

Addressed to:
Emily O'Reilly
European Ombudsman

Brussels, 13th October 2023

**Subject: Answer to the letter from the European Ombudsman's office regarding strategy enquiry
OI/3/2023/MHZ**

Dear European Ombudsman, dear Madam,

I would like to thank you for contacting me and involving SOLIDAR in this call for input into your strategic enquiry. I am happy to submit a contribution, that you can see attached.

As a preliminary remark to the lecture of this contribution, I wish to mention that neither SOLIDAR's Secretariat nor its membership has direct experience in monitoring Frontex' activities or performing Search and Rescue. This contribution represents the views of SOLIDAR members and close partners, based on secondary data, on how search and rescue should work and on what an EU governance of migration and asylum that is based on rights and focuses on protection, would look like. Please note that at the end, we suggest a few organisations to contact for more information on search and rescue, in addition to all the organisations already consulted.

I agree to the publication of this contribution.

SOLIDAR remains available to provide further information on this enquiry or any related topic.

Yours sincerely,



Secretary General, for SOLIDAR

SOLIDAR's contribution to the Call for input into the European Ombudsman's strategic inquiry OI/3/2023/MHZ concerning the role of the European Border and Coast Guard Agency (Frontex) in the context of search and rescue (SAR) operations

Introductory remarks: SOLIDAR is a European and worldwide network of over 50 Civil Society organisations striving to advance social justice through a just transition in Europe and worldwide. Neither in its Secretariat nor within its membership does it have direct experience monitoring Frontex' activities or performing Search and Rescue. This contribution represents the views of SOLIDAR members and close partners, based on secondary data, on how search and rescue should work and on what an EU governance of migration and asylum that is based on rights and focuses on protection, would look like.

The Ombudsman has asked SOLIDAR to share its expertise and experience related to:

- 1. Frontex's coordination activities in three specific joint maritime operations in the Mediterranean (Operation Themis in the central Mediterranean, Operation Poseidon in the eastern Mediterranean, and Operation, Indalo-Minerva, which covers the western Mediterranean route between Spain and Morocco).**

SOLIDAR does not have members directly involved in monitoring Frontex' activities under these operations.

- 2. The Adriana shipwreck of 14 June 2023, specifically Frontex's role**

SOLIDAR does not have members directly involved in monitoring Frontex' activities, but we recommend reading this article from the European Council on Refugees and Exiles on the Adriana shipwreck and ensuing investigations.¹ It compiles some independent media reports and investigations which seem to indicate Frontex was aware of the presence of an overcrowded boat in Greece's Search and Rescue zone in a timely manner that could have allowed to rescue people; that it did warn the Hellenic Coast Guard about it; that despite this, neither the agency nor the Greek authorities intervened in time.

¹ European Council on Refugees and Exiles (ECRE), "Greece: One Month on from Pylos Shipwreck Government Deflects, Media Investigates and Frontex Contemplates", 14th July 2023. <https://ecre.org/greece-one-month-on-from-pylos-shipwreck-government-deflects-media-investigate-and-frontex-contemplates/>

Additionally, another Lighthouse report highlights that Italy and Frontex had key information that could have prevented the Cutro shipwreck of February 2023 and the loss of so many lives, and not only did they not act on it, they also covered it up after the tragedy.²

The European Anti-Fraud Office, OLAF, has allegedly found Frontex involved in covering migrant collective expulsions ('pushbacks') from Greece to Turkey.³

Organisations Human Rights Watch and Borders Forensics have also highlighted Frontex's air surveillance's role in facilitating interceptions and returns to Libya (which can be qualified a pushback, given the known risks for migrants and especially Sub-Saharan migrants in Libya) with the assistance of the Libyan Coast Guard.⁴

As regards these allegations of violation, Frontex like any other EU agency, should be held accountable for human rights violations occurring during their operations. The European Parliament and its Frontex Scrutiny Working Group must be involved at all steps of this accountability monitoring.

3. Frontex's involvement (or potential for further involvement) in SAR operations

The EU and its agencies, including Frontex, have no mandate to carry out Search and Rescue (SAR) operations, as this is a competence of Member States. However, Frontex has a mandatory role to provide technical and operational support to SAR operations, carried out by both EU and non-EU countries as per Regulation (EU) 2016/1624. SAR is an objective in each joint maritime operation. In accordance with this, Frontex ships are always equipped and ready to provide this support to SAR.

Since 2014, Frontex's mandate has been on an expanding trend. Just last year in November 2022, the European Commission in its Central Mediterranean Action Plan recommended increasing Frontex's role in SAR activities in the central Mediterranean.⁵

Official Council of the EU figures seem to indicate high numbers of lives saved at sea since 2015 when Frontex started its activities.⁶ However, what these figures do not show is that **Frontex's surveillance activities may not lead to people being rescued and disembarked safely in a European harbour, but to**

² InfoMigrants, "Investigation reveals Frontex involved in Cutro shipwreck cover-up", 2nd June 2023.

<https://www.infomigrants.net/en/post/49384/investigation-reveals-frontex-involved-in-cutro-shipwreck-coverup>

³ AFP & Euronews, "Leaked report finds Frontex 'covered up' illegal migrant pushbacks by Greek authorities", 29th July 2023. <https://www.euronews.com/my-europe/2022/07/29/leaked-report-finds-frontex-covered-up-illegal-migrant-pushbacks-by-greek-authorities>

⁴ Human Rights Watch, "EU: Frontex Complicit in Abuse in Libya - Aerial Surveillance Is Enabling Interceptions, Return of Migrants to Harm", 12th December 2022. <https://www.hrw.org/news/2022/12/12/eu-frontex-complicit-abuse-libya>

⁵ European Commission, "Migration routes: Commission proposes Action Plan for Central Mediterranean to address immediate challenges", European Commission press corner, 21st November 2022. https://ec.europa.eu/commission/presscorner/detail/en/IP_22_7068

⁶ Council of the European Union, "Saving lives at sea and fighting migrant smuggling", last reviewed on 4th October 2023. <https://www.consilium.europa.eu/en/policies/eu-migration-policy/saving-lives-sea/>

people being intercepted by coast guards and returned to third countries where they may face abuse – such as Libya (see example above documented by HRW and Borders Forensics).

In addition, **the expansion of Frontex’ mandate has been unfolding in parallel with increased criminalisation of civilian humanitarian assistance to migrants, refugees and asylum seekers.** SAR CSOs are playing a major humanitarian role of saving lives in the Mediterranean, especially since the cancellation of the Mare Nostrum operation by the Italian government in 2014, as they fill the gaps left by States’ disengagement in Search and Rescue. This criminalisation, to which States like Italy or Greece have engaged, has the direct consequence to impede the saving of lives at sea. It is telling that a few days before the shipwreck off the Calabrian coast, which cost over 80 people their life the past February, civilian search and rescue ship Geo Barents, operated by Doctors Without Borders, was immobilised and the operating team detained by Italian authorities. This was pursuant to legislation passed by the Italian Parliament that same month to add constraints on civilian search and rescue activities in the Central Mediterranean.

For as long as the EU keeps a closed borders approach, it is crucial to establish and properly fund an EU search-and-rescue programme with a mandate to save lives at the critical points of crossing of the EU’s external borders, in particular in the Mediterranean sea but also dangerous land borders (forest or mountain areas, etc). Criminalisation of civil society SAR operations must cease. If this autonomous SAR mandate is handed to Frontex, it is crucial that Civil Society be part of these discussions on Frontex’ mandate, for instance through Frontex’ Consultative Forum. Where Frontex is deployed in third countries or at the border with third countries, civil society operating in those countries need also to be involved.

In parallel, we need a shift from this deadly policy of closing borders, to one that promotes a comprehensive EU governance of migration that is based on rights and solidarity. The EU and Member States must expand and make structural the regular pathways to come to Europe safely, for all kind of purposes.

For more information on search-and-rescue, SOLIDAR suggests the Ombudsman may contact the following organisations (in addition to those already contacted in the enquiry):

Mediterranea Saving Humans

SOS Humanity

Open Arms

Emergency

Caminando Fronteras

For further information, you may contact SOLIDAR’s Secretary General [REDACTED] ([REDACTED]).