

# **EUROPE WITH NO INTERNAL BORDERS, THE SCHENGEN AREA AND EU BORDER CONTROL**

**Presentation of Boldizsár Nagy at the  
EIPA Training**

**Introduction to EU law and EU policies for non-lawyers**

**Module 6 – The Area of Freedom, Security and Justice stream**

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**Slides developed in cooperation with Petra Jeney**

# THE AREA OF FREEDOM, SECURITY AND JUSTICE

## THE METAMORPHOSIS OF CONCEPTS

**1958 - 1993** = Up to Maastricht: **intergovernmental** cooperation

Schengen Agreement (1985) and Convention implementing the Sch. A. (1990)  
The Dublin Convention on determining the state responsible for the asylum procedure (1990)

**1993 – 1999** = Between Maastricht (1 November 1993) and Amsterdam (1 May 1999) = **Justice and home affairs** = **III pillar** = **9 matters of common interest** as in Article K (Title IV) of the **TEU** (Maastricht treaty)

**1999 - 2009** = From entry into force of the A.T. till entry into force of the Lisbon Treaty (1 December 2009) = **Justice and home affairs** = **Area of freedom, security and justice** =

**I pillar** = Title IV. of TEC (**Visas, asylum, immigration** and other policies related to free movement of persons + civil law cooperation)

+

**III pillar** = Title VI. of TEU (Provisions on **police and judicial cooperation in criminal matters**)

**2009 December 1** - = Area of freedom, security and justice **reunited in Title V of the Treaty on the Functioning of the European Union** = Border checks, asylum, immigration; civil law cooperation; criminal law cooperation; police cooperation = **no pillar structure but CFSP is outside** of the „normal” EU regime

# The impact of the idea of Schengen and the AFSJ

## The moving dilemma:

Abolition of border controls (genuine freedom of movement)

vs.

state sovereignty („security”)

Responses:

Up to Maastricht (1993) (sovereignty)

Maastricht-Amsterdam (sovereignty but Schengen and „matters of common interest”)

After Amsterdam (1 May 1999): Genuine freedom with

flanking measures

closer cooperation, opt ins and opt outs

# Schengen: area with no internal borders

1985: Signature of the Schengen agreement between FR, BE, NL, DE & LUX

1990 Schengen Implementing Convention

1995: abolition of the checks at the internal borders + one single external border among the 13 EU MS (except for UK IRL)

1997: incorporation of the Schengen cooperation into the EU legal framework

2001 Norway and Iceland

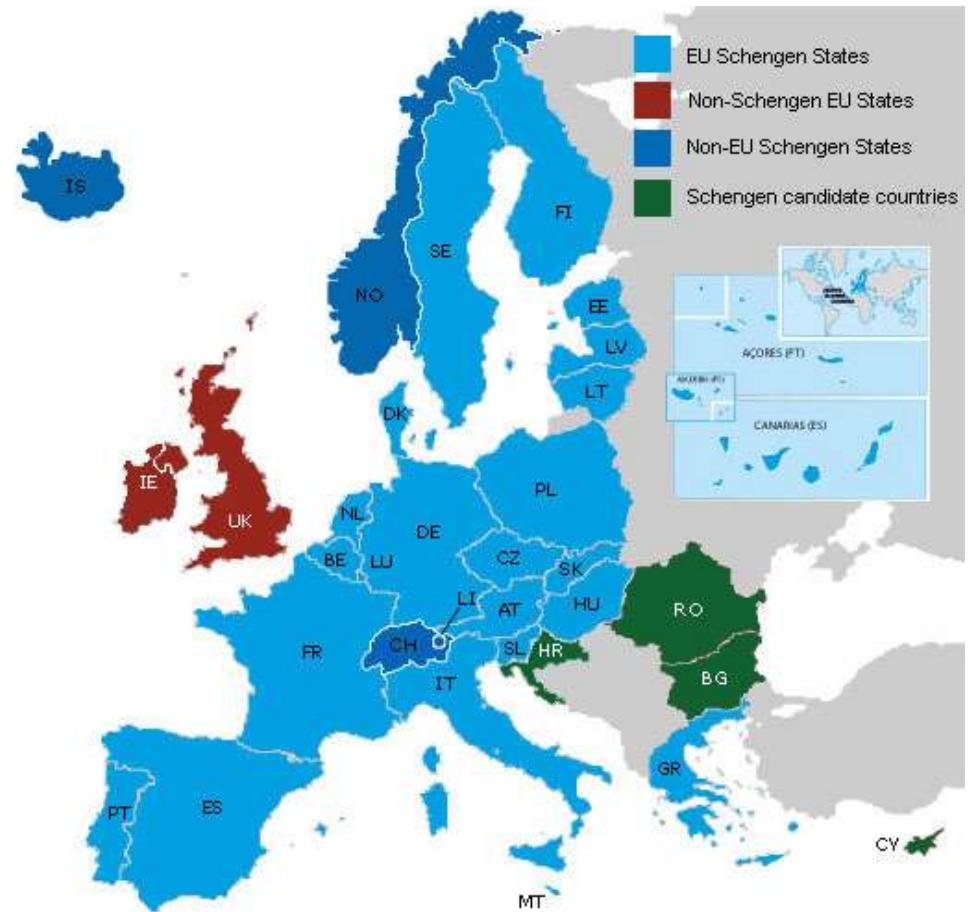
2007 Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovenia, Slovakia and the Czech Republic

2008: Switzerland

2011: Liechtenstein

Prospective Members CY, BG, RO,HR

**Special status UK, IRL and DK – protocols under the Treaty of Lisbon**



# Status of the United Kingdom, Ireland and Denmark

## UK, Ireland

Protocol 20, on border control – **may maintain**, even against persons with free movement rights

Protocol 21 **may opt in** to any measure adopted under Title V TFEU – Arts 67 - 89 on the Area of Freedom Security and Justice

Protocol 19 on the Schengen acquis – UK, Ireland **may opt out** of development of Schengen (police and judicial cooperation)

## Denmark

Protocol 22 Denmark only bound by the Schengen acquis as it stood in 1999 – any development of it – obligation of international legal nature

# EU competences on visas and borders

## Article 77 TFEU

The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures concerning:

- (a) the **common policy on visas** and other short-stay residence permits;
- (b) the **checks** to which persons crossing **external borders are subject**;
- (c) the conditions under which **nationals of third countries shall have the freedom to travel within the Union for a short period**;
- (d) any measure necessary for the gradual establishment of an **integrated management system for external borders**;
- (e) the **absence of any controls on persons**, whatever their nationality, when crossing internal borders.

The Council, acting in accordance with a special legislative procedure, may adopt provisions concerning **passports, identity cards, residence permits or any other such document**. The Council shall act unanimously after consulting the European Parliament.

# Borders

Regulation (EC) No 2016/399 on a Union Code on the rules governing the movement of persons across borders - **Schengen Borders Code**

common rules that govern external border checks on persons, entry requirements

exceptional re-imposition of internal border controls

+ **Regulation 656/2014** surveillance of the external sea borders in the context of operational cooperation

**EUROSUR**  
European Border  
Surveillance System

**EUROPEAN  
BORDER AND  
COAST GUARD**



Smart borders  
Entry/exit  
system

Integrated border  
management

# External borders: border surveillance and control

Tasks in relation to the external border

**Border checks**

**Border surveillance**



**Border control  
(management)**

## Integrated border management

1. Common rules for issuing visas + IT support;
2. Cooperation with third countries;
3. Common rules for border surveillance and control;
4. In depth checks within the Schengen area.



# External borders: **border surveillance**

## Schengen Borders Code

### Border surveillance

means the surveillance of borders **between border crossing points** and the surveillance of border crossing points outside the fixed opening hours, in order **to prevent persons from circumventing border checks** **to prevent unauthorised border crossings**, to counter cross-border criminality and to take measures against persons who have crossed the border illegally.

Schengen **catalogue** – recommendations and best practices

Schengen **handbook** 2006/2015 - detailed instructions on the implementation of the Code

# REGULATION (EU) 2016/1624 European Border and Coast Guard since 6 October 2016

Replaces FRONTEX

Key idea: continuum between the EU agency and the national institutions managing the border = **shared responsibility**

## European Border and Coast Guard

The European Border  
Coast Guard Agency  
border

+

national authorities of MS  
responsible for  
border management

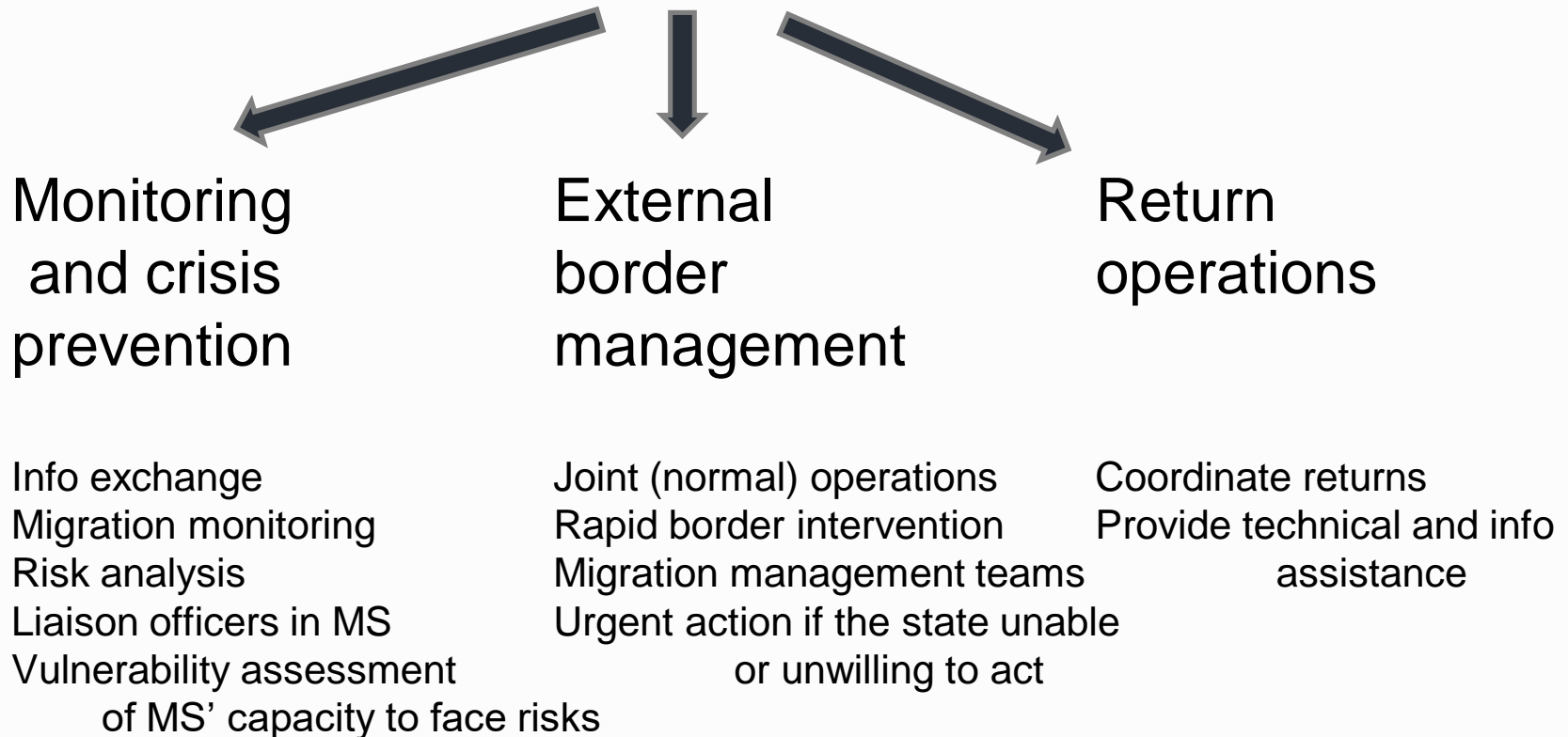
Ireland, UK not bound,

Denmark should decide, as it is Schengen development

Iceland, Liechtenstein, Norway, Switzerland are bound

# European Border and Coast Guard

Main fields of activity:



Rapid reaction pool: **1500 border guards** according to quota (Annex I)

Direct costs: agency – salary: sending country

Agency's own equipment pool

# REGULATION (EU) 2016/1624 European Board and Coast Guard

Situations requiring **urgent action** – right to intervene?

the State **did not follow the recommendations** resulting from vulnerability assessments

faces specific and disproportionate challenges at its external borders **but does not request EBCG operation**

Council implementing act  
-authorises EBCG to take measures  
- MS has to agree to the operational plan

MS's non-compliance with the Council decision and **failure to cooperate with the Agency** may lead to the temporary **reintroduction of border controls** at the internal border

# European Border Surveillance System (Eurosur)

## Information-exchange framework

designed to improve the management of Europe's external borders

- Supports MS by increasing their **situational awareness** and reaction capability in combating cross-border crime, tackling irregular migration and preventing loss of migrant lives at sea

- EBCG Agency creates the European situational picture and the common pre-frontier intelligence picture

Regulation No 1052/2013 of the European Parliament and the Council of 22 October 2013 establishing the European Border **Surveillance System (Eurosur)**



# Large-scale IT systems in the Area of Freedom Security and Justice



Agency for the operational management of large-scale IT systems in the AFSJ, established in 2011

European Commission

Management Authority

## CENTRAL SIS II

- technical support function containing the SIS II database
- uniform national interface NI-SIS

Sirene bureaux

N.SIS II

N.SIS II

N.SIS II

**Visa Information system**

**Eurodac**

# External borders: border checks

## Schengen Borders Code

**C-575/12 Air Baltic case**

Checks carried out at border crossing points, to ensure that persons, including their means of transport and the objects in their possession, may be authorised to enter the territory of the

**minimum checks** - for persons **enjoying the right of free movement** under Union law (EU and EEA citizens and family members)

the entry of **third country nationals** shall be subject to **thorough checks** – document, visa, sufficient means of subsistence, SIS, VIS ...

# Smart borders – Entry/Exit system (EES)

EES will replace manual stamping of passports

It will apply to **all non-EU citizens** who are admitted for a short stay in the Schengen area (maximum 90 days in any 180-day period).

What about returning EU national terrorists?

The system will register the **name, type of travel document and biometrics** and **the date and place of entry and exit.**

Goal:

- **Enhance** border crossing of **bona fide** travellers,
- **Detect over-stayers** and identify **undocumented persons**
- Reinforce **internal security** and the fight against terrorism and serious crime, by providing access to the data, for designated authorities and Europol to a record of **travel histories of third country nationals** including crime suspects



# Internal borders: abolition of border control

## Schengen Borders Code

Internal borders **may be crossed at any point without a border check** on persons, **irrespective of their nationality**, being carried out

**C-188/10 Melki**

**C-278/12 PPU Adil**

## Checks within the territory

- (i) do not have border control as an objective,
- (ii) are based on general police information and experience regarding possible threats to public security and aim, in particular, to combat cross-border crime,
- (iii) are devised and executed in a manner clearly distinct from systematic checks on persons at the external borders
- (iv) are carried out on the basis of spot-checks,

## Removal of obstacles to traffic at road crossing-points at internal borders

## Internal border – restoration of control

Article 25. „Normal case”

**For 30 days** or for the foreseeable duration ,  
exceptionally if „**there is a serious threat to public  
policy or internal security**”.

Can be extended by 30 days – **max 6months**

Procedure (§§ 26 – 27)

**Commission** must be **informed 4 weeks earlier**

**MS** must assess whether the threat justifies interference  
with free movement and would be reduced by  
reintroduction of control

**Commission forms an opinion** on necessity. Other MS  
may also express views. **If dispute: consultations** at  
least 10 days before reintroduction

## Internal border – restoration of control

**Immediate restoration** (without early announcement) of border controls - Article 28 :

„Where a **serious threat to public policy or internal security** in a Member State **requires immediate action** to be taken, the Member State concerned may, on an **exceptional basis, immediately reintroduce** border control at internal borders, for a limited period of up to ten days ” (May be extended by 20 days, several times)  
**Max: two months**

## Internal border - restoration of controls

„Specific procedure where exceptional circumstances put the **overall functioning** of the area without internal border control **at risk**” New §§ 29 - 30

„In **exceptional circumstances** where the **overall functioning** of the area without internal border control is put **at risk** as a result of **persistent serious deficiencies** relating to external border control” because they constitute a „serious **threat to public policy or internal security**” internal border controls may be restored for **6 months** It can be extended 3 times for 6 months. **Max: 2 years**

The Council may recommend it „**as a last resort** and as **a measure to protect the common interests** within the area without internal border control, where all other measures...are ineffective in mitigating the serious threat identified...”

# Schengen Evaluation and Monitoring Mechanism

1994-2014 carried out by SCH States

Reform in 2013 - Regulation (EU) No 1053/2013 - Union led actions

The new mechanism is more clearly structured, including a serious follow-up mechanism

The Commission's role has changed from observer to overall organiser and coordinator, entitled to schedule unannounced on-site visits in Member States;

Expertise of other EU institutions and bodies, such as EBCG Agency, Europol, Eurojust, EASO and EDPS may be used.

The evaluation and on-site-visits may also cover the absence of border control at internal borders;

The EP is now entitled to receive the relevant information;

More public information.

# Schengen evaluation mechanism evaluation in relation to Article 29

Commission adopts Schengen Evaluation Report identifying serious deficiencies in the management of the external border - positive opinion by a Committee of the Member States

Council adopts recommendations for remedial action upon proposal from the Commission

Commission adopts recommendation for specific measures to be taken under Article 19b - following opinion by a Committee of the Member States

Evaluated Member State has three months from the Council recommendations to complete the remedial actions

If situation persists - Commission proposes reintroduction of internal border controls at one or several internal borders for up to six months - Council adopts Commission proposal

**EBCG  
Vulnerability assessment**

# Extending internal border controls, Council implementing decision 2016/1989 of 11 November 2016

## HEREBY RECOMMENDS:

1. Austria, Germany, Denmark, Sweden and Norway to prolong proportionate, temporary border controls for a maximum period of three months, starting from the day of adoption of this Implementing Decision, at the following internal borders:

- Austria at the Austrian-Hungarian land border and Austrian-Slovenian land border,
- Germany at the German-Austrian land border;
- Denmark in the Danish ports with ferry connections to Germany and at the Danish-German land border,
- Sweden in the Swedish harbours in the Police Region South and West and at the Öresund bridge,
- Norway in the Norwegian ports with ferry connections to Denmark, Germany and Sweden.

# Visas

## Visa requirement

List of third countries subject to visa  
(Regulation 539/2001)

Visa Reciprocity Mechanism

Visa Facilitation Agreements

## Procedure

Visa Code  
(Regulation No 810/2009)

consulates

documents required

processing visa applications

remedies

Visa Information System

## Form of visas

Uniform format visas  
(Regulation 1683/1995)

short stay visa,  
visas with limited territorial validity

airport transit visa

Schengen visa: an authorisation/decision by a MS required with a view to:  
transit through or an intended stay in the territory of the Schengen States of a duration of no more than 90 days in any 180 days period ("short stay visa"),  
transit through the international transit areas of airports of the Schengen States ("airport transit visa")

Long term visas are subject to national procedures



# Are visas useful and ethical? Who must have a visa?

„The determination of those third countries whose nationals are subject to the visa requirement, and those exempt from it, is governed by a considered, case-by-case assessment of a **variety of criteria** relating *inter alia*

**to illegal immigration,**  
**public policy and security,**  
and to

the **European Union's external relations** with third countries, consideration also being given to the implications of **regional coherence and reciprocity.**”

Council Regulation (EC) No 539/2001 preamble, para (5)

# Arguments for consideration

1. Both „threat of illegal immigration” threat to public order and security” generalise: based **on the past behaviour of a few makes everyone suspect** and punished by a **collective punishment**: the visa obligation:

It is based on a self-fulfilling prophecy: the number of denied visas as an indication of the threat of illegal immigration

Entering a country into the visa list is the **sheer generalised prejudice**

(All the states of Africa, with the exception of two, on the list)

## Arguments for consideration

2. If used as a tool **in inter-state relations** in order to **promote other goals** the visa obligation burdens the whole of the population: **the civilians become hostage to a political game**. If an authoritarian system is disciplined with the visa obligation the innocent population bears the brunt


Nationals of political **opponents of one** (or a few) member states **are excluded from „the whole EU”**.

3. Individuals **who are known to constitute a danger may be excluded** from entry even if they are visa exempt - **SIS II**

4 . Visa obligation **prevents asylum seekers** from getting to **safety**

# Schen- gen in context

# Visa appli- cations (at consulates) in 2015

Schengen State 	Uniform visas applied for	Total uniform visas issued (including MEV)	Multiple entry uniform visas (MEVs) issued 1)	Total LTVs issued	Uniform visas not issued	Not issued rate for uniform visas	Share of MEVs
Austria	259 167	247 800	145 611	2 803	8 564	3,3%	58,8%
Belgium	239 500	197 495	90 591	1 163	33 420	14,0%	45,9%
Czech Republic	421 355	406 598	131 016	1 494	13 263	3,1%	32,2%
Denmark	123 951	115 469	52 256	165	6 296	5,1%	45,3%
Estonia	130 197	127 543	100 011	413	2 234	1,7%	78,4%
Finland	784 286	771 997	698 743	1 721	9 571	1,2%	90,5%
France	3 356 165	2 997 410	969 666	3 179	333 657	9,9%	32,4%
Germany	2 022 870	1 872 322	521 005	36 430	114 118	5,6%	27,8%
Greece	876 786	842 276	475 801	6 317	27 668	3,2%	56,5%
Hungary	290 798	282 305	128 984	299	8 194	2,8%	45,7%
Iceland	3 987	3 960	724		12	0,3%	18,3%
Italy	2 023 343	1 898 065	1 275 819	13 472	111 806	5,5%	67,2%
Latvia	164 000	162 099	96 409	114	1 787	1,1%	59,5%
Lithuania	423 189	419 470	283 946	125	5 757	1,4%	67,7%
Luxembourg	10 267	10 169	8 548		98	1,0%	84,1%
Malta	39 445	28 748	6 751	114	9 928	25,2%	23,5%
Netherlands	520 809	474 191	393 115	1 906	39 197	7,5%	82,9%
Norway	185 557	174 690	43 055	2 240	8 627	4,6%	24,6%
Poland	970 907	944 821	684 735	1 160	24 926	2,6%	72,5%
Portugal	192 220	168 183	93 851	654	23 383	12,2%	55,8%
Slovakia	76 491	74 419	48 134	292	2 190	2,9%	64,7%
Slovenia	26 895	21 940	21 827	3 118	1 837	6,8%	99,5%
Spain	1 629 753	1 470 892	438 609	5 273	124 323	7,6%	29,8%
Sweden	192 852	166 131	57 567	4 083	19 277	10,0%	34,7%
Switzerland	481 886	429 399	175 675	22 970	29 517	6,1%	40,9%
<b>Grand Total</b>	<b>15 446 676</b>	<b>14 308 392</b>	<b>6 942 449</b>	<b>109 505</b>	<b>959 650</b>	<b>6,2%</b>	<b>48,5%</b>

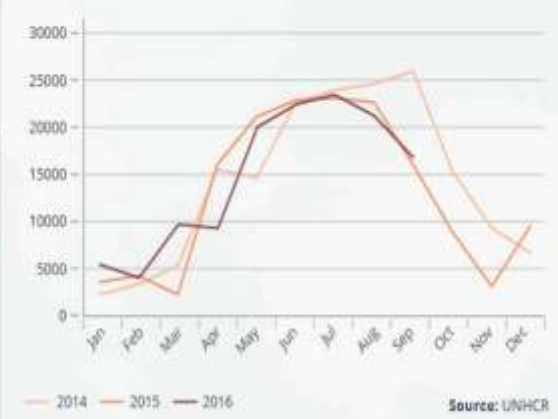
Source:  
[http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/visa-policy/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/visa-policy/index_en.htm)  
 (20161211)

# Irregular arrivals in Italy



## Irregular arrivals in Italy per month

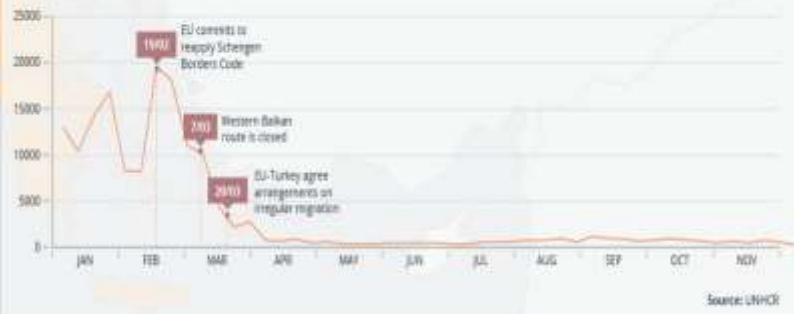
Border crossing by sea, from Jan 2014 to September 2016



# Migration flows: Irregular arrivals in Greece

## Irregular arrivals in Greece per week

Border crossing by sea from January to November 2016



## EU Mediterranean operations: over 100 000 lives saved in 2016

3 EU operations are patrolling the Mediterranean to secure EU borders, target migrant smugglers and rescue migrants at risk.

### Operation Triton

- Frontex border surveillance operation
- Central Mediterranean
- Launched 2014

### EU NAVFOR Med Operation Sophia

- CGOP military operation to target migrant smugglers
- Southern Central Mediterranean
- Launched 2015

### Operation Poseidon

- Frontex border surveillance operation
- Eastern Mediterranean
- Launched 2016



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## Irregular arrivals in Italy per country of origin

Top nationalities, Jan - August 2016

Number and % of total arrivals

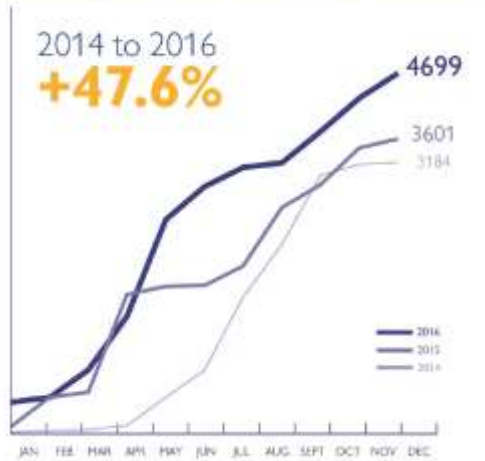


Schen-  
gen in  
context

# Less arrivals, more deaths at sea in 2016 than in 2015



MEDITERRANEAN FATALITIES 2014-2016 (JANUARY TO 30 NOVEMBER)



Data for Greece and Italy 7/12/16  
Data for Spain to 30/9/16

## Mediterranean Update Migration Flows Europe: Arrivals and Fatalities



Source: [http://migration.iom.int/docs/Mediterranean\\_Update\\_09\\_DEC\\_2016.pdf](http://migration.iom.int/docs/Mediterranean_Update_09_DEC_2016.pdf) (20161212)

# Numbers do not add up

	<b>Arrival at sea (IOM data)+</b>	<b>Detection of illegal border crossings (FRONTEX)*</b>	<b>Asylum applications (EASO) α</b>
2015	1,011,712	1.822,337	1,071,971
2016	378,660 until December	359,569 until July	1,093,729 until November

Sources:

+ [http://migration.iom.int/docs/Mediterranean\\_Update\\_09\\_DEC\\_2016.pdf](http://migration.iom.int/docs/Mediterranean_Update_09_DEC_2016.pdf)

\*Frontex: Annual Risk Analysis, 2016 [http://frontex.europa.eu/assets/Publications/Risk\\_Analysis/Annula\\_Risk\\_Analysis\\_2016.pdf](http://frontex.europa.eu/assets/Publications/Risk_Analysis/Annula_Risk_Analysis_2016.pdf) and FRAN Q2, 2016, p. 6 (20161212)

α = EASO Latest Asylum Trends, 2016 October, p. 1

# **THANKS!**

**BOLDIZSÁR NAGY**

**E-mail: nagyboldi100 - at - gmail.com  
www.nagyboldizsar.hu**

**CEU IR and Legal  
Budapest, 1051  
Nádor u. 9.**

**Tel.: +36 1 242 6313, Telefax: +36 1 430 0235**