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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	7 July 2023
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2023) 397 final ANNEX
Subject:	ANNEX to the Proposal for a COUNCIL DECISION on the conclusion, on behalf of the Union, of the Agreement between the European Union and the Republic of Albania on operational activities carried out by the European Border and Coast Guard Agency in the Republic of Albania

Delegations will find attached document COM(2023) 397 final ANNEX.

Encl.: COM(2023) 397 final ANNEX

EUROPEAN
COMMISSION

Brussels, 7.7.2023
COM(2023) 397 final

ANNEX

ANNEX

to the

Proposal for a
COUNCIL DECISION

on the conclusion, on behalf of the Union, of the Agreement between the European Union and the Republic of Albania on operational activities carried out by the European Border and Coast Guard Agency in the Republic of Albania

Agreement between the European Union and the Republic of Albania on operational activities carried out by the European Border and Coast Guard Agency in the Republic of Albania

THE EUROPEAN UNION,

and THE REPUBLIC OF ALBANIA,

hereinafter referred to individually as a 'Party' and collectively as the 'Parties',

WHEREAS situations may arise where the European Border and Coast Guard Agency ('the Agency') coordinates operational cooperation between the Member States of the European Union and the Republic of Albania, including on the territory of the Republic of Albania,

WHEREAS a legal framework in the form of a status agreement should be established for the situations where the team members deployed by the Agency will have executive powers on the territory of the Republic of Albania,

WHEREAS the status agreement may provide for the establishment by the Agency of antenna offices on the territory of the Republic of Albania to facilitate and improve coordination of operational activities and to ensure the effective management of the human and technical resources of the Agency,

CONSIDERING the high level of protection of personal data in the Republic of Albania and the European Union,

CONSIDERING that the Republic of Albania has ratified the Council of Europe Convention No. 108 of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data and the additional Protocol thereto,

BEARING IN MIND that respect for human rights and democratic principles are fundamental principles governing the cooperation between the Parties,

CONSIDERING that the Republic of Albania has ratified the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, the rights enumerated in which correspond to those in the Charter of Fundamental Rights of the European Union,

CONSIDERING that all operational activities of the Agency on the territory of the Republic of Albania should fully respect fundamental rights and the international agreements to which the European Union, its Member States and/or the Republic of Albania are party,

CONSIDERING that all persons participating in an operational activity are obliged to maintain the highest standards of integrity, ethical conduct, and professionalism as well as respect for fundamental rights and to meet obligations imposed upon them by the provisions of the operational plan and the Agency's code of conduct,

HAVE DECIDED TO CONCLUDE THIS AGREEMENT:

Article 1
Scope

1. This Agreement governs all matters necessary for the deployment of border management teams from the European Border and Coast Guard standing corps to the Republic of Albania where the team members may exercise executive powers.

2. The deployment referred to in paragraph 1 may take place on the territory of the Republic of Albania, including at its land, sea and air borders with other countries. Subject to the obligations of the Parties under the law of the sea, in particular the 1982 United Nations Convention on the Law of the Sea, operational activities may also take place in the contiguous zone of the Republic of Albania. Operational activities implemented under this Agreement shall not affect search and rescue obligations deriving from the law of the sea, in particular the 1982 United Nations Convention on the Law of the Sea, the 1974 International Convention for the Safety of Life at Sea and the International Convention on Maritime Search and Rescue.

Article 2
Definitions

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

(1) 'Agency' means the European Border and Coast Guard Agency established by Regulation (EU) 2019/1896 of the European Parliament and of the Council [1] or any amendment thereto;

(2) 'border control' means the activity carried out at a border, in accordance with and for the purposes of this Agreement, in response exclusively to an intention to cross or the act of crossing that border, regardless of any other consideration, consisting of border checks and border surveillance;

(3) 'border management teams' means teams formed from the European Border and Coast Guard standing corps to be deployed during joint operations and rapid border interventions at the external borders in Member States and in third countries;

(4) 'consultative forum' means the advisory body established by the Agency pursuant to Article 108 of Regulation (EU) 2019/1896;

(5) 'European Border and Coast Guard standing corps' means the European Border and Coast Guard standing corps provided for in Article 54 of Regulation (EU) 2019/1896;

(6) 'EUROSUR' means the framework for information exchange and cooperation between the Member States and the Agency;

[1] Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624 (OJ EU L 295, 14.11.2019, p. 1).

(7) 'fundamental rights monitor' means the fundamental rights monitor as provided for in Article 110 of Regulation (EU) 2019/1896;

(8) 'home Member State' means the Member State from which a staff member is deployed or seconded to the European Border and Coast Guard standing corps;

(9) 'incident' means a situation relating to illegal immigration, cross-border crime, or a risk to the lives of migrants at, along or in proximity to, the external borders of the European Union or the Republic of Albania;

(10) 'joint operation' means an action coordinated or organised by the Agency to support the national authorities of the Republic of Albania responsible for border control aimed at addressing challenges such as illegal immigration, present or future threats at the borders of the Republic of Albania or cross-border crime or aimed at providing increased, technical and operational assistance for the control of those borders;

(11) 'team member' means a member of the European Border and Coast Guard standing corps deployed through a border management team to participate in an operational activity;

(12) 'Member State' means a Member State of the European Union;

(13) 'operational activity' means a joint operation or a rapid border intervention;

(14) 'operational area' means the geographical area wherein an operational activity is to take place;

(15) 'participating Member State' means a Member State which participates in an operational activity, by providing technical equipment or staff of the European Border and Coast Guard standing corps;

(16) 'personal data' means any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural 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 or an online identifier, or by reference to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;

(17) 'rapid border intervention' means an action aimed at responding to a situation of specific and disproportionate challenge at the borders of the Republic of Albania by deploying border management teams in the territory of the Republic of Albania for a limited period of time to conduct border control together with the national authorities of the Republic of Albania responsible for border control;

(18) 'statutory staff' means staff employed by the Agency in accordance with the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the Union laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68[2].

[2] OJ EC L 56, 4.3.1968, p. 1.

Article 3

Launching Operational Activities

1. An operational activity under this Agreement shall be launched by means of a written decision of the executive director of the Agency ('the executive director') upon a written request of the competent authorities of the Republic of Albania. Such a request shall include a description of the situation, estimated period of implementation, possible aims and envisaged needs, and the profiles of staff needed, including those staff having executive powers, as applicable.
2. If the executive director considers that the requested operational activity would likely entail or lead to violations of fundamental rights or international protection obligations that are serious or persistent, then the executive director shall not launch the operational activity.
3. If, following the receipt of a request under paragraph 1, the executive director considers that further information is necessary in order to decide whether to launch an operational activity, he or she may request further information or authorise Agency experts to travel to the Republic of Albania in order to assess the situation there. The Republic of Albania shall facilitate such travel.
4. The executive director shall decide not to launch an operational activity if he or she considers there to be justified cause to suspend or terminate it pursuant to Article 18.

Article 4

Operational Plan

1. An operational plan shall be agreed upon for each operational activity between the Agency and the Republic of Albania in accordance with Articles 38 and 74 of Regulation (EU) 2019/1896. The operational plan shall be binding on the Agency, the Republic of Albania and the participating Member States.
2. The Operation Plan shall be approved by the executive director and the representative of the competent authority of the Republic of Albania in writing.
3. The operational plan shall set out in detail the organisational and procedural aspects of the operational activity, including:
    (a) a description of the situation, with *modus operandi* and objectives of the deployment, including the operational aim;
    (b) the estimated time that the operational activity is expected to last in order to achieve its objectives;
    (c) the operational area;
    (d) a description of the tasks, including those requiring executive powers, responsibilities, including with regard to respect for fundamental rights and data protection requirements, and special instructions for the border management teams, including on permissible consultation of databases and permissible service weapons, ammunition and equipment in the Republic of Albania;

(e) the composition of the border management team as well as the deployment of other relevant staff and the presence of other members of the statutory staff, including fundamental rights monitors;

(f) command and control provisions, including the names and ranks of the border guards or other relevant staff of the Republic of Albania responsible for cooperating with the team members and the Agency, in particular the names and ranks of those border guards or other relevant staff who are in command during the period of deployment, and the place of the team members in the chain of command;

(g) the technical equipment to be deployed during the operational activity, including specific requirements such as conditions for use, requested crew, transport and other logistics, and financial provisions;

(h) detailed provisions on immediate incident reporting by the Agency to the management board and to relevant authorities of the participating Member States and of the Republic of Albania of any incident encountered in the course of an operational activity performed under this Agreement;

(i) a reporting and evaluation scheme containing benchmarks for the evaluation report, including with regard to the protection of fundamental rights, and final date of submission of the final evaluation report;

(j) with regard to sea operations, specific information on the application of the relevant jurisdiction and applicable law in the operational area, including references to international, European Union and national law regarding interception, rescue at sea and disembarkation;

(k) the terms of cooperation with the bodies, offices and agencies of the Union other than the Agency, other third countries or international organisations;

(l) general instructions on how to ensure the safeguarding of fundamental rights during the operational activity including personal data protection and obligations deriving from applicable international human rights instruments;

(m) procedures whereby persons in need of international protection, victims of trafficking in human beings, unaccompanied minors and other persons in vulnerable situations are directed to the competent national authorities for appropriate assistance;

(n) procedures setting out a mechanism to receive and transmit to the Agency and to the Republic of Albania complaints (including those lodged under Article 8(5)) against any person participating in an operational activity, including border guards or other relevant staff of the Republic of Albania and team members, alleging breaches of fundamental rights in the context of their participation in an operational activity of the Agency;

(o) logistical arrangements, including information on working conditions and the environment of the areas in which the operational activity is to take place; and

(p) provisions concerning an antenna office, as established in accordance with Article 6.

4. The operational plan and any amendments thereto or adaptations thereof shall be subject to the agreement of the Agency, the Republic of Albania and any Member States neighbouring the Republic of Albania or bordering the operational area, after consultation of the participating Member States. The Agency shall coordinate with the relevant Member States in order to confirm their agreement.

5. Exchange of information and operational cooperation for the purposes of EUROSUR shall take place in accordance with the rules for establishing and sharing the specific situational pictures to be set out in the operational plan for the operational activity concerned.

6. The evaluation of the operational activity in accordance with paragraph (3) point (i) shall be conducted jointly by the Republic of Albania and the Agency.

7. The terms of cooperation with the bodies, offices and agencies of the European Union in accordance with paragraph (3) point (k) shall be conducted in line with their respective mandates and within available resources.

Article 5
Incident Reporting

1. The Agency and the Albanian State Police shall each have an incident reporting mechanism to allow timely reporting of any incident encountered in the course of an operational activity performed under this Agreement.

2. The Agency and the Republic of Albania shall assist each other in carrying out all necessary inquiries and investigations into any incident reported via the mechanism referred to in paragraph 1 as identifying witnesses and collecting and producing evidence, including requests to obtain and, if appropriate, hand over items connected with a reported incident. The handing-over of any such items may be made subject to their return within the terms specified by the competent authority delivering them.

Article 6
Antenna Offices

1. The Agency, in consultation with the relevant authorities of the Republic of Albania, may establish antenna offices on the territory of the Republic of Albania to facilitate and improve coordination of operational activities and to ensure the effective management of the human and technical resources of the Agency. The location of the antenna office shall be established by the Agency, taking into account the agreement of the Republic of Albania.

2. The antenna offices shall be established in accordance with operational needs and remain operational for the period of time necessary for the Agency to carry out operational activities in the Republic of Albania and the neighbouring region. Subject to the agreement of the Republic of Albania, that period of time may be prolonged by the Agency.

3. Each antenna office shall be managed by a representative of the Agency, appointed by the executive director as head of the antenna office who shall oversee the overall work of the office.

4. The antenna offices shall, where applicable:

   (a) provide operational and logistical support and ensure the coordination of the Agency's activities in the operational areas concerned;

   (b) provide operational support to the Republic of Albania in the operational areas concerned;

   (c) monitor the activities of the border management teams and regularly report to the Agency's headquarters;

   (d) cooperate with the Republic of Albania on all issues related to the practical implementation of the operational activities organised by the Agency in the Republic of Albania, including any additional issues that might have occurred in the course of those activities;

   (e) support the coordinating officer in his or her cooperation with the Republic of Albania on all issues related to their contribution to operational activities organised by the Agency and, where necessary, liaise with the Agency's headquarters;

   (f) support the coordinating officer and fundamental rights monitor(s) assigned to monitor an operational activity in facilitating, where necessary, the coordination and communication between the border management teams and the relevant authorities of the Republic of Albania as well as any relevant tasks;

   (g) organise logistical support relating to the deployment of the team members and the deployment and use of technical equipment;

   (h) provide all other logistical support regarding the operational area for which a given antenna office is responsible, with a view to facilitating the smooth running of the operational activities organised by the Agency;

   (i) ensure the effective management of the Agency's own equipment in the areas covered by its activities, including the possible registration and long-term maintenance of that equipment and any logistical support needed; and

   (j) support other staff and/or activities of the Agency in the Republic of Albania as agreed between the Agency and the Republic of Albania.

5. The Agency and the Republic of Albania shall ensure the best possible conditions for the fulfilment of the tasks assigned to the antenna offices.

6. The Republic of Albania shall provide the Agency with reasonable assistance to ensure the operational capacity of the antenna offices.

Article 7

Coordinating Officer

1. Without prejudice to the role of antenna offices as described in Article 6, the executive director shall appoint one or more experts from the statutory staff to be

deployed as coordinating officer(s) for each operational activity. The executive director shall notify the Republic of Albania of such appointment.

2. The role of the coordinating officer shall be to:

   (a) act as an interface between the Agency, the Republic of Albania and the team members, providing assistance, on behalf of the Agency, on all issues relating to the conditions of the deployment of the border management teams;

   (b) monitor the correct implementation of the operational plan, including, in cooperation with the fundamental rights monitor(s), as regards the protection of fundamental rights, and report to the executive director thereon;

   (c) act on behalf of the Agency in all aspects of the deployment of the border management teams and report to the Agency on all those aspects; and

   (d) foster cooperation and coordination among the Republic of Albania and participating Member States.

3. In the context of operational activities, the executive director may authorise the coordinating officer to assist in resolving any disagreement on the execution of the operational plan and deployment of the teams.

4. The Republic of Albania shall issue only instructions that are in compliance with the operational plan to the team members. If the coordinating officer considers instructions issued to team members not to be in compliance with the operational plan or with applicable legal obligations, he or she shall immediately communicate this to the officers of the Republic of Albania carrying out a coordinating role and to the executive director. The executive director may take appropriate measures, including the suspension or the termination of the operational activity, in accordance with Article 18.

Article 8

Fundamental Rights

1. In performing their obligations under this Agreement, the Parties undertake to act in compliance with all applicable human rights instruments, including the 1950 Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, the 1951 United Nations Convention Relating to the Status of Refugees and the 1967 Protocol thereto, the 1965 United Nations International Convention on the Elimination of All Forms of Racial Discrimination, the 1966 United Nations International Covenant on Civil and Political Rights, the 1979 United Nations Convention on the Elimination of All Forms of Discrimination against Women, the 1984 United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the 1989 United Nations Convention on the Rights of the Child, the 2006 United Nations Convention on the Rights of Persons with Disabilities and the Charter of Fundamental Rights of the European Union.

2. Team members shall, in the performance of their tasks and in the exercise of their powers, fully respect fundamental rights, including access to asylum procedures and human dignity, and shall pay particular attention to vulnerable persons. Any

measures taken in the performance of their tasks and in the exercise of their powers shall be proportionate to the objectives pursued by such measures. While performing their tasks and exercising their powers, they shall not discriminate against persons on the basis of any grounds such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation, in line with Article 21 of the Charter of Fundamental Rights of the European Union.

Measures interfering with fundamental rights and freedoms may be taken by team members in the performance of their tasks or in the exercise of their powers only when necessary and proportionate to the objectives pursued by such measures and must respect the essence of those fundamental rights and freedoms in accordance with applicable international, European Union and national law.

This provision shall apply *mutatis mutandis* to all staff of national authorities of the Republic of Albania participating in an operational activity.

3. The Agency's fundamental rights officer shall monitor each operational activity's compliance with applicable fundamental rights standards. The fundamental rights officer, or his or her deputy, may carry out on-the-spot visits to the third country; he or she shall also provide opinions on the operational plans and inform the executive director about possible violations of fundamental rights relating to an operational activity. The Republic of Albania shall support the fundamental rights officer's monitoring efforts, as requested.
4. The Agency and the Republic of Albania agree to provide the consultative forum with timely and effective access to all information concerning respect for fundamental rights in relation to any operational activity performed under this Agreement, including through on-the-spot visits to the operational area.
5. The Agency and the Republic of Albania shall each have a complaints mechanism to process allegations of breaches of fundamental rights committed by their staff in the exercise of their official functions in the course of an operational activity performed under this Agreement.
6. Team Members shall in the performance of their tasks and in the exercise of their powers under this agreement, report without undue delay to the Agency any violations of the Agency's codes of conduct. The Agency shall inform the relevant Albanian authorities of such reports without undue delay via a mechanism to be defined in the operational plan.

Article 9

Fundamental Rights Monitors

1. The Agency's fundamental rights officer shall assign at least one fundamental rights monitor to each operational activity to, *inter alia*, assist and advise the coordinating officer.
2. The fundamental rights monitor shall monitor compliance with fundamental rights and provide advice and assistance on fundamental rights in the preparation, conduct and evaluation of the relevant operational activity. This shall include, in particular:

(a) following the preparation of operational plans and reporting to the fundamental rights officer to enable him or her to fulfil his or her tasks as provided for in Regulation (EU) 2019/1896;

(b) conducting visits, including long-term visits, where operational activities take place;

(c) cooperating and liaising with the coordinating officer and providing advice and assistance to him or her;

(d) informing the coordinating officer of and reporting to the fundamental rights officer on any concerns regarding possible violations of fundamental rights relating to the operational activity; and

(e) contributing to the evaluation of the operational activity as referred to in Article 4(3), point (i).

3. Fundamental rights monitors shall have access to all areas in which the operational activity takes place and to all documents relevant for the implementation of that activity.

4. While present in the operational area, fundamental rights monitors shall wear insignia that clearly allow for their identification as fundamental rights monitors.

Article 10
Team Members

1. Team members shall have the authority to perform the tasks described in the operational plan.

2. While performing their tasks and exercising their powers, team members shall comply with the laws and regulations of the Republic of Albania as well as applicable international and European Union law.

3. Team members may perform tasks and exercise powers in the territory of the Republic of Albania only under instructions from, and in the presence of, border management authorities of the Republic of Albania. The Republic of Albania may authorise team members to perform specific tasks and to exercise specific powers on its territory in the absence of its border management authorities subject to the consent of the Agency or the home Member State, as appropriate.

4. Team members who are statutory staff shall wear the uniform of the European Border and Coast Guard standing corps while performing their tasks and exercising their powers unless specified otherwise in the operational plan.

   Team members who are not statutory staff shall wear their national uniform while performing their tasks and exercising their powers unless specified otherwise in the operational plan.

   While on duty, all team members shall also wear visible personal identification and a blue brassard with the insignias of the European Union and of the Agency on their uniforms.

5. The Republic of Albania shall authorise relevant team members to perform tasks during an operational activity that require the use of force, including the carrying

and use of service weapons, ammunition and other coercive means, in accordance with the relevant provisions of the operational plan.

(a) team members who are statutory staff may carry and use service weapons, ammunition and other coercive means subject to the consent of the Agency.

(b) team members who are not statutory staff may carry and use service weapons, ammunition and other coercive means subject to the consent of the relevant home Member State.

6. The use of force, including the carrying and use of service weapons, ammunition and other coercive means, shall be exercised in accordance with the national law of the Republic of Albania and in the presence of border management authorities of the Republic of Albania. The Republic of Albania may authorise team members to use force in the absence of relevant border management authorities of the Republic of Albania.

(c) for team members who are statutory staff, such authorisation to use force in the absence of border management authorities of the Republic of Albania shall be subject to the consent of the Agency.

(d) for team members who are not statutory staff, such authorisation to use force in the absence of border management authorities of the Republic of Albania shall be subject to the consent of the relevant home Member State.

Any use of force by team members must be necessary and proportionate and comply fully with applicable international, European Union and national law, including, in particular, the requirements laid down in Annex V to Regulation (EU) 2019/1896.

7. The Agency shall, in advance of the deployment of the team members, inform the Republic of Albania of the service weapons, ammunition and other equipment team members may carry under paragraph 5. The Republic of Albania may prohibit the carrying of certain service weapons, ammunition and other equipment, provided that its own law applies the same prohibition to its own border management authorities. The Republic of Albania shall, in advance of the deployment of the team members, inform the Agency of the permissible service weapons, ammunition and equipment and of the conditions for their use. The Agency shall make this information available to Member States.

The Republic of Albania shall make the necessary arrangements for the issuance of any necessary weapon permits and facilitate the import, export, transport and storage of weapons, ammunition and other equipment at the disposal of the team members as requested by the Agency. The procedure to issue the weapon permits shall be set out in the operational plan.

8. Service weapons, ammunition and equipment may be used in legitimate self-defence and in legitimate defence of team members or of other persons in accordance with the national law of the Republic of Albania in line with relevant principles of international and European Union law.

9. The Republic of Albania may authorise team members to consult its national databases if necessary for achieving operational aims specified in the operational

plan. The Republic of Albania shall ensure that it provides access to such databases in an efficient and effective manner.

The Republic of Albania shall, in advance of the deployment of the team members, inform the Agency of the national databases which may be consulted.

Team members shall only consult data which are necessary for performing their tasks and exercising their powers. That consultation shall be carried out in accordance with the national data protection law of the Republic of Albania and this Agreement.

10. For the implementation of operational activities, the Republic of Albania shall deploy officers of the Border and Migration Police Department who are able and willing to communicate in English to carry out a coordinating role on behalf of the Republic of Albania.

Article 11

Privileges and Immunities of the Property, Funds, Assets and Operations of the Agency

1. Any premises and buildings of the Agency in the Republic of Albania shall be inviolable. They shall be exempt from search, requisition, confiscation or expropriation.
2. The Agency's property and assets, including means of transport, communications, archives, any correspondence, documents, identity papers and financial assets shall be inviolable.
3. The Agency's assets include assets owned, co-owned, chartered or leased by a Member State and offered to the Agency. Upon the embarkation of representative(s) of competent national authorities, those shall be treated as assets being on government service and authorised to that effect.
4. No measures of execution may be taken in respect of the Agency. The Agency's property and assets shall not be the subject of any administrative or legal measure of constraint. Property of the Agency shall be free from seizure for the satisfaction of a judgment, decision or order.
5. The Republic of Albania shall permit the entry and removal of articles and equipment deployed by the Agency to the Republic of Albania for operational purposes.
6. The Agency shall be exempt from all duties (including customs duties) and taxes as well as any prohibitions and restrictions on imports and exports in respect of articles and equipment intended for its official use, including articles and equipment imported or exported by a third party on behalf of the Agency.

Article 12

Privileges and Immunities of the Team Members

1. Team members shall not be subject to any form of inquiry or legal proceedings in the Republic of Albania or by authorities of the Republic of Albania, except under the circumstances as referred to in paragraph 2 of this Article.

2. Team members shall enjoy immunity from the criminal, civil and administrative jurisdiction of the Republic of Albania 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.

   Where the authorities of the Republic of Albania intend to institute criminal, civil or administrative proceedings against a team member before any court of the Republic of Albania, the competent authorities shall immediately notify the executive director thereof.

   Following receipt of such notification, the executive director shall, without undue delay, inform the relevant authorities of the Republic of Albania whether the act in question was performed by the team member in the exercise of his or her official functions. If the act was stated as having been performed in the exercise of official functions, the proceedings shall not be initiated. If the act was stated as not having been performed in the exercise of official functions, the proceedings may be initiated. The qualifications by the executive director shall be binding upon the Republic of Albania, which shall not contest it.

   Pending this qualification, the Agency shall refrain from taking any measure intended to jeopardise possible subsequent criminal prosecution of the team member by the competent authorities of the Republic of Albania, including facilitating the return of the concerned team member from the Republic of Albania to their home Member State.

   Privileges granted to team members and immunity from the criminal jurisdiction of the Republic of Albania do not exempt them from the jurisdiction of the home Member State.

   The initiation of proceedings by team members shall preclude them from invoking immunity from jurisdiction in respect of any counterclaim directly connected with the principal claim.

3. Acts of team members that are considered to be of disciplinary relevance may be referred, by Albanian authorities, to the Agency.

4. The premises, dwellings, means of transport and communications, and possessions, including any correspondence, documents, identity papers and assets of team members shall be inviolable, except in the case of measures of execution as permitted pursuant to paragraph 8.

5. The Republic of Albania shall be liable for any damage caused by team members to third parties in the exercise of their official functions.

6. In the event of damage caused by gross negligence or wilful misconduct or not in the exercise of official functions by a team member who is a member of the statutory staff, the Republic of Albania may request, via the executive director, that compensation be paid by the Agency.

   In the event of damage caused by gross negligence or wilful misconduct or not in the exercise of official functions by a team member who is not a member of the statutory staff, the Republic of Albania may request, via the executive director, that compensation be paid by the home Member State concerned.

7. Team members shall not be obliged to give evidence as witnesses in legal proceedings in the Republic of Albania.

8. No measures of execution may be taken in respect of team members, except in cases where criminal, civil or administrative proceedings not related to their official functions are instituted against them. Property of team members which is certified by the executive director 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 criminal proceedings, team members shall not be subject to any restrictions on their personal liberty or to any other measures of constraint, pending the qualification by the executive director whether the act in question was performed by the team member in the exercise of his or her official function.

   In civil proceedings, team members shall not be subject to any restrictions on their personal liberty or to any other measures of constraint.

   In administrative proceedings, the executive director shall be immediately informed by the Republic of Albania of any restrictions on the personal liberty, or any other measures of constraint taken against team members.

9. Team members shall, with respect to services rendered for the Agency, be exempt from social security provisions which may be in force in the Republic of Albania.

10. The salary and emoluments paid to team members by the Agency and/or the home Member States, as well as any income team members receive from outside the Republic of Albania, shall not be taxed in any form in the Republic of Albania.

11. The Republic of Albania shall permit the entry of articles for the personal use of team members and shall grant exemption from all customs duties, taxes, and related charges other than charges for storage, transport and similar services, in respect of such articles. The Republic of Albania shall also allow the export of such articles.

12. Team members' personal baggage shall be exempt from inspection, unless there are serious grounds for suspecting that it contains articles that are not for the personal use of team members, or articles whose import or export is prohibited by the law or subject to quarantine regulations of the Republic of Albania. Inspection of such personal baggage shall be conducted only in the presence of team members concerned or an authorised representative of the Agency.

13. The Agency and the Republic of Albania shall appoint contact points who shall be available at all times and shall be responsible for the exchange of information and immediate actions to be taken where an act performed by a team member may be in violation of criminal law as well as for the exchange of information and the operational activities in relation to any civil or administrative proceedings against a team member.

    Until action is taken by the competent authorities of the home Member State, the Agency and the Republic of Albania shall assist each other in carrying out all necessary inquiries and investigations into any alleged criminal offence in respect of which either the Agency or the Republic of Albania, or both, have an interest in the identification of witnesses and in the collection and production of evidence, including the request to obtain and, if appropriate, the handing-over of items

connected with a purported criminal offence. The handing over of any such items may be made subject to their return within the terms specified by the competent authority delivering them.

Article 13

Injured or Deceased Team Members

1. Without prejudice to Article 12, the executive director shall have the right to take charge of, and make suitable arrangements for, the repatriation of any injured or deceased team members, as well as of their personal property.
2. An autopsy shall be performed on a deceased team member only with the express consent of the home Member State concerned and in the presence of a representative of the Agency or of the home Member State concerned.
3. The Republic of Albania and the Agency shall cooperate to the fullest extent possible to enable the prompt repatriation of injured or deceased team members.

Article 14

Accreditation Document

1. The Agency shall issue a document in Albanian and in English to each team member for the purposes of identification vis-à-vis the national authorities of the Republic of Albania and as proof of the holder's rights to perform the tasks and exercise the powers referred to in Article 10 of this Agreement and in the operational plan (the 'accreditation document').
2. The accreditation document shall include the following information on the staff member: name and nationality, rank or job title, a recent digitised photograph and tasks authorised to be performed during the deployment.
3. For the purposes of identification vis-à-vis the national authorities of the Republic of Albania, team members shall be obliged to carry the accreditation document on their person at all times.
4. The Republic of Albania shall recognise the accreditation document, in combination with a valid travel document, as granting the relevant team member, staff deployed to the Republic of Albania under this Agreement or an operational plan thereunder, entry and stay in the Republic of Albania without the need for a visa, prior authorisation or any other document up to the day of its expiration.
5. The accreditation document shall be returned to the Agency at the end of the deployment. The competent authorities of the Republic of Albania shall be informed thereof.

Article 15

Application to Agency Staff Not Deployed as Team Members

Articles 12, 13 and 14 shall apply *mutatis mutandis* to all Agency staff deployed to the Republic of Albania under this Agreement or an operational plan thereunder who are not team members, including fundamental rights monitors and the statutory staff deployed to antenna offices.

Article 16

Protection of Personal Data

1. The communication of personal data shall take place only if such communication is necessary for the implementation of this Agreement by the competent authorities of the Republic of Albania or the Agency. The processing of personal data by an authority in a particular case, including the transfer of such personal data to the other Party, shall be subject to the data protection rules applicable to that authority. The Parties shall ensure the following minimum safeguards as a precondition for any data transfer:

   (a) personal data must be processed lawfully, fairly, and in a transparent manner in relation to the data subject;

   (b) personal data must be collected for the specified, explicit and legitimate purpose of implementing this Agreement and not further processed by the communicating authority nor receiving authority in a way incompatible with that purpose;

   (c) personal data must be adequate, relevant and limited to what is necessary in relation to the purpose for which they are collected or further processed; in particular, personal data communicated in accordance with the law applicable to the communicating authority may concern only one or more of the following:

      – first name,
      – last name,
      – date of birth,
      – nationality,
      – rank,
      – travel document bio page,
      – accreditation document,
      – ID/passport/accreditation document picture,
      – e-mail address,
      – mobile phone number,
      – weapon details,
      – duration of the deployment,
      – location of the deployment,
      – aircraft or vessel identification numbers,
      – arrival date,
      – arrival airport/border crossing point,
      – arrival flight number,
      – departure date,
      – departure airport/border crossing point,

– departure flight number,

– home Member State/third country,

– deploying authority,

– tasks/operational profile,

– means of transportation,

– route

of team members, Agency staff, relevant observers, or members of staff exchange programmes;

(d) personal data must be accurate and, where necessary, kept up to date;

(e) personal data must be kept in a form which permits identification of data subjects for no longer than is necessary for the purpose for which the data were collected or for which they are further processed;

(f) personal data must be processed in a manner that ensures appropriate security of the personal data, taking into account the specific risks of processing, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures ('data breach'); the receiving Party shall take appropriate measures to address any data breach, and shall notify the communicating Party of such breach without undue delay and within 72 hours;

(g) both the communicating authority and the receiving authority shall take every reasonable step to ensure without delay the rectification or erasure, as appropriate, of personal data where the processing does not comply with this Article, in particular because those data are not adequate, relevant or accurate, or because they are excessive in relation to the purpose of processing; this includes the notification of any rectification or erasure to the other Party;

(h) upon request, the receiving authority shall inform the communicating authority of the use of the communicated data;

(i) personal data may be communicated only to the following competent authorities:

- the Agency; and

- the General Directorate of State Police/Department for Border and Migration,

further communication to other bodies requires the prior authorisation of the communicating authority;

(j) the communicating and the receiving authorities are under an obligation to make a written record of the communication and receipt of personal data;

(k) independent oversight shall be in place to oversee data protection compliance, including to inspect such records; data subjects shall have the right to bring

complaints to the oversight body, and to receive a response without undue delay;

(l) data subjects shall have the right to receive information on the processing of their personal data, access such data and the rectification or erasure of inaccurate or unlawfully processed data, subject to necessary and proportionate limitations on important grounds of public interest; and

(m) data subjects shall have the right to effective administrative and judicial redress for violation of the aforementioned safeguards.

2. Each Party shall conduct periodic reviews of its own policies and procedures that implement this Article. Upon request by the other Party, the Party that received the request shall review its personal data processing policies and procedures to ascertain and confirm that the safeguards in this Article are implemented effectively. The results of the review shall be communicated to the Party that requested the review within a reasonable time.

3. The data protection safeguards under this Agreement shall be subject to oversight by the European Data Protection Supervisor and the Commissioner for the Right to Public Information and Personal Data Protection of Albania.

4. The Parties shall cooperate with the European Data Protection Supervisor, as the supervisory authority of the Agency.

5. The Agency and the Republic of Albania shall draw up a common report on the application of this Article at the end of each operational activity. That report shall be sent to the Agency's fundamental rights officer and data protection officer as well as to the Commissioner for the Right to Public Information and Personal Data Protection of Albania and the General Directorate of the State Police.

6. The Agency and the Republic of Albania shall set out detailed rules on the communication and processing of personal data for the purposes of operational activities under this Agreement in specific provisions of the relevant operational plans. Those provisions shall comply with the relevant requirements of European Union law and the law of the Republic of Albania. They shall describe, *inter alia*, the intended purpose of the communication, the controller(s) and all roles and responsibilities, the categories of data communicated, the specific data retention periods, and all minimum safeguards. In the interest of transparency and foreseeability, those provisions shall be made publicly available in accordance with the relevant guidance of the European Data Protection Board.

Article 17

Exchange of Classified and Sensitive Non-Classified Information

1. Any exchange, sharing or dissemination of classified information in the framework of this Agreement shall be covered by a separate administrative arrangement concluded between the Agency and the relevant authorities of the Republic of Albania that shall be subject to the prior approval of the European Commission.

2. Any exchange of sensitive non-classified information in the framework of this Agreement:

(a) shall be handled by the Agency in accordance with Article 9(5) of Commission Decision (EU, Euratom) 2015/443[3];

(b) shall receive a level of protection by the receiving Party that is equivalent to the level of protection offered by the measures applied to that information by the communicating Party in terms of confidentiality, integrity and availability; and

(c) shall be conducted via an information exchange system that fulfils the criteria of availability, confidentiality and integrity for sensitive non-classified information, such as the communication network referred to in Article 14 of Regulation (EU) 2019/1896.

3. The Parties shall comply with intellectual property rights related to any data processed in the framework of this Agreement.

Article 18

Decision to Suspend, Terminate and/or Withdraw Financing for an Operational Activity

1. If the conditions to conduct an operational activity are no longer fulfilled, the executive director shall terminate that operational activity after informing the Republic of Albania in writing.
2. If this Agreement or an operational plan has not been respected by the Republic of Albania, the executive director may withdraw financing of the relevant operational activity, and/or suspend or terminate it, after informing the Republic of Albania in writing.
3. If the security of any participant of an operational activity deployed in the Republic of Albania cannot be guaranteed, the executive director may suspend or terminate the relevant operational activity or aspects thereof.
4. If the executive director considers that violations of fundamental rights or international protection obligations that are of a serious nature or are likely to persist have taken place or are likely to take place in relation to an operational activity performed under this Agreement, he or she shall withdraw the financing of the relevant operational activity, and/or suspend or terminate it, after informing the Republic of Albania.
5. The Republic of Albania may request the executive director to suspend or terminate an operational activity**.** Such request shall be made in writing and shall include the reasons therefor.
6. A suspension, termination or withdrawal of financing under this Article shall take effect from the date of notification to the Republic of Albania. It shall not affect any rights or obligations arising out of the application of this Agreement or the operational plan before such suspension, termination or withdrawal of financing.

[3] Commission Decision (EU, Euratom) 2015/443 of 13 March 2015 on Security in the Commission (OJ EU L 72, 17.3.2015, p. 41).

7. The Republic of Albania may request the termination of the deployment of any team member, or other staff deployed to the Republic of Albania under this Agreement or an operational plan thereunder who does not respect this Agreement or the operational plan or who commits serious violations of Albanian legislation. The decision to terminate the deployment will be made by the executive director or the respective home Member State, as appropriate, and notified to the relevant authorities of the Republic of Albania.

Article 19

Combating Fraud

1. The Republic of Albania shall notify the Agency, the European Public Prosecutor's Office and/or the European Anti-Fraud Office forthwith if it becomes aware of the existence of credible allegations of fraud, corruption or any other illegal activities that may affect the interests of the European Union.
2. Where such allegations relate to European Union funds disbursed in relation to this Agreement, the Republic of Albania shall provide all necessary assistance to the European Public Prosecutor's Office and/or the European Anti-Fraud Office in relation to investigative activities on its territory, including facilitating interviews, on-the-spot checks and inspections (including access to information systems and databases in the Republic of Albania) and facilitating access to any relevant information concerning the technical and financial management of matters financed partly or wholly by the European Union.

Article 20

Implementation of this Agreement

1. For the Republic of Albania, this Agreement shall be implemented by the Ministry of the Interior.
2. For the European Union, this Agreement shall be implemented by the Agency.

Article 21

Dispute Settlement

1. Any disputes arising in connection with the application of this Agreement shall be examined jointly by representatives of the Agency and the competent authorities of the Republic of Albania.
2. Failing any prior settlement, disputes concerning the interpretation or application of this Agreement shall be settled exclusively by negotiation between the Parties.

Article 22

Entry into Force, Provisional application, Amendment, Duration, Suspension and Termination of the Agreement, and Termination of Predecessor Agreement

1. This Agreement shall be subject to ratification, acceptance or approval by the Parties in accordance with their own internal legal procedures. The Parties shall notify one another of the completion of the procedures necessary for that purpose.

2. This Agreement shall enter into force on 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 in accordance with paragraph 1. Pending the completion of the procedures necessary for its entry into force, this Agreement may be applied on a provisional basis. The Agreement shall be provisionally applied, as from the date of notification of the completion of internal procedures by the Parties to this effect.

3. This Agreement may be amended only in writing by mutual consent of the Parties.

4. This Agreement is concluded for an indefinite period. It may be suspended or terminated by written agreement between the Parties or unilaterally by either Party.

   In the event of a unilateral suspension or termination, the Party wishing to suspend or terminate shall notify the other Party thereof in writing. A unilateral termination or suspension of this Agreement shall take effect on the first day of the second month following the month during which the notification was given.

5. The Status Agreement between the European Union and the Republic of Albania on actions carried out by the European Border and Coast Guard Agency in the Republic of Albania, signed in Tirana on 5 October 2018, is hereby repealed and replaced by this Agreement.

   Any operational activity launched on the basis of the Status Agreement between the European Union and the Republic of Albania on actions carried out by the European Border and Coast Guard Agency in the Republic of Albania, signed in Tirana on 5 October 2018, that are ongoing at the time of the provisional application or entry into force of this Agreement may continue, subject to the amendment or adaptation of the respective operational plan in line with this Agreement.

6. Notifications made in accordance with this Article shall be sent, in the case of the European Union, to the Secretary General of the Council of the European Union and, in the case of the Republic of Albania, to the Ministry for Europe and Foreign Affairs.

Done in duplicate in the Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish, Swedish and Albanian language, each of those texts being equally authentic.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, duly authorised to this effect, have signed this Agreement.

Done at *XX*, date, *DD/MM/YYYY*

For the European Union

For the Republic of Albania