MANAGEMENT BOARD DECISION No 7/2019
of 14 May 2019

on the adoption of the model agreement establishing the terms that govern the use, the secured facilities and storage of equipment

THE MANAGEMENT BOARD

Having regard to the European Border and Coast Guard Regulation\(^1\) (hereinafter the “Regulation”), in particular Articles 38(4) and 62 thereof,

Whereas:

(1) Frontex operational activities continue to face resource-demanding challenges at the external borders, not least due to the high influx of irregular migrants. Furthermore, operations are affected by gaps in the supply of technical equipment which risk undermining their overall effectiveness.

(2) Article 38(1) of the Regulation provides that Frontex may acquire, either on its own or as co-owner with a Member State, or lease technical equipment to be deployed during joint operations, pilot projects, rapid border interventions, return operations, return interventions, by migration management support team deployments, or in technical assistance projects in accordance with the financial rules\(^2\) applicable to Frontex.

(3) By Decision 28/2017 of 27 September 2017 the Management Board adopted the “Strategy for the Acquisition and Leasing of the Agency’s own Technical Equipment”.

(4) Technical equipment to be acquired or leased by Frontex could be used to complement the contributions of the Member States\(^3\) to the technical equipment pool\(^4\) with a view to cover short and long-term gaps.

(5) Article 38(4) of the Regulation provides that, on the basis of a model agreement drawn up by Frontex and approved by the Management Board, the Member State of registration and Frontex shall agree on terms ensuring the interoperability of the equipment and governing the use of the equipment, including specific provisions on rapid deployment during rapid border interventions.

(6) It is in implementation of the mandate laid down in Article 38(4) of the Regulation that Frontex has drawn up a model agreement entitled “Agreement establishing the terms that govern the use, the secured facilities and storage of equipment” annexed to this Decision.

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\(^3\) For the purpose of this Decision, the term “Member States” also includes the States participating in the relevant development of the Schengen acquis within the meaning of the Treaty on the Functioning of the European Union and its Protocol (No 19) on the Schengen acquis integrated into the framework of the European Union.

\(^4\) In accordance with Article 39 of the Regulation.
HAS DECIDED AS FOLLOWS:

Article 1
Adoption of the model agreement

The model agreement entitled “Agreement establishing the terms that govern the use, the secured facilities and storage of equipment”, annexed to this Decision, is hereby adopted.

Article 2
Development of a customised agreement to be signed by each Member State

The model agreement adopted by this Decision is to be further developed and adapted by Frontex in close consultation with the respective signatory Member State, taking into account the specific requirements of the cooperation.

Article 3
Entry into force

This Decision enters into force on the day following its adoption.

Done by written procedure, 14 May 2019

For the Management Board

[signed]
Marko Gašperlin
Chairperson

Annex:
“Agreement establishing the terms that govern the use, the secured facilities and storage of equipment”
Annex

Agreement establishing the terms that govern the use, the secured facilities and storage of equipment (the “Agreement”) between the European Border and Coast Guard Agency (Frontex) and the [...] Having regard to the European Border and Coast Guard Regulation¹ (hereinafter the “Regulation”), and in particular Article 38 thereof, Taking into account the decision of the Management Board of Frontex of 27 September 2017 adopting the Strategy for the Acquisition and Leasing of Frontex own Technical Equipment², Taking into account the joint determination shared by the European Union Member States³ to contribute to the effective implementation of European integrated border management through mutual assistance and operational cooperation, in pursuit of the objectives set by the applicable legal framework, The European Border and Coast Guard Agency (hereinafter referred to as “Frontex” or “the Agency”), represented by its Executive Director, on the one hand, And The [...] (hereinafter referred to as the “Member State”) represented by [...], on the other hand, Hereinafter individually referred to as “Party” or collectively as “the Parties”, Agree on establishing an operational cooperation based on the following provisions:

Article 1
Scope
The scope of the Agreement is to define, establish and regulate the use regime of the Agency’s equipment listed in Annex A (the “Equipment”) in the territory of a Member State and to set out the responsibilities of the Parties.

Article 2
Organisation
1. A Steering Committee (hereinafter the “SC”) shall be established, which shall be responsible on behalf of the Parties for the following tasks:
   (a) implementation of the terms and conditions of the Agreement;
   (b) management and supervision of the correct evolution of the Agreement.

³ For the purpose of this Agreement, the term “Member States” also includes the States participating in the relevant development of the Schengen acquis within the meaning of the Treaty on the Functioning of the European Union and its Protocol (No 19) on the Schengen acquis integrated into the framework of the European Union.
2. In order to fulfil its tasks, the SC shall:
   (a) decide on the necessary policy for the implementation of the Agreement;
   (b) resolve disputes concerning the interpretation and/or implementation of the Agreement;
   (c) propose the necessary amendments to the Agreement to the Parties;
   (d) approve other specific arrangements and any amendments to them, necessary for the implementation of the Agreement.

3. The SC shall consist of two members from the Agency, appointed by the Executive Director to represent the Agency, and two from the Member State, appointed by and representing the Member State. One of the Agency’s representatives shall act as chairperson.

4. Each member may be accompanied by additional aides.

5. Meetings shall normally be hosted by the Agency, unless otherwise agreed.

6. The SC shall meet at least once a year.

Article 3
Strategy for the Acquisition and Leasing of Frontex own Technical Equipment
In accordance with Article 38 of the Regulation, the Agency may acquire or lease technical equipment. In view of the enhanced mandate provided by the Regulation, the Agency developed a Strategy for the Acquisition and Leasing of Frontex own Technical Equipment, which was adopted by Management Board Decision 28/2017.

Article 4
The Agency’s responsibility
1. The Agency shall ensure the compatibility and interoperability of the Equipment for its effective use in operations, in accordance, where applicable, with the respective operational plan.

2. The Agency, either using its own resources or with the support of third parties (e.g. external contractors), shall be responsible for keeping the Equipment in suitable condition for use.

3. The Agency shall meet all expenses for the use of the Equipment.

4. The Agency must ensure that the Equipment is registered in a Member State of the European Union.

5. The Agency shall ensure administrative and financial capacity for any refuelling of the Equipment, where relevant.

6. The Agency shall manage the maintenance of the Equipment and shall be responsible for all maintenance performed on this Equipment, without prejudice to the possibility of developing joint maintenance actions with Member States, in order to achieve synergies and cost benefits for both parties.

7. The Agency is obliged to insure the Equipment. The costs arising from this insurance shall be borne by the Agency.

8. The Agency is liable for any damage caused by the Equipment covered by this Agreement which occurs during its operational activities and is not covered by the insurance of Annex C, except for that caused by wilful misconduct or gross negligence of the crew exploiting the Equipment.

Article 5
The Member State’s responsibility
1. The Member State declares that it is aware of the deployment and intended use of the Equipment by the Agency.

2. The Member State shall allow the movement of the Equipment in accordance with the rules in force in its territory.

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3. The Member State may be requested to facilitate access to restricted circulation areas (e.g. port areas, airfields) and allow parking/docking/landing in regulated areas.

4. In order to meet these requirements, the Member State shall carry out the necessary procedures and ensure that the necessary permits are available.

5. The Member State shall provide Frontex with secured facilities in agreement with the Agency, as described in Annex B, and as to be further agreed with the Agency for the Equipment.

6. The Member State may be requested to provide staff and crew to operate the technical Equipment upon agreement with the Agency.

**Article 6**

**Mutual responsibility**

1. The Parties shall ensure that the Equipment is used in a responsible manner and that it is not used illegally.

2. The Parties shall ensure that the Equipment is operated in accordance with the Frontex Owned/Leased/Co-owned Vehicle Management Policy (ED Decision ...), as specified in Annex D.

3. The secured facilities and possible relocations of the Equipment, as described in Annex B, may be further specified, amended and agreed upon in writing between the Parties.

**Article 7**

**Registration and reception**

1. As provided in Article 4(4), the Equipment covered by this Agreement shall be registered in a Member State.

2. The host Member State shall facilitate the reception of the Equipment in its territory, in order to ensure the seamless implementation of the operations.

**Article 8**

**Use regime**

1. The Agency, the designated representatives of the Member State and the members of the teams deployed by Frontex will be the sole users of the Equipment.

2. The Equipment shall be explicitly used for the purpose of joint operational activities of Frontex:

   (a) patrol cars and vehicles for Mobile Surveillance Systems (MSS) for joint patrols consisting of the members of the host Member State and the participating members of the teams;
   (b) Vehicles for Migration Management (VMM) support for the screening, debriefing, and documents check or related activities.

3. Should the Agency need to deploy the Equipment in a rapid border intervention, it shall send the Equipment to its destination for deployment as soon as possible, and under no circumstances more than 10 days after the date on which the operational plan is agreed. In any event, the provisions of Article 39 of the Regulation shall be observed.

4. The Equipment shall be stored in designated and secured locations. Such storage may take place in facilities made available by the Member State to the Agency, or in addition, in suitable warehouses which the Agency owns or rents for that purpose.

**Article 9**

**Data protection**

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5 As referred to in Article 2(8) of the Regulation.
6 As referred to in Article 17 of the Regulation.
The Parties shall apply their respective data protection rules when processing personal data. In particular, the Agency is subject to Regulation (EU) 2018/1725\textsuperscript{7} and Regulation (EU) 2016/679 applies to the Member State\textsuperscript{8}.

Article 10

Security rules

1. The Agency shall apply the Commission’s rules on security, as set out in Decision (EU, Euratom) 2015/444\textsuperscript{9}, based on Article 50(1) of the Regulation. Those rules shall apply, \textit{inter alia}, to the exchange, processing and storage of classified information.

2. The Agency shall apply its rules for the protection of non-classified sensitive information.

Article 11

Financial aspects

1. The Member State shall be responsible for the provision of secured facilities to Frontex, as described in Annex B.

2. The Agency shall fully meet the costs of maintenance, insurance and usage of the Equipment.

3. The Agency may request information concerning costs incurred by the Member State. For that purpose, the Euro will be the reference currency for any cost estimation or expenditure entered into under the provisions of this Agreement. The reference exchange value shall be the rate officially established by the European Central Bank on the date of the relevant event.

Article 12

Amendments

This Agreement may be amended by mutual consent in writing of the Parties and in accordance with Article 2(2)(c).

Article 13

Language

Only the English language will be used in the implementation of this Agreement. All results and records must be kept in the English language.

Article 14

Applicable law and dispute settlement

1. The Court of Justice of the European Union shall have jurisdiction to settle any dispute regarding the interpretation and/or implementation of this Agreement. Before resorting to the Court of Justice of the European Union, the Parties of this Agreement shall endeavour to settle such dispute in an amicable way through the SC.

2. Contractual liability shall be governed by EU law, complemented by the respective national law of the Member State party to this Agreement.

Article 15

Termination

1. Either Party is entitled to terminate this Agreement by giving a two (2) months’ prior notice in writing to the other Party.


3. The terminating Party will continue its participation, financial and otherwise, until the date of termination.

4. The terminating Party will use its best endeavours to enable the other Party to continue with any work being carried out if the other Party wishes so.

5. Should the Parties jointly decide to terminate the Agreement, then this shall be done in the most expeditious and economical manner. The necessary arrangements for the termination will be negotiated by the Parties.

6. If the deployment of the Equipment in the Member State by the Agency is no longer necessary, then the Agreement may be terminated by the Agency in accordance with paragraph 2 or jointly in accordance with paragraph 5.

7. In case of termination, the Parties must take all appropriate measures to minimise costs, prevent damage and cancel or reduce their commitments.

Article 16
Duration

This Agreement is concluded for a period of two (2) years. It may be extended through the written consent of the Parties.

Article 17
Entry into force

This Agreement shall enter into force on the day following the later of the two signatures below.

Done in [place], on [date] in two originals, in English.

For the European Border and Coast Guard Agency

For the Ministry of [Home Affairs, Foreign Affairs] of [Country]

SIGNATURE

SIGNATURE

Fabrice Leggeri
[signature]

List of annexes:
Annex A - Equipment List
Annex B - Secured Facilities provided by the Member States
Annex C - Insurance Policy
Annex D - Frontex Owned/Leased/Co-owned Vehicle Management Policy (ED Decision ...)

[signature]