

# The National Maritime Border – The Border of the European Union

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## Abstract

*The article analyzes the operational institutions established at the community level for the fight against clandestine immigration through fraudulent border crossing, with the intention of entering the European Union states and the measures required regarding the intensification of control and the strengthening of surveillance of their maritime borders.*

*The most important conceptual landmarks from a legal point of view are briefly analyzed, regarding the institutions entitled to take measures regarding the security of the maritime border, regarding the delimitation of the territorial sea as an institution of the international law of the sea in the context of the current significant challenges.*

**Key words:** territorial sea, border, Frontex

**J.E.L. classification:** O30

## 1. Introduction

With the accession of Bulgaria and Romania to the European Union (EU), on January 1, 2007, the eastern borders of these countries became the eastern borders of the EU, which implies a legal liability *ad litteram*, regarding , the execution of guarding, tracking and surveillance by the National Border Police, of the activities carried out in the border waters and in the territorial sea, with the support of the European Agency of the European Police and the Coast Guard (Frontex), for 7 days per week, 24 hours a day.

After the peak of migration in 2015, concrete measures were adopted and taken to combat clandestine migration, regarding the verification and control of EU external borders and especially wet borders.

In recent years, but especially after the military aggression launched by Russia on 24/02/2022, the pressure of clandestine migration on the European Union states has increased, together with the problems of asylum and migration. The analyzes of the phenomenon, its components and the development probabilities in the coming years attest to the redirection of clandestine migration channels, the permanent modification of the means used and the modes of operation used by the organizers of the traffic with these categories of people.

The constant trends of the last years are maintained, regarding the pressures of border penetration on the eastern border route, where a constant percentage with interests related to the institution of asylum is observed.

Considering the fact that illegal migrations are oriented only on a constant number of member states, the Council asked the Commission to establish and propose the necessary operational measures to counter them. This was the context for the preparation of the legislation, which we will focus on in what follows, regarding the main institutions and legal aspects regarding the EU's eastern border.

## 2. Literature review

The process of continuous development of international relations between the states of the European Union, contributed to the adaptation of the provisions of public international law to the European legislation and respectively to the national legislation, provisions applicable in a single

space related to the Schengen area of Europe.

This process precisely regulated the rights and obligations regarding the external borders of the European Union, but which is also accompanied by negative consequences, related to the emergence of several problems regarding illegal migration, the crossing of the state border in violation of the provisions of European international law and the security of the external border by the border states.

The Schengen Borders Code amended in March 2017 with measures regarding the completion of checks at external borders with the approach of 10 June 2022, which introduces a general reform of the Borders Code with new obligations applicable to maritime borders, as well as for land and air borders, in order to assure all people that they do not represent threats to internal security, public order and public health.

Or considered, mainly the operationalization of computer systems, able to perform early checks, regarding the history of travelers, an important pillar regarding the consolidation of internal borders, regarding the fight against terrorism or other crimes.

### **3. Research methodology**

In preparing the present study, points of view and research results from the specialized literature in the field of public international law were used (University courses, monographs, treaties, current legislation, scientific publications, etc.). Within the limits of this study, we analyzed the importance of the eastern border of Romania, fixed at the border of the Territorial Sea, whose points overlap the eastern border of the European Union.

### **4. Findings**

Starting from the realities of changes from a political point of view, international legislation (Brasoveanu 2011) caused major changes in terms of the rights and obligations of the European Community countries, with the responsibility of all EU states, for securing the space at the level of external borders.

Despite all the measures adopted at the European level, it can be said with certainty that illegal crossings of external borders still occur, especially by forcing maritime borders

#### **4.1. Conceptual milestones**

The territorial sea of littoral states was regulated by the Convention on the Law of the Sea from 1982, established to be up to a distance of 12 nautical miles (Mm), measured in straight lines, which overlaps with the border of states bordering the seas and oceans of the world . National law no. 17/1990, established it at the maximum distance allowed by the Convention as 12 Mm (22.224 km).

The straight baselines are indicated on maritime charts or, in their absence, on lists of the geographical coordinates of the points, with the obligation of the riparian state to ensure their publicity and to submit one copy to the Secretary General of the United Nations.

In this case, we consider the eastern border of Romania as being located at the outer limit of the territorial sea, being constituted by an imaginary line, with each point at a distance equal to the width of the territorial sea, from the closest point of the baseline.

If in the horizontal plane the maritime state border is very precisely regulated, controversial issues arise in the vertical plane, i.e. regarding the maximum height limit of the airspace border above the territorial sea and the maximum depth limit of the subsoil border below the bottom of the territorial sea.

However, these maximum limits were approximated by formulations such as "the maximum limit given by the technical conditions for the exploitation and exploitation" of these spaces, especially the resources that are found exclusively embedded in the subsoil of the submarine spaces.

The Convention on the Law of the Sea does not expressly provide for the maximum depth (in the seabed) up to which a state can exercise full sovereignty with effects on the exploitation and exploration of seabed resources such as liquid or gaseous hydrocarbons, sulfur or salt in these spaces.

By art. 85 stipulates the right of the riparian state to exploit the subsoil by resorting to digging galleries, whatever the depth of the water in that place.

Professor Dumitru Mazilu states that the underground is an important component of the terrestrial territory, the state exercising its full and exclusive sovereignty over it (Mazilu 2002), in the sense that it can explore and exploit its wealth, build tunnels, install pipes and cables, in order to realize or develop some economic (Mazilu 2001) or other activities, as well as unsuspected "mineral resources" (Magnus 1997).

The doctrine comes to clarify in part by specifying that borders are those real or imaginary lines that separate the territories of two states or, as the case may be, from the contiguous sea and that extend deep, inside the earth, to the limits accessible to modern technology (Bolintineanu 2000)..

#### **4.2. Competences of the Coast Guard in the Territorial Sea**

If until 2001, the ships of the Romanian Border Police barely dared to summon and bring to a standstill for control or order the arrest of fishing vessels, usually under the flag of Turkey, which were caught poaching turbot in the territorial sea, after 2007 together with the amendment of the legislation in the field and the appropriate equipment of the operative vessels, today we can appreciate that the vessels of the Romanian Border Police (Popa 2010) can carry out arrest missions and bring safely to port the vessels subject to these kinds of sanctions and can he even uses a weapon.

Today, the Coast Guard represents the regional institution, whose general competence is to supervise the area within the radius of Tulcea and Constanța counties - that towards the interior of the country within the limit of 30 km and within the limit of 10 km from both banks of the Danube within the radius Tulcea and Ialomita counties, with control and supervision.

#### **4.3. Missions at the Eastern Border of Romania**

One of the most important missions of the Coast Guard, at Romania's eastern border, is the control of passage through the Contiguous Sea and the Territorial Sea over a distance of 193.5 km.

Securing the maritime border requires concrete measures to combat illegal migration by sea, on land by boat and the trafficking of migrants through all border points, identifying guides and discouraging traffickers from entering the Black Sea and their attempt to reach Romania, crossing the contiguous sea, territorial sea and territorial waters.

The track record of the search and rescue missions carried out by the Coast Guard Police in the waters of the Black Sea is complemented by specific missions within the Maritime Operations, organized under the auspices of the Frontex Agency.

Regarding illegal migration by violating Romania's eastern border, it does not represent a definite threat, the unstable weather conditions of the Black Sea contributing to this, making it difficult to navigate with small boats and with improper technical navigation conditions.

"The political life of the border" (Barna 2023) viewed from a geopolitical point of view, there may be a risk of forcing the maritime border by some organizers for migrant transports, with optimal capacity, to be able to enter the Black Sea, using expensive boats, with a good seaworthiness.

### **5. FRONTEX**

Responding to the requirement formulated by the Council, the Commission drafted and presented a document entitled: "Improving the management of the maritime border of the European Union", which represents, in the opinion of subject matter specialists, political scientists and lawyers, a daring attempt by the community institutions to revolutionized the field of securing the external maritime borders of the Community, with direct reference to their southern part.

We will try, in the following, to analyze the elements brought to the fore by the Commission in this regard, especially those that call into question the concrete technical actions that have been implemented, a much wider range of measures, including the modification of the legal framework, respectively of the international law of the sea and the accepted procedures for tracking maritime vessels, their interception, carrying out controls on board the vessels and carrying out maritime rescue operations.

We will also refer in principle to the objectives of the Community institutions in order to organizationally and functionally cover the needs to protect the common European space, institutions placed in the sphere of concrete action and direct reactions on border surveillance.

### **5.1. Maximizing FRONTEX activity**

The first of the Commission's objectives was aimed at the already functional FRONTEX and consisted in amending the content of EC Regulation no. 377/2004, through which the network of migration liaison officers was created, approved by EC Regulation no. 1240/2019.

The Romanian Border Police, through its structures and its liaison officers, made a consistent contribution to the detection of numerous networks of traffickers operating on the territory of Romania or outside the national space, in the member states of the European Union or in the countries of origin of the groups migrationists.

The recorded successes validated the system, as such, and encouraged community decision-makers to take the decision to expand it, exemplifying among the interventions whose mission was to save human life at sea, the action carried out in the waters of the Mediterranean Sea by the crews of the patrol vessels MAI 1106 and MAY 3066 which resulted in the rescue of 150 migrants (Thursday 23/03 a.c.) and on 8/04 a.c. of a number of 22 men and one woman (Opaschi 2023), after which the ships of the Border Police of Romania resumed their missions carried out in the framework of "THEMIS 2023".

The second ambitious objective of the commission, which constitutes a valuable innovative element for the concerns in this field, refers to the creation of the common network of coastal patrols, in which sense it advanced the following proposals:

- the creation of the permanent network of coastal patrols along the southern maritime border of the Union, proposed by the feasibility study entitled MEDUZA presented by FRONTEX on July 14, 2006. The study carried out proposes the unconditional coverage of the entire border, from the Atlantic to the eastern shore of the Mediterranean Sea, with operational elements of surveillance, tracking and control, permanently coordinated, interconnected and inter-conditioned with each other, capable of retaining in the imaginary net created any of the clandestine ships that would approach the southern border of the European Union;

- entrusting the administration of this coastal network to FRONTEX, with the additional task of reflecting on the possibility of establishing several regional command centers at the southern maritime border of the Union (Canary Islands, Western Mediterranean, Central Mediterranean and Eastern Mediterranean), each with the express task permanently cover his precisely defined area of responsibility. These centers will have, among others, the task of coordinating daily patrolling activities and of intervening in other maritime collateral activities.

The sharing of coordination responsibilities is imperative, say the authors of the study, given the length of the Union's southern border. Due to the nature of the operational activities that will take place, the management of actions requires quick decisions, close to the action area, as well as other intervention and support measures that cannot be provided from long distances;

- the establishment, within FRONTEX, of a specialized support office for each regional command center, set up according to the coordinates previously considered. The study considers these structures necessary for the proper functioning of the command centers, listing a series of logical arguments in support of the proposal that we will not insist on in our analysis.

### **5.2. The permanent FRONTEX body**

The seat of the matter is Regulation (EU) no. 1896/2019 which allowed the establishment of the Police and the Coast Guard at the European level.

The permanent body of FRONTEX (Asby 2021), has soldiers from the Border Police and the Coast Guard, specialized and equipped with advanced technologies, who can respond to border challenges and ensure the security related to the Schengen area of Europe and who act under the authority of the authorities of the seconding country and are divided into four categories: police officers employed as Frontex members, long-term staff, short-term staff and police officers at the

disposal of Frontex.

## **6. Concrete application of the international law of the sea**

Ambitious community projects will not have the expected success and international recognition if the practical application of the actions will not comply with the precepts of international law, primarily international maritime law and the law of the sea.

The commission ordered and published an in-depth study on the elements of international law of the sea and international maritime law tangential to the project components, dedicated especially to the analysis of the shortcomings of the international legal framework and the rules that would prevent the concrete implementation of all the planned activities, in which a series of aspects are noted with respect to which the necessary amendments are proposed. In our opinion, from the wide range of aspects and proposals that caught the attention of the Commission, following their systematization, the following should be noted:

- more precisely defining the procedures to be followed during the interception of ships that transport or are likely to transport clandestine immigrants to the community space. In this sense, the conclusion of regional agreements was proposed to define and delimit the right to follow and intercept ships in the territorial waters of the countries of origin, and not only in the high seas, as well as the notion of supervised transit. These regulations aim to facilitate the joint control and surveillance operations carried out within the FRONTEX system and, in the future, by EUROSUP. Such agreements will have to give the right to the personnel of the coastal patrols to take appropriate measures at the place of interception of the ships regardless of whether it is in free space or in the areas under the jurisdiction of one or the other of the contracting states;

- examination of the scope of protection obligations incumbent on states, by virtue of the principle of non-refoulement, in the case of multiple situations in which national ships must apply interception, search or rescue measures. The Commission proposed the development of practical instructions to establish the cases in which a state is required to assume responsibility for examining an asylum application during the time it participates in joint operations taking place in the territorial waters of another member state or in the high seas. The Commission rightly and justifiably emphasized the importance of the ratification by the member states, as well as by the African states, of the Palermo Protocol against the illegal trafficking of migrants by land, sea and air.

In this context, we are obliged to state and affirm that such regional agreements, considered in the matter of surveillance, tracking, interception and control of ships that transport or are suspected of transporting illegal immigrants, will only be applicable in the sphere of bilateral relations or multilaterals of the signatory states. It is therefore necessary to expand the geographical area of the signatory states, in order to cover as wide as possible the areas of applicability of the new regulations..

## **7. Conclusions**

Crossroads between Europe, Asia and the Middle East, the Black Sea - an intercontinental sea, which separates Southeast Europe from Asia Minor and the Caucasian countries (Simileanu 2022), is the scene of intense exchanges: energy, transport, economic flows, but also migrations, drug trafficking, human trafficking, illegal immigration, terrorist threats, all of which have a point of departure or arrival at the state border of Romania.

The Eastern Border of Romania overlaps with the Eastern Border of the Republic of Bulgaria, whose supervision requires cooperation with neighboring states.

In the Black Sea, since 2007, the "Cooperation Forum of Border Agencies/Coast Guards of the Black Sea Coastal States (Romania, Ukraine, Russia, Georgia, Turkey and the Republic of Bulgaria - FCMN)" has been operating, which is a multilateral legal instrument in the field of responsibility, whose objective should be that of intensifying specific cooperation, including on the operative component.

Our country is a founding member of the Black Sea Economic Cooperation Organization (OCECMN), established with the aim of stimulating interaction and harmony between member states, as well as ensuring peace, stability and prosperity in the area.

From the point of view of compliance with the provisions of crossing the national maritime border, the Coast Guard collaborates mainly with the General Staff of the Romanian Naval Forces within the Ministry of National Defense, together with which it uses a Complex System of Observation, Surveillance and Control at the Black Sea (SCOMAR).

In this context, our country has respected and fulfilled the duties received upon joining the European Union, but also to the future Schengen area, including the obligation assumed regarding the supervision and control at the external border of the European community.

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