

TRIPARTITE WORKING ARRANGEMENT

between

The European Border and Coast Guard Agency (Frontex)

and

the European Fisheries Control Agency (EFCA)

and

The European Maritime Safety Agency (EMSA)

The European Border and Coast Guard Agency, hereinafter referred to as "Frontex", represented by its Executive Director, on the one part,

and

The European Fisheries Control Agency, hereinafter referred to as "EFCA" and represented by its Executive Director, on the second part,

and

The European Maritime Safety Agency, hereinafter referred to as "EMSA" and represented by its Executive Director, on the third part,

Hereinafter also referred to collectively as "the Agencies",

HAVING REGARD to Regulation (EU) 2019/1896 of 13 November 2019 on the European Border and Coast Guard¹, in particular Article 69(2) thereof,

Having regard to Regulation (EU) 2019/473 of the European Parliament and of the Council of 19 March 2019 on the European Fisheries Control Agency², in particular Article 8(2) thereof,

HAVING REGARD to Regulation (EC) No 1406/2002 establishing a European Maritime Safety Agency³, in particular Article 2b thereof,

Whereas:

1. The objectives and tasks of Frontex include assisting Member States in the application of measures relating to European integrated border management in order to strengthen security at the EU external borders, namely by monitoring migration flows, coordinating and organising multipurpose operations in circumstances requiring increased technical and operational assistance taking into account that some situations may involve humanitarian emergencies and rescue at sea, as well as cooperation with third countries where relevant, ensuring full respect of the obligations of the Charter of Fundamental Rights of the European Union.
2. The objectives and tasks of EFCA include the organisation of operational coordination of fisheries control and inspection activities by the Member States and to assist them in cooperating so as to comply with the rules of the Common Fisheries Policy in order to ensure its effective and uniform application.

¹ OJ L 295, 14.11.2019, p. 1.

² OJ L 83, 25.3.2019, p. 18.

³ OJ L 251, 16.9.2016, p. 77.

3. The objectives and tasks of EMSA include ensuring a high, uniform and effective level of maritime safety, maritime security, prevention of, and response to, pollution caused by ships as well as response to marine pollution caused by oil and gas installations.
4. The Agencies are to support national authorities carrying out coast guard functions at national and Union level and, where appropriate, at international level. Such cooperation is to take place within the framework of a working arrangement, in accordance with the Agencies' respective mandates and with the financial rules applicable to those Agencies.
5. Frontex is implementing a fundamental rights strategy providing standards and principles and guiding the implementation and monitoring of the Agency's tasks and conduct.
6. On 18 March 2017, a Tripartite Working Arrangement entered into force between the Agencies setting out modalities for such cooperation for a period of four years,
7. In view of the expiry of that Tripartite Working Arrangement on 18 March 2021, the Agencies consider that cooperation should continue and a revised Tripartite Working Arrangement (hereinafter "Tripartite Working Arrangement") should be adopted.
8. The Tripartite Working Arrangement should be an overarching arrangement that establishes the precise forms of cooperation between the Agencies on coast guard functions, and is to be complemented by additional measures addressing specific aspects of the cooperation.
9. The Commission's prior approval on the Tripartite Working Arrangement was received on 17.03.2021.
10. The Tripartite Working Arrangement was approved by the Management Board of Frontex and the Administrative Boards of EFCA and EMSA.
11. In accordance with Article 68(2) of Regulation (EU) 2019/1896, the European Parliament and the Council are to be informed of the Tripartite Working Arrangement.

The Agencies intend to cooperate as follows:

ARTICLE 1 – PURPOSE

The purpose of the Tripartite Working Arrangement is to define the precise forms of cooperation between the Agencies in order to support national authorities carrying out coast guard functions at national and Union level and, where appropriate, at international level.

ARTICLE 2 – FORMS OF COOPERATION

1. This Tripartite Working Arrangement covers in particular the following forms of cooperation between the Agencies on coast guard functions, in accordance with their respective mandates and with the financial rules applicable to the Agencies:
 - (a) Sharing, fusing and analysing information available in ship reporting systems and other information systems hosted by or accessible to the Agencies, in accordance with their respective legal bases and access rights under their respective legal frameworks, and without prejudice to the ownership of data by Member States;
 - (b) Providing surveillance and communication services based on state-of-the-art technology, including space-based and ground infrastructure and sensors mounted on any kind of platform;

- (c) Building capacity by drawing up guidelines and recommendations and by establishing best practices as well as by providing training and exchange of staff;
 - (d) Enhancing the exchange of information and cooperation on coast guard functions including by analysing operational challenges and emerging risks in the maritime domain;
 - (e) Sharing capacity by planning and implementing multipurpose operations and by sharing assets and other capabilities, to the extent that these activities are coordinated by the Agencies and are agreed to by the competent authorities of the Member States concerned.
2. The details of the implementation of the tripartite cooperation between the Agencies, may be set out through the establishment of additional measures addressing specific aspects of the cooperation inter alia in the forms of Memoranda of Understanding, Service Level Agreements⁴ or common rules.

ARTICLE 3 – GOVERNANCE

1. For the implementation of the Tripartite Working Arrangement, the Agencies notify each other of the designated points of contact.
2. The Tripartite Working Arrangement will be supervised by a Steering Committee, composed of the Executive Directors of the Agencies, or their representatives, and chaired by one of them in an annual rotation. The Steering Committee meets at least once a year and monitors the implementation of the Tripartite Working Arrangement.
3. The Steering Committee may create technical subcommittees. Their members are appointed by the Executive Directors from their respective Agencies.
4. By 1 September of year “n”, the Steering Committee adopts an annual strategic plan for the implementation of the Tripartite Working Arrangement in year “n+1”.
5. The Steering Committee prepares the agreements or arrangements referred to in Article 2(2) to be adopted under this Tripartite Working Arrangement.
6. The contact group is the forum where the Agencies and the Commission services exchange information on the implementation of this Tripartite Working Arrangement.

ARTICLE 4 - EXCHANGE OF INFORMATION

1. Any exchange or transfer of information between the Agencies is subject to their respective rules and procedures. The Agencies shall use the information received in the context of their cooperation only within the limits of their legal framework and in compliance with fundamental rights, including data protection requirements. The exchange of information may only take place in compliance with the applicable provisions of Union law regarding the exchange of information, data protection and protection of sensitive non-classified information. In particular, each Agency ensures that sensitive non-classified information received from the other Agency, which requires confidentiality, integrity and availability, receives a level of protection within its Agency that is equivalent to the level of protection offered by the measures applied to that information by the providing Agency.
2. The exchange of information with Frontex in the context of Article 8(2) will be conducted via the communication network referred to in Article 14 of Regulation (EU) 2019/1896 or via other accredited information exchange systems, which fulfil the criteria of availability, confidentiality and integrity.

* In case of EMSA, these agreements will be submitted to the Administrative Board pursuant to Article 10.2.cc and Article 15.ba of Regulation 1406/2002 as amended.

3. The exchange of EU Classified Information (EUCI) between the Agencies will be set out in a separate arrangement.
4. When the information contains personal data, the exchange of such information is limited to what is necessary to achieve the purpose of the cooperation.

ARTICLE 5 – FUNDAMENTAL RIGHTS

1. The Agencies carrying out activities on the basis of the Tripartite Working Arrangement ensure respect for fundamental rights, including the principle of non-refoulement.
2. In accordance with Regulation (EU) 2019/1896, during the implementation of operational activities in which Frontex is involved, the Fundamental Rights Officer of Frontex, may monitor fundamental rights compliance of such activities, provide advice and assistance in that regard and contribute to the promotion of fundamental rights as part of European integrated border management, including through the fundamental rights monitors.
3. In the event that, in the performance of activities carried out on the basis of the Tripartite Working Arrangement in which Frontex is involved, violations of fundamental rights are alleged, the Fundamental Rights Officer of Frontex might issue an opinion and request an appropriate follow up. In case it is concluded that violations of a serious nature have occurred, the Fundamental Rights Officer may issue an opinion to the Executive Director of Frontex for a decision to suspend or terminate the activities concerned.

ARTICLE 6 – DATA PROTECTION

1. Processing of personal data for the implementation of the Tripartite Working Arrangement is governed in accordance with the requirements laid down in Regulation (EU) 2019/1896, with Regulation (EU) 2018/1725,⁵ as well as in full compliance with Article 8 of the Charter of Fundamental Rights of the European Union⁶.
2. Personal data collected by each Agency may be exchanged or transferred in the framework of Article 8 of this Tripartite Working Arrangement and may be processed only if authorised by the providing Agency and if compatible with the initial purpose for which the data were collected and transmitted by it. All Agencies involved shall keep written records of a case-by-case compatibility assessment.

ARTICLE 7– PUBLIC ACCESS TO DOCUMENTS

Should one of the Agencies, under the rules concerning public access to documents⁷, receive an application to disclose documents originating from the other Agency/Agencies or drafted jointly, the Agency is to consult with the originating Agency/Agencies prior to any disclosure of the documents forming subject to the application.

ARTICLE 8 – COOPERATION FOR SPECIFIC PURPOSES

1. The Agencies cooperate and exchange relevant information among themselves to establish and maintain maritime awareness pictures to provide the national authorities carrying out

⁵ Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA, (OJ L 119, 4.5.2016, p. 89).

⁶ OJ C364, 18.12.2000, p. 1.

⁷ Regulation (EC) No 1049/2001 of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

coast guard functions at national and Union level with effective, accurate and timely information.

2. Operational cooperation and information exchange for the purpose of detecting, preventing and combatting illegal immigration as well as cross-border crime in addition to contributing to ensuring the protection and saving of the lives of migrants takes place in the framework of the European Border Surveillance system (EUROSUR).
3. Cooperation and information exchange for the purposes of detecting, preventing and responding to accidental and deliberate pollution at sea takes place in the framework of CleanSeaNet, as stipulated by Directive 2005/35/EC.
4. Cooperation and exchange of information for the purpose of maritime safety, port and maritime security, marine environment protection and the efficiency of maritime traffic and maritime transport takes place in the framework of the Union maritime information and exchange system, SafeSeaNet, as required by Directive 2014/100/EC.
5. Cooperation and information exchange for the purposes of Port State Control and other relevant ship inspection regimes (e.g. sulphur inspections) takes place in the framework of THETIS and THETIS-EU based on Directive (EU) 2016/802 and other relevant EU legislation.
6. Cooperation and information exchange for the purposes of collecting emissions declared by shipping companies take place in the framework of THETIS-MRV.
7. Cooperation and information exchange for the purpose of fisheries inspection and control takes place in the framework of the Common Fisheries Policy as stipulated by PART IX of Regulation (EU) No 1380/2013, Regulation (EC) No 1224/2009, Regulation (EU) No 404/2011 and Regulation (EC) No 1005/2008.
8. For the establishment of maritime awareness pictures referred to in paragraph 1 involving information exchange for the purposes of EUROSUR and for the exchange of EUROSUR Fusion services, the rules for specific situational pictures referred to in Article 24 and 27 of Regulation (EU) 2019/1896 apply.
9. The Agencies will contribute to the development of the Common Information Sharing Environment (CISE) with the aim to support information exchange and cooperation between the three Agencies.
10. The Agencies cooperate with the Commission to make available and keep updated a practical handbook on European cooperation on coast guard functions.
11. Cooperation and support to Member States national authorities on capacity building will be implemented inter alia through the development of cross sectoral training activities and through the follow-up and enlargement of the activities started by the European Coast Guard Functions Academy Network (ECGFA Net) project and activities to be made available through an online platform under development at the request of the European Commission.

ARTICLE 9 – MULTIPURPOSE MARITIME OPERATIONS

1. The Steering Committee will establish generic modalities for multipurpose maritime operations.
2. For each multipurpose maritime operation, the Steering Committee will establish the specific modalities for the cooperation between the Agencies which are to be reflected in the operational plan.

ARTICLE 10 – EXPENSES

The Agencies bear their own expenses, which arise in the course of the implementation of the Tripartite Working Arrangement, unless otherwise agreed in writing.

ARTICLE 11 – EVALUATION

The Steering Committee is to evaluate annually the implementation of the Tripartite Working Arrangement. To this purpose, the annual report of activities of Coast Guard Cooperation shared by the three Agencies is submitted for adoption to the Management Board of Frontex and the Administrative Boards of EFCA and EMSA in the framework of the respective annual activity report exercises.

ARTICLE 12 – APPLICATION, AMENDMENTS, AND DISPUTE SETTLEMENT

1. The Tripartite Working Arrangement is applicable as of the day following its signature by the representative of the last Agency.
2. Any amendments to this Working Arrangement are to be made by mutual consent in writing. Amendments will enter into force on the day after the respective procedures have been completed, in line with the applicable legislative framework for each Agency.
3. Any dispute arising out of the interpretation or implementation of the Tripartite Working Arrangement is to be settled by negotiations between the Agencies.

In witness thereof, the Executive Director of Frontex, the Executive Director of EFCA and the Executive Director of EMSA have signed the present Tripartite Working Arrangement in three original copies, in English, on the dates as indicated underneath their respective signatures.

For the European Maritime Safety
Agency (EMSA)

For the European
Fisheries Control Agency
(EFCA)

For the European Border
and Coast Guard Agency
(Frontex)

18 March 2021

18 March 2021

18 March 2021

Ms. Maja Markovčić Kostelac
Executive Director

Mr. Pascal Savouret
Executive Director

Mr. Fabrice Leggeri
Executive Director