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REPORT

on a European Parliament recommendation concerning negotiations on a status agreement between the European Union and the Islamic Republic of Mauritania on operational activities carried out by the European Border and Coast Guard Agency (Frontex) in the Islamic Republic of Mauritania (2023/2087(INI))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Tineke Strik

Rapporteur for the opinion of the associated committee pursuant to Rule 57 of the Rules of Procedure

Jan-Christoph Oetjen, Committee on Foreign Affairs

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PROPOSAL FOR A EUROPEAN PARLIAMENT RECOMMENDATION

concerning negotiations on a status agreement between the European Union and the Islamic Republic of Mauritania on operational activities carried out by the European Border and Coast Guard Agency (Frontex) in the Islamic Republic of Mauritania (2023/2087(INI))

The European Parliament,

- having regard to Article 218 of 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) 2016/1624¹,
- having regard to the European Council conclusions of 9 February 2023,
- having regard to the EU action plan for the Western Mediterranean and Atlantic routes, presented by the Commission on 6 June 2023,
- having regard to Council Decision (EU) 2022/1168 of 4 July 2022 authorising the opening of negotiations on a status agreement between the European Union and the Islamic Republic of Mauritania on operational activities carried out by the European Border and Coast Guard Agency in the Islamic Republic of Mauritania²,
- having regard to the Commission communication of 21 December 2021 entitled ‘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

¹ OJ L 295, 14.11.2019, p. 1.

² OJ L 181, 7.7.2022, p. 18.

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 policy³,
 - 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 its recommendations,
 - 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 (A9-0358/2023),
- A. whereas, pursuant to Article 73(3) of Regulation 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;
- B. whereas on the basis of Council Decision (EU) 2022/1168, the Commission received an authorisation from the Council to negotiate a status agreement with the Islamic Republic of Mauritania in July 2022 and has since entered into negotiations with the Government of Mauritania, with a view to concluding a status agreement on the European Border and Coast Guard Agency (Frontex) that would allow for team members deployed by Frontex to perform tasks with executive powers on the territory of the Islamic Republic of Mauritania on the basis of a dedicated operational plan;
- C. whereas the European Council conclusions of 9 February 2023 called for intensified cooperation with countries of origin and transit, as well as the rapid conclusion of negotiations on new and revised status agreements between the EU and third countries on the deployment of Frontex;
- D. whereas, pursuant to Article 73(2) of Regulation 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 according to Regulation 2019/1896, cooperation with third countries is an important part of European integrated border management; whereas in situations where the Commission recommends that the Council authorise it to negotiate a status agreement, the Commission should assess the fundamental rights situation relevant to the areas covered by the status agreement; whereas such an assessment has not been

³ OJ C 15, 12.1.2022, p. 70.

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;

- F. 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;
- 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 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 Mauritania; 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;
- J. whereas, according to the model status agreement referred to in Article 76(1) of Regulation 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;
- K. whereas Mauritania is both a transit and destination country for migration from other West African countries, such as Senegal, Mali, Guinea and Guinea Bissau; whereas in the last two years, there has been a substantial increase in the number of people travelling along the Mauritanian coast to take the Canary Islands migration route, leading to increased EU engagement, in particular on border management; whereas according to the Spanish Commission for Refugee Aid, the route through Mauritania is

one of the deadliest in the world, and 2021 marked the highest number of deaths and missing people since data first started being recorded;

- L. whereas as of 31 May 2023, the Office of the UN High Commissioner for Refugees (UNHCR) reported the presence of 108 972 refugees and asylum seekers in Mauritania, including 84 093 Malian refugees in the Mbera camp;
- M. whereas despite having signed the 1951 Convention Relating to the Status of Refugees, its 1967 Protocol and the 1969 Organisation of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa, Mauritania has no national legal asylum system in place; whereas in the absence of such a system, the UNHCR conducts registration and refugee status determination and other protection activities on the basis of a Memorandum of Understanding with the authorities; whereas people deemed ineligible for protection are structurally deported to the Malian and Senegalese border by the authorities without further procedure; whereas this has included deportations of people whose cases have not been assessed by the UNHCR, including the deportation of persons perceived by authorities as ‘candidates for sea departures’, persons intercepted at sea in the Western Sahara by Moroccan authorities and persons legally residing in the country; whereas Western and Central African nationals are frequently deported without due process, with no individual legal status assessments or formal deportation decisions;
- N. whereas Mauritania’s current legal framework does not allow for effective protection of women and children, or of LGBTIQ+ persons; whereas same-sex activity is deemed illegal under Mauritanian criminal law and is still a criminal offence punishable by death;
- O. whereas refugees, asylum seekers and migrants in Mauritania continuously face systemic and serious human rights violations and ill-treatment such as refoulement, arbitrary arrests and detention, (gender-based) violence, including cases of torture, exploitation, abusive detention conditions, extortion and theft, and abusive collective expulsions to Senegal and Mali; whereas people are not assessed with regard to their nationality and vulnerability; whereas the UNHCR does not appear to carry out regular visits to border check points, places of disembarkation after interceptions at sea or places of detention to identify any protection needs; whereas civil society organisations seem to be prevented from doing so; whereas the implementation of anti-trafficking legislation has led to instances of migrants being criminalised;
- P. whereas Mauritania only formally abolished slavery in 1981 through the adoption of Law 2015-031, and was the last country in the world to do so; whereas slavery has only been criminalised since 2015; whereas in 2022, the UN Special Rapporteur on contemporary forms of slavery concluded that the country had taken significant steps but that the continued existence of slavery and slavery-like practices, including forced labour, remained a concern and had an impact on both migrants and Mauritanian citizens;
- Q. whereas Mauritania has not abolished the death penalty, despite a de facto moratorium since 1987; whereas foreign detainees facing the death penalty rarely have access to legal assistance or a competent translator;
- R. whereas the Mauritanian authorities have been receiving bilateral border management

support from the Spanish authorities since 2006 in an advisory capacity only, including through the physical deployment of the Guardia Civil; whereas the Frontex status agreement would, for the first time, allow a non-Mauritanian actor to exercise executive powers at the border of the country through its deployed team members;

- S. whereas Frontex, under Operation HERA, also carried out occasional joint operations in Mauritania between 2006 and 2018; whereas this cooperation has not been evaluated on its impact on the protection of and respect for the human rights of migrants in Mauritania; whereas on 20 September 2022, Frontex opened a risk analysis cell in Nouakchott in the context of the Africa-Frontex Intelligence Community; whereas eight risk analysis cells are currently part of the Africa-Frontex Intelligence Community network, with the role of collecting and analysing data on cross-border crime and supporting authorities involved in border management;
1. Acknowledges that Frontex deployment in Mauritania, acting in line with the EU *acquis*, has the potential to have a positive effect on respect for fundamental rights; expresses its deep concern about the situation of fundamental rights in Mauritania, especially for migrants and refugees, and considers that the possible conclusion of a status agreement between the EU and Mauritania providing for the exercise of executive powers by Frontex in Mauritania would entail a high risk of violations of fundamental rights and international protection obligations that are of a serious nature and likely to persist;
 2. Recalls Frontex's legal obligation to comply with EU law to ensure that fundamental rights are fully respected during operations and considers that a possible status agreement that would allow team members deployed by Frontex to perform tasks with executive powers under a dedicated operational plan must contain the necessary guarantees and mitigation measures to uphold EU and international law and principles, and the protection of fundamental rights, in line with Regulation 2019/1896;
 3. Expresses its concern about the fact that the route through Mauritania is one of the deadliest in the world and that 2021 marked the highest number of deaths and missing people since data first started being recorded;
 4. Is concerned on the potential impact of a status agreement on the freedom of movement in West Africa, most notably in Mauritania, and on the Economic Community of West African States' protocol relating to free movement of persons, residence and establishment;
 5. Considers that provisions of the model status agreement must be improved in order to address the abovementioned serious concerns that could lead to severe accountability gaps in the event of fundamental rights violations, which should be properly addressed;
 6. Strongly urges the Commission and Frontex to adopt the following measures without further delay, should negotiations for a status agreement continue:

6.1 European Commission

- a. include explicit safeguards allowing deployed officers to disregard orders issued by Mauritania's authorities that contradict Frontex's fundamental rights

- obligations that derive from EU and international law;
- b. 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;
 - c. ensure that Frontex staff who are granted immunity for their activities in Mauritania 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 waiving immunity for deployed staff, including specifications on how requests from the third-country authorities will be dealt with, as well as enshrining a strong role for the Fundamental Rights Officer (FRO);
 - d. ensure sufficient and accessible internal and external mechanisms for non-EU individuals and ensure that Frontex develops mechanisms to receive complaints in the first instance, in line with the recommendations of the EU Ombudsman;
 - e. include clear guidelines and, if considered necessary, mitigating measures on combating corruption in identified areas of cooperation between officers of Frontex and Mauritanian authorities and security forces, as well as safeguards to avoid the misuse of EU material support;
 - f. in parallel to the negotiations on the status agreement, provide support and resources to assist Mauritanian 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 Mauritanian national human rights institutions and civil society organisations focusing on human rights; 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;
 - g. include provisions and guarantees for adequate human rights protection in the status agreement in order to ensure that the Mauritanian authorities respect fundamental rights during operations, including on monitoring compliance, as well as sound options that will ensure accountability in the event of violations; ensure that the Mauritanian 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;
 - h. uphold, at all times, the highest standards of human rights law during the 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;
 - i. 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, inform the European Parliament before opening negotiations with third countries

- on a status agreement;
- j. in the event that the status agreement is concluded, 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' activities;
 - k. in parallel with the implementation of the status agreement, provide fundamental rights training to the relevant Mauritanian 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;
 - l. make any material support to the border authorities of Mauritania conditional on full respect for fundamental rights and ensure that monitoring is carried out;
 - m. in line with the Frontex FRO's approach when launching operations on the territory of a third country and in cooperation with the FRO, perform *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 2019/1896; make this impact assessment, which Parliament regrets has not yet been performed, publicly available or at least share it with the co-legislators;

6.2 Frontex

- a. ensure effective, proactive and timely consultation with the FRO when deciding whether to launch a joint operation in Mauritania, in line with the requirements of Regulation 2019/1896;
- b. involve the Frontex Consultative Forum on developments related to the status agreement, in accordance with Article 108 of Regulation 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 Mauritania;
- c. ensure that any operational plan establishing operations on the territory of Mauritania should:
 - i. enshrine a robust and formal mechanism to address complaints to Frontex or the relevant Mauritanian authorities for actions or failure to act of deployed staff or host staff in the country, in accordance with Article 111 of Regulation 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 Mauritanian 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 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 Mauritania, 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) 2018/1725⁴ and respects fundamental rights;
- iv. work closely with the UNHCR during operations in Mauritania in order to guarantee the right to asylum;
- v. ensure provisions on training for Frontex staff deployed in Mauritania on the regional and Mauritanian human rights situation and legal framework;
- d. ensure adherence to Frontex rules on waiving immunity for deployed staff, including specifications on how requests from Mauritania's authorities will be dealt with, as well as those enshrining a strong role for the FRO; make the deployment of standing corps officers conditional on these guidelines;
- e. explore and, where possible, establish mechanisms for persons potentially affected by Frontex's actions on the territory of Mauritania to effectively seek remedy through external bodies;
- f. sign a Memorandum of Understanding with Mauritania in order to align complaint mechanisms;
- g. in the event of the signing of the status agreement and the establishment of an operational plan, ensure that the FRO permanently deploy a Fundamental Rights Monitor to oversee operations in Mauritania and monitor the cooperation in relation to the fundamental rights, in accordance with Regulation 2019/1896;
- h. 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;
- i. ensure meaningful consultation, dialogue and engagement with civil society organisations and relevant stakeholders throughout the planning, implementation, and evaluation of its operations in Mauritania, including the dissemination of information;
- j. conduct periodical evaluations of joint operations in third countries, including in Mauritania, with a focus on fundamental rights, share them with the European Parliament and the Council and make them publicly available;

⁴ 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).

7. Emphasises the responsibility of Frontex to address any human rights violations by its staff in Mauritania, in line with its existing procedures, and to ensure accountability; recalls that 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 deployment of Frontex in Mauritania, in accordance with Article 46(4) of Regulation 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 by Mauritanian security forces and to cooperate with relevant authorities to ensure the prompt and impartial investigation of any alleged human rights abuses;

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8. Instructs its President to forward this recommendation to the Council, the Commission, the European Border and Coast Guard Agency, its Fundamental Right Officer, the Government of Mauritania and the signatories to the Cotonou Agreement between the European Union and the group of African, Caribbean and Pacific countries.

EXPLANATORY STATEMENT

The entry into force of Regulation 2019/1896 (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) 2019/1896, 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) 2022/1168 authorised the Commission to negotiate a Status Agreement with the Islamic Republic of Mauritania on operational activities carried out by Frontex on the territory of Mauritania. 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 Republic of Senegal.

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 Mauritania 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 Mauritania, 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) will issue 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, the European Commission - as the negotiating entity - took part, as well as two researchers with an expertise in human rights and international law. During the second meeting, the Executive Director of Frontex, and a representative from the Fundamental Rights Officer took part. The Mauritanian authorities were also invited, but did not participate.

Position and findings of the Rapporteur

The draft report outlines several aspects of the model Status Agreement which could potentially create accountability gaps in the event of a conclusion with Mauritania on this basis. The Rapporteur is of the opinion that the provisions related to immunity in the model agreement are excessively broad, posing a significant risk of fostering impunity. The fact that members of the standing corps cannot be prosecuted in their home member states is an additional element that contributes to the impunity. While the Executive Director would have the possibility to waive the immunity of individual staff under the model status agreement, the Rapporteur believes this procedure is inadequate as a substitute for judicial prosecution, as this procedure should be performed by an independent, external body to safeguard impartiality and neutrality of proceedings.

Furthermore, the Rapporteur is of the opinion that immunity in essence should be granted only with utmost caution and proportionality, considering its large implications for sovereignty of a country and possibilities for this country to hold individuals to account for actions committed on its territory. The Rapporteur considers that, immunity is unnecessary and disproportionate when it comes to carrying out border management tasks. The fact that the model agreement foresees officers to carry service weapons and use force underline the importance of ensuring sound accountability mechanisms.

Moreover, the model agreement foresees a command structure in which Mauritanian officers will give instructions to deployed Frontex staff. This creates a legal gap that raises uncertainty regarding the Agency's legal accountability for the actions performed by its staff under joint operations, given that the Agency wouldn't exercise effective control over deployed staff members. This is especially problematic given the different legal frameworks that the Mauritanian authorities and Frontex are bound by. The Rapporteur considers this question to be insufficiently addressed by the Commission and Frontex during the procedure.

Another shortcoming of the model agreement relates to the limited external possibilities to submit complaints, especially since non-EU citizens do not have the possibility to submit complaints at the EU Ombudsman, and the limited jurisdiction of the Court of Justice of the European Union (CJEU) over external action. Consequently, the Agency and the Commission explore how to expand these possibilities, possibly with the involvement of the Fundamental Rights Agency (FRA) and EU Ombudsman.

Against that backdrop, the Rapporteur recommends the European Commission to seriously address the aforementioned shortcomings during the negotiations before seeking the consent of the European Parliament for the Status Agreement. Further, the Rapporteur recommends the Commission to conduct an ex ante fundamental rights impact assessment without further delay, in order to take into account the findings of this assessment. This should be followed by an independent monitoring by the Commission in case of the actual cooperation on the basis of the Status Agreement, in line with the Parliament recommendation in its report on ‘Human rights protection and the EU external migration policy’, as adopted in May 2021.

Apart from the legal shortcomings, the Rapporteur identified the fundamental rights situation in Mauritania to be a concern in the event of Frontex deployment on its territory. In absence of a legal asylum system, the United High Commissioner for Refugees (UNHCR) determines asylum eligibility. However, individuals not considered eligible for asylum are deported to Mali and Senegal by the authorities without further procedure. Further, there are practical problems related to the access of UNHCR to apprehended persons, which creates a risk of people in need of protection being deported. Migrants and refugees further face a number of other issues, related to serious human rights violations and ill treatment such as refoulement, arbitrary arrests, torture, detention, (gender-based) violence, exploitation and the application of Sharia-mandated penalties that are illegal in the EU. Frontex operations in Mauritania, and under the command structures of the Mauritanian authorities therefore pose a significant risk of deployed staff getting implicated in these violations.

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. The Rapporteur also strongly invites the Agency and FRO to seriously assess the feasibility of the performance of an executive mandate by Frontex on the territory of Mauritania while fully living up to its fundamental rights obligations enshrined by Union law.

21.9.2023

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 Mauritania
(2023/2087(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 ongoing negotiations between the EU and Mauritania on the establishment of a status agreement that provides for the deployment of the European Border and Coast Guard Agency (Frontex) in Mauritania; 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 Mauritania and reporting of human rights violations by Frontex in relation to all its activities concerning migration and asylum in Mauritania;
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 Mauritania as regards the treatment of migrants and refugees and the relevant areas covered by the status agreement before concluding the negotiations with Mauritania, in order to be able to fully consider the impact of potential cooperation and to negotiate the necessary safeguards, and to inform Parliament without delay;

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.

4. Underlines that the launch of Frontex operational activities under a status agreement 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 inhumane 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 Mauritania 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 Mauritanian security forces, but should actively denounce such actions; recalls the legal responsibility of Frontex to respect and to guarantee human rights and 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 Mauritania on the regional and Mauritanian human rights situation and legal framework, as well as on international human rights and humanitarian law and standards;
7. Calls on the Commission to provide training to the Mauritanian authorities and Mauritanian border guards on human rights and the rights and obligations of Mauritanian staff in search and rescue operations, and asylum processing and management;
8. Calls for the establishment of a robust and efficient complaint mechanism that is independent and publicly accessible, for an incident reporting mechanism for Frontex activities and for a mechanism to ensure effective remedy for people impacted by Frontex actions; 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;
9. Calls on the EU to provide additional capacity building support to Mauritanian national human rights institutions and civil society human rights organisations; calls on Mauritania to ensure the independence of its judicial and human rights institutions;
10. Calls for the inclusion of a strong independent human rights monitoring mechanism for Frontex activities carried out under this status agreement, with the Fundamental Rights Officer playing a strong role, in order to avoid any risk of Frontex officials becoming complicit in human rights violations;
11. Is of the opinion that any deployment of Frontex personnel to Mauritania and the conducting of operational activities with Mauritanian 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;
12. Deplores and strongly condemns the repeated practice by Mauritanian border guards

and security staff of pushbacks and refoulement of migrants and asylum seekers;

13. Reiterates and underlines that Frontex should not take part in any form of pushbacks and should publicly denounce such practices when they are observed or when Frontex is made aware of them;
14. Considers that the EU and Frontex should suspend their activities on migration and asylum carried out in cooperation with the Mauritanian 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; calls for clear benchmarks for suspending the status agreement or for suspending specific activities that contribute directly or indirectly to human rights abuses;
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. Is highly concerned about the human rights track record of Mauritania and its security forces, most notably the violations committed between 2020 and 2023 while enforcing migration and border controls, including documented cases of violence and torture, arbitrary arrest and detention, prolonged pre-trial detention of people accused of migrant smuggling, abusive detention conditions, extortion and theft, abusive collective expulsions and trafficking into slavery;
17. Is concerned about the absence of asylum legislation in Mauritania, as well as the fact that homosexual activity is currently illegal in the country;
18. 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 Mauritanian authorities with Frontex;
19. Is concerned by the reported misuse of EU material support by the Mauritanian security forces for migration control purposes; calls for the comprehensive monitoring of the use of material support provided to the Mauritanian authorities and for Frontex funding or material support not to contribute to human rights violations in Mauritania;
20. Calls for the inclusion of the following points in the status agreement before the formal consent of Parliament is sought:
 - (a) Frontex will work with and support Mauritanian authorities to ensure that there will be no excessive or arbitrary detention of migrants and asylum seekers and detention centres will comply with human rights standards;
 - (b) interrogations will only occur where deemed necessary; torture under any form is actively prosecuted and heavily punished;
 - (c) Safeguards against corruption are established and consequently implemented by Frontex governance and by the Mauritanian authorities;
 - (d) Frontex will under no circumstances engage in pushbacks and other human rights violations and will not apply violent measures to influence migration flows;

- (e) EU funding will be disbursed transparently, with human rights impact assessments to be conducted prior to disbursement and strong monitoring during implementation;
 - (f) Explicit safeguards are established in order to allow deployed officers to disregard orders issued by the third country's authorities that contradict the Agency's human rights obligations and/or obligations that derive from EU or international law;
 - (g) Frontex activities will be documented in a transparent manner;
 - (h) Provisions in the agreement will refer to the need for Mauritanian authorities to respect human rights during operations, and include robust measures to ensure accountability in the event of violations;
21. Maintains that development cooperation and efforts to tackle the root causes of migration should remain a priority in EU-Mauritania cooperation on migration;
 22. Calls for the EU and its Member States to ensure safe and legal pathways for migrants and refugees living or in transit in Mauritania.

INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

Date adopted	20.9.2023
Result of final vote	+: 29 -: 5 0: 23
Members present for the final vote	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, 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, Viola von Cramon-Taubadel, Thomas Waitz, Isabel Wiseler-Lima, Željana Zovko
Substitutes present for the final vote	Vladimír Bilčík, Angel Dzhambazki, Andrey Kovatchev, Georgios Kyrtos, Carina Ohlsson, Juozas Olekas, Nikos Papandreou, Mick Wallace, Javier Zarzalejos
Substitutes under Rule 209(7) present for the final vote	Gheorghe Falcă, Dace Melbārde, Jan-Christoph Oetjen, Juan Ignacio Zoido Álvarez

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

29	+
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 Nemeč, 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, Viola von Cramon-Taubadel, 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, Željana Zovko
The Left	Manu Pineda, Mick Wallace

Key to symbols:

+ : in favour

- : against

0 : abstention

INFORMATION ON ADOPTION IN COMMITTEE RESPONSIBLE

Date adopted	26.10.2023
Result of final vote	+: 43 -: 7 0: 1
Members present for the final vote	Magdalena Adamowicz, Malik Azmani, Pietro Bartolo, Theresa Bielowski, Vladimír Bilčík, Malin Björk, Karolin Braunsberger-Reinhold, Saskia Bricmont, Annika Bruna, Jorge Buxadé Villalba, Damien Carême, Patricia Chagnon, Lena Düpont, Cornelia Ernst, Nicolaus Fest, Maria Grapini, Sylvie Guillaume, Andrzej Halicki, Evin Incir, Sophia in 't Veld, Patryk Jaki, Marina Kaljurand, Fabienne Keller, Łukasz Kohut, Moritz Körner, Alice Kuhnke, Jeroen Lenaers, Juan Fernando López Aguilar, Nuno Melo, Javier Moreno Sánchez, Maite Pagazaurtundúa, Paulo Rangel, Diana Riba i Giner, Isabel Santos, Birgit Sippel, Sara Skytvedal, Tineke Strik, Ramona Strugariu, Tomas Tobé, Milan Uhrík, Elissavet Vozemberg-Vrionidi, Javier Zarzalejos
Substitutes present for the final vote	Susanna Ceccardi, Gwendoline Delbos-Corfield, Jan-Christoph Oetjen, Anne-Sophie Pelletier, Róza Thun und Hohenstein, Dragoş Tudorache
Substitutes under Rule 209(7) present for the final vote	Arba Kokalari, Andrius Kubilius, Helmut Scholz

FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

43	+
PPE	Magdalena Adamowicz, Vladimír Bilčík, Karolin Braunsberger-Reinhold, Lena Düpont, Andrzej Halicki, Arba Kokalari, Andrius Kubilius, Jeroen Lenaers, Nuno Melo, Paulo Rangel, Sara Skytvedal, Tomas Tobé, Elissavet Vozemberg-Vrionidi
S&D	Pietro Bartolo, Theresa Bielowski, Maria Grapini, Sylvie Guillaume, Evin Incir, Marina Kaljurand, Łukasz Kohut, Juan Fernando López Aguilar, Javier Moreno Sánchez, Isabel Santos, Birgit Sippel
Renew	Malik Azmani, Sophia in 't Veld, Fabienne Keller, Moritz Körner, Jan-Christoph Oetjen, Maite Pagazaurtundúa, Ramona Strugariu, Róza Thun und Hohenstein, Dragoș Tudorache
Verts/ALE	Saskia Bricmont, Damien Carême, Gwendoline Delbos-Corfield, Alice Kuhnke, Diana Riba i Giner, Tineke Strik
The Left	Malin Björk, Cornelia Ernst, Anne-Sophie Pelletier, Helmut Scholz

7	-
ECR	Jorge Buxadé Villalba, Patryk Jaki
ID	Annika Bruna, Susanna Ceccardi, Patricia Chagnon, Nicolaus Fest
NI	Milan Uhrík

1	0
PPE	Javier Zarzalejos

Key to symbols:

+ : in favour

- : against

0 : abstention