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Your ref. [Ares(2022)2435533-01/04/2022]

Mr Matthias OEL

Director of Directorate B -
Schengen, Borders & Visa
DG HOME, European Commission

Dear Mr Oel,

In reference to your inquiry please see below the necessary elements for a concise reply to the questions related to *“Operations by Frontex vessels in Senegal’s territorial waters”*:

1. Under which operational plans for HERA (I, II or III) was provision made for Frontex vessels to navigate in Senegal’s territorial waters, and when did vessels begin to do so?

JO Hera II, implemented from 11 August to 15 December 2006, aimed at performing surveillance of the Atlantic maritime borders of the European Union, with the main objective of preventing the loss of migrants’ lives at sea as well as assisting Spain in managing the high migratory flow towards the area of Canary Islands, by deploying Member States (MS) maritime and aerial assets (as Frontex did not and still does not have own maritime assets). The operational area of JO Hera II included Senegalese waters and following a formal agreement between Spanish and Senegalese authorities (signed on 10 August 2006), and a subsequent Memorandum of Understanding between the two countries (signed on 24 August 2006), the first deployment of EU Member State (MS) aerial asset took place on 28 August 2006 in Dakar (Senegal), followed by the deployment of MS maritime assets, performing patrols in the operational area until 14 October 2006.

JO Hera III was implemented from 12 February to 12 April 2007 and aimed at controlling the flow of migrants towards Spanish external sea borders by deploying MS maritime and aerial assets. The operational area of JO Hera III also included the Senegalese waters.

2. Did the operational plans also allow for refugees taken on board to be disembarked in Senegal and, if so, to what extent did that actually take place with due regard for the ban on refoulement?

The operational plans of JO Hera II and III allowed the participating assets to take persons on board, in case of search and rescue incidents, in line with the provisions of the international laws at sea. However, no such cases were reported during the JO.

3. Why did Frontex terminate Operation HERA in 2019, and to what extent was disagreement with the host state, Spain, one of the main reasons for doing so?

JO Hera was organized based on the bilateral agreement between Spain and Senegal. Due to the legislative changes brought by the entry into force of the European Border and Coast Guard Regulation¹

¹ Regulation (EU) 2016/1624 of 14 September 2016 on the European Border and Coast Guard (OJ L 251, 16.9.2016, p. 1).

(the Regulation), the Agency had to adhere to the new stipulations regarding its support to third countries.

In accordance with Article 54(10) of the Regulation, “When concluding bilateral agreements with third countries, Member States may, in agreement with the Agency, include provisions concerning the role and competence of the Agency in accordance with this Regulation, in particular regarding the exercise of executive powers by members of the European Border and Coast Guard teams deployed by the Agency during the joint operations, pilot projects, rapid border interventions, return operations or return interventions. The Member States shall notify the Commission of any such provisions”.

Therefore, the Agency requested Spain to provide Frontex with the bilateral agreement between Spain and Senegal where provisions defining the role and competences of the Agency in accordance with the Regulation are included. Furthermore, Frontex proposed to include the Spanish territorial waters around the Canary Islands within the operational area of JO Hera. The proposals were not accepted by Spain and therefore Frontex did not implement JO Hera as from 2019.

Yours sincerely,

Electronically signed

Aija Kalnaja
Deputy Executive Director for Standing Corps Management
Deputising for the Executive Director