

BLUEMASSMED LEGAL QUESTIONNAIRE - SPAIN

DATA/INTELLIGENCE SHARED INSIDE YOUR COUNTRY

What surveillance´s systems does your country have? (Fill this column) What entity controls each one? (Fill after the system) Do entities share data? (Fill the right columns - colours and explanations as in the stated example)		All law enforcement authorities	Some law enforcement authorities (which	Other civilian entities	Other military entities
AIS	(SP Navy)	2	2	2	2
	(Guardia Civil)	1		1	1
SIVE (Radar+Optronica(Visual+Infrared) (Guardia Civil)		3		3	3
Radar (SP Navy)		4	4	4	4
Satellite (SP Navy)		4	4	4	4
Military Maritime C2 Systems (SP Navy)		4	4	4	4
Satellite based sensors- Radar (Guardia Civil)		1	1	1	1
AVL-Automatic Vehicle Location (Guardia Civil)		5		6	5
SIAM-Automatic Plates Identification System (Guardia Civil)		7		8	8
PORTEL (AIS from harbor authorities) (SP Navy)				9	
MSSIS (SP Navy)		2	2	2	2
VMS (Secretaría General del Mar)				10	
V-RMTC (SP Navy)		4	4	4	4

II. Do entities share this data/intelligence? (Fill the right columns - colours and explanations)					
1.- Personal criminal data	SP Navy	11	11	11	11
	Customs				
	Guardia Civil	7		7	7
2.- Personal criminal intelligence (Guardia Civil)		7		7	7
a) General data	SP Navy	11	11	11	11
	Customs				
	Guardia Civil	7		7	7
b) Information regarding incidents and violations, including those placed on black/grey lists	SP Navy	11	11	11	11
	Customs				
	Guardia Civil	7		7	7
c) Ships involved in maritime events (including events involving their cargo or crew/owners) (e.g. any incidents, violations, detentions and inspections)	SP Navy	11	11	11	11
	Customs				
	Guardia Civil	7		7	7
11.- Data that depends on the authorization of the competent judicial authority (in camera proceeding)	SP Navy	11	11	11	11
	Customs				
	Guardia Civil	7		7	7
4.- Personal data (not criminal)					
a.- General data	SP Navy	11	11	11	11
	Customs				
	Guardia Civil	7		7	7
b.- Information about shipping companies (e.g. commercial operator; registered owner; crew list)	SP Navy	11	11	11	11
	Customs				
	Guardia Civil	7		7	7
5.- Another kind of data related to surveillance information (not included in the previous nrs).					
a.- General data about maritime vessels routinely detected (e.g. ship identity; current voyage data)	SP Navy	2	2	2	2
	Customs				
	Guardia Civil	7		7	7

b.- Reference information about vessels (imagery of the ship)	SP Navy	4	4	4	4
	Customs				
	Guardia Civil	7		7	7
	Sec. Gral del Mars		XX		
c.- Reference information about vessels (cargo information including risk classification)	SP Navy	11	11	11	11
	Customs				
	Guardia Civil	7		7	7
d.- Information about national maritime assets that contribute to maritime surveillance (e.g. deployment schedules; routine patrol areas)	SP Navy				
	Customs				
	Guardia Civil	7		7	7
	Sec. Gral del Mars		XX		
e.-Information about national maritime areas of focus (e.g. exclusion zones; sea routes)	Sec. Gral del Mars		XX		
	Guardia Civil	7		7	7
	Customs				
f.-Information about land-based national maritime surveillance sensors (e.g. positional information)	SP Navy				
	Guardia Civil	7		7	7
	Sec. Gral del Mars		XX		
g.- Information from national maritime ports (e.g. cargo information; running list of vessels scheduled in port and at anchor; historical data)	SP Navy		9		
	Customs				
	Guardia Civil	7		7	7

	- Data/intelligence shared
	- Data/intelligence not shared (legal restriction)
	- Data/intelligence not shared (other restriction: e.g. not linked)
	- Data/intelligence shared on a case-by-case basis (legal restriction)
	- Data/intelligence shared on a case-by-case basis (other restriction)

Explanation of all restrictions (do not forget questions / matters to be considered in the next questionnaire):
1- Non-owners.
2- SP Navy shares own AIS information with national authorities. It is made available through the COVAM web portal, offered to all the national maritime administration.
3- Not linked.
4. - Maritime Surveillance information obtained by non cooperative means is shared through military networks with other military authorities and, depending on the military classification of the object, basic data (AIS format) is also shared with civilian authorities like in note 2.
5- Join Operation
6. - We have written in yellow colour because we share the position with SASEMAR in Canary Islands in the CCRC.
7. - All the information/data could be provided to any Justice Authority if they request to make any inquiry. What we do not know is if they share this information/data with other entities or bodies. As it is shown above, the only Authority to be provided with data is Justice Affairs.
8- Organic Law 15/1999 or 13 December on the Protection of Personal Data.
9- Exchange based on an inter-departmental permanent agreement.
10- Received for specific operations. (*)
11.- Not available
(Customs) Spanish customs has restrictions about fiscal/customs personal data, because is secrecy by Tax General Law 58/2003 of 17 th December.
(Customs) Also it has restrictions in the case the data depends on the authorization of the judicial authority.
(Customs) Spanish customs has not any problem to share all information about maritime surveillance coming from their patrol boat or aircraft

(*) Concretions to what is stated in 10 (Secretary General of the Sea)

1.-Judges and courts: **The Spanish Constitution 1978**, Article 118: “It is forced to fulfil sentences and other firm resolutions of the Judges and Courts, as well as to give the collaboration required by these during the process and in the execution of the resolute thing.

- Prosecution: (article 91, 4 **Law 3/2001, of 26 of March, Marine Fishing of the State**,: “When the assumption made violator could be constituent of crime or lack, transfer of as much will occur of fault to the Fiscal Ministry, being suspended the procedure of the sanctioning procedure while the judicial authority had not dictated resolution signs or that it ends the procedure.”.

- Other administrative agencies (article 3, 2 de la **Law 30/1992, of 26 of November**, Legal Regime of the Public Administrations and the Common Administrative Procedure. “The public Administrations, in their relations, are in force by the principle of cooperation and collaboration, and in its action by the criteria of efficiency and service to the citizens.”, article 4, 1, c) y 2 With the object of the had thing in letters c) and d) the previous section, the Public Administrations will be able to ask for whichever data, documents or probatory means are at the disposal of the Being to which the request goes. They will be able to also ask for attendance for the execution of his competitions).

2. - individuals in appropriate cases.

In all these cases, observe the following rules include:

a) **STATUTORY LAW 15/1999, of 13 of December, Protection of Personal Character data**

b) **COUNCIL REGULATION (EC) 1224/2009** of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy.

c) **Law 27/2006, of 18 of July**, by which the rights of access to the information, public participation and access to justice in the matter of environment are regulated (It incorporate the Directives 2003/4/CE and 2003/35/CE).

These standards, along with the Spanish Constitution, are to establish the need to safeguard the confidentiality of personal data, which in practice requires a case by case analysis of the various requests for data coming in order to determine whether they fit those requests to the provisions of relevant legislation.

COUNCIL REGULATION (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006, (Article 12 Transmission of data for surveillance operations: “Data from the vessel monitoring system, the automatic identification system and the vessel detection system collected in the framework of this Regulation may be transmitted to Community agencies and competent authorities of the Member States engaged in surveillance operations for the purpose of maritime safety and security, border control, protection of the marine environment and general law enforcement.”.

“Confidentiality of data: Article 112. Protection of personal data

1. This Regulation leaves intact and in no way affects the level of protection of individuals with regard to the processing of personal data under the provisions of Community and national law, and in particular does not alter either the obligations of Member States relating to their processing of personal data under Directive 95/46/EC or the obligations of the Community institutions and bodies relating to their processing of personal data under Regulation (EC) No 45/2001 when fulfilling their responsibilities.

2. The rights of persons with regard to their registration data processed in national systems shall be exercised in accordance with the law of the Member State which stored their personal data, and in particular the provisions implementing Directive 95/46/EC, and, with regard to their registration data processed in Community systems, shall be exercised in accordance with Regulation (EC) No 45/2001.”

REAL DECREE 176/2003, of 14 of February, by that the exercise of the functions of control and inspection of the activities of marine fishing is regulated (BOE nº 50, of 27 of February)

Order APA/3660/2003, 22 of December, by that the system of location of fishing ships via satellite and by which is regulated in Spain settle down the regulating bases of the aid for the acquisition and installation of the systems of location in the fishing ships.

DATA/INTELLIGENCE SHARED BETWEEN BMM COUNTRIES

I. What surveillance's systems does your country have? (Fill this column) Do your country share data? (Fill the right columns - colours and explanation as in the stated example)		All law enforcement authorities	Some law enforcement authorities (which ones?)	Homologous ¹ authorities or entities	Other civilian entities	Other military entities	EU agencies	Outside EU members (v.g. Interpol)
AIS (SP Navy among others)	Guardia Civil	1		1	1	1	1	1
	SP Navy					2		
SIVE (Radar+Optronic(Visual+Infrared)) (Guardia Civil)		3		3	3	3	3	3
Radar (SP Navy)						2		
Satellite (SP Navy)						2		
Military Maritime C2 Systems (SP Navy)						2		
Satellite based sensors- Radar (Guardia Civil)		1		1	1	1	1	1
AVL-Automatic Vehicle Location (Guardia Civil)		3		3	3	3	3	3
SIAM-Automatic Plates Identification System (Guardia Civil)		4		5	5	5	5	5
PORTEL (AIS from harbor authorities) (SP Navy)								
MSSIS (SP Navy)						2		
VMS - XX (Secretaría General del Mar)								
CleanSeaNet								
V-RMTC (SP Navy)						2		
Not electronic system. Just sighting from Patrol boat/aircraft (Customs)								
II. Do entities share this data/intelligence? (Fill the right columns - colours and explanations)								
1.- Personal criminal data	SP Navy					6		
	Guardia Civil	4		4				4
	Customs							
2.- Personal criminal intelligence								
a.- General data	SP Navy					6		
	Guardia Civil	4		4				4
	Customs							
b.- Information regarding incidents and violations, including those placed on black/grey lists	SP Navy					6		
	Guardia Civil	4		4				4
	Customs							
c.-Ships involved in maritime events (including events involving their cargo or crew/owners) (e.g. any incidents, violations, detainments and inspections)	SP Navy					6		
	Guardia Civil	4		4				4
	Customs							
3.-Data that depends on the authorization of the competent judicial authority (in camera proceeding)	SP Navy					6		
	Guardia Civil	4		4				4
	Customs							
4.- Personal data (not criminal)								
a.- General data	SP Navy					6		
	Guardia Civil	4		4				4
	Customs							
b.- Information about shipping companies (e.g. commercial operator; registered owner; crew list)	SP Navy					6		
	Guardia Civil	4		4				4
	Customs							
5.- Another kind of data related to surveillance information (not included in the previous nrs).								
a.- General data about maritime vessels routinely detected (e.g. ship identity; current voyage data)	SP Navy					2		
	Guardia Civil	4		4				4
	Customs							

¹ "Homologous means the equivalent authority of the other country that is the primary responsible entity for the data.

b.- Reference information about vessels (imagery of the ship)	SP Navy				2		
	Guardia Civil	4		4			4
	Customs						
c.-Reference information about vessels (cargo information including risk classification)	SP Navy				2		
	Guardia Civil	4		4			4
	Customs						
d.- Information about national maritime assets that contribute to maritime surveillance (e.g. deployment schedules; routine patrol areas)	SP Navy				2		
	Guardia Civil	4		4			4
	Customs						
e.- Information about national maritime areas of focus (e.g. exclusion zones; sea routes)	SP Navy				2		
	Guardia Civil	4		4			4
	Customs						
f.- Information about land-based national maritime surveillance sensors (e.g. positional information)	(Navy)				2		
	Guardia Civil	4		4			4
g.- Information from national maritime ports (e.g. cargo information; running list of vessels scheduled in port and at anchor; historical data)	SP Navy				2		
	Guardia Civil	4		4			4
	Customs						

	- Data/intelligence shared
	- Data/intelligence not shared (legal restriction)
	- Data/intelligence not shared (other restriction: e.g. not linked, political, strategic)
	- Data/intelligence shared on a case-by-case basis (legal restriction) EC restrictions, I wrote several EC Reg.
	- Data/intelligence shared on a case-by-case basis (other restriction)

Explanation of all restrictions (if it is a legal restriction, specify the EU or national legislation).

Add lines above with another kind of data (if is necessary to a more accurate explanation).

In your explanations, try to consider the following questions / matters:

- How is the legal framework of disclosing **confidential data** to BMM parties?
- What main restrictions exist on the sharing of data pursuant to **data protection law**? Think about the time you can keep the data without the permission of a competent entity (administrative and judicial purpose)
- What main restrictions exist on the sharing of data obtained from a third country, or to be released to a third country?
- What kind of **data security policies** does your country have? And how does it prohibit or restrict the sharing (or further use) of certain data?
- Are there any grounds of concerning **public access to documents** on which such access may be refused?
- Do any of your military entities have law enforcement authority at sea? Explain.
- Commercial or business secrecy/sensitive, secret of state, trade secret, tax secrecy, contractual confidentiality, “need-to-know” basis ... (see Legal aspects of maritime monitoring & surveillance data - final report from European Commission)

1.- Non-owners.

2.- Routinely exchanged through NATO military C2 systems

3.- Not linked.

4.- It is possible share the information with other foreign law enforcement authorities (through the Courts) if they requested but the treatment of this information/data is unknown for us.

5.- Organic Law 15/1999 or 13 December on the Protection of Personal Data.

6. – Not available

(Customs) – Spanish customs has restrictions about fiscal/customs personal data, because is secrecy by Tax General Law 58/2003 of 17th December.

(Customs) – Also It has restrictions in the case the data depends on the authorization of the judicial authority.

(Customs) – Spanish customs has not any problem to share all information about maritime surveillance coming from their patrol boat or aircraft

XX (Secretaría General del Mar) – VMS data is exchanged with other Member States when the vessel is in waters as is established in the EC Reg. 2244/2003 and EC Reg. 1224/2009

RECOMMENDED SOLUTIONS

Recommend the possible legal solutions for all restrictions stated above (e.g. change national law, change EU law – in what terms?) If there is no legal solution for some information exchange, consider the use of alerts . What are the legal implications of an alert stating that a ship is suspected?
Most of the legal restrictions are related to “Personal data”. Very few restrictions are imposed on the pure maritime data. A clear distinction should be made, in accordance with the User Group classification of data. A EU Directive establishing the basic data (based on the basic package established by the UWG), and the framework for sharing them in the wider community could be a first step.
Data that are exchanged are authorized by applicable law. Personal data about owners aren't transmitted
it would be very complicated to modify so many community and national data's rules. Maybe it could be more feasible to establish a common procedure to analyze for each country those problematic data request, according to applicable Law. (General Secretaria of the Sea)

LIST OF EU LEGISLATION/DOCUMENTS RELATED TO DATA EXCHANGE

- Add relevant EU legislation or another kind of documents. If a Directive, add the correspondent internal transposition Law.
- List any bilateral or multilateral maritime information sharing agreements (formal or informal) your country has with other nations or organizations.

EU LEGISLATION

1. Lisbon Treaty
2. Council Framework Decision 2006/960/JHA, of 18 December 2006 - on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union
3. 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
4. Directive 2002/59/EC of the European Parliament and of the Council, of 27 June 2002 - establishing a Community vessel traffic monitoring and information system and repealing Council Directive 93/75/EEC
5. Directive 2003/4/EC of the European Parliament and of the Council, of 28 January 2003 - on public access to environmental information
6. Directive 2003/98/EC of the European Parliament and of the Council, of 17 November 2003 - on the re-use of public sector information

7. Directive 2007/2/EC of the European Parliament and of the Council, of 14 March 2007 - establishing an Infrastructure for Spatial Information in the European Community
8. 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
9. Council Decision 2009/934/JHA, of 30 November 2009 - adopting the implementing rules governing Europol's relations with partners, including the exchange of personal data and classified information
10. Council Common Position 2005/69/JHA, of 24 January 2005 - on exchanging certain data with Interpol

ANOTHER RELEVANTE LEGISLATION

11. United Nations Convention on the Law of the Sea (Montego Bay Convention 1982)

ANOTHER RELEVANT DOCUMENTS

12. Naples II Convention - Council Act of 18 December 1997, drawn up on the basis of Article K.3 of The Treaty on EU, on mutual assistance and cooperation between customs administrations
13. Legal aspects of maritime monitoring & surveillance data (final report from European Commission).

MORE RELEVAN LEGISLATION (SPAIN):

Regulation (EC) n or 199/2008 of the Council regarding the establishment of a communitarian frame for the compilation, management and use of the data of the fishing sector settle down and the support to the scientific advising in relation to the common fishing policy.

Regulation (EC) not 665/2008 of the Commission, of 14 of 2008 July, by which the dispositions of application of Regulation (EC) not 199/2008 of the Council regarding the establishment of a communitarian frame for the compilation, management and use of the data of the fishing sector settle down and the support to the scientific advising in relation to the common fishing policy

Regulation (EC) not 1224/2009 of the Council, of 20 of November of 2009, by that a communitarian regime of control settles down to guarantee the fulfilment of the norms of the common fishing policy, Regalement's (CE) not 847/96 modify, (EC) not 2371/2002, (EC) not 811/2004, (EC) not 768/2005, (EC) not 2115/2005, (EC) not 2166/2005, (EC) not 388/2006, (EC) not 509/2007, (EC) not 676/2007, (EC) not 1098/2007, (EC) not 1300/2008 and (CE) 1342/2008 and do not derogate the Regulations (the EEC) not 2847/93, (EC) not 1627/94 and (not 1966/2006 CE).

Directive 2002/58/CE of the European Parliament and the Advice of 12 of July of 2002 relative to the personal data handling and the protection of the privacy in the sector of the electronics communications (relative Directive to the privacy and the electronics communications).

Directive 2003/4/CE of 28 of January of 2003 regarding the public access to the environmental information and by which derogate the Directive 90/313/CEE of the Council.

Other legislation on industrial property to community and national level

14. LIST OF ACRONYMS AND ABBREVIATIONS

- **AIS – Automatic Identification System**
- AMASS - Autonomous maritime surveillance system
- CleanSeaNet – satellite based monitoring system for maritime oil spill detection and surveillance in European waters
- COCAE - Cooperation across Europe for Cd(Zn)Te based security instruments
- COSMO-SkyMed - COnstellation of small Satellites for Mediterranean basin Observation (Italian Space System for Earth Observation)
- DIISM-SIIMS - Dispositivo Interministeriale Integrato Sorveglianza Marittima/ System for Interagency Integrated Maritime Surveillance (Italian system)
- GLOBE - European Global Border Environment
- MSSIS – Maritime Safety and Security System
- LRIT – Long-Range Identification and Tracking of Ships
- SafeSeaNet – system of the European Commission
- Sat-AIS Study - Satellite AIS System Study for Maritime Safety and Security
- SECTRONIC - Security system for maritime infrastructures, ports and coastal zones
- SIVE – Sistema Integrado de Vigilancia Exterior (Spanish system)
- TALOS - Transportable autonomous patrol for land border surveillance
- VMS – Vessel Monitoring System
- V-RMTC – Virtual Maritime Traffic Centre
- VTS - Vessel Traffic System