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PROPOSAL

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) 545 final
Subject:	Proposal for a COUNCIL DECISION on the conclusion, on behalf of the European Union, 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) 545 final.

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Proposal for a

COUNCIL DECISION

on the conclusion, on behalf of the European Union, 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

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

One of the tasks of the European Border and Coast Guard Agency (the 'Agency') is to cooperate with third countries in relation to the areas covered by the European Border and Coast Guard Regulation (Regulation (EU) 2019/1896) 'including through the possible operational deployment of border management teams in third countries'[1]. Specifically, the Agency, as part of the European Border and Coast Guard, is to ensure European integrated border management[2], one component of which is cooperation with third countries in the areas covered by Regulation (EU) 2019/1896, focusing in particular on neighbouring third countries and countries of origin or transit for irregular migration.[3] The Agency may cooperate with the authorities of third countries competent in matters covered by the Regulation to the extent required for the fulfilment of its tasks[4] and may carry out actions related to European integrated border management on the territory of a third country subject to the agreement of that third country.

Pursuant to Article 73(3) of Regulation (EU) 2019/1896, in circumstances requiring the deployment of border management teams from the European Border and Coast Guard standing corps to a third country where the members of the teams will exercise executive powers, a status agreement shall be concluded by the Union with the third country concerned. Such a status agreement should be based on the model that the Commission has drawn up as provided for in Article 76(1) of the same regulation. The Commission adopted this model on 21 December 2021[5] .

Bosnia and Herzegovina remains an important transit country for migrants seeking to travel towards and the European Union via the Western Balkans. Between January and September 2024, nearly 17 000 irregular border crossings on entry were registered at the European Union's external borders on the Western Balkan route, approximately 90 per cent of these were at Croatia's border with Bosnia and Herzegovina. Bosnia and Herzegovina's activities also led to the detection of more than 5 000 additional crossing attempts at this section over the same period.

People in irregular movement remain targets of organised criminal groups engaged in people smuggling and are at great risk of human rights violations along the route. The increase in irregular arrivals and ensuing rise in asylum applications are putting significant pressure on some Member States, leading to the need for common, coordinated action at the Union level based on the Pact's principles of fair sharing of responsibility and solidarity.

In 2017, the Commission opened negotiations with Bosnia and Herzegovina for a status agreement on the basis of the previous European Border and Coast Guard Regulation (Regulation (EU) 2016/1624). Negotiations were successfully finalised by the initialling of the draft status agreement by the Commission and Bosnia and Herzegovina in January

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1 Article 10(1)(u) of Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard.

2 Article 71(1) of Regulation (EU) 2019/1896.

3 Article 3(g) of Regulation (EU) 2019/1896.

4 Article 73(1) of Regulation (EU) 2019/1896.

5 Communication COM(2021) 829 - Model status agreement as referred to in 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.

2019. However, the status agreement was not immediately signed and, a few months after the agreement was initialled, the aforementioned regulation was repealed and replaced by Regulation (EU) 2019/1896.

Given that Bosnia and Herzegovina is a neighbouring third country that remains an important country of transit for irregular migration, the value of cooperation between the European Border and Coast Guard Agency and the Border Police of Bosnia and Herzegovina remains as high as ever. A status agreement based on Regulation (EU) 2019/1896 would allow for the deployment of European Border and Coast Guard standing corps teams to Bosnia and Herzegovina's borders, including with countries that are not members of the European Union and thus support the country's Border Police to ensure that anyone entering the territory of Bosnia and Herzegovina does so in compliance with the relevant legislation.

On 18 November 2022, the Commission received Council authorisation to open negotiations with Bosnia and Herzegovina as well as Montenegro, Serbia and Albania, for an agreement on operational activities to be carried out by the European Border and Coast Guard Agency in those countries (i.e. a status agreement on the basis of Regulation (EU) 2019/1896). On 30 November 2022, a meeting was organised by the Commission with the four aforementioned countries, in which the main novelties of the model status agreement were highlighted. The European Commission, on behalf of the European Union, and Bosnia and Herzegovina held formal negotiations in view of an agreement on 23 May,16 July and 6 September 2024 via VTC and on 18 September 2024 in Sarajevo. The Council was regularly informed of the progress of these negotiations via the relevant working parties. The Commission considers that the objectives set by the Council in its negotiating directives were attained and that the agreement is acceptable for the Union.

Compared to the model status agreement, the negotiated text provides an additional provision regarding the Border Police of Bosnia and Herzegovina's internal approval procedure for operational plans (Art 4(3)); a limitation on the geographical range where the standing corps may perform its tasks corresponding with the territorial jurisdiction of the Border Police of Bosnia and Herzegovina (Art 10(3)); an additional provision allowing relevant authorities of Bosnia and Herzegovina to access Frontex premises with permission from the Executive Director (Art 11(5)); a modified article on privileges immunities corresponding with the privileges and immunities provisions afforded to the other countries in the region – providing for functional immunity for staff deployed by Frontex for criminal, civil and administrative matters (Art 12); a provision that the Agency should inform the Border Police to whom accreditation documents have been issued (Art 14(6)); a provision allowing Bosnia and Herzegovina to request the termination of deployment of individual staff members who violate the status agreement, an operational plan or national law (Art 18(7)); a provision for the provisional application of the agreement pending its entry into force (Art 22(2)). Unlike other status agreements, the agreement with Bosnia and Herzegovina delimits the area where team members may perform their tasks to correspond with that where the Border Police of Bosnia and Herzegovina may operate, namely the zone extending 10km inland from the border and at border crossing points – Articles 2 and 10 were adjusted to reflect this.

With the attached proposal for a Council Decision, the Commission proposes the conclusion 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.

Situation of the Schengen associated countries

The present proposal builds upon the Schengen acquis in the field of management of the external borders. The Union has nevertheless no power to conclude a status agreement with Bosnia and Herzegovina in a manner that binds Norway, Iceland, Switzerland or Liechtenstein. To ensure that border guards and other relevant staff sent by those countries to Bosnia and Herzegovina benefit from the same status as provided for in the future status agreement, a declaration attached to the proposal for a Council Decision on the signing, on behalf of the 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 states the desirability that similar agreements be concluded between Bosnia and Herzegovina and each of those associated countries.

This Decision constitutes a development of the provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC[6]; Ireland is therefore not taking part in the adoption of this Decision and is not bound by it nor subject to its application. In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Decision and is not bound by it nor subject to its application.

- **Consistency with other Union policies**

Reinforcing controls along the borders of Bosnia and Herzegovina will positively impact the management of the Union's external borders as well as the borders of Bosnia and Herzegovina itself. The conclusion of a status agreement would tie into the wider objectives and priorities for cooperation as set out in the European Union's Stabilisation and Association Agreement with Bosnia and Herzegovina[7].

The conclusion of a status agreement could also support the wider efforts and commitments of the European Union to further develop capabilities contributing to crisis response management and promoting convergence on foreign and security matters between the Union and Bosnia and Herzegovina.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The competence of the European Union to conclude a status agreement is explicitly provided for in Article 73(3) of Regulation (EU) 2019/1896, which states, '[i]n circumstances requiring the deployment of border management teams from the standing corps to a third country where the members of the teams will exercise executive powers, a status agreement […] shall be concluded by the Union with the third country concerned'.

Pursuant to Article 3(2) of the Treaty on the Functioning of the European Union, the Union shall have exclusive competence for the conclusion of an international agreement *inter alia* when its conclusion is provided for in a legislative act of the Union. Article 73(3) of Regulation (EU) 2019/1896 provides for a status agreement to be 'concluded by the Union with the third country concerned'. Consequently, the agreement to be signed and concluded with Bosnia and Herzegovina falls within the exclusive power of the European Union. In

[6] Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen acquis, OJ L 64, 7.3.2002, p. 20.

[7] OJ L 164, 30.6.2015, p. 2–547.

accordance with Article 73(3) of Regulation (EU) 2019/1896, the proposed status agreement is based on the model agreement adopted by the Commission in December 2021[8].

- **Subsidiarity and proportionality**

The need for a common approach

A status agreement will allow for the deployment in Bosnia and Herzegovina of European Border and Coast Guard teams by the European Border and Coast Guard Agency, using all the possibilities offered by Regulation (EU) 2019/1896. Without such a tool, only bilateral deployments by Member States can be used to develop and implement European integrated border management and support Bosnia and Herzegovina in managing a significant number of migrants seeking to transit its territory. A common approach is therefore needed to better manage the borders of Bosnia and Herzegovina.

The provisions of the proposed agreement do not go beyond what is necessary to achieve its objectives, namely, on the basis of the model status agreement, covering all aspects that are necessary for carrying out the actions of border management teams from the standing corps deployed to a third country where the members of the teams will exercise executive powers, in particular, the scope of the operation, provisions on civil and criminal liability, the tasks and powers of the members of the teams, measures related to the establishment of an antenna office and practical measures related to the respect of fundamental rights.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

As this will be a new agreement, no evaluation or fitness checks of existing instruments could be carried out. No impact assessment is required for the negotiation of a status agreement.

- **Fundamental rights**

As set out in recital 88 of Regulation (EU) 2019/1896, the Commission will assess the fundamental rights situation relevant to the areas covered by the status agreement in Bosnia and Herzegovina and inform the European Parliament thereof.

The envisaged agreement contains practical measures related to the respect of fundamental rights and ensures that fundamental rights are fully respected during activities organised on the basis of the Agreement. Article 8(5) of the Agreement provides for an independent and effective complaints mechanism in accordance with the relevant provisions of Regulation (EU) 2019/1896 to monitor and ensure respect for fundamental rights in all the activities organised on the basis of the Agreement.

- **Data protection**

Since the provisions of the status agreement related to the transfer of personal data do not differ substantially from the model status agreement, and in line with Regulation (EU) 2019/1896, the European Data Protection Supervisor has not been consulted on the provisions of this status agreement.

[8] Communication COM(2021) 829.

4. BUDGETARY IMPLICATIONS

A status agreement in and of itself does not entail any financial implications. The actual deployment of border guard teams on the basis of an operational plan would entail costs borne by the budget of the Agency. Future operations under a status agreement will be financed through the Agency's own resources as provided for in the Union's annual budget cycle.

The Union contribution for the Agency already forms part of the Union's budget as laid out in the Council Conclusions to the Multiannual Financial Framework Agreement.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The Commission will ensure proper monitoring of the implementation of the status agreement.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 77(2)(b) and (d) and Article 79(2)(c) in conjunction with Article 218(6)(a) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament,

Whereas:

(1) In accordance with Council Decision (EU) 202X/XXX[1], 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 (the 'Agreement') was signed on [...], subject to its conclusion at a later date.

(2) Pursuant to Article 73(3) of Regulation (EU) 2019/1896 of the European Parliament and of the Council[2], in circumstances requiring the deployment of border management teams from the standing corps of the European Border and Coast Guard to a third country where the members of the teams will exercise executive powers, a status agreement is to be concluded by the Union with the third country concerned on the basis of Article 218 of the Treaty on the Functioning of the European Union.

(3) This Decision constitutes a development of the provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC[3]; Ireland is therefore not taking part in the adoption of this Decision and is not bound by it nor subject to its application.

(4) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application. Given that this Decision builds upon the Schengen acquis, Denmark shall, in accordance with Article 4 of that Protocol, decide within a period of six months after the Council has decided on this Decision whether it will implement it in its national law.

(5) The Agreement should be approved on behalf of the European Union.

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1 Council Decision (EU) 2024/XXXX of XXX.

2 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 L 295, 14.11.2019, p. 1).

3 Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen acquis (OJ L 64, 7.3.2002, p. 20).

(6) In accordance with the Treaties, it is for the Commission to ensure that the notification to Bosnia and Herzegovina provided for in Article 22(2) of the Agreement be made on behalf of the Union, in order to express the consent of the Union to be bound by the Agreement.

HAS ADOPTED THIS DECISION:

Article 1

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 is hereby approved on behalf of the Union.

The text of the Agreement is attached to this Decision.

Article 2

This Decision shall enter into force on [4].

Done at Brussels,

For the Council
The President

[4] The date of entry into force of the Agreement will be published in the *Official Journal of the European Union* by the General Secretariat of the Council.