

Frontex and surveillance of the EU's external sea borders

In recent years, EU Member States have been confronted with increasing numbers of irregular migrants travelling on overloaded and/or unseaworthy boats across the Mediterranean Sea. In order to limit the growing numbers of fatalities, with hundreds of lives being lost, the EU and its Member States have sought to improve surveillance at the EU's external sea borders and strengthen coordination in search and rescue.

International legal framework for search and rescue operations

While surveillance activities are regulated by the [Schengen Borders Code](#) (Article 12), search and rescue activities are regulated by international law, in particular by the law of the Sea Convention (UNCLOS), the Convention on the Safety of Life at Sea (SOLAS) and the Convention on Search and Rescue (SAR). However, not all EU Member States have ratified the SAR and SOLAS 2004 amendments which define which State is responsible for finding a "place of safety" for migrants in distress.

The coordinating role of Frontex

In the EU, the responsibility for the control and surveillance of external borders lies with the Member States. The European Agency for the Management of Operational Cooperation at the External Borders ([Frontex](#)) assists and coordinates them in external border surveillance, including in cases which involve search and rescue situations. The Council adopted a [Decision](#) in 2010 as an implementing measure of the Schengen Borders Code, which provides for rules to be followed by Member States when participating in Frontex operations. These rules apply in respect of interception, and set guidelines for search and rescue situations and disembarkation.

The European Parliament's role

The European Parliament (EP) decided to challenge this Decision before the Court of Justice of the EU, arguing that such measures could only be adopted under the ordinary legislative procedure. Following the Court's [judgment](#) ruling the Decision contrary to EU law (but maintaining its effects until a new law could be adopted), the Commission submitted a [proposal for a Regulation](#) to be adopted under ordinary legislative procedure in 2013.

Strengthening fundamental rights

The [report](#) of the Committee on Civil Liberties, Justice and Home Affairs (rapporteur Carlos Coelho, EPP, Portugal) seeks to strengthen the Commission proposal. In particular it aims to ensure the [respect of fundamental rights](#) in the context of maritime surveillance, and reinforce legal clarity on the disembarkation of persons intercepted or rescued at sea, including full respect of the principle of non-refoulement. These obligations also arise from the European Court of Human Rights' judgment in [Hirsi Jamaa and Others v. Italy](#). The new regulation will in particular require that no-one can be "disembarked in, forced to enter, conducted to or otherwise handed over to" an unsafe country.

The plenary is due to vote on the report, and thereby confirm the agreement reached with the Council in trilogue in February 2014.