



**European Integration, Regional Cooperation
and Border Management Programs**

**ESTABLISHING JOINT BORDER CHECKPOINTS
ON THE TRANSNISTRIAN SECTOR
OF THE MOLDOVA-UKRAINE BORDER**

**A project developed by the Institute for Public Policy (IPP) in co-operation
with the Ministry of Foreign Affairs and European Integration, Border
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ESTABLISHING JOINT BORDER CHECKPOINTS ON THE TRANSNISTRIAN SECTOR OF THE MOLDOVA-UKRAINE BORDER

INTRODUCTION

The security of the borders between the Republic of Moldova and Ukraine are among the most difficult problems faced by both countries in their bilateral relations and which, during many years, have become gradually a permanent and controversial subject of the high-level meetings agenda.

Such kind of issues emerged when the administrative borders within the former USSR, set in an unnatural way and contrarily to historical arguments, have been transformed into borders between the new independent states. Along with the statehood establishment and its progressive consolidation, based on the necessity to secure efficiently the borders against the increasing impact of regional threats, the two states launched a difficult process aimed at regulating the bilateral relations in the field under consideration.

The definition of the legal status of the borders and of border areas, the delimitation and demarcation, the establishment and the regulation of border crossing points and control over the “green area” – all the above-mentioned processes have been affected by the lack of resources and experience, by multiple legal and technical problems, by a huge psychological and economic impact in the areas where the new state borders imposed serious restrictions on the historical relations or even their break off. Nevertheless, the political conjuncture was the most important factor of influence on such processes. At different historical stages, it determined the implementation “at different speeds” or even with different objectives of the measures to be undertaken in this field.

The “frozen” conflict in the Eastern area of the Republic of Moldova has exerted a particular influence on border security. Because of the “frozen” situation, the legal authorities cannot control the so-called “Transnistria segment” of 443 kilometers and implement on it strengthening measures, similar to the ones undertaken on the rest of the Moldova-Ukraine border perimeter.

As a consequence, the negative phenomena generated by the inexistent control of Moldova authorities over the Transnistria segment of the border have got a particular extension. Smuggling (especially smuggling cigarettes, petrol and alcoholic drinks) estimated annually to hundreds of millions of dollars, illegal trafficking of arms, drugs and human beings are the most serious negative factors of influence on the security and economy of the Republic of Moldova and, on the other hand, the main source for the separatist regime survival.

The situation turned out favorable to the emergence and the escalation of conflicts of interests among various political, economic as well as criminal forces from both states and from abroad. Such forces often succeeded to impose their “arguments” to the Republic of Moldova and Ukraine leaders and governments, and to undermine many initiatives and processes aimed at the efficient border security improvement.

The development of the issue of joint control on the Moldova-Ukraine border is a telling example in that sense. The implementation of such a control form, being considered in the European countries as much more efficient and advantageous than the traditional separate control, and also more adequate to the general frame of the relations between the two countries, has become gradually a major political issue.

GENERAL FEATURES OF THE JOINT BORDER CONTROL

The cooperative control on the borders between two countries, defined more frequently as “joint border control”, is largely applied in the European countries. In fact, such a control form implies an advanced level of interaction between border guards and customs control services of both states. They accomplish their functional responsibilities at border crossing points situated on one side of the border, on one state’s territory.

The rationale for the joint control consists in setting a close collaboration between border services, which has a direct impact on the quality of both - the border control and border traffic management – and reduce the time for border crossing formalities. In addition to it, such a form of control also allows the neighbouring states to reduce the expenses for building up and maintaining the infrastructure of border crossing points.

Joint border control is considered as an essential primary element of integration processes aimed at attenuating the negative effects of borders on the development of regional trade and on the movement of persons. The implementation of joint control is perceived as an optimal form of management of the border between the states, which intend to make easier the cross-border traffic.

Under the terms of the European policy of border management, the joint control is a preliminary stage in the process of customs integration and establishment of a free trade regime between the states. At the following stage, the joint control points are replaced with contact centers intended exclusively for information exchange.

Within the process of Moldova-Ukraine borders organization, such a control form has been applied since the beginning - with various modifications, the joint customs control has been performed since December 1993 to September 2001. For many political, legal and financial reasons, both states initially focused mainly on customs control organization. The other forms of border control have been applied later, after a considerable lapse of time.

At the first stage, joint customs control was performed at four crossing points on the Moldova-Ukraine border (Criva-Mamaliga, Britcheny-Rossoshany, Medveja-Zelionaya and Larga-Kelmentsy) and it was subject to an inter-departments agreement. Joint customs control was initiated as an experimental and temporary form of control, and was justified at that time by the logic of the period of statehood establishment in both countries, by economic policies developed under the influence of Commonwealth of Independent States membership, as well as by the lack of specialists and of adequate and sufficient infrastructure.

A new stage in the process of joint border control started after the conclusion on the 11th of March 1997 of the “Agreement between the Government of the Republic of Moldova and the Government of Ukraine on Joint Control at Crossing Points on the Moldova-Ukraine State Border”. According to the above-mentioned agreement, throughout the period of time 1997-2001, the joint control was performed at five road crossing points on the Moldova-Ukraine state border (Medveja-Zelionaya; Larga-Kelimentsy; Britcheny-Rossoshany; Pervomaysk-Kutchiurgan; Udobnoye-Palanca-Mayaky). At all above-mentioned crossing points, except at Udobnoye-Palanca–Mayaky, the joint control was performed on the Ukrainian territory.

JOINT BORDER CONTROL AND THE TRANSNISTRIAN ISSUE

Late in 2001, under the pretext of the lack of required conditions (insufficient infrastructure and means of communication, lack of additional protocols stipulated by 1997 Agreement, lack of documents concerning the preparedness of crossing points for performing the joint control), the Ukrainian side opposed to the presence of the Moldova border control services at crossing points on its territory and withdrew its representatives from Palanca border crossing point.

According to Moldova authorities and to many independent experts of both countries, joint checkpoints activity has been stopped under political reasons and because of increasing influence of Ukraine's interests in the Eastern area of the Republic of Moldova, which is not controlled by state' legal authorities.

There are many arguments that could be invoked to prove that such an action has been undertaken as consequence of the more resolute policy promoted by Moldova authorities in the Transnistria conflict settlement process and of the establishment of control on that border segment. In the opinion of Moldova authorities, the establishment of joint control on the "Transnistria segment" was perceived as a measure fully complying with both the efforts of the Republic of Moldova and of Ukraine to ensure the security of their borders and with the process of the Transnistria conflict settlement.

Accepting the political objectives and arguments set by Chisinau as legitimate, the Ukrainian authorities explained their refusal to implement such a form of control on the Transnistria segment by their unwillingness to be involved in what they qualified as "economic blockade" with negative effects on the people of the region.

Nevertheless, it is assumed that such a behavior of Ukraine authorities was mainly determined by the fact that the initiatives launched by Moldova had a huge negative impact on the economic interests in that region of various forces interested in maintaining the status quo, including representatives of the highest-level political elites. In such conditions, the Moldova' initiatives concerning the implementation of the constitutional control on the Transnistria border segment have been blocked by stopping the joint control on the other sectors of the Moldova-Ukraine border.

The actions and declarations of the Ukrainian part confirmed the correctness of the above-mentioned statements. Joint customs points stopped their activities soon after August 31st, 2001, when Moldova authorities invalidated the customs seals offered previously to Tiraspol authorities and required Kiev to ban access into Ukraine goods from Moldova that have no documents delivered by authorised customs services.

Despite the legitimacy of these actions from the perspective of international law, the requirements of Moldova authorities have been ignored. According to the data provided by the state enterprise "Caile Ferate ale Moldovei" ("Moldova Railways"), during the period of time August 15th, 2004 – March 1st, 2005, 8794 railway wagons with goods have been sent from Transnistria to Ukraine, with no customs control by Moldova customs services. During the same period of time, 14343 railway wagons with goods have arrived to Transnistria, avoiding the customs control required by Moldova legislation.

On the other hand, the joint control has been stopped after the Ukrainian leaders imposed much more exigent and extremely costly requirements concerning the management of joint checkpoints, compared to other borer checkpoints. Moreover, based on the declaration made in Moscow by the Ukrainian Prime Minister on the 30th of November 2001 during his meeting with the Prime Minister of the Republic of Moldova, Ukraine has invoked the groundless arguments that "the establishment of joint customs checkpoints on the Ukrainian territory would mean foreign military presence and it would contravene the Constitution". It might be only mentioned

the fact that, from June 25th 2001, Ukraine set up such a form of control on its borders with Poland, without considering it to be contrary to the Constitution.

After 2004 elections the relations between the Republic of Moldova and Ukraine entered a new phase. After many rounds of negotiations and joint declarations concerning the necessity of Transnistria conflict settlement and the security improvement of the “Transnistria segment” of the Moldova-Ukraine border, Ukraine authorities have accepted a number of Moldova arguments.

In July-August 2005, joint border control was re-established at four border crossing points from the list stipulated in 1997 Agreement; the process of negotiations on joint control organization on the so-called “Transnistria segment” was re-launched; the European Commission was invited to undertake a monitoring mission at the Moldova-Ukraine border.

PROJECT OBJECTIVES AND RESULTS

In this context, the main objective of the research project “Joint Border Checkpoints on the Transnistria sector of the Moldova-Ukraine border” was to study practices of organizing such control forms in different countries, to draw conclusions and develop proposals for national authorities on this issue.

The project has been developed by the Institute for Public Policy jointly with the experts from Germany, Poland, Hungary, Romania, Ukraine and the Republic of Moldova. The project has been assisted by the Ministry of Foreign Affairs and European Integration, Custom Service and Border Guards Service of the Republic of Moldova.

The project activities included researches developed in the countries of the region, an evaluation field visit of international experts at the border checkpoint „Palanca” on June 16, 2005, and an international seminar that took place on June 17, 2005, in Chisinau.

The researches have been developed with the main objective to determine the key legal, technical and organizational issues that have an influence on creation and activity effectiveness of joint border checkpoints, according to the experience of the European Union countries and countries of the region. The researches especially considered the issues related to the joint border checkpoints organization on the Transnistria sector of the Moldova-Ukraine border, the last political statements and actions of the authorities of both countries, and the ongoing bilateral negotiation process on the issue.

The field visit of the international experts at the border checkpoint “Palanca” on June 16, 2005, has been organized with the purpose to make them acquainted with the current situation at the Moldova-Ukraine border, with practical organization of national border control agencies activity at the border checkpoint that has been organized as a joint border checkpoint in the past. The visit allowed international experts to compare their countries experience with the experience existing in the Republic of Moldova, and to adjust their conclusions and proposals to the real situation.

The international seminar that took place in Chisinau on June 17, 2005, had the following main purposes:

- to present the experience existing in different European Union countries and countries of the region in joint border checkpoints creation and organization;
- to identify the key-problems which have influence on creation and activity effectiveness of such border checkpoints, especially considering their eventual establishment on the Transnistria sector of the Moldova-Ukraine border;
- to develop proposals for solving the existing problems.

As a result of the project development have been generalized the experience and practices existing in different European Union countries and countries of the region, have been developed proposals and recommendations regarding on joint border checkpoints organization on the Transnistria sector of the Moldova-Ukraine border.

ESTABLISHING JOINT BORDER CHECKPOINTS. EXPERIENCE OF THE EUROPEAN UNION COUNTRIES

The borders are a very sensible subject for all countries and de-facto represent the sovereignty limits of a state, or, according to the international laws – “the line which determines the limits of the territorial jurisdiction of a state”. At the same time, the processes of European integration and regional cooperation pull the border problems out of the almost exclusive sphere of bilateral relations between two states into a particular chapter. Today even the integration process has become directly dependent on the each state successes made on the sphere of its own borders security, including by improving border control and management, according to communitarian policies, principles, standards and requirements.

In this context, each candidate-state makes significant efforts in order to comply with the European Union requirements in the field and undertake comprehensive measures of reorganizing and improving the structures and forces engaged in border control, the methods of organization and their activity practices. Different new forms of actions emerge as a result of this process, getting gradually the trust of the involved countries.

GENERAL CONDITIONS FOR ESTABLISHMENT

Joint Border Checkpoints (JBC) are a relatively new form of border control, but already largely used both in countries of the European Union and in the rest of the world. As a rule, border control organized in such a form indicates the existence of common political and economic objectives, a high level of reciprocal trust between two countries and results from a political will clearly expressed and aimed at simplifying the border control procedures and at facilitating the trafficking of goods and passengers.

Usually, by establishing the joint border control, the countries within the European Union aim to reach the following **main objectives**:

- Transform complicated and time-extensive border crossing procedures into quicker and simpler operations for passengers and goods transit;
- Reach a higher level of border control efficiency and transparency;
- Reduce the border checkpoints functioning costs;
- Reduce the risks related to different phenomena that are difficult to combat, such as corruption and illegal trafficking.

Moreover, the creation and organization of such forms of border control is also dictated by **imperative necessities** to:

- Establish between the two countries a more rapid and secure exchange of information on flow of goods and people, and on other issues related to border control improvement;
- Establish an enhanced cooperation among the two countries agencies responsible for border control;
- Improve coordination of efforts focused on combating criminality;
- Accelerate border traffics.

Creation of joint border checkpoints is determined by a favorable **political framework**:

- Increased awareness among the authorities of the two neighboring countries on the necessity of such forms of border control;

- Developed political will and a joint agreement of both countries leadership to establish such forms of cooperation;
- Established adequate level of trust between the two parties;
- Adopted adequate political and administrative decisions;
- Created sufficient legal and regulatory basis for establishing and efficient activity of joint border control checkpoints;
- Obtained consensus on Joint Border Checkpoints location on the territory of one or both countries;
- Adopted decisions concerning necessary financial allocations and covering the costs related to JBC creation and equipment.

At the practical level the creation of the JBC is determined by the:

- Existence of premises for potential opportunities to create the necessary infrastructures to deploy, equip, maintain and develop an efficient JBC functioning;
- Development and signing joint activity agreements among the central and local administrations of the services responsible for the border control, including:
 - Level of involvement of these agencies (services) in the border control process;
 - Delimitation of tasks and responsibilities among the involved agencies (services);
 - Establishment of compatible and complementary in time procedures and operations;
 - Establishment of detailed sequencing and control procedures, including such aspects as time, limits, operations and actions that determine the beginning and ending of the control process, transfer of the control documents, etc.
 - Organization of the working teams in terms of number, competencies, shifts, etc.

LEGAL ASPECTS

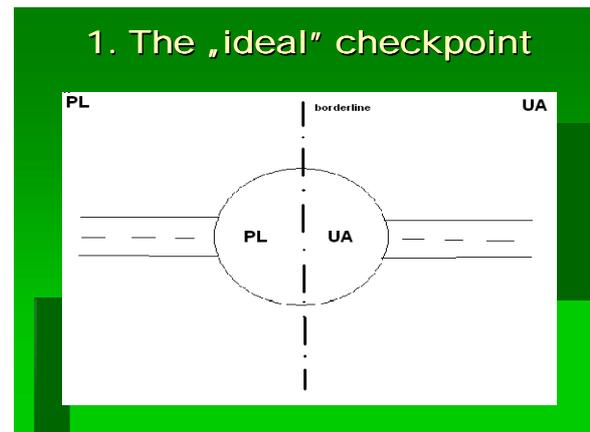
As a rule, the **bilateral agreement** signed at the inter-state level (e.g. Germany-Poland) or at the inter-governmental level (e.g. Hungary-Austria, Hungary–Slovakia) serves as the **legal basis** for creating joint border control checkpoints. These agreements, depending on the practices existing in the countries signing the agreements, either establish and stipulate in detail the general framework for creating the joint border checkpoints or are supported by additional documents that provide such stipulations. Generally, these agreements provide regulations on the key issues that determine the activity of these joint border checkpoints, including:

- a) General objectives of the two countries provided by the activity of the joint border checkpoints.
- b) Legal status of the joint border checkpoints (As a rule, these checkpoints do not have an extra-territorial legal status and are under complete jurisdiction of the host country).
- c) Legal status of the border checkpoint staff (As a rule, the staff involved in ensuring the border control does not have special immunities other than being guaranteed the unlimited access to the checkpoint during the duty time. Depending on the relations between the two states, the staff of the guest country possesses service identification cards and national identification documents or/and service passports).

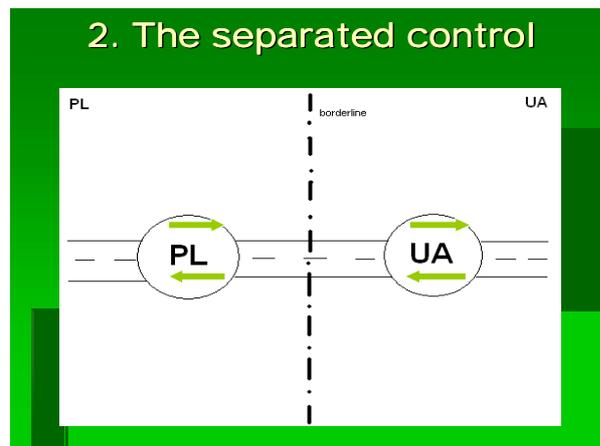
- d) Security of the joint border checkpoints and its staff. (There is a general rule that the host country, on the territory of which the joint border checkpoint is located, assumes full responsibility for ensuring the security of equipment, infrastructure, and staff on duty).
- e) Wearing uniforms. (Wearing national uniform on the border checkpoint territory is mandatory and it has been respected in all the cases that have been studied by project experts).
- f) Use of firearms. (The current practices within the European Union establish the mandatory carrying of arms during the duty time on the territory of the border checkpoints and the use of these arms on the territory of the foreign state only for self-defense).
- g) Telecommunications. (As a rule, the inter-state or inter-governmental agreements regulate only those aspects related to telecommunications that ensure avoiding interference in the activity of the telecommunications of the host country or general issues of reciprocal assistance in the field. Such a regulation would refer to the type of telecommunication systems and radio-frequencies authorized on the territory of the JBC to be used by the members of the control team of the guest country; the type of telecommunication systems and frequencies used for connection between the duty team at the joint border checkpoint located on the territory of the foreign state and the national headquarter or another hierarchically superior authority located on the national territory, the owner of the equipment and the payment procedures for the services provided by the authorities (services) of the host country, etc.
- h) The rights to control, inspect, and arrest. (There is a general rule, respected by the European Union countries, which stipulates that the right to control and inspect on the territory of the joint border control checkpoints located on the territory of another state should be similar to the respective rights in force on the national territory. At the same time, the countries in the region have different practices regarding the right to arrest that may be applied within the different Joint Border Checkpoints. In some cases (e.g. the joint border checkpoints on the German territory at the Germany – Poland border) the border control agencies of the guest country (Poland) are not authorized to arrest and inquire the citizens of the host country (Germany) only, but have the full rights to arrest or inquire the citizens of their own country, or citizens of third countries. In some other cases (e.g. the border control checkpoints located on the territory of Austria at the Hungary – Austria border), the arrest authorization relates exclusively to the citizens of their own state (Hungary); whereas the citizens of the third countries can be arrested only by the border control bodies of the state on the territory of which the border checkpoint is located (Austria).
- i) The mode of operation with seizing goods. (The agreement stipulates the rights of the control agencies (services) of the guest country to seize the illegal goods, to detain and escort them to the national territory).
- j) Financial issues. (The agreement stipulates the financial responsibilities of the parties, related to the maintenance of the joint border checkpoints, the procedures of payments and applying the customs rights, etc.)
- k) Issues, which regulation is authorized by protocols and working documents at the services (departments) level: the physical boundaries of the joint border control, the physical line of dividing the authority limits, work procedures, interaction between the teams of the two states, administration of the infrastructures of the joint border checkpoints, the order of actions in exceptional cases, organizational issues, etc.
- l) Others.

MODELS OF JOINT CONTROL POINTS MANAGEMENT BASED ON THEIR POSITIONING OPTIONS AND EXAMPLES FROM POLISH EXPERIENCE

The experience of the European Union countries in managing border control has proved that the “**ideal**” control point is the one situated directly on both sides of the border line, border control services performing their work on their own national territory, but in immediate physical contact (scheme 1). Under such a control form, persons, passenger vehicles, trucks and goods are subject to entry and exit control procedures within the same control site. It excludes any possibility to move on the territory of a state without having passed border control.



Within such a control point, border control services of each state work under the full and exclusive jurisdiction of their state, having at the same time the possibility to work practically “hand to hand” and to be in direct contact with border services of the other state. In such a situation, the difference between the separate control and the joint control, in terms of co-operation and efficiency, is minimal, while the management of control points and procedures is simpler from several points of view and does not require major efforts to solve the multiple political, legal, organizational, financial, technical, etc. problems, which are much more visible under other forms of border control.



But in fact, there are very few such control points. For various geographical, legal, political, economic, etc. reasons, countries have to establish their border checkpoints at some distance from the borderline.

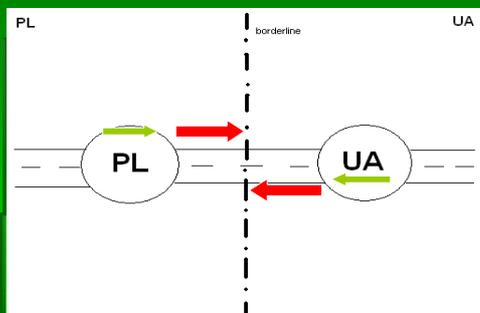
Traditionally, border control is performed by **separate control posts** (scheme 2): each state performs both the exit and entry control of persons, cars and goods exclusively on its national territory, within a border control point situated at some distance from the real borderline. Such a control form allows each state to exert, with no constraints, its legal

rights and its full and exclusive authority over the all applied control types, forms, methods, procedures, etc.

Considered traditionally as more secure and simpler in organization, such a control form has multiple disadvantages and weak points, which impede the continuous development of bilateral relations. First of all, such a control is time-consuming – persons, cars and goods are twice subjects of border control, in two different border control sites. The practice of such border control points proves that they often work according to different procedures and schemes and, especially, with different rhythms and there is a low degree of connection between control points of neighboring states. Such disadvantages, along with many others, generate multiple inconveniences and problems related to border crossing procedure. (For example, such a control form worsens the bilateral trade with perishables.)

Based on the level of mutual trust between the states, on their policies in security, economic, customs, migration, etc. sphere, the separate control can be replaced with other control forms intended to make easier the traffic of persons and goods.

3. Separated control on a single direction. A. Control on exit way.

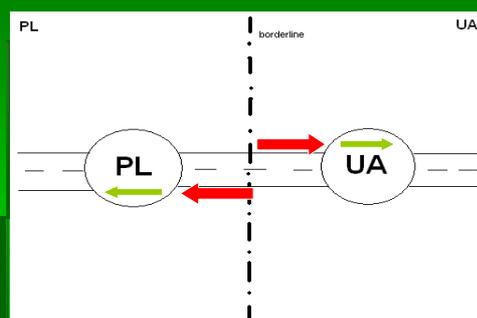


One-way separate control is a simplified form of separate border control. Under such a control form, border control services perform their duties exclusively on their national territory, but on one way only: exit (scheme 3) or entry (scheme 4). The responsibility for performing border control on the opposite way is being conveyed to the neighboring state. In such a case, persons and goods that cross the borders are subject to one control sequence only, while under the traditional separate control they are subject to two border control sequences. The main advantage of such a border control form, compared to the separate traditional control, is

that this form of border crossing procedures is less time consuming, which is an important factor in encouraging the flow of goods and persons. Thus, this control schema is much more oriented to facilitate persons and business. The last but not the least, such a control form takes into consideration the need for a decrease in number of border control services personnel, which is smaller if compared to the number of the personnel required to perform the traditional form of control.

The “extra-territorial problem”¹ and the low efficiency in fighting against smuggling, illegal trade and migration are the most important disadvantages of such a control form and the most serious difficulties faced by countries that perform such a control. It is well known that the rate of discovering the above-mentioned phenomena by border control services is still quite low and it is obvious that this rate will be lower if one control sequence is performed instead of two. On the other hand, such a control form is especially inefficient if economic policies and legal frameworks of neighboring countries

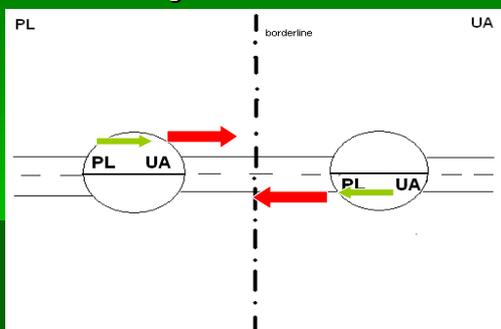
4. Separated control on a single direction. B. Control on entry way.



are very different. As a result, certain cases would not be excluded, namely when the exports/imports of some goods would be subject to different regulations or even would be forbidden on/from the territory of one of the states, while there are no such restrictions in the other state.

The practice has shown that countries are usually not very motivated to exempt from control one of the traffic direction. Nevertheless, the experience of the states, which apply such a control form, reveals that the **entry control**

5. Semi-joint control on the territory of the exit state.

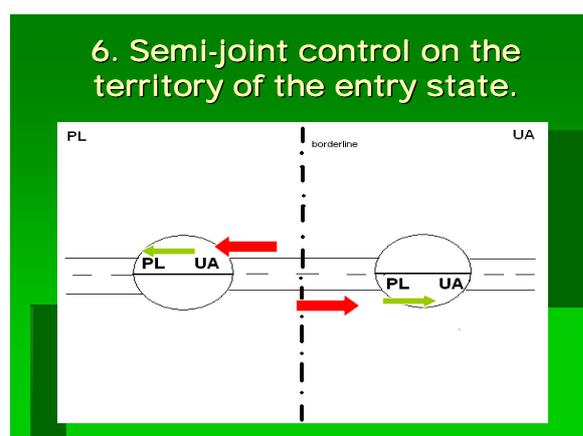


¹ From the legal viewpoint, the “extra-territorial problem” is the problem of applying the national legislation on the territory of the host state. From several perspectives, including practical experience, it is the most complicated problem related to management of border control services of one state that perform their duties on the territory of another state.

(scheme 3) is usually preferred. An economic argument justifies their option – the economic policy of many states of the region is mainly focused on export promotion and on the protection of home market and of local producers of goods and services.

Semi-joint control or **one-way joint control performed on the territory of both states** is another form of border control. Under such a control form, control points are set on both sides of the frontier. Representatives of both states work at each crossing point where the border control is done in one direction. There are two options to perform such a control form.

The first option (scheme 5) implies the accomplishment of border control procedures of both states **on the territory of the exit country**. Under such a control form, the exit control is done on the national territory, while the entry control is performed on the territory of the neighboring state.



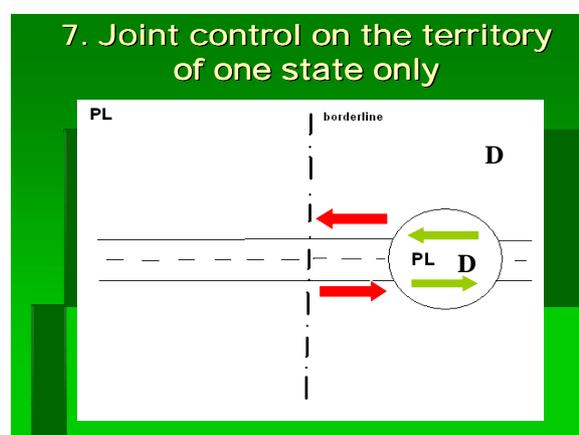
The second option (scheme 6) is opposite and implies the accomplishment of all border control procedures of both states **on the territory of the entry state**. Under such a control form, the entry control is performed on the national territory, while the exit control is accomplished by border control services of the entry state, but situated on the territory of the exit state.

Semi-joint control is the first form of border control under which control services of a state perform their duties on the territory of another state. The **mutuality principle** is the main principle, which encourages the establishment of such a border control form. Both states perform their control on both - their national territory and the territory of the neighboring state; both states are responsible for the work of one control team on their national territory and of another control team on the territory of the neighboring state; both states have approximately the same responsibilities, the same financial expenses, etc.

The establishment of semi-joint control points requires bilateral agreements, different from the traditional ones, and focused on regulation of new issues such as the status of the personnel of control services on the territory of the host country, the legal limits of their activity, the delimitation of competencies among the control services of both countries situated in the same border crossing point, etc.

The main **advantages** of such a form of border control are high control **efficiency** and short **time** spent for border crossing formalities compared to the time required for the control at the separated border checkpoints. This border control form aims at a closer co-operation with a view to strengthen border control and to increase the border flows.

The main **disadvantages** of the semi-joint border control are the operational **costs** (each state is in charge of a control point). In the same time, such a model depends on the “**extra-territorial problem**“ settling decisions and on

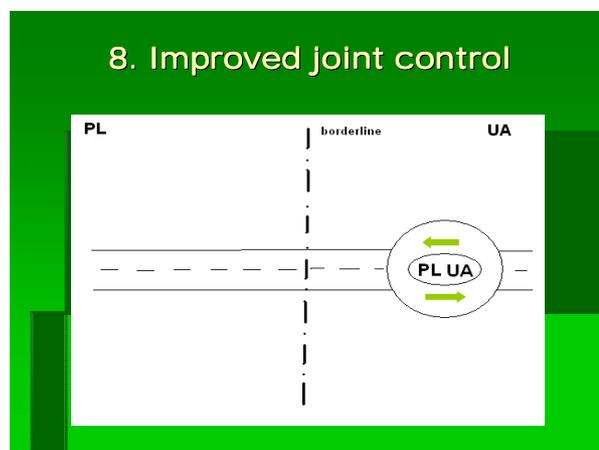


legal constraints which influence the activity of the control services of both states established on the territory of the host country.

The **joint border control on the territory of one state only** (schema 7) is a more advanced form of border control management. Under such a model, at a border crossing road there is only one control site established on the territory of one of the states² with representatives of control services of both countries. Such a border control form requires the adjustment of legal provisions of the host country and the approval of the control services of the neighboring country to perform “abroad” a number of actions that, traditionally, are legal exclusively on the territory of the home country of border control services.

Different models could be applied under such a control form. The control can be performed either on one direction or jointly on both directions. Usually, within a control post, there is a **clear demarcation of facilities and of the infrastructure** operated by the control services of both states as well as a **physical line of delimitation** of their competencies. When passengers, cars, goods and documents have passed that line, it means that border control procedures of one state have been completed, the responsibilities of one border control team have expired and the legal borderline has been crossed.

The **improved joint control** (scheme 8) is the most advanced form of joint control, derived from the experience of the European Union countries. In addition to performing activities in close co-operation on a single site, the improved joint control means having joint control teams working together according to the principle “one-stop hand-in-hand control”. As a result, the time required for border formalities is minimal and the physical line for competence delimitation is practically inexistent. Under such a control form, the competencies of a control team expire when control documents are passed to the control services of the other country.



Improved joint control is based on a high level of mutual trust and on close collaboration between the governments of two countries. It is applied, for example, at Polish-German, German-Czech, Austrian-Hungarian, and Hungarian-Slovakian borders. This form of border control is considered the most appropriate for intense flows of goods and persons: the time for border formalities is minimal and there are many other advantages (low risk of corruption, high level of collaboration between border services of both states, exchanges of information and experience, etc.). There can be different options concerning the management of improved joint control. For example, at border control point Hegyeshalom (Nickelsdorf) on the Hungarian-Austrian frontier, the control of persons (cars and buses) is performed on the territory of Hungary, while the control of goods (TIR trucks) – on the territory of Austria.

Joint border control has generated a new tool for collaboration between control services – **local co-ordination teams** in charge for developing plans on interaction between border control services of two neighboring states on the territory of the joint control point, for coordinating joint management of infrastructure, control schemes and procedures, etc.

² Under the terms of some states, which detach their teams on the territory of another state, such a control post is called “advanced control post”.

The **distance between the border control post and the borderline** is an issue faced within all forms of border control, with a special intensity under joint control. When border control formalities are completed, it is considered that persons, means of transportation and goods have *de jure* left (entered) the territory of a state, while *de facto* that happens when the real frontier line is crossed. The longer the distance between the control post and the frontier line is and the worse that sector of road is supervised (i.e. it does not exclude any possibilities for unauthorized exit or entry), the greater is the risk for legal problems, especially concerning the observance of the legislation of both states.

To exclude erroneous interpretations concerning the sphere of application of the bilateral agreements provisions and the legislation of both countries concerning border control, it is necessary to separate physically and visibly, the **borders of joint control posts** from the green frontier and other adjacent areas.

It is well known that when joint control posts are set, the governments of two countries face some new problems such as operating the infrastructure and facilities, control and transmission means, the legal status of the guest state personnel on duty and its deployment on the territory of the host country, the detachment of the personnel for duty to a foreign country and providing the required insurance, collecting and repatriating customs duties, etc.

The practice of border control within the European Union does not provide a standard model for solving such problems. Different solutions have been adopted for joint control points at German-Polish, German-Czech and Austrian-Hungarian borders. The concerned states had different contribution to the establishment of each joint control point, taken into consideration the potential and possibilities of a country, based on best practices, procedures, conditions, facilities, advantages and disadvantages of the models and solutions proposed by each side³. At the same time, their experience confirmed that the efficiency and results of such control forms depend directly on the level of trust between the states and on the political will which influences on all concerned operational levels.

JOINT CONTACT POINTS.

The process of European integration, of opening the borders between member states, on the one hand, and the need for a higher level of transborder security and for a more intense mutual exchange of information, on the other hand, determined the establishment of a large number of **joint contact points**.

Joint contact points are intended to encourage the coordination activities among border control services of two or more countries, to inter-connect national databases concerning border control and fighting against crimes by maintaining a permanent exchange of information (24/24 hours) on:

- experience in controlling cross-border traffic and major trends;
- anticipation of major events having impact on cross-border traffic;

³ As an example, see the Agreement between the Federal Republic of Germany and the Czech Republic on the simplification of the border control and road, railway and fluvial traffic". The Agreement was ratified by the Parliaments of both states and provides for most issues concerning the management of joint control points.
<http://www.jura.uni-sb.de/BGBI/TEIL2/1996/19960018.2.HTML>

- ad-hoc measures undertaken by police services or by road traffic control services with possible impact on cross-border traffic;
- requirements for entry the territory of a state;
- typical illegal activities, especially offences related to forgery;
- modifications operated to border control legislation;
- best practices in border control and statistical results;
- etc.

Joint contact points establishment is relatively less difficult from legal and logistic viewpoints. They are deployed on the territory of one state that provides the basic infrastructure and most of the required equipment. The posts have a small number of personnel (2-6 representatives of border services of each state) and work non-stop in shifts. The states appreciate positively the results of the work of such control points, including in terms of border security concepts implementation, and integrated border management.

PROPOSALS AND RECCOMENDATIONS ON CREATING JOINT BORDER CHECKPOINTS ON THE TRANSNISTRIAN SECTOR OF THE MOLDOVA-UKRAINE BORDER

Developed by experts participants to the international workshop in Chisinau on June 17, 2005

Taking into consideration:

- The experience and practices of the European Union countries and countries of the region regarding the creation of joint border checkpoints;
- Common political objectives of the Republic of Moldova and Ukraine of integrating into European structures;
- The level, quality and prospective of bilateral relations between the two states;
- The common will to improve the quality and effectiveness of border control, to make the border check formalities less time consuming and easier for the travelers;
- The imperative necessity to secure the Transnistrian sector of the Moldova-Ukraine border;
- The economic situation, legal framework and experience in organizing joint border checkpoints existing in both states,

The experts-participants to the international workshop generally accepted that

- Organizing joint border checkpoints on the Transnistrian sector of the Moldova-Ukraine border corresponds to political and economic interests of both states, to European integration and transnistrian conflict settlement objectives;
- At this stage, the model of joint border control used on other sectors of the Moldova-Ukraine border (two joint control points on each route of border transit established to perform border control on the direction of entry) can not be implemented on transnistrian sector;
- The optimal model of border control in current circumstances is the model of joint border control on the territory of a single state, implemented on the Ukraine territory;
- Compared with the models implemented on other sectors, this model brings more benefits, is more efficient and corresponds to development prospective of the joint border control between the two states;
- There are no legal or technical impediments which could hamper the creation and development of such joint border checkpoints on the Ukrainian territory;
- The political will is a primary factor for the implementation of this joint border control model;
- This deployment would substantially contribute to the security improvement of the borders between the two states, to combat the illegal trafficking and improve the climate of bilateral relations.

In this context, **the experts propose to take into consideration the following recommendations on joint border checkpoints organization on the Ukrainian territory:**

LEGAL ASPECTS:

- ◆ To develop and address (interpret) the most important legal, organizational and technical aspects into a bilateral Moldova-Ukrainian agreement at governmental level;
- ◆ To prevent offering a neutral or ex-territorial status to joint border checkpoints on Ukrainian territory. They should be under full Ukrainian legal jurisdiction;
- ◆ To separate the territory of the joint border checkpoints from the other Ukrainian territories, to define and mark clearly the boundaries of the joint checkpoints (by fence, barriers, etc.) in order to exclude the non-authorized access;
- ◆ To determine and specify clearly in the bilateral Agreement the competencies and rights of the Moldova border control services representatives on the territory of Ukraine, and other elements, including:
 - Free and uncontrolled access to the joint checkpoints for duty performance;
 - Wearing and using distinctive government services uniforms, signs and symbols of the Republic of Moldova;
 - Use of telecommunications;
 - Rights and preconditions to use firearms (according to the European practices carrying personal firearms is mandatory for border control personnel on duty, but on the territory of a foreign state using firearms is permitted for self-defense only);
 - Rights and preconditions to control, search and arrest persons.
- ◆ To offer the representatives of the Republic of Moldova border control agencies the following special rights and powers allowing them to perform their duties on the territory of the joint border checkpoint deployed on the Ukrainian territory:
 - To arrest Moldova citizens and citizens from third countries (but not Ukraine citizens).
 - To detain Ukrainian citizens when the preconditions to arrest them appear (according to the provisions of the Republic of Moldova legislation) under the condition of immediate information of the Ukrainian counterparts (Ukrainian border guards or customs services);
 - To interrogate Ukrainian citizens under the condition the Ukrainian representatives (Ukrainian border guards or customs services) will have the right to participate;
 - To retain and confiscate items with no difference of the owner's or holder's nationality according to the Republic of Moldova legislation;
 - To bring confiscated items to the Republic of Moldova for legal procedures according to the Republic of Moldova legislation.
- ◆ To prevent offering to the Moldova border guard agencies personnel a special legal status that provides them immunity in case of legal offences on the territory of Ukraine;
- ◆ To determine and specify precisely by laws and other juridical documents the competencies and responsibilities of the Border Guards Service, Customs Service, and, if needed, of the other border control services of the Republic of Moldova at the joint border checkpoints

established on the Ukrainian territory and at the same time, to offer preliminary competencies to each service (agency) for emergency cases when the respective services (agencies) are temporarily absent or not represented.

- ◆ To determine in detail the sequence of the control procedures, including the following:
 - The border control authorities of the country which the travelers are leaving will start with the joint control procedures;
 - After the border authorities of the country of exit finished the border control procedures and travel documents have been returned to the owner or passed to the border authorities of the entering country no additional or repeated intervention on the Ukrainian territory will be authorized;
 - When the authorities of the country of exit have refused the exit of persons, vehicles of goods, the border authorities of the country of entering shall have no right for intervention;
 - The Republic of Moldova border authorities shall not be obliged to intervene in any case on the spot in the joint border checkpoints when other Republic of Moldova national authorities are primarily competent.

TECHNICAL ASPECTS:

- ◆ To establish the rules for joint use of the data bases, sophisticated and expensive equipment by the representatives of the two countries agencies (ex. special document inspection laboratory, automatic document and car number plates readers, special technical inspection sites, carbon-dioxide probes equipment and gas-analyzers, radiation detectors, etc.);
- ◆ To provide a necessary number of computers with online access to the national central data bases from each joint border checkpoint;
- ◆ The Republic of Moldova border authorities should have the right to use their own telecommunication lines;
- ◆ Forgery detection equipment should be available at joint border checkpoints according to the European Union Council Recommendation of 28 May 1998 on ports of entry to the European Union (*Official Journal C 189, 17/06/1998 p. 0019 – 0020*);
- ◆ To provide the joint border checkpoints with control booths which should be large enough to provide sufficient working space for both countries border guards (border police) and customs officers joint activity;
- ◆ Shift leaders' offices should be placed close to control positions in order to enable them to have an efficient supervision and direct influence on control procedures;
- ◆ To establish a real (or imaginary) axle (line) which should divide installations, equipment and offices for separate using by both countries border control services representatives;
- ◆ To establish the prerogatives and responsibilities of the host state' authorities concerning the systems and procedures of access to the joint border checkpoints' spots.

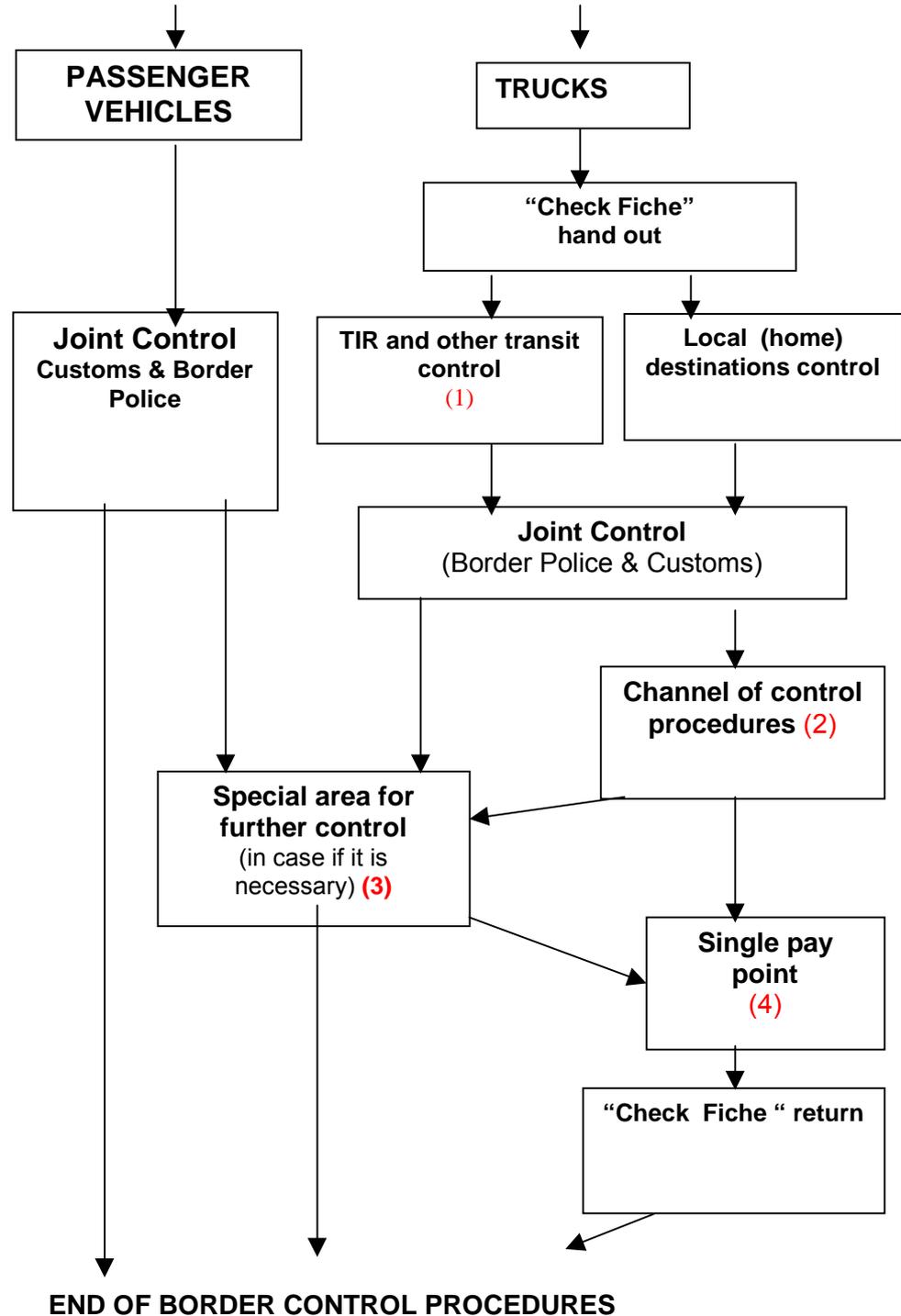
ORGANIZATIONAL ASPECTS:

- ◆ To organize the joint activity of both countries border control services according to the “Hand-to-Hand Control” principle. This will mean performing control procedures in a single fourfold sequence by the representatives of four services – two border guards services and two customs services;
- ◆ The Republic of Moldova and Ukraine representatives offices should be in one and the same office building in order to provide short communication ways and thus to guarantee a close and smooth cooperation;
- ◆ For “rush” hours, or in case of non-expected heavy traffic, to authorise each side to control the traffic on a single direction only (the incoming or leaving traffic line);
- ◆ To provide the organisation of a „Local Coordination Team (Committee)“ in each joint border checkpoint, formed by the respective chairmen of the various services of both countries. It should hold regular meetings (at least every month) or additionally at the request of one border authority. To provide for the Local Coordination Team (Committee) in the bi-lateral agreement the largest competencies on decisions taking about the joint border checkpoint’ routine activities.
- ◆ To provide the organization of a “Board of Directors” at inter-governmental level with actions coordination responsibilities at high level, formed by representatives of both countries ministries and services which have competencies and responsibilities in border control;
- ◆ Work shifts should not exceed 12 hours. Each shift should have a shift leader with far reaching competencies for decisions about refusal of entry, arrests, confiscation, etc. The number of personnel should be in compliance with the volume of border crossing traffic;
- ◆ To harmonise jointly the control procedures applied by the two states border control services, to reduce to minimum the organisational differences in order to facilitate a close and efficient cooperation development;
- ◆ To provide language training for the joint border checkpoints personnel, in order to avoid communication problems and allow them to perform their duties in both countries languages;
- ◆ To ask for financial, technical and organisational assistance from the part of the European Union in establishing joint border checkpoints and organising their activity in compliance with the European Union standards and principles.

STANDARD SCHEMA OF BORDER CONTROL ORGANIZATION

In order to facilitate border-crossing traffic reshaping the functional organisation and flow of traffic under the standard control schema in major border crossing points is highly recommended.

SCHEMA OF CONTROL: ARRIVAL



Explanations:

(1) = TIR & other transit controls:

- Goods Manifest of the TIR carnet
- Guarantee (amount)
- Means of transportation (truck)
- Place of origin, departure, place of loading
- Intended office of transit (entry or exit)
- Final destination, place of unloading

(2) = Channel of control procedures

(i) Customs controls

- customs (import or export) declaration:
 - description of goods
 - tariff classification
 - number
 - kind
 - marks
 - number of packages
 - labels
 - quotas, quantities restrictions
 - prohibitions on imports / exports
- accompanying documents:
 - commercial invoice
 - certificates of origin
 - stamps
 - all kind of supporting documents
- control of the valuation of goods for customs purposes:
 - system of taxation
 - preferential tariff treatment
 - partial exemption
 - statistical data

(ii) Border police controls

- passports
- visa
- ADR documents (with transports of hazardous goods)
- illegal migration

(iii) other controls

- veterinary
- sanitary

(3) = Place for further controls

- means of transportation
- passport and/or visa
- possible seizures
- fines

(4) = Payment in a “single pay point”

- Special place for payment of duties, taxes, toll etc. to a private bank.
(No cash payment to any civil servant).