Council of the European Union

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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	5 September 2018
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2018) 610 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 the former Yugoslav Republic of Macedonia on actions carried out by the European Border and Coast Guard Agency in the former Yugoslav Republic of Macedonia

Delegations will find attached document COM(2018) 610 final ANNEX ANNEX.

Encl.: COM(2018) 610 final ANNEX ANNEX

EUROPEAN
COMMISSION

Brussels, 5.9.2018
COM(2018) 610 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 the former Yugoslav Republic of Macedonia on actions carried out by the European Border and Coast Guard Agency in the former Yugoslav Republic of Macedonia

ANNEX

STATUS AGREEMENT

between the European Union and the former Yugoslav Republic of Macedonia on actions carried out by the European Border and Coast Guard Agency in the former Yugoslav Republic of Macedonia

THE EUROPEAN UNION,

and THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA,

Hereinafter referred to as 'the Parties',

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

CONSIDERING that the former Yugoslav Republic of Macedonia, as a candidate country for EU membership since 2005, closely cooperates with the Union in managing migratory flows and countering illegal immigration and cross border crime,

WHEREAS the Parties will comply with the provisions set out in the declarations attached to this status agreement,

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 the former Yugoslav Republic of Macedonia,

CONSIDERING that all actions of the European Border and Coast Guard Agency on the territory of the former Yugoslav Republic of Macedonia should fully respect fundamental rights,

HAVE DECIDED TO CONCLUDE THE FOLLOWING AGREEMENT:

Article 1

Scope of the Agreement

1. This Agreement shall regulate the rights and obligations of the members of a team of the Agency while managing migratory flows and countering illegal immigration and cross border crime in the former Yugoslav Republic of Macedonia, in which they have executive powers, as well as other aspects that are necessary for carrying out actions in which the members of a team of the Agency and competent authorities in the former Yugoslav Republic of Macedonia participate.

2. This Agreement does not extend the scope of the Agreement between the European Community and the former Yugoslav Republic of Macedonia on the readmission of persons residing without authorisation ('EC-former Yugoslav Republic of Macedonia readmission agreement'). With regard to return operations as defined in Article 2(4), this Agreement only concerns the provision of operational support for return operations which are carried out in accordance with the EC-former Yugoslav Republic of Macedonia readmission agreement.

3. This agreement shall only apply in the territory of the former Yugoslav Republic of Macedonia and the members of the team shall have executive powers in those areas of the former Yugoslav Republic of Macedonia as set out in the Operational Plan.

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 the former Yugoslav Republic of Macedonia neighbouring a Member State and deployment of Members of a team of the Agency on the territory of the former Yugoslav Republic of Macedonia for a given period of time, in accordance with the Operational Plan;

(3) ‘rapid border intervention’ means an action aimed at rapidly responding to a situation of specific and disproportionate challenges, at the borders of the former Yugoslav

Republic of Macedonia neighbouring a Member State for a limited period of time in accordance with the Operational Plan;

(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 the former Yugoslav Republic of Macedonia in line with the Agreement between the European Community and the former Yugoslav Republic of Macedonia 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;

(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 the former Yugoslav Republic of Macedonia 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;

(12) 'Executive powers of the members of a team' means powers necessary to perform the tasks required for border control and return operations which are conducted on the territory of the former Yugoslav Republic of Macedonia during the joint action as included in the Operational Plan.

Article 3

Launching the Action

1. The initiative to launch an action can be proposed to the competent authorities of the former Yugoslav Republic of Macedonia by the Agency. The competent authorities of the former Yugoslav Republic of Macedonia may request the Agency to consider launching an action.

2. Carrying out an action requires the consent of both competent authorities of the former Yugoslav Republic of Macedonia and the Agency.

Article 4

Operational Plan

An Operational Plan, that has the agreement of the Member State or Member States bordering the operational area, shall be agreed between the Agency and the former Yugoslav Republic of Macedonia for each joint operation or rapid border intervention. The plan shall set out in detail the organisation and procedural aspects of the joint operation or rapid border intervention, including a description and an assessment of the situation, with modus operandi, the operational aim and objectives, the type of technical equipment to be deployed, the implementation plan, the cooperation with other third countries, other Union Agencies and bodies or international organisations, the provisions in respect of fundamental rights including personal data protection, the foreseeable duration of the action, the geographical area where the action will take place, a description of the tasks, responsibilities, including the respect for fundamental rights, and special instructions for the members of the team, as well as permissible consultation of databases and permissible use of service weapons, ammunition and equipment in the former Yugoslav Republic of Macedonia, the composition of the

members of the teams, as well as the deployment of other relevant staff, command and control provisions, including the names and ranks of the border guards of the former Yugoslav Republic of Macedonia responsible for cooperating with the Agency team members, in particular the names and ranks of the border guards of the former Yugoslav Republic of Macedonia who are in command during the period of deployment of the members of the team on the territory of the former Yugoslav Republic of Macedonia, and the place of the members of the team in the chain of command, the type of the technical equipment which will be used; 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 former Yugoslav Republic of Macedonia and by the Agency.

Article 5

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 of the former Yugoslav Republic of Macedonia.

3. Members of the team may only perform tasks and exercise powers on the territory of the former Yugoslav Republic of Macedonia under instructions from and, in the presence of border guards or other relevant staff of the former Yugoslav Republic of Macedonia. The former Yugoslav Republic of Macedonia shall issue where appropriate instructions to the team in accordance with the Operational Plan.

The Agency, through its Coordinating Officer, may communicate its views to the person in charge from the Border Police of the former Yugoslav Republic of Macedonia on the instructions given to the team. In that case, the former Yugoslav Republic of Macedonia shall take those views into consideration and follow them to the extent possible.

In cases where the instructions issued to the team are not in compliance with the Operational Plan, the Coordinating Officer shall immediately report to the Executive

Director of the Agency. The Executive Director may take appropriate measures, including the suspension or the termination of the action.

4. Members of the team shall wear where appropriate their own uniform while performing their tasks and exercising their powers. Members of the team shall also wear where appropriate 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 the former Yugoslav Republic of Macedonia, members of the team shall at all times carry an accreditation document referred to in Article 8.

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 national law and the law of the former Yugoslav Republic of Macedonia. The former Yugoslav Republic of Macedonia shall, in advance of the deployment of the members of the team, notify the Agency of the permissible service weapons, ammunition and equipment and of the relevant legal framework and conditions for their use.

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 former Yugoslav Republic of Macedonia, in the presence of border guards or other relevant staff of the former Yugoslav Republic of Macedonia and in accordance with the national law of the former Yugoslav Republic of Macedonia. The former Yugoslav Republic of Macedonia may authorise members of the team to use force in the absence of border guards or other relevant staff of the former Yugoslav Republic of Macedonia. The former Yugoslav Republic of Macedonia, in advance of the deployment of the members of the team, shall notify the Agency of the permissible use of physical force and means of coercion, as well as the conditions for their use.

7. The former Yugoslav Republic of Macedonia shall, in advance of the deployment of the members of the team, inform the Agency of the national databases which may be consulted. That consultation shall be carried out in accordance with the national legislation of the former Yugoslav Republic of Macedonia.

National databases shall be accessed only by authorized persons from the former Yugoslav Republic of Macedonia who have authorization to access the appropriate national databases.

The former Yugoslav Republic of Macedonia may allow data from its national databases to be shared with members of the team if necessary for fulfilling operational aims specified in the Operational Plan and for return operations.

Article 6

Suspension and Termination of the Action

1. The Executive Director of the Agency may suspend or terminate the action, after informing the former Yugoslav Republic of Macedonia in writing, if the provisions of this Agreement or of the Operational Plan are not respected by the former Yugoslav Republic of Macedonia. The Executive Director shall notify the former Yugoslav Republic of Macedonia the reasons thereof.

2. The former Yugoslav Republic of Macedonia 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 former Yugoslav Republic of Macedonia shall notify the Agency the reasons thereof.

3. In particular, the Executive Director of the Agency or the Minister of Interior of the former Yugoslav Republic of Macedonia may suspend or terminate the action in cases of breach of fundamental rights, violation of *non-refoulement* principle or of data protection rule.

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 7

Privileges and immunities of the members of the team

1. The privileges and immunities granted to the members of the team of the Agency aim at ensuring successful exercise of their official functions in the course of the

actions carried out in accordance with the Operational Plan on the territory of the former Yugoslav Republic of Macedonia.

2. Papers, correspondence and property of members of the team shall be inviolable, except in case of measures of execution which are permitted pursuant to paragraph 8.

3. Members of the team shall enjoy immunity from the criminal jurisdiction of the former Yugoslav Republic of Macedonia 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.

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 shall, after careful consideration of any representation of the competent authority of the home Member State and the competent authorities of the former Yugoslav Republic of Macedonia, certify to the competent judicial authorities of the former Yugoslav Republic of Macedonia 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 this certification, 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 the former Yugoslav Republic of Macedonia.

If the act was committed in the exercise of official functions in the course of the actions carried out in accordance with the Operational Plan, proceedings shall not be initiated. If the act was not committed in the exercise of official functions in the course of the actions carried out in accordance with the Operational Plan, proceedings may continue. The certification by the Executive Director of the Agency shall be binding for the authorities of the former Yugoslav Republic of Macedonia.

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

4. Members of the team shall enjoy immunity from the civil and administrative jurisdiction of the former Yugoslav Republic of Macedonia 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 of the former Yugoslav Republic of Macedonia, 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 shall, after careful consideration of any representation of the competent authority of the home Member State and of the competent authority of the former Yugoslav Republic of Macedonia, certify to the competent judicial authorities of the former Yugoslav Republic of Macedonia 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 in the course of the actions carried out in accordance with the Operational Plan, the proceeding shall not be initiated. If the act was not performed in the exercise of official functions in the course of the actions carried out in accordance with the Operational Plan, the proceeding may continue. The certification by the Executive Director of the Agency shall be binding for the authorities of the former Yugoslav Republic of Macedonia.

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

5. The immunity of members of the teams from the criminal, civil and administrative jurisdiction of the former Yugoslav Republic of Macedonia in accordance with paragraphs 3 and 4 of this article may be waived by the home Member State as the case may be. Such a waiver must always be an express waiver.

6. Members of the team shall not be obliged to give evidence as witnesses.

7. 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, the former Yugoslav Republic of Macedonia 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, the former Yugoslav Republic of Macedonia may request, via the Executive Director of the Agency, 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, the former Yugoslav Republic of Macedonia may request that compensation be paid by the Agency.

8. No measures of execution may be taken in respect of members of the team, except in the case where a civil proceeding not related to their official functions in the course of the actions carried out in accordance with the Operational Plan 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.

9. The immunity of members of the team from the jurisdiction of the former Yugoslav Republic of Macedonia shall not exempt them from the jurisdiction of the respective home Member States.

10. Members of the team shall, with respect to services rendered for the Agency, be exempt from social security provisions which are in force in the former Yugoslav Republic of Macedonia.

11. Members of the team shall be exempt from any form of taxation in the former Yugoslav Republic of Macedonia 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 the former Yugoslav Republic of Macedonia.

12. The former Yugoslav Republic of Macedonia shall, in accordance with laws and regulations in force, permit the entry of articles for the personal use of members of the team, 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 former Yugoslav Republic of Macedonia shall also allow the export of such articles.

13. The personal baggage of members of the team shall be exempt from inspection, unless there are serious grounds or considering 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 the former Yugoslav Republic of Macedonia. 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 member (s) of the team.

Article 8

Accreditation document

1. The Agency shall, in cooperation with the former Yugoslav Republic of Macedonia, issue a document in the official languages of the Parties to each member of the team for the purposes of identification vis-à-vis the national authorities of the former Yugoslav Republic of Macedonia and as proof of the holder's rights to perform the tasks and exercise the powers referred to in Article 5 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.

2. The accreditation document, in combination with a valid travel document, grants the member of the team access to the former Yugoslav Republic of Macedonia 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 9

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 10

Processing of personal data

1. Processing of personal data shall only take place when necessary for the implementation of this Agreement by the former Yugoslav Republic of Macedonia, the Agency or participating Member States.

2. Processing of personal data by the former Yugoslav Republic of Macedonia 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 the former Yugoslav Republic of Macedonia, 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, Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters 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 the former Yugoslav Republic of Macedonia, 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 former Yugoslav Republic of Macedonia accordingly.

5. Personal data collected for administrative purposes during the action may be processed by the Agency, the participating Member States and the former Yugoslav Republic of Macedonia in line with the applicable data protection legislation.

6. The Agency, the participating Member States and the former Yugoslav Republic of Macedonia 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 Agency's Fundamental Rights Officer and Data Protection Officer, as well as to the competent authority for the protection of personal data in the former Yugoslav Republic of Macedonia. The Agency's Fundamental Rights Officer and Data Protection Officer shall report to the Executive Director of the Agency.

Article 11

Disputes and interpretation

1. All issues arising in connection with the application of this Agreement shall be examined jointly by the competent authorities of the former Yugoslav Republic of

Macedonia and by representatives of the Agency, which shall consult the Member State or Member States neighbouring the former Yugoslav Republic of Macedonia.

2. Failing any prior settlement, disputes concerning the interpretation or application of this Agreement shall be settled exclusively by negotiation between the former Yugoslav Republic of Macedonia and the European Commission, which shall consult any Member State neighbouring the former Yugoslav Republic of Macedonia.

Article 12

Entry into force, duration 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.

3. This agreement is concluded for an indefinite period of time. The Agreement may be terminated by written agreement between the Parties or unilaterally by either Party. In this last case, the Party wishing to terminate 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. This Agreement may be amended at any time by mutual consent of both Parties in writing. Amendments shall enter into force in accordance with paragraph 1 of this Article.

5. 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 the former Yugoslav Republic of Macedonia, to the Ministry of Foreign Affairs.

Article 13

Relation with other agreements

This Agreement shall not affect the rights and obligations of the Parties arising from other international agreements by which both Parties are bound.

Article 14

Competent authorities for the implementation of the agreement

1. The competent authority for the implementation of this agreement in the former Yugoslav Republic of Macedonia shall be the Ministry of Internal Affairs.

2. The competent authority of the European Union for the implementation of this agreement shall be the Agency.

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 the former Yugoslav Republic of Macedonia, on the other hand, conclude, without delay, bilateral agreements on actions carried out by the European Border and Coast Guard Agency in the former Yugoslav Republic of Macedonia in terms similar to those of this Agreement.

JOINT DECLARATION

Both parties agree that refraining from taking any measure likely to jeopardise possible subsequent criminal prosecution of the member of the team by the competent authorities of the host State includes refraining from actively facilitating the return of the concerned member of the team from the European Border and Coast Guard operation premises in the former Yugoslav Republic of Macedonia to his/her home Member State, pending the certification of the Executive Director of the Agency.