

EXPLANATORY MEMORANDUM (EM) ON THE WORKING ARRANGEMENT ESTABLISHING OPERATIONAL COOPERATION BETWEEN THE EUROPEAN BORDER AND COAST GUARD AGENCY AND THE HOME OFFICE OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

Working arrangement on establishing cooperation between the European Border and Coast Guard Agency (Frontex) and the Home Office, signed on 23 February 2024.

Submitted by the Home Office on 23 February 2024

SUBJECT MATTER

This concerns a working arrangement (WA) between the UK and Frontex. The UK Prime Minister and the European Commission President announced the beginning of discussions on a UK-Frontex WA on 16 May 2023. Frontex, the European Border and Coast Guard Agency, provides expertise to EU Member States and Schengen Associated countries in managing the EU's external borders and tackling cross-border crime, as well as working with specific non-EU countries.

The WA, which has been agreed by the UK and Frontex, establishes a framework for long-term cooperation across a range of operational and technical areas to detect, prevent and combat illegal migration and cross-border crime. A WA is the standard means for a non-EU country to cooperate with Frontex. It has been developed using Frontex's model WA template as referred to in Regulation (EU) 2019/1896.

Our aim is to work with Frontex through the WA to enhance our respective and joint operational responses to illegal migration and cross-border crime. The WA will better enable Frontex and the UK to tackle illegal migration through focussed collaboration on strategic and operational challenges.

The WA includes provision for cooperation on:

- information and intelligence exchange, situational awareness and risk analysis, including through the framework of EUROSUR¹;
- training and capacity building;
- cooperation on research and innovation;
- technical and operational cooperation, including deployment of UK and Frontex staff to participate in operational activities without executive powers (i.e., in observational, advisory, or coordination capacities);
- sharing best practice and expertise;
- exchange of Liaison Officers.

The WA also provides for the two-way deployment of staff and/or equipment in certain circumstances; these staff will be deployed as observers or in operational activities, without the use of executive powers.

¹ The working arrangement provides a basis for the exchange of information within the framework of EUROSUR, the EU's border surveillance system. The terms and requirements for this are outlined in an annex to the WA. Any exchange of classified information and personal data through EUROSUR will be set out in separate mutually agreed instruments.

The details of cooperation will be set out in an overarching cooperation plan and/or, where applicable, detailed operational plans to be jointly agreed separately. Further information on the potential exchange of classified information within the context of this WA will also be set out in a separate agreement.

SCRUTINY HISTORY

The Chair of the House of Lords European Affairs Committee requested this EM in correspondence with the Minister for Europe, Foreign, Commonwealth & Development Office (FCDO), arising from the Committee's consideration of the European Commission's 2023 Annual Work Programme. There has been no previous parliamentary scrutiny of this WA. However, Regulation (EU) 2019/1896 was subject to scrutiny before the UK's exit from the EU as EU document 12143/18, COM(18)631. The Home Office submitted an EM dated 17 October 2018. The House of Commons European Scrutiny Committee reported on the proposed Regulation on four occasions, completing scrutiny on 6 June 2019 (Report 67, 17/19). The proposed Regulation was examined by the then House of Lords European Union Committee's Home Affairs Sub-Committee and scrutiny was completed on 22 May 2019.

The Home Office will keep Parliament updated on any major developments in relation to our cooperation with Frontex under this WA. The format and frequency of these updates will depend on the nature of cooperation as it develops.

MINISTERIAL RESPONSIBILITY

The Secretary of State for the Home Department has primary responsibility for UK-Frontex cooperation.

The Foreign Secretary has overall responsibility for the UK-EU relationship.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

Immigration is a reserved matter. The WA relates to international cooperation and applies equally to all nations of the United Kingdom.

Given the nature of the cooperation envisaged, we do not foresee any direct impact on the Devolved Administrations, other than benefiting from the arrangement. Devolved Administrations have been notified of the UK-Frontex WA.

LEGAL AND PROCEDURAL ISSUES

A WA is the standard means for a non-EU country to cooperate with Frontex. As with all WAs between Frontex and non-EU countries, this arrangement is non-legally binding.

The WA emphasises the importance of ensuring that all cooperation is compliant with the Sides' respective international human rights obligations and legal principles, as applicable. In line with their Regulation, Frontex's fundamental rights officer and fundamental rights monitors may, to the extent needed to carry out their role as legally mandated by EU law, monitor the compliance of joint activities under this – or

any – WA with applicable human rights standards. As set out in the WA, any such visit will involve prior notice to the UK and must be in relation to activities set out in writing in mutually agreed cooperation or operational plans, or via an exchange of letters. The working arrangement also makes equivalent provision for relevant UK authorities to monitor joint activities in EU Member States to ensure compliance with UK human rights obligations.

The WA was signed on 23 February 2024 by Border Force Director General Phil Douglas, and Frontex Executive Director Hans Leijten. The WA applies from the moment it was signed by both sides.

There will also be a Written Ministerial Statement published on 23 February 2024.

POLICY AND LEGAL IMPLICATIONS

Our cooperation with Frontex will develop over time. We intend to begin cooperation under the WA as soon as possible, with an initial focus on sharing knowledge, expertise, and information on mutual priorities. Over the coming months, the Home Office will agree detailed cooperation and operational plans with Frontex to support extensive collaboration across the areas covered by the WA.

By allowing us to work together with Frontex to tackle illegal migration into and across Europe, we anticipate the WA will help reduce the number of migrants trying to reach the UK illegally. For example, provisions in the WA that enable information and intelligence exchange will give the UK and Frontex an increased understanding of migratory trends – including around specific routes and the use of fraudulent documents – allowing us to respond more effectively to these.

Opportunities to share best practice and expertise – including through personnel exchange, participation in working groups and risk analysis networks, as well as the opportunities to collaborate on research, innovation and technology will improve our collective border management capabilities.

While there is no single solution to tackling illegal migration, this WA represents an important strand of the Government's work with international partners to tackle this shared and complex global issue.

This WA underscores our shared commitment to tackling organised immigration crime, be it in the Channel, elsewhere along the EU's external border or further upstream.

TERRITORIAL APPLICATION

This working arrangement will neither apply to nor have any effects in:

- a. Gibraltar;
- b. Sovereign Base Areas of Akrotiri and Dhekelia;
- c. Anguilla; Bermuda; British Antarctic Territory; British Indian Ocean Territory; British Virgin Islands; Cayman Islands; Falkland Islands; Montserrat; Pitcairn, Henderson, Ducie and Oeno Islands; Saint Helena, Ascension and Tristan da Cunha; South Georgia and the South Sandwich Islands; Turks and Caicos Islands; and

- d. The Bailiwick of Guernsey; the Bailiwick of Jersey; and the Isle of Man.

CONSULTATION

The Devolved Administrations and Crown Dependencies were informed about the WA prior to signature.

FINANCIAL IMPLICATIONS

As set out in the WA, the UK and Frontex are generally expected to bear their own respective costs. The UK may also make financial contributions to compensate Frontex for the implementation of certain approved activities, the details of which will be set out in a separate agreement.

MINISTERIAL NAME AND SIGNATURE

James Cleverly

Secretary of State for the Home Department

Home Office

