

Border control in compliance with EU acquis

PhD (C.) Miranda Boshnjaku

Abstract

Nowadays, when economic globalization, international migration and fear towards terrorism and organized crime have been increased, a proper management of borders is a political priority, both within EU and wider. The term Integrated Border Management (IBM) refers to the coordination and cooperation among all law enforcement agencies involved in border security and facilitation of trade to introduce efficacious systems of integrated border managements, in order to achieve the common goal for open but controlled and secure borders. Several actors have been involved in tasks related to the management of state borders in every country. Although they clearly have a different focus and objectives in accordance with their duties and responsibilities, they work together towards a common strategic goal.

Keywords: border control, EU Acquis, Albania.

Introduction

Border Control is in line with the National Strategy on Integrated Border Management and its Action Plan (Inter-sectorial Strategy 2014 – 2020), as approved by the Decision of the Council of Ministers Nr. 119, dated 5.3.2014 (Inter-agency cooperation; A) Regulatory Legal Framework; Strategic Objective Nr. 1 “Ensure that legal and normative acts to be developed will be in full accordance with the *acquis communautaire* and best practices”. The draft act is in accordance with the Political Program of the Council of Ministers, to be adopted in 2016 and is also part of National European Integration Program for the period 2016-2020.



General Information

Capital:	Tirana
Area:	Total: 28,748 km ² (land: 27,398 km ² , water: 1,350 km ²) General: 1079 km (land: 717 km; maritime: 362 km);
Border:	Bordering countries: Montenegro 151 km, Kosovo 112 km, Macedonia 172 km, Greece 282 km)
Population:	Registered based on the Civil Registry Office : 4 329 326 Population according to INSTAT (Average Annual Population 2014): 2 894 475; Density: 100.7/km ²
Language:	Albanian is the official language in Albania. Other regional languages are government-recognized minority languages, such as Greek, Serbo-Croat and Macedonian.

Integrated Border Management (IBM)

Traditionally, state-level strategic goals related to border management are based on border protection against threats to national security, national economy and public health but also in the prevention of cross-border criminal activities and illegal entry into the country or abroad.

Border services, including border police and customs, veterinary services and phytosanitary services, play an important role in this regard.

Border services are obliged to ensure the safety and health of people, animals, plants and cultural heritage. Since the threats and risks are numerous, the required control system must be quick and effective at the same time, in accordance with a complex management. On the other hand, the growth of international trade and tourism, as well as increased cultural and educational exchanges that facilitate the movement of people and goods is an important strategic objective for most countries.

Therefore, border services are required to achieve a delicate balance between strict controls concerning the risks and fully open borders. In order to balance these objectives of modern borders management - that is border security and facilitates movement of people and goods - efficiently and effectively, appropriate equipment and well-trained and motivated staff and strong legal base are very important. A clear division of tasks and responsibilities as well as the efficient exchange of information is required.

Given the complexity of the task, this cooperation and coordination should not be limited to units within a ministry or agency, but also between all stakeholders involved in border management within a certain country and internationally. Integrated Border Management, led by the solidarity principle, is based on a technical operational strategy and is composed by the following elements:

- The border control (verification and surveillance), including the measures taken together with the other law enforcement authorities to prevent, detect and investigate cross-border crime;
- The risks analysis for internal security and threats assessment that may affect the operation or safety of borders;
- Interagency cooperation between the Border and Migration Police, Customs Authority, National Food Authority and all other authorities related to the border, including regular exchange of information through existing mechanisms of information exchange;
- Cooperation with other countries, focusing in particular on neighboring countries and other countries, which have been identified through risk analysis as countries of origin and transit for illegal immigration;
- Technical and operational measures, which are related to border control and aim to prevent illegal immigration and cross-border crime strike;
- The return of foreign nationals who stay illegally in the territory of the Republic of Albania;
- The use of technology, including information systems with large-scale;

Following the developments in the corresponding EU-*Acquis*, the question of Fundamental Rights was elevated in its importance to ensure that whatever activities are undertaken in the context of border control, there are international obligations to be followed and all activities are to be carried out in a non-discriminatory manner, following the principle of proportionality and on a strict case-by-case basis.

Border control is now clearly divided in border checks and border surveillance. Border checks are further subdivided into first and second line checks, minimum and thorough checks. Border control is divided - in accordance with the EU *acquis* - in border checks (measures at authorized border crossing) and border surveillance (measures in sections of the border between the BCPs and measures at the BCPs out of working hours). First line checks are carried out at passport control booths. Second line checks are further checks to be done away from first line in separate premises. Persons are subject to further checks if during first line checks issues are detected that require further inquiry. When being submitted, persons are now to be properly informed about the procedures by handing out written information.

Assessment of the legality, constitutionality and harmonization with the domestic and international legislation in power

The draft Law on Border Control is in accordance with the Constitution of the Republic of Albania, specifically with Articles 78, 83 - paragraph 1 and article 37, paragraph 3 thereof.

The draft Law on border control is furthermore fully in line with the relevant EU- and Schengen-*Acquis* in this field¹. The draft-law on "Border Control" defines the rules for

¹ The draft Law on Border Control is in line with the relevant *Acquis Communautaire* in this area, namely the Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code; last amendment Regulation (EU) No

the border regime of persons who cross the state border of the Republic of Albania. Border control is under administrative jurisdiction of the Minister responsible for public order and security. Border control activity, namely, verification and border surveillance, is carried out by the Border and Migration Police, which must be equipped with the human and financial resources, equipment and technology necessary for the fulfillment of its duties. It is authorized for installation and use of technical equipment and the use of dogs and establishment of barriers to prevent people crossing the border outside authorized BCPs; it is authorized to take pictures, video image and use automated equipment, as long as it is necessary to verify the identity of persons and the prevention and detection of criminal activities and to apprehend the perpetrators. BMP can also use automated verification systems (ABC Gates) to carry out border checks.

Border Verification is the verification of the person, his belongings and the vehicle, in order to obtain a complete picture on the person who wants to enter or exit. Based on this assessment, a decision is made on entry, exit or refusing the request.

For this reason, it is necessary that border guards should be equipped with powers to carry out their duties, either alone or in cooperation with customs officials or other authorities operating at the border. In order to complete their tasks, they may access every piece of land and water and run (vehicles) on every street. Measures to be taken can be enforced in cases stipulated in this law. Competencies include verification of documents and in case of indicators that justify suspicion that the document is interfering or presents false information, their seizure. Verifying the identity of the person and the circumstances related to the intended trip also includes verification of the relevant data bases, the question of the person subject to the control and verification of objects and their vehicles outside and inside. Based on this comprehensive overview, which should be followed, a decision is made to allow or refuse entry or exit. Refusals are clarified and limited for certain specific cases as defined.

The competences of the Border and Migration Police stipulate authorization to verify persons, belongings and vehicles within the territory of the Republic of Albania, to detect foreigners staying or transiting illegally in / through the territory of RA, as well as to prevent, detect and fight cross-border crime. BMP has further competences to fulfill investigative and procedural actions in criminal cases related to the border, except those which are investigated especially by other police or other agencies.

Border crossing points are opened, and defined by the Council of Ministers. In cases of green border crossing points, the decision is based on an inter-governmental agreement. Agreement or decision of the Council of Ministers also determines the location and possible restrictions for groups of people, the type of traffic or geographical limitations. As a new element, an additional category is introduced in the new draft-law - the temporary border crossing points. These temporary BCPs will be used to implement cross-border projects, such as cultural, tourist, scientific or sports, civil emergency exercises, measures to separate traffic or agricultural issues and forestry. Opening of these BCPs will be under the competent regional authorities, local Director of the Border and Migration Police. The agreements for permanent

1051/2013 of the European Parliament and of the Council of 22 October 2013).

BCPs and the orders for opening temporary BCPs take into consideration the relevant permits by the customs, aviation, and aspects of security and public order, economic relations and the expected flux, as well as the human resources for a proper running of business in there.

Verification of persons provides border verification according to Border Schengen Code with regards to the movement of persons, including also means of transport and objects in the possession of the person who crosses the border, if the latter do not constitute a danger to public order and security, etc. The common goal of these checks is to have a complete picture on the purpose of the travel thus enabling border guards to guarantee entry-exit access to the person. The concept of border checks includes the procedural standpoint, checks first line checks and second line checks, as well as the requirement for written information to be given to any person who becomes subject to a second line check. From the perspective of content, it is divided into minimal checks and thorough checks, with specific amendments for thorough checks in entry and exit on the conditions that basically undergo minimum checks, but on basis of risk analysis and non-systematic basis. Also, it is envisaged as an exception to the general rule of verification border, which for certain categories of persons (such as heads of state, dignitaries with prior notice, pilots and crew members, workers cross the border, minors) and means of transportation (air-airport, aerodrome flight, private, joint-point road crossing, rail, maritime cruise ships, ferries, recreational boats, cargo, fishing boats) special rules apply, which are determined by the Council of Ministers.

Travel documents of foreigners, are stamped on entry and exit systematically, paying special attention to the travel documents containing visas, since the exact number of residence is essential for the determination of possible violations of the residency period. Sealing rules which are unified with the rules of marking Schengen Borders Code. No stamps are put in entry and exit travel documents to nationals of the Republic of Albania, EU, European Economic Area and Switzerland, Andorra, Monaco and San Marino, as well as travel documents of foreigners who possess a residence permit validated in accordance with the legislation on foreigners. Furthermore, there are exceptions with regard to the heads of states and other personalities, for whom there is a prior notification, licenses pilots, crew members of aircraft and passports of sailors, as long as they do not leave the area of the port and members of the crew and passengers of vessels, if they are not subject to border verification. Exceptionally, at the request of the foreigner, the entry-exit stamps can be placed on a separate sheet of paper, where the name and passport number of the person is written down, because stamping the passport may cause serious difficulties for the person. The format and technical specifications of seals, sealing and rules are determined by the Council of Ministers.

Expected effects of this draft-law

Expected effects of this draft may be summarized as follows:

- Border control is now – in compliance with the Schengen Borders Code - defined as the activity carried out in response to an intention to cross or the act of crossing the border. This activity is divided into border checks (carried out at border

crossing points) and border surveillance (carried out at the segments between border crossing points).

- The content of the legislative proposal is reduced to the requirements to perform border control in accordance with the EU-Integrated Border Management concept.
- The possibility for accompanying CMD allows for a harmonization of procedures along the whole border and also for flexibility in case of upcoming minor developments in the *Acquis*. Compliance with minor amendments in the *acquis* can be ensured by changing DCM, without changing the law itself.
- The new concept for temporary border crossing points increases the responsibilities for the Regional Directorates, but also the possibility for people living in the border regions to increase cross-border contacts and regional development.
- Refusals of exit are regulated in accordance with the principles of effectively, legality and efficiency and brought in line with obligations deriving from international law. All Albanian citizens now have the right to freely leave their country and return back to it, except for specifically enumerated cases, which also include latest issues related to suspected cases of terrorism.

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