

RISK ASSESSMENT DURING BORDER CHECKS

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Abstract. *As a complex mechanism, the activities of the State in all its various spheres of existence are carefully planned, both in the long and short term (Wagner, 2021). The activities of the State institutions that ensure national security and carry out the various executive functions entrusted to them are no exception. The role of the State Border Guard Service under the Ministry of the Interior of the Republic of Lithuania (further – SBGS) in this context is of particular importance, since the officers of the Service - border guards - are the first to greet, or to see off, persons arriving in, or leaving, Lithuania. Despite this unique role, in addition to the other very important functions assigned to it, the SBGS also performs another function directly related to national security and the security of all of us: risk analysis and assessment. This work is carried out by the SBGS at several levels. The highest of them covers long-term monitoring, identification of risk factors, trends and their constant updating, while the lowest one is the risk assessment carried out by a specific officer, at a specific time, carrying out a border inspection, which starts the whole chain of risk assessment, which contains information on the risk factors observed and recorded by the officers during the course of their service.*

The aim of the article is to present the actions of the SBGS officers in the course of the risk assessment during the border inspection. The aim is mainly based on the provisions of the legislation and the recommendations offered by Frontex.

Keywords: *border checks, risk, threats.*

Introduction

A border checks include "an examination of persons, documents, vehicles and objects to determine the lawfulness of the movement and presence of persons, vehicles, objects, goods and goods across the state border and their presence on the border, in the territorial sea, in the territorial sea and in the border waters"(Act No. VII-1666,2017). Checks are carried out at border check posts, which may be located on roads, at international airports, at ship or river ports or at railway stations, but it is at international land border check posts that the largest migration flows are recorded and the most intensive risk assessment is carried out. It goes without saying that when crossing the state border we are obliged to present a travel document confirming our identity, and if we are travelling by car - the car documents as well, but not everybody is aware of the fact that State Border Guard Service of the Ministry of the Interior of the Republic of Lithuania officers are obliged to carry out a risk assessment and risk factor assessment of a person and a vehicle, among other things, in order to decide whether to allow a person to enter our country, whether a person poses a threat to national security, public order, or whether a person is attempting to enter Lithuania by illegal means (Land, Ricks & Ricks, 2014). The risk assessment process is provided for and guided by certain specialised internal regulations of the SBGS and the Common Integrated Risk Analysis Model "CIRAM 2.0" developed by the European Border and Coast Guard Agency (further -Frontex) and applied in

the Member States of the European Union (Neal, 2009). Although officers are familiar with the risk analysis model and procedures provided for in the legislation, each assessment case is individual, as they are dealing with different individuals from different countries, social backgrounds and with different intentions, which makes it necessary for border guards to be able to carry out risk analysis in different and often uncomfortable situations, applying the legal norms they are familiar with, in a flexible and adaptable manner. The question is therefore whether officers are strictly bound by the requirements of the legal norms when carrying out a risk assessment, or whether they are nevertheless of a recommendatory nature and the practical implementation of the risk assessment varies during border checks.

The concepts of risk and threat

One of the main functions of the SBGS officers is to assess whether the person crossing the state border poses “they are not considered to be a threat to public policy, internal security, public health or the international relations of any of the Member States” (Schengen Border Code, 2016). In other words, to assess and prevent potential risks.

In a general, risk refers to some possible threat of a negative outcome, but risk and threat are not identical concepts.

Risk is defined in the Lithuanian dictionary as "a thing connected with a possible danger" (Dictionary of the Lithuanian Language, 2002). It also uses the synonym "hazard" to define the concept of threat. Obviously, this description of the above terms is acceptable in everyday language and does not fully reflect their content in the context of risk assessment in border control.

The definition of a threat in the Risk Analysis description (further - Description) is as follows: "A threat is an external factor that may adversely affect the security of the State border" (Order of the Head of the State Border Guard Service under the Ministry of the Interior of the Republic of Lithuania No 4-615 of 30 December 2016). It can be safely stated that this definition is much broader and more complex than the one provided by the Lithuanian dictionary. The definition suggests that the concept of threat is seen in two ways. First of all, it is a factor which may have a negative impact on the security of the State border. Naturally, an act or process that may have a positive or neutral impact on border security is not considered a threat by the SBGS. Secondly, the factor must be external, i.e. originating not within the state but outside it and directed towards the Republic of Lithuania. The Description also establishes the concept of risk – “Risk is a combination of the likelihood and magnitude of the threat of a breach of the State border, the level of vulnerability of the State border, and the impact (consequences) of the breach” (Order of the Head of the State Border Guard Service under the Ministry of the Interior of the Republic of Lithuania No 4-615 of 30 December 2016) . The fact that the definition states that the concept is a combination of several elements indicates that it is complex and requires special attention. First of all, it should be noted that threat, in the Description, becomes part of the concept of risk, which means that the concept of risk is broader and more encompassing than that of threat. Secondly, the concept of risk provides for a relationship between the likelihood of a threat and the scale of the threat, i.e. it is not only assessed whether some factor dangerous to the security of the state border is likely to occur, but it is also attempted to measure the extent to which it would occur. Thirdly, the notion of risk includes an assessment of the level of vulnerability of the border, e.g. in sections where there are fewer technical border surveillance measures, say cameras, the level of vulnerability of the border will be higher than in sections where there are more cameras, and this is important to assess. Finally, it should also be noted that the concept of risk in the Description also refers to

the impact of the violation, i.e. the assessment of the consequences for border security, national security, public order, or any other aspect of national life of the negative factor, and whether these consequences will be of a short-term or long-term nature. If the risk is confirmed and an adverse factor affecting the security of the State's borders occurs, the human and financial resources available to the State may have to be deployed in order to remedy the effects of the factor or to repair the damage. Such potential losses should also be considered in the risk assessment.

Frontex, with which the SBGS and border authorities of other EU Member States cooperate actively, also bases its activities on risk analysis. The Agency's official website identifies risk analysis as one of its main responsibilities: "Risk analysis is the starting point for all Frontex activities, from high level strategic decision-making to planning and implementation of operational activities. Frontex collects a wide range of data from Member States, EU bodies, its partner countries and organisations, as well as from open sources on the situation at and beyond Europe's borders. The data is analysed with the aim of creating a picture of the situation at the EU's external borders and the key factors influencing and driving it." The last sentence implies that the Agency's risk analysis is of the highest level, as it is the basis for the activities of the international institution (Wagner, 2021).

In the context of risk analysis, Frontex recommends the Common Integrated Risk Analysis Model (further - CIRAM 2.0). The aim of this model is to "establish a clear and transparent methodology for risk analysis which should serve as a benchmark for analytical activities, thus promoting harmonisation and the preconditions for efficient information exchange and cooperation in the field of border security" (Guidelines for Risk Analysis Units, 2013). "A threat is defined as a force or pressure acting on the external borders. It is to be characterised by its magnitude and likelihood"(Guidelines for Risk Analysis Units, 2013). There is a notable difference between the national and international levels of the concept. As Frontex is an agency of the European Union, responsible for the protection of the EU's external borders, a threat is not defined as a factor that threatens the security of a country's borders, but rather as a force that could affect the external borders of the European Union as a whole. The scale of the threat at national level is limited to a specific state, but in the context of a threat to the external borders of the European Union, the association is with a threat that is either very powerful, or one that involves a very wide range of actors (States), and which would be dealt with the help of other Member States. For example, the irregular migrant crisis in Lithuania, during which officials from various Frontex Member States were deployed to the Republic of Lithuania, humanitarian aid was provided because in the initial stages of the crisis Lithuania lacked the human resources to deal with the unusual phenomenon. Considering the threat to the security of the borders of a particular state, a localised factor is already imaginable, which the state is capable of dealing with on its own. The CIRAM 2.0 generic integrated risk analysis model also identifies the concept of risk, albeit through an international, European Union prism, and refers to it as "external border management risk". This concept is defined as "the magnitude and likelihood of a threat occurring at the external borders, given the measures in place at the borders and within the EU, which will impact on the EU internal security, the security of the external borders, on the optimal flow of regular passengers or which will have humanitarian consequences" (Guidelines for Risk Analysis Units, 2013). It can be seen that the concept is essentially similar to the one used in the SNS documents, but its content is broader, at the European Union level, referring to the security of the EU borders. This strong similarity is due to the fact that the legislation of the SBGS, which defines the risks, their analysis and the related processes, is based on the CIRAM 2.0 model developed by Frontex.

Thus, we can conclude that both national-institutional and European Union legislation define the concept of threat as a certain factor that may have a negative impact on the external borders of the state or the EU, while risk is understood as a complex concept, a combination of the concept of threat, its likelihood and scale, the possible violation of the state's or the EU's external borders, public security, public order, and the consequences of such a violation. At both national and international level, the concept of risk is broader than that of threat (Strachan-Morris, 2012; Tumulavičius & Greičius, 2017).

Levels of risk analysis and features of the risk analysis process

The risk assessment at border checks starts long before the person arrives at the border check post. This preliminary process of assessing potential risks is called risk analysis. "Risk analysis is a systematic assessment of the threat to the State border, the vulnerability of the State border and the impact (consequences) of a breach" (Order of the Head of the State Border Guard Service under the Ministry of the Interior of the Republic of Lithuania No 4-615 of 30 December 2016). Obviously, the concept of risk analysis is very similar in content to the concept of risk, but the key difference in the definition is that risk analysis is a process - a long-term, consistent, analytical process of assessing threats, which produces results - a certain number of conclusions that are then used by officials. In the CIRAM 2.0 model published by Frontex, we find two definitions. One of them describes the concept of analysis as such: "analysis identifies, describes and assesses a risk, threat, vulnerability or impact" and the other one is intended to explain the concept of risk analysis in more concrete terms: "[...] a systematic study of the components of risk, with the objective of obtaining information and providing it to decision makers" (Guidelines for Risk Analysis Units, 2013). The decision-makers in this case are border guards in the course of their direct duties, carrying out border checks and assessing risks in real time.

In order for the findings of the risk analysis to reach border control officials and be used as a basis for their risk assessment, there must be a continuous process of risk analysis, which is, of course, regulated by law, as are all processes in a state governed by law. In particular, it is necessary to talk about the levels of risk analysis. "Risk analysis is carried out at three levels: strategic, operational and tactical. Risk analysis can also be tailored to the specific case as required" (Guidelines for Risk Analysis Units, 2013).

"Strategic risk analysis analyses the most strategically relevant information. It identifies potential changes and suggests courses of action. All the information is systematised and a strategic picture (relevant phenomena and key factors) is developed. The strategic risk analysis collects statistics and produces a trend and qualitative description. The results of the Frontex risk analysis are used. The strategic risk analysis shall be carried out at the headquarters of the SBGS" (Order of the Head of the State Border Guard Service under the Ministry of the Interior of the Republic of Lithuania No 4-615 of 30 December 2016). Risk analysis at the strategic level does not only focus on the risks and threats prevailing in the Republic of Lithuania, but also considers the trends observed in the international arena, which the SBGS learns about by evaluating the results of the risk analysis provided by Frontex.

"Operational risk analysis is carried out at all levels of administration of the SBGS units - central, territorial and local." This is the only level of risk analysis that is carried out at both the central SBGS and at the frontier districts. "The task of operational risk analysis is to prepare qualitative and quantitative analyses of the operational conditions, objects and results of its activities". As stipulated in the Description, this level of risk analysis analyses not only the conditions under which officers work, the risks and threats that are observed during their service

or the objects that pose them, but also the performance and results of the activities of the SBGS and its officers. Thus, it can be said that at this level, the Service assesses how it is managing to deal with the identified risks and threats, and that, once assessed, "special attention must be paid to the elimination of deficiencies" (Order of the Head of the State Border Guard Service under the Ministry of the Interior of the Republic of Lithuania No 4-615 of 30 December 2016). Although all three levels of risk analysis are interlinked in one way or another, operational risk analysis has a direct link to tactical risk analysis, as "operational risk analysis is used to establish risk profiles and descriptions of criminal methods for the tactical level of risk analysis."

"Tactical risk analysis is a real-time assessment of the situation in relation to the tactical situation. [...] it is an assessment of the persons and vehicles to be checked based on prior information on specific persons, risk profiles, warnings of possible offences or descriptions of criminal methods." (Order of the Head of the State Border Guard Service under the Ministry of the Interior of the Republic of Lithuania No 4-615 of 30 December 2016). As tactical risk analysis is carried out in real time during border checks, it is "implemented at the local level of the administration of the Service", i.e. at the border posts within whose area of operation the border guards carry out their direct duties of checking persons and vehicles, mostly at border checkpoints and less frequently during patrols. Although the local level of administration includes the smallest structural units of the SBGS, i.e. the border crossing points, the risk analysis carried out here is of particular importance, as the results of the risk analysis are directly communicated to the officers. More details on the risk analysis at the level of the BCP and the persons responsible for it are provided in the Regulation on Border Control, which describes the assessment of the situation in the area of operation of the BCP. "Situation assessment in the area of operation of the BCP means the risk analysis of the BCP commander based on the current methodology of the CIRAM and the vulnerability assessment in accordance with Article 13 of the European Border and Coast Guard Regulation, and other available information-based activities, assessing the situation in the area of operation of the BCP, forecasting possible breaches of the State border crossing procedure, and planning actions to prevent and combat such breaches, with a view to taking the necessary decisions for the management of the force and coordination of actions to ensure border control and the apprehension of lawbreakers" (Order of the Head of the State Border Guard Service under the Ministry of the Interior of the Republic of Lithuania No. 4-358 of 30 July 2019).

It should be noted that the levels of risk analysis form a chain of information exchange relevant to the performance of the Service: the results of the strategic risk analysis carried out in the central office are sent to the border guard posts, which add the results of the operational risk analysis carried out at the level of the border guard posts to the findings of the operational risk analysis carried out at the level of the border guard posts, which are guided by the strategic and the operational risk analysis and carry out the risk analysis at the local level in real time. Of course, this information chain is not one-way. In order to carry out operational risk analysis, it is important to assess the tactical risk analysis carried out by the commanders of the border crossing points at the local administrative level of the service, and to take into account the situation assessments prepared by them in the areas of operation of the crossing points. However, in order to be able to talk about the risk analysis and its conclusions at the level of the entire Service, it is necessary to look at the risk analysis carried out by the territorial units at the level of the Service's administration, i.e. the border formations, which summarises the risk analysis prepared by the commanders of the border outposts within their area of operation, and their assessments of the situation in the areas of operation of the outposts. Thus, although the conduct of risk analysis at different levels in different levels of the administration of the service may seem confusing, in essence, risk analysis is a continuous, targeted process of

collecting, processing, structuring and sharing information at the level of the entire SBGS, which can assist officers in the performance of their direct duties.

Having discussed the levels of risk analysis and at which levels of the administration of the service they are implemented, it is important to analyse the risk analysis process itself and understand its procedures. The process consists of a number of steps that are necessary for the proper preparation of a risk analysis. Paragraph 10 of the description provides that: 'Risk analysis is a cyclical process consisting of the following components, sequentially arranged on a timeline: (see Figure 1).



Figure 1. Process of risk analysis
Source: Guidelines for Risk Analysis Units, 2013

This model of the risk analysis process (see Figure 1) is adapted from the flowchart in Frontex Agency's CIRAM 2.0 model, which is referred to in the document as the "Intelligence Cycle".

The assignment of a task, in this case, means nothing else than the assignment of a task to carry out a risk analysis. Intelligence gathering is the gathering of knowledge about recurring suspicious factors, threats, risks and possible irregularities observed during the course of the service. Information assessment is the process of verifying the accuracy, relevance and validity of the information collected. Information extraction refers to the result of the step in the risk analysis process discussed above, i.e. the extracted information is the information that is selected after the information assessment. Information analysis is the study of selected relevant information on threats risks, possible infringements, etc., which identifies the possible causes of the threats, risks, groups of persons or vehicles that may pose them, or other relevant features related to the above mentioned negative factors that may help the officer to identify the sources of risk. The compilation of a certificate is the compilation of the results of the risk analysis, the conclusions drawn and the recommendations made into a document which is disseminated (dissemination of the certificate) at the service, territorial or local level, depending on the level at which the risk analysis was carried out. Finally, the results of the risk analysis are evaluated, i.e. how effectively the analysis was carried out, whether it was successful, and whether its findings and the guidance it provided helped officials to identify and prevent risks and threats,

and to identify irregularities or offenders. It should be noted that the risk analysis process can also be shorter, i.e. simplified and carried out on the basis of professional necessity.

Risk assessment during border checks “[...] allows the selection of the objects to be checked in greater detail from among the many objects crossing the border, according to the risk characteristics of those objects. The main focus and effort of the officers is on inspecting precisely those objects of suspicion. This allows to ensure the quality/efficiency of border inspections with less effort and, if necessary, the redeployment of available forces and means” (Order of the Head of the State Border Guard Service under the Ministry of the Interior of the Republic of Lithuania No 4-615 of 30 December 2016). The number of objects crossing the state border is enormous and a thorough, in-depth inspection of each one of them, without any justification, would be superfluous, as it would make the work of the officials extremely difficult, slow down the pace of border checks, and would most likely lead to dissatisfaction on the part of the border crossers. Therefore, officers are able to identify from this large flow of objects, based on the results of the risk analysis - risk profiles, lists of risks, and knowledge of the risk characteristics - those that meet the above-mentioned profiles or characteristics, are likely to pose a risk and should be subjected to a thorough screening. However, it should be noted that risk assessment is not only about identifying and scrutinising objects that may pose a risk, but also about managing the forces and human resources that enable the most efficient performance of officials. “The creative use of materials by the Service officer can assess risk indicators and select specific persons, their possessions or the vehicles they drive for more detailed screening, thus increasing the efficiency of border checks and facilitating and speeding up the passage of honest travellers across the state border” The discretion of the official: “[...] the aim is to encourage the initiative of the officials themselves to select, without prejudice to the requirements of the legislation, persons crossing the state border, their belongings and the vehicles they drive for a more detailed check to detect possible offences.” It should be stressed that all information must be obtained by lawful means. “Risk assessment” means the process by which an estimated risk is assessed against risk criteria in order to determine the significance of the risk. Risk assessment is necessary to make a decision on risk control.” It can be argued that “calculated risk” in this definition refers to the risk analysis already carried out and its result, while “risk control decision” corresponds to the decision taken by an official to carry out a thorough and detailed examination of an object crossing the State border which is indicative of risk.

Although risk assessment at border checks is flexible, i.e. an officer can use the Guidelines in a very creative way and build his/her own risk assessment system on the basis of the Guidelines, there are certain peculiarities that are always present. These features are set out in point 6 of the Recommendations. “6.1. the risk characteristics may differ from one border inspection post to another or from one border inspection post to another” . Naturally, the risk characteristics will vary from one border crossing point to another. It is important to be able to react quickly to an unseen, unfamiliar threat. “6.3. the time available for an officer to communicate with a person crossing the border or other person in order to identify signs of risk is limited”. This feature is linked to the objective, mentioned earlier in the Recommendations, of ensuring the smooth and swift movement of objects crossing the border in good faith. The officer cannot spend a disproportionate amount of time on selective objects, as this slows down the pace of movement at the border and distracts the officer from his/her immediate work. The officer should assess the risks in the shortest possible time, which is the purpose of the risk analysis.

Thus, risk assessment during border checks can be described as essentially the application of the results of the risk analysis known to the officer, based on his/her experience, the

information managed and various methodological materials, in order to identify the signs of risk and to decide whether the border crossing needs to be checked more closely. In addition to identifying the objects that correspond to the risk characteristics, the risk assessment also contributes to the efficient organisation of the service and the allocation of human and technical resources.

Conclusions

The concept of threat is a certain factor that may have a negative impact on the external borders of a country or the EU, and risk is understood as a complex concept, a combination of the concept of threat, its likelihood and magnitude, the possible violation of the country's or the EU's external borders, public security, public order, and the possible consequences of such violation.

Risk assessment during border checks is the application of the results of the risk analysis known to the officer on the basis of his/her service experience, managed information and various methodological materials, in order to identify the signs of risk and to take a decision on the need for a more comprehensive inspection of the border crossing, efficient organisation of the service, allocation of human and technical resources.

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