

SOURCE Legal & Policy Card – European Maritime Border Surveillance

Recent years have seen an increasing EU policy and legal attention to border surveillance, especially at the maritime borders in the Mediterranean. This card highlights the main actors, legal frameworks, recent operational developments and cross-cutting issues.

RELEVANT ACTORS

- **The European Commission:** proposes EU legislation in this area, monitors its implementation, and manages funding available for surveillance. The most important internal Directorate-Generals are those of Home Affairs and Maritime Affairs.
- **The European Parliament:** plays a key role as co-legislator and as accountability forum in this area.
- **EU Border Agency Frontex:** coordinates operational coordination between Member States in Joint Operations (JOs), including on border surveillance in the Mediterranean. It also operationalizes the EUROSUR system (see next page).
- **The European Defence Agency (EDA):** promotes Member States cooperation on maritime surveillance from a military view.
- **Europol:** EU law enforcement agency increasingly interested in surveillance.
- **Member States / Council:** Despite the involvement of EU institutions and agencies, the Member States play a central role in border surveillance, and particularly in Search and Rescue (SAR). The ‘Friends of the Presidency Group’ in the Council is involved in developing the Maritime Security Strategy (MSS, see next page).
- **The European External Action Service (EEAS):** This foreign policy service of the EU is involved in the external relations aspects of border surveillance activities and hosts the structures for the coordination of EU Border Assistance Missions.

LEGAL AND POLICY FRAMEWORKS

- **The Schengen Borders Code:** Establishes the rules on crossing the external borders of the Member States.
- **The Frontex Regulation:** Gives the Agency the competence to coordinate JOs on external borders in accordance with an Operational Plan. After the 2011 amendments, the Regulation also includes provisions on human rights in the Agency's work.
- **The Regulation on Frontex sea border surveillance operations:** After a legal battle before the Court of Justice of the EU, this Regulation governs sea border surveillance operations in Frontex JOs. It covers the sensitive competence issue of SAR and aims to include the key *Hirsi* judgment from the European Court of Human Rights.
- **The EU Maritime Security Strategy (MSS):** As adopted by the Member States in the Council, and with the close involvement of the EDA, Commission DG Maritime Affairs and the EEAS, this non-binding strategy highlights civil-military cooperation.
- **EU Funds:** The EU Home Affairs funds finance several surveillance activities, including EUROSUR. Moreover, other EU Funds from the external relations and development sphere also finance surveillance capacity building in third countries.

SURVEILLANCE NETWORKS

- **EUROSUR:** The 'European Border Surveillance System' aims to prevent and stem irregular migration, tackle cross-border crime, and save migrants lives. It produces a surveillance picture from several sources at and beyond the external borders.
- **MARSUR:** This Maritime Surveillance system is developed under the leadership of the EDA and promotes voluntary exchange between the Navies of several Member States.
- **The Common Information Sharing Environment (CISE):** To be operational by 2020, this network would be of a cross-sector (in particular civil-military) nature where all surveillance data, including from EUROSUR and MARSUR, could be exchanged.

RECENT OPERATIONAL DEVELOPMENTS

- **The Italian ‘Mare Nostrum’ operation:** After the headline-grabbing deaths at sea off the Italian island of Lampedusa in 2013, the Italian Navy started this operation. It engaged in the interception of over 150,000 individuals and operated as far south as close to the Libyan coast line. The operation was discontinued in the fall of 2014.
- **The Frontex Joint Operation ‘Triton’:** This operation was presented as the European follow-up to ‘Mare Nostrum’. It engages much closer to the Italian coast in border surveillance, and not explicitly in SAR. This limited focus is justified by arguments over the Agency’s limited competences and capabilities. The operation is still ongoing until at least the end of 2015.

CROSS-CUTTING ISSUES FOR SOCIETAL SECURITY

- **Maritime border surveillance touches on sensitive EU legal competence questions:** The dividing lines between EU and national legal competences are contested, most notably on SAR. The competence sensitivities influence what surveillance activities are initiated at EU level, as the limited nature of the ‘Triton’ operation shows.
- **Diverging actors and frameworks in- and outside EU Rule of Law:** With the post-Lisbon Treaty institutional and legal landscape of ‘de-pillarisation’, different policy communities strive for authority in this field. These are most notably the Schengen and civilian based home affairs versus the military, maritime and external relations actors. Long legislative processes brought some frameworks to govern surveillance, such as the SBC and the Frontex sea border surveillance operations Regulation. We see however actors using informal cooperation such as the MSS outside these Rule of Law frameworks.
- **Impacts on human rights:** There is an unclear allocation of responsibility for those targeted by surveillance, often those also legally qualifying for asylum in the Member States. Surveillance can produce sensitivities to several human rights of migrants.

LEGAL AND POLICY REFERENCES

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- Council, Regulation (EC) 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (**Frontex Regulation**), *OJ* L349/1, 25 November 2004.
- Parliament and Council, Regulation (EU) 1168/2011 of 25 October 2011 amending Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the EU (**Amended Frontex Regulation**), *OJ* L 304/1, 22 November 2011.
- Parliament and Council, Regulation (EU) No 656/2014 of 15 May 2014 establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by Frontex at the external borders of the Member States of the EU (**Regulation on Frontex sea border surveillance operations**), *OJ* L 189/93, 27 June 2014.
- Parliament and Council, Regulation (EU) 1052/2013 of 22 October 2013 establishing the European Border Surveillance System (**EUROSUR Regulation**), *OJ* L 295/11, 6 November 2013.
- Commission , Communication – Towards the integration of maritime surveillance: a **Common Information Sharing Environment (CISE)** for the EU maritime domain, COM (2009) 538 final, Brussels, 15 October 2009.
- Council, European Union **Maritime Security Strategy (MSS)**, Doc. 11205/14, Brussels, 24 June 2014.
- Council, European Union Maritime Security Strategy (MSS) – **Action Plan**, Doc. 17002/14, Brussels, 16 December 2014.
- **MARSUR** website: <http://marsur.info>