</sup> In the second case, the asylum procedure runs in parallel with the investigation of the trafficking case. If asylum is denied, a B9 permit may still be granted by the Immigration Service, provided the victim continues to cooperate with the investigation and fulfils any other conditions required.

Source: Royal Netherlands Marechaussee, 2013

### 3.3. Children at risk

**Charter of Fundamental Rights of the European Union****Article 24: The rights of the child**

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

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

The United Nations Convention on the Rights of the Child applies to every child within the jurisdiction of a state party irrespective of the child's status. Article 20 of the convention provides for special protection of a child temporarily or permanently deprived of his or her family environment. Article 3 requires that primary consideration be given to the child's best interests. EU Member States have

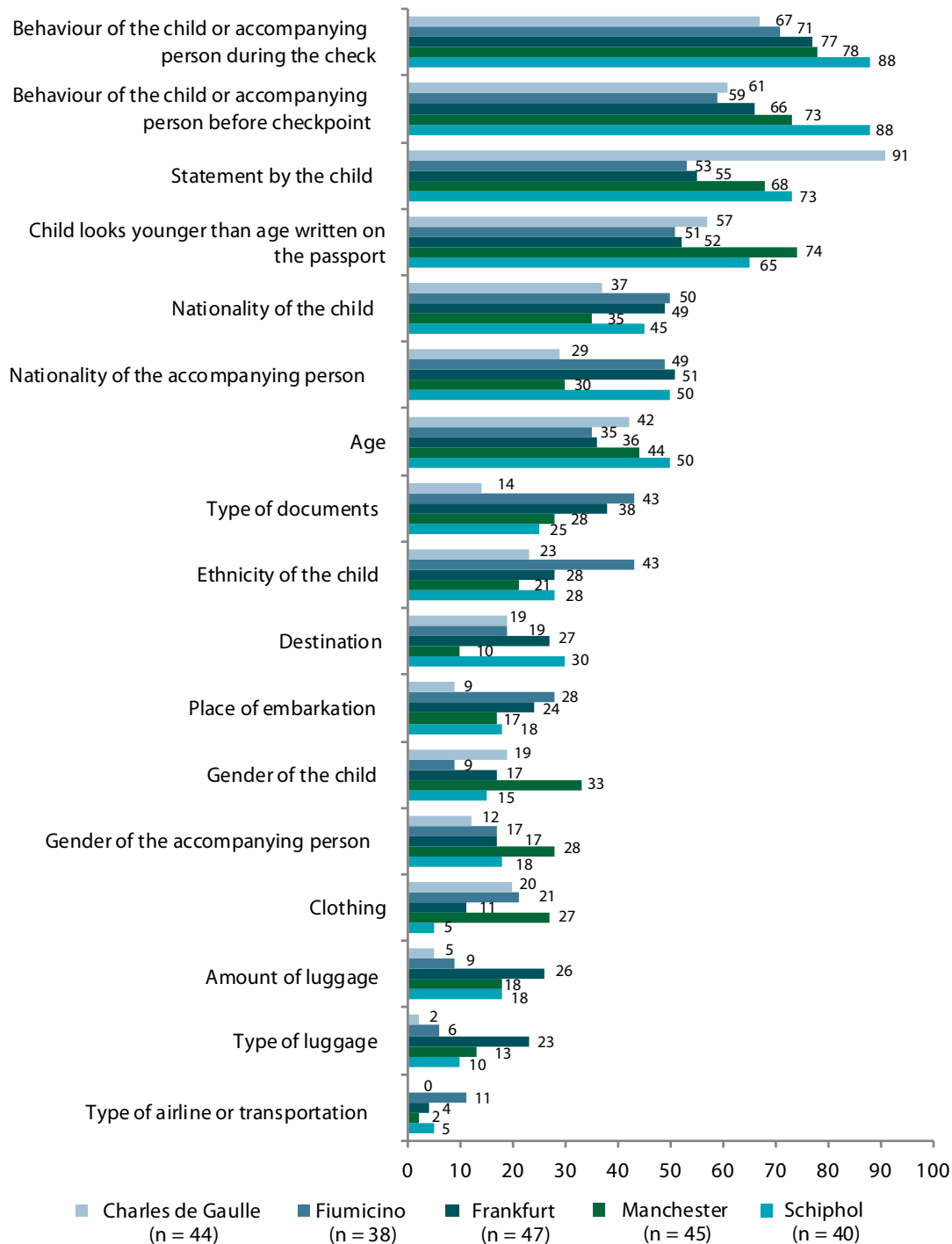
82 Netherlands, Aliens Act 2000, Art. 30 1b.

83 Netherlands, Aliens Circular 2000.

incorporated the 'best interests' principle into their national laws. United Kingdom Border Agency guidance, for example, explicitly incorporates this principle into immigration-control-related tasks.

The Schengen Border Code requires that border guards pay particular attention to children travelling, whether or not they are accompanied (Annex VII). This includes verifying parental care of the persons accompanying the child or parental consent if the child is travelling alone. EU law on asylum and human

Figure 17: Criteria considered most helpful at all airports in identifying children at risk (%)



Note: Valid responses range between 201 and 213. Respondents who did not provide an answer to a given item have been excluded when computing the results. Non-response per airport: Charles de Gaulle, n = 1; Fiumicino, n = 2; Frankfurt, n = 2; Manchester, n = 0; Schiphol, n = 4.

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



trafficking further sets out specific safeguards and protection measures applying to child applicants or victims, referring, for example, to counselling, appropriate representation and suitable accommodation.<sup>84</sup> With regard to asylum-seeking children, EU law provides further guidance on the assessment of best interests in the context of reception standards (Reception Conditions Directive, Article 23 (2)) as well as safeguards concerning age assessment (Asylum Procedures Directive, Article 25 (5)).

To respect and apply the ‘best interests’ principle in practice, whenever a decision affects a child, his or her best interests need to be assessed. While the rights enshrined in the Convention on the Rights of the Child provide a general framework for such an assessment, there is no specific guidance on the parameters to consider in the context of border control. The UN Committee on the Rights of the Child, the convention’s supervisory body, lists the factors to consider in its General Comment No. 14. It mentions the child’s views and identity, the preservation of the family and maintaining relations, care, protection and safety of the child, situation of vulnerability, and the child’s rights to health and education.<sup>85</sup> The Committee notes that ‘allowing the child access to the territory is a prerequisite to this initial assessment process’.<sup>86</sup>

The Committee also notes that separated children should be appointed a guardian or adviser promptly, as soon as they are identified.<sup>87</sup> Under EU law, child victims of human trafficking must be assigned a guardian or a representative from the moment they are identified (Human Trafficking Directive, Article 14 (2)) and asylum-seeking children must be assigned a representative as soon as possible (Asylum Procedures Directive, Article 25 (1) (a)). The Committee on the Rights of the Child recommends that the guardian should be appointed before the child is referred for asylum or other procedures.<sup>88</sup>

This section describes the challenges related to identifying children at risk and protecting their best interests at the stage of immediate referral at the airport. It refers to ‘separated children’ rather than ‘unaccompanied minors’ in order to encompass children who arrive without an adult responsible for them by law or custom. Obligations that refer specifically to unaccompanied minors thus apply also to them.

84 Reception Conditions Directive 2013/33/EU, OJ 2013 L 180/96, Art. 21–24; Human Trafficking Directive 2011/36/EU, OJ 2011 L 337/9, Art. 14 and 15.

85 UN Committee on the Rights of the Child (2013), points 53–79.

86 UN Committee on the Rights of the Child (2005), point 20.

87 *Ibid.*, point 33.

88 *Ibid.*, point 21.

### 3.3.1. Identification of children at risk

Children travelling alone – without parental consent or the company of adults responsible for them – may be at particular risk of exploitation, including human trafficking. During border checks, they should be checked systematically for signs of such risks.

FRA observed that border guards pay special attention to children. They visually verify correspondence with their passports, and they observe and listen to the child and accompanying adult during the first-line check. Children may be asked simple questions or asked to point at their parents. Attention is, however, not always systematic (as, for example, was observed at Schiphol). Nor is it always based on specific guidance or procedures facilitating the identification of children at risk. Manchester has a useful tool. United Kingdom Border Force officers can draw on a Code of Practice, which comprises a list of concrete circumstances and features that may indicate protection needs.<sup>89</sup> Specific enforcement instructions provide further guidance on unaccompanied children.<sup>90</sup>

FRA asked border guards which among a list of indicators they considered most useful in identifying children at risk. Officers at all airports generally considered the top three indicators to be: the child’s statement (68 %); the behaviour of the child or accompanying person when approaching the first-line counter (70 %); and their behaviour during the check (76 %) (Figure 17). The age and nationality of the child are on a par (approximately 42 %). Some considerations differ more by airport. These are, in particular, destination, nationality of the accompanying person, clothing, type and amount of luggage, the child’s and the accompanying person’s gender, and the child having an appearance that suggests they are younger than the age given on their passport.

The top indicators depend on interaction with the child and behavioural analysis. Child-sensitive communication is thus a key factor for effective identification. In turn, effective identification is a precondition for ensuring that a child at risk receives the necessary protection and care.

#### Age assessment

Trafficked children may try to pass as adults, enabling traffickers to avoid more detailed checks. A significant indicator for protection needs is thus a traveller who appears to be younger than the age stated on their passport. Border guards base their initial assess-

89 United Kingdom Border Agency (2008).

90 United Kingdom, UK Visas and Immigration (2013b).



ment on appearance and behaviour and may, if in doubt, request an age assessment or refer the child to authorities who may conduct one. When age is disputed, the person must be considered a child until it is ascertained that they are not.<sup>91</sup> Agencies other than those responsible for immigration control generally carry out age assessments. In Fiumicino, police usually transfer the child to the nearby Ostia hospital for a wrist X-ray. In Frankfurt, the police and asylum authorities are not involved in the process; they adopt the assessment of the youth service. Stakeholders at Schiphol expressed concern about an overreliance on documentary evidence of adulthood on the part of the Dutch border police. They said too little consideration was given to other sources, such as the child's statement and assessments by the IND or the Dutch guardianship institution Nidos.

At all airports except Manchester, border management authorities may request an assessment that includes medical examinations,<sup>92</sup> despite the medical and ethical questions health scientists and immigration lawyers have raised about such tests.<sup>93</sup> Such examinations generally require the individual concerned to give prior consent.<sup>94</sup> However, no prior consent or prior appointment of a temporary guardian is necessary,<sup>95</sup> nor is it usually requested in practice,<sup>96</sup> as the appointment occurs only after or pending age assessment. Only at Schiphol must a guardian consent to such procedures. The guardian's consent is necessary when there are doubts

about whether or not the child is under the age of 15 but minority itself is not in doubt.<sup>97</sup> In the United Kingdom, medical reports are commissioned, in line with a judgment involving Merton Council relating to the Children Act 1989,<sup>98</sup> only if the applicants themselves request them.<sup>99</sup> Local authorities conduct age assessment tests based on criteria such as physical appearance, social development, educational history and accounts of family life. According to United Kingdom Visas and Immigration previously United Kingdom Border Agency guidance, 'Merton-compliant' age assessment is considered sufficient proof of age for immigration purposes.<sup>100</sup>

In the context of asylum, the European Asylum Support Office consulted with Member States on their age assessment practices. The resulting publication (EASO Age assessment practice in Europe)<sup>101</sup> provides useful guidance on age assessment in border management.

### Training on child-sensitive communication

Child-sensitive communication, as noted previously, is a key factor for effective identification. The Committee on the Rights of the Child has said that communication should include 'informing children about the process and possible sustainable solutions and services, as well as collecting information from children and seeking their views'.<sup>102</sup>

Officers at most airports were observed speaking in a softer tone of voice with children, although not all said that they had had specific training in interacting with children (84 % at Manchester, 25 % on average at other airports), as envisaged in the Frontex Common Core Curriculum (modules 1.7.8, 1.7.9 and 2.3.1). Standardised interviewing procedures for children are not in place at all airports, for example at Fiumicino.

A clear exception is Manchester airport, where all border officers said that they had received training on child protection. Schiphol's anti-human-smuggling and -trafficking squad of the Royal Marechaussee also has professionals trained in speaking with children. They can be called upon should a child be a suspected trafficking victim; in practice, however, the squad is rarely called upon for child-related issues.

- 91 Human Trafficking Directive, 2011/36/EU, OJ 2011 L 337/9, Art. 13 (2); UNHCR (2007); Separated Children in Europe Programme (2012); United Kingdom, Border Agency (2011); Italy, Ministry of the Interior (2007).
- 92 France, Circular of 31 May 2013 concerning the modalities of support of foreign unaccompanied or separated minors: national protocol of sheltering, evaluation and orientation (2013); Germany, Residence Act, Art. 49 Paragraph 6; Italy, Ministry of Interior (2007); Italy, Legislative Decree No. 25 of 28 January 2008, Art. 19, Clauses 2 and 3; Netherlands, Aliens Circular 2000, C11/3.4; United Kingdom, *B v. London Borough of Merton* (2003); United Kingdom, *FZ v. London Borough of Croydon* (2011).
- 93 Smith, T. and Brownlees, L. (2011), p. 13; Crawley, H. (2012). See also Council Directive 97/43/Euratom, OJ 1997 L 180/21, Art. 3.
- 94 Asylum Procedures Directive 2013/32/EU, OJ 2013 L 180/60, Art. 25 (b); France, Public Health Code, Art. L.1111-4 and L.1111-2; Italy, Legislative Decree No. 25 of 28 January 2008, Art. 19 (2); Netherlands Forensic Institute (2011); Germany, Social Code (*Sozialgesetzbuch, SGB*) (1976, as last amended in 2014), Book One – General Part, Paragraphs 62 and 65.
- 95 France, Ministry of Justice (2013a and 2013b); European Network of Guardianship Institutions (2011), p. 29; Guardians Against Child Trafficking and Exploitation (GATE) (2012b), p. 35.
- 96 National Association of Border Assistance for Foreigners (*Association nationale d'assistance aux frontières pour les étrangers, Anafé*) (2013); Arbeitsgemeinschaft Dritte Welt (2013); Germany, Hamburg Behörde für Arbeit, Soziales, Familie und Integration – Amt für Familie (2013); Guardians Against Child Trafficking and Exploitation (GATE) (2012a), p. 37.

- 97 Netherlands Forensic Institute (2011).
- 98 United Kingdom, *B v. the London Borough of Merton* (2003).
- 99 United Kingdom, Visas and Immigration (2014).
- 100 *Ibid.*; United Kingdom Border Agency (2011).
- 101 European Asylum Support Office (2013).
- 102 UN, Committee on the Rights of the Child (2013), point 89.

## Promising practice

## Providing border forces with guidance and training

United Kingdom Border Force officers are trained in the protection of children as part of their general training. Each airport team has an officer trained in interviewing children. Specific guidance on identifying child trafficking is available through an e-learning tool developed by End Child Prostitution in Asian Tourism, a global network of children's rights organisations. The National Crime Agency's Child Exploitation and Online Protection Centre has also developed a Strategic Threat Assessment on child trafficking, which contains profiles used by front-line agencies to identify child victims.

Children undergoing second-line checks may also receive an information leaflet, 'Children travelling to the UK', in addition to the standard information for the check (form IS-81). Both documents are available only in English, but an interpreter is called in for an interview if the child does not speak English or has no language in common with the border officers.

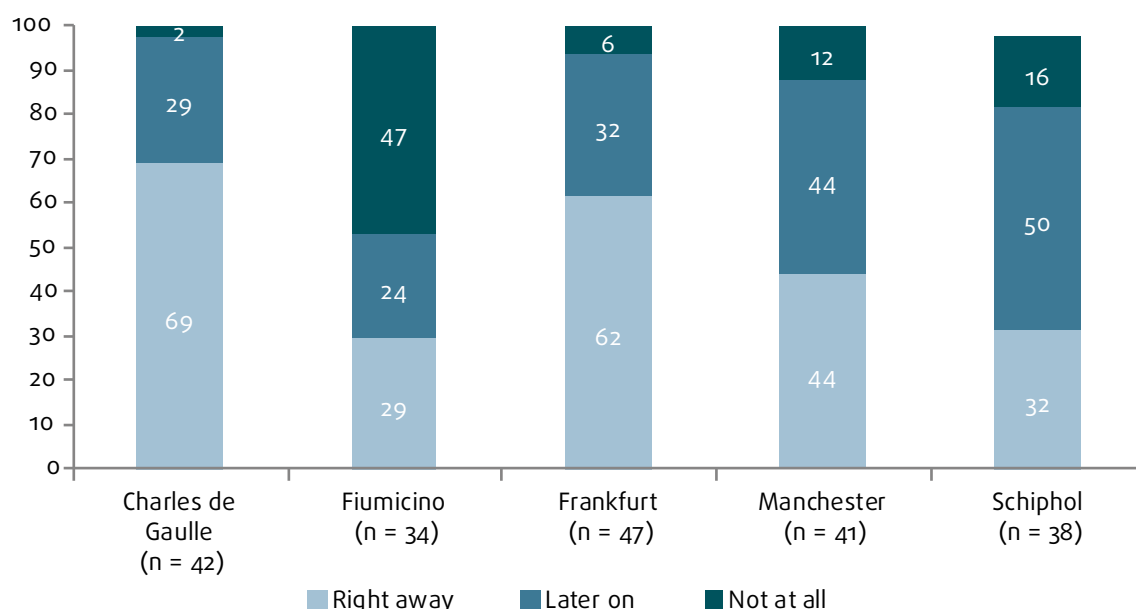
Source: UK Border Force, 2014

## Checking parental custody or consent

General entry controls – not specifically relating to third-country national children – commonly verify parental custody or permission in cases of children travelling with only one parent, different surnames and unrelated adult company. To do so, border authorities may call the other parent, verify authorisation letters, request birth certificates or consult various databases. If border guards consider the child old enough, they may ask whether the accompanying adult is one of its parents. Shift leaders at Schiphol also mentioned that they may consult officers in the United Kingdom and the United States, who can look up names in their national databases.

Border officers at Manchester explain to passengers why they have been stopped and asked additional questions by providing a leaflet, 'Children travelling to the UK'.<sup>103</sup> The leaflet includes advice on the documents passengers could carry in the future as evidence, such as birth or adoption certificates showing the relationship with the child, divorce or marriage certificates, or a letter from the child's parent or parents authorising the accompanying adult to travel with the child and providing contact details.

Figure 18: Border guards providing information on rights in a way that can be understood by the child (%)



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

Non-response per airport: Charles de Gaulle, n = 3; Fiumicino, n = 6; Frankfurt, n = 2; Manchester, n = 3; Schiphol, n = 6.

Source: FRA, Border guard survey, 2012 (question 28)

<sup>103</sup> United Kingdom, Border Force (2013).

Table 7: Temporary guardianship and representation arrangements at airports

Airport	Who	Legal source
Charles de Gaulle	Ad hoc administrator	Ceseda Article L221-5
Manchester	Responsible adult (no representation functions)	
Frankfurt	Youth welfare office	Social Code, Book VIII, Paragraph 42
Schiphol	Nidos (guardianship institution)	Civil Code, Article 1: 253r

*Note: No temporary representation arrangement exists for unaccompanied children at Fiumicino airport, as they are normally transferred to the competent local authority.*

*Source: FRA, 2013*

If doubts about parental consent cannot be resolved, border guards usually first inform their supervisor (92 %) and then call an interpreter if necessary (71 %). Officers also provide information on what will happen, although this differs by airport, as all officers provide this information at Frankfurt and Manchester and only 50 % do so at Fiumicino.

### Providing information

A majority of border guards say that if they identified a separated child they would also try to inform the child about their rights in a child-friendly way (83 %). However, this is not always done immediately, and differences among airports are again significant, ranging from 98 % at Charles de Gaulle to 53 % at Fiumicino.

### 3.3.2. Preliminary representation of separated children at the airport

Initial decisions on where to refer the child are usually taken during the second-line check, where immediately applicable procedures are determined and initial placement is arranged. At this stage, that an independent representative should be present to ensure that the child's best interests are protected.<sup>104</sup>

Table 7 provides an overview of the temporary guardianship or representation arrangements in place to support children at the five airports. At Charles de Gaulle and Manchester airports, a person supporting the child normally meets him or her at the airport. At Frankfurt and Schiphol, children are generally referred to the care of organisations present in the country, although in some cases representatives from these services may also meet the child at the airport. At Fiumicino, unaccompanied children are allowed entry and transferred to a reception facility. No temporary guardians are

nominated if an unaccompanied child remains in the transit zone for some reason.

With regard to the procedures described in the following paragraphs, room for improvement can be seen in: timeliness of referral, scope of tasks, professional training, personal presence and contact with the child, remuneration, access to files, and availability, capacity and continuity of assistance.

If a child is refused entry at Charles de Gaulle, the border police must immediately inform the prosecutor, who appoints an ad hoc administrator 'without delay'.<sup>105</sup> The ad hoc administrator's tasks are to assist the child in all administrative and judicial procedures which relate to his or her stay in the waiting zone or holding centre, entry to national territory and asylum procedures.<sup>106</sup> None of the legal texts concerning transit zones, however, mention this administrator's obligation to act in the child's best interests. They do not have to be present during second-line interviews. During the research, they were also observed to be absent during OFPRA hearings. They may fulfil their function merely nominally, never seeing the child,<sup>107</sup> perhaps because of a shortage of ad hoc administrators.

Ad hoc administrators interviewed also reported obstacles to accessing the border police's dossiers on the children, which they should be able to request at any time.<sup>108</sup> Stakeholders said that difficulties mainly arise from the prosecutor's often late nomination of an administrator and from insufficient coordination among different stakeholders. These obstacles may prevent the administrator from effectively monitoring the child's case during the check and stay in the waiting zone.<sup>109</sup> It appears

<sup>105</sup> France, Ceseda, Art. L 221-5, as modified by Law 2006-911, Art. 48.

<sup>106</sup> France, Ceseda, Art. L. 221-5; France, Circular no. CIV/01/05 (2005).

<sup>107</sup> FRA (2010b).

<sup>108</sup> France, Ceseda, Art. L. 221-5.

<sup>109</sup> France, Human Rights Watch (2009), pp. 20-21.

<sup>104</sup> See also FRA (2014).

that, in some cases, ad hoc administrators are not informed of the procedures border police conduct.

*During the hearing with the Judge of Liberties and Detention, the ad hoc administrator discovered that the police had conducted research and contacted the child's mother in Armenia. The mother told police she would welcome her son back, saying that he could come back to Armenia. [...] There is a real lack of information for the ad hoc administrator, who has not been informed of this procedure nor of its results, especially as the ad hoc administrator had also tried to contact the mother.*

(Focus group interview, Charles de Gaulle)

Ad hoc administrators receive a fixed lump sum for each assignment, ranging from €50 to €100, which covers all expenses incurred.<sup>110</sup> Such low compensation does not encourage new people to commit to working with third-country national children.

At Manchester airport, Border Force officers have a legal obligation to exercise immigration procedures having regard to the need to safeguard and promote the welfare of children.<sup>111</sup> A responsible adult is always present during interviews with children, including during second-line checks. Officers can choose such a person from a pool of trained volunteers, available based on an agreement with the airport chaplaincy. The responsible adult, however, does not represent the child's best interests, and his or her mandate mainly entails ensuring that the child 'understands the questions which are being asked and that the police do not ask questions in a way which is confusing, repetitive or oppressive'.<sup>112</sup> Responsible adults need not have any immigration law expertise or fully understand the consequences of immigration decisions. Their mandate ends with the interview, which further limits their insight into how any follow-up affects the child's best interests.

If entry conditions are not met, the child is referred to the local authority children's services, officers of which collect the child at the airport and provide assistance. If the child does not seek asylum, officers also notify the relevant Embassy or High Commission in the United Kingdom, as well as the authorities in the country of origin, in order to reunite the child with his or her family.

At Frankfurt airport, a guardian is not usually present or appointed when the police and asylum authorities initially speak with children. Onward referral to the Frankfurt youth welfare service is immediate

and was found to work well in practice.<sup>113</sup> Although the youth welfare service is in principle the competent authority to be involved, even if entry has not (yet) been authorised and the child is in the transit area, access to a guardian may be difficult for 16- and 17-year-olds who are refused entry and do not request asylum as children of this age group have been considered to have administrative competence.

If the child seeks asylum, Inspection V informs the regional Hesse government office, the social ministry of Hesse and the youth welfare service, which is responsible for taking the child into care in the absence of a personal custodian.<sup>114</sup> If the child is under 16, Inspection V also directly informs the regional court, requesting it to initiate measures to ensure the child's best interests. These measures include the appointment of a guardian, who, in most cases, is assigned to the youth welfare service of Frankfurt. Whereas practice varies across the German federal states, in Hesse, a lawyer competent in asylum and immigration law is automatically appointed as a complementary guardian for children under 16.<sup>115</sup>

For 16- and 17-year-old asylum seekers, the youth welfare office informs the regional court of the child's presence, asking the court to initiate measures to ensure the child's best interests within three working days from first contact. The youth welfare office then carries out a specific 'clearing procedure', whereby social workers register personal details, make an initial assessment of the child's age and enquire about his/her itinerary and possible family ties in Germany.<sup>116</sup> Access to legal assistance in the form of a complementary guardian is subject to the decision of the responsible family court for 16- and 17-year olds.<sup>117</sup> Airport social services, run by the NGOs Caritas and Diakonie, provide preliminary procedural advice to asylum seekers, including children specifically, and support the referral of separated children.

If a child is refused entry and does not request asylum, the youth welfare office is also to be informed.<sup>118</sup> However, 16- and 17-year-old children are usually not taken into the care/custody of the youth welfare

<sup>110</sup> France, Prime Minister (2003), Art. 10; France, Prime Minister (2008).

<sup>111</sup> United Kingdom, Borders, Citizenship and Immigration Act 2009, Chapter 55.

<sup>112</sup> United Kingdom, Home Office (2013).

<sup>113</sup> Bundesfachverband Unbegleitete Minderjährige Flüchtlinge (BUMF) (2013).

<sup>114</sup> Germany, Germany, Social Code (Sozialgesetzbuch, SGB) (1976, as last amended in 2014), Book VIII (1) 3, para. 42.

<sup>115</sup> Germany, Social Ministry of Hesse (Hessisches Sozialministerium) (2008), II.2; Germany, BUMF (2013); Germany, BUMF (2012).

<sup>116</sup> Germany, Social Ministry of Hesse (Hessisches Sozialministerium) (2008).

<sup>117</sup> Ibid.; Germany, BUMF (2013); and Germany, BUMF (2012).

<sup>118</sup> Germany, Social Code (Sozialgesetzbuch, SGB) (1976, as last amended in 2014), Book VIII (1) 3, Paragraph 42.

office, which means that the process of appointing a guardian is not triggered.<sup>119</sup>

At Schiphol, all activities related to separated children were transferred to the asylum procedure application centre in the town of Ter Apel as of 1 January 2013, even if asylum is not requested. The Dutch border police organise the transfer of the child by taxi from the airport to the application centre and inform Nidos, the Dutch guardianship institution, of the child's presence. Given this change in procedure, Nidos's mobile teams are no longer present at the airport, but they remain on call in case the child's parents are arrested and the child has to remain at the airport. Upon intake to the application centre, the child meets a guardian from Nidos as soon as possible to prepare his or her first interview with the immigration police. After the interview, the guardian decides on the most suitable form of care and placement for the child. The guardian also checks whether or not the child is a victim of human trafficking. If the child has been trafficked, he or she is referred to a protected reception facility.

At Fiumicino, separated children are allowed entry and referred to local authorities' social services based on the national legislation applicable to unaccompanied minors.<sup>120</sup> If the transfer is delayed for some reason, no temporary guardianship arrangement exists while the child remains in the transit zone.

A guardian must be appointed before the asylum procedure starts.<sup>121</sup> Upon receipt of an asylum application, the airport immigration office immediately transfers the application to the juvenile court in order for it to appoint a guardian in line with the Civil Code.<sup>122</sup> As a general rule, a guardian is appointed even if the child does not apply for asylum, in line with the Civil Code (Article 343).<sup>123</sup> There is no guardianship arrangement for the age-assessment phase (which normally involves a medical test at the hospital in Ostia).

## Promising practice

### Ensuring legal aid for separated children

Although children are not required to have legal representation in administrative procedures in the Netherlands, the Dutch Legal Aid Board assigns a lawyer to every separated child, pursuant to the law on legal aid. The child, the guardian and the lawyer the board assigns work together on completing the child's asylum request or possible appeals.

Germany does not provide free legal advice under its residence law, but the church refugee service, in coordination with BAMF, assigns separated asylum-seeking children arriving at Frankfurt airport a complementary guardian competent in asylum and residence law (*Verfahrenspfleger*). This was agreed in the context of a dialogue forum involving participants from UNHCR, Pro Asyl, Hesse Refugee Council, the church refugee service, the association of lawyers, the federal police, regional government and the BAMF.<sup>124</sup> The appointment of a *Verfahrenspfleger* compensates for the fact that guardians may not be able to provide legal advice in the specific fields of asylum and residence. The youth welfare service covers the costs. Complementary guardians have not, up to now, usually been assigned to 16- and 17-year-old third-country national children as, under residence law, they were considered to have legal capacity. A forthcoming change in the asylum procedure and residence laws will raise the age limit of third-country national children's legal capacity to 18.<sup>125</sup> With the agreement of the dialogue forum participants, however, they may be provided such guardians during the interview with BAMF at Frankfurt airport.

Source: UNHCR and BAMF, 2014 and Dutch Legal Aid Board, 2014

### 3.3.3. Accommodation arrangements

Unaccompanied children in airport asylum procedures are transferred to separate facilities connected to the airport. At Frankfurt, they may be accommodated at the airport Asylum Centre for up to seven days. There, specialist staff, available 24 hours a day, deal with children under the age of 16. Their stay is kept as short as possible, because the facility does not meet the standards of a youth support facility under the youth protection law (Social

<sup>119</sup> Germany, BUMF (2012), pp. 1, 6.

<sup>120</sup> Italy, Parliamentary Commission for Children, Law 184/1983; Italy, Civil Code, Art. 343, 344, 357, 402 and 403; Italy, Legislative Decree No. 25 of 28 January 2008, Art. 19; Italy, Council of Ministers, Decree No. 535. The duty to transfer a child to a safe place derives from the combination of these provisions. For asylum-seeking children, see Italy, Ministry of the Interior (2006).

<sup>121</sup> Italy, Legislative Decree No. 25 of 28 January 2008, Articles 19 (1) and 26 (5).

<sup>122</sup> Italy, Civil Code, Art. 343s.

<sup>123</sup> See the information note on the Ministry of Interior website at <http://www.interno.gov.it/mininterno/export/sites/default/temi/minori/sottotema005.html>.

<sup>124</sup> Dialogforum Flughafenverfahren, *Annual report 2010*, p. 2.

<sup>125</sup> Germany, *Deutschlands Zukunft gestalten*, coalition treaty, p. 77.



Code, Book VIII (*Sozialgesetzbuch Aches Buch, SGB VIII*)).<sup>126</sup> If entry is allowed following the airport procedure, children (aged eight to 18) are usually taken into care at a clearing house (Valentin Senger House) run by the youth welfare office.<sup>127</sup> The 'ZAPI mineurs' holding area at Charles de Gaulle provides shelter for no more than six children. At Schiphol, all separated children are immediately transferred to Ter Apel, the largest reception centre for asylum seekers in the Netherlands, upon referral by the Royal Marechaussee. Nidos then decides on the most suitable form of care and placement and applies for custody.

At Fiumicino, separated children are transferred to a reception facility. Local authorities' social services are responsible for their care and well-being. Child victims of trafficking are referred to the prosecutor of the juvenile tribunal and the local prefecture (*Prefettura, Ufficio Territoriale del Governo*). They are granted social protection in Italy and get a specific residence permit.<sup>128</sup>

Children allowed entry at Frankfurt airport on grounds other than an asylum application are accommodated in other Hessen youth support facilities and remain entitled to support under the Social Code, Book VIII. Children refused entry, who either did not request asylum or received a negative decision, become subject to return procedures. They may be accommodated in special children's facilities at the airport until their return. Return of separated children whose asylum applications were rejected at the airport takes place, although numbers are not available.<sup>129</sup> At Fiumicino, no reliable information could be collected on separated children who do not fulfil entry conditions and do not seek protection. At Manchester airport, inadmissible children are not detained in Pennine House and would generally be granted temporary entry. Local social services are responsible for arranging their accommodation, but they may not always be available to pick them up quickly, depending on the time of day.

### 3.4. Access to protection for persons with false documents

Persons arriving with false documents enter a criminal procedure in all five Member States, as provided for in their penal codes. Not all passengers are able to disclose their situation during the border check or wish to do so on their own initiative. It is particularly unlikely that victims of human trafficking will do so. The research found that procedures applying to criminal offences, including interviewing procedures, do not always pay sufficient attention to grounds for protection, which go unnoticed unless officers proactively identify them.

Article 8 of the EU Human Trafficking Directive protects victims of trafficking from prosecution for crimes that they have been forced to commit, which may include passport offences. Similarly, states must not impose penalties on refugees who enter without authorisation if they come directly from a territory where their life or freedom was threatened, according to Article 31 of the 1951 UN Convention Relating to the Status of Refugees. However, asylum seekers and, if not identified, victims of human trafficking, may initially be arrested for document fraud and detained.

As noted above, border authorities do not systematically ask passengers if they wish to request asylum unless they show clear signs of fear. If officers are insufficiently trained in recognising indicators of protection needs, this can lead to incorrect referral and pose problems for further claims. At Schiphol, the questionnaire used by the forgery unit aims to find out if the passenger is an asylum seeker, but this does not guarantee that persons in need of international protection are identified. For example, a young Tibetan smuggled to Schiphol with a false passport found out about the possibility of requesting asylum only from the detention facility interpreter, rather than at the second line or during interviews with the claims, identification and Article 4 unit. Other, similar cases were reported at Schiphol. For a family from Iraq and a woman travelling with her baby from Afghanistan, border authorities adhered strictly to the criminal procedure. Only with the help of NGO lawyers could asylum be successfully claimed.

Those arriving with false passports face greater difficulties in gaining access to protection mechanisms at other airports, too:

*If, for example, somebody has come through on false documents, what will happen is that the police will be there then to arrest them and they'll be treated through the criminal justice system.*

(Greater Manchester Immigration Aid Unit staff member, interviewed at Manchester)

126 Germany, response to Kleine Anfrage der Abg. Fuhrmann on 11 January 2012.

127 Bundesfachverband Unbegleitete Minderjährige Flüchtlinge (BUMF)/UNHCR (2010).

128 Italy, Immigration law No. 40/1998, Art. 18.

129 Germany, response to Kleine Anfrage der Abg. Fuhrmann on 11 January 2012.

Passengers trying to pass the border check with false documents should be encouraged to come forward with possible grounds for protection. This could be done by displaying information in the waiting area for second-line checks. Manchester airport uses a poster, which informs passengers, in several languages, of the need to claim asylum immediately at the point of entry.



## Conclusions

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

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

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

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

Upon identification, border guards arrange the referral of persons needing protection to specific protection services provided by the state, NGOs or local networks. National procedures are standardised, but implementation depends on the air-

port. Persons identified as requiring protection are informed of the relevant procedures. This works particularly well at airports where border guards are able to rely on specialised teams or services to provide this information. Whether officers provide information on rights and procedures sooner or later differs significantly by airport.

## Asylum seekers

Asylum seekers are generally expected to identify themselves as such, either during the border check or the procedures following refusal of entry. The research shows, however, that protection needs often surface only at later stages of immigration control or upon detention, once passengers receive more information and have had time to understand their options. They may also have already been referred for other procedures, for example criminal investigation for irregular entry or the use of false documents. Border guards should maintain efforts to identify asylum seekers throughout the immigration procedure.

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

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

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

## Presumed victims of human trafficking

Difficulties in identifying victims of human trafficking are inherent to the nature of the crime. Victims may be unaware of their situation; the trip is often arranged with authentic travel documents and work permits in line with entry requirements. In addition, victims may not be able to disclose their situation during the check because of its short duration, their distrust of the authorities and/or a lack of awareness of victims' rights. As groups are handled without necessarily addressing all accompanying passengers, depending on the incidence of obvious risk factors and considering the time pressure during the check, the scope for interaction and proactive identification of risks is limited. A large number of victims can be expected to pass unnoticed. Successful identification thus hinges on officers' observation and communication skills, their experience and the intelligence they have received.

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

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

## Children at risk

Children travelling alone – without parental consent or the company of adults responsible for their care – may be at particular risk of exploitation, including of human trafficking. Border guards must check systematically for signs of such risks. Checks should include the verification of parental consent and, if

relevant, minority of age. Officers can take different approaches to verifying parental consent or custody (calling the parent, or the other parent, verifying authorisation letters, requesting birth certificates, consulting various databases). However, a recurrent difficulty at all airports is the initial assessment of age, as one factor indicating vulnerability, during the border check. In some cases, officers appeared to rely too heavily on documentary evidence of adulthood, such as passports.

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

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

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





## FRA opinion

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

### Identification

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

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

Border management authorities could further

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

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

### Referral

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

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

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

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



# 4

## Right to an effective remedy

### Charter of Fundamental Rights of the European Union

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

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

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.

Persons affected by a state's action must have the option to complain and seek effective remedy. In the context of entry controls at airports, this is relevant mainly in four situations: complaints about the conduct of border checks; appeals against decisions to refuse entry; appeals against rejections of asylum applications processed at the airport; and appeals against detention orders when passengers are placed in a holding facility. This chapter looks at passengers' options for taking such action at airports.

Access to information is a practical prerequisite for such steps. Passengers who are stopped for immigration purposes or refused entry must be informed about the reasons and related procedures. The Schengen Borders Code details the specific information to be provided in both cases:

1. Third-country nationals subject to a **second-line check** shall be informed of the purpose of, and procedure for, such a check (Article 7 (5) of the Schengen Borders Code). Passengers further have a right to 'request the name or service identification number of the border guards carrying out the thorough second line check'. With the 2013 revision of the Schengen Borders Code, this information must be provided in writing.<sup>130</sup>
2. Upon **refusal of entry**, passengers must be informed of the reason for the refusal by means of a standard form provided in Annex V, Part B of the Schengen Borders Code, including information on the right to appeal. Passengers refused entry should also receive a list of contact points able to provide legal assistance (Article 13 (3)).

Member State administrative law provides for the option to complain about state action as a basic principle of good governance. The EU Charter of Fundamental Rights sets out the right to good administration for every person, including the right to be heard before a measure with an adverse effect on the individual is taken and to have any damages made good (Article 41). Article 41 of the Charter refers only to institutions and bodies of the EU, but the Court of Justice of the European Union (CJEU) has also used it to scrutinise Member State action.<sup>131</sup> In *Zakaria*, the CJEU was asked whether the Schengen Borders Code requires an effective remedy for document checks carried out in an offensive manner. The CJEU ruled that Article 13 of the Schengen Borders Code obliges Member States to establish means of obtaining redress only for decisions to refuse entry.

<sup>130</sup> Regulation (EU) No. 610/2013, OJ 2013 L 182/1, Art. 7 (5).

<sup>131</sup> CJEU, C 383/13 PPU, *M.G. and N.R. v. the Netherlands*, 10 September 2013.

However, if inappropriate behaviour is governed by EU law, Member States must provide 'for the appropriate legal remedies to ensure, in compliance with Article 47 of the Charter, the protection of persons claiming the rights derived from Article 6 of Regulation No. 562/2006' on the conduct of border checks in respect of human dignity, applying measures proportionate to the objectives pursued and in a non-discriminatory way.<sup>132</sup>

The right to an effective remedy enshrined in Article 13 of the ECHR covers violations of the rights guaranteed by the ECHR. The ECtHR has held that an appeal must immediately suspend a return measure against an asylum seeker who faces potentially irreversible effects contrary to Article 3 of the ECHR.<sup>133</sup>

## 4.1. Complaints about the conduct of border checks

When asked if they wanted to complain about the conduct of the second-line check, only 12 % of passengers interviewed replied positively (28 out of 242), although an additional 30 passengers did not reply to this question. Results at Charles de Gaulle and Fiumicino are above average: 19 % (10 out of 53) and 15 % (seven out of 47), respectively, wanted to complain. Overall, the number of complaints on the conduct of checks registered at the airports was low. According to information border management authorities provided FRA, for example, in 2012, 111 complaints were registered in Frankfurt, 113 in Manchester and 217 in Schiphol. Complaints relate more frequently to queuing, waiting time and facilities than to treatment during the border check or upon refusal of entry.

### 4.1.1. Complaint procedures

Border management authorities at Manchester, Frankfurt and Schiphol airports primarily rely on internally managed complaint systems. At Charles de Gaulle and Fiumicino airports, complaints are mainly lodged with independent bodies or administrative courts. The Rights Defender (*Défenseur des droits*) in France<sup>134</sup> or the judiciary in Italy (*Tribunale Amministrativo Regionale*) appear to be the main avenues for processing complaints about misconduct during

a border check. In Italy, judicial procedures can be lengthy (taking more than a year) and are expensive.

Manchester airport illustrates how internal complaint mechanisms can work. There, the Central Allocation Hub provides a single point of contact for all passengers who wish to make a complaint, which can be done by email, letter, phone or fax, or face to face in English or Welsh. Complaints about minor misconduct, such as incivility, brusqueness or poor attitude, can be resolved locally. United Kingdom Border Force guidance outlines possible ways of resolving such complaints. Options include clarifying the issues with the customer, explaining operating procedures, agreeing further action and offering an apology if appropriate.<sup>135</sup> Complaints on serious misconduct are usually assigned to the Professional Standards Unit. United Kingdom Border Force guidance includes a formula test for determining signs of possible discrimination, which would constitute serious misconduct.<sup>136</sup> If there is strong initial evidence that the passenger's treatment can be explained by factors other than race, including situations where a passenger complains that an immigration decision allegedly reflects an implicit racist attitude, the case is usually referred for local resolution.

Information on the kinds of complaints received, how they are processed and how quickly they are responded to is not usually made public. This has raised concerns, even in Member States with detailed complaint procedures. The Chief Inspector raised the issue in the United Kingdom:

*One of the first recommendations I made on a complaints inspection some years ago was that the agency should publish complaints information on its website. It was one of the few organisations that didn't publish anything about complaints. Any organisation needs to consider complaints handling information as valuable management information.*

Independent Chief Inspector of United Kingdom Borders and Immigration

### 4.1.2. Access to information

Complaint procedures become accessible only if information is made available to passengers.

#### Information on the purpose and procedure of second-line checks

Interviews with passengers showed that many did not understand why they were undergoing second-line checks, what the next steps were or what their rights in the procedure were. Overall, 21 % (55 out of 259) said they had not received a clear

<sup>132</sup> CJEU, C-23/12, *Mohamad Zakaria v. Latvia*, 17 January 2013.

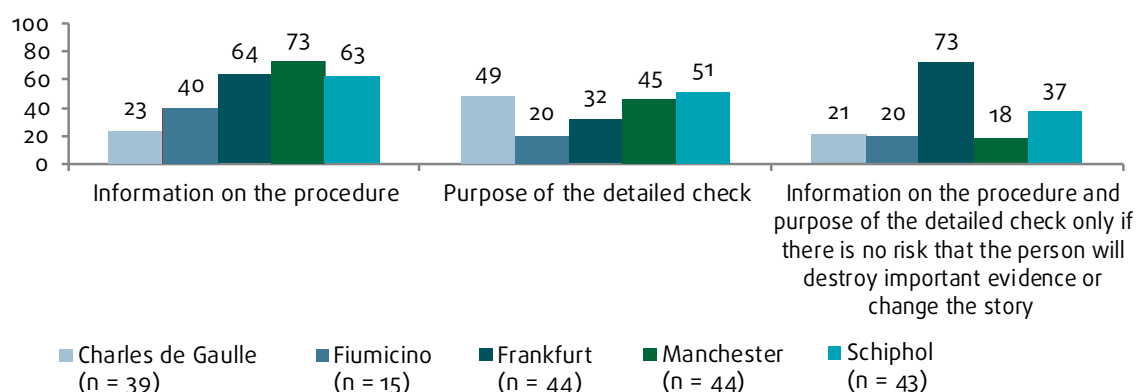
<sup>133</sup> ECtHR, *Gebremedhin v. France*, No. 25389/05, 26 July 2007; ECtHR, *Hirsi Jamaa and Others v. Italy* [GC], No.27765/09, 23 February 2012, paras. 197-207.

<sup>134</sup> For a complaint form, see: <https://formulaire.defenseurdesdroits.fr/defenseur/code/afficher.php?ETAPE=informations>.

<sup>135</sup> United Kingdom, Border Agency (2012a).

<sup>136</sup> *Ibid.*, point 7.2.

Figure 19: Information border guards provide when carrying out a second-line check (%)



Note: Respondents who did not provide an answer to a given item have been excluded when computing the results. Non-response per airport: Charles de Gaulle, n = 6; Fiumicino, n = 1; Frankfurt, n = 0; Manchester, n = 1; Schiphol, n = 1.

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

explanation of the purpose and procedure of the second-line check, although the Schengen Borders Code sets out such an obligation. Results for Fiumicino (26 %, 14 out of 53) and Frankfurt (23 %, 13 out of 57) were slightly above average. For Schiphol, where border guards gave an oral explanation only, results matched the overall average. Upon enquiring about the status of the check, several passengers were only told to wait, sometimes for very long periods of time, without further information. This causes frustration and impatience during the check. At Frankfurt, for example, a lack of information was the main complaint and the main reason for dissatisfaction with the border check.

The findings of the border guards survey corroborate this (Figure 19). On average, 48 % of officers at all airports said they do not usually inform passengers about the procedure of the check and 61 % do not inform them about the check's purpose. Even where there is no risk that a person might destroy important evidence or change his or her story, only a minority of officers would provide this information, except for officers at Frankfurt airport.

Most airports provide information on the second-line check procedure in written form, but they do not always disseminate it or make it available in the languages needed. In some cases (Frankfurt, Manchester), information material is in legal language. The information may not be specific to the individual situation of the person undergoing a second-line check (Frankfurt). This may cause confusion and require an interpreter in some cases. Interpreters can be called in by phone or in person, but interpretation during the check is not always mandatory. At Fiumicino, passengers are not given any written material and there is no visible information material concerning the second-line check.

Pending completion of the second-line check, passengers' access to communication with the outside world may be limited. The use of their mobile phones may be restricted. Such restrictions may be lifted if this could help to resolve a case, for example if a call could produce a requested document. In the passenger survey, 64 % replied that they did not have or did not ask for access to a telephone or the internet during the waiting time or check.

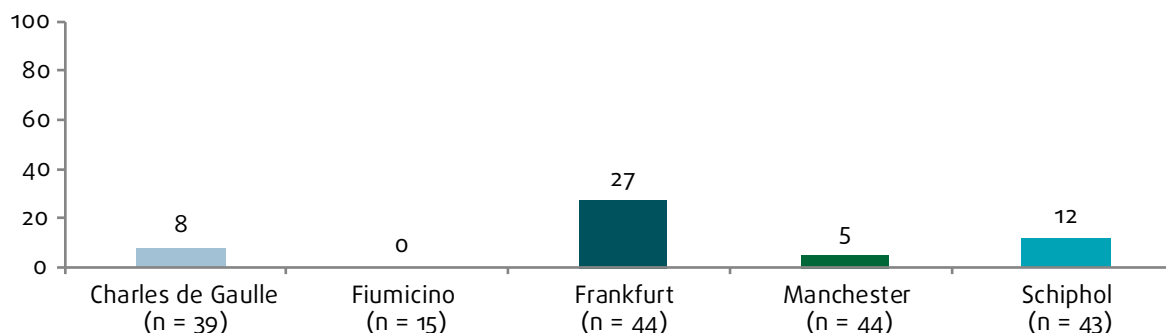
### Specific information on complaint options

According to the border guards survey, only 10 % generally provide information on how to complain about the check's performance when carrying out a detailed inspection, with significant variations by airport (27 % at Frankfurt, 0 % at Fiumicino). Upon refusal of entry, an overall majority of officers (64 %) would not always inform passengers of where to complain, although 51 % of officers would do so at Frankfurt (Figure 20).

The research results reflect different policies concerning the provision of information on complaint options at the airports. At Schiphol, according to shift leaders, passengers are informed of ways to complain only upon explicit request. At Charles de Gaulle, police officers are obliged to file every complaint that a person addresses to them. However, no officers interviewed said that they had ever received a complaint about conduct during immigration control.

At most airports, the availability and visibility of information material could be improved. Where leaflets or complaint forms exist, their availability in different language versions is limited. At Manchester, passengers receive a complaints form providing the email and postal address of the United Kingdom Border

Figure 20: Border guards providing information on how to complain about the performance of the check when carrying out a second-line check (%)



Note: Respondents who did not provide an answer to a given item have been excluded when computing the results. Non-response per airport: Charles de Gaulle, n = 6; Fiumicino, n = 1; Frankfurt, n = 0; Manchester, n = 1; Schiphol, n = 1.

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

Force Complaints Allocation Hub, albeit only in English. Fiumicino airport has no forms or information available on complaints, nor is there a poster showing how to complain about treatment during the check. A leaflet by the Royal Marechaussee informs passengers what complaints can be submitted, how they are processed and which elements to include.

#### Promising practice

#### Explaining procedures and complaint options

At Schiphol airport, a poster explaining customs officers' gate checks is located in plain view of where passengers disembark and enter the lounge gate. It explains in simple language and pictures the customs check at the gate and ways to complain and provides a web address for more information. Border police could replicate this practice for immigration-related checks.

Source: Non-participant observations, 2012

### 4.1.3. Responses to complaints made at the airport

Immediate responses to complaints differ. If passengers complain about treatment during the check, they would probably receive a form at Schiphol and Manchester (77 % and 64 % of officers provide a form always or often) informing them about where and how to complain. Oral information is also more likely to be provided at Schiphol (60 %) and Manchester (44 %), as well as at Frankfurt (51 %). At Fiumicino and Charles de Gaulle, most officers at these two airports would say that they were only doing their job (90 % at Charles de Gaulle, 80 % at Fiumicino).

Officers also mentioned other ways of responding to complaints, such as explaining again the check's procedure or trying to calm the passenger down. Interviews and observations also showed, however, that some officers' responses to complaints were mocking or inappropriate. Examples included referring to children as an 'entry ticket' to France or telling passengers to shut up (see Chapter 1.2).

## 4.2. Appeals against non-admission

Third-country nationals appealing the decision to refuse entry encounter different procedures, information and options for legal support, depending on the Member State of the airport. An appeal does not usually suspend removal. It would have to be continued from a third country, which poses practical difficulties. This further restricts the time frame for appeals in practice. Other recurrent challenges relate to a lack of information, a lack of access to means of communication, translation and interpretation and movement restrictions for passengers in the transit zone (see also Chapter 1.1.3).

### 4.2.1. Appeal procedures

Article 13 (3) of the Schengen Border Code provides for the right to appeal but does not regulate the procedure or other details. As long as procedural and substantive safeguards set forth in the ECHR and the EU Charter of Fundamental Rights are respected, EU Member States are free to regulate their appeals procedures. National law typically sets forth conditions with which appeals must comply, such as timelines, languages and other formalities (see also Table 8). Appeals must also be reasoned. This is usually only possible with legal assistance and interpretation.



Table 8: Aspects of appeal procedures concerning refusal of entry

Airport	Time frame	Legal basis for appeal	Automatic suspensive effect	Interim measure	Legal basis for interim measure
Charles de Gaulle	Two months (four months if the third-country national lives abroad)	Administrative justice code, Articles R421-1, R421-7 and L. 521-1	No	May be requested	Administrative justice code, L. 521-1
Fiumicino	30 days (60 days if the person is outside Italy)	Legislative decree No. 150/2011, Article 18 (3), which may be applied by analogy	No	Unclear: not expressly provided for; can only be inferred from general rules	Legislative decree No. 150/2011, Article 5, which may be applied together with Article 700 of the civil procedure code
Frankfurt	One month	Basic Law, Article 19 (4); Code of Administrative Court Procedure, Articles 124 and 132	No	none	none
Manchester	No in-country appeal unless entry is cleared and appeal rights are not limited by law; 28 days for out-of-country appeals	Nationality, Immigration and Asylum Act 2002, Sections 82, (103A (1) and 103B); Human Rights Act 1998, c. 42	Not relevant, as no in-country appeal	none	none
Schiphol	Four weeks	Aliens Act, Articles 77 and 83 (a) (1) (for administrative review); General Administrative Law Act, Article 8 (1) (for judicial review)	No	May be requested	Aliens Act, Article 78, in conjunction with the General Administrative Law Act, Article 8 (81)

Source: FRA, 2013

In France, Germany and the Netherlands, passengers at all airports have in-country appeal rights against decisions to refuse entry. In Italy, the law is unclear: there is no express regulation of the right to appeal a non-admission decision. In the absence of other legal sources,<sup>137</sup> provisions regulating appeals against expulsions could possibly be applied by analogy. In the United Kingdom, only persons with a valid visa have a full right to in-country appeals, provided they have important immigration documents such as a passport, identification card or travel document and satisfy other conditions.<sup>138</sup> Although an appeal may also be submitted from

outside the United Kingdom,<sup>139</sup> no formal channel for doing this seems to exist. and no such applications were lodged between 1992 and 2004.<sup>140</sup>

The short time period between a decision to refuse entry and actual removal is a key challenge in complying with existing procedures. This is especially true because an appeal usually does not suspend removal. Immediate removal is possible at all airports, although at Charles de Gaulle and Schiphol those facing removal may request an interim measure suspending the decision's effect. At Schiphol, applying for this interim measure, according to Council of State case law, requires indicating the date of the removal, which is not always known, thus making it impossible to request such a measure in practice.

<sup>137</sup> General procedure of administrative law is not applicable. The Supreme Court (*Corte di Cassazione*) has clarified that the ordinary jurisdiction, not the administrative jurisdiction applies to appeals against expulsion and non-admission decisions. See Italy, Supreme Court (*Corte di Cassazione, Sezione Unite*), order of 10 June 2013, No. 14502; and Italy, Supreme Court (*Corte di Cassazione, Sezione Unite*), judgment 17 June 2013, No. 15115.

<sup>138</sup> United Kingdom, Nationality, Immigration and Asylum Act 2002.

<sup>139</sup> United Kingdom, Nationality, Immigration and Asylum Act 2002, Ch. 95.

<sup>140</sup> Information Centre about Asylum and Refugees (ICAR) (2004), p. 17.



Table 9: Available language versions of refusal of entry form/decision

Airport	Form	Languages
Charles de Gaulle	According to Schengen Borders Code Annex V	n.a.
Fiumicino	According to Schengen Borders Code Annex V	four (Italian, English, French, Spanish)
Frankfurt	According to Schengen Borders Code Annex V	10 (including Chinese, English, Spanish, German, Turkish, Ukrainian, Portuguese, Vietnamese and Russian)
Manchester	IS82A, IS82AR, IS82CR	English only (preformulated, tick boxes)
Schiphol	According to Schengen Borders Code Annex V	10 (Dutch, Chinese, Russian, English, German, Arabic, Portuguese, Turkish, Spanish, French)

Note: n.a. = information not available to FRA.

Source: FRA, 2013

At Fiumicino, the majority of non-admitted passengers fly back on the same day, and at Frankfurt within a few days. At Charles de Gaulle, passengers can indicate on the refusal of entry notification that they wish to benefit from a grace day (*jour franc*) before being removed.<sup>141</sup> Border guards do not, however, always inform third-country nationals about this right.<sup>142</sup> At Manchester, depending on flight availability, removal may be immediate.

## 4.2.2 Access to information

Upon refusal of entry, passengers at all airports receive a standardised form notifying them of the refusal, the next steps and their right to appeal the decision, which they must sign. At the four Schengen airports, this form corresponds to the one annexed to the Schengen Borders Code, indicating the reasons for the refusal and the right to appeal, in line with Article 13 (3), and is available in several language versions (see Table 9).

Perhaps unsurprisingly given the use of these forms, practically all the border guards confirmed that they inform passengers of the reasons for refusing entry (Figure 21). The survey results present a mixed picture on the provision of information on passengers' rights. The percentages of officers who indicated that they would always inform a person refused entry of his/her rights range from 33 % (Fiumicino) to 93 % (Manchester). Similarly, the percentage of officers providing advice on where to get legal assistance also differs by airport, ranging from 61 % (Schiphol) to 0 % (Fiumicino).

The results of the passenger survey strongly suggest that information on appeal rights and, to a lesser extent, the reasons for refusal of entry, are not provided systematically at all airports nor always understood when provided. Many passengers reported that in many cases information was either not given or not understandable.

The contradictory results may stem from border guards' reliance on the form, considering it enough to hand it out, while passengers neither understood it nor found it to contain sufficient information on appeals or follow-up procedures. It is also possible that passengers signed the refusal of entry form without reading it, did not understand the language or terms, or did not get a sufficient and clear explanation.

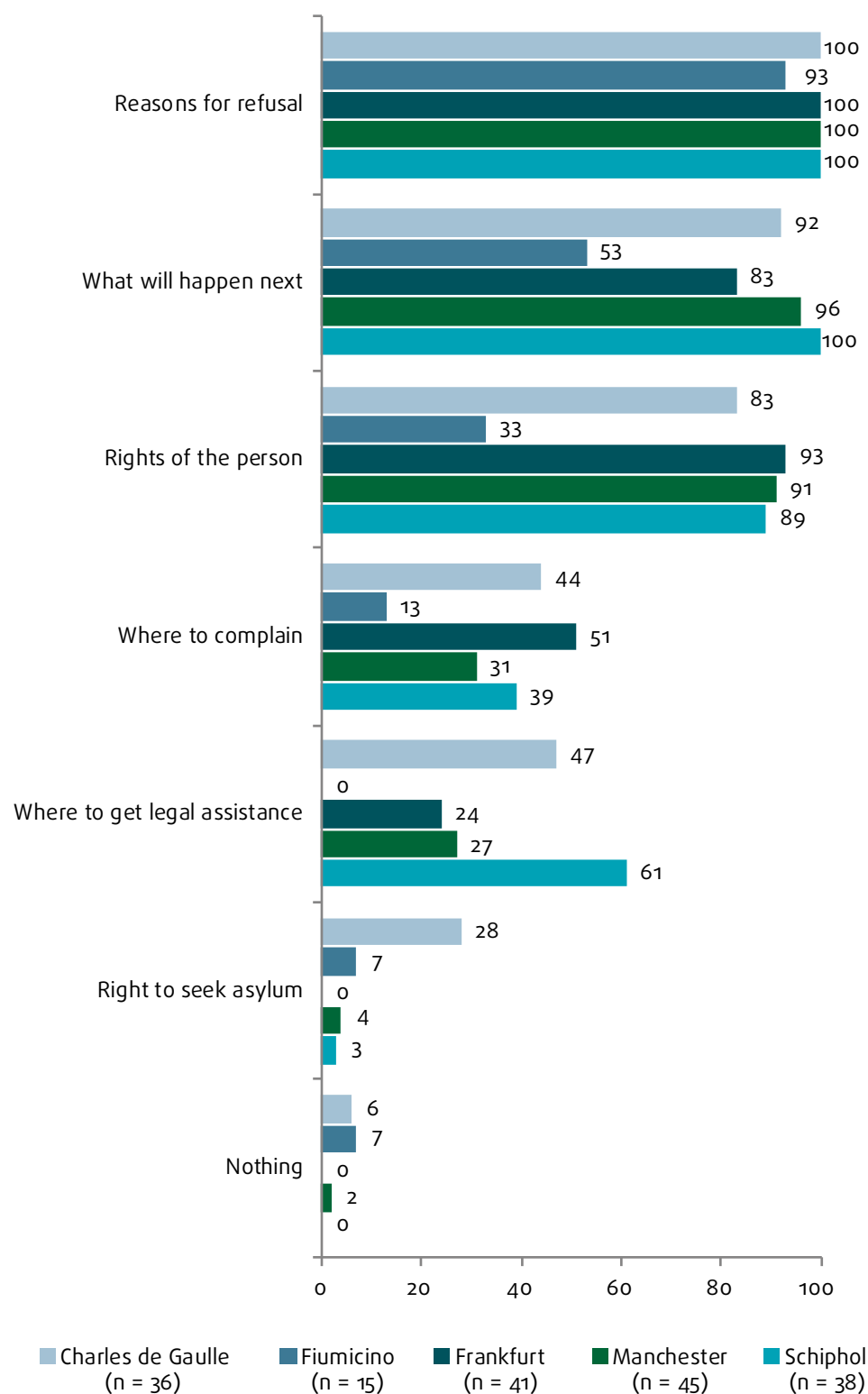
Overall, 69 % (64 out of 93) of passengers refused entry and interviewed at the four airports replied that they were not informed of their right to appeal the refusal of entry. While a majority of those who did receive this information understood the language in which it was provided (89 %, 25 out of 28), only a few understood the procedure very well (six out of 28) and 32 % (nine out of 28) not at all. At Schiphol, border authorities provide the form and give verbal information on appeal rights only upon request. At Frankfurt, Charles de Gaulle and Fiumicino, such information is not provided systematically to all passengers refused entry. While a majority of passengers interviewed said they were told why entry was denied in a language they understood (64 out of 70), only 32 received the reason in writing.

This suggests that, even leaving aside language difficulties, information on appeals is limited and/or difficult to understand because of its legal nature and/or the complexity of the procedures, which may best be explained both in writing and orally.

<sup>141</sup> France, Ceseda, Art. L 213-2.

<sup>142</sup> France, General controller of places of freedom deprivation (*Contrôleur général des lieux de privation de liberté*) (2009), p. 7.

Figure 21: Information border guards always provide upon refusal of entry (%)



Note: Respondents who did not provide an answer to a given item have been excluded when computing the results. Non-response per airport: Charles de Gaulle, n = 2; Fiumicino, n = 0; Frankfurt, n = 1; Manchester, n = 0; Schiphol, n = 5.

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

At Fiumicino airport, for example, out of 39 passengers refused entry only two said that they were given information on making an appeal in a language they understood. None received information about persons or organisations to contact to receive assistance with their appeal. Passengers at Fiumicino do not usually receive the refusal of entry form until they board the return flight.

Perhaps as a result, only 5 % of passengers at Fiumicino said that border guards had told them about their appeal rights. At Charles de Gaulle, in contrast, a clear majority of passengers (62 %) confirmed that they had.

*He did not give me any information on how to appeal against their decision to stop me here in Fiumicino. [...] I was not given any contact details of persons or organisations to reach out to for help.*

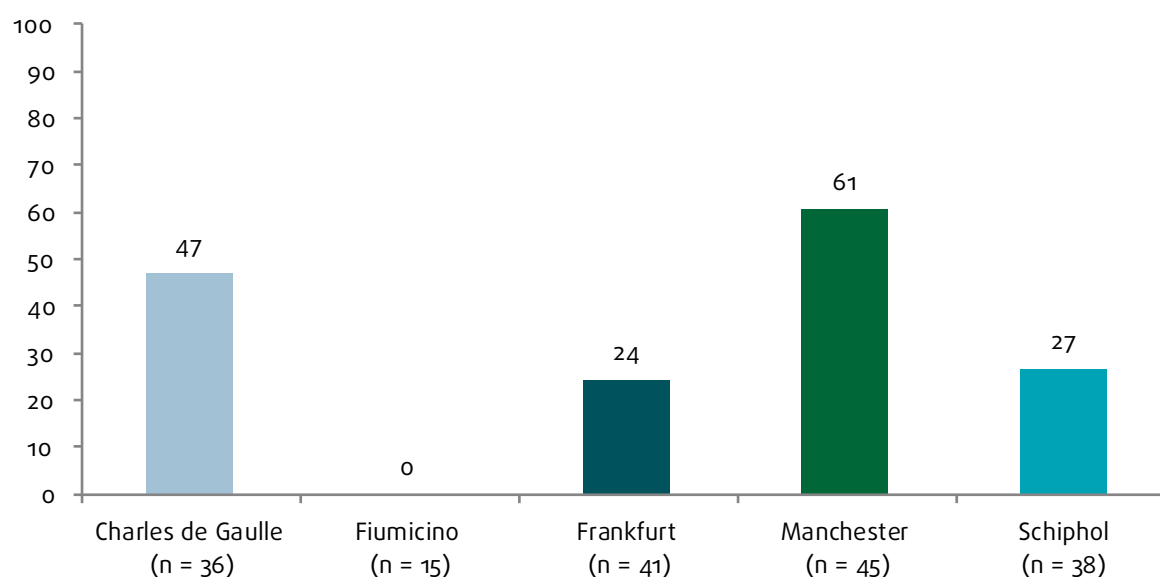
(Passenger from Venezuela, male, interviewed at Fiumicino)

### 4.2.3. Access to legal assistance

According to Article 13 (3) of the Schengen Borders Code, passengers refused entry must be given a written indication of how to find representatives competent to act on their behalf. Only 32 % of the officers surveyed would provide such information. Results at Schiphol and Charles de Gaulle are above average (61 % and 47 %), whereas none of the officers at Fiumicino would provide this information (Figure 22).

Passenger interviews at the four airports confirm this. A majority (83 %, 68 out of 82) said that border guards had not informed them of persons or organisations who could help them with an appeal. At Charles de Gaulle and Fiumicino, where sample sizes exceeded 30 passengers, 64 % (23 out of 36) and 100 % (39 out of 39), respectively, said that they had not been provided with such information.

Figure 22: Border guards always providing information on where to get legal assistance when entry is refused (%)



Note: Respondents who did not provide an answer to a given item have been excluded when computing the results. Non-response per airport: Charles de Gaulle, n = 2; Fiumicino, n = 0; Frankfurt, n = 1; Manchester, n = 0; Schiphol, n = 5.

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

Table 10: Contact details of organisations providing legal advice available at the airport

Airport	Information	Location
Charles de Gaulle	List of lawyers and Anafé's contact details	Waiting room; ZAPI 3
Fiumicino	Brochure on contact details of UNHCR and NGOs	Information office
Frankfurt	List of lawyers	Provided upon request and on display in police offices
Manchester	Information on NGOs	Available in Pennine House
Schiphol	Brochures on the asylum procedure and competent authorities	Application centre

Source: FRA, 2013

Information on and relevant contact details for legal advice may, however, be available on posters in the immigration office or waiting facilities at the airport, as Table 10 summarises. This material refers to legal aid in general, without reference to specific procedures concerning refusal of entry.

Where information on legal aid is available, practical obstacles may prevent passengers from obtaining it. Passengers at Schiphol, for example, must request legal aid through the Chief of Immigration, but they hesitate to use this right since the office takes the final decision when entry is refused. The Court of The Hague, however, found no violation of the right to effective remedies.<sup>143</sup> At Charles de Gaulle, technical problems with the waiting room telephone were reported. Where communication

with the outside world is limited in the transit area – as is the case, for example, at Fiumicino (see Chapter 3.5) – it would be difficult for a lawyer to obtain the power of attorney necessary to submit the appeal within the short time frame. None of the 59 passengers interviewed at Fiumicino had received information about persons or organisations providing legal assistance for an appeal.

Passengers waiting in transit zones or waiting rooms for removal have limited time and information to launch an appeal. Stakeholders confirmed this for persons awaiting removal in Manchester's airside holding room:

*Nothing. There'll be nothing. There'll be no way of being able to get any kind of legal advice there.*

(Greater Manchester Immigration Aid Unit staff, interviewed at Manchester)

Table 11: Legal basis and conditions for free legal assistance for persons refused entry and rejected asylum seekers

Airport	Legal basis	Comments/restrictions
<b>Charles de Gaulle</b>	For persons refused entry: Decree n°95-507 of 2 May 1995 For rejected asylum seekers: Ceseda, Article L. 213.9, provided by the legal aid system; legal aid provided by Anafé's volunteers	For persons refused entry: limited number of visits (four per week) in terminals, legal assistance provided through hotline and visits to the ZAPI 3. For rejected asylum seekers: provided by the legal aid system; legal aid provided by Anafé's volunteers
<b>Fiumicino</b>	For persons refused entry: Legislative Decree ( <i>Decreto legislativo</i> ) No. 25, 28 January 2008, Article 16 (2), subject to the conditions provided for by the decree of the President of the Republic of 30 May 2002, No. 115	Subject to means and merit test and legal residence in Italy
<b>Frankfurt</b>	For persons refused entry: Law on Legal Aid ( <i>Beratungshilfegesetz</i> ), Paragraph 1 For rejected asylum seekers: Code of Administrative Procedure Act, Chapter 166 in conjunction with the Code of Civil Procedure, Chapter 114; Federal Constitutional Court/ <i>Bundesverfassungsgericht</i> , decision of 14 May 1996 – 2 BvR 1516/93	For persons refused entry: subject to means test For rejected asylum seekers: representation before the court is not part of the free legal aid; subject to merits test
<b>Manchester</b>	For persons refused entry: no appeal possible (Legal Aid, Sentencing and Punishment of Offenders Act 2012; House of Commons Library (23 May 2013), Civil legal aid: changes since 1 April 2013, SN/HA/6645, pp. 6–7)	
<b>Schiphol</b>	For persons refused entry: Decision on Legal Aid, Article 8 (1) (a); Aliens Act, Chapter 100 For rejected asylum seekers: Legal Aid Act; Decision on Legal Aid, Article 8 (1) (a)	For persons refused entry: only if person is deprived of liberty or faces immediate removal For rejected asylum seekers: considered very efficient

Note: This table does not include legal assistance provided by NGOs outside formal legal aid schemes.

Source: FRA (2013)

<sup>143</sup> Netherlands, District Court of The Hague, Administrative Law Sector (*Rechtbank's Gravenhage, Sector Bestuursrecht*), 22 April 2011, AWB 11/12281; AWB 11/12279; AWB 11/13079.

In addition, while access to free legal assistance may not be restricted by law to persons with in-country appeal rights, access from abroad would be difficult in practice.

At two airports (Charles de Gaulle, Manchester), the demand for free legal assistance was reported to significantly exceed the available supply. At Charles de Gaulle, support from Anafé is based on voluntary work and organised under a framework established by a convention between the NGO and the state, renewable each year. Legal assistance to foreigners held cannot always be provided as a result of capacity limits, specific working hours and restrictions on the number of visits authorised per week. In Germany, Italy and the United Kingdom, a means and merit test is required, which may make it impractical to get legal advice before removal.<sup>144</sup> At Schiphol, only passengers deprived of liberty or facing immediate removal are eligible for free legal counselling (see Table 11).

The quality of free legal counselling, if available, may be affected by how immigration cases are remunerated, United Kingdom stakeholders reported. Lawyers there receive payment only upon closure of a case. This may put them under pressure to close the case as soon as possible.

*They changed that system and now you only get your money on the completion of a case. That's okay if you've got a rapid turnover, but that tends to mean that you're a lawyer who is forcing everything to a conclusion, whereas a lawyer who really wants to get to the bottom of cases has a very strong material incentive not to do so.*

(Migrants' Rights Network staff member, interviewed in London)

Passengers at Charles de Gaulle face practical difficulties in identifying immigration or asylum lawyers, because the waiting room and ZAPI 3 lists include all the region's lawyers without specifying their area of expertise. Third-country nationals interviewed did not consider lawyers appointed through the legal aid system to be very committed. In addition, no room is allocated for lawyers in the terminal, only at ZAPI 3, where it is the general room for visits and is not equipped with a phone, computer or photocopier.

#### 4.2.4. Access to means of communication

Access to means of communication depends on the facility where passengers refused entry stay. As a general rule, at two of the airports (Fiumicino, Frankfurt), passengers wait in the international transit area, where they often face practical obstacles to

communication. It is difficult to make telephone calls because of the lack of identification cards required for buying SIM cards, as these are held by border guards; sockets and connectors for charging phones; functioning public phones; or availability of shops with phone cards in stock.

This can make it difficult to provide power of attorney or to produce the documentation required for entry. At Fiumicino, where a non-admitted passenger's situation is reversible up until departure, border guards often help passengers to obtain missing documents.

*If we see that a case is likely to be resolved, we give them our phone and fax number in order to give them the possibility of providing us with documentation coming from outside. Up to the moment of departure, if they produce valid documentation, the order may be revoked.*

(Shift leader, Fiumicino)

Three of the airports provide temporary holding facilities connected to the airport (Charles de Gaulle, Manchester, Schiphol), to which passengers can be transferred if removal is not imminent. A recurrent obstacle in these facilities concerns mobile phones, which are usually prohibited if they have a camera or internet function. If their mobile phones must be removed, passengers cannot easily access their phone numbers.

#### Promising practice

##### Ensuring access to communication

At Manchester airport, passengers undergoing further examination or held upon refusal of entry may ask to borrow a temporary phone if they are not allowed to use their mobile phones. They may insert their SIM card and thus access their directory's numbers, if saved on the SIM card or transferred to it. This facilitates contact with people who may help in resolving their case. In addition, free internet access is available for those passengers held at Pennine House. If passengers are admitted temporarily, the default option in certain cases of refused entry, their access to communication is not restricted.

Source: UK Border Force, 2013

In addition, the research observed limitations on border guards' communication equipment, such as limited access to international calls and reliance on fax machines. Finally, limited guidance on the required format for missing documents, in the shape of a form or standard sample, for example standard invitation letters, may be provided.

<sup>144</sup> UNHCR (2010), p. 450.

### 4.2.5. Availability and quality of interpretation

When entry is refused, interpreters are often needed to inform passengers of the contents of the refusal of entry document, including their rights and duties, which they must sign. Interpretation arrangements must ensure basic communication during the second-line interview, making sure that officers understand if the person requests international protection.<sup>145</sup> Phone interpretation is used systematically at Schiphol and Manchester, but less so at Frankfurt, where interpreters are usually called in person.

At Charles de Gaulle, if interpreters cannot be found quickly enough, they may sometimes be present only after but not during the second-line interview, when entry has been refused and the passengers are notified of the decision and their rights. This is in line with national law, which requires only that passengers be notified of the refusal and their rights in a language they understand.<sup>146</sup> In effect, however, it prevents passengers from finding out about and contributing to resolving the issue during the second-line check.

Waiting for interpreters to arrive, as at Frankfurt airport, can, on the other hand, extend waiting times during which passengers are unable to get information on the status of their check. Although interpretation may sometimes be done by telephone if the language is uncommon, passengers may have to wait hours while border police look for an interpreter. Difficulties were observed in particular with regard to interpretation of local Afghan, Ethiopian and Somali languages.

At Fiumicino, non-admitted persons were observed to have access to interpretation upon border police request. Asylum seekers may find an interpreter at the Information Office. Interpreters for Arabic are available on weekdays from 11.00 to 17.00, and one Immigration Office police officer speaks Arabic. Interpretation may also be provided over the phone, if necessary. To resolve time-consuming communication problems, however, border authorities need access to more interpreters with greater availability.

At Manchester airport, the Border Force pre-books interpreters in anticipation of arrivals from higher-risk countries, such as Pakistan, based on past experience of communication problems, higher instances of asylum claims and/or under-documented travellers. Interpreters then wait at the front of the queue at the first-line check and can be called over as needed. This also facilitates a speedy second-line interview.

An interpreter is always present during the reading of the refusal notice. Until the interpreter arrives, however, information cannot always be clearly communicated to the passenger in the absence of translated forms (see, for example, Table 9). Moreover, border guards do not receive systematic information on which languages or interpreters are available at a given time. Officers must call each individual interpreter until they find one who is available, which may cause delays. Telephone numbers for interpreters are posted in the second-line check interview rooms, and the airport chaplaincy provides a database of interpreters for all languages. Before an interpreter is added to the database, they must pass several translation and interpretation tests.

Private companies providing interpretation services may not always employ certified interpreters, as, for example, at Charles de Gaulle. Such interpreters may not have received specific training on ethical standards and may not be aware of their duty to remain neutral and provide a complete translation of the entire document. This runs the risk that passengers are not adequately informed of the reasons for refusal and their options for remedy. For persons in need of protection, the independence and professionalism of interpreters is particularly important.

During the appeal process, interpretation and translation of documents are not usually free of charge unless related costs are covered by legal aid, as can be the case in Germany.

## 4.3. Appeals against the rejection of an asylum claim

This section deals with only the three airports where an asylum claim may be rejected at the airport: Charles de Gaulle, Frankfurt and Schiphol. At Fiumicino, asylum applicants are transferred to special reception facilities. At Manchester, only a very basic screening takes place at the airport and undocumented applicants are moved to the immigration removal centre Pennine House, where the next step is determined.

Under EU law, asylum seekers rejected at the airport must be able to appeal a decision that considers their application unfounded, inadmissible or rejects it in substance.<sup>147</sup> Applicants must also be

<sup>145</sup> Asylum Procedures Directive 2013/32/EU, OJ 2013 L 180/60, Art. 8.

<sup>146</sup> France, Céseda, Art. L 213-2.

<sup>147</sup> Asylum Procedures Directive 2005/85/EC, OJ 2005 L 326/13, Art. 39; Asylum Procedures Directive 2013/32/EU, OJ 2013 L 180/60, Art. 46 (1) (a).

Table 12: Appeal possibilities in airport procedures, three airports

Airport	Time frame	Legal basis for appeal	Automatic suspensive effect	Interim measure	Legal basis for interim measure
<b>Charles de Gaulle</b>	48 hours in border procedure	Ceseda, Article L. 213-9	Yes	none	none
<b>Frankfurt</b>	Unclear; to be submitted together with request for interim measure. Legal argumentation may be submitted four days later	Asylum Procedure Law, Article 18a (4)	No	May be re-requested within three days	Asylum Procedure Act, Article 18a (4)
<b>Schiphol</b>	One week in accelerated procedure, four weeks in the general and extended procedures	Aliens Act, Section 69 (1) and (2); General Administrative Law Act, Article 8 (1)	No for accelerated and general procedures, if repeated application, Dublin case or detained	May be re-requested within two days	Aliens Act, Section 78, in conjunction with Article 8 (8-1) of the General Administrative Act

Source: FRA, 2013

informed about how to appeal such a decision.<sup>148</sup> At all stages of the procedure, applicants for international protection have the right to consult legal advisers at their own cost and free legal aid must be provided subject to certain conditions.<sup>149</sup>

### 4.3.1. Appeal procedures

At Schiphol, the full asylum procedure can be carried out while the applicant is at the airport. At Charles de Gaulle and Frankfurt, border authorities conduct a preliminary examination of the claim at the airport to decide whether to allow the applicant to enter the territory to seek asylum. If the application is considered inadmissible or the claim manifestly unfounded, it is rejected and entry not granted.

The time frame for submitting appeals ranges from 48 hours (Charles de Gaulle) to four weeks (Schiphol), as Table 12 shows. Suspensive effect may be automatic, possible upon request or not possible at all, depending on the circumstances and type of procedure.

Although appeals against asylum decisions taken during border procedures at Charles de Gaulle have a suspensive effect in principle, the judge may decide not to examine the appeal if it is manifestly unfounded or inadmissible and the issue cannot be addressed

within the time frame of the procedure.<sup>150</sup> This significantly limits the chances for asylum seekers to have their appeals examined. Furthermore, all documentation must be submitted in French, including a well-grounded legal justification, although no interpretation or translation services are provided in the waiting and holding areas. Interpreters working as volunteers with NGOs such as Anafé are not always available.

The person can apply for an interim measure within three days at Frankfurt,<sup>151</sup> or two days at Schiphol. These measures grant leave to enter and offer preliminary protection from deportation. As long as the interim measure is pending, the asylum seeker cannot be removed and denial of entry is suspended.<sup>152</sup> If the court does not overrule this request within 14 calendar days, the asylum seeker must be granted entry.

The revised Asylum Procedures Directive restricts the processing of applications by unaccompanied minors at the border, in transit zones or through accelerated procedures. Such processing is allowed only in the cases listed in Article 25 (6). Normally, unaccompanied minors should be allowed to stay in the territory during the examination of the appeal. The directive allows Member States not to grant such an automatic right to stay in exceptional cases only and exclusively when the strict conditions listed in Article 46 (7) of the directive are met.

<sup>148</sup> Asylum Procedures Directive 2013/32/EU, OJ 2013 L 180/60, Art. 42 (3).

<sup>149</sup> *Ibid.*, Art. 20, 21 and 22 and preamble (23).

<sup>150</sup> France, Ceseda, Art. L 213-9.

<sup>151</sup> Germany, Code of Administrative Court Procedure (*Verwaltungsgerichtsordnung*), Art. 123.

<sup>152</sup> Germany, Asylum Procedure Act, Art. (18a) IV.



These include, for example, the necessary language and legal assistance and at least one week to ask a court or tribunal for the right to remain in the territory pending the appeal's outcome.<sup>153</sup>

### 4.3.2. Access to information

The duty to inform asylum seekers about the procedure and appeal rights is set out in national and EU law. Article 11 (2) of the Asylum Procedures Directive requires Member States to provide information on how to challenge a negative decision. The information must be provided in writing and include the reasons in fact and in law. According to Article 12 (1) (f) applicants must be informed of the result of the asylum decision by the determining authority 'in a language that they understand or are reasonably supposed to understand', although there are exceptions for applicants who are assisted or represented by a legal adviser or other counsellor. Article 12 (1) (b) of the same directive entitles applicants to an interpreter, but not necessarily to a lawyer, when submitting an appeal.

In principle, OFPRA agents at Charles de Gaulle mention appeal rights to passengers when they notify them of the refusal of entry for the purpose of seeking asylum,<sup>154</sup> which is done in the language the passengers select at the start of the procedure or by default in French.<sup>155</sup> An Anafé brochure, in six languages, provides information on appeal procedures. The research could not determine if it is distributed to third-country nationals at the airport, but it is posted on waiting zone walls. At Schiphol, the IND and the Dutch Council for Refugees provide information material in several languages.<sup>156</sup> At Frankfurt, border police communicate information on how to appeal a negative decision together with the refusal of entry using an interpreter, if necessary.

### 4.3.3. Access to legal assistance

Considering the complexity and short time frames of appeal procedures, it is difficult for asylum seekers to comply with them without legal assistance. Asylum seekers rejected while held at airports have a particularly short window in which to acquire legal aid for an appeal. Free legal aid is available upon request and may be subject to certain conditions and restrictions, for example means and merits tests (see Table 11). At all stages of the procedure,

however, applicants must have the right to consult legal advisers at their own cost.<sup>157</sup>

Access to lists of contact details of organisations providing legal advice is in principle the same as for non-admitted persons, for example through notice boards in holding facilities (see Table 10). Legal counsellors working in such facilities may also provide advice.

#### Promising practice

#### Providing legal aid to asylum seekers

At Schiphol, the Legal Aid Board provides state-funded legal aid. A lawyer is automatically appointed for every asylum seeker from the day they apply for asylum. This has made the use of private lawyers practically non-existent.

Source: European Council on Refugees and Exiles (ECRE) (2013), *Asylum information database (AIDA)*, National country report, The Netherlands, 26 November 2013, p. 18.

Obstacles to effective legal counselling are similar to those mentioned in relation to appeals against refusal of entry. Organisations providing such services or referring rejected asylum seekers have access to the following airport areas: Anafé to the holding centre and terminals at Charles de Gaulle; Hesse Refugee Service (*Hessischer Flüchtlingsdienst*) to the Frankfurt terminals; and the Dutch Council for Refugees to Schiphol Judicial Complex. Access may not, however, extend to all areas where rejected asylum seekers stay (Frankfurt) or may be limited to a certain number of visits per week (Charles de Gaulle).

As with appeals against refusal of entry, in France and Germany interpretation is not usually available for the appeal submission but only for the hearing. Unlike the previous version of the Asylum Procedures Directive (Article 39), the recast version requires interpretation also during the appeal process.<sup>158</sup> Only in the Netherlands are interpretation and translation provided free of charge throughout the whole asylum procedure.<sup>159</sup> Documents can be translated for free.<sup>160</sup> In Germany, the translation of appeal documents may be provided as part of legal aid, if granted.<sup>161</sup>

<sup>153</sup> FRA (2013).

<sup>154</sup> France, *Ceseda*, Art. L 213.2.

<sup>155</sup> *Ibid.*, Art. L 111-7.

<sup>156</sup> European Council on Refugees and Exiles (ECRE) (2013), *Asylum Information Database (AIDA)*, p. 27.

<sup>157</sup> Asylum Procedures Directive 2013/32/EU, OJ 2013 L 180/60, Art. 20, 21 and 22 and preamble (18).

<sup>158</sup> *Ibid.*, Art. 46 (7).

<sup>159</sup> Netherlands, Aliens Circular 2000, C12/1.1 and C13/1.1.

<sup>160</sup> Netherlands, Implementation Regulation on Translation Services, (*Uitvoeringsregeling subsidie vertaaldiensten*) (2009), Art. 2.

<sup>161</sup> Germany, Administrative Court Procedure Code (*Verwaltungsverfahrensgesetz*), Art. 162 (1); UNHCR (2010), p. 447.

## 4.4. Appeals against placement in a holding facility

Placement in holding facilities connected to the airport constitutes a deprivation of liberty.<sup>162</sup> It must therefore respect the substantive and procedural safeguards enshrined in the ECHR. Further guidance can be found in the Returns Directive (not applicable to the United Kingdom). This directive's Articles 16 and 17 contain provisions on detention conditions applicable also to Member States that have decided on the basis of its Article 2 (2) not to apply the directive to persons apprehended for an irregular border crossing.

In practice, the placement of a passenger in such facilities may be ordered together with the issuance of a non-admission decision by border guards. The research did not examine the legality, necessity and proportionality of detention orders. It did, however, ask border guards whether they inform passengers of their rights and where to get legal assistance. According to the ECHR, persons deprived of liberty must be informed promptly, in a language they understand, of the reasons (Article 5 (4)) and of the right to seek review (Article 5 (2)).

Overall, 63 % of the officers surveyed say they provide information on the rights of the person held, ranging from 88 % at Frankfurt to 20 % at Fiumicino. Only 30 % would inform persons held about where to get legal assistance, with Schiphol results above average (58 %) and Fiumicino clearly below average (0 %). Because of this, access to legal advice often depends on available information materials and staff or lawyers employed by NGOs who regularly visit the facility.

## Conclusions

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

For airport entry checks, access to effective remedy is relevant mainly in four situations: complaints about the conduct of border checks; appeals against decisions to refuse entry; appeals against rejection at the airport of asylum claims; and appeals against placement in a holding facility. The effectiveness of remedy at the airports, according to the research,

largely depends on certain aspects of the appeal procedures, such as the time frame for submission, suspensive effect and language requirements, and the accessibility of information and legal aid, including means of communication and interpretation.

### Appeal procedures

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

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

### Provision of information

Upon a second-line check, many passengers do not understand why they are being checked, the next steps in the process or their related rights. The FRA border guards survey confirmed this: almost half say that they do not usually inform passengers about the second-line check procedure.

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

<sup>162</sup> ECtHR, *Ahmed v. Malta*, No. 55352/12, 23 July 2013, paras. 138–141.

Passengers are not always informed of their appeal rights. Clarity of information, if any is given, may be affected by the form and language in which it is provided, its limited scope and the timeliness and quality of interpretation.

Most border guards interviewed say that, upon refusal of entry, they would always inform those passengers refused entry of their rights in general (78 %). There are, however, significant differences among airports, ranging from 94 % to 33 %. If passengers are held upon refusal of entry, fewer, although still a majority of, officers (60 %) say that they provide information on the rights of the person held, with the difference by airport ranging from 86 % to 20 %. The research also observed that persons needing an interpreter were placed in a holding/waiting facility while awaiting the interpreter and before being informed of their rights.

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

Despite the standardised forms provided on refusal of entry, third-country national passengers could not in many cases understand the information as it was given. A majority of the passengers interviewed said that they were not informed of their right to appeal a refusal of entry (69 %, 64 out of 93). While a majority of passengers who received information on their appeal right understood the language in which it was provided (89 %, 25 out of 28), almost a third (32 %, 9 out of 28) did not understand the procedure at all and only 21 % (6 out of 28) understood it very well. Only four out of 93 passengers said they received information in writing on their appeal rights.

## Legal assistance

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

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

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

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

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

## Interpretation

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

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

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

## FRA opinion

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

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

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

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

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

*Legal assistance is another precondition for an effective remedy, considering the complexity of*

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

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

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

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

*As a good practice, interpretation should be made available for the preparation of appeals against negative asylum decisions. Border management authorities should explore the possibility of providing interpretation for the preparation of appeals against refusal of entry in an effort to ensure the practical accessibility of procedures within existing time frames.*



# 5

## Data protection

### Charter of Fundamental Rights of the European Union

#### Article 8: Protection of personal data

1. Everyone has the right to the protection of personal data concerning him or her.
2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.

The right to respect for private and family life, as enshrined in Article 7 of the Charter of Fundamental Rights and Article 8 of the ECHR, protects individuals against arbitrary interference by public authorities and private organisations. It covers four dimensions: private life, family life, the home and correspondence. Public authorities' collection and storage of information and data on passengers interfere with respect for private life and thus fall within the scope of Article 8 (1) of the ECHR.<sup>163</sup> Council of Europe Convention 108 contains safeguards relating to the automatic processing of personal data.

Processing of personal data must comply with the rights set forth in the Charter. According to Article 52 (1), these rights can be limited only if this is necessary and proportional and if such limitation is provided for by law, respects the essence of the rights and freedoms in question and genuinely meets objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.

Checks at border-crossing points necessarily entail the verification of personal data. Depending on the situation, these may be limited to alphanumeric data, such as name, date of birth, nationality and passport number. They may also include biometric data, such as fingerprints or facial images. In addition, passengers may need to share detailed information about their private lives, for example, when asked to justify the reasons for their travel. This chapter examines the extent to which the collection, use and storage of such data at the five airports is carried out with respect for data protection principles, including the right to private and family life.

In general terms, at border-crossing points, personal data may be collected, stored or used in different ways:

- passenger data received from airlines are consulted before the passenger arrives (see Section 2.2);
- data included in passports and visas are verified during gate and first-line checks, for example by consulting existing databases;
- detailed personal information may be collected by questioning the passenger at first- or second-line checks;
- after the border check, personal information may be stored in a database, where it is retained for a certain period of time and may be shared with others.

The EU Data Protection Directive (95/46/EC), which is currently under revision, allows the processing of personal data given the consent of the person concerned or if necessary for compliance with legal obligations to which the controller is subject (Article 7).

<sup>163</sup> ECtHR, *Rotaru v. Romania*, No. 28341/95, 4 May 2000.



The directive applies to border control procedures that the Schengen Borders Code regulates. It requires that data subjects be informed of the purposes of data processing, including who has access to the data, whether replies to questions are obligatory or voluntary, as well as the possible consequences of failure to reply, and of their right to access and rectify their personal data (Article 10). Personal data must not be kept for longer than necessary (Article 6 (1)). The directive also sets out safeguards for the processing of sensitive data (Article 8) and for the security of data processing (Article 17).

In addition, specific rules have been established for large European information technology (IT) databases, including the Schengen Information System (SIS II) and the Visa Information System (VIS), which are managed by the EU Agency for large-scale IT systems (EU-LISA).

## 5.1. Confidentiality during checks

The first-line counters at all five airports are positioned to ensure the confidentiality of passenger data. Neither the passenger who presents himself or herself to border control nor any other passenger can see the personal data that is checked during border control checks. Border guards' questions and passengers' replies are not normally heard by other passengers, who are usually required to wait at a certain distance.

While at the counter, passengers are monitored by closed-circuit television cameras at all five airports. FRA could not verify if and under what circumstances

these videos are stored. The cameras' main purpose is to give border guards an overview of what is happening at the booth. The cameras or recorded videos did not seem to be accessible to people other than border guards, although the FRA research could not fully verify this.

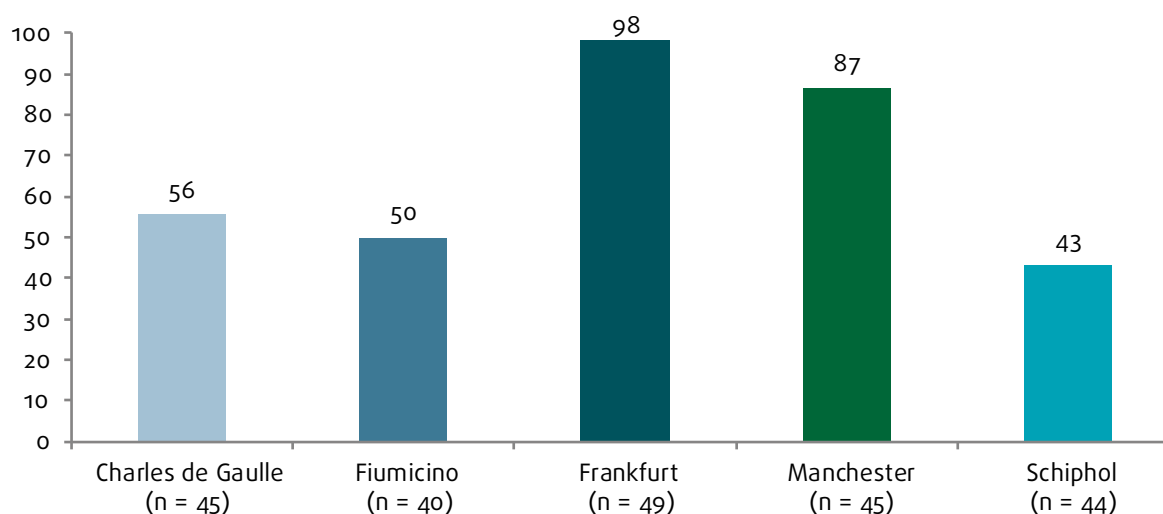
Four of the five airports reviewed (excluding Fiumicino) have installed automated border control gates. Under the Schiphol Privium system, travellers can pay to register their passport and iris scan. In contrast, automated border control gates at Frankfurt (Easypass), Charles de Gaulle (Parafe) and Manchester are open only to adult EU/EEA and Swiss citizens with e-passports.

Automated border control gates verify whether a travel document is authentic and whether the passenger is the rightful holder of the document. To do so, they compare the biometric information stored in the passport with the actual passport holder. Most automated border control systems currently use facial recognition as the main biometric authentication method. Second-generation e-passports, however, carry both facial and fingerprint data. The system also checks border-control records stored in databases and automatically determines eligibility for border crossing.

If communication problems arise at the first line, officers often resort to other passengers for help, Figure 23 shows.

While this may be a practical solution, officers need to be aware of the need to protect personal data and how to do so. This is particularly important as they may at this stage ask passengers detailed questions

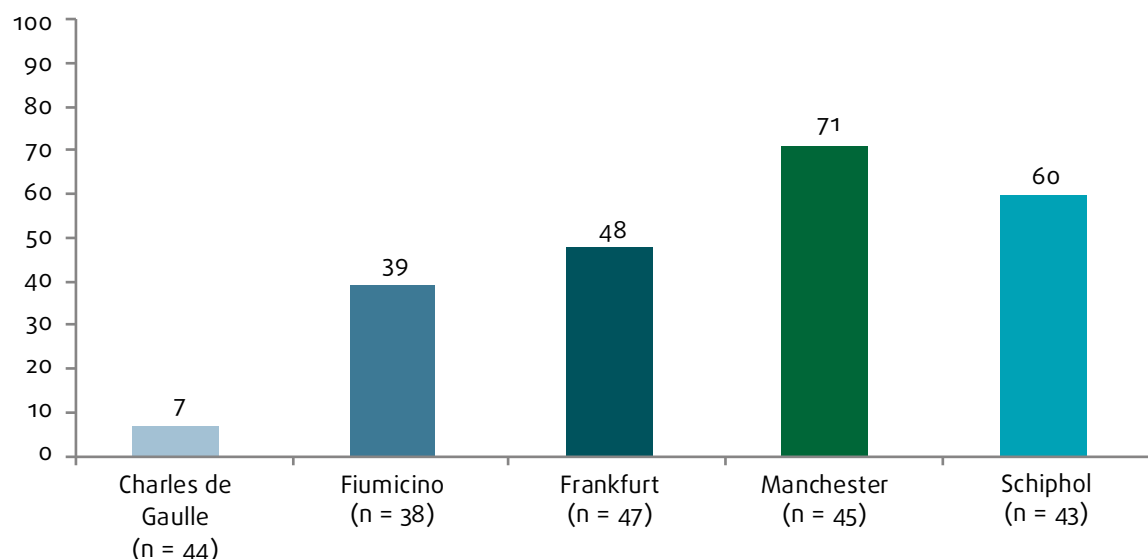
Figure 23: Officers asking other passengers for help if communication problems arise at the first line (%)



Note: All participating officers provided an answer to this item.

Source: FRA, Border guard survey, 2012 (question 12; multiple responses possible)

Figure 24: Officers having received training on data protection in 2011 (%)



Note: Respondents who did not provide an answer to a given item have been excluded when computing the results. Non-response per airport: Charles de Gaulle, n = 1; Fiumicino, n = 2; Frankfurt, n = 1; Manchester, n = 0; Schiphol, n = 1.

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

about the purpose and conditions of their stay and their financial situation and to share supporting documents. Officers may not, however, have had regular training on such issues (Figure 24).

Second-line checks are even more delicate, as passengers may have to provide more detailed information on their private life. If they are travelling for medical purposes, for example, they may be required to share information on their state of health. To prove sufficient resources, they may need to provide details about their financial situation. While border guards may be justified in asking these personal questions to prove that travel is genuine, under no condition should such information be shared with other passengers.

Facilities for second-line checks could be improved. In particular, at Charles de Gaulle FRA observed that the lack of office space may compromise the privacy of second-line checks. At Fiumicino, passengers in the waiting room could listen in to the interviews if doors were left open or voices raised.

More generally, privacy issues may also emerge at a later stage. At temporary holding facilities, for example, phone calls may be monitored, affecting passengers contacting a lawyer.

## 5.2. Databases used at the border

When taking a decision on whether or not to allow entry, officers at border crossing points may consult

national or European databases. National databases available at borders may include databases on foreigners, which, for example, record past Member State entry bans, or police databases with crime-related information.

In the field of home affairs, the EU has developed three large databases: Eurodac, SIS II, in use since April 2013 in its upgraded form,<sup>164</sup> and VIS. SIS II and VIS are tools to facilitate border-crossing-point work. Eurodac is used primarily to register asylum seekers to determine which Member State is responsible for examining an application.

As part of the Smart Borders Package, the EU is currently discussing the introduction of two new databases: the Entry/Exit System and the Registered Traveller Programme.<sup>165</sup> If adopted, the Entry/Exit System will record, through the collection of biometric data, the movement of all third-country national passengers into and out of the Schengen area. The aim is to identify persons who stay in the Schengen area longer than allowed. The Registered Traveller Programme will enable faster entry through automated border control gates for pre-vetted third-country national passengers.

SIS II contains information on persons and objects for the purpose of refusing entry or stay. VIS, estab-

<sup>164</sup> Regulation (EC) No. 1987/2006, OJ 2006 L 381/4-23.

<sup>165</sup> European Commission (2013b); European Commission (2013c); European Commission (2013d).



Table 13: Information on persons contained in SIS II and VIS

	Content	Retention period
<b>SIS II</b>	Information on persons as described in Articles 94 and following of the Convention implementing the Schengen Agreement of 14 June 1985 (i.e. persons wanted for arrest, persons who have been issued an entry ban and missing persons)	Maximum of three years subject to possible extension following individual assessment
<b>VIS</b>	Personal information on each visa applicant, such as data on visa applications, photographs, fingerprints, related decisions and links between applications	Maximum of five years

Note: SIS II also contains information on objects, such as, for example stolen documents.

Source: SIS II Regulation (EC) No. 1987/2006 (Article 29) and VIS Regulation (EC) No. 767/2008 (Articles 5 and 23)

lished in 2008 but not yet in use at all border-crossing points,<sup>166</sup> contains visa holders' personal information, including fingerprints, photographs and information on sponsors. VIS allows for reliable fingerprint comparisons with the help of a biometric matching system, thus reducing the risk that passengers will try to cross the border with documents that are not their own.

SIS/SIS II and VIS are part of the Schengen *acquis* and are, except for some parts of the SIS,<sup>167</sup> not applicable to the United Kingdom. Table 13 provides an overview of the type of personal information the two databases contain. SIS II covers objects, such as stolen documents or banknotes, which are also relevant to customs checks.

**First-line checks** of third-country national passengers generally include the verification of the absence of alerts in available databases. This is done by scanning the passenger's passport and checking it against the SIS II database, where available. Alert categories for SIS II, which lead to second-line checks, include third-country nationals on the entry ban list, missing adults and missing children. These alerts trigger further checks, but passengers may not necessarily be told the reason for these.

At the counter, officers may also have access to national or airport internal databases. As an illustration, at Schiphol airport officers at the first line have access to a tracing system (*Opsporingssysteem*) that contains missing persons information.

Information from the **second-line check** may be documented for entry into national databases and possibly SIS II 'on the basis of a national alert resulting from a decision taken by the competent administrative authorities or courts' after an individual assessment.<sup>168</sup> Entries may be made in national databases as well as EU-level databases, and these also need to respect EU data protection law. Entries that remain in databases forever and automatically trigger further checks every time the person crosses the border may raise questions of proportionality. When a passenger is allowed entry following a second-line interview at Manchester or Schiphol airports, information on the interview and reasons for allowing entry are stored. This information can be accessed if the person enters again, regardless of the time elapsed since the previous entry. This happens regardless of the interview's outcome.

*Where we Code 3 somebody – so that's we're letting them enter the UK but we want to make a few notes – we would make full notes on the back of the landing cards and we would also sometimes note that on CID [Casework Information Database] as well. So, for example, today, we had a case where a person had previously been Code 3'd and when she came to refer the case to me, we brought it up on CID. So we knew what she had said to the officer the last time she was granted the Code 3.*

(Chef immigration officer, interviewed at Manchester)

Border guards at Schiphol can establish a report in the aliens database, where they describe the case, explain why the person was admitted and what their doubts are/were. The anti-human smuggling and -trafficking squad of the Royal Marechaussee draws up similar reports whenever they suspect someone of being a (potential) victim of trafficking or smuggling or of being a (potential) trafficker. They register their names in an airport-internal passenger handling system (*Passagiers Afhandelingsysteem*) for future reference. The entry would,

<sup>166</sup> VIS Regulation (EC) No. 767/2008, OJ 2008 L 218/60 as amended by Regulation (EC) No. 81/2009, OJ 2009 L 35/56 and by Regulation (EU) No. 610/2013, OJ 2013 L 182/1.

<sup>167</sup> The United Kingdom does not take part and is not bound by or subject to Council Decision 2013/158/EU of 7 March 2013, therefore only the SIS II Decision (2007/533/JHA of 12 June 2007) is applicable to it.

<sup>168</sup> SIS II Regulation (EC) No. 1987/2006, OJ L 381, Art. 24.

for example, include details on persons vouching for women arriving from risky countries, such as those claiming responsibility for their housing and means of subsistence. If in the future the same person vouches for another female passenger, this will raise suspicions of a trafficking network, a shift leader at Schiphol airport told FRA in an interview.

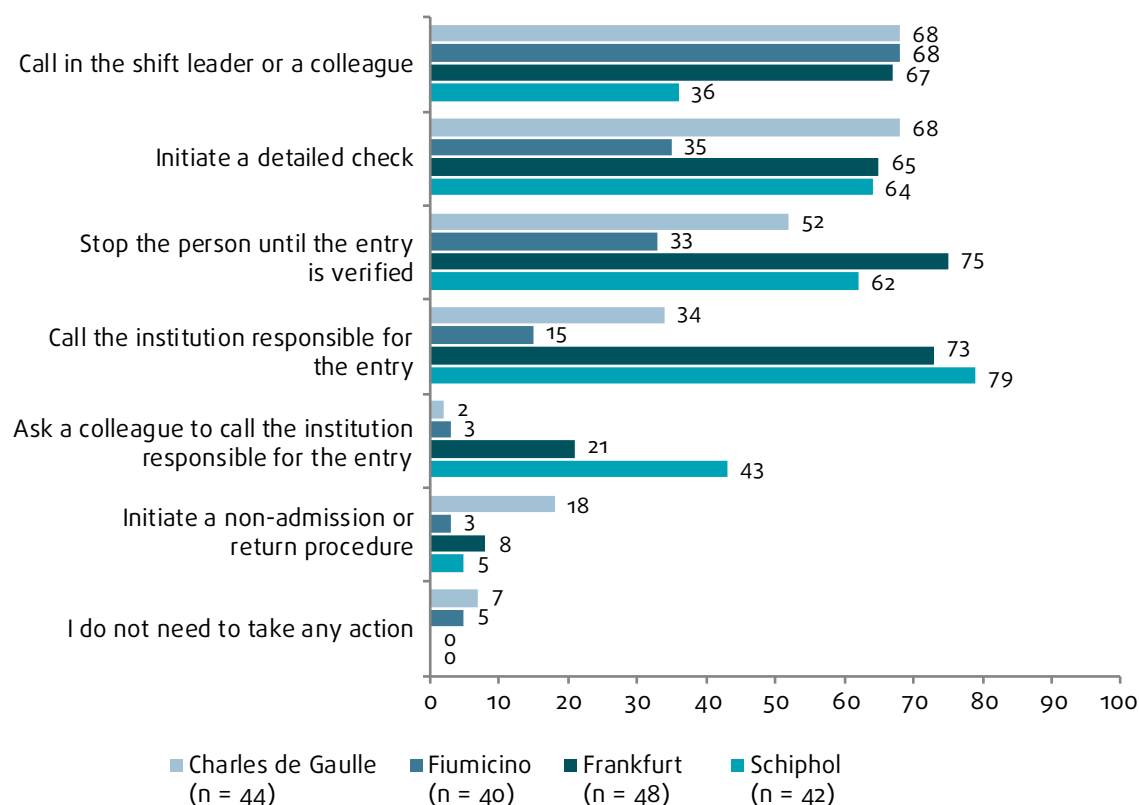
Although some exceptions exist, generally persons who are subject to a SIS II alert must be informed.<sup>169</sup> Otherwise, individuals may not deal with the situation before they travel again. The research noted of cases where passengers did not know what information was being stored, or that information was being stored at all. The Dutch national ombudsman expressed concerns over disproportionate consequences of database entries, for example a brief overstayer refused entry because of a SIS II alert, although the person was unaware he or she had been entered into the database. According to the ombuds-

man, passengers must be informed whenever they are registered in SIS II so that they can do something about it.<sup>170</sup> This can also be assumed to apply to other database systems with similar consequences.

Where passengers are not informed about information stored in the databases, this may also raise issues of effective remedy, especially considering that entries in SIS II and VIS appear to include inaccurate information. Many of the border guards FRA interviewed said that they had found mistakes in the databases (41 % were referring to SIS II, 32 % to VIS).<sup>171</sup>

If a passenger challenges a database entry, the officers surveyed take different steps (see Figure 25), although they largely concurred in calling in the shift leader or a colleague. While a majority of officers at Schiphol (79 %) and Frankfurt (73 %) would consider calling the institutions responsible for the entry, only a few (15 %) would do so at Fiumicino.

Figure 25: Initial actions border guards take if passengers dispute a database entry (%)



Notes: SIS II and VIS do not apply to the United Kingdom.

Respondents who did not provide an answer to a given item have been excluded when computing the results. Non-response per airport: Charles de Gaulle, n = 1; Fiumicino, n = 0; Frankfurt, n = 1; Schiphol, n = 2.

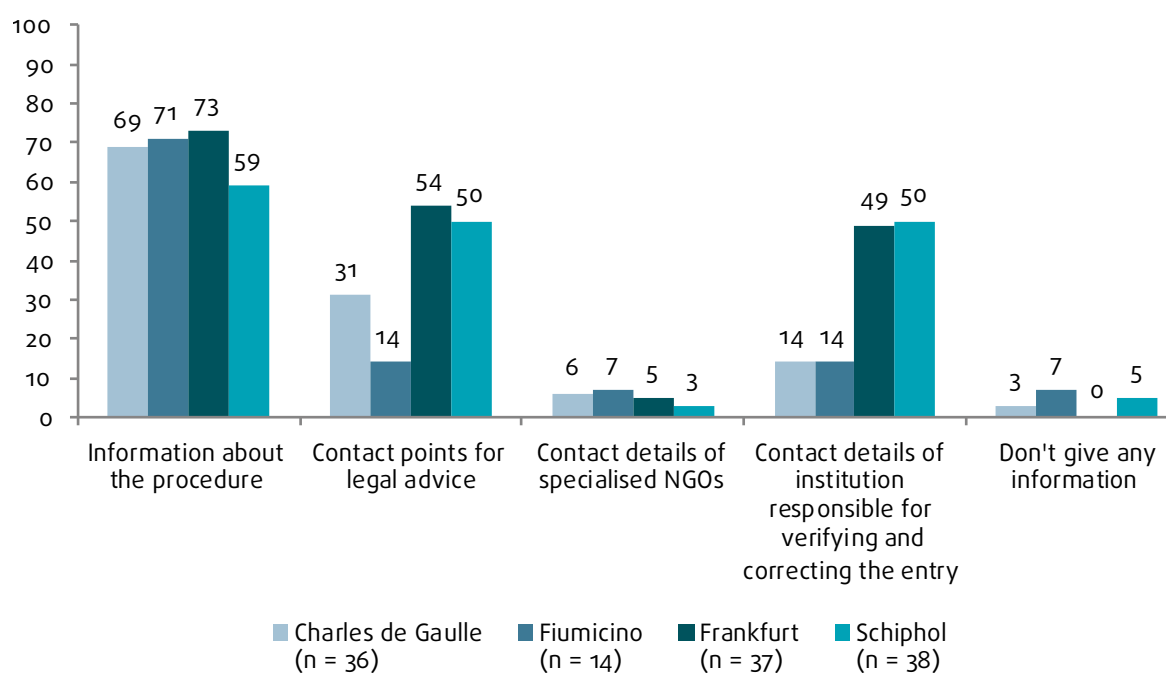
Source: FRA, Border guard survey, 2012 (question 30; multiple responses allowed)

<sup>169</sup> SIS II Regulation (EC) No. 1987/2006, Art. 42 (1) and (2), OJ L 381.

<sup>170</sup> Netherlands, National Ombudsman (2010).

<sup>171</sup> FRA, border guards survey (2012), question 29; percentages exclude responses from Manchester as SIS II and VIS are not applicable in the United Kingdom.

Figure 26: Information border guards provide if passengers challenge a refusal of entry based on a database entry (%)



Notes: SIS II and VIS do not apply to the United Kingdom

Respondents who did not provide an answer to a given item have been excluded when computing the results. Non-response per airport: Charles de Gaulle, n = 1; Fiumicino, n = 1; Frankfurt, n = 4; Schiphol, n = 0.

Source: FRA, Border guard survey, 2012 (question 31; multiple responses allowed)

When passengers challenge a refusal of entry based on a database entry, border guards provide information as shown in Figure 26.

A majority of border guards at all four airports where SIS II and VIS are operational would provide information about the procedure. Only at Frankfurt and Schiphol, however, are passengers likely to receive information on contact points for legal advice and for the institution responsible for verifying and correcting the entry. Very few border guards, however, said that they did not give any information in such cases. Differences by airport ranged from 0 % (Frankfurt) to 7 % (Fiumicino).

## Conclusions

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

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

Before arrival, carriers are obliged under Council Directive 2004/82/EC to communicate API to the border guards at the port of arrival, who may use these data for advance passenger screening. Some EU Member States also have access to PNR data systems, which include the information a person provides when booking and purchasing the ticket and upon check-in.

If communication problems arise at the first line, officers often resort to other passengers for help as interpreters. This may be problematic because of the detailed questions asked at this stage, and requires officers to know what personal data are and how to protect them during the check. Regular training on data protection, however, does not appear to be available at all airports. At European level, two data-

bases, SIS II and VIS, support the work carried out at border crossing points. SIS II contains information on persons and objects for the purpose of refusing entry or stay. VIS includes personal information on each visa applicant. The Entry/Exit System would, if adopted, make it possible to identify people who stay in the Schengen area longer than allowed. To do so, it would record, through the collection of biometric data, the movement of all third-country passengers into and out of the Schengen area. The Registered Traveller Programme, if adopted, would enable faster entry through automated border control gates for pre-vetted third-country national passengers.

At the first line, border guards scan and check the passenger's passport against the SIS II database, where available. An alert triggers a second-line check. The passenger will not necessarily be informed of the reason for this. Upon refusal of entry, in line with the Convention on International Civil Aviation, Annex 9, Appendix 9, border guards share information on passengers with the airline companies, so that they can organise and pay for return flights. Previous inadmissibility would not necessarily bar passengers from entering at a later date, unless an entry ban is recorded in SIS II.

Entries may also be made in national databases as well as EU-level databases. Such national databases also need to respect EU data protection law. Entries that remain in databases forever and automatically trigger further checks every time the person crosses the border may raise questions of proportionality.

Persons who are subject to a SIS II alert have to be informed, although some exceptions exist (SIS II Regulation, Article 42 (1) and (2)). Otherwise, individuals may not address the situation before they travel again. Lack of information on database entries may also raise issues of effective remedy, especially considering that many of the border guards FRA interviewed said they had found mistakes (41 % for SIS II and 32 % for VIS).

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

#### FRA opinion

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



# General conclusions

The impact of border checks on the fundamental rights areas researched is as follows:

In terms of **human dignity**, the research revealed no systematic insufficiencies. The majority of passengers considered border guards' behaviour during first- and second-line checks at the five airports professional. Isolated incidents of unhelpfulness, non-responsiveness and verbal aggression were reported and observed, but cannot be considered representative. Officers at all five airports received guidance on professional conduct. At some airports, border guards' office conditions were suboptimal and did not encourage respectful behaviour, although renovations carried out subsequently at one airport improved the situation there. Some offices suffered from limited space, equipment, lighting or air conditioning. Some were too far from other agencies that need to be consulted during checks. Where passengers have to wait in transit areas for long periods or overnight, resting facilities or showers are often insufficient. Passengers reported having to depend on border guards' responsiveness in escorting them to toilets because they had no direct access while being held for further checks or removal. Arrangements ensuring basic subsistence of passengers waiting to be returned or whose check is taking a long time are in place, but do not always appear to be implemented consistently. At holding facilities near the airport, men and women are not always clearly separated and children's facilities are limited. For searches carried out during second-line checks, the research identified occasional shortcomings such as lack of availability of facilities ensuring privacy, information provided to passengers on the search or gender sensitivity. Guidance on searches for immigration purposes, in particular with regard to transgender people, is often lacking. Proportionality appeared debatable in situations where persons were searched routinely and repeatedly while being held and under observation.

With regard to **non-discrimination**, the research found no evidence of unlawful discriminatory profiling in the selection of flights and passengers for further checks. Border guards emphasised the importance of behavioural analysis at the first and second line to determine a possible irregular entry attempt. Ethnicity was rated less frequently as helpful than other indicators. The research found, however, that perceptions of discrimination may arise in particular if passengers are not informed adequately of the check. Shift leaders at most airports also referred to intuition as an element in officers' screening, which requires objectification and regular review.

**Access to protection** is an area for improvement at all five airports. The research generally noted constraints in relation to a low degree of prioritisation of identification tasks, insufficient assessment of individual circumstances, lack of training and lack of flexible (or any) identification procedures. Although a clear majority of officers said that they would recognise a claim for international protection if the passenger expressed fear of serious harm if returned, one in five surveyed did not. This figure raises concerns considering the serious risks for individuals who may be returned to persecution or serious harm in violation of the principle of *non-refoulement*. Specific guidance and training on identifying potential victims of human trafficking is limited at most airports. The research also found that procedures applying to criminal offenders, including interviews at the airport, do not always pay sufficient attention to the fact that persons arriving with no or false documents may qualify for asylum or protection as victims of human trafficking.

Attention to children is not always systematic or based on specific guidance or procedures. The FRA border guards survey confirmed the significance officers attribute to the child's statements and behaviour to indicate protection needs. Child-sensitive communication is thus a key factor for effective identification. However, specific training in interacting with children, as foreseen by the Frontex Common Core Curriculum, is not yet regularly available to officers at all airports. The assistance of an independent person safeguarding best interests is required as early as second-line checks, when important placement and procedural decisions are taken. At some airports, officers may arrange the appointment of a guardian, administrator or responsible adult as an initial safeguard. There are limitations, however, concerning the scope of the appointees' tasks, professional training, swift appointment, remuneration and access to files, and the availability, capacity and the continuity of assistance.

Passengers' access to the information they need to seek an **effective remedy**, as required by the Schengen Borders Code, was often found to be limited. Information on the second-line check and upon refusal of entry is often not provided or not understood. Only about half of the officers surveyed at all airports said that they usually tell passengers about the procedure, and even fewer about the purpose, of the second-line check. When entry is refused, information on appeal rights and contact points for legal advice is not provided systematically nor always understood when provided. Reasons for this appear

to vary. They include officers' reliance on forms containing limited information or legal language, a lack of written information, limited availability of foreign language versions and late or no provision of information. With the exception of Schiphol, only a minority of officers said that they would always inform passengers refused entry about where to get legal assistance.

Although free legal counselling is in principle possible under certain conditions when appealing refusal of entry, rejection of an asylum claim or placement in a holding/waiting facility, practical obstacles may compromise its availability and quality. These include: capacity limits; restrictions on visits to holding facilities; requirements for prior means and merit tests; time constraints; poor remuneration of lawyers; time pressure; lack of access to specialist lawyers; lack of office facilities; difficulties in obtaining power of attorney from passengers in transit;

procedures obliging passengers to request a lawyer through immigration authorities; and communication difficulties in transit areas. Information on legal assistance is more readily available at holding centres than at airport transit areas or waiting rooms.

In terms of **data protection**, two issues arose from the research. First, the research noted that passengers are frequently used as interpreters if communication difficulties arise at the first line. While this may be a practical response, it requires officers to clearly understand what personal data are and how to protect them. Access to regular training on data protection, however, appears to be limited. Second, the research showed that passengers may not always be well informed of the data on them entered into databases, the consequences and how to correct mistakes, which is of particular concern considering the frequency of mistakes mentioned by the officers surveyed.





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# Annex 1: Methodology

The fieldwork included interviews, administration of questionnaires and non-participant observations, which took place in the course of 2012 at all five airports. In total, 274 questionnaires<sup>172</sup> were administered to third-country nationals subjected to second-line checks as they transited through or arrived at the airports (110 women and 164 men). For the research, 92 qualitative interviews of varying length were carried out with third-country nationals subjected to second-line checks (59 men, 32 women, one transgender person), including 19 asylum seekers. Border guards completed 223 questionnaires (164 male and 59 female officers). Researchers contracted by FRA conducted 28 qualitative interviews with border guard shift leaders and 40 qualitative interviews with other stakeholders, such as airport companies, airport health services, airlines, airport security companies and NGOs. In addition to this, substantial desk research focused on the procedures applicable to border checks.

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

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

Generally, those carrying out the fieldwork enjoyed good cooperation with airport border police, which helped the research teams to understand the border check procedures and identify passengers and border guards for interviews. The main challenge concerned research authorisation and access to airport facilities, which was delayed at Charles de Gaulle and not granted at Heathrow, subsequently replaced by Manchester. This delay reduced the time available to prepare for the field visit and the interviews. At Manchester, authorisation was given neither for interviews with third-country nationals nor for access to

the temporary detention centre. Passenger opinions have therefore not been addressed. At Fiumicino, the research was not able to observe checks after landing/at the gate or to include interviews with persons found with false documents or stopped without documents – the category of passengers who might be held overnight at the second line.

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

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

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

The questionnaire pertained only to the border check on the day of the interview, not to previous experiences of crossing the EU external border. Respondents were identified while waiting for or after a second-line check or while waiting at the luggage belt after a second-line check. In the latter case, only flights coming from destinations considered to be 'high risk' were targeted, given the greater likelihood of more thorough checks. Overall, 108 passengers who were refused entry and 33 asylum seekers responded to the survey. The majority of survey respondents were classified as inadmissible (44 out of 64 and 45 out of 59) at Charles de Gaulle and Fiumicino airports.

<sup>172</sup> The structured questionnaire will be published on the FRA website.

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

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

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

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

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

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

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



## Annex 2: Border guard questionnaire

1. Gender: 1. Male ☐ 2. Female ☐

2. Age:

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

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

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

4. How long have you worked at [BCP]?<sup>173</sup>

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

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

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

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

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

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

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

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

<sup>173</sup> Border crossing point (BCP).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



2. Invalid visa or lack of visa \_\_\_\_\_
3. Insufficient means \_\_\_\_\_
4. SIS hit \_\_\_\_\_
5. Arrest warrant \_\_\_\_\_
6. Other (specify): \_\_\_\_\_

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

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

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

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

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

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

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



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

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

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

## REQUESTS FOR ASYLUM

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

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

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

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

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

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

## HUMAN TRAFFICKING

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

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

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

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

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

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

3. Provide information on rights	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Provide information on what will happen	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Inform protection services (established by national law)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Inform the supervisor	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Inform a specialised NGO	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. Inform organisations providing legal assistance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. Other (specify): _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

## CHILDREN

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

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

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

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

## DATABASES

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

#### 29.a) SIS

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

#### 29.b) VIS

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

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

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

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

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

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

## HANDLING AGGRESSIVE PASSENGERS

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

1. Yes ☐
2. No ☐
3. Don't remember ☐

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

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

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

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

## TRAINING

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

The report examines the procedures for and conduct of checks that border guards carry out on third-country national passengers entering European Union (EU) territory at five international airports. Third-country nationals undergo more thorough border checks than EU/European Economic Area (EEA) and Swiss citizens. A majority are admitted, some after undergoing extended checks. Others may be referred to protection services. A small number are rejected after a detailed check of the entry requirements. They may be held in transit or in a special facility until all issues are verified, the decision to refuse entry is final and a return flight is available. These practical border management tasks raise questions about the application of fundamental rights such as the right to human dignity, non-discrimination, the prohibition of trafficking in human beings, the right to asylum, the rights of the child, the right to an effective remedy and the right to the protection of personal data.



Publications Office

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