



Feedback to the Update of the European Union Maritime Security Strategy (EUMSS)

September 2022

I) Abbreviations

BVMN - Border Violence Monitoring Network
CONT - Committee on Budgetary Control
CSO - Civil Society Organisation
ECtHR - European Court of Human Rights
ECHR - European Convention on Human Rights
EU - European Union
EUDPR - European Union Data Protection Regulation
EUMSS - European Union Maritime Security Strategy
FMBWG - Frontex Management Board Working Group
FMBW - Frontex Management Board Working Group
FRO - Fundamental Rights Office
FSA - Frontex Surveillance Aircraft
HCG - Hellenic Coast Guard
IMO - International Maritime Organization
IOM - International Organization for Migration
LIBE - European Parliament's Committee on Civil Liberties, Justice and Home Affairs
MEP - Member of European Parliament
MRCC - Maritime Rescue Coordination Centre
MS - Member State
OHCHR - United Nations High Commissioner for Human Rights
OLAF - European Anti-Fraud Office
POM - people-on-the-move
SAR - International Convention on Maritime Search and Rescue
SOLAS - International Convention for the Safety of Life at Sea
SIR - Serious Incident Report
TCG - Turkish Coast Guard
UN - United Nations
UNCLOS - United Nation Convention on the Law of the Sea



II) Introduction

The Border Violence Monitoring Network welcomes the call for evidence for the 2014 European Union Maritime Security Strategy (EUMSS) and its revised Action Plan (2018) as a possibility to contribute to the safety at sea through pointing at current lacks in compliance with UN, EU and national law and offering recommendations for the implementation of such within the newly formulated strategy.

Border Violence Monitoring Network (BVMN; <https://www.borderviolence.eu/>) is an independent network of NGOs and collectives based on the so-called Balkan Route, Greece, and Turkey, which monitors Human Rights violations at the borders of the European Union and advocates to end the violence exerted against people-on-the-move (POM). BVMN came into existence in 2016, with the formal closure of the Balkan Route and the signing of the EU-Turkey Agreement, when several grassroots organisations started reporting on violent pushbacks¹ of POM along the Balkans and Greece and began to document such cases. The Network has developed a common methodology for the recording of testimonials and supporting evidence which are published on our website. Through the cooperation with and between the member organisations, BVMN has profound knowledge and expertise on Human Rights-related subjects in the Balkan states and Greece.

Our own resources, including several reports and testimonies, will be the main basis of the argumentation of this submission as well as reports of our member organisation Mare Liberum² and partner organisations. In 2020 and 2021, BVMN collected 12 testimonies on pushbacks in the Aegean Sea, affecting 310 people. The respondents reported, besides others, about severe beatings, damaging of the motor or the boat itself before being left adrift at sea, the creation of waves which endangered their boat to sink and the robbing of their belongings, which were thrown into the water.³ It is therefore evident that pushbacks often incorporate severe Fundamental Rights violations such as the right to life guaranteed in Art. 2, European Convention on Human Rights (ECHR) and the prohibition of torture, and "*inhuman or degrading treatment or punishment*", Article 3, ECHR. Moreover, they result in forced returns without individual assessment and collective expulsions with high risk of refoulement, including chain refoulement (see also below). Itamar et al. (2020) furthermore confirm through their research that "*acts of torture and inhuman and degrading treatment*" constitute a systematic part of illegal pushbacks in the Aegean.

The described incidents indicate an ever increasing insecurity at EU's maritime borders through an ongoing and systematic violation of international and European Human Rights law. Research originating from related organisations, such as the Push-Back Map (PushBackMap, n.d.), a platform

¹ The Special Rapporteur on the Human Rights of migrants describes "pushbacks" as "*various measures taken by States which result in migrants, including asylum seekers, being summarily forced back to the country from where they attempted to cross or have crossed an international border without access to international protection or asylum procedures or denied of any individual assessment on their protection needs which may lead to a violation of the principle of non-refoulement.*" (OHCHR, 2021a).

² For more information see <https://mare-liberum.org/en/>

³ List of testimonies to be seen in the Annex below



for documentation of border violence, and the recently launched platform Forensic Architecture (Forensic Architecture, 2022) which verified and mapped evidence for over 1000 pushback incidents at sea, confirm our findings. The most recent update about violation of international law at sea, resulting in substantial endangerment of life and thus mounting insecurity at the EU maritime borders is published by Alarm Phone, which published its latest analysis about pushbacks and rescue operations at the Aegean sea on the 15th of August (Alarm Phone, 2022b).

With this submission, BVMN aims to contribute to the Maritime Security Strategy, drawing particular attention to severe violations of international law concerning people in distress at sea. BVMN will especially focus on the mounting securitization efforts through the increasing employment of the European Border and Coast Guard Agency (Frontex), as well as a strengthening of border surveillance strategies to the detriment of Search and Rescue. Finally, we are formulating recommendations on how the significant gap between international Human Rights legislation and its implementation through national and European actors can be reduced and the compliance with international law at Europe's external border assured within the updated Maritime Security Strategy. Even though the expertise of BVMN lays on pushback incidents in the Aegean Sea, the following submission will also cover some developments in the Mediterranean Sea. Through that, we aim to point to the overall importance of a comprehensive and reliable implementation of international law at sea within renewed Maritime Security frameworks.

A) European Securitisation Strategy in Context of International Law

The European Union (EU) is committed to a global order based on international law, which ensures Human Rights, sustainable development and lasting access to the global commons (Larsson et al., 2020). Consequently, the various texts adopted by European Union bodies must respect the norms of international law. The EU Maritime Security Strategy (EUMSS) itself mentions in section III that “the Strategy is based on the following guiding principles [...] *“c) Respect for rules and principles: respect for international law, Human Rights and democracy and full compliance with UNCLOS, the applicable bilateral treaties and the values enshrined therein are the cornerstones of this Strategy and key principles for rules-based good governance at sea.”*”

Doubts remain as to the respect of international law of previous missions implemented in the framework of the EUMSS (Bous, 2021). For example, research suggests that the EUMSS mission “Operation Sophia”, the first naval mission under the EUMSS in the Mediterranean Sea, may have been in fact in violation of EU law with regards to mandate and oversight. Significantly, the mission might have been at variance with international refugee law and international law of Human Rights as well as the international law of the sea, binding on the EU and its member states, as its mission was not in line with the respect for the principle of *non-refoulement* and Human Rights principles such as the right to life and the freedom from torture, as well as its obligations to engage in rescue people in distress in high seas (Butler et al., 2016).

1) International Law

International Law and Rescue at Sea



At the international level, maritime security is regulated by the United Nations Convention on the Law of the Sea (UNCLOS) which mostly regulates, among others, the limits of territorial and high seas, economical aspects and the conservation of the living resources in the high sea. References to the protection of Human Rights within the convention are to be found in Art. 146 of the UNCLOS which states that *“With respect to activities in the Area, necessary measures shall be taken to ensure effective protection of human life. To this end, the Authority shall adopt appropriate rules, regulations and procedures to supplement existing international law as embodied in relevant treaties.”* Art. 98 of the Convention also makes it mandatory to *“to render assistance to any person found at sea in danger of being lost”*.

This refers to operations of search and rescue which are legislated in more detail in the International Convention on Maritime Search and Rescue (SAR) (IMO, 1979). Although the obligation of ships to assist vessels in distress was enshrined both in tradition and in international treaties (such as the International Convention for the Safety of Life at Sea (SOLAS), 1974), there was, until the adoption of the SAR Convention, no international system covering search and rescue operations. Parties to the Convention are required to ensure that arrangements are made for the provision of adequate search and rescue services in their coastal waters. They are encouraged to enter into search and rescue agreements with neighbouring States involving among others the establishment of sea and rescue regions, the pooling of facilities and the establishment of common procedures. The revised technical Annex of the SAR Convention clarifies the responsibilities of governments and puts greater emphasis on the regional approach and coordination between maritime and aeronautical search and rescue operations.

International law requires that everyone rescued at sea be promptly disembarked and delivered to a ‘place of safety’. As referred to in the Annex to the 1979 SAR Convention, a place of safety is a location where rescue operations are considered to terminate, where the survivors’ safety of life is no longer threatened and where their basic human needs (such as food, shelter and medical needs) can be met. Further, it is a place from which transportation arrangements can be made for the survivors’ next or final destination. Governments should cooperate with each other with regard to providing suitable places of safety for survivors after considering relevant factors and risks. The need to avoid disembarkation in territories where the lives and freedoms of those alleging a well-founded fear of persecution would be threatened is a consideration in the case of asylum-seekers and refugees recovered at sea (UNHCR, n.d.).

In practice, prompt delays of disembarkation in a place of safety are facing some issues. In 28 instances (compared with 22 such incidents in 2020, 28 in 2019 and 16 in 2018) vessels with rescued people had to remain at sea for more than a day waiting to be assigned a safe port. In total, delays in disembarkation affected some 9,590 rescued migrants and refugees, including 2,546 children (European Union Agency for Fundamental Rights, 2022).

This is of particular relevance considering e.g. the practice of apprehending POM in the Central Mediterranean and forcing them back to Libya or apprehending POM in the Aegean and forcing them



back to Turkey, as Libya and Turkey do not fulfil the requirements for a place of safety (Médecins sans Frontières, 2022; OHCHR, 2021b). Authorities conducting pushbacks are breaching the principle of non-refoulement, as elaborated upon below.

In November 2001, the International Maritime Organization (IMO) adopted Resolution A.920(22) (IMO, 2001) on humanitarian obligations regarding the treatment of persons rescued at sea, according to which it should be ensured that: *“(1) survivors of distress incidents are provided assistance regardless of nationality or status or the circumstances in which they are found; (2) Ships, which have retrieved persons in distress at sea, are able to deliver the survivors to a place of safety; (3) Survivors, regardless of nationality or status, including undocumented migrants, asylum seekers and refugees, and stowaways, are treated, while on board, in the manner prescribed in the relevant IMO instruments and in accordance with relevant international agreements and long-standing humanitarian maritime traditions.”*

International law and pushbacks at sea

BVMN asserts that practices incorporated in border securitisation regimes which can be linked to current securitisation policies (see below) lead to the facilitation of illegal pushbacks at the EU's external borders as well as a lack of implementation of search and rescue. The facilitation of illegal pushbacks at sea and land constitutes a violation of international law.

Article 33 (1) of the 1951 Geneva Convention Relating to the Status of Refugees provides that *“No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”* It is also binding under Article 1(1) of the 1967 Protocol (UNHCR, 1977).

The UN Declaration on Territorial Asylum (UN GA, 1967) should be mentioned. Art. 3, parag. 1, states that: *“No person referred to in article 1, paragraph 1⁴, shall be subjected to measures such as refusal of admission at the frontier or, if he has already entered the territory where he was seeking asylum, expulsion or refoulement to any State where he would be in danger of persecution.”*

Non-refoulement is also enshrined in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Article 3 and in the International Convention for the Protection of All Persons from Enforced Disappearance in Article 16.

The principle of non-refoulement is a general rule (*jus cogens*) that forms an essential protection under international Human Rights, refugee, humanitarian and customary law and allows no derogation. It prohibits States from transferring or removing individuals from their jurisdiction or effective control when there are substantial grounds for believing that the person would be at risk of irreparable harm upon return, including persecution, torture, illtreatment or other serious Human

⁴ Asylum granted by a State, in the exercise of its sovereignty, to persons entitled to invoke article 14 of the Universal Declaration of Human Rights, including persons struggling against colonialism, shall be respected by all other States.



Rights violations (OHCHR, n.d.). The prohibition applies to all persons, irrespective of their citizenship, nationality, statelessness, or migration status, and it applies wherever a State exercises jurisdiction or effective control, even when outside of that State's territory. Respect for the principle of non-refoulement is also central to the objectives regarding the protection of migrants of the Office of the United Nations High Commissioner for Human Rights (OHCHR, n.d.).⁵

2) Relevant European regulations

The practice of pushbacks does not only violate UN legislation but also legislation on the EU level. As the EUMSS aims at increasing security and surveillance at EU's external land and sea borders, it is evident that it needs to operate in respect of international law, as well as it needs to include mechanisms which assure compatibility of actions with UN and EU Charter on Fundamental Rights as well as EU Treaties and EU legislation. This chapter covers, in a non-exhaustive way, the relevant European legal texts, focusing on Regulation (EU) No 656/2014 (European Parliament 2014), to be taken into account when updating the EUMSS.

European Regulations and pushbacks at sea

EU law enshrines in primary law the right to asylum and the right to international protection in Article 78 of the Treaty on the Functioning of the European Union (TFEU) and Article 18 of the EU Charter of Fundamental Rights.

In 2014, the European Parliament enacted Regulation (EU) No 656/2014 "*establishing rules for the surveillance of the external sea borders in the context of operational cooperation*", adhering the "*Protection of Fundamental Rights and the principle of non-refoulement*" (Art. 4), setting among others binding rules for "*Search and rescue situations*" (Art. 9), as well as "*Disembarkation*" (Art. 10). The testimonies collected in the BVMN database that refer to the Aegean Sea (see Annex below) give evidence to illegal pushbacks that constitute a violation of Regulation (EU) No 656/2014. According to Art. 10, "*in the case of interception on the high seas [...], disembarkation may take place in the third country from which the vessel is assumed to have departed.*" (Regulation (EU) No 656/2014, Art. 10,1(b)). However, this would have to align with Fundamental Rights and non-refoulement as enshrined in Art.4 of the regulation. In numerous of the testimonies collected by BVMN, people were pushed back to Turkey, where they face a risk of inhuman or degrading treatment, for instance in the form of chain-pushbacks⁶ without granting them the possibility to access to protection or asylum (Yeung, 2021; see also BVMN, 2022a; BVMN, 2022c; and BVMN, 2021a). In addition, members of

⁵ "OBJECTIVE 8: Save lives and establish coordinated international efforts on missing migrants Commit to search and rescue operations that uphold the principle of non-refoulement, the prohibition of collective expulsion, and ensure the Human Rights, safety and dignity of persons rescued.

OBJECTIVE 11: Manage borders in an integrated, secure and coordinated manner Commit to ensure due process at international borders and that all migrants are treated in accordance with international Human Rights law including the principle of non-refoulement.

OBJECTIVE 21: Cooperate in facilitating safe and dignified return and readmission, as well as sustainable reintegration Commit to upholding the fundamental international Human Rights law principle of non-refoulement and the prohibition of collective expulsion."

⁶ A chain-pushback occurs when POM are pushbacked from one country to another via a second country, e.g. from Italy to Slovenia and then, by chain, to Bosnia-Herzegovina (BiH) (BVMN (2020f)



particular groups are endangered of persecution and face a higher likelihood to be victims of severe Human Rights Violations in Turkey, for instance Kurdish and Gulenists. Pushing them violently back to Turkey therefore constitutes a breach of the principle of non-refoulement.

Moreover, in the Resolution on Asylum for Persons Threatened with Persecution, adopted by the Committee of Ministers of the Council of Europe on 29 September 1967, MS are recommended to be guided by the following principles: [...]

“2. They should, in the same spirit, ensure that no person is refused admission at the frontier, turned back, expelled or subjected to any other measure which would have the effect of obliging him to return to or remain in a territory where he would be threatened with persecution on account of his race, religion, nationality or membership of a particular social group or political opinion.”

In addition to that, Article 4 of Protocol No. 4 to the European Convention on Human Rights prohibits the collective expulsion of aliens. The notion of "collective expulsion" should be understood as meaning that *"any measure group of aliens to leave a country, except in cases where such a measure is taken on the basis of a reasonable and objective examination of the particular situation of each of the aliens forming the group"*.⁷ In that sense, the Charter of Fundamental rights of the European Union guarantees *"the right to asylum [...] with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty establishing the European Community"* as well as *"protection in the event of removal, expulsion or extradition"* and prohibits collective expulsions.

In the few cases which have been brought to court, the unlawfulness of the actions have been confirmed. For example, in the case *Hirsi Jamaa and Others v. Italy* [GC], where Somali and Eritrean citizens were disembarked in Libya without any personal assessment, the European Court of Human Rights (ECtHR) acknowledged the collective nature of the expulsion. Furthermore, in *Sharifi and Others v. Italy and Greece*, the Court reached the same conclusion on the basis of a lack of individual analysis of the personal situation of asylum seekers (Russo, n.d.).

European Regulations and Rescue at Sea

Concerning search and rescue operations, *the host Member State and the participating Member States shall cooperate with the responsible Rescue Coordination Centre to identify a place of safety and [...], they shall ensure that disembarkation of the rescued persons is carried out rapidly and effectively.*" (Regulation (EU) No 656/2014, Art. 10,1(c)).

Frontex's role in search and rescue (SAR) operations is enshrined in Regulation (EU) 2019/1896. The regulation includes operations launched and carried out in accordance with Regulation (EU) No 656/2014 and international law, taking place in situations that may arise during border surveillance operations at sea. In these circumstances, Frontex is obliged to provide Member States and non-EU

⁷ ECHR, CASE OF KHLAIFIA AND OTHERS v. ITALY, 15 December 2016



countries with technical and operational assistance in support of search and rescue operations.

In addition, the ECtHR ruled concerning the application of Art. 2 and 3 of the Convention that the expulsion of an alien might lead to a risk of death penalty or risk of inhuman and degrading treatment or punishment. In these circumstances, Articles 2 and 3 imply an obligation not to deport the person in question to that country⁸. Recently, the Court found the Greek authorities responsible for a failure to comply with the positive obligations under Article 2 and of degrading treatment under Article 3, in a case of the sinking of a fishing boat transporting 27 foreign nationals in the Aegean Sea. The Court noted that the Government had not provided any explanation as to the specific omissions - in requesting additional assistance and in having the necessary rescue equipment- and delays - in informing the coordination and research centre - in the present case and that serious questions arose as to the manner in which the operation had been conducted and organised⁹.

III) Arguments

A) Securitization against Fundamental Rights

In order to formulate recommendations for the update of the EUMSS, it is necessary to set it in the context of broader EU securitization politics and their impact on POM and the respect of their rights in line with the EU Charter for Fundamental Rights and the EU Treaties.

Securitization means a process in which 'security' is invoked to legitimise contentious legislation, policies or practices that would otherwise not have been deemed legitimate (Neal, 2009). In the case of the EU's external borders, this can be witnessed on the one hand in an increasing militarisation, which leads to more violence against and the criminalization of POM and their supporters and on the other hand in a mounting surveillance practice. Without a reinforced commitment to search and rescue obligations, this can be seen as a considerable erosion of the legal foundation of the EU, as constant violations of national and international law became broadly tolerated. The unlawfulness of those actions become evident in view of the relatively few cases in which POM filed complaints against their expulsions. Multiple times, the ECtHR ruled in their favour (FRA, 2022).

In addition, the current SAR regulation draws on the same fact, as it inhibits several obligations concerning sea and rescue responsibilities, which are systematically and increasingly not implemented. Instead, it can be asserted that means of surveillance replace more and more its implementation in the form of search and rescue operations (see below). This results in a practice, in which POM are not seen any more as subjects to which international law applies, but as 'threats' which have to be detected and repelled. It coincides with the definition of securitization by Wæver. He argues that securitization is based on identified or constructed urgent 'security issues' or 'threats' which are used in order to mobilise opinion and constitute legitimacy and authority for the means of dealing with that 'threat' (Wæver, 1995). Coherent to that, the practices of border authorities, which are per definition pushbacks and thus constitute breaches of international law, are by now labelled

⁸ ECHR, F.G VS SWEDEN, 23 March 2016, §110-111

⁹ ECHR, SAFI AND OTHERS VS. GREECE, 7 July 2022



as “prevention of entries”, granting them a facade of legitimacy in public.¹⁰ The re-definition of the act of entry and the people attempting to enter as threats allows the employment of increasingly abhorrent practices to parry that threat, as for example the usage of unseaworthy dinghies in which POM are left adrift at sea (Legal Center Lesvos, 2020).

The described process of securitization can be witnessed explanatory in the case of Frontex’ employment at the EU’s external borders. In a news release of 11.07.2022, it is announced that *“Frontex missions contribute to the protection of the safety of all Europeans by helping the national authorities fight cross-border crime and address effectively the hybrid threats coming from the outside of the EU”* (Frontex, 2022), addressing clearly irregular migration inside the European Union, defined as ‘hybrid threat’ since 2021 (Bachmann, 2021).

Frontex is supposed to assure the compliance of international law at the EU’s external borders (see below). However, in areas where it is employed it is reported by CSOs on a regular basis that the opposite is the case. In its most recent report about Frontex’ activities surveilling the Mediterranean, Human Rights Watch states: *“Frontex claims the surveillance is to aid rescue, but the information facilitates interceptions and returns to Libya. [...] Since May 2021, the EU border agency Frontex has deployed a drone out of Malta, and its flight patterns show the crucial role it plays in detecting boats close to Libyan coasts. Frontex gives the information from the drone to coastal authorities, including Libya. Libyan forces intercepted at least two other boats and took at least 228 people back to Libya. [...] Frontex never informed the nearby nongovernmental Sea-Watch rescue vessel.”* (Human Rights Watch, 2022) The EU’s border agency breaches thereby multiple obligations and rights enshrined in international law as outlined above, for example the principle of non-refoulement and the right to life and freedom of torture (ECHR, Art. 2, Art. 3).

CSOs like BVMN have reported about Frontex’ involvement in pushbacks as well as that of several national authorities of member and non-member states of the EU for many years, basing their allegations on hundreds of pushback testimonies (BVMN, n.d.). Numerous of those incidents took place at sea. Under the pretext of the implementation of security measures against an incoming threat, national as well as international actors facilitated push- and pullbacks, often employing extensive force and tolerating broad and systemic breaches of basic Fundamental Rights law, international sea law, data protection law and the Geneva refugee convention of 1951.

For example in June 2020, BVMN collected a testimony of a sea pushback of 32 people from Greece to Turkey, pointing to common practices of border authorities resulting from increasing securitisation policies concerning EU’s external borders (BVMN, 2020a). *“The respondent states that the group had been a allegedly five minutes off the coast of Lesvos, when the Greek Coast Guard (HCG) in a large boat detected the transit group after five hours at sea. According to the respondent, a smaller boat approached the transit group and destroyed and removed the engine of the dinghy. With a hook on a stick (like a spear), the transit group were beaten by authorities; one group member was injured during the attack, with several cuts on his head and face. The HCG then attached a rope*

¹⁰ See for example recent statements by the Greek government: <http://www.infomigrants.net/en/post/43075/greece-blocked-over-150000-irregular-migrants-this-year-mitarachi> as well as Lighthouse Reports, 2020 and Statewatch, 2021a



to the dinghy and towed it towards Turkish waters.” The respondent describes that later on the Turkish Coast Guard (TCG) as well as the HCG were creating waves towards the dinghy. Finally, they were left adrift overnight at sea. [...] The next day, water was entering their dinghy. Throughout their journey, the respondent alleges members of the transit group were calling 112 and the HCG as instructed, but without success. Ultimately, they were rescued by a CSO.

Other testimonies BVMN collected on illegal pushbacks in the Aegean Sea report on similar incidents and patterns of violence, as to be seen in the Annex below. On multiple occasions, respondents state that their fuel was taken from the HCG and they were left at sea without the possibility to move further. After a while, European authorities pushed them back to Turkey, after having thrown all their possessions into the sea (BVMN, 2020c; similar BVMN, 2020d).

The existence of systematic pushbacks at sea, including regularly life-threatening treatments of POM, is confirmed by various CSOs. In 2020, Legal Center Lesvos observed the employment of life rafts to pushback people to Turkish waters: *“In all cases documented, Greek authorities forced migrants into these life rafts after intercepting them at sea, or after arresting them following the migrants’ landing in Greece. The Greek authorities subsequently abandoned the occupants of these life rafts at sea, in open water in the Aegean between the Greek islands and Turkey, where they were later rescued by the Turkish Coast Guard.”* (Legal Center Lesvos, 2020)

BVMN member organisation Mare Liberum reports on the continuity and systemacy of similar pushback patterns in the Aegean Sea: *“In 2020, we started to receive reports of the Hellenic Coast Guard systematically deploying life rafts to conduct pushbacks. Since then, the Coast Guard has reportedly continued to regularly abandon individuals in life rafts on the open sea, [...]. This practice has become part of the authorities’ ‘modus operandi’. In 2021, a reported total of almost 5,000 people were abandoned by the Hellenic Coast Guard in life rafts in Turkish waters. At the beginning of 2021, reports began to illustrate a new tactic used in pushbacks, in which Greek authorities would people push into the water near the Turkish coast.”* (Mare Liberum, 2021)

This aligns with the findings on the recently launched platform of Forensic Architecture, which provides proof of more than 1,000 pullback and pushback incidents in the Aegean since 2020, many of them including the usage of life rafts (Forensic Architecture, 2022). In addition, in 2021, a joint research, by Der Spiegel and others could prove the tactic to throw migrants into the sea during the pushback, endangering people's lives (Der Spiegel, 2022a). Repeatedly, people died during those interventions and their bodies were found later on Turkish shores. Some of them had their hands tied together (Mare Liberum, 2021; Forensic Architecture, 2022; Aegean Boat Report, 2022).

As outlined above, UN and EU legislation include expansive obligations in terms of rescue operations of people in distress. Nonetheless, when it comes to the reception of distress calls by migrant boats, numerous incidents proved that alarm calls of people in distress have been ignored or not been forwarded to the competent authorities.

For example, Alarm Phone reports of a migrant boat that was denied assistance on the 1st March



2020 for at least 13 hours following the notification of the Hellenic Coast Guard (Alarm Phone, 2020). Mare Liberum published the case of another migrant boat on 12th of June 2020, that was denied assistance for at least 15 hours (Mare Liberum, 2020).

The ongoing resilience to support boats in distress results regularly in shipwrecks and numerous deaths in the Aegean and Mediterranean Sea. In its monthly report of December 2021, BVMN reports of three shipwrecks which were recorded in the Aegean with dozens confirmed dead. More than 30 dead bodies have been found and more people went missing. *“In each case, Alarmphone along with other actors was involved in contacting relevant authorities, to ensure timely rescue operations and support survivors. Repeatedly, the authorities were slow to respond and failed to provide clear information as to what happened to survivors, and to the bodies of those who lost their lives.”* (BVMN, 2022a).

The cited testimonies show, as many others, the recent reality of frequent and systematic violation of international law at sea by national as well as EU actors in the name of securitization efforts. POM are robbed from their belongings by coastguards and border authorities; they get beaten and insulted; their lives are consciously put in danger and their distress calls are willingly ignored. Regardless of the exhaustive evidence proving those severe breaches of Fundamental Rights, neither are legal measures taken by the EU against MS, nor is funding declined, for example Frontex'. Still, it is the EU's best funded agency (Guardian, 2022). In recent years, the funding of border guarding activities focussed increasingly on surveillance measures. Despite its stated aim to increase safety at sea and rescue lives (Frontex, 2022), it can be asserted that in the past, compliance with law tended to decrease with the employment of more border surveillance techniques. Moreover, surveillance measures couldn't avoid high numbers of deaths at sea, mounting to 3,000 in 2021 according to the United Nations (UN Geneva, 2022). Therefore, any plan to increase the employment of border guarding activities and techniques at sea has to come along with the presentation of mechanisms which assure and monitor the compliance of international law and the respect of Human Rights. When updating the EUMSS, turning away a perceived threat can not, as so far, be prioritised before Fundamental Rights in border areas as it is the status quo. Therefore their implementation has to be assured alongside border securitisation efforts. To avoid the undercutting of international Human Rights law and thereby the foundation of the EU, the constitution of increasing security measures at sea, as they are part of the new European Union Maritime Security Strategy (EUMSS), must involve robust safeguards against their misuse which include an independent monitoring actor. Without those mechanisms or with only the employment of national safeguards, it is highly probable that an increase in military forces and surveillance technology will ultimately result in even more breaches of international law and thereby less safety at sea.

B) Lack of implementation of Regulation 656/2014

As elaborated above, the practice of pushbacks constitute a profound breach of the principles of international law, such as non-refoulement and obligation of search and rescue. In addition, the 2014 enacted Regulation (EU) No 656/2014, which regulates the implementation and procedures of sea



rescues, is violated in several accounts, as it is evidenced by BVMN testimonies.¹¹

BVMN asserts a lack, but also a false implementation of Regulation (EU) No 656/2014, due to several reasons.

According to numerous CSOs, the regulation lacks clear definitions of several relevant terms (Statewatch, 2021a; Statewatch, 2021c), which leads to a misinterpretation of the terms in practice and thus the lack of implementation of relevant search and rescue of POM in distress (López, et al., 2021). Unclear definitions additionally bear the danger of an increasing latitude of judgement and therefore also increase the lack of accountability (Statewatch, 2021b).

For instance, Art. 9, 2.(f)(ii) regulates that when deciding if a vessel is in distress, and therefore a search and rescue operation should be initiated, among others *“the seaworthiness of the vessel and the likelihood that the vessel will not reach its final destination”* (Art. 9, 2.(f)(ii)) should be taken into account, as well as *“the number of persons on board in relation to the type and condition of the vessel”* (Art. 9, 2.(f)(iii)) and *“the weather and sea conditions”* (Art. 9, 2.(f)(x)). At the same time, legal researchers argue that *“the dangerous conditions in which border enforcement takes place and the vulnerability of asylum seekers to these conditions are rendered irrelevant and thereby, banalised. Rubber boats carrying illegalized migrants are generally considered seaworthy, not recognised as in distress, regardless of how many people they carry or the fluctuating weather conditions in the Aegean.”* (López, et al., 2021).

BVMN asserts that in several of the testimonies taken (see Annex), the vessels transporting POM fall under the category of “distress” and therefore, search and rescue should have been established. In addition, several of BVMN testimonies, as well as other investigations (see e.g. Legal Centre Lesbos, 2020; Mare Liberum, 2021) report on the fact that as part of illegal pushbacks, POM are left adrift on boats that can be considered unseaworthy. In its 2021 report on alleged Human Rights violations, analysing five Frontex Serious Incident Reports (SIR) in the Aegean Sea Operations, the Frontex Management Board Working Group (FMBWG), working on Fundamental Rights and legal and operational aspects of the agency’s operations¹², clearly states that *“Boats must not be left adrift unable to navigate regardless of other vessels in the vicinity. All stakeholders shall undertake the utmost to prevent such situations at any given time as well as any interference to the sea-worthiness to vessels at sea”* (FMBWG, 2021).

According to Regulation (EU) No 656/2014, Art. 10,1(c) disembarkation is only allowed at a *“place of safety”* which aligns with obligations in international law (Annex to the 1979 SAR Convention, see above). While the latter defines a *“place of safety”* concretely as a place where an individual’s safety of life, as well as their basic human needs and their transportation to their next or final destination is assured (Annex to the 1979 SAR Convention), Regulation (EU) No 656/2014 lacks a clear definition. This is particularly problematic, as the reality of interaction at sea with people in distress, as well as search and rescue operations require a clear definition in order to conduct the necessary actions without delay (Statewatch, 2021a). Consequently, stakeholders operating at sea, like Frontex,

¹¹ For the list of testimonies collected by BVMN, referring to pushbacks at sea, see Annex.

¹² For more information see Frontex, 2020.



establish their own internal working definitions, thereby defining which country can be assumed to be safe. In the case of Frontex, this led to the definition of Libya being a “*place of safety*”, which is not revised even though criticised by their internal actors of accountability, like e.g. their Fundamental Rights Office (FRO) (Statewatch, 2021b). In addition, it is evident and broadly recognized that this definition does not align with international law, as introduced above, as Libya can not be assumed to fall under the latter’s definition of a place of safety (Medicines Sans Frontiers, 2022; OHCHR, 2021b). At the same time, it has to be underlined that any interaction at sea, whether leading to an interception or a search and rescue operation, does not include individual assessment and therefore does not leave POM the possibility to prove individual persecution and therefore claim asylum as enshrined in the Geneva Convention (Statewatch, 2021b).

While the lack of clear definitions lead to false implementation of the Regulation, resulting in a lack of facilitation of search and rescue as well as the breach of the principle of non-refoulement and the right to asylum, it is important to emphasise that additionally, in several cases, search and rescue is not facilitated as enshrined in the Regulation. For instance, Art. 9,1 Regulation (EU) No 656/2014 states, that “*Member States shall observe their obligation to render assistance to any vessel or person in distress at sea and, during a sea operation, they shall ensure that their participating units comply with that obligation, in accordance with international law and respect for Fundamental Rights.*” Several of the testimonies collected by BVMN as well as reports of CSOs such as Alarm Phone (Alarm Phone, 2022) report on POM not being rescued, even though in distress. Arguments for the lack of search and rescue are partly based on increasingly wrongly interpreted terms of who is defined as being in distress (as elaborated upon above), as well as the fact that a search and rescue operation is only one option of three when a boat of POM is detected at sea, next to interception at sea (Art. 6; Art. 7), which can under certain circumstances lead to the apprehension of the POM and the seizing of their vessel (Art. 6,2(b); Art. 7,2 (a)), and the “*re-rerouting of a vessel*” (Statewatch, 2021c; as well Art. 6,2(b); Art. 7,2 (b)-(d)). This is particularly worrying as it is proven by numerous investigations that the re-routing of vessels in distress, as well as the apprehension of POM and the seizing of their vessels, followed by illegal pushbacks are common practice in the Aegean Sea, carried out by the HCG (Mare Liberum, 2021; Legal Centre Lesbos, 2020), as well as Frontex (Statewatch, 2021a and see below).

The most relevant example of the faulty implementation of the Regulation by Frontex might be the recent investigation that unveiled Frontex’ awareness of and complicity in illegal pushbacks when labelling them “*prevention of departure*” (Lighthouse Reports, 2020; Statewatch, 2021a). This points clearly to the fact that the Regulation was faulty implemented and misused in order to facilitate illegal pushbacks instead of search and rescue operations. In addition, it bears the danger of a further decrease of search and rescue justified by a change of narrative. “*The use of the ‘prevention of departure’ categorisation codifies and transforms situations that could trigger humanitarian and Human Rights obligations into legitimate practices of border control.*” (Statewatch, 2021a; López, 2021). Throughout this development, “*prevention of departure/entry*” has become a synonym for illegal pushbacks.

Until today, concrete and realisable accountability mechanisms are lacking to assure the



implementation of the regulation. BVMN therefore asserts that in order to assure effective search and rescue missions that prevent deaths and illegal pushbacks at sea, the implementation of Regulation (EU) No 656/2014 has to be assured. In line with the above mentioned argumentation this can only be guaranteed when made an integral part of border enforcement and security strategies. This also includes the establishment of an Independent Border Monitoring Mechanism. In addition, search and rescue has to be made an integral part of the updated EUMSS.

C) Frontex' involvement in border securitization and related concerns

1) Frontex as an actor

According to the FMBWG, *“Jointly with the respective Host Member States, Frontex constitutes the main guarantor for strong and protected European external borders”* (FMBWG, 2021). It can therefore be assumed that Frontex will play an integral role in EUMSS. However, several investigations and BVMN testimonies report on their complicity in Fundamental Rights violations while being deployed at the EU’s external borders (BVMN, 2020e). At the same time, it is barely possible to hold members of, as well as the agency itself, accountable. BVMN therefore wants to point to issues regarding the agency’s current actions and accountability mechanisms in order to improve those when including the agency as a stakeholder in the updated EUMSS.

As an EU body, Frontex is bound by the EU Charter of Fundamental Rights which requires that in areas where the Charter guarantees the same rights as the ECtHR, it must at least offer the same level of protection. (Art 53 CFR). The ECtHR has consistently held that public authorities have positive obligations: *a duty to intervene arises when the authorities “knew or ought to have known” of a “real and immediate risk” to the rights of one or more specific individuals, thus when an interference is foreseeable.*¹³ This includes the principle of non-refoulement, as elaborated upon above.

Furthermore, In the 2016 and 2019 Frontex regulations, search and rescue is enshrined as a specific objective of the operational plan of every Frontex joint maritime operation: *“the key roles of the Agency should be [...] to provide technical and operational assistance in the support of search and rescue operations for persons in distress at sea”* (Regulation (EU) 2019/1836, L 295/2). These regulations are in line with Regulation 656/2014 (as introduced above) and customary international law that oblige maritime border surveillance operations to provide technical and operational assistance to member states and non-EU countries in support of search and rescue operations.

In stark contrast to these obligations, investigations and evidence collected by BVMN, multiple other CSOs, and journalists confirm the systemic involvement of Frontex in illegal pushbacks and violations of the principle of non-refoulement in the Aegean and central Mediterranean Seas (BVMN, 2020e).

2) Complicity in Pushbacks in the Aegean Sea

On August 19th 2020, BVMN collected a testimony of a pushback that involved two ships with ‘an EU flag’ and ‘a German-flag’, respectively (BVMN, 2020d). The reportant described how, around 1km

¹³ ECtHR *Osman v. The United Kingdom*, 28 October 1998, no. 23452/94, para. 116; ECtHR *Opuz v. Turkey*, 9 June 2006, no. 33401/02, para. 129; ECtHR *O’Keefe v. Ireland*, 16 June 2009, no. 35810/09, para. 144.



from the coast of Lesvos, they were told to board the boat with the EU flag, where all their possessions were taken. A “small”, “dark grey” boat with a “German flag” then approached, with three German-speaking men. The men forced the whole group onto life-rafts, before “*throwing all their bags and possessions overboard from the big ship*”. Both boats left, and after 20-30 minutes a Turkish Coast Guard vessel came and took them back to Karaburun in Turkey. While the reportant does not identify the vessels as belonging to Frontex, vessels with EU and German flags are likely to be deployed under the agency. In response to a question in the Bundestag, the German interior ministry's parliamentary secretary has said that, “*the German Government is aware that the ‘Uckermark’ was deployed in the Aegean Sea on 13 May 2020 as part of the Frontex operation ‘Poseidon’*” (Statewatch, 2020a). BVMN’s testimony is corroborated by several other investigations. In 2020, a joint investigation by Bellingcat and others found that, according to open source data, “*Frontex assets were actively involved in one pushback incident at the Greek-Turkish maritime border in the Aegean Sea, were present at another and have been in the vicinity of four more since March*” (Bellingcat, 2020). They recorded two instances, on June 8th and August 15th, 2020, where Frontex assets appeared to be actively involved in, and present at the scene of, a pushback (respectively).

On 28 February 2022, the Director-General of the European Anti-Fraud Office (OLAF), Ville Itälä, presented the agency’s report on Frontex at a meeting of the Committee on Budgetary Control (CONT) and LIBE committees (European Parliament, 2022). While the report is classified, Der Spiegel and other news agencies have obtained access. Der Spiegel reports that the EU investigators “*prove that Frontex knew about pushbacks early on*” and “*covered them up*”, withdrawing a plane that was patrolling the Aegean sea to avoid recording further Human Rights violations (Der Spiegel, 2022b). This is confirmed by considerable evidence, including a handwritten note dating from Nov. 16, 2020 that states “*we have withdrawn our FSA [Frontex Surveillance Aircraft] some time ago, so not to witness (sic)*”.

In May 2022, Lighthouse Reports, Der Spiegel, SRF Rundschau, Republik and Le Monde published the findings of a joint investigation into Frontex’s own internal database, revealing the extent of Frontex's complicity in illegal pushbacks (Lighthouse Reports, 2020). They found that “*data recorded in its internal Joint Operations Reporting Application (JORA) database, when cross-referenced with other sources, indicates that Frontex was involved in at least 22 verifiable cases where people were put on life rafts before being pushed back to Turkey [...] between March 2020 and September 2021*”, placing an estimated 957 people in “*life-threatening situations*”. The investigation also noted 222 incidents recorded by Frontex as “*prevention of departure*” a term that is commonly used to refer to pushbacks, as the investigation confirmed through interviews with Frontex officials and sources within the Greek authorities. “*Prevention of departure*” incidents typically had an almost identical description: “*a Frontex asset (plane, helicopter, vessel or drone) detects a migrant boat crossing from Turkey and warns the Greek Coast Guard. The Coast Guard informs the Maritime Rescue Coordination Centre in Greece and Turkey, after which the Turkish Coast Guard returns the boat to Turkey.*”

3) Facilitating Pull-Backs in the Central Mediterranean

In the Central Mediterranean, investigations have shown similar complicity by Frontex in violations of non-refoulement, as well as practices that put the lives of POMs at risk. In this region, Frontex’s



border patrolling is largely limited to surveillance activities conducted by the agency's air assets, including airplanes and drones. Frontex's website states that *"to expand its ability to monitor the external borders and share the gathered information with EU Member States, Frontex has rolled out the Multipurpose Aerial Surveillance (MAS), which allows for planes monitoring the external borders to feed live video and other information directly to the Frontex headquarters and affected EU countries"* (Frontex, 2018).

A 2020 report by Alarm Phone, Borderline Europe, and others found that Frontex systematically *"engage in an illegitimate and formal interpretation of international law of the sea by alerting only the "competent" Rescue Coordination Centre according to the geographical position of the search and rescue event"* (Alarmphone et al, 2020). When an event takes place in the Libyan search and rescue region, it asks the Libyans to intervene, and does not alert other CSO ships in the vicinity that would help in a more effective way (EUObserver, 2020; Der Spiegel, 2021). At the beginning of 2020 the European Commission Vice-President Borrell confirmed the collaboration of Frontex and Libyan authorities: *"in the framework of the Eurosur Fusion Service – Multipurpose Aerial Surveillance (MAS) is performed. During the execution of MAS in the pre-frontier area (since 2017 up to 20 November 2019), when Frontex detected a distress situation in the Libyan Search and Rescue Region, the Agency provided notice in 42 cases to the neighbouring Member State Rescue Coordination Centre, to EUNAVFOR MED, as well as to Libyan authorities."* (European Parliament, 2020).

The inability of Libyan authorities to competently coordinate search and rescue is evident in the number of casualties that take place in the Central Mediterranean, with over 17,000 deaths and disappearances registered since the start of the cooperation (Missing Migrants Project, 2022) and was furthermore confirmed by a statement of the so-called Libyan coastguard commenting on their inability of rescuing people in distress in the Central Mediterranean due to their involvement in another mission (Sea-Watch, 2022). By referring search and rescue missions to the Libyan authorities, and ignoring other vessels, Frontex are violating their positive obligation to safeguard the lives of POMs. Moreover, EU authorities are aware that Libyan vessels will bring POMs back to Libya, without providing them the possibility to ask for asylum and putting them at risk of life and torture (a practice often referred to as "pullbacks"). In 2012, the ECtHR considered the physical returning of rescued people on an Italian military ship back to Libya a form of prohibited collective expulsion contravening the principle of non-refoulement.¹⁴ While the present cases do not involve the vessels of EU member states, the EU's strategy of avoiding physical contact with POMs does not exempt them from their juridical and political responsibilities.

Moreover, the recent creation of the Libyan search and rescue region is itself a deliberate attempt to absolve EU member states of responsibility for POM vessels in distress, and prevent migration to Europe. Italy has collaborated with the Libyan authorities to address migration concerns since the 1990s (Alarmphone et al., 2020). In 2018, these efforts culminated in the creation of the new search and rescue region, to be coordinated by the Libyan authorities. The creation of the Libyan search and rescue region means that the Libyan Maritime Rescue Coordination Centre (MRCC) is responsible for

¹⁴ ECtHR, Hirsi Jamaa and others v. Italy, 23.02.2012



coordinating any incidents that occur within its parameters, as opposed to the Italian MRCC. (Watch the Med, 2020)). Any vessels picked up by the so-called Libyan Coast Guard will be taken back to Libya. With the new SaR zone, Italy and other member states attempt to absolve themselves of responsibility for rescue of vessels in distress, which, in line with the European Convention on Human Rights, would prohibit them from disembarking in Libya and usually require disembarkation on EU member states' shores (see above). However, due to the inadequacy of the so-called Libyan Coast Guard and the dangers faced by POMs returning to the country, this deliberate externalisation of European borders puts POMs at risk of death or injury at sea and Human Rights violations (including torture and other ill-treatment) (Amnesty International, 2012) if they return. In 2021, more than 32,450 POM were intercepted by Libyan forces and returned to Libya (IOM, 2021).

The de-prioritization of search and rescue by the EU is highlighted by the gradual withdrawal of maritime assets in the Central Mediterranean and an increase in aerial surveillance. In March 2019, the EUNAVFOR MED "Operation Sophia" withdrew its maritime assets, leaving merely six aerial assets. Without the ability to intervene in cases of migrant boats in distress, the EU avoids obligations to rescue and bring people to EU states. On the 25th of March 2020, the EUNAVFOR MED operation named "Irinì" was launched to replace EUNAVFOR MED Operation Sophia.

The combination of a decrease in EU funded search and rescue in the Central Mediterranean, as well as the increase in support of non-EU countries that lead to the facilitation of pullbacks and constitute severe breaches of Fundamental Rights as well as the principle of non-refoulement, call for the need of the EU to establish mechanisms within the EUMSS that prevent those. This is of particular relevance, as the European Commission recently confirmed their support of the Egyptian border management (European Commission, 2022), which is not supported by MEP. Erik Marquardt (MEP) stated, "*it [European Commission] will fund the Egyptian coast guard [...] to drag people back into the country, even though the human rights situation is catastrophic.*" (Marquardt, 2022).

4) Frontex's Accountability

Under Human Rights law, the EU Charter of Fundamental Rights, and the European Convention on Human Rights, Frontex is obliged not to expose anyone to Human Rights abuse, directly or indirectly, and to take necessary measures to protect people from Fundamental Rights violations. While the above elaborated evidence suggests that Frontex officers systematically violate these requirements, a failure of functioning oversight mechanisms has prevented effective accountability and change.

Frontex needs to employ functioning oversight, reporting and monitoring mechanisms that aim to ensure that officers do not participate in Human Rights abuse, and are held accountable if they do. Accountability mechanisms also intend to prevent complicity in abuse by EU member states. However, assessments by Human Rights Watch (Human Rights Watch, 2021) and others (Karamanidou & Bernd, 2020) have found that "*they have failed to prevent complicity by Frontex in Human Rights abuses or to ensure accountability.*" Moreover, in March 2021, a report produced by the Frontex Management Board Working Group that investigated 13 reported incidents in the Aegean sea found that there had been no wrongdoing by Greece or Frontex, despite stark evidence of the contrary (FMBWG, 2021). In response to that, BVMN has filed three complaints under Frontex's individual complaints mechanism, and submitted 5 letters of concern to the agency (see



e.g. BVMN, 2022d; BVMN, 2020g).

Several institutions have expressed concern as to the accountability of Frontex. On June 15th 2021, the EU Ombudsman delivered a report that criticised the functioning of the agency's complaint mechanism and the role of the Fundamental Rights officer (O'Reilly, 2021). In April 2021, the Meijers Committee, the Standing Committee of Experts on International Migration, Refugee and Criminal Law, noted that *"Frontex's working methods are an obstacle to the effectiveness of those accountability mechanisms that are available"* (Meijer's Committee, 2021). The report confirms that while according to Article 47 of the Charter of Fundamental Rights everyone has the right to an effective remedy before an independent and impartial tribunal, *"there are several legal obstacles for individuals to hold Frontex legally accountable."* The report states that national courts are not sufficiently competent to rule on the legality of Frontex's operations, while international courts such as the ECtHR are unable to, because the EU is not under their jurisdiction. In the Court of Justice of the European Union (CJEU), *"avenues for individuals to initiate proceedings are scarce."* Therefore, the Committee recommends that a fully *"independent and impartial forum must be provided where individuals can hold Frontex accountable."*

Article 46 of the Frontex Regulation (Frontex, 2019) requires that the Agency suspends or terminates operations where Human Rights violations are *"of a serious nature or are likely to persist"*. The EU has a legal obligation to ensure compliance with Fundamental Rights in its activities, as EU Agencies may not engage in illegal practices and may not support MS who do so. Nonetheless, despite its complicity and involvement in systematic Fundamental Rights violations in the Mediterranean, and multiple calls for it to terminate its operations in Greece, including from BVMN, Frontex continues to operate (BVMN, 2022d; Legal Centre Lesvos, 2021).

In line with the Meijers Committee, BVMN asserts the need for an independent and impartial forum where individuals can hold Frontex, or any other border agency, accountable and that offers anonymity for complainants. These forums shall ensure that in all operations of Frontex, or any other border agency, no migrant is returned or dissuaded from entry without full respect for procedural rights established in Human Rights law and the Schengen Borders Code.

D) Criminalisation

BVMN assesses that the mounting securitisation within EU border management is resulting in increasing criminalisation of POM, CSOs, and the people working for them who are aiming to support POM in accessing their Fundamental Rights or monitoring their access to the latter (see also BVMN, 2022e). This includes CSOs, such as BVMN member organisation Mare Liberum, which are working in areas that are connected to the blue border - the EU's external borders that fall under the scope of the Maritime Security Strategy due to their geolocation and scope of action (Mare Liberum, 2021). BVMN observes three main areas that are targets of criminalisation at EU external borders: monitoring, search and rescue and POM themselves.

1) Criminalisation of Monitoring

One example of the criminalisation of monitoring is the increased targeting of Mare Liberum, whose



main operational goal is to monitor Fundamental Rights breaches and pushback practices in the Aegean Sea (Mare Liberum, 2021).

Mare Liberum has repeatedly experienced criminalisation in the form of harassment by excessive administrative controls or audits, surveillance by law enforcement, smear campaigns, criminal investigations and serious threats by the HCG in the form of threatening with firearms (BVMN, 2022e).

For instance, in July 2021, the HCG stopped Mare Liberum's ship after it left Mytilene port. They checked the passports of all members and took photos of them. Additionally, they asked detailed questions about their route. In the early morning, before arriving at Chios, the HCG stopped the boat again. Three masked men in camouflage uniform, with their finger on their machine-guns' trigger, asked for all crew members to assemble on deck, checked again their papers and left in the direction of Chios harbour. On their way to the harbour, Mare Liberum's crew passed two more boats of the Hellenic Coast Guard. They both had weapons installed at the front, pointing at the organisation's boat. When Mare Liberum's boat passed, they turned with them, continuously pointing the weapons in their direction (BVMN, 2022e).

Moreover, in 2020, Mare Liberum was subject to a criminal investigation by the Greek police, secret service, and the Coastguard (Christides et al., 2020). In the context of the investigation, in September 2020, Mare Liberum's ship was raided by members of the police, the HCG and special forces. During this raid the crew members were targeted with harassment, including racist treatment and four of them were held for six hours at the police station without official arrest or interrogation. In addition, their phones and computers were confiscated and not returned (Mare Liberum, 2020). After the conclusion of the six-month-long investigation, which allegedly included the recruitment of two asylum seekers as informants and surveilling communication of the four CSOs team members, the Greek police issued a press release about the case. Without informing the accused organisations, the authorities proceeded to leak all the details of the case, including police documents, to the Greek media, who launched a largescale smear campaign mixing information from the authorities with wild additional accusations and claims under headlines such as "*NGOs for human trafficking and espionage*" (Popotas & Kalyva, 2020). Since there has still not been a trial or an indictment, this case can be considered as continued harassment in the form of legal action against the volunteers in question, while leading to negative media coverage and defamation of CSOs' commitment to protect the Fundamental Rights of POM (Gruber, 2021).

In addition to the listed incidents of formal and informal criminalisation, recent legal developments in Greece limit the CSOs' scope of action, bear the potential of misuse for further criminalisation and constitute a tool that resulted in the non-existence of monitoring in the Aegean Sea. For CSOs working in monitoring of sea areas, like BVMN member organisation Mare Liberum, or such working in search and rescue, the Amendment to the Law on Deportations (Law 4825/2021) by the Greek government is in practice highly restrictive. Passed in 2021, it greatly impacts the work of migrant rights defenders and civil society, particularly with conducting monitoring activities or search and rescue.



In the amendment, new additions were made to Article 40. This article regulates the activities of NGOs that operate in the area of jurisdiction of the Hellenic Coast Guard (HCG). It is still unclear what the legislation's wording implies at the geographical level, since the HCGs jurisdiction extends beyond the sea, covering coastal areas such as the seashore. The vague wording of the amendment is concerning: on the islands, the HCG can easily argue that they have jurisdiction inland, which would have severe impact on CSOs working for POM's rights and bears the potential to limit their operations. This is due to the fact that the Article specifies that NGOs willing to operate in the area of jurisdiction of the HCG shall be registered in the national NGO registry, and in the local emergency plans as well as act under the orders of the HCG. Failure to comply results in large fines and criminal charges. It is clear that the amendment targets vessels that are operated by CSOs. The administrative burden and aforementioned issues with the CSO registration law, together with the extra requirements set out in this amendment, make it very difficult for civil search and rescue organisations to be able to operate.

In practice, the HCG is not willing to allow CSOs to operate under their jurisdiction. Therefore, BVMN assesses that the amendment of the law is a strategy from the authorities to hinder any CSOs from operating at sea or at the shores. This development, in addition to the well-founded fear of criminalisation, has pushed almost all civil search and rescue and monitoring organisations to leave the Aegean Sea. Given the broad evidence for Human Rights violations by national and EU actors at sea and the lack of monitoring, this is highly problematic.

The amendment affects not only Search and Rescue organisations, but also civil monitoring actors, as our partner organisation Mare Liberum which has had its operations hindered under this amendment. In October 2021, the CSO facilitated a mission in the Aegean Sea for approximately 24 hours. Beforehand, the Greek authorities had visited and contacted Mare Liberum via telephone several times. During their mission, their *"monitoring vessel was checked, followed, photographed and ultimately ordered to leave the sea"* (BVMN, 2021a). After they had exchanged emails several times with the authorities, they were *"forced to return"* and *"leave the anchoring spot"*. Following several days of email conversations with the authorities, the local Coast Guard informed Mare Liberum that their ship was unable to operate under the new amendment to the Law 4825/2021. Days later, Mare Liberum was allowed to leave the port for the commemoration of those who died at Europe's external borders. The permission was given under the obligation *"to abstain from monitoring, stay far away from the border and call the authorities every hour"*. This was combined with the threat *"that 'any deviation' from their orders would result in 'criminal sanctions'"* (ibid).

As a consequence of the mounting incidents of criminalisation as well as increasingly limiting legislation, in February 2022, Mare Liberum posted a statement on their Facebook page explaining they *"had to halt [their] operations at sea due to a change in Greek law"* and that *"there are currently no [independent] civil monitoring or rescue assets active in the Aegean Sea"* (Mare Liberum, 2022). At the point of this submission, there are still no independent monitoring activities in the Aegean Sea. This is highly problematic, as even though several vessels of the HCG, as well as Frontex are present in the area, mounting evidence points to their involvement in illegal pushbacks, and thus



the commitment of Fundamental Rights violations outside of external monitors. Therefore, there is an urgent need for independent monitoring in the area, such as CSOs like Mare Liberum.

2) Criminalisation of search and rescue and POM

The current practice of securitisation of maritime borders results not only in the criminalisation of CSOs' conducting independent border monitoring as shown above, but also in the criminalisation of search and rescue and POM themselves.

In recent years, several CSOs have reported an increase in incidents of criminalisation of search and rescue, impeding their work of saving lives in the Aegean and Mediterranean Sea, in the context of European states and the EU decreasing rescue capabilities or refusing to answer distress calls. These include, among other, increasing administrative controls, arbitrary use of administrative regulations and legislation in order to prevent them from leaving the port, and the prevention of disembarkation. In addition to incidents of criminalisation impeding actions of search and rescue, there are also mounting cases of formal and informal criminalisation of crew members (Gleitze et al., 2021; see also Statewatch, 2020b; and EU Agency for Fundamental Rights, 2022).

Criminalisation is in so far connected to border externalisation (Dadusc, 2021) and securitisation, as MS increasingly use the argument of search and rescue operations being a “pull-factor” for more migrants to come as a justification for their criminalisation efforts, even though statistics prove that there is no connection between the existence of sea rescue operations in the Central Med and POM trying to cross the sea to Europe (Gleitze et al., 2021; see also Villa, 2020). Opposite to that, several scholars see a link between the political development in Europe towards increasing border securitisation and the narrative and definition of POM being a threat to security (as elaborated above, see also Bigo, 2002; Neal, 2009 and Gionco et al., 2022). This aligns with the increasing focus in EU migration politics on “*fighting migrant smuggling*” (Bellezza, 2017). In this context “*the criminalisation of CSOs can be seen as both ‘a new approach to irregular immigration and migration control tactics’ (López-Sala & Barbero, 2019, p. 2) and as the result of intensified ‘crimmigration’ (the criminalisation of irregular migration) policies (Stumpf, 2006). In this context, CSOs are punished for their involvement with and defence of people-on-the-move; a group that is increasingly labelled as ‘criminals’ (Schack & Witcher, 2021).’*” (BVMN, 2022e).

While civil search and rescue organisations are filling a gap of EU institutions by carrying out sea rescue operations, particularly since the end of operation Mare Nostrum and the lack of actual state financed search and rescue (Dadusc, 2021, see also chapter X Frontex), they are also criminalised. Scholars draw a line between the lack of provisioning the needed assistance and the establishment of the picture “*of the Mediterranean into a battlefield*”, which is drawn among other through an “*increased militarisation of maritime surveillance (increased cooperation between EU Common Security & Defence Policy (CSDP) missions Frontex, in particular the EUNAVFOR MED operations in the Mediterranean) [...] since 2015.*” (Statewatch, 2021b).

Equally important to mention is the criminalisation of POM themselves, which is embedded in the overall tendencies within the EU border regime to criminalise migration and close off its borders



(Spaggiari et al., 2022).

One relevant development in that context is the establishment of the “*Facilitators Package*” in 2002 (Bellezza, 2017). Often, it constitutes the basis upon which EU Member States establish legislation that criminalises humanitarian actors supporting POM¹⁵ and POM themselves. The increasing focus on the narrative of preventing smuggling and apprehending the facilitators of smuggling in practice often leads to the arbitrary apprehension of POM crossing the sea towards Europe.¹⁶

Apprehensions, legal steps and imprisonment are frequent as well as arbitrary actions that follow accusations of POMs driving the boats with which migrants cross the sea. These accusations are usually of facilitation, support of entry (term depending on national legislation) (Bellezza, 2017), or being responsible for shipwrecks, which can be penalised with five to 30 years imprisonment (Captain Support, 2022). For instance in Greece, following a shipwreck, two of the POM who were on the boat were sentenced with doubtful charges. While one of them was charged with a life sentence “*for the death of one person plus a further 10 years imprisonment per transported person, amounting to 230 years plus life imprisonment.*”, the other one was “*charged with ‘endangering the life of his child’, facing up to ten years imprisonment*” (I Have Rights., n.d.).¹⁷ Criminalisation of POM and the arbitrary accusation of them being the smugglers because of having driven the boat can be viewed as a systematic practice (I Have Rights., n.d., Hänsel et al., 2020).

In addition, an increasing number of POM is facing criminalisation and legal charges following their resistance against Fundamental Rights violations at sea in forms of pushbacks towards Libya. The most prominent example might be the one of the El Hiblu Three, three teenagers that in a bigger group of POM fled Libya in a rubber boat. When, after their rescue, the group realised that they were sought to be returned to Libya, they started a non-violent protest which resulted in their disembarkation in Malta. There, the teenagers were accused of terrorism and when convicted, face several years of imprisonment (Free El Hiblu 3, n.d.).¹⁸

Also, often POM themselves are involved in solidarity work of CSOs, which makes them particularly vulnerable to criminalisation, as for example in the case of Sarah Mardini, a Syrian with refugee background who was volunteering with an CSO on Lesvos and got criminalised for rescuing 18 POM with her boat when the engine of the group’s boat failed (UN Special Rapporteur on Human Rights Defender, 2022).¹⁹

BVMN therefore assesses that under the current Maritime Security Strategy, the environment for CSOs promoting migrants’ rights at EU’s external borders, as well as for POMs themselves greatly deteriorated. As increasing securitisation attempts oftentimes result in an increase of criminalisation

¹⁵ For more information on the consequences and critics to the facilitators package see BVMN, 2022e, for legal analysis see (Bellezza, 2017)

¹⁶ For more information see also ARCI Porco Rosso et al., 2021

¹⁷ For further information see also: <https://freethesamostwo.com/>

¹⁸ For more incidents see also the Nivin case: <https://forensic-architecture.org/investigation/nivin> and the Vos Thalassa Case: <https://elhiblu3.info/thalassa>

¹⁹ (former) POM are in particular vulnerable to criminalisation connected to their legal status (see e.g. BVMN, 2022e)



attempts by several stakeholders, BVMN calls for robust safeguards which protect people of concern against unjustified accusations and any form of criminalisation.

Overall, securitisation already leads to several forms of criminalisation, with severe effects on the respect of Fundamental Rights. A new Maritime Security Strategy has to stop this trend by preventing criminalisation and incorporating search and rescue as well as monitoring mechanisms.

E) Data as part of Border Surveillance and Securitisation

Drones have become the favoured technology in surveilling state borders within the EU and at EU's external borders (Loukinas, 2017), being deployed regularly in border areas where reports of pushbacks have been documented (Kaamil, & Tondo, 2021). Burt et al. (2020, p. 2) argue that in *"the European Union, [...] drones are playing a key role in attempts to pushback irregular migrants aiming to cross the Mediterranean Sea"*, setting the increase in technological border surveillance in the context of securitisation politics within the EU.

Several actors are involved in the surveillance of the EU external borders. Next to national governments, which increasingly implement drones in their border security programs, also Frontex strengthens its focus on their border surveillance strategy through deploying drones (see above, as well as Burt et al., 2020; Kaamil & Tondo, 2021). This also includes the agencies cooperation with multiple actors by processing and exchanging data conducted by drones (Burt et al., 2020), including the processing of data collected by drones in the Mediterranean to the so-called Libyan Coast Guard (Kaamil, & Tondo, 2021), as well as the transfer and processing of data collected by private contractors (Burt et al., 2020; see also Akkerman, 2020; Monroy, 2021; Monroy, 2020).

1) Data collection and processing in border surveillance and its interlinkage with the facilitation of pushbacks

Although surveillance data is extensively collected, it is frequently not used to facilitate rescue operations. In the current practice of EU border securitisation and surveillance, data collected and processed is often not shared with search and rescue resources that are close to the people in distress and therefore able to carry out rescue operations (Nielsen, N., 2020; Creta et al., 2021). Opposite to that, BVMN assesses that the data collected and shared through the use of drones and other tools of aerial surveillance like e.g. aeroplanes deployed in European border surveillance might often result in the facilitation of pushbacks.

Considering the focus of this submission on the Aegean Sea, it is important to point out that Greece's heavy investment in different forms of technology used in border surveillance within the last years has been criticised by scholars for endangering Human Rights and privacy rights, in particular of POM (Ahmed et al., 2021, Loukinas, 2017). In addition, in 2021, Frontex announced its deployment of a drone surveilling the Eastern Mediterranean *"to support the Greek authorities with border management and pre-frontier surveillance"* (Frontex, 2022). According to the statement, the data collected by the drone will be transferred to and processed in the agency's headquarters. In the light of recent investigations that prove Frontex's involvement in pushbacks in the Aegean Sea (see above), the agency's access to this data without functioning accountability mechanisms is highly



problematic as it might probably be misused to conduct pushbacks.

In the Central Mediterranean region, where drones have become an increasingly crucial element of border surveillance, the data collected by the latter is often used to facilitate pushbacks, executed by the Libyan authorities. CSOs have proven that the data collected by aircrafts and drones is often shared solely with the so-called Libyan Coast Guard, leading to a breach of the principle of non-refoulement (see above).

Given the fact that several actors are involved in the collection, processing and use of data collection in border surveillance it is important to point to the fact that those acts fall under international responsibility and that ethical issues, as well as such resulting from legal liability, indict the EU and its MS. Using the data collected by drones deployed in European border surveillance to facilitate pushbacks constitute a fundamental breach of personal data rights. However, even if not used to this aim, the data collected and shared often make a significant contribution towards the commission of an internationally wrongful act by a state (ARSIWA Commentaries, Comment 5 to Art. 16). Without the exchange of data, the location, interception and pullback of migrant boats in distress would not be possible (Moynihan, 2018). As the collection and sharing of data is a positive action, one which results from a decision on the part of the state to cooperate with third states, such as Libya, the certain state also bears the responsibility that the further processing and use of the data is in compliance with international law. Questions of ethical issues and international responsibility of the EU in addition arise by its own agency, Frontex, when collecting, processing and transferring the data necessary to locate POM that are later on being pushed back, in particular when this data is provided to authorities which are known for their involvement in illegal pushbacks.

Given that drones record data that locates people in distress and evidences Human Rights breaches at the Mediterranean Sea, BVMN argues that CSOs involved in search and rescue missions, as well as those monitoring Human Rights violations in border areas, should get access to this data. This would strengthen the role of CSOs as independent control mechanisms preventing the abuse of Fundamental Rights by state agencies (Koslowski, & Schulzke, 2018). Parallels can be drawn to the United Nations Convention on the Law of the Sea (UNCLOS) 1982, which calls for the requirement of a procedural duty of assistance on operators of drones. It obliges the operator of drones which collected the data of a boat in distress to share that information with any actor who is best placed to render assistance (UNCLOS, Art. 98). It is clear that the *'effective protection of human life'* demands a legal provision to this effect (Ibid, Art. 146). This is particularly relevant, as CSOs involved in search and rescue as well as journalist investigations report on the non-supply with data collected by Fontex on people in distress at sea (Nielsen, N., 2020; Creta et al., 2021).

2) Drones in border surveillance and data protection issues

Since 2018, BVMN has recorded 33 testimonies where drones were used during pushbacks, affecting an estimated 1004 people. For example, May 2022, a testimony from the Greek/Turkish land border describes how *"one of the masked individuals reportedly used a small grey drone to ensure there were no authorities on the other side of the river, which is Turkish territory"* (BVMN, 2022b), before



proceeding with the illegal pushback.²⁰ Even though none of the testimonies published by BVMN is reporting on the use of a drone in a pushback taking place at sea, we would like to point to some aspects concerning the use of drones in border surveillance stemming from our expertise. BVMN considers it as highly important that those are taken into account when revising the current Maritime Security Strategy and developing future strategies for the collection and processing of data as part of it.

Drones deployed at borders for surveillance purposes create huge amounts of data, while their nature of moving location imposes challenges to track them, as well as their silent operation making it difficult for people to be aware of being surveilled. This raises ethical concerns such as civil liberty, privacy and data protection issues (Finn & Wright, 2012). BVMN is concerned about the lack of transparency on the use of data collected by drones deployed during border surveillance.

The protection of Data within the EU is regulated under Regulation (EU) 2018/1725, the EU Data Protection Regulation (EUDPR).

The processing of data conducted by drones that are used in this nature in border surveillance can be seen as a breach of Art. 4 (1) a. EUDPR, as it is not processed in a *“transparent manner in relation to the data subject”*, even though Art. 10 (2) b EUDPR allows the processing of personal data only when safeguards for Fundamental Rights of the data subject are provided. The remoteness of pushback areas, as well as drones’ silent, unnoticeable operations make it impossible for people in the area to be aware of the collection of data. Neither are they informed about the processing of this data, as well as the further rights they hold as data subjects (EUDPR, Chapter III).

The nature of pushbacks is such that they are carried out in an expeditious manner, leaving no room for the data rights of the subject to be protected. Without doubt, the usual procedural guarantees which attach to the data rights of the subject, specifically those which relate to ensuring transparent information, communication and modalities for the exercise of those rights, are not respected.

In the case of drones being deployed in border surveillance, it might be argued that the data collected is processed *“relating to criminal convictions and offences”* (EUDPR, Art. 11), as drones are partly used in order to detect irregular border crossings and cross-border crime (Burt et al., 2020). However, this also comes with the obligation to implement *“appropriate safeguards for the rights and freedoms of data subjects”*(EUDPR, Art. 11). This aligns with Art. 1 (2)a. Directive (EU) 2016/680, according to which all MS are obliged to protect Fundamental Rights and the right to protection of personal data in police and criminal justice authorities’ operations when collecting personal data. Hence, also when processed for criminal purposes, safeguard mechanisms have to be in place.

However, crossing a border with the aim to seek asylum does not constitute a crime and therefore cannot be considered as such (AIDA, 2020). Hence, when drones are employed at border areas, guarantees regarding the protection of Fundamental Rights when processing personal data, in particular of POM, have to be established as part of the revised EUMSS, e.g. by implementing safeguard mechanisms for personal data.

²⁰ for the full list of testimonies in the BVMN database see Annex below



Multiple actors, including those falling under the scope of the definition of an EU body (EUDPR Art. 3 (10)) are involved in the collection, processing and transferring of data collected by drones and other techniques of aerial border surveillance. Hence, when considering data protection by EU bodies, not only these have to be considered but also external agencies and companies, which are collecting personal data that is later on processed to EU bodies. This is due to the fact that the collection of data for purposes of border surveillance of Frontex, in particular for their platform Eurosur, is not conducted by the agencies themselves, but by private contractors (Burt et al., 2020; see also Akkerman, 2020; Monroy, 2021; Monroy, 2020). The outsourcing of military and security service provision, including border surveillance and migration control to non-state actors, entails challenges to ensure Fundamental Rights and data protection (Burt et al., 2020). Therefore, there is a need for a clear regulatory framework at national as well as a regional level to ensure the protection of personal data (Saner, 2015).

3) Relevant concerns regarding data protection in border surveillance

Considering border securitisation and alongside with it border surveillance at the EU level, Frontex is one of the main stakeholders, also in Maritime Areas (FMBW, 2021). At the same time, in the past years, BVMN observed several Frontex border surveillance activities that breach relevant EU data protection laws.

Since 2019, at least 12 respondents of interviews conducted by BVMN claimed that Frontex officers, or officers that might be affiliated with Frontex, took visual footage of the transit group or an individual within the group that was apprehended after irregularly entering the territory of a state. That might be constituting a breach of data protection rights as laid down in EUDPR. One of these incidents took place during a pushback in the Aegean Sea (BVMN, 2021b).

The rights of POM as data subjects, as enshrined in the EUDPR, were violated in the mentioned cases. In all cases their data was recorded without them receiving accessible information neither on the data collected and its processing (Art. 14), nor on their right to access the data (Art. 17) or potential complaints mechanisms (Art. 14; Art. 16 (2) d). Crucially, there is complete disregard for the general prohibition against processing of special categories of data (Art. 10(1)). Importantly, it is highly uncertain whether the exceptions to this prohibition are met. It is not clear for what purpose biometric data is being processed, whether explicit consent has been given by the data subject, whether processing is carried out in the course of legitimate activities and with appropriate safeguards, or whether data is disclosed to others without the consent of the data subject (Art. 10(2), EUDPR).

Oftentimes, POM lack access to relevant information in situations of apprehension or when interacting with Frontex officers (see also ENNHRI, 2019). As recorded in several of BVMN testimonies, interpretation is barely provided. However, according to the EUDPR information should be provided in a "*concise, transparent, intelligible and easily accessible form*" (Art. 14 (1) EUDPR). As POM crossing EU external borders do not hold the nationality of an EU MS, it can not be assumed that they speak the same language as the implementing officers of Frontex. Therefore, in order for



information to be accessible, it must be given in a language understood by the data subject. Hence, an interpreter must be present in order to ensure the accessibility of the information given. The relevance of the accessibility of information is furthermore emphasised upon by the European Union Agency for Fundamental Rights when recommending the “[u]se [of] leaflets or posters to be better understood” when personal data in border controls at external land borders is processed (FRA, 2020). In addition, the way Frontex operations are facilitated bears dangers of breaches of the EUDPR due to a lack of understanding and access to information on the side of POM. This is particularly the case in so-called debriefing interviews. Frontex’ debriefing officers are often deployed in joint operations. Their responsibility is “to debrief third country nationals by systematic extraction of information from persons willing to cooperate” according to the course description on Frontex’ website (Frontex, 2022). The purpose of the debriefing interviews is to collect information about migration routes, identifying smuggling routes and rings, and others. This data is processed by Frontex for risk analysis and vulnerability assessments. While the participation in debriefs is voluntary according to the information retrieved from the website, POM report that they are not informed properly about the voluntary nature of the debrief. They are often transferred from one office to another, where they are asked questions by foreign officers. Their data is being collected again. They are handed over documentation that they are requested to sign even though there is a lack of information they are able to access. The lack of interpretation, and hence information not being provided in an accessible manner, adds up to the fact that POM are not informed where their data is collected and the manner to access it. They are unaware that they can request the erasure of their data from Frontex. They are not informed that they can file a complaint to the Frontex Data Protection Supervisor in case their data is misused. The debrief reports contain detailed information such as the full name, date and place of birth, nationality, family composition, personal story of the POM and migration route travelled. The conditions for consent as legislated in Art. 7 EUDPR are not met and often POM’s consent is vitiated (see also López et al., 2022).

Therefore, an updated maritime security strategy, when establishing a EU wide border surveillance practice, has to include data protection safeguards as well as assure the data protection rights of the concerned individuals.

IV) Recommendations

For the update of the EUMSS, BVMN articulates the following core recommendations in order to establish the EU’s adherence with Fundamental Rights and international law at its external borders, as well as the protection of POM, aiming at the abolition of illegal pushbacks as well as the prevention of death at its external borders by enabling well functioning search and rescue operations:

1. The EUMSS must include the establishment of an independent border monitoring mechanism at all of the EU external sea borders.
2. In cases of illegal pushbacks and other breaches of Fundamental Rights of POM accountability must be established. Functioning Accountability Mechanisms must be an integral part of the EUMSS.



3. Evidence collected by independent CSOs as well as journalists' investigations on Fundamental Rights breaches at EU's external sea borders must be taken seriously.
4. The updated EUMSS must not allow any criminalisation of CSOs or POM working to assure the compliance with Fundamental Rights at the EU's seaborders. Protection mechanisms for criminalised CSOs as well as individuals must be established as part of the EUMSS.

Relating to the chapters above this results following concrete recommendations:

Regulation 656/2014

1. Establish search and rescue as an integral part of the updated EUMSS
2. Assure the implementation of Regulation 656/2014 and incorporated search and rescue obligations.
3. Establish clear definitions of the relevant terms, in order to support POM in distress and ensure search and rescue operations for those on unseaworthy vessels, as well as prevent their disembarkation in an unsafe country.
4. Establish an accountability mechanism for the implementation of Regulation 656/2014 in order to prevent its false implementation into practice as well as its misinterpretation.

Frontex

1. ensure that Frontex, or any other border agency, prioritises search and rescue and the safeguarding of human life, by:
 - a. alerting all nearby vessels when there is a vessel in distress
 - b. aiding any passengers in unseaworthy vessels or otherwise in distress and ensuring their disembarkation in a place of safety
2. ensure that in all operations of Frontex, or any other border agency, no migrant is returned or dissuaded from entry without full respect for procedural rights established in Human Rights law and the Schengen Borders Code
3. ensure that Frontex, or any other border agency, establish in addition to the independent external monitoring an internal oversight, reporting and monitoring mechanisms that aim to ensure that officers do not participate in Fundamental Rights abuse, and are held accountable if they do. Those accountability mechanisms should be able to prevent complicity in abuse by EU member states
4. have an independent and impartial forum where individuals can hold Frontex, or any other border agency, accountable, and that offers anonymity for complainants
5. end communication between European Union agencies and the Libyan authorities
6. revoke the Libyan search and rescue zone

Criminalisation

1. Prevent the criminalisation of CSOs that have a monitoring and search and rescue missions , as well as protect those criminalised
2. Support CSOs that take the relevant role of independent border monitoring or search and rescue by supporting legislation that enables them to function



3. Include CSOs facilitating independent border monitoring as well as search and rescue as integral part of the EUMSS
4. Prevent the criminalisation of POM searching for protection in the EU and grant them access to protection and asylum procedures as enshrined by international law

Data as part of Border Surveillance and Securitisation

1. explicitly legislate that drones must be used in adherence with international legal obligations, that they cannot be used to facilitate pushbacks, and that drones at the borders, whether they be at sea or land, cannot be used to avoid search and rescue responsibilities.
2. ensure that MS are not provided drones, or other technologies, to facilitate Fundamental Rights breaches such as pushbacks
3. In case of outsourcing military and security service provision, including border surveillance and migration control to non-state actors, establishment of a clear regulatory framework for the implementation of safeguard mechanisms which ensure respect of Fundamental Rights in the use of drones during border surveillance, applicable not only to governmental actors but also private companies
4. Closely monitor the implementation of clear regulations, guaranteeing data protection not only by EU bodies but also when data is collected by private contractors, actors and companies on a national level. EUDPR must lay legal grounds in order to assure that EU bodies are only allowed to work with data processed to them which was collected under data protection regulations consistent with its own standards. This includes the setting of clear responsibilities among external contractors for data protection.
5. Include a special permission for CSOs, alongside state agencies or private contractors, to use drones in maritime surveillance and border areas in order to ensure effective deployment of search and rescue and enable independent border monitoring
6. Create mechanisms that allow victims access to their own data created by drones and other technologies in border surveillance documenting Fundamental Rights violations in order to hold the perpetrators of pushbacks to account
7. improvement of control and complaint mechanisms in order to strengthen data protection rights of data subjects, in particular when consisting of vulnerable groups, such as POM, within EU agencies' operations.



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<https://www.borderviolence.eu/violence-reports/august-24-2021-0530-in-the-aegean-sea-3-kilome-tres-from-samos-island/>

BVMN. (2021). *“They strip searched us naked in the forest.”*.
<https://www.borderviolence.eu/violence-reports/september-18-2021-1400-samos/>

BVMN. (2021). *“We were crying and swimming and crying and swimming”*.



<https://www.borderviolence.eu/violence-reports/january-27-2021-2100-fener-adasi-turkey/>

BVMN. (2020). *"We are refugees, we want to apply for asylum"*.

<https://www.borderviolence.eu/violence-reports/december-3-2020-1200-lesvos/>

BVMN. (2020). *"When they put us inside the vessel they put us at gunpoint again."*

<https://www.borderviolence.eu/violence-reports/november-10-2020-0100-south-of-mytilene-left-at-sea-between-turkey-and-lesvos-39-043526-26-750051/>

BVMN. (2020). *"Once they put us on the Coast Guard Ship, they shot our boat approximately 20 times"*.

<https://www.borderviolence.eu/violence-reports/october-30-2020-2130-aegean-sea-between-rhodes-and-marmaris-mugla/>

BVMN. (2020). *"We did not want to put our children through all that so to protect them, we preferred to return directly. The ship chased us until we had returned to Turkish waters."*

<https://www.borderviolence.eu/violence-reports/august-24-2020-0230-greek-waters-off-of-kos/>

BVMN. (2020). *"We were screaming is this Europe? Where is Europe? Where is the humanity?"*

<https://www.borderviolence.eu/violence-reports/august-19-2020-0400-greek-waters-off-of-skala-sikamineas-lesvos/>

BVMN. (2020). *"My 11 year old son yelled at the Greek soldiers, begging them for mercy and humanity, convinced we would die in that moment"*.

<https://www.borderviolence.eu/violence-reports/july-27-2020-0000-rhodos/>

BVMN. (2020). *"They had no mercy at all. Isn't it against all mercy and humanity what they do?"*

<https://www.borderviolence.eu/violence-reports/july-11-2020-0000-coast-off-lesvos/>

BVMN. (2020). *"[they told us] we don't care...die... we want you to die"*.

<https://www.borderviolence.eu/violence-reports/june-5-2020-1000-aegean-sea-lesvos-turkey/>

BVMN (2020). *"They are ready to push us back and back again and again"*.

<https://www.borderviolence.eu/violence-reports/june-3-2020-0200-lesvos-greece/>

List of testimonies involving drones

Below are 33 BVMN testimonies that reference drones used during pushbacks:

BVMN. (2022). *"They treat us so bad, like toys or something, animals are way better treated than us."*

<https://www.borderviolence.eu/violence-reports/may-2-2022-0000-orestiada/>

BVMN (2022). *"All that you have to do to stay alive is follow their orders"*.

<https://www.borderviolence.eu/violence-reports/april-26-2022-0000-mikrochori-gr-to-kiremitcisalih-tr/>



BVMN (2022). *"I will be dead before I even finish the word. You really don't know how brutal they are"*. <https://www.borderviolence.eu/violence-reports/april-9-2022-0000-valcha-polyna-hamzabeyli/>

BVMN (2022). *"At the pushback point were 3 men in civilian clothing and balaclavas. They were speaking syrian arabic to the respondent: "don't make the officer upset, let us beat you, just follow the order, stop trying before you lose your life"*

<https://www.borderviolence.eu/violence-reports/march-22-2022-0000-nea-vyssa-gr-to-bosna-tr/>

BVMN (2022). *"When [the man in uniform] found my phone he told me to open [it], slapped me [in the] face, and then said 'good boy'"*.

<https://www.borderviolence.eu/violence-reports/march-10-2022-0300-from-malko-tarnovo-bg-to-su-krupasa-tr/>

BVMN (2022). *"The police knows me, they know I'm a refugee. First time I was pushed back I was shocked, now I got used to the violence"*.

<https://www.borderviolence.eu/violence-reports/march-9-2022-1100-croatia-close-to-cuic-brdo/>

BVMN (2022). *"Tunisian man hit with torch in Horgos"*.

<https://www.borderviolence.eu/violence-reports/january-24-2022-0200-horgos-border-vojvodina/>

BVMN (2022). *"We had to get on our knees, because if we don't get on our knees, they beat us"*.

<https://www.borderviolence.eu/violence-reports/february-13-2022-0300-bosnian-croatian-one-hour-van-drive-from-staro-selo-near-m201/>

BVMN. (2021). *"This is Germany"*.

<https://www.borderviolence.eu/violence-reports/december-4-2021-0100-near-motorway-e71-croatia/>

BVMN. (2021). *"I knew he would catch me..."*.

<https://www.borderviolence.eu/violence-reports/october-6-2021-0900-mandra-greece-to-alibey-turkey/>

BVMN. (2021). *"One of my friends fell down, the police started beating him very hard with batons while he was on the ground yelling that they were going to release the dogs on him. I went back and took my friend under my arm and we ran away together, he was bleeding and so was I in my hands"*.

<https://www.borderviolence.eu/violence-reports/september-4-2021-0600-gornja-mocila-rakovica-croatia/>

BVMN. (2021). *"« We were 50, it was not possible to sit or breathe »"*.

<https://www.borderviolence.eu/violence-reports/august-30-2021-0800-near-road-55-hungary/>

BVMN. (2021). *"I ran away very fast so they beat me very little, but a friend of mine was beaten very hard, even in the face and on the head"*.

<https://www.borderviolence.eu/violence-reports/august-27-2021-0000-novo-selo-korenicko-croatia/>

BVMN. (2021). *"The 6 year old told the police his mom lives in Germany and he wanted to go there"*



and they just laughed”.

<https://www.borderviolence.eu/violence-reports/july-10-2021-0200-rozke-horgos-border-crossing/>.

BVMN. (2021). *“When they came the whole group was asleep. They kicked everyone, not just me”.*

<https://www.borderviolence.eu/violence-reports/june-14-2021-1300-horgos-border-crossing/>.

BVMN. (2021). *“Go back to your country”.*

<https://www.borderviolence.eu/violence-reports/april-18-2021-1430-rozke-horgos-border-crossing/>.

BVMN. (2021). *“Don't come again to Romania, if you come back we will beat you more and more”.*

<https://www.borderviolence.eu/violence-reports/april-8-2021-2200-near-moravita-romania/>.

BVMN. (2021). *“One small boy, he was very scared.” 30 people removed from Croatia to Bosnia.*

<https://www.borderviolence.eu/violence-reports/march-9-2021-0000-road-e71-in-croatia/>.

BVMN. (2021). *“But the thing the most I hated [was that] they [Romanian officers] kept guns like we did bad things, like [we were] terrorists”.*

<https://www.borderviolence.eu/violence-reports/march-4-2021-0008-near-comlosu-mare-romania/>.

BVMN. (2021). *“They had to wait there for several hours and they were not allowed to fall asleep”.*

<https://www.borderviolence.eu/violence-reports/february-27-2021-0005-near-kelebija-serbia/>.

BVMN. (2020). *“If we had known, we would not have come to thessaloniki. But I thought we have papers, we have UNHCR documents, nothing will happen to us!”.*

<https://www.borderviolence.eu/violence-reports/august-27-2020-0900-thessaloniki-greece/>.

BVMN. (2020). *“Sent back wounded from Hungary”.*

<https://www.borderviolence.eu/violence-reports/july-23-2020-1800-subotica/>.

BVMN. (2020). *“They took our jackets so it would hurt more”.*

<https://www.borderviolence.eu/violence-reports/march-25-2020-1200-near-beba-veche-romania/>.

BVMN. (2019). *“[We] understood that we are alive but don't understood anything [else]”.*

<https://www.borderviolence.eu/violence-reports/october-15-2019-0000-north-west-karlovac-croatia/>.

BVMN. (2019). *“We are not terrorists, we are only looking for a good life to take care of our families”.*

<https://www.borderviolence.eu/violence-reports/october-15-2019-0000-buhaca-croatia/>.

BVMN. (2019). *“They close the door after each one”.*

<https://www.borderviolence.eu/violence-reports/august-21-2019-0000-rijeka-croatia/>.

BVMN. (2019). *“I told them: “stop! You're hurting me. I cannot breathe.””.*

<https://www.borderviolence.eu/violence-reports/august-5-2019-1500-near-sturlic-bih/>.

BVMN. (2019). *“One of the police officers was facetiming a woman and smiling”.*

<https://www.borderviolence.eu/violence-reports/july-25-2019-2000-between-dvor-hr-and-stabandz>



[a-bih/](#).

BVMN. (2019). *"It was a lot of fight, black stick, electronic stick, everybody sticks"*.

<https://www.borderviolence.eu/violence-reports/april-22-2019-0800-2-3-hours-from-rastovica-rest-station-a3-croatia/>.

BVMN. (2019). *"Driver very big problem"*.

<https://www.borderviolence.eu/violence-reports/april-4-2019-0400-odmoriste-spacva-gas-station-highway-e70-croatia/>.

BVMN. (2019). *"There, they spotted some officers along the road and heard the sound of drones"*.

<https://www.borderviolence.eu/violence-reports/march-30-2019-0000-near-donji-vaganac-croatia/>.

BVMN. (2019). *"At this moment we were far away from the first city and you know, without phone means without map!"*.

<https://www.borderviolence.eu/violence-reports/march-8-2019-0900-near-komesarac-croatia/>.

BVMN. (2018). *"He hit him so strong, that he fell on the ground"*.

<https://www.borderviolence.eu/violence-reports/september-29-2018-0100-croatia-forest-close-to-ogulin/>.