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**NOTE**

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From: Presidency  
To: Working Party on External Aspects of Asylum and Migration (EMWP)  
Subject: Presidency discussion paper – Evaluation of the European Border and  
Coast Guard Regulation – Cooperation with third countries

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Delegations will find in annex a discussion paper on the above-mentioned topic for the EMWP meeting on 14 March 2024.

**Presidency discussion paper: Evaluation of the European border and Coast Guard Regulation**  
**– Cooperation with third countries**

**Context**

On 2 February 2024, the Commission issued its report<sup>1</sup> on the evaluation of the European Border and Coast Guard (EBCG) Regulation<sup>2</sup> (hereafter “the EBCG Regulation”), including the review of the Standing Corps. The report was published together with an Action plan<sup>3</sup> to be implemented by Frontex, Member States and the Commission.

A first general review of the most strategic aspects of this evaluation took place at the SCIFA meeting on 20 February 2024 and was followed by a discussion at the Schengen Council of 4 March 2024. During the SCIFA discussion, many delegations welcomed the possibility to further discuss the evaluation report at technical level and to address the cooperation of Frontex with third countries and other European Union agencies.

**New elements contained in the EBCG Regulation**

The EBCG Regulation strengthens the external dimension of the European Border and Coast Guard compared to the previous one dating from 2016 (2016/1624). The EBCG Regulation introduces a number of new elements in terms of cooperation with EU institutions, other Union bodies, offices, agencies, and international organisations, and third countries. Those aspects are set out in Articles 68, 71 to 77 of the Regulation.

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<sup>1</sup> ST 5490/24 INIT

<sup>2</sup> 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

<sup>3</sup> ST 5490/24 ADD1

The Commission adopted a Model Status Agreement in December 2021, on the basis of which the Union can conclude status agreements with third countries that reflect the enhanced mandate of Frontex. Such agreements enable the Agency to carry out joint operations with executive powers on the territory of the respective third country for the purposes of fostering integrated border management. The geographical scope of such operations is extended compared to the previous Regulation, whereunder joint operations were only possible along third countries' common borders with EU Member States. Under the current Regulation, the Standing Corps may be deployed, in principle, on the entire territory of any third country as requested by that third country and agreed with Frontex.

Moreover, the EBCG Regulation reinforces the exchange of information between Member States and third countries within the framework of EUROSUR (via the National Coordination Centres) as well as between the Agency and third countries if this is provided for under a status agreement or working arrangement in place.

The EBCG Regulation strengthens the role of Frontex Liaison Officers, notably by recognising their role in information exchange and cooperation with third countries. The links with the National Coordination Centres and Frontex are also formally established, thereby complementing the European Immigration Liaison Officers (ILO) network<sup>4</sup> and the European Migration Liaison Officers (EMLO). The EBCG Regulation also extends the Frontex Liaison Officers tasks to cover technical assistance in identifying third-country nationals and acquiring travel documents for their return.

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<sup>4</sup> Regulation (EU) 2019/1240 of the European Parliament and of the Council of 20 June 2019 on the creation of a European network of immigration liaison officers (recast)

## **Conclusions of the Commission's evaluation**

In general, the report from the Commission highlights that the EBCG Regulation delivered good results in terms of its relevance, coherence and EU added value, including for the cooperation with third countries and with other EU entities and international organisations. The Commission considers that the evaluation of the EBCG Regulation and the review of the Standing Corps confirm that overall there is no immediate need for a revision of the Regulation or its annexes. Nevertheless, the report identifies a number of challenges that currently limit the Regulation's effectiveness and for which the Commission has put forward an Action plan.

For the upcoming discussion in EMWP, the Presidency has chosen to focus on the issue of the conclusion of status agreements and working arrangements with third countries. Both aspects form important parts of the EU negotiation strategy with third countries.

**Issue 23** of the Action Plan: “Status agreements enable Frontex deployment in third countries with a view to strengthening their external border protection. However, status agreements have not been concluded yet with important countries of origin or transit of migration towards the EU.”

The Commission considers the importance to identify modalities that would push certain partner countries especially in the African context to negotiate status agreements. As the report concludes, the new model status agreement is an appropriate basis to do so and to strengthen our relations with third countries. To ensure the attainment of this objective, preparatory/support activities and synergies with other EU efforts in the relevant third countries should be considered to foster the start of or enhance existing engagement of Frontex in those third countries.

Since the adoption of the EBCG Regulation, the Commission has negotiated status agreements with Moldova, North Macedonia, Montenegro, Albania and Serbia. It has also received authorisation to negotiate with Bosnia and Herzegovina, Senegal and Mauritania. The absence of status agreements with key countries of origin and transit is a point of concern frequently expressed by Member States when addressing migration cooperation, including within the framework of broader negotiations on migration. During the SCIFA discussion, some Member States indicated the need to reflect on the reasons why certain partner countries do not feel the added value of status agreements, particularly for African countries, in order to better promote a strengthened cooperation with third countries. As evidenced from public feedbacks from many African countries, the issue of national sovereignty and the reputation of Frontex are factors that could explain the reluctance of cooperating with the Agency.

Related to African countries, a mandate was adopted by the Council to the Commission to negotiate status agreements with Mauritania and Senegal<sup>5</sup>. Neither country showed great interest in hosting Frontex joint operations on their territories. Similarly, Tunisia does not seem to be interested in concluding a working arrangement and is only available to cooperate with Frontex on a case by case basis. Recently, in the framework of the negotiations of the Joint Declaration, Mauritania has expressed openness to agreeing on a working arrangement with the Agency.

**Issue 24** of the Action Plan: *“The Agency has not been able to conclude any new working arrangements with third countries under the EBCG Regulation (...)”*.

Due to *inter alia* concerns regarding the provisions on personal data protection, only one working arrangement with a third country authority has been concluded the basis of the current EBCG Regulation since it entered into force (i.e., that with the Home Office of the United Kingdom)<sup>6</sup>. The Commission is working with Frontex and EDPS to draft new data protection provisions which will allow for the swift adoption of the working arrangements with third countries it has negotiated or is in the process of negotiating, since the adoption of the EBCG Regulation.

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<sup>5</sup> On 7 June 2022, COM presented a recommendation for a Council Decision authorising the negotiation of a Frontex status agreement with Mauritania and Senegal. On 4 July 2022, the Decision was adopted by the Council.

<sup>6</sup> Notably, working arrangements have been concluded with CSDP missions in third countries: EUAM Ukraine (2024) and EUCAP Sahel Niger (2022).

Frontex currently has working arrangements in place with the border management authorities of all six Western Balkan partners<sup>7</sup>, all Eastern Partnership countries<sup>8</sup>, Canada (2010), Cape Verde (2011), Nigeria (2012), Türkiye (2012), the United Kingdom (2024) and the United States (2009).<sup>9</sup> These working arrangements were mostly agreed with countries where the cooperation on migration is traditionally smoother. Additionally, Frontex has a fully agreed text with Niger before the military coup and is currently negotiating new arrangements with Mauritania and Senegal. Finally, Frontex is also preparing to commence negotiations with Morocco (in March) and Jordan.<sup>10</sup>

## **Question**

*Member States are invited to share their views on the following question:*

*What additional measures could be taken by the EBCG community (Member States, Commission, Frontex), with the aim of complementing the actions proposed by the Commission in the Action plan, to make the conclusion of status agreements and/or working arrangements more effective and more attractive for priority countries of origin or transit, in order to address our needs and challenges at external borders?*

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<sup>7</sup> Albania, (2021), Bosnia and Herzegovina (2019), Kosovo (2016), North Macedonia (2014), Montenegro (2009), Serbia (2009).

<sup>8</sup> Georgia (2021), Azerbaijan (2013), Armenia, (2012), Moldova (2008), Ukraine (2007). [NB: agreements with Belarus and Russia are currently suspended].

<sup>9</sup> The working arrangements with Russia (2006) and Belarus (2019) have been suspended.

<sup>10</sup> Frontex has additionally negotiated updated working arrangements with Albania, Moldova and Kosovo and is currently negotiating renewed arrangements with Bosnia and Herzegovina, Montenegro, Serbia, North Macedonia, the United States and Nigeria.