



## 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]). 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.	Text Removed - Sensitive operational information
Information/Allegations	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	

	<p>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 [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."</p>
Text Removed - Sensitive operational information	<p>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.</p>
Text Removed - Sensitive operational information	
Text Removed - Sensitive operational information	<p>2. The Fundamental Rights Office understands from vessel tracking analysis that Sca-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.</p> <p>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.</p>
	<p>As regards, its communication with the Maltese authorities, The Fundamental Rights Office takes note of the following statements:</p> <ol style="list-style-type: none"> <li>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.</li> <li>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.</li> <li>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.</li> <li>4. Allegations of boats sinking, being left adrift or hindering rescue are false.</li> <li>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.</li> </ol>
Measures/Actions taken	<p>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.</p> <p>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.</p>
Assessment Text Removed - Reporting tools	<p>Against the backdrop of information collected, the Fundamental Rights Office concludes the following:</p> <ol style="list-style-type: none"> <li>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</li> </ol>

	<p>of said photos, the rescue took place in the night between 12/05/2022 - 13/05/2022.</p> <p>2. Information provided by Maltese authorities and vessel tracking data are consistent in suggesting that the migrants encountered Sea-Eye 4 north of the place of Frontex sighting. The distance between the Frontex sighting location and location of Sea-Eye 4 U-turn amounts to approximately 70 nautical miles in NW direction whereas Maltese authorities have claimed that migrants were rescued 90 miles northwards after having covered 250 nautical miles since the beginning of their journey. Mission reports and briefings from the concerned area and period, analysed as part of fact-finding, document wind and currents mostly from N/NE/NW. Such weather conditions would have pushed the migrant boat south. The Fundamental Rights Office therefore excludes the possibility that the boat drifted all the way from the point of sighting to the point of rescue. Instead, it can be concluded that the boat was, at least partially, mobile moving to the point of eventual rescue, which is a finding in line with the explanation provided by Maltese authorities.</p> <p>3. The Fundamental Rights Office established that the migrants have been at sea already on 11/05/2022, at 17:58 UTC, when they contacted the Italian MRCC, i.e. more than two days prior to their eventual rescue. It is, at the same time, not in a position to confirm the overall duration of the migrants' journey at sea, or their lack of water/food supplies as alleged by Alarm Phone. In general, the 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.</p> <p>4. The Fundamental Rights Office regrets that Maltese authorities did not provide any detailed information on initial alert, their assessment and actions taken with regard to the case of migrant boat or on timelines and locations. While outreach by Maltese authorities to the Frontex Surveillance Aircraft and, as alleged by Sea-Eye, their communication with the commercial vessel points to a certain level of coordination, no further details on such activities were obtained. The Maltese authorities did mention their dedication to ensuring safety, including where rescue is not possible, but specifically, did not elaborate further on the role of the commercial vessel Ross Sea, the instructions provided to it, or possible coordination with surface assets available to support the SAR operation including the NGO Sea-Eye 4 to ensure that the rescue was conducted without undue delay.</p>
Final outcome	<p>In view of information collected, the Fundamental Rights Office finds that migrants were rescued by Sea-Eye 4 in the night between 12/05/2022 - 13/05/2022 ten hours or more after sighted by Frontex, and two days after being first located by the Italian MRCC. The Office concludes further that the boat was not adrift, as reported initially, but at least partially mobile after it was first detected by the Frontex Surveillance Aircraft.</p> <p>At the same time, the Fundamental Rights Office was not in a position to assess the conditions of the migrants or conclusively establish the overall duration of their journey at sea. Therefore, the Office cannot comment in detail on the urgency of the rescue. However, it would like to point out that in general, national authorities should assess not only the condition of migrants' vessel but their health as much as possible, the time necessary to reach the migrant boat by the entity conducting the rescue operation, information already available on the time spent on water and any other factor indicating the need for a prompt intervention to save lives.</p> <p>Finally, the Office would consider in general that withholding assistance to a boat that has been in water already for a considerable number of hours or days not only puts the lives of migrants in danger but could amount to a case of inhuman and/or degrading treatment and violation of human dignity.</p> <p>Against this backdrop, the Fundamental Rights Office issues the following</p>

	<p>recommendations:</p> <p>To Frontex:</p> <ol style="list-style-type: none"><li>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;</li><li>2. 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;</li><li>3. To engage in a dialogue on definitions of vessels in distress and criteria of references to classify when a vessel requires prompt intervention to be rescued.</li></ol> <p>To Maltese Authorities:</p> <ol style="list-style-type: none"><li>1. To provide information in a transparent manner about search and rescue operations based on or correlating with Frontex sightings, including in particular in the context of a Serious Incident Procedure and enquiry by the Fundamental Rights Office.</li><li>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.</li></ol>
Personal Data	