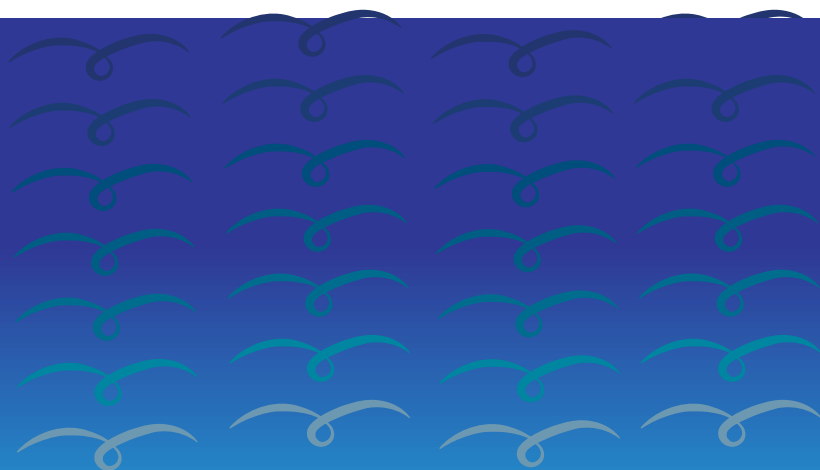# ADMiGOV

Advancing Alternative Migration Governance

Operational practices of EU entry governance at air, land and sea borders

Julien Jeandesboz (ed.), Eirini Aivaliotou, Patrycja Matusz, Polly Pallister-Wilkins, Ilias Pitsikos
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Acknowledgments

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ACRONYMS

ACI	Airport Council International
API	Advanced Passenger Information
BAC	Brussels Airport Company
BelPIU	Belgian Passenger Information Unit
BG	Border Guard (Poland)
CALL	Council for Alien Law Litigation (Belgium)
CGRS	Office of the Commissioner General for Refugees and Stateless Persons (Belgium)
CIA	Police 'district information crossroad' (*carrefour d'information de l'arrondissement*, Belgium)
Ciré	Coordination et Initiatives pour Réfugiés et Etrangers (Belgium)
DGA	Directorate General for Administrative Police (Belgium)
DVZ/OE	Immigration Office (Belgium)
EASO	European Asylum Support Office
EES	Entry/Exit System (EU)
EMN	European Migration Network
ETIAS	European Travel Information and Authorisation System (EU)
Fedasil	Federal Agency for the Reception of Asylum Seekers (Belgium)
FNHN	First-level National Health Network (Greece, ΠΕΔΥ: Πρωτοβάθμιο Εθνικό Δίκτυο Υγείας), formerly Social Insurance Institute (IKA)
Frontex	European Border and Coast Guard Agency
HCDCP	Hellenic Center for Disease Control and Prevention (Greece) ΚΕΕΛΠΝΟ: Κέντρο Ειδικών Λοιμώξεων και Πρόληψης Νοσημάτων
HUSA	Health Units Societe Anonyme ΑΕΜΥ: Ανώνυμη Εταιρία Μονάδων Υγείας
iAPA	Interactive Advanced Passenger Information (system)
IATA	International Air Transport Association
ICAO	International Civil Aviation Organization
IOM	International Organization for Migration
L80	Law on foreigners' access to the territory, stay, establishment and removal of 15 December 1980 (Belgium)
LPA	Aeronautical Police (Belgium)
MIAA	Ministry of Internal Affairs and Administrations (Poland)
MFLSP	Ministry of Family, Labour and Social Policy (Poland)
Myria	Federal Migration Centre (Belgium)
NEHC	National Emergency Help Center ΕΚΑΒ: Εθνικό Κέντρο Άμεσης Βοήθειας

NGO	Non-Governmental Organisation
NPHO	National Public Health Organization (Greece)
	ΕΟΔΥ: Εθνικός Οργανισμός Δημόσιας Υγείας
	Formerly HCDCP / ΚΕΕΛΠΝΟ
NCSS	National Center for Social Solidarity
	ΕΚΚΑ: Εθνικό Κέντρο Κοινωνικής Αλληλεγγύης
OF	Office of Foreigners (Poland)
PD	Presidential Decree
	ΠΔ.: Προεδρικό Διάταγμα
PTSD	Post-Traumatic Stress Disorder
RAO	Regional Asylum Office
RIC	Reception and Identification Centre (formerly First Reception Centre)
RIS	Reception and Identification Service
SARPs	Standards and Recommended Practices (ICAO)
SBC	Schengen Borders Code
SSN	Social Security Number (Greece)
	ΑΜΚΑ: Αριθμός Μητρώου Κοινωνικής Ασφάλισης
TCN	Third country national
ToS	Terms of Service
UASC	Unaccompanied and separated children
UNHCR	United Nations High Commissioner for Refugees
UNSC	United Nations Security Council
ZSE6	National evidence information system (Poland, Zintegrowany System Ewidencji)

1. General introduction

Julien Jeandesboz (Université libre de Bruxelles)

1.1.   Aims, assumptions and questions

This deliverable for Work Package 1 (WP1) of the Advancing Alternative Migration Governance project (ADMIGOV) sketches an analysis of the operational practices involved in governing the entry of third-country nationals on the territory of the Member States of the European Union (EU). More specifically, this report presents and brings together the results from field research at specific segments of the EU external air, land and sea borders. This field research was guided by the following question: how is EU entry governance organised operationally, and why? The research presented here is more specifically meant to reflect, using the terminology found in the ADMIGOV inception documents, a 'bottom-up' perspective, meaning that the focus is on actors involved in the operational, day to day conduct of entry governance rather than in the formulation of laws, prescriptions, policies, principles or strategies. This 'bottom-up' perspective is implemented by means of three case studies focusing on entry by air at Brussels Airport (Belgium), entry by land at the Terespol/Brześć border crossing (Poland/Belarus) and entry by sea on the island of Lesvos (Greece).

The research presented here builds on the same, shared understanding of entry across ADMIGOV WP1, as access to the territory of states, and here more specifically as access by third country nationals to the territory of the Member States of the European Union and the Schengen area. The focus is therefore explicitly on persons who are not citizens of an EU Member State or Schengen associated country. In so doing, we acknowledge that this seemingly straightforward understanding involves a number of complexities, which emerge from the research presented below.

Access should not be understood in the narrower sense of the moment when a person physically steps into the territory of a state. The literature acknowledges for instance that access is shaped by a range of decisions, practices, procedures and rules that unfold 'remotely' (inter alia Guiraudon, 2003; Zolberg, 1999, 2003), that is at a physical distance from the territory to be accessed. In the context of EU migration governance, this comprises for instance the screening and assessment of Schengen visa applications by the consular authorities of Member States in third countries for the purpose of detecting persons who might be deemed as posing a security threat or an irregular migration 'risk' (Bigo and Guild, 2005). The research presented here operates within the latter, wider understanding of entry in order to account for the way in which entry into the territory of the EU Member States is conditioned by measures and procedures unfolding prior to arrival and even prior to actual departure.

Territory is a similarly complex notion. As political geographer and international relations scholar John Agnew (1994) famously argued, territory is an analytical 'trap' because our understanding of its meaning tends to be dominated by an idealized version of the historically-

specific experience and practice of the territoriality of the sovereign state. We tend to reify territory as 'state territorial spaces' (Ibid: 77), and we understand state territorial spaces as fixed and mutually exclusive geographical units with clearly defined borders that combine the functions of administrative, legal, regulatory and political boundaries. In the context of the European Union, however, the meaning of territory involves a set of silences and tensions that contradict this idealized understanding (e.g. Bialasiewicz, Elden and Painter, 2005). A quick look at the Treaties confirms this insight, as they can be characterized by the 'existence of different geographical scopes of application for different sets of rules' (Ziller, 2007: 52). While territory is almost systematically mentioned in reference to the territory of the Member States and only once as 'Union territory' (Art. 153(1)(g) of Title X TFEU), it coexists with other spatialities (Ibid: 335), chiefly that of 'area' which characterizes specifically the 'area of freedom, security and justice' (AFSJ). Other spatialities are also commonly brought up in policy documents or political statements, including the 'Schengen area' or the 'eurozone', which altogether do not conform with an idealized, state-centric understanding of political space as sovereign territorial space. Given this state of affairs, the research presented here works with an understanding of territory that comprises and involves tensions between multiple spatial practices and technological infrastructures and focus on understanding how, from the standpoint of the actors involved in entry governance, such multifarious understandings and practices of spatiality play out.

Alongside this shared understanding of entry and entry governance and its intricacies, the main assumption informing this research and its guiding question is that the operational practices studied here are likely to differ or diverge from the overarching prescriptions produced in particular within the EU governmental arenas. This assumption is grounded in part in the analysis of the law of European entry regimes in ADMIGOV deliverable D.1.1 (Koopmans and González Beilfuss, 2019). Said report concluded that these prescriptions (hereafter characterized as the 'law of entry') left considerable 'operational discretion to national authorities' (Ibid: 78). The additional questions informing the research presented here and deriving from this first stage of ADMIGOV WP1 research are therefore the following. How does the operational discretion left to national border control authorities of the Member States manifest? What are the extent of and the limits to this discretion? In operational contexts, considering these questions call for two further developments. First they should also apply to intra-state circumstances, since 'states' capacity to enforce immigration laws is itself generated by complex relationships between *multiple* movement-control policies and practices' (Vigneswaran, 2019: 2, emphasis in original). In a given operational site, who has discretion and who does not, how do local-national bureaucratic arrangements, rules and practices shape the way in which persons enter the territory of EU Member States? Studies of operational actors involved in border control, residence permit or visa delivery processes, for instance, show how everyday bureaucratic actors have margins for maneuver and enjoy a degree of discretionary power that is certainly framed by regulations, rules, procedures and technical systems but can also exceed these frameworks (e.g. Eule, 2017; Infantino, 2014, 2017a; Moffette, 2014; Pallister-Wilkins, 2015; Spire, 2008; Zampagni, 2016). Second, they should be extended to include other actors than public bodies. Operationally, migration

governance in general and here entry governance more specifically enacted through 'complexes' of public and private authority (e.g. Golash-Boza, 2009; Nyberg Sorensen and Gammeltoft-Hansen, 2013).

The remainder of this introduction presents the shared methodological elements of the three case studies conducted by WP1 researchers, as well as the structure of the deliverable.

1.2.   Methodology

The report encompasses three separate case studies along with an opening chapter providing a statistical description of patterns of entry at EU external borders. Given the diversity of data and empirical contexts, each chapter comprises a specific methodology section outlining the design, data generation and analysis methods used by the researchers, as well as difficulties encountered in the process.

In order to structure fieldwork and set common objectives, furthermore, WP1 researchers coordinated to establish a common field guide in the first months of work. The purpose of the inquiries presented here, in this respect, is not systematic comparison, causal inference and hypothesis-testing through a "small-n" experimental research design. We understand each case as a specific setting in which it is possible to observe and analyse 'patterns of interaction, organizational practices, social relations, routines, actions' (Yanow et al., 2008) that relate to the unfolding of EU entry governance and allow us to examine the full range of this governance.

To do so, the research was conducted by the different teams with a shared understanding of:

- **Methods**. Research would rely on qualitative methods to generate data, including if possible observation (participant or otherwise) and semi-structured interviews. Quantitative data was not ruled out, but was eventually used only for descriptive purposes (see the next chapter on 'Patterns of entry' in particular).

- **Population to be investigated**. The focus would be on operational actors involved in entry governance. The implication is that the research does not study border crossers themselves, nor does it look in-depth at the actors in charge of producing norms, procedures, regulations or rules related to entry governance. Attention would be directed, furthermore, to the practices of these actors, namely their way of thinking and speaking about, problematising and enacting, entry governance, with the understanding that researchers should endeavour to meet, if applicable, interview and observe different groups of operational actors, with variations in terms of hierarchy, organisations, and location.

- **Matters of concern**. From the onset WP1 researchers designed a list of key stakes in entry governance, identified in the inception documents of ADMIGOV and originating in collective discussions at the kick-off meeting of the project (February 2019) that

would be the subject of observation, interview questions and desk research. These stakes include:

- o The regulatory environment of operational actors in entry governance, that is of the norms, procedures, regulations or rules that actors themselves bring up as relevant to their daily work or important for their organisations;

- o Operational coordination, that is the way in which actors from different bodies and organisations acknowledge, frame and negotiate their interactions, and resulting frictions and obstacles;

- o Infrastructure, that is how equipment including the built environment of entry governance, the devices and resources available to operational actors impact entry governance. This involves understanding which aspects of infrastructure are in play, what devices and resources are used by operational actors and how, concerns, obstacles and frictions arising from these aspects of entry governance;

- o Rights, that is the way in which questions related to fundamental rights are handled in operational contexts and by operational actors, including awareness, concrete action and obstacles, and including rights for specific categories of persons identified as particularly vulnerable;

- o Gender and sexuality, that is the way in which entry governance is gendered and sexualised from an operational perspective, involves gendered assumptions or heteronormative sexualisation in the assessment of border crossers or the performance of gendered and sexualised norms in the material and normative organisation of entry governance practices. This includes considering the degree of awareness of operational actors regarding gender and sexuality, the way these concerns manifest, if at all, specific considerations and obstacles in taking them into account.

- o Class and race, that is the role that assumptions about the socioeconomic status or race of third-country nationals plays in operational entry governance. Again, this involves considering the degree of awareness of operational actors regarding class and race, whether there are specific efforts in place to prevent discriminatory practices, and related obstacles and frictions.

To accommodate the fact that research on each entry segment would be conducted simultaneously and by separate teams, the field guide was left deliberately open-ended in terms of both population and matters of concern. Each team would therefore be able to add or subtract from the actors or matters under consideration, depending on the specificities of the site under investigation and the limits and possibilities of access to operational contexts and actors. This open-endedness was adopted for pragmatic reasons – to keep coordination efforts to a reasonable level and enable each team to make autonomous decisions about their

empirical research – as well as to leave room for more inductive-style research. It also has limits, which are discussed for each specific inquiry.

1.3.   Outline of the deliverable

The deliverable is organised as follows. The next chapter provides a statistical description of key patterns related to entry through the external borders of the European Union and Schengen area. It examines how persons on the move, and more specifically third-country nationals, access the territory of the Member States of the European Union. Each of the following three chapters then provides a case study of each 'type' of EU external borders and operational entry governance practices that unfold there. Chapter 3 delivers the entry by air case study. Chapter 4 covers entry by land. Chapter 5 examines entry by sea. The conclusions of the deliverable outline key findings for each chapter and a discussion of both further research avenues and the way forward with the objectives of ADMIGOV.

2. Patterns of entry

Julien Jeandesboz (Université libre de Bruxelles)

2.1.   Introduction

Discussing the operational practices of EU entry governance should start from an overview of patterns of entry through the external borders of the European Union and Schengen area. This chapter accordingly provides a statistical description of key patterns related to entry through the external borders of the European Union and Schengen area. It looks at how persons on the move, and more specifically third-country nationals, access the territory of EU Member States and Schengen associate countries and for what purposes, at how and who is refused entry, and at how and who enters the EU and Schengen area outside of authorised channels. How do persons on the move, and more specifically third-country nationals, access the territory of the Member States of the European Union? Asking this question raises three complementary interrogations.

Following a discussion on methodology (2.2.), we first, how many people enter the EU, where, and for what purposes (2.3.)? Examining this questions involves understanding overall patterns of entry and distinguishing, if possible, between the entries of EU/EEA citizens and third-country nationals. It also involves examining the purposes for which third-country nationals cross the external air, land or sea borders of EU and Schengen states. While there is no overall statistical information on the latter, it is possible to provide an assessment for some categories of third-country nationals.

Second, who is refused entry (2.4.)? Refusing entry to a third-country national is part of the operational practices involved in entry governance, and the point at which, for the purposes of the project, entry governance segues into exit governance. Refusals of entry, it has to be specified, involves situations where a third country national presents themselves for admission at a border crossing point and is denied entry.

Thirdly, then, how many people enter the EU without being authorized to do so, and where (2.5.)? This concerns cases where persons are detected or intercepted while crossing the external borders outside of designated border crossing points, which is different from refusals of entry that take place at such crossing points. We therefore consider both 'regular' and 'irregular' entry within the scope of the chapter.[1]

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[1] In so doing, we use the terminology of regular and irregular entry (as well as migration and movements of persons), in order as Düvell (2006: 29) argues, 'to avoid any discriminatory connotation, to prevent further criminalization, and to emphasise that it is not the immigrant as a human being who is illegal, but her mode of entry and stay or work.'

2.2.   Methodology

The following discussion consists of a statistical description of patterns of entry, refusals of entry, and entry outside authorised channels, through EU and Schengen area external borders. It presents statistical information on the air, land and sea external borders, when applicable[2], of the EU-28 Member States and Schengen associate countries. Since the aim is description rather than inference, we do not make use of further specific quantitative methods. It is however necessary to clarify the data sources that are relied on, as well as the choices made in collating and presenting said data. The following draws on available public datasets and published statistical information, in particular:

- European Border and Coast Guard Agency (EBCG, hereafter Frontex) data as collected, compiled and published by Frontex as part of its risk analysis responsibilities and on the basis of Article 11(4) if the EBCG Regulation.[3] This data is made available in the agency's quarterly and annual risk analysis reports.[4];

- Data collected and compiled by Eurostat since 2008 on the basis of Article 5 and 7 of Regulation (EC) No 862/2007[5], which establishes common rules for the collection and compilation of EU statistics on migration and asylum. This data is made available in Eurostat's Enforcement of Immigration Legislation database (*migr_eil*). Eurostat data is used in particular for the purpose of analysing patterns of refusal of entry

Both datasets are used separately and compared when applicable, in order to assess the reliability of information on patterns of refusal of entry. A number of discrepancies and divergences between Eurostat and Frontex statistics are identified, which are partly explained by differences in methodology and availability of data. Specific instances are highlighted and discussed when appropriate below. As a general observation, however, it is important to keep in mind that the quality, reliability and context of use of data on migration and international protection in the EU has been a matter of concern. While the EU has, through the Eurostat database, one of the most expansive and robust regional migration data systems, there are issues with the fact that this data originates in a variety of national sources that despite harmonisation efforts still show differences in terms of sources, definitions, or collection methods (Singleton, 2016: 2). Frontex data suffers from similar issues, and has found itself at the heart of political and public controversies over the last years, involving for instance cases

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[2] Not all EU and Schengen states have external land and/or sea borders.
[3] Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard, OJ L251/1, 16.9.2016.
[4] For the purpose of this research, statistical information provided by Frontex was gathered from all annual risk analysis published by the agency starting in 2010.
[5] Regulation (EC) No 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection and repealing Council Regulation (EEC) No 311/76 on the compilation of statistics on foreign workers, OJ L199/23, 31.7.2007.

of double counting of persons travelling on the so-called 'Western Balkans route' in 2015 (as revealed by Sigona, 2015). The statistics presented and discussed here should therefore be taken as rough estimates of patterns of entry and come with a health warning.

2.3.   Overall patterns of entry

Who enters the EU, how, and for what purposes? There is no unambiguous answer available from the various statistical sources compiled by EU agencies and bodies. Frontex, the European Border and Coast Guards agency, provides since 2015 (the first reporting year being 2014) annual estimates of regular entries by type of border, which are shared by national authorities with the agency on a voluntary basis. **Figure 2-1** below shows that over the period 2014-2018, entry by air has been by far the predominant way to access the territory of EU Member States, followed by land and sea entry. These statistics, however, concern the number of yearly *entries* on the territory of EU and Schengen states, as opposed to the number of *persons*. It is fair to assume that some individuals will enter (and exit) several times over the course of a single year.[6]

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[6] In addition, the data collected and compiled by Frontex is not complete for all EU-28 and Schengen associate countries. Data on entries for 2018, for instance, are not available for Austria, Ireland, Sweden and the United Kingdom, nor is data on passenger entries at the air and sea border for Spain, or data on passenger entries at the sea border for Cyprus, Malta, the Netherlands, Romania and Denmark (Frontex, 2019: 51).

Figure 2-1. Number of entries by type of EU external border, 2014-2018
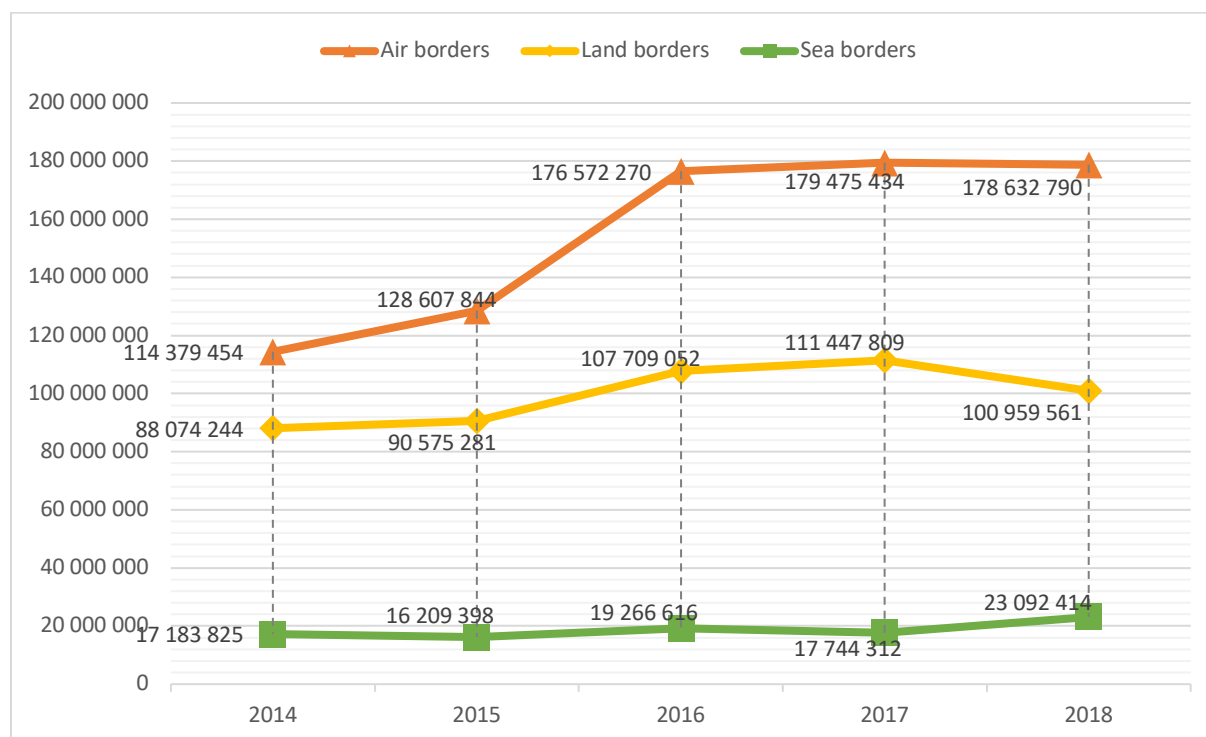
Source: Frontex annual risk analysis reports, 2015 through 2019

The statistics outlined in Figure 2-1, furthermore, do not distinguish between entries by EU citizens and entries by third-country nationals by type of border. Frontex provides rough estimates of persons holding the nationality of an EU Member State or Schengen associate country, and of TCNs, entering the EU annually, presented in **Figure 2-2** below. Note that the most important category of entry here (represented by the top line in the graph) is for those persons whose nationality has not been specified by EU or Schengen national authorities. In addition, there are no information available on the purpose of entry. The lack of information regarding the repartition of entries between EU and Schengen associate country nationals and third country nationals, incidentally, has been presented as one of the motives for the adoption of the EU Entry/Exit system.[7]

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[7] See ADMIGOV deliverable D.1.1. for further discussion.

Figure 2-2. Entries by nationality at EU external borders, 2014-2018
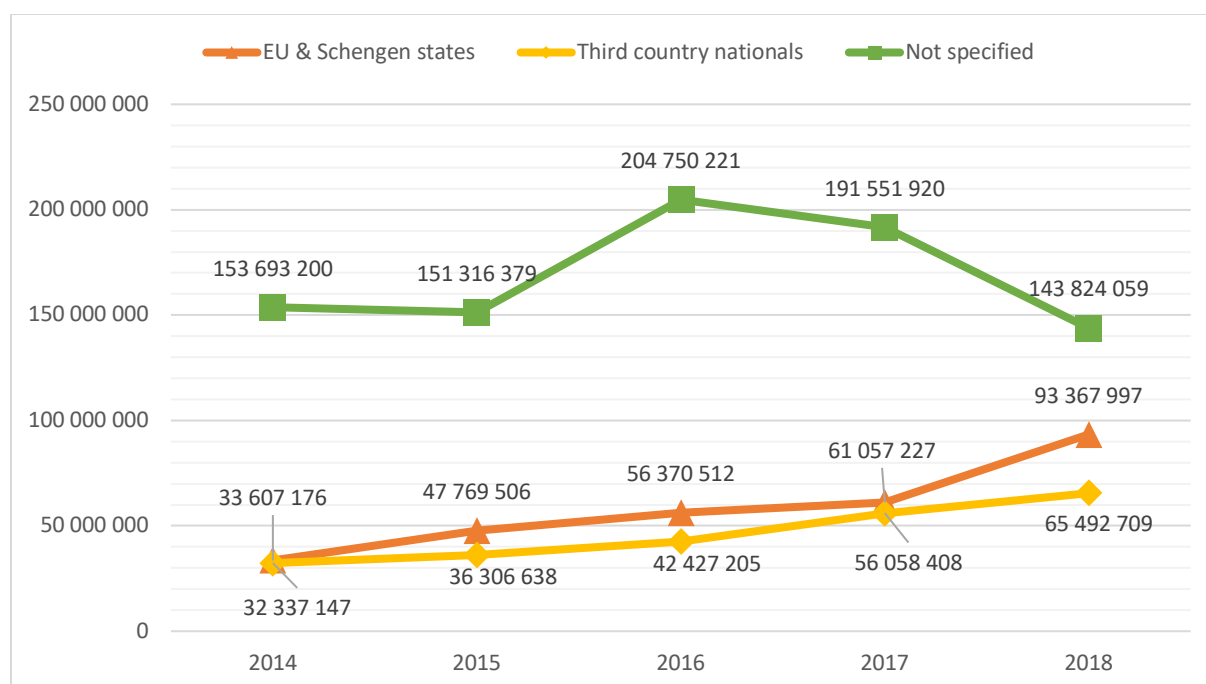
Source: Frontex annual risk analysis reports, 2015 through 2019

If one assumes that the respective proportion of EU and Schengen associate country nationals and TCNs accessing the territory of EU Member States is constant across the different types of borders, then it could be inferred that travel by air is also the main modality of regular entry for TCNs. Following this assumption, in 2018 at least 33,3 million entries (22 percent of the total number of entries by air) of TCNs in the EU happened through air borders (22,2 million by land and about 5 million by sea). This is the roughest of estimates, however, because the assumption it is based on cannot be verified. There are also issues with the accuracy of the data provided by Frontex or to Frontex by Member State authorities, which further limit the usefulness of this estimate. While it is *likely*, given the pre-eminence of air travel as a modality of entry in the EU, that air borders account for the largest share of TCN entries, this cannot be supported with convincing evidence at this time.

2.4.   Patterns of refusal of entry

2.4.1. How many persons are refused entry, and where?

As **Figure 2-3** below underscores, the number of persons refused at land borders according to Eurostat data exceeds by far the number of persons refused entry at either air or sea borders. In fact, in order to represent the situation at each type of border on the same graph, it has been necessary to include a secondary y-axis in Figure 3. The difference is so significant, in fact, that data displayed here concerning refusals of entry at land borders have to be read

together with the primary y-axis to the (reader's) left, while numbers concerning refusals of entry at air and sea borders have to be read together with the secondary y-axis to the (reader's) right.

Figure 2-3. Persons refused entry at the external borders of EU-28 and Schengen associate countries by type of border, 2008-2018 (Eurostat data)
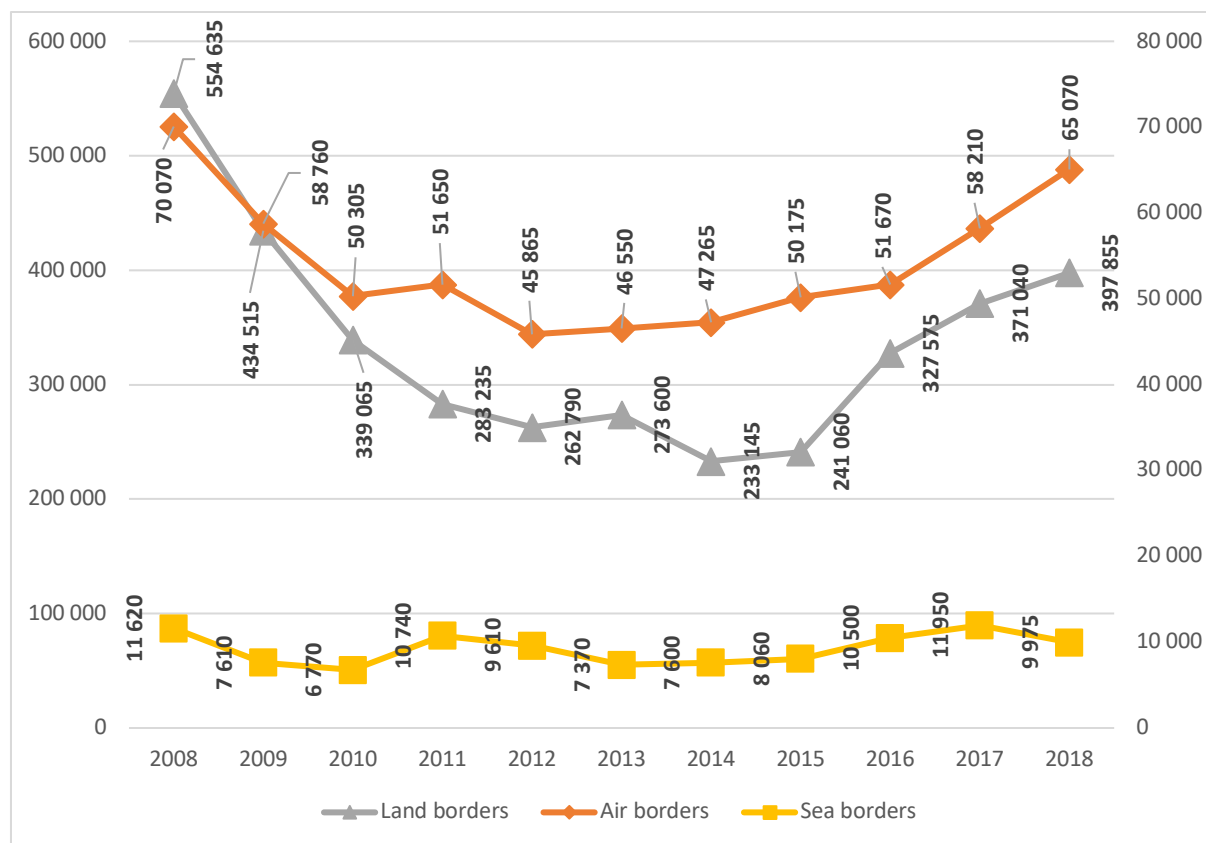
Frontex data on persons refused entry at the external borders of EU-28 and Schengen associate countries, displayed in **Figure 2-4** similarly indicates that more persons are refused entry at land borders than at either or both air and sea borders.

Figure 2-4. Persons refused entry at the external borders of EU-28 and Schengen associate countries by type of border, 2008-2018 (Frontex data)
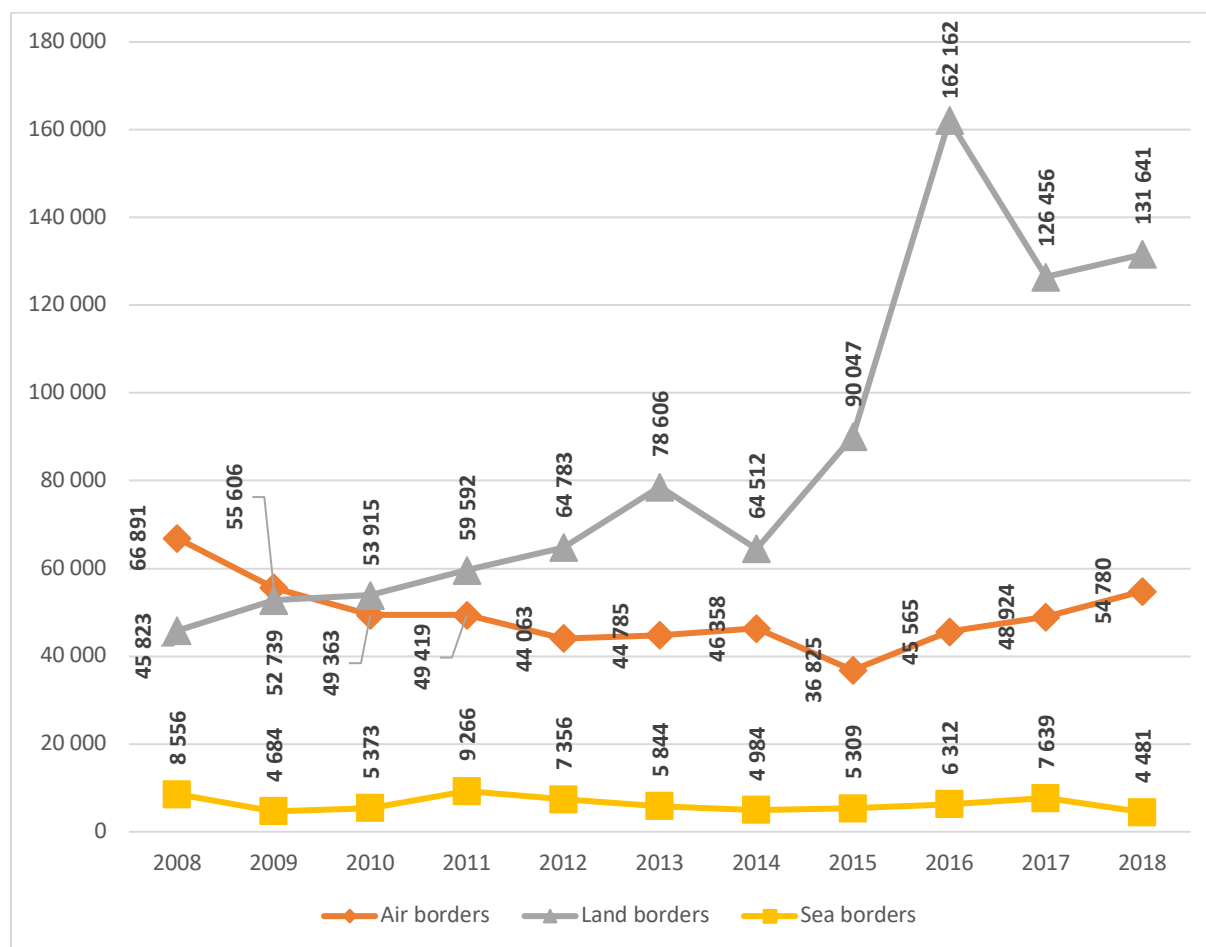
The absolute number of persons refused entry at EU and Schengen external borders varies, at times significantly, from country to country. **Figure 2-5** below illustrates these variations by providing an overview of the absolute number of persons refused entry at the external borders of EU and Schengen states on average over the last ten years (2008-2018), based on Eurostat data.

Figure 2-5. Average number of persons refused entry at the external borders of EU and Schengen states by country, 2008-2018 (Eurostat data)

Country	Value
Luxembourg	4
Iceland	30
Denmark	138
Malta	263
Norway	289
Czechia	321
Sweden	455
Austria	675
Cyprus	787
Slovakia	852
Switzerland	1 020
Latvia	1 267
Estonia	1 434
Finland	1 439
Belgium	1 916
Portugal	1 987
Netherlands	2 621
Bulgaria	2 870
Lithuania	3 191
Ireland	3 337
Germany	4 114
Romania	5 040
Slovenia	5 837
Italy	7 393
Greece	9 398
Croatia	10 068
Hungary	10 871
United Kingdom	16 558
France	29 294
Poland	30 389
Spain	252 142

As indicated above, the statistics compiled from Frontex annual risk analysis reports on refusals of entry also significantly diverge from the statistics provided by Eurostat. This divergence is made even clearer in **Figure 2-6**, which compares Eurostat and Frontex statistics on the total number of persons refused entry at the external borders of EU-28 and Schengen associate countries between 2008 and 2018. The total annual numbers reported by Eurostat are systematically higher, and by a significant order of magnitude, than the numbers reported by Frontex.

Figure 2-6. Overall number of persons refused entry at external borders of EU-28 and Schengen associate countries, 2008-2018: comparison between Eurostat and Frontex data
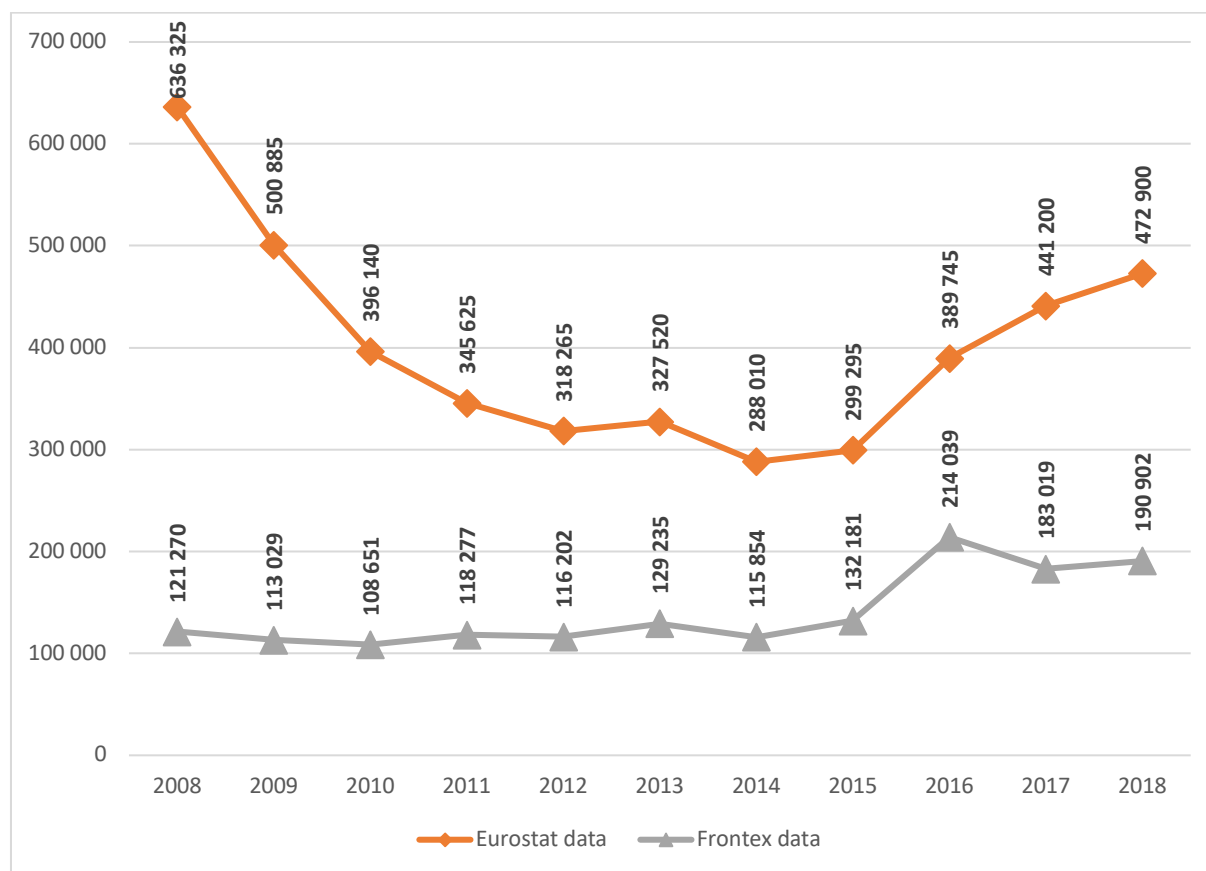
The divergence between Eurostat and Frontex statistics can be in part attributed to differences in data selection. The mean percentage difference between Eurostat and Frontex entry refusal figures over the period 2008-2018 is highest for land borders (73%) followed by sea borders (31%), and is the lowest for air borders (7%). For land borders, the issue most likely concerns refusals of entry at the land border between the Spanish exclaves of Ceuta and Melilla and Morocco, which are included in Eurostat data and excluded from Frontex data. Ceuta and Melilla are the only land borders between Spain and a third country and, as indicated in **Figure 2-5** earlier, Spain is the EU and Schengen state that has refused entry to the highest absolute number of persons on average over the last ten years. Persons refused entry at land borders also represent the largest contingent for Spanish external borders from 2008 to 2018. Another explanation for these discrepancies is the fact that Eurostat and Frontex do not collate their statistics from the same sources. Eurostat data is collected from national statistical institutes or relevant ministries, while Frontex data is gathered through the Frontex Risk Analysis Network (FRAN) from national border control services.[8]

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[8] Email communication between Frontex and Julien Jeandesboz, December 2019. Both Eurostat and Frontex have been contacted for further information on these divergences. Eurostat did not grant permission to interview the

2.4.2. On what grounds are people refused entry?

Figure 2-7 and **Figure 2-8** present the main motives communicated by border control authorities for refusing entry to third country nationals at the EU and Schengen external borders according to Eurostat and Frontex data, respectively.[9] For each year, **Figure 2-7** gives figures both for the motive for which the most persons have been refused entry, as well as the total number of persons who have been refused entry according to Eurostat. **Figure 2-8** can be read in the same way for Frontex data. For example, as **Figure 2-7** shows, the top three motives for which persons have been refused entry between 2008 and 2015 according to Eurostat alternate between the lack of a valid travel document, of a valid travel visa or residence permit, the lack of justification for the purpose and condition of the person's stay in the EU/Schengen area, insufficient means of subsistence, or the fact that an SIS alert has been issued for that person for the purpose of non-admission. The main motive for which persons have been refused entry from 2008 to 2015 - still according to Eurostat data - is the lack of a valid visa or residence permit, while from 2016 to 2018, this has been (by far) the lack of a valid travel document.

official(s) in charge of the *migr_eil* data (Unit F/2 "Population and migration") but the Eurostat helpdesk responded by email and provided links to the (publicly available) methodology and metadata guides concerning this dataset. At the time of writing, Frontex has provided preliminary clarifications and was assessing further our request at the time of submission (January 2020).

[9] Eurostat data is available for the period 2008-2018 and Frontex data for the period 2009-2018

Figure 2-7. Main motives for refusal of entry at the external borders of EU-28 and Schengen associate countries, 2008-2018 (Eurostat data)

Legend:
- No valid travel document
- No valid visa or residence permit
- Purpose and condition of stay not justified
- No sufficient means of subsistence
- Alert has been issued
- Total number of entry refusals/year

Values shown per year:
- 2018: 281 185 / 472 920
- 2017: 268 635 / 441 120
- 2016: 55 065 / 207 870
- 2015: 42 590 / 138 925
- 2014: 42 915 / 123 840
- 2013: 61 620 / 143 345
- 2012: 44 990 / 126 955
- 2011: 37 870 / 127 700
- 2010: 39 190 / 115 470
- 2009: 48 740 / 126 005
- 2008: 53 025 / 142 595

Figure 2-8. Main motives for refusal of entry at the external borders of EU-28 and Schengen associate countries, 2008-2018 (Frontex data)
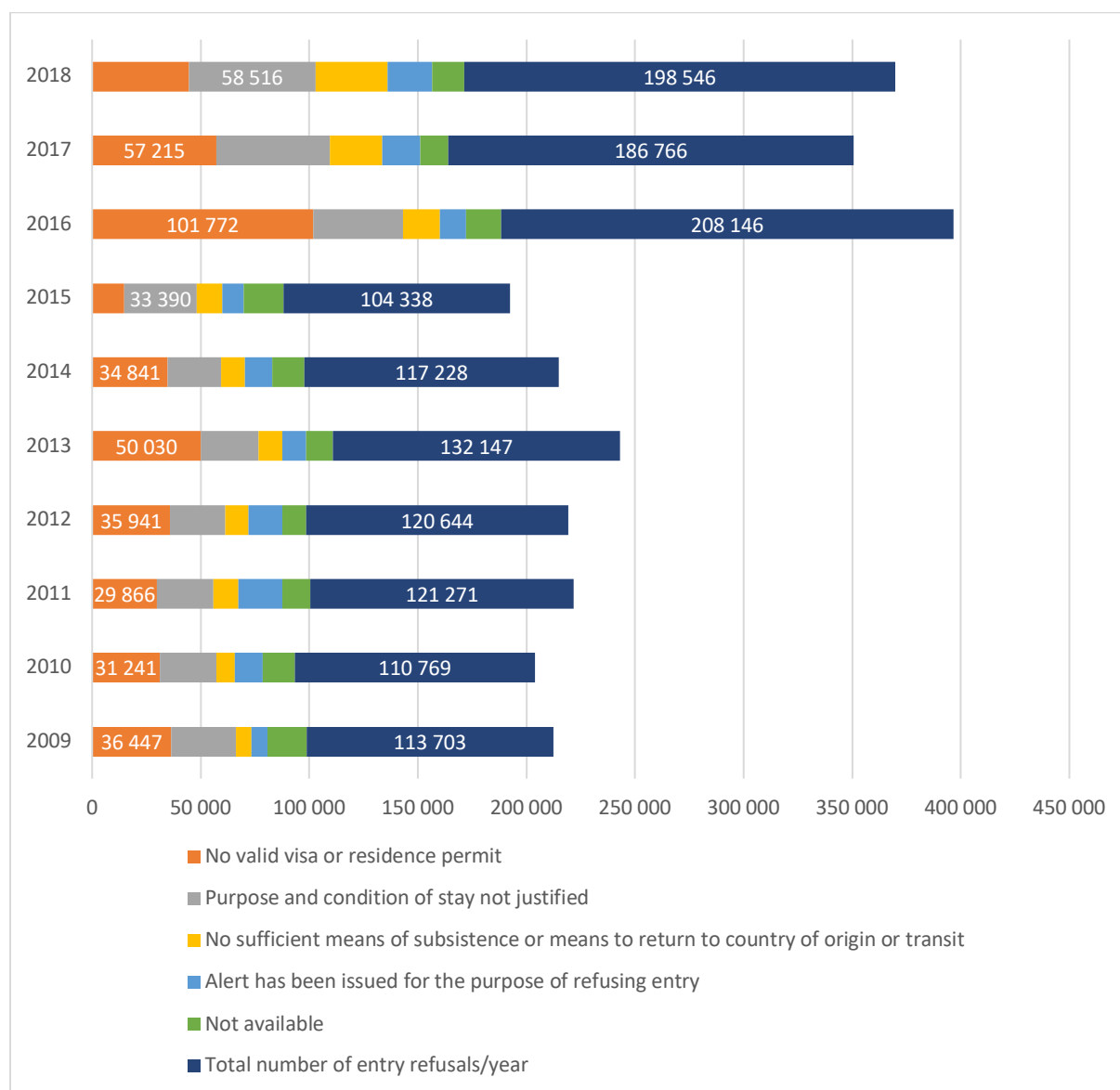
While the numbers reported by Eurostat and Frontex still differ significantly[10], they are mostly convergent as far as the main motives stated by border authorities for refusing entry are

[10] Besides divergences between Eurostat and Frontex statistics, there are also some noticeable discrepancies between the number of persons who have been refused entry at EU and Schengen external borders and the count of motives justifying refusals of entry provided by national authorities within each set of statistics. In some cases, national authorities may list more than one grounds for refusing entry, or the grounds for refusing entry have either not been communicated to Eurostat and Frontex or not registered at all. Both bodies note that Spanish authorities do not in most cases issue refusal forms at the land border crossing points between Ceuta and Melilla and Morocco and do not otherwise collect data on the grounds for refusal. Eurostat reports that according to Spanish national authorities 90 percent of persons are refused entry at these border crossing points

concerned. The foremost motive is the absence of a valid visa or residence permit, and the second most frequent reason for most years in both sets of statistics concerns the justification of the purpose or conditions of a person's stay.

2.5.   Patterns of irregular entry

Statistics concerning patterns of irregular entry are collected, collated and published by Frontex, since the agency took over the responsibilities of the Centre for Information, Discussion and Exchange on the Crossing of Frontiers and Immigration (CIREFI; Singleton, 2016; 11), which during the 1990s was the main EU body (operating as a working group under the EU Council of Ministers) tasked with statistical work about EU external borders. As stated in the methodology discussion for these chapters, these statistics require careful handling. They do not provide, in particular, a precise count of how many persons enter the EU without being authorised to do so, but estimates of the number of border-crossings (which may be attempted by the same person several times) that have been detected and reported by national authorities. There is no telling, furthermore, the effect that new measures, increased or decreased efforts by national authorities to control their segments of the EU external borders has on reported figures, nor is there a clear (publicly available) understanding of the quality and reliability of the data reported to the agency, since unlike Eurostat, Frontex does not regularly publish and make available the metadata on its statistical series.

Figure 2-9 below provides such an estimates, which concerns the detection of irregular border crossings outside of designated border checkpoints at EU land and sea external borders (and not at air borders, where the possibility of irregular entry is extremely limited) over the last decade. Unsurprisingly, Frontex statistics indicate a peak in detected irregular border crossings in 2015 (though, to reiterate, this does not give us a clear indication as to how many *persons* attempted to cross). This is one of two statistical series that Frontex provides on irregular entry, the other one concerning irregular entry that are detected by national authorities at border checkpoints.[11] What is unclear – on the basis of the methodological information provided by Frontex – is how this second statistical series differs from statistics on persons who have been refused entry because they have been deemed improperly documented. Given this doubt, the statistical description provided here draws only on the first series.

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for not being in possession of a valid travel document or documents that would authorise them to enter (Eurostat, 2019: see Annex II).

[11] In Frontex reports, these statistics are further broken down by gender, nationalities (top ten), age (adult/minor) and migratory 'routes'.

Figure 2-9. Detections of irregular border crossings between EU external border check points (Frontex data, 2008-2018)
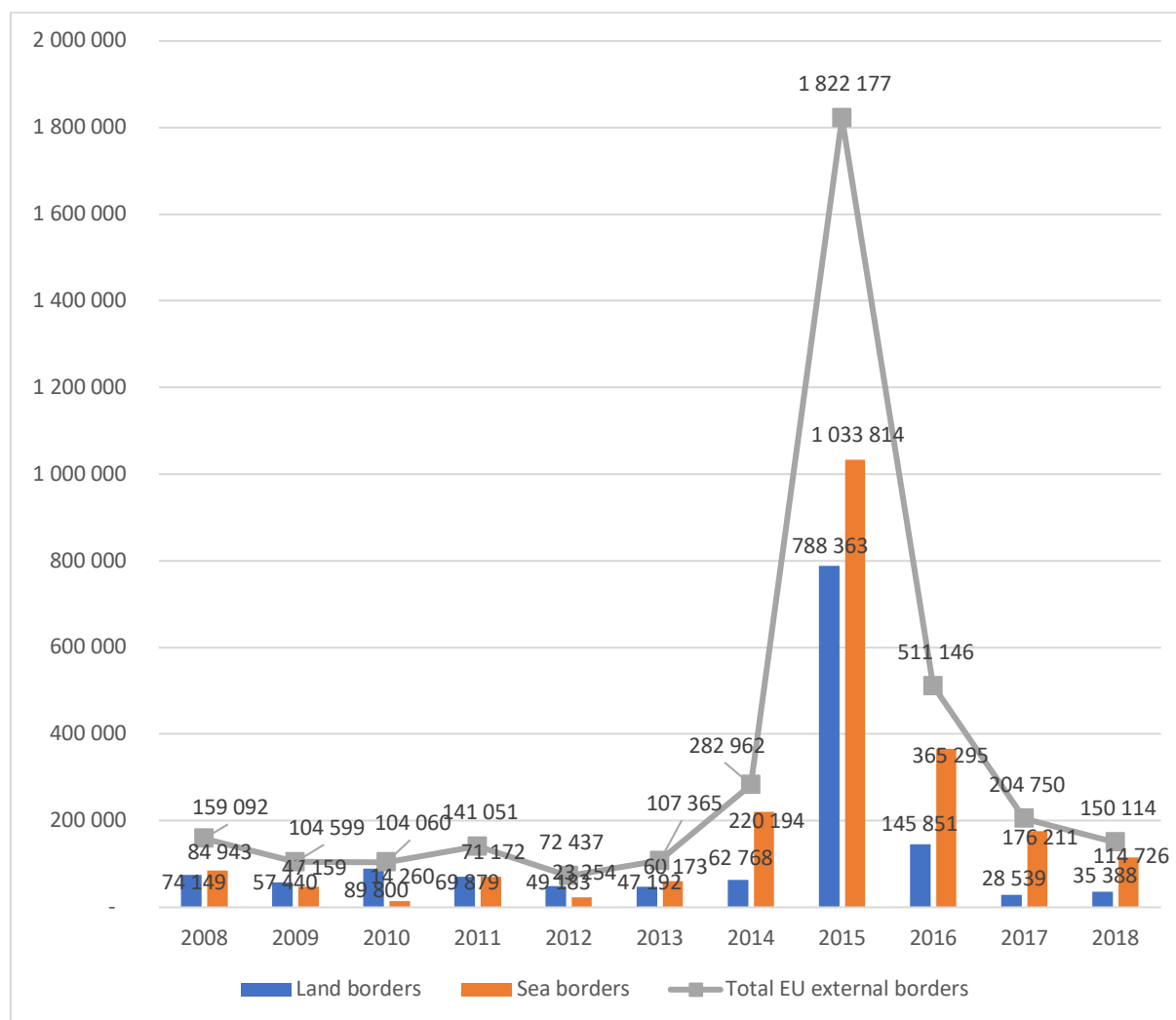
Source: Frontex annual risk analysis reports, 2010 through 2019

Figure 2-9 also points out some further limits to Frontex data. While it appears that most detections since 2013 concern the crossing of sea borders, the context in which such detections occur is not specified. We do not know if these are detections at sea or detections that occur once persons have arrived on shore. There is no clear indication of who has performed these detections (see e.g. the chapter on entry at sea, which shows that irregular entry can happen in several ways), or what detections actually mean – whether these include reports of persons or vehicles that have been noticed but not stopped, or just records of arrests of persons linked to the unauthorised crossing of a border. Furthermore, there is no indication of whether these detections include persons who, once detected and presumably arrested, have submitted an application for international protection and were recognised as refugees. What is clear, nonetheless, is that the number of irregular detections reported by the agency appears is almost insignificant compared to the number of regular entries it reports at the same time. In 2015 – the height of the so-called 'migration crisis' – the number of reported detection of irregular entry between border checkpoints represented for instance

less than 0,8% of the number of regular entries (see Figure 2-1). The same year, the agency reported that 132, 181 persons had been refused entry at authorised border checkpoints (see Figure 2-6 and note that for reasons already explained, Eurostat data provides a higher figure), which is less than 0,1% of the number of persons who were let in. These figures should not be considered as the best of indicators, but they must nonetheless be kept in mind when considering the operational efforts that EU and Schengen states dedicate to border and migration enforcement.

2.6.   Conclusion

The chapter's objective was to provide a statistical description of patterns of entry at EU external borders, to provide some context to the analyses of operational practices of entry governance developed in the following pages. The main features of the description are the following. While it is not possible to distinguish between entries by EU citizens and TCNs, most people access the territory of EU and Schengen states by air, followed by land and finally sea entry. However, it is at land borders that most refusals of entry are issued, followed this time by air and sea entry. For most years over the last ten years, the main grounds on which persons (and in this case this concerns TCNs) have been refused entry are the lack of a valid visa or residence permit, followed by the justification of the purpose of their stay. Finally, while entry by air appears to be the predominant way to access the territory of EU and Schengen states, it is at the external sea borders that the highest number of detections of irregular entry are reported. These findings, however, are rough estimates at best, given that the chapter identified issues with the quality and reliability of the data produced by both Eurostat and Frontex, which is an issue that will be familiar to students of European migration policies.

3. Operational governance at the air borders

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3.1. Introduction

3.1.1. Aims and objectives

This chapter examines EU entry governance in the context of air borders and from an operational rather than legal-institutional perspective. The focus here is on the Belgian segment of the EU external air border and the country's main air entry, the Brussels-National airport (hereafter Brussels Airport or BNA). The questions that inform this analysis fall in line with the overarching interrogations informing the deliverable. How do third-country nationals access the territory of EU and Schengen states when travelling by air? Which authorisations (norms, rules) and authorities are involved? How do the configuration of these authorisations and authorities in national (Belgian)-local (BNA) contexts shape the ways in which this access take place?

In order to deal with these questions, the present introductory section provides basic stepping stones for the analysis provided in subsequent sections. It starts with methodological considerations presenting the parameters of the chosen case study and providing an initial description of BNA as an operational context of entry (by air) governance as well as considerations related to data generation. It then moves to a selected review of the literature on entry by air, air borders and border security, in order to outline the specificities of entry by air that will inform the reminder of the chapter. It finally outlines the structure of the chapter.

3.1.2. Methodology

3.1.2.1. Case study

The chosen case for the study of entry by air is the main international airport of Belgium, Brussels National airport or Brussels Airport, occasionally still known by its former name, Zaventem Airport or even simply Zaventem. While there are other international airports in Belgium, in particular the Brussels-South/Charleroi airport for low-cost airlines, that have in recent years gained grounds (Lohest and Aubin, 2011), Brussels Airport remains the main airport for intercontinental flights to and from Belgium. Located approximately 12 kilometres northeast of Brussels, Brussels National airport (BNA) is among the top twenty international airports in the European Union in terms of passenger flows, and as illustrated in more details in Section 3.2, one of the main European airports for flights to and from Central African

destinations, and an intercontinental airport specialised in serving destinations on the African continent more generally. This is in large part a historical and institutional inheritance of the network of the former Belgian flagship carrier, Sabena (*Société anonyme belge d'exploitation de la navigation aérienne*)[12], which became Brussels Airlines in 2002 (Ibid).

Since such considerations will matter in the analysis that follows, it is worth detailing a bit further the features of BNA as an operational environment for entry governance. As illustrated by **Figure 3-1** on the next page, travellers arriving from non-Schengen destinations (including non-Schengen EU Member States) usually disembark in a long corridor that runs below the non-Schengen international departures terminal of Pier B. They might also, but more rarely do, disembark at T-Terminal, located at the very end of Pier A that otherwise serves as the arrival and departure hall for Schengen flights.

As they reach the end of the Pier B arrival hall, travellers encounter the main border checkpoint area at Brussels Airport. Travellers in transit take a right turn and go through a separate checkpoint, from which they can then access the departure halls of either Pier A or B. Holders of EU and EEA passports can make use of one of the six automated gates to the left of the checkpoint area. These gates have been installed in a man-trap configuration and operated since July 2015. Passengers are encouraged to make use of these gates by airport employees usually posted before the border checkpoint to provide assistance, and by large overhead signs. Passengers step through the first door of the gate, which closes after them. They then introduce their passport in a reader located on their right, which feeds the information into the system. They are asked to stand still and look at a screen where they can see themselves, while the gate captures a facial image that is compared with the biometric data on the passport chip. If the verification is successful, the front door of the gate open, and passengers are then free to leave the border checks area and effectively enter onto Belgian territory. If the automated gates are not operational or if they encounter an issue while using a gate, the supervisor standing on the other side will direct them to a booth for manual inspection. There are no such gates available at the T-Terminal and passengers all have to go through manual inspection.

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[12] Sabena was established in 1923 as a mixed-ownership Belgian-Congolese company to operate flights between Belgium and the Congo and within the Congo, in addition to operating flights in Europe (Vanthemsche, 2012: 189). It thus developed by providing Belgium with an 'imperial airway' (Vanthemsche, 2002: 37) to its colony, which has had a lasting influence on the shape of its network of aerial liaisons, the embeddedness of Brussels Airport within international and intercontinental aerial connections, and on the outlook of the transport services offered by its successor company, Brussels Airlines.

Figure 3-1. Overview of arrival hall at Brussels Airport
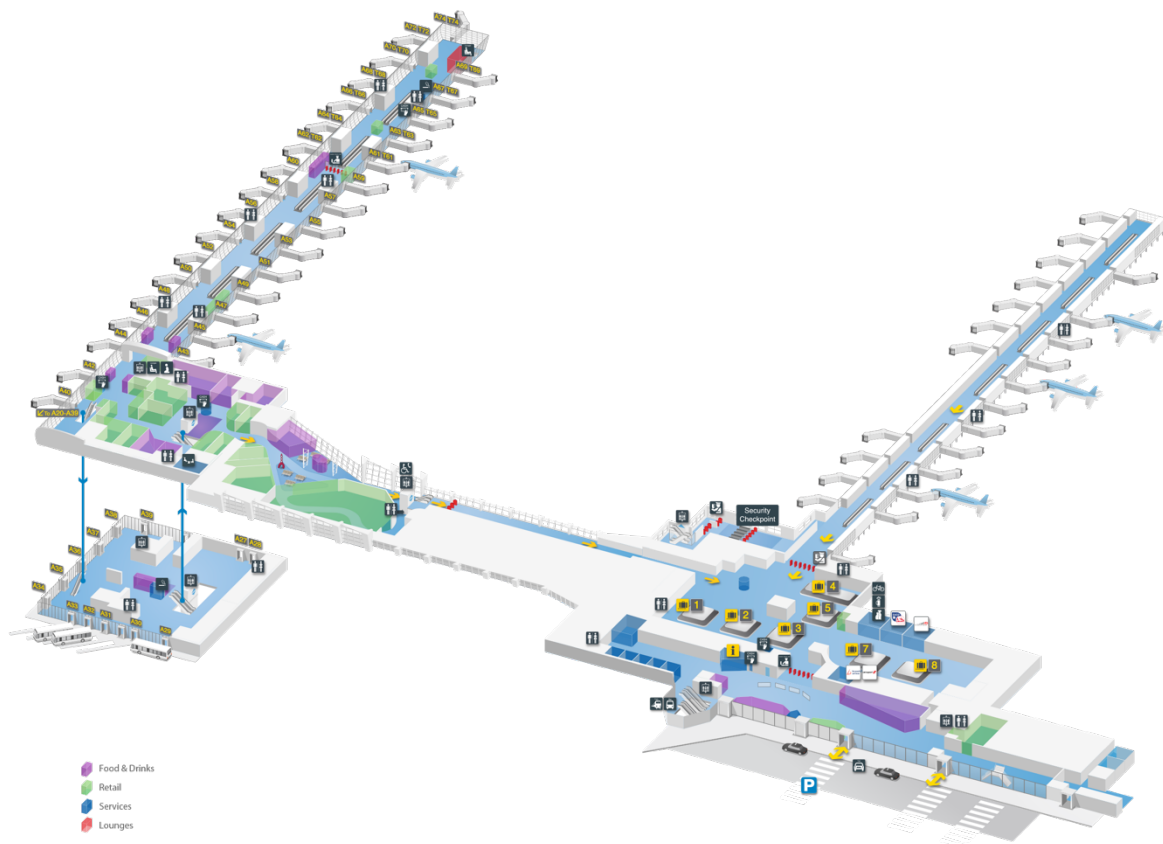
Source: Brussels Airport Company, 2019

Third country nationals, and families travelling with children under the age of 12 irrespective of the passport they hold must queue in the right-hand lane[13] to have their documents and authorisations checked manually by officers of the Belgian aeronautical police sitting in split booths. It is at this point that a decision is made on the person's admissibility onto Belgian territory. This is not, however, a decision about whether a person should be refused entry, but a decision about whether a person can be let through without further questions, or whether they need to be taken aside for a so-called second-line check. Travellers who are allowed entry move on to the luggage collection area, where they mix with travellers arriving from Schengen airports and disembarked at one of the doors of Pier A, coming out of another corridor situated at a right angle. It is impossible to access the Connector, the building bridging the distance between Pier A and B that departing travellers access after having gone through security, from that corridor, as it is blocked by one-way automatic glass doors. Travellers who

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[13] The reason is that EU passports for children under the age of twelve do not store biometric data, which is a pre-requisite for using automated gates, for the time being (see ADMIGOV D.1.3., however, for a discussion of foreseen changes in this regard – Lemberg-Pedersen et al., 2020).

are not authorised to enter will be led to a second-line checks room located on the disembarkation corridor of Pier B for further questioning.

There are additional intricacies to Brussels Airport as an operational environment for entry by air, which will be examined further in the chapter. For the time being, it is relevant to note that in many ways, Brussels Airport is typical of Schengen international and intercontinental airports, though architectural and infrastructural details may vary. From an entry perspective, the most important feature is the systematic separation between Schengen and non-Schengen arrival halls, which is mirrored by the separation between departure halls. Before 2015, when the Connector building was inaugurated, that separation was even clearer as passengers were required to walk long underground corridors (going up and down several elevators or lifts in the process) to transfer between Piers A and B, or to reach the main terminal building and the luggage collection area. Brussels Airport as an operational environment for entry by air also typifies what makes air borders stand apart from land and sea borders. Entry by air takes place in an entirely artificial (that is, man-made and unaffected by physical geographical features) and controlled environment where travellers are channelled, brought to thresholds, stopped and let go while being repeatedly screened in ways that are difficult to imagine in other settings. As one interviewee for this research remarked, in fact, air borders are the 'easy case'[14] when it comes to deploying new border control measures or devices, precisely because of this artificiality.

As a final note, it seems relevant to highlight the features of Brussels Airport not just as an operational context of entry governance but as a research context. This is a familiar setting for a researcher based in Brussels and who is often called to travel by air in Europe and internationally for professional reasons. For someone who holds a passport issued by an EU Member State, airports such as BNA are also an oddly comfortable setting, associated with often enriching and stimulating experiences of mobility and travel and the occasional mild irritation caused by cancelled or delayed flights, changing aircraft security requirements, longer than usual waiting times at passport control or equipment malfunctions (typically, of the aforementioned ABC gates). Such lived experiences are not individual, furthermore, and are shared by most of the researchers who have studied airports, air entry and air borders whose contributions are further discussed below. When one belongs to the more affluent segments of affluent societies, and beyond the occasional fear of flying, airports, air travel and entry by air are not usually spaces and contexts that generate unease, which makes it difficult to envisage the experience of persons for whom that might be the case because of the passport or visa they carry or do not carry, or because of the stakes involved in travelling and entering by air for them. Such shared experiences may also lead to distortions in analyses of airports when it comes to the governance of access to the territory of states, when it is found for instance that contrary to representations of smooth and frictionless transit, airports and air borders are also characterised by infrastructural and organisational tensions, malfunctions and glitches, or when it is discovered that contrary to the cultural and social imaginaries of

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[14] Interview, eu-LISA, Brussels, December 2019.

mobility and limitless travel that such places are associated with, these are also spaces of social sorting, detention, deportation and death.

3.1.2.2. Data generation: a qualitative inquiry into the operations of entry governance at EU external air borders

The study that follows relies principally on qualitative data generated through semi-structured interviews, supported and complemented by documentary research. It does occasionally rely on quantitative data for purposes of statistical description rather than inference.

Qualitative data has been generated through six semi-structured interviews conducted between September 2019 and January 2020. Interviews involved Belgian officials from the federal Migration Centre Myria, the Federal Police Council and the Ministry of Interior (former official). Two interviews were conducted with interlocutors working with the airline industry (independent consultant in aviation matters and Brussels Airlines[15]). In order to address some of the shortcomings of the research discussed below, an interview was organised with an official from the eu-LISA agency to discuss specifically the implementation of recently adopted EU measures involving the agency's mandate. At this point it has not been possible to secure interviews with the Brussels National unit of the Belgian federal police, or with the federal Immigration Office.[16] While inquiries have been made through formal, hierarchical channels at the time of writing, it has not been possible to access relevant interlocutors through informal interactions that play an important role when conducting research on border and immigration enforcement operational services (Kalir, 2019: 87-89). Requests for interviews have been made through the public relations office of the Brussels Airport Company, but without results at the time of writing.

Quantitative data is mobilised mostly in Section 2 of this chapter, which describes specific patterns of air entry at EU and Schengen international airports. The data is extracted from three Eurostat datasets: Eurostat datasets *avia_paexcc* (International extra-EU air passenger transport by reporting country and partner world regions and countries), *avia_paexac* (International extra-EU air passenger transport by main airports in each reporting country and partner world regions and countries) and *avia_paoa* (Air passenger transport by main airports in each reporting country), all three as updated on 7 August 2019. The data consists of air transport data for passengers transmitted to Eurostat by EU Member States, Iceland, Norway

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[15] Another contact working in a different department of Brussels Airlines and on operational matters responded positively to inquiries about an interview, in January 2020. The interview will take place in the second half of February 2020.

[16] A key contact, who formerly worked at the Ministry of Interior, has been interviewed in early January 2020 following a first inquiry in September 2019 and several postponements. They have provided and facilitated contacts with the cabinet of the current Commissioner General of the Belgian federal police, as well as with the Belgian Passenger Information Unit (see below for details on this service). As of January 2020, inquiries are under way concerning the possibility of interviewing interlocutors from the federal (aeronautical) police, at central service level and at the airport.

and Switzerland as well as candidate and potential candidate countries (on a voluntary basis). With regard to airport data for international extra-EU air passenger transport, this covers all international airports located in the territory of the participating countries with activities exceeding 15 000 passengers per year. Further statistical information found in reports from Belgian bodies and services involved in border and migration matters, including the Belgian federal Immigration Office (DVZ/OE) and the Belgian federal Migration Centre (Myria) are used throughout the chapter, albeit in more sporadic fashion, and additional comments on the methodology for the dataset, data quality and reliability are provided when relevant.

3.1.3. Selected literature review: entry by air, air borders and airports

What are the stakes, issues, and politics involved in entry by air, air borders and airports? A sizeable literature deals with airports from the perspective of management (e.g. Graham, 2018), transportation policy, aviation and transportation economics and business administration (e.g. Doganis, 1992; Forsyth et al., 2004; Macário and Van de Voorde, 2010; Vasigh et al., 2013) as well as tourism and hospitality studies, geography (e.g. Goetz and Budd, 2014) or architecture and urbanism (e.g. Edwards, 2005; Fuller and Harley, 2004) – to name but a few areas of scholarship. This literature does not speak directly to questions of migration governance and will therefore not be extensively discussed. It does nonetheless serve as a reminder that airports are not just points of entry by air, but rather spaces where concerns with entry (and exit) governance intersect with issues related to the organization and logistics of civilian aviation, or with the profitability of both landside and airside commercial activities. Public authority focused on ensuring security, safety, controlling access to and departure from the territory, interacts with private authority driven by concerns with profitability, which is central to the activities of airlines, air operators, suppliers of border control infrastructure (see also ADMIGOV D.1.3, Lemberg-Pedersen et al., 2020) or investors in what industry actors characterize as the 'buying game' of the global airport market (Grad, 2019).

Airports Council International (ACI), the main international trade association of the airport operator industry, thus characterizes airport activities in terms of economic key performance indicators (KPIs), contrasting aeronautical and non-aeronautical revenues per passenger with the total cost per passenger of airport operations (ACI, 2019; see e.g. Graham, 2009; Fuerst et al. 2011, for a discussion of the focus on airports' commercial revenues).[17] Airports are designed as spaces of consumption as well as travel, where movements of persons are interrupted as much by safety and security operations, border and migration enforcement checks as by 'periodic banks of shops, bars, cafes, flower stalls, currency dealerships and car rental points […] Every stage in the journey is manipulated by commerce in one form or another' (Edwards, 2005: 81). Concerns with commerce and profitability are as impactful on

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[17] According to ACI, in 2018 the global revenues of the airport industry was 161.3 billion USD, 56% of which come from aeronautical revenues and 39.4% from non-aeronautical revenues (such as revenues from retail concessions, car parking, and property and real estate).

the functioning of airports as social spaces as preoccupations with safety, national security or entry and exit governance.

This has important implications for the persons who make use of airport infrastructure as a waypoint to enter the territory of a state. A traveller's presence in an airport is first and foremost authorised by a contract passed with a service provider, usually an airline company, and they must regularly provide proof that they are indeed the person with whom the contract has been passed in the first place. For anthropologist Marc Augé (1995), the contractual basis of the relations taking place in an airport is what makes such spaces 'non-places', as opposed to traditional anthropological 'places' where one is born and assigned an identity within a dense network of social and historical relations:

> Alone, but one of many, the user of a non-place is in contractual relations with it (or with the powers that govern it) He is reminded, when necessary, that the contract exists […] The contract always relates to the individual identity of the contracting party. To get into the departure lounge of an airport, a ticket – always inscribed with the passenger's name – must first be presented at the check-in desk; proof that the contract has been respected comes at the immigration desk, with simultaneous presentation of the boarding pass and an identity document: different countries have different requirements in this area (identity card, passport, passport and visa), and checks are made to ensure that these will be properly fulfilled (Augé, 1995: 101-102).

Developed in the context of a rather more abstract and general reflection on anthropology and contemporaneity, modernity and what he terms 'supermodernity', Augé's observations highlight two points of importance for the present research. First, because entry by air is necessarily associated with air travel, it is embedded within a particular lifestyle and form of life that has thoroughly established itself in the cultural and social practices of affluent societies. Geographers and sociologists, building in part on Augé's insights, have characterised this lifestyle as 'aerial life' (Adey, 2010) or 'aeromobilities' (Cwerner et al., 2009) in an effort to make sense of mass air travel and its correlate, 'the readiness to fly, increasingly boosted by various networks and systems, such as airports, scheduled aviation, global corporations and a myriad of tourist destinations' (Cwerner, 2009: 5).

The impact of the cultural form and social imaginary of aerial life (at least in its civilian version of commercial air transport) should not be understated, because it contributes to shape the way in which entry governance is envisaged, including in EU policies. For instance, part of the justification for the establishment of the EU Entry/Exit System (EES), which was approved by the European Parliament and the Council in November 2017[18], was that the measure would

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[18] See Regulation (EU) 2017/2226 of the European Parliament and of the Council of 30 November 2017 establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third-country

free up the time of border guards (by automating some verification tasks), and 'facilitate the crossing by third-country nationals of EU external borders through self-service systems and semi-automated or automated systems' (European Commission, 2016: 4). Such systems typically involve self-registration kiosks where travellers can directly enrol their biometric and document data into border control information systems, and automated gates of the kind installed at Brussels Airport since 2015 (but limited, for the time being, to EU and EEA citizens). However, these are also typically systems that have originally been thought for use in the controlled (including weather-controlled) environment of airport spaces – the 'easy case', as the aforementioned interviewee highlighted - and much less so in the context of land border crossings. The practical operational guidelines for the deployment and use of automated gates (ABC gates) published by Frontex (2016: 27), for instance, argues that 'ABC systems can be equally effective at air, land and sea BCPs' but that 'their use at land and sea BCPs has to be further explored because of the limited practice among [Member States]'. Likewise, the Commission-funded technical feasibility study on smart borders (including the feasibility of EES) notes that the impact in terms of waiting time, quality of (biometric) enrolment[19] and staff workload would in all likelihood be more significant at land borders (PwC, 2014). The report summarising the findings of the EU-funded FastPass project tasked with studying the installation of ABC gates at EU external borders similarly notes that 'the successful transfer of these systems from airports to other types of borders has not been demonstrated on a large scale' (Toivonen, 2017: 3).

The second point of interest in Augé's remarks concern what is arguably the key specificity of entry by air and its governance, in the EU as well as in other contexts: the fact that it is at the same time about enabling movements of persons for profit (whether aeronautical or non-aeronautical) and about constantly checking that said persons are indeed the ones who are supposed to be there, that they have been properly authorised, vetted, and screened. In slightly emphatic terms, Fuller and Harley (2004: 11) thus characterise airports as spaces of 'invasive security procedures and hyper-surveillance mixed in with the comfy banality of global franchising'. This, in turn, has two implications for examining the case of entry by air. First, airports are spaces where private and public authority overlap and interact with one another. The relations between private and public actors can take many forms, from the outsourcing of safety and security tasks to private security companies (e.g. Leese, 2016) to the enrolment of private actors, especially airlines, in the performance of border and migration enforcement tasks (e.g. Guiraudon, 2003, 2006) to private-public partnerships (e.g. Lahav, 2008) for instance in the domain of infrastructure (see also ADMIGOV D.1.3, Lemberg-Pedersen et al., 2020). Second, airports are spaces of 'institutionalised mobility' (Salter, 2007: 51) that are built around the facilitation of transit, that connect distant locations. At the same time airport spaces are design to channel, insulate, screen and separate persons based on

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nationals crossing the external borders of the Member States and determining the conditions for access to the EES for law enforcement purposes, OJ L 327/20, 9.12.2017.

[19] In addition to the fact that at the time, the contractor was only able to perform feasibility tests at exit (PwC, 2014: 83).

multiple assessments of their economic value (as consumers, as customers), their trustworthiness (travellers are constantly checked to ascertain that they are indeed who they claim to be, that the purpose of their journey is indeed their 'true' purpose), and the degree of risk they present in terms of safety, security, as well as international protection and migration. Salter (2007: 51-54) suggests that airports as sites of governance are 'heterotopic': they bring together several logics or mentalities and practices that would otherwise be considered as incompatible, and as such are sites of politics involving frictions between these purportedly incompatible logics and/or mentalities (Salter, 2008). This characterisation comes with a caveat, however, which relates to the earlier observation about Brussels Airport as a research environment. While the claim that airports are 'heterotopic' spaces is a convenient way to articulate the notion that there are politics involved here, one feels compelled to point out that they may only be so to persons and groups who are disposed, due to their socioeconomic status, cultural capital as well as administrative resources (such as the passport they hold), to envisage airports and air travel in terms of untrammelled mobility. Persons who do not hold the same status and do not have access to the same resources are likely to entertain a different relationship to airports, air travel and entry by air.

From the point of view of security and surveillance, airports 'are perhaps the most stringently surveilled sites [in liberal regimes] in terms of the means of movement and of identification' (Lyon, 2008: 34; see also Schouten, 2014). Security and surveillance measures at airports, in turn, do more than thwart malicious plans or mitigate risks, they constitute airports as filtering, sorting and containment devices for persons, bodies and data, that in recent years has increasingly become centred on the performance of risk analysis and assessment (e.g. Leese, 2014, 2016) – although even practitioners recognise that because airports constitute 'complex social organisations', such measures are unlikely to function according to design and plan (Kirschenbaum, 2015; Kirschenbaum et al. 2012). From the point of view of entry, and returning to the opening statement of this section, airports are spaces that, unlike 'a mere gateway or doorway […] do something to movement' (Adey, 2008: 145; see also Adey, 2002, 2004). While the functional purpose of airport space is to transform 'a body on the ground into a body in the air' (and vice-versa), it also performs 'the incorporeal transformation of the travelling body into a series of processing categories, like citizen, passenger, baggage allowance, threat' (Fuller and Harley, 2004: 44).

The split lanes for EU and EEA citizens on the one hand and third country nationals on the other that disembarking travellers encounter at the end of the Pier B arrival hall at Brussels Airport are a deceivingly simple example of this process. This sorting is further refined as the electronic personal data of travellers, carried in the chips embedded in their travel documents, is matched to the electronic personal data held in EU information systems, in particular the Schengen Information System (SIS) and Visa Information System (VIS) that border guards access during manual checks. It is however important not to overstate the centrality of airports in terms of entry governance. While they concentrate a variety of risk evaluation, security and surveillance measures, entry by air is probably also the mode of access to the territory of EU and Schengen states where border and migration enforcement measures are the most 'diffuse' (Côté-Boucher, 2008, on the notion of 'diffuse border'), meaning that third

country nationals seeking access by air are subjected to said measures very much ahead of the moment when they actually present themselves at a border checkpoint (see e.g. Bennett, 2005). Airports are specific social spaces within networked borders (Crosby and Rea, 2016: 86) where some decisions on entry by air are made, but are not the only site where such decisions are made. To return to the case at hand, and as will be detailed further in the pages that follow, third country travellers walking down the non-Schengen arrival hall at Brussels Airport will have been assessed, checked, screened and vetted multiple times before they even make it to that stage in their journey and encounter border checks by federal Belgian police. This is for instance one of the findings of the literature on sanctions imposed on carriers, in particular airlines, which transport persons deemed insufficiently or improperly documented to EU and Schengen airports (see e.g. Scholten, 2015) and that will be the object of a specific discussion throughout the chapter.

A last point stands out in the literature, which concerns the link between entry by air, refusal of entry, and deportation. It speaks directly to the notion that airports are heterotopic spaces and spaces where travellers are sorted, filtered, and subjected to different modalities of control depending on the outcome of this sorting. Airports are not only spaces of entry, but also spaces of containment, detention and deportation. These characteristics will not be visible to most travellers and run contrary to our commonly held representations of airports and air transportation as drivers of globalization and a key factor in the acceleration of movements of persons worldwide. While deportation, particularly the deportation of persons arrested on the territory of states, has become a target and cause for protest movements in Europe (see e.g. Rosenberg et al., 2018) over the last three decades, refusal of entry – non-admission – and the subsequent detention of non-admitted persons at air borders habitually take place in discreet fashion. Non-admission decisions are taken as a result of second-line checks (Crosby and Rea, 2016) and detention in closed centres and so-called 'waiting zones' (Makaremi, 2008) that are in close vicinity but removed from the airport's areas open to travellers and hard to access even by lawyers or members of NGOs. Entry by air involves a peculiar and specific practice here, because unlike persons arrested for migration enforcement purposes on the territory of a state, those who are refused entry at air borders are 'locked outside' (Ibid: 60). In the context of air entry, it is impossible to directly send back persons deemed inadmissible to the other side of the border, because there is not such thing as another side (Ibid: 59): such persons are therefore 'held at the border', physically on the territory of a state, but legally outside of it. As spaces of departure and entry, then, airports are not just embedded within the 'global mobility infrastructure', that is the ensemble of physical structures, services and legal provisions 'that promotes human mobility' (Spijkerboer, 2018: 455), but also function within the 'deportation infrastructure' of aviation (Walters, 2017), that is of forced displacement. The governance of entry by air, then, just as for other modalities of entry, involves coercion, which at times results in brutality and death. Brussels Airport, in this regard, is a highly symbolic site of investigation. On 22 September 1998, Semira Adamu, a twenty-year old Nigerian woman who had been awaiting deportation at the detention facility Centre 127bis, near the airport, died in hospital after having been suffocated by Belgian gendarmes using the infamous 'cushion technique' to silence her protests during

the sixth attempt to expel here from Belgium by air (Fekete, 2005: 71; Vertongen, 2018). Her death led to the resignation of the Minister of Interior at the time, to a review of guidelines on deportation by a special commission (also known as the Vermeersch commission after its chairperson) and to a decades-long debate and controversy over the forced removal of third country nationals from Belgian territory.[20]

To recapitulate, the literature on entry by air, air borders and airports first draws our attention to airports as *spaces* rather than as *points* of entry. Airports, to be more specific, are *networked* spaces. Thinking about travel and entry by air requires taking into consideration how processes, including processes governing entry, unfold across airports of departure and arrival. Because airports, and aviation more generally, are a networked infrastructure, entry does not operationally start upon arrival but is already prefigured and prepared at departure. Second, the literature draws our attention to the fact that airports – and, following, entry by air which takes place at airports – are spaces where different forms of authority are exercised for different purposes. Airports, and entry by air, involve at the very least overlaps between private and public authority, and between concerns with profit and concerns with access control. Such overlaps, in turn, raise questions about coordinated action between different authorities and different priorities. Third, airports are heterotopic spaces. The governance concerns and overlapping authorities involved may be altogether incompatible with one another. In particular, airports and air travel may be culturally valued for their promise of unfettered and untethered mobility, but they are also the spaces and modalities of cross-border movement where security and surveillance measures imposed on travellers are most exacerbated. Finally, and in line with the notion that airports are heterotopic spaces, airports are also spaces of containment, detention and deportation. Accordingly, studying entry by air should also include consideration of how the governance of entry by air also inevitably comprises the modalities for denying entry.

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[20] The Vermeersch I commission submitted its findings to the Minister of the Interior in January 1999. A second commission (Vermeesch II commission) was established in January 2004 following the verdict of the Brussels Court of first instance who convicted four of the nine gendarmes charged following the death of Semira Adamu of manslaughter (see Vermeesch II Commission, Z005: 7). One of the major recommendations of this report, namely the establishment of a permanent body charged with the independent assessment of Belgium's deportation policy, has yet to be implemented, despite the fact that deportation has remained a matter fraught with controversy in Belgian politics since it was brought to light by the death of Semira Adamu. In fact, on 7 March 2018, a new commission, widely considered as a follow-up to the Vermeersch I and II commissions, was established to evaluate the practical implementation of Belgium's return policy and the degree of cooperation of the actors involved. The so-called Bossuyt commission was created after the controversial deportation of ten persons to Sudan in 2017 and following allegations that some had subsequently been subject to cruel and inhuman treatment (see CGRS, 2018). Its intermediary report was transmitted to the Minister of the Interior in Feburary 2019 (Bossuyt Commission, 2019; for an analysis see Myria, 2019b).

3.1.4. Structure of the chapter

Keeping the insights of the literature in mind and the questions that should be examined throughout, the chapter is structured as follows. The next section (3.2.) explores how third-country nationals access the territory of EU and Schengen states by providing a specific, statistical analysis of patterns of air entry and refusal of entry at EU and Schengen external borders. The analysis also complements the statistical descriptions provided in the previous chapter. The chapter then moves on to the core of the matter, focusing on how entry is governed at EU air borders through an examination of operational practices at Brussels Airport (3.3.). That core section, in turn, articulates two concerns, with authorisation and authorities. On the one hand (3.3.1.), it offers a complement to the analysis of the 'law of entry' developed in ADMIGOV deliverable D.1.1. (Koopmans and Beilfuss, 2019) by exploring which norms come into play from an operational perspective in governing entry by air. This analysis offers a first opportunity to identify some of the key operational actors involved in entry by air, and significant emphasis is placed, in this regard, on the role of commercial actors, specifically of air carriers. The section then moves on to develop a fully-fledged mapping of authorities, that is of actors involved in operational air entry governance at BNA (3.3.2.) in order to understand how their practices as well as national-local operational contexts shape the way TCNs access the territory of EU and Schengen states. The final point (3.3.3.) offers an analysis of the practices involved in refusing entry to TCNs in the context of BNA, highlighting in particular the links between entry, detention and eventually deportation, and thus providing a bridge to the work of other ADMIGOV teams on exit governance and international protection.

3.2.   Specific analysis of patterns of air entry at EU and

Schengen external borders

The aim of this section is to complement the statistical description of entry in the EU and Schengen area provided in the previous chapter with air entry specific considerations. As determined earlier, entry by air is statistically the most frequent way for persons to access the territory of EU and Schengen states. The other main characteristic of entry by air compared to land borders and sea borders, furthermore, is that it necessarily passes through a specific infrastructure – most frequently airports, occasionally smaller aerodromes and airfields. While it is possible to cross land and sea borders outside of specifically dedicated infrastructures – that is, to enter the territory of a state by land or sea outside of designated passage points – doing so by air appears almost impossible. This was tragically illustrated, one year after the death of Semira Adamu, by the discovery on 2 August 1999 at Brussels airport of the bodies of Yaguine Koita and Fodé Tounkara, two children who had stowed away in the landing wheel-bay of Sabena flight 520 connecting Conakry, Guinea, and Brussels a few days earlier on 28 July and had frozen to death as the plane reached its cruising altitude.[21]

As a consequence, a statistical description of air entry mainly involves discussing arrivals at EU and Schengen airports of flights from non-EU and non-Schengen points of departure (henceforth international arrivals). In what follows, we first identify major air entry points in EU and Schengen states (3.2.1.). For a more granular understanding of air entry, we then break down patterns of international arrivals by region of origin (3.2.2.). We further examine patterns of air entry in relation with the Schengen visa regime (3.2.3.), because Schengen visa requirements signal that persons from a given third country are deemed to be of particular concern from a border and migration enforcement perspective. The section then provides a specific description of the features of air entry for the chosen air borders case study (3.2.4.).

3.2.1. Major air entry points in the EU

According to the latest (as of August 2019) edition of the Eurostat statistical yearbook, London Heathrow was the most important airport in terms of passengers carried in the EU-28 in 2016. Eurostat's full top 15 ranking of EU airports is presented in **Figure 3-2** below. What this ranking immediately shows is that the EU air border, as a result of being manifested through airports and passenger flows, is highly uneven. Four major airports or hubs (London Heathrow with 76 million passengers, Paris Charles-de-Gaulle with 66 millions, Amsterdam Schiphol with 64 millions and Frankfurt Airport with 61 million) account for a major share of passengers travelling by air, and an overwhelming share of passengers travelling on international flights,

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[21] Their case struck a chord among African and European media, artists and intellectuals because along with identity documents, school records and personal effects, they had been carrying a letter addressed to 'European officials' explaining why they had risked their lives in such a way (see e.g. Ferguson, 2002).

although available data does not distinguish between EU and non-EU travellers. This predominance is also durable, as Eurostat indicates that Heathrow has been in top position since 1993, and all four hubs have occupied the top ranks since 2011 (Eurostat, 2018: 119). While accounting for this predominance is not necessarily relevant for the present research, it arguably has to do with the fact that these airports are and have been for decades the main hubs for some of the world's largest airlines (e.g. Bowen, 2002: 431) and have been affected by the shift towards the 'hub-and-spoke' organisation of commercial aviation networks pioneered in the wake of air travel deregulation and liberalisation by US-based air carriers since the end of the 1970s (e.g. Goetz and Sutton, 1997) and adopted by European carriers.[22]

Figure 3-2. 2018 Eurostat ranking of top 15 airports in the EU-28
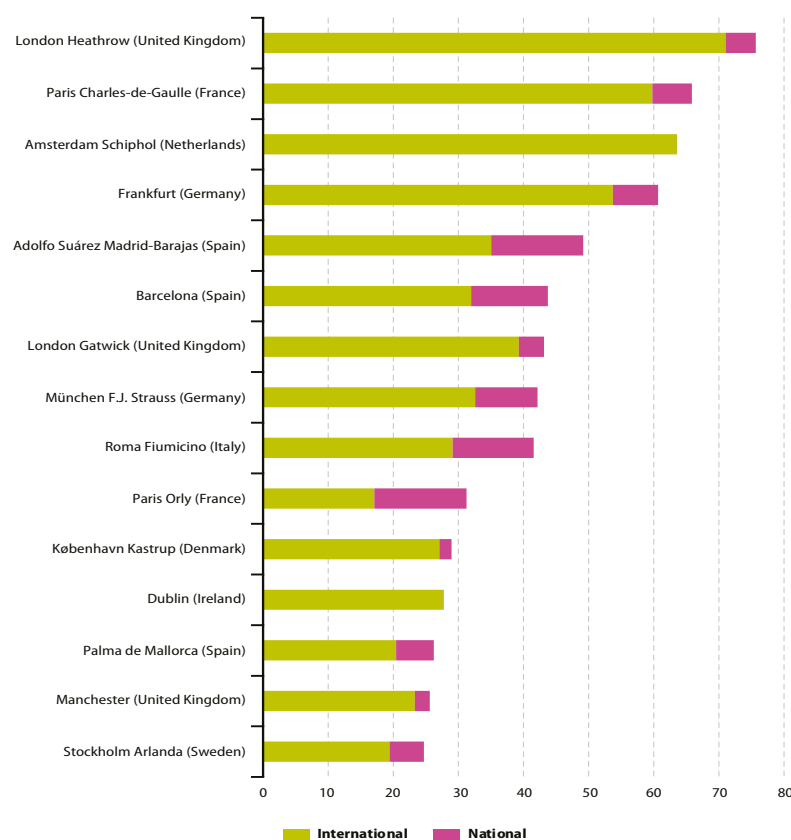
Source: Eurostat, 2018: 118

While instructive, the snapshot provided by Eurostat may not be the most helpful way to think about the EU external air border. Bel and Fageda (2010), for instance, find a tendency towards

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[22] We acknowledge that the story is slightly more complex. Burghouwt and de Wit (2005) show that European airlines already operated their scheduled flights through star-shaped networks (or hub-and-spokes) prior to deregulation, but that these geographical patterns were not coordinated temporally (i.e. that few European hubs offered planned connections between international, extra-EU flights and intra-EU flights). Their research shows however that the deregulation of the EU air transportation market led to a restructuration of airline networks to enhance such connectivities, generating more concentrated patterns of air traffic.

an actual decrease in the concentration of non-stop intercontinental flights among European airports located in large European urban areas (more than one million inhabitants) over the period 2004-2008, including from airports that previously offered very little in the way of such services. During that period, the top four hubs (hereafter "Hub-Four") identified above actually lost market and air traffic shares to airports that are for instance located in or close to cities with important business centres (such as Dublin, Dusseldorf or Brussels), secondary hubs that have become increasingly important for the largest carriers or airports that have benefitted for instance from economic growth in other parts of the world, such as East Asia (Athens, Helsinki). A more granular understanding of the EU external air borders, and therefore of top ranking EU airports, seems then required. We do so here using the Eurostat *avia_paoa* dataset, focusing exclusively on international travel by passengers on board. First, **Figure 3-3** below provides a top 20 ranking of EU airports for passengers on board international flights (arrivals and departures) on average between 2008-2017, to correct for potentially temporary fluctuations in passenger flows arising from providing a 'snapshot' overview of EU airports.

Figure 3-3. Top 20 EU-28 airports by international passengers on board
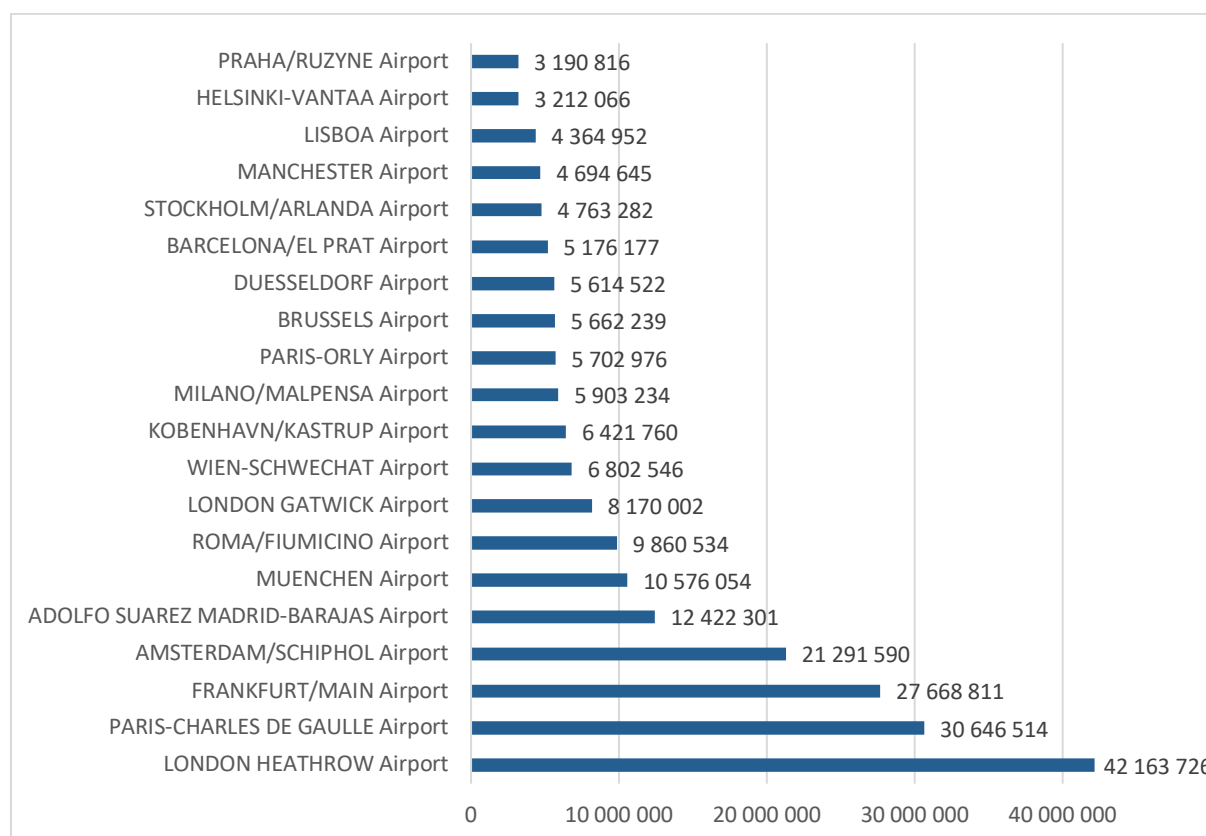
Source: Eurostat *avia_paoa* dataset (extracted August 2019)

*data for 2018 not available at the time of extraction

Figure 3-4 next provides a top 20 ranking of EU airports passengers on board international flights on arrival, which is more relevant to the task at hand since this amounts to categorizing EU airports by numbers of international arrivals (although this does not give an indication of the respective share of these flows represented by EU and non-EU travelers, nor does it allow us to distinguish between purposes of travel). The figures represent an average per year between 2008 and 2017, again to correct for potentially temporary variations in passenger flows.

Figure 3-4. Top 20 EU-28 airports by international passengers on board at arrival
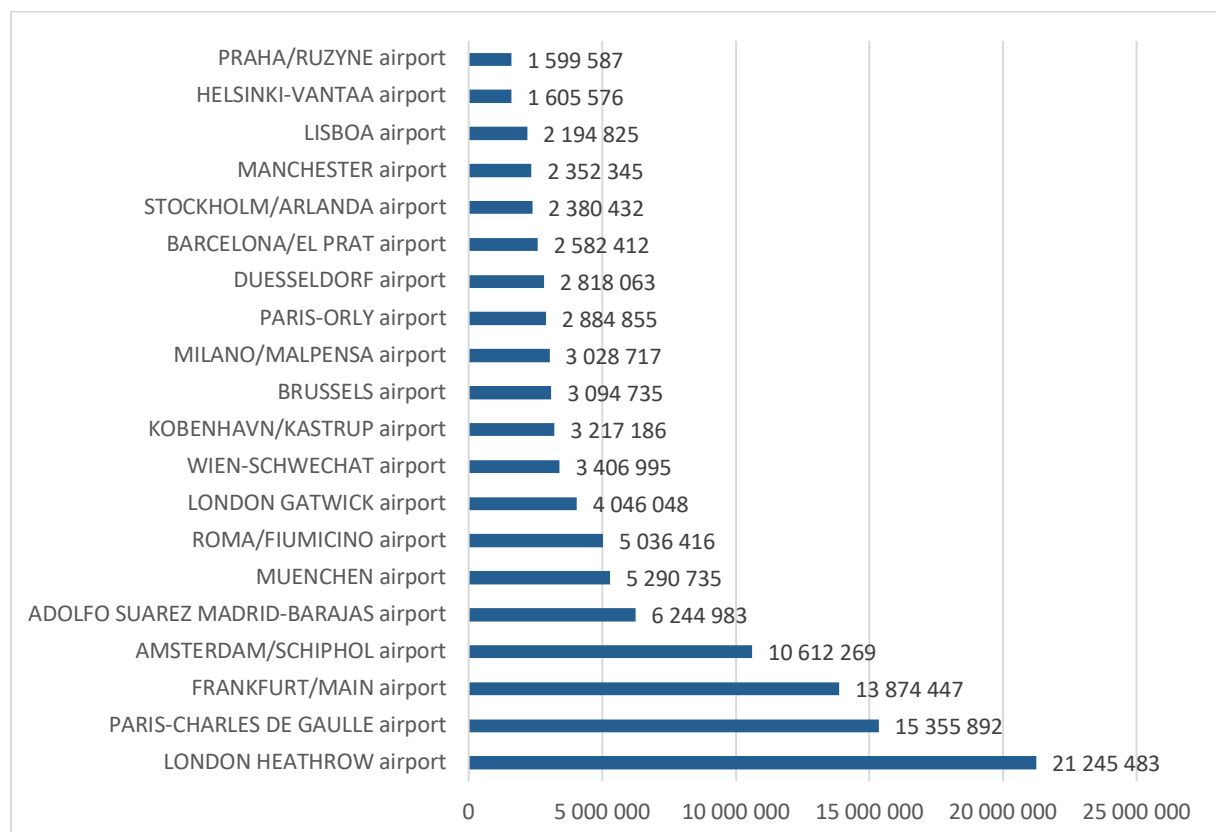
Source: Eurostat *avia_paoa* dataset (extracted August 2019)

*data for 2018 not available at the time of extraction

Figure 3-3 and **3-4** confirm the ranking of the top 4 hubs of Heathrow, Charles-de-Gaulle, Frankfurt and Schiphol, while nuancing the respective positions of lower ranked airports, and consequently their importance in terms of understanding patterns of international travel and international entry at EU air borders. Barcelona El Prat, for instance, moves from 6th to 15th position in both, while Dublin Airport disappears from the top 15/top 20 and airports such as Brussels Airport (13th and 11th positions, respectively) or Wien-Schwechat (9th in both rankings) appear in the top 15. These shifts are an incentive to explore other possibilities and options for categorising EU international airports. We ask in the following how these airports

rank when focusing on international passenger flows and entry between specific regions of the world and the EU. There are indeed many factors that can affect patterns of entry at specific airports, including airline strategies and commercial practices as well as historical dynamics – in the case of Brussels Airport and Brussels Airline, the main operator of international and intercontinental flights to and from BNA, the legacy of Sabena as an imperial airway[23] and the services it operated to and from destinations on the African continent. Patterns of entry by air should therefore be considered on a region-to-region basis alongside overall numbers of passengers arriving on international, non-EU flights.

3.2.2. Major air entry patterns: a region-to-region analysis

In order to understand major air entry patterns at EU international airports, **Figure 3-5 through f** use the Eurostat dataset *avia_paexac* to provide examples of how top EU airports rank in terms of passengers on board with selected regions of the world. Similar to what has been done before in Figure 4 and 5, figures are average numbers of said travellers over the period 2008-2018. To remain concise, not all regions for which Eurostat data is available are presented, only representative examples, and the scope has been limited to top-15 airports.[24] It is important to note, as in previous descriptions, that the data does not distinguish between EU and non-EU travellers.

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[23] Which is not, by far, a singular experience. As McCormack (1976: 89) notes, from the 1920s onward '[a]ir transport was assigned the critical task of giving substance to the shadow of empire' by European colonial powers. The legacy of these imperial practices on air transportation patterns however and rather expectedly varies depending on dynamics of decolonization (e.g. Button et al., 2015).

[24] Eurostat divides the world in the following regions: Other non-EU European countries, European Republics of the former Soviet Union, Central, Eastern, Northern, Southern and Western Africa, Northern America, Central America and Caribbean, South America, Eastern Asia, Southern Asia, Near and Middle East Asia, Asian Republics of the former Soviet Union, Oceania and Polar Regions.

Figure 3-5. Top 15 EU-28 airports by international passengers on board, arrivals and departures from/to other non-EU European countries, 2008-2018

Airport	Passengers
MALAGA/COSTA DEL SOL Airport	2 518 028
BRUSSELS Airport	2 545 302
PALMA DE MALLORCA Airport	2 603 118
ADOLFO SUAREZ MADRID-BARAJAS Airport	2 768 564
LONDON GATWICK Airport	2 877 534
WIEN-SCHWECHAT Airport	3 014 913
STOCKHOLM/ARLANDA Airport	3 105 592
BARCELONA/EL PRAT Airport	3 505 495
MUENCHEN Airport	3 583 090
DUESSELDORF Airport	3 598 980
LONDON HEATHROW Airport	3 703 594
PARIS-CHARLES DE GAULLE Airport	4 048 956
FRANKFURT/MAIN Airport	4 656 658
KOBENHAVN/KASTRUP Airport	4 780 452
AMSTERDAM/SCHIPHOL Airport	7 377 205

Source: Eurostat *avia_paexac* dataset (extracted August 2019)

Figure 3-5 ranks the busiest EU airports for international flows of air travellers between the EU and other European, non-EU countries on average between 2008 and 2018. While most of the airports are the same as in previous rankings and the 'Hub-Four' airports are very high on the list, there is also a degree of variation, with Schiphol emerging as the busiest point of the EU external air border, Copenhagen Kastrup airport making it to second position, and less busy airports such as Palma de Mallorca appearing on the top-15 list.

A similar observation can be made when looking at **Figure 3-6** below, which ranks the busiest EU airports for international flows of air travellers between the EU and Northern African destinations. The 'Hub-Four' are still on the list, but the top four positions are held by French airports, while Heathrow and Schiphol rank much lower than their overall position in terms of international passenger flows.

Figure 3-6. Top 15 EU-28 airports by international passengers on board, arrivals and departures from/to Northern Africa, 2008-2018

Airport	Passengers
DUESSELDORF Airport	582 897
MANCHESTER Airport	655 086
LONDON HEATHROW Airport	715 224
BARCELONA/EL PRAT Airport	818 550
AMSTERDAM/SCHIPHOL Airport	949 092
ROMA/FIUMICINO Airport	1 072 456
MILANO/MALPENSA Airport	1 075 678
BRUSSELS Airport	1 093 884
ADOLFO SUAREZ MADRID-BARAJAS Airport	1 103 609
FRANKFURT/MAIN Airport	1 149 442
LONDON GATWICK Airport	1 208 478
LYON SAINT-EXUPERY Airport	1 282 524
MARSEILLE-PROVENCE Airport	1 473 305
PARIS-CHARLES DE GAULLE Airport	2 936 243
PARIS-ORLY Airport	4 431 772

Source: Eurostat *avia_paexac* dataset (extracted August 2019)

Figure 3-7 and **3-8** rank the busiest EU airports for international flows of air travellers between the EU and Central African destinations and the EU and Western African destinations, respectively. While there may be issues with the quality of data provided by Eurostat, **Figure 3-7** further demonstrates, in conjunction with Figure 3-6 above, a correlation between specific airports and specific third regions of the world. In the case of **Figure 3-7**, the airports where international passenger flows are the highest are located on the territory of states that used to be the foremost colonial powers in Central Africa (Belgium and France).

Figure 3-7. Top 15 EU-28 airports by international passengers on board, arrivals and departures from/to Central Africa, 2008-2018
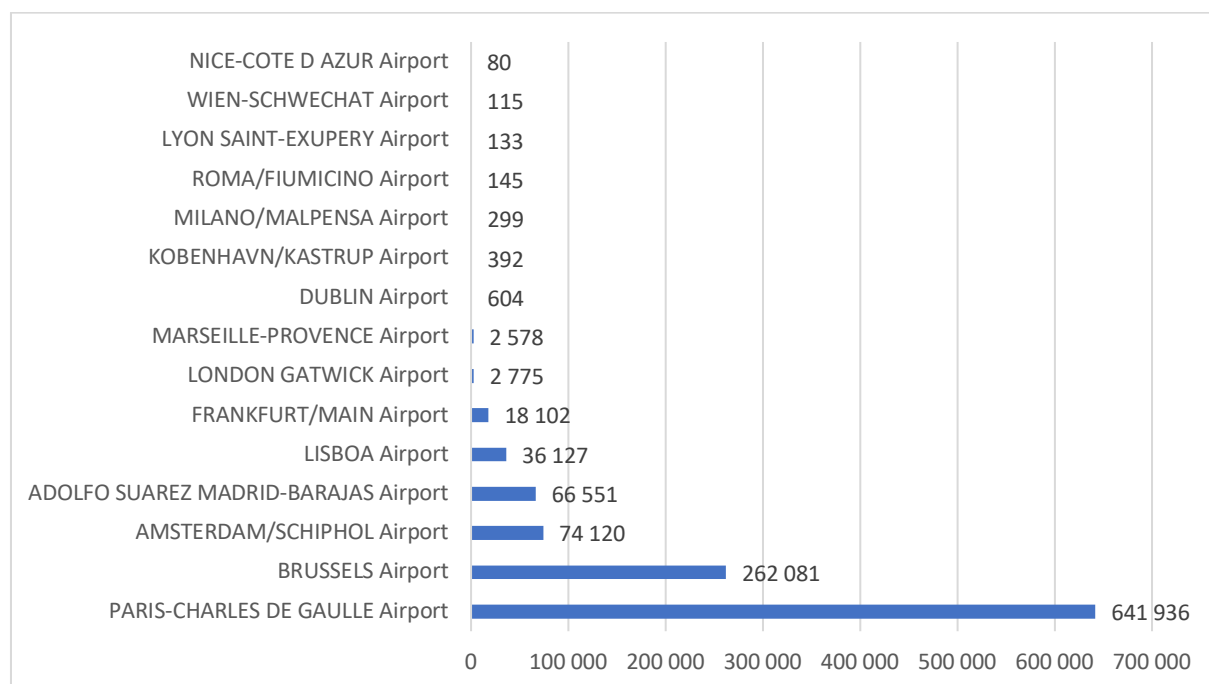
Source: Eurostat *avia_paexac* dataset (extracted August 2019)

Figure 3-8 however nuances this understanding, suggesting a tension between the 'hub-and-spoke' organisation of commercial passenger airline services and historical and symbolic relations between EU states and third countries and regions, particularly with Schiphol in the third rank.

Figure 3-8. Top 15 EU-28 airports by international passengers on board, arrivals and departures from/to Western Africa, 2008-2018
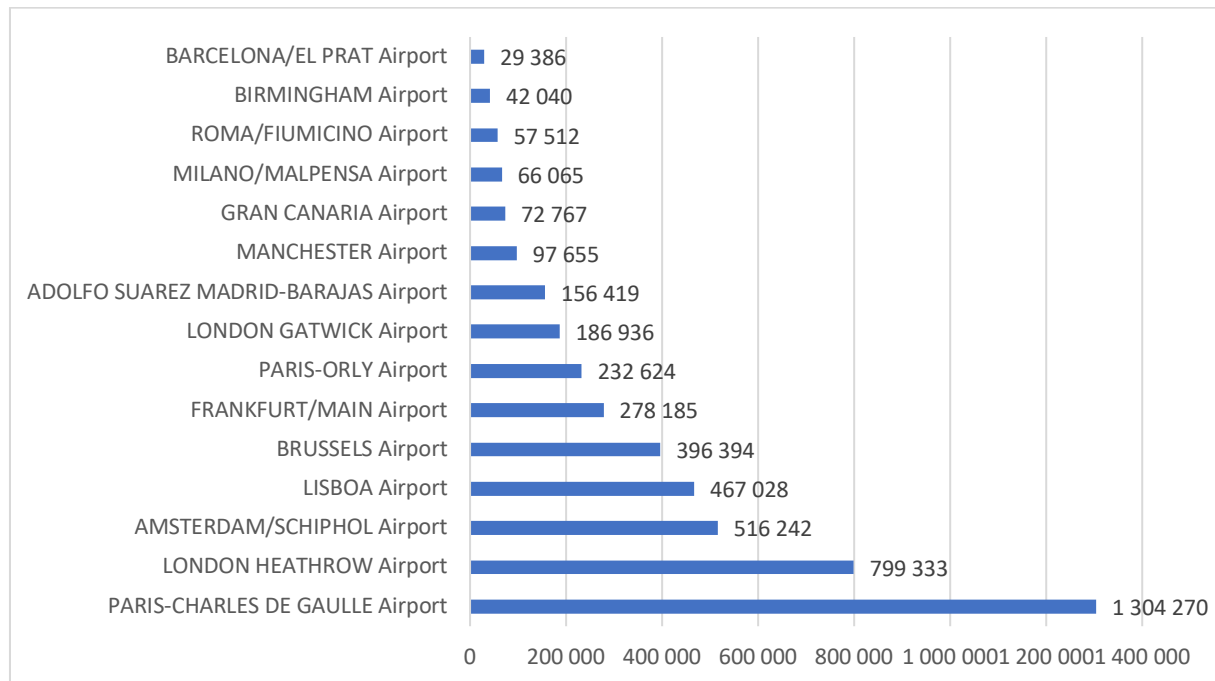
Source: Eurostat *avia_paexac* dataset (extracted August 2019)

Figure 3-9, finally, ranks the top 15 EU-28 airports for international passengers on board (arrivals and departures) from and to South America. The shape of the EU external air border here appears to be affected both by overall commercial hub-and-spoke network logics (presence of the 'Hub-Four' in the top 6 airports listed) together with more specific hub logics associated with historical and symbolic patterns with the presence of the Madrid-Barajas and Lisbon airports in the top 3.

Figure 3-9. Top 15 EU-28 airports by international passengers on board, arrivals and departures from/to Latin America, 2008-2018

Airport	Passengers
MANCHESTER Airport	3 050
ATHINAI/ELEFTHERIOS VENIZELOS Airport	3 578
PARIS-ORLY Airport	10 028
LONDON GATWICK Airport	15 053
MUENCHEN Airport	113 891
PORTO Airport	114 380
MILANO/MALPENSA Airport	218 736
BARCELONA/EL PRAT Airport	365 540
ROMA/FIUMICINO Airport	654 863
LONDON HEATHROW Airport	714 177
FRANKFURT/MAIN Airport	1 095 982
AMSTERDAM/SCHIPHOL Airport	1 107 948
LISBOA Airport	1 504 166
PARIS-CHARLES DE GAULLE Airport	1 789 677
ADOLFO SUAREZ MADRID-BARAJAS Airport	4 427 232

Source: Eurostat *avia_paexac* dataset (extracted August 2019)

Refining the description of patterns of entry by air by focusing on region-to-region air travel shows that there is no 'typical' international airport in the EU and Schengen area. 'Hub-Four' airports account for the largest overall share of international travel and thus of entry by air, but smaller airports do matter as well when considering liaisons with specific parts of the world. From a research perspective, the analysis so far shows that investigating an airport outside of the overall top four or five, such as Brussels Airport, does have heuristic value, insofar as they remain intercontinental points of entry onto the territory of EU and Schengen states, albeit more specialised ones. This point is further demonstrated by looking at patterns of travel between EU and Schengen airports and countries whose nationals are required to hold a Schengen visa.

3.2.3. Air entry patterns and the Schengen visa regime

A second way to refine the statistical description of patterns of entry at EU international airports is to examine patterns of travel and passenger flows between the EU and countries that are considered to be particularly of concern from a border and migration enforcement perspective. In EU policy, these are the countries whose nationals are required to hold a Schengen visa for short stays. This is a relevant indicator for border and migration enforcement concerns because the Schengen visa regime has often been characterized in the literature as a practice of (migration) 'policing at a distance'. It indeed imposes an additional set of requirements on some third country nationals and not on others, and that part of these requirements involve assessing whether visa applicants pose 'a risk of illegal immigration', as

indicated in the Community Code on Visas.[25] Examining patterns of air travel and passenger flows between the EU and third countries in that way allows us to describe which parts of the EU external air border (which airports) are the most important points of entry for travellers arriving from the 104 countries and entities listed in Annex I and referred to in Article 1(1) of Council Regulation (EC) No 539/2001 of 15 March 2001.[26] Accordingly, **Figure 3-10** below lists the top 20 EU airports for international arrivals from visa required countries as a proportion of total passenger flows (international arrivals and departures) on average between 2008 and 2018

Figure 3-10. Top 20 EU-28 airports for international arrivals from visa required countries as a proportion of total passenger flows (international arrivals and departures), 2008-2018

Airport	Percentage
MANCHESTER Airport	22%
WIEN-SCHWECHAT Airport	22%
BERLIN-TEGEL Airport	23%
RIGA Airport	24%
IRAKLION/NIKOS KAZANTZAKIS Airport	26%
BIRMINGHAM Airport	26%
PRAHA/RUZYNE Airport	26%
MILANO/MALPENSA Airport	26%
LONDON STANSTED Airport	26%
LARNAKA/INTL Airport	28%
BRUSSELS Airport	28%
DUESSELDORF Airport	28%
NUERNBERG Airport	37%
STUTTGART Airport	37%
KOELN/BONN Airport	38%
HANNOVER Airport	39%
LYON SAINT-EXUPERY Airport	40%
LEIPZIG/HALLE Airport	42%
PARIS-ORLY Airport	43%
MARSEILLE-PROVENCE Airport	44%

Source: Eurostat *avia_paexac* dataset (extracted August 2019)

The ranking here differs the 2016 overview provided by Eurostat and the various rankings provided so far, in that most of the major hubs are absent. How this ranking is interpreted,

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[25] See Article 21(1) of Regulation (EC) No 810/2009.
[26] Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, OJ L 81/1, 21.3.2001.

however, requires some nuances. Figure 7 does not necessarily reflect the shape of the EU external air borders when it comes to arrivals from third country nationals required to hold a Schengen visa, but simply the proportion of arrivals from visa required countries as a proportion of the total extra-EU passenger flows in the listed airports. These arrivals could be of third country nationals or of EU citizens. This would be likely for instance in airports that specialise in connecting touristic destinations popular with EU citizens, rather than in regular, scheduled flights servicing for instance business travellers.

3.2.4. Air entry for the specific case study

As indicated in the introduction, the chapter focuses on a case study of the Brussels National airport. **Figure 3-11** draws on statistics provided by the federal police detachment at the airport regarding the total number of arrivals at BNA between 2014 and 2018 and the total number of non-Schengen arrivals. It highlights that over the last half-decade, non-Schengen arrivals represent about a third of total arrivals at Brussels Airport. In terms of overall figure, this places BNA in the top-ten EU-28 airports for the average number of passengers on international flights arriving from non-Schengen, visa required countries, between 2008 and 2018.

Figure 3-11. Total arrivals and non-Schengen arrivals at Brussels Airport, 2014-2018
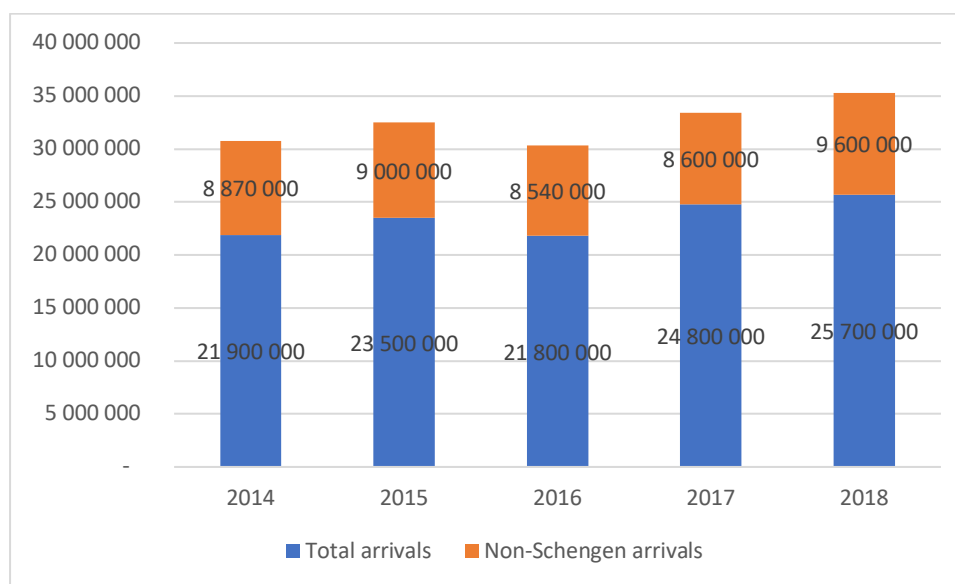
Source: Belgian Federal Migration Centre (Myria, 2019a: 86)

In terms of overall figures, furthermore, Brussels Airport does not figure in the 2018 top-twenty of the largest EU airports. It does, however, rank among the top-fifteen EU-28 airports for average numbers of passengers on board arriving and departing international flights. It also ranks higher over the same period when considering the number of passengers on board

arriving and departing international flights for North Africa (#8), Central Africa (#2), West Africa (#5). As a sign of its specialisation in these particular destinations, it does not even appear in the top-fifteen EU-28 airports for passengers on board international flights arriving and departing from Latin America.

3.3.   Governing entry at EU air borders

3.3.1. Introduction

The aim of this section is to provide an account of how air entry is governed from an operational perspective. To best map air entry operations, it is relevant to start with the way these have been depicted in European Union documentation. One of the clearest summarised depictions, reproduced in **Figure 3-12** below, is provided by the European Union Fundamental Rights Agency (FRA) in its report on fundamental rights at airports (FRA, 2014).

The figure highlights that unlike (in most cases) land borders and to a lesser extent sea borders, entry by air is the situation where border and migration enforcement are the most 'diffused' – a point that scholarship on the matter has repeatedly made. Third country nationals, and in some respect EU citizens, who travel on international flights from third country departure points to an EU or Schengen state are checked far ahead – both geographically and temporally – of the moment when they effectively reach an EU/Schengen point of entry, through a series of "pre-border checks". What the FRA's depiction does not show, in passing, is the requirement for TCNs to secure a travel authorisation – depending on the purpose of their trip, via the Schengen visa procedure and in the future through the European Travel Information and Authorisation System (ETIAS) for visa-exempt TCNs if the trip concerns a short stay, or via a national long-stay visa procedure for other purposes. These procedures, in particular the Schengen visa procedure for short stays, have long been characterised in the literature as amounting to a migration enforcement and in some cases (e.g. screening of travel authorisation applications for public order motives) to a law enforcement practice (e.g. Bigo and Guild, 2005).

Figure 3-12. The Fundamental Rights Agency's depiction of entry by air for third-country nationals
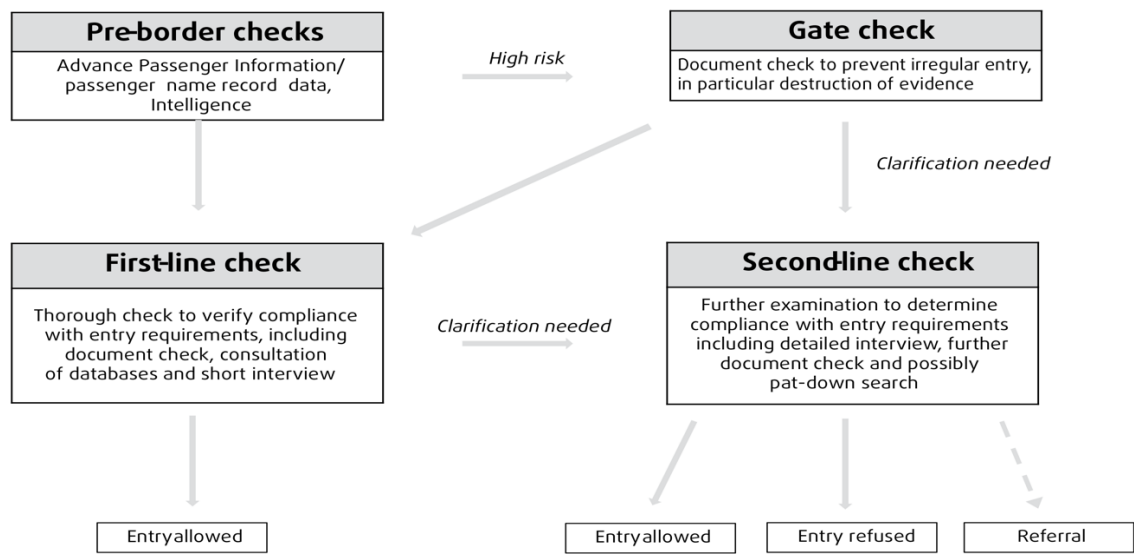
Source: FRA, 2014, p. 19

The FRA's depiction of entry by air further highlights that arrival airports are *spaces* rather than *points* of entry. Persons entering the territory of EU and Schengen states by air can be checked at different points once their aircraft has docked at an arrival gate. Gate checks can be performed by border guard/police officials, immediately as passengers leave the aircraft and ahead of the formal entry point on the territory, which is where passport control booths and occasionally automated gates can be found (first-line checks). For some TCN travellers, gate checks or first-line checks are can lead to additional scrutiny in the form of second-line checks, which can include further scrutiny of documents demonstrating that they comply with entry requirements (such as means of subsistence, for instance), checks for potentially fraudulent or counterfeited identity and/or travel documents, as well as body searches. Should the second-line check not turn out favourably for these travellers, entry can either be denied or postponed subject to a referral (if the person applies for asylum at the border, for instance, or if it turns out they are persons of interest in a criminal investigation).

While the depiction presented above is a useful starting point for the present discussion, it is also important to acknowledge that it is a parsimonious account. One of the aspects most deserving of attention, in this regard, is the role played by private air carriers in the governance of entry. When it comes to border checks, this concerns the top-left box in Figure 3-12, where the FRA identifies (the transmission of) advance passenger information (API) and passenger name record data (PNR) as part of "pre-border" processes.[27] API and PNR data,

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[27] We will return to this point, but to avoid any misunderstandings at this stage it should be clear that the inclusion of PNR as a "pre-border" check by FRA speaks to the ambiguity of the purpose of PNR data processing. As the FRA report itself notes, PNR "are collected by air carriers for commercial and operational purposes in providing air transport" but their processing by national authorities in the EU is "designed to help combat serious crimes and terrorism" (FRA, 2014: 20). While the processing of PNR data happens to take place in the context of

typically, are generated by air carriers when would-be travellers book a flight (for PNR data, which can also be generated by travel agents) and when they go through check-in (for API data).[28] Air carriers also do more than transmitting data and are expected to perform document checks on travellers at both the check-in and boarding stages. They do so out of what they claim is a legal obligation, initially established under the 1944 Chicago Convention - the main international instrument regulating civil aviation worldwide - and subsequently developed through national and European rules establishing a "carriers sanctions regime" (e.g. Scholten, 2015) in the field of border and migration enforcement.

Expanding on the FRA's account therefore seems necessary in order to understand what is at stake in operational practices of air entry governance. This is done in three ways in the following pages. We first examine the "law of entry" from an operational perspective (3.3.2.). The section complements the legal and normative analysis provided in the first deliverable of ADMIGOV WP1 by highlighting how additional legal norms come into focus once entry is examined from an operational perspective. The argument developed here is that paying attention to operational normative regimes shows that entry governance is shaped by interactions and entanglements between norms applied by, applying to and designed by different actors, in multiple contexts: European, but also national and local as well as international and transnational. We draw attention, in particular, to the interplay between private and public authority, which constitutes a defining feature of the operational side of entry governance, and is constitutive of the role of air carriers in the governance of entry by air into the EU. From examining the operational side of the law of entry, the discussion then moves to mapping air entry operational practices (3.3.3.), outlining in turn the administrative and institutional context of international protection and migration governance in Belgium within which operational actors work; the operational actors involved and their practices and paying specific attention to the interplay between private and public actors, authorities and practices, how they coordinate and the specific question of air entry infrastructure. The final subsection (3.3.4.) considers how entry by air is denied, and the articulation between refusal of entry and detention leading potentially to deportation.

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processes governing access by air to the territory of EU stats, then, this is not a border or migration enforcement measure in the first place.

[28] More specifically, API data are the biographical information of a traveler contained in the machine-readable part of their passport, and include their name, place of birth and nationality, as well as the passport number and expiry date. In EU rules regarding entry, API data further includes information on a passenger's journey (BCP of entry into the territory of the Member States, initial point of embarkation, flight code, departure and arrival time of flight, total number of passengers carried on that flight). PNR data, on the other hand, consist of personal data on travelers collected for commercial purposes by airlines. Such data may include API data, insofar as air carriers collect it during their booking process, but also include further information such as the date of reservation and issuance of ticket, customer address and contact information, forms of payment information, frequent flyer information, information on travel agency or agent, on the travel status of the passenger, general remarks included by the air carrier, ticket information, seat number and seat information, and so on (EU legislation foresees 18 fields in total, see Annex I of Directive (EU) 2016/681.

3.3.2. The law of entry: operational norms at the air border

This subsection examines the law of entry from an operational perspective and as it concerns EU air borders. Rather than cataloguing operational norms coming into play upon entry by air, it asks and explores these norms as they are encountered by TCNs travelling to an EU and Schengen state by air, at the different stages of their journey. The discussion below specifically emphasises the norms encountered before the journey (3.3.2.1.) and until departure (3.3.2.2.), where the differences between entry by air and entry by either land or sea are the most manifest. When relevant, the specificities involved in the case of the Belgian air border, are highlighted.

3.3.2.1. Air entry: operational norms before the journey

The norms a third country national encounters when entering Belgium as an EU and Schengen state by air logically varies according to their nationality and purpose of travel. If they plan to enter and stay for a period longer than 90 days, they are required, regardless of their nationality, to apply with a Belgian consulate for a travel and stay authorisation, usually in the form of a visa. This subjects them to the dispositions of the law of 15 December 1980 on foreigners (hereafter law of 15 December 1980 or L80).[29] The law is the centrepiece of immigration governance in Belgium, laying down the rules on the access to the territory, the stay and establishment as well as the removal of foreigners defined as 'whomever does not demonstrate that they hold Belgian nationality' (Art.1(1)(1°), author's translation). In some cases applications for travel and stay authorisations will be processed and decided on locally by Belgian consular officials, while in others the competence is shared with the services of the federal Immigration Office (*Dienst Vreemdelingenzaken / Office des étrangers*, hereafter DVZ/OE) in Brussels.[30] If the purpose of the trip is a stay of less than 90 days, TCNs are subjected to both EU norms and the provisions enacting these norms in the law of 15 December 1980. Should they hold a travel document from a country listed in Annex I of Regulation (EU) 2018/1806, they are required to apply for a short-stay Schengen visa, and are subjected to the rules and procedures laid down in the Community Code on Visas (Koopmans and Beilfuss, 2019: 27-31). If they hold a travel document from a country listed in Annex II of Regulation (EU) 2018/1806, they are currently exempted from applying for and obtaining any kind of pre-travel permission. From 1 January 2021 (at the time of writing), they will however have to apply online for and be granted a travel authorisation on the basis of Regulation (EU)

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[29] Loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers, *Moniteur Belge*, 31.12.1980, No. 1980121550, p. 14584 (updated version of 22.08.2019).

[30] The distribution of competences is unclear and appears to be tipped in favour of the DVZ/OE. In its recommendations to Belgium following the 2018 evaluation of its application of the Schengen acquis in the field of the common visa policy, the Council has for instance recommended that Belgium should '[g]rant its consulates the authorization to refuse visas […] and limit the categories of applications which consulates are required to refer to the Immigration Office to those cases where further investigations conducted by the central authorities in Belgium can have a real added value' (Council of the EU, 2019: 3).

2018/1240 establishing the European Travel Information and Authorisation System (ETIAS), and pay a fee of 7 euros unless they are a family member of an EU citizen within the meaning of the Citizens' Rights Directive (Directive 2004/38/EC), in which case the fee is waived.

While these steps are similar regardless of whether a TCN plans to enter an EU and Schengen state by air, land or sea, entry by air also usually requires buying transportation services from an air carrier. This can be done either directly with a specific airline, or by relying on the services of a travel agent, company or any other third party that books transportation with the airline on their behalf. Buying a plane ticket effectively involves entering into a private (commercial) law contract and being bound, in order to benefit from the service they have acquired, by the terms of services (ToS) of said contract. Relevant ToS features in the context of entry governance include providing and consenting to the processing of personal data (PNR data and identity and travel document data), as well as accepting responsibility for being in possession of the travel authorisations, travel and supporting documents required by the border and immigration authorities of the country of destination. In addition, entering into a contractual relationship with a travel company and/or airline also entails that travellers are impacted by the contractual relationships that they have entered into with other service providers. Booking a ticket and travelling with Brussels Airline – the main commercial operator of scheduled international, extra-Schengen flights to and from Brussels Airport – implies for instance that they are subject to the contract between that company and travel technology company Amadeus, which handles its reservation, inventory and departure control operations.[31]

3.3.2.2. Air entry: operational norms prior to departure

The private contractual relationship entered in with an air carrier is therefore the legal basis that enables air travellers in general and TCN travellers planning to enter the EU by air in particular, to undertake the main steps in their journey prior to departure, namely checking in on the flight they have booked, and eventually boarding that flight. This private contractual relationship, however, is also entangled with public international, European and national norms. As will be discussed in further details below, airline staff at check-in counters and boarding gates for flights originating outside the Schengen area are indeed expected to perform identity and document checks on all would-be travellers in addition to ascertaining that they indeed hold a reservation for their flight and have paid for their trip.

They do so on the basis of an obligation imposed on air carriers, also known as carrier liability, to take the necessary measures to ensure that third country nationals travelling to the Schengen area are in possession of the travel documents and authorisations required to enter the territory of their state of destination. Should they fail to do so, carriers face sanctions that usually include the duty to transport inadmissible passengers back to their point of departure,

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[31] Interview, Brussels Airlines (Brussels Airport, November 2019).

the obligation to bear all the costs incurred while said passengers await deportation and during their removal (including detention, accommodation and escort), and the payment of a fine for transporting these passengers in the first place (Rodenhäuser, 2014: 226). In Belgian law, carrier liability is detailed in Title III bis of the 1980 law on foreigners, which foresees on the one hand a fine of 3,000 EUR per passenger inflicted on air carriers that transport at least five undocumented or improperly documented travellers on the same flight without having taken the necessary precautions to ensure that these passengers complied with Belgian entry regulations (Art. 74/2), which can be aggravated upon decision of the competent minister by an administrative fine of 5,000 EUR per passenger and can lead the seizure of the means of transportation (the aircraft) until such time as the administrative fine has been paid. On the other hand, Article 74/4 of L80 establishes that carriers must transport inadmissible passengers back either to their point of departure or to any country where they can be admitted, and cover in solidarity with said passengers accommodation, living and health expenses if they cannot be immediately deported. In addition, carriers that are found to neglect their duty to transport back inadmissible passengers can be required to reimburse the costs of forced removals performed by public officials.

In the European context, the obligation of carriers, and especially air carriers, to perform document checks on their passengers prior to departure, and the sanctions imposed on them should they be found to neglect these duties, originate in Article 26 of the 1990 Schengen Convention. The Article 26 sanctions regime reflected a trend that saw national governments in the 1980s and 1990s introduce or strengthen financial and administrative sanctions for carriers transporting insufficiently documented or undocumented travellers as a border and migration enforcement measure. By 1994 – that is, one year before the entry into force of the Schengen Convention – almost all EC and Schengen states had adopted such measures (Cruz, 1994: 6; for a contemporary overview see e.g. Baird, 2017). Belgium was among the first group of EC Member States (together with Germany and the United Kingdom) to introduce national legislation to this effect in 1987 (Ibid: 4). In the Belgian case, these provisions are contained in the law of 14 July 1987 modifying the law on foreigners of 15 December 1980[32]. Provisions on carrier liability in L80 were at the time introduced as part of a series of changes largely

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[32] Loi du 14 juillet 1987 apportant des modifications, en ce qui concerne notamment les réfugiés, à la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers, *Moniteur Belge*, 18.07.1987, No. 1987009653, p. 11111. See Article 17 for the introduction of carrier sanctions. National rules concerning the obligations of carriers and the administrative and financial implications of transporting undocumented or improperly documented foreigners to Belgium were subsequently strengthened by a specific law on carrier sanctions of 8 March 1995 and by provisions included in the law of 15 July 1996. Both legislations are modifications to the L80 law. See, respectively: Loi du 8 mars 1995 modifiant l'article 74/2 de la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers et y insérant un article 74/4bis nouveau, *Moniteur Belge*, 30.03.1995, No. 1995000199, p. 7993; Loi du 15 juillet 1996 modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers et la loi du 8 juillet 1976 organique des centres publics d'aide sociale, *Moniteur Belge*, 05.10.1996, No. 1996000376, p. 25616.

construed to restrict the possibility for third country nationals to introduce an application for international protection (Devillé, 1996: 6).[33]

In turn, EC/EU and national measures on carrier sanction and liability are made possible by features of the legal framework for international cooperation in the field of civil aviation, enshrined in the Convention on International Civil Aviation signed in Chicago on 7 December 1944 (ICAO, 2006; hereafter the Chicago Convention). During the interviews conducted for the case study, it is in fact striking to note that while Belgian and EU officials tend to refer to national (in particular the law on foreigners) and European regulations, interlocutors who are involved with air carriers start from the Chicago Convention.[34] The aims of the Chicago Convention, specified in its preamble, are to lay down 'certain principles and arrangements in order that international civil aviation may be developed in a safe and orderly manner and that international air transport services may be established on the basis of equality of opportunity and operated soundly and economically' (Ibid: 1). For the purpose of the present discussion, the Convention establishes in its Article 13 that the 'laws and regulations of a contracting state to the admission to […] its territory of passengers, crew or cargo of aircraft, such as regulations relating to […] immigration, passports […] shall be complied with *by* or *on behalf of* such passengers, crew or cargo upon entrance into […] the territory of that State' (Ibid: 7, emphasis added). In the context of entry governance, the Convention therefore not only creates a legal obligation for airline passengers to comply with the laws and regulations regarding entry at their destination, but also and without saying so explicitly for airlines to ensure that their passengers comply with these laws and regulations (Abeyratne, 1998: 677).[35]

Explicit references to air carriers, their role and responsibilities with regard to entry procedures and persons deemed inadmissible and persons to be deported are in fact found in Annex 9 to the Chicago Convention on 'Facilitation' (ICAO, 2017), specifically in Chapters 3 and 5. Like the other Annexes to the Convention, Annex 9 lists Standards and Recommended Practices (SARPs) which are not legally binding (Scholten, 2015: 92) and that signatories can diverge from, provided that they notify the ICAO (ICAO, 2006: 17, Article 38). Annex 9 has been revised periodically since its adoption in 1949, and is updated on the basis of discussions within two ICAO bodies, the Facilitation Panel and the Facilitation Division, both of which involve representatives of states parties to the Chicago Convention and the air transportation industry (Scholten, 2015: 92). Since the 1980s, the SARPs contained in Annex 9 have also

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[33] Likewise, the United Kingdom is understood to have introduced carrier sanctions by adopting the Immigration (Carriers' Liability) Act in the same year following concerns over an increase in the number of applications for international protection from Sri Lankan nationals (e.g. Ruff, 1989).

[34] "As an airline company, we undertake document checks on our passengers to fulfil our obligations under the Chicago Convention, which holds us responsible in the case of an improperly documented passenger" (Interview, Brussels Airlines, Brussels Airport, November 2019). The same interlocutor presented a few moments later in the interview the rules on carrier liability in the Belgian law on foreigners of 15 December 1980 as a "transposition" of the Chicago Convention.

[35] The absence of references to air carriers in Article 13 means that it could be interpreted differently, for instance as referring to a duty devolved 'upon the authorities of the State in which the person embarked on his flight' (Abeyratne, 1998: 677).

become increasingly stringent with regard the responsibility of carriers in performing pre-departure checks on passenger documents and for transporting undocumented or improperly documented persons (Ibid: 93, see also Feller, 1989 for an overview of Annex 9 evolutions in the 1980s and leading to the adoption of the ninth edition in 1990). Chapter 3 of Annex 9 lists SARPs concerning the entry and departure of persons while Chapter 5 concerns SARPs concerning inadmissible persons and deportees.[36] Standard 5.9. establishes the responsibility of air carriers for the costs 'of custody and care' of inadmissible passengers, and while the possibility for states to fine carriers who are found to have neglected their document check obligations is not part of Annex 9 SARPs, Standard 5.14 establishes that states 'shall not fine aircraft operators […] where aircraft operators can demonstrate that they have taken necessary precautions to ensure that these persons have complied with the documentary requirements for entry', implying that carriers can be fined if they have not taken said 'necessary precautions' (ICAO, 2017: 5-2). Recommended Practice 5.15, in turn, highlight that fines and penalties imposed by states should be mitigated when carriers 'have cooperated' with public authorities, in particular by entering into memoranda of understanding (MoU) with them. In the context of Brussels Airport, the latter is a practice that plays an important role in the relations between border and migration authorities and carriers, and especially for Brussels Airlines, which is the main airline operating international flights to and from BNA. **Box 3-1** on the next page present how carrier sanctions fit within Belgian entry governance practices.

Box 3-1. Carrier sanctions and Belgian entry governance practices

In Belgium, the Immigration Office is competent to enter into MoUs on the issue of inadmissible travellers with carriers, including air carriers since 1995, on the basis of Article 74/4bis of the law of 15 December 1980. There is, however, no public register of these MoUs. Furthermore, the DVZ/OE used to make the number of memoranda it had entered into with carriers available, without breaking these numbers down by type of carrier, in its annual reports (available for the years 2007 through 2013), but this information is no longer provided since the Office has shifted to only publishing statistical reports (from the reporting year 2014 to date). At the end of 2007, the DVZ/OE reported having active MoUs with 50 carriers, a number that went down to 35 by the end of 2013 (DVZ/OE 2008: 96; 2014: 149).

As far as the fines inflicted upon carriers, the annual figures provided by the DVZ/OE for the 2007 through 2013 are not broken down by type of carriers. However, given its geographical situation, entry by air is the most common way to access Belgian territory when travelling from third countries, and it is therefore logically to assume that most of the fines were inflicted upon air carriers. In addition, figures provided by the DVZ/OE distinguish between fines inflicted on carriers who have entered into an MoU with the Office, and on those who have not.

Figure 3-13. Administrative fines inflicted on carriers by Belgian authorities, 2003-2013

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[36] Inadmissible persons are defined in Annex 9 as 'a person who is or will be refused admission to a State by its authorities' (ICAO, 2017: 1-4).
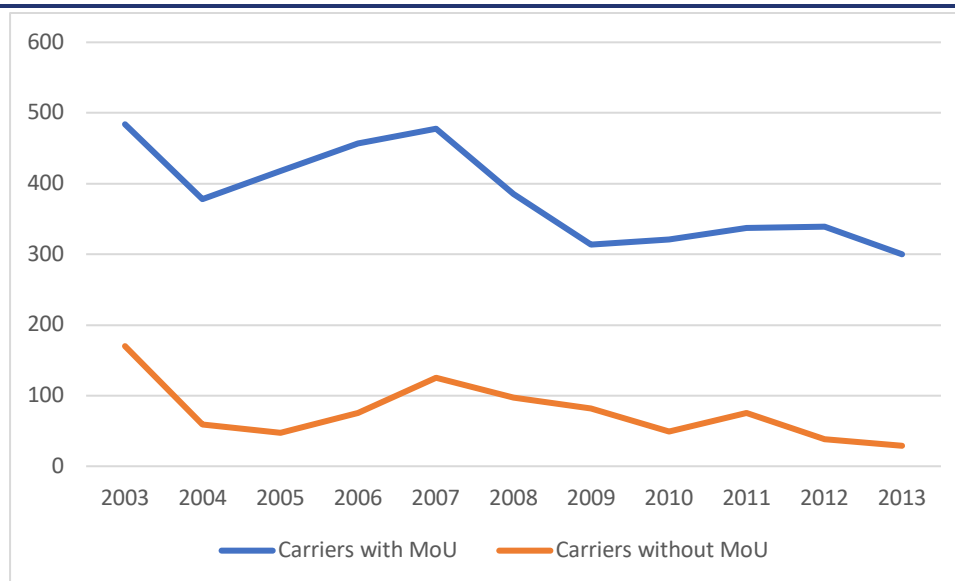
Source: DVZ/OE, 2008: 96 for 2003-2008 data, DVZ/OE, 2014: 150 for 2009-2013 data

Figure 3-13 above shows a relative decrease in the overall number of fines for both categories of carriers over 10 years. It may also seem to indicate that the number of fines inflicted on carriers without MoUs is lower than for carriers with MoUs, but this is a much less reliable finding since there is no information on how many carriers are in each category. The most likely explanation here is that most of the major carriers – and that are likely to be, again, air carriers - operating international transportation services to Belgium have entered into an MoU with the Immigration Office, and are fined more because they transport more passengers. In its report for 2013, the Office notes that the decrease in the number of fines inflicted on carriers can be explained by the 'good performance' of airlines serving Brussels National airport (DVZ/OE, 2014: 151).

Figure 3-14. Amounts of fines inflicted on carriers by Belgian authorities, 2003-2013
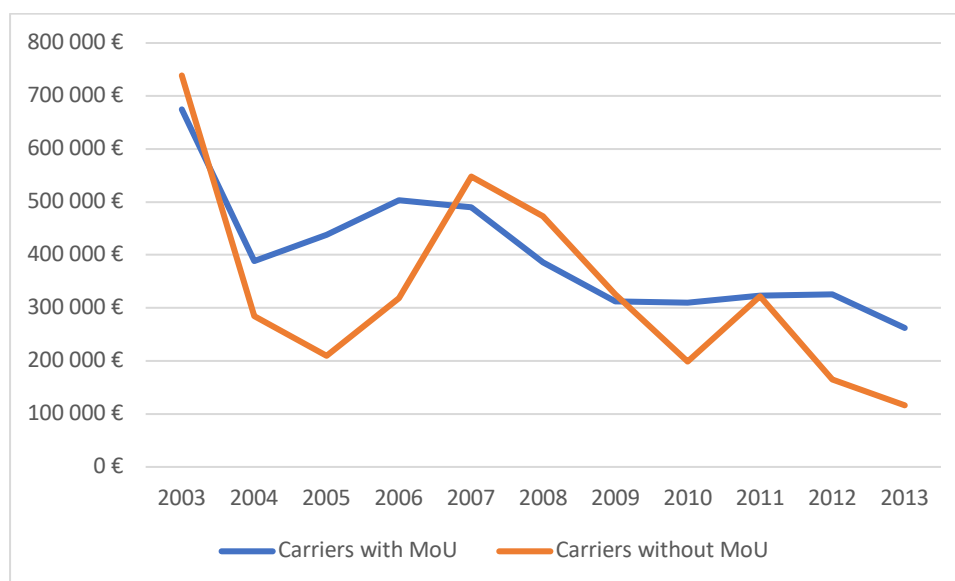
Source: DVZ/OE, 2008: 96 for 2003-2008 data, DVZ/OE, 2014: 150 for 2009-2013 data

Figure 3-14 above shows that the relative decrease in the overall number of fines is logically accompanied by a relative decline in the amounts fined. The difference between categories of carriers is not as pronounced how. For the years 2007 through 2009, the amounts of fines inflicted to carriers who have not entered into an MoU with the Immigration Office are higher than the amounts of fines inflicted to carriers who have, despite the fact that the latter have received more fines. This suggests that entering in an MoU with state authorities, at least in the Belgian case, allows carriers to mitigate the economic costs of carrier sanction regimes. MoUs are also presented by the Immigration Office as a way to exercise leverage over carriers. The Office officially recognises that it can terminate MoUs with carriers that do not comply with their obligations, in particular when they do not pay the fines they receive on time, and can deny the possibility of concluding an MoU to carriers that have yet to enter into one but that do not comply with their obligations or pay their fines on time (DVZ/OE, 2014: 150, 151).

The practice of concluding MoUs between border and migration enforcement authorities and carriers deserves attention in order to better understand the operational environment of entry governance. As detailed above for the Belgian case, such agreements are used by airlines and migration authorities to handle the financial liability of the former in the context of carrier sanction regimes. In exchange for limiting their financial liability, however, the signing of an MoU may impose more obligations on airlines with regard document checks that they consider to be their responsibility under the Chicago Convention or national and European carrier sanction regimes, "beyond even document checks".[37] While such MoUs are not confidential, they are not, at least in the Belgian case, readily available. As far as Brussels Airlines - the main air carrier operating non-Schengen flights to and from Brussels Airport – is concerned, the MoU was inherited from the national Belgian airline Sabena after its collapse. At least two successive versions of the MoU were signed between the Immigration Office and Sabena, one in May 1996 (Sénat de Belgique, 1998: 121) and one in January 1999 (Chambre des représentants, 1999: 10). A version of the 1999 MoU is available in one of the annexes of a Belgian Senate report of March 2000 on the federal government's migration policy (Sénat de Belgique, 2000: 78-83). While it is likely that the agreement has been updated since, this version is sufficient to highlight how such MoUs take the relation between an air carrier and national border and migration authorities beyond the question of fines and penalties. The MoU thus outlines, for instance, the commitment of both parties to deploy and support the deployment of enhanced control measures at airports deemed to be 'high-risk' (Article 3)[38], including the possibility for the carrier to request that federal authorities send an immigration officer to such airports, at the carrier's expense (Article 7). The MoU also includes provisions for the training of airline staff on Belgian entry conditions and rules, as well as false or falsified documents and basic techniques for the detection thereof (Article 6). Said training programmes are to be funded by the carrier, but should be approved by the Minister (for

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[37] Interview, Brussels Airlines (Brussels Airport, November 2019).

[38] The provisions for determining what constitutes a 'high risk airport' are fairly detailed. An airport is a 'second-category' high risk airport if more than four improperly documented passengers arrive from that airport each month for a period of four consecutive months (Article 3(4)) and 'first-category' if the number of such passengers is higher than eight (Article 3(1)).

border and migration enforcement matters, or their delegate, in this case the federal Immigration Office).

Embedded in national, European and international norms, whether these constitute legally binding obligations or 'soft law' standards and recommended practices, carrier sanctions regimes have also been used to expand the scope and nature of entry checks to which persons travelling by air are subject prior to their departure. This concerns in particular the transmission of passenger data to the authorities of the EU/Schengen state of destination. As they check in and board their flight, EU citizens and TCNs travelling by air from an extra-Schengen destination encounter operational norms requiring carriers to transmit both API and PNR data to the authorities at their destination. In the Belgian case, these further obligations of carriers are established in the law of 25 December 2016 on processing passenger data.[39] The law was ostensibly adopted, as outlined in the federal government's memorandum included with the legislative proposal, with the aim of allowing national law enforcement authorities to investigate, but also to anticipate risks related to, serious crime and threats to public order and the interests of the state, as well as terrorist crimes and activities (Chambre des représentants, 2016: 5). The law effectively impacts the governance of entry by air in two ways. On the one hand, it requires air carriers[40] to transfer PNR data, which are generated when a passenger books a flight to/from Belgium, to the national Belgian Passenger Information Unit (hereafter BelPIU). The royal decree implementing the law of 25 December 2016 as it concerns the obligations of air carriers specifies that PNR data is transferred twice: 48 hours prior to the scheduled departure time of the flight, and again immediately after flight closure.[41] The law also establishes a requirement for air carriers to transfer passenger travel document information (API data), following flight closure.

As with most of the operational norms of entry discussed so far, the adoption of the law of 25 December 2016 is not a strictly national initiative, however, and stems from EU legislative developments. The requirement to transfer PNR data transposes into Belgian law the so-called EU PNR Directive[42], while the requirement to transfer API data transposes for the second time the EU API Directive of 2004 into Belgian law.[43] While these measures serve different

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[39] Loi du 25 décembre 2016 relative au traitement des données des passagers, *Moniteur Belge*, 25.01.2017, No. 2017010166, p. 12905.

[40] The law applies to all carriers, including air, land and sea transportation service providers. It is only discussed here in relation to the obligations it imposes on air carriers, however.

[41] Arrêté royal du 18 juillet 2017 relatif à l'exécution de la loi du 25 décembre 2016 relative au traitement des données des passagers, reprenant les obligations pour les compagnies aériennes, *Moniteur Belge*, 28.07.2017, No. 2017030879, p. 75934 (see Article 3).

[42] Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime, OJ L 119/132, 4.5.2016.

[43] Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data, OJ L 261/24, 6.8.2004. The directive was originally transposed in Belgian law by the law of 15 May 2006 and the Royal Decree of 11 December 2006. The Belgian government's stated rationale for replacing these acts by the law of 25 December 2016 was to widen the obligation to transfer API data, alongside PNR data beyond air carriers to land and sea carriers (Chambre des représentants, 2016: 11).

purposes, they build on and expand the carriers sanction regime. This is directly the case in the EU context for the obligation made to airlines to transfer API data, which builds on Article 26 of the Schengen Convention and Council Directive 2001/51/EC that supplemented it.[44] The EU PNR Directive references the API Directive and API data, in particular by highlighting that 'the use of PNR data together with API data has added value in assisting Member States in verifying the identity of an individual, thus reinforcing the law enforcement value of that result' (Recital 9). The PNR Directive also foresees that Member States shall adopt rules for penalties, including financial penalties, against air carriers that fail to transmit PNR data or do not transmit this data in an appropriate format (Article 14). Both measures therefore build and expand on the carrier sanctions regime. In the case of carriers' obligation to transfer PNR data to the authorities of the state of destination, this expansion is accompanied by a change in purpose, which no longer concerns border and migration enforcement but law enforcement.

Just like the general carrier sanctions regime, the obligation for carriers to transfer API and PNR data as part of entry regulations applied by EU and Schengen states has also become a feature of the international civil aviation regime. The latest (at the time of writing) edition of Annex 9 now includes a full chapter on passenger data exchange systems, including API and PNR. Provisions regarding the transfer of API have been introduced as early as its twelfth edition (adopted in 2004), and Standard 9.5. establishes that 'Each Contracting State *shall* establish an Advance Passenger Information (API) system' (ICAO, 2017: 9-1, emphasis added) while Standard 9.6. notes that the API system of each contracting state should 'be consistent with internationally recognized standards for API' (Idem). Annex 9 SARPs regarding the obligation to transfer PNR data are less developed at this time, and do not for instance establish a requirement for contracting states to introduce PNR systems.[45] In the meantime, ICAO, together with the World Customs Organisation (WCO) and the airline industry's International Air Transport Association (IATA), have adopted leading international guidelines for the concrete and technical implementation of both API and PNR systems, meaning that operational entry regulations applied by EU and Schengen states are in effect an international rather than simply national or European matter. It is also notable, in this regard, that the obligation of carriers to transfer API and PNR data as part of states' entry regulation have become part of another international regime, seemingly unrelated to matters of civil aviation and migration governance, centred on the UN Security Council (UNSC) and concerned with counterterrorism. In particular, UNSC Resolution 2178 on foreign terrorist fighters, adopted

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[44] Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention Implementing the Schengen Agreement of 14 June 1985, OJ L 187/45, 10.7.2001.

[45] In March 2019, the ICAO set up a Facilitation Panel Task Force to review and consider amendments to existing Annex 9 SARPs on PNR data. In November 2019, the Council of the EU has adopted a decision establishing the position to be taken by EU Member States on behalf of the Union within the ICAO Council. See Council Decision (EU) 2019/2017 of 28 November 2019 on the position to be taken on behalf of the European Union within the Council of the International Civil Aviation Organization as regards the revision of Chapter 9 of Annex 9 (Facilitation) to the Convention on International Civil Aviation in respect of standards and recommended practices on passenger name record data, OJ L 317/117, 10.12.2019.

in September 2014 and which builds on and expands the UN's terrorism proscription regime[46], calls upon UN Member States 'to require that airlines operating in their territories provide advance passenger information to the appropriate national authorities in order to detect the departure from their territories, or attempted entry into or transit through their territories, by means of civil aircrafts' of individuals targeted by UN restrictive measures (UNSC, 2014: 5). As Sullivan (2017: 71) notes, the same resolution also furthers the use of PNR data when it '*encourages* Member States to employ evidence-based traveller risk assessment and screening procedures including collection and analysis of travel data' (UNSC, 2014: 4, original emphasis).

3.3.2.3. Normative entanglements

The operational aspects of the law of entry highlight that entry by air involves encounters with an entanglement of national, European and international norms, of varying status: domestic legislation, binding European and international law, administrative agreements between private and public authorities (MoUs), private law contracts, as well as 'softer' standards and recommended practices negotiated with and endorsed by trade bodies and international organisations. At the heart of this entanglement is the role of air carriers in the performance of 'pre-entry' checks and controls. This role has also been thoroughly documented in the literature and understood in terms of the 'privatisation' of border and migration enforcement and the development of 'remote control' practices by states, and in particular Western states (e.g. Gammeltoft-Hansen, 2011: 158-208; Guiraudon, 2003, 2006; Rodenhäuser, 2014; Scholten, 2015). 'Remote control' (a term introduced by Zolberg, 1999, 2003), here, refers both to the fact that border and migration enforcement measures take effect extraterritorially – an airline company transporting passengers to Belgium effectively enforces Belgian and Schengen rules outside of the territory of Belgium and the Schengen area – and to the fact that these measures are enacted by actors who are not border or migration officials from the state of either departure or destination.

The focus on privatisation as the key issue, however, may not be the most helpful, because it suggests that border and migration enforcement have *become* privatised (and implicitly, that this is, by historical standards, a fairly recent development). If anything, work on 'remote control' has shown that such practices are concomitant with the development of modern state border and migration enforcement policies. Zolberg (2003) shows that in the U.S. context, remote control and the enrolment of transportation companies (at the time shipping companies) has gone through a first phase (a 'rehearsal', in his words – Ibid: 197) from the

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[46] The UN's terrorism proscription regime is based on UNSC resolutions 1267, 1333 and 1390 adopted between 1998 and 2002 and targets persons and groups associated with Usama bin Laden, Al Qaida or the Talibans, and on UNSC Resolution 1373 adopted in the wake of the 11 September 2001 attacks that targets all individuals who commit, attempt to commit, participate in or facilitate the commission of terrorist acts. These regimes involve the adoption of restrictive measures such as travel bans against listed individuals. See Sullivan and Hayes, 2010, for an overview and critical analysis of their transposition into the EU's legal order.

1830s until approximately 1855. In the U.S. still, the 1902 Passengers Act refers to the responsibility of transportation companies for removing undocumented passengers and to fines should they transport them in the first place (Rodenhäuser, 2014: 226). Likewise, Annex 9 to the Chicago Convention was initially adopted in 1949 (Scholten, 2015: 92). It is also important to keep in mind that at the time that the Convention was adopted, the airline sector was under strict (public) governmental control, and that it is not until the end of the 1970s (and early 1980s for Western European countries) that the airline industry has gone through the deregulation and privatisation that has established the boundary between private and public authority. In turn, it is because of deregulation and privatisation in the commercial aviation sector that the role of air carriers in border and migration enforcement can now be characterised in terms of privatisation. What this suggests, then, is that the enrolment of (air) carriers in border and migration enforcement has been a constitutive part of how states control access to their territory, rather than a subsequent extension or recent development, and particularly for entry by air. This accounts for the fact, for instance, that in the Belgian context the former Sabena, now Brussels Airlines, is considered as a legitimate interlocutor and participant in the formulation of public policies on deportation, for instance[47] as well as a relevant target for activists contesting these policies.[48]

The issue might then not be privatisation as such, but rather the very entanglement of norms of various kinds and produced in different contexts within which air carriers operate as a border and migration enforcement authority for EU external borders today. For convenience's sake, the term that has been used so far to characterise these groups of norms has been of 'regime'. Discussing deportation in the Netherlands, Kalir and Wissink (2016: 36) have argued, however, that 'the notion of [deportation] regimes might suggest a field that is well under control and that functions according to neatly implemented regulations and orders', while this is not actually the case in practice. The same observation would apply for the operational norms of entry governance by air discussed so far. Not only are there significant differences in the way carrier sanctions are implemented by EU states (Baird, 2017), but entry by air is in itself shaped by heterogenous norms that are entangled, but pertain to different legal orders and different preoccupations: between the international normative order regulating civil aviation and domestic normative orders for border and migration enforcement, mediated in the case of EU and Schengen countries by EU and (the leftovers of) Schengen law, for instance, or as in the last observation of the previous point, between the global normative order of terrorist prescription and domestic/regional normative orders of border and migration enforcement. The question is not just anymore, in this perspective, of how to implement existing or new rules properly (and who should be responsible for it) but of the interactions between (entangled, overlapping) normative orders that are not just made of hard law, but

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[47] Brussels Airlines is therefore represented, for instance, in the ongoing Bossuyt commission on the deportation of third country nationals in Belgium.
[48] See e.g. the 'Brussels Airlines: Stop Deportations' campaign: https://brusselsstopdeportations.net/fr/ (accessed November 2019).

also of memoranda of understanding, standards and best practices (for a conceptual reflection on processes of interaction between plural normative orders, see e.g. Delmas-Marty, 2009).

The effect that the specific features of entry by air and its interacting and interlocking normative orders has had on fundamental rights has been a longstanding feature of the literature (e.g. Feller, 1989, more recently Gammeltoft-Hansen, 2011; Moreno Lax, 2008; Scholten and Terlouw, 2014), but also a practitioners' concern. This is particularly the case when the assumedly safe and orderly regulation of civil aviation and access to state territory conflicts with the possibility for persons to safely access international protection. In the mid-1990s, as carrier sanction regimes were taking shape in Western countries, the United Nations High Commissioner for Refugees expressed its concerns that such rules might jeopardise the possibility for people seeking international protection to effectively do so. While states have a 'legitimate interest' in enforcing migration regulation to prevent unauthorised entry and to do so via various means, including carrier sanctions , when these measures interfere with the possibility for persons to seek international protection, states 'act inconsistently' with their international obligations (UNHCR, 1995: 1). In particular, states 'should not sanction […] carriers which have knowingly brought into the State a person who does not possess a valid entry document but who has a plausible claim for refugee status or otherwise needs international protection' (UNCHR, 1995: 2). This concern is acknowledged in Annex 9 of the Chicago Convention, in a Note attached to Standard 5.4. (on how to organise the removal of an inadmissible person) inserted in 1988 (Scholten, 2015: 94), which indicates that '[n]othing in this provision is to be construed as to allow the return of a person seeking asylum in the territory of a Contracting State, to a country where his life or freedom would be threatened on account of his race, religion, nationality, membership in a particular social group or political opinion' (ICAO, 2017: 5-1). However, this does not cover the case of persons who are refused transportation on grounds that they are not properly documented. In this sense, carriers sanctions belong to a realm of measures that can be characterised as 'interception' (Moreno Lax, 2008: 322) , exercised extraterritorially, and may be in breach of the principle of non-refoulement enshrined among others in the European Convention of Human Rights (Article 3). In addition, the implications, financial incentives or disincentives for air carries will also vary depending on the specific rules in the form of MoUs agreed upon with national authorities. Typically, the MoU between Sabena/Brussels Airlines and the federal Immigration Office does not make an exception for persons applying for international protection, except to allow for the length of the application process. Article 8 thus specifies that the obligation of the carrier to cover accommodation and health expenses for passengers who did not carry required entry documents apply whether or not the passenger in question has applied for asylum in Belgium, although this obligation to pay is limited to seven days of stay and to the number of days between the final (negative) decision on an asylum application is communicated to the carrier and the date of the passenger's removal. We will return to this issue, from an operational perspective, in the following pages.

3.3.3. Mapping of air entry operational practices

Building on the discussion of operational norms of entry by air, the following points provide a mapping of air entry operational practices. The analysis focuses in more details here on what goes on in relation to the governance of entry by air at Brussels Airport.

3.3.3.1. The administrative and institutional context of asylum and migration

governance

To understand who is involved in air entry operations and how their involvement matters, it is useful to first sketch an overview of the administrative institutional context in which they operate. **Box 3-2** on the next page provides an overview of the Belgian national authorities in charge of asylum and migration (entry) governance.

Box 3-2. Belgian national authorities in charge of asylum and migration governance

Belgium is a federal state comprising two types of federated entities: territorially defined Regions (Brussels-Capital, Flanders and Wallonia) and linguistically defined Communities (Flemish, French and German-speaking). Generally speaking (and at the time of writing), the federal state is competent in core sovereignty areas including foreign policy, defence and home affairs, as well as justice, finance, social security and most public health matters. Authority and competence over migration and international protection matters are generally held by the federal state, particularly with regard the entry and stay of third country nationals on Belgian territory. Integration and employment questions are usually handled by regional, community as well as municipal authorities (who are also central in delivering residence permits).

Since the formation of the Di Rupo I federal government in December 2011, asylum and migration matters fall under the remit of a single minister and ministerial administration at the federal level, the State Secretary for Migration and Asylum Policy. The Ministers and ministries of the Interior, of Justice and of Foreign and European Affairs on the other are involved insofar as matters related to migration enforcement and law enforcement, nationality, guardianship for minors, as well as visa and development issues, are concerned.

The main federal service responsible for the entry of TCNs on Belgian territory (as well as matters of residence, detention, deportation, the application of the Dublin system and the registration of applications for international protection) is the Immigration Office (DVZ/OE). While the service answers to the State Secretary for Migration and Asylum Policy, it is administratively under the tutelage of the Ministry of Interior. In the field of asylum, the Office of the Commissioner General for Refugees and Stateless Persons (CGRS) is the body responsible for processing applications for international application, the granting or denying of refugee or subsidiary protection status. The Federal Agency for the Reception of Asylum Seekers (Fedasil) is responsible for the reception of applicants for international protection and other specific categories of TCNs eligible for material aid related to reception. It also coordinates Belgian policy in the field of assisted voluntary returns. In addition to these administrative authorities, there are two main judicial bodies in the field of asylum and migration in Belgium. The Council for Alien Law Litigation (CALL, *Conseil du Contentieux des Etrangers/Raad voor Vreemdelingenbetwistingen*) is the appeal court competent to hear appeals against decisions taken by the CGRS and the DVZ/OE. The Council of State further acts as supreme administrative court for appeals against rulings by the CGRS. Finally, the Federal Migration Centre (Myria) is an independent public body in the field of migration and international protection. It provides the federal authorities with information on asylum and migration patterns and advice in cases involving the fundamental rights of foreigners and is the Belgian independent National Rapporteur on trafficking in human beings. With regard to entry by air, the federal police units operating in Belgium's six 'Schengen airports' – i.e. the airports that receive scheduled and non-scheduled flights originating from outside the Schengen area – are tasked with conducting border checks. They are placed under the authority of the Aeronautical Police Directorate (*Luchtvaartpolitie / Police aéronautique*, hereafter LPA). LPA is considered as an administrative police entity and falls under the authority of the Directorate-General for Administrative Police (DGA). LPA's remit includes border control, deportations, identity fraud. LPA units are also expected to participate in operations related to trafficking and smuggling in human beings as well as other forms of serious crime, including terrorism, alongside both central and deconcentrated services of the judicial police. The police detachment at Brussels National airport is one of the six LPA units in the country.

Figure 3-15 below provides a visual recapitulation of the information above and is the latest overview (as of February 2019) of the relations between Belgian national authorities in charge of asylum and migration matters, made available by the Belgian national contact point of the European Migration Network (EMN Belgium, 2019b).

Figure 3-15. EMN Belgium's indicative overview of the Belgian institutional framework for immigration and asylum policies (as of February 2019)
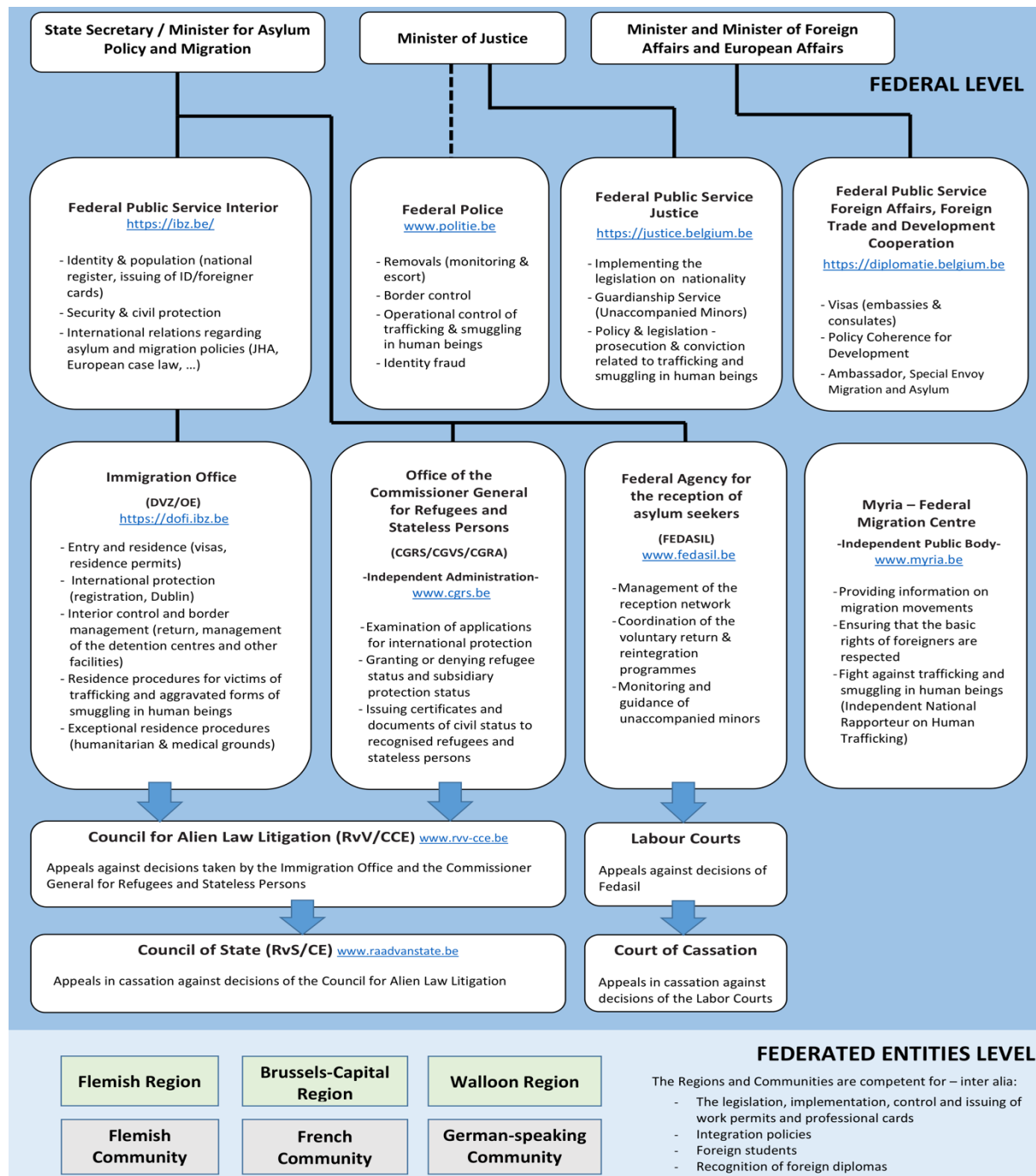
Source: EMN Belgium, 2019b

From the perspective of operational air entry governance at Brussels airport, the key actors here are first and foremost the federal police detachment of the LPA at BNA, whose officers staff the first line check booths and second line room. The assessment they make of third country nationals who are held for second-line checks, specifically when these assessments involve a non-admission decision, are communicated to the federal Immigration Office, whose officials are the only ones authorised to decide whether a person should be refused entry on Belgian territory. As detailed further in point 3.4., DVZ/OE officials are also responsible for the registration phase of the asylum procedure, should a person who has been deemed inadmissible upon entry indicate their intention to apply for international protection. If registration is concluded satisfactorily, the application will then be examined by the CGRS.

While Figure 3-15 places Federal Police units under the authority of the Minister of Justice, this is not exactly the case when it comes to LPA and other units and services of the Federal Police's Directorate-General for Administrative Police, who in fact operate under the authority of the Minister of the Interior. This creates a particular situation at Brussels Airport, which has to do with the institutional and political history of policing in the country. Belgian police today is officially a single 'integrated' police force structured on two levels: local and federal. This integrated force is the outcome of a reform process formally initiated with the adoption of the law of 7 December 1998 organising an integrated police force structured at two levels.[49] The law was adopted following more than a decade of controversies and scandals involving police forces in Belgium, including the mishandling of high profile cases such as the string of murderous department store and supermarket raids attributed to the so-called 'Brabant killers'/*Bende van Nijvel* (1982-1985), the bombing campaign of the far left *Cellules Communistes Combattantes* (1984-1985), the Heysel Stadium disaster of 29 May 1985, or the dysfunctions identified in the investigation of the series of child abductions and murders known as the Dutroux affair after the main perpetrator who was arrested in August 1996 (e.g. Van Outrive, 1997). Prior to the 1998 reform, there were three separate police forces in Belgium: the Gendarmerie, with a jurisdiction over the entire Belgian territory (and until 1991, under the authority of the Minister of Defence rather than the Ministers of the Interior or of Justice), the Judicial Police, with strictly investigative responsibilities and squads attached to public prosecutors' offices in each of the country's court districts (and a national squad), and the municipal police attached to each Belgian municipality (Vermeulen, 1998: 3-5). This administrative-institutional configuration generated significant competition among the various police corps, particular with the evolution of the Gendarmerie from a force dealing with public order and political police matters to a corps involved in preventing and investigating serious crime as well as community policing (Van Outrive, 1997: 32-33; Devroe and Ponsaers, 2013). The 1998 reform, which was only initiated in 2001 for the federal police and in 2002 for the local police, was expected to reorganise Belgian police forces on the basis of the principles of subsidiarity and speciality, according to which the federal police would

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[49] Loi du 7 décembre 1998 organisant un service de police intégré, structuré à deux niveaux, *Moniteur Belge* 05.01.1999, No. 1998021488, p. 132.

take over special assignments related to either administrative or judicial police tasks, and undertake support assignments for police forces at the local level of the integrated police (Devroe and Ponsaers, 2013).

As a result of the 1998 reforms and subsequent modifications, in particular the measures introduced by the law of 26 March 2014[50], the federal level of the integrated police is currently organised as illustrated by **Figure 3-16**. A key element to understand the information displayed below is that the federal level of the Belgian integrated police formally distinguishes between two operational directorates: a directorate-general for administrative police (DGA), the operational remit of which covers in fact most activities such as the broad category of public order maintenance that one usually associates with the police, and a directorate-general for judicial police (DGJ), with an operational remit involving criminal investigations conducted by public prosecutors' offices as well as serious crime. A second meaningful distinction is between central services and deconcentrated services, with the latter operating at the level of the judicial district ("arrondissement judiciaire"). As such, there are deconcentrated services for both administrative police and judicial police functions.

Figure 3-16. Organigramme of the Belgian federal police
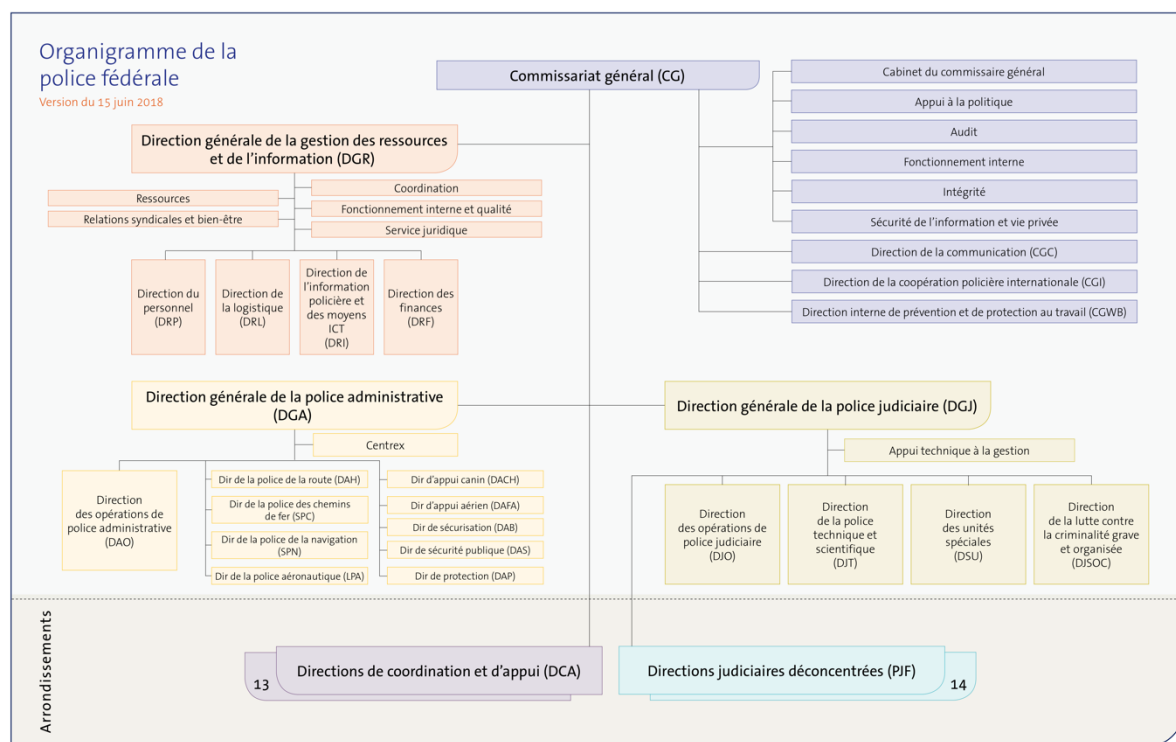
Source: Federal Police, 2019

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[50] Loi du 26 mars 2014 portant mesures d'optimalisation des services de police, *Moniteur Belge*, 31.03.2014, No. 2014000252, p. 27784.

The LPA unit at Brussels Airport, in this institutional context, is one of six units within the Directorate for Aeronautical Police of DGA. While it may seem that the unit is part of a centralised command structure, however, it is important to note that the coordination of its activities with other police units relies on a deconcentrated directorate of the federal police (DCA) and for the sharing of information on a federal, district-level structure, the Brussels-Asse CIA.[51] In addition, the LPA unit at Brussels Airport does not only deal with border and migration checks, but is also the police unit responsible for most routine police operations on the premises of BNA, including all aspects of regular police functions including for instance registering complaints and depositions, traffic regulation, patrolling, or the protection of airport premises and members of the public. As such, it is also involved and participates in judicial police activities including actions and checks to counter the trafficking of narcotics or human trafficking. It therefore works at Brussels Airport with a unit of the federal judicial police (PJF Airport), which is part of the deconcentrated federal judicial police.

3.3.3.2. Operational actors and processes of air entry

Moving now to the operational actors and processes of air entry at Brussels Airport, the first point is that it is difficult to produce a single overview that would include all actors and processes. The research has led to the identification of at least two series of processes and related actors, at the very least, which coexist and interact, but whose practices are guided by different logics: the actors and processes under public authority, involving the border, migration and law enforcement actors present at the airport and beyond, on the one hand, under private authority, and the actors and processes under private authority, in particular airline staff.

Operational practices of air entry at Brussels Airport involve on the one hand a limited selection of the Belgian authorities in charge of migration governance, and chiefly the federal LPA unit stationed at the airport. It is this unit that is in charge of enforcing national (the law of 15 December 1980) and European rules on border checks and migration enforcement (chiefly the Schengen Borders Code). **Figure 3-17** on the next page outlines how air entry processes and stages look like for these actors, adapted from an overview provided by the

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[51] CIA here stands for "Carrefour d'information d'arrondissement", which will be translated hereafter by "information crossroad". Brussels-Asse is the judicial canton ("canton judiciaire") and subdivision of the Brussels judicial district on the jurisdiction of which Brussels Airport is located. CIAs are federal police bodies tasked with handling the information generated in the context of criminal investigations as well as information generated in the context of public order activities. It supports both federal police and local police services and units. The role, tasks and functioning of CIAs is established in the MFO 6 joint ministerial instruction – see: Directive commune et contraignante MFO 6 des ministres de la Justice et de l'Intérieur du 9 janvier 2003 relative au fonctionnement et à l'organisation des carrefours d'information de l'arrondissement (CIA), *Moniteur Belge*, 19.02.2003, No. 2003009052, p. 08166.

federal Migration Centre (Myria, 2019a: 86). They are broadly similar to what the FRA investigation, referenced at the beginning of this section, identifies, with a few exceptions.

Figure 3-17. Operational entry processes at Brussels Airport for public authorities
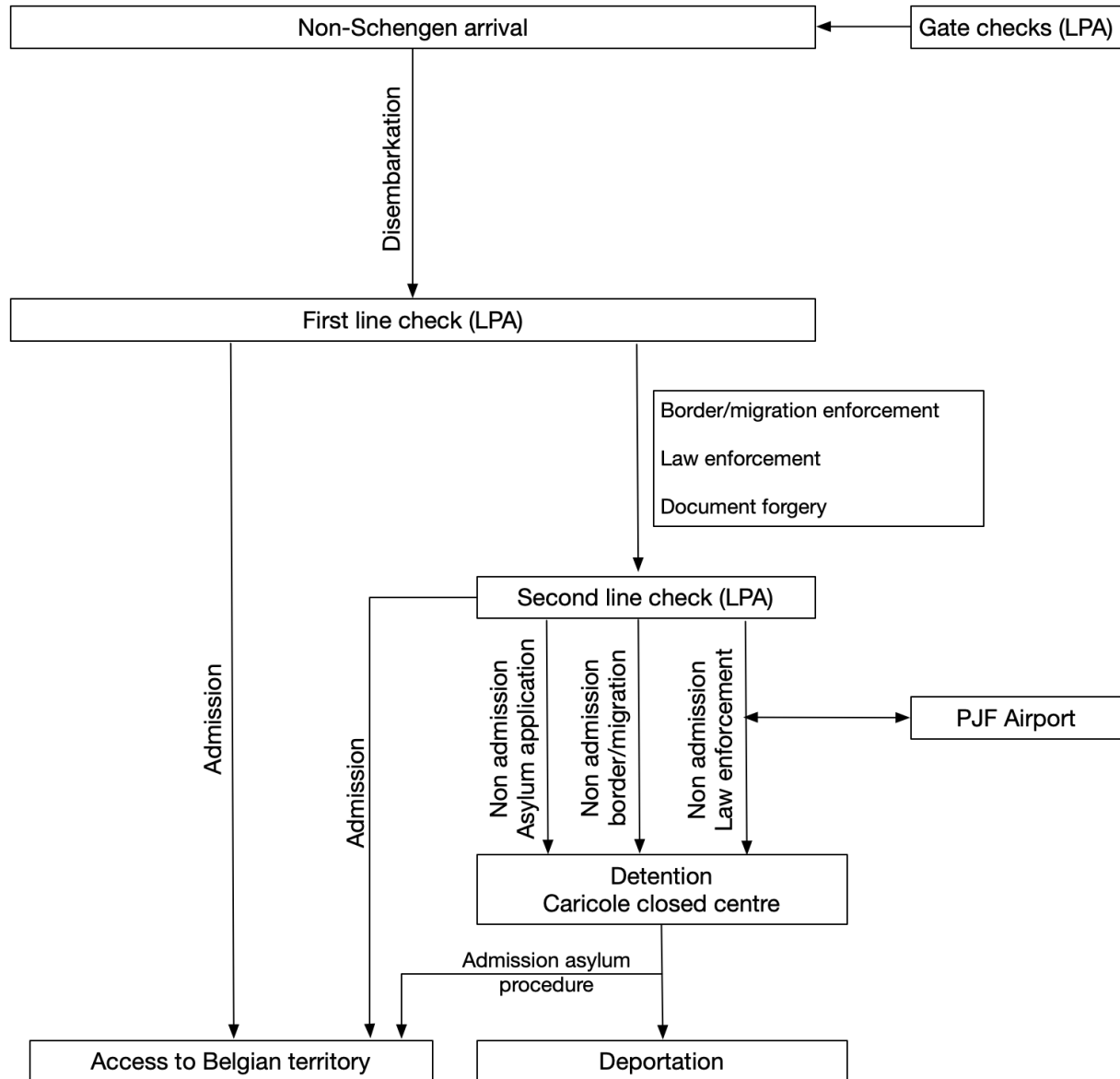
Source: adapted from Myria, 2019a: 86

As in most EU and Schengen international airports with non-Schengen flights, passengers (EU and TCN) arriving at Brussels Airport can be subjected to gate checks as they exit their plane. Decisions on gate checks are usually based on pre-arrival information – what LPA officials refer to in the report on an inquiry conducted a few years ago by the Standing Police Monitoring

Committee (hereafter Committee P[52] as 'profiling' – such as API data or operational intelligence, most of which appears to be gathered not by the LPA unit itself but by PJF Airport, the unit of the federal judicial police based at Brussels Airport (Comité P, 2012: 5). Persons who are found to be of concern for either border/migration or law enforcement concerns at this stage are immediately brought to the second-line check facility. Passengers who are allowed to proceed or who are not confronted with gate checks are then channelled along the arrival hall of Pier B toward first-line checks. When they work, EU and EEA citizens who are not travelling with children younger than 12 are encouraged by Brussels Airport staff to make use of the automated gates, while TCN travellers go through manual checks. For this group, first-line LPA have to decide, based on automated verifications against the SIS and VIS that is accessible from their booths, and from questions asked, whether to let travellers through and access Belgian territory, or to divert them for a second-line check.

Between 2014 and 2018, the LPA detachment at Brussels Airport has performed between 24,000 and 34,000 second line checks per year. Out of those, between 5,000 and 6,000 cases a year have required additional inquiries regarding in particular whether they met entry criteria (Myria, 2019a: 86). While these figures may seem high in absolute terms, it is important to stress that the Brussels LPA unit has performed between roughly 8.5 and 9.5 million first-line checks for non-Schengen entries yearly (including on EU and EEA citizens) during the same period. In 2018, then, approximately 0,3% of first-line checks resulted in second-line checks. Approximately 18% of these second-line checks (and 0,06% of first-line checks) led to additional inquiries. Most persons (approximately 93%) who underwent second-line checks were subsequently admitted onto Belgian territory. Most second-line checks are usually short, except if additional inquiries and a decision from the federal Immigration Office to grant or refuse entry (or in the case of unaccompanied minors, from the guardianship service of the Ministry of Justice) is required. In these cases, the person is placed under administrative arrest and can be held up to 24 hours, which may happen especially if they have arrived at night or during the weekend (Myria, 2019a: 89). Persons who are refused entry following second-line checks, particularly if their removal cannot be executed rapidly or if they oppose their deportation, can be transferred and placed in detention at the centre for inadmissible persons, also known as the Caricole Centre (see further discussion on refusals of entry and detention below).

A specific case concerns third country nationals who introduce an application for international protection upon entry. This involves persons who are not in possession of the entry documents required to gain access to Belgian territory (if they have such documents in their possession and are granted access, they can apply for international protection "on the territory"). The law of 15 December 1980 specifies (Art. 50/1) that in this case, the request for international protection must be submitted 'without delay' to the authorities in charge of

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[52] The Standing Police Monitoring Committee or Committee P ("Comité permanent de contrôle des services de police") was established in 1991 and became operational in 1993. It provides the Belgian federal parliament with an independent monitoring body for police forces.

border controls when the person is asked for the purpose of their stay in Belgium. There is however an ambiguity in this case, since the relevant national authority in this case is the border inspectorate ("service inspection des frontières") of the federal Immigration Office, who does not have staff present at the airport[53] but is located in downtown Brussels. This effectively means that persons who make it to Brussels Airport without the proper documents to enter Belgian territory and who introduce an asylum application are systematically arrested during second-line checks, and subsequently placed in detention (also further discussed in subsection 3.4. below).

What is missing from the depiction provided so far, however, are the operational practices of private actors, and in particular airline personnel, who exert a considerable degree of authority in the process of accessing to the territory. **Figure 3-18** on the next page outlines operational entry processes for airlines, based on information specific to Brussels Airlines, but which are broadly similar to how other airlines operate. Through these processes, air carriers both participate in entry checks performed by border and migration enforcement authorities in Belgium/EU and Schengen states (for instance by forwarding API and PNR data), but they also conduct entry checks in their own right, in the form of document checks at check-in and identity checks at boarding, in particular.

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[53] Interview, Myria, October 2019.

Figure 3-18. Operational entry processes at Brussels Airport for airlines

Booking	Check-in	Boarding	Flight Closure

PNR data generated and stored in reservation system

Document check by airline check-in staff (travel document, visa if applicable)

Passenger deemed improperly documented

Passenger deemed properly documented

Identity check by boarding gate airline staff

Identity check is unsuccessful

Identity check is successful

Passenger is refused boarding

Passenger is authorised to board

Passenger is refused transportation

Passenger checked in and API data is generated and stored together with PNR in airline local Departure Control System (DCS)

PNR data sent to national Passenger Information Unit of state of destination (BE: 48 hours before departure)

API and PNR data are sent to national PIU of state of destination (one link but two separate messages)

PNR data transferred to airline check-in system (48-72 hours before departure)

Source: Interviews, independent consultant in aviation matters (October 2019), Brussels Airlines (November 2019).

Passenger processes for entry by air, as far as private carriers are concerned, involves four main stages: booking, check-in, boarding and flight closure.[54] The booking stage is a purely commercial process, whereby a passenger or travel agent selects an itinerary and fare, and provides personal data and payment information in order to reserve their flight. It is at this stage that passengers agree to the airline's Terms of Service. The personal data they provide is not checked by the airline, but simply stored within its reservation system (or the reservation system of the service provider they outsource their booking operations to, Amadeus in the case of Brussels Airlines) and assigned a booking code, also known as a PNR code. The period between the booking and check-in stages of passenger-related processes is where private and public authority first become entangled in the operational governance of entry by air. As discussed above, airlines operating flights to and from Brussels Airport are since the beginning of 2018 required to transmit the PNR data generated and stored on their (or their service provider's) reservation system to the Belgian Passenger Information Unit. The transmission takes place 48 hours before departure. In parallel, and 48 to 72 hours before flight departure, reservation (PNR) data is transferred from the airline's reservation system to its check-in system. In the case of Brussels Airlines, which does not operate its own reservation system or its own check-in system, this is done through the company's reservation and check-in service provider Amadeus.[55]

The second important stage from the perspective of air carriers is check-in. This is the moment when airline staff first execute their company's obligations under national, EU and international rules to check whether would-be passengers are properly documented – that they hold a valid travel document for their destination, and if applicable a visa, and that these are authentic documents and authorisation. In the context of EU and Schengen air borders, check-in effectively becomes a first entry check, since airline staff have the right, under the ToS passengers have agreed to by buying their ticket, to refuse transportation to passengers they deem to be insufficiently documented. If, on the other hand, passengers are considered sufficiently documented, check-in staff will proceed to input their identity and travel document data (API data) within the airline's check-in system. This is done automatically when passengers hold a machine-readable travel document, by swiping the machine-readable part in an optical reader. If travel documents are not machine-readable, API data has to be inserted manually in the check-in system. At this point, API and PNR data are stored together but as separate files within the airline's departure control system (DCS). Check-in staff also issue passengers' boarding passes (or check them if passengers have gone through advanced online check-in). These boarding passes, incidentally, are the document that

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[54] There are multiple variants on the processes described here, depending on the airline and the flight's destination. The information provided here is what happens in most cases on Brussels Airlines flights from non-Schengen airports to Brussels Airport. Additional processes can include passenger screening in the line prior to check-in (as can be the case for flights to the UK, Israel or the US) or prior to boarding, for instance, which can be performed either by airline staff, service providers (typically, private security company Securitas for Brussels Airlines and for extra-Schengen flights departing from Brussels Airport)
[55] Interview, Brussels Airlines (Brussels Airport, November 2019).

alongside their travel documents give travellers access to the departure hall provided that they satisfy security and exit checks. In the case of Brussels Airlines (but the company is by no means an exception among air carriers) additional steps can be taken if the point of departure is considered, under the terms of the MoU with the Immigration Office, as a 'high-risk airport'. For Brussels Airlines, this is the case of all of the airports on the African continent from which they operate flights to Brussels.[56] Operational practices at check-in can include making copies of entry documents at check-in which are then transported physically to Brussels by the on-board staff and which can in case of a problem be handed to the border and immigration authorities at Brussels Airport[57], and in specific cases the withholding of entry documents presented by passengers at check-in, which are then handed to the flight crew who will return them upon arrival in Brussels.

The third and fourth stages of passenger processes for airlines in the context of entry operations are boarding and flight closure. Airline staff at the boarding counter will perform an identity check on passengers in addition to a verification of their boarding pass, which aims at ascertaining that they are the same person who has gone through check-in. At this point, and just like at check-in, it remains possible for airline staff to refuse transportation to a passenger deemed to be improperly documented or whose identity is in doubt. Under the terms of the MoU between Brussels Airlines and the federal Immigration Office, additional measures for high risk airports can include a (third) document check at the foot of the aircraft, presumably in cases where passengers do no access the plane directly from the terminal building. The last operational stage for passenger air entry processes from the airline's perspective, finally, is flight closure, that is the moment where the doors of the aircraft are closed. It is at this point that API data, and PNR data for the second time, are sent to the national authorities of the state of destination – to the BelPIU in the case of flights to Brussels Airport. In the case of Brussels Airlines, the data is sent as part of a single communication but API and PNR data are separated, for technical reasons – API data is formatted according to the PAX LST standard, while PNR data is formatted according to the PNR GOV EDIFACT standard, both of which are international standards agreed upon and endorsed by state representatives, IATA, ICAO and the WCO.

3.3.3.3. Coordination and frictions in air entry operations

The air entry governance actors and processes described above, as we have shown, involve multiple actors intervening at different stages of the entry process, and operating according to different logics – providing commercial air transportation services, enacting and enforcing both immigration legislation and rules for international protection, as well as law

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[56] Interview, Brussels Airlines (Brussels Airport, November 2019). At the time of writing Brussels Airlines operates flights to Brussels from Angola, Benin, Burkina Faso, Burundi, Cameroon, D.R. Congo, Egypt, Gambia, Ghana, Guinea, Ivory Coast, Liberia, Morocco, Rwanda, Senegal, Sierra Leone, Togo and Uganda.
[57] Interview, independent consultant in aviation matters (Brussels, October 2019).

enforcement. The question arises of how these actors coordinate their activities with one another, and of the frictions that seem unavoidable given their differences. While for the sake of description the previous point has predominantly distinguished between public and private operational practices, it is important to keep in mind that this is not the only distinguishing characteristic of the actors involved in air entry operations. Questions can and should be asked about coordination and frictions among public actors as well.

In this regard, the matter of information sharing between public authorities at BNA has been a matter of concern. A 2012 report from the Standing Police Monitoring Committee (Comité P., 2012), the findings of which remain relevant today[58], highlights issues regarding the sharing of operational information between police services at Brussels Airport. The report is the result of a long investigation opened by the Committee after tensions emerged between the LPA unit and judicial police units at Brussels Airport in the aftermath of the 'integrated police' reforms. While the question was not the initial focus of the investigation, the report outlines that while basic operational cooperation between the two main police units based at Brussels Airport, information sharing had evolved into an issue as an outcome of both organisational limitations and local efforts to find a workaround. Due to the specific way in which police forces are organised in Belgium, there is no dedicated operational information flow related to airports. In the case of Brussels Airport, police information channels are under the responsibility of the information crossroad of the Brussels-Asse judicial canton (CIA Asse). As a result, responsibilities regarding the sharing of information related to BNA were delegated by CIA Asse to a unit of the LPA service at the airport, to the detriment of the judicial police unit at the airport, which considered that because of this workaround, they did not have access to the operational information and intelligence necessary to perform their work with regard in particular human and narcotics trafficking (Comité P., 2012: 23-24). At the same time, the LPA service at BNA was critical of the fact that the intelligence or 'profiling' part of police activities at the airport (including passenger information and data such as PNR) was under the responsibility of the judicial police unit at the airport, despite the fact that this information and data was increasingly critical to the work of LPA officials, including to decide when to perform gate checks (Ibid: 23). While the situation has evolved in this regard with the establishment of the BelPIU handling PNR data within the Belgian National Crisis Centre, that is in a central administration of the federal state[59], it seems that this issue has not been resolved and that for the time being for instance, the LPA units at Brussels Airport receive the outcome of PNR data analysis after flights have arrived rather than before.[60] What appears to be going on, in more analytical terms, is the fact that entry by air is not only a matter of interest for authorities in charge of border and migration enforcement, but also for law enforcement and judicial actors. What is the priority when it comes to dealing with persons

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[58] Interview, Federal Police Council (Brussels, December 2019).
[59] The Centre is a service of the *SPF Intérieur* (Belgian federal Ministry of the Interior) and under the authority of its president (the senior civil servant at the head of the Ministry). Interview, former SPF senior civil servant (Brussels, January 2020).
[60] Interview, Federal Police Council (Brussels, December 2019).

accessing the territory of Belgium by air and what should be done, operationally, about these priorities, generates frictions between units and services stationed in the same place.

The same observation can be made with regard the coordination of operational practices between state authorities and air carriers. The latter are keen to highlight that they cooperate with state authorities in dealing with improperly documented persons as part of an effort to facilitate (a terminology enshrined in the Chicago Convention) access to the territory for their customers[61], in addition to limiting their financial and administrative liability under carrier sanctions rules. This is how they justify the fact that they accept, for instance, to take responsibility for passengers who are refused entry on grounds other that the validity of their travel documents and authorisations, such as the lack of proven appropriate means of subsistence or the persons whom the airlines characterise as 'UTR' travellers ('Unclear Travel Reason').[62] In the operational context of Brussels Airport, this coordination is embodied in the so-called 'INAD forum', organised since 2005, where officials from the Immigration Office, the LPA and Brussels Airlines meet several times a year in order to discuss procedures, results and future initiatives to deal with 'inadmissible passengers'. This takes place despite the fact that airlines tend to put a distance between what constitutes their interest in air transportation and the issue of checking that passengers meet entry conditions. [63] Where frictions seem to appear, however, is when air carriers claim they do not see 'return on investment' for the coordination and cooperation efforts they consent.[64] In recent years and in the context of Brussels Airport, the lack of such 'return on investment' is manifested for airlines by the fact that despite performing document and pushing both API and PNR data before the departure of extra-Schengen flights to Belgium, the speed at which passengers are able to clear border controls seems to not have improved significantly. Interviewees have stressed for example the significant delays experienced by passengers in transit in the summer of 2017, after changes to the Schengen Borders Code enabled LPA officers to carry out systematic checks (akin to checks on third country nationals) on EU citizens entering the territory.[65] As recent

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[61] Interview, Brussels Airlines (Brussels Airport, November 2019).

[62] Idem.

[63] As one of the interviewees working for the air transportation industry stressed in the opening minutes of our conversation, "I will start with a preliminary statement that is unkind and in my opinion nor diplomatic […] Airlines in fact have absolutely no interest in checking passengers' documents. It is not our responsibility, we are not interested. The only thing we are interested in is to know that the person who is boarding the plane has paid for their ticket. We are a business, and nothing else. That is the first principle. When it really comes down to it, we are not interested in knowing who boards our plane, except of course that we want the person is physically able to travel, that they are well behaved on board – so there is the whole matter of [flight] safety here. But to know that Mr Dupont is travelling from Paris to Madrid, we don't care. What we are interested in knowing is how much Mr Dupont has paid, how much he is ready to pay for his ticket, whether he has paid for it, and that we are able to offer the service he has paid for" (Interview, Brussels Airlines, Brussels Airport, November 2019, author's translation).

[64] Idem.

[65] Interviews, independent consultant in aviation matters (Brussels, October 2019) and Brussels Airlines (Brussels Airport, November 2019).

EU measures related to entry governance will place additional requirements on carriers, such frictions may be amplified.

3.3.3.4. Air entry infrastructure

As we have seen in the previous point, a particular feature of entry by air concerns information sharing and more broadly concerns with air entry infrastructure. Accordingly, the last item of discussion in this mapping of air entry operational practices concerns infrastructural matters. This focus is further justified by the fact that, as shown in the first deliverable of ADMIGOV WP1, this infrastructure and particularly its information and communications aspects have been a predominant focus of EU measures concerning the access of third country nationals to the territory of EU and Schengen states in the last five year. Measures such as the establishment of the EES or ETIAS are susceptible to have significant repercussions on how entry is both operated by the actors examined so far and experienced by third country nationals. The issue surfaced in most of the interviews conducted, where it concerned both the question of API and PNR as well as the establishment of EES and ETIAS and the so-called 'interoperability' regulation in the field of borders and visa checks (for a description, see Koopmans and Belfiuss, 2019: 32-35).

The establishment of EES and ETIAS, on the one hand, would place another operational requirement and introduce a modification in airline operations at check-in. Both systems foresee a carrier gateway or portal accessible to carriers. The EES carrier portal would allow (and thus require) carriers including air carriers 'to verify whether third-country nationals holding a short-stay visa issued for one or two entries have already used the number of entries authorised by their visas' (Article 13 EES Regulation).[66] The ETIAS 'carrier gateway' would enable (and thus require) carriers including air carriers to 'send a query to the ETIAS Information System in order to verify whether or not third-country national subject to the travel authorisation requirement are in possession of a valid travel authorisation' (ETIAS Regulation, Article 45).[67] The verification should take place, in both cases, during check-in, either as an automatic result for passengers equipped with a machine-readable travel document or of a manual operation whereby the relevant travel document information (i.e. API data) is entered in the airline's check-in system by its check-in agents. For both EES and ETIAS, the outcome of the query would be an 'OK' or 'Not OK' message received by the check-in agent (EES Regulation Article 13(3) and ETIAS Regulation Article 45(2)). While seemingly straightforward in the abstract, air transport professionals have emphasised that this would require changes (and therefore incur costs) to how check-in systems are currently designed for flights operated between a non-Schengen country and the EU, namely their upgrade to

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[66] Regulation (EU) 2017/2226.
[67] Regulation (EU) 2018/1240 of the European Parliament and of the Council of 12 September 2018 establishing a European Travel Information and Authorisation System (ETIAS), OJ L236/1, 19.9.2018.

'interactive API' systems (hereafter iAPI).[68] These are interactive systems because 'API data is transmitted on a passenger-by-passenger basis while check-in is taking place' (ICAO, 2016: 2). Airlines already use iAPI systems for some of the services they operate (e.g. for international flights to the U.S.) and the international airline trade body, IATA, has taken explicit positions that such systems can be beneficial to airlines despite their costs, if they result in increased 'facilitation' for their customers, i.e. faster admission on the territory of a state (ICAO, 2016: 3). The costs are not just for upgrading check-in systems, but also for communications between check-in systems and the web portal/gateway, typically for airlines such as Brussels Airlines that externalise their check-in operations to the likes of Amadeus.[69] They can also include the costs incurred by lengthier check-in operations, which have to do with the question of how to handle travellers who are not subject to verifications against the EES and ETIAS – namely holders of an EU or EEA passport. For these passengers, checks against EES and/or ETIAS would bring back an erroneous 'Not OK' message because their personal data cannot be found in these systems, which in turn would either require that airlines introduce different check-in procedures depending on their customers' travel documents[70], or to train staff to ignore such messages.[71]

The establishment of EES and ETIAS, on the other hand, comes with a promise to change the way in which first-line checks are performed at Schengen external borders, by automatizing some of the tasks that first-line staff currently conduct manually for third-country nationals. Together with the interoperability regulation in the field of borders and visa checks[72], the introduction of EES and ETIAS would also increase the amount of information on display on the screens of first-line check booths, in particular with regard the verification of the identity of third-country nationals (the green/yellow/red links produced by the multiple-identity detector component[73] of the interoperability framework). At this time there is no clear understanding of the impact that the further automation of border and migration enforcement processes and the introduction of additional information might have.[74] This is not just a matter of speed – that is, how long it would take a first-line officer to determine whether a third country national should be held for second-line checks or admitted – but also of the potential increase in the number of second-line checks as a result. In light of past and existing issues in the operational context of Brussels Airport with regard to the sharing of

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[68] Interviews, independent consultant in aviation matters (Brussels, October 2019) and Brussels Airlines (Brussels Airport, November 2019).

[69] In the current set-up, as discussed earlier, API data is forwarded to national in a single 'batch message'. With iAPI systems, the number of messages processed through check-in systems would increase exponentially.

[70] For which there is no financial incentive, interviews, independent consultant in aviation matters (Brussels, October 2019) and Brussels Airlines (Brussels Airport, November 2019).

[71] With the risks (from the point of view of both carriers and travellers) of human errors and, air transportation professionals claim, additional costs for training or re-training check-in staff (Idem).

[72] Regulation (EU) 2019/817 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of borders and visas, OJ L 135/27, 22.5.2019.

[73] See Article 25 of Regulation (EU) 2019/817.

[74] We will keep monitoring this issue over the course of the ADMIGOV project, at least for air borders.

information, the possibility does exist that the introduction of EES/ETIAS and interoperability would cause further disruptions, depending on how these EU measures are implemented nationally and locally at the airport, and on how border and migration enforcement staff is trained.[75] It is notable that for some actors, these new measures, and in particular interoperability, are seen as a workaround for some of the organisational issues faced by Belgian police forces.[76]

3.3.4. Denying entry at air borders

Denying access to the territory is the last aspect of air entry governance that requires consideration here. This is also where the work of WP1 touches upon issues of both exit and international protection, which are examined by other ADMIGOV work packages 2, 4 and 5 respectively. Third country nationals who are denied entry at the Belgian air border at Brussels National airport are indeed placed in detention pending their expulsion toward their point of departure. This is also the case for third country nationals who apply for international protection at the border but who are not admitted on the territory because they are deemed to lack the appropriate documentation or authorisation (travel documents, visas) by airport police officials. Because the most immediate consequence for third country nationals of being refused entry is detention, this is also the context in which the coercive and repressive dimension of air entry governance is most explicitly manifested. Being refused entry means that third country nationals are deemed "inadmissible". The authority to declare a person inadmissible for entry by air, as we have seen, does not however lie exclusively with national public authorities in EU and Schengen states, but also rests within the purview of airline staff at the point of departure. The operational configuration of inadmissibility (how inadmissibility happens) is discussed in point 3.3.4.1., while the articulation of inadmissibility, detention and deportation is examined in point 3.3.4.2. This last point is limited in scope due to the fact that these issues are expected to be discussed in-depth in the aforementioned work packages, and fall somewhat out of the scope of WP1.

3.3.4.1. Operational configuration and practices of inadmissibility

To understand the operational configuration and practices of inadmissibility, the first step is to get a sense of the scale of inadmissibility, that is of how many persons are deemed inadmissible on a yearly basis at BNA. The federal Immigration Office and the federal Migration Centre both provide data regarding decisions on inadmissibility. A distinction should be, and is made between the number of inadmissibility decisions that are taken by the Immigration Office and the number of such decisions that are effectively enforced. An initial

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[75] The provision of training, in turn, is presented as a key matter for EU officials working on these matters. Interview, eu-LISA (Brussels, December 2019).
[76] Interview, Federal Police Council (Brussels, December 2019).

inadmissibility decision can indeed be annulled, for example if the person is granted asylum or granted access to the territory in order to have their asylum claim examined. The granularity of the data provided by the DVZ/OE has however declined over time. While it is possible to know how many persons were ultimately declared inadmissible at Belgian air borders and for each international airport on Belgian territory from the early 2000s to the mid-2010s, such detailed information is no longer readily available for more recent years. The available data is presented below. **Figure 3-19** displays enforced inadmissibility decisions at Belgian air borders in general and in the context of entry at Brussels Airport in particular between 2003 and 2013, together with data on the total number of enforced inadmissibility decisions at all Belgian external borders between 2003 and 2018. **Figure 3-20** on the next page presents data on the difference between the number of inadmissibility decisions taken by Belgian authorities for TCNs seeking entry on the territory, and the number of such decisions effectively enforced between 2014 and 2018.

Figure 3-19. Enforced refusal of entry decisions at all Belgian Schengen borders, Belgian Schengen air borders and Brussels Airport (2003-2018)
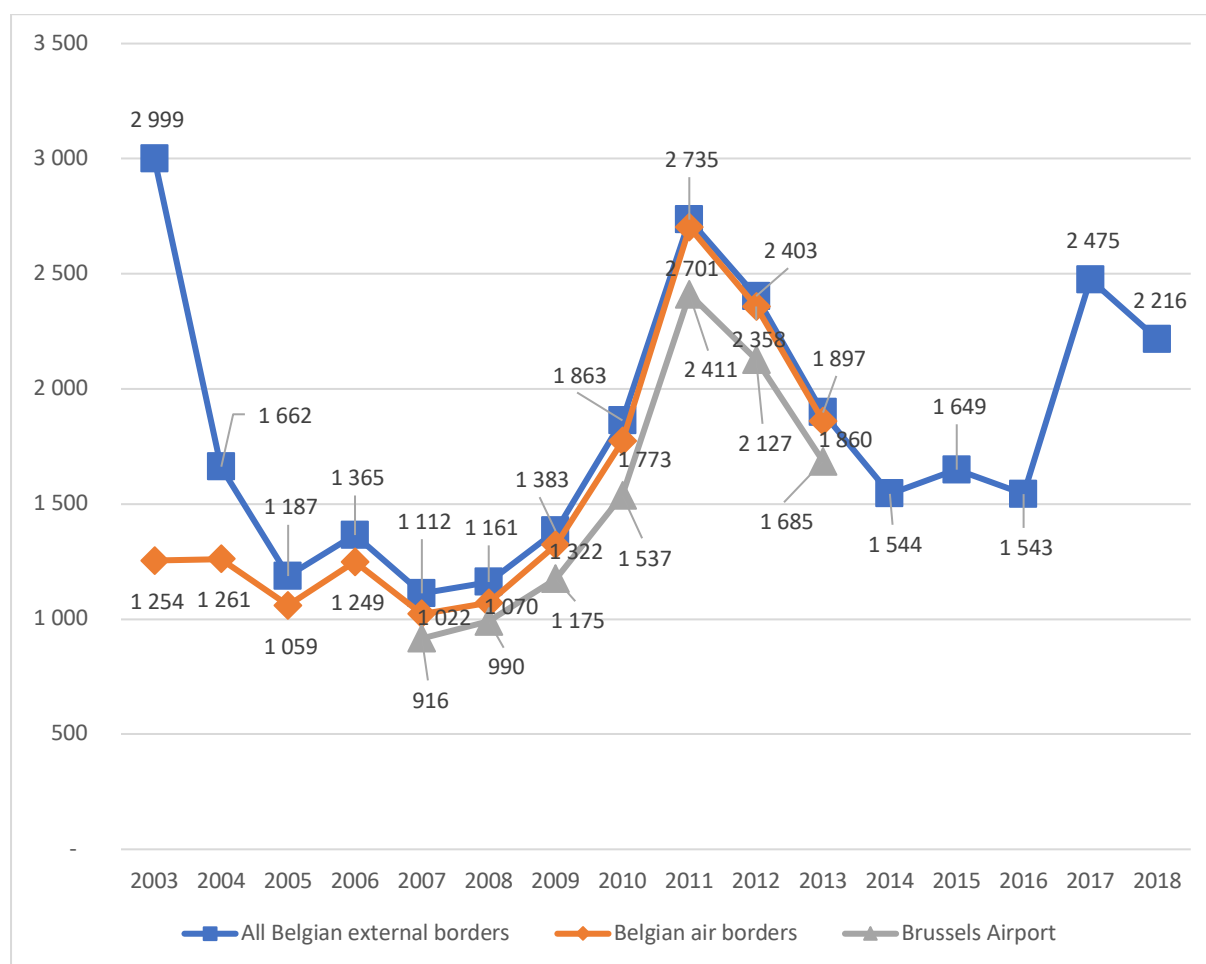
Source: DVZ/OE annual reports 2003 through 2013, DVZ/OE annual statistical reports 2014 through 2018

Figure 3-19 for two immediate observations. First, and except for 2003 and 2004, Belgian air borders are where most enforced inadmissibility decisions take place, which is consistent with

the fact that besides its seaports, Belgium can only be directly accessed from third countries by air. Second, most of these decisions take place at Brussels Airport. This is important in order to make sense of the data displayed in Figure 3-20 below, where we can work with the assumption that most inadmissibility decisions issued and enforced by the Belgian authorities concern Brussels Airport.

Figure 3-20. Issued and enforced refusal of entry decisions at Belgian Schengen borders
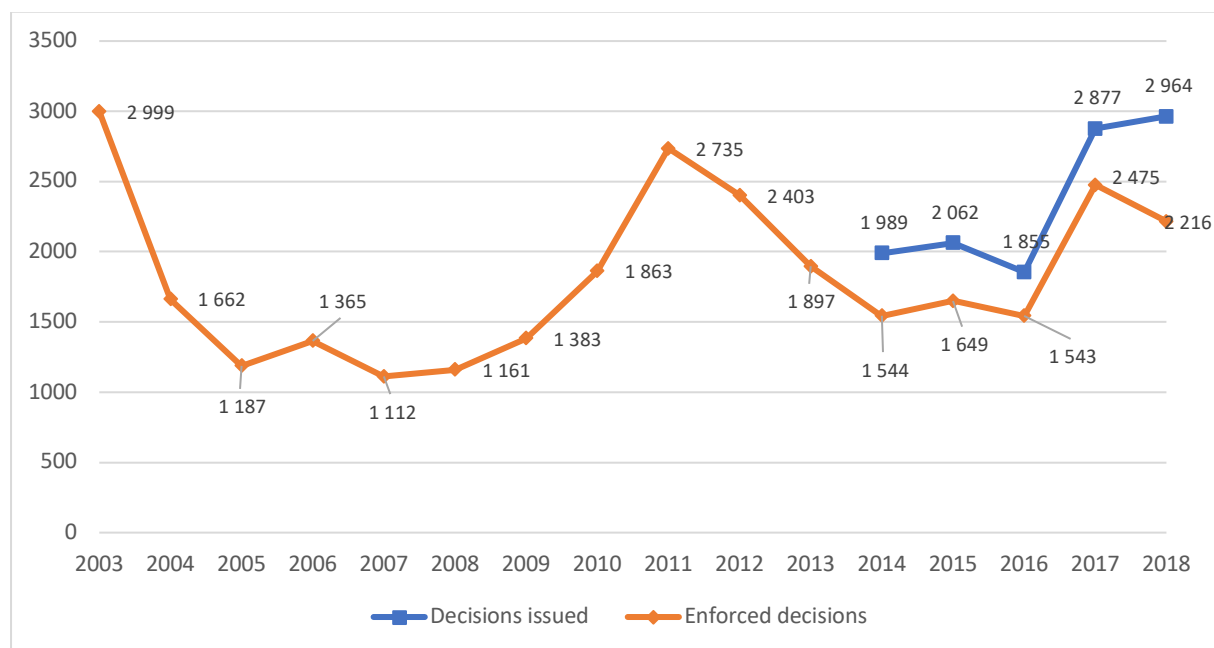
Source: DVZ/OE annual reports 2003 through 2013, DVZ/OE annual statistical reports 2014 through 2018

A general observation on patterns of refusal of entry at Belgian Schengen borders, air borders and Brussels Airport is that no clear trend emerges from the last fifteen years. It can be argued that despite these fluctuations the number of enforced inadmissibility decisions has generally decreased (from 2,999 in 2003 to 2,216 in 2018, and as low as 1,112 in 2007). As for the grounds on which these decisions are taken, the narrative elements available in the DVZ/OE reports for 2007-2013 indicate that these fluctuations do not involve cases of travellers who are insufficiently documented or carry fake or forged travel documents, but mostly have to do with changes in the number of travellers who do not satisfy other conditions of entry such as holding a valid travel document or valid travel authorisation (which can include passports that are close to their date of expiry or expired visas), proof of sufficient means of subsistence, lack of supporting documents demonstrating the purpose of their intended stay, or travellers for whom an alert has been issued in the SIS or are considered a threat to public order (see e.g. DVZ/OE, 2014: 152).

Having outlined the scale of inadmissibility, we should now consider how these decisions are taken. Contrary to commonly held understandings, inadmissibility in the context of air entry

is not decided at the moment of and by officials conducting first-line checks, but following second-line checks. In practice, the process involves two stages: a police stage and an administrative stage. Legally, the federal Immigration Office (Border Inspectorate) is the only authority that is competent to refuse access to Belgian territory.[77] As mentioned earlier, however, the border inspectorate of the DVZ/OE does not have staff present at Brussels Airport[78] and therefore does not intervene until the administrative stage, when it receives information from the LPA unit at Brussels Airport. It follows that Immigration Office staff make decisions on admitting or refusing entry at the air border from a distance, and solely on the basis of the report drafted by the LPA officer who conducted the second-line interview, occasionally accompanied by a questionnaire filled and signed by the person being held.[79] Federal police officers, then, are the only interlocutors that persons being held following a second-line check will have until after an inadmissibility decision has been taken. Persons who are refused entry are notified of the decision by being handed an 'Annex 11' document[80], which states the reasons for the decision in the form of a check box list, with three lines left blank for a narrative statement, and includes a formal notice that recipients must sign to acknowledge reception of the decision. Once a person has been deemed inadmissible, furthermore, the airline company that has transported them to Brussels Airport receives a document from the Immigration Office, where the motive for inadmissibility is stated, which then enables the determination of who is responsible and to what extent for the costs incurred for the removal of the person, for their accommodation or detention are borne by the carrier or by the Belgian state.[81]

Third-country nationals who do not meet entry conditions and intend to submit an application for international protection encounter slightly different operational practices. They are required to signal their intent to apply for international protection 'without delay'[82], in this case to LPA officers either during first- or second-line checks. Following the transmission of the police report to the OE, they receive an 'Annex 25' document confirming that they have submitted an asylum application, as well as an 'Annex 11ter' which notifies them that they are refused entry and that they can be deported as soon as the decision becomes executable. They also receive a document indicating that they are to be detained on the basis of Article

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[77] 'Décision de refoulement' in the (francophone version) of the Belgian procedure for declaring a person inadmissible.

[78] Interview, Myria, October 2019, confirmed by Interview, Federal Police Council, December 2019.

[79] 'Border report' ('rapport de frontière' in the francophone version of the Belgian procedure), see e.g. Conseil du Contentieux des Etrangers, 2018, point 4.3.

[80] These are annexes to the royal decree implementing the law of 15 December 1980. See: Arrêté royal sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers, *Moniteur Belge*, 27.10.1981, No. 19811001949, p. 13740 (updated version of 22.08.2019). Samples for all annexes can be found on the website of the federal Immigration Office (https://dofi.ibz.be/sites/dvzoe/FR/Guidedesprocedures /Pages/Formulaires.aspx).

[81] Interview, Brussels Airlines (Brussels Airport, November 2019).

[82] Art. 50/1 of the law of 15 December 1980.

74/5 of the law on foreigners while the Office of the Commissioner General for Refugees and Stateless Persons examines their application.

The above concerns decisions to refuse entry to third country nationals upon their arrival at Brussels Airport. As discussed throughout the chapter, however, the operational governance of entry by air is a diffused process, where private actors are both required and authorised to refuse access to the territory to persons they deem to be improperly documented. This situation effectively means that third country nationals looking to travel to Belgium (and to other EU and Schengen countries) can be deemed inadmissible at their point of departure. While from the perspective of airlines what matters is whether passengers have paid for their flight and whether or not they pose a safety risk for their aircraft, staff, and other customers[83], the existence of carrier sanction regimes means that operational practices have been developed to deal with the question of documentation. This involves in particular providing training to check-in agents, or in some cases hiring specifically trained personnel for the purpose of document control.[84] Such operational practices, as already discussed, are not found in every third country airports, but are implemented at airports deemed to present a 'high risk' for border and migration enforcement. What is notable is that the decision to refuse transportation taken by a carrier at the point of departure amounts to a refusal of entry, because in the context of entry by air, flying on a commercial airline is almost the only means available for third country nationals to reach the border of an EU or Schengen state. In the case of air entry in Belgium, however, there is no publicly available information on how many persons are refused transportation on the grounds that they are considered insufficiently documented.[85] The practice also raises the question of the remedies available to third-country nationals who find themselves adversely affected at their point of departure by an airline decision, taken in the context of national, European and international rules on carrier liability and in the framework, usually, of an MoU signed with the border and migration authorities of the state of destination, and consider that they have been wrongfully refused transportation. EU law deals with cases of denied boarding – when carriers refuse to carry a passenger – in the context of the Flight Compensation Regulation (Regulation (EC) No 261/2004) but the Regulation excludes from its scope situations where 'there are reasonable grounds to deny [...] boarding, such as reasons of health, safety or security, or inadequate travel documentation'.[86]

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[83] Interviews, Independent consultant in aviation matters (Brussels, October 2019), and Brussels Airlines (Brussels Airport, November 2019).

[84] Interview, Brussels Airlines (Brussels Airport, November 2019).

[85] At the time of writing, it has not been possible to obtain either specific information or general estimates from Brussels Airlines, or from the federal Immigration Office. A query has also been transmitted to the Belgian Federal Public Service Mobility (*SPF Mobilité*) which handles passenger complaints under Regulation (EC) No 261/2004 (see next footnote) but the service does not specifically collect statistics on persons who have been refused boarding due to improper documentation (email communication, January 2020).

[86] Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, OJ L 046/1, 17.02.2004, Article 2(j).

While decisions to refuse transportation to third country nationals deemed improperly documented, taken under the private authority of air carriers, are a concern, there are also questions and issues concerning inadmissibility decisions taken by public border and migration enforcement authorities. In the case of operational practices at Brussels Airport, this concerns the fact that decisions taken by the Immigration Office for third country nationals who are not applying for asylum are taken on the basis of information provided almost exclusively by police officers. The issue here concerns the possibility of persons in such situations to appeal the DVZ/OE's decision. Since 2007, the Council for Aliens Law Litigation is the competent authority to hear such appeals. It exclusively performs a legality check, however, can suspend or annul the decision but cannot grant access to the territory[87], and is not competent to ensure that third country nationals' rights are respected during the police phase of the refusal of entry procedure, a task which falls rather within the remit of the Standing Police Monitoring Committee. Among other concerns that the police stage of the refusal of entry procedure raises, in this regard, are the right to be informed and the right to be heard prior to the adoption of any decision that might affect them adversely, which cannot be guaranteed here given that there are no representative of the Immigration Office systematically present at Brussels Airport.[88]

3.3.4.2. Air entry, inadmissibility and detention

The most immediate consequence for third country nationals of being refused entry at Brussels Airport is detention. This is not unique to either BNA or Belgium, of course. The detention of foreigners has become a central and intensely controversial aspect of Belgian policy in the areas of asylum, border and migration enforcement in the last thirty years. As detailed in the boxed insert below, its history is also intimately associated with the question of entry by air. Two of the five "closed centres" where third country nationals are currently detained in Belgium are indeed located in close proximity to the Brussels National airport. The Centre 127bis, built and opened in 1994, mostly holds persons who have applied for asylum in Belgium but have been found to have lodged a prior application in another EU Member State and are awaiting to be transferred there through so-called "Dublin transfers"

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[87] See e.g. the reasoning of the CALL in its ruling of 12 October 2018 (Conseil du Contentieux des Etrangers, 2018: 4). This concerns the case of an Algerian national arrested at the border at Gosselies Airport, appealing the decisions of the Immigration Office to refuse them access to the Belgian territory and to cancel his Type C Schengen visa. One of the defendant's arguments was that they were married to an EU citizen and that as such, they had the right to access Belgian territory even if they did not have the appropriate documentation. The defendant further argued that they did not have the possibility at the time of their arrest to document the fact that they were married, and that their lawyer subsequently (three days later) submitted evidence of their marriage to an EU citizen. While the judge acknowledged that the evidence was indeed submitted, they pointed out that at the time when the decision was taken, this information was not available to the Immigration Office, which meant that it could not be reasonably expected to take it into consideration and that the decision was therefore legal in that regard. Since the CALL only rules on the legality of administrative acts and not on the existence of a right (in this case, of the defendant to enter), the judge rejected the defendant's argument.
[88] Interview, Myria, October 2019.

(Ciré, 2016: 14-15). The Caricole Centre, built in 2012 to replace both the oldest detention facility for third country nationals in Belgium, the Centre 127 (built in 1988) and the centre for "inadmissible" third country nationals of the Brussels National airport[89], is also located on airport grounds. The Caricole Centre is where most third country nationals who have been refused entry after arriving at Brussels Airport are detained.

Box 3-3. The detention of foreigners in Belgium

The detention of third country nationals in relation to asylum, border and migration enforcement in Belgium is intimately tied with the question of entry by air. The practice began in 1988 with the creation of a "transit centre", the "Centre 127" detention facility. Located on the grounds of the Melsbroek military airfield, in close proximity to the Brussels National airport, the Centre 127 was particularly meant to detain persons applying for international protection in Belgium, who were required to remain in the transit zones of the country's international airports while the receivability of their application was examined (Vertonghen, 2018: 42). This situation resulted from legislative changes. Until the adoption of the law of 14 July 1987 modifying the Belgian law on foreigners of 15 December 1980 indeed, persons who notified their intention to submit an asylum application would be automatically allowed to enter Belgian territory (Devillé, 1996: 6).

The detention of foreigners in specific facilities "at the border" (that is, legally prior to entry on Belgian territory) when they do not meet entry criteria and including persons applying for international protection who do not hold valid travel documents and visas, was legalised in subsequent modifications of the law on foreigners (laws of 18 July 1991 and especially law of 6 May 1993; Devillé, 1996: 6-7). The oldest formal detention facility for foreigners in Belgium today, the "Repatriation Centre" or Centre 127bis was built in 1994, again in close vicinity to the Brussels National airport on the territory of the Steenokkerzeel municipality, along with the Merksplas (1994) and Bruges (1995) closed centre. The only detention facility currently open in Wallonia is the Vottem closed centre, opened in 1999. These last three facilities hold third country nationals arrested while staying without proper authorisation on Belgian territory, rather than persons placed in detention upon entry. Currently, most third country nationals who have been refused entry after arriving at Brussels National Airport are held in the Caricole transit centre, also located on the territory of the Steenokkerzeel municipality, which opened in 2012.

In May 2017, the Belgian federal government adopted a "closed centre Masterplan" with the aim of almost doubling the detention capacities of Belgian closed centres, from 583 (as of 31 December 2016; Myria, 2017: 21) to 1.066 beds (Chambre des représentants, 2017: 38). This would be achieved by extending the holding capacity of Centre 127bis and building three new detention facilities. The Holsbeek closed centre, established on the premises of a former hotel in the suburbs of Leuven, was inaugurated in May 2019 and will exclusively detain women (Ciré, 2019: 16). The Zandvliet closed centre is planned to open in 2020 in the suburbs of Antwerp is meant to hold third country nationals considered to be "difficult cases", with half of its 144 beds destined to persons who have previously

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[89] The "INAD Centre" used to be located on the airport premises, at the end of Pier B and on the arrival hall for non-Schengen flights. The facility could hold approximately 30 persons in two dormitories (one for men and one for women) (Ciré, 2006: 5).

served a prison sentence and are meant to be expelled (Ciré: 2019: 17). To this end, the Belgian government entered into an agreement with the Dutch authorities for the transfer of the metallic containers used to detain Belgian inmates at the Tilburg prison so that they could be used for the Zandvliet closed centre (Myria, 2018: 24). The Jumet closed centre, lastly, is meant to open its doors in 2021 and would become both the second such facility in Wallonia and the largest in Belgium, with a planned capacity of 200 beds (Ciré, 2019: 17). Whether the facility will be built remains unclear at this stage, given the opposition to the project from both civil society and the local authorities, in particular the Charleroi municipal council.

The detention of third country nationals 'at' the air border is by no means a practice exclusive to Belgium, but as in other national contexts has proven questionable from the point of view of fundamental rights. Over the last decade, the Belgian authorities have been found in violation of Article 3 of the European Convention of Human Rights (ECHR) for releasing persons who had been arrested upon arrival at BNA in the airport's transit zone[90], for the detention of isolated children 'at the border' in the so-called 'Tabitha ruling'[91] of the European Court of Human Rights (ECtHR) as well as families in the case Kanagaratnam and others.[92] The "INAD Centre" of the airport, where persons who were refused entry in Belgium in particular used to be detained until it was replaced by the Caricole Centre, had been particularly criticised for its inadequate facilities.[93]

Of particular concern is the situation of persons who apply for international protection upon arrival at BNA, and who are almost systematically detained after introducing their application.[94] Systematic detention is enabled by the specific operational context of entry by air, where there is, as discussed previously, no 'other side' to the border that a person can be sent back to. Courts have recognised that states have the possibility to place a person applying for asylum in detention if that person does not meet entry conditions, provided that the detention is executed in good faith by state authorities, that it relates to examining a person's asylum application, that the place and conditions of detention are appropriate (i.e. that the person is not detained as the suspect of a crime) and that the length of detention is proportionate to the purpose (deciding on an application for international protection).[95]

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[90] *Riad and Idiab v. Belgium*, nos 29787/03 and 29810/03 (ECHR 24 January 2008).

[91] *Mubilanza Mayeke and Kaniki Mitunga v. Belgium*, no. 13178/03 (ECHR 12 January 2007).

[92] *Kanagaratnam et autres c. Belgique*, no. 15297/09 (ECHR 13 December 2011).

[93] See e.g. the report from the Belgian ombudsperson on closed centres. The facility was found to allow no outdoors access for detainees who were confined inside at all times, to have floor-to-ceiling windows overlooking the airport's runways in the dormitories without curtains, to offer no educational activities or distractions to detainees who were mostly left to their own devices, to prohibit most visits including by NGOs, among other issues (Médiateur fédéral, 2009).

[94] There are exceptions for unaccompanied minors and families or persons with specific procedural needs, in particular if applicants have been victims of torture, rape, or other serious forms of psychological, physical or sexual violence. The Immigration Office and the CGRS are responsible for evaluating such procedural needs.

[95] *Saadi v. United Kingdom*, no. 13229/03 (ECHR 29 January 2008). But see the dissenting opinion of Judges Karakaş and Turković in *Thimothawes c. Belgique*, no. 39061/11, (ECHR 18 July 2017).

Organisations defending the rights of persons seeking international protection and refugees in Belgium have however expressed concerns about the practice of detaining persons applying for international protection at the (air) border. Because it is almost systematic and detention is often justified using the same stereotypical motivations, the practice does not seem compatible with the requirement that the situation (and grounds for detention) of persons applying for international protection be assessed on an individual basis (Nansen, 2018: 8), which is found in Article 8 of the Reception Directive, and signals an inadequate transposition of EU law into Belgian law (Ibid: 7-11).[96] The motivation for placing a person who applies for international protection upon entry does explicitly state that the reason for detention is not that the person has introduced such an application, but because they do not meet entry conditions and in order to guarantee that they can be deported (Ibid: 10). The Belgian Court of Cassation has however found that such motivation did not meet the requirement in Article 8(2) of the Reception Directive that detention should be based on an individual assessment.[97]

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[96] Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection, OJ L 180/96, 29.6.2013. The directive was transposed in Belgian law alongside the Procedures Directive by the following: Loi du 21 novembre 2017 modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers et la loi du 12 janvier 2007 sur l'accueil des demandeurs d'asile et de certaines autres catégories d'étrangers. *Moniteur Belge*, 12.03.2018, No. 2017032079, p. 19712.

[97] Cour de cassation de Belgique, Arrêt N° P.17/1244.F *S.I.A.G. c. Etat Belge*. The ECtHR reaches similar conclusions in *Thimothawes c. Belgique*, point 77.

3.4.   Conclusion

This chapter has examined operational practices of entry governance at EU and Schengen air borders. For this purpose, it has relied on the study of a specific operational context, that of Brussels Airport. The implications of selecting this particular setting for investigation have been discussed through an overview of patterns of entry at air borders. Insofar as entry by air necessarily takes place at and through international airports, this overview has shown that there is no 'typical' EU and Schengen international airports. While the landscape of air travel in Europe is clearly dominated, in terms of the number of arriving and departing passengers, by four major hub airports, this landscape is also affected by patterns of specialisation among international airports that may, depending on the outlook of the intercontinental services that connect them to other regions of the world, be among the major points of entry for air travellers from specific countries or areas. In this regard, while Brussels Airport is not one of the four major hubs among EU international airports, it is among the top twenty and among the most significant for connections with Central, North and West Africa. It is therefore a relevant and meaningful setting for studying operational practices of entry governance.

The chapter has examined said practices by investigating which authorisations and which authorities are involved in governing entry by air, and elucidating how the configuration of these authorisations and authorities shapes the conditions for TCNs to access the territory of EU and Schengen. While entry is commonly depicted, including in legal and policy documents, as a matter involving a specific decision taken at a particular point and time 'at' the EU external border, the governance of entry by air is in fact a process unfolding across various spaces and taking place under both private and public authority. It does not involve a single decision (to let in a third-country national or refuse entry), but multiple assessments of the documentation, identity, trustworthiness and degree of 'risk', including but not limited to the so-called 'migratory risk', of travellers. These assessments are performed by airlines, police, immigration and international protection authorities (as well as consular authorities, whose practices fall outside of the scope of the study) and spatially and temporally diffused from prior to a person's departure, at departure, to their arrival and after, on Belgian territory. These assessments are authorised by a set of 'messy' and entangled norms, rules, standards and procedures unfolding on different scales (international, European, national and local). The diffused, entangled character of the governance of entry by air, in turn, is conducive to difficulties in coordination and frictions among the various actors involved. The specificities of Brussels Airport as an operational setting for entry by air also highlights the effect that repeated administrative and organisational changes can have on how air border and migration enforcement is performed.

The diffused and entangled character of the governance of entry by air has a significant impact on the persons who are deemed not to meet entry conditions. It raises questions as to the degree of legal certainty and predictability as well as equal treatment that third country nationals are confronted with when seeking entry by air to the territory of EU and Schengen states. The chapter also shows that the specific operational configuration at Brussels Airport

raises questions regarding the possibility for these persons that their situation is subject to an individual examination, despite the fact that individual assessment is a requirement under both the Schengen Borders Code and for international protection procedures. The result is that detention 'at' the border – which is a legal fiction insofar as these persons are effectively detained on Belgian territory – is almost systematic when a third-country national is found not to meet entry conditions. It is also on these grounds that persons who make it clear that they wish to apply for international protection upon attempting entry are placed in detention, and served with a deportation order before their application is examined, in case they might then be found not to meet the requirements for asylum.

As we will show in the following chapters, the operational governance of entry by air is not the only setting in which the diffused character of border and migration enforcement is in question, although configurations at land and sea borders are distinct. Likewise, issues related to fundamental rights, detention as well as to the integrity and reliability of procedures to apply for international protection manifest themselves in these other settings.

4. Operational entry governance at the land borders

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4.1.   Introduction

This chapter examines EU entry governance in the context of land borders. Similarly to the previous and next chapters, it focuses on operational rather than legal and institutional aspects. The focus here is on Poland, with special attention to the Polish-Belarus border and the operational setting of the Terespol/Brześć border crossing. It asks in particular who under normal circumstances has the legal right to access Polish territory and how access is governed specifically at land borders. The introduction briefly presents the methodology followed for this investigation, as well as the structure of the chapter.

4.1.1. Methodology

The methodology of this chapter follows the general framework outlined in the introduction to the deliverable. To study specifically the operational situation at the land borders, Poland has been selected for the analysis. The aim of the report is the analysis of the entry governance based on the selection of relevant documents such as legal acts, statistic data collected by public institutions, practices of public institutions, reports of non-governmental organizations actively working in the field of migration and human rights. The analysis of the current situation of migration management in Poland would not be possible without the insight into the political debate related to the inflow of third-country nationals to the country.

The desk research analysis was supplemented with the observations made during the visit at the border crossing at the Polish-Belarus border in Terespol/Brześć. The field work of two members of research team took part between 26th and 31st of May 2019. During this participant observation, researchers visited all sides of the border crossing (railway terminal, pedestrian border crossing, lorry terminal and border crossing, car border crossing). They have observed the procedures of documents checking before entry to the territory of Poland. The research team also talked to the representatives of the Polish Border Guard working in all positions at the border crossing point. The participants' observation allows a closer look into the technical equipment use daily at the Brest-Terespol border by the Polish Border Guards, as well as the procedures followed. The important part of the research was the analysis of the role of the NGOs. The representatives of the NGOs reported the violation of human rights by the border crossing and the applications of international protection.

The collected materials were supplemented with information gathered during the interviews with representatives of the non-governmental organizations working actively in the field of

migration, human rights, who are particularly familiar with the border crossing point Tersepol/Brześć and with the researchers working on refugee studies. There were 10 semi-structured interviews conducted (7 with the NGOs representatives and 3 with researchers involved in the research on border management and international protection).

4.1.2. Structure of the chapter

The chapter is organised in two main sections. The next section (4.2.) provides the necessary elements to understand the context in which operational governance of entry by land unfolds in Poland. It looks at Polish migration policy and its evolutions since 1989, including aspects related to European Union membership, and discusses the current migratory situation in the country and how it has been framed by political debates. Section 4.3., which constitutes the core of the chapter, then examines operational practices of entry governance at the land border between Poland and Belarus. It details the operational legal and institutional arrangements that structure the operational context of entry, the entry procedures followed by the Polish border guard (BG), the outlook of entry operations at the Terespol/Brześć border crossing point. Lastly, it examines and discusses the questions that have been asked of these entry operations by non-governmental actors. The conclusion provides a summary of findings and recommendations to be taken into consideration as part of the ADMIGOV project.

4.2.   Migration in Poland

Poland is not usually considered a destination country for migrants. It has generally been depicted as a state of large emigration to the USA and Western Europe (Okólski, 2012). The outflow of labour migrants has only increased when Poland joined the European Union (EU). About 1, 5 million Poles decided to use the advantage of free movement principle and moved to other Member States (Fihel, 2015).

Only recently Poland started its transformation from an emigration to an immigration country. The current, rapid inflow of migrants from the Eastern neighbouring countries (mainly Ukraine) to Poland became a widely discussed economic, social, political and cultural phenomenon. Between the years 2013-2019 the number of migrants falling under different categories (e.g. temporary and seasonal migrants, family migration, students, expats, EU-citizens, resident permits holders) has increased significantly. The liberalisation of access to the Polish labour market for foreign workers through the simplified procedure (employer's declaration of employing foreigners for up to six months over 12 months) has strengthened this process[98]. According to the IOM World Migration Report 2020 (IOM, 2020), Poland issued

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[98] In the case of a foreigner being a citizen of the Republic of Armenia, the Republic of Belarus, the Republic of Georgia, the Republic of Moldavia, the Federation of Russia or the Ukraine, to the extent not covered by the

more than 660.000 residence permits to foreigners, with the majority going to Ukrainian nationals, to address labour shortages (IOM, 2019). In 2018 Poland reached the first rank among EU member states for issuance of first-time resident permits, 20% of all first-time resident permits in the EU (UDSC, 2019). At the same time the political debate about migration started to be much politicized, with the focus on securitization, control of borders and restriction of irregular migration (Legut, Pędziwiatr, 2018).

4.2.1. Overview of migration policy in Poland

The growing number of economic migrants mainly from neighbouring countries impacted the public debate about the causes and consequences of migration in Poland (Brunarska, Kindler, Szulecka, and Toruńczyk-Ruiz, 2016). Till 2015 migration was not a central matter in the political and public debate. A limited number of researchers and practitioners were working on the issue, and the Polish government had not adopted an explicit migration or integration policy. In July 2012 as a result of cooperation with experts from academia and representatives from the NGOs sector the government adopted the strategic document Migration policy of Poland- current state and recommendations (*Polityka migracyjna Polski-stan obecny i postulowane działania*)*,* which was meant to be a plan for implementation of legal changes planned in the field of migration and integration (KPRM, 2012). In 2015 after a change of government (from the Civil Platform to the Law and Justice), an electoral campaign, based on the claim that Poland was facing a 'migration crisis', was used in order to arouse fear and the feeling of threat for public order and security (Cywiński, Katner, Ziółkowski, 2019). As a result, the 2012 strategic document was withdrawn and restrictive migration measures (mainly in border control, visas and return procedures) were proposed[99]. Following the political campaign of 2015, the Polish government decided not to accept the relocation of refugees proposed by the European Commission (European Commission, 2015). The Polish government presented its own approach to the migration crisis in the EU, trying to convince other Member States as well not to accept the relocation scheme. PM Szydło tried to find support among other EU Member States to oppose the solidarity in dealing with the migration crisis (Reuters, 2017).

The framing of migration as a matter of law and order and security in political and public debates went hand in hand with the growing demand on economic migrants on the Polish labour market. This led to a situation where on the one hand the Polish government

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provisions of the permit for seasonal work, and for a period of no more than 6 months with a period of 12 consecutive months, a work permit shall not be required if the county labour office has, prior to the start of work by the foreigner. The employer has to register the declaration of the intension to employ the TCNs, and this declaration allows the TCNs to sign the contract and start working in Poland. It the TCN wants to extend the stay, he/she must obtain work permit.

presented the reduction of number of potential refugees and irregular migration as the highest political priority, while on the other the simplified procedure on accessing the Polish labour market, and the unstable political and economic situation in Ukraine led to an increase in the number of economic migrants. **Figure 4-1** shows the decrease in number of applications for international protection. From 4131 issued applications the protection was granted to 272 persons (135 asylum status, 137 subsidiary protection) (UDSC, 2019).

Figure 4-1. Number of application for international protection in Poland, 2014-2018
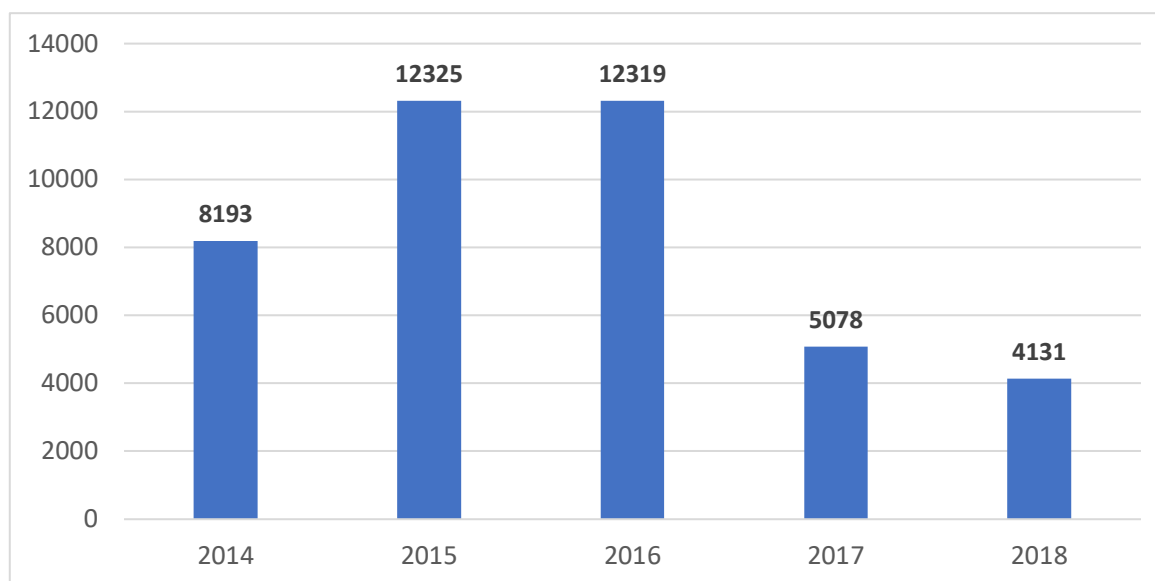
Source: Polish Border Guard 2018.

The migration and asylum issues in Poland are regulated by two main acts:

- The Law on Foreigners (December 2013)

- The Law on granting protection in the territory of Poland (June 2003)

Of course these two basic acts are supplemented by ordinances with the details about procedures in migration and international protections. The Law on Foreigners implemented on 1st May 2014 and modified several times since then (Law on Foreigners 2014). This act is very complex regulating all the procedures in the field of border control (access to the territory, issuing visas, pre-entry procedures), types of residents permits, procedures of return. This act regulates:

- issuing visas (pre-entry procedures)

- issuing various kinds of residents permits (a)including those of special needs; b)or special privileges)

- issuing return orders (Szulecka, Pachocka, Sobczak-Szelc, 2018).

The important change was related to the competencies of the Border Guards. The Border Guards according to the law is responsible for controlling the border and deciding about the right to apply for international protection due to humanitarian reasons. When the Border Guard accept the application the Office of Foreigners is responsible for proceeding the applications. The government is working on the reform of the Law on Protection, which was strongly criticized by the Commissioner on Human Rights and the civil society organizations. The Ministry of the Interior and Administration explained the reason for the reform as the result of the migration crisis in the EU, and the need for protection against irregular migration (Ministry of the Interior and Administration 2017). The proposed changes include the use of a list of safe third countries and the countries of origin. If Ukraine and Belarus would be included to the list of safe third country, it means that the foreigners coming to Poland from the territory of both countries who are seeking international protection might be sent back.

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Table 4-1. Development of migration and asylum law and policies

Year	Introduction of laws/changes in the law	Institutional and political changes
1989	Introduction of a work permit for foreigners (along with the provisions of employing foreigners)	'Opening of the borders' linked to the beginning of political transition (liberalisation of passport policy)
1991	The signing of the Geneva Convention of 1951 and the New York Protocol of 1967 and introduction of the possibility to apply for refugee status to the Law on Foreigners of 1963 (The law amending the Law on Foreigners of 1963, 1991, article 1(3)); refugee status was granted by the minister of the interior in consultation with the minister of foreign affairs.	The signing of an agreement on readmission with Schengen countries: the introduction of a visa-free regime between Poland and the Schengen countries
1993		Establishment of the Office for Migration and Refugees at the Ministry of the Interior (in 1997 changed into the Department of Migration and Refugee Issues at this Ministry)
1993		The signing of an agreement with Germany on cooperation around the consequences of migration, including financial aid for Po
1996	Granting foreigners with refugee status the right to social assistance (The Law amending the Law on Social Assistance and other laws, 1996, article 1(2)).	
1997	Introduction of a new Law on Foreigners38 (it replaced the Law on Foreigners of 1963). The changes	Establishment of a Refugee Board (it started its activity in 1999)

	included, among others, additional requirements from incoming foreigners, including visitors and tourists	
2001	Introduction of an amendment to the Law on Foreigners39. Changes included, among others, the establishment of the Office for Repatriation and Foreigners and introduction of temporary protection.	Establishment of the Office for Repatriation and Foreigners (changed in 2007 to Office for Foreigners). The Office served as the institution issuing decisions in asylum proceedings in the first instance (previously this competence was performed by the Ministry of the Interior)
2003	Introduction of a new Law on Foreigners of 200341, including, among others, restrictions in provisions of visas.	
2003	Introduction of Law on granting protection to foreigners in the territory of Poland of 200342 , including among others the introduction of a permit for tolerated stay (a national form of protection)	
2003	First regularisation programme for foreigners, lasting from September to December 2003 (among other provisions it included the possibility to leave Poland without consequences despite unlawful stay; requirement to stay in Poland at least since 1997).	
2004	Introduction of Law on Social Assistance, which included, among others, developed provisions on integration programmes for refugees	
2004	Introduction of Law on the promotion of employment and labour market institutions44 including provisions specifying conditions of issuing work permits for foreigners	

2006	Introduction of simplified procedure of employing foreigners on a short-term basis in agriculture (the procedure has been developed in the following years)	
2007	Second regularisation programme for foreigners (it lasted from July 2007 until January 2008; the required period of stay amounted to 10 years, and it was dedicated to foreigners who could not benefit in the first regularisation programme)	Mobilising of EU funds linked to the SOLID programme – Solidarity and management of migration flows (including the European Fund for Refugees started already in 2006, and European Fund on Integration).
2007	Introduction of facilitations in the system of admitting foreigners to the labour market: lower cost of obtaining a work permit and simplified procedures for issuing a work permit. Additionally, the simplified procedure related to short-term work became available in all the sectors of the economy (citizens of Belarus, Russia, Ukraine could benefit from it; in 2009, Moldova, in 2010, Georgia and in 2014, Armenia joined the group of countries, whose citizens could benefit from the facilitation)	
2008	Amendment to the Law on Protection, including, among others, introduction of subsidiary protection. Amendment to the Law on Social Assistance, including, among others, giving access to individual integration programmes to foreigners with subsidiary protection status	
2010	Introduction of an amendment to the Law on Education, enabling foreigners to attend Polish secondary schools until foreigners are 18 years old (the same access as Polish citizens)	

2011	Amendment to the Law on Protection, including, among others, the possibility of relocation and resettlement of foreigners to Poland; specification of conditions for providing social assistance and medical aid to asylum applicants and providing assistance in voluntary returns; specifying of the conditions of apprehension and detention of asylum seekers.	
2012	Introduction of Law on regularisation of stay of particular foreigners on the territory of Poland (passed in 2011, lasted for the first half of 2012; included provisions on the possibility of obtaining a residence permit by failed asylum seekers (who got negative decisions and were ordered to leave before Jan. 1st, 2010 and were staying irregularly in Poland) or asylum seekers applying for international protection several times (being in the course of a subsequent procedure after Jan. 1st , 2010)	Acceptance by the Polish government of a strategic document on migration policy ('Polish migration policy – the current state and recommended activities')
2014	Introduction of a new Law on Foreigners of 201347 , implementing, among others, the EU directive on single permits, prolonging the maximum period of stay in the territory of Poland based on the temporary residence permit from 2 to 3 years, the introduction of a permit for stay due to humanitarian reasons and modifying the permit for tolerated stay	Acceptance by the Polish government of the plan of implementation of the strategic document on migration policy accepted in 2012

2015	Introduction of an amendment to the Law on Protection, implementing the Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)	
2015	Introduction of amendments to the Law on Protection, including, among others, provisions on the relocation to Poland of persons with international protection granted by other EU countries and the introduction of provisions of access to free of charge legal aid for asylum seekers	A decision on relocation to Poland of asylum seekers from other countries, withdrawn after the change of government in October 2015

Source: Stefańska and Szulecka 2014: 4-5.

4.2.2. Current migration situation

Poland has been going through a very rapid process of change from an emigration to an immigration country. The high inflow of migrants has impacted the Polish labour market, as well as the public debate about causes and consequences of this process. While talking about the exact numbers of migrants living in Poland, there are many public institutions collecting statistics about foreigners in Poland, among others the Ministry of the Internal Affairs and Administration (MIAA), the Office of Foreigners (OF), Border Guard (BG), Ministry of Family, Labour and Social Policy (MFLSP)[100].

The available data sources differ in methodology, scope, as well as categories of migrants registered (type of resident permits). The shortcomings in collected data cause the risk of

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[100] The Office for Foreigners and the Border Guard collect data on migration. The Ministry of Family, Labour and Social Policy collects data on work permits and other documents related to work of foreigners. The Ministry of Foreign Affairs collects data on the issuing of visas or Polish Cards (special procedure for foreigners having Polish roots). There are to systems of personal data collections: The PESEL register (personal number) is also a source of data on the population according to citizenship, as well as – since 2009 – on migration for permanent stay according to the country of birth. The POBYT system (manage by the Office for Foreigners (OF)). This system facilitates the maintenance of registers and records of foreigners in the field of settlement, international protection, visas, invitations, deportations and unwelcome people. This system includes information concerning EU citizens and their family members, as well as on the third-country nationals.

double-counting certain categories of foreigners or omitting others. This requires that we compare the information available in different datasets on migration and in many cases we cannot have a precise figure.

Figure 4-2 presents the total number of third-country nationals' arrivals to Poland through the external border. This data is provided by the Border Guards and it not included the arrivals of foreigners through the internal borders with for example Germany, Czech Republic or Slovakia. Due to the Schengen Agreement since 2007 there are no controls on the internal borders in Poland with neighbouring Member States (except of temporary controls due to mass events or other threats).

Figure 4-2. Arrivals of third-country nationals in Poland (2016-2018)
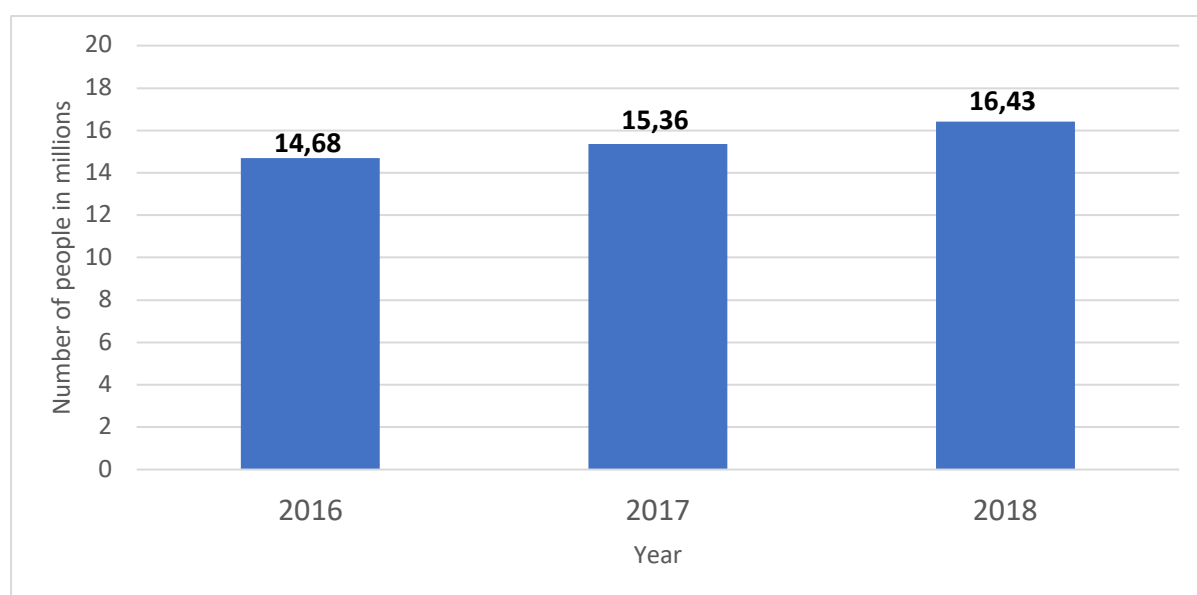
Source: authors' calculations based on The Office of Foreigners (Poland)

There is a huge inconsistency in the statistics compiled from employers' declarations of employing foreigners (simplified procedure of employing foreigner). The declarations are submitted by employers to the Local Labour Office for the specific employee. One employer can submit many declarations, and one foreigner can obtain declarations from more than one employer. The liberal policy for making the Polish labour market accessible to third-country nationals become a subject of public discourse. One the one hand the employers, trade unions and labour offices supported the inflow of labour migrants due to shortages on the labour market, on the other hand politicians and right-wing media described the growing inflow of economic migrants as the treat to the Polish identity, lack of border control and lack of protection of the labour market in Poland (Pędziwiatr, Legut, 2016). There is a question if the TCNs could use the Polish system as a way to gain access to the EU and Schengen? If Poland is going to be a temporary place of settlement before the TCNs move to other Member States? **Table 4-2** shows the increase in the number of employers' declarations over the last decade.

Table 4-2. Number of employers' declarations of employing foreigners issued by Regional Labour Offices

Year	Numbers of declarations	Increase (%) in relation to previous year
2009	188.414	20,23%
2010	180.073	-4,43%
2011	259.777	44,26%
2012	243.736	-6,17%
2013	235.616	-3,33%
2014	387.398	64,42%
2015	782.222	101,92%
2016	1.314.127	68,00%
2017	1.824.464	38,83%
2018	1.582.225	-13,28%

Source: The Ministry of Family, Labour and Social Policy (2019)

As mentioned before the numbers of submitted employers' declaration do not mean the actual numbers of migrants working in Poland. It shows the growing interest of potential migrants who are about to access the Polish labour market. Another available source of information on this matter are statistics on the number of work permits issued yearly, presented in table 3 below for the period 2010-2017. The third country nationals, who use the simplified procedure of accessing the Polish labour market, and after arrival want to extend the stay, must obtain the permit to stay and work in the Regional Governor's Offices. The reports by Supreme Audit Office found that in some Regional Governors Offices, the waiting list for the third country nationals in the application for work permits exceeded the time of 12 mounts (Supreme Audit Court 2019). It means that there are not exact data about those TCNs who used the simplified procedure and started the application for resident and work permit. Using the simplified procedures of accessing the labour market, foreigners are able to enter Poland and change their type of permit during their stay.

Table 4-3. Number of work permits issued in 2010-2017

Year	Number of issued permits	Increase (%) in relations to previous year
2010	36622	24,82%
2011	40.808	11,43%
2012	39.144	-4,08%
2013	39.078	-0,17%
2014	43.663	11,73%
2015	65.786	50,67%
2016	127.394	93,65%
2017	235.626	84,96%

Source: Statistics Poland 2017.

The available date on the entry to the territory of Poland collected mainly by the Border Guard does not include information on the length of stay of foreigners, it means that it does not allow to distinguish between visitors (coming for short-time visit) and migrants.

If it comes to the nationalities of the foreigners crossing the Polish border, Ukrainians are the most numerous group, followed by Belarusians and Russians. However there has been an increase of reported economic migrants from India and Pakistan (UDSC, 2019). The foreigners enter Poland through the land border with Ukraine, Belarus and Russia. For the cross border traffic in Poland, the so called small border traffic regime plays an important role. The agreement on the local border crossing was implemented in 2007 and gives the inhabitants of the border areas (area 30km from border line) the right to cross the border (limited to 90 days and restricted to border area) without visas. This agreement was implemented in order to strengthen the local mobility, trade and contacts between neighbouring nations.

Summing up, Poland has been going to the rapid process of transformation from emigration to immigration country. Knowing the limitations of statistical data sources of public institutions, the Central Statistical Office published the migratory balance of Poland (based on the number of people who registered and deregistered their stay in Poland) in 2017 as +1400 people (difference between emigration and immigration) (CSO, 2018). This is the first time in the post-war history of Poland when the migratory balance was positive. The entry policy towards economic migrants has become very liberal and caused the significant increase in numbers in this category. At the same time the number of asylum seekers arriving in Poland has decreased (see Figure 3). The narratives towards this category of migrants especially among right-wing group started to be very negative. It was a growing expectation coming from the political discourse, to better protection of the border and reduction of the number of irregular migrants, as well as asylum seekers.

Figure 4-3. Number of applications and persons applying for international protection in Poland in 2017-2018
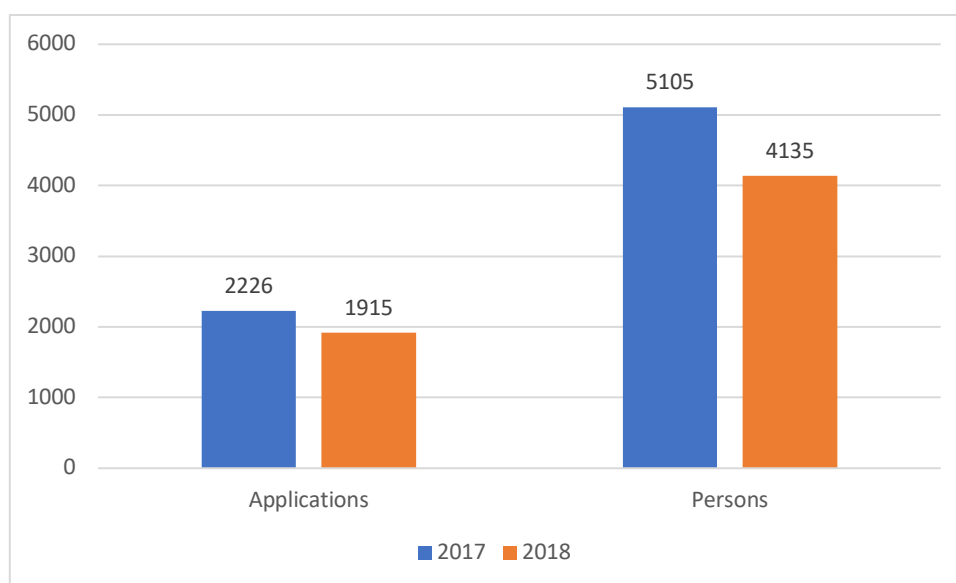
Source: The Office of Foreigners 2018.

If we compare the figures about numbers of international protections issued in Poland, with those from other Member States, they seem to be very low. According to Eurostat there were 473,000 first-time asylum applications submitted in the EU Member States (January to September 2019, Eurostat 2019). Among the six countries with the highest number of applicants were Germany, France, Spain, the UK and Italy (Eurostat 2019).

4.3.   Operational entry governance and border management in Poland

This aim of this section is to analyse the Poland's approach to entry governance and border management. The regulations include divers procedures related to cross-border mobility, and applications for international protections. Poland is responsible of the control of the Polish-Belarusian, Polish-Ukrainian and Polish-Russian border being at the same time/for all cases the external border of the EU. There are sources allocated to these tasks from the European Fund for Internal Security and Control at the borders for the period of 2014-2020, totalled €49.113.133,00, which is the EU fund for Asylum, Migration and Integration totalled €63.410.477,00 (European Commission, 2016). The European Agency Frontex based in Warsaw, have been not actively involved in supporting Polish institutions in controlling these external borders. The Southern European external border after the migration crisis in 2015 seems to be more of the interest of the European institutions. However, Frontex was involved in the protection of the external border during special events filled with masses like this of the Euro2012 (Szulecka, 2019).

This paragraph analyses the legal and institutional framework for entry governance in Poland. It presents the case of border crossing Terespol/Brześć at the Polish-Belarusian border, with the particular attention to the role of NGOs monitoring the situation of TCNs applying for international protection there.

4.3.1. The operational legal framework for entry governance in Poland

The procedures related to the issuing of visas (both Schengen and national) are regulated, as mentioned, by the 2014 Law on Foreigners. There are three institutions responsible for issuing visas: Polish consulates, Regional Governor's Offices and in some cases the Border Guard[101]. The appeal procedure in case of refusal of issuing visa, was the mostly criticized part of this process. According to the Law on Foreigners if the applicant did the procedure via consulate, he/she must turn to the consulate and ask for the decision to be reconsidered. If the application has been introduced at the border to an officer of the Border Guard and rejected, the applicant appeals to the Chief Commander of the Border Guard (Law on Foreigners art.76, 93). Several institutions requested the Polish authorities to necessary changes in the legislation, including the non-arbitrary body in case of appeal procedure (European Commission, Ombudsman)[102]. Due to the verdict of the Court of Justice of the European Union the amendment to the law was passed (4/03/2019) which says that in case of negative decision in visa issuance, the applicant may appeal to the administrative court in Warsaw.

There are 27 different types of visas issued by the Polish authority for the third-country nationals based on divers reasons to access the Polish territory (the Law of Foreigners art.60). These are those of: work (based on a declaration of intending to hire foreigners, a seasonal work permit or a work permit), business, education, medical treatment, tourism, research (participation in conferences), visit, repatriation and other purposes. There is a special group of foreigners within the granted Polish Charter. These are those having Polish origin or being involved in Polish community abroad (in the territory of Former-Soviet countries). The Polish

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[101] EU regulations applied in issuing visas: Regulation (EU)2018/1806 of the European Parliament and of the Council of 14 November 2018 listening the third countries whose nationals must be in possession of visas when crossing the external borders and those nationals are exempt from that requirement PE/50/2018/REV/1
Council Regulation (EC) No 539/2001 of 15 March 2001 listening the third country whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement
Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code)
Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation.
[102] The Court of Justice of the European Union verdict of 13 December 2017 third-country nationals should be provided by the effective appeal measures in the visa procedure issuance (C-403/16).

Charter gives this group a number of rights to access the Polish labour market and the social services[103].

The visas allow foreigners to stay legally up to 3 or 12 months. As it was mentioned before, visas can be issued by the Polish consulates abroad, by the voivodes (in regions) or by the Border Guard. With the valid visa foreigners can cross the border to the territory of Poland. Resident permits are issued in the territory of Poland, by the department of foreigners in the Governor's Offices (regions). The permits are valid up to 3 months (temporary permits) or permanently. If there are any concerns about the purpose of the stay of the foreigners, lack of financial recourses required, lack of medical insurance the Council or the Border Guard can cancel the visa or not prolong the issued one. In case of short visits up to 3 mounts the resident permits it is not necessary. By longer stays the foreigner must get the resident permit. There are long waiting periods in the Governor's Offices responsible for this procedures (it should take 1-2months).

The temporary residence permits may be linked to:

- The performance of work based on a single stay and work permit;

- The performance of work as high skilled worker (EU blue card);

- The performance of work within an intra-company mobility framework;

- The performance of posted work;

- The performance of seasonal work;

- The performance of business activities;

- Studies and research;

- Family reunion;

- Victims of trafficking in human beings;

- Other circumstances (also for foreigners staying unlawfully) (Szulecka, Pachocka, Sobczak-Szelc, 2019).

Permanent and long-term resident permit are issued by the Regional Governor's Offices. Foreigners with these types of permits have unlimited access to labour market and social services.

If the foreigner fails to complete the formalities related to resident permit and overstay, by the checks of Border Guard, Office of Foreigners or Police it will be ordered to leave the territory of Poland. They are two types of return: forced return executed immediately and

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[103] https://www.msz.gov.pl/pl/polityka_zagraniczna/polonia/karta_polaka/kto_moze_otrzymac_karte_polaka/

voluntary return which must occur in 15-30 days. In case of foreigners who might be a threat to public security, the procedure of detention is applicable.

Part of the Polish entry governance are the local border traffic agreements (with Ukraine since 2009 and with Russian Federation since 2012). It allows the inhabitants of the border area (30km from the border line) to cross the border without issuing visas (special permit). The period of stay is limited to 90 days and to the defined border area. In order to travel outside the restricted area the inhabitants need to obtain the visas[104].

There are some main categories of foreigners defined in the Law of Foreigners and the Law on Protection. The Polish legal acts do not use the term asylum seekers. The Polish legal system describe a person how submitted the application for international protection ('a person applying for international protection' Law on Protection). According to the Law on Protection there are four forms of protection granted in Poland: refugee status, subsidiary protection, temporary protection and asylum (Law on Protection, art. 3). Asylum is a form of national protection system, which was granted more frequently to the Ukrainians after 2014 (Szulecka, 2019).

When comes to undocumented migrants, there is no legal definition of this category in the Polish legal system. There are at least three cases in which the migrant might become undocumented in Poland: by crossing the border without valid documents (false documents), crossing the green border, by overstay (coming with valid documents but staying longer than allowed or not applying for required permits), staying in Poland despite a return order. There are the voluntary return programmes for undocumented migrants run by the International Organization for Migration and the Office of Foreigners.

4.3.2. Institutional framework

There are three main Ministries responsible for migration issues in the Polish institutional framework: the Ministry of Interior and Administration, the Ministry of Foreign Affairs and the Ministry of Family, Labour and Social Policy. The Border Guard is responsible for border surveillance and border checks. It also deals with applications for international protection issued at the border and takes part in the procedure of readmission of foreigners based on court decisions. The Border Guard decide if the TCNs can issue the application, it means that the BG examine the TCNs, register the case and transfer it the Office of Foreigners. The Border Guard is supervised by the Ministry of Interior and Administration. The other institution involved in proceeding of application for international protection is the Office for Foreigners supervised by the same Ministry. The Ministry of Foreign Affairs (thorough the networks of consular offices) is mainly responsible for the procedure of issuing visas for foreigners willing

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[104] Ministry of Foreign Affairs, 2019: https://www.msz.gov.pl/pl/informacje_konsularne/maly_ruch_graniczny/ Regulation on the small border control.

to access the territory. Both Border Guard and the Office of Foreigners are involved in border management and international protection. The Border Guard is responsible only for receiving applications and proceeding it to the Office for Foreigners.

The Border Guard is an important actor within the entry governance in Poland. Activities undertaken by the Border Guards consist of:

- prevention of illegal border crossing by people and vehicles, identification, prevention and detection of crimes and offences as well as prosecution of their perpetrators, in particular crimes connected with crossing the national border;

- counteracting the cross border smuggling of explosives, arms and ammunition, radioactive materials (the border crossing points are equipped with ionizing radiation detection equipment) dangerous chemicals and dual-use goods (for this purpose additional means of control are applied e.g. specially trained dogs and transported chemical substances composition identification testers);

- assurance of security in the international civil aviation communication by executing security controls of passengers, their baggage, postal deliveries, aircrafts on high security flights as well as pyrotechnic control;

- introduction of undercover officers on boards a commercial aircrafts - "sky marshals";

- maintenance of public law and order within territorial range of border crossing points by protection of facilities which belong to, or are used by the Border Guard against terrorist acts;

- securing major public events and critical infrastructure facilities;

- protecting transportation routes;

- gathering, processing and analysing information concerning potential terrorist's threats;

- execution of operational-investigation activities in the field of identifying and counteracting of terrorists threats;

- cooperating in the field of counteracting terrorist threats with the Internal Security Agency, the Foreign Intelligence Agency, the Police, the Military Counterintelligence and Intelligence Services, the Polish Military Gendarmerie and bodies which protect borders of the neighbouring countries (Border Guard 2019).

Polish Border Guard cooperates with the network of liaison officers from the neighbouring countries. The liaison officers of the Polish Border Guard are based in Russia, Ukraine, Germany and Vietnam, as well as in Brussels. The cooperation has to strength the exchange of information regarding cross-border criminal activity (Frontex, 2016).

4.3.3. Entry procedures at the land border

The Border Guard (BG) is responsible for border checks and border surveillance as well as the control of the legality of stay on the territory of Poland. It means that the BG operates on the whole territory (and can, and does, undertake road controls, checks at the workplace, or in public spaces). In addition, the BG also has public order and law enforcement competences, with regard the fight against cross-border crimes, search for smuggled goods and trafficked persons, as it was mentioned in the previous paragraph.

At the border crossing the BG controls the travel documents (passports, visas, IDs). The requirements for TCNs are defined in the Law on Foreigners (Law of Foreigners 2013, art.25). The EU Regulation applied to this is the Schengen Border Code[105]. The TCNs nationals crossing the border should have:

- Valid travel document (passport, visa, resident permit)

- Health insurance for the period of stay (30.000 euro minimum)

- Financial means to cover the stay.

Travel documents, in particular, are checked against data held in EU information systems (SIS and VIS), as well as the ZSE6 national information system (Zintegrowany System Ewidencji). This system allows accessing both EU data bases and national ones, including information on criminal issues (Interpol and national police system Krajowy System Informacji Policyjnej). ZSE6 stores the biometric data.

Table 4-4. Personal border traffic at land borders, January-September 2019 - numbers of crossings

Type of border	Total	From Poland	To Poland
Russia	2,624,943	1,309,162	1,315,781
Belarus	6,637,713	3,385,137	3,252,576
Ukraine	16,231,186	7,916,015	8,315,171
Small border traffic	3,251,157	1,623,849	1,627,308
Sea border	136,206	78,399	57,807
Air border	15,449,140	7,727,066	7,722,074
Total	41,079,188	20,663,409	27,776,697

Source: Polish Border Guard 2019

Along with the asylum application the Border Guard collect biometric data (photo and fingerprints). The data from whole EU are collected in the EURODAC (in Poland local system

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[105] Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Border Code)

POBYT collects all data related to application for international protection). Starting from 2016, according to the Law on Counter-Terrorism Activities in case of foreigners not having valid documents the Border Guards, Police and Internal Security Agency besides of collecting fingerprints and photos, might collect DNA personal data (Szulecka 2019).

Figure 4-4 below shows the number of detained persons trying to cross the international border without valid travel documents, and the specific numbers of those crossing the border by using false documents.

Figure 4-4. Foreigners detained by the Border Guard for crossing a state's border without valid travel documents in 2019
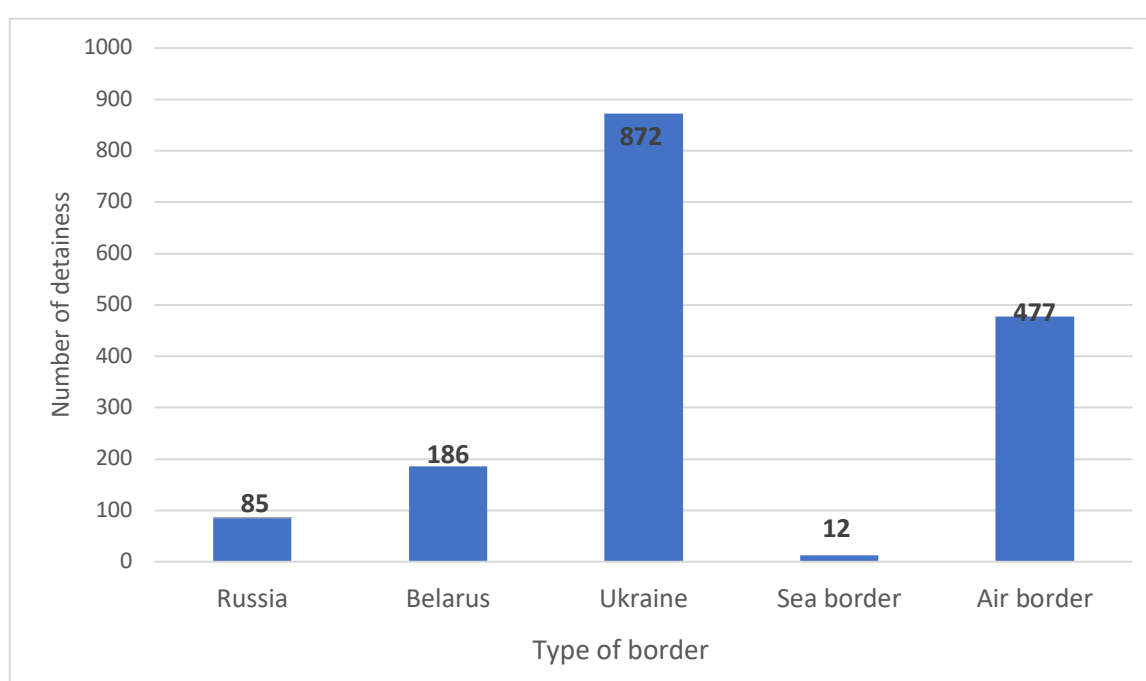
Source: Polish Border Guard 2019.

According to the data collected by Frontex in 2017 there were 776 illegal crossing in Eastern external border of the EU, 12.179 at Western Balkans, 42.319 in Eastern Mediterranean, 6.396 in between Albania-Greece, 118.692 in Central Mediterranean, 23.143 in Western Mediterranean and 421 in Western Africa[106]. The figures clearly show that the Eastern external border of the EU is it not the popular rout among irregular migrants coming to Europe.

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[106] European Parliament (2015) "Migration and asylum". [online] Available at: https://www.europarl.europa.eu/thinktank/infographics/migration/public/index.html?page=intro.

Figure 5 shows the number of foreigners arrested while trying to cross the state border in Poland with a false document. When it comes to crossing the state border with false documents, the majority of cases are related to false visas.

Figure 4-5. Foreigners arrested while attempting to cross the state border with a false document
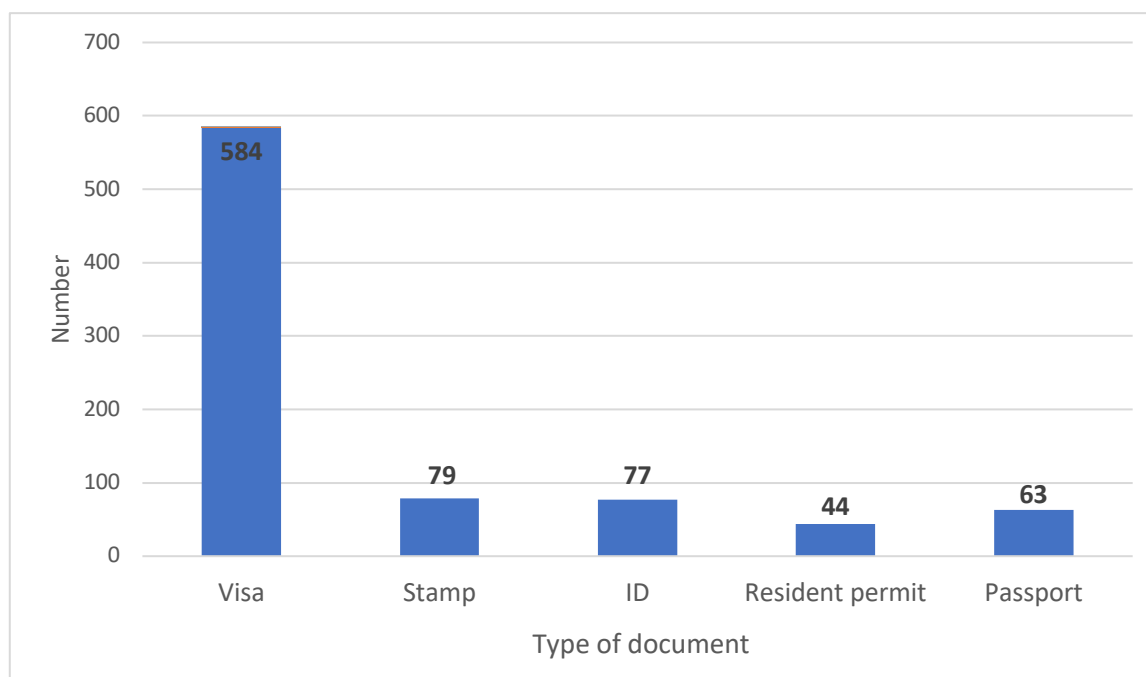
Source: Polish Border Guard 2019.

Application for international protection are submitted to the Office of Foreigners through the Border Guards. The Border Guard is responsible for receiving application and inform the applicant about the procedure. By the interviewing of the applicant the Border Guard is obliged to provide the translator, and the applicant should be informed in writing (in the language they understand) about whole procedure. The application must be submitted personally by the applicant to the Border Guard. The Border Guard is responsible for confirmation of the identity of an applicant. The applicant has the right to be supported by the application by the international or non-governmental organization. The assistance of these organizations is free of charge. The application should be transfer from the Border Guard to the Office of Foreigners within 48 hours. The Office has to check whether Poland is responsible for proceeding the application. According to the Law of Protection the applicants have the right to among other: social aid, free of charge legal assistance, education for children (Klaus, 2017).

The Foreign Office responsible for proceeding the applications for international protection is the central institution, having two local offices one in Biała Podlasa and one in Terespol. There are two reception centre, one located 30km from the Terespol/Brześć border crossing (Biała Podlaska) and one in Podkowa Leśna-Dębak (suberb of Warsaw), there are also nine other

centres where applicants are accommodated after the first stage of proceeding of their application.

4.3.4. Refusal, returns, detention of third-country nationals.

According to the Law of Foreigners refusals of entry might be issued to foreigners based on:

- Not having valid travel documents (passport, visa, resident permit);

- Not having the health insurance;

- Not possessing the financial means (Law of Foreigners, art. 28)

Table 4-5 below shows the refusal of entry for Polish external border, with Russia, Belarus and Ukraine, including sea border and air border.

Table 4-5. Refusals of entry for foreigners at the EU external border

Type of border	Jan-Sep 2018	Jan-Sep 2019	Increase (%) in relations to previous year
Russia	972	1,064	- 9%
Belarus	20,547	19,182	+7%
Ukraine	44,769	38,713	+16%
Sea border	4	21	-81%
Air border	1,049	839	+25%
Total	67,342	59,819	

Source: Polish Border Guard Bulletin Jan-Sept 2019.

The decision of refusal of entry is issued by the Border Guard and is executed immediately. The foreigner might appeal against this decision to the Chief Commander of the Border Guard (Law of Foreigners, art.33). The decision of the refusal is based on checking the documents and the interview with the foreigners. There are several IT-system used by the Border Guard. The fingerprints collected during the border procedures are send first to the local information system POBYT, and after this to Eurodac. Eurodac enable to check it the person asking for international protection applied already for it in another Member States. According to the Law of Counter-Terrorism three institutions: Security Agency, Police and the Border Guard can collect fingerprints, face image and non-invasive collection of biological material of foreigners in case there are doubts of travel documents, or any documents confirming conditions of stay (Szulecka, Pachocka, Sobczak-Szelc, 2019). By the refusal of entry the written protocol must be formulated and sign by the foreigners whom the entry was refused.

The detention procedure apply for those TCNs who avoid executing the return order or whose return will be the executed by the authorities or secure the Dublin transfer or readmission (Law of Foreigners, art.194). The detention can last 48 hours. The person should be released after this time if the person is not at the disposal of the court (Law of Foreigners, art. 394). Applicants for international protections might be detained in order to check their identity or to collect information about the case. The decisions on the detention of the foreigner are taken by the courts on request of the Border Guard. For example the court might decide on the detention to secure the Dublin transfer of the asylum applicant, on request of the Border Guard. The period of detention should not exceed 60 days, however it can be prolong to 6 months based on the Border Guard's request.

Figure 4-6. Applications for international protection accepted by the Border Guard authorities (Jan-Sep 2018 and Jan-Sep 2019)
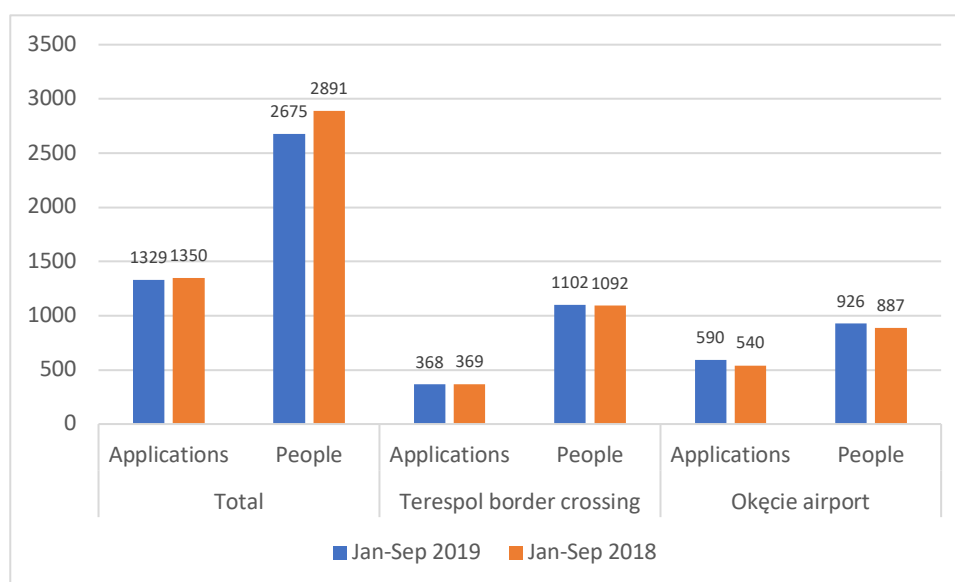
Source: Polish Border Guard 2019

The Return Directive was introduced to the Polish legal system in May 2014. There are several cases in which the decision on expulsion might be implemented:

- No possession of valid travel documents

- Withdrawal of resident permit

- Negative decision on granting international protection

The procedure of issuing the return order might be voluntary or obligatory (executed immediately). The voluntary procedure gives the foreigner between 15 and 30 days to leave the country, from delivering the decision. In this time the foreigner might appeal this decision. The forced procedure is implemented in case there is a risk that the foreigner will escape or be the danger for safety or public order (Law of Foreigners, art.315).

The decision on return procedure includes the ban of re-entry Poland for the period depending on the reason of the order (from 6 months to 5 years). As it was mentioned before there are voluntary return programs managed in Poland by International Organization for Migration and the Office for Foreigners dedicated to the undocumented migrants. Assistance in voluntary return covers travel costs and medical care.

Same as by the applications for international protection, by the return procedure, Polish legislation allow the representatives of international organization or NGOs to be observer in the process of bringing foreigner to the border.

Table 4-6. Foreigners handed over and received in the period January-September 2019 (including Readmission, Dublin III, administrative decisions obliging them to leave the territory of the Republic of Poland and agreements)

From Poland	To Poland
20 144	794

Source: The Border Guard 2019.

The figures considering the transfer of foreigners to and from Poland (table 4) according to the Dublin regulations or readmission agreement, show that Poland is rather the transit country for asylum seekers. In 2017, Poland received 1.433 asylum seekers under the Dublin regime from other EU countries (mostly from Germany, Austria and France). Poland remains the country to which asylum seekers submit their first applications for international protection and then move to other countries to apply for international protection again (Szulecka, Pachocka, Sobczak-Szelc, 2019: 20).

4.3.5. Terespol/Brześć (Polish-Belarus border)

The Brest-Terespol border crossing is a challenging case due to its geographical location, connecting an EU Member state (Poland) with a non-EU Member state (Belarus). The Border Guard Office in Terespol oversees 4 border crossing points: the truck crossing in Kukuryki, as well as the railway, pedestrian and car crossing point in Terespol. The Border Guards in Terespol are also responsible for monitoring and securing a 28km-long segment of green border that runs along the River Bug. On average, 7832 persons and 3345 vehicles cross the border daily. Busses are controlled at a separate terminal. At the railway terminal the average daily border traffic is at the level of 1000 people and 50 trains. According to Border Guard data in 2018, a total of 3,520,444 people were controlled at the border crossings subordinated to the BG Office in Terespol (Polish Border Guards 2019). In the same year the total number of vehicles controlled in Terespol reached 1 649 971. There are 432 border guards employed in Terespol, divided in 4 working units: border traffic control, special support team, operational duty team, green border team. The responsibility of these 4 working units includes the protection of the state border, and control of the border traffic. These teams are supported by an investigation team, working on detection and prosecution of cross-border

crimes. The border guards are equipped with various vehicles (cars, motorbikes, and boats), X-ray devices for controlling cars and trains, mobile devices for document checks, and dogs for drugs, tobacco products, explosives and weapons search. There are observation towers alongside the border. For the surveillance of the border, BG officers are equipped with thermal imaging cameras and night vision cameras or goggles. There are also observation towers along the border. Due to the geographical location, there is very difficult to cross the green border illegally without being seen.

The Border Guards working in the border crossing in Terespol/Brześć are specialized in detection of document forgery and smuggling of goods (cars, tobacco and alcohol products, drugs). The Border Guard is responsible for radiometric control and pyrotechnic control. All the data collected by the Border Guards are important for other internal and international institutions such as EUROPOL, EUROJUST, INTERPOL i FRONTEX.

Picture 4-1. Railway terminal at the border crossing in Terespol

Source: authors' archive

The railway station is the point of entry where most persons seeking international protection arrive from the Belarusian side (Brześć) in order to cross the border. The families and individuals, whose applications have been denied, have to return the same day back to Brześć. The city of Brześć is in most cases the place, where the mixed migrants return when denied from the Border Guards. The process of returning for a lot is costing a big amount of money (since they have attempted several times to cross, some people end up having no more financial resources). In other cases returning to the Belarus side, it can be hazardous for some individuals fearing for their physical safety. In a lot of cases, sleeping at the train station until the next morning, is the only solution (Górczyńska, M, Szczepanik, M 2016).

Picture 4-2. Car terminal at the border crossing in Terespol

Source: authors' archive

The members of the research team were allowed to visit all positions and take part in all types of controls. However, at the beginning of the visit, the research team was informed that it is not allowed to observe situations when persons introduced an application for international protection. At the time of the visit there were a Chechnya family present at the railway terminal, but the team was not able to get information about the procedure.

4.3.6. The role of NGOs and other actors in monitoring the situation at Terespol/ Brześć

The NGOs have been very involved in the human rights protection in the field of international protection in Poland. For many years there were mostly Chechens with the Russian passports who applied for international protection in Poland. After the 2015 the discussion was driven by the migration crisis in the EU, and the expectation from the politicians were related to the border control and the protection of asylum seekers and irregular migration. The political debate was polarised, on the one hand the right-wing parties pushed for a better control and prevention of irregular migration, on the other opposition (Civil Platform) supported the arguments about welcoming people in need of protection.

> "It was a strong pressure from the government (Law and Justice) to protect the border. I my opinion it was the reason when it was more difficult to apply to international protection in Poland. Even if the policy is not explicitly formulated, you can feel this pressure exerted pressure on the Border Guard" (NGO1:Sep2019)

This public debate contributed to the development of the politics of fear, presenting migration (mainly inflow of potential refugees) as a treat to the public security. The Polish government definitely rejected the relocation scheme. This all cased very difficult situation for the potential applicants for international protection on the Polish Eastern border. The Terespol/Brześć border crossing became a symbol of the radicalization of Polish government approach towards asylum seekers. Because many asylum seekers reported many attempts in crossing the Belarusian-Polish border, facing several refusal of entry before they finally were able to submit the application for international protection, the NGOs started the monitoring of this particular case.

> "We gather a lot of information about the situation at the Terespol/Brześć crossing point. There are everyday people coming by train and trying to apply for international protection, families with children, single women. They get refusal and are returned to Belarus. They come again, and again and try to apply again. In between they stay in the railway station in Brześć, which seems to be a provisional refugee camp" (NGO3:Sep2019)

The monitoring of the border procedure, especially in the field of proceeding the application for international protection, has been the main area of activities of NGOs on Polish border. The violation of international protection rules and 'push backs' of foreigners trying to apply for protection have been reported both by the civil society organization and the representatives of the Commissioner of Human Rights. The 'push backs' were related to the refusal of the right to apply for international protection. The problems at the border had to do the fact that the Border Guard plays a double role in the system of border management. As it was mentioned before, the Border Guard is mainly responsible for border control (passports, visa checks), at the same time it receives the declaration of intention for application for protection. In practice, it means that Border Guards are those deciding who are allowed/or not to apply. Based on the decision of the Border Guards the applicants can submit its application to the Office of Foreigners, responsible for proceeding the application.

> "This is the dual role of the Border Guard. They are responsible for border protection, reducing the irregular migration, and on the other hand they receive the application for international protection." (NGO5:Oct2019)

According to the Helsinki Foundation for Human Rights, the nationalities that attempt mostly to cross this specific border, come from Russia, Ukraine, Tajikistan, Iraq, Armenia, Turkey, Georgia, Belarus, Iran and Afghanistan (2019). The majority of the Russians are ethnically Chechen (RPO 2016). In 2018, there were 4.131 applications seeking for international

protection in Poland, out of which 2.128 were rejected. The rejection rate reached more than 85% (Helsinki Foundation for Human Rights, 2016).

Interestingly in the public debate the representatives of the governing party used the argument of helping the Ukrainians, as its contribution to the management of migration crisis. Beata Szydło said in the European Parliament: "*You are talking about migrants – it is a serious problem. Poland has admitted approximately one million refugees from Ukraine. People who nobody wanted to help. This is something we also need to talk about*" (KPRM, 2016).

On the one hand there has been a very liberal access to the Polish labour market reported, on the other the access to the territory of Poland for asylum seekers became very restricted.

> "I can give many examples of 'push backs' at the border. Practically the people coming without visa get the denial of the right to apply for protection. There are different way of not informing people about their right. There were NGOs and even the European Court of Human Rights involved in monitoring the situation in Terespol but is has not changed" (NGO2:Sep2019)

In most cases the every-day interaction between the Polish Border Guards and the newcomers is threefold. It initiates with a queue and a separation of the people who are about to be interviewed, secondly the guards check the passports of the applicants and note down important information about them, including the reasons, why they wish to enter Poland and it finally ends up with in most cases with their return to the train station for their way back to Brest (Helsinki Foundation for Human Rights 2016, Human Constanta 2019).

> "The Border Guard do not inform the foreigners about the application procedure, if the person does not clearly formulate the willingness to apply for the protection, and they don't ask (BG), they simply send them back" (NGO6:Oct2019)

There are reports from the persons involved in these situations (mothers with children, families) who tried to cross the border many times. This could be the way to discourage the people from coming to Poland. Clearly, the official website of the Ministry of the Interior and Administration amplifies this anti-immigration policy, since the pictures from the Polish border guards, are all depicting them "catching" and restricting irregular crossings only (Ministry of the Interior and Administration). Moreover, the current Prime Minister of Poland, Mateusz Morawiecki publicly congratulated the Polish border guards and called them the elite military formation suggesting that they are the defenders of the nation, restricting illegal and irregular crossings (KPRM, 2019).

Poland as a Member State of the EU is obliged to follow certain polices (European Commission, 2016). Among those is the non-refoulement, which is based on human rights law and restricts countries to return individuals back to hazardous countries, where they might face persecution or torture (European Commission 2016). According to the European observer, the topic of the non-refoulement has raised most concerns for the violation of

human rights at the Brest-Terespol border (Erikson, 2016). In 2017, the European Data Protection Supervisor (EDPS) called for the improvement of the border policies. Butarelli, the previous EDPS supervisor discussed the information gathered will be used to grant or deny individuals access to the EU, based on the migration, security or health risks they may pose, it is vital that the law clearly defines what these risks are and that reliable methods are used to determine in which cases they exist (European Data Protection Supervisor, 2017). The EU observer suggests that they received a written statement in 2016 from Agnieszka Golias the spokesman of the Polish Border Guards, where she replied to the non-refoulement accusations and unjustified entry denials. She explained that the people refused, do not meet the requirements that would make their entry eligible (Erikson, 2016). Therefore, several thoughts arise on how the EU funds are allocated and spent, who is deemed to fulfil the criteria and if according to the wishes of EDPS, the methods are indeed reliable. Furthermore, the European Border and Coastal Agency (Frontex) argues that each European Member state has different systems of protecting their borders. However, there is a common European standardized behaviour at the borders that should grand the mixed migrants, high professionalism and ethical standards (Frontex, 2019). The criticism of the Polish and European institutions and civil society organizations were expressed in several reports and recommendation about the violation of the right for international protection.

The NGOs reported the also the lack of the written protocols signed by the checked person. The activists reported that

> "It is difficult to understand why some potential asylum seekers are 'push back' and other are let it. But there are many evidences of people trying many times to entry Poland. Those people are desperate, they have no place to go back, no home" (NGO3:Sep2019).

As it was mentioned before the majority of the potential applicants for international protection come to Terespol/Brześć by train. The way the Border Guard organize its activity on the railway terminal was strongly criticized by the NGOs.

> "They are trying to control all the people coming as quick as possible, to send those who received refusal back with the same train. It means that there is not enough time for an interview based on which the Border Guard take the decision on the application" (NGO1:Sep2019).

The Polish authorities consequently claim that the procedures of applying for international protection are sufficiently regulated according to the international law. However in 2018 there were four cases in ECtHR against Poland and the situation at the border crossing points related to international protection.

> "Even the ECtHR verdicts did not change the situation at the border. There are still 'push backs' and people in need for protection are not allowed to apply it" (NGO4:Oct2019)

Very recently the coalition of the NGOs (Amnesty International, Fundacji Nasz Wybór, Fundacji Polska Gościnność, Helsińskiej Fundacji Praw Człowieka, Migrant Info Point, Stowarzyszenia Homo Faber, Stowarzyszenia Interwencji Prawnej, Stowarzyszenia Nomada i Uchodźcy.info) started a public campagna to inform about the valuation of human rights at the border crossing in Terspol/Brześć. All these organizations were involved in monitoring the situation at the border and interviewing the foreigners, who were trying to cross the borders. In the description of the campaign they write: "According to the authors of the Human Constant Report, in the first half of 2019, refugees waiting in Brześć tried to apply for international protection in Poland at least 1604 times. Only 136 of these applications were accepted"[107]. The organizations are trying to get the attention over these situation. The picture below presents the billboard placed in Terespol close to the border crossing saying "We are sorry". [108] The campaign has been not very intensely commented in the Polish media. But the cooperation of the NGOs working in the area of the human rights, international protection and migration might have an impact on the debate around the valuation of human right at the Polish borders.

Picture 4-3. Sign with the campaign's logo and website

Source: authors' archive

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[107] All about the campaign https://amnesty.org.pl/granica-praw-czlowieka-przepraszamy/
[108] The website address of the campaign was: granicaprawczlowieka.pl, which means border of human rights. The text ("granica praw czlowieka") on the billboard presented in Picture.3 uses word play, since the word "granica" has two meanings, one related to the physical border and the second meaning is more abstract is more about "crossing the line" in this case of the human rights.

4.4.   Conclusion and recommendation

In the last few years, Poland has started transforming from an emigration to an immigration country, with the positive migration balance received for the first time after the post-transformation time. Claims that the EU was experiencing a migration crisis featured as a leverage for the initiation of a high-profile political debate in Poland, which increased the polarization of society over questions of migration governance.

The Polish legislation in the area of entry governance seems to be compliant with the EU law. However the biggest concerns of both international organization, NGOs, as well as EU institutions are related to the violation of human right during procedure on the border crossing. There is reported that the potential applicants for the international protection had limited access to the procedure at the Eastern border of Poland. The practices of 'push backs' were reported both by activists monitoring the situation at the border, as well as by TCNs seeking for protection. Even the involvement of the European Court of Human Rights did not impact the legal changes and the improvement of the practise at the border. The Polish authorities did not respect the verdicts of the ECfHR and keep refusing the TCNs the right to apply for international protection, putting them at risk of being tortured or prosecuted in the country of origin.

Due to the increase of inflow of economic migrants to Poland, Polish border are perceived by the society as open and accessible for foreigners. At the same time to politicization of migration policy restricted the border control procedure in order to reduce the irregular migration and 'push back' the asylum seekers.

Looking at the figures the irregular migration and inflow of asylum seekers is relatively low, comparing to the numbers of economic migrants coming to Poland. However knowing the vulnerability of the forced migrants more attention should be paid to the fundamental rights of migrants of all categories.

As a result of the research we conclude with the following recommendations.

- There is a lack of awareness of the problem of restricted access to application for international protection among divers institutions

- The recommendations of the international organizations and the NGOs, as well as the verdicts of the ECtHR about the restricted access to the international protection application are not considered by the Polish authority

- The Border Guard acts in the dual role: protection of the border/travel documents check and the institution responsible for deciding on the acceptance of the application for international protection

- The institution responsible for receiving applications for international protection should not decide whether the application is justified or not

- The decision on the issuing of the application should be taken by the independent (from BG) institutions

- The representatives of the NGOs and international organization should have the access for monitoring the procedures and supporting the applicants

- The applicants should have access to translators and lawyers during the interview deciding on issuing the application

5. Operational entry governance at the sea borders

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5.1.   Introduction

This section explores cross-border entry into the EU Schengen area by sea, looking at the case of the Aegean island of Lesvos in Greece. While Lesvos is a site of a small number of regular sea entries to the EU via the daily ferry services that run between Mytilene and Ayvalik, Turkey, our study here is focused on irregular entries by sea, as such entries overwhelmingly shape Lesvos as an gateway for irregular entries of migrants and refugees. This results in the operational entry governance practices on Lesvos incorporating additional actors and practices to other points of entry by air or land. For example, the asylum process, in conjunction with issues of protection plays a central role in entry governance on-the-ground on the island and sees practices such as medical care becoming a way through which entry is governed. In addition the role of the sea itself, that is the geography of the borderzone informs entry governance practices from surveillance of the seascape, to the geographical restrictions in place on onward movement of persons who have entered Greek territory without meeting specific entry conditions as required under EU border policies.

Our study was interested in the operational discretion left to entry authorities and how such discretion manifests on Lesvos. A focus on operational discretion and its manifestation on the ground (and at sea) requires additional questions around who has discretion and who does not? And how local, national, and supranational bureaucratic arrangements, rules and practices shape the way persons enter at the sea borders of Lesvos? With these questions guiding our research our overall findings highlight the multiple actors, EU, state, and non-state engaged in the governing of entry on Lesvos. Furthermore this governing of enrtry includes complimentary and contradictory practices wherein the events of 2015, where large numbers of irregular entries, approximately 1,000,000 people, entered the EU through Lesvos (UNHCR, 2015) play an important role in conditioning actors approach to the governing of entry. The impact of these large numbers continues to be felt, both in relation to entry infrastructure such as the Reception and Identification Center and in terms of increased workloads for all staff engaged across multiple agencies. This increase in workload has resulted in an increased role for EU bodies such as the European Asylum Support Office (EASO) that continues to take on a larger role in supporting the Greek Asylum Service in managing asylum requests through interviewing asylum seekers and making recommendations.

A study of entry governance in Lesvos has to consider the centrality of vulnerability as a factor structuring practices on-the-ground with the large number of vulnerability cases creating

considerable workloads for agencies such as the Hellenic Center for Disease Control and Prevention HCDCP, now the National Public Health Organization (NPHO). Because the HCDCP/NPHO remains significantly understaffed, major delays occur in the identification of vulnerabilities of new arrivals.

> "The time it takes to assess if a person is or is not vulnerable under Greek law varies considerably depending on the number of new arrivals, but also on the availability of professionals and interpreters. Insufficient number of doctors, psychologists (but also lack of space for them to have confidential interviews and examinations) as well as significant delays in recruiting interpreters limit the impact of these measures, leading to months of delays [...]" (FRA 2019: 47).

In Lesvos,

> "GCR [Greek Council of Refugees] has observed vulnerability assessments taking place between a period varying from a few days to 5 months from the arrival of the person depending on the availability of staff, including interpreters, and the number of arrivals. Since 24 October 2018, the medical and psychosocial division of KEELPNO [HCDCP] in Lesvos RIC has halted its operation as the only doctor of the division resigned [...]. Since then no vulnerability assessment was taking place, with the exception of very urgent medical screenings conducted by an army doctor. Due to this shortcoming, a backlog of cases has been created and applicants wait for prolonged periods in order to undergo medical and psychosocial screening" (GCR 2019: 87).

Meanwhile like other entry governance mechanisms the initiation of a vulnerability assessment relies to a great extent on the discretion of the particular caseworker

In addition concerns have been raised about the European Asylum Service Office's (EASO) vulnerability assessment, claiming that it is not clear whether such assessments take Greek law into consideration (GCR 2019: 90). In many cases vulnerability is identified during the interview with EASO, but this procedure is not clearly set out in Greek law.[109] The Greens / EFA (2018: 22) reported the findings of research conducted in 2018, claiming that out of 40 cases examined 33 cases were wrongfully not identified as vulnerable despite having undergo an EASO vulnerability assessment.

When reading this report on sea entry is it crucial to be aware that the Greek government announced in September 2019 its intentions to further restrict the legal framework for

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[109]   L. 4375/2016 art. 60.4.b provides that EASO staff may conduct a personal interview, without mentioning vulnerability assessment.

requesting and granting asylum[110] and published the new International Protection Bill (L. 4636/2019) in October 2019. The new law will be applied from January 1 2020. It is therefore of critical importance to emphasize that this section of the report presents the entry policy which was operational until the end of 2019.

The study of entry by sea is structured as follows: it begins with a brief outline of the methodology used before going on to discuss in more detail the limits of the research including issues of access to institutional authorities and the current Greek political environment. After that, the discussion of sea entry governance follows the journey or irregular arrivals in Lesvos. From the initial sea crossing where people first enter the territory of the EU; to first reception by authorities or informal actors at sea or on land; before transfer to the Reception and Identification Center, known locally as Moria, where a number of border checks are performed, all of these are examined along with an examination of the material conditions of the RIC. Following this attention is turned to discussing the asylum procedure that often follows the initial registration and identification procedure and the accompanying practices that come in to play while irregular arrivals are held in Lesvos (under the EU-Turkey Statement) awaiting the outcome of their asylum request, including a focus on vulnerable cases, the increasing role of EASO, and the provision of medical care as a form of entry governance. All of this highlights the spatial and temporal dynamics of sea entry governance in Lesvos, from the short period of the initial border crossing moment to the drawn-out asylum procedure that gives Lesvos and other Aegean islands like it an important place in wider EU governance of (irregular) entry. These central dynamics of entry governance in Lesvos also feed into the larger aims of the ADMIGOV project and compliment the research focus of Workpackage Four on protection issues in the borderlands of Europe.

5.2. Methodology

The data, as with the other chapters in this deliverable, is generated from qualitative research that has employed participant observation and twelve interviews in total (8 recorded and 4 with notes) with people working either voluntarily or professionally on the front line of sea entry. Interviews were conducted between July and December 2019. The findings also make use of the relevant legal frameworks and draw on reports from NGOs. Those interviewed are anonymized and referred to here by their professional field of expertise, they include: the guardian of unaccompanied minors; a Reception and Identification Centre administrative staff member; Greek Asylum Service Officers; a lawyer working with irregular sea arrivals; a volunteer rescuer; an EASO field support officer; a psychologist working in a women's day center; and a doctor working in an NGO-run clinic outside of the Reception and Identification

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[110]   See the Announcement of the General Secretariat of Information and Communication (in Greek) in https://media.gov.gr/o-st-petsas-gia-tis-apofaseis-tou-ypourgikou-symvouliou/ (last access in 24/12/2019).

Center who has also worked in Mytilene's hospital in the recent past; and NGO case workers working inside the Reception and Identification Center.

The research had intended to interview specific institutional authorities. We faced many challenges in gaining access to these institutional authorities as is a recognized challenged when undertaking qualitative research with security actors (De Goede et.al, 2019). The particular operational environment of the Greek sea borders needs to be considered when considering the difficulties in engaging with institutional authorities, including national elections, the change of government, and an overall increase in work pressure faced by front-line workers. A national election was called just after the first data collection trip had been organized. This election resulted took place during the data collection period meaning that official interviews were not possible. Instead the time was spent collecting background information and undertaking participant observation of the Reception and Identification Centre and its satellite services. We attempted to arrange interviews with the local Greek Police, the National Public Health Organization and UNHCR. Unfortunately, these institutions did not respond to our requests for a research interview. Moreover, the local Coastguard Agency claimed increased workload as a reason to deny us our request. Frontex refused any possible interview with a field officer based on Lesvos or in Greece more broadly and it proved impossible to find a suitable data and time for an interview with an officer based in Frontex's Warsaw HQ to be conducted. Therefore, aside from the official interview with an EASO officer, all other interviews with institutional actors were carried out informally based on the existing contacts of the researchers and the interviewees were speaking without having obtained permission from their agencies in advance. To work around these restrictions and in order to understand the complicated administrative structures of the entry system as it is practiced in Greece and particularly in relation to irregular entries by sea, multiple NGOs' reports (see References, Reports), public announcements from different actors, and laws have been studied and used.

Finally, it is important to consider the research presented here as being temporally limited. The change in Greek government in July 2019 led not only to a change in key personnel across the civil service, the closing of the Ministry of Migration Policy and the absorption of key migration-related services into the Ministry of Citizen Protection but also changes to the legal framework governing irregular entries by sea in operation from January 1 2020.

5.3.   Border crossing

This section focuses on the first stages of entry by sea and is concerned with irregular crossing, that is those crossings that take place without border checks upon embarkation in a non-EU, non-Schengen state, in this case Turkey. The focus on irregular entry by sea includes the crossing of the sea border in the Aegean between Greece and Turkey; the role of the Greek Coastguard Agency in monitoring irregular crossings; and the role of various agencies and actors, both formal and informal. Here it is important to flag the divergences between the

policy frameworks overseeing the interception of irregular sea entries and the on-the-ground realities, where, in the case of Lesvos, informal practices often diverge from the stated procedures.

Figure 5-1. Map of Greece

The operational environment for institutional actors and non-institutional informal actors engaged in entry governance are shaped by the particular border geographies of the Aegean. There are no international waters between the Aegean Greek islands and the Turkish mainland, meaning the operational environment is very different from the operational environment in the Central Mediterranean triangle between Libya, Malta and Italy where international water allows for the presence of a larger number of actors and different interception/rescue dynamics (see, Cuttitta, 2018; Jumbert, 2018; Pallister-Wilkins, 2017). The realities of the irregular sea crossing also impact on the types of practices undertaken by the Greek Coastguard Agency, the Greek National Policie and their Frontex colleagues. The sea crossing can be perilous with hundreds of deaths of being recorded in the Aegean.[111] It takes approximately four hours for the most commonly used rubber dinghies with a small outboard motor to make the journey from Turkey to the northern or eastern shores of Lesvos. After which there are three ways persons in the Aegean make landfall in Greece: through interception or rescue at sea by the Greek Coastguard Agency and/or Frontex vessels and operatives working under Joint-Operation Poseidon; through rescue (if in distress) by commercial vessels such as fishing boats; or by coming ashore independently without interception or rescue. Furthermore, the Aegean maritime space between Lesvos and Turkey is heavily surveilled by the Greek Coastguard Agency and Frontex Joint-Operation Poseidon operatives (see Dijstelbloem et.al, 2017) as well as by informal actors, such as local residents and volunteer rescuers who monitor boat crossings and coordinate with the Greek Coastguard Agency (interview 5).

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[111] Hundreds of people have died trying to enter the EU via the Greek islands. For further information, see Tselepi et al. 2016; Human Costs of Border Control in http://www.borderdeaths.org/ (last access 22.12.2019).

Figure 5-2. Borderline between Lesvos and Turkey

The response to irregular arrivals by sea continues to be shaped by the events of 2015 and is key to understanding the current operational environment on Lesvos. The large number of irregular arrivals on Lesvos from Turkey in 2015, with the UNHCR estimating that over 800,000 refugees crossed the Aegean irregularly in 2015 (UNHCR, 2015), resulted in ad hoc responses from the local population and other civil society actors from across Europe and elsewhere (Interview 5). While the numbers of arrivals have reduced following their peak in 2015, as can be seen from **Figure 5-3** irregular entry across the Aegean continues, with fairly steady numbers of arrivals in 2017 and 2018, with a rising number of arrivals in the summer of 2019. As can be seen from **Figure 5-4**, a majority of these arrivals land in Lesvos. According to the UNHCR during 2019, the majority of refugees and migrants (irregular entries) to Greece arrived on Lesvos with 19,503 arrivals (UNHCR, 2019).

Figure 5-3. Number of monthly irregular arrivals to Greece, 2017-2019 (UNCHR)

Monthly Arrivals 2017 to 2019
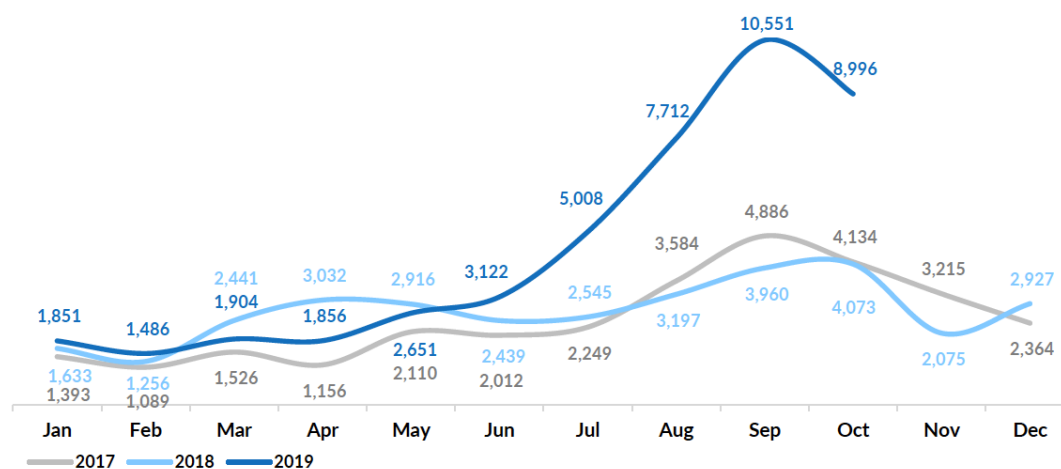
Figure 5-4. Points of entry for irregular entries in the Aegean (UNCHR)
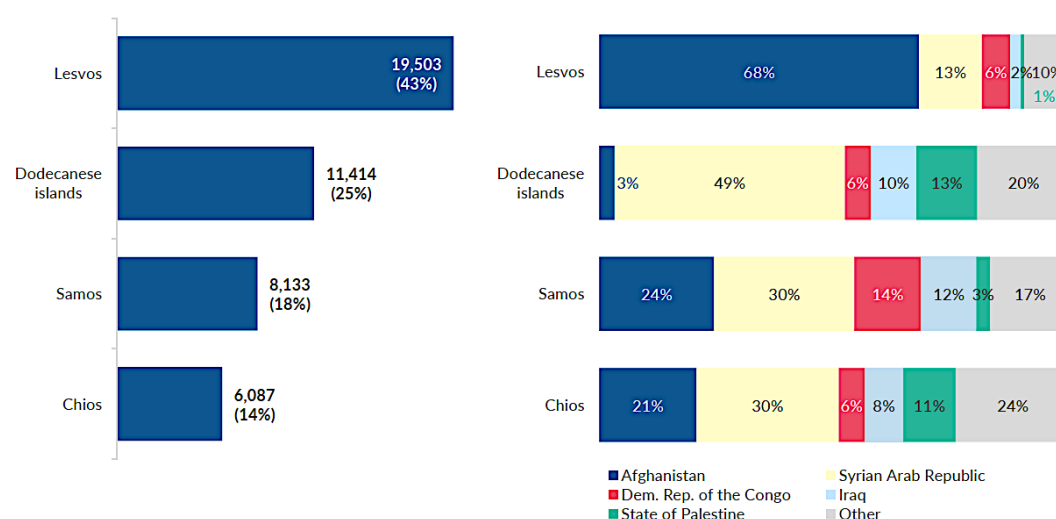
Informal, non-state actors actors such as NGOs and civil society organisations — coordinated overall by the UNHCR who maintains a list of all informal actors engaging in first response (Interview 5) — continue to play a role in various aspects of sea entry, from surveillance activities and coordinating with the Greek Coastguard Agency to working alongside institutional actors at other stages of the registration and identification process. The fall in irregular arrivals by sea has seen a drop in the number of informal actors engaged in first response at sea and on land. Following the imposition of the EU-Turkey Statement on March 20, 2016 informal actors felt a change in institutional attitudes to their involvement in first response with attempts by authorities to know who was informally engaged in first response (Interview 5). However, the socio-cultural and political memory of civil society engagement remains on the island and elsewhere in the EU and shapes the operational environment for

institutional actors as informal, civil society, actors maintain a monitoring presence and are called on occasionally to engage in sea rescues by the Coastguard in exceptional circumstances (Interview 5).

> "We try to do a monitoring, a mapping of what is going on in the sea. What we do at the beach is a first response, watching from the land what is happening at sea, if a boat is in danger. These plastic boats that are being used by the people don't maintain safety standards. They are like balloons loaded with 50-60 people. [...] The travel's safety usually depends on the weather conditions. The distance between Lesvos and Turkey is very short. Binoculars[112] allow us to have an eye contact, a monitoring of the crossing. If something goes wrong, we alert the Coastguard Agency. We are required to alert the Coastguard Agency from the first moment we locate the boat, in order for the coastguards to do the rescuing. This has always been the case. But in 2015, with so many arrivals per day, it was very difficult for the Coastguard Agency to respond."
>
> (I05; volunteer rescuer)

On Lesvos and other sites of irregular sea entry in the Aegean, the border extends beyond the geographical sea border between Turkey and Greece, meaning that the border as a set of political, security, and bureaucratic practices is spatially disaggregated (Balibar, 2009; Parker and Vaughan-Williams, 2012). The increasing spatial disaggregation of entry governance away from the borderline itself is a common feature of EU entry governance more broadly (Parker and Adler-Nissen, 2012), but we can also see such dynamics at play in the entry governance of irregular sea arrivals on Lesvos. Entry governance extends far beyond first reception at sea with border checks of irregular sea entries taking place at the Reception and Identification Center (RIC) (art. 14.1 L. 4375/2016). However, transportation from the point of arrival on land to the RIC are not always smooth, in practice, many irregular entries remain in open transit sites — each with their own operational managers — such as that at Skala Sykaminias (known as Stage II) or locked in police vans depending on the reception capacity of the RIC. It is at the RIC that the largest number of entry governance mechanisms are located and these are the focus of the following section.

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[112]   "We use common equipment. Night vision binoculars are prohibited. Only regular binoculars. Teams on the beach are prohibited from having walkie talkies coordinating with authorities' ones. The only wireless we are allowed to use is for internal use, which has less than 2 km range. Other tools the teams use are their phones social networks to let them know if there is a need to volunteer at the beach." (I05; volunteer rescuer).

5.4.   Reception and identification procedures

Following initial entry the reception and identification procedures undertaken in the RIC are a moment and site for learning about operational discretion and the multiplicity of local, national, and supranational actors involved in governing entry on Lesvos. The RICs are not only a site of border governance, marking an administrative point on a person's journey, but they are a site of work for a number of diverse actors involved in governing entry. The following section focuses on the diversity of actors operating in the site; and the range of procedures and moments of operational discretion occurring during the reception and identification procedures.

5.4.1. Reception and identification centres

The RICs are sites where a number of activities relating to reception, registration and identification take place involving a number of institutional actors including: the Greek Police, Frontex, the UNHCR, IOM, EASO, the Greek Asylum Service, and the Hellenic Center for Disease Control and Prevention (HCDCP) along with private actors such as Health Units Societe Anoyme (HUSA) and many humanitarian, legal and civil society actors.

Figure 5-5. Formal Institutional actors working in the RIC
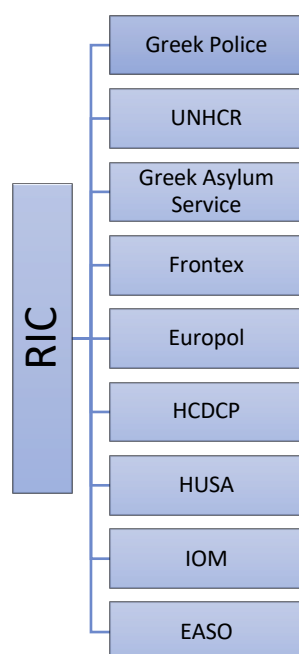
The reception, registration and identification procedures are implemented in Greece under the L. 4375/2016. According to the law, the RIC's Manager issues a Decision of Liberty Restriction within the first 3 days with the possibility of extension up to 25 days, if procedures are not completed (art. 14.2 L. 4375/2016). A number of safeguards are provided similar to

those applied in instances of detention in Greece e.g. notification given in a language that is understood, and the right to judicial appeal and legal aid (art. 14.2 L. 4375/2016). Permission to exit the RIC's restriction on liberty during the reception, registration and identification procedures can be granted for serious reasons (art. 14.3 L. 4375/2016). For instance, the RIC's manager may refer vulnerable cases to other appropriate facilities or RICs on the Greek mainland for the continuation of the reception and identification procedure (art. 14.2 L. 4375/2016). In such cases alternatives to restriction of liberty may occur depending on the type of vulnerability of the person/s concerned.

Following the enactment of the EU-Turkey Statement on March 20, 2016, RICs were supposed to have been transformed into closed detention centres due to the imposition of a blanket detention for all new (irregular) arrivals. However, because of the limited capacity of the RIC on Lesvos (and elsewhere) and the reactions both from the detained irregular entrants and civil society organizations, the practice of blanket detention has largely been abandoned and it has been replaced by a process of geographical restriction (see below). Generally, Lesvos' RIC (known as Moria from the name of the nearest village) is an open site meaning there is no detention, with some exceptions (see below).

Upon entering the RICs new arrivals are informed of their rights, their responsibilities and the procedure by the UNHCR, the IOM and the Greek Police (art. 13 & 14 L. 4375/2016). During all these procedures, new arrivals have the possibility to express their will to apply for asylum and for this to be recorded. This may take place in a verbal way or in the online Police/RIC database with an automatic notification to the Asylum Service database (called Alkyoni). There can only be two days between the expression of the desire to apply for asylum and the recording of this desire.

The registration and identification process has 6 main steps taking place as outlined in **Figure 5-6**, the procedures of which have been criticized by the Greens/EFA Group in the European Parliament for "a total lack of transparency" (The Greens / EFA 2018: 14).

Figure 5-6. Stages of registration and identification, with actors involved

The identification and nationality screening process includes the recording of the following information on a screening form: nationality, age, language spoken, and an intention to apply for asylum or not (there are boxes 'asylum'/'no asylum' to tick). The presumed nationality can be changed up to five days after the initial screening upon presentation of original documents, and the person is screened again and additional questions are asked.

Following the registration process outlined above in Figure 4, irregular entrants may be debriefed by specialist Frontex debriefing officers for the purposes of intelligence gathering on smuggling networks and foreign fighters. This debriefing process is optional and is conducted following the initial identification and nationality screening. If Frontex or the Greek Police gather what they understand to be useful intelligence then this is shared with Europol.

Upon completion of the above registration and identification procedures and on the basis of the willingness to apply for asylum, the RIC's Manager refers the case to the procedures outlined below procedures (art. 14 L. 4375/2016). In the case of vulnerability, this is specifically mentioned in the Manager's referral to the Greek Police.

5.4.2. Nationality and administrative detention

Depending on the nationality of the arrivee — except vulnerable and Dublin cases — Administrative Detention is for a maximum of 3 months. This decision concerns nationalities with a low asylum recognition rate in EU (<25%), such as Pakistanis, Bangladeshis, Georgians, and those from sub-Saharan Africa. These arrivees are detained because it is thought their request for asylum will be rejected. The Greek Police take the initial decision of Administrative

Detention for a period of 1 month. Following this the Regional Asylum Office (RAO) can propose to the Greek Police that detention is continued for a further 2 months or that the asylum seeker should be released. The RAO may propose to the Greek Police that detention be continued for one of the following reasons:

1) to determine or verify his/her identity or nationality;
2) to determine those elements on which the application for international protection are based, in particular when there is a risk of absconding on the part of the arrivee;
3) when there are reasonable grounds to believe that the person is applying for international protection merely in order to delay or frustrate the enforcement of the return decision;
4) there is a risk of absconding when EU Regulation no. 604/2013 (Dublin Regulation) is applicable;
5) the Police may decide on the detention of an asylum seeker when the protection of national security or public order so requires. Alternative measures to detention are to be obligatorily examined before the measure of detention is imposed.

As a lawyer working with those irregular arrivals navigating the asylum process and its relationship to country-of-origin states:

> "Those who come from war zones and they can prove it... or the stateless, like the Palestinians, because everyone knows that their state is broken and cannot protect them and Israel is hunting them etc... yes, in these cases we can have positive response... while someone who comes from a country with low rates of asylum recognition in EU, like Cameroon, he is treated with disbelief and goes straight to detention while there is no such a law. I mean that there is no law that says that anyone coming from a country with this rate of recognition goes into detention. The detention is administrative and the law says that someone is detained exceptionally and only when it is deemed necessary for the fast and effective processing of the asylum claim or when he/she does not have or has destroyed his/her identity [documents] and makes it difficult to prove his/her personal features or when he/she is dangerous for public order, not in the sense that he/she is suspect, but in the sense that a court conviction has been issued against him/her.[113] "Exceptionally" means that it cannot be the rule, but in Greece asylum seekers' detention was always the rule, that is, when they put someone in administrative detention, then he/she applies for asylum and then they don't let him/her free, but they still keep him/her in detention… so that's the rule. Because they do not have the infrastructure to keep everyone detained, they apply the policy of detention only to those with a low recognition rate, but this is not in the law. […] And when HCDCP gets

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113   Art. 13 PD. 114/2010.

into trouble, either because it doesn't have a doctor or because it doesn't have a psychosocial body or because of whatever… which happens very often, then the authorities detain everyone without knowing if there are vulnerable cases or not, instead of let them free. So, for example, a French-speaking kidney-patient was detained recently, who had the need of dialysis every two days and eventually had a septic episode. When the medical system doesn't function, it would make sense not to detain the people, let alone when the law says that detention is exceptional…"

(I04; lawyer)

If none of the above apply, asylum seekers are released. In that case:

a) If full registration is completed, the applicant is released with an asylum seekers' card and an appointment for a Refugee Status Determination interview (art. 41.1.d). In this case there is a referral by RIC to the Open Reception Centers for asylum seekers (art.14.7).

b) If full registration (lodging) is not completed, there is a release with asylum seeker's card (pre-registration card) and an appointment for full registration (art. 41.1.d). In this case there is a referral to Open Reception Centers (art.14.7).

In the case of a non-asylum request, the RIC's Manager refers the non-asylum seeker to the Greek Police (art. 14.10) upon which the Greek Police have to assess the possibility of deportation, return or readmission. Assessments are made on the following basis:

a) In the case of the principle of non-refoulement being violated, a permit to stay for humanitarian reasons is granted (art. 78.a L. 3386/2005) meaning that no deportation decision is issued. For persons belonging to vulnerable groups, the Greek Police and the RIC coordinate for further referral to relevant social support institutions or open accommodation facilities (art. 14.8). In particular cases of unaccompanied and separated children (UASC), referrals are made to the Public Prosecutor (who acts as a temporary guardian), to the Greek Police and to the Center for Social Solidarity (EKKA) for accommodation in reception facilities on the mainland, as well as for medical examinations and transportation to reception facilities on the mainland.

b) In cases where the principle of non-refoulement is not being violated, a deportation decision is issued:

   i.   The execution of deportation can be suspended reasons of force majeure (art. 78 L. 3386/2005).

   ii. Upon issuance of a deportation decision a person has 7-30 days to leave Greece voluntarily when not considered at risk of absconding or a danger for the reasons of public order (art. 76.5 L. 3386/2005).

   iii. Removal can be postponed for 6 months for (1) minor with parents who have legal residence in Greece; (2) parent(s) of a child with Greek nationality; (3) elderly of 80 years or older; (4) pregnant women and women within the first 6 months of giving birth (art.79 L. 3386/2005

and 41 L. 3907/2011 mutatis mutandis after the amendment of L. 3386/2005).

iv. Pre-removal detention (art.76 L. 3386/2005 & art. 30, 31 L. 3907/2011). Alternative to detention measures should be examined (art. 23.3 & 30.1 L. 3907/2011). In such cases there is the possibility to explore the possibility of Assisted Voluntary Return with IOM or the Greek Police.

Picture 5-1. Map of the Lesvos RIC.
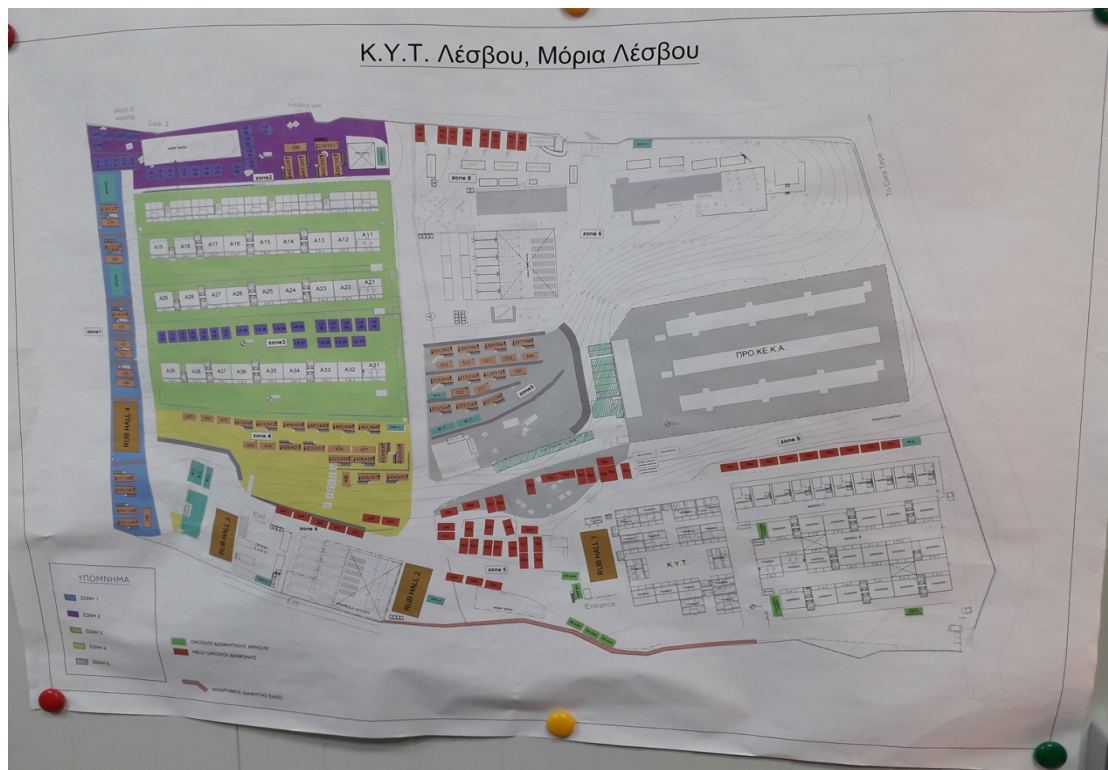
5.5. Material conditions of reception

"80% of our new mental health patients treated in July and August 2017 on Lesvos reported experiencing violence [...], just over a quarter reported experiencing torture [...] and 19% reported experiencing sexual violence [...]. This violence was experienced in people's country of origin, in transit and in Greece"

(MSF 2017: 3)

A focus on the material conditions of reception lays important groundwork for the research focus of ADMIGOV WP4 on Protection Issues at the borderlands of Europe. These conditions

are introduced here in line with the overall design of the ADMIGOV project that follows the migratory chain and examines the interrelationship between various stages across time and space.

According to art. 17.1 L. 4540/2018, material reception conditions must provide conditions that respect human dignity and provide adequate living standards ensuring subsistence and the promotion of physical and mental health. In the aftermath of the EU-Turkey Statement and the imposition of the geographical restriction preventing asylum seekers from leaving Lesvos for mainland Greece serious overcrowding has been a regular feature of Lesvos' reception facilities.

Meanwhile the European Council on Refugees and Exiles (2007) emphasizes that refugees' accommodation infrastructure should be integrated into already existing residential areas, and UNHCR (2014) makes clear that "housing is not adequate if it is cut off from employment opportunities, health-care services, schools, childcare centers and other social facilities", the vast majority of asylum seekers (almost 19,000 people, that is the 18% of the total population of Lesvos) lives in Moria's RIC, 9km from the center of the city of Mytilene, living in conditions of severe overcrowding, in an area of approximately 0.11 km^2. This means that 18% of the total population of Lesvos resides in an area comprising only 6.75% of the total area of Lesvos. At the time of writing, almost 21,000 asylum seekers reside on the island, with most of them in Moria's RIC, an ex-military camp initially designed to accommodate a maximum 3,000 people.

 According to a letter written to the former Greek Prime Minster Alexis Tsipras by a number of civil society actors there is "little access to proper shelter, food, water, sanitation, health care, or protection." (ActionAid et.al, 2017) Meanwhile the poor conditions are of particular concern for those with physical disabilities, as ActionAid makes clear; "[a]ccessing water, sanitation and food is particularly difficult for the many people with physical disabilities — for example, people using wheelchairs simply cannot reach these basic services." (ActionAid et al. 2017) Furthermore issues of sexual and gender based violence continue to be a concern. (Interview 8).

According to our research — and the research of others (GCR 2019; MSF, 2017) conditions in the Moria RIC have a negative impact on the health and mental well-being of asylum seekers resident there.

> "In Moria and in Section C[114] the situation is not good at all, there are not many toilets and, generally, the are infrastructure problems, there is a lot of tension between the different communities… there are some attempts being made by organizations to improve the situation in Section C, but things are very difficult there, women cannot sleep, there is a lot of noise at

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[114]   Section C is a protected space inside RIC for single women while Section D is a protected space inside RIC for single mothers.

night… At the Day Center we give to the women the opportunity to have a shower, so women from Section C come and do shower at the Center or they come and sleep in a room we have for relaxation… […] Moria is a dangerous place for women. Because there are so many people there... Obviously some of these people can't handle the tension and the situation there... they behave differently, there are different cultures... We have clear information about Moria... We know about rapes, we know about sexual harassments... Women who do not fit in Section C [due to the overpopulation] and stay out, they wear nappies during the night in order not to have to go to the toilet alone."

(I08; psychologist)

A number of humanitarian actors have documented the impact of these conditions on the physical and mental health of asylum seekers and migrants — including incidents of self-injury, suicide attempts, anxiety, aggression, and depression. For instance, a medical professional working for a medical humanitarian organization just outside the RIC says:

"These are not just conditions of neglect; these are conditions that create a hygiene problem, that is, you see things like rats bite on babies, easy health problems in these conditions become serious, that is, we speak about conditions of neglect. at best, or about physical extermination, at worst. […] This is exactly what I mean [we don't speak just about poor medical facilities, but, even more, about miserable living conditions]. From the perspective of prevention, if you have good conditions, a good bath, good nutrition, housing and outpatient care and vaccinations, you are preventing many medical problems. Essentially, all of these living-conditions' problems outweigh the medical burden many times, that is, children who have just a mere childhood illness, if they were living in a proper home, this illness would have last just for 5 days, and in Moria's RIC it might last more than 20 days. I don't speak about difficult incidents; I speak, for example, about gastroenteritis… Nutrition conditions are not suitable for nursing mothers, it can be raining, they may not even have heat, stay in a summer camp-tent while it is cold outside... All of these conditions medically make everything worse."

(I09; doctor)

Professionals note that in many cases, the psychological distress they experience has been factored and/or exacerbated by the policy of them on islands, which also impedes their access to adequate support and mental health care (Tsavdaroglou et al. 2019). Of particular concern is the well-being of women in the RIC.

"[There is obviously institutionalization in some women who don't step out of the Sections. That is, we have met women who do not step out of Moria

because of the fear, etc. [...] We are talking about women who have withdrawn, it's very difficult for them to find any interest, it's very difficult for them to make contact. They spend every day, the whole day there… without having anything else to do [other] than visiting the different agencies… It's like a habit, I think… Obviously they have problems… of course… but even if their health it's not so bad… because of the insecure environment…"

(I08; psychologist)

Our research is clear that the conditions in the RIC themselves have a negative impact on the mental health of those resident there which raises concerns for the longer-term integration of those affected.

"In addition, Moria creates PTSD… not only reinforce already existing problems, but it creates as well... Talking about dreams and sleep, points which are crucial for the PTSD diagnosis, women often bring [to the Center and to the psychological sessions] constant and repeated traumatic dreams from Moria and not only from their countries of origin. And… when they leave Mytilene and go to stay in bigger urban centers, they have great adjustment difficulties because of the fact that Moria does not reflect reality, it does not reflect society. [...] There are women who are a year and a half in Moria."

(I08; psychologist)

Finally, it should be highlighted that the RIC is a difficult working environment for the asylum personnel who work there as well. There is regular physical unrest as a result of the poor conditions and over-crowding, with personnel having to be evacuated out of the RIC through a specially constructed escape route (see Howden, 2020). Additionally, asylum personnel report finding working in the RIC traumatic with long-term implications for their working ability.

"The working environment in the RIC is a very stressful one and we need regular supervision. When I return home, I need psychologist in order to help me to manage all this. The big danger of this job comes from the burn out. For sure, the escape system is not the best one, but the biggest risk comes from the burn out."

(I02; RIC administrative staff member)

5.6. Asylum procedures

"Greece, like other countries, applies the so-called Border Procedure, that is, wherever there are many border-crossings the authorities follow different procedure than the procedures which are being followed to the rest of the country; a procedure with different deadlines, with a different evaluation or inquiry principle, much tougher, and with much more – according [to] my opinion from what I have seen on Lesvos, human rights violations; with a permanent argument from the authorities, the argument of the fast procedures, but, at the same time, we speak about faster asylum rejections and faster deportations... And this procedure has already legislated… And the vast majority thinks that it is normal to follow different procedures for someone who finally manages to reach Athens and to apply for asylum and different procedures for someone who entered Greece via Lesvos... [...] The asylum's examination authority differs than the one who examines the asylum application under the Regular Procedure; Yes, it has the same name, but on Lesvos EASO officers have been brought, who are not Greeks and the whole process is in English… This is what I mean by the "different authority". EASO does the interview, which is very important as in the 2nd instance the interview is just one, and now in the appeal you no longer have an interview, you say your story once and that's it. So, in case the interview is incomplete (and the EASO's interviews are incomplete, they do very incomplete interviews, they ask almost nothing) you can't judge."

(I04; lawyer)

This section examines the asylum procedure in greater detail as a key part of entry governance that expands the temporality of such governance, introduces a number of additional actors into the entry governance regime, as well being a principal avenue in which entry governance converges with the European Union's Fundamental Rights framework. Additionally, the asylum procedures at play in Lesvos are in a constant state of flux as they react to the both the changing dynamics of irregular arrivals and changes in government. In short these changes have seen vulnerable cases no longer facing geographic restrictions and having to remain on the island for their interviews, however, this is accompanied by attempts to shrink categories of vulnerability and saying "if vulnerability has not occurred in the country of origin, there is no vulnerability" (Interview, 3.1).

As stated earlier in the case of an asylum request, the RIC Manager refers the asylum seekers to the Regional Asylum Office (RAO) (art. 14.7). From here the asylum process can have two main stages: First Instance and Second Instance Asylum Procedures. First Instance relates to

the initial application while the Second Instance concerns any appeal process should the initial application be denied.

5.6.1. First Instance Asylum Procedures

General steps: expression of will for International Protection (asylum and subsidiary protection) (in the islands it takes place before the RIS, in the mainland it is conducted through Skype); registration before the Asylum Service; interview; notification of the decision (in case of rejection, there is the possibility of appeal).

5.6.1.1. Border Asylum Procedure

Asylum applications submitted at the border and/or Transit Zones of ports or airports, remain in detention in the RIC for 28 days. In this case a fast examination of applications takes place by EASO case workers and the deadlines are short. International protection applications lodged at the border are examined according to the Border Procedure. The applicant receives an asylum seeker's card with geographical restriction.

The Border Procedure (art. 60.4 L. 4375/2016) concerns non-vulnerable cases (almost 20-30% of the new arrivals) of (a) Syrians, (b) nationalities with low (<25%) asylum recognition rate in EU (Algerians, Pakistanis etc.), and (c) nationalities with high (>25%) asylum recognition rate in EU (Iraqis, Eritreans etc.) who are not Syrians. Practically, it concerns all the cases, except the vulnerable and the Dublin cases (art. 60.1 L. 4375/2016).

(a) Syrians fall under the EU-Turkey Statement of 2016 whereby their possible return to Turkey is examined (except Palestinians residents of Syria). So, there is an Admissibility Decision (that is acceptance of the asylum application - only in case in which the asylum seeker can prove he/she is not safe in Turkey) in case they will stay in Greece, or an Inadmissibility Decision (no acceptance of asylum application) in which case a return to Turkey according to the EU-Turkey Statement should take place.

(b) Greece is a priori the responsible state for their asylum request and the essence of their asylum claim is being examined.

(c) MERGED PROCEDURE: in this instance both the possibility of a return to Turkey (admissibility) and the essence (if he/she deserves asylum or international protection) of the asylum claim is examined.

According to the art. 54 L. 4375/2016, an asylum application can be considered as inadmissible on the following grounds: (a) another EU member has granted international protection status or has accepted responsibility under the Dublin Regulation, (b) the applicant

comes from a "safe third country" [115] or a "first country of asylum" [116], (c) the application is a subsequent one without "new essential elements" have been presented, and (d) a family member has submitted a separate application to the family application without justification for lodging a separate claim.

The deadline to lodge an appeal against a Rejection Decision is 5 days (art. 61).

Meanwhile our research has shown that there is no effective access to free legal assistance aside from the limited advice offered by legal NGOs who cannot handle the large numbers of cases in practice.

5.6.1.2. Regular Asylum Procedure

The Regular Asylum Procedure concerns vulnerable cases (almost 70-80% of new arrivals), that is unaccompanied minors, people with a disability or suffering from an incurable or serious illness, the elderly, pregnant women or having recently given birth, single parents with minor children, victims of torture, rape or other serious psychological, physical or sexual forms of violence or exploitation, persons with a post-traumatic stress disorder, in particular survivors and relatives of victims of ship-wrecks, and victims of human trafficking (art. 14.8 L. 4375/2016).

Art. 20 L. 4540/2018 introduces further categories of vulnerability such as persons with psycho-social disorders and victims of female genital mutilation. However, persons with PTSD are not expressly mentioned under these categories of vulnerability. Art. 23 L. 4540/2018 has also amended the procedure for certifying persons subject to torture, rape or other serious forms of violence (GCR 2018: 85). In vulnerable cases the admissibility is not under examination, but only the essence. The applicant receives an asylum seeker's card without geographical restriction so he/she can move to the mainland. The deadline to lodge an appeal against a Rejection Decision is 30 days (art. 61). The asylum application should be examined within a maximum of 6 months (art. 51.2 L. 4375/2016) with a 9 months extension possibility

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[115]   According to the art. 56.1 L. 4375/2016, a country shall be considered as a "safe third country" for a specific applicant when all the following criteria are fulfilled: (a) the applicant's life and liberty are not under threat for reasons of race, religion, nationality, membership of a particular social group or political opinion, (b) this country respects the principle of non-refoulment, (c) the applicant doesn't face risk of suffering serious harm according to art. 15 PD. 141/2013, transposing the recast Qualification Directive, (d) the county prohibits the removal of an applicant to a country where he/she risks to be subject to torture or cruel, inhuman or degrading treatment or punishment, (e) the possibility to apply for refugee status exists and, if applicant is recognized as a refugee, to receive protection in accordance with the Refugee Convention, and (f) the applicant has a connection with that country, under which it would be reasonable for him/her to move to it..

[116]   According to the art. 55 L. 4375/2016, a country shall be considered to be a "first country of asylum" for an applicant provided that he/she will be readmitted to that country, if the applicant has been recognized as a refugee in that country and can still enjoy of that protection or enjoys other effective protection n that country, including benefiting from the principle of non-refoulment.

in specific cases (art. 51.3 L. 4375/2016) and a further 3 months extension possibility (art. 51.4 L. 4375/2016).

Decisions granting status are given to the person of concern in extract, which does not include the reading for any decision taken. According to Greek Asylum Service data, during 2018 45% of total asylum applications in Greece were pending for more than 6 months from the day of full registration and "the average time between the applicant's expression of intention to apply for asylum and the interview in 2018 was 8.5 months, due to the average 42-day delay between pre-registration and [full] registration of the application, and the average delay of 212 days between registration and personal interview" (GCR 2019: 43).

5.6.1.3. Fast Track Procedure

The examination of an asylum claim is by rule individualized. However, in cases of large numbers of arrivals and asylum applications due to particular events in the country of origin, and because the country of reception is incapable of examining all of the claims on an individual basis, refugee status may be granted without an interview (Fast Track Procedure, art. 60.4 L. 4375/2016), with the perspective that in the future all of the cases will be examined with the regular individualized procedure. This practice applies currently to Syrian refugees in Greece, provided they entered Greece before 20.03.2016 (EU-Turkey Statement) and that they can prove their Syrian origin (i.e. if they hold a Syrian passport). Furthermore, it concerns vulnerable cases from Syria, even if they entered Greece after the EU-Turkey Statement, and when they have a Syrian passport.

Lodging of will, registration, interview and decision are part of both Border and Regular Asylum Procedures.

> "The difference between the Border Procedure and the Regular Procedure has to do with the procedural guarantees one can have, that is, the Border Procedure has much shorter deadlines, such as the call for the interview, a shorter period of time to appeal against the first rejection, and this is essentially a shrinking of the human rights. In the Regular Procedure we have longer deadlines."

(I03.1; Asylum Service officer)

> "On the 16th of September 2019, the Regular Procedure was abolished in Lesvos and we only have a Border Procedure, which means that the vulnerable cases are not being interviewed on the island and have to go to the inland. Just the interview of the non-vulnerable cases takes place on the island. [...] It sounds good that the vulnerable people leave, but this decision is accompanied by an attempt to shrink the category of the vulnerable. There are 7 types of vulnerabilities in the law. The 7th one is what we call "non-obvious vulnerabilities" (that is, victims of torture, victims of violence,

rape victims, trafficking victims, shipwreck survivors and relatives of shipwreck survivors). Under the new directives, the Asylum Service makes a conservative shift and links vulnerability to the country of origin (although this is not provided by law), saying that "if vulnerability has not occurred in the country of origin, there is no vulnerability". […] This is against the law. [...] These instructions or directives are internal, distributed only to the staff of the Asylum Service […]. Of course, shrinking the vulnerability category is an explicit commitment of the new government."

(I03.1; Asylum Service officer)

5.6.2. Second Instance Asylum Procedures

The second instance asylum procedures relate to the appeals process whereby an appeal is lodged with the Greek Asylum Service, with the presence of an interpreter, mentioning briefly the grounds against the decision of First Instance. It may be accompanied by an analytical memo explaining the grounds of the appeal. Following this the Greek Asylum Service defines a specific date on which the Committee of Appeal will examine the case, usually without a new interview. Upon registration of the appeal the Asylum seeker's card is returned to the applicant.

The Appeals Authority is in charge of examining the asylum application on its merits at Second Instance. The process is as a rule written and only exceptionally is the applicant invited for an oral interview before the committee. Most often this occurs if there are crucial allegations in the First Instance interview that need further clarification. During the period of lodging an appeal, and until the notification of the decision of the Appeals Committee, every measure of deportation, return or re-admission is suspended.

"If the first application is rejected, the applicant has the right to appeal to the Committee of Appeal (which is a three-member panel consisting of 2 administrative judges and 1 member nominated by the UNHCR, but without being UNHCR staff member). Even in the appeal in the Second Instance we face a human rights' shrinking as people in the Border Procedure have only 5 days to lodge the appeal, and this, combined with the fact that we don't have [an] interview in the Second Instance, but the new assessment or judgment is based on the existing file, so the appeal must be accompanied by a good memo, as the person will not be able to state the reasons why he left his country… In 5 days it's almost impossible to find lawyer, but even if the applicant find lawyer, he cannot write a memo in 5 days. Also, while the law provides free legal aid in the 2nd instance by the state, lawyers registered in the Register are not sufficient. For example, in Lesvos there is only one lawyer who provides free legal support. [There is only one lawyer] because the state announced just one job position."

(I03.1; Asylum Service officer)

5.6.3. After Second Instance: Appeal before Administrative Court and subsequent application

A negative decision by the Committee of Appeal can be challenged before the Administrative Court of Appeal within 60 days from notification. The latter may issue interim measures and provide temporary judicial protection from deportation until the case has been examined; otherwise rejected applicants may be deported.

In exceptional cases, after the final rejection of the claim, the applicants present new substantial elements. Then they have the right to lodge a new application after the rejection of their application at the Second Instance. If found admissible, this fresh application is examined on its merits. While waiting for the admissibility assessment, the applicants are protected from deportation, but are issued no asylum seeker's card and consequently do not enjoy the rights that are attached to it (art. 59 L. 4375/2016).

> "In case of rejection in the Second Instance, then the applicant has two options. The first one is to challenge the rejection, which is a very expensive judicial process. For example, you need €400 just for the administrative fee, so just a few organizations have a budget that can cover these expenses. Importantly, in this case we don't have judgment of the essence of the asylum application, but judgment of the illegality of the procedures which have been followed. The second option, which is used by most, is to re-submit an asylum request, that is from the beginning, but it must contain new substantial elements… You cannot go with the same request you had at the beginning; you have to show that since your first asylum application something new happened."

(I03.1; Asylum Service officer)

Therefore the asylum process can be both drawn-out and reliant on access to organizations with the material resources to cover administrative fees, when mouting a judicial challenge. Mounting a judicial challenge relies on invoking knowledge of the administrative procedure and its particualr — and possibly illegal — application in the specific case. However, it is not clear how accessible information regarding the administrative procedures is to both asylum seekers and their legal representatives. This explains why a greater number of people resubmit an asylum claim based on new information relating to their personal circumstances. In such instances access to new information is easier to obtain by the asylum seeker and their legal representatives as it relates to their personal circumstances as opposed to the particualrs of the administrative procedure.

5.7. Geographical restriction and travel cost

The geographical restriction is an important tool of entry governance operational on Lesvos since March 20, 2016 when the EU-Turkey Statement came into effect. It plays an important role in shaping the spatial and temporal aspects of entry governance in the Aegean, turning the Aegean islands collectively into spaces of entry and holding, while extending the governance of entry beyond the immediate moment of border crossing.

Under the geographical restriction, asylum applicants cannot travel onwards to mainland Greece, with the exception of vulnerable cases under the Regular Procedure where there is no restriction on onwards mobility. The geographical restriction operates in the entry governance regime as an alternative to detention and serves the purpose of confinement of all persons at the respective entry point to the EU in order to facilitate their swift return, following a fast-track examination of asylum claims (The Greens / EFA 2018: 16). However, the idea of an ultra-rapid procedure that is designed to be concluded in a few days has clearly failed in practice.

People without geographical restriction undergo their interview on the mainland, except those cases that have already begun their interview procedure on Lesvos but it was aborted for some reason. These very few cases have to travel back to the island in order to finish their procedure, extending the spatiality of entry governance of the sea borders further. Vulnerable cases that face no geographic restriction have their travel costs (by ship) covered in one of three ways:

1. For those cases that have to be accommodated in camps on the mainland, their travel cost is being covered by the Ministry of Civil Protection.
2. For those cases that have to be accommodated in UNHCR's structures on the mainland, e.g. the high-vulnerability cases, their travel cost is covered by the UNHCR.
3. For those who do not want to wait for movement by either the Ministry or UNHCR's, they have to cover the cost themselves.

Furthermore, there is the possibility of lifting the geographical restriction for 1 month (with the possibility for extensions) for some non-vulnerable cases (Border Procedure) because of serious health reasons and the need for medical exams or medical treatment in hospital that cannot be carried out on Lesvos. For serious and emergency health cases can be transferred by airplane the cost of which is met by the Ministry of Civil Protection or the UNHCR, however return travel to Lesvos must be covered by the individual concerned. One of our interviews considered the temporary-recognition of vulnerability in these cases, outside of a recognition of vulnerability in the asylum process, a contradiction (I01; guardian). Finally, those cases that have been initially recorded under the Regular Procedure and have traveled to the mainland, but the authorities have subsequently changed their status redirecting them under the Border Procedure, must travel back to Lesvos covering the travel cost themselves.

5.8.   Medical care as entry governance

In the instance of irregular arrivals in Lesvos, the provision of medical care and medical professionals play a role in entry governance. This is not only the result of the perceived links between migration and the communication of disease from a public health perspective (see Smith, 2016; Voelkner, 2011) but also because medical care plays a role in the asylum procedure around determining cases of vulnerability. Medical care has played a long-running role in border control (see Harrison, 2006; Huber, 2006) that draws medical personnel and medical knowledge into regimes of entry governance (see Pallister-Wilkins, 2018). In the case of the RIC in Lesvos, this means the HCDCP and the HUSA become part of the governing entries by sea.

L. 4368/2016 provides free access to health care for asylum seekers (and the members of their families) and beneficiaries of international protection even if they do not have social insurance. Asylum seekers have the right to free access to health, pharmaceutical, hospital and psychiatric care. However, in practice, on-the-ground access to health care services is limited by significant shortages of resources and bureaucracy (see Amnesty International 2019). Thisb is further compouneed in the case of Greece by an overall degradation of the of the public health system in Greece — even for the local population — due to policies of austerity policies underway since 2010.

Inside the RIC, the medical examination and psychosocial screening of persons belonging to vulnerable groups is being implemented by the NPHO (the successor to the HCDCP under Law 4600/2019) and the HUSA.

> "After the first registration, the refugees join the asylum procedures, they are interviewed etc., they pass for medical assessment from NPHO [formerly the HCDCP] in order to evaluate […] if they are vulnerable cases or not. NPHO functions inside the RIC both in order to do medical evaluation for the asylum procedure, and normally in order to provide medical services, but given the circumstances, NPHO's understaffed condition, […] and at the same time there is a significant increase in arrivals, there is actually such a long queue for medical evaluation that NPHO doesn't practice its medical duties, except the medical evaluation for the vulnerability. Nothing else is going on except for the medical evaluation, and this with very slow speeds. If someone gets sick, he/she will not be seen by an NPHO doctor, even though it is NPHO's duty."
>
> (I09; doctor in the NGO's clinic outside of Moria's RIC)

There are just a four-five doctors in the daily shifts inside the RIC, including those working for NGOs, for a population of 19,000 refugees. Alongside these works the HUSA, a private medical

company contracted to provide medical and psychological care inside the RIC's detention facilities, on the understanding that the Greek Police are unable to provide such expert care themselves (Interview 4). It is understood from our research that the HUSA works inside the detention facilities, carrying out medical assessments, without access to interpreters.

> "For two years now they examine the detainees' psychological state without an interpreter. And the police must have a referral from them in order to get someone to the hospital, unless it's urgent..."
>
> (I04; lawyer)

As a result of the high workload, issues of understaffing and the large refugee population, NPHO does not practice medical interventions aside from the vulnerability evaluation, meaning their role is fundamentally one linked to border control and entry governance rather than wider public health. Medical exams can be used in order to support asylum claims. According to the law (L. 4375/2016 art. 53) the authorities have the possibility to refer a refugee (with consent) for a medical and/or psychosocial diagnosis where there are signs or claims of past persecution or serious harm that can present themselves and be diagnosed medically. The law provides that these medical exams shall be free of charge, shall be conducted by specialized scientific personnel and their results shall be submitted to the competent authorities as soon as possible. Otherwise, the applicants concerned must be informed that they may be subjected to such examinations at their own initiative and expense. Any results and reports of such examinations must be taken into consideration by the Greek Asylum Service. People subjected to torture, rape or other serious types of violence should be certified by medical certificate issued only by a public hospital, an army hospital or by an adequately trained and qualified doctor of a public sector health care service provider (L. 4540/2018 art. 23). However, according to the GCR (2018: 99), "doctors in public hospitals and health care providers are not adequately trained to identify possible victims of torture [and] according to the Istanbul Protocol, a multidisciplinary approach is required — a team of a doctor, a psychologist and a lawyer — for the identification of victims of torture".

In considering the links between entry governance and public health concerns the recent annulment of the provision of a Social Security Number (SSN) to asylum seekers on July 11, 2019 has some important ramifications especially around vaccinations. The SSN allowed asylum access to the Greek public health system, access to medical and pharmaceutical care at a lower cost.

Without an SSN people cannot visit the hospital or any other public medical institution by themselves, except in emergencies. Visits and examinations can only take place following a referral procedure. This means that those resident in the RIC without a SSN have to visit either NGO doctor or a military doctor on night shift in the RIC and only after a doctor's referral can they can be accepted at a hospital or FNHN. These referrals also tie NGO medical personnel into entry governance practices (see Pallister-Wilkins, 2018) through informal processes of need and formalized practices of registration (Interview 9).

Returning to the public health implications of the annulment of provision of SSN and its impact in the vaccination process our research points to a heavy burden now falling to resource poor NGOs as they attempt to maintain public health provision through vaccination and the provision of vaccinations only in response to pandemic fears, thus undermining the pre-emptive logic of good public health governance. In this regard it is worth reproducing the words of an NGO doctor in full here:

> "Since there is no SSN, there is no vaccination process. With the SSN, like all the rest population of Greece, you had access to free vaccination, and this has to do with the integration process as well. Anyone with SSN in Greece is eligible for the free vaccines provided by the national vaccination program (the national vaccination program doesn't provide not all vaccines). When the SSN was valid, asylum seekers were able to make an appointment at the hospital, in the pediatric outpatient clinic, for example, to write the prescription, to get the vaccine free, and to return to the hospital to make the vaccine (this is the typical procedure for the whole Greek population). As long as the refugees do not have SSN, this process doesn't exist. So, the possibility of vaccination is thus left to the NGOs. With such a large population, it is no longer possible individually to do this, each child doing his/her own programming, which is a daily, regular flow of vaccinations for the hospital. The only left are the vaccination campaigns. Since the SSN cancelled, this is [he means the vaccination campaigns] what the NPHO did inside the RIC. I don't know which population did they cover, they provided the measles vaccine ... parotiditis - rubella ... this triple vaccine, because of their fear for an epidemic... it was a massive campaign, but I don't know how many people did they vaccinate... and our NGO organizes vaccinations with this triple vaccine, which probably covers possible pneumonia and measles in the winter, but our NGO had some difficulty finding the vaccine on the market, it was not able to import the vaccine from abroad, it had to find them and get them from the national market... and find them in sufficient numbers and staff to do the most mass vaccinations possible to cover all the kids in the camp. But it is impossible to vaccinate everyone. The process is up to the NGO's ability to make mass vaccinations, find the vaccines, organize them, set up the facility, find the staff, get nursing care in case something will go wrong and there is some side effect... in essence, NGO's are the ones who have taken over this process. This should not go beyond state supervision. In essence, the only involvement the state had is these mass vaccinations by the NPHO and that they are provided with a vaccination booklet by the National Public Health Organization to show what vaccines do the refugees take and when. Unfortunately, it's not the first time such booklet vaccinations take place, but the refugees maybe don't know the value of the booklet."

> (I09; doctor)

Problems are compounded due to the limited number and availability of interpreters. Moreover, because of the workload resulting from the overpopulation and the understaffing of the austerity degraded hospital, broader issues arise. This scene brings pressure both to the doctors and the patients, creating fertile conditions for the consolidation of negative links between migration and public health fears (Interview 9).

Furthermore, in linking medical personnel and decisions to the asylum process through the vulnerability procedure new avenues are opened for illegal activity in the provision of medical and psycho-social evaluations conferring a status of vulnerability. Our interviewees understood how the vulnerability procedure could be exploited through the presence of medical personnel — especially private medical providers — in the vulnerability procedure, especially by private medical providers (Interview 9). In fact newspapers have reported that authorities on Lesvos have identified an illegal network (consisting of at least a private psychologist, two psychiatrists, an interpreter and two lawyers) providing medical opinions certifying PTSD to asylum seekers.[117]

5.9.   European Asylum Support Office (EASO)

The European Asylum Office now plays a central role in entry governance in Lesvos and Greece more broadly, taking on a growing role in managing the asylum procedure as part of entry governance, especially in relation to interviewing asylum applicants and gathering essential information to the asylum claim. Its changing role in entry governance appears to respond to the changing dynamics of irregular entries by sea where there has been a marked increase in entry to the EU across the Aegean since 2015 and the work load this has placed on staff from the Greek Asylum Service.

EASO started operating in Greece in May of 2016 and was initially exclusively involved in the Border Procedure where typically EASO delivers an opinion or recommendation whereupon it is left to the Greek Asylum Service to make a final decision in line with the sovereignty of member states. EASO's role is understood therefore by those within the organization as one of support, as is clear from an EASO officer we interviewed.

> "EASO plays just a supportive role in the service of the Greek authorities. So, the EASO operators are typically interviewing asylum seekers but without making decisions. Only the Greek authorities are in charge of making decisions. EASO writes opinions, recommendations, to the Greek authorities which, by studying the interview conducted by EASO in conjunction with the opinion, the recommendation written by EASO

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[117] For example, see the article "Moria: Business with profit 3.5 millions with fake opinions – Sold 4,000 PTSD Opinions" in Ethnos (in Greek), available in https://www.ethnos.gr/ellada/77725_moria-mpizna-35-ekat-me-maimoy-gnomateyseis-poylisan-4000-bebaioseis-stres (last access 21.12.2019).

> operators, [the Greek Asylum Service] will make the decision. The Greek authorities are the ones who take the decisions. For example, if they would like to ask two more questions to this particular asylum seeker, they will invite him for a complementary interview. Otherwise, they proceed directly with the decision. In each case, our work as EASO ends when we give our opinion to the Greek authorities. Beyond that, we don't know what the final decision of the Greek authorities will be or what will happen next."

(I06; EASO field support officer)

This support role is new however as prior to L. 4540/2018, only Greek Asylum Service caseworkers (operators or handlers) could conduct interviews in the Regular Procedure. EASO started conducting interviews under the Regular Procedure in September 2018 and was limited to Lesvos in response to the numbers of irregular entries by sea on the island.

> "Always playing a supportive role in the service of the Greek authorities, EASO started getting involved in the Regular Asylum Procedure in September 2018. This took place only on Lesvos. So, there were then EASO-trained Greek-speaking operators who properly got trained in order to join the Regular Asylum Procedure. So, in September 2018, EASO started being supportively engaged in the Regular Asylum Procedure with interviews and opinions, recommendations… since our role is always supportive towards the Greek authorities, only this, we only support the Greek authorities. […] In September 2019 we had so many arrivals, massive arrivals, that the population was booming. […] So, it was decided that EASO would shift all its resources to the Border Asylum Procedure, and [the] Regular Procedure ceased… In Lesvos, for the moment, we no longer take over new cases under the Regular Procedure. […] We send the Regular Procedure cases to the mainland. So all of our resources are focused on [the] Border Procedure [cases] in order to help the people not to get stacked."

(I06; EASO field support officer)

According to the GCR (2019: 45), in case of applications referred from the Fast-Track Border Procedure to the Regular Procedure (e.g. due to vulnerability) following an interview held by an EASO officer, a supplementary first instance interview should be conducted by a Greek Asylum Service caseworker, however the GCR claims this is not always the case.

> "GCR is aware of cases where, despite referral to the Regular Procedure, no interview with an Asylum Service caseworker took place and thus the only interview conducted before the issuance of the first instance decision was done by an EASO caseworker. In 2018, in a case supported by GCR, the Administrative Court of Piraeus annulled the 2nd instance asylum decision and returned the case to the Appeals Authority in order to handle it according to the Regular Procedure guarantees prescribed by law. In this case, despite the applicant's having been identified as vulnerable, the only interview had been conducted by EASO personnel" (GCR 2019: 45).

EASO has been criticized both for the asylum policy it promotes and the practices implemented in the field. Concerns have been raised about EASO's vulnerability assessment (see "Vulnerable cases"), about the confidentiality, the credibility and the quality of the interviews and the decisions, focusing especially on the erroneous use of country of origin information (see GCR 2019: 46; The Greens / EFA 2018: 17-20). As an asylum lawyer we interviewed states:

> "[In] my opinion, the interviews conducted by EASO English-speaking officers are incomplete. For example, they ask him "Why did you leave your country?", he answers "Because I joined a demonstration and then the police came to my house and they beat me and I ran away and left", "Did you finish what you had to say?", "Yes", "Do you have anything else to add?"… That is, you are dealing with a man who doesn't know the process, usually he didn't go to school, he does not have a lawyer, and you ask him just a question and that's it… There are many things you can ask in order to understand if a person is actually being persecuted, like "What happened with the other demonstrators?" … This is what I mean with the "incomplete interviews"."

> (I04; lawyer)

This interviewee went on to explain the reasons for what they see as both incomplete EASO interviews and unnecessary questions levelled at all applicants despite the specific dynamics of the EU-Turkey Statement and the designation of Turkey as a safe-third country. It is worth presenting their insights here in full as they touch on a number of important issues, including training, a lack of professional experience, policy tensions with other agencies including the Greek Asylum Service, and Turkey's geographic restriction in relation to asylum, whereby only those from Europe are considered eligible for asylum:

> "For sure, the staff is poorly trained. Furthermore, they conduct an interview both in order to evaluate the vulnerability and in order to find if Turkey is a Safe Third Country. This only applies to Syrians, but EASO disagrees and suggests that it should apply to everyone, so they ask

everyone questions about this issue. So, they ask them questions for 5 hours, useless questions like "What did you eat in Turkey?", "Where did you stay in Turkey?" and they don't ask, for example, if he had any paper in Turkey -I have faced such examples... this is important. It's not important where did he stay and with whom, but the important [thing] is, for example, if he had papers, if the police arrested him etc... [In] my personal opinion, this is EASO's policy. For example, when UNHCR clearly says "Don't return people back to Iraq" … EASO's opinion is different than UNHCR's one. I think that this is a guideline... […] Of course there are many factors influencing this… the long interview that makes both operator and asylum seeker tired, the operators don't have the right training… In the past, things were worse. Some better trained EASO Greek-speaking officers arrived on Lesvos in order to start conducting the Regular Procedure interviews. […] Speaking about EASO's English-speaking officers, they are too young, it's not proper to recruit such young people, with poor training… I am not referring to the Greek staff who arrived later and they entered through the Asylum Service and they were experienced in the refugees' field... I'm talking about the English-speakers participating in the Border Procedure… […] The truth is that, in general, Asylum Service's interviews are much better. The Asylum Service considers Turkey unsafe for everyone except Syrians and issues inadmissibility opinions only for Syrians, while the EASO says that the inadmissibility issue applies to everyone, except some individual cases. The logic behind EASO's suggestion is that Turkey can examine everyone's case. Yes, Turkey may give Syrians a residence permit for 1 year, but it never examines their asylum applications. Turkey gives nothing to the other nationalities, not even a document, let alone residence permit."

(I04; lawyer)

Therefore their appears to be a tension between the claims that EASO only plays a supportive role and the claims that EASO intercedes into the work of the Greek Asylum Service and how they choose to interpret the EU-Turkey Statement and the designation of Turkey as a safe-third country. However typically, EASO conducts interviews and delivers recommendations, in support of the Greek Asylum Service, a conclusion reached by both interviewees from the Greek Asylum Service and lawyers.

"In almost all the cases the decision is the same with the EASO's opinion; the Asylum Service just translate the EASO's opinion."

(I03.1; Asylum Service officer)

Therefore, more often than not EASO and the Greek Asylum Service reach similar decisions, however there are some important differences in specific cases relating to dynamics that cannot be captured by the broad-brush country of origin policies that strip the asylum process of nuance.

"The only difference is the one I described above [that the EASO suggest inadmissibility opinions for everyone] … and in a few other cases... Unfortunately, according to my experience, speaking about the Syrian Kurds, for example, the Asylum Service agreed to their return to Turkey, so you had to appeal etc. In case the Palestinians can prove that they come from Syria, but they are Palestinians, then they will not be returned back to Turkey. However, in general, Asylum Service's operators accept EASO's opinion, they copy them... and no one of them complains about the quality of the EASO's interviews in order to call the asylum seeker again for further questions…"

(I04; lawyer)

When pushed on the lack of nuance in country of origin policies governing the asylum procedure EASO was clear that recommendations are still given on a case by case basis while reaffirming other Fundamental Rights principles.

"These are case by case. It does not mean that the man who is Palestinian from Syria, for example, will get rejected because he is Palestinian from Syria. These are case by case. Every person, even if he lives in an area without war, can leave because his/her life is in danger. If he/she returns, he may be in danger. This may depend on various issues, risks, problems which this person may face in the country of origin. […] So, our judgment is not based on the nationality. Whether or not we recommend for an asylum seeker to receive protection depends solely on the interview we have with this person as a human being and not as a former resident of a particular country, of a particular city etc. […] Everything can be important. Everything is subjected to evaluation procedures and each case is being separately managed... This doesn't mean that someone who is not a Kurd, for example, someone from Cameroon, will be returned back to Turkey. It doesn't depend on nationality. During the interview, we give to the applicant the opportunity to talk about the reasons for not wanting to be returned to Turkey. So, he/she will be asked if there are any specific reasons, why he doesn't want to return. Every man, wherever he comes from, may have his own reasons why he does not want to return to Turkey. So, the interviews in general, and the admissibility and eligibility procedures, do not depend on which country you are from, whether there is a war… or whether Turkey invaded... It does not depend only on it. You, as a human being, your life, your own life, your life in Turkey, your personal features, your experiences, your reasons, your fears, all of them are being valued, estimated, so that a decision will be made for you, as man, as a person, not for you as a nationality."

(I06; EASO field support officer)

5.10. Conclusion

From our research it is clear that the events of 2015, when approximately 1,000,000 people arrived in Lesvos (UNHCR, 2015), continues to shape the overall operational response from interception and rescue at sea, to the reception, registration and identification procedures undertaken in the RIC, to the asylum procedure. The operational environment is shaped by this feeling of 'crisis' resulting in both the application of various fast-track procedures and the presence of a range of local, national, and supranational actors, working together on various aspects of entry governance. This results in actors with a range of competencies, from individual police officers, to medical personnel taking important decisions relating to entries on Lesvos. This already complex administrative landscape has been further complicated by the change in government in Greece in July 2019 resulting in changes to a number of administrative agencies (e.g. HCDCP, now NPHO) and the closure of the Ministry of Migration Policy with key migration-related services now falling under the remit of the Ministry of Citizen Protection.

In addition the complex operational environment for all personnel has been further compounded by changes to the legal framework governing irregular entries by sea that has been operational from January 1 2020. Furthermore, the central role of the RIC along with material conditions and constraints on the island, including large-scale overcrowding, have a detrimental impact on the working conditions of entry governance as well as the presence of a number of NGO actors in peripheral and at times — of high pressure — central roles.

Our research aimed to uncover instances of operational discretion in entry governance in Lesvos. We found three main interrelated areas where such operational discretion plays a role in governing entry:

1. Nationality screening and the subsequent decision to place an arrivee under administrative detention.
2. Vulnerability assessment, including a medical examination and psychosocial evaluation, undertaken by the HCDCP/NPHO, the HUSA, and in certain cases EASO.
3. Asylum decisions, taken by the Greek Asylum Office in conjunction with (ambiguous) operational support from EASO.

In all three of the above interrelated areas, shortages of personnel and relating overwork impact on the operational environment, leading in certain instances to charges of institutional overreach, as in the case of EASO, and a lack of clarity concerning operational mandates.

A further key finding of our research into entry governance at sea borders, with a focus on Lesvos, is the central, structuring role that vulnerability and subsequent protection processes play in shaping entry governance at every stage. From initial surveillance and rescue/interception at sea, to how arrivees are processed through the RIC, the material conditions of residence while on Lesvos, any possible onward movement to mainland Greece,

and asylum decisions. The centrality of vulnerability and issues of protection are important findings as they complement the focus of Workpackage Four on protection issues in the borderlands of Europe.

6. General conclusion

In this deliverable, we have examined operational practices of entry governance across three operational settings, which correspond to the three 'types' of borders that third-country nationals may cross in order to access the territory of EU and Schengen states. Through an analysis of entry by air at Brussels Airport (Belgium), entry by land at the Terspol/Brześć border crossing (Poland/Belarus) and entry by sea on Lesvos (Greece), we have sought to provide a 'bottom-up' perspective on how entry is governed in the EU and Schengen area. While we do not cover every single aspect of the research presented thus far, we outline in this conclusion general findings that should inform subsequent ADMIGOV work in WP1 and beyond.

The first general insight is that operational entry governance practices are diffused across multiple locations. While the degree of diffusion varies across the different operational settings we examined, it is fair to argue that entry governance does not take place in a single location at a specific time. This is probably more pronounced in the case of entry by air, where the enrolment of air carriers in the conduct of document and identity checks on travellers means that third-country nationals (and EU citizens) are checked multiple times before they even leave their point of departure. Entry governance also extends beyond the moment when persons have physically arrived on the territory of EU and Schengen states. This is the case at air borders in particular, but perhaps more strikingly in the operational setting of Lesvos, specifically when entry occurs outside of the channels designated by national and EU authorities.

The implication of this diffused operational entry governance – and the second insight from the research presented here – is that entry is not conditioned by a single decision. Third-country nationals, and to a lesser extent EU citizens, are repeatedly sorted and channelled through multiple assessments of their documents, identity and status, performed by different actors with distinct remits, rationales and interests. What differentiates operational settings and categories of persons, in this respect, is the number and types of assessments, the logic according to which they are performed and by whom they are performed. At the same time, we find in all three settings that the role of border guard/police is central not just because they take decisions related to entry, but also because they gather and report information that impacts other assessments and evaluations. This is particularly striking in the operational settings of Brussels Airport and Lesvos. We also find that the decisions and/or information collected and reported by border guard/police actors are not always up to the standards set in key norms such as the SBC. This concerns the requirement that decisions are taken on an individual basis and based on clear and explicit criteria. In all three settings there are issues related to this requirement, most strikingly perhaps in the operational context of the Terspol/Brześć border crossing. Interestingly, findings related to that particular setting suggest that it is in part the working conditions at the crossing that do not allow for appropriate procedures to be observed.

Thirdly, we find that operational entry governance is diffused and disaggregated, but that the boundaries between the actors involved is also blurry. Since operational entry governance involves the sorting and channelling of third-country nationals through multiple assessments, actors who are not primarily responsible or competent for border and migration enforcement find themselves in that position. This is the case for airline employees in the context of entry by air at Brussels airport, as well as for instance of medical professionals in the context of entry by sea in Lesvos. While the notion that migration governance involves chains of actors operating across formal governance 'levels' is a starting assumption of ADMIGOV, in the case of operational entry governance these chains also involve interactions across governmental/non-governmental, public/private, commercial/non-profit boundaries and across sectors of activity such as border enforcement/law enforcement, health/migration or border enforcement/international protection. These interactions do not just signal that operational entry governance is a plural process, but that it is a site of friction and conflict. These frictions can arise because of administrative, material or organisational issues – for instance, in the case of Brussels Airport, as the result of organisational flux around the functioning of various federal police services – but also because of diverging understandings of a particular issue – for instance in the differences between the assessment of applications for international protection by EASO and the Greek Asylum Office.

Researching the operational side of entry governance has also led the deliverable to discuss the normative architecture of entry governance. Operational practices of entry governance are found to diverge, in some cases markedly, from the rules and procedures in the EU's 'law of entry', including on foundational aspects such as the principle of non-refoulement found in Article 4 SBC, as found for instance in the case of the Terspol/Brześć crossing. In addition, we find that rules, procedures, standards and practices for operational entry constitute a messy entanglement of norms formulated in distinct circumstances – for instances rules and procedures for the governance of civil aviation, in the case of entry by air – and unfolding at different scales. In the case of entry by air again, EU rules become entangled with international rules on the role of air carriers and with commercial practices such as the transportation contracts between airlines and their customers, as well as with local arrangements between national authorities and specific air carriers that contribute to expand the role of the latter in border and migration enforcement.

In general, the diffused, disaggregated and entangled character of operational entry governance raises a series of questions as to whether it constitutes a safe and orderly context for third-country nationals. In stating this, we are fully cognisant (and have shown in this deliverable) of the fact that most of the persons who cross the external borders of the EU do so without encountering obstacles. However, we also find across the various operational settings under examination that entry governance practices do, albeit to various degrees, jeopardise fundamental rights. Entry may well the stage – to be confirmed by further ADMIGOV research - where third-country nationals are the most exposed to systematic detention, expedited pushbacks or deportation if they do not meet all conditions for access. This is shown, for instance, by the practice of pre-emptively issuing a deportation order for persons who are refused entry and have applied for international protection, which is found

both at Brussels Airport and, for some persons who are deemed less likely to be recognised as refugees, in Lesvos. The fact that, particularly in the context of entry by air and entry by sea, border and migration enforcement authorities have the capacity to hold persons 'at the border', that is off the legal territory of the state, in spite of these persons being manifestly and physically present, is another particularly striking feature. The issue here concerns in part legal certainty and predictability, the fact that third-country nationals can safely foresee what will be asked of them upon entry, who takes decisions about their admission, and in what circumstances they can be denied access to the territory.

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