

FINAL SIR REPORT

10347/2022 – SIR Cat. 1 – FSC Aerial Surveillance 2022

SI-Handler: Fundamental Rights Office

Key Points	
<p><u>Incident reported:</u> A boat adrift was detected by a Frontex Surveillance Aircraft detected in the Tunisian SAR zone and later in the Maltese SAR zone with 280 + persons on board. The migrant boat was eventually rescued by the Italian authorities. During the rescue operations 7 people on board were found dead.</p>	
<p><u>Possible violation of fundamental rights enquired:</u></p> <ul style="list-style-type: none"> • Right to life (Article 2 of the Charter of Fundamental Rights of the European Union); • Human dignity (Article 1 of the Charter of Fundamental Rights of the European Union); • Right to integrity of the person (Article 3 of the Charter of Fundamental Rights of the European Union); • Prohibition of inhuman and degrading treatment (Article 4 of the Charter of Fundamental Rights of the European Union); • The obligation to conduct rescue operations in accordance with international human rights standards and maritime law obligations, (SAR and SOLAS Conventions). 	
<p><u>Party allegedly involved in the incident:</u> Frontex Surveillance Aircraft (FSA), Tunisian, Maltese and Italian MRCCs</p>	
<p><u>Conclusion and impact:</u> Based on the available information, the Fundamental Rights Office notes that more than approximately 17 hours passed from the moment the migrant boat was sighted adrift for the first time (24/01/2022 at 06.54 UTC) by Frontex until it was rescued (24/01/2022 at 23.50 UTC). The Fundamental Rights Office underlines that search and rescue at sea requires prompt coordination and assistance from all parties involved to ensure the protection of migrants’ right to life and to avoid, as much as possible, loss of life. While the Frontex aerial asset contributed with the detection and updates on the boat in distress which were communicated to the competent MRCC authorities, the Fundamental Rights Office underlines that a more efficient and prompt SAR response and coordination, particularly between the two MRCCs in whose search and rescue zones the boat was detected, would have been necessary, considering in particular that 7 migrants died while on board.</p>	
Description of the event - Timeline	Operational Area
<p>On 24/01/2022 at 06:52 UTC, a FSA asset (Osprey 2) flying from ██████████ detected a wooden migrant boat with one engine in the TUN SAR region at position ██████████. The boat was adrift with approximately 200+ persons on board. No lifejackets were visible. F█████ informed the MRCCs of Italy, Malta Libya and Tunisia (information included into Mission Report ██████████ as FSA ██████████). Reporting Tools 2x</p> <p>Osprey 2 provided two updates on the vessel at 10:39 and 11:11 UTC and reported that the vessel was mobile again with a speed of 7kts. At the third sighting (11:11 UTC) the vessel had crossed from the Tunisian into the Maltese Search and Rescue Zone. Shortly after, Osprey 2 returned to based.</p> <p>The same day, IT NCC requested a second sortie with the FSA asset flying from ██████████ to obtain an update on the case.</p>	<p>Operational Area Reporting Tools</p>

Operational Area

At 22:05 UTC, the FSA updated the position of the wooden migrant boat in Italian SAR region at [REDACTED]. It further reported that the boat was again adrift and that the NGO AITA MARI was in vicinity. At 23:50 UTC, the FSA asset sighted the Italian Coast Guard performing the rescue of the migrants at position [REDACTED]. (Information included into Mission Report [REDACTED] as [REDACTED]). Reporting Tools (2x)

Operational Area

According to information obtained through the Italian law enforcement expert present in the monitoring room, 280 people were rescued and 7 people were found dead, probably due to hypothermia.

EMT did not receive any reply from the Libyan or Tunisian Authorities after they had disseminated the sighting information. Communication to MRCCs was relayed via e-mail (sighting forms from FSA) and with the assistance of the Italian SAR Expert present in the monitoring room.

Information collected – Contributors/Entities consulted – Follow-up

SIR 10347/2022 Cat. 1 was launched on 25 January 2022. FSA was consulted to get more information and details about the incident.

Assessment

SAR activities and considerations regarding rescue operations

- The Fundamental Rights Office takes note of the timely sharing of information about the migrant boat by Frontex with all relevant MRCCs in the present case. It likewise notes that the initial classification of the sighted migrant boat and overall situation triggered the notification to all the MRCC, as formally required by applicable procedures.
- The Fundamental Rights Office commends as good practice the fact that Italian authorities made use of the possibility to request a second sortie to obtain updates on distress cases producing updated information on the boat. The new details then informed the subsequent rescue operation.
- While the Fundamental Rights Office had limited insight into the coordination of the search and rescue among MRCCs or potential lack thereof, it underlines the significant number of hours that passed between the initial detection of the migrants by Frontex and their rescue and considers that the rescue should have been conducted more promptly.

The Fundamental Rights Office underlines that the SAR Convention foresees an obligation of the State Parties to provide assistance in their own search and rescue zone and whenever information have been received of persons in distress and to foster and ensure cooperation with neighbouring countries. Furthermore, The Office would like to draw attention to the statement of the Human Rights Committee (HRC) of the International Covenant on Civil and Political Rights according to which delay or failure to respond to distress call/situation constitutes a violation of the State's obligation to protect right to life.

- Importantly, and as the present case makes clear, the Fundamental Rights Office considers that national authorities must factor in the conditions and health of migrants when assessing the urgency of a case/level of distress in addition to criteria pertaining to the sea-worthiness of the boat. The authorities then must take immediate steps to coordinate and support rescue if there is a risk of loss of life regardless the cause, in line with their obligations under the SAR convention and other obligations related to the protection of EU fundamental and international human rights principles.

In the case under scrutiny, the FSA had initially assessed the case to be a search and rescue case and had shared the respective information with MRCCs for their assessment and follow up. As the discovery of the dead persons on board makes clear, an immediate rescue was necessary despite the fact that the boat remained partially mobile.

Final conclusion – Proposals – Lessons learned

In light of the above, the Fundamental Rights Office believes that further discussion is needed to better coordinate the SAR operations at sea in pre-frontier areas, in order to minimize risks related to, *inter alia*, protection of migrants' right to life.

Specifically, the Fundamental Rights Office **recommends** the following:

To Frontex

1. To continue providing SAR support for operations in Central Med using FSAs within the multipurpose aerial surveillance service.
2. To continue existing good practice related to FSAs staying on site for continuous monitoring and the option for second sorties to collect updated information that can be crucial for the rescue of migrants;
3. to promote a dialogue among stakeholders including EU MRCC to ensure that rescue operations are conducted in a coordinated and prompt manner;
4. to strengthen communication with NGOs operating in the area with assets available for SAR activities.

To Member States' authorities

1. For EU MRCCs to support SAR activities and respond in a timely manner to distress calls in order to ensure that rescue operations are promptly conducted in line with international human rights and refugee law and to foster and ensure good cooperation with neighbouring countries for the purpose of saving lives.

Final SI-Handler Report Template



Warsaw, 02/08/2022

FINAL SIR REPORT

12634/2022 – SIR Cat. 1 – FSC Aerial Surveillance 2022

SI-Handler: Fundamental Rights Office

Key Points
<p>Incident reported: On 02/06/2022, Frontex surveillance aircraft sighted in the Tunisian SAR zone an overcrowded migrant boat with approx. 50 migrants on board, headed north, into the Libyan SAR zone. Tunisian and Libyan MRCCs were notified. Three hours later, the boat was sighted in Libyan SAR zone, with Libyan coast guard boat conducting rescue of the migrants. Frontex aircraft monitored the interception of the boat and embarkation of migrants, during which it recorded instances of physical violence by the Libyan Coast Guard vessel's crew against the people from the migrant boat. Specifically, five persons were slapped and hit to the head as well as kicked, some repeatedly. The Libyan vessel with migrants onboard then returned to Libya.</p>
<p>Possible violation of fundamental rights enquired: Possible violations of</p> <ul style="list-style-type: none">• human dignity (Article 1 of the Charter of Fundamental Rights of the European Union), right to integrity of the person (Article 3 of the Charter of Fundamental Rights of the European Union), prohibition of inhuman and degrading treatment (Article 4 of the Charter of Fundamental Rights of the European Union, Article 7 of the International Covenant on Civil and Political Rights),• the obligation to conduct rescue operations in accordance with international human rights standards and maritime law obligations, including disembarkation in a place of safety (SAR and SOLAS conventions).
<p>Party allegedly involved in the incident: Officers of the Third Country Libya, Frontex Surveillance Aircraft (as observer)</p>
<p>Conclusion and impact: Considering the involvement of the third country Libya, the Fundamental Rights Office has been unable to investigate the abuse of migrants during the rescue beyond the review of video evidence from Frontex surveillance aircraft. However, based on this evidence, the Fundamental Rights Office considers that excessive force has been used by the Libyan authorities during the described incident, violating rights of persons targeted to be free from inhuman and degrading treatment. Additionally, the Fundamental Rights Office is concerned about the safety of all rescued migrants upon disembarkation, considering the reporting by international NGOs about the detention conditions in Libya. In this respect, the Fundamental Rights Office invites dialogue on better coordination of SAR activities, including Frontex' classification of vessels requiring immediate rescue.</p>
<p>Description of the event - Timeline</p>
<p>On 02/06/2022, at 05:50 UTC, Frontex' surveillance drone detected at ^{Operational Area} [REDACTED] (Tunisian SAR zone) a blue overcrowded wooden boat with approx. 50 migrants on board heading north. At 06:39 UTC, the Tunisian as well as Libyan MRCC were notified of the sighting by Frontex.</p>
<p>At 08:51 UTC, Frontex surveillance aircraft observed the same migrant boat at ^{Operational Area} [REDACTED] (Libyan SAR zone) and remained at the site to monitor the rescue. Libyan Coast Guard vessel was in pursuit, with the migrant boat refusing to stop. At 08:55 UTC, Libyan vessel dispatched a fast rigid inflatable boat (RIB) with the crew of three. At 09:00 UTC, the migrant boat was intercepted by the Libyan RIB. During interception, the recording shows two blows (arm swings) by one of the RIB crew aimed at a person steering the migrant boat.</p>

At 09:05 UTC, migrants began being transferred from the boat onto the Libyan Coast Guard vessel. At 09:06 to 09:20 UTC, during the onboarding of migrants, the recorded video shows several incidents of physical abuse by the crew of the Libyan vessel. Five persons from the migrant boat are subjected to slaps and hits to the head as well as kicks, both prior to and immediately after their onboarding. All the migrants are being gathered at the front deck of the Libyan Coast Guard vessel.

At 09:21 UTC, Frontex surveillance aircraft left the area. Libyan Coast Guard vessel moved off and departed, initially heading North. At 10:25 UTC, the same Libyan vessel was sighted again, with migrants on the fore deck, heading towards Libyan coast.

Information collected – Contributors/Entities consulted – Follow-up

SIR 12634/2022 Cat 1 was launched on 27/06/2022. Due to conclusiveness of the video evidence and the third country status of Libya, no further enquiries were conducted.

Assessment

Conduct of the rescue by Libyan authorities:

- The Fundamental Rights Office considers it established, in light of available video evidence, that the Libyan Coast Guard officers have used physical violence amounting to inhuman and degrading treatment of migrants, during their rescue.
- The Fundamental Rights Office notes that similar abuse of migrants has been documented previously, including recently in SIR [REDACTED]. This pattern of behaviour by the Coast Guard officers of a third country Libya casts doubt on general compliance of Libyan authorities with international and human rights law during SAR operations.

SAR activities and considerations regarding disembarkation in a place of safety:

- The Fundamental Rights Office takes note of the timely sharing of information about the migrant boat by Frontex with all relevant MRCCs in the present case. It likewise notes that the initial classification of the sighted migrant boat and overall situation (migrant boat navigating, sea state 2, overcrowded, buoyancy good, no people in the water, no life jackets), which triggered the notification of Libyan MRCC, was done fully in line with applicable procedures.
- The Office commends as good practice the fact that Frontex surveillance aircraft was instructed to stay and monitor the whole course of embarkation by the Libyan Coast Guard, enabling gathering important evidence underlying this SIR.
- The Fundamental Rights Office however also notes that entities involved in SAR operations, in addition to ensuring their expediency in order to protect the right to life of those onboard vessels in distress, are also required to seek to disembark the rescued persons in a place of safety. Generally, identification of a place of safety in the context of SAR is an important safeguard of the principle of non-refoulement. According to Art. 80 of the EBCG Regulation, Frontex shall ensure that “in the performance of its tasks, no person is disembarked in, forced to enter, conducted to, or otherwise handed over or returned to the authorities of a country where there is, inter alia, a serious risk that he or she would be subjected to the death penalty, torture, persecution, or other inhuman or degrading treatment or punishment, or where his or her life or freedom would be threatened on account of his or her race, religion, nationality, sexual orientation, membership of a particular social group or political opinion”.
- The Fundamental Rights Office further notes numerous reports of international NGOs (among them Amnesty International, Medecins Sans Frontieres) and IGOs (including UNHCR), which do not consider Libya as a safe third country in this context.

Final conclusion – Proposals – Lessons learned

Violations of rights of migrants to personal integrity, and to be free from inhuman and degrading treatment in the SIR 12634/2022 have been established on the basis of video evidence.

Furthermore, in the context of

Reporting Tools

- (i) documented instances of migrant abuse during rescue at sea by Libyan authorities in the present SIR as well as in SIR [REDACTED];
- (ii) the need to balance several fundamental rights concerns during coordination of SAR activities (namely the right to life and identification of place of safety/principle of non-refoulement); and
- (iii) the involvement in SAR operations in Central Med of Libya, which cannot unequivocally be considered as a safe place for the purposes of disembarking rescued persons;

the Fundamental Rights Office believes that further discussion may be needed to better coordinate the SAR operations at sea in pre-frontier areas, in order to minimize risks to fundamental rights of rescued migrants in scenarios where Frontex is involved.

Specifically, the Fundamental Rights Office recommends the following:

To Frontex

1. to continue monitoring the conduct of SAR activities by Libyan authorities using Frontex surveillance aircrafts (FSAs) within the multipurpose aerial surveillance services;
2. to engage in a dialogue on definitions of vessels in distress and on common criteria to classify when a vessel requires prompt intervention to be rescued;
3. to strengthen communication and coordination with NGOs operating in the area with assets available for SAR activities;
4. to explore possibility of engaging with UNHCR and IOM with respect to rescue operations conducted by the Libyan authorities to ensure their presence at disembarkation points in Libya.

To Member States' authorities

1. EU MRCCs should pro-actively support SAR activities along and in the vicinity of the lines separating their respective SRR from that of Libya, in order to ensure that rescue operations are promptly conducted in line with international, human rights and refugee law.

FINAL SIR REPORT

13489/2021 – SIR Cat. 1 – FSC Aerial Surveillance 2021

SI-Handler: Fundamental Rights Office

Key Points

Incident reported:

Frontex Surveillance Aircraft recorded the Libyan Coast Guard shooting at migrants during a search and rescue operation conducted in the Libyan Search and Rescue Region (SRR) on 15/09/2021.

Possible violation of fundamental rights enquired:

- Human dignity (Article 1 of the Charter of Fundamental Rights of the European Union),
- Right to life (Article 2 of the Charter of Fundamental Rights of the European Union)
- Right to integrity of the person (Article 3 of the Charter of Fundamental Rights of the European Union),
- Prohibition of inhuman and degrading treatment (Article 4 of the Charter of Fundamental Rights of the European Union)
- The obligation to conduct rescue operations in accordance with international human rights standards and maritime law obligations

Party allegedly involved in the incident: Libyan officers, Frontex Surveillance Aircraft (as observer).

Conclusion and impact:

Based on video evidence collected by the FSA which monitored the incident, the Fundamental Rights Office considers that excessive force was used by the Libyan authorities during the described incident, violating migrants' fundamental rights including to be free from inhuman or degrading treatment. Additionally, the Fundamental Rights Office is concerned about the safety of all rescued migrants upon disembarkation in Libya. In this respect, the Fundamental Rights Office invites dialogue on better coordination of search and rescue (SAR) activities in Central Mediterranean taking into consideration that Libya cannot be considered a place of safety.

Description of the event - Timeline

On 15 September 2021, at 07:45 UTC, the Frontex Surveillance Aircraft Heron 1 detected a blue wooden boat at [REDACTED] with 20+ migrants on board in the Libyan Search and Rescue Region. The boat had one engine and was travelling with 6kts and course 360°. A LBY PV was in vicinity. (Sighting report sent to Italian, Maltese, Libyan and Tunisian authorities)

At 09:04 UTC, Heron 1 returned to the same vessel monitoring the intervention of the Libyan patrol vessel who had arrived on site attempting to intercept the boat. At the time, Fundamental Rights Monitor [FROM] of the Fundamental Rights Office was present in the monitoring room and followed the incident on the screen together with the European Monitoring Team. The FROM and FRO Serious Incident Team were further provided with the video of the incident for their review showing the following:

The migrant boat attempted to avoid interception and was closely followed by the Libyan patrol vessel. Attempting to stop it, the LCG vessel subsequently manoeuvred around the small boat in circles. For approximately 35-45 minutes, the LCG vessel continued trying to intercept the boat by means of creating waves and the use of a water

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hose spraying water in the direction of migrants. Moreover, an individual on board the Libyan patrol vessel at one point during the pursuit was observed holding an item shaped like a pistole, pointing it in direction of the migrant boat and shots, presumably bullets, being fired in the direction of the migrants.

Eventually, the LCG vessel managed to stop the boat and the migrants were made board the LCG vessel at 10:04 UTC.

No information was obtained concerning the port of disembarkation of the rescued migrants.

At 10:37, Frontex Team Leader sent to the Libyan authorities with Italian, Maltese and Tunisian authorities in copy the following message:

“In regards to the sighting FSA ^{Reporting Tool} sent earlier we would like to inform you that patrol vessel ^{Operational Area} is shooting into the water close to the migrant boat and using fire hose in their direction. We highly recommend/suggest to NOT use force during SAR operations.”

Information collected – Contributors/Entities consulted – Follow-up

SIR 13489/2021 Cat. 1 was launched on 17 September 2021.

Assessment

Conduct of the rescue by Libyan authorities:

- Considering the availability of video evidence, the Fundamental Rights Office considers established that the members of the Libyan Coast Guard used physical force that is not in line with the principles governing the use of force (necessity, proportionality, precaution) putting the lives of the migrants in jeopardy during search and rescue.
- Against this backdrop and several other reports about excessive use of force by Libyan authorities during SAR, including well documented ones (12634/2022 and ^{Reporting Tool}), the Fundamental Rights Office is concerned about the compliance of Libyan authorities with international human rights law during SAR operations.

Frontex support to SAR activities and considerations regarding disembarkation in a place of safety:

- The Fundamental Rights Office takes note of the timely sharing of information about the migrant boat by Frontex with all relevant MRCCs in the present case. It likewise notes that the initial classification of the sighted migrant boat and overall situation triggered the notification of Libyan MRCC in line with applicable procedures.
- The Fundamental Rights Office commends as good practice the fact that Frontex surveillance aircraft was instructed to stay and monitor the whole course of embarkation by the Libyan Coast Guard which allowed for the collection of evidence underpinning the present SIR.
- The Fundamental Rights Office remains concerns about engagement that result in migrants being brought back to Libya as according to numerous reports issued by international organisations including OHCHR, UNHCR, CoE and Amnesty International, the country cannot be considered as a place of safety for disembarkation.

Final conclusion – Proposals – Lessons learned

Considering the video evidence showing actions by Libyan officers that amount to excessive use of force putting the lives of migrants at risk during SAR the Fundamental Rights Office considers that migrants’ fundamental rights guaranteed in articles 1, 2, 3, and 4 of the Charter of Fundamental Rights of the European Union were violated. Furthermore, in the context of:

- (i) Several documented cases of abuse during rescue at sea by Libyan authorities including the present SIR;
- (ii) the need to balance several fundamental rights concerns during coordination of SAR activities (namely the right to life and identification of place of safety/principle of non-refoulement); and

(iii) the involvement of Libya in SAR operations in Central Mediterranean, which cannot unequivocally be considered as a safe place for the purposes of disembarking rescued migrants,

the Fundamental Rights Office believes that further discussion is needed to better coordinate the SAR operations at sea in pre-frontier areas, in order to minimize risks to fundamental rights of rescued migrants in scenarios where Frontex is involved.

Specifically, the Fundamental Rights Office **recommends** the following:

To Frontex

1. To continue providing SAR support for operations in Central Med using FSAs within the multipurpose aerial surveillance service.;
2. To continue the FSA good practice to stay and continue monitoring, whenever possible, SAR operation conducted by the Libyan Coast Guard;
3. to promote dialogue with/among EU Member States to ensure better coordination of search and rescue activities in Central Mediterranean that takes into account that Libya cannot be considered a place of safety for disembarkation of migrants;
4. to strengthen communication with NGOs operating in the area with assets available for SAR activities.

FINAL SIR REPORT

SIR 14400/2021

SI-Handler: Fundamental Rights Office

Key Points

Incident: On 16 November 2021 at 10:41 UTC, Heron 1 spotted a white wooden boat adrift with 100+ migrants on board inside the Libyan search and rescue zone, after having received respective information by the Italian Search and Rescue (SAR) expert on a possible overcrowded migrant boat in distress and people in the water. Three Mayday calls were broadcasted on maritime CH16 by Heron 1. Migrants were rescued by the NGO Geo Barents and disembarked in Messina port (IT). Reportedly, 10 people were found dead at the bottom of the boat.

Possible violation of fundamental rights enquired:

- Right to life (Article 2 of the Charter of Fundamental Rights of the European Union);
- Right to integrity of the person (Article 3 of the Charter of Fundamental Rights of the European Union);
- Human dignity (Article 1 of the Charter of Fundamental Rights of the European Union).

Party allegedly involved in the incident: Frontex Surveillance Aircraft, NGO Geo Barents, Libyan, and Italian authorities (indirectly)

Conclusion and impact:

The Fundamental Rights Office finds that migrants were assisted by NGO Geo Barents 2+ hours after detection by the Frontex aerial asset. With the available information, the Fundamental Rights Office could not conclusively establish the condition of the migrants inside the boat at the time of detection or the overall duration of their journey at sea which could have led to the death of the 10 migrants on board. The Fundamental Rights Office notes that Frontex aerial asset remained on site and monitored the area of the incident and that the [REDACTED] acted in line with applicable legal framework and operational procedures. As regards the actions by the relevant authorities, the Fundamental Rights Office understands that Frontex team leaders did not receive a reaction or information on their cooperation/coordination of the case and underlines the importance of timely communication by all involved stakeholders. In light of the importance of such exchange and updated information, it commends the exchange between Frontex TL and IT SAR expert which allowed the FSA to proceed on site.

Reporting Tools

Description of the event - Timeline

The timeline of the incident (based in [REDACTED] information and respective mission and sighting reports) includes the following actions:

Reporting Tools

On 16/11/2021,

At 10:12 UTC, the European Monitoring Team (EMT) at Frontex received information by the ITA SAR expert on a possible migrant boat in distress with 100 POB and people in the water.

At 10:13 UTC, FSA Heron was directed to alter the course and fly direct to the migrant boat (to position [REDACTED] Operational Area [REDACTED]).

At 10:36 UTC, FSA Heron 1 reported the migrant boat in sight at distance.

Operational Area

At 10:41 UTC, FSA Heron 1 early detected a white wooden migrant boat in [REDACTED]. The boat

was adrift tilted on the starboard side, with an estimation of 100 people on board without lifejackets (FSA sighting no. [REDACTED]). Heron 1 broadcasted an emergency signal (MAYDAY) on VHF Channel 16.

Reporting Tools

At 10:47 UTC, FSA Heron1 was directed to perform a 5 nm search pattern around the migrant boat to assess the possible presence of people in the water. In the meantime, a second MAYDAY call was broadcasted on VHF Channel 16.

At 11:07 UTC, FSA Heron 1 reported no people in the water and continued to explore the adjacent area. NGO Geo Barents and General Administration for Coastal Security patrol vessel (GACS Libyan PV [REDACTED]) were observed on route to the migrant boat's position.

Operational Area

At 12:29 UTC, NGO Geo Barents and GACS Libyan PV [REDACTED] were observed heading towards the migrant boat position.

Operational Area

At 12:39 UTC, the EMT observed NGO Geo Barents and GACS Libyan PV [REDACTED] next to the migrant boat. FSA Heron 1 broadcasted a third MAYDAY call on VHF Channel 16 while leaving the area.

Operational Area

15:13 UTC – FSA Heron 1 was directed to extend the mission until reaching bingo fuel to properly monitor all the detected cases.

The Team Leader on duty on the 17 November 2021 informed that the incident reported by Médecins Sans Frontières (@MSF_Sea) on 16 November 2021 at 21:58 UTC via Twitter post was correlated with FSA sighting 408 of 16 November 2021:

“#BreakingNews: after a distress call from @alarm_phone, confirmed by #Seabird, this afternoon 99 survivors were rescued by the #GeoBarents at approx 30 miles from the Libyan shores. At the bottom of the overcrowded wooden boat, 10 people were found dead”

On 18.11.2021 at 08:50 LT, the ICC Rome informed that the NGO vessel “Geo Barents” requested a place of safety to Italian authorities; at 20:55 LT the ICC Rome informed that Messina Port was assigned for disembarkation.

On 19.11.2021 at 11:30 LT NGO vessel "Geo Barents" arrived in Messina and started disembarking the POB and the 10 bodies at 15:00 LT.

Information collected – Contributors/Entities consulted – Follow-up

1. Considering the severity of the case, as it involved loss of lives, the Fundamental Rights Office requested supplementary information to [REDACTED] in order to establish the facts pertaining the incident, the actions and decision-making process of all the actors involved in the case.
2. As regards communication on the case, the Fundamental Rights Office understands from FSC that the EMT did not receive any acknowledgements of the Mayday calls by the FSA nor was it shared information on the coordination of the case by MRCCs.
3. The Fundamental Rights Office understands that the Italian, Maltese, Libyan and Tunisian authorities were updated by Frontex on the case at 10:53 UTC and 12:43 UTC in form of sighting reports including the location of the incident and fact that Maydays were launched.

Reporting Tools

Assessment

1. The Fundamental Rights Office notes that following receipt of information from the Italian SAR expert on a possible migrant boat in distress with 100+ people on board and some in the water, the Frontex asset

was instructed to change its course and proceed to the location of said boat. When arrived on location, the detected boat was indeed adrift with an estimate 100 people on board with no lifejackets. At 10:44 UTC, Frontex aerial asset broadcasted the first Mayday call. While conducting a search around the boat to search for persons in the water, it launched a second Mayday call at 10:47 UTC. No persons in the water were found.

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2. Around one hour after the initial detection, the NGO Geo Barents and General Administration for Coastal Security patrol vessel (GACS Libyan PV [REDACTED]) were observed on route to the migrant boat's position. The two vessels reached the proximity of the migrant boat at 12:39 UTC, time when the FSA Heron 1 left the area after sending a third emergency signal.
3. The Fundamental Rights Office understands that Heron 1 left the scene to check on another migrant boat (sighting [REDACTED]) for which it had also launched a Mayday prior to attending to the incident under scrutiny.
4. According to the collected information, the Fundamental Rights Office takes note that Frontex asset remained on site and monitored further the area as a follow-up to the initial sighting until assistance arrived. The Fundamental Rights Office acknowledges that [REDACTED] acted in line with applicable legal framework and operational procedures by immediately informing all the MRCCs in the Central Mediterranean Sea area including the competent Libyan JRCC and by launching three Mayday calls (between 10:44 UTC and 12:39 UTC). NGO Geo Barents and General Administration for Coastal Security patrol vessel (GACS Libyan PV 301) were observed heading towards the migrant boat position around 2+ hours after the initial Frontex sighting.
5. The Fundamental Rights Office takes note of a tweet by Médecins Sans Frontières (MSF Sea) on 16/11/2021 claiming that the NGO ship Geo Barents recovered 10 bodies from the bottom of a wooden boat carrying another 99 people about 30 miles off the Libyan coast.
6. The Fundamental Rights Office regrets that the Mayday calls were not acknowledged by any of the relevant MRCCs (which were broadcasted over VHF Channel 16 but also reference in the sighting reports) and that [REDACTED] did not obtain information regarding the coordination of the case among them. In general, the Fundamental Rights Office is of the opinion that the responsible authorities must take immediate action to assume coordination of SAR cases and support the rescue when lives are at stake, including through timely communication, in line with their obligations under the SAR convention and others related to the protection of EU fundamental and international human rights principles.
7. Finally, the Fundamental Rights Office does not hold any information as to the cause or time of death of the migrants who did not survive their journey across the Mediterranean Sea.

Reporting Tools

Reporting Tools

Reporting Tools

Final conclusion – Proposals – Lessons learned

Operational Area

1. In view of information collected, the Fundamental Rights Office finds that Geo Barents (and GACS PV [REDACTED]) arrived on site to rescue the migrants approximately 2 hours after first detection from Frontex aerial asset in the Libyan SAR zone and following two Mayday calls broadcasted from FSA Heron 1. The Office concludes further that the boat was adrift, but with no information on people in the water, as reported initially by the Frontex asset. The Fundamental Rights Office further finds that the rescue was concluded with the disembarkation in a port of safety (Messina) [REDACTED].
2. The Fundamental Rights Office concludes that Frontex actors in [REDACTED] reacted promptly and in line with applicable legal framework and operational procedures contributing to the rescue of the migrants in concrete and imminent danger.
3. With the available information, the Fundamental Rights Office could not conclusively establish the condition of the migrants, or the overall duration of their journey at sea which could have impacted or led to the death of the 10 migrants on board. Moreover, the Fundamental Rights Office understands that the EMT does not hold any information on how relevant authorities coordinated and/or supported the SAR operation nor when they first learnt about the distress case (other than through Frontex). For this reason the Fundamental Rights Office is not in a position to comment on the nature or timeliness of their respective responses.

Reporting Tools

Against this backdrop, the Fundamental Rights Office recommend:

For Member States

1. For MRCCs to support SAR activities and respond in a timely manner to distress calls in order to ensure that rescue operations are promptly conducted in line with international human rights and refugee law.
2. For MRCCs to ensure flow of information and provide information in a transparent manner about search and rescue operations related to Frontex sightings and/or in which Frontex is involved to ensure a close coordination of aerial and surface vessel assets.

For Frontex:

1. To ensure flow of communication by requesting feedback and updated information regarding search and rescue operations it is involved to ensure that it contributes to the saving of lives in the most effective manner based on accurate information.
2. to continue to adjust flight routes and schedules in a flexible manner whenever lives are at stake allowing for FSA to assist in a prompt manner.

FINAL SIR REPORT

14577/2021 – SIR Cat. 1 – FSC Aerial Surveillance 2021

SI-Handler: Fundamental Rights Office

Key Points

Incident reported:

Alarm Phone alleged that the Libyan Coast Guard was shooting at migrants during a search and rescue operation in the Maltese Search and Rescue Region (SRR) on 24/11/2021.

Possible violation of fundamental rights enquired:

- Human dignity (Article 1 of the Charter of Fundamental Rights of the European Union);
- Right to life (Article 2 of the Charter of Fundamental Rights of the European Union)
- Right to integrity of the person (Article 3 of the Charter of Fundamental Rights of the European Union);
- Prohibition of inhuman or degrading treatment (Article 4 of the Charter of Fundamental Rights of the European Union, Article 7 of the International Covenant on Civil and Political Rights);
- Obligation to conduct rescue operations in accordance with international human rights standards and maritime law obligations, including disembarkation in a place of safety (SAR and SOLAS Conventions).

Party allegedly involved in the incident: Officers of the third country (Libya), Frontex Surveillance Aircraft (as observer).

Conclusion and impact:

The Fundamental Rights Office is aware of a migrant boat that was sighted by Frontex in the area where Alarm Phone reported the incident but was not able to assess whether the vessels are the same. Furthermore, as regards the migrant boat sighted by the Frontex Surveillance Aircraft, a revision of sighting and mission reports as well as exchange with respective Frontex Team Leaders and managers responsible for aerial surveillance made clear that the Frontex asset did not witness any Libyan intervention. For this reason, the occurrence of the incident could not be corroborated using internal data.

At the same time, the Fundamental Rights Office underlines that a similar incident (the Libyan Coast Guard shooting at migrants) was well documented in SIR 13489/2021 and expresses concern about the treatment of migrants during SAR by the former. Additionally, the Fundamental Rights Office is concerned about the safety of all rescued migrants upon disembarkation, considering the reporting by relevant IO and NGO on detention conditions in Libya. In this respect, the Fundamental Rights Office invites dialogue on better coordination of search and rescue (SAR) activities in Central Mediterranean region that takes into consideration that Libya cannot be considered a place of safety.

Description of the event - Timeline

Operational Area

On 24/11/2021 at 06.00 UTC, Heron 1 detected a blue wooden boat equipped with two outboard engines sailing at 5 knots in northern direction at position [REDACTED] (Libyan SAR zone). An estimate of more than 50 people were presumed on board the vessel (sighting number FSA [REDACTED]). The sea state at that point was 2.

[REDACTED] EMT informed the competent MRCCs of the sighting.

Reporting Tools

Reporting Tools

Operational Area

The same vessel was sighted again on 24/11/2021 at 08:20 UTC, at position [REDACTED] (Libyan SAR zone) heading north. At that time a Libyan PV was spotted 23 NM from the vessel.

Operational Area

A final update was gathered at 12:57 UTC: the blue wooden boat was detected mobile at position [REDACTED] (Maltese SAR) with the Libyan PV approximately 4 NM away, heading towards the migrant boat.

Operational Area

This last position was provided based mainly on the radar sensor while Heron 1 was flying in Libyan FIR, no visual confirmation was possible.

The Alarm Phone tweeted on 24/11/2021 at 15:36 UTC: 'Squared SOS, the so-called Libyan coastguard is shooting at a boat in distress in Maltese SAR zone! We were called by a group who said they are being chased & shot at by the so-called Libyan coastguard. We urge all authorities to order them to stop the fire & to put an end to this violence' The position indicated on the map joint to the message was the following: DD: 34.65, 12.617 – DMS: 34 38' 0", 12 37' 0"

In a follow up message on 24/11/2021 at 16:46 UTC, Alarm Phone tweeted: 'We lost contact to the boat & are worried about the situation. A relative told us there are 85 people on board. We don't know if EU authorities are trying to stop this attack by the sc Libyan coastguard. We called @Armed_Forces_MT & @guardiacostiera but they refuse to share info.'

At 24/11/2021, at 18:55 UTC, Frontex FSA team leader sent an enquiry to the Italian and Maltese interlocutors attaching the initial Alarm Phone tweet (from 15:36 UTC) and asking for information on the case.

On 24 /11/2021 at 20:12 UTC, Alarm Phone tweeted: 'We are worried about the 85 people who were attacked by a Libyan asset in #Malta SAR. We haven't had contact with them for 4 hours now and the #EU authorities @Armed_Forces_MT do not even pick up the phone. Migration is not a crime, shooting people is! #BlackLivesMatters'.

Reporting Tool

On 25/11/2021, at 08:40 (time zone unknown), the Maltese Liaison Officer to FX [REDACTED] replied that Maltese authorities did not have any information on this case and hence, could not comment on whether it happened or not.

On 25/11/2021 at 17:29 UTC Alarm Phone tweeted: 'Warning signal' Illegal pushback to #Libya from Malta SAR! We were told that after being shot by the so-called Libyan Coastguard 20nm within Malta SAR, the ~85 people were illegally forced back to #Libya! This is another violation on behalf of @Armed_Forces_MT! We will keep them accountable.

Reporting Tool

Sat 27/11/2021 02:04, Frontex Team Leader was informed by the Italian SAR expert that the Italian MRCC had closed the case of sighting [REDACTED] in their system given the last tweet of Alarm Phone (at 17:29 UTC) about the interception of a migrant vessel by the Libyan coast guard.

Furthermore, on 26/11/2021, replying to an enquiry by the Fundamental Rights Office, the Frontex Situational Centre stated that:

Reporting Tool

1. [REDACTED] does not have any info on that case from official sources and does not know whether it did happen or not.
2. If [the incident as reported by Alarm Phone] did happen and if the information was published near to real-time from the exact time when the shootings were fired, then there is the possibility that it occurred while Frontex Surveillance Aircraft was flying in Central Med but far from the position reported by Alarm Phone.
3. FSA didn't witness any shooting nearby the migrant boats spotted/monitored [reference to sighting [REDACTED]].

Reporting Tool

Finally, the Fundamental Rights Office takes note of the relative high number of sightings of 9 vessels by Heron 1 on 24/11/2021 requiring the aircraft to fly back and forth between them to provide updates.

Information collected – Contributors/Entities consulted – Follow-up

SIR 14577/2021 Cat. 1 was launched on 6 December 2021.

Assessment

The Fundamental Rights Office underlines that it was not possible to conclusively establish that the boat referred to by Alarm Phone and sighting [REDACTED] are the same. Reporting Tool

The Fundamental Rights Office reviewed sighting forms and the mission report of Heron 1 and confirms that the drone was not on-site and hence not monitoring any interception of the Libyan coast guard of migrant boat [REDACTED]. Furthermore, when Alarm Phone informed about allegations of the Libyan coast guard (15:36 UTC) shooting at migrants, the drone had already proceeded to other locations where it monitored another migrant boat in a different sector.

Reporting Tool

Conduct of the rescue by the Libyan authorities:

- Based on the information available the Fundamental Rights Office cannot establish with certainty that the Libyan Coast Guard officers used physical force amounting to inhuman or degrading treatment of migrants or put their lives at risk during the operation. This is due to a lack of video-footage to corroborate the statement provided by Alarm Phone.
- At the same time, the Fundamental Rights Office notes that abuse of migrants in form of excessive use of force by Libyan officers has been documented previously in SIRs 13489/2021, 12634/2022 and [REDACTED] giving rise to serious concern regarding the treatment of migrants by the Libyan Coast Guard during SAR operations.

Reporting Tool

SAR activities and considerations regarding disembarkation in a place of safety:

- The Fundamental Rights Office takes note of the timely sharing of information about the migrant boat by Frontex with all relevant MRCCs in the present case. It likewise notes that the initial classification of the sighted migrant boat and overall situation (overcrowded, far from the shoreline) triggered the notification to the competent MRCC, as formally required by the applicable procedures.
- The Fundamental Rights Office also notes that the MRCC responsible for the SAR region in which the rescued persons were recovered, in addition to ensuring their prompt assistance and coordination to protect the right to life of those onboard vessels in distress, is primarily responsible for arranging for a place of safety. Generally, identification of a place of safety in the context of SAR is an important safeguard of the principle of *non-refoulement*. According to international human rights and refugee law and IMO Guidelines on the Treatment of Persons Rescued at Sea (Resolution MSC.167(78)), disembarkation of rescued asylum-seekers and refugees in territories where their lives or freedoms would be threatened must be avoided.
- According to Article 80 of Regulation 1896/2019 also application to EU MS, in the performance of its tasks, the European Border and Coast Guard shall ensure that “in the performance of its tasks, no person is disembarked in, forced to enter, conducted to, or otherwise handed over or returned to the authorities of a country where there is, inter alia, a serious risk that he or she would be subjected to the death penalty, torture, persecution, or other inhuman or degrading treatment or punishment, or where his or her life or freedom would be threatened on account of his or her race, religion, nationality, sexual orientation, membership of a particular social group or political opinion”.
- The Fundamental Rights Office further notes numerous reports issued by international organisations including OHCHR, UNHCR, Council of Europe and Amnesty International which point to the fact that Libya cannot be considered as a safe country.

Final conclusion – Proposals – Lessons learned

In the context of:

1. allegations of abuse of migrants during rescue at sea by the Libyan authorities in the present SIR as well as documented in SIRs 13489/2021 (shooting at the migrant boat) and 12634/2022 and [REDACTED] (beating of migrants) ;
2. the need to balance several fundamental rights concerns during coordination of SAR activities (namely the right to life and identification of place of safety/principle of non-refoulement);
3. the involvement of Libya, even indirectly, in SAR operations in the Central Mediterranean, which is not considered a place of safety for the purposes of disembarking rescued persons according to international organisations and European Court of Human Rights case-law;

the Fundamental Rights Office considers that further discussion is needed to better coordinate SAR operations at sea in pre-frontier areas and the Central Med in particular, in order to minimize risks to fundamental rights of rescued migrants, in particular, where Frontex is involved.

Specifically, the Fundamental Rights Office recommends the following:

To Frontex

1. To continue providing SAR support in the Central Med using FSAs within the multipurpose aerial surveillance service;
2. For FSA to stay on site and continue monitoring, whenever possible, SAR operation conducted by the Libyan Coast Guard;
3. To promote a dialogue with EU Member States to ensure that rescue operations conducted in their own SAR zones are completed with disembarkation in a place of safety;
4. To strengthen communication with NGOs operating in the area with assets available for SAR activities;

To Member States' authorities

5. For EU MRCCs to support SAR activities in order to ensure that rescue operations are conducted in a manner that respects international human rights and refugee law and principles, including with regard to arranging for migrants' disembarkation in a place of safety.

ANNEX 5 – Final SI-Handler Report Template



Warsaw, 16/09/2022

FINAL SIR REPORT

SIR – 12318/2022

SI-Handler: Fundamental Rights Office

Key Points

Incident reported:

On 25/05/2022, Frontex Surveillance Aircraft team leaders (FSA Tls) diverted Heron 1 to an alleged shipwreck inside the Maltese SRR – Tunisian Territorial Waters based on information received from the Italian expert in EMT. Throughout the correspondence of the case, Maltese MRCC made clear that it had no duty to coordinate given the position inside the Tunisian Territorial Water with the Maltese Liaison Officer further insisting that a deployment of Heron 1 to the location would constitute a breach of the [REDACTED]. On-site, Heron 1 found the migrants in life rafts next to two NGO sailing boats but was soon asked to clear the area by Maltese Air Traffic Control (ATC) and the Maltese Armed Forces. Osprey 2 later returned to the location finding a Tunisian patrol vessel and the NGOs collaborating in rescuing the migrants eight (8) hours after Frontex had been alerted to the boat in distress and eleven (11) hours or more after Malta received a respective alert.

Modus Operandi (Cooperation with Member States)

Possible violation of fundamental rights enquired: Threat to right to life (Article 2 of the Charter of Fundamental Rights of the European Union), possible violations of human dignity (Article 1 of the Charter of Fundamental Rights of the European Union), and the prohibition of inhuman and degrading treatment (Article 4 of the Charter of Fundamental Rights of the European Union)

Party/assets allegedly involved in the incident: Participants in Frontex Multipurpose Aerial Surveillance (Maltese and Frontex officers), RCC Malta, MRCC Italy, Heron 1 ([REDACTED]), Osprey 2 ([REDACTED])

Number and type of technical equipment + Operational Area

Conclusion and impact:

The Fundamental Rights office acknowledges challenges related to the coordination of search and rescue in the location under scrutiny due to overlapping zones of state responsibilities but has underlined that such circumstances do not eliminate state authorities' obligation to support search and rescue and to cooperate, including through the exchange of relevant information in order to fulfil their positive obligation to protect lives. In present case, the Fundamental Rights Office finds that in at least in one instance, a request by the FSA Tls for an update on the case was not met with an answer by Maltese authorities.

Furthermore, the Fundamental Rights Office regrets that FSA Tls were actively discouraged from attending to the distress case by the Maltese liaison officer on the basis [REDACTED] that in the view of the Fundamental Rights Office poses challenges to the Agency's obligation to respect fundamental rights including the right to life.

Modus Operandi (Cooperation with Member States)

Description of the event - Timeline

The following timeline was established by the Frontex Surveillance Sector and supplemented with information extracted from correspondence received by the Frontex European Monitoring Team from different stakeholders.

24/05/2022, at 1750Z – MLT Liaison Officer asked for a possible early take-off with Osprey 2 from [REDACTED] Operational Area to obtain an update on this event that was inside the MLT SRR. MLT Liaison Officer was asked whether it was a SAR case which he negated. IT experts wanted to keep the take-off time of Osprey 2 due to other possible events. MLT Liaison Officer was offered early take-off with Osprey 3 from [REDACTED] which he rejected. Operational Area

Operational Area

Operational Area

At 2149Z, S/V Nadir reported to MRCC Rome / RCC Malta: They arrived at reported distress case at [REDACTED]. They found an overcrowded wooden boat of approx. 12 m length with approx. 110 people on board. The boat is unseaworthy, overcrowded and not able to manoeuvre. They report winds of 20 kt and a sea state of 3-4. They are providing first aid assistance but being a Yacht of only 18m, S/V Nadir cannot guarantee the safety of the people in distress for a longer period at sea. They urge addressees to send a bigger and more suitable vessel to assist all the people in distress and to provide medical assistance.

At 22:22Z, S/V Nadir to RCC Malta: *"The situation is urgent, as the wooden boat is totally overcrowded, water is coming in, conditions deteriorate (waves >1m, wind 20knts). The people are in direct risk of life. We expect you to organise immediate help. We as a small boat can not do more than to stay with the boat and hope it will not capsize or sink."*

On 25/05/2022,

Personal Data

At 01:04 LT [time zone unclear] SV Nadir to MRCC Rome and RCC MALTA: MAYDAY RELAY MAYDAY RELAY MAYDAY RELAY. THIS IS GERMAN SAILING VESSEL NADIR [REDACTED]. *"Dear Sir or Madam, we again asked for your help in the distress case described below. We contacted RCC Malta again, but they do not respond. Situation is deteriorating, the wooden boat makes more and more water with a high risk of sinking or capsizing, what would cost more than 100 lives."*

Operational Area

At 0054Z ■ Frontex Surveillance Aircraft Team Leaders (FSA TLs) diverted Heron 1 to position [REDACTED] (Maltese SRR – Tunisian Territorial Waters) for a migrant boat capsized with 150 POB based on information obtained by Italian experts/MRCC Italy. It is reported that FSA TLs assessed that there was no time to launch Osprey 2 or Osprey 3.

At 0100Z – FSA TLs got in contact with MRCC TUN via phone informing about the possible SAR and position of Heron 1 asking for instructions. MRCC TUN informed that they are sending a PV to the area from Sfax, ETA in 6 hrs.

Operational Area

At 0110Z – FSA TLs sent an email to RCC Malta (Maltese Liaison Officer in copy) informing them that Heron 1 was diverted to position [REDACTED] (Maltese SRR – Tunisian Territorial Waters) after having received information from the Italian SAR expert that a migrant boat with about 150 POB had capsized there. In the same email, the FSA TLs requested Maltese authorities to provide an update on the ongoing SAR event and enquired about their intentions for the drone.

At 0113Z – The Maltese Liaison Officer replied to the email referring to the [REDACTED] and location of the SAR event is inside Tunisian TTW concluding that "no SAR searches [REDACTED]". Furthermore the email refers to Heron 1's lack of capacity to search persons in the water during the night and that *"any action by your good self [REDACTED] will be taken as a breach of the above mentioned agreed notions between all involved stakeholders and will have severe repercussions in future relations"*. TL decided to await further instructions from MLT RCC or TUN RCC.

Modus Operandi
(Cooperation with
Member States)
3x

Operational Area

AT 0121Z – FSA TLs sent a message to EUnavformed Liaison Officer with content: as mentioned over phone we have a SAR case in pos. [REDACTED] capsized. Please assess whether there are EUNAVFORMED assets in the area with SAR capacity.

At 0128Z – FSA TLs called TUN authorities with information about Heron 1 position and asking for instructions.

AT 0130Z – FSA TLs called RCC Malta about the situation and position of Heron 1. They asked for instructions and if they received the email sent at 0110Z. MLT RCC had no instructions and stated that they would reply to email sent from [REDACTED]. Reporting Tools

At 0138Z – FSA TLs replied to MLT Liaison Officer's email informing that Heron 1 reached the point of interest awaiting instruction from RCC Malta. FSA TLs also informed that Heron 1 had been in contact with Maltese Air Traffic Control and that Tunisian RCC would dispatch a patrol vessel from SFAX with ETA in OA at 0700Z.

At 0138Z - MRCC Rome sent an email to RCC Malta and RCC Tunis (██████████ in copy) offering their assistance in case of need for the SAR case in subject. From the same email emerged that RCC Malta replied to NGO Nadir (MRCC Rome in copy) stating that *"the position given falls within Tunisian Territorial Seas where the area is regarded as sovereign territory of Tunisia. Hence for this reason you are kindly being requested to address the competent authority which is Tunisia"*. Furthermore, it emerged that at 0015Z, NGO ASTRAL has broadcast MAYDAY on channel 16 receive by Palermo Radio and shared with RCC Malta. It contains the information: "MIGRANTS BOATS IN CAPSIZE PEOPLE IN THE WATER".

At 0142Z – FSA TLs launched MAYDAY on Channel 16 through Heron 1.

At 0146Z – Heron 1 informed FSA TLs that they had to turn east due lack of clearance by Malta ATC.

At 0146Z – Heron 1 inform FSA TLs that they spotted the life rafts with 50+ POB.

At 0153Z – RCC Malta replied to FSA TLs' email stating: "As you should be well aware, the boat is inside Tunisian sovereign territorial waters, where Malta does neither enjoy jurisdiction nor any coordination rights or duties respectively. To this extent, please address the below email to the competent authority responsible for those waters. Meanwhile, we urge you to take further notice prior submitting such emails to national State authorities".

Reporting Tools

At 0208Z – FSA TLs sent sighting n. ██████████ to the Tunisian authorities (copying IT MRCC and MT RCC) reporting on the presence of life rafts with more than 50 people on board and two NGOs, ASTRAL and NADIR, nearby.

At 0209Z – Heron 1 inform FSA TLs that they had previously received ATC clearance from Malta radar.

At 0209Z – Heron 1 informed FSA TLs that had received several phone calls from the Armed Forces of Malta and Malta ATC Supervisor. ATC diverted Heron 1 eastbound to get clear of the area.

At 0237Z – FSA TLs sent the Sighting n. 196 – Update 1 addressed to Tunisian authorities (copying IT MRCC and MT RCC) reporting an update of situation ongoing and that Heron 1 is leaving the area on request from MLT ATC.

Operational Area

At 0523Z – Osprey 2 took off from ██████████ in direction of the incident.

At 0634Z – Osprey 2 reported from the location of the incident: NGO Astral and NGO Nadir on scene; rigid-hull inflatable boat (RHIB) dispatched; 50+ people in life raft; empty wooden boat on scene; unknown if people in water; patrol vessel approaching (from sw 17 nm far way). Osprey 2 resuming the pattern.

At 0847Z – Osprey 2 reported: Tunisian Patrol Vessel on Scene. Osprey 2 resuming the pattern.

At 0920z – Osprey 2 reported: OSP2 has listened radio communication (CH12) within PV and NGOs about the migrants refusal to be rescued by Tunisian PV.

The mission report of Osprey 2 further includes the following key development:

09:10Z – RHIB moves towards life raft.

09:20Z – RHIB was returned to patrol boat.

09:22Z – Patrol boat began to leave, migrants refused to be rescued.

09:47Z – Astral loading migrants, patrol boat RHIB assisting.

Operational Area

At 1049Z, Osprey 2 is quoted in sighting report (FSA sighting ██████████ - 25.05.2022 - UPDATE 5/FINAL): OSP2 has listened radio communication (CH12) within PV and NGOs about the Tunisian who had "given NGO authority to transport all migrants to Lampedusa." Tunisian RHIB seems helping NGOs to bring migrants on board Nadir and Astral. NGOs astral report on radio no more migrants on life rafts (86 POB on Astral – 22 on Nadir).

Information collected – Contributors/Entities consulted – Follow-up

The Fundamental Rights Office regrets that Maltese authorities failed to provide feedback on the detailed list of questions it submitted. Questions pertained, inter alia, to information obtained by state authorities, their assessment of the case and actions taken as well as their views on the role of Frontex Surveillance Aircrafts in search and rescue within the Maltese SAR zone.

Instead, Maltese authorities provided a brief statement explaining that *"SAR is a state competence. The case took place inside Tunisian territorial seas wherein Malta is not the appropriate and the competent authority [and hence] Malta was neither in coordination of the case"*.

The Fundamental Rights Office further takes notice of correspondence attached to a message received from the Italian MRCC which was sent to by Palermo Radio containing the following elements:

25/05/2022 00:29Z¹

To: RCC Malta, ITMRCC

Operational Area

"00.15UTC S/B ASTRAL REPORTED IN PSN [REDACTED] MIGRANTS BOATS IN CAPSIZE PEOPLE IN THE WATER S/B NADIR RECOVERING THE CASTAWYS; DISTRESS SITUATION"

The Fundamental Rights Office took note of the complexities and sensitivities pertaining to the location of the incident including bordering Flight Information Regions of Malta and Tunisia as well as the overlapping Maltese Search and Rescue Zone and Tunisian Territorial Waters.

The office studied flight logs and mission reports finding that Heron1 was instructed by the FSA TL to stay outside the Tunisian FIR and follow instructions of the Maltese Air Traffic Control several times. The crew confirmed and stated that it had obtained clearance from the former. Later on, it was reported that they were asked by Maltese ATC and the Maltese Armed Forces to clear the area. Moreover, the log mentions a complaint received by the crew from the Tunisian authorities, presumably Tunisian ATC, the details of which could not be established.

Finally, the FRO investigation team scrutinised the existing [REDACTED]

[REDACTED]. The Fundamental Rights Office did enquire under what circumstances Maltese authorities would consider requesting Frontex support but did not receive a reply.

Modus Operandi (Cooperation with Member States)

Assessment

General findings

The case under review, alerts by NGOs made credible that approximately 100 people were in distress at sea and that their lives were in immediate and concrete danger. Reports about the event suggest that the situation (both the seaworthiness and weather condition) deteriorated over time culminating in several Mayday calls. The Fundamental Right Office found that information provided to state authorities was accurate and consistent, including as regards the location of the incident, providing a solid basis for their assessment and actions.

Arrival of alerts

The Fundamental Rights Office finds that Maltese authorities were aware of the case by 24/05/2022 1750 UTC (time of Liaison Officer request), and received the first (documented) alert on 24/05/2022 21:49 UTC providing clear information of this being a distress case ("water is entering the boat"; "Nadir cannot guarantee the safety of the people in distress"). SOS messages kept arriving with the first (documented) Mayday likely to have reached RCC Malta at 0029 UTC.

¹ The email presented to the Fundamental Rights Office sent by PalermoRadio to RCC Malta and MRCC Italy is stamped 02:29 LT. As all stakeholder (sender and recipients) operated in time zones UTC + 0200 and the reported Mayday call reportedly stems from 0015 UTC, the Fundamental Rights Office considers likely that the email was sent on 00:29 UTC.

FSA TLs of the Frontex Surveillance Aerial Aircraft deployed in the region at the time of the incident first learnt about the distress call at around 0100 UTC on 25/05/2022 through the Italian experts in contact with the Italian MRCC present in the monitoring room at Frontex HQ.

Actions taken by stakeholders

The Fundamental Rights Office finds that logs and actions of FSA TLs displayed high reactivity diverting Heron 1 to the location of alleged shipwreck when they first learnt about the distress case. Moreover, the Fundamental Rights Office finds that FSA TLs ensured flow of information and – in addition to sending sighting reports to the standardised distribution list including the national authorities of neighbouring states – promptly liaised with a number of relevant stakeholders namely the Maltese RCC and Liaison Officer, Italian MRCC through Italian experts at Frontex, EU NAVFOR and the Tunisian MRCC via email and phone. A request for an update on the case sent to RCC Malta at 0110 UTC only minutes after team leaders were made aware of the case, to the knowledge of the Fundamental Rights Office, was not met with an answer.

Operational Area

The Fundamental Rights Office further notes that after leaving the location, FSA TLs directed Osprey 2 after its planned take-off at 05:30 UTC from [REDACTED] directly to the location of the incident. Approximately three hours passed between departure from the scene and take-off of Osprey 2. The Fundamental Rights Office was advised by Frontex Aerial Surveillance experts that the respective response time for a potential early take-off is [REDACTED], leading the Office to conclude that the follow up was conducted as fast as possible on Frontex Surveillance Sector end.

Number
and type of
technical equipment

During the incident and its correspondence, Maltese authorities were explicit vis-à-vis Nadir, Frontex and ITMRCC that they considered that they bore no responsibility or duties, no rights even, to coordinate the search and rescue. The Fundamental Rights Office does not hold any record of communication between the Maltese and Tunisian authorities, including no forwarding of alert messages received by Malta. The Fundamental Rights Office attempted to enquire about Maltese authorities' actions in this regard through outreach to them but did not receive a reply.

On Malta's obligation to support

The Fundamental Rights Office underlines that the SAR Convention foresees an obligation of the State Parties not only to assume responsibility whenever required but also to foster and ensure cooperation with neighbouring countries as well as provide assistance in their own search and rescue zone and whenever information have been received of persons in distress. Furthermore, The Office would like to draw attention to the statement of the Human Rights Committee (HRC) of the International Covenant on Civil and Political Rights according to which delay or failure to respond to distress call/situation constitutes a violation of the State's obligation to protect right to life².

The Fundamental Rights Office is aware that the vast Maltese search and rescue region overlaps with the Territorial Water of Tunisia which has sometimes created issues related to coordination, assumption of responsibility and assistance for SAR Operations. It is the position of the Fundamental Rights Office that Tunisian sovereign jurisdiction over its territorial water zone does not exclude neighbouring states' support to SAR Operations in said zone, given, in particular, that the SAR Convention explicitly encourages a practice of good cooperation between neighbouring countries. Therefore, Malta's obligation to provide SAR support within the limits of what is feasible remains applicable.

In particular, such support includes the sharing of relevant information. The Fundamental Rights Office underlines the importance of the closest practicable co-ordination between maritime and aerial services so as to provide for most effective and efficient search and rescue. For this reason, in general, the Fundamental Rights Office considers that state authorities' refusal to exchange on or not forwarding relevant information on SAR cases to those involved, including not to the authorities they claim are responsible for search and rescue, is inconsistent with their positive obligation to save lives. The Fundamental Rights Office regrets that Maltese authorities, when approached, refused to demonstrate that they ensured such flow of information.

On shortcomings of the framework for collaboration between Malta and Frontex

² CCPR: Failure of Italian authorities to respond promptly to distress calls from sinking vessel | European Database of Asylum Law (asylumlawdatabase.eu)

The Fundamental Rights Office underlines that reference to and conduct of SAR operations as contribution to saving life is one of the cornerstones of Frontex Regulation 2019/1896. Furthermore, the Frontex Multipurpose Aerial Surveillance service in Central Med operates under the umbrella of EUROSUR which equally foresees, as one of its purposes, support to saving lives. The Fundamental Rights Office is of the opinion that a [REDACTED] as matter of principle in an area where protection of right to life is constantly at stake poses challenges to the Agency's obligation to respect fundamental rights including the right to life.

Modus Operandi (Cooperation with Member States)

Such a contradiction manifested itself in the present in case with FSA TLs assisting in the distress case while facing pressures from the Maltese Liaison Officer to Frontex to refrain from doing so while referring to the limitations [REDACTED].

Modus Operandi (Cooperation with Member States)

Final conclusion – Proposals – Lessons learned

The Fundamental Rights office acknowledges challenges related to the coordination of search and rescue in overlapping zones of various responsibilities but has underlined that such circumstances do not eliminate state authorities' obligation to support search and rescue operations, including through the exchange of information with all the stakeholders involved including Frontex aerial asset. While the Fundamental Rights Office has limited visibility of actions by Maltese authorities, and even less of those of Tunisian authorities, it did identify three messages by the Maltese MRCC and Maltese Liaison Officer suggesting that there was no basis for Maltese involvement in the case. Specifically, the Office further established that when asked for information on the case at 0110 UTC by FSA TLs only minutes after they had learnt about the distress case, Maltese authorities did not provide such.

The present case has made clear Maltese authorities' stance not only in terms of its responsibilities related to search and rescue in the region belonging both to the Tunisian Territorial Waters and its search and rescue zone but regarding the limits to the use of Frontex Surveillance Aircraft [REDACTED].

Modus Operandi (Cooperation with Member States)

The Fundamental Rights Office further regrets that FSA TLs were actively discouraged from attending to the distress case by the Maltese liaison officer on the basis [REDACTED], in the view of the Fundamental Rights Office, poses challenges to the Agency's obligation to respect fundamental rights including the right to life. To the concern of the Fundamental Rights Office, [REDACTED]

Modus Operandi (Cooperation with Member States)
2x

[REDACTED] would contribute, inter alia, to more continuous monitoring of distress cases whenever fundamental rights are at risk.

Against the backdrop of the findings of this enquiry, the Fundamental Rights Office recommends the following:

To Frontex:

1. To offer to Malta support in search and rescue operations coordinated by Malta in the Central Mediterranean Sea including inside the Maltese Search and Rescue region when the Agency is aware that loss of life and protection of other Fundamental Rights are at stake;
2. To strengthen accountability and internal follow up by requesting information by state authorities on incidents it is involved in;
3. To clearly communicate and sensitise national partners to the Serious Incident Reporting framework applicable to all participants in Frontex activities including explicitly Frontex multipurpose aerial surveillance activities, and national authorities' role in supporting related investigations by the Fundamental Rights Office;

To Maltese Authorities:

1. To ensure flow of information and provide information in a transparent manner about search and rescue operations related to Frontex sightings and/or in which Frontex is involved, including in the context of a Serious Incident Procedure and enquiry by the Fundamental Rights Office.
2. To request Frontex support inside its search and rescue zone whenever necessary to save lives and when protection of other Fundamental Rights are at stake.



Serious Incident Report no. 12048/2022

Report date and time (UTC)	2022-05-18 15:04
Last modification date and time (UTC)	2022-08-03 14:38
Reporting entity/function	Fundamental Rights Office
SIR Status	Closed
Workflow Status	Processed
SIR Category	1 - Situations of potential violations of Fundamental Rights or international protection obligations
Subject	JO FSC Aerial Surveillance 2022 - Potential threat to right to life and potential inhuman or degrading treatment
Joint operation	FSC Aerial Surveillance 2022
JORA incident number	
Original source of information	[REDACTED] (Frontex) Text Removed - Reporting Tools
FX SI Handler	HoO.FRO
Frontex resources involved	Yes
Use of force	No
Incident dates (UTC)	2022-05-12 09:40
Location of the incident	
Latitude	[REDACTED] Text Removed - Sensitive operational information
Longitude	[REDACTED]
Location details	Maltese Search and Rescue area
Reference to the operational area	Yes
Type of resources / involvement	Frontex Surveillance Aircraft: Eagle 1
Dead persons	
Injured persons	
Missing persons	

Details

Text Removed - Reporting tools	On 12/05/2022 at 09:40 UTC, Eagle 1 spotted a blue wooden boat with 20+ migrants on board (overcrowded) adrift at [REDACTED] (reference: FSA [REDACTED]).	Text Removed - Sensitive operational information
Information/Allegations	The sighting report further contained the information that Eagle1 had been instructed by RCC Malta to contact the commercial vessel Ross Sea (approx. 30 NM away) and ask them to establish communication with RCC Malta. Ross Sea reportedly acknowledged these instructions. At 09:51 UTC, Eagle 1 reached bingo fuel and had to return to base. Correspondence obtained by the Italian MRCC includes a message by NGO MV Sea-Eye 4 declaring its intention to rescue the migrants with an estimated arrival	

on scene on 13/05/2022 at 08:00 local time. On 13/05/2022 at 15:26, Sea-Eye 4 tweeted pictures of the rescue of the migrants conducted in the dark. In its tweets, Sea-Eye 4 further alleged to have been in contact with the [REDACTED] of Ross Sea citing them to have allegedly said "RCC Malta told me to keep on monitoring. They asked me to just stay around and keep on monitoring from distance."

Personal data

Text Removed - Sensitive operational information

1. According to communication sent by the Italian coast guard, the Fundamental Rights Office learnt that reportedly already on 11/05/2022, at 17:58 UTC, they had received a call from a migrant via satellite phone who claimed to be on board a wooden boat with another 23 persons inside the Libyan search and rescue zone ([REDACTED]). It is not known to the Office when exactly the boat entered the Maltese search and rescue zone. Correspondence from the Italian coast guard further suggests that they received an updated location ([REDACTED]) from the same migrants on 12/05/2022 at 15:17 UTC.

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Text Removed - Sensitive operational information

2. The Fundamental Rights Office understands from vessel tracking analysis that Sea-Eye-4 arrived from NE direction to location [REDACTED] where it slowed down and performed a sharp turn returning in direction NE on 13/05/2022 at 02:03 UTC. The Fundamental Rights Office identified this as a possible moment when the rescue could have taken place.

3. The Fundamental Rights Office takes note of a Tweet by Alarm Phone on 12/05/2022 claiming that migrants had been at sea for 4 days and that they had run out of drinking water and food. The further claimed that "winds were getting stronger" (Frontex reported sea state 3 in sighting report). It further notes that Sea-Eye 4 who rescued the migrants stated on twitter on 13/05/2022 that migrants had been 6 days on the water with many being hypothermic.

As regards, its communication with the Maltese authorities, The Fundamental Rights Office takes note of the following statements:

1. Even though Eagle 1 sighted the boat adrift, it was only stationary for a short period of time, as is common when aircrafts circle above such boats. The boat thereafter proceeded with a speed of 5 Kts and was intercepted 90 miles north of the sighted position after having covered 250 nautical miles.
2. SAR coordination is a state competence. Maltese authorities monitor all cases in their search and rescue zone with cases evaluated and classified accordingly by the competent search and rescue authority as per applicable SAR convention.
3. Maltese authorities exercise duty of care in all cases and note that no forceful rescues can be conducted but that necessary measures will be taken to ensure safety which depend on the circumstances of the case. Considerations also include characteristics of the vessels on-site such as safety of crew, nature of cargo and limits of manoeuvre.
4. Allegations of boats sinking, being left adrift or hindering rescue are false.
5. Finally, Maltese authorities consider that the Fundamental Rights Office or Frontex do not have the right to demand feedback on issues that fall outside the Agency's mandate.

Measures/Actions taken

By launching a Serious Incident procedure, the Fundamental Rights Office intends to clarify the facts regarding the rescue of the migrants sighted in the Maltese search and rescue zone by Eagle 1 on 12/05/2022 at 09:40 UTC. The Fundamental Rights Office took note of the notable period of time that elapsed between the moment SOS messages were first received and when migrants were eventually rescued as well as allegations in relation to failure to act.

Therefore, the Fundamental Rights Office intends to enquire including through outreach to national authorities whether stakeholders involved have fulfilled their obligation to conduct timely search and rescue within the limits of what was feasible given the circumstances of this case.

Assessment

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Against the backdrop of information collected, the Fundamental Rights Office concludes the following:

1. Given reported numbers of migrants (24) and photographic evidence published by Sea-Eye 4 showing the same wooden boat, the Fundamental Rights Office considers that rescued migrants are the same as the ones sighted by Frontex ([REDACTED]). The Office further concludes that, given the photographs showing night-time and the timing of Frontex sighting and release