

## AMNESTY INTERNATIONAL BRIEFING

# CONTRIBUTION TO EUROPEAN OMBUDSMAN'S STRATEGIC INQUIRY 01/3/2023/MHZ - THE ROLE OF THE EUROPEAN BORDER AND COAST GUARD AGENCY (FRONTEX) IN THE CONTEXT OF SEARCH AND RESCUE OPERATIONS

## INTRODUCTION AND KEY FINDINGS

Amnesty International has long followed the work of Frontex, the European Border and Coast Guard Agency. It was a member of Frontex's Consultative Forum on Fundamental Rights, from its inception in 2012 until it concluded its membership at the end of 2022. Since 2015, Amnesty International has raised concerns over elements of the Agency's maritime operations in the Mediterranean and its involvement in search and rescue (SAR) activities.<sup>1</sup> Additional concerns have emerged and been echoed by the Consultative Forum.

A first set of concerns relates to the Agency's **aerial surveillance activities** in the central Mediterranean Sea, which involve cooperation with the Libyan Coast Guard to intercept and return refugees and other migrants back to Libya, where they are then exposed to prolonged arbitrary detention, torture and other ill-treatment, and a host of other serious violations. While the deployment of naval assets by the Agency has been minimal, and their direct involvement in actual rescues rare, since 2018 the Agency's aircrafts have played a key role in identifying the position of boats in the central Mediterranean and its notification to Libyan authorities.

Second, Amnesty International has raised questions over the **information available to Frontex and national authorities** ahead of multiple cases of shipwrecks in the Mediterranean, and their ability to prevent these losses of life. Third, both Amnesty International and the Consultative Forum have also expressed repeated concerns over the Agency's operations in countries adopting practices that are incompatible with European Union (EU) law on asylum and migration, urging it to take **swift action in cases of reported or alleged fundamental rights violations**.

Most recently, Amnesty International has investigated the **shipwreck of the *Adriana* off the coast of Pylos, Greece**, that took place on 13-14 June 2023 and caused the death of more than 600 people. Together with Human Rights Watch, the organization visited Greece in July 2023 to interview survivors, UN and international agencies, nongovernmental organisations, and representatives of the Hellenic Coast Guard and police. It also had several communication exchanges with Frontex between June and September 2023, to determine the circumstances of the shipwreck and steps taken toward accountability.

Amnesty International considers that Frontex could have taken more steps to verify the state of the *Adriana* and ensure the proper conduct of SAR operations, including by taking earlier and more proactive steps to dispatch its assets to the migrant boat and issuing a Mayday call. Our concerns extend to Frontex's assessment of situations of distress at sea, including in this case, and how this is reflected in its subsequent actions. We also draw attention to the discrepancies between Frontex's actions in this case – such as its brief monitoring of the *Adriana* – and the recommendations issued by several institutions regarding Frontex assets in SAR events. Lastly, we highlight Greece's request to dispatch the asset Frontex had offered for the *Adriana* to an incident south of Crete, in view of the previously recorded practice by Greek authorities of diverting Frontex assets from incidents that might raise fundamental rights concerns.

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<sup>1</sup> Amnesty International, 22 April 2015, "Europe's sinking shame: The failure to save refugees and migrants at sea". <https://www.amnesty.org/en/documents/eur03/1434/2015/en/>.

This contribution to the European Ombudsman's inquiry discusses these elements in turn. It is informed by this experience and builds on several Amnesty International reports that included an analysis of specific Frontex operations and activities in the Mediterranean.<sup>2</sup>

## I. FRONTEx'S COORDINATION ACTIVITIES AND INVOLVEMENT IN SEARCH AND RESCUE IN THE MEDITERRANEAN

### 1) FRONTEx INVOLVEMENT IN PULLBACK AND PUSHBACK OPERATIONS

As the Frontex Consultative Forum noted in its tenth annual report, released in June 2023 and covering 2022, serious fundamental rights concerns arise from Frontex's Multipurpose Aerial Surveillance (MAS) services.<sup>3</sup> These have expanded and become more sophisticated in scope and reach, with concerns that information gathered via aerial surveillance and provided to third countries may have contributed to violations of the principle of non-refoulement at various EU external borders.

In particular, Amnesty International's research findings have corroborated that **Frontex aerial assets and surveillance are routinely employed to identify the presence of vessels carrying refugees and other migrants at sea** – including well into the Libyan SAR Region – **and to immediately inform the Libyan authorities of their position**, leading to disembarkation in Libya.<sup>4</sup> These assets have operated since at least 2018. In May 2021, Frontex also began operating an unmanned drone over the Mediterranean to assist in such surveillance.

Nongovernmental organisations such as Sea-Watch International and Alarm Phone, and several independent investigations, have reported numerous instances in which Frontex planes appeared over the site of ships in distress shortly before the arrival of the Libyan Coast Guard.<sup>5</sup> The Office of the High Commissioner for Human Rights (OHCHR) has reported receiving information that appears to confirm that coordination and intelligence-sharing between EU and Libya SAR authorities “work to effectively “pull back” migrants to Libya from international waters, including from the Maltese SAR zone”.<sup>6</sup> The Frontex Consultative Forum notes that, as confirmed by Frontex, “in about 50% of the cases, sightings by Frontex have triggered search and rescue and/or interceptions by Libyan coastguards of migrants and refugees from international waters, leading to their disembarkation in Libya.”<sup>7</sup> On disembarkation, rescued persons often face arbitrary detention in inhumane conditions, torture, ill-treatment and other serious human rights abuses in Libya.<sup>8</sup>

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<sup>2</sup> Key reports include: Amnesty International, 22 April 2015, “Europe’s sinking shame: The failure to save refugees and migrants at sea”, <https://www.amnesty.org/en/documents/eur03/1434/2015/en/>; Amnesty International, 11 December 2017, “Libya’s dark web of collusion: Abuses against Europe-bound refugees and migrants”, <https://www.amnesty.org/en/documents/mde19/7561/2017/en/>; Amnesty International, 8 September 2020, “Malta: Waves of impunity. Malta’s Human Rights Violations and Europe’s Responsibilities in the Central Mediterranean”, <https://www.amnesty.org/en/latest/press-release/2020/09/malta-illegal-tactics-mar-another-year-of-suffering-in-central-mediterranean/>; Amnesty International, 24 September 2020, “Libya: ‘Between life and death’: Refugees and Migrants trapped in Libya’s cycle of abuse”, <https://www.amnesty.org/en/documents/mde19/3084/2020/en/>; Amnesty International, 15 July 2021, “Libya: ‘No one will look for you’: Forcibly returned from sea to abusive detention in Libya”, <https://www.amnesty.org/en/documents/mde19/4439/2021/en/>; Amnesty International, 15 July 2021, “Libya: ‘No one will look for you’: Forcibly returned from sea to abusive detention in Libya”, <https://www.amnesty.org/en/documents/mde19/4439/2021/en/>.

<sup>3</sup> Frontex Consultative Forum on Fundamental Rights, 16 June 2023, “Tenth Consultative Forum Annual Report 2022”, <https://prd.Frontex.europa.eu/document/tenth-consultative-forum-annual-report-2022/>.

<sup>4</sup> Amnesty International, 8 September 2020, “Malta: Waves of impunity. Malta’s Human Rights Violations and Europe’s Responsibilities in the Central Mediterranean”, <https://www.amnesty.org/en/latest/press-release/2020/09/malta-illegal-tactics-mar-another-year-of-suffering-in-central-mediterranean/>; Amnesty International, 15 July 2021, “Libya: ‘No one will look for you’: Forcibly returned from sea to abusive detention in Libya”, <https://www.amnesty.org/en/documents/mde19/4439/2021/en/>.

<sup>5</sup> Amnesty International, 15 July 2021, “Libya: ‘No one will look for you’: Forcibly returned from sea to abusive detention in Libya”, <https://www.amnesty.org/en/documents/mde19/4439/2021/en/>.

<sup>6</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), May 2021, ““Lethal Disregard”: Search and rescue and the protection of migrants in the central Mediterranean Sea”, <https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/OHCHR-thematic-report-SAR-protection-at-sea.pdf>.

<sup>7</sup> Frontex Consultative Forum on Fundamental Rights, 16 June 2023, “Tenth Consultative Forum Annual Report 2022”, <https://prd.Frontex.europa.eu/document/tenth-consultative-forum-annual-report-2022/>.

<sup>8</sup> Office of the High Commissioner for Human Rights (OHCHR), 27 March 2023, “Libya: Urgent action needed to remedy deteriorating human rights situation, UN Fact-Finding Mission warns in final report.”, <https://www.ohchr.org/en/press-releases/2023/03/libya-urgent-action-needed-remedy-deteriorating-human-rights-situation-un>.

Amnesty International has previously criticized the role played by Frontex in facilitating interceptions by the Libyan Coast Guard. In particular, Amnesty International has stressed that the **replacement of European ships with aerial assets deployed by Frontex is patently designed to circumvent European legal obligations toward people in distress at sea.**

In recent years, EU member states have largely withdrawn naval assets from the central Mediterranean as a means of avoiding SAR obligations, including the duty to disembark people in a place of safety (usually in Europe). Vessels previously patrolling the sea as part of EU operations, such as EUNAVFOR MED Operation Sophia, have been gradually moved away from areas where distress calls usually come from. Similarly, since February 2018, Frontex's joint operation Themis has continued to be active to support Italy with border control, surveillance and search and rescue in the central Mediterranean.<sup>9</sup> However, its ships have rarely been called to rescue people from the sea, likely because they were positioned close to Italian waters rather than in areas from where distress calls are most commonly launched.

In response to this criticism, Frontex remarked that its notification to relevant Maritime Rescue Coordination Centres (MRCCs), including Libyan authorities, of the position of boats spotted in distress by its airplanes aims to ensure prompt rescues in line with maritime law.<sup>10</sup>

However, Frontex has repeatedly failed to engage with Amnesty International's key concern regarding the Agency's responsibility to uphold key principles of international law which are binding on EU institutions and agencies – and entail the responsibility of the EU if breached through operations of its agencies – notably the principle of non-refoulement, which prohibits the transfer of any persons to a country where they are at risk of serious human rights violations.

As Libya cannot be regarded as a place of safety for the disembarkation of people rescued at sea,<sup>11</sup> Amnesty International considers that, in order to comply with relevant obligations, European governments and institutions participating in SAR operations in the central Mediterranean, including Frontex, must adopt specific measures to ensure disembarkations do not take place in Libya. This includes defining a clear mechanism, consistent with international law and standards, determining in which places of safety rescue vessels shall promptly disembark any people rescued in the Libyan SAR Region.<sup>12</sup>

The Frontex Consultative Forum recommended, in Annex III of its latest report, that Frontex review its MAS activities in the central Mediterranean in particular, to ensure accountability for any actions that may have represented a breach of the Agency's obligations under international and EU law, and to ensure that people rescued at sea following sightings by Frontex are promptly disembarked in a place of safety rather than in Libya.<sup>13</sup>

## 2) FRONTEx INVOLVEMENT IN PREVENTABLE DROWNINGS

National authorities and Frontex's response to incidents at sea raise concerns, particularly in incidents which resulted in deadly shipwrecks in recent years. Two examples are discussed below, in addition to the Pylos shipwreck in June 2023 in the final section.

### *SHIPWRECK IN CUTRO, 26 FEBRUARY 2023*

One such case is the 26 February 2023 shipwreck near Steccato di Cutro, in Italian territorial waters, which resulted in at least 94 deaths, including 35 children.<sup>14</sup> The shipwreck took place at about 04:30 local time on 26 February, metres away from the beach of Steccato di Cutro. A Frontex surveillance aircraft spotted the boat at around 22:26 on 25 February, in the

<sup>9</sup> Amnesty International, 8 September 2020, "Malta: Waves of impunity. Malta's Human Rights Violations and Europe's Responsibilities in the Central Mediterranean", <https://www.amnesty.org/en/latest/press-release/2020/09/malta-illegal-tactics-mar-another-year-of-suffering-in-central-mediterranean/>.

<sup>10</sup> Frontex - European Border and Coast Guard Agency, 13 October 2020, "Letter Reference SAM/8358/2020, Subject: Amnesty International reports: Waves of Impunity and Between life and death", [https://www.Frontex.europa.eu/assets/Images\\_News/2020/Frontex\\_responds\\_Amnesty\\_International\\_report.pdf](https://www.Frontex.europa.eu/assets/Images_News/2020/Frontex_responds_Amnesty_International_report.pdf).

<sup>11</sup> UN High Commissioner for Refugees (UNHCR), September 2018, "UNHCR Position on Returns to Libya (Update II)", <https://www.refworld.org/docid/5b8d02314.html>.

<sup>12</sup> Amnesty International, 16 June 2021, "Europe: Plan of Action - Twenty Steps to Protect People on the Move Along the Central Mediterranean Route (Index: EUR/01/4289/2021)", <https://www.amnesty.org/en/documents/eur01/4289/2021/en/>.

<sup>13</sup> Frontex Consultative Forum on Fundamental Rights, 16 June 2023, "Tenth Consultative Forum Annual Report 2022", <https://prd.Frontex.europa.eu/document/tenth-consultative-forum-annual-report-2022/>.

<sup>14</sup> Amnesty International, 17 March 2023, "Italy: Avoidable loss of life at sea calls for swift review of search and rescue procedures and visa policies", <https://www.amnesty.org/en/documents/eur30/6569/2023/en/>.

Italian SAR Region, and communicated the sighting to the competent Italian authorities. It indicated that the boat was floating well and only one person could be seen on the deck of the boat, but also that the thermal cameras onboard the airplane had given a plausible indication of the presence of people below deck, and that there were no visible lifejackets on the ship. While two speedboats of the Italian Guardia di Finanza went to search for the ship at about 02:20, they returned to the base at 03:30 alleging that the rough sea conditions did not allow them to continue the search.

Independent investigations carried out in the aftermath of the incident have revealed what information was available to both Frontex and member state authorities ahead of the shipwreck, shedding light on their ability to prevent it.<sup>15</sup> While the responsibility for the 26 February shipwreck in Italian territorial waters rests with Italian authorities and must be fully investigated, Amnesty International wrote to the Executive Director of Frontex, Mr Hans Leijten, to request that it also opens an investigation regarding the adequacy of information it provided to Italian authorities further to the boat sighting, and the lack of a Mayday being launched to unequivocally ensure a SAR response from the relevant authorities.<sup>16</sup> In his reply, the Executive Director of Frontex did not disclose whether a 'serious incident report' (SIR) had been initiated on this case, whether any investigation was ongoing, or which specific mitigating measures Frontex was planning to introduce in relation to aerial surveillance activities, based on recommendations issued by the Fundamental Rights Officer and the Consultative Forum on Fundamental Rights.

#### *'EASTER MONDAY PUSHBACK' BY MALTA TOWARDS LIBYA, 10-15 APRIL 2020*

On a previous instance on 15 April 2020, a group of 51 people were unlawfully returned to Tripoli after having been rescued in Malta's SAR Region by a Libyan-flagged vessel routinely docked in Malta.<sup>17</sup> A Frontex aircraft patrolling the area spotted boats in difficulty on 10 April and alerted maritime authorities in Italy, Libya, Malta and Tunisia. Yet, according to information available to Amnesty International, no rescue operation was initiated until the night between 13 and 14 April, when Italy and Malta sent out air reconnaissance flights. Eventually, Maltese authorities coordinated an operation which resulted in the unlawful returns to Libya on 15 April. According to survivors' reports, 12 people had already lost their lives while awaiting rescue.

For several days, both Frontex and states' maritime authorities were aware of the boat needing assistance, but a rescue was not launched, despite clear obligations under international and European law. Frontex confirmed that it informed the MRCCs of Italy, Malta, Libya and Tunisia in real time of the location of several boats in distress spotted by a Frontex surveillance aircraft, and that it did not receive any feedback from competent SAR authorities to the communicated sighting. While the primary responsibility to declare a situation of distress and coordinate rescue operations falls on the competent MRCC, as discussed in following sections, this does not relieve Frontex of certain responsibilities.<sup>18</sup>

Amnesty International asked the European Commission whether the Agency had initiated a SIR for failure by any of the MRCCs notified to take prompt action and ensure an immediate rescue, or whether it had otherwise reported this incident.<sup>19</sup> Given Frontex's obligation to guarantee the protection of fundamental rights in all its activities, any such failure by any of the MRCCs notified should have been duly reported to relevant stakeholders, whether through the SIR reporting mechanism or otherwise. However, both Frontex and the European Commission reiterated to Amnesty International that Frontex is not mandated to further follow up on the measures taken by the member states' authorities or question their inaction.

### **3) FAILURE TO TRIGGER ARTICLE 46 OF THE EUROPEAN BORDER AND COAST GUARD REGULATION IN RESPONSE TO ALLEGED OR REPORTED VIOLATIONS OF FUNDAMENTAL RIGHTS**

A third area of concern regards Frontex's failure to trigger Article 46 of Regulation (EU) 2019/1896 on the European Border and Coast Guard, which places on the Agency a responsibility to suspend, terminate or not launch activities when it

<sup>15</sup> Amnesty International, 2 June 2023, "Italy: New investigation reveals damning details about preventable drownings", <https://www.amnesty.org/en/latest/news/2023/06/italy-new-investigation-reveals-damning-details-about-preventable-drownings/>.

<sup>16</sup> Amnesty International, 17 March 2023, "Italy: Avoidable loss of life at sea calls for swift review of search and rescue procedures and visa policies", <https://www.amnesty.org/en/documents/eur30/6569/2023/en/>.

<sup>17</sup> Amnesty International, 8 September 2020. "Malta: Waves of impunity. Malta's Human Rights Violations and Europe's Responsibilities in the Central Mediterranean", <https://www.amnesty.org/en/latest/press-release/2020/09/malta-illegal-tactics-mar-another-year-of-suffering-in-central-mediterranean/>.

<sup>18</sup> See "Section II. Whether Frontex assessed the Adriana to be in a situation of distress, its communications to maritime authorities and failure to issue a Mayday" below.

<sup>19</sup> Amnesty International, 8 September 2020. "Malta: Waves of impunity. Malta's Human Rights Violations and Europe's Responsibilities in the Central Mediterranean", <https://www.amnesty.org/en/latest/press-release/2020/09/malta-illegal-tactics-mar-another-year-of-suffering-in-central-mediterranean/>.

considers that there are violations of fundamental rights or international protection obligations related to the activity concerned that are of a serious nature or are likely to persist. Amnesty International considers that the threshold for such an intervention has already been crossed in multiple situations, including in cases where human rights violations have taken place through non-assistance at sea in line with international obligations or other practices by states that are incompatible with EU law on asylum and migration. Amnesty International and the Frontex Consultative Forum have urged the Agency to take swift action, including using Article 46, in cases of reported or alleged fundamental rights violations.<sup>20</sup>

Beyond the instances described above, this also concerns allegations of Frontex involvement in unlawful returns from Greece,<sup>21</sup> as well as the failure to suspend or terminate operations in Lithuania and Latvia despite a persistent and explicit state policy of conducting unlawful collective expulsions across these countries' borders with Belarus. Amnesty International has urged Frontex to suspend its operations in all the above countries as a result.

In its 2022 report, the Consultative Forum notes that Article 46 of the European Border and Coast Guard Regulation “does not constitute solely an emergency tool to be applied when there is a high risk of fundamental rights violations.”<sup>22</sup> Rather, it calls for its application to be introduced as a default standard mechanism into Frontex planning, implementation and evaluation processes.

## II. ROLE OF FRONTEX IN THE *ADRIANA* SHIPWRECK OF 14 JUNE 2023

In the early hours of 14 June 2023, the fishing trawler “*Adriana*” sunk off the coast of Pylos, Greece, causing the death of over 600 people. A Frontex aircraft first sighted the *Adriana* at 12:47 EEST on 13 June.<sup>23</sup> Afterwards, Frontex offered to deploy a drone that was scheduled to patrol the Aegean Sea to the *Adriana* site. Greece asked the Agency to send the drone “to another search and rescue incident south off Crete with 80 people in danger”.<sup>24</sup> Research by Amnesty International (AI) and Human Rights Watch (HRW) based on testimonies from several of the 104 survivors of the Pylos shipwreck, suggest that the incident was caused by a Greek coast guard (HCG) boat towing the *Adriana*.<sup>25</sup> On 30 June, AI and HRW wrote to Mr Hans Leijtens, Executive Director of Frontex, to address the actions taken by the Agency before, during and after the incident. In our letter, we referred to Frontex’s public statement of 16 June 2023 and other public sources. Frontex replied to our request on 11 September 2023. While we welcome that Frontex opened a SIR into the shipwreck on 22 June,<sup>26</sup> concerns remain regarding various aspects of the Agency’s role in the events, which are detailed below.

### 1) FRONTEX’S KNOWLEDGE OF THE SITUATION OF THE *ADRIANA* AND TIMELINE OF ACTIONS TAKEN BY FRONTEX

In our 30 June communication, we requested a clarification of whether Frontex had first become aware of the situation of the *Adriana* with their sighting of 12:47 EEST and what actions the Agency had taken since becoming aware of the vessel. In their 11 September response, Frontex clarified that it first became aware of the *Adriana* in the early morning of 13 June, prior to their sighting of 12:47 EEST, having been cc-ed in a message from MRCC Rome to JRCC Piraeus, “about a fishing vessel with 750 migrants on board”.<sup>27</sup> Frontex stated that at the time a “Frontex aircraft [hereinafter a Frontex Surveillance Asset, FSA] was flying over the Ionian Sea”, and was directed to the *Adriana*, leading to the sighting of 12:47 EEST. Frontex stated that at the time, the *Adriana* was in the Greek SAR Region, in international waters. Frontex clarified that **the FSA monitored the *Adriana* for 10 minutes**, until it had to return to the base as it had run out of fuel. Frontex states that upon sighting the vessel, it immediately informed the Greek and the Italian authorities.<sup>28</sup>

<sup>20</sup> Frontex Consultative Forum on Fundamental Rights, 16 June 2023, “Tenth Consultative Forum Annual Report 2022”, <https://prd.Frontex.europa.eu/document/tenth-consultative-forum-annual-report-2022/>.

<sup>21</sup> Amnesty International, 23 June 2021, “Greece: Pushbacks and violence against refugees and migrants are de facto border policy”, <https://www.amnesty.org/en/latest/press-release/2021/06/greece-pushbacks-and-violence-against-refugees-and-migrants-are-de-facto-border-policy/>.

<sup>22</sup> Frontex Consultative Forum on Fundamental Rights, 16 June 2023, “Tenth Consultative Forum Annual Report 2022”, <https://prd.Frontex.europa.eu/document/tenth-consultative-forum-annual-report-2022/>.

<sup>23</sup> Frontex, Frontex statement following tragic shipwreck off Pylos, 16 June 2023, [www.Frontex.europa.eu/media-centre/news/news-release/Frontex-statement-following-tragic-shipwreck-off-pylos-dJ5l9p](http://www.Frontex.europa.eu/media-centre/news/news-release/Frontex-statement-following-tragic-shipwreck-off-pylos-dJ5l9p).

<sup>24</sup> Ibid.

<sup>25</sup> Amnesty International and Human Rights Watch, *Greece: Disparities in accounts of Pylos shipwreck underscore the need for human rights compliant inquiry*, 3 August 2023, [www.amnesty.org/en/latest/news/2023/08/greece-disparities-in-accounts-of-pylos-shipwreck-underscore-the-need-for-human-rights-compliant-inquiry/](http://www.amnesty.org/en/latest/news/2023/08/greece-disparities-in-accounts-of-pylos-shipwreck-underscore-the-need-for-human-rights-compliant-inquiry/)

<sup>26</sup> Politico, EU border agency to scrutinize events leading to Greek migrant shipwreck, 22 June 2023, [www.politico.eu/article/Frontex-greece-capsize-ship-probe-incident-hundreds-of-migrant-deaths/](http://www.politico.eu/article/Frontex-greece-capsize-ship-probe-incident-hundreds-of-migrant-deaths/).

<sup>27</sup> Frontex, written response of 11 September 2023, on file with Amnesty International.

<sup>28</sup> Ibid.

In our 30 June communication we asked to clarify when, according to Frontex's own public statement, the Agency "offered to provide additional assistance" to the situation of the *Adriana* with the early dispatch of a drone (hereinafter Remotely Piloted Aircraft System - RPAS) which was scheduled to patrol the Aegean that day, as the Agency indicated in their public statement. In their 11 September response, Frontex specified that the Agency had also offered to re-dispatch the aircraft from Italy. Frontex's response stated: "Frontex offered to Greek Authorities the possibility to anticipate the flight of the Frontex Remotely Piloted Aircraft System (RPAS) from Crete, scheduled for later in the evening, or to dispatch again the Frontex aircraft from Italy, although this was assigned for another operation. No response was received to this offer".<sup>29</sup>

**Frontex did not answer our question as to when it made the offer to dispatch the aircraft from Italy.** The Agency also responded vaguely to our questions on when the Greek authorities requested that the RPAS be sent to attend to the incident off the coast of Crete, saying that Greek authorities informed them of the incident "right before the scheduled patrol of the Frontex RPAS" which was scheduled for "later in the evening".<sup>30</sup>

According to the information available to Amnesty International, it appears that Frontex could have taken more steps to verify the state of the *Adriana*, ensure that the SAR operations were conducted promptly and in a way that minimized the risk of loss of life, including by dispatching its assets to the *Adriana* much earlier than directed to do so by the Greek authorities. The Agency's inaction raises numerous questions about the promptness of Frontex's efforts to seek information on the member states' response to SAR situations it has notified them of, the quality of information that is exchanged between the Agency and member states' authorities, and the chain of responsibility involved when Frontex has means to assist but member states decline to make use of them in life and death situations.

Information on the timeline of the Pylos shipwreck published by the organization Solomon,<sup>31</sup> and by the newspaper Der Spiegel,<sup>32</sup> combined with publicly available information and Frontex's letter of 11 September, raises question about the consistency of Frontex's actions in SAR cases and whether the Agency did all it could within its mandate to prevent this tragedy. Indeed, based on the information above, between 12:47 EEST on 13 June, at the time of the first sighting and brief (10 minutes) monitoring, and the shipwreck, Frontex did not carry out further actions in relation to the *Adriana*. According to Solomon, Frontex offered additional support to the Greek authorities at 19:35, 00:34 EEST (or at 18:35 and at 21:34 according to Der Spiegel)<sup>33</sup> and 00:52 EEST.<sup>34</sup> This, despite Frontex knowing since 12:47 EEST that the boat was overcrowded and lacking life vests and having been notified via email by the organization Alarm Phone (AP) about further distress indicators regarding the situation on the boat since at least 18:20 EEST.<sup>35</sup> Solomon research specifies that after Frontex's first offer, the Greek authorities asked the Agency to assist with the separate SAR incident south of Crete and that the RPAS spotted the concerned vessel at 22:50 EEST.<sup>36</sup> According to Frontex's letter on 11 September, the RPAS monitored the incident south of Crete "until a rescue vessel arrived on scene", which, according to Greek public sources, happened at approximately 02:30 EEST on 14 June.<sup>37</sup> Afterwards, "the RPAS was directed to the last known position of the [*Adriana*], arriving on scene when the rescue operation was already ongoing, finding no evidence of the fishing vessel".<sup>38</sup> We assume that such directions came from the Greek authorities. Based on Frontex's public statement, the RPAS arrived at the scene of the *Adriana* "at [07:05 EEST] in the morning".<sup>39</sup> Almost 15 hours passed between the first sighting of the *Adriana* and its capsizing at around 02:00 EEST of 14 June 2023.<sup>40</sup>

<sup>29</sup> Ibid.

<sup>30</sup> Ibid.

<sup>31</sup> According to Solomon's research, available at the time of Frontex's response of 11 September, after the first sighting of the *Adriana*, Frontex offered to the Greek authorities to dispatch its aircraft ("Eagle I") to the *Adriana* at 19:35 and at 00:34 EEST, and to dispatch its drone/RPAS "Heron" at 00:52, receiving no response. Solomon, *Under the unwatchful eye of the authorities' deactivated cameras: dying in the darkest depths of the Mediterranean*, 6 July 2023, at: [wearesolomon.com/mag/format/investigation/under-the-unwatchful-eye-of-the-authorities-deactivated-cameras-dying-in-the-darkest-depths-of-the-mediterranean/](https://wearesolomon.com/mag/format/investigation/under-the-unwatchful-eye-of-the-authorities-deactivated-cameras-dying-in-the-darkest-depths-of-the-mediterranean/)

<sup>32</sup> The newspaper Der Spiegel gives a different timeline than Solomon, stating that Frontex offered to dispatch the aircraft at 18:35 and at 21:34. The information is reportedly based on "an internal memo" obtained by Der Spiegel. Der Spiegel, *New accusations against Greek Coast Guard, "We thought they knew what they were doing"*, 30 June 2023, at: [www.spiegel.de/international/europe/new-accusations-against-the-greek-coast-guard-we-thought-they-knew-what-they-were-doing-a-5b7b93b8-9ca0-4889-b52a-e134bbd84f43](https://www.spiegel.de/international/europe/new-accusations-against-the-greek-coast-guard-we-thought-they-knew-what-they-were-doing-a-5b7b93b8-9ca0-4889-b52a-e134bbd84f43)

<sup>33</sup> Der Spiegel, *New accusations against Greek Coast Guard, "We thought they knew what they were doing"*, above.

<sup>34</sup> Solomon, *Under the unwatchful eye of the authorities' deactivated cameras*, in full above.

<sup>35</sup> Alarm Phone, *Europe's "shield": Hundreds presumed to have drowned off Greece*, 14 June 2023, <https://alarmphone.org/en/2023/06/14/europes-shield/>

<sup>36</sup> Ibid.

<sup>37</sup> Efsyn, *In Heraklion, the migrants who were rescued in the south of Crete*, 14 June 2023, [https://www.efsyn.gr/ellada/koinonia/393697\\_sto-irakleio-oi-metanastes-poy-diasothikan-sta-notia-tis-kritis](https://www.efsyn.gr/ellada/koinonia/393697_sto-irakleio-oi-metanastes-poy-diasothikan-sta-notia-tis-kritis)

<sup>38</sup> Frontex response of 11 September 2023, on file with Amnesty International.

<sup>39</sup> Frontex, *Frontex statement following tragic shipwreck off Pylos*, 16 June 2023.

<sup>40</sup> Frontex Fundamental Rights Office (FRO) has noted in a case where a long time passed between a FSA's sighting of a migrant boat and the rescue, that SAR requires "prompt coordination and assistance from all parties involved" to protect people's life and avoid loss of life. SIR report 10347/2022, of 27 October 2022, <https://fragdenstaat.de/dokumente/234191-imported-documents-1/?page=1>

## 2) WHETHER FRONTEx ASSESSED THE *ADRIANA* TO BE IN A SITUATION OF DISTRESS, ITS COMMUNICATIONS TO MARITIME AUTHORITIES AND FAILURE TO ISSUE A MAYDAY

While acknowledging that the primary responsibility to declare a situation of distress and coordinate rescue operations falls on the competent MRCC, this does not relieve Frontex of responsibility to (a) clearly indicate to the competent MRCC that there is an emergency situation that needs prompt SAR activities, and (b) mobilize its assets, or at least promptly and repeatedly offer to do so to the competent MRCC, whenever a boat appears to be in a situation of distress. In the context of the Pylos shipwreck, Frontex's responsibilities are of paramount importance in view of the concerns raised by several reputable stakeholders, including EU institutions and agencies, in relation to Greece's treatment of migrants and refugees. These include allegations of serious human rights violations by the authorities involved in maritime and other border patrol operations with migrants and refugees, including unlawful summary returns (pushbacks) and endangering lives of refugees and other migrants.<sup>41</sup>

Based on Frontex's own assessment of the *Adriana* in its public statement of 16 June, the vessel was "heavily overcrowded and was navigating at slow speed". In their 11 September response to AI and HRW, Frontex also confirmed that in their "sighting report" to Greece, they indicated the lack of visible life jackets and mentioned "that the boat had good buoyancy".

EU law defines the phases of "uncertainty, alert or distress" of boats at sea under Regulation (EU) No 656/2014, Article 9, specifying a vessel "shall be considered to be in a phase of distress in particular: (i) when positive information is received that a person or a vessel is in danger and in need of immediate assistance", among other situations. Further evaluation of a vessel's phase of emergency is outlined in the same rules based on the following criteria:

"(i) the existence of a request for assistance, although such a request shall not be the sole factor for determining the existence of a distress situation; (ii) the seaworthiness of the vessel and the likelihood that the vessel will not reach its final destination; (iii) the number of persons on board in relation to the type and condition of the vessel; (iv) the availability of necessary supplies such as fuel, water and food to reach a shore; (v) the presence of qualified crew and command of the vessel; (vi) the availability and capability of safety, navigation and communication equipment; (vii) the presence of persons on board in urgent need of medical assistance; (viii) the presence of deceased persons on board; (ix) the presence of pregnant women or of children on board; (x) the weather and sea conditions, including weather and marine forecasts".<sup>42</sup>

At the time of Frontex's sighting of the *Adriana* at 12:47 EEST, the Agency declaredly observed several indicators of distress, including the lack of life vests and the heavy overcrowding of the boat.<sup>43</sup> However, Frontex did not answer our questions as to whether the Agency informed the Greek authorities that it considered that the vessel was in distress based on its observations. Frontex responded that: it "does not designate the phase of emergency (uncertainty, alert, and distress) and does not bear the responsibility to organise and coordinate SAR operations. These responsibilities lie exclusively with the Rescue Coordination Centres".<sup>44</sup> Amnesty International notes that, while indeed Rescue Coordination Centres (RCCs) have a primary responsibility in designating situations of uncertainty, alert and distress, other actors – including Frontex – also maintain some relevant obligations.<sup>45</sup> Regulation 656/2014 provides that when Frontex units have reason to believe that they are facing a phase of uncertainty, alert or distress as regards a vessel or any person on board, not only they shall promptly transmit all available information to the relevant RCC and place themselves at its disposal, but while awaiting

<sup>41</sup> See among others: European Anti-Fraud Office (OLAF), Final Report on Frontex, available at: <https://fragdenstaat.de/dokumente/233972-olaf-final-report-on-Frontex/>. EU Parliament, LIBE Committee on Civil Liberties, Justice and Home Affairs, Frontex Scrutiny Working Group" (FSWG), Working Document - Report on the fact-finding investigation on Frontex concerning alleged fundamental rights violations, 14 July 2021, [www.statewatch.org/observatories/Frontex/Frontex-under-scrutiny-inquiries-and-investigations-november-2020-onwards/full-text-of-the-european-parliament-scrutiny-group-report-on-fundamental-rights-violations/](http://www.statewatch.org/observatories/Frontex/Frontex-under-scrutiny-inquiries-and-investigations-november-2020-onwards/full-text-of-the-european-parliament-scrutiny-group-report-on-fundamental-rights-violations/); Fundamental Rights and Legal Operational Aspects of Operations in the Aegean Sea, Final Report of the Frontex Management Board Working Group (FRALO report), 1 March 2021, [www.Frontex.europa.eu/assets/Key\\_Documents/MB\\_Documents/Agenda\\_Point\\_WG\\_FRaLO\\_final\\_report.pdf](http://www.Frontex.europa.eu/assets/Key_Documents/MB_Documents/Agenda_Point_WG_FRaLO_final_report.pdf)

<sup>42</sup> Regulation (EU) No 656/2014 of the European Parliament and of the Council of 15 May 2014 establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, Article 9.2(f), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014R0656>

<sup>43</sup> Ibid., Art.9.2(f)

<sup>44</sup> Frontex response of 11 September 2023, on file with Amnesty International.

<sup>45</sup> See: Regulation (EU) No 656/2014 and Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624, Articles 10.1(i), 36.2(e), 82.1 and 82.2.

instructions from the RCC, they also “shall take all appropriate measures to ensure the safety of the persons concerned”.<sup>46</sup> Even if persons on board were to refuse assistance, a unit must “continue to fulfil a duty of care by surveying the vessel and by taking any measure necessary for the safety of the persons concerned”, if the unit considers the vessel to be in a situation of uncertainty, alert or distress.<sup>47</sup> Furthermore, when the RCC responsible for the search and rescue region does not respond, the relevant unit must contact another RCC.<sup>48</sup>

Indeed, Frontex’s internal documents, including various SIRs, demonstrate that Frontex routinely classifies situations sighted by FSAs, which determines what type of notification the Agency triggers to member states.<sup>49</sup> Frontex’s own publication ‘Multipurpose Aerial Surveillance’ (MAS) states: “[...] [SAR] missions are performed **every time MAS detects a boat in distress**. Relevant authorities are notified and act to rescue the people on board”. This suggests that the Agency can consider an asset to be in distress, at least for the purposes of the notification it then issues to the relevant authorities.<sup>50</sup>

In Frontex’s own response to a letter by the European Commission on “Detection and notification of maritime emergencies”, the Agency indicates that, while unable to “declare a case as SAR”, Frontex FSAs can assess a situation as one of distress.<sup>51</sup> When asked: “what routines and procedures does Frontex use to determine the existence of a maritime emergency on the high seas requiring notification of a competent rescue coordination centre [...]”, under Frontex Aerial Surveillance Service, the Agency refers to the rules in Regulation 656/2014 on how to define a boat in distress, and states that “Frontex immediately shares information on distress situations at sea with the geographically competent and internationally recognised [...] (MRCC) as well as with the adjacent MRCCs acting in the operational area”, in line with international instruments.<sup>52</sup> Frontex states: “when FSAs *detect* [emphasis added] a distress situation at sea and the uncertainty - alert phases are exceeded and there is an imminent danger of human life loss (e.g. shipwreck, boat adrift, bad weather conditions etc.), Frontex Surveillance Aircrafts broadcast a MAYDAY alert, that is received by all vessels (military, law enforcement, merchant and NGO vessels) and aerial assets in the area/vicinity of the incident”.<sup>53</sup>

In its 2022 Annual Report, the Frontex Consultative Forum recommended that the Agency consider the “wider, timely use of mayday relay calls on emergency radio channels when vessels in distress requiring assistance are identified at sea [...]”.<sup>54</sup> **Regrettably, Frontex failed to address AI and HRW’s question as to whether the Agency considered to or issued a Mayday based on its assessments of the conditions of the *Adriana* and, if not, why.**

While the Frontex FSA only monitored the *Adriana* for around 10 minutes following its detection at 12:47 EEST, Frontex received further updates about the conditions of the *Adriana* by the NGO Alarm Phone (AP). AP was in contact with people on board as of 15:17 EEST and shared detailed information on their conditions via e-mail with several stakeholders, including Frontex, at 17:53 EEST.<sup>55</sup> In the email, AP described the *Adriana* as in distress, stating that women and children were on board, several people were “very sick” and that people said “they cannot go on” and “are urgently asking for help”. The Frontex Situation Centre replied to AP’s email at 18:20 EEST stating that the information had been relayed to the Greek authorities.<sup>56</sup>

Based on the information published by the Greek authorities, as of 13:50 EEST, the Greek MRCC had taken steps to verify the conditions on the *Adriana*, including by sending a helicopter to the boat, then directing merchant vessels in the area to check the situation on the boat, and mobilizing a HCG vessel based in Crete (vessel 920), which however only reached the

<sup>46</sup> Regulation (EU) No 656/2014, Art.9.2(g)

<sup>47</sup> Ibidem, Art.9.2(h)

<sup>48</sup> Ibidem, Art.9.2(i)

<sup>49</sup> See: Final SIR report – 10347/2022 – SIR Cat 1 FSC Aerial Surveillance 2022 – of 27 October 2022; Final SIR 12634/2022 – FSC Aerial surveillance 2022 of 2 August 2022. See: Compilation of SIRs concerning Frontex Aerial surveillance, SIR 12634/2022 of 2022 of 2 August 2022 <https://fragdenstaat.de/dokumente/234191-imported-documents-1/?page=1>

<sup>50</sup> Frontex, Multipurpose aerial surveillance – Frontex situation centre, Publications Office of the European Union, 2018, p.4, <https://data.europa.eu/doi/10.2819/393657>

<sup>51</sup> Communication from Frontex to Mr Matthias OEL, Director of Directorate B – Schengen, Borders & Visa DG HOME, European Commission, regarding the written question E-1755/2022 on “Detection and notification of maritime emergencies”:  
[www.statewatch.org/media/3427/07072022\\_transmission-letter-from-Frontex-to-com-regarding-written-question-e-1755-2022.pdf](http://www.statewatch.org/media/3427/07072022_transmission-letter-from-Frontex-to-com-regarding-written-question-e-1755-2022.pdf)

<sup>52</sup> Ibid. The document mentions: the International Convention for the Safety of Life at Sea (SOLAS), United Nations Convention on the Law of the Sea (UNCLOS), the International Convention on Maritime Search and Rescue (SAR Convention 1979) and the International Aeronautical and Maritime Search and Rescue (IAMSAR).

<sup>53</sup> Ibid.

<sup>54</sup> Frontex, Tenth annual report: Frontex Consultative Forum on Fundamental Rights 2022, p. 86, para. 12.  
<https://prd.Frontex.europa.eu/document/tenth-consultative-forum-annual-report-2022/>

<sup>55</sup> Alarm Phone, *Europe’s “shield”: Hundreds presumed to have drowned off Greece*, 14 June 2023. Updates on the state of *Adriana* were published by activist Nawal Soufi on social media, [https://twitter.com/nawal\\_soufi](https://twitter.com/nawal_soufi)

<sup>56</sup> Alarm Phone, *Europe’s “shield”: Hundreds presumed to have drowned off Greece*, 14 June 2023.



*Adriana* at 22:40 EEST time,<sup>57</sup> and, according to reports,<sup>58</sup> did not have enough capacity to rescue people on the boat. In a meeting with AI and HRW, on 13 July 2023, Greek Coast Guard (HCG) officials stated that the patrol vessel 920 was the only asset available in the case of the *Adriana*, as other assets were deployed in the Aegean.<sup>59</sup> Two merchant vessels directed by the Greek authorities to the *Adriana* did not provide rescue to the boat, and according to an investigation by the NGO Forensis, were released from their duty of rescue, despite the HCG vessel's lack of capacity.<sup>60</sup> The Greek authorities maintained that people on the *Adriana* refused rescue.<sup>61</sup> This is at odds with the description of the events on the boat shared by AP with the Greek authorities and Frontex, and with **survivors' testimonies to AI and HRW, who consistently said that passengers asked to be rescued**, and that they witnessed others on the boat plead for a rescue by satellite phone in the hours before their boat capsized.<sup>62</sup>

It is unclear whether Frontex took steps to assess whether the actions taken by the Greek MRCC were appropriate to the situation of the *Adriana* or to probe their assessment regarding the alleged wishes of people on board not to receive assistance, considering the conflicting information shared by AP on the issue at the time.<sup>63</sup>

### 3) REGARDING THE TERMINATION OF FRONTEX'S MONITORING OF THE SITUATION OF THE *ADRIANA*

Based on the information above, between 12:47 EEST, at the time of the first sighting and brief (10 minutes) monitoring, and the shipwreck, Frontex did not carry out further actions in relation to the *Adriana*. While we appreciate that force majeure – low fuel – may have made it necessary to cease monitoring the *Adriana* after the initial sighting, the failure of Frontex to proactively resume monitoring raises concerns regarding the effectiveness of its support to SAR operations and is at odds with recommendations by Frontex's Fundamental Rights Officer (FRO).

In several SIRs concerning SAR events where Frontex participated with FSAs, the FRO considered it a good practice that the FSA stayed on the spot to continue the monitoring of the situation. In SIR no. 12634/2022,<sup>64</sup> which concerned a FSA's sighting of a migrant boat initially in the Tunisian SAR Region, and then in the Libyan SAR Region in conditions comparable to the *Adriana*, as the boat was described as overcrowded, with good buoyancy, and with no life jackets, the FRO commended as good practice that the FSA “was instructed to stay and monitor the whole course of embarkation by the Libyan Coast guard, enabling gathering important evidence underlying this SIR”.<sup>65</sup>

Similarly, the 2021 Report on “Fundamental Rights and Legal Operational Aspects of Operations in the Aegean Sea” (FRALO report) acknowledges the importance of the continued monitoring of incidents by FSAs, stating that “Frontex surveillance flights or other Frontex assets could in future remain at the location of detected incidents to document border police measures until they have been completed, provided that operational activities are not weakened and no gap in the surveillance system occurs”.<sup>66</sup>

In its 2022 Annual Report, the Frontex Consultative Forum recommends considering the “assurance that, unless otherwise dictated by force majeure, Frontex assets remain at the location of detected incidents to document border police/ coast guard measures until completed, based on defined criteria established together with the FRO and regularly monitored”.<sup>67</sup> The Forum also issued detailed recommendations in relation to the fundamental rights implication of MAS, including to “annex the respective mitigating measures to each MAS activity to ensure compliance with the obligations set out in Article 80 of the Frontex Regulation”, regarding the principle of non-refoulement.<sup>68</sup> The report also recommends as “measures to

<sup>57</sup> Hellenic Coast Guard, *Continuation of information regarding a broad operation of search and rescue of foreigners in international waters in the maritime area of 47 n.m. southwest of Pylos*, 14 June 2023, <https://www.hcg.gr/el/drasthriothtes/synexeia-enhmerwshs-anaforika-me-eyreia-epixeirhsh-ereynas-kai-diaswshs-allodapwn-se-die8nh-ydata-sth-8alassia-perioxh-47-nm-notiodytika-pyloy/>

<sup>58</sup> Forensis, *The Pylos Shipwreck*, 7 July 2023, <https://counter-investigations.org/investigation/the-pylos-shipwreck>

<sup>59</sup> In person meeting between HRW and AI delegates with senior officers of the HCG, 13 July 2023, Athens.

<sup>60</sup> Forensis, *The Pylos Shipwreck*, 7 July 2023, <https://counter-investigations.org/investigation/the-pylos-shipwreck>

<sup>61</sup> Hellenic Coast Guard, *Continuation of information regarding a broad operation of [SAR]*, in full above.

<sup>62</sup> AI and HRW, *Greece: Disparities in accounts of Pylos shipwreck underscore the need for human rights compliant inquiry*, above.

<sup>63</sup> Reference should be made to Article 9 para. 2(h) of EU Regulation No 656/2014, above, regarding assets' obligations in the event of a refusal of rescue.

<sup>64</sup> SIR 12634/2022 of 2022 of 2 August 2022, Compilation of SIRs concerning Frontex Aerial surveillance: <https://fragdenstaat.de/dokumente/234191-imported-documents-1/?page=1>

<sup>65</sup> The FRO made similar considerations regarding the continued monitoring of incidents in SIR no 13489/2021, concerning an episode where Libyan Coast guard members shot at migrants in a SAR operation in the Libyan SRR.

<sup>66</sup> FRALO report, 1 March 2021, in full above.

<sup>67</sup> Frontex, Tenth annual report: Frontex Consultative Forum on Fundamental Rights 2022, p. 86.

<sup>68</sup> Frontex Tenth Consultative Forum Annual Report 2022, ANNEX III: Recommendation on the assessment of fundamental rights implications of Multipurpose Aerial Surveillance in Frontex activities.

be considered”, to ensure compliance with non-refoulement, “systemic adjustments, such as the parallel deployment of Frontex and Member States’ naval assets to ensure that people rescued at sea following sightings by Frontex officials may be disembarked in a place of safety”.<sup>69</sup> While the recommendations referred particularly to the case of disembarkation in Libya, it should also be applied to cases where fundamental rights concerns arise in relation to the treatment of people intercepted at sea by assets of a Member State.

In the situation of the *Adriana*, based on the timeline above, Frontex offered to dispatch two assets: its aircraft at 19:35 and at 00:34 EEST,<sup>70</sup> and its drone/RPAS at 00:52 EEST. After the Greek authorities’ request to assist with a separate incident in Crete, Frontex’s RPAS was deployed to the incident and spotted the concerned vessel at 22:50 EEST. As such, Frontex could have still made further efforts to mobilize its other asset, the aircraft from Italy, in support of the *Adriana*.

#### 4) REGARDING GREECE’S DIRECTION OF A FSA TO A DIFFERENT INCIDENT SOUTH OF CRETE

The practice whereby member state authorities, and particularly Greek authorities, divert Frontex assets away from incidents concerning migrant boats has been documented on several occasions.<sup>71</sup> Frontex’s own role in such incidents has been denounced, particularly in the OLAF report of 2021, which examined serious allegations against the Agency, including the “possible involvement in and/or cover-up of illegal pushbacks” in Greece. The report addresses how Frontex officials “decided to relocate a [FSA] to a different operational area of activity. One reason for doing so appears to have been to avoid witnessing incidents in the Aegean Sea with a potential [fundamental rights] component”.<sup>72</sup>

Based on the above, it becomes important to establish whether in the event around the Pylos incident, Frontex has duly taken these precedents into account, taking adequate steps to mitigate the risk that its assets are diverted from situations that might raise fundamental rights concerns.

Of relevance to the present case, in SIR 11095, addressed by the OLAF report and involving the towing of a migrant boat by an HCG vessel, the HCG Sea Border Expert had rejected the FSC Team Leader’s proposal to divert an aerial asset to monitor the situation.<sup>73</sup> The SIR 11934/2020, also examined by the OLAF report, presents important similarities to the situation of the *Adriana*. In the incident, a FSA sighted a migrant boat “being towed towards the [Turkish territorial waters] by a [HCG] asset”. In the OLAF report, a Frontex representative is cited stating that: “From a SAR perspective, the move makes no sense as towing an overcrowded fragile boat in the night towards the open sea is a situation that can seriously endanger the lives of the passengers. *Our aircraft was immediately instructed to fly away from the scene by the Hellenic Coastguards Expert* [emphasis added]. It was sent to patrol over Greek land and then back and forth 9 times between 2 way points where no activity was ever observed (...)”. It continues: “(...) the repetition of such kind of events becomes more and more difficult to deal with and to ‘take up’ with the involved staff. [...] Therefore, we need [...] act upon by e.g. communicating our position to GR authorities and/or withdraw aerial surveillance (which is not a perfect option as it opens the question what we do with our other assets under the JO and similar events)”.<sup>74</sup> The OLAF report also addressed how, following the incident in that SIR, Frontex took steps aimed at removing the FSA from the Aegean Sea, namely “to withdraw the aerial asset working under the Joint Operation (JO) POSEIDON SEA to be redeployed in other regions in central Mediterranean”.<sup>75</sup>

Discussing the same SIR, the FRALO report describes the request to the FSA “not to monitor the event and to continue the patrol in south-eastern direction” as “part of an established operational process used to ensure the effective surveillance of other areas which otherwise remain unattended during incidents”. It adds: “Maritime and aerial assets, both of the Host

<sup>69</sup> Frontex Tenth Consultative Forum Annual Report 2022, ANNEX III: Recommendation on the assessment of fundamental rights implications of Multipurpose Aerial Surveillance in Frontex activities.

<sup>70</sup> Or at 18:35 and at 21:34 according to Der Spiegel, as above.

<sup>71</sup> Open Democracy, Where was Frontex when 600 people died in the Med?, 27 September 2023, [www.opendemocracy.net/en/beyond-trafficking-and-slavery/frontex-greece-coastguard-pylos-adriana-shipwreck-600-dead-mediterranean](https://www.opendemocracy.net/en/beyond-trafficking-and-slavery/frontex-greece-coastguard-pylos-adriana-shipwreck-600-dead-mediterranean)

<sup>72</sup> OLAF Report, p. 3, at: <https://fragdenstaat.de/dokumente/233972-olaf-final-report-on-frontex/>. Also, the Frontex Scrutiny Working Group” (FSWG) report observed that the division of responsibilities between the host Member State and Frontex gave rise to issues of fundamental rights compliance, noting: “the principle of working under instructions of the host Member States can hinder the capacity of Frontex to fulfil its fundamental rights obligations. This was the case when Frontex was ordered to leave or not to enter a place in the operational area where a risk of fundamental rights violations could be expected”.

<sup>73</sup> Frontex Serious incident report no. 11095/2020, at: <https://fragdenstaat.de/en/documents/8932-11095/>

<sup>74</sup> OLAF Report p. 26-27.

<sup>75</sup> OLAF Report, p. 30

Member State or Participating Member State may be cleared to continue their patrol in cases as soon as appropriate capacities are able to respond to an incident".<sup>76</sup>

In the case of the *Adriana*, however, these considerations may not be applicable. Assuming the accuracy of the timeline provided by Solomon, the incident in south Crete, which the Greek authorities directed the FSA to monitor, only occurred after Frontex's first offer to deploy its aircraft to the *Adriana* at 19:35 EEST on 13 June (or at 18:35 and at 21:34 according to Der Spiegel). There seem to be no grounds for Frontex's failure to take earlier and further steps to assist the *Adriana* between the first sighting of 12:47 EEST, and 19:35 EEST (or at 18:35 and at 21:34 according to Der Spiegel), especially as Frontex had become aware of concerning information about the situation of people on board from AP's notification. Also, as noted above, Frontex could have still made further efforts to mobilize the aircraft from Italy, since only the drone was deployed in the SAR incident south of Crete.

#### **5) AS TO WHETHER FRONTEx COULD HAVE DISPATCHED OTHER ASSETS TO RESPOND TO THE SITUATION OF THE ADRIANA, INCLUDING MARINE ASSET.**

In our request of 30 June, we asked what Frontex assets are specifically assigned to Greece, where these assets were at the time of the 12:47 EEST aerial sighting and, if deployment was possible, why Frontex decided not to do so. We also asked Frontex to clarify whether it would have had capacity to monitor both the incident that occurred off Crete and the Pylos incident and, if so, why it decided not to monitor both. In its response, Frontex clarified that the location of the Pylos incident "was outside of the operational area of the JO Poseidon and the average distance from the deployed assets was around 350 NM", and that based on the assets concerned, it would have taken more than one day to cover the distance. The Agency also noted that it "is not independently deciding on the deployment of assets", and that "JRCC Piraeus is the [SAR] coordinating authority in Greek Flight Information Region and decides which vessel is more appropriate for a large-scale SAR operation".<sup>77</sup>

#### **6) REGARDING AERIAL AND SATELLITE IMAGERY OF THE *ADRIANA* ACQUIRED BY FRONTEx AND OTHERS**

Frontex failed to address our questions on whether satellites or drones of the EUROSUR system were operational in the area where the *Adriana* was sailing. A request of the same content submitted by the organization "Homo Digitalis" was recently submitted through a Public Access to Document request, asking if EUROSUR system gathered information about the *Adriana* since 9 June.<sup>78</sup>

#### **7) REGARDING THE REPORTING REQUIREMENT OF ASSETS FINANCED OR CO-FINANCED BY FRONTEx**

Finally, according to Solomon research, the Hellenic Coast Guard vessel 920 (ΠΠΛΣ-290), which intervened in the situation of the *Adriana*, was significantly co-financed (90%) through EU funding through an action labelled "Equipment to be made available to the European Border and Coast Guard Agency (FRONTEx)".<sup>79</sup> According to the proposals outlined in the FRALO report, "If feasible, all actions taken by [...] Frontex co-financed assets – in scope of Regulation (EU) 656/2014 – should be documented by video consistently."<sup>80</sup> It will be important to verify if Frontex has taken steps, throughout the events and including as part of the ongoing SIR, to assess whether the Greek authorities have complied with this principle in this incident.

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<sup>76</sup> Fralo report, p. 10.

<sup>77</sup> Frontex response of 11 September 2023, on file with Amnesty International.

<sup>78</sup> [https://www.asktheeu.org/en/request/information\\_collected\\_by\\_eurosur#incoming-48091](https://www.asktheeu.org/en/request/information_collected_by_eurosur#incoming-48091)

<sup>79</sup> See: "MiGRation & Borders Funds Review", September 2021, at: YMA\_2021\_Magazine\_T01.pdf (migration.gov.gr) and Solomon, Under the unwatchful eye of the authorities' deactivated cameras, above.

<sup>80</sup> FRALO report, p. 17. Also: Solomon, Under the unwatchful eye of the authorities' deactivated cameras, in full above.