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

**Model status agreement as referred to in Article 54(5) of Regulation (EU) 2016/1624 of
the European Parliament and of the Council of 14 September 2016 on the European
Border and Coast Guard**

2. INTRODUCTION

Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard¹ has expanded the tasks of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union. To reflect those changes, it has been renamed the European Border and Coast Guard Agency².

Active cooperation with third countries is a key element of European integrated border management.

Article 54(4) of Regulation (EU) 2016/1624 provides that where it is envisaged that teams will be deployed to a third country in actions where the team members will have executive powers, or where other actions in third countries require it, a status agreement has to be concluded by the Union with the third country concerned.

The present Communication sets out the model status agreement drawn up by the Commission in accordance with Article 54(5) of Regulation (EU) 2016/1624.

3. COOPERATION WITH THIRD COUNTRIES IN THE FRAMEWORK OF THE EUROPEAN BORDER AND COAST GUARD REGULATION

Cooperation with third countries is a key element to ensure an effective management of the EU external borders. Regulation (EU) 2016/1624 has reinforced the mandate of Frontex in that respect. The Agency encourages and facilitates technical and operational cooperation between Member States and third countries³.

The Agency may also cooperate with third countries in the framework of working arrangements⁴. The Agency may establish such cooperation with third countries in the areas of exchange of information, risk analysis, training, research and development and pilot projects. This cooperation may take place on the territory of third countries⁵.

The Agency may also coordinate operational cooperation between Member States and third countries with respect to management of the external borders. In that respect, it can carry out actions at the external borders involving one or more Member States and a third country neighbouring at least one of those Member States, subject to the agreement of that neighbouring country, including on the territory of that third country⁶. In case search and rescue operations for persons in distress at sea would arise during border surveillance operations with a third country, specific provisions need to be added to the status agreement and the operational plan with that third country.

¹ OJ L 251, 16.9.2016, p. 1.

² According to Recital (11) of Regulation (EU) 2016/1624, the Agency will continue to be commonly referred to as Frontex.

³ Article 54(1).

⁴ Article 54(2).

⁵ Cp. Regulation (EU) No 656/2014 of the European Parliament and of the Council of 15 May 2014 establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union which envisages cooperation in the territorial waters of third countries.

⁶ Article 54(3).

This cooperation will reinforce the Agency's capabilities to assist third countries in the management of their borders and migration flows. Where it is envisaged that teams will be deployed to a third country in actions where the team members will have executive powers, or where other actions in third countries require it, a status agreement needs to be concluded by the Union with the neighbouring third country concerned⁷.

Operations shall be carried out on the basis of an operational plan. The operational plan has to be agreed upon by the Member State or the Member States bordering the operational area⁸.

With regards to return, Regulation (EU) 2016/1624 provides that the Agency may organise or coordinate return operations, in view of supporting Member States in returning illegally staying third-country nationals, in compliance with the provisions of the Return Directive 2008/115/EC⁹. The Agency shall cooperate with the competent authorities of third countries on return, including on the acquisition of travel documents¹⁰. In this framework, a status agreement could for example grant the team members access to the databases of the third country on a case-by-case basis when necessary for facilitating the identification of the irregular migrant to be returned. However, the Agency is not empowered to organise or coordinate return operations from third countries. The European External Action Service (EEAS) will provide advice and support to the Commission in the negotiation of these agreements. In particular, it will advise on the countries with which such agreements should be negotiated. The EEAS will therefore be informed before a negotiation process is launched with a particular third country and provide advice and support on operations, including through the EU Delegations present in the relevant third countries.

The Agency shall inform the European Parliament of all its activities and assess the cooperation with third countries in its annual report¹¹.

4. MODEL STATUS AGREEMENT

The model status agreement establishes a framework for the cooperation between the Agency and its teams on the one hand and the competent authorities of the third country concerned on the other. It should therefore be considered as an umbrella under which several actions could be carried out.

Pursuant to Article 54(4) or Regulation (EU) 2016/1624, the model status agreement needs to cover the scope of the operation, the civil and criminal liability, the tasks and powers of the members of the team as well as the compliance with fundamental rights.

Consequently, the model contains the following specific provisions:

- Article 1 determines the scope of the status agreement, which covers all aspects necessary for carrying out actions on the territory of the third country;

⁷ Article 54(4).

⁸ Article 54(3).

⁹ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ L 348, 24.12.2008, p. 98).

¹⁰ Article 54(6).

¹¹ Article 54(11).

- Article 2 provides definitions of key terms used in the model, including that an action means a joint operation, a rapid border intervention or a return operation;
- Article 3 states that an operational plan should be adopted for each joint operation or rapid border intervention¹², detailing the organisational and procedural aspects of the action;
- Article 4 describes the tasks and powers of the members of the team, including that they can only perform tasks and exercise powers under instructions from and in the presence of border guards of the third country;
- Article 5 contains rules on the suspension and termination of the action;
- Article 6 lists the privileges and immunities of members of the team, including civil and criminal liability;
- Article 7 determines that accreditation documents should be issued by the Agency to the members of the team;
- Article 8 states that fundamental rights **must be ensured during any action**;
- Article 9 contains rules on processing and protection of personal data;
- Article 10 regulates what to do in case of disputes concerning the interpretation of the agreement;
- Article 11 describes the procedure for **the** entry into force, duration and termination of the agreement.

4. CONCLUSIONS

The new competence of the Agency to carry out actions on the territory of neighbouring third countries will contribute significantly to a better management of the EU's external borders.

While the Commission will use the enclosed model status agreement when negotiating a status agreement with a neighbouring third country on behalf of the European Union, it should be noted that the final texts of such agreements will differ depending on the outcome of the negotiations with the third country. The Commission will however strive to preserve the essence of the model status agreement during such negotiations.

The Commission may issue in due time a revised Communication and a revised model status agreement taking into account the lessons learned.

¹² There is no operational plan required for a return operation.