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Council of the European Union
General Secretariat

Brussels, 19 May 2017
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NOTE

From: General Secretariat of the Council

To: JHA Counsellors

Subject: Status agreement between the European Union and the Republic of Serbia on actions carried out by the European Border and Coast Guard Agency on the territory of the Republic of Serbia

Delegations will find attached a document from the services of the Commission.

3. DRAFT STATUS AGREEMENT (ANNOTATED)

TEXT UNMARKED = Agreed

GREY HIGHLIGHTED TEXT = Changed + agreed

GREEN = Serbian proposal

YELLOW = EU position/proposal

Status agreement between the European Union and the Republic of Serbia on actions carried out by the European Border and Coast Guard Agency in the Republic of Serbia

THE EUROPEAN UNION,

and THE REPUBLIC OF SERBIA,

Hereinafter referred to as 'the Parties',

WHEREAS situations may arise where the European Border and Coast Guard Agency may coordinate operational cooperation between EU Member States and Republic of Serbia, including on the territory of the Republic of Serbia,

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 may have executive powers on the territory of the Republic of Serbia,

CONSIDERING that in implementing all actions on the territory of the Republic of Serbia the European Border and Coast Guard Agency should fully respect fundamental rights,

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HAVE DECIDED TO CONCLUDE THE FOLLOWING AGREEMENT:

Article 1

Scope of the Agreement

1. This Agreement shall cover all aspects of cooperation between the Republic of Serbia and the European Border and Coast Guard Agency necessary for carrying out actions by the European Border and Coast Guard Agency that may take place in the territory of the Republic of Serbia whereby team members of the European Border and Coast Guard Agency may have executive powers.

2.

<p>The agreement shall cover the Republic of Serbia. This agreement shall not cover Kosovo*. This is without prejudice to Member States' position on the status of Kosovo.</p> <p>* (in footnote): this designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.</p>	<p>The scope of territorial applicability concerning the Republic of Serbia will be defined in the negotiations and in full compliance with the UN Security Council Resolution 1244 of 9 June 1999.</p>
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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 external borders of a Member State neighbouring the Republic of Serbia and deployed in the territory of the Republic of Serbia¹;
- (3) 'rapid border intervention' means an action aimed at rapidly responding to a situation of specific and disproportionate challenges at the borders of the Republic of Serbia neighbouring a Member State and deployed in the territory of the Republic of Serbia for a limited period of time;
- (4) 'return operation' means an operation that is organised or coordinated by the Agency and involves technical and operational reinforcement being provided by one or more Member States under which persons for whom the final decision on the return has been made are returned from one or more Member States either on a forced or voluntary basis to the Republic of Serbia in line with the Agreement between the European Community and the Republic of Serbia on the readmission of persons residing without authorisation;²
- (5) 'border control' means the control of persons, travel documents, means of transport and items carried out when crossing a state border, 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 and other relevant staff from participating Member States, including border guards and other relevant staff that are seconded by Member States to the Agency to be deployed during an action;

¹ See Joint Declaration in Annex 1

² See Joint Declaration in Annex 2

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(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 data 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 i.e. unique citizen's identification number, location data, an online identifier or to one or more characteristics 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 Republic of Serbia by providing technical equipment, border guards and other relevant staff deployed as part of the team;

(11) 'Agency' means the European Border and Coast Guard Agency established by Regulation (EU) 2016/1624 on the European Border and Coast Guard.

Article 3

Launching the Action and Operational Plan

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

2. Launching an action requires the consent of both competent authorities of the Republic of Serbia and the Agency.

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3. A joint 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 Republic of Serbia 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, the operational aim and objectives, 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 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 competent authority of the Republic of Serbia and by the Agency

~~4. Any subsequent amendments to the Operational Plan must be approved by the Agency and the competent authorities of the Republic of Serbia.~~

Article 4

Tasks and powers of the members of the team

1. Members of the team shall have the authority to perform the tasks and exercise the executive powers required for border control and return operations.
2. Members of the team shall respect the national legislation of the Republic of Serbia.
3. Members of the team may only perform tasks and exercise powers in the territory of the Republic of Serbia under instructions from and in the presence of border guards or other police officers of the Republic of Serbia. The competent authority of the Republic of Serbia shall issue, where appropriate, instructions to the team in accordance with the Operational Plan. **The competent authority of the Republic of Serbia may authorise members of the teams to act on its behalf as long as the overall responsibility and command and control functions remain with the border guards or other police officers of the Republic of Serbia present at all times.**

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The Agency, through its Coordinating Officer, may communicate its views to the competent authority of the Republic of Serbia on the instructions given to the team. In that case, the competent authority of the Republic of Serbia 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 their own uniform while performing their tasks and exercising their powers. Members of the team shall at least wear visible personal identification and a blue armband with the insignias of the European Union and of the Agency. For the purposes of identification vis-à-vis the competent authorities of the Republic of Serbia, members of the team shall at all times carry an accreditation document referred to in Article 7.

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. The Republic of Serbia shall, in advance of the deployment of the members of the team, inform the Agency of the permissible service weapons, ammunition and equipment and of the relevant legal framework and conditions for their use. The Agency shall submit in advance to the competent authority of the Republic of Serbia the list of service weapons of the members of the team, namely information concerning the type and serial number of the weapons and the type and quantity of ammunitions.

6. While performing their tasks and exercising their powers, members of the team shall be authorised to use force, including service weapons, ammunition and equipment, with the consent of the home Member State and the Republic of Serbia, in the presence of border guards or other police officers of the Republic of Serbia and in accordance with the national law of the Republic of Serbia. The Republic of Serbia may authorise members of the team to use force in the absence of border or other police officers of the Republic of Serbia. Members of the team may use weapons only when it is absolutely necessary in self-defence to repel an immediate unlawful life-threatening attack against themselves or another person, in accordance with the national legislation of the Republic of Serbia.

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7. The competent authority of the Republic of Serbia may, upon request, communicate relevant information contained in its national databases to members of the team if necessary for fulfilling operational aims specified in the Operational Plan and for implementing actions. The members of the team may be communicated only information concerning relevant facts which is necessary for performing their tasks and exercising their powers. The Agency may communicate to the competent authorities of the Republic of Serbia relevant information which is necessary for fulfilling operational aims specified in the operational plan and for implementing joint actions.

8. For the purposes of fulfilling operational aims specified in the Operational Plan and implementing actions, the competent authority of the Republic of Serbia and members of the team may exchange other information and findings.

9. The members of the team referred to in paragraphs 1 and 3 to 6 do not include the Agency staff.

Article 5

Suspension and Termination of the Action

1. The Executive Director of the Agency may suspend or terminate the action, after informing the competent authority of the Republic of Serbia in writing, if the provisions of this Agreement or of the Operational Plan are not properly implemented by the Republic of Serbia. The Executive Director shall notify the competent authority of the Republic of Serbia the reasons thereof.

2. The Republic of Serbia 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 properly implemented by the Agency or by any participating Member State. The competent authority of the Republic of Serbia shall notify the Agency the reasons thereof.

3. In particular, the Executive Director of the Agency or the Republic of Serbia may suspend or terminate the action in cases of breach of fundamental rights, violation of non-refoulement principle or of data protection rules.

4. Termination of the action shall not affect any rights or obligations arising out of the application of this Agreement or the Operational Plan before such termination.

Article 6

Privileges and Immunities of the members of the team

<p>1. Members of the team shall not be subject to any form of arrest or detention in the Republic of Serbia.</p>	<p><i>[Serbia wants to replace paragraphs 1 to 7 by the following:]</i></p>
<p>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 7 ¶.</p>	<p>1. During the action, members of the team shall be treated in the same way as police officers of the Republic of Serbia in respect of all criminal offences that might be committed against or by them.</p>
<p>3. Members of the team shall enjoy immunity from the criminal jurisdiction of the Republic of Serbia in respect of all acts performed by them in the exercise of their official functions. In the event of an allegation of a criminal offence being committed by the members 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 and the competent authority of the home Member State shall certify to the court whether the act in question was performed in the exercise of their official functions. If the act was committed in the exercise of official functions, proceedings shall not be initiated. If the act was not committed in the exercise of official functions, proceedings may continue. The certification by the Executive Director of the Agency and the competent authority of the home Member State shall be binding upon the jurisdiction of the Republic of Serbia which may not contest it. Privileges</p>	<p>2. The Republic of Serbia may, upon examining all circumstances of a specific case, decide to transfer criminal proceedings to the competent authorities of the home Member State.</p> <p>3. The Agency shall be held liable for any possible damage caused by members of the team while acting in the Republic of Serbia.</p>

granted to members of the team and immunity from the criminal jurisdiction of the Republic of Serbia 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 Republic of Serbia in respect of all acts performed by them in the exercise of their official functions. If any civil proceeding is instituted against members of the team before any the Republic of Serbia court, the Executive Director of the Agency and the competent authority of the home Member State shall be notified immediately. Prior to the initiation of the proceeding before the court, the Executive Director of the Agency and the competent authority of the home Member State shall certify to the court whether the act in question was performed by Members of the team in the exercise of their official functions. If the act was performed in the exercise of official functions, the proceeding shall not be initiated. If the act was not performed in the exercise of official functions, the proceeding may continue. The certification by the Executive Director of the Agency and the competent authority of the home Member State shall be binding upon the jurisdiction of the Republic of Serbia which may not contest it. The initiation of proceedings by members of the team shall preclude them from invoking immunity from jurisdiction in respect of any counter-claim directly connected with the principal claim.

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| <p>5. The immunity of members of the teams from the criminal, civil and administrative jurisdiction of the Republic of Serbia 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.</p> <p>6. Members of the team shall not be obliged to give evidence as witnesses.</p> <p>7. No measures of execution may be taken in respect of members of the team, except in the case where a criminal or civil proceeding not related to their official functions is instituted against them. Property of members of the team, which is certified by the Executive Director of the Agency to be necessary for the fulfilment of their official functions, shall be free from seizure for the satisfaction of a judgment, decision or order. In civil proceedings, members of the team shall not be subject to any restrictions on their personal liberty or to any other measures of constraint.</p> | |
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8. The immunity of members of the team from the jurisdiction of the Republic of Serbia shall not exempt them from the jurisdictions of the respective home Member States.
9. Members of the team shall, with respect to services rendered for the Agency, be exempt from social security provisions which may be in force in the Republic of Serbia.
10. Members of the team shall be exempt from any form of taxation in the Republic of Serbia 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 Republic of Serbia.

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11. The Republic of Serbia shall, in accordance with such laws and regulations as it may adopt, permit the entry of articles for the personal use of members of the team, and shall grant exemption from all customs duties, taxes, and related charges other than charges for storage, transport and similar services, in respect of such articles. the Republic of Serbia shall also allow the export of such articles.
12. The personal baggage of members of the team may be inspected only in cases of justified suspicions that it contains articles that are not for the personal use of members of the team, or articles whose import or export is prohibited by the law or subject to quarantine regulations of the Republic of Serbia. Inspection of such personal baggage shall be conducted only in the presence of the member(s) of the team concerned or an authorised representative of the Agency.

Article 7

Accreditation document

1. The Agency shall, in cooperation with the Republic of Serbia, issue a document in the official language(s) of the the Republic of Serbia and in an official language of the institutions of the European Union to each member of the team for the purposes of identification vis-à-vis the national authorities of the Republic of Serbia and as proof of the holder's rights to perform the tasks and exercise the powers referred to in Article 4 of this Agreement and in the Operational Plan. The document shall include the following information on the member: name and nationality; rank or job title; a recent digitised photograph and tasks authorised to be performed during the deployment. It shall also mention that the holder of this document has a right to reside in the territory of the Republic of Serbia for the duration of action without additional procedures.
2. The accreditation document, in combination with a valid travel document, grants the member of the team access to the Republic of Serbia 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.

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4. The Agency will before the start of the application of this Agreement and whenever its template is modified provide the competent authority of the Republic of Serbia with a specimen of the accreditation document referred to in paragraph 1.

Article 8

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 use an existing 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 9

Processing of personal data

1. Processing of personal data shall take place only in cases when it is necessary for the implementation of this Agreement by the Republic of Serbia, the Agency or participating Member States.

2. Processing of personal data by the competent authority of the Republic of Serbia shall be subject to its national laws.

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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 Republic of Serbia, 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 competent authority of the Republic of Serbia, 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 competent authority of the Republic of Serbia accordingly.

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

For the purpose of implementing this Agreement the competent authority of the Republic of Serbia shall keep a record of personal data collected and further processed under this Article. The data covered by this record shall be: name and surname, date of birth, place of birth, country of origin, number and type of personal or other documents, place and time of data processing and the reason for data collecting and processing.

The data contained in this record shall be kept for three years from the date of collection.

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6. The Agency, the participating Member States and the Republic of Serbia shall draw up a common report on the application of paragraphs 1 to 5 of this Article at the end of each action. This report shall be sent to the competent authorities of the Republic of Serbia, to the Agency's Fundamental Rights Officer and to the Data Protection Officer. The latter two shall report to the Executive Director of the Agency.

Article 10

Disputes and interpretation

1. All issues arising in connection with the ~~interpretation or~~ application of this Agreement shall be examined jointly by the competent authorities of the Republic of Serbia and by representatives of the Agency which shall be in constant contact with the European Commission as well as any Member State neighbouring the Republic of Serbia.

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

Article 11

Relation to other international obligations

This agreement shall be without prejudice to the obligations assumed by the Republic of Serbia or the European Union on the basis of international treaties and agreements in accordance with generally accepted principles of international law. ~~and shall be without prejudice to their application.~~

Article 12

Competent authorities for the implementation of the agreement

1. The competent authority for the implementation of this agreement in the Republic of Serbia shall be the Ministry in charge of Internal Affairs.
2. The competent authority of the European Union for the implementation of this agreement shall be the Agency.

Article 13

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

1. This Agreement shall be approved by the Parties in accordance with their own internal legal procedures.
2. This Agreement shall enter into force the first day of the second month following the date on which the Parties have notified each other of the completion of the internal legal procedures referred to in paragraph 1.
3. The Agreement may be terminated or suspended by written agreement between the Parties or unilaterally by either Party. In this last case, the Party wishing to terminate or suspend it shall notify in writing the other Party thereof through diplomatic channels. The termination or the suspension shall take effect the first day of the month following the month notification was given.

The suspension shall take effect ten (10) working days after receiving notification.

The termination shall take effect the first day of the second month following the month notification was given.

4. Notifications made in accordance with this Article shall be sent, in the case of the European Union, to the General Secretariat of the Council of the European Union and, in the case of the Republic of Serbia, to the Ministry of Foreign Affairs of the Republic of Serbia.

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

Signatures:

For the European Union	For the Republic of Serbia
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JOINT DECLARATIONS

ANNEX I: JOINT DECLARATION CONCERNING ARTICLE 2(2)

The Contracting Parties take note that the European Border and Coast Guard Agency will support the Republic of Serbia to control efficiently its border with any country that is not a member of the European Union by other means than deployments of European Border and Coast Guard teams with executive powers.

ANNEX II: JOINT DECLARATION CONCERNING ARTICLE 2(4)

The Contracting Parties take note that the present status agreement does not extend the scope of the Agreement between the European Community and the Republic of Serbia on the readmission of persons residing without authorisation ('EU-Serbia readmission agreement') and that it only aims at providing operational support for return operations carried out in accordance with the EU-Serbia readmission agreement.

**ANNEX III: 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 Republic of Serbia, on the other hand, conclude, without delay, bilateral agreements on actions carried out by the European Border and Coast Guard Agency in the Republic of Serbia in terms similar to those of this Agreement.
