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From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Subject:	ANNEX to the 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

Delegations will find attached document COM(2021) 830 final ANNEX.

Encl.: COM(2021) 830 final ANNEX



EUROPEAN
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ANNEX

ANNEX

to the

**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**

Model for a Working Arrangement Establishing Operational Cooperation between the European Border and Coast Guard Agency and [*authority of a third country*]

The European Border and Coast Guard Agency (hereinafter “the Agency”), established by Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard¹ (hereinafter “the Regulation”) represented by its Executive Director, [...], on the one part,

and

[*Third Country Authority*], represented by [...], on the other part,

hereinafter referred to individually as a “Side” or collectively as the “Sides”,

intend to conduct operational cooperation as follows:

1. Scope

- 1.1 The Sides emphasise that the intended operational cooperation is to be developed gradually. The aim is to work towards a sustainable operational partnership in the area of integrated border management, including in detecting, preventing and combatting illegal migration and cross-border crime, as well as in the area of return, in conformity with the applicable national, Union and international legal frameworks, including on the protection of personal data.

2. Purpose

The Sides intend to cooperate for the purpose of promoting an effective implementation of integrated border management, with a view to facilitating legitimate border crossings, protecting the external borders of the European Union and [*third country*] against threats including illegal immigration and cross-border crime, as well as to facilitate the implementation of return and readmission obligations, all in full respect of the applicable international instruments, in particular [*delete as applicable*: the European Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights, the United Nations Conventions on the Rights of the Child and the 1951 United Nations Convention and Protocol relating to the Status of Refugees and the Convention on International Civil Aviation]. Such cooperation is to cover:

- a) border management, including border control, search and rescue, situational awareness, risk analysis, information exchange, capacity building, training, law enforcement, quality control and research and innovation;
- b) return, including pre-return activities (e.g., counselling, identification and issuance of travel documents), the voluntary and non-voluntary return of persons staying illegally on the territory of a European Union Member State or of a Schengen Associated Country, post-return activities (e.g., effective readmission and reintegration) and other return-related activities.

¹ J.O. L 295, 14.11.2019, p. 1.

3. Nature of the Cooperation

- 3.1 In the implementation of operational cooperation, the Sides respect their fundamental rights obligations, in particular those related to access to international protection and the principle of *non-refoulement*. The Sides in particular ensure that the rights of all persons, especially those in need of international protection, unaccompanied minors, victims of trafficking in human beings and other vulnerable persons, are fully respected during all joint activities.
- 3.2 The cooperation between the Sides should be carried out in accordance with the European Union *acquis* and the legal framework governing the Agency, within the framework of the European Union's external action policy and in accordance with the legal framework of [*third country*].

Information Exchange

- 3.3 The Sides may share information and analytical products, subject to their respective data protection rules, in order to improve common situational awareness, cooperation during operational activities and joint risk analyses for the purpose of integrated border management.

To that end, the sides may establish special arrangements regulating the exchange of information, where applicable in line with the provisions of [*insert reference to the Annex*].

- 3.4 The Sides may appoint experts in the field of risk analysis and participate in the activities of the mutually agreed regional Risk Analysis Networks coordinated by the Agency.

Capacity-Building

- 3.5 The Sides may cooperate in training and capacity-building activities aimed at enhancing and supporting integrated border management, including return and reintegration measures, support for the implementation of the Agency's common core curricula in the national curriculum for training of border and coast guards as well as cooperation through the Agency's network of Partnership Academies.
- 3.6 The Sides may exchange good practices and undertake joint activities and trainings to that end, including in the areas of research and innovation, return, readmission and reintegration, information exchange, document fraud, quality control for border management (including vulnerability assessments), capability development (including for investigative purposes), identification of persons of interest, identification and referral of vulnerable persons as well as other areas of common interest.
- 3.7 The Sides may invite each other's representatives to participate in projects and activities of common interest, including in technology innovation pilot projects, technology demonstrations or tests.
- 3.8 The Agency, in cooperation with the competent authorities of [*third country*] and with the relevant authorities of the European Union Member States and of the Schengen Associated Countries, and in synergy with other actions, programmes and instruments implemented with the support of the European Union, may develop initiatives and implement technical and operational assistance projects to enhance integrated border management capacities of [*third country*] (including by enhancing its capacity to prevent and combat illegal migration and cross-border crime) and in the area of return.

Operational response

- 3.9 The Agency may deploy its staff and members of the teams from the European Border and Coast Guard standing corps to participate without executive powers in operational activities on the territory of [*third country*], as defined in the specific operational plans agreed between the Agency and [*third country*]. [*Third country*] should facilitate the procedures required by its national legislation to ensure the right of the deployed staff and members of the teams to reside in the territory of [*third country*] for the duration of their deployment. To that end, [*host third country*] may appoint a point of contact. In addition, matters relating to privileges and immunities would be covered in the respective operational plan.
- 3.10 The Agency may facilitate and promote technical and operational cooperation between other actions, programmes and instruments implemented with the support of the European Union, its Member States and the Schengen Associated Countries and the competent authorities of [*third country*] on all areas covered by the Agency's mandate, including cooperation on law enforcement and coast guard functions, detection of document and identity fraud, as well as other operational activities under the European Union Policy Cycle/EMPACT for organised and serious international crime.
- 3.11 The Agency may use [*third country*]'s seaports and airports for implementing operational cooperation (*inter alia* supporting border surveillance, search-and-rescue and return) with maritime and aerial assets, as defined in the respective operational plan agreed with [*authority of the third country*].

Return and readmission

- 3.12 The Sides may develop cooperation in the area of return, readmission and reintegration in line with existing Union policy and legislation, for the effective implementation of return-related activities and in respect of fundamental rights and international obligations. This includes, *inter alia*, cooperation in all stages of the return process, including the voluntary and non-voluntary return of persons present without authorisation in the territory of a European Union Member State or of a Schengen Associated Country, the identification and documentation of third country nationals subject to return procedures and reintegration assistance.
- 3.13 The Sides may share information relevant for the return systems of [*third country*], the Member States of the European Union and of the Schengen Associated Countries, in accordance with points 5 to 8 of this working arrangement.

Observers

- 3.14 Staff of competent authorities of [*third country*] may be invited to participate in pilot projects of the Agency.
- 3.15 The Agency may invite experts from competent authorities of [*third country*] to participate as observers in its activities, including operational activities hosted by European Union Member States Schengen Associated Countries or other countries, subject to the agreement of the hosting state(s). The Sides should agree on detailed rules on their participation, which should be reflected in the activity or operation's implementation or operational plan, including on information exchange and cooperation during their participation, as applicable. Those modalities should be in full compliance with the applicable provisions of Union and national law, in particular those related to fundamental rights, including data protection.
- 3.16 [*Third country authority*] may invite experts from the Agency to participate as observers in activities covered by this working arrangement.

Events and activities

- 3.17 The Sides may invite each other to participate in meetings and/or other events addressed to authorities responsible for border management and return.

Exchange of liaison officers

- 3.18 Subject to the relevant legal provisions applicable respectively to the Agency and to [authority of the third country], the Agency may deploy liaison officers to [third country].
- 3.19 The Agency may receive liaison officers from [third country] on a reciprocal basis.

4. Fundamental Rights

- 4.1 All activities implemented on the basis of this working arrangement will be conducted in full compliance with the Sides' obligations to respect fundamental rights and freedoms, in particular respect for human dignity, the right to life, the prohibition of torture and inhuman or degrading treatment or punishment, the prohibition of trafficking in human beings, the right to liberty and security, the right to the protection of personal data, the right of access to documents, the right to asylum and to protection against removal and expulsion, non-refoulement, non-discrimination and the rights of the child.
- 4.2 Any individual participating in activities implemented on the basis of this working arrangement on behalf of a Side will, while so doing, not discriminate against persons on any grounds including, but not limited to, sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or other opinion, membership of a national minority, property, birth, disability, age, sexual orientation or gender identity.
- 4.3 The Agency's fundamental rights officer may monitor the compliance of activities implemented on the basis of this working arrangement with applicable fundamental rights standards including following up on any allegations of fundamental rights violations. The fundamental rights officer, or his or her deputy, may carry out on-the-spot visits to [third country]; he or she may also issue an opinion, request appropriate follow-up and inform the Agency's executive director of possible violations of fundamental rights relating to such an activity. [Third country] will support the fundamental rights officer's monitoring efforts, as requested.
- 4.4 The Agency's fundamental rights monitors will assess the fundamental rights compliance of operational activities implemented on the basis of this working arrangement. Fundamental rights monitors may conduct visits to any areas relevant to the execution of an operational activity. The fundamental rights monitors will furthermore provide advice and assistance in that regard and contribute to the protection and promotion of fundamental rights as part of integrated border management.

5. Exchange of Information within the framework of EUROSUR

The Sides may exchange, share or disseminate information under this working arrangement within the framework of EUROSUR in accordance with the terms set out in Annex *[insert Annex reference]* to this working arrangement. *[NB: the annex should contain relevant terms based on the EUROSUR Model provisions.]*

6. Exchange of Classified and Sensitive Non-Classified Information

- 6.1 Any exchange, sharing or dissemination of classified information between the Sides in the framework of this working arrangement will be set out in a separate administrative arrangement.
- 6.2 Any exchange of sensitive non-classified information under this working arrangement:
- a) will be handled by the Agency in accordance with Article 9(5) of Commission Decision (EU, Euratom) 2015/443²;
 - b) will receive a level of protection by the receiving Side that is equivalent to the level of protection offered by the measures applied to that information by the communicating Side in terms of confidentiality, integrity and availability,
 - c) will be conducted via information exchange systems that fulfil the criteria of availability, confidentiality and integrity for sensitive non-classified information, such as the communication network referred to in Article 14 of the Regulation.
- 6.3 The Sides will comply with intellectual property rights related to any data processed under this working arrangement.

7. Transparency

- 7.1 The onward transmission of any information received will take place in accordance with the respective legal frameworks and under the same conditions as those applying to the original transmission and will only take place with the other Side's prior approval.
- 7.2 The Sides intend to take all necessary measures to ensure appropriate confidentiality of the information received under this working arrangement.
- 7.3 Without prejudice to the European Union legal framework on transparency of the activities of the Agency, and in particular on the right of access to documents, as well as the relevant legislation on transparency of *[third country]*, the Sides intend to ensure that:
- (a) information received under this working arrangement should be used only for the exercise of their responsibilities related to integrated border management, and for the purposes for which it was transferred,
 - (b) should one of the Sides (holder), under their rules concerning public access to documents, receive a request to disclose documents originating from the other Side, the holder should obtain the originating Side's prior approval for their release.

8. Protection of Personal Data

- 8.1 The communication of personal data will only take place if such communication is necessary for the implementation of this agreement by the competent authorities of *[third country]* or the Agency and will be subject to the data protection rules of the communicating Side. The processing of personal data by a Side in a particular case,

² Commission Decision (EU, Euratom) 2015/443 of 13 March 2015 on Security in the Commission (OJ L 72, 17.3.2015, p. 41).

including the transfer of such personal data to the other Side, will be subject to the data protection rules applicable to that Side. The Side will ensure the following minimum safeguards as a precondition for any data transfer:

- (a) personal data must be processed lawfully, fairly, and in a transparent manner in relation to the data subject;
- (b) personal data must be collected for the specified, explicit and legitimate purpose of implementing this arrangement and not further processed by the communicating Side nor receiving Side in a way incompatible with that purpose;
- (c) personal data must be adequate, relevant and limited to what is necessary in relation to the purpose for which they are collected and/or further processed; in particular, personal data communicated in accordance with the applicable law of the communicating Side may concern only the following:
 - *[List of categories of data that may be exchanged and the purposes for which they may be processed and transferred]*
- (d) personal data must be accurate and, where necessary, kept up to date;
- (e) personal data must be kept in a form which permits identification of data subjects for no longer than is necessary for the purpose for which the data were collected or for which they are further processed;
- (f) personal data must be processed in a manner that ensures appropriate security of the personal data, taking into account the specific risks of processing, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures ('data breach'); the receiving Side will take appropriate measures to address any data breach, and will notify the communicating Side of such breach without undue delay and within 72 hours;
- (g) both the communicating Side and the receiving Side will take every reasonable step to ensure without delay the rectification or erasure, as appropriate, of personal data where the processing does not comply with the provisions of this article, in particular because those data are not adequate, relevant, accurate, or they are excessive in relation to the purpose of processing. This includes the notification of any rectification or erasure to the other Side;
- (h) upon request, the receiving Side will inform the communicating Side of the use of the communicated data;
- (i) personal data may only be communicated to the following competent authorities:
 - *[List of authorities and scope of their competencies]*Further communication to other bodies requires the prior authorisation of the communicating Side;
- (j) the communicating Side and the receiving Side will make a written record of the communication and receipt of personal data;
- (k) independent oversight will be in place to oversee data protection compliance, including to inspect such records; data subjects will have the right to bring complaints to the oversight body, and to receive a response without undue delay;
- (l) data subjects will have the right to receive information on the processing of their personal data, access such data and rectification or erasure of inaccurate or

unlawfully processed data, subject to necessary and proportionate limitations on important grounds of public interest;

(m) data subjects will have the right to effective administrative and judicial redress for violation of the aforementioned safeguards.

8.2 Each Side will conduct periodic reviews of its own policies and procedures that implement this provision. Upon request by the other Side, the Side that received the request will review its personal data processing policies and procedures to ascertain and confirm that the safeguards in this provision are implemented effectively. The results of the review will be communicated to the Side that requested the review within a reasonable time.

8.3 The data protection safeguards under this arrangement will be subject to oversight by [*independent public authority or other competent oversight body in third country*], as supervisory authority of [*third country*], and the European Data Protection Supervisor, as supervisory authority of the Agency. The sides will cooperate with these authorities.

9. Combating Fraud

9.1 [*Third country authority*] will notify the Agency, the European Public Prosecutor's Office and/or the European Anti-Fraud Office forthwith if it becomes aware of the existence of credible allegations of fraud, corruption or any other illegal activities that may affect the interests of the European Union.

9.2 Where such allegations relate to European Union funds disbursed in relation to this working arrangement, [*Third Country Authority*] will provide all necessary assistance to the European Anti-Fraud Office, the European Court of Auditors and/or the European Public Prosecutor's Office in relation to investigative activities on its territory, including facilitating interviews, on-the-spot checks and inspections (including access to information systems and databases in [*third country*]); and facilitating access to any relevant information concerning the technical and financial management of matters financed partly or wholly by the European Union.

10. Implementation of this Arrangement

10.1 The Sides intend to maintain dialogue on the implementation of this working arrangement. To that end, the Sides may agree on multi-annual or annual cooperation plans setting out the activities to be implemented under point 3.

10.2 The coordinators for the implementation of this working arrangement are, for the Agency, the International Cooperation Unit, and for [*authority of the third country*], [*third country coordinator*].

10.3 Additional contact points may be considered for specific activities, as agreed by both Sides.

10.4 [*In ase of annex*] The Annex(es) forms an integral part of this working arrangement.

11. Financial aspects

The participation of authorities of [*third country*] in activities organised or coordinated by the Agency may be financed under terms and conditions to be agreed separately between the Sides on a case-by-case basis.

12. Dispute Settlement

Any dispute arising out of the interpretation or implementation of this working arrangement will be settled by consultation and/or negotiation.

13. Legal status

This working arrangement constitutes solely an administrative arrangement at technical level. It does not constitute a legally binding agreement under national or international law. Its practical implementation is not regarded as the fulfilment of international obligations by the European Union and its institutions nor by [*third country*].

14. Application, amendment and discontinuation

- 14.1 The Sides intend to apply this working arrangement as of the moment both of them have signed it.
- 14.2 This working arrangement may be amended only by a writing agreed to by both Sides.
- 14.3 The Sides may discontinue this working arrangement by mutual agreement or unilaterally in writing.

Signed at [*place*], on [*date*] in two originals, in English [*If the working arrangement is signed in more than one language*] and [*language(s)*].

[*If the working arrangement is signed in two or more languages*] In case of disagreement on the interpretation of the provisions of this working arrangement, the English version prevails.

Signatures