

Working paper for discussion on a
Draft Roadmap towards a
“European Framework for Operational Cooperation on Search and Rescue in the Mediterranean Sea”

This working paper for discussion follows the meeting of the Search and Rescue (SAR) Contact Group on 31 January 2023 that selected, as one of four strands, to work towards a better framework for operational cooperation on SAR. The aim is to discuss at the next technical meeting (April 2023) and agree at the next SAR Contact Group plenary (June 2023) a roadmap outlining the main steps needed towards establishing a “European Framework for Operational Cooperation on SAR in the Mediterranean Sea”, which addresses the specific challenges stemming from the ongoing migratory movements to the EU by sea, including those deriving from the increased number and types of actors involved in SAR operations.

I. Legal and policy context

The legal framework governing SAR and the protection of human life at sea is composed of customary and treaty law, including international maritime law conventions, international human rights and refugee law. More specifically, providing assistance to persons found in distress at sea is a legal obligation of Member States established in international customary and treaty law – in particular the International Convention for the Safety of Life at Sea (SOLAS Convention, 1974), the United Nations Convention of the Law of the Sea (UNCLOS, 1979, to which the EU is a contracting Party), and the International Convention on Maritime Search and Rescue (SAR Convention, 1979) – as well as EU law as concerns activities carried out in the context of Frontex-led joint operations at sea (Regulation 656/2014). The European Court of Justice has recognised in its case law the customary and treaty law obligation, pursuant to which *“every State must require any master of a ship flying its flag to render assistance to persons in danger or distress at sea, in so far as he or she can do so without serious danger to his or her ship, the crew or the passengers”* up to the completion of *“all operations relating to the transshipment or disembarking of persons to whom their respective masters decided to render assistance when they were in danger or distress at sea”*¹.

The 2004 amendments to the SAR and SOLAS Conventions² further developed the global set of rules governing SAR activities. Beyond these provisions, a number of guidelines, recommendations and other instruments³ have been developed over time to address specific concerns.

However, the migratory situation that has developed over recent years shows the need to address persisting challenges linked to complex SAR operations, with large numbers of people requiring rescue at

¹ Judgment of the Court of 1 August 2022, Sea Watch, Joined Cases C-14/21 and C-15/21, ECLI:EU:C:2022:604.

² The amendments were ratified by all EU Member States except for one.

³ These include, among others, the IMO Guidelines, such as on the Treatment of Persons Rescued at Sea (Res MSC.167(78)); for preparing plans for cooperation between search and rescue services and passenger ships (MSC/Circ.1079/Rev.1); or for the development of plans and procedures for recovery of persons from the water (MSC.1/Circ.1447).

the same time also involving different types of actors, with a view to preventing loss of life in the Mediterranean.

While the European Commission has no role in coordinating SAR operations or in determining a place of safety for the disembarkation of assisted persons - both of which fall within the remit of the responsible national authorities - SAR activities are a key element of European integrated border management, as set out in the Commissions' recent communication on this topic⁴.

Furthermore, a new form of SAR operations in the European maritime landscape has emerged in recent years, whereby vessels operated by private entities in the Central Mediterranean Sea have been engaging in SAR operations as their predominant activity. Moreover, the continuous disembarkations of rescued migrants in some coastal Member States, resulting from both national and private operations, has a significant impact on these countries' asylum, migration and border management systems with subsequent consequences on the functioning of asylum and migration at EU level.

As the current international framework does not fully address the complexities brought by the new dimensions of the SAR phenomenon, the Commission, as part of its comprehensive approach to SAR developed with the Pact on Migration and Asylum⁵, has issued a Recommendation⁶ to address the specificities of the SAR practice, which have arisen in the Mediterranean over the past years, in line with EU competences and the relevant legal framework.

The Recommendation calls upon EU Member States to enhance information exchange, cooperation and coordination among them, and between them and other relevant stakeholders, with a view to preventing loss of life, improving migration management and ensuring safe navigation, including as regards operations carried out by private vessels owned or operated for this specific purpose.

The need to enhance cooperation among EU Member States has been reiterated by the Commission in its Action Plan for the Central Mediterranean, endorsed by the extraordinary Justice and Home Affairs Council on 25 November 2022⁷, and in the meeting of the European Council of 9-10 February 2023, which recognised the specificities of different types of borders, particularly the maritime borders and underlined the need for reinforced cooperation on search and rescue activities⁸.

In line with these developments, this draft roadmap outlines the main steps needed towards establishing a "European Framework for Operational Cooperation on SAR in the Mediterranean Sea", which addresses

⁴ The Commission adopted on 14 March 2023 the [Communication establishing the multiannual strategic policy for European integrated border management](#), providing policy priorities and strategic guidelines, among other components, on SAR.

⁵ https://commission.europa.eu/publications/migration-and-asylum-package-new-pact-migration-and-asylum-documents-adopted-23-september-2020_en

⁶ <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32020H1365>

⁷ <https://www.consilium.europa.eu/media/60347/fin-pres-summary-migration.pdf>

⁸ <https://data.consilium.europa.eu/doc/document/ST-1-2023-INIT/en/pdf>

the specific challenges stemming from the ongoing migratory movements to the EU by sea, including those deriving from the increased number and types of actors involved in SAR operations.

II. General objective and participation

The establishment of a Framework for Operational Cooperation is intended to facilitate and reinforce information exchange and coordination among competent national authorities, including those of coastal and flag Member States, as well as other relevant stakeholders. It should help to clarify the roles and responsibilities of the various players in **different SAR configurations**, which require coordination firstly among Member States, and secondly between Member States and other actors, in line with existing rules defined by international and European law. Although the operational framework would not focus on the disembarkation stage, it could help facilitate subsequent disembarkation arrangements. The framework should also support national authorities and other actors to **achieve greater clarity and improve operational cooperation** as regards the operations of private organisations that systematically carry out SAR at sea as their main activity and in an autonomous way, without having received a delegation from the authorities responsible for the coordination of such activities, notably in their SAR areas.

The Framework for Operational Cooperation could be **agreed, on a voluntary basis, among EU Member States and Schengen Associated Countries** starting with those that are SAR Contact Group members. Once agreed, it **could subsequently be extended** to other stakeholders, such as privately owned or operated vessels involved in rescue activities as relevant and needed, commercial vessels and shipping associations, and to the responsible authorities of other non-EU Coastal States in the Mediterranean. In the **longer term**, lessons learned through the introduction and implementation of this cooperation framework could serve as basis for a further **initiative within the International Maritime Organization (IMO)**.

III. Underlying principles for a European Framework for Operational Cooperation on SAR

- The international obligation to render assistance to those in distress at sea without discrimination⁹.
- The principle of *non-refoulement*, which prohibits return to territories where an individual may face persecution, torture, inhuman and degrading treatment, or other irreparable harm. The principle of *non-refoulement* also applies when a State acts extraterritorially¹⁰.
- The obligation to ensure arrangements for distress communication and coordination¹¹.

⁹ Article 98 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS), entered into force 16 November 1994; Chapter V, Regulation 33 1-1, SOLAS Convention; Chapter 2.1.10 SAR Convention.

¹⁰ Article 33 of the 1951 Convention relating to the Status of Refugees, entered into force 22 April 1954 (1951 Convention); Articles 6 and 7 of the 1966 International Covenant on Civil and Political Rights, entered into force 23 March 1976 (ICCPR); Article 3 of the 1984 Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, entered into force 26 June 1987 (CAT).

¹¹ Article 98(2), UNCLOS; Chapter V, Regulation 7, SOLAS Convention

- The duty to cooperate to ensure that shipmasters providing assistance to those in distress are released from their obligations, and that survivors are disembarked from the assisting ship and delivered to a place of safety as soon as reasonably practicable¹².
- The duty of shipmasters to comply with any relevant instructions of the Government responsible for the SAR region where the survivors were recovered, or of another responding coastal State¹³. Such duty upon the shipmaster should not come in conflict with the duty to render assistance and to ensure swift disembarkation in a place of safety.
- The principle of sincere cooperation among EU Member States, in particular flag and coastal Member States¹⁴.

IV. Roadmap towards a Framework for Operational Cooperation

In order to establish a more effective and common European Framework for Operational Cooperation to address the main operational challenges in the Mediterranean, SAR Contact Group members could commit to discuss the main elements of the framework following a gradual approach, in line with the Roadmap outlined below. The Roadmap – composed of nine deliverables – builds upon the work that is being developed in all work strands of the SAR Contact Group, including efforts to improve situational awareness in the Mediterranean and to bring about a greater alignment of national rules and practices on private vessels certification relevant for SAR.

Deliverable 1) Agree on scope of the Framework for Operational Cooperation

| Action | Actor(s) | Indicative milestone |
|--|--|--|
| Agree on the situations to which the Framework for Operational Cooperation applies | Volunteering SAR Contact Group members Frontex, European Maritime Safety Agency, European Fisheries Control Agency European Commission | Agreement at the SAR Contact Group meeting on 16 June 2023 |

The framework could address the most common situations of rescue events currently occurring in the Mediterranean, with a view to clarifying what type of intervention would be required in each of these cases, and to define the roles and responsibilities of the Maritime Rescue Coordination Centres (MRCCs) and other relevant actors in these situations, in compliance with and without duplicating existing

¹² Regulation 33, 1-1, SOLAS Convention, as amended; Chapter 3.1.9, SAR Convention, as amended; IMO Resolution MSC.167(78), Annex 34, Guidelines on the Treatment of Persons Rescued at Sea, 2004

¹³ Guidelines on the Treatment of Persons Rescued at Sea, 2004

¹⁴ Article 4(3) TEU. See also Judgment of the Court of 1 August 2022, Sea Watch, Joined Cases C-14/21 and C-15/21, ECLI:EU:C:2022:604:

<https://curia.europa.eu/juris/document/document.jsf?jsessionid=A271762BD1F63D4E9B030331BFA8F1D5?text=&docid=267857&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=5580388>

applicable law and practices. Moreover, the framework could bring clarity as regards the specific timings for the various operational actions required in these situations.

SAR situations falling within the scope of this cooperation framework could include:

- SAR operations carried out under the coordination of an EU Member State MRCC:
 - inside its SAR area, with or without the involvement of a commercial and/or privately owned vessel carrying out SAR operations as their predominant activity.
 - inside the SAR area of another EU Member State, but in coordination with it, with or without the involvement of a commercial and/or privately owned vessel carrying out SAR operations as their predominant activity.
 - Outside the SAR area of an EU Member State, with or without the involvement of a commercial and/or privately owned vessel.
- SAR operations carried out without the coordination of an EU Member States MRCC:
 - outside the SAR area of an EU Member State, by a commercial and/or privately owned vessel carrying out SAR operations as their predominant activity, where the coordination of the rescue operation was assured by a national MRCC competent for the SAR area of a non-EU country, and where a place of safety for disembarkation is requested to an EU Member State.
 - outside the SAR area of an EU Member State, by a commercial and/or privately owned vessel carrying out SAR operations as their predominant activity, where no coordination of the rescue operation was assured by any MRCC, and where place of safety for disembarkation is requested to an EU Member State.

Deliverable 2) Improve situational awareness on SAR in the Central Mediterranean

| Action | Actor(s) | Indicative milestone |
|--|---|--|
| Agree on operational actions to facilitate information sharing in the short term and medium term | Volunteering SAR Contact Group members Frontex, European Maritime Safety Agency, European Fisheries Control Agency [non-State actors, as information providers] Commission | Technical discussion in working groups (February - May 2023) Agreement at SAR Contact Group meeting in June 2023 [Further refinement using EUROSUR and/or CISE as platform for information exchange end of 2023- early 2024] |

Building on the work carried out in the dedicated work strand of the SAR Contact Group, on the initiative of Italy with Frontex support, volunteering SAR Contact Group Members could cooperate to achieve a better common situational picture of SAR developments in the Central Mediterranean, available to all interested Member States, leading to an improved shared understanding of the operational challenges and actions needed to address them, contributing to preventing loss of life at sea.

Information sharing could target two phases: a first phase of near real time exchange between relevant MRCCs, and a second phase with ex-post reporting to interested and relevant national authorities, beyond MRCCs, as identified by the Member States taking part in the cooperation framework.

In the short term, the information exchange could take place via email but in the medium term, available systems such as EUROSUR and/or CISE could be used. With a view to exchanging information, focal points should be established in EU Member States (see deliverable 3). The exchange could focus initially on the Central Mediterranean area but could then be extended as needed and relevant, to all relevant routes.

Deliverable 3) Establish operational focal points on SAR

| Action | Actor(s) | Indicative milestone |
|---|---|--|
| Appoint operational focal points in the MRCCs of SAR Contact Group members and relevant EU Agencies | Volunteering SAR Contact Group members Frontex | Agreement at the SAR Contact Group meeting in June 2023 on the establishment of focal points Nomination to take place by 15 July 2023 |

Focal points in the MRCCs of SAR Contact Group members and relevant EU Agencies could be appointed to ensure systematic, timely and detailed information sharing for improved situational awareness and overall smooth coordination and cooperation among all relevant stakeholders on the various aspects of the SAR cooperation framework, in line with applicable international and established practices. The use of already established contact points, where appropriate and available, could be explored as the preferred solution, for example as regards EUROSUR NCCs.

Depending on the agreement on the scope of the Framework for Operational Cooperation and actions to be developed, focal points can be single or multiple for the different actions foreseen.

Deliverable 4) Agree on operational roles and responsibilities of flag and coastal States

| Action | Actor(s) | Indicative milestone |
|--|--|--|
| SAR Contact Group members taking part in the Cooperation Framework agree on respective roles and responsibilities in a number of SAR scenarios | Volunteering SAR Contact Group members | Technical discussion in working groups (February - May 2023) Agreement at SAR Contact Group Plenary, in fall 2023 |

Authorities of the Member States voluntarily participating in the SAR Contact Group, will be asked to provide their views as regards each actor's role and responsibilities in the specific SAR scenarios that were

previously agreed to fall under the scope of the European Framework for Operational Cooperation (see deliverable 1).

Member States would share with each other the relevant **existing plans of operation** – i.e. pre-established procedures that help to ensure a coordinated and effective response to SAR incidents at sea through communication protocols, description of resources available, and the chain of command. These Plans can include, for example, On-Scene Coordinator (OSC) Plans (assigning responsibility for the management of a SAR operation to a specific individual and outlining the procedures for coordinating the response efforts on scene), Medical Plans, Evacuation Plans, Debriefing Plans (outlining the procedures for conducting a debriefing session with all parties involved in the SAR operation once the operation has been completed).

Depending on how the roles and responsibilities of each actor for different SAR situations are defined, **broader operational and communication arrangements for specific situations may be developed** on the initiative of one or more focal points to support smoother cooperation, in specific / more complex situations.

Dedicated meetings could be organised on the basis of actual case studies that Member States and Frontex could volunteer to share, with a view to identifying how to enhance and develop ways and means of cooperation and coordination.

Deliverable 5) Agree on the type of information that shipmasters may be asked to collect

| Action | Actor(s) | Indicative milestone |
|--|--|--|
| Agree on a clearer definition of the information that shipmasters may be asked to collect about the SAR event and the rescued persons on-board for the responsible authorities | Volunteering SAR Contact Group members [non-State actors] | Technical discussion in working groups (June - fall 2023) Agreement by the SAR Contact Group Plenary in fall 2023 |

Based on available information, there appears to be no common definition of information that shipmasters of private vessels, irrespective of the way in which they come to be engaged in a rescue activity, might be asked to collect on board in view of facilitating a smooth disembarkation and first reception in the coastal State where the port of safety is determined by the responsible authorities. A more common definition of the type of information that might be needed and the treatment of those onboard the vessel might therefore support improved cooperation, with a view to ensuring a safe and swift conclusion of the rescue operation.

The type and timing of information needed, which is of indicative nature and does not prevent the responsible coastal authorities from asking for further elements, should build on established good practice

developed over the years, and be proportionate to the objective and nature of the rescue activity, in line with applicable law.

Deliverable 6) Conduct consultation on the framework for operational cooperation with other stakeholders

| Action | Actor(s) | Indicative milestone |
|---|--|---|
| Organise dedicated meetings with relevant stakeholders to include them in the cooperation framework | Volunteering SAR Contact Group members [non-State actors] | Technical discussion in working groups (fall 2023-2024) Agreement by the SAR Contact Group Plenary in 2024 |

Once the Framework for Operational Cooperation is agreed among the volunteering SAR Contact Group members, dedicated meeting(s) could be organised to present and discuss the framework and its underlying principles and operational elements with relevant stakeholders. These could include seafarers and shipping associations, private organisations operating vessels carrying out SAR as their main activity, as well as relevant international organisations (in particular the IMO) and responsible authorities of other non-EU Mediterranean coastal States. These would build on consultations that might already take place for specific elements of the Cooperation Framework, such as for example on issues linked to registration and certification.

Deliverable 7) Develop a common understanding of distress situations

| Action | Actor(s) | Indicative milestone |
|---|---|--|
| Develop a more operational and common understanding of situations of distress, based on commonly agreed indicators on the basis of existing rules and practices | Volunteering SAR Contact Group members European Commission | Technical discussion in working groups (June - fall 2023) Agreement at SAR Contact Group Plenary, in early 2024 |

According to the SAR Convention¹⁵, a distress phase is defined as “3.1 when positive information is received that a person, a vessel or other craft is in danger and in need of immediate assistance; or 3.2 when, following the alert phase, further unsuccessful attempts to establish contact with a person, a vessel or other craft and more widespread unsuccessful enquiries point to the probability that a distress situation exists; or 3.3 when information is received which indicates that the operating efficiency of a vessel or other

¹⁵ Annex – Chapter 4, 4.4.3.

craft has been impaired to the extent that a distress situation is likely". Criteria to further specify this broad definition have been developed in guidelines, such as the IAMSAR Manual, Volume III, and could include among others overcrowding, poor conditions of the vessel, and/or lack of necessary equipment and expertise on board.

However, based on the outcome of the questionnaire and information shared so far within the SAR Contact Group, it appears that the notion of distress is still not interpreted in the same way by different authorities. There is, therefore, a need for a more precise and common understanding at operational level.

A common understanding could build on the abovementioned definition and include criteria such as: indications that a vessel or the conditions of the people on board do not allow for safe travel, potentially endangering their lives, overcrowding, poor conditions of the vessel, and/or lack of necessary equipment and expertise on board. This could also take into account work already carried out so far in other fora, such as the IMO.

Deliverable 8) Agree on standardisation/convergence of registration and certification rules on private vessels carrying out SAR as their predominant activity

| Action | Actor(s) | Indicative milestone |
|---|--|---|
| Agree on common standards / convergence of relevant rules | Volunteering SAR Contact Group members of [non-State actors] | Technical discussion in working groups (April - fall 2023) Agreement by the SAR Contact Group Plenary in fall 2023- early 2024 |

SAR Contact Group members, in particular flag and coastal States, could agree on common standards to be developed and applied, related to registration and certification for private vessels carrying out SAR as their predominant activity. Non-State actors could be provided the opportunity to share their views on these aspects (see also point 6).

Deliverable 9) Launch joint initiative on SAR within IMO

| Action | Actor(s) | Indicative milestone |
|--|--|--|
| Agree on content of a possible regional initiative on addressing SAR challenges in the Mediterranean | Volunteering SAR Contact Group members | Technical discussion in working groups (June 2023- 2024) Agreement by the SAR Contact Group Plenary in 2024 |

Volunteering SAR Contact Group Members could agree on a possible joint initiative within the IMO to discuss in broader terms and with other IMO members the specific challenges linked to search and rescue

arising in a context of increased migratory flows, and how to address them, in particular with a view to preventing loss of life at sea, maintaining safety of navigation, preventing and fighting against smuggling and trafficking of migrants by sea, and ensuring overall improved cooperation and coordination among all relevant players. Lessons learned through the introduction and implementation of this cooperation framework could serve as basis for a further initiative within the IMO.

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