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MSc International Relations Global Refugee Studies

Algorithmic Borders

Surveillance Expansion and the Limits of Accountability in EU Migration Governance

Master's Thesis

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Abstract

In 2022 Frontex faced the most serious accountability crisis in its history. This accountability arose from converging investigations by the European Anti-Fraud Office, the European Parliament, civil-society organisations, and a submission to the International Criminal Court. The outcome was the resignation of the Executive Director, however no criminal prosecution was brought, and no operational activity was restricted. In the years that followed, the Agency's budget, mandate and surveillance capabilities expanded. The present thesis asks how this expansion could occur during the period of the most serious scrutiny in the Agency's history, and what it reveals about the structural limits of accountability in migration governance driven by technology. Through drawing on publicly available institutional documents, judicial and civil-society documents, it argues that the post-2022 expansion does not constitute a paradox, but the predictable outcome of a system in which the surveillance mediated by artificial intelligence produces three forms of distance, spatial, temporal and legal, which render accountability impossible.

Keywords: Frontex; algorithmic borders; AI surveillance; accountability; EU migration governance; opacity; three forms of distance; critical security studies.

List of Abbreviations

ADS-B Automatic Dependent Surveillance-Broadcast

AI Artificial Intelligence

EBCG European Border and Coast Guard

ECA European Court of Auditors

ECCHR European Center for Constitutional and Human Rights

EEAS European External Action Service

EP European Parliament

EU European Union

EUNAVFOR MED European Union Naval Force Mediterranean

EUROSUR European Border Surveillance System

FIDH International Federation for Human Rights

FOI Freedom of Information

FRA European Union Agency for Fundamental Rights

FRO Fundamental Rights Officer

Frontex European Border and Coast Guard Agency

FSWG Frontex Scrutiny Working Group

HRW Human Rights Watch

ICC International Criminal Court

IOM International Organization for Migration

JORA Joint Operations Reporting Application

LFJL Lawyers for Justice in Libya

LIBE Committee on Civil Liberties, Justice and Home Affairs (European Parliament)

NGO Non-Governmental Organisation

OLAF European Anti-Fraud Office

OPLAN Operational Plan

SIR Serious Incident Report

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Chapter 1: Introduction

1.1 Problem Field

In 2022, the European Border and Coast Guard Agency, Frontex, faced the most serious accountability crisis in its history. In a single year an investigation was conducted by the European Anti-Fraud Office which concluded that the allegations of misconduct against the Agency were proven (OLAF, 2022), a working group of the European Parliament found that it had been aware of fundamental rights violations at the external border and had failed to act on them (European Parliament, 2021), through a joint investigation by human rights organisations and investigative organisations the role of its aerial surveillance in the interception and return of migrants to abuse in Libya was documented (Human Rights Watch and Border Forensics, 2022), and a communication was submitted to the International Criminal Court concerning the conduct at issue (ECCHR, 2022). The Executive Director of the Agency resigned. By the close of the year, the conduct of the Agency had been documented by an anti-fraud body, a parliament, a civil society coalition, and a submission to an international court.

The Agency's activities did not contract but expanded. After 2022 the budget rose and reached 922 million euros, a vast difference from the six million at its establishment in 2005, and the mandate provided for a standing corps of 10,000 operational staff (Regulation (EU) 2019/1896; Statewatch, 2025). Surveillance capabilities rather than diminishing increased, with a rise of more than 50 per cent in drone operation flight hours (Monroy, 2025). During the same period the loss of life along the routes on which the Agency operated increased. Figures documenting this are provided by the International Organization for Migration: deaths and disappearances across the Mediterranean rose from 2,048 in 2021 to 2,411 in 2022 and to 3,041 in 2023, with a further 2,452 recorded in 2024 (International Organization for Migration, 2024). This means that the most serious scrutiny in the Agency's history was followed by the enlargement of its budget, its mandate, and its surveillance apparatus.

The sequence of events presents an initial contradiction. The logical expectation in this case was that the documentation of serious violations by bodies of this standing and in this concentration would restrict the institution or at least the activities which were found to be implicated in many of these violations. The activities instead expanded. In the present thesis this apparent contradiction is taken as its starting point. It asks how the surveillance infrastructure of the European borders was able to expand during the period in which it was called to account, and what this expansion reveals regarding the conditions under which accountability operates or fails in a system of migration governance increasingly mediated by artificial intelligence. In the chapters that follow it is argued that this contradiction is apparent and that the relationship between accountability and expansion, if properly understood, is not one of tension but of structure.

1.2 Research Question

To examine this apparent contradiction, the thesis is organised around a single main research question:

How has EU border surveillance infrastructure expanded following the 2022 accountability moment, and what does this reveal about the structural limits of accountability in technology-driven migration governance?

This question is approached through three subsidiary questions, each addressed in turn by the empirical and analytical chapters that follow. The first asks what surveillance technologies Frontex has deployed, and what is known, and unknown, about how they operate. The second asks how Frontex responded, institutionally and technologically, to the 2022 accountability moment. The third asks how the structural conditions of EU border governance, combined with the opacity of AI systems, produce and sustain limits on accountability.

The academic significance of the question is particularly important because the expansion of border surveillance using artificial intelligence has outpaced the bibliography that would account for its relationship to accountability. The development of European border control and the harms associated with it are documented by a substantial literature, and a separate literature examines the opacity of automated decision-making, the connection between the two, namely the question of how the specific properties of systems that use artificial intelligence affect the possibility of accountability in border governance, remains underdeveloped. The question has societal significance. These systems govern the movement and affect the survival of some of the most vulnerable people at Europe's borders. The difficulty of accountability for such systems is not however confined to migration. It arises wherever consequential decisions are delegated to technologies whose oversight is not open and whose functioning is not examined.

1.3 Delimitations

Temporally, it centres on the period from 2018 to 2025. The accountability moment of 2022 however characterises the pivot, and both the investigations and conduct that converged in that year and the expansion that followed are examined. Earlier developments are used only to render that period intelligible. Thematically, what it concerns are the surveillance technologies mediated by artificial intelligence, which monitor a border, the situational, analytical, and aerial systems that collect and process information relating to movement, rather than the full range of the Agency's activities or the broader field of migration policy. Geographically, Frontex and the European Union are taken as the framework rather than any single national border or migratory route, although the central Mediterranean recurs in the empirical material, because it is there that the consequences of surveillance have been most fully documented.

Methodologically the thesis rests on the analysis of publicly available documents such as institutional reports, regulatory and parliamentary materials, court and ombudsman findings, public communications of the Agency (Frontex) and its contractors, and civil society investigations. No interviews were conducted, and no legal analyses are undertaken as to whether specific conduct violated specific provisions of law. The focus is on the conditions of accountability and not on adjudicating individual cases. These boundaries are not incidental. The thesis argues that the opacity of the systems in question places their internal operation beyond the reach of external study, in such a way that the documentary record does not constitute merely the chosen source but is to a large extent the only available one. The implications of this for the findings are analysed more extensively in the methodology.

1.4 Structure of the Thesis

The thesis contains eight chapters. In Chapter 2 the theoretical frameworks through which the analysis is conducted are set out, and it identifies the theoretical gap in the existing literature that the thesis addresses. In Chapter 3 the methodology is described, explaining the document-based approach and the reasons for which it was used in this way. In Chapter 4 the surveillance technologies that Frontex deploys are examined, and it establishes what is known and what is not known regarding the way they operate. Chapter 5 examines the accountability moment of 2022, setting out the four documented converging investigations and examining why none of them produced a restriction of the Agency's activities. In Chapter 6 what followed is examined, showing that the period after 2022 was one of expansion rather than the expected restriction. In Chapter 7 these findings are brought together in a discussion organised around the three forms of distance that constitute the contribution of the present thesis, and through them it accounts for both the failure of accountability and the expansion that followed. In Chapter 8 the argument is developed, its contribution, its limitations, and the questions it leaves open. 2.

Chapter 2: Literature Review

This chapter will review the theoretical framework of this study about AI surveillance in border governance and the conditions under which accountability mechanisms fail. This chapter will emphasise literature about critical border studies, surveillance studies and political economy of border control and it will interconnect 5 different bodies of theories. The first analysis is referring to Didier Bigo and is about securitization and the Ban-opticon that explains the expansion of the surveillance infrastructure from an institutional perspective. The second chapter will contain Michel Foucault’s work on biopower logic and the justification of how governance operates through diffuse mechanisms that produce harmful outcomes without identifiable acts of sovereign will. The third chapter will be the analysis of Achille Mbembe in a more figurative way, analysing the concept of death-worlds which will provide in this analysis the conditions and the exposure of risk that such a governance produces. The fourth chapter will be the analysis of Didier Fassin by the review of his theory about the humanitarian reason that demonstrates how compassionate discourse functions as the legitimate complement of repressive practice. The fifth chapter will analyse the political economy of the illegality industry referring to Ruben Andersson’s work, which explains why the expansion is a rational institutional response to documented failure. At the end, the last chapter will analyse the gap that this study addresses in existing literature, concerning analytical tools for understanding the specific accountability problems generated by algorithmic governance.

2.1 Securitization, the Ban-Opticon, and the Three Universes of Border Control: Didier Bigo.

2.1.1 The Governmentality of Unease (2002)

Didier Bigo in "Security and Immigration: Toward a Critique of the Governmentality of Unease (2002)" argues that the securitization of migration is driven by organisational interests and is not a response to objective danger, but it is the product of a self-reinforcing dynamic. For Bigo, the pattern of claiming migration as a security threat results from "the creation of a continuum of threats and general unease" (p.63). This framing is illustrated through a transnational field of professionals such as border agencies, intelligence services, private corporations and media organisations that exchange and amplify fears and threats in a way that consolidates institutional authority and secures their operational mandates. For this reason, the securitization of immigration is not only an administrative response to a social phenomenon but is a constructed political field that serves specific institutional interests.

Bigo's framework and concept of the "professionals of unease" refers to a transnational field of security actors, whose institutional reproduction depends on the sustained perception of migration as a manageable but permanent threat. These professionals are motivated in part by "competition for budgets and missions" (p.64), and their authority rests upon their claim to possess specialised knowledge about risks that others cannot access or evaluate.

Bigo further argues that when this institutional pattern is challenged by critical evidence, the response is not a revision but what he terms "a policy of forgetting, or a denial" (p.66). The persistence of securitizing discourse is not a product of ignorance. Mostly it is an actively maintained denial by actors whose institutional position depends upon it. This dynamic has direct implications for understanding how mechanisms of accountability operate, or fail to operate, within the field of border governance.

In 2002, Bigo analyses a particularly consequential claim. This analysis concerns the relationship between surveillance technology and the securitization process. Rather than treating technology as a neutral instrument deployed in response to pre-existing threats, Bigo reverses the causal logic: "securitization of immigration is the result and not the cause of the development of technologies of control and surveillance" (p.73). Technologies of computerization, risk profiling and remote border control do not simply implement decisions already taken on other grounds. They actively generate new categories of risk, new objects of surveillance and new institutional justifications for expanded operational mandates. The result of this pattern causes the development of surveillance infrastructure which is itself constitutive of the security framing it appears merely to serve, creating a feedback loop between technological investment and the institutional logics that depend upon it.

2.1.2 The Ban-Opticon: Selective Surveillance and the Erosion of Accountability (2008)

Bigo in his chapter "Globalized (In)Security: The Field and the Ban-Opticon" develops the concept of the ban-opticon. This concept describes the distinctive form of surveillance that characterizes contemporary border governance. This comes in opposition with Foucault's panopticon, which describes the view over an enclosed population universally, rather than the ban-opticon which operates selectively: it is "characterized by… practices of exceptionalism, acts of profiling and containing foreigners" (p.10). It targets specific populations identified by risk logic while the majority moves freely and unobserved. This selectivity is structural and not incidental and has implications for accountability. When this surveillance takes place upon populations already defined as exceptional or suspect, the legal and procedural protections that accompany visible state action are correspondingly attenuated.

The ban-opticon is further characterised by a proactive temporal logic that "aims to act before an offence is committed… anticipating the behaviour" (p.36) of those identified as risky. This rationality operates through what Bigo calls "surveillance at a distance," through remote technical systems rather than direct physical encounters. The displacement of control from the border to the data system creates a form of governance in which decisions with life-altering consequences are taken by actors who are spatially, institutionally and legally far away from those affected. This distance, as Bigo suggests, is not only a logistical feature of modern border management but a structural condition that fundamentally complicates any attribution of responsibility for its outcomes.

The theoretical divide that Bigo illustrates between the panopticon and the ban-opticon offers a helpful lens for this. The ban-opticon, he argues, "depends no longer on immobilizing bodies under the analytic gaze of the watcher but on profiles that signify differences" (p.37). Once the focus shifts from bodies to profiles, controls stop being about what a particular individual is seen doing, and are instead based on statistical constructions that assign risk on the basis of group characteristics, such as patterns of behaviour pieced together from others' actions, and on algorithmic connections that might have nothing to do with what that person has actually done or intended. This approach generates results of exclusion, interception and detention, without creating the type of individual, document-oriented decisions that accountability mechanisms typically require in order to function.

2.1.3 Three Universes of EU Border Control and the Production of Invisible Exclusion (2014)

In his 2014 article "The (In)securitization Practices of the Three Universes of EU Border Control," Bigo maps the institutional landscape of European border governance through the framework of three distinct social universes, each following a distinct professional logic and holding a different view of what borders are and how to manage them. The first universe, driven by military and naval figures, understands the border as a solid boundary requiring defence.

The second universe, consisting of police and border officers, interprets it as a flexible filter designed to sort and direct the movement of people.

The third universe, that of data analysts, IT specialists, and the agencies managing large-scale surveillance systems, thinks of the border as something gaseous, conceiving it as a wide-reaching system of data points that tracks, profiles, and assesses individuals through time and space, detached from any physical boundary. The third universe classifies people on the move into three distinct groups, whose unequal treatment exposes the accountability challenges that come with data-driven border control. First, the "normalised" refers to those whose profiles raise no flags and who pass through the borders nearly invisibly. They "mistake speed for freedom" (p.219), without recognising that their frictionless passage depends on fitting the profile of a trusted traveller. Second, the "abnormalised" are "transformed into 'legitimate' objects of suspicion" (p.219) on the basis of profile associations, subjected to intensified scrutiny at multiple points in the control apparatus. It is worth noting that the decisions that shape both groups can, at least on paper, be traced back. They happen at specific points in time, involve known institutions, and leave behind some kind of administrative trail. The third and more analytically significant category is that of the "data-banned." It refers to those who are excluded before any border is physically encountered, on the basis of algorithmic profiles constructed from the behaviour of others who share demographic or geographic characteristics. As Bigo observes, these individuals "will never see Europe… because people 'like them'… have done so" (p.219). This form of exclusion is particularly consequential from an accountability perspective. It is produced remotely, automatically, and without any direct interaction between the affected individual and a decision-making authority. There is no formal decision to point to, no appeal process is triggered, and no institutional paper trail exists that would let anyone review or challenge the exclusion. The data-banned population, which Bigo estimates numbers in the millions, is the group most consistently impacted by border governance, and at the same time the hardest to reach through the usual oversight and redress channels that accountability normally depends on.

2.2 Biopower, the Management of Populations, and the Diffusion of Responsibility: Michel Foucault

Michel Foucault's analysis of modern power in The History of Sexuality, Volume 1 (1978) identifies a historically significant transformation in the exercise of political power: the gradual displacement of sovereignty, defined by "the right to take life or let live" (p.136), by a new form of power oriented toward the administration and optimisation of living populations. In Foucault's terms this new form is biopower. Unlike sovereign power, it does not operate through the threat of death but through the management of life. As he says, it "brought life and its mechanisms into the realm of explicit calculations" (p.143), which refers to making the conditions, capacities, and risks of living populations the object of systematic governmental intervention. What makes this shift so important for understanding contemporary governance is not just what biopower achieves, but how it spreads responsibility around. For example while sovereign power works through clear acts of will by known authorities, biopolitical governance

runs through institutions, norms, and techniques that are so spread out and diffuse that pinning responsibility for what they produce becomes a structural problem.

At the heart of Foucault's thinking on biopower is a rethinking of how political power relates to death. Instead of killing directly, biopolitical power works as a "power to foster life or disallow it to the point of death" (p.138). Analytically this means that under biopower, death is not a deliberate act by sovereignty, but it is the result of being deliberately left out of the state's life-sustaining efforts. Populations that don't fit into the categories of useful, normal, or productive are not killed outright. They are simply deemed not worth the protection, or intervention that the state puts into improving life for everyone else. The fact that they end up exposed to conditions where death becomes likely is the result of what is not done rather than what is done. This matters a great deal for accountability, because it is far harder to hold institutions responsible for what they neglect to do than for what they actively carry out.

Foucault describes the operational mechanism of biopower as the "distributing [of] the living in the domain of value and utility" (p.140). This distribution is achieved through processes that "qualify, measure, appraise, and hierarchize" (p.140) populations based on norms set and managed by institutions that claim technical and scientific expertise. What this produces is a layered social field where some groups receive protection and support, while others are gradually pushed to the margins through what Foucault refers to as "continuous regulatory and corrective mechanisms" (p.140). These mechanisms don't work through exceptional acts of state violence but through the working routine of administrative systems such as classification, assessment, risk calculation, and norm enforcement, whose ordinary, bureaucratic character conceals the political decisions embedded within them.

The implications of Foucault's framework for accountability are significant and underexplored. Biopolitical power operates through diffuse and institutionally scattered processes, and this is the reason why the forms of scrutiny and redress for which accountability mechanisms are designed are systematically evaded. The population that is categorized, hierarchized and left exposed to risk through the routine operations of administrative systems makes it difficult to identify a specific decision that could be challenged, a decision-maker who could be held responsible, or a moment at which an alternative course of action was available. The power to "disallow life to the point of death" operates not through direct commands but through the cumulative impact of how people are classified, how resources are allocated, and how procedures end up excluding groups in ways that individually appear technical and neutral. For Foucault, the way agency is distributed across institutions, norms and technologies is not a side effect of modern governance but its core. This characteristic makes the outcomes of biopolitical power structurally difficult to address through conventional accountability means.

2.3 Death-Worlds and the Conditions of Exposure: Achille Mbembe

In "Necropolitics" (2003), Achille Mbembe extends Foucault's lens of biopower to argue that sovereign authority in its most consequential forms operates not only through the administration of life but through the management of death. For Mbembe, the ultimate expression of political power is "the power and the capacity to dictate who may live and who

must die" (p.11). Crucially, this capacity encompasses not only direct killing but the broader right "to kill, to allow to live, or to expose to death" (p.12). It is this third element, exposure to death, that grounds the idea of death-worlds, which is the most useful part of Mbembe's framework for what this study is trying to do. Death-worlds are not about one act of violence. They describe an ongoing situation, a spatial and social setup where people are kept alive but left in conditions that make their death likely, treated as normal, and ignored by the institutions around them.

Mbembe defines death-worlds as spaces in which "vast populations are subjected to conditions of life conferring upon them the status of living dead" (p.40). The people who inhabit death-worlds are not simply poor or marginalized. Their condition is political in a very specific sense, defined by the systematic denial of the protections, resources, and recognition that life needs in order to be sustained. They are caught in what can only be described as an ambiguous threshold, where they remain biologically alive but are treated by political and institutional systems as if their lives do not really matter. This is not something that comes from a single decision or from a deliberate policy aimed at extermination. It arises from the combined weight of spatial arrangements, legal structures, institutional routines, and resource distributions that collectively give shape to a zone of organized abandonment. For Mbembe, racism functions as the political technology that makes the production of death-worlds socially and institutionally tolerable. As he argues, racism functions as "the condition for the acceptability of putting to death" (p.17) or, to put it more precisely in the context of death-worlds, of exposing certain populations to conditions where death becomes a likely outcome. Racial categorisation creates a hierarchy of lives where the deaths of certain populations are seen as less worthy of grief, less visible, and less politically significant than the deaths of others. This unequal way of valuing lives does not have to show itself through explicit ideological declarations. More often it works quietly, through the institutional arrangements, the systems used to classify people, and the choices made about how resources are distributed, all of which form part of how governance is practiced on an everyday basis. The implication this carries for accountability is considerable. The conditions that produce death-worlds are able to persist over time without generating the kind of political pressure or institutional reaction that would almost certainly follow if comparable conditions were affecting populations that are racialised differently.

Within this study, the concept of death-worlds is not deployed as an accusation suggesting deliberate intent on the part of any actor. Rather, it serves as a descriptive framework through which the conditions produced by a specific institutional and technological system can be examined and understood. In Mbembe's thought, a death-world does not presuppose a sovereign who deliberately exposes a population to death. It only requires that the arrangements through which governance operates consistently fail to shield that population from conditions where death becomes probable. This distinction carries analytical weight because it shifts accountability away from the question of intent — did any actor aim to produce harm? — toward the question of structural effect: what conditions does the system generate, and what mechanisms are available to recognise, confront, and correct them?

2.4 Humanitarian Reason, Compassion, and the Legitimation of Border Governance: Didier Fassin

In “Policing Borders, Producing Boundaries: The Governmentality of Immigration in Dark Times” (2011), Didier Fassin explores how immigration is governed through the framework of governmentality, contending that migration management in contemporary liberal societies rests on three interconnected pillars: economy, police, and humanitarianism. Fassin notes that the balance between these pillars has shifted considerably in recent decades, with policing gradually overtaking the other logics as the primary means through which states manage those they define as unwanted. Significantly, he argues that this “policiarization of immigration has proceeded almost regardless of the changes of political majorities” (p.221), suggesting that the punitive and expansive character of border governance is not an accidental outcome of specific political circumstances but a structural feature of the contemporary state, one that endures across elections, changes of government, and even formal accountability investigations.

A key contribution of Fassin’s analysis lies in his examination of how humanitarian discourse and repressive practice interact in the governance of migration. Instead of viewing these as opposing forces in conflict, Fassin identifies “remarkable confusion between repression of illegal aliens and compassion for suffering others” (p.221), that is fundamental to contemporary border governance. Compassion and repression do not work against each other; they operate as complementary logics within the same institutional framework. The humanitarian language, with its emphasis on saving lives, shielding the vulnerable, and alleviating suffering, supplies a moral vocabulary that upholds the legitimacy of governance arrangements whose practical effects are largely restrictive and punitive. This coexistence is not a matter of hypocrisy but of structure. It is exactly the humanitarian framing that makes the expansion of border control politically sustainable across different governmental contexts.

Fassin builds on this argument through the concept of humanitarian reason, which is described as giving rise to "discretionary forms of 'humanitarian reason'" (p.221) within immigration governance. A principled, universal obligation to uphold human dignity does not form part of the humanitarian dimension that runs through border governance. It carries characteristics that are selective, conditional, and ultimately remains secondary to the policing rationale that accompanies it. Compassion can only be granted to those who have been able to prove their suffering in ways that institutions are able to recognise and process, such as medical records, stories of individual persecution, or visible signs of physical hardship. However, those who have not managed to fit into this vulnerability within the established criteria, no such consideration applies. They are left exposed to the repressive mechanisms of the system, without any of the protections that humanitarian discourse promises. The process gives rise to a governance arrangement that can convincingly claim to serve humanitarian purposes, while at the same time leaving intact, and in many ways reproducing, the very structural conditions from which the suffering it selectively responds to originates. This is the point at which the humanitarian dimension does not challenge the system, but rather enables its continuation by providing it with a layer of moral credibility.

What matters most from Fassin's framework for the purposes of this study is what it reveals about the relationship between humanitarian reason and institutional accountability. This has real implications for how accountability functions. When violations occur, when institutions fail, or when structural harms come to light, the humanitarian framing allows them to be presented as regrettable but inescapable by-products of an operation that is, at its core, about protection. What might otherwise be recognized as evidence of deep institutional dysfunction in need of remedy is instead folded into a narrative of necessary sacrifice, making it far more difficult to challenge the system on its own terms. Within this logic, the expansion of surveillance infrastructure following documented violations is not read as a failure of accountability. On the contrary, it is presented as proof of the institution's dedication to its humanitarian mission, on the grounds that more technology translates into a greater capacity to detect distress and save lives. As a result, the very measures that might raise questions about rights and oversight are repackaged as evidence of moral commitment. What Fassin's framework points to is that this humanitarian legitimation is not merely an incidental feature of border governance as it currently operates. It is structurally essential to it. Without the language of compassion to draw on, the ongoing expansion of repressive capacity would lack the political cover it needs and would become unsustainable in the eyes of the public and of political institutions alike.

2.5 The Illegality Industry and the Political Economy of Border Expansion: Ruben Andersson

So far the frameworks that were discussed were about how governance is securitised and the harmful outcomes that are produced without direct violence, and also the way humanitarian rhetoric legitimises its continuation. The largely unaddressed basic question is: why does the system keep growing. The answer comes from a political economy lens that Ruben Andersson offers in Illegality, Inc. (2014). In his account, the expansion of border control infrastructure is not driven by threat assessments or policy choices. It is the result of a predictable system that includes a wide range of actors who derive institutional and financial benefit from the existence of the problem they claim to be solving. The industry, as he mentions, "produces what it is meant to eliminate, curtail, or transform — more migrant illegality," generating a self-reinforcing dynamic in which "more funding is assured in a vicious circle reminiscent of the 'war on terror'" (p.8).

Andersson is careful to distinguish the industry's stated purpose and its products. The border agencies document threats to justify budgets, leading the way for technology companies to develop new surveillance solutions that create more contracts. NGOs expand operations in response to the humanitarian issues and consequences that appear. Media organizations sustain the public attention through crisis narratives that reinforce the political salience of the issue. The result is what Andersson calls a "value chain" in which "migrant illegality is processed, 'packaged', presented, and ultimately rendered profitable" (p.15). Significantly, no single actor needs to intend this outcome. It emerges through the accumulation of decisions that are, taken individually, perfectly rational within a system that incentivizes growth but lacks any internal mechanism for scaling back or self-correction. That is not conspiracy but structure. It is a

structural logic that makes Andersson's framework so analytically useful for the present study, because it shifts the question from who decided to expand to what kind of system makes expansion the rational default.

What matters most in Andersson's analysis for the purposes of this study is what he shows about how accountability functions within this system, or more accurately, how it fails to function at all. He identifies the subcontracting chain as the structural characteristic most directly responsible, arguing that it "make[s] accountability impossible while enabling extensive feedback between seemingly self-contained sectors" (p.276). Frontex points to member states. Member states point to third-country partners. Private contractors claim they merely supply products without responsibility for how they are used, and European politicians insulate themselves through institutional delegation. As Andersson says, "arm's-length delegation brings political leverage — at a price" (p.276). The price is not borne by the institutions that benefit from the arrangement. And because "illegality is now hardwired into institutional arrangements, from Red Cross rescue operations to Frontex risk analysis networks" (p.274), documented failures do not produce restriction. They produce more justification, funding and investment, because each actor in the system has both the incentive and the capacity to reframe exposure as a reason for more of what they provide rather than less.

This is why, through Andersson's framework, the expansion of Frontex's surveillance infrastructure after 2022 is not some paradox that needs explaining. It is a predictable result of how the system's own logic operates. The illegality industry "keeps the defence industry and security forces funded, the NGOs busy, and the media occupied with an external 'threat'" (p.276). Regarding this, documented violations become in that context not the reason to restrict but a reason to invest more in the systems that were supposed to prevent them.

2.6 The Gap: What Existing Frameworks Cannot Explain

The five frameworks reviewed in this chapter together explain a great deal. Bigo explains the institutional logic that drives securitization and the expansion of surveillance infrastructure. Foucault illustrates how governance produces harmful results through mechanisms diffuse enough to evade responsibility. Mbembe's concept of death-worlds describes the conditions in which populations are systematically left unprotected, and death-worlds appear as a normalized space. And Andersson shows that through political economy the illegality industry expands and that this expansion is a rational response to documented failure. All together these frameworks explain why border governance expands, why it produces harmful outcomes, and why it continues despite formal accountability pressures.

Despite these findings, none of these frameworks addresses what happens when the decisions shaping these outcomes are products of algorithmic systems. Each was developed before the rise of AI technologies as a structural feature of border governance rather than an experiment at its margins. Bigo's ban-opticon anticipates the logic of data-driven profiling but does not refer to machine learning technologies or predictive analytic tools that produce risk assessments without the input of human decisions. Foucault's analysis was developed before the rise of algorithmic governance. Mbembe's framework doesn't engage with specific accountability problems that arise when exposure to danger is channeled through technology

rather than through identifiable acts of sovereign decision-making. Fassin's analysis of humanitarian reason does not account for systems that categorize people for rescue or interception without the kind of discretionary human judgment that his framework presupposes. And Andersson describes the subcontracting chain before AI systems became a central node in that chain itself, introducing a layer of opacity that his analysis leaves unexamined.

The deployment of AI in border governance introduces a qualitatively distinct accountability problem. When life-altering consequences are produced or shaped by AI systems, three forms of distance appear that compound the accountability deficits already identified in this literature. First is the spatial distance that arises, for example, when a remotely operated drone, or a maritime AI system producing assessments based on aggregated satellite data, generates outcomes without there being any direct contact between the person making the decision and the person affected by it. Second, predictive systems introduce a temporal distance by acting on what someone might do in the future rather than on what they are doing now. This makes it extremely hard to point to a concrete decision that could be reviewed or challenged after it has already taken effect. And third, the legal distance which emerges from the structural ambiguity of responsibility in AI-mediated governance: when an outcome is produced by the combined interaction of a Frontex mandate, an operational decision taken by a member state, an algorithm designed by a private contractor, and the output of an automated system, none of the existing accountability frameworks can clearly answer the question of who bears responsibility.

There is another dimension that existing literature leaves unaddressed: the opacity of the systems themselves. Frontex for example does not publicly disclose by which criteria AI systems generate risk assessments, the decision chains through which automated outputs become operational actions, or the standards against which these systems are evaluated. This lack of disclosure is significant not merely as a limitation for research but as an analytical finding. Parliamentary oversight, monitoring by civil society, and judicial review all depend on access to information about how the system works, and without that information they simply cannot function. The opacity here is not a gap in the available evidence. It is itself part of the accountability problem that this thesis tries to examine.

This thesis responds to this gap by looking at how the expansion of Frontex's surveillance infrastructure after 2022 has proceeded without accountability mechanisms that are able to govern the spatial, temporal, and legal distances created by AI systems. The argument is not that these technologies were chosen in order to evade accountability, but that the structural conditions Andersson describes combined with the accountability vacuums generated by algorithmic governance produce a situation in which documented violations are followed by technological expansion rather than operational restriction. The following chapters will set out to examine this problem.

2.7 Theoretical Framework

In the previous section, the frameworks that already exist in the literature were shown to be not enough to explain something specific. To fill the gap, the introduction of the three forms of distance will be helpful to explain the main argument. The three forms of distance are the

spatial, temporal, and legal, and they will be the analytical contribution of this study. This section will explain how the four theoretical frameworks will be applied to the empirical analysis to develop the central argument: that the post-2022 expansion of Frontex's AI-powered surveillance infrastructure is not a failure of accountability in any conventional sense, but the predictable outcome of a system whose structural conditions make accountability impossible through the mechanisms that currently exist. This argument is not based on claims about what these technologies do. It is based on what the available documentary record shows they do not disclose, whom they do not hold responsible, and what did not change after the most significant accountability case in Frontex's history.

This paragraph will analyse the three texts that are applied in Chapter 4 of the thesis. This chapter examines the surveillance technologies that Frontex deploys and what the public records reveal about how they operate. The ban-opticon explains the logic behind these technologies: they exercise selective surveillance with data systems at a distance without physical encounter. The Three Universes framework locates these technologies in the third universe, the gaseous border of databases and automated systems, where the link between decision and consequence is most diffuse and institutional responsibility most difficult to establish. The data-banned category describes what these systems structurally produce as an accountability condition. For example, exclusions that occur without formal decisions, without notification of those who are affected, without any administrative record or evidence that the existing oversight mechanisms could identify and review. Chapter 4 will show that this information is not publicly available and that the absence of that information is itself a finding. It will not show how these systems function internally. The opacity that is documented in Chapter 4 is the first condition that makes the three forms of distance possible.

The framework of Foucault's concept of biopower is applied both in Chapter 4 and Chapter 5. In Chapter 4, biopower gives the conceptual language for understanding how surveillance technologies exercise power through classification and sorting rather than direct coercion, and how their routine and technical character hides the political decisions that are embedded within them. In Chapter 5, which examines the accountability moment of 2022, biopower gives an explanation of how biopolitical governance produces harmful results through omission rather than commission. This explains from the empirical data why the documented violations were so difficult to assign to any identifiable actor, and why the formal accountability mechanisms directed at the system — OLAF, the European Parliament, civil society litigation — produced findings but not operational restriction. When governance produces harmful outcomes through diffuse, routine administrative processes rather than through acts of will, the mechanisms that are designed to hold specific actors responsible have nothing to attach to.

Mbembe's death-worlds concept is applied descriptively in Chapter 6. Chapter 6 examines the post-2022 expansions and their human consequences. The concept of death-worlds is not used to make claims about intent, but to name the conditions that the empirical data documents. Specifically, it examines conditions where populations are exposed to the probability of death, where this exposure persists across accountability events, and where the institution with the capacity to shift the structural conditions that generate this exposure has demonstrated that it will not do so through the mechanisms that exist. The racism theory is applied in the same

chapter to illuminate why these conditions (deaths, exposure to death) do not produce political pressure commensurate to their scale. This represents a contextual claim and not an analytical one. So this does not form part of the central argument; it is something which helps to understand the environment in which these incidents take place. Racism explains why the system can continue politically to be sustainable and the same conditions continue to exist. This does not form the central argument of the analysis, but it is an ingredient of political complacency.

Fassin's compassion and repression framework is applied in Chapters 5 and 6. In Chapter 5, it explains the mechanism through which the accountability moment of 2022 was absorbed institutionally. Moreover, documented violations were reframed as confirmation that newer technology is needed, in contrast to being treated as evidence of institutional failure that demands operational restrictions. The humanitarian framing is used to provide the rhetoric of surveillance as life-saving, AI as early detection, expansion as protection. This rhetoric is not examined as different from institutional behaviour but as a structural mechanism that renders the reframing credible and politically sustainable. In Chapter 6, it accounts for how the expansion after 2022 was justified publicly with means that made the restriction politically difficult to demand. Without using this language of compassion, the expansion that the empirical data documents would have required political justification. With this rhetoric, expansion and accountability can coexist in official discourse without contradiction.

The framework of the illegality industry by Andersson is applied in Chapters 5, 6, and 7. In Chapter 5, the example of the subcontracting chain explains why the accountability moment did not produce any operational restriction, despite the unprecedented scale. The reason is that every actor in this chain could deflect the responsibility to the next actor, so there was no available mechanism to hold them responsible as a whole for what the parts collectively produced. In Chapter 6, the self-reinforcing cycle explains why after the exposure, expansion followed rather than restriction. The documented failure, within the political economy that Andersson describes, represents a structural justification for further funding and not for reducing the operation. In Chapter 7, the framework of Andersson is extended to explain what the AI systems contribute specifically. Particularly, when a private contractor supplies a risk assessment tool whose algorithm is not available to the public, the chain of deflected responsibility becomes longer, and every new contract makes the legal distance between the decision and accountability difficult to bridge.

Chapter 7 relies on these five frameworks to develop the central argument through three forms of distance (spatial, temporal, and legal). These forms of distance are not applied as theoretical claims on how the technologies function internally. They are used as analytical descriptions of the documentary evidence showing how accountability fails in practice. The spatial distance is documented in Chapter 4. The technologies which are examined produce effects between institutions that produce evaluations and persons who are affected by these evaluations, and the official record does not reveal the criteria based on which these evaluations are made. The temporal distance is documented in Chapter 4, partly through the opacity finding. The predictive analytics systems, by definition, operate through expected behaviour, and the absence of publicly available data on the way in which these systems generate their outputs

means that the basis upon which these decisions are taken cannot be reviewed retrospectively. The legal distance appears in Chapters 4, 5, and 6. The interaction between the mandate of Frontex, operational decisions of member states, private algorithmic contractors, and machine-generated outputs produces results in which no actor takes on responsibility, as the accountability moment of 2022 empirically demonstrated.

The argument and the methodological statement of this thesis is grounded in what the accessible data reveals and what it does not reveal. It does not claim that these systems were designed to evade accountability. It claims that the combination of the existing structure of the illegality industry, as Andersson describes, and the specific opacity, the diffusion of responsibility, and the predictive logic of AI systems produces conditions in which accountability is not just difficult but structurally inaccessible through the mechanisms that currently exist. The proof of this argument is not the internal functioning of these technologies. It is the gap between what is documented, what these technologies are not mandated to reveal, and what the empirical data after 2022 reveals — when the most serious accountability pressure was applied to the same system that produced expansion instead of restriction.

Chapter 3: Methodology

3.1 Research Design

The present thesis adopts a qualitative research methodology based on document analysis. The research question is what shapes the selection of this approach. The question of why institutional responses to documented human rights violations produced expansion rather than restriction is examined, and this requires close engagement with the documents that institutions produce, including their official reports, procurement decisions, parliamentary submissions, and public communications. These documents do not merely constitute records of institutional activity. The use of documents in many cases frequently serves as central sites through which institutional stances are formed, justified to external audiences, and their analysis is essential for understanding the patterns that the present thesis examines.

An inductive approach is followed in the present thesis, which means that the patterns and themes are allowed to emerge from the material rather than being decided in advance. Through Chapter 2 the theoretical frameworks and the literature review are employed as interpretive lenses through which the observed patterns can be understood and explained. This approach aligns with the tradition of critical research, which rather than asserting analytical neutrality, openly declares its theoretical commitments from the start. Qualitative content analysis, as Schreier (2012) notes, is an analysis which is appropriate for research interested both in the direct claims made within documents and in what they imply or conspicuously leave unsaid.

The explanation for the methodological decision in this study stems from the treatment of absence. Several of the key findings do not emerge from the content of the documents, but from what they leave unsaid. The criteria on the basis of which artificial intelligence systems generate risk assessments, the decision-making chains through which automated outputs are converted into operational actions, and the standards on the basis of which these systems are

evaluated are not fully disclosed by Frontex. The treatment of the missing criteria behind risk assessments and the lack of accessible review mechanisms for those affected by algorithmic decisions in the present thesis are used as analytical tools and significant findings. In Chapter 2 the analytical framework was set, which aligns with the above claim, as the opacity of these systems is identified as one of the structural conditions that make the three forms of distance possible. Bringing this opacity to light is by itself part of the contribution that the present thesis seeks to make.

3.2 Temporal frame

The analysis focuses on the period from 2022 onwards. The starting point has been chosen deliberately. Institutional investigations, legal complaints and civil society reports converged and created an unprecedented accountability moment for Frontex in 2022. There is a documented OLAF investigation into the deliberate misclassification of pushback incidents, affecting 957 asylum seekers between March 2020 and September 2021. Fabrice Leggeri, who was Executive Director, resigned. The publication of the report "Airborne Complicity" by Human Rights Watch and Border Forensics, through which statistically significant correlations were identified between drone flight hours and Libyan Coast Guard interceptions, which indicates through this correlation that Frontex was systematically informing Libyan Coast Guard interceptions, and this is also observed from the fact that as drone flights increased, the number of people intercepted and returned to Libya increased, which indicated that surveillance data was being used to facilitate returns rather than rescues. Furthermore, the European Centre for Constitutional and Human Rights submitted a complaint to the International Criminal Court against 24 individuals, including EU officials, for crimes against humanity. An event like this had not previously taken place in the Agency's history.

Setting 2022 as the starting point allows the study to trace what came next, namely whether and how this unprecedented accountability pressure was translated into changes in operational practice, technological deployment or institutional governance.

3.3 Data sources

The analysis is built on three categories of sources, selected for their relevance to the research questions and their suitability for cross-verification.

Documents produced by Frontex and EU institutions, including annual activity reports, board decisions, procurement contracts and tender specifications, press releases and operational statistics, constitute the first category. European Parliament materials such as the findings of the LIBE Committee and the Frontex Scrutiny Working Group as well as the conclusions of the OLAF investigation are included in this category. The disclosure regarding operational decisions but also the way of functioning through which Frontex justifies its activities externally gives a significant relevance to the research. The absence of information and particularly the operational logic of artificial intelligence systems is not treated as a simple gap but as analytically significant.

The second category consists of reports from human rights organisations and civil society such as "Airborne Complicity" (2022) by Human Rights Watch and Border Forensics. For

procurement and the development of artificial intelligence, analyses by Statewatch are used as well as the communication to the ICC. The official documentation of Frontex does not offer perspectives on its operations, and data such as flight data, interception statistics, and survivor testimonies are drawn from independently verified evidence. These sources are not treated as neutral. Like any source, they carry distinct analytical and political commitments, and their findings are triangulated where possible with institutional documents.

The third category also consists of secondary quantitative data. These data are used descriptively to support the framework and underpin the patterns addressed in the qualitative analysis. Among these data are figures from the IOM Missing Migrants Project on deaths in the Mediterranean, Frontex operational statistics on drone flight hours as documented by Monroy (2025), and EU budget allocation figures. Statistical analysis on these data is not used. Instead they are used to establish a factual baseline against which the claims made in the documents can be evaluated and to capture the scale of the patterns that the analysis brings to light

The fourth category consists of materials produced by private contractors engaged by Frontex. These materials are derived from public procurement procedures, including press releases, product documentation and corporate statements. The analysis uses the materials of this category with regard to the analysis, including the press releases and product pages of Windward Ltd, the maritime analytics company contracted by Frontex under a framework contract for Maritime Analysis Tools, and corporate statements issued by Shield AI in connection with the V-BAT tactical drone deployment carried out in cooperation with Frontex. The treatment of these materials does not describe them as neutral in operational reality but as the contractors' own self-presentation regarding the purpose for which the procured systems were designed, in the language and framing that the companies themselves use to describe their products. Their inclusion in the present study is not incidental but methodological. The absence of description in the operational documentation of how a system functions on the part of Frontex means that contractor materials frequently constitute the only publicly available source for these questions. Treating them as primary documentation is consistent with the analytical strategy outlined in Section 3.1, in which the absence of disclosure on the part of Frontex is treated as analytically significant rather than as a research limitation.

These documents were selected on the basis of a purposive sampling strategy and continued until thematic saturation was achieved. This saturation means that the documents no longer produced additional new themes nor substantially altered the existing ones. The body of texts remains manageable in size, allowing close and detailed engagement with each individual document, as the study concentrates on a specific actor within a delimited timeframe.

3.4 Analytical method

Qualitative content analysis as developed by Schreier (2012) is used as the analytical approach. The method is particularly suitable for research that aims at the systematic reduction, description and interpretation of documentary material without losing sight of context. Quantitative content analysis does not treat documents as mere collections of countable units and therefore would not be effective. With this analytical approach, the focus is placed on

meaning, framing and the interplay between what is stated and the institutional setting in which it is produced, and it focuses on aligning closely with the questions of the present thesis.

Five stages are what the analysis proceeds through in total. In the first stage, the aim was familiarisation with the material and the flagging of passages of potential relevance that emerged from the selected documents that were read. The second stage involves the coding of relevant segments through an initial set of codes derived inductively from the material. The third stage contains the organisation of these codes into categories based on thematic similarity. In the fourth stage the identification of overarching themes that cut across individual documents and source types takes place. And finally in the fifth stage the themes that emerged were interpreted in light of the theoretical framework set out in Chapter 2, placing emphasis on the observed patterns and their relationship to the contribution of the present thesis regarding distance: spatial, temporal and legal.

No qualitative data analysis software was used in the research and the analysis was performed manually, reflecting a preference for close contextual reading over the automated identification of patterns. The organisation takes place around four thematic areas that reflect the sub-questions of the thesis. These are the nature and function of the surveillance technologies deployed, the character and findings of the accountability moment of 2022, the trajectory of technological investment and deployment after 2022, and the relationship between accountability mechanisms and institutional expansion.

3.5 Validity

This study addresses validity through four strategies. Among these is source triangulation, through which cross-checking is carried out through institutional documents, civil society reports and quantitative data, and the convergence of these different source types contributes to reinforcing confidence in the identified pattern, while divergence is recorded and its significance assessed. For the opacity finding this dynamic is particularly relevant, as official documents fail to clarify the way artificial intelligence systems operate and the pattern is reinforced by independent reports rather than called into question.

Transparency is maintained throughout the thesis with regard to analytical decisions, selection criteria and theoretical commitments. The orientation of the study is critical and is frequently stated. The frameworks applied in the analysis reflect specific commitments regarding the relationships between institutional power, technology and accountability, something which is explicitly acknowledged.

Finally there is theoretical coherence through the application of the frameworks developed in Chapter 2 across each analytical theme (technology, accountability, expansion, interpretation) in such a way that the three forms of distance (spatial, temporal, legal) are traced through the empirical material rather than being deployed arbitrarily.

3.6 Limitations

In the present thesis there were several limitations. The most significant is the one that relates to access to information. Frontex does not make public the way its artificial intelligence

systems operate, the criteria informing its predictive risk assessments, or the decision chains through which automated outputs are translated into operational actions, and this has been noted in Chapter 3.1. This means that the analysis is directed toward other ways of finding evidence and rests necessarily on procurement documents, contractor communications and investigative reporting, rather than on direct examination of the systems. The treatment of this phenomenon is not treated as a limitation but as part of the analysis. The treatment applied in this thesis is that the absence of disclosure constitutes part of the legal distance that the present thesis identifies, and documenting it constitutes part of the analysis itself.

Primary data through interviews or fieldwork has been excluded from the present thesis. The reason this occurs is that the research focus is directed toward the analysis of institutional patterns and documented practice and not toward individual perspectives and motivations. The viewpoints of those working within Frontex and related institutions are not directly captured, and this constitutes a genuine limitation for certain kinds of questions, such as questions about the internal reasoning of operational staff, the informal pressures shaping individual decisions, or the day-to-day implementation of accountability mechanisms within the Agency. However it is less significant for the study's focus on structural patterns and the documentary records they produce.

In-depth legal analysis of EU or international law is not carried out in this thesis, although the relevant legal frameworks are noted where they connect to issues and questions of accountability. Furthermore there is no systematic comparative analysis with countries or regimes outside the EU. The analysis is centred on Frontex and how migration governance is exercised in the EU, and the only reason references are made to other contexts is where they serve a directly illustrative purpose.

Furthermore, the orientation of the present thesis which is critical and theoretical shapes what the analysis can bring to light. Regardless of whether the frameworks focus on power, accountability failure and structural harm align with the research questions, they potentially make it harder to perceive the ways in which individual actors within the system work to resist or mitigate the structural tendencies that the analysis brings out. This trade-off accompanies the critical approach and is accepted as such.

3.7 Ethical considerations

Publicly available documents and secondary data are exclusively what the present thesis rests on. No primary data was collected from human participants and therefore there are no ethical concerns associated with research based on interviews or ethnography, including matters of informed consent, confidentiality or potential harm to those taking part in the research.

The research engages with evidence of serious harm to vulnerable populations, including deaths at sea and documented human rights violations. Particular care is given to these pieces of evidence. Individuals are not identified by name, claims regarding specific incidents rest on verified sources rather than conjecture, what is proven by the evidence is carefully distinguished in the analysis as well as what is implied and what remains uncertain. The aim is

not to exploit the suffering that the sources document but to deepen the understanding of the institutional conditions that produce it.

The critical orientation of the present thesis has a focus on accountability and institutional failure, and recognises both an intellectual and political commitment as it is not framed with neutrality. Research on border governance cannot be carried out from a point entirely outside the political questions it addresses, and this means that making this orientation visible constitutes both a methodological and an ethical obligation.

Chapter 4: Technology

4.1 Introduction

The accountability moment of 2022 did not produce operation restriction. In addition, what is observed was the expansion of the technologies and budgets. First is important to understand what the technologies involved are and what the public documents and records say about how they function. This chapter examines three categories of surveillance structure that Frontex use for operations. These technologies are integrated data systems. AI-powered analytics and drone operations. For every technology the analysis will illustrate how they operate through procurement documents, official Frontex communications, contractor materials and investigative reporting to establish what is known and what remains undisclosed.

The part of knowing and not knowing matters in this chapter because the analysis steps on the absence of information and not the information that publicly is announced. Frontex does not publicly disclose who the AI systems produce outputs, who make the reviews and how they use it into the operational decisions or who they will use them in the future. As written in the methodology this absence is not clearly a research limitation. It is an absence of disclosure which has been recorded through freedom of information requests, EU Ombudsman proceedings, and court rulings. It is part of what this thesis analyses, and this chapter begins to establish it empirically.

The three technologies that examined in this analysis correspond to the analytical framework that is developed in literature review in chapter 2. EUROSUR is the integrated border surveillance system that interprets clearest to BIGO's third universe the gaseous border that operates through distributed data networks rather than physical presence. The windward Maritime AI system introduces the predictive logic behind border infrastructure which is described on ban opticon section- the anticipated behavior before any specific act has happened. Drone operations defines the spatial dimension – decisions with life altering consequences are operated remotely, people who operate are physically, legally and intentionally in distance from the people whose these decisions affect. Together these three technological systems create the contribution of the conditions for the spatial, temporal and legal distance that will be examined through the chapter 7 as the mechanism which affects the accountability process.

4.2 The European Border Surveillance System (EUROSUR)

The European Border Surveillance System was established as an integrated framework for information exchange and operational cooperation at the EU's external border under Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard, which repealed and replaced Regulation (EU) No 1052/2013 (Regulation 2019/1896, OJ L 295, 14.11.2019). Article 18 of the Regulation as set out provide EUROSUR to serve the purpose of external border surveillance including monitoring, detection, identification, tracking, prevention and interception of unauthorized border crossings in order to "detect , prevent and combat illegal immigration and cross-border crime" and to "contributing to ensuring the protection and saving the lives of migrants" (Article 18(1), Regulation 2019/1896). The technical and operational arrangements that underpin EUROSUR's functioning are setting out in Commission Implementing Regulation (EU) 2021/581. Under Article 21 of Regulation 2019/1896, EUROSURS's operational architecture is built upon a network of National coordination centers, designated by each state and acting as the single point of contact for information exchange between all national authorities responsible for external border control and between those authorities and the agency. The regulation form three categories of situational picture. The national, the European and a specific one, each consisting of a layer of events, a layer of operations, and a layer of analysis (Article 24, Regulation 2019/1896).

The processed informations of EUROSUR are not only produsedfor the external borders but also on what Article 2(20) of Regulation 2019/1896 defines as the "pre-frontier area". The pre-frontier area is the area beyond external borders that is the subject of analasis under the regulation. Under Article 28, the agency the Agency coordinates the EUROSUR Fusion Services, through which it aggregates data from satellite imagery provided by the European Union Satellite Centre and the European Maritime Safety Agency, ship position reporting systems, and aerial surveillance feeds, in order to supply the National Coordination Centers, the Commission, and itself with information on a continuous basis. According to frontex's description for these operational activities, each external border section is assigned an impact level on the basis of this aggregated information, ranging from low to critical, and Member States are required to implement the operational response that corresponds to that level (Frontex, Monitoring and Risk Analysis, 2024). The border section and its classification as high impact triggers an obligation to request, or requesting operational assistance from the agency. EUROSUR appears not only to produce situational awareness. The high impact that may can shape ,through classification of a maritime area, can deploy assets , may influence which aauthorities are alerted for vessel detection, and may can play a role on weather a vessel receives rescue assistance or interception.

The expilicit legal basis for cooperation with thrird countries within EUROSUR is provided by the regulation. According to Article 76 and Article 89 of Regulation 2019/1896, the Agency may conclude working arrangements with the authorities of third countries, and information collected through EUROSUR may be exchanged with them on the basis of such arrangements. In civil society reports that was published in December 2022 by Human Rights Watch and Border Forensics with reporte title "Airborne Complicity", the operational consequences of

this o framework for central mediterranean were described. According to the report Frontex aerial surveillance assets detected 433 vessels in the central Mediterranean in 2021, while Frontex issued only 21 mayday alerts over the period from January 2020 to April 2022, and Frontex-facilitated operations are reported to have contributed in 2021 to returns to Libya of approximately 10,000 people (Human Rights Watch and Border Forensics, 2022). Also the report describes the operational mechanism from which Frontex aircraft gives video feed to its centre in Warsaw, where, from what in report is written , decisions are taken about which authorities to alert. when the Libyan coastguard is alerted rather than civilian rescue organisations, the interception that follows can be understood, in formal terms, as an act of Libya rather than of Frontex. The architecture set out in Regulation 2019/1896 appears to provide the legal foundation on which this distribution of operational responsibility rests.

The operational decision-making generates opacity that has been the subject of repeated finding in the institutional record. While HRW and border Forensics prepared the report “Airborne Complicity” 30 freedom of information requests to Frontex were submitted. According to the report, 27 of those requests that were processed , the agency identified thousands of relevant doxuments, but released only 86, many of theses extensively redacted and refused to accommodate requests for a visit to its situation centre in Warsaw or for interviews with operational personnel Human Rights Watch and Border Forensics, 2022). In its judgment of 24 April 2024 in Case T-205/22 Naass and Sea-Watch v Frontex, the General Court of the European Union issued a ruling on access to documents concerning an aerial surveillance operation that the Agency conducted in the central Mediterranean on 30 July 2021. The Court partially set aside the contested Frontex decision in so far as it concerned more than one hundred photographs whose very existence the Agency had concealed, while at the same time upholding the Agency's broader recourse to Article 4(1)(a) of Regulation (EC) No 1049/2001 — the exception protecting the public interest in the field of public security — as grounds for withholding the rest of the documents (Case T-205/22, Judgment of the General Court, 24 April 2024). The european ombudsman, on 14 December 2022, FragDenStaat and Drone Wars UK, determined that Frontex's refusal to process requests for public access to documents sent by email amounted to maladministration — reportedly the first instance of such a finding regarding the right of access to documents in the Agency's history (European Ombudsman, joint case decision, 14 December 2022). A further decision was issued by the Ombudsman on 30 May 2023, which produced a second finding of maladministration in relation to Frontex's practice of delaying the registration of access requests. aken together, these successive findings have given weight to wider concerns that the situation reflects a pattern of restricted disclosure rather than a sequence of unrelated incidents.

The legal architecture drawed by Regulation 2019/1986 , the operational consequences described in the report on the central Mediterranean and the successive findings conncerning restricted disclosure support a figurative reading for EUROSUR of paradigmatic instance of what Bigo terms as “the third uinverse of EU border control”. The gaseous border as he refers, whise operations are distributed across data networks rather than concentrated in physical encounter of border guards with people who are crossing the borders and the frontiers. The system reflects Bigo’s description of surveillance “no longer on immobilizing bodies under the

analytic gaze of the watcher but on profiles that signify differences" (Bigo, 2008, p.37), in that interpreted situational picture it produces concers categorised aggregate risks attached to given border sections, rather than to individually identified people. What renders this configuration analytically visible is the pattern of restricted disclosure outlined above. The operations may well determine who is rescued and who is intercepted, but the criteria guiding such decisions are only partially exposed to the review mechanisms on which any meaningful accountability would depend.

4.3 The Windward Maritime AI System

Under Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019, the European Border and Coast Guard Agency operates an integrated information framework for the exchange of operational data on the external borders, into which procured analytic capabilities may be integrated (Regulation 2019/1896, OJ L 295, 14.11.2019). The award of a Frontex framework contract for Maritime Analysis Tools to Windward Ltd is recorded in the EU's Tenders Electronic Daily procurement database, which published both the contract notice and the contract award notice for the procurement procedure conducted in Warsaw (Tenders Electronic Daily, 2020). From Statewatch's analysis the estimated value of the framework contract was valued around 2.6 million as it is shown by the published procurement record (Statewatch, 2020). In its press release in January 2021, Windward described the contract as an arrangement under which "Frontex has selected Windward's maritime analytics Predictive Intelligence solution" to support the Agency in countering irregular migration and cross-border crime in the maritime domain (Windward, 2021). According to the same announcement, the system will allow Frontex to "systematically research and analyze the maritime risk environment" (Windward, 2021). On 22 January 2021, MEP Özlem Demirel submitted Parliamentary Question E-000340/2021 to the Commission, framing the deployment as one of "automatic risk detection and assessment in EU waters" involving "self-learning software" that generates a "constantly updated 'threat map'". She asked the Commission to reveal which companies Frontex had signed maritime analysis contracts with, what costs these had been incurred and which of those applications were based on artificial intelligence (Demirel, 2021).

In Windward's own product documentation, the system is characterized in ways that point to a structural shift from reactive to anticipatory maritime surveillance. The company's Border and Asset Security page, headed "Predictive Intelligence to Protect What Matters Most", portrays the platform as one that "transforms decision-making from reactive to proactive" (Windward, 2025a). The same page further states that the system enables users to "act before threats reach your borders", noting that the underlying analytics are built on "15+ proprietary AI models, and patented deep learning algorithms to detect suspicious and deceptive activities" (Windward, 2025a). What the company itself describes, in other words, is not a platform geared towards the reactive identification of vessels engaged in observable conduct. Its orientation is anticipatory: vessels are classified through behavioural profiles assembled from aggregated maritime data. The publicly available product material does not explain which criteria the underlying models rely on to classify a vessel as suspicious, what data inputs they weigh, or what thresholds they apply. Those affected, namely the vessels and persons assigned a

Windward-generated risk classification, have no procedural means of finding out that such a classification has been made, or on what grounds.

The available records do not establish publicly how the outputs of this system are used in operational decision-making. The company replies to questions regarding decision-making, as seen in the MAI Expert product page, that the tool is "designed to support, not replace, human judgment" and that "outputs should be reviewed and validated by users" as part of standard operational and decision-making processes (Windward, 2025b). There is nothing in the publicly accessible Frontex documentation indicating whether such a review process is actually used. The same documentation says nothing about who would conduct it, or about the criteria that govern the move from a Windward risk assessment to an operational action. The Tenders Electronic Daily entry for this procurement describes the contract as one for Maritime Analysis Tools, but says nothing about the operational parameters of how the system is to be integrated into Frontex operations (Tenders Electronic Daily, 2020).

What the documents reflect are some key features of what Bigo (2008) described as the Ban-opticon. The system, as described by the documentation, does not exercise generalized observation by tracking every vessel. It observes and selects vessels by their location, ownership pattern, or behavioural deviation from a statistical baseline and marks those which have been identified as risk objects within the model's profiling logic. The way Windward describes itself as a platform — a platform that turns decision-making from reactive into proactive — reflects Bigo's drawing (2008, p.36) on the proactive temporal logic of the ban-opticon, a logic that "laims to act before an offence is committed… anticipating the behavior" of those who have been identified as risky. The outputs produced by the system are not records of behaviour that has taken place and been recorded at a specific moment. They are projections built from aggregated maritime data and operate on what can be called, following Bigo (2008), statistically constructed profiles that replace the immobilized body of an identified individual as the object of control. Within the predictive analytic capability that the EUROSUR architecture examined in Section 4.2 is intended to coordinate, the Windward platform represents one component, contributing an element of the infrastructure that has underpinned Frontex's operational expansion since 2022.

4.4 Drone Operations

The official Journal of the European Union, on 17 January 2025, published the award decision for a new framework regarding Frontex. This framework includes a contract for long-range drones, listed under procurement reference OJ S 12/2025. The contract has a total value of around €184 million. According to the response from Executive Director of Frontex Hans Leijtens to Parliamentary Question E-000420/2025, the countries that agreed to host the contracted Medium Altitude Long Endurance Remotely Piloted Aircraft Systems are Greece, Malta and Italy and they operate in the Central and Eastern Mediterranean (Frontex Executive Director, Letter of 3 March 2025, Annex 2 to E-000420/2025(ASW)). According to the same letter, the contract is structured around a cascade scheme. The agency is the first that approaches the contractor ranked first in the tender, Airbus DS Airborne GmbH, and may then address the second-ranked contractor, Leonardo Societa Per Azioni, should the first contractor

be unable or unwilling to deliver the requested service. It further notes that the framework contract does not foresee the addition of a signals intelligence (COMINT) capability. The operational scale of these activities expanded significantly in the period preceding this renewal. According to figures provided by Frontex to respond to a written parliamentary question and reported by Matthias Monroy, the agency conducted 3,307 hours of drone surveillance in 2023 and 4,993 hours in 2024. The increase is over 50% within a single year. Of these hours, 2,137 were flown from Malta and 2,856 from Crete, against an annual Frontex budget for 2024 of €922 million (Monroy, 2025).

Frontex and the Bulgarian border Police between May and July 2025 introduced a second category of drone deployment though a tactical pilot project. The official Frontex communication on the project this project covered 8100 square km and tested both long and shrt endurance tactical drones under a company oparated moder implemented by a consortium of three providers the Global SAT, Shield AI, and DAT CON (Frontex, 2025). In Burgas (Bulgaria) there was a live demonstration on 4 and 5 of June 2025. This demonstration attended by more than 100 participants from EU states, Eu agencies, and partner countries. Frontex's public communication on the project frames the deployment in anticipatory terms. Hans Leijtens the executive director is quoted that the technology allows the agency to be "seeing smarter" and to be "future-proof border security across Europe" (Frontex, 2025), and Darek Saunders, the Head of Research and Innovation of the agency quoted about the project that is roadmap for smarter and more connected border management" (Frontex, 2025). In a public statement by Shield AI of 6 of August 2025 the V-BAT vertical take-off and landing tactical unmanned aircraft system has been operational in Europe since early June 2025 under a contract with Frontex, in partnership with Global Sat Tech, with the company describing the platform as having operated across thousands of miles of land and maritime borders over a sixty-day pilot. According to an investigation published by Inkstick Media in December 2025, the V-BAT platforms were deployed along Bulgaria's border with Turkey, where they were "streaming real-time video to a command center and flagging movements to operators" (Inkstick, 2025).

The publicly available record does not establish on how this outputs of the drone operations are translated into operational decisions, the criteria and by whom. The response of the European Commission to Parliamentary Question E-000420/2025, issued on 15 April 2025 on behalf of Commissioner Brunner, stated that "the question falls entirely under the responsibility of the European Border and Coast Guard Agency (Frontex)", and forwarded the question to the Agency rather than answering it directly (European Commission, Answer to E-000420/2025, 15 April 2025). The response by Frontex's executive Director addressed technical specification of the contract but no description of the protocols from which the feeds transmitted from the drone platforms to the Warsaw command centre are converted into alerts to national or third-country authorities. Inkstick Media investigation request for precise details requests for precise details on the Bulgaria pilot were denied, Shield AI did not respond to questions on the system, its deployment, costs, or data use, and Frontex characterized the preventative effect attributed to the pilot as an "indirect outcome" of a "research and innovation pilot, which includes comprehensive fundamental-rights safeguards", without further specification (Inkstick, 2025).

The available record reflects the key features of Ban-opticon. The programme does not exercise generalized observation of population that cross external borders in their entirety. It operates selectively over specific maritime and land corridors in which the people under surveillance are already constituted through the location and movement and it is the object ofoperational attention. On what Bigo describes (2008,p22) "surveillance at a distance" reflects the arragment. The practice of to control the movement of population through remote sensing rather than physical encounter. In instance the platforms collect imagery and tracking data from above maritime and land routes, the feeds are transmitted in real time to a command centre in Warsaw and to national control centres, and the persons observed have no contact with, and no knowledge of, the actors interpreting the feed. Frontex's public communications on the Bulgaria pilot present the project as a step towards anticipatory and intelligence-led border management. In addition, the Inkstick investigation describes the V-BAT platforms as flagging movements to operators. Both descriptions reflect what Bigo (2008) refers to as the proactive temporal logic of the ban-opticon. The operational record does not document that any specific act has occurred at the moment the platform produces its alert. Instead, it points to the system's capacity to detect deviation in advance.

4.5 Opacity as Finding

The three sections above this chapter presented the European border Surveillance system in the scope of the Windward maritime analytics platform and Frontex’s long range and tactical drone operations. The usage of these specific technological systems is used because are tend to be the transition in Border surveillance of EU. The EU legal framework that governs that systems , the procurement records, the documentation from the contractors that describes them and the institutional findings that have address them leads to what the sections to set out what the publicly accessible record establishes about each system and what it doesent. In each of these categories , it is not described the criteria by which these systems generate their outputs, the operational outputs though which becomes operational actions and the institutional procedures by which of those actions to people where are affected can be identified or notified.

This pattern is not inferred from the absence of one or two specific documents. Instead, it is supported by an institutional record that involves multiple bodies. On 24 April 2024, the General Court of the European Union delivered its judgment in Case T-205/22 Naass and Sea-Watch v Frontex. According to this judgment, the Court upheld Frontex's reliance on Article 4(1)(a) of Regulation 1049/2001, which is the public security exemption, in order to refuse access to documents on an aerial surveillance operation. However, the Court partially annulled the contested decision. The annulment was made only in regard to the existence of more than one hundred photographs that had been concealed. The European Ombudsman issued two findings of maladministration against Frontex in relation to access to documents, on 14 December 2022 and on 30 May 2023, the first such findings in the Agency’s history in this domain. Human rights Watch and Border Forensics investigation of December 2022 , the submitted 30 freedom information requests, to Frontex resulted the release of 86 documents out of thousands identified by the Agency. In response to Parliamentary Question E-000420/2025, the European Commission stated on 15 April 2025 that the matter "falls entirely under the responsibility" of the European Border and Coast Guard Agency and forwarded the

question to the Agency rather than answering it; the subsequent Frontex reply addressed the technical specifications of the framework contract but did not describe the operational protocols through which the systems are used. Through Inkstics Media investigation of December 2025 the requested details on the tactical drone pilot project denied and the US contractor of the V-BAT platform did not respond to question regarding the deployment , the cost and data use on the system.

Taken together, these elements indicate that the limited disclosure documented in this chapter is not a research limitation. Instead, it is a feature of the institutional configuration within which Frontex's surveillance technologies operate. The architecture described in Section 4.2 generates situational pictures and impact-level classifications. However, the decision criteria behind them are not described in publicly accessible material. The platform described in Section 4.3 produces predictive risk classifications based on proprietary models. The criteria of these models are also not described in publicly accessible material. Furthermore, the drone operations described in Section 4.4 transmit imagery and tracking data to a command centre and produce alerts. However, the handling protocols of these alerts are also not described in publicly accessible material. The consistency of this pattern across legal architecture, private contracted analytics, and direct procurement of drone services suggests that the opacity is structural rather than incidental. Moreover, it can be understood as a feature of how the system has been built and is being expanded.

The systems that have been examined in this analysis section share structural identity that follow this configuration. First, the decisions they shape are produced at a remove from any direct encounter between the Agency and the persons affected by them. They are also produced at a remove from any specific act of conduct that has been observed and recorded. Second, the criteria by which those decisions are generated are not described in any publicly available document of the Agency or its contractors. Third, the institutional responsibility for the consequences of those decisions is distributed across a chain. This chain includes Frontex, member state authorities, private contractors, and, in some cases, third-country authorities. Together, these systems produce the conditions for the three forms of distance examined in Chapter 7.

Chapter 5: The 2022 Accountability Moment

5.1 Introduction

Frontex in 2022 was merged with an extraordinary chain of legal complaints , institutional investigations , civil society reports and parliamentary inquiries. They Agency had been investigated for many years by European Anti-Fraud office. Also, the same time parallel inquiries concluded by the European Parliament’s Civil Liberties Committee, through its Frontex Scrutiny Working Group. Human Rights Watch and Border Forensics published Airborne Complicity, an investigation that documented the operational link between Frontex aerial surveillance and interceptions of migrant vessels by the Libyan coastguard. The investigation “Airborne Complicity” by the organizations Human Rights Watch and Border

Forensics documented the operational connection between Frontex aerial surveillance and the interceptions of migrant vessels by the Libyan coast guard. The International Court received a report from the European Centre for Constitutional and Human Rights regarding crimes against humanity. Taken together, the four events constituted the most significant accountability pressure in the Agency's history. The Executive Director resigned. No prosecution followed.

Each of the four cases is presented and documented in this chapter, which also demonstrates the institutional response that followed. Sections 5.2, 5.3 and 5.4 present consecutively the four cases and follow the institutional response based on the main investigation findings and the public documents. Section 5.6 examines the consequences of the revelations of the operational archive in the cases for the activities of the Agency and, through the analytical frameworks developed in Chapter 2, the structural conditions under which the moment of accountability in 2022 did not lead to operational restriction.

5.2 The OLAF Investigation

The registration of Case OC/2021/0451/A1 concerning the conduct of Frontex by the investigation of the European Anti-Fraud Office was opened on 3 May 2021 (OLAF, 2022) as part of an earlier case (OC/2020/0866/A1) (OLAF, 2022) by OLAF, which had itself been opened on 11 November 2020 following information received in October 2020. The investigation was based, according to the report, between 8 and 11 December 2020, on the inspection of the offices of the persons concerned, on digital forensic operations and the analysis of data from 20 interviewed witnesses, as well as through questionnaires from which information was collected from a further 10 witnesses (OLAF, 2022). On 4 October 2021, the persons concerned were given the opportunity to comment on the facts. The report was classified as SENSITIVE: OLAF Investigations and runs to more than 120 pages, while full access was limited to a small number of officials at the time of its completion (FragDenStaat, 2022).

In its own terms, the conclusion of the report is stated as follows: "OLAF concludes, based on the evidence collected during the investigation, that the allegations are proven" (OLAF, 2022). The established failings of the persons concerned are grouped by the report into three categories and relate to their compliance with procedures, their duty of loyalty to the Union, and their managerial responsibilities. Among the specific findings, the report establishes that Frontex and the persons concerned decided to relocate an aerial surveillance asset to a different operational area, and according to the report's assessment the reason for doing so appears to have been the avoidance of witnessing incidents in the Aegean Sea with a potential fundamental rights component (OLAF, 2022). The report also refers to the finding that the conduct of the persons concerned resulted in a limitation of the access of the Fundamental Rights Officer to information within the Agency, including the EUROSUR system, and that the application of Article 46 of Regulation (EU) 2019/1896 was not ensured with regard to appropriate follow-up action, which provides that the Executive Director may suspend or terminate an activity in cases of serious fundamental rights violations. Certain incidents recorded in material received from the Turkish authorities, the responsible person did not initiate a Serious Incident Report, as the report documents.

In providing information to the European Commission and the European Parliament, the report additionally finds, with regard to the way in which the Agency dealt with fundamental rights matters, that the necessary assurance of the highest standards of impartiality and objectivity was not ensured by the persons concerned, "presenting an incorrect or biased description of facts" (OLAF, 2022). This scale of practices was documented in parallel by a joint journalistic investigation. In April 2022, Lighthouse Reports, together with Der Spiegel, Le Monde, SRF Rundschau and Republik, through the publication of an analysis of the Joint Operations Reporting Application (JORA), the database in which Frontex records border incidents (Lighthouse Reports, 2022). This investigation claims that between March 2020 and September 2021 at least 957 asylum seekers, across twenty-two separate incidents, had been placed in life rafts and left adrift at sea before being returned to Turkey, and these incidents had been recorded in JORA under the term "prevention of departure". In the database the said term was used, as confirmed through the investigation by two Frontex officers, to denote pushbacks, and identifies a total of 222 incidents recorded as pushbacks, involving 8,355 people during that period.

The OLAF report was made publicly available on 13 October 2022 through the German freedom of information portal FragDenStaat, in cooperation with the news organisations Der Spiegel and Lighthouse Reports (FragDenStaat, 2022). The names of those identified in the report were redacted in the public version. In her statement to the European Parliament plenary of 18 October 2022, the European Commissioner for Home Affairs, Ylva Johansson, characterised the documented misconduct as "extremely serious", referring to the conduct addressed in the report which concerned the former Executive Director of Frontex and two other staff members (European Parliament, 2022). The European Parliament voted to refuse the approval of the 2020 Frontex budget, on the same day, by 354 votes to 284 (European Parliament, 2022).

Following the release of the initial findings of the investigation and almost six months before the report itself was made public, the Executive Director, Fabrice Leggeri, had resigned on 29 April 2022. In the press release issued at the time, Frontex stated that, as Leggeri had already stepped down, the launch of further disciplinary procedures was "not necessary anymore" (Frontex, Press Release, 29 April 2022). In its formal response to the public release of the report, the Agency characterised the documented misconduct as "practices of the past" (Frontex, Statement of Executive Management, October 2022). No criminal prosecution of any Agency official followed the conclusion of the investigation. Aija Kalnaja took over temporarily as Executive Director and Hans Leijtens was appointed as the new Executive Director in December 2022, taking office in early 2023. Therefore, the most serious accountability finding concluded with the resignation of one official, the departure of two others from the positions they had held, and the continuation of the Agency's operations under new leadership.

5.3 The European Parliament Frontex Scrutiny Working Group

Following a decision of the LIBE Coordinators of 23 February 2021, the Frontex Scrutiny Working Group was constituted within the European Parliament's Committee on Civil

Liberties, Justice and Home Affairs and was endorsed by the Committee on 1 March 2021 (FSWG, 2021). Its membership was drawn from across the political groups of the Parliament, with Roberta Metsola as chair and Tineke Strik as rapporteur. The aspects of the functioning of Frontex as well as the correct application of the EU acquis and the execution by the Agency of Regulations were the monitoring mandate of the Working Group, (EU) 2019/1896 and 656/2014. The Working Group carried out an investigation to establish the facts relating to the alleged violations of fundamental rights in which the Agency was involved and to observe whether it had been aware of or had not acted upon them, within its first four months of operation. For this purpose the Working Group held eight public meetings, requesting documents from Frontex and the European Commission, and opened a channel through which evidence could be submitted by external actors. This mission was conducted at the Agency's headquarters in Warsaw on 14 and 15 June 2021 (FSWG, 2021).

The question of direct involvement was carefully qualified in the Working Group's conclusion. In the serious incident cases that it was able to examine, it did not find conclusive evidence of the direct performance of pushbacks or collective expulsions by Frontex (FSWG, 2021). The Agency's broader conduct, however, produced a direct conclusion. The report contains the finding that national and international bodies had consistently reported violations of fundamental rights at the border, but that "Frontex generally disregarded these reports" (FSWG, 2021). Furthermore, the report concluded that the Agency had found evidence relating to violations within the Member States where they operated jointly, but "failed to address and follow-up on these violations promptly, vigilantly and effectively", and that as a result the Agency "did not prevent these violations, nor reduced the risk of future fundamental rights violations" (FSWG, 2021).

A large part of the report concerns the conduct of the Executive Director. More specifically, opinions and requests for information from the Fundamental Rights Officer and the Consultative Forum were, according to the Working Group, repeatedly impossible to respond to, along with recommendations, and that no internal procedures existed governing such responses, which as the report states had "significantly hampered the effectiveness" of those bodies (FSWG, 2021). Expressions of concern relating to fundamental rights situations, as the Working Group states, had been submitted by the Fundamental Rights Officer since 2017, to which no response from the Executive Director followed, as no response followed regarding the at least forty observations submitted to operational plans. The Commissioner for Home Affairs also stated, following a parliamentary hearing in December 2020, that some of what the Executive Director had said in Parliament was "not true" (FSWG, 2021), as the Executive Director had made statements before Parliament that did not reflect the knowledge he held at the time

he Working Group, according to the report, is also critical of the Management Board, as according to the report it should have acknowledged the risk of fundamental rights violations and ensured that the Agency met its obligations by playing a more proactive role. The report draws particular attention to Article 46 of Regulation (EU) 2019/1896. This provision provides that the Executive Director may suspend, terminate, or withdraw the financing of an activity in cases where serious and persistent fundamental rights violations are observed. The Working

Group found that this power had been used only once, in the case of Hungary, and that the decision had been taken five years after the first relevant recommendation of the Fundamental Rights Officer (FSWG, 2021). The conclusion points to the required clearer procedures and clearer criteria for the adequate application of Article 46, which should apply to all of the Agency's activities together with its reporting mechanisms, including support provided in third countries as well as aerial support (FSWG, 2021).

5.4 Airborne Complicity: Human Rights Watch and Border Forensics

A multimedia investigation into the role of Frontex aerial assets in the central Mediterranean, entitled Airborne Complicity: Frontex Aerial Surveillance Enables Abuse, was published on 8 December 2022 by Human Rights Watch together with Border Forensics (Human Rights Watch and Border Forensics, 2022). The combination of the investigation was data analysis with survivor testimony. The evidentiary core that the investigation drew upon was a dataset of flight-tracking data obtained from the open platform ADS-B Exchange, which covered the operation of aircraft and drones chartered by Frontex between May 2020 and September 2022. Through the flight patterns as well as the reconstruction of the operational areas, the investigation focused on examining the relationship between Frontex aerial surveillance and the interception of migrant vessels by the Libyan Coast Guard. The report produced by human rights organisations and investigative organisations is treated in the present thesis as analytically committed and not neutral, and furthermore where possible its claims are read against figures provided by Frontex itself.

The investigation relies considerably on figures that come from Frontex itself. The aerial surveillance recorded 433 detections in the central Mediterranean in 2021 alone, involving 22,696 people. 21 mayday alerts had been issued in the central Mediterranean over a longer period between January 2020 and April 2022 by Frontex. The investigation's characterisation of the number of alerts presents it as a tiny fraction of the boats detected by aerial surveillance during that period. The investigation further presents how in 2021 the operations of the Libyan Coast Guard were facilitated by Frontex in 2021, and this fact resulted in the forced return of approximately 10,000 people to Libya, a number which according to the report corresponds to one third of the 32,000 people disembarked in Libya that year (Human Rights Watch and Border Forensics, 2022).

The description of the operational mechanism by the investigation is depicted as follows: The aircraft, operated by private companies, transmit video feeds and other information to a situation centre at Frontex headquarters in Warsaw, where decisions are taken about when and whom to alert regarding migrant boats. Border Forensics reports a moderate and statistically significant correlation between the two activities on the basis of data analysis: on days when Frontex was more operationally active over an area, the Libyan Coast Guard tended to intercept more vessels. The same analysis during the period examined indicates that operational activation did not have a meaningful impact on the number of deaths at sea. The case of 30 July 2021, which is documented by the investigation, is reconstructed by cross-referencing flight-track data with information from the rescue organisation Sea-Watch, and is based on survivor testimony as well as the activation of the emergency assistance hotline Alarm Phone.

On that day, no governmental rescue vessel received any distress alert from Frontex before witnessing an interception by the Libyan Coast Guard.

The way in which a boat in distress is defined is given particular weight by the investigation. Frontex, when it identifies a boat in distress, immediately alerts the national rescue coordination centres of Italy, Malta, Libya, and Tunisia, and also issues a mayday alert to all vessels in the area only when there is an emergency in which lives are at stake. According to the assessment of Human Rights Watch and Border Forensics, this narrow interpretation of distress is deliberate, as it allows the Agency to notify the Libyan authorities while at the same time concealing alerts from nearby non-governmental rescue vessels that were seeking to bring people to safety in Europe. The testimony of survivors described their return and what it means in practice through the report, as they are subjected to arbitrary detention, violence, and exploitation in Libya, and described the recurring pattern in which the presence of an aircraft overhead was followed by the arrival of the Libyan Coast Guard and the return of migrants to detention.

Limits on access to information were also imposed on the investigation, as the investigation itself documents. Of the 30 freedom of information requests that Frontex processed, it processed 27 and also identified thousands of relevant documents but released 86 of them, many of which were redacted. The visit as well as communication with the operational centre in Warsaw and with operational staff were requests which the Agency met with denial. This pattern observed here corresponds to Chapter 4. That is, the operational record that would allow the relationship between surveillance and interception to be assessed independently exists, but is rendered inaccessible.

5.5 The ECCHR Communication to the International Criminal Court

Regarding the interception and return of migrants and refugees to Libya, a Communication was submitted to the Prosecutor of the International Criminal Court by the European Center for Constitutional and Human Rights with the support of the organisation Sea-Watch (ECCHR, 2022). Based on Article 15 of the Rome Statute and the provision under which a person or organisation may submit information to the Prosecutor, who determines whether there is a basis on which to open an investigation. This Communication argues regarding the systematic return and interception of migrants and refugees in the central Mediterranean, as they do not constitute sea rescue operations but themselves constitute a crime against humanity under the severe deprivation of physical liberty, Article 7(1)(e) of the Rome Statute.

Twelve exemplary incidents of interception and return which took place between 2018 and 2021, this Communication details in full, of which sixteen high-level decision makers from EU member states, the European Commission, Frontex, the European External Action Service and the EU naval mission EUNAVFOR MED (ECCHR, 2022). Through the use of Frontex drones, it argues that the EU has increased the support it provides to the Libyan Coast Guard and that officials of the EU and its member states participate directly in certain interceptions, providing information on the location of vessels.

A Communication under Article 15 constitutes a request to the Prosecutor to examine a situation, and the legal form of the submission is relevant to the concerns of the present chapter. In simpler terms, it does not in itself initiate a prosecution and the Prosecutor is under no obligation to act upon it. The submission of the ECCHR constituted an attempt to attach individual criminal responsibility to the conduct it examined, however formally it was a request for investigation and not a determination of responsibility.

5.6 Why the Accountability Moment Did Not Produce Restriction

The events examined in this chapter for the Agency constituted the most serious accountability pressure in its history. An anti-fraud investigation found that the allegations against it were proven. It was found by a parliamentary working group that the Agency had disregarded reports of human rights violations, failing to address them. The operational link between its aerial surveillance and the return of migrants to abuse in Libya was documented by a civil society investigation. A Communication to the International Criminal Court requested, for alleged crimes against humanity, the examination of the individual criminal responsibility of senior decision-makers and officials of the Agency. The outcome was the resignation of one official, the departure of two others, the conduct was characterised as practices of the past and the Agency's operations continued under new leadership. Prosecutions and operational activities were not restricted and no prosecution followed. This thesis examines how such a concentration of accountability pressure did not translate into operational restriction. The argument proposed is that the failure is structural, that is in the sense that it is not contingent and did not result from insufficient evidence or a lack of political will, but that it followed from the way the governance of the border is organised.

The distribution of responsibility is the first element that concerns the structure. Andersson (2014) describes contemporary border control as an enterprise with chain actors which is distributed across national authorities, EU agencies, private contractors and third-country forces, and each link of this chain performs each part of a function that no single actor performs in full. This conduct never belonged exclusively to one actor. Frontex conducted surveillance and transmitted information to its centre in Warsaw. Member states conducted operations, the Libyan Coast Guard carried out interceptions, and the Management Board and the European Commission exercised governance and oversight. Responsibility for an interception and its consequences could be located simultaneously at a point along this chain but also at none. The most legally exposed acts, such as the interception at sea and the return to Libya, which are delegated to actors held at arm's length from the EU institutions that enable them, constitute, according to Andersson's analysis, a defining feature of the system and not a contingent one.The three named individuals to whom OLAF attributed misconduct, and the characterisation of those practices as practices of the past, treated a distributed practice as though it were the conduct of particular persons.

This personalisation is evident in the institutional reflexes. The problem was located in individuals by the mechanisms that produced a concrete outcome. The Executive Director resigned, two other officials left their posts, and the Agency presented its change of leadership as evidence that the matter had been resolved. The dependence of those practices that the

investigations had documented, however, was not on individuals. The sequence running from surveillance to interception, the narrow interpretation of distress, and the non-application of the Agency's own suspension powers were features of the operation, and the departure of the persons concerned did not alter them. The consequence and the documented conduct were not applied by the legal mechanisms that could have connected them. No criminal prosecution of any Agency official followed the conclusion of the investigation, and the one binding operational mechanism, the power under Article 46 of Regulation (EU) 2019/1896 to suspend or terminate an activity in cases of serious fundamental rights violations, had been used only once in the Agency's history, five years after the Fundamental Rights Officer first recommended it. A condition that pre-existed it was confirmed by the accountability moment of 2022, namely that the system was already organised in such a way that documented violations do not lead to legal consequence. The thesis and the argument it unfolds is that the surveillance technologies examined are not responsible for the failure of accountability. It is the property with which the already structured governance of borders precedes the technologies temporally.

The way in which the documented harm was absorbed rather than acted upon is a second element. Fassin (2011) describes how compassion and repression can coexist within a single institutional practice, so that measures which produce harm are at the same time justified in the language of protecting life. This dynamic is visible in the justification of Frontex's aerial surveillance. Human Rights Watch and Border Forensics documented that the Agency presents its surveillance assets as a means of saving lives, while the same surveillance correlated with an increase in interceptions which did not have a meaningful impact on the number of deaths at sea. The humanitarian justification within this frame does not stand beside the operational function and appears to be a separate rhetoric in order to render that function legitimate. Within this frame, violations are not received as evidence that an activity should be restricted, but as evidence that it should be improved through better technology, earlier detection, and closer oversight. The fuller evidence for this reframing lies in what followed the accountability moment, which Chapter 6 examines: the response to the events of 2022 was not a reduction of surveillance but an expansion of it, justified in the same protective terms.

A third element concerns the form that the harm takes. In his analysis of biopower, Foucault (1978) distinguishes a power that directly causes death from one that administers life and withholds protection, which, in his formulation, makes live and lets die. At the centre of the events of 2022 the harm was largely of the second kind. It consists in what was not done: distress alerts that were not issued to rescue vessels, suspension powers that were not applied, internal warnings from the Fundamental Rights Officer that were not acted upon, and incidents that were not reported or investigated. The finding of the Frontex Scrutiny Working Group did not identify conclusive evidence documenting the direct performance of pushbacks by the Agency, but its finding is that the Agency had failed to prevent, address, and follow up violations of which it had been aware. It is structurally more difficult to attach responsibility for an omission than for an act, because there is no single decision and no identifiable moment of commission to which a legal consequence can be fixed. The harm's diffuseness — spread

across a chain of actors and rooted in inaction rather than action — is part of what rendered the accountability mechanisms unable to bind.

These conditions, taken together, account for the outcome documented in this chapter. The four mechanisms of 2022 established the facts in detail but none of them possessed the power to compel a change in operational practice. An anti-fraud investigation may have found that the allegations are proven but the exercise of criminal prosecution does not follow. The failure of an agency's duties can be found by a parliamentary working group but it can only issue recommendations. Civil society does not possess enforcement power following an investigation that reconstructs the relationship between surveillance and abuse. The International Criminal Court can request the examination of a situation but cannot oblige it to act. The single mechanism with binding operational force was dormant. This functions as a test. The accountability moment of 2022, which was the most serious concentration of scrutiny in the Agency's history and which demonstrated thoroughly documented conduct, produced the departure of individuals and the continuation of the practices. The distribution of responsibility across a chain, the personalisation of a structural problem, the reframing of harm as an argument for greater capacity, and the diffuseness of an injury that consists in omission, identified here as structural conditions, are taken up in Chapter 7, and its development and analytical framework constitute the framework through which the present thesis explains the relationship between accountability and expansion. Chapter 6 first sets out what this expansion consisted of.

Chapter 6: Expansion

6.1 Introduction

The examination of the previous chapter at the accountability moment of 2022 produced no restriction of the Agency's operations. This chapter will examine what it produced instead. The argument proposed here is that the period that followed was one of expansion, as opposed to the restriction that the scrutiny of 2022 might have been expected to produce. The Agency's budget and operational mandate expanded; the type of surveillance identified as contributing to returns to abuse was broadened rather than scaled back; and the opacity identified by the investigations into accountability was carried over into new systems. This chapter sets the documented expansion against the accountability findings of Chapter 5, in relation to the continuing loss of life along the routes covered by the surveillance. It does not argue that the expansion was designed to evade the scrutiny of 2022. It argues that the scrutiny and the expansion coexisted, and that the expansion followed without being constrained by it.

6.2 Governance Scrutiny and the Growth of Resources and Mandate

The governance of the Agency was the subject of the investigations of 2021 and 2022. The failure of the Executive Director to cooperate in ensuring compliance with the Agency's obligations and the insufficient active role of the Management Board in addressing the risk of fundamental rights violations were the findings of the Frontex Scrutiny Working Group. The misconduct at the most senior level of the OLAF investigation. The findings concerning the

institution were that its powers had grown faster than the mechanisms designed to hold it to account, a concern which had been expressed by the European Court of Auditors in its Special Report of 2021, which noted that the approval for the Agency's 2019 mandate had been given without an impact assessment and that the support it provided to member states was not sufficiently effective (European Court of Auditors, 2021).

During the same period the trajectory of resources moves in the opposite direction to restriction. At its establishment the Agency's budget was approximately six million euros and it operated with approximately forty staff. By 2020 the budget was approximately 420 million euros and the staff reached 700 people. By 2024 the budget reached approximately 922 million euros and the staff approximately 2,500 (Statewatch, 2025). The 2019 Regulation provided for the existence of a standing corps of 10,000 operational staff by 2027, of whom 3,000 will be the permanent staff with executive powers and member states will have seconded 7,000 (Regulation (EU) 2019/1896; European Court of Auditors, 2021). The European Court of Auditors characterised this as an exponential increase in resources. Following the events of 2022, instead of a downward revision of the figures, there is a continuation of proposals for further enlargement, with the European Commission pledging to expand the standing corps toward a figure of 30,000 (Context, 2025).

Within the context of the scrutiny, a similar pattern was followed. The Frontex Scrutiny Working Group, which had produced the parliamentary findings of 2021, was succeeded by a Schengen and Borders Scrutiny Working Group, the effectiveness of which has been questioned by the rapporteur of the original group and by other observers (Context, 2025). In 2022 the Executive Director resigned and was replaced, and the Agency's operations continued under the same legal framework, the same mandate, and with the more enlarged resources that the same existing framework provided. The governance failures documented in 2021 and 2022 were followed not by a reduction of the Agency's powers but by their continued growth.

6.3 Complicity Findings and the Expansion of Surveillance

In Chapter 5 the civil society investigation examined a specific category of activity, concerning the aerial surveillance through which the investigation states the Agency detects migrant vessels and transmits information that contributes to their interception. In practice, the function of the surveillance in the service of interceptions by Libyan authorities rather than rescue was what Human Rights Watch and Border Forensics found. In the event that the findings of 2022 had led to restriction, this would have been the category of activity in which restriction would have been visible.

As set out in Chapter 4, this confirms that the opposite occurred. The Agency's drone surveillance hours increased from 3,307 to 4,993 in 2024, representing statistically an increase of more than 50 per cent within a single year (Monroy, 2025). The framework contract for long-endurance drone operations in January 2025 was renewed at a value of approximately 184 million euros (European Parliament, 2025). Systems supplied by additional private contractors were incorporated in 2025 by the Agency, which conducted a tactical drone pilot in Bulgaria, with the Agency describing the project as a step toward smarter and more connected border management (Frontex, 2025). The absence of restriction but rather the expansion over the

following three years, both in terms of flight hours and in terms of the range of platforms and contractors involved, was the outcome of the 2022 investigation which had found complicity in returns and abuse. What is significant here is the timing, namely that the expansion of aerial and autonomous surveillance took place after the documentation of its consequences and not before.

6.4 Transparency Findings and the Extension of Opacity

The restriction on access to the Agency's operational record was a consistent finding of the events of 2022. The Fundamental Rights Officer had been excluded from information held within the Agency, among other things including the EUROSUR system. The report made through the civil society investigation concerning the Agency was that the Agency had released only a portion of the documents it held and had denied access and requests to visit the operations centre and to communicate with operational staff. Chapter 4 refers to litigation before the General Court and findings of the European Ombudsman, which concerned the restriction of access. The opacity of 2022 and its identification was presented by those who documented it as an obstacle to accountability.

The extension to new systems indicates that the opacity was not remedied in the period that followed. Through one analysis it is estimated that the Agency, since the entry into force of the 2019 Regulation, had issued a large number of tenders and procurements for technology and services, referring to twenty tenders that cost more than 210 million euros in the first period alone (Statewatch, 2020). Chapter 4 analyses the autonomous systems acquired through such procurements. These include the maritime analytics platform supplied by Windward as well as the tactical drone systems that were put to trial in 2025, which operate on the basis of proprietary models and decision criteria that are not described in any accessible document. The expansion of surveillance capacity examined in the previous section also constitutes the expansion of opacity, in the sense that each new contracted system adds a further layer of operational decision-making whose criteria and data are not available for external scrutiny.

6.5 The Justification of Expansion

The expansion analysed in the present chapter was presented in the language of protection and not as the expansion of a contested activity. Fassin (2011) describes how compassion and repression coexist within a single institutional practice, so that measures which produce harm are justified through the language of protecting life. The Agency follows this same pattern to justify its surveillance. Human Rights Watch and Border Forensics documented that the Agency presents its aerial surveillance as a means of saving lives. Frontex describes its recent technological expansion as a means of earlier and clearer detection and the development of smarter and more anticipatory border management (Frontex, 2025). The documented harms within this frame of the existing system are not received as a reason to restrict it but as a reason to improve and extend it; to put it more simply, the response to a surveillance system found complicit in abuse is a better, more capable surveillance system.

The contrast can also be supported by the recorded outcome at sea. According to the Missing Migrants Project of the International Organization for Migration, the annual number of migrant

deaths and disappearances across the Mediterranean rose from 2,048 in 2021 to 2,411 in 2022 and to 3,041 in 2023, with a further 2,452 recorded in 2024, while 2023 was the deadliest since 2016 with reference to migrants at sea and in Europe. With the expansion of surveillance during that period no reduction was recorded in the recorded loss of life. This condition that is produced is that populations are governed through a system of close monitoring of their movement in which the permanent feature is exposure to death. This is described by Mbembe (2003) as the production of zones in which exposure to death becomes a permanent feature of existence. This argument is not advanced as a causal claim about the relationship between surveillance and mortality, which the available records do not establish, but with regard to the framework within which the humanitarian justification of expansion is to be read.

6.6 Conclusion

The restriction which could have been produced by the accountability moment of 2022 was followed by expansion. OLAF and the parliamentary working group documented governance failures which were followed by the continued growth of the budget, staff, and mandate of the Agency. The surveillance was extended in hours, platforms, and contractors despite having been found complicit in returns and abuse. The opacity identified as an obstacle to accountability was carried over into new contracted systems. The recorded loss of life at sea is inconsistent with the Agency's language of protection. This sequence sets out the central phenomenon that the present thesis seeks to explain. It is not adequately characterised as a paradox. This description treats the expansion as occurring despite accountability pressure, and treats the two as forces of comparable kind that happened to point in opposite directions. The following chapter develops the argument that the relationship between them is structural. That is, that the same features which make accountability ineffective are the features which make expansion possible, and that the two can be understood through the forms of distance that the Agency's technologies introduce between a decision and its consequences. Chapter 7 develops this argument.

Chapter 7: Discussion - Three Forms of Distance

7.1 Introduction

The sequence of findings is what shaped the preceding three chapters. Chapter 4 examined the technologies that the Agency deploys and found that the criteria on the basis of which their assessments are generated, the chains through which automated outputs are converted into operational action, and the standards on the basis of which they are evaluated are not disclosed in any publicly available record. This opacity was corroborated by an institutional record that includes a judgment of the General Court, two findings of maladministration by the European Ombudsman, and documents withheld from civil society investigators. Chapter 5 examined the most serious accountability moment in the Agency's history, the convergence in 2022 of an anti-fraud investigation, a parliamentary inquiry, a civil society investigation, and a communication to the International Criminal Court, and found that it produced the resignation of individuals without however any prosecution or restriction of operations. The period that

followed was examined in Chapter 6, where it was found that, across the dimensions in which the scrutiny of 2022 could have led to restriction, the Agency instead expanded.

The description of this sequence frequently takes the form of a paradox; in conclusion, an agency subject to the most serious scrutiny in its history extends the very capabilities that had been called into question by that same scrutiny. This chapter argues that this description is mistaken and that it obscures more than it reveals. A paradox is an apparent contradiction between forces of the same kind that happen to point in opposite directions. Describing this situation in these terms leads to the conclusion that accountability was not strong enough, so that firmer scrutiny would have produced a different result. It is not the absence of strength that is the argument proposed here. The failure arose because the system within which it was applied is structured in a way that conditions favour the absence of the accountability that is required. Understood in this way, the expansion that followed was not a means of escape from accountability pressure but was the response to a predictable behaviour of a system in which that pressure cannot be converted into consequence.

The three forms of distance that are introduced and developed is the argument concerning decisions and their consequences for the Agency's technologies. These are the spatial, the temporal, and the legal. Each of them appears as a distinct mechanism in the sense that a different condition that accountability requires is removed. Spatial distance removes the encounter at which a decision could be witnessed and recorded. Temporal distance removes the completed act for which a decision would answer, and finally legal distance removes the identifiable actor to whom responsibility could be assigned. The three distances are analytically separable, but operate together and are conditioned throughout by the opacity documented in Chapter 4, which forecloses the reconstruction through which any one of them might otherwise be crossed.

These distances are proposed as analytical descriptions of what the documentary record reveals about accountability and the way it fails, and are not claims about the way the technologies function internally. This chapter will examine each distance in turn, showing in each case the form the distance takes independently of these technologies and the way they are examined in border governance, and the connection of these distances in the final section will account for both the failure of accountability and the expansion that followed.

7.2 Opacity as the Enabling Condition

The condition on which the rest of the argument depends is the finding established in Chapter 4. The criteria on the basis of which the analytical systems generate risk assessments, the decision chains through which automated outputs are converted into operational action, and the standards on the basis of which these systems are evaluated are not disclosed by the Agency. The relationship of the three distances comes closer to the significance of this opacity for the present argument. The distance between a decision and its consequences does not in itself constitute an obstacle to accountability. A decision taken far from the point ,where it produces effects can initially be accounted for, on the terms that the basis on which that decision was taken can afterwards be reconstructed and the actor who took it can be identified. What opacity does, is the removal of the means by which such a distance could be crossed. The basis of a

decision cannot be reconstructed when its criteria are not disclosed. When the chain of action is not disclosed, the actor responsible for it cannot be identified. In this sense, opacity is the first condition that makes each of the forms of distance operate as an obstacle rather than as a mere feature of organisational scale.

Bigo (2008), through his definition of the "data-banned", describes this condition and what it produces for the people subject to these systems. The decisions produced for these people from data they cannot see, on the basis of criteria they cannot know, result in their having no means to contest them. The issue is not that a decision is taken at a distance, which has always been true of bureaucratic administration, but that the distance is combined with opacity and makes review more difficult. The technical character and routine of these systems contributes to this foreclosure. According to Foucault (1978), the political decisions that are embedded in neutral classification and risk scoring are those that decide who may move and who may not, and these decisions are difficult to recognise as decisions at all. A risk assessment appears as a technical output rather than as an act for which an account might be demanded. In the following sections the three distances are examined within this condition and are rendered consequential through it.

7.3 Spatial Distance

Spatial distance refers to the production of outcomes without any direct encounter between the institution and the person. The institution generates an assessment and the person is affected by it. What this condition removes is the point at which a decision concerning a person has been taken in that person's presence, and is therefore subject to observation, is recorded, and can be contested. At the border, border control involved a degree of separation between the authority that sets a policy and the person to whom it is applied. Historically the point at which the encounter took place was a physical border between an officer and a person seeking to cross it. The person could be observed, a record was produced, and they were present. This encounter is what the technologies examined in the present thesis displace.

As documented in Chapter 4, aerial and autonomous surveillance observes from a distance and from altitude, and the contact with the observed person occurs on a screen rather than with a body before an officer. As the civil society investigation documented in Chapter 5, the information these systems collect is transmitted to a situation centre at the Agency's headquarters in Warsaw, where decisions are taken about which authorities to alert. The interception that follows is carried out, at a further remove from the European institution, by the Libyan Coast Guard, whose surveillance is facilitated. There is no point of encounter between the Agency and the person in movement whose movement it is governed. The separation of decision and consequence occurs not only through physical distance but also through the absence of any moment at which the two are present to one another. This separation is illustrated in the OLAF finding. That a Frontex aerial asset was relocated to a different operational area, and the reason for this was, in the language of the report, the avoidance of witnessing incidents in the Aegean Sea. Governance at a distance contributes to the capacity and the choice not to witness.

Surveillance at a distance is described in this condition by Bigo (2008). The mode of control is directed at the movement of populations and dispenses with the physical, immobilising encounter of older forms of policing and operates instead upon contacts, tracks, and profiles. This has serious significance for accountability because the encounter produces the material on which accountability depends, such as a witness, a record, a moment that can afterwards be reconstructed and examined. Accountability is difficult to find when the decisive act consists in the relay of a screen contact from an aircraft to a situation centre and then to a third-country force. The person was never before the institution that set the sequence in motion, having been returned to Libya, and it was that institution which, as the OLAF finding established, was in a position to choose not to see. The deepening that the technology introduces is not only a matter of degree. The encounter at the border pre-existed in older forms of remote administration. In this case the surveillance examined here is constructed so that the governing decision and the person it governs need never meet. In this form spatial distance does not merely make accountability more difficult but removes the encounter that accountability would have taken as its object.

7.4 Temporal Distance

Temporal distance is the displacement of a decision to a point before the act to which it would otherwise respond. This condition removes the event, namely the completed act that accountability ordinarily takes as its object. In its conventional form accountability attaches to something that has occurred, a recognised wrong and a dated examination against the rules that govern it. It was within this framework that older forms of border control largely operated. There was a response to an event, a crossing attempted, an arrival, a document presented, and its response could be assessed on the basis of what had taken place. The predictive orientation of the systems examined in the present thesis displaces the decision to a point before any such event has occurred.

In Chapter 4 the maritime analytics system was examined and described its function as the transformation of decision-making from reactive to proactive, enabling its users to act before threats reach their borders. The risk-analysis and impact-level architecture of EUROSUR, through which sections of the external border are assigned levels of anticipated risk that trigger predetermined operational responses, is oriented in the same way toward what is expected rather than what has occurred (Article 24, Regulation 2019/1896; Frontex, Monitoring and Risk Analysis, 2024). The formation of the decision is not taken as a response to something a person has done, but is based on a forecast of what a person or persons is predicted to do. The intervention precedes the act.

The ban-opticon of Bigo (2008) corresponds to this temporal logic, which seeks to act before an offence is committed on the basis of statistical estimates and constructed profiles rather than of a recognised act. Its consequence for accountability is not the same as that of the opacity examined earlier. The difficulty would remain regardless of whether the criteria of a predictive system were disclosed, since at the moment of intervention there would be no completed act to adjudicate. The assessment of a decision for accountability would be with regard to a response to an event which would not have occurred and which, the intervention having been made,

would never occur. At this point temporal distance connects to the biopolitics described by Foucault (1978), which describes that power operates upon populations through the management of probabilities and statistical risks rather than upon individuals through responses to recognised acts. These two conditions reinforce one another. The decision taken through predictive tools removes the event that accountability would have examined, and the opacity removes the means by which the basis of that decision could be reconstructed. This combination through temporal distance ensures that there is neither a completed act to point to nor a disclosed basis for review. The limits of this claim lie in the fact that the present study describes the predictive systems as they are described through public records and not their internal functioning, which the opacity finding renders inaccessible. This argument concerns what that orientation removes from the reach of accountability and not the technical characteristics and accuracy of any particular prediction.

7.5 Legal Distance

The dispersal of responsibility across a chain of actors in such a way that none of them can be held to account constitutes legal distance. Legal distance removes the identification of the responsible actor, at the point to which consequences can be attributed and from whom an account can be demanded. Andersson's (2014) description of borders operating as an enterprise in which the work of control is subcontracted across national authorities and EU agencies, private companies and third-country forces, each separately performing a part of a function that none performs in whole. Such a chain that produces such an outcome has no single author. Any link bears responsibility and for that reason it is secured at none.

Legal distance of this kind precedes what this thesis examines and is its essential argument. The clearest demonstration is set out in Chapter 5. The accountability moment of 2022 concerned conduct that did not constitute a matter of artificial intelligence at all. For example, the return of asylum seekers in the Aegean, the recording of incidents under misleading descriptions, and the inability to apply the suspension of the Agency's operations by its own powers. Allegations that were proven by a fraud investigation, the resignation of the Executive Director, and the absence of criminal prosecution of any official led to the conclusion that the documented conduct that was established attributed responsibility to no actor. This is the point that guards the present argument against overstatement. The diffusion of responsibility is produced by surveillance technologies and is a property of the way in which the governance of borders is organised, which was already in operation before the systems examined here were introduced. These systems do not create legal distance but extend it.

In the documentary record of the preceding chapters the form that this dispersal takes is visible. With regard to the parliamentary question concerning the operation of drone surveillance, examined in Chapter 4, the European Commission replied that the matter fell entirely under the responsibility of the Agency. The Agency, on the other hand, conducts surveillance whose results become the subject of action by member states and the Libyan Coast Guard. The responsibility of each actor can be referred elsewhere. More specifically, the Commission to the Agency, the Agency to the operational decisions of member states, and member states to the forces that carry out the interception. The accountability moment of 2022 demonstrated the

outcome of this arrangement empirically. The documented conduct yielded no actor who could be held responsible, and the matter concluded with the resignation of the Executive Director and the continuation of operations.

The present thesis consolidates and extends the chain for the technologies examined. With each analytical or autonomous system that the Agency procures from a private contractor, an additional link is added. In Chapter 4 it was established that the criteria by which these systems produce outputs are not disclosed and are proprietary. When a contractor produces a risk assessment and an operational decision is based upon it, responsibility for the decision can be referred to the system while the basis of the system cannot be examined because it is not available. The chain of subcontracted responsibility described by Andersson is extended in this way. Each new contract means newer links are also the least accountable of all, because they combine the deflection of responsibility that characterises subcontracting with the opacity that in turn characterises proprietary systems. The expansion documented in Chapter 6 was not only an increase in surveillance capability. It was also an extension of the chain in such a way that responsibility is dispersed, and each additional contract placed a further link between a decision and the actor who might answer for that decision.

The consequence for accountability completes the pattern set out in the previous two sections. Spatial distance removes the encounter at which a decision could become the object of observation, temporal distance removes the event for which a decision could answer, and legal distance removes the actor to whom a decision could be attributed. The first two leave accountability without an object and the third, the legal without an addressee. In this case the opacity established at the outset is decisive, as a chain of responsibility could be traced if each link were disclosed as to its contribution, but this is not feasible when the criteria of the contracted systems are withheld, because the chain cannot be followed to its source. The events of 2022 showed that even for this extensively documented conduct no actor could be compelled to answer. What the technologies examined here add is the progressive withdrawal of those conditions under which an actor might in future be identified.

7.6 Synthesis: Structural Impossibility and Predictable Expansion

The three forms of distance examined in this chapter remove, between them, the three conditions on which accountability depends. Spatial distance removes the physical presence that would furnish a witness and a record, temporal distance removes the completed act that would become the object of accountability, and legal distance removes the actor to whom responsibility and consequence could be attributed. All three distances are what is shaped by the opacity that had been established, which forecloses the reconstruction through which any of the distances might otherwise be crossed. Through the term data-banned (Bigo, 2008) we can study the combined effect of this condition: A person subject to decisions that give rise to serious consequences, which were taken at a distance, before any event, by no identifiable responsible actor, on the basis of criteria that are not disclosed and which lead to there being no means by which they can be contested. The presupposition of accountability is that a decision can be located, examined, and attributed to someone. In the description that is given, each of these presuppositions is structurally absent from the system.

For this reason the failure of accountability in 2022 is better understood as structural rather than contingent. The conventional reading of this failure is treated as a shortfall of will or institutional strength that must be remedied by firmer oversight. The analysis proposes here that the opposite is indicated. None of the mechanisms that converged in 2022 was weak. There were mechanisms such as an anti-fraud investigation, a parliamentary inquiry, an investigation based on independently verified flight data, and a submission to an international court. All of these mechanisms documented the conduct of the Agency in detail. What could not be achieved was the conversion of that documentation into consequence, because the conditions under which a consequence could be attached were absent. This is the answer to the question with which the present thesis began. The expansion of the Agency's surveillance after 2022 must be understood not through the lens that accountability was insufficiently robust, but as evidence that the system within which accountability operates is structured in such a way that even its most serious exercise leaves the operational dimension and the practices of the Agency untouched.

The same structure that prevents documented harm from producing restriction also makes expansion the rational institutional response to it. Where harm cannot be attributed to an actor, it presents not as a wrong for which someone must answer, but as a problem to be managed. The form that this management takes is understood through Fassin's (2011) analysis of humanitarian reason. That is, the harm is absorbed into a framework of protection, in which the appropriate response to a surveillance system implicated in abuse is a more capable surveillance system, one that promises to detect earlier, to identify more, and so, in its own terms, to protect more effectively. Andersson's (2014) analysis also supplies the institutional logic that accompanies this. A mechanism organised around the management of migration has no reason to be withdrawn when there is evidence that the existing system is failing, but instead further investment is made in it. The documented failures of 2022, in this sense, were not an obstacle to expansion but were among the conditions that made it possible. It was demonstrated that there was a need for improvement, and improvement in this domain has consistently meant more.

The relationship between accountability and expansion is not ultimately a paradox. The paradox would be conceivable if accountability pressure and operational expansion were opposing forces of the same kind, in such a way that the strengthening of each would diminish the other. The argument developed here is that these forces are not of the same kind. Ineffective accountability, the three distances and the opacity are features that make expansion the available and rational response to documented harm. Within this system accountability and expansion are not in opposition but are joint products of a single structure. The post-2022 expansion is not the improbable survival of a discredited mechanism but the outcome that the structure predicts, and this is precisely what this analysis seeks to demonstrate.

The framework of three distances is the framework that the thesis seeks to offer. Each of them illuminates part of the picture. Bigo describes the mode of control through the condition of the data-banned. Andersson describes the chain of subcontracting in border control, Fassin describes the humanitarian framework through which its harms are rendered legitimate, and Foucault describes through biopolitics the omissive form of power. However, what none of

them provides in this specific analysis is an account of how these combine in the case of a border mediated by artificial intelligence, so as to render accountability not merely difficult but structurally foreclosed, and to make the expansion of the mechanism the predictable consequence of its own documented failures. The three distances are offered for this analysis. They do not constitute a claim about how the internal functioning of the technologies is applied, which remains undisclosed, but analyse and describe what is revealed by the public record as well as the conditions that these technologies establish between a decision and any prospect of accounting for it.

wo further observations situate this argument in its context. The first is its stakes, namely that the system described here, as the figures set out in Chapter 6 indicate, governs a population which is exposed to death and these figures did not diminish during the period of expansion. The condition it administers is one in which the close surveillance of movement coexists with an undiminished risk to life, an arrangement that corresponds to what Mbembe (2003) describes as the production of zones in which exposure to death becomes a durable condition of existence. The second observation concerns the limits of the claim. The argument proposed here is the structural dimension, and a dimension of this kind is answerable to evidence that could tell against it. Had the accountability moment restricted the Agency's operations, such a conclusion would have been substantially weakened. On the contrary, it did not. Therefore, in conclusion, the most serious scrutiny in the Agency's history brought expansion as its consequence across every dimension in which restriction might have been possible.

Chapter 8: Conclusion

In the present thesis the question that was sought to be answered is how the EU border surveillance infrastructure has expanded following the accountability moment of 2022 and what is revealed through this regarding the structural limits of accountability. The answer to this question concluded that the expansion that was documented does not constitute a paradox. It is a predictable outcome of a system through whose deployment of surveillance mediated by artificial intelligence three forms of distance are produced, the spatial, the temporal, and the legal, and these together render accountability ineffective. The conditions under which scrutiny could be converted into consequence were absent, and the same conditions that foreclosed accountability rendered expansion the rational response to its own documented failures.

The answer was reached in three steps corresponding to the three subsidiary questions that structured the inquiry. The first asked which technologies had been deployed by Frontex and what is and is not known about the way they operate. In Chapter 4 it was established that the Agency's principal systems, the EUROSUR architecture, the Windward maritime analytics platform, and its expanding drone operations, operate on the basis of criteria that are not disclosed in any publicly available record. Furthermore, this opacity is corroborated by an institutional record of court judgments, ombudsman findings, and refused requests for access. The second question concerned how the Agency responded, institutionally and technologically, to the accountability moment of 2022. In Chapters 5 and 6 it was established that the response institutionally was the resignation of individuals without prosecution or operational restriction,

and technologically an expansion of surveillance across every dimension on which restriction might have been expected. In the third question the question was posed regarding how the structural conditions of EU border governance, in combination with the opacity of technology systems, produce and sustain limits on accountability. In Chapter 7 this question was answered through the analytical tool of the three forms of distance, which together remove the encounter at which a decision could become the object of observation, the completed act for which it might answer, and the actor to whom it could be attributed.

2. Contribution

The operation of the three distances is not isolated. Spatial distance removes the encounter between the Agency and the person whose movement it governs, temporal distance shifts the decisive action to a point before any act has occurred, and legal distance disperses responsibility across a chain of national authorities, EU agencies, private contractors, and third-country forces. The opacity established in Chapter 4 conditions all three distances and removes the means by which any of them might be crossed. Three things are removed in total from what accountability requires. The first is an object for examination, the second a moment that can be reconstructed, and the third an actor who can be compelled to answer. The reason why the accountability moment of 2022 is a predictable sequel, despite the detail it produced, is that it was unable to convert documentation into consequence, and why the expansion that followed was not a contradiction of that moment. At the point where harm cannot be attributed, it is not received as a wrong that must be restrained but as a problem that must be managed. In this domain the management of a problem has consistently meant the acquisition of further capability.

The contribution of the present thesis lies in the framework through which this analysis is given. The literature and each part of it used in this thesis illuminates each a part of the picture. More specifically, Bigo's analysis of surveillance at a distance and the condition of the data-banned, Andersson's analysis of the chain of subcontracting across which border control is distributed, Fassin's analysis of the humanitarian framework through which its harms are legitimated, and Foucault's analysis of the biopolitical and omissive form of its power. What the three distances add is an analysis of how these combine. In this case of a border involving artificial intelligence technology, so as to render accountability not merely difficult but structurally foreclosed, and expansion becomes the sequel of documented failure. This framework does not constitute a claim about the way these technologies operate but an analytical description of the conditions they establish between a decision and any prospect of accounting for it. This tool can be applied beyond the case examined here, where technological systems of this nature mediated by artificial intelligence produce consequential decisions in distributed and opaque institutional arrangements.

3. Limitations

These findings are bounded by several limitations. The study examines only one agency, Frontex, and although the three distances can be offered as a framework of broader application, the present thesis establishes them only for the case of EU border surveillance. The application of the three distances to other domains of governance mediated by artificial intelligence

remains to be demonstrated. The analysis rests on public documentary material without interviews or internal access. This is a methodological choice and at the same time in part a necessity, since the thesis identifies opacity as its central condition and locates this opacity, placing the internal functioning of the systems beyond the reach of any external study. For the same reason, the thesis makes no claim regarding the way these systems operate internally, nor regarding the technical accuracy of any particular assessment they generate. The same applies to the causal relationship between surveillance and loss of life at sea, which the available evidence does not support. The recorded death toll is presented as the setting against which the humanitarian justification of expansion is observed, and not as an outcome attributed to the technology. These are limits of scope and method, but they do not insulate the central claim from test. The argument developed here is structural and every argument of this kind is answerable and susceptible to evidence that could tell against it. Had the accountability moment of 2022, the most serious concentration of scrutiny in the Agency's history, produced a restriction of operations, the contention that the system forecloses such an outcome would have been substantially weakened.

4. Future research

Two directions for further research follow from a single observation that recurs in the empirical material of the present thesis. The technologies deployed at the European borders are provided to a significant degree by private companies whose primary domain of specialisation is defence and security, and many of them are based outside the EU.

The first direction focuses on the character of the technologies themselves, which have not been specifically designed for border management. This raises the question of whether the accountability problem identified constitutes part of what makes borders attractive as sites where these systems can be deployed and normalised, and whether these technologies are trialled in order to subsequently move into other domains.

The second direction concerns the dimension of sovereignty through dependence. The EU is increasingly turning toward ambitions aimed at technological sovereignty, however the systems examined in the present thesis originate from countries outside the EU and their infrastructure likewise. The tension between this imaginary of sovereignty and the reality of dependence is itself productive, to the extent that it can serve to justify the continued expansion of border surveillance even when the infrastructure on which that expansion depends remains foreign. In this way the accountability deficit identified in the present thesis raises the question of whether it becomes an entry point regarding the distribution of authority in the emerging global order of digital technology.

5. For the Damaged Coda - *Here's the receiver, but where's the transmitter?*

The apparent contradiction with which the present thesis began concluded, by arguing that it does not constitute one. The expansion of Frontex's surveillance following the accountability moment was not the failure of accountability to constrain, the institution, since the institution itself is structurally built so that accountability is rendered impossible. The three forms

introduced into the analysis condition the opacity throughout and foreclose its reconstruction, removing the encounter, the act, and the actor. As the technologies are extended the distances are extended with them, and accountability recedes rather than grows. What is ultimately at stake is not only the governance of Europe's borders. What is at stake is democratic accountability and its survival from the delegation of decisions to systems that have been built to place those decisions beyond the reach of anyone who might answer for them.

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