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REPORT

on a European Parliament recommendation to the Commission concerning on the ongoing negotiations on a status agreement on operational activities carried out by the European Border and Coast Guard Agency (Frontex) in Senegal (2023/2086(INI))

Committee on Civil Liberties, Justice and Home Affairs

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PROPOSAL FOR A EUROPEAN PARLIAMENT RECOMMENDATION

**to the Commission concerning on the ongoing negotiations on a status agreement on operational activities carried out by the European Border and Coast Guard Agency (Frontex) in Senegal
(2033/2086(INI))**

The European Parliament,

- having regard to the Treaty on the Functioning of the European Union (TFEU), in particular Articles 77(2)(b) and (d), 79(2)(c) and 218(3) and (4) thereof,
- having regard to the Universal Declaration of Human Rights,
- having regard to the Convention Relating to the Status of Refugees of 1951 and the additional protocol thereto,
- having regard to the United Nations Convention against Transnational Organized Crime, its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, and its Protocol against the Smuggling of Migrants by Land, Sea and Air,
- having regard to Regulation 33 of Chapter V of the International Convention for the Safety of Life at Sea entitled ‘Distress Situations: Obligations and procedures’,
- having regard to Chapter 4 of the International Convention on Maritime Search and Rescue on operating procedures,
- having regard to the UN Convention on the Law of the Sea,
- having regard to the European Convention on Human Rights,
- having regard to the Charter of Fundamental Rights of the European Union,
- having regard to Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA¹,
- having regard to Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624²,
- having regard to the European Council conclusions of 9 February 2023,
- having regard to Council Decision (EU) 2022/1169 of 4 July 2022 authorising the opening of negotiations on a status agreement between the European Union and the Republic of Senegal on operational activities carried out by the European Border and

¹ OJ L 101, 15.4.2011, p. 1.

² OJ L 295, 14.11.2019, p. 1.

Coast Guard Agency in the Republic of Senegal³,

- having regard to the EU strategy on combating trafficking in human beings 2021-2025,
 - having regard to the EU action plan for the Western Mediterranean and Atlantic routes,
 - having regard to the Commission communication of 21 December 2021 on the model status agreement as referred to in Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624 (COM(2021)0829),
 - having regard to its resolution of 19 May 2021 on human rights protection and the EU external migration policy⁴,
 - having regard to the report of the Frontex Scrutiny Working Group of the Committee on Civil Liberties, Justice and Home Affairs of 14 July 2021 on the fact-finding investigation on Frontex concerning alleged fundamental rights violations and the recommendations included therein,
 - having regard to its resolution of 14 December 2023 on Frontex building on the fact-finding investigation of the LIBE Working Group for Frontex Scrutiny⁵,
 - having regard to Rules 114(4) and 54 of its Rules of Procedure,
 - having regard to the opinion of the Committee on Foreign Affairs,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A9-0032/2024),
- A. whereas on the basis of Council Decision (EU) 2022/1169, the Commission received an authorisation from the Council to negotiate a status agreement with the Republic of Senegal in July 2022, which would allow for the possibility that team members deployed by the European Border and Coast Guard Agency (Frontex) could perform tasks with executive powers on the territory of the Republic of Senegal on the basis of a dedicated operational plan;
- B. whereas, pursuant to Article 73(3) of Regulation (EU) 2019/1896, in circumstances requiring the deployment of border management teams from the standing corps to a third country where the members of the teams will exercise executive powers, a status agreement must be concluded by the Union with that third country on the basis of Article 218 TFEU;
- C. whereas the status agreement with Senegal and the one currently being negotiated with the Islamic Republic of Mauritania would be the first agreements on operational activities carried out by Frontex concluded with third countries that are not candidates for EU

³ OJ L 181, 7.7.2022, p. 20.

⁴ OJ C 15, 12.1.2022, p. 70.

⁵ Texts adopted, P9_TA(2023)0483.

accession and that have legal regimes that differ greatly from EU standards; D. whereas pursuant to Article 73(2) of Regulation (EU) 2019/1896, when cooperating with the authorities of third countries, Frontex must act within the framework of the Union's external action policy, including with regard to the protection of fundamental rights and personal data, the principle of non-refoulement, the prohibition of arbitrary detention and the prohibition of torture and inhumane or degrading treatment or punishment;

- E. whereas Senegal is a priority country for the EU and its Member States, according to the joint EU-Senegal strategy; whereas a Talent Partnership with Senegal is envisaged as one of the key components of reinforced cooperation between the EU and Senegal on migration management;
- F. whereas according Regulation (EU) 2019/1896, in situations where the Commission recommends that the Council authorise it to negotiate a status agreement with a third country, the Commission should assess the fundamental rights situation relevant to the areas covered by the status agreement in that third country; whereas such an assessment has not been performed yet; whereas in its report of 21 May 2019, the Frontex Consultative Forum called on Frontex to carry out an effective fundamental rights impact assessment prior to engaging with a third country;
- G. whereas according to Article 218(11) TFEU, a Member State, the European Parliament, the Council or the Commission may obtain the opinion of the Court of Justice of the European Union (CJEU) as to whether an envisaged agreement is compatible with the Treaties; whereas when the opinion of the CJEU is negative, the envisaged agreement may not enter into force unless it is amended or until the Treaties are revised;
- H. whereas, once concluded, nothing precludes a Member State, the European Parliament, the Council or the Commission from considering it appropriate to obtain this opinion on the compatibility of the negotiated status agreement with the Treaties;
- I. whereas Article 218(10) TFEU obliges the Commission to immediately and fully inform Parliament during all stages of the conclusion procedure for a status agreement;
- J. whereas the model status agreement referred to in Article 76(1) of Regulation (EU) 2019/1896 is to serve as the basis for the Commission's negotiations with Senegal; whereas it establishes a framework for cooperation between Frontex and its teams on the one hand and the competent authorities of the third country concerned on the other, setting out, among other things, the scope of operation, criminal and civil liability, the tasks and powers of members of the team and practical measures related to the respect of fundamental rights; whereas Frontex must ensure that fundamental rights are fully respected during those operations and provide for a complaints mechanism;
- K. whereas, according to the Model Status Agreement referred to in Article 76(1) of Regulation (EU) 2019/1896:
 - Frontex's team members may, in general, only perform tasks and exercise powers in the territory of the third country under instructions from and in the presence of the border management authorities of that country, and must comply with the laws and regulations of the third country as well as applicable Union and international

law; the third country's authorities must only issue instructions that are in compliance with the operational plan to the team members; this is the only operational framework where EU personnel operate under third-state command;

- Frontex's team members enjoy immunity from the criminal jurisdiction of the third country under all circumstances, and must not be subject to any form of arrest or detention in the third country or by its authorities; the waiver of immunity is at the discretion of the Executive Director or the home Member State, depending on the status of the team member;
- L. whereas Senegal is a country of emigration, transit and immigration; whereas migration and mobility are positively perceived in Senegal; whereas the right to mobility is enshrined in the Senegalese constitution and inter-communal cross-border mobility is normal; whereas Senegal has been one of the main destination countries in West Africa for a long time; whereas, according to the International Organization for Migration, in 2018, 200 000 nationals from other countries were living in Senegal; whereas 2023 saw an increase in the number of boats departing from Senegal to the Canary Islands; whereas the majority of people on the boats in 2023 were Senegalese nationals; whereas the Atlantic 'route' is one of the deadliest in the world, due in large part to the length of the overseas journey and the lack of dedicated search-and-rescue capacity; whereas the International Organization for Migration has reported that at least 3 519 persons have died or gone missing at sea on the Atlantic route since 2014; whereas there have been reports of repeated pushbacks of migrants and refugees from the Mauritanian and Malian borders to Senegal;
- M. whereas concerns have been raised by the Office of the UN High Commissioner for Human Rights and human rights non-governmental organisations (NGOs) regarding violations of the rights to freedom of expression and peaceful assembly and the excessive use of force by defence and security forces; whereas access to social media and mobile internet connections have been restricted in Senegal;N. whereas people and NGOs are being criminalised for denouncing the negative effects of migration cooperation between Senegal and the EU; whereas concerns have also been raised by human rights NGOs regarding a series of acts of repression towards persons attempting to leave Senegal irregularly;
- O. whereas Senegal's current legal framework does not allow for effective protection of children, trafficking victims or LGBTIQ+ persons; whereas same-sex activity is deemed an offence under criminal law, punishable by imprisonment;
- P. whereas Senegal is a signatory state to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol; whereas Senegal included the main aspects of the convention in a 1968 domestic law on asylum, which was updated in April 2022 to include statelessness and appeals procedures; whereas Senegal has not ratified the Organisation of the African Union Convention Governing the Specific Aspects of Refugee Problems in Africa;
- Q. whereas as of February 2022, the UN High Commissioner for Refugees (UNHCR) reported the presence of 14 533 refugees and 2 058 asylum seekers in Senegal; whereas the UNHCR multi-country office based in Dakar reported that, as of February 2022, there

were 6 017 Senegalese refugees and asylum seekers in the Gambia, Guinea, Guinea-Bissau, Togo and Sierra Leone;

- R. whereas since September 2003, Senegal has been a party to the UN Convention against Transnational Organized Crime and its additional protocols; whereas in December 2020, the government created the Inter-ministerial Committee Fighting Clandestine Migration by decree; whereas the committee worked on a national strategy for the fight against irregular migration that was adopted on 27 July 2023 and will be implemented until 2032; whereas the Senegalese legal framework on smuggling is not in line with the UN Convention against Transnational Organized Crime, which outlines that migrants should not be criminalised after interception;
- S. whereas Senegal has been receiving EU and bilateral support for border management, including border surveillance, notably through the EU Emergency Trust Fund for Africa and its bilateral cooperation with the Spanish Guardia Civil since 2003; whereas since 2018, Senegal has established at least nine border posts and four regional branches of the National Division for the Fight against Migrant Smuggling, with the aim of fighting trafficking and other associated practices, whereas EU funding has supplied Senegal with advanced surveillance technologies, including phone extraction devices, biometric fingerprinting, drones and night-vision goggles; whereas the aim is to create an African integrated border management system that would connect Senegal's and other African countries' databases with data from international police agencies;
- T. whereas Frontex, under Operation HERA, also carried out occasional joint operations between 2006 and 2018 in Senegal; whereas this cooperation has not been evaluated on its impact on the protection of and respect for the human rights of the people who were intercepted;
- U. whereas there are several drivers for irregular migration in Senegal, namely the lack of safe and legal migration pathways, including obstacles to accessing Schengen visas; poverty, insecurity and unemployment, in particular in the fishing community; whereas the fishing community is overrepresented in the groups of people attempting to reach the Canary Islands;
- V. whereas Regulation (EC) 1049/2001⁶ codifies EU lawful residents' right of public access to documents, and also provides for the possibility of granting document access to individuals residing outside the EU; whereas Frontex restricts access to its documents to EU or Schengen country nationals or residents, including legal persons residing or having a registered office in these countries, even though it is increasingly active, in some cases with executive powers and a mandate to use force, in non-EU territory; whereas it is almost exclusively non-EU citizens or residents who are affected by Frontex's actions in third countries; whereas civil society organisations in Senegal face difficulties in accessing information on the possible status agreement; W. whereas there have been repeated reports of migrants and refugees being subject to refoulement following their arrest and detention, whereby they are pushed back across the Mauritanian and Malian borders to Senegal, as well as of Senegalese nationals being intercepted in Dakhla and

⁶ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

returned by bus to Senegal via Mauritanian territory;

- X. whereas Frontex has the legal obligation to comply with EU law to ensure that fundamental rights are fully respected during operations; whereas a status agreement can only be established under the condition that it strictly requires, including during operations, the protection of human rights and personal data, the principle of non-refoulement, the prohibition of arbitrary detention and the prohibition of torture and inhuman or degrading treatment or punishment, as enshrined in Article 73(2) of Regulation (EU) 2019/1896;
- Y. whereas a large part of European development aid is conditioned on the fight against irregular migration⁷;
1. Notes that the official negotiations between the EU and Senegal on the establishment of a status agreement that provides for the deployment of Frontex border management teams in Senegal have not yet started; acknowledges the ongoing exchange with Senegalese authorities; notes that the Senegalese Government is reluctant to sign the status agreement and has started to negotiate a working arrangement as a first step;
 2. Acknowledges, despite the country's difficult human rights situation, the efforts by the Senegalese Government to uphold or improve human rights, through its active membership of the UN Human Rights Council between 2018 and 2023; expresses its concern about the increasing reports of human rights violations in Senegal, specifically those concerning the use of force or abuse of migrants during border control checks and the increased criminalisation of civil society; highlights and condemns the repeated pushbacks of migrants and refugees from the Mauritanian and Mali borders to Senegal; reiterates and underlines that Frontex should not take part in any form of pushbacks; considers that the possible conclusion of a status agreement between the EU and Senegal providing for the exercise of executive powers by Frontex in the country would entail a high risk for Frontex of becoming complicit in direct and indirect violations of fundamental rights or international protection obligations; believes that these risks are of a serious nature and are likely to persist;
 3. Is concerned about the potential impact of a status agreement on the freedom of movement of individuals in West Africa, as guaranteed under the Economic Community of West African States Treaty, which provides for the long-term establishment of a free-movement zone for goods, capital and people, as well as about the impact on the right to leave and the right to asylum;
 4. Is concerned about the lack of access by Senegalese nationals, civil society organisations and the media to information about EU and bilateral support to Senegalese authorities for border surveillance; calls, in this regard, on Frontex to make use of the option to provide access to individuals residing outside the EU, as well as to legal entities based in or having a registered office in third countries, in line with Regulation (EC) 1049/2001;
 5. Considers that that the provisions in the model status agreement must be improved in

⁷ European Parliamentary Research Service, '[Briefing – Growing impact of EU migration policy on development cooperation](#)', October 2016.

order to address the abovementioned serious concerns, which could lead to severe accountability gaps in the event of fundamental rights violations and should be properly addressed;

6. Calls on the Commission to perform an *ex ante* fundamental rights impact assessments that are relevant to the areas linked to the potential Frontex deployment before engaging in negotiations with third countries on the conclusion of status agreements in order to be able to fully consider the impact of the potential cooperation and to negotiate on the necessary safeguards, in accordance with recital 88 of Regulation (EU) 2019/1896; calls on the Commission to make this impact assessment, which Parliament regrets has not yet been performed, publicly available or at least share it with the co-legislators;
7. Is of the opinion that any deployment of Frontex personnel to Senegal and the conducting of operational activities with local and regional security forces can only take place where adequate human rights protection can be guaranteed for migrants and asylum seekers throughout the entire process of their application or return;
8. Acknowledges the fact that the Senegalese Government has expressed its unwillingness to pursue this kind of cooperation; expresses its reservations regarding the possible conclusion of a status agreement, taking into account the abovementioned concerns;
9. Strongly urges the Commission and Frontex to adopt the following measures without further delay, taking into account the fact that Frontex has been increasingly operating in third countries, should negotiations for a status agreement between Frontex and Senegal be opened:

9.1. European Commission

- a. in line with the approach of the Frontex Fundamental Rights Officer (FRO) when launching operations on the territory of a third country and in cooperation with the FRO, always perform an *ex ante* fundamental rights impact assessment before engaging in negotiations with third countries on the conclusion of status agreements, in accordance with recital 88 of Regulation (EU) 2019/1896, in order to be able to fully consider the impact of the potential cooperation and to negotiate on the necessary safeguards; make these impact assessments publicly available;
- b. ensure that Frontex staff who are granted immunity for their activities in Senegal must continue to be held accountable under EU or Member State laws in order to guarantee legal certainty; adopt guidelines, in cooperation with Frontex's Executive Director, on the waiving of immunity for deployed including specifications on how requests from the third-country authorities will be dealt with, as well as enshrining a strong role for the FRO;
- c. ensure sufficient and accessible internal and external mechanisms for non-EU individuals to submit complaints to Frontex, in line with the recommendations of the EU Ombudsman;
- d. ensure safe and legal pathways to the EU for Senegalese nationals and migrants, including refugees living in or transiting Senegal, including by facilitating the granting of Schengen visas;

- e. ensure that EU development aid policies, as well as any cooperation with third countries on migration and border management, including border surveillance, are implemented with full transparency and under parliamentary scrutiny;
- f. engage in regular dialogue with local human rights organisations and other NGOs in Senegal that protect and promote the rights of migrants regarding the human rights situation in the country;
- g. support local civil society organisations in Senegal that protect and promote the rights of migrants, asylum seekers, Senegalese returned migrants and candidates for migration, as well as those monitoring the Senegalese authorities' cooperation with Frontex;
- h. make any material support to the border authorities of Senegal conditional on full respect for fundamental rights and ensure that monitoring is carried out;
- i. include in the status agreement explicit safeguards to allow deployed officers to disregard orders issued by the Senegalese authorities that contradict Frontex's fundamental rights obligations that derive from EU and international law;
- j. refrain from including specific provisions allowing for the agreement to be provisionally applied before the European Parliament assesses whether to give its consent to it;
- k. include clear guidelines and, if considered necessary, mitigating measures on combating corruption in identified areas of cooperation between officers of Frontex and Senegalese authorities and security forces, as well as safeguards to avoid the misuse of EU material support;
- l. in parallel to the negotiations on the status agreement, continue providing support and resources to assist Senegalese authorities in developing a comprehensive legal asylum system, based on fundamental rights and in line with the guidelines and practices of the UNHCR, including additional capacity-building support to Senegalese national human rights institutions and civil society organisations focusing on human rights; provide fundamental rights training to the relevant Senegalese authorities as a core component of executive operations in the country, including on search-and-rescue obligations and on the rights of those concerned, including appeals to complaints;
- m. ensure that any potential future Frontex deployment will take place in a legal context where access to international protection procedures for persons in need, including access to information, legal assistance, interpretation services and necessary support, can be effectively exercised and where the independence of judicial and human rights institutions is guaranteed;
- n. include, in the potential status agreement, provisions and guarantees for adequate human rights protection in order to ensure that Senegalese authorities respect fundamental rights during operations, including provisions on monitoring compliance, as well as clear options that will ensure accountability in the event of violations; ensure that the Senegalese authorities set up an independent and

effective complaints mechanism, in line with the complaints mechanism established by Frontex in accordance with Article 111 of Regulation (EU) 2019/1896;

- o. uphold, at all times, the highest standards of human rights law during negotiations and implementation of status agreements and ensure compliance with all relevant conventions, agreements and standards related to human rights to which the EU is legally bound;
- p. keep the European Parliament fully and regularly informed on all steps of the negotiations process, in accordance with Article 218(10) TFEU, and, in general and inform the European Parliament before opening negotiations with third countries on a status agreement;

9.2 Frontex

- a. ensure effective, proactive and timely consultation with the FRO when deciding whether to launch a joint operation in Senegal, in line with the requirements of Regulation (EU) 2019/1896; share FRO opinions on the operational plans in third countries with the European Parliament;
 - b. establish a robust, independent, efficient and easily accessible complaint mechanism for non-EU nationals and persons potentially affected by Frontex's actions on the territory of Senegal in to effectively seek remedy through external bodies, such as the European Ombudsman, the CJEU or a different entity; ensure that this complaint mechanism guarantees the anonymity and confidentiality of individuals reporting on Frontex activities that violate human rights;
 - c. conduct periodical evaluations of joint operations in Senegal, with a focus on fundamental rights; share them with the European Parliament and the Council and make them publicly available;
 - d. ensure the right of public access to documents for individuals residing outside the EU;
10. Strongly urges the Commission and Frontex to adopt the following concrete measures without further delay, should negotiations for a status agreement between Frontex and Senegal be concluded:

10.1 European Commission

- a. ensure and share a periodical evaluation of the application of its provisions and of the joint operational activities, with a focus on the impact on fundamental rights, and include an adequate fundamental rights monitoring mechanism for Frontex's activities;

10.2 Frontex

- a. ensure consistent, regular and transparent reporting on Frontex's activities in Senegal under any potential status agreement, with a focus on human rights

compliance and the human rights context in the country;

- b. involve the Frontex Consultative Forum on developments related to the status agreement, in accordance with Article 108 of Regulation (EU) 2019/1896, and consult with it, in line with its working methods and mandate, including on the possible organisation of an on-the-spot visit to Senegal; enable non-governmental stakeholders from third countries where Frontex is active or plans to be active to apply for membership of the Frontex Consultative Forum;
- c. fulfil its responsibility for addressing direct and indirect human rights violations by its staff in Senegal, in line with its existing procedures, in order to ensure accountability;
- d. ensure that any operational plan establishing operations on the territory of Senegal should:
 - i. enshrine a robust and formal mechanism to address complaints to Frontex or the relevant Senegalese authorities for actions or failure to act of deployed staff or host staff in the country, in accordance with Article 111 of Regulation (EU) 2019/1896; include clear provisions on follow-up and enforcement tools after complaints are lodged and clearly communicate about this follow-up;
 - ii. pursue, in cooperation with the Senegalese authorities, a Frontex presence in critical areas where the apprehension of migrants is likely to take place, and ensure that the FRO and Fundamental Rights Monitors have full access to the operational area, in line with the FRO's standard operating procedure, in order to have an independent mechanism to oversee and evaluate Frontex activities in Senegal, while ensuring clear commitments to transparency and information sharing of Frontex activities;
 - iii. ensure that the FRO permanently deploy a Fundamental Rights Monitor to oversee operations in Senegal and monitor the cooperation in relation to fundamental rights, in accordance with Regulation (EU) 2019/1896;
 - iv. include special guidelines for the processing of asylum requests from vulnerable migrants, most notably children, unaccompanied minors, women, LGBTIQ+ persons and members of communities that face targeted violence or discriminatory prosecution in their country of origin;
 - v. ensure meaningful consultation, dialogue and engagement with civil society organisations and relevant stakeholders throughout the planning, implementation, and evaluation of its operations in Senegal; including the dissemination of information;
 - vi. ensure that the collection and analysis of any personal data are fully compliant with Regulation (EU) 2018/1725⁸ and respect fundamental rights;

⁸ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the

- e. sign a Memorandum of Understanding with Senegal in order to align complaint mechanisms;
 - f. ensure that national and human rights institutions and civil society organisations have access to all the information deemed necessary for them to scrutinise the impact of the status agreement on migration management in Senegal, as well as any human rights risks and consequences; in accordance with Regulation (EC) 1049/2001;
11. Recalls that human rights violations of a serious nature or that are likely to persist are cause for the presence of Frontex personnel to be questioned and should trigger a re-evaluation or suspension of the Frontex deployment in Senegal, in accordance with Article 46(4) of Regulation (EU) 2019/1896 and Article 18 of the model status agreement; calls on Frontex to denounce any such actions in order to avoid all complicity in human rights violations and to cooperate with relevant authorities to ensure the prompt and impartial investigation of any alleged human rights abuses;
12. Calls for the EU and Senegalese authorities to enable inclusive, constructive and transparent dialogue; stresses, in this context, the importance of the EU engaging in regular dialogue with local human rights organisations and other NGOs regarding the human rights situation in Senegal;
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13. Instructs its President to forward this recommendation to the Council, the Commission, the European Border and Coast Guard Agency, its Fundamental Rights Officer, the Government of Senegal and the signatories to the Samoa Agreement between the European Union and the group of African, Caribbean and Pacific countries.

protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

EXPLANATORY STATEMENT

The entry into force of Regulation 2019/1886 (the Regulation) significantly expanded the mandate of the European Border and Coast Guard Agency (Frontex), including its possibilities to work in third countries. The Regulation mandates the Agency with the possibility of deployment of staff for operational activities on the territory of a third country that does not share any common borders with an EU Member State, to the extent required for the fulfilment of its tasks that are defined in the Regulation.

In order to establish the legal framework to perform executive tasks on the territory of a third country, the conclusion of a so-called Status Agreement is required. This concerns an international agreement between the EU and the third country on the basis of Article 218 TFEU. Procedurally, the Council mandates the European Commission to negotiate such an agreement on behalf of the EU, while the latter is obliged per this article to keep the European Parliament fully and immediately informed at all stages of the procedure. As enshrined in Article 54(5) of Regulation (EU) 2019/1886, the European Commission will negotiate on the basis of the so-called ‘model status agreement’, laid down in communication COM(2021)829. When the negotiations are concluded, the European Parliament should be requested to vote on the agreement as negotiated and give its consent before it can enter into force.

On the 4th of July, Council Decision (EU) (2022/1169) authorised the Commission to negotiate a Status Agreement with the Republic of Senegal on operational activities carried out by Frontex on the territory of Senegal. This decision was accompanied by the negotiation directive, in which the Council expressed that it saw no specific reasons to derogate from the model Status Agreement, and the Commission should thus aim to preserve its essence during the negotiations. A simultaneous decision was taken to launch negotiations with the Islamic Republic of Mauritania.

On the 9th of February 2023, the Council underlined its political support for the effort of externalising Frontex action by urging for the rapid conclusion of negotiations on new and revised Status Agreements in its conclusions, including with Senegal and Mauritania. The potential Status Agreement with Senegal would mandate Frontex for the first time in its existence to perform an executive mandate on the territory of a third country that is not bordering an EU Member State, nor geographically located in Europe. This step would have fundamentally different implications compared to the actions performed under the current Status Agreements.

The current signatory countries to Frontex Status Agreements share the ambition to become part of the EU on the short term, meaning that they are in the process of aligning their legal frameworks with the EU acquis - including on fundamental rights. Moreover, all are parties to the Council of Europe, thus bound to the European Convention of Human Rights. Opposed to Senegal, these countries are bound by frameworks that help safeguarding EU fundamental rights standards to a certain extent.

In light of the significant implications and precedent created by the conclusion of a Frontex Status Agreement with a non-European third country, the European Parliament decided to initiate a more extensive procedure during the negotiation process of the Status Agreement, apart from the - fairly limited - consent procedure. The Committee on Civil Liberties, Justice

and Home Affairs - which is responsible for the scrutiny of Frontex - took the decision to draw this own initiative report, already during the negotiation stage, with a view to provide recommendations to the Commission regarding the negotiation process. The human rights committee (DROI) issued an opinion on the report, given the external nature of the Status Agreement and human rights dimension.

Procedurally, the Rapporteur has convened two Shadow Rapporteur meetings, in which key stakeholders were invited to present their views on the matter. In a first meeting, representatives of Frontex, replacing the Executive Director of Frontex, and a representative from the Fundamental Rights Officer took part. The Senegalese authorities were also invited, but did not participate. In a second meeting the European Commission - as the negotiating entity - took part, as well as one researcher with an expertise in human rights and international law.

POSITION AND FINDINGS OF THE RAPPORTEUR

The Rapporteur is generally concerned about the EU's push for a Status Agreement between Frontex and Senegal, even though the Republic of Senegal has not expressed interest in such a Status Agreement. The Rapporteur is generally concerned about logics of conditionality and neo-colonialism accompanying such a push, in a country where migration is seen as positive and a driver of development. The Rapporteur is of the opinion that in principle agreements with countries, who do not want these agreements should not be sought or forced by force.

Concretely the Rapporteur is concerned that the envisioned Frontex Status Agreement with Senegal will hinder free movement of persons and regional integration in the ECOWAS region. The ECOWAS Protocol on Free Movement of Persons and the area of freedom of movement that comes with it was established in 1979, before the creation of Schengen stipulating that people are allowed to move freely on other ECOWAS States' territory for up to 90 days provided they have a traveling document. As the Status Agreement might put the management of Senegal's borders with its neighbouring countries into the focus, in particular at the land borders of Senegal (with Mauritania, Mali, Gambia and Guinea-Bissau) that would mainly be targeted by the agreement. Similar cases related to the obstacles to free movement caused by agreements with the EU or national legislation and adopted under EU pressure have been brought before the ECOWAS Court of Justice. The latest complaint was filed by the Nigerien state and it relates to law n°2015-36 on illegal migrant trafficking. The latest crisis in Niger exemplifies what negative consequences such agreements can have on the countries economy. In Niger we are witnessing a humanitarian crisis under which again migrants and refugees are those who suffer most. ECOWAS is an historical achievement, just like Schengen, that should not be endangered by deploying the EU Border and Coast Guard Agency in one of the ECOWAS Member States.

The Frontex Status Agreement would fit into the EU's general approach on further externalising its migration policies. This trend is already visible in the general EU-Senegal migration cooperation as well as EU funding for border surveillance in Senegal. The Rapporteur does not support measures on externalization related to migration, but believes that the EU and its Member States should take their responsibility for migration and asylum

seekers by opening safe and legal pathways for migrants and asylum seekers. Additionally the Rapporteur is concerned that externalizing the EU's borders, with Frontex as an instrument will only force people on more dangerous migratory routes and is of the belief that the growing number of checks combined with the lack of rescue operations and that of rescue coordination at sea and on land, would probably only confirm this trend.

Against this background the draft report outlines that the negotiations between the EU and Senegal on the establishment of a status agreement that provides for the deployment of the European Border and Coast Guard Agency (Frontex) in Senegal have not yet started and notes the reluctance of the Senegalese Government to sign such a status agreement. It also expresses concern about the deteriorating situation of fundamental rights in Senegal and considers that the possible conclusion of a Status Agreement between the EU and Senegal providing for the exercise of executive powers by Frontex in Senegal entails a high risk for the Agency of becoming complicit in direct and indirect violations of fundamental rights or international protection obligations that are of a serious nature and are likely to persist. It highlights possible negative consequences for the ECOWAS region and in particular the impact on the right to leave and the right to asylum. It underlines that the Model Status Agreement falls significantly short of addressing the above-mentioned serious concerns and could lead to severe accountability gaps in the event of fundamental rights violations. It also criticizes the lack of an impact assessment on fundamental rights, which has not been performed yet by the Commission.

Against that backdrop, the Rapporteur does not support the conclusion of a Status Agreement with Senegal and recommends the European Commission not to open negotiations.

Furthermore the Rapporteur develops in her report, in light of Frontex increased presence in third countries, recommendations to the Commission in the Agency that in view of the Rapporteur should be addressed immediately. In the recommendations to be addressed by the Commission and the Agency immediately, the Rapporteur focuses in particular on the ex ante fundamental rights impact assessments, that should be performed by the Commission and has not performed yet, the provisions of immunity of the Model Status Agreement, as well as addressing the more general EU-Senegal migration cooperation, focusing on legal pathways for migrants and refugees living or in transit in general as well as making sure that any support to border authorities in third countries is conditional upon the respect for fundamental rights. In the case of the Agency, the focus is in the important role of the Fundamental Right Officer, efficient complaint mechanisms for actions performed by the agency on the territory of a third country, a diligent review of the Agency's action in third countries and access to documents in this regards.

Irrespective of this, the Rapporteur also develops recommendations to the Commission and the Agency that should be addressed in view of the Rapporteur in the event that negotiations on the Status Agreement would be ever opened.

With this the Rapporteur seeks to address the aforementioned shortcomings should negotiations ever be opened, before seeking the consent of the European Parliament for the Status Agreement. The recommendations addressed to the Commission focus on addressing the legal shortcoming of the Model Status Agreement and ensuring that Frontex operations take place only in countries where fundamental rights and access to international protection can be guaranteed. This includes ensuring accountability and monitoring of these rights in the

context of operations performed by Senegalese authorities, as well as Frontex staff. The Rapporteur also recommends to keep the European Parliament fully informed at all stages of the negotiations. The Rapporteur recommends to the Agency to ensure consistent, regular and transparent reporting on its activities in Senegal under any potential status agreement and to fulfil its responsibility to address direct and indirect human rights violations by its staff in Senegal in accordance with the existing procedures. Furthermore the Rapporteur develops concrete recommendations on the potential operational plan establishing operations on the territory of Senegal. Additionally the Rapporteur recommends the Agency to ensure that national and human rights institutions and civil society organisations have access to all the information deemed necessary for them to scrutinise the impact of the status agreement in Senegal and to scrutinise the conduct of Senegalese security forces and Frontex in conducting migration management, as well as the human rights risks and consequences.

The Rapporteur is also of the opinion that the European Court of Justice should formally assess whether the Status Agreement as negotiated is compatible with the Treaties, as enshrined in Article 218 (11) TFEU, especially related to accountability of the Agency for actions performed on the territory of Senegal, in light of the significant differences between the legal framework of the EU and Senegal.

The Rapporteur recommends that the European Commission thoroughly considers the Parliament's recommendations in light of increased operations of Frontex in third countries and the general trend towards externalizing EU migration policies.

The Rapporteur recommends that Frontex thoroughly considers the Parliament's recommendations and closely cooperates with the Fundamental Rights Officer (FRO) to address the issues identified in the report and ensure that it complies with its fundamental rights related obligations.

**ANNEX: ENTITIES OR PERSONS
FROM WHOM THE RAPPORTEUR HAS RECEIVED INPUT**

Pursuant to Article 8 of Annex I to the Rules of Procedure, the rapporteur declares that she has received input from the following entities or persons in the preparation of the report, until the adoption thereof in committee:

Entity and/or person
Ms Alexandra SÁ CARVALHO, Deputy Head of Unit, International Affairs (HOME.A.3)
Ms Corinna ULLRICH, Head of Unit, Schengen & External Borders (HOME.B.1)
Ms Lauren SEIBERT, Researcher & Advocate, Refugee and Migrant Rights Division; Human Rights Watch
Mr Goetz Brinkmann, Director of International and European Cooperation Division, Frontex
Ms Jagoda Walorek, Senior Fundamental Rights Monitor in charge of the cooperation with Third Countries, Frontex
Sophie Duval, CCFD-Terre Solidaire

The list above is drawn up under the exclusive responsibility of the rapporteur.

OPINION OF THE COMMITTEE ON FOREIGN AFFAIRS

for the Committee on Civil Liberties, Justice and Home Affairs

on the ongoing negotiations on a status agreement on operational activities carried out by the European Border and Coast Guard Agency (Frontex) in Senegal
(2023/2086(INI))

Rapporteur for opinion: Jan-Christoph Oetjen

SUGGESTIONS

The Committee on Foreign Affairs calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

1. Acknowledges the negotiations between the EU and Senegal on the establishment of a status agreement that provides for the deployment of the European Border and Coast Guard Agency (Frontex) in Senegal; notes that the Senegalese Government is reluctant to sign the status agreement; notes that a status agreement can only be established under the condition that it strictly adheres, including during operations, to the protection of human rights and personal data, the principle of non-refoulement, the prohibition of arbitrary detention and the prohibition of torture and inhuman or degrading treatment or punishment, as enshrined in Article 73(2) of Regulation (EU) 2019/1896¹; insists on the inclusion of a clear human rights clause and guarantees of accountability in Senegal and reporting of human rights violations by Frontex in relation to all its activities concerning migration and asylum in Senegal;
2. Calls for the inclusion of an adequate human rights monitoring mechanism for Frontex activities in all Frontex missions through the deployment of Frontex's Fundamental Rights Monitors in third countries and clear commitments to transparency and information sharing regarding Frontex activities;
3. Calls on the Commission to conduct a thorough and independent assessment of the human rights situation in Senegal as regards the treatment of migrants and refugees and the relevant areas covered by the status agreement before concluding the negotiations with Senegal, in order to be able to fully consider the impact of potential cooperation and to negotiate the necessary safeguards;
4. Underlines that the launch of Frontex operational activities under a status agreement

¹ Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624 (OJ L 295, 14.11.2019, p. 1).

should fully respect, promote and strengthen human rights and EU values including with regard to the protection of personal data, the principle of non-refoulement, the prohibition of arbitrary detention and the prohibition of torture and inhuman or degrading treatment or punishment; considers that any status agreement providing for Frontex operations in third countries should integrate this aspect;

5. Considers it necessary that Frontex staff who are granted immunity for their activities in Senegal must continue to be held accountable under EU or Member State law; calls on the Executive Director to adopt guidelines on the mandatory waiving of immunity for deployed staff, specifying how requests from the third country authorities will be dealt with, as well as enshrining a strong role for the Fundamental Rights Officer; considers that Frontex staff should not only avoid complicity in human rights violations by Senegalese security forces, but should actively denounce such actions; calls for a clear, swift and efficient mechanism to ensure accountability of Frontex staff in their home country;
6. Calls for clear guidelines, prepared in consultation with experts and civil society organisations, and training to be provided to Frontex staff deployed in Senegal and to Senegalese border guards on the regional and Senegalese human rights situation and the legal framework in which they operate, which includes international human rights and humanitarian law and standards;
7. Calls for the EU to assist the Senegalese authorities with strengthening their capacity to train and educate Senegalese civil servants tasked with processing asylum applications and handling asylum seekers' complaints;
8. Calls for consistent, regular and transparent reporting on Frontex activities in Senegal under any potential status agreement, with a focus on human rights compliance and on the human rights context;
9. Considers that national and human rights institutions must have access to all the information deemed necessary for them to scrutinise the impact of this status agreement on migration management in Senegal and to scrutinise the conduct of Senegalese security forces in conducting migration management, as well as the human rights risks and consequences;
10. Notes the efforts made by the Senegalese authorities in receiving and processing migrants and refugees in the region; highlights and condemns the repeated occurrences of pushbacks of migrants and refugees from the Mauritanian and Malian borders to Senegal; reiterates and underlines that Frontex should not take part in any form of pushbacks; calls for the EU to continue to support Senegal in providing adequate protection for migrants and refugees in transit and to assist with capacity building and the strengthening of the asylum procedure; calls for the establishment of a mechanism to ensure effective remedy for people impacted by Frontex actions, in the event that a status agreement is concluded;
11. Calls for the establishment of a robust and efficient complaint mechanism that is independent and easily accessible to the public, and for an incident reporting mechanism for Frontex activities; considers that this incident reporting mechanism should guarantee the anonymity and confidentiality of individuals reporting on Frontex

activities that infringe international humanitarian law or violate human rights;

12. Calls for the EU and Senegalese authorities to enable inclusive, constructive and transparent dialogue in the preparation of the status agreement; stresses, in this context, the importance for the EU to engage in regular dialogue with local human rights organisations and other non-governmental organisations regarding the human rights situation in the country;
13. Is of the opinion that any deployment of Frontex personnel to Senegal and the conducting of operational activities with local and regional security forces can only take place where adequate human rights protection can be guaranteed for migrants and asylum seekers throughout the entire process of their application or return;
14. Considers that the EU and Frontex should suspend their activities on migration and asylum carried out in cooperation with the Senegalese authorities under the status agreement in the event of persistent and serious human rights violations, as set out under the standards of the International Criminal Court;
15. Underlines that the provision of development aid by the EU and its Member States is to be carried out in full transparency and under parliamentary scrutiny;
16. Calls on the Commission to support local civil society organisations that protect and promote the rights of migrants, as well as those monitoring the cooperation of the Senegalese authorities with Frontex;
17. Calls on the Commission to ensure that the conclusion of this status agreement with Senegal and Frontex's activities in Senegal do not impede the right to freedom of movement of individuals as guaranteed under the Economic Community of West African States Treaty, which provides for the long-term establishment of a free movement zone for goods, capital and people;
18. Calls for the EU and its Member States to ensure safe and legal pathways for migrants and refugees living or in transit in Senegal and seeking a better life in the EU.

INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

Date adopted	20.9.2023
Result of final vote	<div style="display: flex; justify-content: flex-end; align-items: center;"> <div style="text-align: right; padding-right: 10px;">+:</div> <div>29</div> </div> <div style="display: flex; justify-content: flex-end; align-items: center;"> <div style="text-align: right; padding-right: 10px;">-:</div> <div>5</div> </div> <div style="display: flex; justify-content: flex-end; align-items: center;"> <div style="text-align: right; padding-right: 10px;">0:</div> <div>23</div> </div>
Members present for the final vote	<p>Alviina Alametsä, Alexander Alexandrov Yordanov, Traian Băsescu, Anna Bonfrisco, Reinhard Bütikofer, Włodzimierz Cimoszewicz, Katalin Cseh, Michael Gahler, Giorgos Georgiou, Sunčana Glavak, Raphaël Glucksmann, Klemen Grošelj, Bernard Guetta, Dietmar Köster, Andrius Kubilius, David Lega, Miriam Lexmann, Nathalie Loiseau, Leopoldo López Gil, Antonio López-Istúriz White, Thierry Mariani, Marisa Matias, David McAllister, Vangelis Meimarakis, Sven Mikser, Alessandra Moretti, Javier Nart, Matjaž Nemec, Demetris Papadakis, Kostas Papadakis, Tonino Picula, Manu Pineda, Thijs Reuten, Nacho Sánchez Amor, Isabel Santos, Mounir Satouri, Andreas Schieder, Jordi Solé, Hermann Tertsch, Hilde Vautmans, Anders Vistisen, Thomas Waitz, Isabel Wiseler-Lima, Željana Zovko</p>
Substitutes present for the final vote	<p>Vladimír Bilčík, Angel Dzhambazki, Andrey Kovatchev, Georgios Kyrtos, Carina Ohlsson, Juozas Olekas, Nikos Papandreou, Mick Wallace, Javier Zarzalejos</p>
Substitutes under Rule 209(7) present for the final vote	<p>Gheorghe Falcă, Dace Melbārde, Jan-Christoph Oetjen, Juan Ignacio Zoido Álvarez</p>

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

29	+
PPE	Željana Zovko
Renew	Katalin Cseh, Klemen Grošelj, Bernard Guetta, Georgios Kyrtos, Nathalie Loiseau, Javier Nart, Jan-Christoph Oetjen, Hilde Vautmans
S&D	Włodzimierz Cimoszewicz, Raphaël Glucksmann, Dietmar Köster, Sven Mikser, Alessandra Moretti, Matjaž Nemec, Carina Ohlsson, Juozas Olekas, Demetris Papadakis, Nikos Papandreou, Tonino Picula, Thijs Reuten, Nacho Sánchez Amor, Isabel Santos, Andreas Schieder
Verts/ALE	Alviina Alametsä, Reinhard Bütikofer, Mounir Satouri, Jordi Solé, Thomas Waitz

5	-
ID	Anna Bonfrisco, Thierry Mariani, Anders Vistisen
NI	Kostas Papadakis
The Left	Giorgos Georgiou

23	0
ECR	Angel Dzhambazki, Hermann Tertsch
PPE	Alexander Alexandrov Yordanov, Traian Băsescu, Vladimír Bilčík, Gheorghe Falcă, Michael Gahler, Sunčana Glavak, Andrey Kovatchev, Andrius Kubilius, David Lega, Miriam Lexmann, Leopoldo López Gil, Antonio López-Istúriz White, David McAllister, Vangelis Meimarakis, Dace Melbārde, Isabel Wiseler-Lima, Javier Zarzalejos, Juan Ignacio Zoido Álvarez
The Left	Marisa Matias, Manu Pineda, Mick Wallace

Key to symbols:

+ : in favour

- : against

0 : abstention

INFORMATION ON ADOPTION IN COMMITTEE RESPONSIBLE

Date adopted	31.1.2024
Result of final vote	+: 35 -: 31 0: 0
Members present for the final vote	Katarina Barley, Pietro Bartolo, Theresa Bielowski, Vladimír Bilčík, Karolin Braunsberger-Reinhold, Patrick Breyer, Saskia Bricmont, Annika Bruna, Jorge Buxadé Villalba, Damien Carême, Patricia Chagnon, Clare Daly, Lena Düpont, Lucia Ďuriš Nicholsonová, Cornelia Ernst, Nicolaus Fest, Sylvie Guillaume, Andrzej Halicki, Sophia in 't Veld, Marina Kaljurand, Assita Kanko, Moritz Körner, Jeroen Lenaers, Juan Fernando López Aguilar, Nuno Melo, Nadine Morano, Javier Moreno Sánchez, Maite Pagazaurtundúa, Paulo Rangel, Karlo Ressler, Diana Riba i Giner, Birgit Sippel, Martin Sonneborn, Tineke Strik, Ramona Strugariu, Annalisa Tardino, Tomas Tobé, Elena Yoncheva
Substitutes present for the final vote	Delara Burkhardt, Susanna Ceccardi, Gwendoline Delbos-Corfield, Daniel Freund, José Gusmão, Beata Kempa, Jaak Madison, Philippe Olivier, Anne-Sophie Pelletier, Paul Tang, Róza Thun und Hohenstein, Loránt Vincze, Juan Ignacio Zoido Álvarez
Substitutes under Rule 209(7) present for the final vote	Isabel Benjumea Benjumea, Ana Collado Jiménez, Margarita de la Pisa Carrión, Emmanouil Fragkos, José Manuel García-Margallo y Marfil, Vlad Gheorghe, Svenja Hahn, Petra Kammerevert, Miapetra Kumpula-Natri, Georgios Kyrtos, Antonio López-Istúriz White, Francisco José Millán Mon, Alin Mituța, Dolors Montserrat, Hermann Tertsch

FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

35	+
NI	Martin Sonneborn
Renew	Lucia Ďuriš Nicholsonová, Vlad Gheorghe, Svenja Hahn, Sophia in 't Veld, Moritz Körner, Georgios Kyrtos, Alin Mituța, Maite Pagazaurtundúa, Ramona Strugariu, Róza Thun und Hohenstein
S&D	Katarina Barley, Pietro Bartolo, Theresa Bielowski, Delara Burkhardt, Sylvie Guillaume, Marina Kaljurand, Petra Kammerevert, Miapetra Kumpula-Natri, Juan Fernando López Aguilar, Javier Moreno Sánchez, Birgit Sippel, Paul Tang, Elena Yoncheva
The Left	Clare Daly, Cornelia Ernst, José Gusmão, Anne-Sophie Pelletier
Verts/ALE	Patrick Breyer, Saskia Bricmont, Damien Carême, Gwendoline Delbos-Corfield, Daniel Freund, Diana Riba i Giner, Tineke Strik

31	-
ECR	Jorge Buxadé Villalba, Emmanouil Fragkos, Assita Kanko, Beata Kempa, Margarita de la Pisa Carrión, Hermann Tertsch
ID	Annika Bruna, Susanna Ceccardi, Patricia Chagnon, Nicolaus Fest, Jaak Madison, Philippe Olivier, Annalisa Tardino
PPE	Isabel Benjumea Benjumea, Vladimír Bilčík, Karolin Braunsberger-Reinhold, Ana Collado Jiménez, Lena Düpont, José Manuel García-Margallo y Marfil, Andrzej Halicki, Jeroen Lenaers, Antonio López-Istúriz White, Nuno Melo, Francisco José Millán Mon, Dolors Montserrat, Nadine Morano, Paulo Rangel, Karlo Ressler, Tomas Tobé, Loránt Vincze, Juan Ignacio Zoido Álvarez

0	0

Key to symbols:

+ : in favour

- : against

0 : abstention