



**2023/2086(INI)**

27.10.2023

## **DRAFT 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

Rapporteur: Cornelia Ernst

## CONTENTS

	<b>Page</b>
PROPOSAL FOR A EUROPEAN PARLIAMENT RECOMMENDATION .....	3
EXPLANATORY STATEMENT .....	9
POSITION AND FINDINGS OF THE RAPPORTEUR .....	10

## 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 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 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<sup>1</sup>,
- 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 Coast Guard Agency in the Republic of Senegal<sup>2</sup>,
- 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

---

<sup>1</sup> OJ L 295, 14.11.2019, p. 1.

<sup>2</sup> OJ L 181, 7.7.2022, p. 20.

external migration policy<sup>3</sup>,

- 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 the draft resolution of the Committee on Civil Liberties, Justice and Home Affairs of 14 July 2023 on Frontex building on the fact-finding investigation of the LIBE Working Group for Frontex Scrutiny,
  - 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 (A9-0000/2023),
- 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 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 accession and that have legal regimes that differ greatly from EU standards;
- C. whereas according Regulation 2019/1896, in situations where the Commission recommends that the Council authorise it to negotiate a status agreement, it should assess the fundamental rights situation in the areas covered by the status agreement; whereas such an assessment has not been performed yet;
- D. whereas the model status agreement referred to in Article 76(1) of Regulation 2019/1896 is to serve as the basis for the Commission’s negotiations with Senegal;
- E. whereas Senegal is a country of emigration, transit and immigration; 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, 200000 nationals from other countries were living in Senegal; whereas 2023 has seen an increase in the number of boats departing from Senegal to the Canary Islands; whereas the majority of people on the boats in 2023 have been 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

---

<sup>3</sup> OJ C 15, 12.1.2022, p. 70.

missing at sea on the Atlantic route since 2014;

- F. whereas concerns have been raised by human rights non-governmental organisations about a worsening trend as regards violations of the rights to freedom of expression and peaceful assembly and the excessive use of force by defence and security forces; whereas the president's main opponent, several members of opposition parties, activists and journalists have been arrested and detained 'under a committal order for calls to insurrection and acts or operations likely to compromise public security'; whereas on 31 July 2023, the Senegalese authorities ordered the dissolution of a political party; whereas access to social media and mobile internet connections have been restricted;
- G. 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 2006;
- H. 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;
1. Notes that the 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; 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. Expresses its concern about the deteriorating fundamental rights situation in Senegal; 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 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, in particular its protocol on free movement in neighbouring countries, as well as about the impact on the right to leave and the right to asylum;
  4. Considers that the model status agreement falls significantly short of addressing the abovementioned serious concerns and could lead to severe accountability gaps in the event of fundamental rights violations;
  5. Regrets that the Commission decided to interpret recital 88 of Regulation 2019/1896 in a restrictive way, whereby the fundamental rights situation in a given third country is only assessed after the conclusion of the status agreement; stresses that this prevents the relevant actors from taking into account the fundamental rights situation during the negotiations of and the decision to conclude a status agreement, as well as for the European Parliament during the consent procedure;

6. Considers that the possible conclusion of a status agreement between the EU and Senegal is part of the EU's general push to externalise border controls and responsibility for asylum seekers; does not, therefore, support the conclusion of a status agreement, taking into account the abovementioned concerns, and recommends therefore that negotiations not be opened;
7. Strongly urges the Commission and Frontex to adopt the following measures without delay, irrespective of the developments in the negotiations of the agreement with Senegal and taking into account the fact that Frontex has been increasingly operating in third countries:

#### **7.1. European Commission**

- a. always perform *ex ante* fundamental rights impact assessments 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; include a human rights impact assessment of the migration cooperation between Senegal and the EU and its Member States since 2005; make these impact assessments publicly available;
- b. critically review the current provision on immunity from criminal prosecution by national authorities for deployed Frontex officers, in line with the principle of proportionality, in order to safeguard the right to an effective remedy for the individuals concerned;
- c. ensure safe and legal pathways to the EU for Senegalese nationals and refugees living in or transiting Senegal, including by granting Schengen visas;
- d. make any support to the border authorities of a third country conditional on full respect for fundamental rights and ensure that independent monitoring is put in place;
- e. inform the European Parliament before opening negotiations with third countries on a status agreement;

#### **7.2 Frontex**

- a. ensure effective, proactive and timely consultation with the Fundamental Rights Officer (FRO) when deciding whether to launch a joint operation in the third country covered by the status agreement, in line with the requirements of Regulation 2019/1896;
- 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 the third country to effectively seek remedy through external bodies, such as the European Ombudsman, the Court of Justice of the European Union (CJEU) or a different entity;
- c. conduct periodical evaluations of joint operations in third countries, 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;
8. Strongly urges the Commission and Frontex to take the following concrete measures without further delay, should negotiations for a status agreement between Frontex and Senegal ever be opened:

#### ***8.1 European Commission***

- a. include explicit safeguards to allow deployed officers to disregard orders issued by the third country's authorities that contradict Frontex's fundamental rights obligations that derive from EU and international law;
- b. ensure that potential future Frontex deployments 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;
- c. include, in the potential status agreement, provisions and guarantees for adequate human rights protection to ensure that Senegalese authorities respect fundamental rights during operations, including provisions on monitoring compliance and 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 2019/1896;
- d. keep the European Parliament fully and regularly informed on all steps of the negotiations process in accordance with Article 218(10) TFEU;

#### ***8.2 Frontex***

- a. ensure consistent, regular and transparent reporting on Frontex activities in Senegal under any potential status agreement, with a focus on human rights compliance and the human rights context;
- b. fulfil its responsibility for addressing direct and indirect human rights violations by its staff in Senegal, in line with existing procedures, in order to ensure accountability;
- c. 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 any failure to act of deployed or host staff in Senegal, in accordance with Article 111 of Regulation 2019/1896, and include clear provisions on the follow-up and enforcement tools after complaints are lodged, while clearly communicating about this follow-up;

- ii. pursue, in cooperation with the Senegalese authorities, a Frontex presence in critical areas where the apprehension of migrants, or violence or degrading treatment against them, is likely to take place, and provide full access to the operational area to the FRO and Fundamental Rights Monitors, in line with the FRO's standard operating procedure, in order to allow for 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 collection and analysis of any personal data are fully compliant with Regulation (EU) 2018/1725<sup>4</sup> and respects fundamental rights;
  - d. 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 while conducting migration management, as well as the human rights risks and consequences;
- 9. Requests that the CJEU formally assess whether the status agreement as negotiated is compatible with the Treaties, as enshrined in Article 218(11) TFEU, especially related to Frontex's accountability for actions performed on the territory of Senegal, in the light of the significant differences between the legal framework of the EU and Senegal;
- 10. 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 Cotonou Agreement between the European Union and the group of African, Caribbean and Pacific countries.

---

<sup>4</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the 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 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.