

Ambassadors as Technological Facilitators: How Coreper Diplomats Make Possible the Legal Shaping of Border Security Technologies

An InsSciDE Case Study

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How do professional diplomats shape Schengen Area border security technologies? The development and operation of these large-scale technological systems are increasingly based on specialized European Union (EU) law – of which draft text can never be tabled for approval by the EU Justice and Home Affairs ministers without the agreement of a particular set of diplomats. These are the EU Member States ambassadors appointed to Coreper, the Permanent Representatives Committee of the Treaty on the European Union. The ambassadors seek consensus on technological issues and negotiate within their group the terms under which they can vest procedural trust in supranational networks of experts, technocrats and administrators accomplishing the preparatory work. What they mainly care about in this case is that technological views are cleared of differences between Member States. The underlying political epistemology of this special kind of security and technology diplomacy and its legal consequences are catalytic factors for the framing of the technological side of EU border policies.



Image credit: European Union

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Schengen Area, Coreper II, border security technologies, legal shaping of technology, procedural trust



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For most aspects of European Union (EU) policies regarding its external borders, the impact of control and surveillance technologies on efficient operations is a key factor, often influencing disputes between Member States and thus also political decision making. These technologies, in tandem with bureaucratic procedures, are an essential durable result of the diplomacy between Member States. EU law is in this respect crucial and almost no activities can be launched without it.

The fact that border control technologies are an outcome of diplomacy is visible both from the press and the official publications of the EU. For instance, in the year 2007 the following statement appeared in various official EU documents: "Council Decision 2007/533/JHA is the legislative basis for governing the second generation of the Schengen Information System (SIS II) for the purposes of police and judicial cooperation in criminal matters". Twelve years later, in 2019, an online publication announced that "Works on Interoperability of EU Information Systems Can Start - Legal Framework Established". The legal texts adopted by the Council of Justice and Home Affairs ministers included specifications on information system architecture, on shared IT (information technology) services and applications, as well as on procedures and human resources. For example, the text of the seminal Council Decision 2007/533/JHA is an assemblage of technological and organizational requirements and thus reads in many passages as if it were an IT design document. Headings such as "Technical architecture and ways of operating the SIS II" are typical of this legal text. The specifications provided include definitions of the technical terms; operational and security engineering competencies for the responsible organizational units;

categorisation of data and their flagging; description of modalities of data-entries and data-management; alerts triggering action of border guards; rules of authorisation of access to the functionalities of the system; and finally issues of governance of large-scale information infrastructure and financial planning.

The same impression arises from the 2019 legislation introducing interoperability between various components of the EU border technologies. Its purpose was the establishment of interconnections between the second generation of the Schengen Information System and various other databases for border control. The system functionalities for this had been labelled with names pointing to the new architecture of the information infrastructure for border security and law enforcement. Furthermore, issues of authorisation of access of the various stakeholders of border and law enforcement operations, such as the specialized EU agency FRONTEX (European Border and Coast Guard Agency), to various databases were central at this stage of the development of the border security information infrastructure. The tech jargon again seen in this text is characteristic of many pieces of legislation framing the technological side of border policies.



Source: @EU_Commission

Ambassadors as technological lawmakers

The adoption of this kind of EU legislation after the Treaties of Amsterdam and increasingly after the Treaty of Lisbon (effective respectively since 2000 and 2009) required co-decision by the EU Council of Ministers of Justice and Home Affairs with the European Parliament based on the law drafts prepared by the European Commission. But the ultimate agreement to table these for final approval belonged to Coreper. The Coreper (Comité des représentants permanents) consists of ambassadors representing the national governments of the Member States in Brussels with a key role in EU decision making. These diplomats regularly convene in two different formations. Both Coreper II and Coreper I play a key role in preparing the agenda and the framework of deliberations in the councils of European ministers or of the heads of national governments.

Without question, awareness of technical details is for the most

part very limited among council-level politicians who usually lack both corresponding training and time to make a close study of the proposals. In many cases, issues regarding border technologies are listed on the agenda of their meetings as 'A-Items'. This signifies that the drafts are tabled because they are regarded as fully prepared and depleted of technical, policy or diplomatic risks. Thus they can be automatically and unanimously approved without the slightest discussion. In this way the Coreper II ambassadors who give the final approval for tabling the drafts at the Council shoulder much of the responsibility for security and technology policy-making and its impact.

The extent to which these ambassadors are decisive gatekeepers in these legislative processes can be fully realized if we have a look at the timed agendas of the regular Coreper II meetings and compare the frequency there of items dealing with border security technologies with the corresponding frequency on the agendas placed before the council of Justice and Home Affairs ministers who officially pass the pieces of EU legislation on border policies. Between the years 2000 and 2019, 304 such items were reviewed by Coreper II whereas only 32 items were to be discussed by the ministers. Similarly, the European Parliament (EP) appears less involved compared to the Committee of the permanent representatives of the Member States. In the same period just 10 EP resolutions were taken with regard to the reports of the parliamentary Committee on Civil Liberties, Justice and Home Affairs (LIBE) responsible among other things for border issues.

Moreover, the wordings of decisions of the Council of the EU Justice and Home Affairs ministers are characteristic for their responsibilities in matters of border security and especially their technological side. At one instance in the 3508th meeting of the Council of the European Union (Justice and Home Affairs, held in Brussels on 8 and 9 December 2016) the drafts were returned without further deliberations to the Coreper II ambassadors. The wording concerning the EES (the automated IT system for registering travellers from third-countries, both short-stay visa holders and visa exempt travellers) is telling: "The Council confirmed the conclusion of the Mixed Committee and asked the Permanent Representatives Committee to continue to work with a view to agreeing on a mandate for negotiations with the European Parliament on the whole text as soon as possible." Even more impressive is the note of the Coreper II on 4 October 2010: "Coreper is invited to agree on these draft Council conclusions on SIS II and forward them to the Council (JHA) on 7-8 October 2010 for adoption."



A meeting room awaits Coreper in Brussels. Source: Council of the European Union Newsroom

Coreper: Agenda-setters, gatekeepers, and invisible

No legal or *ad hoc* policy decision by ministers and heads of government can be made without prior agreement between the ambassadors who function as permanent representatives of the Member States in Brussels. They meet regularly in a committee called Coreper (*Comité des représentants permanents*). The national representations are appointed by their respective governments and are staffed with diplomats, administrative personnel and most importantly technical advisors who also establish and maintain the connections with various specialized working groups, the EU bureaucracy and the policy makers of the European Commission. The top people in the representations are the ambassador (who functions as the head of the representation) and his or her deputy. They meet in two different configurations. Coreper II groups the heads of the permanent representations, who deal with political, financial, foreign affairs and security issues, including border issues. Coreper I consists of the deputy heads of these national representations; they deal with social issues and specific economic policies.

It is interesting that these protagonists of the EU law-making process, the permanent representatives of EU Member States in Brussels, remain for most observers invisible. It is thus not astonishing that their role in the legal shaping of border security technologies remains largely unknown. Of course Coreper II ambassadors are only one node in the complex webs of the EU machinery. The EU Justice and Home Affairs ministers are part of the game, as are – importantly – the specialist staff of the European Commission, or of dedicated agencies like eu-LISA (European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice), the Committee on Civil Liberties, Justice and Home Affairs (LIBE) of the European Parliament, and last but not least the various ad-hoc or permanent working groups that are active. But what distinguishes the Coreper II diplomats is the fact that they make the final decision on whether the issues of border technologies will appear in the agenda of the ministers. No other group has such an agenda-setting and gate-keeping role in the governance system of the EU.

Durability versus politics

What is being adopted is the durable, infrastructural side of policies. The sociologist Bruno Latour once wrote that technology is society made durable. This saying could also apply to policies. Technological systems which are crucial for the implementation of policies, such as border policies, introduce a durable element which is different from politics. Politics is something unstable, often fuzzy, variable, and mostly close to crisis management. By contrast law-based policies emerge from the intention to create systematically reproducible conditions of organizational operations. For this, lawmakers introduce bureaucratic and technological procedures. The work of ambassadors is supposed to be embedded in politics and aim towards international contracting. But multilateralism and quasi-federalism as in the case of the EU have changed this. Common rules require common procedures, and the latter also require common information bases, which makes necessary a common information infrastructure. This was the case with the border security technologies for the protection of the Schengen Area. In this field diplomats have been working against the politicians who have often violated the rules in order to cope with situations which they perceive as crises. This was the case with the 2015-2016 refugee crisis during which the operational standards of the Schengen Area border information technologies were in practice cancelled for a certain period of time. But the technological backbones and the operational standards had been enshrined in EU law, the making of which EU ambassadors accomplished through a great number of meetings.

Reflective practitioners without expertise

Coreper II ambassadors are for the most part successful in their task to create procedural and technological durability by law. They do this by being reflective practitioners who understand the art of exploiting and reconfiguring others' expert opinions. The development of border security technologies is a rather complex subject matter. The attempt to frame technological activities in this domain by means of the performative character of EU law is without any doubt a tricky exercise. The implications of these series of legislative acts are diverse. They can have an impact on public procurement and contracting with the companies which do most of the hands-on technical work, but also on administrative services belonging to the system of EU bureaucracy / technocracy. But there are also legal and fundamental rights implications which very often can be traced back to the operational modalities of the information systems for border security. It is very interesting how the ambassadors can sense when there is a sufficient



Source: Shutterstock

level of agreement among the technical experts as reported by their advisers. The latter are receivers of messages coming from a very diverse web of policy and expert networks between both individuals and working groups with institutional standing. Especially the working groups, most of which are directly connected to the administrative apparatus of the Commission, play a decisive role in the multifaceted and multilevel intra-European diplomacy. The special agencies such as eu-LISA (European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice), and often also FRONTEX, can be of very high importance, not only in operational matters but also in delivering reliable expert opinions. Coreper ambassadors develop the skill of seeing where the differences are in cases where these are not cleared. They mainly have to reflect on the interplay between two types of controversies: political and technical. In the context of the EU, technical controversies can easily become political and vice versa. They preferably decide on contributing to consensus finding only when it is deemed realistic to neutralize both sources of differences. The main emphasis lies of course in overcoming differences between Member States.

Technological facilitators

Researchers and practitioners in the field of technological system development (especially in the field of large-scale system development as in the case of transnationally operational border information infrastructures), as well as administrative stakeholders and representatives of business interests, play a very important role in the development and operation of border technologies. In the case of large systems, technological success depends on coping with politics and conflicts between various interests. In spite of phenomena of diffusion of responsibility, due to distributed intelligence in the context of intra-EU diplomacy, the involvement of the Coreper diplomats in EU legislative processes has a facilitating effect on the EU machinery; this applies also to the case of the development and operation of the large-scale information systems for the protection of

EU borders. By clearing national differences and by creating trust in expertise, even if this happens at a sub-optimal level and with often problematic consequences (technological, legal, and with regard to fundamental rights), the ambassadors keep the projects of planning and implementation of border security technologies afloat.



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Stakes

Very soon after the creation of the Schengen Area it was realized that without controlling the external borders by profiling potential entrants and monitoring their stay, free movement and the application of the rule of law would be made extremely difficult. For this, a large-scale information infrastructure with a centralized core and national subsystems was indispensable. Erecting it proved to be not a simple technological task. But the stakes were not solely technologi-

cal. Successfully operating these systems required harmonisation of border policies across the Union, a target that remains to be reached. And the application of technology for border surveillance and control has often implications regarding fundamental rights and a whole range of legal risks to which the EU is exposed. EU legislators must consider both operational risks and compliance of the technological planning, design and implementation processes with human rights and the rule of law. Coreper II ambassadors play in this context a catalytic role.

Technology and science

Border security technologies consist of a complex configuration of interoperable data bases with end-user interfaces which make the systems friendly to border guards and other officials entitled to access the available data. Data is being collected with conventional entries but also with the application of digital recognition technologies for fingerprints or other biometric characteristics such as DNA samples. Here hard science and high tech play a crucial role. The development of all these technological components and the definition of the modalities of technologically based border operations require a legal basis, thereby creating an interplay between expertise on technological system development and legal expertise. Furthermore, this interplay is embedded in the dynamics of EU policy making which is rarely deprived of political tensions. It requires a thorough understanding of political processes. This means that border security technologies for the protection of the borders of the Schengen Area require a high degree of knowledge-intensity but also a high degree of interdisciplinarity.

Conclusions

In most cases that could be cited, commercial or science and technology attachés facilitate technological and scientific cooperation between state organizations and private companies belonging to different national entities. But in the case of the permanent representatives of EU Member States, the situation is different. They are not facilitators by creating the conditions of cooperation, for those are already institutionalized in a multilateral setting with quasi-federalist features. Ambassadors of the EU Member States are rather part of the collective process of planning, designing, developing and operating a large-scale border security information infrastructure. The same applies to the EU ministers of Justice and Home Affairs who make the final formal decision on the legal basis of this stream of technological system development. The latter rely on the ambassadors to decide whether to table draft laws for this purpose. In spite of not having the detailed disciplinary knowledge to finely assess the technical legislation, the diplomats are gatekeepers who decide whether the results of the work of the preparatory groups and committees, as well as of the European Commission, will be forwarded to the council of ministers. They make this move conditional upon their collective understanding of whether the draft laws needed for technological system development are acceptably cleared of political and technological risks. The dependence on EU law generated through diplomacy creates in this case both a unique manner of large-scale information system development and a special kind of technology diplomacy.

Study Questions

- What do we mean by “border security technologies”? Why are they needed in the Schengen Area?
- What distinguishes Coreper II technology diplomacy from other kinds of tech diplomacy? And conversely, what makes Coreper II’s action resemble any other tech diplomacy?
- What kind of knowledge is engaged by the Coreper II ambassadors in order to decide whether they will table draft law for Justice and Home Affairs ministers? Is this knowledge peculiar to tech diplomacy, or found (also) in other processes?
- Do you consider that the border security technology diplomacy described here is transparent and responsible? If not, what changes would be needed, at what level, and under which conditions could they be achieved?

Endnote

A fuller version of this InsSciDE work will be forthcoming in a peer-reviewed journal.

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