



## ANNEX 5 – Final SI-Handler Report Template



Warsaw, 29/07/2024

### FINAL SIR REPORT

Log Number: 10463/2024

SI-Handler: Fundamental Rights Office

#### Key Points

**Incident:** The Fundamental Rights Office received information from various sources that on 25/01/2024 a migrant boat reached close to Lesvos Island shore. The boat was initially stopped by a Frontex vessel near the border between Türkiye and Greece. When it continued approaching Lesvos, the Frontex vessel and a Hellenic Coast Guard (HCG) speedboat tried to prevent it from continuing the journey, allegedly by dangerously manoeuvring, making waves and using sticks against the engine and the migrants on the boat. After one of such interventions the engine on the migrant boat stopped working. The migrants - now near Lesvos shore - managed to restart it, and after the arrival of a second HCG vessel the migrant boat returned to Türkiye, accompanied by HCG vessel. The migrants were finally rescued by the Turkish Coast Guard.

**Possible violation of fundamental rights enquired:** Right to life (Article 2 of the Charter of Fundamental Rights of the European Union), Prohibition of collective expulsion (Article 19 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).

**Party allegedly involved in the incident:** Frontex Standing Corps [REDACTED] officers, Hellenic Coast Guard Officers (participants of JO Poseidon 2024)

**Conclusion and impact:** The Fundamental Rights Office established with certainty that the migrant boat entered the Greek territorial waters and that it was intercepted twice - initially by the Frontex vessel near international border, as well as by HCG near the Lesvos shore.

The Office confirmed that the HCG speedboat performed maneuvers in high speed and in close proximity to the overcrowded speeding migrant boat, resulting in waves threatening to capsize the migrant boat. Additionally, the crew of the HCG speedboat used the mooring stick at speed in an extremely dangerous way. The Office considers that these actions have put the lives and safety of the migrants on board at risk.

The Fundamental Rights Office believes that under these circumstances, the decision of the migrants to return to Türkiye cannot be considered entirely as an expression of their free will. It likely resulted from a multitude of reasons, including prominently previous actions of HCG. The Office was however unable to isolate the dominant motives for the migrants' return. Should the direct causation between the actions of the HCG and the migrants' decision to return be established, the Office would consider that the migrants were subjected to a prohibited collective expulsion.





The Office notes with regret that reporting of the incident by the Frontex vessel crew in the mission report, as well as by the Greek authorities in [REDACTED], was incomplete and incorrect.

#### Description of the event - Timeline

On 25/01/2024 throughout the afternoon, Frontex received several SOS messages from an NGO claiming that there is boat in distress, with 33 migrants (17 children) and the engine shut off close to the Greece-Türkiye border at sea north of Lesvos (at: [REDACTED]).

The same NGO later [posted on X](#) several photographs and a claim that the migrant boat has nearly reached Lesvos but was stopped by two vessels, both with EU flags, which are creating big waves. Later post in the same thread in the evening of 25/01/2024 alleged that the group had been pushed back into Turkish territorial waters, and was being towed by the Turkish Coast Guard boat back towards Greece. Final post claimed that the 33 migrants were eventually rescued by the Turkish Coast Guard.

In the evening of 25/01/2024, the Fundamental Rights Office received from another NGO photos and videos taken by the migrants from the same boat, claiming that they had nearly reached Lesvos ([REDACTED] or [REDACTED] in Greek territorial waters) before being stopped by a Frontex vessel. Videos show:

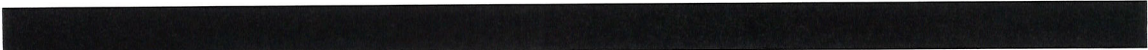
- White migrant rubber boat with one engine and men, women and children on board, in different situations and locations at sea - with engine running, engine stopped, near the shore and farther from it;
- Three other vessels appear in the videos: (i) Frontex RK-30, seen stationary between the migrants and the shore which is visible relatively near; other clips show RK-30 passing by or circling around the migrant boat, which is in motion; (ii) speedboat marked with a Hellenic Coast Guard symbol and number 800, with two engines and a crew of three masked uniformed men; this boat is seen on several videos speeding alongside the migrant boat towards or along the coast, with one of the crew members holding a stick and attempting to hit something onboard the migrant boat; in other videos, the speedboat follows migrants as they navigate away from the coast; (iii) one video shows a Lambro type CPB with a visible number 141, which follows behind the sailing migrant boat away from the shore.

In May 2024, the same NGO that had provided pictures and videos, published their version of events of 25/01/2024 [here](#) and [here](#). In their story, the NGO claims that Frontex vessel RK-30 and two Hellenic Coast Guard boats jointly stopped the migrant boat near the shore of Lesvos, after disabling its engine with the stick. The HCG then allegedly towed the migrants back to Turkish waters, where they were abandoned. The NGO blog also insists that the Frontex crew should have filed a report about the fundamental rights violations observed but failed to do so.

The Fundamental Rights Office launched SIR 10463/2024 on 02/02/2024 to clarify allegations of use of violence at sea and a collective expulsion of migrants.

#### Information collected - Contributors/Entities consulted - Follow-up

For the purpose of the present inquiry, the Fundamental Rights Office interviewed Frontex Standing Corps Officers of the Latvian CPB RK-30 vessel as well as the alleged victim, consulted Frontex operational teams and Frontex operational reporting and internal databases as well as available audiovisual material, requested information from Greek national authorities and conducted open-source research.





More specifically, the [REDACTED] Joint Operation Poseidon confirmed that the available video shows the LV CPB RK-30 (hereinafter the Frontex CPB RK-30), which is a Latvian asset deployed in Lesvos as well as that the other boat is presumably PLS 800 (hereinafter HGC CPV 800).

Moreover, the respective incident was reported by the Greek authorities in [REDACTED], classified as a prevention of departure, containing the following information:

- On 25th January at [REDACTED] the LVA CPB (FX asset) received information regarding a suspicious target at the sea area of [REDACTED] North of Lesvos Island.
- At [REDACTED], the LVA CPB detected a rubber boat with approximately 60 persons on board inside Turkish territorial waters, in position [REDACTED]
- The information passed to HCG CPB 141 and CPV 800 which headed to the area and detected the rubber boat in position [REDACTED] (in Turkish territorial waters).
- Subsequently, Joint Rescue Coordination Center (JRCC) Piraeus informed Maritime Rescue Coordination Centre (MRCC) Ankara while the LVA CPB and HCG CPV 800 were instructed to continue their patrolling activity to the designated area so as not to allow surveillance gaps.
- The HCG CPB 141 remained to the area to monitor the situation, when at [REDACTED] a third TCG patrol boat arrived at the area and took over responsibility of the incident.

The Fundamental Rights Office reviewed operational reporting of Frontex CPB RK-30, confirming that:

- Frontex RK-30 was called to the area near the borderline, where at [REDACTED] a migrant rubber boat was sighted (at [REDACTED] - Turkish territorial waters) and surveilled.
- At [REDACTED] Hellenic Coast Guard's CPB 141 and CPV 800 arrived and took over responsibility of the incident. Subsequently, Frontex CPB RK-30 departed and continued patrolling in its designated area.

As regards the various available coordinates of the location of the migrant boat the [REDACTED] of JO Poseidon provided the following clarifications:

- When the migrant boat sent the SOS message, it was about to cross the Turkish - Greek border line [REDACTED] - inside Turkish waters, [REDACTED] metres from the Greek territorial waters].
- Later on, the Latvian asset detected the boat around 2 km north of the first position, closer at that time to Turkish shore [REDACTED]. It gives the impression that the migrant boat was turning back to Türkiye by its own means, or the coordinates given by the migrants were not accurate.
- Then the HCG arrived at the area and found the boat about 1.5 km west from the previous position [REDACTED]. It seems that the migrants were moving west by their own means, likely remaining around the area waiting to be rescued or intercepted.

The Fundamental Rights Office interviewed one of the alleged victims on 01/02/2024. The interviewed person stated the following:

- The migrants departed from Türkiye on 25/01/2024 [REDACTED] by boat of a total 37 persons on board.
- At around [REDACTED] took place the first encounter of the migrants with the Frontex vessel.
- The Frontex vessel did not use any violence but [REDACTED], asked the migrants to wait for the HCG to arrive, and warned them that a big cargo ship will arrive.
- Subsequently, the migrants turned off the engine and waited there for 20 minutes. In the meantime, the Turkish Coast Guard (TCG) approached asking if they need any help.

<sup>1</sup> The interviewee stated that the departure took place [REDACTED] from Turkey. Given the time zone difference between the two countries, hereinafter the time has been accordingly converted.

- After 20 minutes the migrants decided to proceed to the Greek territorial waters and Frontex [REDACTED]
- Then a small HCG boat arrived with three officers on board, which then remained with the migrant boat for three hours.
- After the small HCG boat arrived the Frontex vessel went away for a short time.
- Subsequently, the small HCG boat's crew attempted to take the engine off of the migrant boat and migrants decided to proceed to the Greek shore.
- The small HCG boat was maneuvering for 2 - 2,5 hours, put water into the migrant boat and tried to push them into the Turkish territorial waters.
- When the migrant boat was about [REDACTED] away for the Greek shore, the second HCG boat arrived, whose crew were wearing masks and they were harsh towards the migrants. At that point a HCG officer from the second HCG vessel boarded to the small HCG boat.
- When the second HCG boat arrived, the Frontex vessel and the small HCG boat left.
- At that point, the migrants became afraid that the HCG may sink their boat and they may die, and decided to go back to Türkiye.
- The HCG big boat was at the back of the migrant boat, escorting them towards the borderline.
- After crossing back to Türkiye, a TCG boat came and towed them back to the border line, where four HCG boats were waiting. They stayed tied for one hour to the TCG boat. The TCG wanted to take pictures of the four Greek boats, untied the migrants, and then tied them again. Then the TCG took the migrant on board and they were finally transferred to a camp in Türkiye. The apprehension by the TCG took place at [REDACTED].
- The interviewee described that the small HCG boat had a yellow flag and a flag of the EU.
- The interviewee identified LV RK-30 as the number of the Frontex boat and recognized the second HCG vessel on the video.
- As regards the conduct of the HCG officers of the small HCG boat the interviewee explained that they tried to beat the migrants with four sticks, three of which the migrants managed to take. The interviewee stated that the HCG officers were beating them; that they were circling around the migrant boat; they were making a lot of waves; they threw water inside the migrant boat; and that they took fuel jerry cans from their boat.

The interviewed migrant likewise provided the Fundamental Rights Office with screenshots from his phone, which allegedly capture the position nearest to the shore reached by the migrant boat. The pins in the shared material do not contain exact coordinates. They show the migrant's boat in a position approx. [REDACTED], at coordinates [REDACTED] (these are nearly identical to those provided earlier by the NGO: [REDACTED] - which would place the migrant boat as close as [REDACTED]. While it is not impossible that the migrant boat approach the shore even more, as stated by the migrant, the Fundamental Rights Office considers it established that at least these positions - [REDACTED] - had been reached by the migrants.

According to the Turkish Coast Guards announcements ([38 Irregular Migrants Were Apprehended Off the Coast of Çanakkale](#)), on 25/01/2024 at 19:40 p.m. an inflatable boat with 38 Afghan nationals was apprehended by three TCG vessels off the coast Çanakkale's Ayvacik district.

The Fundamental Rights Office interviewed on 01/02/2024 two Standing Corps officers, members of the crew of the Frontex vessel CPB RK-30, who provided the following information:

- They confirmed the initial interception near the borderline, after which a HCG speedboat arrived and took over the incident.
- RK-30 left the area, only to be called back after approximately 20 minutes, because assistance of a bigger boat was needed.
- Frontex CPB RK-30 returned to the area in 20 minutes.
- The migrants crossed to the Greek territorial waters, with direction to Lesvos towards the sea route of the ferry, having a speed of 5-6 nautical miles.





- The Frontex CPB RK-30 [REDACTED]. Frontex officers were telling the migrants to stop the boat because the ferry was coming. This lasted about 20 minutes.
- The HCG officer on the video was trying to break the fuel line of the migrant boat in order to stop it and avoid any collision with the passing ferry, by using a plastic telescopic stick for mooring operations.
- The migrant boat reached about 7 km away from the shore of Lesbos Island (approx. 2-3 miles from the border).
- The Frontex CPB RK-30 left from the spot, before the HGC CPB141 arrived.
- As regards the reason why it was not reported that the Frontex vessel left then returned and then left again, the crew explained that they keep the report short as well as that no wrongdoing took place.

On 21/02/2024 and 26/02/2024 the [REDACTED], having received the SIR 10463/2024, provided the following information and clarifications:

- Regarding the use of a telescopic mooring stick: [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
- Regarding the risk of collision between the passenger ferry and the migrant boat: The “full speed” treatment can only be applied to a migrant boat, of a speed of 4 knots only (approximately 7 km/h), as determined by the Frontex CPB RK-30 equipment. The Frontex CPB RK-30 carried out the necessary maneuvers to save lives and prevent possible collision according to the International Regulations for Preventing Collisions between ships (COLREG 72).
- No violations of fundamental rights and international protection requirements, and the Frontex Code of Conduct, were identified while on the site of the incident. In addition, the activities of Frontex CPB RK-30 were carried out in accordance with international conventions.

The Fundamental Rights Office contacted the Greek authorities on 15/03/2024, requesting:

- A full timeline of the incident, information about the movements and exact location of the migrant boat.
- The type and purpose of the use of mooring sticks.
- To comment on the alleged dangerous maneuvering.
- The justification provided by the Greek authorities for the second handover from Frontex to national assets.
- Information about the presence and actions of the TCG.
- To comment on what appears to be an inconsistency between the reporting of the incident in JORA as prevention of departure and the Frontex crew’s and migrant’s statements that the migrant boat entered the Greek Territorial waters.
- Information regarding any ongoing or planned investigation(s) into the incident.

In their reply on the 17/04/2024, the Greek authorities provided the following information:

- HCG assets may [REDACTED]  
[REDACTED] in a way proportional to the intended purpose (such as either *the prevention unauthorized border crossing or the arrest and escorting of the suspicious vessels to a designated port for further investigations*), which ensures the safety of the involved vessels, the participating units and any third parties at all times.
- Reservations were expressed regarding the conduct of interviews with unknown third country nationals who reside in Türkiye and were allegedly onboard the rubber-boat.





- The matter has been addressed to the HCG Disciplinary Unit for their assessment and possible follow up actions.

The Office consulted internally a Frontex expert on border surveillance and SAR operations at sea, regarding the maneuvers alleged to have been performed during the high-speed pursuit, as well as the use of the mooring sticks:

- According to the expert the stick visible in the video is not the typical tool that probably originally was on board of the speedboat, but rather a part of it that may have broken off. Regarding the use of the stick in general, the expert explained that it is indeed sometimes [REDACTED].  
[REDACTED] Under no circumstances, according to the expert, should such a technique be used against an overcrowded inflatable migrant boat at speed, as it is shown in the video.
- Regarding the maneuvers in the vicinity of the migrant boat visible in the video, the expert explained that [REDACTED].  
[REDACTED] However, conducting these maneuvers very close to the extremely unstable inflatable migrant boat driving at speed should absolutely be avoided. In the scenario visible in the videos [REDACTED]. Additionally, the maneuvering presents a significant risk of capsizing the migrant boat or filling it with water.
- The expert concluded that the actions of the vessels in the videos do not represent good coast guarding practice, as they put lives of migrants in the boat at significant risk.

## Assessment

### Timeline of the incident

In light of the available aforementioned information, the office established the likely phases and timeline of the event as follows:

#### 1. Interception of migrants by Frontex near borderline

- At [REDACTED] Frontex CPB RK-30 received information about a target in [REDACTED] area.
- At [REDACTED] Frontex CPB RK-30 arrived at the spot where a migrant rubber boat was sighted (at 39° 26.47'N, 026° 15.99'E - Turkish territorial waters) near the borderline. Frontex CPB RK-30 informs the migrants that HCG is on its way to assist, informing them that a ferry is approaching.
- At about [REDACTED] the TCG vessel arrives to enquire if migrants require assistance.

#### 2. Arrival of HCG speedboat, handover and departure of Frontex vessel

- At about [REDACTED] HCG CPV 800 arrived and took over responsibility of the incident (first handover of Frontex CPB RK-30 to HCG). Frontex CPB RK-30 left the area to continue patrolling.

#### 3. Pursuit of the migrant boat from borderline towards Lesvos shore

- At about [REDACTED] Frontex CPB RK-30 is instructed to return and re-joins HCG CPV 800 at about [REDACTED].
- For the next 20 minutes the migrant boat is inside the Greek territorial waters, heads towards and manages to reach very close to the shore of Lesvos island.
- During the pursuit, Frontex CPB RK-30 attempts to block migrant boat's passage. The HCG CPV 800 crew uses the mooring rod towards the migrant boat and the speedboat makes waves.

#### 4. Migrant boat stopped near the shore, second handover and departure of Frontex, arrival of HCG CPB 141







- Around [REDACTED] the HCG speedboat crew manages to disable the engine on the migrant boat, which stops and remains stationary - most likely approx. [REDACTED] from the Lesvos shore, at [REDACTED].
- The Frontex CPB RK-30 is instructed to leave the area and continues patrolling in its designated area (second handover of Frontex CPB RK-30 to HCG).
- The HCG CPB 141 arrives later on.

#### **5. Migrants return to Türkiye, escorted by HCG CPB 141**

- Following the arrival of the second HCG vessel, migrants restart the engine and begin returning to Türkiye, escorted by HCG CPB 141
- At [REDACTED] the migrant boat is in Turkish territorial waters.
- The Turkish Coast Guard vessel arrives and eventually, at [REDACTED] the migrants are taken to the Turkish port.

#### **Regarding the alleged violence, maneuvers and actions during the pursuit**

Frontex vessel was alleged to have blocked the way and made waves to stop the migrant boat from crossing the border from Türkiye to Greece. According to the migrant's statements, however, these maneuvers were not understood as threatening or dangerous. According to the Frontex expert as well,

[REDACTED] The crew furthermore stated that a part of the reason was to protect the migrants from crossing the path of an incoming ferry boat - a statement the migrant confirmed.

Migrant alleged that following Frontex vessel's (first) departure the crew of the HCG CPV 800 attempted to remove the migrant boat's engine, in order to immobilize the migrants near the borderline. The Fundamental Rights Office has no means to corroborate this statement. However, if confirmed, it considers such practices in the middle of the sea as problematic.

During the migrant boat's attempt to reach the Lesvos shore, the migrant alleged:

- the beating of the migrants with four sticks by the crew of the HCG speedboat;
- attempts to destroy the migrant boat's engine with a stick and theft of jerrycans with fuel;
- waves made to prevent the migrant boat from progressing towards Lesvos made by the HCG speedboat, resulting in destabilizing the migrant boat and throwing water inside it.

The Fundamental Rights Office found no additional evidence to corroborate some of these allegations. The Office cannot, therefore, comment on the alleged number of sticks that were fought out of the HCG speedboat's crew's hands by the migrants, or on the alleged theft of jerrycans with fuel. The remaining allegations, however, are supported by the video material available to the Fundamental Rights Office, and are therefore assessed below.

In order to determine the dangerousness of these alleged actions by the crew of the HCG speedboat, the Fundamental Rights Office considers it important to explore the speed, the seaworthiness of the migrant boat, and the duration of the pursuit.

As far as the speed of the migrant boat is concerned, based on the information provided by the Frontex CPB RK-30 and the respective Latvian authorities, the speed of the migrant boat was 4 knots (approximately 7km/h). On the other hand, the available video depicts the migrant boat having a





much higher speed than 4 knots. Taking the above information into consideration, the Office considers that the migrant boat throughout the incident may have had a speed varying from 4 knots (approximately 7km/h) to a much higher one corresponding to the one illustrated in the available video. The distance between the borderline where the migrant boat was intercepted for the first time ( [REDACTED] and the point that the migrant boat reached close to Lesbos shore ( [REDACTED] ), as depicted in the pin sent by the alleged victim, corresponds to 5.4 km. Based on the aforementioned timeline, the migrant boat covered such distance in approx. 20 minutes. Thus, the average speed of the migrant boat during the 20 minute-long pursuit was 16 km/h. It can be assumed that the route between the two aforementioned points was not necessarily covered in a straight line, meaning that the migrant boat may have even covered a higher distance than 5.4 km. Similarly, the migrant boat speed may have not remained the same all the time but may have varied throughout. This calculation, which is to be understood as an approximation rather than precise calculation, nevertheless clearly indicates that the average speed of the migrant boat must have significantly exceeded the 7 km/h estimated by the Latvian officials.

Furthermore, the Frontex CPB RK-30 mission report describes the migrant boat as a rubber boat with an unknown number of persons on board. According to [REDACTED] incident 60 persons were on board, according to the interviewed migrant's statements 37 persons, based on that day's SOS messages about 33 persons, and according to TCG's records 38 persons were on board. The Office assumes that there were 38 persons including minors on board. The videos available show that some people on board, especially children, are wearing life vests, while others have inflatable floating devices. The videos and the picture published by the TCG also clearly indicate that the migrant boat is filled with people to the brim. Therefore, the Office considers that the quality and instability of the rubber boat in combination with the high number of the persons on board and the speed of the boat significantly affected the seaworthiness of the boat.

As regards the use of the mooring sticks the interviewed migrant stated that HCG officers were using them in a harsh and violent way to hit the migrants. On the other hand, according to the Latvian crew as well as the Greek and Latvian authorities [REDACTED] [REDACTED] [REDACTED]. The Greek authorities in their response cited that HCG assets may [REDACTED] [REDACTED], which ensures the safety of the involved vessels, the participating units and any third parties at all times. In this context, the Fundamental Rights Office notes that the main purpose of operations at sea - after the migrant boat is found in the territorial waters - should be the disembarkation of such migrants in the safe EU port. This intended purpose was also provided by the Greek authorities (*the arrest and escorting of the suspicious vessels to a designated port for further investigations*), which, however, did not comment on the proportionality of the means used in this case to achieve such end. Without such detailed elaboration, it is impossible for the Fundamental Rights Office to fully assess the proportionality of the maneuvers, movements and uses of the suitable maritime equipment. Such proportionality in the present case remains merely claimed but not evidenced by the Greek authorities.

Available pictures and videos depict a HCG officer addressing a mooring stick towards the migrant boat. The Office considers it established - by both the interviewed migrant and the Frontex vessel crew statements - that the migrant boat engine was at some point stopped, when the HCG officers managed to cut the fuel line of the boat by using the mooring stick. The Office is not in capacity to establish whether the mooring sticks were used by the HCG also with the intention to mistreat the







migrants on board, in addition to cutting the engine fuel line. As mentioned above, determining the proportionality of the use of maneuvers and the mooring sticks by the HCG is impossible due to lack of elaboration about their intended purpose, the detail and proportionality of employed measures by the Greek authorities. The Fundamental Rights Office therefore adopts the Frontex consultant's view that such techniques should be used against an overcrowded inflatable migrant boat at speed under no circumstances. The Fundamental Rights Office is concerned that in these specific circumstances such equipment was used in a way that put the lives and safety of the persons on board in danger.

As regards the allegation that the HCG CPV 800 was maneuvering dangerously the Office considers that the actions of the HCG crew put the migrant boat at real risk of capsizing as a result of waves created and/or sudden movement of people on board, or of sinking as a result of seawater thrown by the waves inside the migrant boat. Conducting maneuvers at high speed, very close to the extremely unstable inflatable migrant boat, which has already entered the territorial waters and therefore such a technique cannot serve the purpose of prevention of entry, did endanger the life and safety of the persons on board.

The Fundamental Rights Office is concerned that the improper use of seamanship equipment and operational practices such as the performance of dangerous maneuvers towards an unseaworthy migrant boat, put the lives and safety of the persons on board at risk and as a result violated their right to life and the right to be free of inhuman or degrading treatment.

#### **Regarding the allegation of collective expulsion**

The Fundamental Rights Office acknowledges that in cases when the migrants decide to return voluntarily, as a result of the sea patrolling, such cases should not be considered as a violation of the prohibition of collective expulsion. Instruction to cause migrants to turn voluntarily, thus preventing their entry into EU waters, through sea patrolling, is included in Frontex' [REDACTED] [REDACTED] does not explicitly limit such patrolling operations merely to the borderline area, suggesting that even if the migrant boat already entered the EU territory, it can still be turned back - as long as sea patrolling is the only used means. The Office has confirmed this approach in previous SIRs - namely SIR 11695/2023.

On the other hand, when effective control is exercised by the intercepting coast guard assets, and physical coercion against migrants or even assistance such as towing has been alleged, resulting in the migrant boat's "return" to the territorial waters of departure, the Office has consistently considered such scenarios as instances of collective expulsion - for example, in SIRs 15676/2023, 14951/2023, 13276/2023.

In the present case, as corroborated by the Frontex CPB RK-30 crew statements, also confirmed by the interviewed migrant, as well as indicated by the NGOs, the migrant boat entered Greece and reached at least [REDACTED] (and possibly up to merely [REDACTED]) away from the Lesbos shore. Furthermore, since the moment of migrants' crossing into Greece until the moment they left Greece again, at least one HCG vessel has constantly been in migrant's boat's vicinity. Therefore, in this case the migrant boat was clearly deep in the Greek territory, and under the effective control of the HCG.

In order to assess the allegation of collective expulsion, it remains to evaluate the reasons for migrants' departure from Greece back to Türkiye. Should they return involuntarily, as a result of coercive actions by the HCG, such operation must be classified as collective expulsion.



The interviewed migrant stated that the HCG officers treated the migrants in a violent way and at some point, the migrants decided to return to Türkiye out of fear for their life. Specifically, the migrant mentioned that at the moment when their engine was disabled and their boat stopped near the Lesvos shore, migrants witnessed the arrival of HCG CPB 141, and saw one of its crew members with masked face jumping over to HCG CPV 800. The interviewee said this was the moment when the migrants realized that they may be killed, and decided to re-start the engine and turn back.

Finally, the aggressive and dangerous maneuvers and hits with the mooring stick, which the migrants had just been exposed to at the hands of the HCG speedboat crew, contributed to their belief that more violence is likely to follow. As also stated by the Frontex expert, one of the purposes of

The Fundamental Rights Office is convinced that the actions discussed in previous sub-section were aimed at discouraging the migrants from continuing their journey. Irrespective of their intention, they were perceived as threatening by the migrants who, when Frontex vessel was no longer in the vicinity (due to the second handover and departure of RK-30), chose to return to Türkiye out of fear.

The Fundamental Rights Office concludes that the prior violent and dangerous actions (use of mooring sticks and manoeuvres) of the Hellenic Coast Guard experienced by the migrants while they were approaching Lesvos likely played an important role in the migrants' decision to return from Greece to Türkiye. However, the Office was unable to definitively identify all the reasons that led to the migrants' decision to return, and isolate the dominant ones. Should the direct causation between the actions of the HCG and the migrants' decision to return be established, the Office would consider that the migrants were subjected to a prohibited collective expulsion.

#### **Regarding the new allegations reported by NGO in relation to this case after the launch of this SIR**

Regarding the allegation that the migrant boat was stopped by two HCG vessels in the presence of the Frontex Latvian vessel, as already described in detail above, the Office notes that the two HCG vessels and the Frontex asset were never simultaneously present.

As far as the allegation that the HCG towed the migrant boat towards Türkiye is concerned, the Office has not obtained any statement or evidence that corroborates this allegation. In particular, the interviewed migrant explained that, on the contrary, the migrants decided to return to Türkiye on their own and with a functioning engine. The only statement of the interviewed migrant in relation to the towing of this migrant boat, was linked to the actions of the TCG, also mentioned by the NGO Alarm Phone.

Regarding the allegation that the Frontex Latvian crew was present when the two HCG vessels allegedly towed the migrant boat and pushed them back to Türkiye, and the Frontex crew failed to file a SIR [REDACTED] in respect of these events, the crew stated that they witnessed no wrongdoing or misconduct. In addition, the allegation of towing and subsequent pushback was not confirmed.

#### **Regarding the gaps in the operational reporting of Frontex Standing Corps officers of CPB RK-30 as well as the inaccurate information reported in [REDACTED]**

In light of the Frontex CPB RK-30 officers' statements, confirmed also by the interviewed migrant, the following are concluded in relation to the RK-30's mission report: the Fundamental Rights Office notes with regret that the information contained in the report is incomplete and therefore inaccurate. In particular, the mission report does not record that the migrant boat in fact entered the Greek



territorial waters and omits also the second handover to the HCG. Likewise, the executed way points are incorrect.

Regarding the reporting by the Greek authorities in [REDACTED]: the Fundamental Rights Office is concerned that the reporting in [REDACTED] does not provide accurate information in relation to this incident. More specifically, the incident is classified as “prevention of departure” and, similarly to the aforementioned Frontex mission report, fails to record accurately the course of events and in particular that the concerned migrants entered Greece. This element is crucial for the inaccurate and wrong [REDACTED]

Incomplete and inaccurate operational reporting, especially in operational areas with fundamental rights concerns, can be concerning. The Fundamental Rights Office wishes to underline that correct and complete operational reporting is the cornerstone of Frontex joint operations and especially in operational areas with frequent reports of fundamental rights violations may ensure accountability and enable an effective follow up.

The Office likewise emphasizes that the [REDACTED] states that *“Frontex should receive information/feedback from the national authorities about their follow-up actions in all incidents where Frontex staff and assets are involved, particularly as regards incidents of detections, interceptions, and apprehensions of migrants. Frontex operational staff should share this information with FRO together with the report on the involvement of the Frontex asset.”*

#### **Regarding the second handover of the migrant boat from Frontex to the Hellenic Coast Guard and the handovers’ thorough justification**

According to the [REDACTED], Frontex should operationalize FRaLO recommendation, according to which *“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.”*

Furthermore, *“FRONTEX assets will not be excluded from interception stages or follow up measures, upon the arrival of national assets in the area. By way of derogation, the practice of hand-over to national assets can be conducted following thorough justification according to optimal operational practices and given the particularities of the incident. Frontex will be informed of the reasons when the hand-over is requested”.*

In [REDACTED] incident no. [REDACTED] the justification provided for the first handover of Frontex to the HCG is as follows *“LVA CPB and HCG CPV 800 were instructed to continue their patrolling activity to the designated area so as not to allow surveillance gaps”.* Even though the Greek authorities provided a justification about the handover, questions may be raised whether the requirement of a “thorough” justification is fulfilled, given that no specific information on the circumstances which would explain such surveillance gaps was provided.

Moreover, taking into consideration that the second handover of Frontex to the HCG was not recorded, no thorough justification was provided on that matter.

The Fundamental Rights Office wishes to emphasize the importance of compliance with the Implementation Plan as regards the presence and involvement of Frontex assets in case of interception and apprehensions as well as the importance of a thorough and full justification.

#### **Regarding the national authorities replying sufficiently to the SIR inquiry and the effective investigation into the incident**

The Fundamental Rights Office further points out that the Frontex Management Board requested national authorities to “cooperate in good faith and provide a timely and detailed reply to enquiries including all information, data, records and evidence relevant to a case under investigation” and to “reply, whenever feasible, to each question listed in the enquiry separately to provide all information deemed relevant by the Fundamental Rights Office for its comprehensive investigation of the incident” (100<sup>th</sup> MB Meeting, 12-13/06/2024).

However, in the present case, the Fundamental Rights Office considers that the information provided by the authorities to its enquiry is insufficient. In particular, the national authorities did not provide any specific information about the circumstances of the incident, the particular conduct of the HCG and the use of mooring sticks. The national authorities replied in a vague way, providing general information about the way that the HCG operates and the use of mooring sticks. Lack of information about the “intended purpose” of interventions involving this seamanship equipment prevented the Office from analysing the proportionality of HCG’s actions. Moreover, the national authorities did not comment on the shortcomings in the operational reporting as regards the omission to report that the migrant boat entered Greece as well as the second handover of Frontex to the HGC. The Fundamental Rights Office regrets that the national authorities’ insufficient response and notes that such approach significantly affects the effectiveness of SIR inquiries, while also raising transparency and accountability concerns.

Finally, in their response to the Fundamental Rights Office’s enquiry, the Greek authorities informed that the case had been addressed to the HCG Disciplinary Unit for their assessment and possible follow-up. The Fundamental Rights Office considers essential that the Greek authorities investigate the allegations raised in the present SIR as a matter of a possible fundamental rights violation and expects to receive comprehensive information on the scope and outcomes of the investigation.

#### Final conclusion - Proposals - Lessons learned

Regarding the allegations in SIR 10463/2024, the Fundamental Rights Office concludes the following:

- The migrant boat entered the Greek territorial waters and it was intercepted twice - initially by the Frontex vessel near international border, as well as by HCG near the Lesvos shore.
- The HCG speedboat performed maneuvers in high speed and in close proximity to the overcrowded speeding migrant boat, resulting in waves threatening to capsize the migrant boat. Additionally, the crew of the HCG speedboat used the mooring stick at speed in an extremely dangerous way. The Office considers that these actions have put the lives and safety of the migrants on board at risk.
- Under these circumstances, the decision of the migrants to return to Türkiye cannot be considered entirely as an expression of their free will. It likely resulted from a multitude of reasons, including prominently previous dangerous actions of HCG. The Office was however unable to isolate the dominant motive for the migrants’ return. Should the direct causation between the actions of the HCG and the migrants’ decision to return be established, the Office would consider that the migrants were subjected to a prohibited collective expulsion.
- The Office notes with regret that reporting of the incident by the Frontex vessel crew in the mission report, as well as by the Greek authorities in [REDACTED], was incomplete and incorrect, with missing information about the migrants’ presence in Greece, and the second handover of the incident from Frontex to HCG.

Taking the above into consideration, the Fundamental Rights Office recommends:

To Greek authorities:





1. To ensure that no returns take place without a prior administrative decision in each case and that individual assessments are conducted to determine whether migrants could be at risk of refoulement.
2. To review and assess the systems and rules of operational reporting and record-keeping, as well as the way they are being implemented in order to avoid reporting gaps; to use [REDACTED] in a comprehensive way for all detections/apprehensions.
3. To communicate in a detailed manner and reply to the questions of the Fundamental Rights Office, particularly those relating to cases analyzed in the framework of SIR.
4. To ensure implementation of agreed operational and reporting procedures, such as those related to handovers at sea.
5. To adopt a firm policy and enforce firm sanctions against Hellenic officials found involved, either directly or indirectly, in fundamental rights violations at all levels of the hierarchy.
6. To initiate robust and diligent investigations into all allegations of collective expulsions.

To Frontex:

1. To increase its presence and be more actively involved in activities including border surveillance, detection, interception of migrant boats, search and rescue operations at sea and on land, and detection and apprehension of migrants on land in the Frontex operational areas where migratory pressure is high and where alleged violations of fundamental rights are reported.
2. To identify and implement effective safeguards to mitigate fundamental rights risks existing for migrants crossing the operational area in the Aegean Sea by boat, for example, in case of detections/interceptions by Frontex and subsequent handover, by staying on site and by systematically following up on cases with the Hellenic authorities.
3. To continue sensitizing all Frontex operational staff about the existence of allegations of collective expulsion and violence at the operational area as well as the importance of reporting Serious Incidents and their role in the initial collection of information that allows for meaningful follow up.
4. [REDACTED]

