

DIGNITY



How the Eurosur Regulation affects fundamental rights

September 2018



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How the Eurosur Regulation affects fundamental rights

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Acronyms

| | |
|--------------|--|
| ARSIWA | Articles on Responsibility of States for Internationally Wrongful Acts |
| BCP | Border crossing point |
| ECBG | European Border and Coast Guard Agency – Frontex |
| ECHR | European Convention on Human Rights |
| ECtHR | European Court of Human Rights |
| EU | European Union |
| EUNAVFOR MED | European Union Naval Force Mediterranean |
| Eurosur | European Border Surveillance System |
| FRA | European Union Agency for Fundamental Rights |
| GDPR | General Data Protection Regulation |
| JORA | Joint Operation Reporting Application |
| MAS | Multipurpose Aerial Surveillance |
| NCC | National Coordination Centres |
| SAR | Search and rescue |
| TEU | Treaty on European Union |
| TFEU | Treaty on the Functioning of the European Union |

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Key findings

The European Border Surveillance System (Eurosur) establishes a mechanism for information exchange and cooperation between different national authorities involved in border surveillance as well as with Frontex, the European Border and Coast Guard Agency. The purpose of Eurosur, which was established by Regulation (EU) No. 1052/2013, is to detect, prevent and combat irregular immigration and cross-border crime, as well as to contribute to the protection and saving lives of migrants.

In November 2017, the European Commission requested FRA's support in evaluating the impact on fundamental rights of the Eurosur Regulation. Further to this request, FRA reviewed the implementation of Eurosur by the European Border and Coast Guard Agency (Frontex) and analysed cooperation agreements concluded by EU Member States with third countries which are relevant for the exchange of information for the purposes of Eurosur. This report presents the main findings of the review.

The first part of the report focuses on Frontex, the European Border and Coast Guard Agency. It illustrates that Eurosur, together with other instruments and tools, contributes to search and rescue at sea. It shows that:

- Overall, Frontex pays attention to implement the Eurosur Regulation in a fundamental rights compliant manner, including also through well-designed training. The attention given to the protection of personal data in the *Eurosur Handbook* and in the Eurosur training appears effective in reducing the risk of inadvertent data protection violations and should therefore be continued.
- With the further development of Eurosur, new fundamental rights risks may emerge, for example, in relation to the processing of photographs and videos of vessels with migrants by maritime surveillance aircrafts or concerning algorithms used to track suspicious vessels.
- There are areas where the recording of border surveillance incidents in Eurosur could be improved, for example, by clearly marking incidents related to search and rescue. Other adjustments in the way incidents at the border are captured and recorded would enable the user to have a more comprehensive picture and thus better realise the potential of Eurosur to protect fundamental rights of migrants and asylum seekers, including children.

The second part of the report looks at the cooperation with third countries. FRA reviewed seven bilateral agreements, protocols and memoranda of understanding concluded by EU Member States with third countries and one regional convention, which serve as a basis for information exchange under Eurosur.

- None of the documents reviewed contain wording formally contradicting fundamental rights, but a number of them lack express safeguards to promote a fundamental rights-compatible implementation. For future agreements, the report suggests including safeguard clauses in the agreements that would provide for implementation in conformity with fundamental rights and in particular with the principle of *non-refoulement*.

- Building on the good practice of some of the reviewed documents, standard clauses reflecting the core data protection safeguards, as set out in Council of Europe Convention No. 108, should be considered for agreements entailing the exchange of personal data.
- The agreements FRA reviewed do not contain a duty to assess the general situation in the third country before border surveillance information is shared, although several Member States do this in practice. FRA, therefore, suggests more systematic and regular assessments of the situation in the third country which data exchanges are envisaged with, and the inclusion of regular updates on the human rights situation in relevant third countries in the analytical layer of the European Situational Picture.

Background

The European Union (EU) established the European Border Surveillance System (Eurosur) in October 2013 through Regulation (EU) No. 1052/2013 (Eurosur Regulation),¹ which became operational in December 2013.

Eurosur establishes a mechanism for information exchange and cooperation between different national authorities involved in border surveillance as well as with Frontex, the European Border and Coast Guard Agency. The purpose of Eurosur is to detect, prevent and combat irregular immigration and cross-border crime, as well as to contribute to the protection and saving lives of migrants.

As illustrated in Figure 1, Eurosur consists of national hubs – referred to as National Coordination Centres – established in each EU Member State for interagency cooperation and information exchange. These are connected through a secure communication network among themselves and with Frontex. Frontex operates the Eurosur Fusion Services which supports border surveillance in different ways, for example through satellite imagery, ship recording services, weather and environmental services.

Eurosur contains situational pictures. Member States manage their own national situation picture, whereas Frontex is responsible for the European Situational Picture, covering the whole of the EU as well as areas beyond the EU's external borders (so called Common Pre-Frontier Intelligence Picture). These situational pictures include information on events and incidents which occur at the external border, information on patrolling assets and analytical information.

Figure 1: National and European Situational Pictures



Notes: NCC = National Coordination Centre

Source: FRA, 2018

¹ [Regulation \(EU\) No. 1052/2013 of the European Parliament and of the Council of 22 October 2013 establishing the European Border Surveillance System \(Eurosur\)](#), OJ L 295/11.

Under Article 22 of the Eurosur Regulation, the European Commission must provide an overall evaluation of Eurosur every four years. The evaluation must also cover “compliance with and impact on fundamental rights”. The *Eurosur Handbook* notes that the European Commission may avail itself from the expertise of the EU Fundamental Rights Agency (FRA) for this purpose.²

In 2017, the European Commission requested FRA’s support to assess the impact of the Eurosur Regulation on fundamental rights.³ Due to resource considerations, FRA’s review focused on the European Situational Picture and on information exchange between EU Member States and third countries under Article 20 of the Eurosur Regulation.

FRA carried out the evaluation in October and November 2017 using a combination of the following methodologies:

- desk research;
- on-site visit at Frontex headquarters;
- semi-structured interviews with Frontex staff;
- analysis of Member State responses to eight questions on fundamental rights included in the Eurosur Questionnaire to Member State experts conducted by the European Commission;
- analysis of selected cooperation agreements concluded by EU Member States with third countries.

FRA visited Frontex on 7 November 2017. Together with the Frontex Fundamental Rights Officer, FRA reviewed the European Situational Picture and the Common Pre-Frontier Intelligence Picture. It also reviewed the training Frontex offers to National Coordination Centres (NCC) operators and consulted the Frontex Data Protection Officer.

This report presents the evaluation’s main findings. They concern nine different issues, most of which can be addressed through adjustments in the implementation. On some points, FRA also notes how the Regulation itself or cooperation agreements concluded with third countries could be improved.

The results were presented to the European Commission and to Member States in late 2017 and discussed within the framework of the Eurosur Expert Group, which is chaired by the European Commission and includes Member States and Frontex. The report was finalised before changes to the Eurosur Regulation were tabled.

² European Commission (2015), [Annex to the Commission Recommendation adopting the Practical Handbook for implementing and managing the European Border Surveillance System](#) (*Eurosur Handbook*), Strasbourg, 15 December 2015, C(2015) 9206 final, p. 55.

³ See European Commission (2018), Commission Staff Working Document, Evaluation of the Regulation (EU) No. 1052/2013 of the European Parliament and of the Council of 22 October 2013 establishing the European Border Surveillance System (Eurosur), Brussels, 12 September 2018, SWD(2018) 410, paragraph 3.1 on methodology, and European Commission (2018), Report from the Commission to the Council and the European Parliament on the evaluation of the European Border Surveillance System (EUROSUR), Brussels, 12 September 2018, SWD(2017) 131 final.

1. European Situational Picture

This first part focuses on the European Situational Picture and is largely based on the observations and interviews carried out during the visit to Frontex, the European Border and Coast Guard Agency. It covers seven different aspects. Some of these aspects focus on the way information on incidents at the external borders are recorded in Eurosur, while other parts look at possible fundamental rights challenges as Eurosur develops further. The final section speaks about training.

1.1. Search and rescue (SAR)

Article 1 of the Eurosur Regulation clarifies that the purpose of Eurosur is also to “contribute to ensuring the protection and saving the lives of migrants”. As Eurosur is only one of the instruments and tools aimed at enhancing search and rescue at sea, it is difficult to assess the degree to which Eurosur helped saving lives at sea.

The contribution of Eurosur to saving lives at sea is to be assessed together with other related developments, including Regulation (EU) No. 656/2014,⁴ the European Border and Coast Guard Regulation (EU) No. 2016/1624⁵ and tools developed by Frontex in support of Member States. In addition, it would require further research on the relationship and cooperation between Eurosur National Coordination Centres and Maritime Rescue Coordination Centres.

Frontex joint operations frequently cover maritime areas affected by SAR events. Such operations are governed by operational plans, which, under Regulation (EU) No. 656/2014, contain a strong focus on search and rescue.

In addition, a number of surveillance tools Frontex has developed to support Member States contribute to search and rescue, as the following four examples illustrate.

- On 17 September 2014, an object was detected on a radar image south of Spain, leading to the rescue of 38 people.
- On 6 October 2015, 10 objects were detected on a radar image in the Mediterranean. The information was forwarded to EUNAVFOR MED who found three rubber boats, saving 350 people.
- On 5 September 2016, the analysis of radar images detected an object between Spain and Morocco, which led the Spanish authorities to save 35 people.
- On 24 June 2017, 73 people were rescued and brought to safety in Motril, Spain, after being spotted by Frontex’s vessel detection service.

The importance of European border surveillance activities for search and rescue is increasing with the implementation of the Multipurpose Aerial Surveillance (MAS)

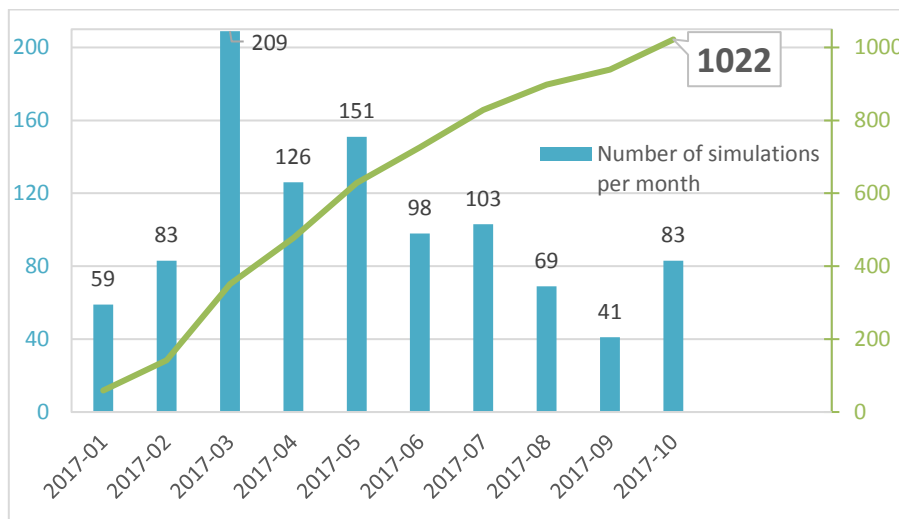
⁴ [Regulation \(EU\) No. 656/2014 of the European Parliament and of the Council of 15 May 2014 establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union](#), OJ L 189/93.

⁵ [Regulation \(EU\) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation \(EU\) 2016/399 of the European Parliament and of the Council and repealing Regulation \(EC\) No. 863/2007 of the European Parliament and of the Council, Council Regulation \(EC\) No. 2007/2004 and Council Decision 2005/267/EC](#), OJ L 251/1.

project. Under the project (which is formally not part of Eurosur), in November 2017, Frontex disposed of two fixed-wing aircrafts to patrol the sea. These aircrafts provided real time videos to an operations room in Frontex, which allowed the agency to spot boats with migrants drifting at sea and to pass this information to the national Maritime Coordination Centre to initiate a search and rescue operation. From June to early November 2017, the MAS project supported 35 search and rescue operations with 1,569 migrants involved.

An important contribution to search and rescue are maritime simulations, a service EU Member States can request from Frontex to determine the position of a vessel adrift at sea. Through a simulation exercise, which takes into account the characteristics of the vessel, wind and sea conditions and other relevant factors, Frontex determines where a dinghy which issued a distress will be by the time SAR staff reach the area. This information allows national rescue authorities to target the search, saving important time and leading to swifter rescue operations. As illustrated in Figure 2, from January to October 2017, Frontex carried out over 1,000 simulations, with most requests coming from Italy (420).

Figure 2: Number of Frontex maritime simulations between 1 January and 31 October 2017



Source: Frontex Situational Centre, November 2017

On a more technical level, the European Situational Picture in Eurosur contains short reports of incidents which occurred at the external border. Information on whether an incident was a search and rescue (SAR) event is usually included in the free text explaining the incident. However, SAR events are not marked as such. An overview of how many incidents concerned SAR events can only be calculated by opening the description of each individual incident. By contrast, JORA – the application used by Frontex to store reports from joint operations – incorporates a tick box to mark “search and rescue involved” during the incident.

Conclusions

Eurosur has the potential to help saving lives at sea through the prominence given to rescue at sea in all Eurosur materials (from the *Eurosur Handbook* to the Eurosur training), the maritime simulations by Frontex and the common applications of

surveillance tools. However, SAR events could be better captured in Eurosur, so as to offer statistical data that can be used as a basis for the further development of measures to reduce the number of migrants dying at sea by tagging whether an “illegal border crossing” incident was a SAR event or not.

1.2. Protection of personal data

According to Article 13 of the Eurosur Regulation, personal data can only be processed in the National Situational Pictures. No personal data can be processed in the European Situational Picture and the Common Pre-Frontier Intelligence Picture, except for ship identification numbers. This provision is based on the rationale that – except for ship identification numbers – personal data are not necessary for risk analysis purposes.

As shown in Figure 3, according to responses to the Eurosur Questionnaire to Member State experts, six Member States process personal data in their national situational picture. From the responses, it is not clear if this refers only to ship identification numbers or also to other personal data.




Figure 3: Do you process Personal Data as part of your national implementation of Eurosur?

| | | Answers | Ratio |
|-----|---|---------|--------|
| Yes |  | 6 | 22.2 % |
| No |  | 21 | 77.8 % |

Source: Eurosur Questionnaire to Member State experts, 2017; total responses: 27

The majority of EU Member States responding to the Eurosur Questionnaire to Member State experts consider that the handling of personal data in Eurosur is satisfactory, but one out of four believe that this is not the case (Figure 4).

Figure 4: Do you believe that the handling of personal data in the Eurosur Regulation is satisfactory?

| | | Answers | Ratio |
|-----------|---|---------|--------|
| Yes |  | 18 | 66.7 % |
| No |  | 7 | 25.9 % |
| No Answer |  | 2 | 7.4 % |

Source: Eurosur Questionnaire to Member State experts, 2017; total responses: 27

This conclusion may have several reasons. Apart from the desire by several Member States to enlarge the possibility to process personal data in Eurosur, there also appears to be a different understanding of whether or not certain data included in Eurosur are personal data. For example, one third of the Member States responding to the Eurosur Questionnaire to Member State experts consider that ship identification numbers constitute personal data, but more than half of the responding Member States consider that this is not the case.

In certain circumstances, information on legal persons may also amount to personal data. The ship's identification number may amount to personal data as it may lead to the direct or indirect identification of a natural person.⁶

Responses to the Eurosur Questionnaire to Member State experts also indicate that national data protection authorities rarely audit Eurosur. As illustrated in Figure 5, only in two EU Member States (Finland and Spain) did national data protection authorities undertake an audit. The majority of Member States, however, did not respond to this question.

Figure 5: Please indicate whether the national data protection authority has audited the relevant national bodies and infrastructures involved in the implementation of Eurosur

| | Answers | Ratio |
|-----------|---------|--------|
| Yes | 2 | 7.4 % |
| No | 4 | 14.8 % |
| No Answer | 21 | 77.8 % |

Source: Eurosur Questionnaire to Member State experts, 2017; total responses: 27

The *Eurosur Handbook* published by the European Commission contains in Point 3.2.9 concrete suggestions on how to avoid that personal data is processed inadvertently.

To verify whether or not personal data are included in the European Situational Picture, FRA and the Frontex Fundamental Rights Officer reviewed 60 incidents, randomly selected among the 2,422 incidents reported in Eurosur between 8 October and 7 November 2017. Eighteen different EU Member States had reported these 60 incidents. The review included all data fields, including the narrative text that describes the incident. None of the incidents contained personal data, except ship identification numbers.

Interviews with Eurosur operators in Frontex confirmed that EU Member States rarely insert personal data in incidents reported in the National Situational Picture and then transferred to the European Situational Picture. In recent months, Frontex recalled two cases in which they had to contact the National Coordination Centre because an entry was made under the "name" field; in one case, the entry corresponded to a geographical location and in the second case, the entry corresponded to a name included in a forged document used by a migrant. Both entries were subsequently removed.

FRA and the Frontex Fundamental Rights Officer also reviewed satellite imageries to assess a possible risk of personal data being processed. As the images currently used by Frontex have a maximum resolution of 50 cm per pixel, the risk of inadvertently processing personal data is considered minimal at this point. Using such a resolution does not make it possible to recognise faces or identify car number plates, for example.

Conclusions

⁶ See European Commission, DG Maritime Affairs and Fisheries, (2008), [Legal aspects of maritime monitoring & surveillance data – Summary report](#), p. 10.

Should the Multipurpose Aerial Surveillance project be included in Eurosur in the future, attention should be paid to avoid the processing of pictures or videos which depict faces which could be recognised through face recognition software.

The attention given to the protection of personal data in the Eurosur Handbook and in the Eurosur training appears effective in reducing the risk of data protection violations and should therefore be continued.

To further reduce the risk of personal data (particularly names) being recorded in the European Situational Picture, a flag could be added to the incident template next to the "name" entry, reminding NCC operators that such field must only be used for the national situational picture.

The currently extensive free narrative text could benefit from safeguards to ensure that personal data is not inadvertently inserted.

1.3. Children

According to Article 2 (4) of the Eurosur Regulation, priority should be given to the special needs of children. The European Commission noted in its *Communication on the Protection of Children in Migration* that data on children in migration are still very fragmented, making children and their needs "invisible". More detailed data on all children in migration are needed to inform policy development and better target support services and to plan for contingencies.⁷

Although a number of irregular border crossing incidents also concerned children, the number of girls and boys affected by an incident was not visible when opening the incident details section, which in most cases showed only a breakdown of the persons concerned by sex. In principle, the template allows for recording whether children are affected by an incident, including the possibility to report the number of boys and girls (Figure 6). However, it appears that this option is only rarely used.

⁷ European Commission (2017), [Communication from the Commission to the European Parliament and the Council, The protection of children in migration](#), COM(2017) 211 final, Brussels, 12 April 2017, p. 15.

Figure 6: Incident template – information

| Section | Field | Value |
|--------------|--|----------------|
| Perpetrators | Descriptions: Perpetrator Descriptions | |
| | Adults - Male: | 1 |
| | Adults - Female: | Enter a number |
| | Minors - Male: | Enter a number |
| | Minors - Female: | Enter a number |
| | Total adults: | 1 |
| | Total minors: | Enter a number |
| | Total: | 1 |
| Facilitators | Descriptions: Facilitator Descriptions | |
| | Adults - Male: | Enter a number |
| | Adults - Female: | Enter a number |
| | Minors - Male: | Enter a number |
| | Minors - Female: | Enter a number |
| | Total adults: | Enter a number |
| | Total minors: | Enter a number |
| | Total: | Enter a number |
| Victims | Descriptions: Victim Descriptions | |
| | Adults - Male: | Enter a number |
| | Adults - Female: | Enter a number |
| | Minors - Male: | Enter a number |
| | Minors - Female: | Enter a number |
| | Total adults: | Enter a number |
| | Total minors: | Enter a number |
| | Total: | Enter a number |

Source: Eurosur, November 2017

Conclusions

FRA suggests that EU Member States pay more attention to ensuring that data on children are included and made visible when incidents are uploaded into the European Situational Picture. This matter could be given more attention in the Eurosur training.

1.4. Vessel tracking rules and non-discriminatory profiling

Frontex uses algorithms to track vessels of interest. These algorithms are primarily based on the geographical position of vessels (e.g. presence of vessel in a specific area or distance of vessels between themselves when at sea). Based on the discussions with Frontex, the European Border and Coast Guard Agency, but without having individually reviewed the algorithm used, these do not appear to be based on any sensitive data that could result in direct or indirect discrimination.

However, more sophisticated algorithms may be used in future, possibly also using data on the nationality of the ship, the port of departure and other data which may reveal the ethnic or social origin of the captain or the crew and which could result in targeting specific groups of people (e.g. fisherman from an ethnic minority). It would, therefore, be advisable that any new rule be reviewed by a fundamental rights expert, to ensure that they do not reflect possible biases of the person developing the algorithm, leading to direct or indirect discrimination.

Conclusions

Should the Eurosur Regulation be revised, consideration could be given to include a provision on the need to ensure that algorithms used for border surveillance are based on objective and evidence-based criteria, similar to Article 6 (4) of the PNR Directive (Directive (EU) 2016/681).⁸

1.5. Incidents not related to Eurosur

Three out of the 60 incidents FRA reviewed did not appear to be linked to irregular migration or cross-border crime. The first incident (reported as “falsification/document fraud”) concerned a national stopped inside the territory of an EU Member State with a counterfeit driving licence. The incident did not occur at the border nor were there further details linking it to a possible cross-border crime. The second incident (reported as “illegal border crossing”) concerned a group of asylum applicants stopped near an open reception facility. The third incident (reported as “other unspecified events – asylum”) concerned the submission of an asylum application by one person in the second largest city of the reporting EU Member State.

From the information recorded it was not possible to establish a link between these entries and the purposes of Eurosur, namely combatting irregular migration and cross-border crime (Article 1 of the Regulation).

Conclusions

Steps should be taken to improve data quality, ensuring that only incidents which fall under the scope of Eurosur are included in the situational picture. Further guidance to standardise the text for events and allow for better comparative analysis would be useful.

1.6. Differences between Eurosur and JORA and their impact on fundamental rights

A comparison between Eurosur and JORA (the application used by Frontex to store reports from joint operations) shows that incidents occurring in EU Member States hosting joint operations are sometimes recorded in both systems and sometimes only in JORA.

A large number of incidents relating to irregular migration were recorded between 9 October and 7 November 2017 in Spain (317 incidents including the national and the Frontex nodes), Italy (97 incidents in total, including also non-migration related incidents) and Greece (364 incidents in national node, some referring to JORA numbers, but not directly transferred). This was, however, for example, not the case at the Serbian-Hungarian green border, where Eurosur contained only four entries, essentially relating to cross-border crime in the Szeged-Röszke geographical area, compared to some 50 irregular border crossings reported in JORA.

⁸ [Directive \(EU\) 2016/681 of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record \(PNR\) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime](#), OJ L 119/132.

From a technical point of view, JORA includes a functionality which, if ticked, allows for the automatic transfer of the incident to Eurosur. However, not all EU Member States systematically use this option.

The absence or low reporting of irregular border crossing incidents in some sections of the border may lead to a distorted picture. This also impacts on the potential of Eurosur to protect fundamental rights. For example, lower reporting of incidents in Eurosur may impact on the way the reaction capability of Member States is assessed. The reaction capability should also cover procedures and mechanisms in place to deal, for example, with an increased arrival of asylum applicants (see *Eurosur Handbook* at 3.3.2 on page 30). If no or a significantly lower number of incidents are reported in the Eurosur European Situational Picture, possible needs to strengthen national asylum processing or reception capacities for asylum applicants would remain invisible.

Similarly, incidents occurring at border crossing points (BCPs) are currently only reported in Eurosur on a voluntary basis, as the Eurosur Regulation does not require this. Significant differences between JORA and Eurosur are the result. As an illustration, in October 2017, 186 incidents were recorded in JORA at the Terespol BCP at the Polish-Belarusian border but no refusal of entry or irregular migration incident was recorded in Eurosur.

Conclusions

A more comprehensive reporting of incidents in Eurosur, including from border crossing points, would not only improve the quality of the European Situational Picture but also help better realise the potential of Eurosur to protect fundamental rights of migrants and asylum seekers. It would enable users to better identify weaknesses linked to referral systems for applicants of international protection, children at risk, or suspected victims of trafficking in human beings or the inadequacy of reception capacities at the border for newly arrived people.

To avoid involuntary disparities between Eurosur and JORA, transfer of data from JORA to Eurosur could occur automatically, unless this option is deliberately unticked by the responsible officer.

1.7. Eurosur training

Frontex has developed a training course for Eurosur National Coordination Centres operators. The course consists of different components. It starts with an online preparatory module and is followed by three face-to-face modules lasting one week each. The course ends with the assessment and certification. Fundamental rights have been well integrated into the course. One full day of the face-to-face module is devoted to fundamental rights which are taught using practical case studies linked to the day-to-day work of operators. These complement the theoretical knowledge gained during the online preparatory phase. The fundamental rights part of the training, which focuses on the right to life (rescue at sea), the access to international protection and data protection, was implemented with the support of the Frontex Fundamental Rights Officer.

Conclusions

Some of the issues identified by this evaluation could be addressed by adjusting the training for National Coordination Centres operators. For example, training could give more attention to children and incorporate any future guidance on data standardisation that may be developed.

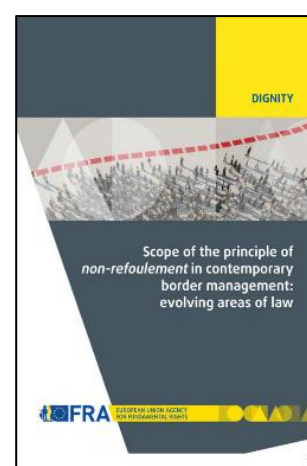
2. Cooperation with third countries

This second part focuses on cooperation with third countries. It first reviews selected bilateral or multilateral cooperation agreements from a fundamental rights perspective and concludes with the last section on ways to mitigate the risk of *refoulement* or serious harm.

The Eurosur Regulation gives significant importance to cooperation with third countries (Article 20), which is one of the 11 components of European integrated border management (Regulation (EU) 2016/1624 on the European Border and Coast Guard, Article 4 (f)). From a fundamental rights perspective, such cooperation may, however, entail significant risks. For example, information shared with third countries may lead to possible violations of the principle of *non-refoulement*, ill-treatment of migrants, or unlawful processing of personal data. At the same time, good cooperation also offers opportunities. For example, an improved situational picture can support effective search and rescue at sea and swift disembarkation in a place of safety.

According to Protocol No. 23 to the Treaty on European Union (TEU)/Treaty on the Functioning of the EU (TFEU), EU law on checks at external borders is “without prejudice to the competence of Member States to negotiate or conclude agreements with third countries *as long as they respect Union law and other relevant international agreements*” (italics added).⁹ Article 20 (3) of the Eurosur Regulation clarifies further that agreements with third countries must “comply with the relevant Union and international law on fundamental rights and on international protection, including the Charter of Fundamental Rights of the European Union and the Convention Relating to the Status of Refugees, in particular the principle of non-refoulement”.

In December 2016, FRA issued guidance¹⁰ to support EU Member States and Frontex, the European Coast and Border Guard Agency, to mitigate fundamental rights risks when cooperating with third countries. A legal analysis of the principle of *non-refoulement* and a description of operational scenarios accompany the guidance. The guidance suggests, for example, to clarify responsibilities and procedures in bilateral or multilateral agreements, to refrain from asking third countries to intercept migrants in case of real risk of serious harm and to provide targeted fundamental rights training. The guidance, which is available in 13 official EU languages and has been used in Frontex operations HERA 2017, may also assist EU Member States when implementing Article 20 of the Eurosur Regulation.



⁹ European Communities (2008), [Consolidated version of the Treaty on the Functioning of the European Union - PROTOCOLS - Protocol \(No. 23\) on external relations of the Member States with regard to the crossing of external borders](#), OJ C 115/304.

¹⁰ FRA (2016), [Guidance on how to reduce the risk of refoulement in external border management when working in or together with third countries](#), December 2016.

2.1. General fundamental rights safeguards

The majority of EU Member States who are bound by the Eurosur Regulation have concluded agreements with third countries that cover border management falling under the scope of the Eurosur Regulation (Figure 7).

Figure 7: Do you have agreements with third states in the area of border management?

| | | Answers | Ratio |
|-----------|--|---------|--------|
| Yes | | 20 | 74.1 % |
| No | | 5 | 18.5 % |
| No Answer | | 2 | 7.4 % |

Source: Eurosur Questionnaire to Member State experts, 2017; data not verified by FRA

FRA reviewed seven – of a total of 10 requested – bilateral agreements, protocols and memoranda of understanding concluded by EU Member States with third countries and one regional convention, the Police Cooperation Convention for South East Europe (hereinafter referred to as “documents”). FRA selected these documents among the approximately 120 agreements and other written arrangements which EU Member States identified in the context of Article 20 (1) of the Eurosur Regulation. Criteria for the selection were:

- geographical balance: four documents with Eastern European countries (Belarus, Moldova, Russian Federation); two with African countries (Algeria, Cape Verde) and two with the Western Balkans (Police Cooperation Convention, Serbia);
- different status: one regional convention, four agreements, two protocols, and one memorandum of understanding;
- different thematic coverage: five police cooperation documents; two border management documents; and one cooperation agreement to combat irregular migration. In case of police cooperation agreements, only those provisions which were relevant for information exchange in the field of border management under Eurosur were analysed.

FRA reviewed the documents in one of their official languages. The table in the Annex provides an overview of the agreements and arrangements analysed.¹¹

Date of conclusion

All reviewed documents were concluded before December 2013, i.e. the date of application of the Eurosur Regulation and none were subject to significant amendments. Formal amendments to these agreements after December 2013, of which FRA was made aware, are of purely technical nature. For example, the agreement between Estonia and the Russian Federation was updated on 21 January 2016 with new names of border representatives. Therefore, the reviewed

¹¹ Three additional agreements were requested (Croatia – Bosnia and Herzegovina, Malta – Tunisia and Spain – Senegal) but not received.

documents were not subject to prior consultation with the European Commission, as envisaged in Article 20 (2) of the Eurosur Regulation for newly concluded agreements.

Three documents reviewed were concluded after the date of entry into force of the Lisbon Treaty and the Charter of Fundamental Rights of the European Union (EU Charter) on 1 December 2009. Two of them (Bulgaria, Romania)¹² contain a reference to human rights instruments (Council of Europe Convention No. 108)¹³ in the preamble. They also clarify that the document does not affect the parties rights and obligations deriving from international law. This seems to point to an increased attention paid to fundamental rights in documents concluded post-Lisbon but the sample reviewed is too small to make any definitive conclusions.

Compliance with fundamental rights

None of the documents reviewed contain wording which would formally contradict fundamental rights provisions enshrined in the EU Charter and in Recital (15) or in Article 2 (4) of the Eurosur Regulation.

A different question is whether the documents contain wording which, in the absence of express safeguards, may result in fundamental rights violations by one of the parties during their implementation. Whenever they implement EU law – thus including the Eurosur Regulation – EU Member States are bound by the EU Charter. Together with international human rights obligations applicable to EU Member States and the safeguards to protect fundamental rights in national constitutional law and administrative law, this should facilitate a rights-compliant implementation of the agreements in the EU Member States concerned.

Third countries are, however, not bound by the same legal framework. EU law does not apply to them and their obligations under international human rights law and national law may differ significantly.

In principle, third countries bear the responsibility for possible human rights violations they commit when they carry out border management activities in cooperation with EU Member States. Nevertheless, the ECtHR pointed out that “where States establish [...] international agreements, to pursue co-operation in certain fields of activities, there may be implications for the protection of fundamental rights. It would be incompatible with the purpose and object of the [European Convention on Human Rights] if Contracting States were thereby absolved from their responsibility under the Convention in relation to the field of activity covered by such attribution”.¹⁴

International law on state responsibility is evolving. Articles 16, 17 and 18 of the Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA)¹⁵

¹² For reasons of readability, the agreements and arrangements reviewed are referred to in the text using by referring the EU Member State party to it.

¹³ Council of Europe (1981), [Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data](#), ETS No. 108, 1981 (*Convention No. 108*).

¹⁴ European Court of Human Rights, *T.I. v. the United Kingdom*, No. 43844/98, 7 March 2000, page 15.

¹⁵ International Law Commission (2001), [Responsibility of States for Internationally Wrongful Acts](#), Text adopted by the Commission at its fifty-third session, in 2001, and submitted to the General Assembly as a part of the Commission's report covering the work of that session. The report, which also contains commentaries on the draft articles, appears in Yearbook of the International Law Commission, 2001, vol. II (Part Two). Text reproduced as it appears in the annex to General Assembly resolution 56/83 of 12 December 2001, and corrected by document A/56/49(Vol. I)/Corr.4.

outline circumstances under which a state may assume responsibility for internationally wrongful acts of another state. These constitute exceptions and the threshold for state responsibility is therefore high.

More specifically, Article 16 of ARSIWA provides that a state is responsible for aiding or assisting another state in the commission of an internationally wrongful act if three requirements are fulfilled. First, the relevant state organ or agency providing aid or assistance must have knowledge of the circumstances making the conduct of the assisted state internationally wrongful. Second, the aid or assistance must be provided to facilitate the commission of that conduct, which must in turn indeed result in wrongful conduct. Third, the conduct must be such that it would have been wrongful even if it had been committed by the assisting state itself.¹⁶ There is no international case law yet which would give guidance as to how these rules would be applied in the context of border management and whether the aid or assistance could also consist of the sharing of information which enables a third country to take actions in violation of, for example, the principle of non-*refoulement*, the prohibition of torture, inhuman and degrading treatment or punishment or of other core fundamental rights. Nevertheless, responsibility cannot be fully excluded. Preventive measures can be taken to mitigate such risks. One of them is to include express fundamental rights clauses in the agreement.

Express fundamental rights safeguard clauses

According to responses to the Eurosur Questionnaire to Member State experts, at least 11 Member States incorporated fundamental rights safeguards clauses in some of the agreements and arrangements they concluded with third countries (see Figure 8).

Figure 8: Do some of these agreements contain a fundamental rights safeguards clause?

| | Answers | Ratio |
|-----------|---------|--------|
| Yes | 11 | 40.7 % |
| No | 9 | 33.3 % |
| No Answer | 7 | 26.0 % |

Source: Eurosur Questionnaire to Member State experts, 2017; data not verified by FRA

References to concrete international human rights instruments in the documents reviewed mostly concern the protection of personal data. The preambles of three documents reviewed (Police Cooperation Convention¹⁷, Bulgaria and Romania) refer expressly to a Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data. The preamble of a fourth document (Latvia) contains a more general reference to international law.

¹⁶ International Law Commission (2001), [Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries](#), Text adopted by the International Law Commission at its fifty-third session, in 2001, and submitted to the General Assembly as a part of the Commission's report covering the work of that session (A/56/10). The report, which also contains commentaries on the draft articles, appears in the Yearbook of the International Law Commission, 2001, vol. II, Part Two, as corrected, p. 66.

¹⁷ The 2006 Police Cooperation Convention for Southeast Europe is referred to as "Police Cooperation Convention".

These four documents also contain an operational clause clarifying that the agreement does not affect the parties' rights and obligations deriving from international law. A fifth document, which is an implementing memorandum of understanding (Italy), contains such a clause in the "mother agreement" (Article 8 of the 1999 cooperation agreement between the governments of Italy and Algeria relating to the fight against terrorism, organised crime, drugs smuggling and illegal immigration).

The inclusion of express fundamental rights safeguard clauses in bilateral or multilateral agreements may mitigate the risk that such agreements lead to violations of fundamental rights. When reviewing the eight documents, FRA examined the type of safeguard clauses included.

a) Implementation must comply with fundamental rights

Leaving data protection aside, which is referred to in a number of agreements, none of the documents reviewed contain an operational safeguard clause, explicitly obliging the parties to implement the agreement in compliance with fundamental or human rights. Nor does any of the documents reviewed contain a clause reminding the parties to respect the principle of *non-refoulement* when implementing the agreement.

b) Implementation must comply with international obligations of the parties

Six of the eight documents reviewed contain a general reference stating that the agreement must be implemented in accordance with the parties' international obligations (Police Cooperation Convention, Bulgaria, Estonia, Latvia, Lithuania, and Romania). Although formulated in general terms, such safeguard clauses promote a fundamental rights-compliant implementation – this, at least, when the third country is bound by international human rights obligations that are similar to those included in EU law.

c) Implementation must comply with national law

Almost all documents reviewed contain a very general reference to the need to apply the agreement in conformity with national law. This does not, in the view of FRA, represent a sufficient safeguard, as national laws of third countries do not necessarily need to reflect EU law standards.

The status of the document – whether it is a convention, an agreement, a protocol or a memorandum of understanding – does not seem to significantly affect whether or not fundamental rights safeguard clauses are included. It appears, however, that documents covering police cooperation more frequently contain references to human rights instruments as compared to those which only cover border management.

Conclusions

If current agreements are amended or new agreements are concluded, it would be beneficial to include express clauses providing that the agreement, protocol or memorandum of understanding must be implemented in conformity with fundamental rights and in particular with the principle of *non-refoulement*. Such safeguards would promote a fundamental rights-compliant implementation of agreements that serve as a basis for information exchange under Eurosur.

2.2. Specific data protection safeguards

Article 20 (4) of the Eurosur Regulation requires that “[a]ny exchange of personal data with third countries in the framework of Eurosur shall be strictly limited to what is absolutely necessary for the purposes of this Regulation” and must be carried out in full compliance with EU and national data protection rules. Although the great majority of Member States do not process personal data as part of their national implementation of Eurosur, six Member States indicated processing such data by their national authorities. In only two Member States, the national data protection authority has audited the relevant national bodies and infrastructures involved in the implementation of Eurosur (see Section 1.2).

Under the EU legal framework on data protection applicable at the time of the review (Directive 95/46/EC)¹⁸, transfers of personal data to third countries are only authorised with an adequate level of protection, unless the transfer falls under the derogations in Article 26 of Directive 95/46/EC. Similarly, under the EU General Data Protection Regulation (GDPR),¹⁹ which applies from May 2018, data may be transferred on the basis of an adequacy decision or subject to appropriate safeguards. Derogations are possible only under the conditions listed in Article 49 (1) of the GDPR.

Transfers of personal data to third countries performed in the framework of police and judicial cooperation in criminal matters is regulated by Articles 35-40 of Directive (EU) 2016/680²⁰ and before May 2018 were subject to the specific rules in Article 13 of the Council Framework Decision 2008/977/JHA.²¹ These rules also set out the requirement that the third country concerned must ensure an adequate level of protection for the intended processing of personal data. More specifically, under Directive (EU) 2016/680, an adequacy decision or appropriate safeguards have to be in place. Derogations are subject to specific conditions.

The adequacy of the level of protection afforded by a third country must be assessed in light of all the circumstances surrounding the data transfer. The European Commission is empowered to determine whether a third country ensures an adequate level of protection by adopting “adequacy decisions” (Article 45 of the GDPR). When doing this, the Commission must examine a number of factors. These include, among others things, the rule of law, respect for human rights and fundamental freedoms in the third country concerned, relevant legislation (both general and sectoral), data protection rules, professional rules and security measures, the existence and effective functioning of independent supervisory authorities as well as international commitments entered into in the field of data protection. None of the third countries

¹⁸ [Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data](#), OJ L 281/31.

¹⁹ [Regulation \(EU\) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC \(General Data Protection Regulation\) \(Text with EEA relevance\)](#), OJ L 119/1 (General Data Protection Regulation).

²⁰ [Directive \(EU\) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA](#), OJ L 119/89.

²¹ [Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters](#), OJ L 350/60.

who are party to the documents FRA reviewed are subject of an adequacy decision by the European Commission.

Six out of the eight documents reviewed envisage the sharing of personal data. However, only four of them (Police Cooperation Convention, Bulgaria, Latvia and Romania) contain a specific provision on data protection and an additional document (Latvia) has a general clause prohibiting the sharing of information if not allowed under national or international law of the parties. The content of the data protection provisions varies. Detailed data protection rules are included in the Police Cooperation Convention (Article 31), the Bulgaria-Serbia agreement (Article 24) as well the Romania-Moldova (Article 4) protocol. All three documents require the parties to comply with the requirements of Council of Europe Convention No. 108; they set limits as to who can use personal data received from the other party and for what purpose; they set rules for sharing data with third parties and on data retention, and they require the parties to keep log-files and to protect the data effectively against unlawful access.

Not all requirements deriving from the EU data protection *acquis* can reasonably be included in bilateral agreements covering border surveillance, which usually tend to be short and rather technical. However, the explicit reference to the above core data protection standards which need to be observed helps significantly in promoting a fundamental rights compliant implementation.

Conclusions

Building on promising practices identified in this review, particular attention should be paid to data protection clauses in future agreements with third countries. Standard clauses reflecting the core data protection safeguards, at least as set out in Council of Europe Convention No. 108, should be considered in any agreement that may entail the exchange of personal data. In addition, agreements with EU candidate countries can set higher data protection standards as they have to align their national legislation with EU data protection *acquis* as a requirement stemming from their candidate country status.

If adequate data protection safeguards for a given third country are not in place, the transfers of personal data should only be made for situations which fall under the derogations set forth in Article 49 of the General Data Protection Regulation (GDPR) and, in case of law enforcement data, under Article 38 of Directive (EU) 2016/680.

2.3. Assessment of risk of *refoulement* or serious harm

One type of incident reported in the European Situational Picture concerns prevention of departures. Depending on the circumstances, prevention of departures may result in violations of the principle of *non-refoulement* as analysed in FRA's 2016 report 'The scope of the principle of *non-refoulement* in contemporary border management'.²²

Prevention of departures are essentially situations in which the neighbouring third country prevents an irregular border crossing by stopping individuals before they reach the external border. This can occur on the third country's own initiative or on the basis

²² FRA (2016), [Scope of the principle of non-refoulement in contemporary border management: evolving areas of law](#), Luxembourg: Publications Office of the European Union, December 2016, Scenario 7, pp. 37-38.

of information shared with the third country by an EU Member State that detected a group of migrants approaching the border during its surveillance activities.

Border surveillance information shared with third countries must respect the safeguards included in Article 20 (5) of the Eurosur Regulation. According to it, information sharing must not happen if it “provides a third country with information that could be used to identify persons or groups of persons whose request for access to international protection is under examination or who are under a serious risk of being subjected to torture, inhuman and degrading treatment or punishment or any other violation of fundamental rights”.

The purpose of the safeguards in Article 20 is to avoid situations in which the information shared by an EU Member State enables a third country to violate a person’s fundamental rights. Such a risk would exist, for example, when information is shared which gives a neighbouring third country the opportunity to stop a group of dissidents who have a well-founded fear of persecution from reaching safety. Under Article 20 (5) of the Eurosur Regulation, an EU Member State should refrain from sharing information on third-country nationals trying to reach the EU’s external land or sea border, when there are substantial grounds for believing that the third-country authorities will intercept the persons concerned and subject them to ill-treatment, for example by placing them in facilities where conditions are inhuman or degrading.

To determine whether the sharing of information on persons approaching the external border of the EU with a neighbouring third country could raise issues under Article 20 (5) of the Eurosur Regulation, reliable information on the human rights situation in the third country is needed. Such information should include details on how the third country treats migrants and asylum seekers. However, as of now, only nine Member States indicated that they carry out a general assessment of the situation in the third countries they cooperate with so as to determine whether the exchange of information runs the risk of violating Article 20 (5) of the Eurosur Regulation (see Figure 9).

Figure 9: Do you use a general assessment of the situation in the third country to determine whether the exchange of information runs the risk of contradicting the provision in Article 20 (5) of the Eurosur Regulation?

| | | Answers | Ratio |
|-----------|--|---------|--------|
| Yes | | 9 | 33.3 % |
| No | | 7 | 26.0 % |
| No Answer | | 11 | 40.7 % |

Source: Eurosur Questionnaire to Member State experts, 2017

The analytical layer in Eurosur does not contain much information on neighbouring third countries’ human rights situation. Developments relating to human rights are primarily inserted in Eurosur when they may trigger changes in migration movements. For example, FRA noted that Frontex uploaded a document on key developments on Boko Haram in March 2016. The Eurosur Common Pre-Frontier Intelligence Picture does not include a regular analysis of the way neighbouring third countries treat

asylum seekers and migrants to exclude the risk of potential breaches of the principle of *non-refoulement*.

None of the agreements or arrangements reviewed by FRA contain a duty to assess the general situation in the third country before border surveillance information is shared with them. This may also be explained by the fact that many of these documents were concluded long before the adoption of the Eurosur Regulation.

In the absence of an explicit clause in the documents, EU Member States may take other preventive measures to avoid the risk that the information shared with a third country is used to violate fundamental rights. As a best practice, the *Eurosur Handbook* suggests (page 10) that the National Coordination Centre (NCC) “draws up a standard operating procedure for sharing information with third countries. This procedure should include checking that information is not shared when the NCC knows or is supposed to know that it will be or most likely might be used by the third country to violate fundamental rights” of the persons concerned. No information is available on EU Member States’ experience in this regard.

Conclusions

To ensure that no information is shared with neighbouring third countries which could be used by the third country to violate fundamental rights, EU Member States should be obliged to undertake a general assessment of the situation in the third country, similarly to what is envisaged in Article 4 (2) of Regulation (EU) No. 656/2014 for Frontex coordinated sea operations. Such assessment would enable EU Member States to evaluate possible fundamental rights implications and calibrate the sharing of information to avoid or reduce the risk of participation in conduct that could violate fundamental rights. Such assessment should be based on a full range of sources and include information on access to asylum and on the treatment of persons in need of international protection.

To operationalise the safeguard in Article 20 (5) of the Eurosur Regulation, if reviewed, the Regulation could make it compulsory to include in the European Situational Picture regular updates on the situation of asylum seekers and migrants in neighbouring third countries, focusing in particular on those apprehended when trying to leave the country. Such information could correspond to the general assessment of the situation in a third country undertaken within the framework of Article 4 (2) of Regulation (EU) No. 656/2014, provided the analysis is based on a variety of reliable sources, including those from EU institutions and agencies, international organisations, Member States and civil society.

To facilitate monitoring, EU Member States could keep an electronic log with the date, the name of the third country and the type of information shared.

Annex: List of bilateral and multilateral agreements reviewed

| EU Member State | Agreement | Subject area covered by the agreement | Subject area examined here | Year | References to human rights in text | Agreement does not affect parties' rights / obligations deriving from international law | Implementation must be in accordance with (express operational clause) | | | Data protection | |
|--------------------|--|---------------------------------------|--|------|--|--|---|----------------------------|---|---|---|
| | | | | | | | EUMS international obligations | Fundamental / human rights | National legislation | Agreement includes sharing of personal data | Express data protection clause |
| AT, BG, HU, RO, SI | Police Cooperation Convention for Southeast Europe (includes Albania, Bosnia and Herzegovina, FYROM, Moldova, Montenegro, Serbia) | Police cooperation | Exchange of information to combat irregular migration; mixed patrols, reception facilities | 2006 | Article 31 refers to Council of Europe, Committee of Ministers, Rec. No. R (87) 15, 17 September 1987 regulating the use of personal data in the police sector; Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data. | ✓ Article 36 (refers to rights and obligations arising out of other international treaties). | Partly; Article 24 on technical measures (e.g. communication equipment) makes reference to relevant international agreements. | No | ✓ Article 1 | Yes | ✓ Article 31 & definitions in Article 2 |
| BG | Agreement between the Government of the Republic of Bulgaria and the Government of the Republic of /Serbia on Police Cooperation | Police cooperation | Irregular migration and trafficking in human beings | 2010 | The Preamble refers to "international agreements" ratified by the parties; Article 24 refers to Council of Europe, Committee of Ministers, Rec. No. R (87) 15, 17 September 1987 regulating the use of personal data in the police sector; Council of Europe Convention for the Protection of Individuals with regard to Automatic | ✓ Article 30 refers to rights and obligations arising out of other international treaties. | ✓ Article 6 | No | ✓ Articles 3 and 4 (general clauses) ✓ Article 8 (human trafficking and irregular migration) ✓ Article 16 (mixed patrols); ✓ Article 24 (data) | Yes | ✓ Article 24 |

| EU Member State | Agreement | Subject area covered by the agreement | Subject area examined here | Year | References to human rights in text | Agreement does not affect parties' rights / obligations deriving from international law | Implementation must be in accordance with (express operational clause) | | | Data protection | |
|-----------------|---|--|---------------------------------------|------|---|---|--|----------------------------|--|--|---|
| | | | | | | | EUMS international obligations | Fundamental / human rights | National legislation | Agreement includes sharing of personal data | Express data protection clause |
| | | | | | Processing of Personal Data. | | | | protection) | | |
| EE | Agreement between the Government of the Republic of Estonia and the Russian Federation on the activities of border representatives | Border management | Border management | 1996 | No | ✓ Article 15 | ✓ Article 2 | No | ✓ Article 2 | Yes | No |
| IT | Memorandum of Understanding between Italy and Algeria to reinforce police cooperation in the field of transnational crimes | Police cooperation | Parts relevant to irregular migration | 2009 | No | In the 1999 mother agreement (Preamble and Article 8) which refers to obligations deriving from other bilateral or multilateral treaties. | No | No | ✓ Article 4 ✓ Articles 1 and 6 of 1999 mother agreement | Not under the MoU | Not relevant |
| LT | Protocol on the exchange of information between the State Border Committee of the Republic of Belarus and the State Border Guard Service of the Ministry of Interior of the Republic of Lithuania | Information exchange between border guards | Information on Irregular migration | 2011 | No | No | ✓ Article 3 | No | ✓ Article 3 | Yes, in the Annex to the Protocol: points 5.1 on non-admitted persons, and 5.2 on removed persons. | No. Only general clause in Article 3 according to which information has to be shared in compliance with national and international law. |
| LV | Agreement between the State Border Guard of the Republic of Latvia and the Federal | Irregular migration | Irregular migration | 2009 | No; the Preamble refers generally to norms of international | ✓ Article 10 (2) | ✓ Article 1 ✓ Article 6 forbids info sharing if | No | ✓ Article 1 ✓ Article 6 forbids info | Yes | ✓ Article 7 (4) |

| EU Member State | Agreement | Subject area covered by the agreement | Subject area examined here | Year | References to human rights in text | Agreement does not affect parties' rights / obligations deriving from international law | Implementation must be in accordance with (express operational clause) | | | Data protection | |
|-----------------|---|---------------------------------------|---------------------------------------|------|---|---|--|----------------------------|--|---|----------------------------------|
| | | | | | | | EUMS international obligations | Fundamental / human rights | National legislation | Agreement includes sharing of personal data | Express data protection clause |
| | Migration Service (Russian Federation) on Cooperation in Combating Illegal Migration | | | | law and national legislation. | | contrary to international obligations. | | sharing if contrary to national legislation. | | |
| PT | Agreement on Technical Co-operation in the Police Field between the Portuguese Republic and the Republic of Cape Verde | Technical police cooperation | Parts relevant to irregular migration | 1988 | No | No | No | No | No | No | Not relevant |
| RO | Protocol between the Ministry of Administration and Interior of Romania through the General Inspectorate of the Border Police and the Border Guard Service of the Republic of Moldova on strengthening cooperation at central and local level | Police cooperation | Parts relevant to irregular migration | 2011 | The Preamble refers to the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data. | ✓ Article 7 | ✓ Article 1 | No | ✓ Article 1 | Yes | ✓ Article 4 (detailed provision) |

Notes: Country codes: AT = Austria; BG = Bulgaria; EE = Estonia; IT = Italy; HU = Hungary; LT = Latvia; LV = Lithuania; PT = Portugal; RO = Romania; SI = Slovenia
Source: FRA, 2018

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HELPING TO MAKE FUNDAMENTAL RIGHTS A REALITY FOR EVERYONE IN THE EUROPEAN UNION

In November 2017, the European Commission requested the support of the European Union Agency for Fundamental Rights (FRA) in evaluating the impact on fundamental rights of the European Border Surveillance System (Eurosur) Regulation. Further to this request, FRA reviewed the implementation of Eurosur by the European Border and Coast Guard Agency (Frontex) and analysed cooperation agreements concluded by EU Member States with third countries which are relevant for the exchange of information for the purposes of Eurosur. This report presents the main findings of the review.

The Eurosur system establishes a mechanism for information exchange and cooperation between different national authorities involved in border surveillance as well as with Frontex, the European Border and Coast Guard Agency. The purpose of Eurosur is to detect, prevent and combat irregular immigration and cross-border crime, as well as to contribute to the protection and saving lives of migrants.

FRA - EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS

Schwarzenbergplatz 11 – 1040 Vienna – Austria
Tel. +43 1580 30-0 – Fax +43 1580 30-699
fra.europa.eu – info@fra.europa.eu
[facebook.com/fundamentalrights](https://www.facebook.com/fundamentalrights)
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