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European Union

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PROPOSAL

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| From: | Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director |
| date of receipt: | 28 February 2019 |
| To: | Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union |
| No. Cion doc.: | COM(2019) 107 final ANNEX |
| Subject: | ANNEX to the Proposal for a Council Decision on the signing, on behalf of the Union, of the status agreement between the European Union and Bosnia and Herzegovina on actions carried out by the European Border and Coast Guard Agency in Bosnia and Herzegovina |

Delegations will find attached document COM(2019) 107 final ANNEX.

Encl.: COM(2019) 107 final ANNEX



Brussels, 28.2.2019
COM(2019) 107 final

ANNEX

ANNEX

to the

Proposal for a Council Decision

on the signing, on behalf of the Union, of the status agreement between the European Union and Bosnia and Herzegovina on actions carried out by the European Border and Coast Guard Agency in Bosnia and Herzegovina

ANNEX
AGREEMENT

between the European Union and Bosnia and Herzegovina on actions carried out by the European Border and Coast Guard Agency in Bosnia and Herzegovina

THE EUROPEAN UNION,

and BOSNIA AND HERZEGOVINA,

Hereinafter referred to as 'the Parties',

WHEREAS situations may arise where the European Border and Coast Guard Agency, (hereinafter referred to as 'Agency') coordinates operational cooperation between Member States of the European Union and Bosnia and Herzegovina, including on the territory of Bosnia and Herzegovina,

WHEREAS a legal framework in the form of a status agreement should be established for the situations where the team members of the European Border and Coast Guard Agency will have executive powers on the territory of Bosnia and Herzegovina,

CONSIDERING that all actions of the European Border and Coast Guard Agency on the territory of Bosnia and Herzegovina should fully respect fundamental rights,

EMPHASIZING that this Agreement shall not affect the rights, obligations and responsibilities of the European Union and Bosnia and Herzegovina arising from the Agreement between the European Community and Bosnia and Herzegovina on the readmission of persons residing without authorization.

HAVE DECIDED TO CONCLUDE THE FOLLOWING AGREEMENT:

Article 1

Scope of the agreement

1. This Agreement shall cover aspects that are necessary for carrying out actions by the European Border and Coast Guard Agency that may take place in the territory of Bosnia and Herzegovina whereby team members of the European Border and Coast Guard Agency have executive powers in accordance with the laws in Bosnia and Herzegovina.

2. This Agreement shall only apply in the territory of Bosnia and Herzegovina.
3. The status and delimitation under international law of the respective territories of the Member States of the European Union and Bosnia and Herzegovina is in no way affected neither by this Agreement nor by any act accomplished in its implementation by the Parties or on their behalf, including the establishment of operational plans or the participation in cross-border operations.

Article 2

Definitions

For the purposes of this Agreement, the following definitions apply:

- (1) 'action' means a joint operation, a rapid border intervention or a return operation;
- (2) 'joint operation' means an action aimed at tackling illegal immigration or cross-border crime or aimed at providing increased technical and operational assistance at the border of Bosnia and Herzegovina neighbouring a Member State, and deployed in the territory of Bosnia and Herzegovina;
- (3) 'rapid border intervention' means an action aimed at rapidly responding to a situation of specific and disproportionate challenges at the borders of Bosnia and Herzegovina neighbouring a Member State, and deployed in the territory of Bosnia and Herzegovina for a limited period of time;
- (4) 'return operation' means an operation that is coordinated by the Agency and involves technical and operational reinforcement being provided by one or more Member States under which returnees from one or more Member States are returned either on a forced or voluntary basis to Bosnia and Herzegovina in line with the Agreement between the European Community and Bosnia and Herzegovina on the readmission of persons residing without authorisation;
- (5) 'border control' means the control of persons carried out at a border in response exclusively to an intention to cross or the act of crossing that border, regardless of any other consideration, consisting of border checks at border crossing points and border surveillance between border crossing points;
- (6) 'Member of a team' means a member either of the Agency staff or a member of a team of border guards from participating Member States, including border guards that are seconded by Member States to the Agency to be deployed during an action;

it may include other relevant staff whose functions will be defined in the operational plan. Local staff are not considered as members of the team;

- (7) 'Member State' means a Member State of the European Union;
- (8) 'home Member State' means the Member State of which a member of a team is a border guard or other relevant staff member;
- (9) 'personal data' means any information relating to an identified or identifiable natural person; an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;
- (10) 'participating Member State' means a Member State which participates in the action in Bosnia and Herzegovina by providing technical equipment, border guards and other relevant staff deployed as part of the team;
- (11) 'Agency' means the European Border and Coast Guard Agency established by Regulation (EU) 2016/1624 on the European Border and Coast Guard.

Article 3

Operational plan

An operational plan shall be drawn up by the Agency in close consultation with the competent authorities of Bosnia and Herzegovina for each joint operation or rapid border intervention. The plan, that has the agreement of the Member State or Member States bordering the operational area, shall be agreed between the Agency and the Border Police of Bosnia and Herzegovina. The plan shall set out in detail the organisational and procedural aspects of the joint operation or rapid border intervention, including a description and an assessment of the situation, the operational aim and objectives, the operational concept, the type of technical equipment to be deployed, the implementation plan, the cooperation with other third countries, other European Union Agencies and bodies or international organisations, the provisions in respect of fundamental rights including personal data protection, the coordination, command, control, communication and reporting structure, the organisational arrangements and logistics, the evaluation and the financial aspects of the joint operation or rapid border intervention. The evaluation of the joint operation or of the rapid border

intervention shall be conducted jointly by the Border Police of Bosnia and Herzegovina and by the Agency.

Article 4

Tasks and powers of the members of the team

1. Members of the team shall have the authority to perform the tasks and exercise the executive powers required for border control and return operations.
2. Members of the team shall respect the laws and regulations in Bosnia and Herzegovina.
3. Members of the team may only perform tasks and exercise powers in the territory of Bosnia and Herzegovina under instructions from and, as a general rule, in the presence of the Border Police or other relevant staff of Bosnia and Herzegovina, except in exceptional circumstances to be set out in the operational plan. The Border Police of Bosnia and Herzegovina shall issue, where appropriate instructions to the team in accordance with the operational plan. The Border Police of Bosnia and Herzegovina may authorise members of the team to act on its behalf in line with the exceptions envisaged in the operational plan.

The Agency, through its Coordinating Officer, may communicate its views to the Border Police of Bosnia and Herzegovina on the instructions given to the team. In that case, the Border Police of Bosnia and Herzegovina shall take those views into consideration and follow them to the extent possible.

4. Members of the team shall wear their own uniform while performing their tasks and exercising their powers. Members of the team shall also wear visible personal identification and a blue armband with the insignias of the European Union and of the Agency on their uniforms. For the purposes of identification vis-à-vis the national authorities of Bosnia and Herzegovina, members of the team shall at all times carry an accreditation document referred to in Article 6.
5. While performing their tasks and exercising their powers, members of the team may carry service weapons, ammunition and equipment as authorised according to the home Member State's and Bosnia and Herzegovina national law. The Border Police of Bosnia and Herzegovina shall, in advance of the deployment of the members of the team, inform the Agency of the permissible service weapons, ammunition and

equipment and conditions for their use. The Agency shall submit in advance to the Border Police of Bosnia and Herzegovina the list of service weapons of the members of the team, namely information concerning the type and serial number of the weapons and the type and quantity of ammunitions.

6. While performing their tasks and exercising their powers, members of the team shall be authorised to use force, including service weapons, ammunition and equipment, with the consent of the home Member State and the Border Police of Bosnia and Herzegovina, in the presence of border guards or other relevant staff of the Border Police of Bosnia and Herzegovina and in accordance with the national law of Bosnia and Herzegovina. The Border Police of Bosnia and Herzegovina may authorise members of the team to use force in the absence of border guards or other relevant staff of Bosnia and Herzegovina in accordance with the relevant provisions of Article 4, paragraph 3.
7. Bosnia and Herzegovina may upon a request of team members provide data from its national databases if necessary for fulfilling operational aims specified in the operational plan. The use of that data shall be in accordance with the Law on Protection of Personal Data and Law on Protection of Classified Information.

Article 5

Privileges and immunities of the members of the team

1. Papers, correspondence and assets of members of the team shall be inviolable, except in case of measures of execution which are permitted pursuant to paragraph 7.
2. Members of the team shall enjoy immunity from the criminal jurisdiction of Bosnia and Herzegovina in respect of the activities performed in the exercise of the official functions in the course of the actions carried out in accordance with the operational plan.

In the event of an allegation of a criminal offence being committed by a member of the team, the executive director of the Agency and the competent authority of the home Member State shall be notified immediately. Prior to the initiation of the proceeding before the court, the executive director of the Agency, after careful consideration of any representation made by the competent authority of the home Member State and the competent authorities of Bosnia and Herzegovina, shall act expeditiously and certify whether the act in question was performed in the exercise

of their official functions in the course of the actions carried out in accordance with the operational plan. Pending the certification by the executive director of the Agency, the Agency and the home Member State shall refrain from taking any measure likely to jeopardise possible subsequent criminal prosecution of the member of the team by the competent authorities of Bosnia and Herzegovina.

If the act was committed in the exercise of official functions, the member of the team shall benefit from immunity from the criminal jurisdiction of Bosnia and Herzegovina for the acts performed during and for the purpose of the exercise of the official functions in the course of the actions carried out in accordance with the operational plan.

3. Members of the team shall enjoy immunity from the civil and administrative jurisdiction of Bosnia and Herzegovina in respect of all acts performed by them in the exercise of their official functions in the course of the actions carried out in accordance with the operational plan. If any civil proceeding is instituted against members of the team before any court, the executive director of the Agency and the competent authority of the home Member State shall be notified immediately. Prior to the initiation of the proceeding before the court, the executive director of the Agency, after careful consideration of any representation made by the competent authority of the home Member State and the competent authorities of Bosnia and Herzegovina, shall act expeditiously and certify to the court whether the act in question was performed by Members of the team in the exercise of their official functions in the course of the actions carried out in accordance with the operational plan.

If the act was performed in the exercise of official functions, the member of the team shall benefit from immunity from the civil and administrative jurisdiction of Bosnia and Herzegovina for the acts performed during and for the purpose of the exercise of the official functions in the course of the actions carried out in accordance with the operational plan.

4. The immunity of members from the criminal, civil and administrative jurisdiction of Bosnia and Herzegovina may be waived by the home Member State as the case may be. Such a waiver must always be an express waiver.

5. Members of the team, who are witnesses, may be obliged by the competent authorities of Bosnia and Herzegovina, with full respect to the provisions of paragraphs 2 and 3, to provide evidence and in accordance with the procedural provisions of Bosnia and Herzegovina.
6. In case of damage caused by a member of a team in the exercise of official functions in the course of the actions carried out in accordance with the operational plan, Bosnia and Herzegovina shall be liable for any damage.

In case of damage caused by gross negligence or wilful misconduct or if the act was not committed in the exercise of official functions by a member of the team from a participating Member State, Bosnia and Herzegovina may request, via the executive director, that compensation be paid by the participating Member State concerned.

In case of damage caused by gross negligence or wilful misconduct or if the act was not committed in the exercise of official functions by a member of the team who is a staff member of the Agency, Bosnia and Herzegovina may request that compensation be paid by the Agency.

In case of damage caused in Bosnia and Herzegovina, due to force majeure, neither Bosnia and Herzegovina, nor the participating Member State, nor the Agency, shall hold any responsibility.

7. No measures of execution may be taken in respect of members of the team, except in the case where a criminal or civil proceeding not related to their official functions is instituted against them.

Property of members of the team, which is certified by the executive director of the Agency to be necessary for the fulfilment of their official functions, shall be free from seizure for the satisfaction of a judgment, decision or order. In civil proceedings, members of the team shall not be subject to any restrictions on their personal liberty or to any other measures of constraint.

8. The immunity of members of the team from the jurisdiction of Bosnia and Herzegovina shall not exempt them from the jurisdictions of the respective home Member States.
9. Members of the team shall, with respect to services rendered for the Agency, be exempt from social security provisions which may be in force in Bosnia and Herzegovina.

10. Members of the team shall be exempt from any form of taxation in Bosnia and Herzegovina on the salary and emoluments paid to them by the Agency or the home Member States, as well as on any income received from outside Bosnia and Herzegovina.
11. Bosnia and Herzegovina shall, in accordance with such laws and regulations as it may adopt, permit the entry of articles for the personal use of members of the team, and shall grant exemption from all customs duties, taxes, and other duties or charges applicable to the import of goods other than charges for storage, transport and similar services, in respect of such articles. Bosnia and Herzegovina shall also allow the export of such articles.
12. The personal baggage of members of the team may be inspected only in cases of justified suspicions that it contains articles that are not for the personal use of members of the team, or articles whose import or export is prohibited by the law or subject to quarantine regulations of Bosnia and Herzegovina. Inspection of such personal baggage shall be conducted only in the presence of the member(s) of the team concerned or an authorised representative of the Agency.

Article 6

Accreditation document

1. The Agency shall, in cooperation with Bosnia and Herzegovina, issue a document in the official language(s) of the Bosnia and Herzegovina and in an official language of the institutions of the European Union to each member of the team for the purposes of identification vis-à-vis the national authorities of Bosnia and Herzegovina and as proof of the holder's rights to perform the tasks and exercise the powers referred to in Article 4 of this Agreement and in the operational plan. The document shall include the following information on the member: name and nationality; rank or job title; a recent digitised photograph and tasks authorised to be performed during the deployment and date of issue and date of expiry of the permit.
2. The valid accreditation document, in combination with a valid travel document, grants the member of the team access to and the right to stay in Bosnia and Herzegovina without the need for a visa or prior authorisation.
3. The accreditation document shall be returned to the Agency at the end of the action.

Article 7

Fundamental rights

1. Members of the team shall, in the performance of their tasks and in the exercise of their powers, fully respect fundamental rights and freedoms, including as regards access to asylum procedures, human dignity and the prohibition of torture, inhuman or degrading treatment, the right to liberty, the principle of non-refoulement and the prohibition of collective expulsions, the rights of the child and the right to respect for private and family life. While performing their tasks and exercising their powers, they shall not arbitrarily discriminate against persons on any grounds including sex, racial or ethnic origin, religion or belief, disability, age, sexual orientation or gender identity. Any measures interfering with fundamental rights and freedoms taken in the performance of their tasks and in the exercise of their powers shall be proportionate to the objectives pursued by such measures and respect the essence of these fundamental rights and freedoms.
2. Each Party shall have a complaint mechanism to deal with allegations of a breach of fundamental rights committed by its staff in the exercise of their official functions in the course of a joint operation, rapid border intervention or return operation performed under this Agreement.

Article 8

Processing of personal data

1. Processing of personal data shall only take place when necessary and proportionate for the implementation of this Agreement by Bosnia and Herzegovina, the Agency or participating Member States.
2. Processing of personal data by Bosnia and Herzegovina shall be subject to its national laws.
3. Processing of personal data for administrative purposes by the Agency and the participating Member State(s), including in case of transfer of personal data to Bosnia and Herzegovina, shall be subject to Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, Regulation (EU)

2016/679 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 and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), 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 and measures adopted by the Agency for the application of Regulation (EC) No 45/2001 as referred to in Article 45 (2) of Regulation (EU) 2016/1624.

4. In case the processing involves the transfer of personal data, Member States and the Agency shall indicate, at the moment of transferring personal data to Bosnia and Herzegovina, any restrictions on access to it or use of it, in general or specific terms, including as regards transfer, erasure or destruction. Where the need for such restrictions becomes apparent after the transfer of personal data, they shall inform the Bosnia and Herzegovina accordingly.
5. Personal data collected for administrative purposes during the action may be processed by the Agency, the participating Member States and Bosnia and Herzegovina in line with the applicable data protection legislation.
6. The Agency, the participating Member States and Bosnia and Herzegovina shall draw up a common report on the application of paragraphs 1 to 5 of this Article at the end of each action. This report shall be sent to the competent authorities of Bosnia and Herzegovina and the Agency's Fundamental Rights Officer and Data Protection Officer. They shall report to the executive director of the Agency.

Article 9

Suspension or termination of the action

1. The executive director of the Agency may suspend or terminate the action, after informing the Border Police of Bosnia and Herzegovina in writing, if the provisions of this Agreement or of the operational plan are not respected by Bosnia and Herzegovina. This could concern instances such as when instructions issued to the team are not in compliance with the operational plan.

The executive director shall notify the Border Police of Bosnia and Herzegovina the reasons thereof.

2. The Border Police of Bosnia and Herzegovina may suspend or terminate the action, after informing the Agency in writing, if the provisions of this Agreement or of the operational plan are not respected by the Agency or by any participating Member State. The Border Police of Bosnia and Herzegovina shall notify the Agency the reasons thereof.
3. In particular, the executive director of the Agency or the Border Police of Bosnia and Herzegovina may suspend or terminate the action in cases of breach of fundamental rights, violation of non-refoulement principle or of data protection rules.
4. Termination of the action shall not affect any rights or obligations arising out of the application of this Agreement or the operational plan before such termination.

Article 10

Disputes and interpretation

1. All issues arising in connection with the application of this Agreement shall be examined jointly by representatives of the Border Police of Bosnia and Herzegovina and of the Agency, which shall consult any Member State neighbouring Bosnia and Herzegovina.
2. Failing any prior settlement under paragraph 1, disputes concerning the application of this Agreement or its interpretation shall be settled exclusively by negotiation between Bosnia and Herzegovina and the European Commission, which shall consult any Member State neighbouring Bosnia and Herzegovina.

Article 11

Entry into force, duration, suspension and termination of the agreement

1. This Agreement shall be approved by the Parties in accordance with their own internal legal procedures.
2. This Agreement shall enter into force the first day of the second month following the date on which the Parties have notified each other of the completion of the internal legal procedures referred to in paragraph 1 of this Article.

3. This Agreement shall be valid indefinitely. The Agreement may be terminated or suspended by written agreement between the Parties or unilaterally by either Party. In this last case, the Party wishing to terminate or suspend it shall notify in writing the other Party thereof through diplomatic channels. The termination shall take effect the first day of the second month following the month notification was given.
4. Notifications made in accordance with this Article shall be sent, in the case of the European Union, to the General Secretariat of the Council of the European Union and, in the case of Bosnia and Herzegovina, to the Ministry of Foreign Affairs of Bosnia and Herzegovina.

Done at on

in duplicate in the Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish, Swedish, Bosnian, Croatian and Serbian languages, each text being equally authentic.

In the case of divergence between authentic language versions, the English language version shall prevail.

Signature:

**JOINT DECLARATION WITH REGARD TO ICELAND, NORWAY,
SWITZERLAND AND LIECHTENSTEIN**

The Contracting Parties take note of the close relationship between the European Union and Norway, Iceland, Switzerland and Liechtenstein, particularly by virtue of the Agreements of 18 May 1999 and 26 October 2004 concerning the association of those countries with the implementation, application and development of the Schengen acquis.

In such circumstances it is desirable that the authorities of Norway, Iceland, Switzerland and Liechtenstein, on the one hand, and Bosnia and Herzegovina, on the other hand, conclude, without delay, bilateral agreements on actions carried out by the European Border and Coast Guard Agency in Bosnia and Herzegovina in terms similar to those of this Agreement.

JOINT DECLARATION CONCERNING ARTICLE 2(2) AND 2(3)

The Contracting Parties note that the European Border and Coast Guard Agency may support Bosnia and Herzegovina to control efficiently its border with any country that is not a member of the European Union by other means than deployments of European Border and Coast Guard teams with executive powers such as: capacity building, trainings, risk analysis, deployment of experts without executive powers at the border crossing points.