



Brussels, 21.12.2021
COM(2021) 830 final

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT AND THE COUNCIL**

**Model working arrangement 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**

1. INTRODUCTION

Council Regulation (EC) No 2007/2004¹, which established the European Border and Coast Guard Agency (the ‘Agency’), commonly referred to as Frontex (under the name European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union), provided that the Agency ‘*may cooperate with the authorities of third countries competent in matters covered by this Regulation in the framework of working arrangements concluded with these authorities, in accordance with the relevant provisions of the Treaty.*’² Regulation (EU) 2016/1624,³ which replaced the Council Regulation (EC) No 2007/2004 in 2016, contained the same provision, this time requiring the arrangements to be ‘*in accordance with Union law and policy.*’⁴ There are currently 18 working arrangements with border management authorities of non-Member States in force⁵, all but two⁶ of which were drafted under the framework of Council Regulation (EC) No 2007/2004.

2. COOPERATION WITH THIRD COUNTRY AUTHORITIES

In 2019, Regulation (EU) 2019/1896⁷, commonly referred to as the European Border and Coast Guard Regulation (the ‘Regulation’) entered into force. Under the Regulation, ‘*the Agency may cooperate, to the extent required for the fulfilment of its tasks, with the authorities of third countries competent in matters covered by this Regulation.*’⁸ When cooperating with third country authorities, the Agency must act within the framework of the Union’s external action policy, with the support of, and in coordination with, Union delegations and any relevant Common Security and Defence Policy missions and operations.⁹ The Regulation calls for the Agency to act within the framework of working arrangements concluded with the third country authorities on matters ‘*related to the management of operational cooperation.*’¹⁰ The working arrangement must specify the scope, nature and purpose of the cooperation.¹¹

¹ Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union. *OJ L 349*, 25.11.2004, p. 1.

² Art 14 of Council Regulation (EC) No 2007/2004.

³ Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC *OJ L 251*, 16.9.2016, p. 1–7.

⁴ Art 54(2), Regulation (EU) 2016/1624.

⁵ Border Guard Service of the Federal Security Service of Russia, State Border Guard Service of Ukraine, Border Guard Service of Moldova, Ministry of Internal Affairs of Georgia, Ministry of the Interior of Serbia, Ministry of Interior of Albania, Ministry of Security of Bosnia and Herzegovina, United States Department of Homeland Security, Police Directorate of Montenegro, State Border Committee of Belarus, Canada Border Services Agency, National Police of Cape Verde, Nigerian Immigration Service, National Security Council of Armenia, Ministry of Foreign Affairs of Turkey, State Border Service of Azerbaijan, Ministry of Internal Affairs of Kosovo, Ministry of Internal Affairs of North Macedonia.

⁶ Ministry of Internal Affairs of Georgia and Ministry of Interior of Albania.

⁷ 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 PE/33/2019/REV/1 *OJ L 295*, 14.11.2019, p. 1.

⁸ Art 73(1).

⁹ Art 73(2).

¹⁰ Art 73(4).

¹¹ Art 73(4).

Before the Agency can initiate formal negotiations on a working arrangement, it must be given approval by the Commission. Before a working arrangement can be concluded, it must be approved by the Agency's management board. Proposals for decisions of the management board on working arrangements with third countries require a vote in favour of their adoption by the members of the management board representing the Member States neighbouring that third country.¹² Finally, the Agency must have provided the European Parliament with '*detailed information as regards the parties to the working arrangement and its envisaged content*' and is required to make working arrangements public on its own initiative.¹³

3. MODEL WORKING ARRANGEMENT

The Regulation calls upon the Commission to draw up a model working arrangement after consulting the Agency, the European Union Agency for Fundamental Rights, the European Data Protection Supervisor and any other relevant Union bodies, offices or agencies.¹⁴ That model must include provisions related to fundamental rights and data protection safeguards.¹⁵

Consequently, the model contains the following specific provisions:

- Article 1 provides the scope of the working arrangement, which includes gradually developing operational cooperation towards a sustainable operational partnership in the area of integrated border management;
- Article 2 describes the purpose of the working arrangement, which is to promote effective implementation of integrated border management, protecting the external borders and to facilitate the implementation of return;
- Article 3 provides the wide range of potential modalities of operational cooperation between the sides;
- Article 4 ensures that fundamental rights are fully respected at all times in relation to the application of the working arrangement and provides for the Agency's fundamental rights officer and fundamental rights monitors to ensure such respect;
- Article 5 allows the sides to exchange, share or disseminate information within the framework of EUROSUR under terms to be annexed to the arrangement;
- Article 6 regulates the exchange of sensitive non-classified information and bars the exchange of classified information without the conclusion of a separate administrative arrangement between the Agency and the third country;
- Article 7 contains provisions for the onward transmission and appropriate confidentiality of information received under this arrangement;
- Article 8 lists the rules on processing and protection of personal data;
- Article 9 provides for the third country to proactively inform the relevant Union bodies in the event that it becomes aware of allegations of fraud, corruption or other illegal activities that may affect the interests of the European Union;
- Article 10 allows the Sides to agree on cooperation plans and to nominate coordinators for the implementation of the working arrangement;

¹² Art 100(3).

¹³ Art 76(4) and Art 114(2), respectively.

¹⁴ Art 76(2).

¹⁵ Art 76(2).

- Article 11 clarifies that the financing of the participation of authorities from the third country in activities organised or coordinated by the Agency must be agreed upon separately;
- Article 12 regulates how disputes concerning the interpretation of the agreement are to be resolved;
- Article 13 underscores that a working arrangement is not a legally binding instrument;
- Article 14 describes the procedure for the application, amendment and discontinuation of the agreement.

4. CONCLUSIONS

That the Regulation requires the Agency to cooperate with third countries for the purpose of European Integrated Border Management and migration policy underscores the importance of such cooperation for the Agency to achieve its mission, bolster the Union's border security and promote European integrated border management standards. The model working arrangement establishes a framework for the cooperation between the Agency and the relevant third country border management authorities. While the Agency should use this model as a starting point for every working arrangement negotiation with a third country, the final texts of such arrangements will necessarily differ in accordance with the differing realities of each negotiating partner and the differing objectives of the Union in relation to those partners. The Agency should nonetheless strive to preserve the essence of the model working arrangement during such negotiations.