



statewatch

News

30 September (Issue 16/22)

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Welcome to the latest edition of Statewatch News, featuring:

- **Surveillance: states versus the law**
- **Artificial intelligence: migration, policing and the law**
- **European integrated border management strategy: internal Council documents**

We also have stories on the underfunding of EU and national data protection authorities, and information released by the UK authorities on bilateral cooperation with Greece on anti-migrant smuggling cooperation.

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Surveillance: states versus the law

In June this year the the Court of Justice ruled that the rules governing the EU's system for air travel surveillance and passenger profiling, set out in the Passenger Name Record (PNR) Directive, must be "interpreted restrictively" to conform with fundamental rights standards. The ruling requires substantial changes to member state practices - but the Council, in time-honoured fashion, is looking at how to circumvent it, and to ensure the greatest possible freedom of manouvre for law enforcement authorities.

Read more [here](#).

Artificial intelligence: migration, policing and the law

[An open letter published this week](#), which we signed along with a group of other civil society organisations and academic experts, calls upon an EU-funded research project to halt the development of software designed to “predict migration flows” and “detect risks of tension related to migration.” The letter calls on the consortium “immediately halt the use of the EUMigraTool and stop pursuing the use of any and all technologies that can be used in securitising migration, and criminalising movement and solidarity with people on the move.”

Meanwhile, negotiations on the EU’s proposed AI Act, which will set out a legal framework to govern AI technologies, continue. There has been a minor bump in the road, with [the Council Legal Service arguing](#) that one of the legal bases, concerning police cooperation, is incorrect. At the same time, the Czech Council Presidency has circulated a new compromise text – [which we have published](#) – seeking to insulate police, border and immigration authorities from scrutiny over their use of AI tools and technologies.

If you’ve not read it already, don’t miss our report from May: [A clear and present danger: Missing safeguards on migration and asylum in the EU’s AI Act](#)

European integrated border management strategy: internal Council documents

The 2019 Frontex Regulation obliges the EU to develop a “multiannual strategy policy cycle” in order to implement “European integrated border management” (EIBM). The intention is to continue to systematically toughen up the EU’s borders at a time when they have become more dangerous and deadly than ever. Earlier this year the Commission published an initial policy document, which the Council and Parliament will follow up on before the Commission, Frontex and national authorities will develop and implement various strategies.

To enable the public to see what is being discussed, this week we published three internal Council documents: comments from the member states on the European Commission’s policy document published in May, and an initial and amended set of draft Council conclusions on the forthcoming policy cycle.

Read more [here](#).

News and analysis

Data protection: 80% of national authorities underfunded, EU bodies “unable to fulfil legal duties”

EU: AI Act: Council Presidency seeks more secrecy over police use of AI technology

EU: AI Act: Council Legal Service says police cooperation legal basis "is not justified"

Using AI tools to predict migration flows will lead to human rights abuses and must cease

2022 UK-Greece: Bilateral cooperation against migrant smuggling

2022 EU: Draft Council conclusions and member state comments on the European integrated border management strategy

EU: Travel surveillance: member states seek to circumvent court judgment on PNR

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News

30 September 2022

[Data protection: 80% of national authorities underfunded, EU bodies “unable to fulfil legal duties”](#)

It won't come as a surprise to anyone familiar with the work of data protection authorities (DPAs): they are chronically underfunded and lack the staff and resources to do their jobs properly. Figures released earlier this month show the scale of the problem for national authorities, and EU authorities have taken the unprecedented step of calling on the European Parliament not to approve the budget proposed for them for 2023 by the European Commission.

29 September 2022

[EU: AI Act: Council Presidency seeks more secrecy over police use of AI technology](#)

The Czech Presidency of the Council has inserted new provisions into the proposed AI Act that would make it possible to greatly limit the transparency obligations placed on law enforcement authorities using "artificial intelligence" technologies. A new "specific carve-out for sensitive operational data" has been added to a number of articles. If the provisions survive the negotiations, the question then becomes: what exactly counts as "sensitive operational data"? And does the carve-out concern just the data itself, or the algorithms and systems it feeds as well?

29 September 2022

[EU: AI Act: Council Legal Service says police cooperation legal basis "is not justified"](#)

The Council Legal Service (CLS) is of the opinion that one of the legal bases used in the proposed Artificial Intelligence Act - an EU treaty provision governing police cooperation measures - "is not justified", and the Act can only rely on provisions relating to the internal market and data protection.

27 September 2022

[Using AI tools to predict migration flows will lead to human rights abuses and must cease](#)

Along with a group of human rights organisations and academic experts, we have signed an open letter to an EU-funded research project, ITFlows, which is developing a tool to "predict migration flows" and "detect risks of tension related to migration". The letter calls on the consortium to "immediately halt the use of the EUMigraTool and stop pursuing the use of any and all technologies that can be used in securitising migration, and criminalising movement and solidarity with people on the move."

27 September 2022

[UK-Greece: Bilateral cooperation against migrant smuggling](#)

Information released by the Home Office and Crown Prosecution Service in response to freedom of information requests gives some indication of the scale and scope of cooperation under the UK-Greece Joint Action Plan on migration and 'Project Invigor', "the UK's organised immigration crime taskforce set up to target the criminal networks behind people smuggling impacting on the UK."

26 September 2022

[EU: Draft Council conclusions and member state comments on the European integrated border management strategy](#)

Three internal Council documents on the forthcoming multiannual policy cycle on European integrated border management: comments from the member states on the European Commission's policy document published in May, and an initial and amended set of draft Council conclusions on the forthcoming policy cycle.

22 September 2022

[EU: Travel surveillance: member states seek to circumvent court judgment on PNR](#)

In June this year the the Court of Justice ruled that the rules governing the EU's system for travel surveillance and passenger profiling, set out in the Passenger Name Record (PNR) Directive, must be "interpreted restrictively" to conform with fundamental rights standards. The ruling requires substantial changes to member state practices - but the Council, in time-honoured fashion, is looking at how to circumvent it, and to ensure the greatest possible freedom of manouvre for law enforcement authorities.

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The Roundup

Material we have shared on our [Twitter](#) and [Facebook](#) accounts in the last fortnight, now categorised by theme:

- [Asylum and immigration](#)
- [Civil liberties](#)
- [Law](#)
- [Policing](#)
- [Privacy and data protection](#)
- [Racism and discrimination](#)
- [Secrecy and transparency](#)
- [Security and intelligence](#)
- [Surveillance](#)

Asylum and immigration

Greens/EFA

[Europe, stop paying for pushbacks! Urge the European Commission to act now.](#)

“Instead of taking these countries to the EU Court of Justice, the Commission grants financial support to the countries that carry out these inhumane practices through the use of European migration funds. Funds meant to uphold European law and values, by fulfilling human rights obligations are misused for the opposite.

This has to stop. No EU money should fund these extreme human rights violations at our borders.”

Leiden Journal of International Law

[Weaponizing rescue: Law and the materiality of migration management in the Aegean](#)

“Looking at the migration management policies at Europe’s external Aegean border, this article examines how and why infrastructures of protection come to function as technologies of border violence. The repurposing of rescue rafts for extreme border violence in the Aegean Sea reveals a little-examined dark side of European ‘migration management’ as a process purportedly aimed to ‘civilize’ Greek coastguard operations. In transforming life-saving materials into life-threatening ones, patterns of border violence tell an alarming story about the relationship between law, politics, and the materiality of physical objects: absent concrete political and moral commitments to international protection, rescue’s physical infrastructure has been weaponized.”

European Network of National Human Rights Institutions
[Strengthening human rights accountability at borders](#)

“The robust body of evidence gathered by National Human Rights Institutions (NHRIs), civil society organisations (CSOs), journalists, and regional and international bodies demonstrates that serious violations of the human rights of migrants persist at European borders.

The present report provides guidance and good practices on how to overcome gaps identified in our previous report on “Gaps in Human Rights Accountability at Borders”.

The Guardian, 29 September

[Review of UK seasonal worker visas to increase risk of slavery, experts warn](#)

“The seasonal worker scheme has already been rapidly expanded, with about 40,000 visas issued this year, up from just 2,500 in its pilot in 2019.

Brexit and the war in Ukraine mean workers are being recruited from more distant countries that have fewer labour protections than in Europe. Experts say the high cost of flights and visas also increase the risk of debt bondage even in situations where no other exploitative fees are charged.”

Anafé, 28 September

[À l’abri des regards : l’enfermement illégal à la frontière franco-italienne \[Communiqué de presse\]](#)

“À l’heure de discussions autour d’une nouvelle loi sur l’immigration et l’asile en France et d’une réforme de l’espace Schengen et du Pacte européen sur la migration et l’asile, un même constat s’impose : les politiques migratoires de l’Union européenne et de ses États membres sont constitutives de violations des droits fondamentaux et de la dignité des personnes en migration. Dans ce contexte, l’Anafé publie aujourd’hui un dossier sur l’enfermement illégal constaté depuis 2015 à la frontière franco-italienne, enfermement qui illustre les conséquences de ces politiques violentes.”

AlJazeera, 27 September

[Who is responsible for the deaths of children at EU borders?](#)

“Thousands of children die or are harmed when fleeing for safety to and within Europe due to violent border control policies.”

The Guardian, 26 September

UK: [Home Office U-turn over deportation of Albanian asylum seekers](#)

“The Home Office has conceded that it does not have the right to fast-track the deportation of Albanian asylum seekers after their arrival in the UK, in an abrupt policy U-turn.”

The Guardian, 26 September

UK: [Home Office to reopen immigration detention centres with £399m deal](#)

“The government currently operates seven immigration detention centres along with some short-term holding centres in various parts of the UK. Officials say they can accommodate

3,000 people at any one time. If the two new centres go ahead, they will represent a significant increase in the number of people the Home Office can lock up.”

The Guardian, 25 September

[Death toll from sinking of Lebanon boat rises to 94](#)

“The death toll from a boat that sank off the Syrian coast after sailing from Lebanon earlier this week has risen to 94, Syrian state TV said on Saturday.

The country’s transport ministry has quoted survivors as saying the boat left Lebanon’s northern Minyeh region on Tuesday bound for Europe with between 120 and 150 people onboard.”

Algorithm Watch, 23 September

[Greece plans automated drones to spot people crossing border](#)

“The Greek Migration Ministry announced it would use EU-funded drones with “Artificial Intelligence” to track people seeking refuge at the border. Promises that they will also improve search and rescue operations ring hollow.”

InfoMigrants, 23 September

[EU top court rules against Hungarian asylum law – again](#)

“The European Court of Justice (ECJ) in Luxembourg has ruled that Hungary’s asylum process is partly in violation of EU law. The ruling said that Hungary’s asylum system violates EU law as it is designed to limit access to the case files for certain applicants as well as for their legal council.”

psicosocial.net, 22 September

Spain: [Joint statement by CSOs after interior minister Marlaska’s appearance in parliament demands an adequate and exhaustive investigation into events in Melilla on 24 June](#)

“Ayer, 21 de septiembre, compareció ante el pleno del Congreso el Ministro de Interior Fernando Grande-Marlaska para explicar los hechos acontecidos el pasado 24 de junio en el puesto fronterizo ubicado entre Melilla y Marruecos en el que murieron al menos 40 personas según Caminando Fronteras. La comparecencia del Ministro Marlaska ha supuesto una verdadera decepción para todas las organizaciones abajo firmantes.”

Frontex, 22 September

[Frontex opens risk analysis cell in Nouakchott](#)

“On 20 September, Frontex, the European Border and Coast Guard Agency, and Mauritanian authorities opened a risk analysis cell in Nouakchott within the framework of the Africa-Frontex Intelligence Community (AFIC).”

See also: [Africa-Frontex Intelligence Community: participating agencies named](#)

European Ombudsman, 21 September

[How the European Border and Coast Guard Agency \(Frontex\) handled a complaint concerning the rights of migrants in 'debriefing' interviews](#)

“The complainant is concerned with how representatives of the European Border and Coast Guard Agency (Frontex) carry out interviews of migrants (so-called debriefing) being held by national border authorities. The complainant contends that debriefing interviews undermine human rights and raised these concerns with Frontex, but was dissatisfied with how Frontex dealt with its concerns.”

See: [Questioning the interviewers: Frontex’s covert interrogations at the Spanish southern border](#)

UK: House of Commons International Affairs Committee, 21 September

[Written evidence: UK-Rwanda Memorandum of Understanding](#)

All the evidence submitted to the committee on the UK-Rwanda deal.

Financial Times, 20 September

[EU asylum agency accused of covering up ‘irregularities’](#)

“The head of the EU’s asylum agency is facing accusations of misconduct three years after she was tasked with restoring the body’s credibility following her predecessor’s abrupt resignation.

In a complaint sent to the EU’s anti-fraud agency and the European Commission last week, employees of the European Union Agency for Asylum called for a probe into top management over alleged nepotism, misleading reports and mishandling of harassment claims.”

InfoMigrants, 19 September

[À Calais, de nouveaux rochers pour contrer les migrants](#)

Authorities in #Calais install rocks to stop people sleeping on the grass. "On this site, about a hundred migrants, mainly Syrians, used to live, explains the Human Rights Observers collective, which denounces a logic of absurd harassment."

RTBF, 13 September

Belgium: [Plusieurs organisations présentent une feuille de route pour sortir de la crise de l'asile](#)

“Médecins sans Frontières, Médecins du Monde, le Samusocial, le Ciré et Vluchtelingenwerk Vlaanderen ont présenté, mardi à Bruxelles, une feuille de route pour sortir de la crise actuelle de l'asile.

Baptisé "Ceci n'est pas une crise", le plan d'action est signé par une cinquantaine d'organisations actives sur le terrain partout dans le pays. Elles reprochent à l'Etat belge et à l'Agence fédérale pour l'accueil des demandeurs d'asile (Fedasil) de ne pas remplir leurs obligations en matière d'accueil, malgré leur condamnation en janvier dernier par le tribunal de première instance de Bruxelles.”

European Journal of Migration and Law, 12 September

[**Strategic Litigation against European Migration Control Policies: The Legal Battleground of the Central Mediterranean Migration Route**](#)

“Migration control policies at Europe’s borders that lead to human rights violations are widespread. As a result, NGOs, law clinics and individual lawyers mobilise the law against different actors in an attempt to seek accountability for these violations and end the policies that cause them. Accordingly, the aim of this article is to present an overview of and initial reflection on strategic litigation concerning the Central Mediterranean migration route.”

Verfassungsblog, 9 September

[**The Secretiveness over the OLAF Report on Frontex Investigations**](#)

“The present blog focuses on the implications of the secretiveness over the OLAF Report and its most controversial aspects. Preventing public scrutiny over human rights violations committed by civil servants and precluding access to the evidence needed to exercise the right to an effective remedy should have no space in a Union based on the rule of law.”

Abolish Frontex, 7 September

[**Call-out: Organise to stop the Italy-Libya Memorandum!**](#)

“On November 2, 2022 the Italy-Libya Memorandum is to be renewed – it is the backdoor of the cooperation of the EU with the militia-led Libyan coast guard, the hellish detention system, and the silent tragedies of thousands of invisible deaths in the Sahara at the southern border.

STOP the Italy-Libya Memorandum!”

Australian Institute of International Affairs, 24 August

[**Pushbacks and Offshoring Asylum: Is Externalisation Becoming the Default Response to Refugee Situations?**](#)

“Externalisation and migration control measures infringe upon the rights of refugees and migrants. The deal between the United Kingdom and Rwanda sets a concerning precedent.”

Civil liberties

The Guardian, 28 September

UK: [**Colston four: protesters cannot rely on ‘human rights’ defence, top judge rules**](#)

“Protesters accused of “significant” criminal damage cannot rely on human rights protections when on trial, the court of appeal has said.

The ruling comes after the attorney general made a referral on a point of law following the acquittal of the Colston four. Suella Braverman, who is now home secretary, made the referral after Conservative MPs criticised the acquittal of protesters who toppled the Bristol statue of the slave trader Edward Colston.”

Law

Garden Court Chambers, 11 October 2022

UK: [Disrupting Rebellion: The Public Order Bill and the government's latest crackdown on protest](#)

"Netpol and Garden Court Chambers are jointly holding an online seminar on the new Public Order Bill and its serious implications for civil liberties and protest rights.

Having successfully passed one piece of draconian public order legislation, the government is already embarking on the introduction of another. The new Public Order Bill includes measures that first appeared in 2021, during the passage of what is now the Police, Crime, Sentencing and Courts Act, but which were defeated in the House of Lords.

Ministers now want to use their large parliamentary majority to revive far-reaching proposals to further clamp down on our right to protest."

Byline Times, 27 September

['Ministers Can Make it Mean Anything they Want it to': The Realities of Citizenship-Stripping in the UK](#)

"Faima Bakar speaks to experts about the Government's removal of citizenship without notice and its disproportionate impact on British Muslims"

European Data Protection Supervisor, 22 September

[EDPS takes legal action as new Europol Regulation puts rule of law and EDPS independence under threat](#)

"On 16 September 2022, the EDPS requested that the Court of Justice of the European Union (CJEU) annuls two provisions of the newly amended Europol Regulation, which came into force on 28 June 2022. The two provisions have an impact on personal data operations carried out in the past by Europol. In doing so, the provisions seriously undermine legal certainty for individuals' personal data and threaten the independence of the EDPS - the data protection supervisory authority of EU institutions, bodies, offices and agencies."

EurActiv, 21 September

[Slovenia's interior minister faces no-confidence vote](#)

"Opposition SDS Democrats tabled a motion of no-confidence on Tuesday against Interior Minister Tatjana Bobnar, alleging that he should be removed from office for his government's decision to remove the long border fence erected to fight irregular migration between 2015 and 2016."

Irish News, 20 September

[Funeral to take place for last man in north to receive death sentence](#)

"A victim of torture by members of the Parachute Regiment, Mr Holden was forced into confessing to the killing of paratrooper Private Frank Bell, who was shot dead in the Ballymurphy area of west Belfast in 1972. A month after the killing, which was the result of a single sniper's bullet, Mr Holden was arrested at his Whiterock home by British army members under the Special Powers Act."

The Guardian, 20 September

[Liz Truss lands in US to reset 'special relationship' on first foreign trip as PM](#)

"Relations between the two leaders are already strained by her threats as foreign secretary to rip up the post-Brexit trading arrangements in Northern Ireland.

Biden has expressed concerns that peace in the province should not be undermined by the Brexit row, and has been reluctant to strike a free trade deal with the UK as a result."

Policing

[Statewatch](#), 29 September

Today @ElHiblu3 delivered a letter with over 1,000 signatories to Malta's Attorney General, Victoria Buttigieg.

It calls for dropping all charges against the El Hiblu 3: Amara, Abdalla, and Kader.

We are one of the signatories. Free the #ElHiblu3!

The Guardian, 27 September

UK: [New Met commissioner declines to say whether force is institutionally racist](#)

"The new commissioner of the Metropolitan police declined to say whether his force was institutionally racist or not, saying he was not interested in "labels", while vowing to root out racism in the force."

La Directa, 27 September

[Catalonia: Police video shows how to infringe all relevant protocols when using a taser](#)

Officers detained a woman suffering a mental health crisis and used a taser against her on the Day for Elimination of Violence Against Women in 2020.

EUobserver, 26 September

[EU mulls more police powers for west Africa missions](#)

"The EU wants to further prop up anti-terror efforts at its overseas civilian missions in places like Niger.

Although such missions already seek to counter terrorism, the latest proposal (framed as a "mini-concept" by the EU's foreign policy branch, the European External Action Service, EEAS), entails giving them so-called "semi-executive functions."

Such functions includes direct support to the authorities by helping them carry out investigations, as well as aiding dedicated units to prosecute and detain suspected terrorist offenders."

Europol, 23 September 2022

[Europol to host United Arab Emirates Liaison Bureau](#)

“This week, the Ministry of Interior of the United Arab Emirates (UAE) and Europol took an important step in enhancing their cooperation. A Liaison Officer Agreement was signed between the two on 22 September, allowing UAE law enforcement liaison officers to be deployed to Europol’s headquarters in The Hague in the Netherlands.”

See also: [United Arab Emirates: Authorities continue their systematic repressive policies](#) (GCHR) and: [UNITED ARAB EMIRATES 2021](#) (Amnesty)

Prisons

UK House of Commons Justice Committee, 28 September

[Justice Committee finds IPP sentences “irredeemably flawed” and calls for comprehensive re-sentencing programme](#)

“The Justice Committee has called on the Government to re-sentence all prisoners subject to IPP sentences. In a report published today, the Committee finds that the current regime for managing IPP prisoners is inadequate in supporting their specific needs and calls for swift improvement in the quality of support they are given.”

Privacy and data protection

EDRi, 28 September

[Rather delete than comply: how Europol snubbed data subject rights](#)

“On 8 September 2022, the European Data Protection Supervisor (EDPS) issued a decision ordering the EU law enforcement agency, Europol, to give Dutch activist Frank van der Linde access to the personal data the agency holds on him following a two-year investigation by the data protection watchdog. Findings of the inspection reveal that Europol tried to cover up the traces of the data processing and to avoid complying with the data access request by deleting van der Linde’s data.”

ICO, 28 September

[UK: Action taken against SEVEN organisations who failed in their duty to respond to information access requests](#)

The ICO has issued a formal reprimand to the Home Office after discovering 21,000 subject access requests not answered in time between Mar-Nov 2021.

This caused "significant distress". Most likely concern immigration/asylum cases.

Racism and discrimination

The Guardian, 26 September

[World leaders promise vigilance on human rights as far right win in Italy](#)

“France and the US have stressed the importance of Italy’s continued commitment to human rights as Giorgia Meloni and her far-right Brothers of Italy party look set to lead a coalition government following Sunday’s general election.”

The Conversation, 19 September

[Giorgia Meloni – the political provocateur set to become Italy’s first far-right leader since Mussolini](#)

“Italy looks set to get its first far-right leader since Mussolini’s body was strung up for all to see at the end of World War II. On Sept. 25, 2022, voters are widely expected to elect as prime minister Giorgia Meloni, the leader of Fratelli d’Italia, or Brothers of Italy – a party whose lineage traces back to the rump of Mussolini’s fascists.”

Secrecy and transparency

Access Info Europe, 19 September

[Malta and Spain: The Right to Request – New Developments!](#)

“As part of Access Info’s work to promote access to information as a right for all, a right which can be exercised transnationally, we are happy to share two important updates on our campaigns with a key court hearing in Malta and the good news of opening up requests to all in Spain.”

Security and intelligence

Review of International Studies, 28 September 2022

[Epistemic fusion: Passenger Information Units and the making of international security](#)

“This article focuses on the control of international mobility through the gathering, processing, and sharing of air travellers’ data. While a lot has been written about pre-emptive rationalities of security translated into the functionalities of IT systems used for border controls, we take a step further and investigate how these rationalities are operationalised through data transfer, screening, validation, discarding, profiling, contextualisation, calibration, and adjustment practices. These practices may seem banal and technical; however, we demonstrate how they matter politically as they underpin the making of international security. We do so by analysing the work of Passenger Information Units (PIUs) and retracing how they turn Passenger Name Record (PNR) data into actionable intelligence for counterterrorism and the fight against serious crime.”

Surveillance

EurActiv, 28 September

[Germany split on using IP data storage to fight online child abuse](#)

“Referring to the European Court of Justice ruling, which overturned indiscriminate data retention on 20 September as expected, the ministers argued that the storage of IP addresses by providers was within the scope of national lawmakers.”

Big Data & Society, 21 September

[Neither opaque nor transparent: A transdisciplinary methodology to investigate datafication at the EU borders](#)

“We supplement the digital analysis and visualisation of networks of companies with close reading of tender documents. In so doing, we show how a transdisciplinary methodology can be a device for making datafication ‘intelligible’ at the European Union borders.”

The Register, 21 September

[Look who's fallen foul of Europe's data retention rules. France and Germany](#)

“Indiscriminate’ preemptive harvesting of personal info a big no-no. What a novel concept. On Tuesday, the European Court of Justice (ECJ) issued rulings that limit indiscriminate data retention in France and Germany.”

Reuters, 20 September

[Germany's blanket data retention law is illegal, EU top court says](#)

“Germany's general data retention law violates EU law, Europe's top court ruled on Tuesday, dealing a blow to member states banking on blanket data collection to fight crime and safeguard national security.”

Judgment (French): **[Affaires jointes C-339/20 et C-397/20](#)**

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