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#### NOTE

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| From:    | Presidency                                                                                     |
| To:      | Working Party on Frontiers / Mixed Committee (EU-Iceland/Norway and Switzerland/Liechtenstein) |
| Subject: | The future of Frontex: engagement with third countries                                         |

External engagements are an integral part of Frontex's mandate as highlighted in the agency's report on cooperation between Frontex and third countries from 2024. As outlined in the report, Frontex maintains strong relations with third countries in the EU's neighbourhood and beyond, including as regards information sharing, training, and research and innovation.

#### Agreements with third countries

Frontex currently has a mandate to cooperate, to the extent required for the fulfilment of its tasks, with third countries under working arrangements and comprehensive status agreements. Working arrangements provide for non-executive operational cooperation on e.g. information exchange. Status agreements allow for the deployment of border management teams from the standing corps with executive powers as well as of technical assets in third countries.

Status agreements have proved effective particularly in the EU's neighbourhood. Specifically, status agreements have been agreed with Albania, Bosnia-Herzegovina, Moldova, Montenegro, North Macedonia, and Serbia. These agreements have enabled the deployment of Frontex operations in these neighbouring third countries, providing tangible support to local authorities in areas such as border surveillance and capacity building. This stands in clear contrast with the Agency's limited visibility and operational footprint in other key countries of origin and transit. The Commission was authorised to negotiate status agreements with Senegal and Mauritania. However, it has not been possible to conclude status agreements with these countries.

Regulation (EU) 2019/1896 on the European Border and Coast Guard currently requires that status agreements be drawn up on the basis of a comprehensive model template prepared by the Commission. The model status agreement presented by the Commission in 2021 includes 22 articles covering *inter alia* fundamental rights, privileges and Immunities, personal data, and dispute settlement. The need to rely on a model template for status agreement sets Frontex apart from other EU agencies in justice and home affairs. Regulation 2019/1896 also provides for a template for working arrangements.

The Presidency has taken note that there is widespread support among Member States for more flexible agreements with third countries also of a more limited scope. For instance, this could include deployments to major international airports or other specific border crossing points, possibly combined with a clear Frontex mandate to advise third country authorities on the admissibility into the Schengen Area of a particular third country national ("pre-departure checks").

Given the agreement among Member States on the need for more flexible agreements with third countries, the Presidency considers that there is a need to identify what more flexibility should mean in practice and which amendments might be needed in Regulation 2019/1896. The Presidency would therefore like to invite delegations to clearly indicate if they see scope for alternative forms of cooperation that could boost the Agency's presence in third countries.

In this context, it could be examined how e.g. compliance with fundamental rights, personal data rules and privileges and immunities of staff and family members can be effectively ensured through more limited forms of agreements such as e.g. Memoranda of Understanding.

#### Returns from third countries

Regulation (EU) 2019/1896 does not explicitly allow for Frontex assistance in the return of illegally staying migrants from third countries to other third countries. Specifically, the regulation makes a distinction between the deployment of border management teams and return teams. The Commission's proposal for the regulation from 2018 and the Council's mandate for negotiations with the European Parliament allowed for the deployment of both border management and return teams to third countries. However, the deployment of return teams to third countries was opposed by the European Parliament.

The Presidency has taken note that Member States agree on the need to allow for the deployment of return teams to third countries. This could contribute to reducing the pressure along the migratory routes and to making Frontex a more attractive partner for third countries. However, Member States could discuss how the modalities of Frontex support for returns from one third country to another third country should be implemented in practice.

This could include which tasks that return teams should mainly focus on (e.g. identification, readmission or reintegration).

As with Frontex's other activities in third countries, Frontex support for returns from third countries to other third countries must obviously be carried out in compliance with fundamental rights, EU law, and international obligations.

**“Primary EU law does not ban the possibility for Frontex to implement removals from one third country to another. However, it exposes the agency to a constant risk of operating in violation of the principle of non-refoulement enshrined in Articles 18 and 19 of the Charter. To mitigate such risk, robust and clear fundamental rights safeguards must be in place.”**

From the legal position paper “Planned return hubs in third countries: EU fundamental rights law issues” by the EU's Fundamental Rights Agency, February 2025.

## Return hubs

The scope of the current return directive and the Commission's proposal for a return regulation is limited to third-country nationals staying illegally on the territory of the Member States. However, the proposal for a new return regulation from March 2025 includes provisions on the possibility to transfer illegally staying third-country nationals who have been issued a return decision in a Member State, from the EU to a third country with which there is an agreement or arrangement for return ("return hubs").

Member States could discuss if Frontex, at the request of Member States, should be able to assist Member States that enter into agreements with third countries on return hubs for persons with illegal stay in the EU.

## Questions

Against the background, the Presidency invites delegations to reflect on the following questions:

1. What are the main obstacles to Frontex cooperation with third countries? What would more flexible and potentially new forms of legally binding agreements with third countries mean in practice, and do you see a need to amend the regulation?
  2. How do you see the modalities of Frontex support for returns of illegally staying persons in third countries to other third countries in practice?
  3. Should Frontex, in addition to being allowed in the future to assist third countries in returning illegally staying persons in those countries, also be given a mandate to assist Member States that enter into agreements with third countries on return hubs for returning illegally staying persons to such return hubs if Member States request such assistance?
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