



Brussels, 26 March 2019
(OR. en)

7196/19

Interinstitutional File:
2019/0057 (NLE)

FRONT 98
COWEB 42

LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: Status Agreement between the European Union and Bosnia and Herzegovina
on actions carried out by the European Border and Coast Guard Agency in
Bosnia and Herzegovina

STATUS AGREEMENT
BETWEEN THE EUROPEAN UNION
AND BOSNIA AND HERZEGOVINA
ON ACTIONS CARRIED OUT BY THE EUROPEAN BORDER
AND COAST GUARD AGENCY IN BOSNIA AND HERZEGOVINA

EU/BA/en 1

THE EUROPEAN UNION,

and

BOSNIA AND HERZEGOVINA,

hereinafter referred to as "the Parties",

WHEREAS situations may arise where the European Border and Coast Guard Agency, (hereinafter referred to as "Agency") coordinates the operational cooperation between 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 of the Agency will have executive powers on the territory of Bosnia and Herzegovina,

CONSIDERING that all actions of the Agency on the territory of Bosnia and Herzegovina should fully respect fundamental rights,

EMPHASIZING that this Agreement shall not affect the rights, obligations and responsibilities of the European Union and Bosnia and Herzegovina arising from the Agreement between the European Community and Bosnia and Herzegovina on the readmission of persons residing without authorisation¹,

HAVE DECIDED TO CONCLUDE THIS AGREEMENT:

¹ OJ EU L 334, 19.12.2007, p. 66.

ARTICLE 1

Scope

1. This Agreement shall cover aspects that are necessary for carrying out actions by the Agency that may take place on the territory of Bosnia and Herzegovina whereby members of a team of the Agency have executive powers which are in accordance with the law of Bosnia and Herzegovina.
2. This Agreement shall only apply in the territory of Bosnia and Herzegovina.
3. The status and delimitation under international law of the respective territories of the Member States of the European Union and Bosnia and Herzegovina is in no way affected neither by this Agreement nor by any act accomplished in its implementation by the Parties or on their behalf, including the establishment of operational plans or the participation in cross-border operations.

ARTICLE 2

Definitions

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

- (1) "action" means a joint operation, a rapid border intervention or a return operation;

- (2) "joint operation" means an action aimed at tackling illegal immigration or cross-border crime or aimed at providing increased technical and operational assistance at the border of Bosnia and Herzegovina neighbouring a Member State and deployed in the territory of Bosnia and Herzegovina;
- (3) "rapid border intervention" means an action aimed at rapidly responding to a situation of specific and disproportionate challenges at the borders of Bosnia and Herzegovina neighbouring a Member State and deployed in the territory of Bosnia and Herzegovina for a limited period of time;
- (4) "return operation" means an operation that is coordinated by the Agency and involves technical and operational reinforcement being provided by one or more Member States under which returnees from one or more Member States are returned either on a forced or voluntary basis to Bosnia and Herzegovina in line with the Agreement between the European Community and Bosnia and Herzegovina on the readmission of persons residing without authorisation;
- (5) "border control" means the control of persons carried out at a border in response exclusively to an intention to cross or the act of crossing that border, regardless of any other consideration, consisting of border checks at border crossing points and border surveillance between border crossing points;

- (6) "member of the team" means a member either of the Agency staff or of a team of border guards from participating Member States, including border guards who are seconded by Member States to the Agency to be deployed during an action. It may include other relevant staff of the Agency or from participating Member States whose functions are defined in the operational plan. Local staff are not considered as members of the team;
- (7) "Member State" means a Member State of the European Union;
- (8) "home Member State" means the Member State of which a member of the team is a border guard or other relevant staff member;
- (9) "personal data" means any information relating to an identified or identifiable natural person; an identifiable 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, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;
- (10) "participating Member State" means a Member State which participates in an action in Bosnia and Herzegovina 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 the Council Regulation (EC) No 2007/2004¹.

ARTICLE 3

Operational plan

1. An operational plan shall be drawn up by the Agency in close consultation with the competent authorities of Bosnia and Herzegovina for each joint operation or rapid border intervention. The operational plan, which has the agreement of the Member State or Member States bordering the operational area, shall be agreed between the Agency and the Border Police of Bosnia and Herzegovina (the "Border Police").

¹ Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (OJ EU L 349, 25.11.2004, p. 1).

2. The operational plan shall set out in detail the organisational 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; the operational concept; the type of technical equipment to be deployed; the implementation plan; the cooperation with other third countries, other agencies and bodies of the European Union 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; and the evaluation and the financial aspects of the joint operation or rapid border intervention.
3. The evaluation of the joint operation or of the rapid border intervention shall be conducted jointly by the Border Police and by the Agency.

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 laws and regulations of Bosnia and Herzegovina.

3. Members of the team may only perform tasks and exercise powers in the territory of Bosnia and Herzegovina under instructions from and, as a general rule, in the presence of the Border Police or other relevant staff of Bosnia and Herzegovina, except in exceptional circumstances to be set out in the operational plan. The Border Police shall issue, where appropriate, instructions to the team in accordance with the operational plan. The Border Police may authorise members of the team to act on its behalf in line with the exceptions envisaged in the operational plan.

The Agency, through its coordinating officer, may communicate its views to the Border Police on the instructions given to the team. In that case, the Border Police shall take those views into consideration and follow them to the extent possible.

4. Members of the team shall wear their own uniform while performing their tasks and exercising their powers. Members of the team shall also wear visible personal identification and a blue armband with the insignias of the European Union and of the Agency on their uniforms. For the purposes of identification vis-à-vis the national authorities of Bosnia and Herzegovina, members of the team shall at all times carry the accreditation document referred to in Article 6.

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 national law of the home Member State and of Bosnia and Herzegovina. The Border Police 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 conditions for their use. The Agency shall submit in advance to the Border Police 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 ammunition.

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 Border Police, in the presence of border guards or other relevant staff of the Border Police and in accordance with the national law of Bosnia and Herzegovina. The Border Police may authorise members of the team to use force in the absence of border guards or other relevant staff of Bosnia and Herzegovina in accordance with paragraph 3.

7. At the request of a member of the team, Bosnia and Herzegovina may provide data from its national databases, if necessary, for fulfilling operational aims specified in the operational plan. The use of that data shall be in accordance with the Law on protection of personal data and the Law on protection of classified information of Bosnia and Herzegovina.

ARTICLE 5

Suspension or termination of the action

1. The executive director of the Agency (the "executive director") may suspend or terminate the action, after informing the Border Police in writing, if this Agreement or the operational plan are not respected by Bosnia and Herzegovina, for example when instructions issued to the team are not in compliance with the operational plan. The executive director shall notify the Border Police the reasons for this.

2. The Border Police may suspend or terminate the action, after informing the Agency in writing, if this Agreement or the operational plan are not respected by the Agency or by any participating Member State. The Border Police shall notify the Agency the reasons for this.
3. In particular, the executive director or the Border Police may suspend or terminate the action in cases of breach of fundamental rights, of violation of the principle of *non-refoulement* 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

1. Papers, correspondence and assets of members of the team shall be inviolable, except in case of measures of execution which are permitted pursuant to paragraph 7.
2. Members of the team shall enjoy immunity from the criminal jurisdiction of Bosnia and Herzegovina in respect of the acts performed in the exercise of their official functions in the course of the actions carried out in accordance with the operational plan.

In the event of an allegation of a criminal offence being committed by a member of the team, the executive director 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, after careful consideration of any representation made by the competent authority of the home Member State and the competent authorities of Bosnia and Herzegovina, shall act expeditiously and certify whether the act in question was performed in the exercise of the member's official functions in the course of the actions carried out in accordance with the operational plan. Pending the certification by the executive director, the Agency and the home Member State shall refrain from taking any measure likely to jeopardise possible subsequent criminal prosecution of the member of the team by the competent authorities of Bosnia and Herzegovina.

Where the executive director certifies that the act was performed in the exercise of the official functions of the member of the team in the course of the actions carried out in accordance with the operational plan, the member of the team shall benefit from immunity from the criminal jurisdiction of Bosnia and Herzegovina for that act.

3. Members of the team shall enjoy immunity from the civil and administrative jurisdiction of Bosnia and Herzegovina in respect of all acts performed by them in the exercise of their official functions in the course of the actions carried out in accordance with the operational plan. If any civil or administrative proceeding is instituted against a member of the team before any court of Bosnia and Herzegovina, the executive director 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, after careful consideration of any representation made by the competent authority of the home Member State and the competent authorities of Bosnia and Herzegovina, shall act expeditiously and certify to the court whether the act in question was performed by the member of the team in the exercise of his official functions in the course of the actions carried out in accordance with the operational plan.

Where the executive director certifies that the act was performed in the exercise of the official functions of the member of the team in the course of the actions carried out in accordance with the operational plan, the member of the team shall benefit from immunity from the civil and administrative jurisdiction of Bosnia and Herzegovina for that act.

4. The immunity of the members of the team from the criminal, civil and administrative jurisdiction of Bosnia and Herzegovina may be waived by the home Member State as the case may be. Such a waiver shall always be an express waiver.

5. Members of the team who are witnesses may be obliged by the competent authorities of Bosnia and Herzegovina, while respecting to the provisions of paragraphs 2 and 3, to provide evidence in accordance with the procedural law of Bosnia and Herzegovina.

6. In case of damage caused by a member of the team in the exercise of the official functions in the course of the actions carried out in accordance with the operational plan, Bosnia and Herzegovina shall be liable for any damage.

In case of damage caused by gross negligence or wilful misconduct or if the act was not performed in the exercise of official functions by a member of the team from a participating Member State, Bosnia and Herzegovina may request, via the executive director, that compensation be paid by the participating Member State concerned.

In case of damage caused by gross negligence or wilful misconduct or if the act was not performed in the exercise of the official functions by a member of the team who is a staff member of the Agency, Bosnia and Herzegovina may request that compensation be paid by the Agency.

In case of damage caused in Bosnia and Herzegovina, due to force majeure, neither Bosnia and Herzegovina, nor the participating Member State, nor the Agency shall hold any responsibility.

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 held in the course of the actions carried out in accordance with the operational plan is instituted against them. Property of members of the team, which is certified by the executive director 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.

8. The immunity of members of the team from the jurisdiction of Bosnia and Herzegovina 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 Bosnia and Herzegovina.
10. Members of the team shall be exempt from any form of taxation in Bosnia and Herzegovina 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 Bosnia and Herzegovina.
11. Bosnia and Herzegovina shall, in accordance with its laws and regulations, permit the entry of articles for the personal use of members of the team, and shall grant exemption from all customs duties, taxes, and other duties or charges applicable to the import of goods other than charges for storage, transport and similar services, in respect of such articles. Bosnia and Herzegovina shall also permit 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 Bosnia and Herzegovina. 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 Bosnia and Herzegovina, issue a document in the official language(s) of Bosnia and Herzegovina 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 Bosnia and Herzegovina 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 accreditation document shall include the following information on the member of the team: name and nationality; rank or job title; a recent digitised photograph; and tasks authorised to be performed during the deployment. The accreditation document shall also include the dates of its issue and expiry.
2. The accreditation document, in combination with a valid travel document, grants the member of the team access to and the right to stay in Bosnia and Herzegovina without the need for a visa or prior authorisation.
3. The accreditation document shall be returned to the Agency at the end of the action.

ARTICLE 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 have a complaint mechanism to deal with allegations of a breach of fundamental rights committed by its staff in the exercise of their official functions in the course of an action carried out under this Agreement.

ARTICLE 9

Processing of personal data

1. Processing of personal data by members of the team shall only take place when necessary for and proportionate to the implementation of this Agreement by Bosnia and Herzegovina, the Agency or the participating Member States.
2. Processing of personal data by Bosnia and Herzegovina shall be subject to its national laws.

3. Processing of personal data for administrative purposes by the Agency and the participating Member State(s), including in case of transfer of personal data to Bosnia and Herzegovina, shall be subject to Regulations (EU) 2018/1725¹ and (EU) 2016/679² of the European Parliament and of the Council, to Directive (EU) 2016/680 of the European Parliament and of the Council³, and to measures adopted by the Agency for the application of Regulation (EU) 2018/1725 as referred to in Article 45 (2) of Regulation (EU) 2016/1624 of the European Parliament and of the Council⁴.

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 Bosnia and Herzegovina, 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 Bosnia and Herzegovina accordingly.

¹ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ EU L 295, 21.11.2018, p. 39).

² Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ EU L 119, 4.5.2016, p. 1).

³ Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ EU L 119, 4.5.2016, p. 89).

⁴ Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC (OJ EU L 251, 16.9.2016, p. 1).

5. Personal data collected for administrative purposes during the action may be processed by the Agency, the participating Member States and Bosnia and Herzegovina in line with the applicable data protection law.

6. The Agency, the participating Member States and Bosnia and Herzegovina shall draw up a common report on the application of paragraphs 1 to 5 at the end of each action. That report shall be sent to the competent authorities of Bosnia and Herzegovina and to the Agency's fundamental rights officer and data protection officer. They shall report to the executive director.

ARTICLE 10

Dispute settlement

1. All issues arising in connection with the application of this Agreement shall be examined jointly by representatives of the Border Police and of the Agency, which shall consult any Member State neighbouring Bosnia and Herzegovina.

2. Failing any prior settlement under paragraph 1, disputes concerning the application of this Agreement or its interpretation shall be settled exclusively by negotiation between Bosnia and Herzegovina and the European Commission, which shall consult any Member State neighbouring Bosnia and Herzegovina.

ARTICLE 11

Entry into force, duration, suspension and termination

1. This Agreement shall be subject to ratification, acceptance or approval by the Parties in accordance with their own internal procedures and 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 month during which the last notification provided for in paragraph 1 has been carried out.
3. This Agreement is concluded for an indefinite period. It 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. The termination or suspension shall take effect on the first day of the second month following the month during which the notification was given or the written agreement between the Parties was concluded.
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 Bosnia and Herzegovina, to the Ministry of Foreign Affairs of Bosnia and Herzegovina.

Done 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, Bosnian and Serbian languages, each text being equally authentic.

In the case of divergence between authentic language versions, the English language version shall prevail.

Done at ... on

For the European Union

For Bosnia and Herzegovina

JOINT DECLARATION CONCERNING ARTICLE 2(2) AND (3)

The Parties note that the European Border and Coast Guard Agency may support Bosnia and Herzegovina to control efficiently its border with any country that is not a Member State of the European Union by other means than deployments of European Border and Coast Guard teams with executive powers, such as: capacity building, trainings, risk analysis and deployment of experts without executive powers at the border crossing points.
