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**PROPOSAL**

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| From: | Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director |
| date of receipt: | 28 November 2024 |
| To: | Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union |
| No. Cion doc.: | COM(2024) 546 final ANNEX 2 |
| Subject: | ANNEX to the Proposal for a COUNCIL DECISION on the signing, on behalf of the European Union, and provisional application of the Agreement between the European Union and Bosnia and Herzegovina on operational activities carried out by the European Border and Coast Guard Agency in Bosnia and Herzegovina |

Delegations will find attached document COM(2024) 546 final ANNEX 2.

Encl.: COM(2024) 546 final ANNEX 2

EUROPEAN
COMMISSION

Brussels, 28.11.2024
COM(2024) 546 final

ANNEX 2

**ANNEX**

***to the***

**Proposal for a**

**COUNCIL DECISION**

**on the signing, on behalf of the European Union, and provisional application of the Agreement between the European Union and Bosnia and Herzegovina on operational activities carried out by the European Border and Coast Guard Agency in Bosnia and Herzegovina**

# AGREEMENT
# BETWEEN THE EUROPEAN UNION
# AND BOSNIA AND HERZEGOVINA
# ON OPERATIONAL ACTIVITIES CARRIED OUT
# BY THE EUROPEAN BORDER AND COAST GUARD AGENCY
# IN BOSNIA AND HERZEGOVINA

THE EUROPEAN UNION,

and

BOSNIA AND HERZEGOVINA,

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 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 deployed by the Agency will have executive powers on the territory of Bosnia and Herzegovina,

WHEREAS the status agreement may provide for the establishment by the Agency of antenna offices on the territory of Bosnia and Herzegovina 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 Bosnia and Herzegovina and the European Union,

CONSIDERING that Bosnia and Herzegovina has ratified 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 Bosnia and Herzegovina has ratified the 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 Bosnia and Herzegovina should fully respect fundamental rights and the international agreements to which the European Union, its Member States and/or Bosnia and Herzegovina 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 Bosnia and Herzegovina where the team members may exercise executive powers.

2. The deployment referred to in paragraph 1 may take place on the territory of Bosnia and Herzegovina.

Subject to the parties' obligations under the law of the sea, in particular the United Nations Convention on the Law of the Sea, operational activities may also take place in Bosnia and Herzegovina's contiguous zone. Operational activities implemented under this agreement shall not affect search and rescue obligations deriving from the law of the sea, in particular the United Nations Convention on the Law of the Sea, the International Convention for the Safety of Life at Sea and the International Convention on Maritime Search and Rescue.

3. The status and delimitation under international law of the respective territories of the Member States and Bosnia and Herzegovina is in no way affected either by this Agreement or by any act accomplished in its implementation by the Parties or on their behalf, including the establishment of operational plans or participation in cross-border operations.

ARTICLE 2

Definitions

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

(1) "operational activity" means a joint operation or a rapid border intervention;

(2) "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;

(3) "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;

(4) "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;

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

(6) "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;

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

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

(9) "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;

(10) "incident" means a situation relating to irregular migration, 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 Bosnia and Herzegovina;

(11) "joint operation" means an action coordinated or organised by the Agency to support the competent authorities in Bosnia and Herzegovina responsible for border control aimed at

[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

addressing challenges such as irregular migration, present or future threats at the borders of Bosnia and Herzegovina or cross-border crime, or aimed at providing increased technical and operational assistance for the control of those borders;

(12) "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;

(13) "Member State" means a Member State of the European Union;

(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 Bosnia and Herzegovina by deploying border management teams in the territory of Bosnia and Herzegovina for a limited period of time to conduct border control together with the competent authorities in Bosnia and Herzegovina 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].

(EU) No 1052/2013 and (EU) 2016/1624 (OJ EU L 295, 14.11.2019, p. 1).

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

(19) "executive powers" means powers necessary to perform the tasks required for border control which are conducted on the territory of Bosnia and Herzegovina during an operational activity as provided for in the operational plan.

(20) "Border Police" means the Border Police of Bosnia and Herzegovina;

(21) "Border area" means the area extending 10 kilometres from the border line of Bosnia and Herzegovina into the territory of Bosnia and Herzegovina;

(22) "Border crossing point" means any crossing-point authorised by the competent authorities in Bosnia and Herzegovina for the crossing of Bosnia and Herzegovina's land borders, including river and lake borders, sea borders, airports, river ports, seaports and lake ports.

ARTICLE 3

Launching operational activities

1. An operational activity under this Agreement shall be launched by a written decision of the executive director of the Agency ('the executive director') upon a written request of the Border Police. Such request shall include a description of the situation, 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 serious or persistent violations of fundamental rights or international protection obligations, 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 Bosnia and Herzegovina in order to assess the situation there. Bosnia and Herzegovina shall facilitate such travel and otherwise assist in such assessments, as requested.

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 Border Police in accordance with Articles 38 and 74 of Regulation (EU) 2019/1896. The operational plan shall be binding on the Agency, Bosnia and Herzegovina and the participating Member States.

2. 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 Bosnia and Herzegovina;

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

(k) the terms of cooperation with bodies, offices and agencies of the European 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 authorities in Bosnia and Herzegovina for appropriate assistance;

(n) procedures setting out a mechanism to receive and transmit to the Agency and to Bosnia and Herzegovina complaints (including those lodged under Article 8(5)) against any person participating in an operational activity, including border guards or other relevant staff of Bosnia and Herzegovina 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.

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

The Border Police, prior to agreeing to the operational plan, shall, with regard to the location and deployment of the border management team and other staff, in accordance with the relevant security challenges and risks, inform and seek the opinion of all competent law enforcement authorities in whose territory activities are to be carried out, in accordance with the constitutional competences of those authorities.

4. 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.

5. The evaluation of the operational activity in accordance with paragraph 2, point (i), shall be conducted jointly by Bosnia and Herzegovina and the Agency.

6. The terms of cooperation with the bodies, offices and agencies of the European Union in accordance with paragraph 2, point (k), shall be conducted in line with their respective mandates and within available resources.

## ARTICLE 5

## Incident reporting

1. The Agency and the Border Police shall each have a 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 Bosnia and Herzegovina shall assist each other in carrying out all necessary inquiries and investigations into any incident reported via the mechanism referred to in paragraph 1, such 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 may establish antenna offices on the territory of Bosnia and Herzegovina 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 opinion of the relevant authorities in Bosnia and Herzegovina.

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 Bosnia and Herzegovina. Subject to the agreement of Bosnia and Herzegovina, 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 Bosnia and Herzegovina 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 Bosnia and Herzegovina on all issues related to the practical implementation of the operational activities organised by the Agency in Bosnia and Herzegovina, 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 Bosnia and Herzegovina 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 in Bosnia and Herzegovina, 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 Bosnia and Herzegovina as agreed between the Agency and Bosnia and Herzegovina.

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

6. Bosnia and Herzegovina shall provide the Agency with 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 Bosnia and Herzegovina of such appointment.

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

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

4. The Border Police 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 Bosnia and Herzegovina officers 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 authorities in Bosnia and Herzegovina

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 Bosnia and Herzegovina; 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. Bosnia and Herzegovina shall support the fundamental rights officer's monitoring efforts, as requested.

4. The Agency and Bosnia and Herzegovina 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 Bosnia and Herzegovina 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.

## 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(2), 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 Bosnia and Herzegovina as well as applicable international and European Union law.

3. Team members may perform tasks and exercise powers only in the border area and at the border crossing points of Bosnia and Herzegovina only under instructions from, and in the presence of, the Border Police. The Border Police may authorise team members to perform specific tasks and to exercise specific powers in the border area or at the border crossing points of Bosnia and Herzegovina in its absence, 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. Bosnia and Herzegovina 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.

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

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 Bosnia and Herzegovina and in the presence of border management authorities in Bosnia and Herzegovina. Bosnia and Herzegovina may authorise team members to use force in the absence of relevant border management authorities.

For team members who are statutory staff, such authorisation to use force in the absence of border management authorities in Bosnia and Herzegovina shall be subject to the consent of the Agency.

For team members who are not statutory staff, such authorisation to use force in the absence of border management authorities in Bosnia and Herzegovina 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 Bosnia and Herzegovina of the service weapons, ammunition and other equipment team members may carry under paragraph 5 and the Border Police shall provide information thereon to all competent police authorities in Bosnia and Herzegovina. Bosnia and Herzegovina 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. Bosnia and Herzegovina 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.

Bosnia and Herzegovina 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.

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 Bosnia and Herzegovina in line with relevant principles of international and European Union law.

9. Competent authorities in Bosnia and Herzegovina may authorise team members to consult data from their respective databases if necessary for fulfilling operational aims specified in the operational plan. Bosnia and Herzegovina shall ensure that it provides such database access in an efficient and effective manner.

Bosnia and Herzegovina shall, in advance of the deployment of the team members, inform the Agency of the databases which may be consulted.

Team members shall only consult data which is necessary for performing their tasks and exercising their powers. That consultation shall be carried out in accordance with relevant data protection legislation in Bosnia and Herzegovina and this Agreement.

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

ARTICLE 11

Privileges and immunities of the property, funds,
assets and operations of the Agency

1. Any premises and buildings of the Agency in Bosnia and Herzegovina 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. Upon a request by the relevant authorities in Bosnia and Herzegovina, the executive director may give consent for relevant authorities in Bosnia and Herzegovina to enter the premises and buildings and/or access to the property and assets of the Agency in cases of serious suspicion of criminal offences.

The consent of the executive director may be assumed in the event of a fire or other disaster requiring prompt protective action.

6. Bosnia and Herzegovina shall permit the entry and removal of articles and equipment deployed by the Agency to Bosnia and Herzegovina for operational purposes.

7. 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 intended for its official

use.

## ARTICLE 12

### Privileges and immunities of the team members

1. The subsequent privileges and immunities granted to team members aim at ensuring the exercise of their official functions in the course of the actions carried out in accordance with the operational plan on the territory of Bosnia and Herzegovina.

2. Team members shall not be subject to any form of inquiry or legal proceedings in Bosnia and Herzegovina or by authorities in Bosnia and Herzegovina, except under the circumstances as referred to in paragraph 3.

3. Team members shall enjoy immunity from the criminal, civil and administrative jurisdiction in Bosnia and Herzegovina in respect of all acts performed by them in the exercise of their official functions.
Where the authorities in Bosnia and Herzegovina intend to institute criminal, civil or administrative proceedings against a team member, the competent authorities in Bosnia and Herzegovina shall immediately notify the executive director thereof. The notification procedure shall be in line with the applicable Agency decision thereon, which shall be set out in the operational plan.

Following receipt of such notification, the executive director shall, without undue delay, inform the relevant authorities in Bosnia and Herzegovina 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 qualification by the executive director shall be binding upon Bosnia and Herzegovina, 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 in Bosnia and Herzegovina, including facilitating the departure of the concerned team member from Bosnia and Herzegovina.

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

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

5. 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 10.

6. Bosnia and Herzegovina shall be liable for any damage caused by team members to third parties in the exercise of their official functions.

7. 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, Bosnia and Herzegovina 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, Bosnia and Herzegovina may request, via the executive director, that compensation be paid by the home Member State concerned.

8. Neither Party nor any participating Member State nor the Agency shall be liable for damage caused in Bosnia and Herzegovina due to a force majeure event beyond its control.

9. Team members shall not be obliged to give evidence as witnesses in legal proceedings in Bosnia and Herzegovina. Team members may give evidence through a statement submitted in accordance with the procedural law of Bosnia and Herzegovina. Such submission shall not affect the immunity provided for under paragraph 3.

10. 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, civil or administrative proceedings, team members shall

not be subject to any restrictions on their personal liberty or to any other measures of constraint.

11. Team members shall, with respect to services rendered for the Agency, be exempt from social security provisions which may be in force in Bosnia and Herzegovina.

12. 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 Bosnia and Herzegovina, shall not be taxed in any form in Bosnia and Herzegovina.

13. Bosnia and Herzegovina 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. Bosnia and Herzegovina shall also allow the export of such articles.

14. 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 Bosnia and Herzegovina. Inspection of such personal baggage shall be conducted only in the presence of team members concerned or an authorised representative of the Agency.

15. The Agency and Bosnia and Herzegovina 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 of Bosnia and Herzegovina 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 Bosnia and Herzegovina 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 Bosnia and Herzegovina, 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. Bosnia and Herzegovina 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, in cooperation with Bosnia and Herzegovina, issue a document in the languages in official use in Bosnia and Herzegovina and in English to each team member for the purposes of identification vis-à-vis the authorities in Bosnia and Herzegovina and as proof of the holder's rights to perform the tasks and exercise the powers referred to in Article 10 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 authorities in Bosnia and Herzegovina, team members shall be obliged to carry the accreditation document on their person at all times.

4. Bosnia and Herzegovina shall recognise the accreditation document, in combination with a valid travel document, as granting the relevant team member entry and stay in Bosnia and

Herzegovina 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 in Bosnia and Herzegovina shall be informed thereof.

6. The Agency shall, upon issuing an accreditation document, inform the Border Police that such document has been issued and of the information contained therein.

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 Bosnia and Herzegovina 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 in Bosnia and Herzegovina 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 or 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 data pertaining to team members, Agency staff, relevant observers, or members of staff exchange programmes:

– 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;

(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 authority shall take appropriate measures to address any data breach, and shall notify the communicating authority 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 Border Police,

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 Agency for Personal Data Protection in Bosnia and Herzegovina.

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

5. The Agency and Bosnia and Herzegovina 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 Agency for Personal Data Protection in Bosnia and Herzegovina.

6. The Agency and Bosnia and Herzegovina 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 Bosnia and Herzegovina. 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 in Bosnia and Herzegovina 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 applicable 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, including as notified by the Border Police, the executive director shall terminate that operational activity after informing Bosnia and Herzegovina in writing.

2. If this Agreement or an operational plan thereunder has not been respected by Bosnia and Herzegovina, the executive director may withdraw financing of the relevant operational activity, and/or suspend or terminate it, after informing Bosnia and Herzegovina in writing.

3. If the security of any participant of an operational activity deployed in Bosnia and Herzegovina cannot be guaranteed, the executive director may suspend or terminate the relevant

[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).

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 Bosnia and Herzegovina.

5. Bosnia and Herzegovina may request the executive director to suspend or terminate an operational activity if this Agreement or an operational plan thereunder is not respected by a team member. 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 Bosnia and Herzegovina. 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.

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

## ARTICLE 19

## Combating fraud

1. Bosnia and Herzegovina 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, Bosnia and Herzegovina 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 Bosnia and Herzegovina) 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 Bosnia and Herzegovina, this Agreement shall be implemented by the Border Police.

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 in Bosnia and Herzegovina.

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, amendment, duration,
suspension and termination of the 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.

3. This Agreement may be applied on a provisional basis as from the date of its signature pending its entry into force. The provisional application of this Agreement shall be terminated if one Party notifies the other Party of its intention not to become a party to the agreement.

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

5. 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.

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 Bosnia and Herzegovina, to the Ministry of Foreign Affairs.

Done in duplicate in the official languages of the Union and in the languages and scripts in official use in Bosnia and Herzegovina at the date of signature of the Agreement, each of those texts being equally authentic.

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