

Automated border control (ABC), privacy and data protection:

the law, the citizens, the policy-makers

Diana Dimitrova, KU Leuven, Diana.dimitrova@law.kuleuven.be

Maegan Hendow, ICMPD, Maegan.hendow@icmpd.org

Anne-Marie Oostveen, University of Oxford, anne-marie.oostveen@oii.ox.ac.uk

24 October 2015

Amsterdam Privacy Conference 2015

Agenda

Overview

What is Automated Border Control? And Where?

Legal Challenges: Legality; Privacy and Data Protection

Policy makers and Societal Stakeholders

Citizens

Conclusions

Agenda

Overview

What is Automated Border Control? And Where?

Legal Challenges: Legality; Privacy and Data Protection

Policy makers and Societal Stakeholders

Citizens

Conclusions

Overview

- What is Automated Border Control (ABC)?
- Selected legal challenges
 - » Legality
 - » Privacy and Data Protection: data accuracy, transparency, purpose limitation/function creep
- Policy-makers and societal stakeholders
 - » ABCs can provide a consistent and secure identity verification process
 - » ABC may be problematic in certain situations
- Citizens
 - » The volume of global air traffic is expected to reach over 6.4 billion by 2030. ABCs could enhance passenger convenience
 - » Reports, interviews with border guards, border management, and passengers show that ABCs are underused

Agenda

Overview

What is Automated Border Control? And Where?

Legal Challenges: Legality; Privacy and Data Protection

Policy makers and Societal Stakeholders

Citizens

Conclusions

What do Automated Border Controls do?

Automated Border Controls (ABC):
Automated systems which:

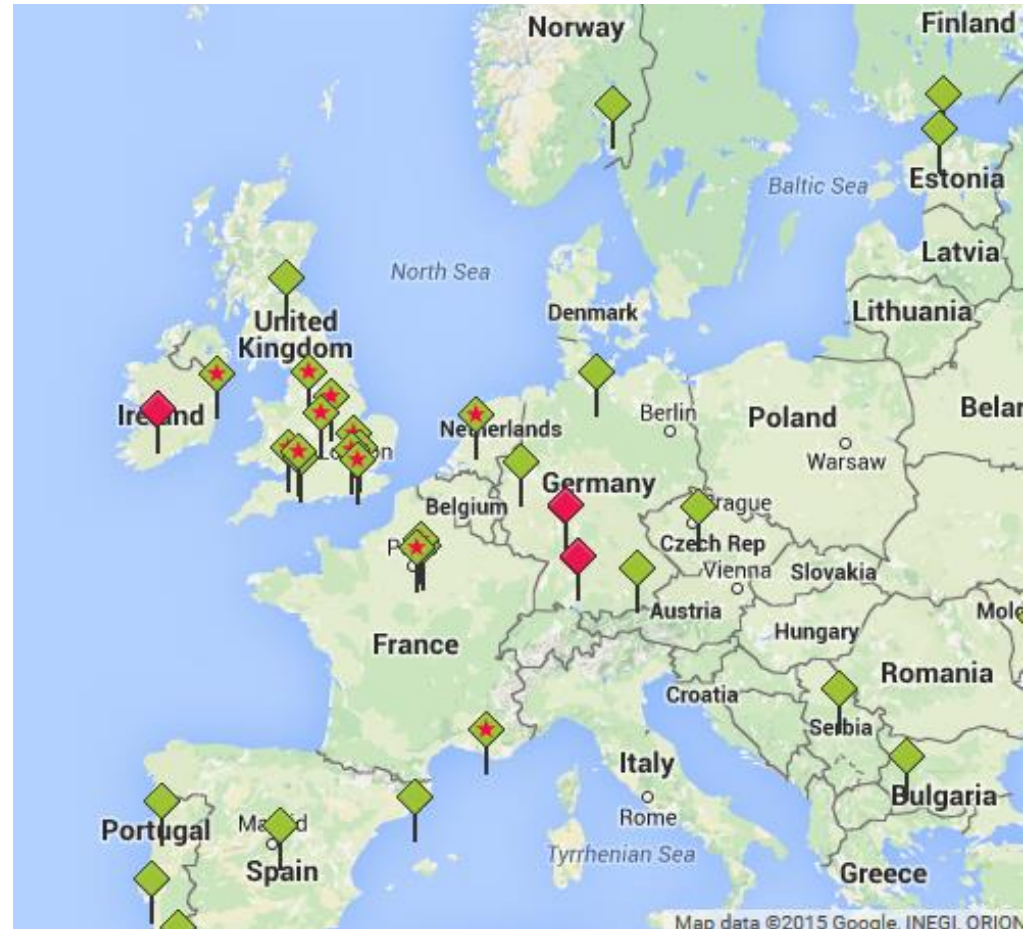
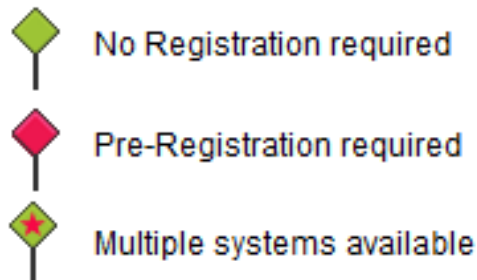
- authenticate the e-MRTD,
- establish that the passenger is the rightful holder of the document (e.g. through facial recognition),
- query border control records and
- automatically determine eligibility for border crossing according to pre-defined rules

(Frontex 2012)



Automated Border Controls in Europe

As of 2013, 288 operating
ABC gates installed in over
13 EU Member States
(Frontex)



Map data ©2015 Google, INEGI, ORION

(IATA, 2014)

Agenda

Overview

What is Automated Border Control? And Where?

Legal Challenges: Legality; Privacy and Data Protection

Policy makers and Societal Stakeholders

Citizens

Conclusions

ABC and the Law

Legality

- External Border Control in the EU regulated by Schengen Borders Code (SBC).
- One of the required checks is the identity check on the basis of a travel document.
- According to the SBC, a visual comparison of the picture on the travel document and the face of an EU/EEA/CH passenger suffices.
- E-Passport Regulation allows *automated verification of biometric features* at borders, but does not amend SBC. Used at many ABC solutions in the EU.
- ABC not regulated by law, currently not mentioned in the SBC.

ABC and the Law

Privacy and Data Protection

ABC processes biometrics to verify *automatically* the identity of passengers.

Biom
etrics

- Sensitivity.
- Automated Processing = interference with privacy and Data Protection.

ABC

- Purposes?
- What processing is necessary and proportionate?

DP
principles

- Accuracy.
- Data minimization.
- Transparency and accountability.
- Purpose limitation and function creep.

Function Creep



- (Biometric) data not deleted after crossing the border and/or creation of some RTP databases (also in the RTP in Smart Borders Package). Or data re-use at the e-Gate (police database search with biometrics presented for verification). Biometrics from chip can be accessed also during **the manual check**.



- Between databases created in the context of ABC and other (e.g. police) databases. Synergies between proposed RTP and EES and SIS II, VIS, etc.
- Biometrics become universal (interconnection) key between nationals and EU databases.



- EURODAC, proposed EES: innocent persons under general suspicion. Function creep?
- Consequences of mismatches?

Agenda

Overview

What is Automated Border Control? And Where?

Legal Challenges: Legality; Privacy and Data Protection

Policy makers and Societal Stakeholders

Citizens

Conclusions

Stakeholder opinions 1: ABCs can provide a consistent and secure identity verification process

“More secure processing of a person's identity is a huge benefit, in terms of personal economy, in terms of social convenience... Without this you can do very little”

- Increased security
 - » Especially with introduction of multi-modal biometric systems (e.g. for possible future Smart Borders package)
 - » Enhance privacy – by preventing identity theft and the usage of false identity documents
- Non-intrusive (i.e. through use of facial image)
- Other fundamental rights: non-discrimination

Stakeholder opinions 2: ABC may be problematic in certain situations

"What is secured enough? Because 100% security will come at a certain cost of other social and ethical issues"

- Fallibility of technology: false positives, interference (e.g. "skimming"), forgery
- Different cultures of privacy (TCN and European)
- Other fundamental rights concerns: child protection (e.g. unaccompanied minors), discrimination, access to remedy
- **Central concern**: not with the technology of ABC itself, but rather its use in broader systems or for other policy objectives

Agenda

Overview

What is Automated Border Control? And Where?

Legal Challenges: Legality; Privacy and Data Protection

Policy makers and Societal Stakeholders

Citizens

Conclusions

ABCs & Citizens: Usability Issues

- At the moment non-use is still an issue with ABCs. Reasons:
 - » People have not heard of e-gates,
 - » They don't know they have an e-passport,
 - » They can't find e-gates,
 - » People prefer to choose the familiar over the new,
 - » There are excluded groups,
 - » The benefits not clear.
- E-gates are under development. There are still many problems related to usability of systems and lack of harmonization. Passengers experience service failure due to technical or human error. Sometimes the data on the e-passports is of insufficient quality.

ABCs & Citizens: Privacy Issues

- Privacy concerns related to biometrics are seldom mentioned by passengers when they talk about **current** ABCs.
 - » People are unaware what data gets stored,
 - » how long data is stored for,
 - » and who has access to the data.
 - » But people assume the worst.
- However, when discussing **future** scenarios for border control, passengers become worried about intrusive technologies.
 - » Function creep is a worry: if it becomes possible to ‘read’ biometrics from a distance (corridor scenario), where else will this be used?

Agenda

Overview

What is Automated Border Control? And Where?

Legal Challenges: Legality; Privacy and Data Protection

Policy makers and Societal Stakeholders

Citizens

Conclusions

Conclusions/Solutions

- Legal, administrative and technical solutions and safeguards. Proper necessity and proportionality assessment.
- Stakeholder and citizen opinions vary, largely based on the larger context within which ABCs are foreseen to be used.

Thank you very much for your attention!

Diana Dimitrova

E-mail: Diana.Dimitrova@law.kuleuven.be

Anne-Marie Oostveen

E-mail: anne-marie.oostveen@oii.ox.ac.uk

Maegan Hendow

E-mail: Maegan.Hendow@icmpd.org