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Proposal for a

COUNCIL DECISION

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

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Article 54(3) of Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard¹ provides that the European Border and Coast Guard Agency may coordinate operational cooperation between Member States and third countries with respect to management of the external borders. In that respect, it can carry out actions at the external borders involving one or more Member States and a third country neighbouring at least one of those Member States, subject to the agreement of that neighbouring country, including on the territory of that third country.

Pursuant to Article 54(4) of Regulation (EU) 2016/1624, in cases where it is envisaged that European Border and Coast Guard teams will be deployed to a third country in actions where the team members will have executive powers, or where other actions in third countries require it, a status agreement shall be concluded by the Union with the third country concerned. The status agreement shall cover all aspects that are necessary for carrying out the actions. It shall in particular set out the scope of the operation, civil and criminal liability and the tasks and powers of the members of the teams. The status agreement shall ensure the full respect of fundamental rights during these operations.

On the basis of negotiating directives adopted by the Council, the European Commission has negotiated with the former Yugoslav Republic of Macedonia a status agreement with a view of setting up the legal framework that will allow acting immediately through setting up Operational Plans when quick reaction will be needed. While the migration flows in the region are much lower than in 2015/16, organised crime networks adapt quickly their routes and methods for smuggling migrants to any new circumstances. With the status agreement in place, the responsible authorities of the former Yugoslav Republic of Macedonia and the EU Member States, coordinated by the European Border and Coast Guard Agency, will be in a much better position to quickly respond to such possible developments.

The attached proposal for a Council Decision constitutes the legal instrument for concluding the status agreement between the European Union and the former Yugoslav Republic of Macedonia.

On 21 February 2017 the Commission received the Council authorisation to open negotiations with the former Yugoslav Republic of Macedonia on a status agreement on actions carried out by the European Border and Coast Guard Agency in the former Yugoslav Republic of Macedonia.

Negotiations on the status agreement have been opened on 15 September 2017, a second round took place on 24 November 2017 and a final round took place on 30 April 2018. Negotiations were successfully finalised by the initialling of the draft status agreement by Commissioner for Migration, Home Affairs and Citizenship D. Avramopoulos and the Minister of Interior of the former Yugoslav Republic of Macedonia O. Spasovski on 18 July 2018 in Brussels.

The Commission considers that the objectives set by the Council in its negotiating directives were attained and that the draft status agreement is acceptable for the Union.

Member States have been informed and consulted in the relevant Council Working Group.

¹ O.J. 16.9.2016, L 251/1.

- **Consistency with existing policy provisions in the policy area**

Thirteen Member States have bilateral agreements currently in place with the former Yugoslav Republic of Macedonia: those include a series of joint measures such as border checks, surveillance, patrolling, return etc. A working arrangement (which is being updated) between the Ministry of Internal Affairs of the former Yugoslav Republic of Macedonia and the European Border and Coast Guard Agency is also already in place, that includes in particular regular participation of the representatives from the Sector for Border Affairs and Migration in European Border and Coast Guard Agency coordinated joint operations, as observers on Member States' territory, upon agreement of the hosting Member State.

- **Consistency with other Union policies**

The European Agenda on Migration is built on four pillars. One of these is border management: this involves better management of the EU external border, in particular through solidarity towards those Member States that are located at the external borders, and improving the efficiency of border crossings. A reinforced control of the former Yugoslav Republic of Macedonia's borders will also positively impact the EU external borders, in particular the external borders of Bulgaria and Greece, as well as the borders of the former Yugoslav Republic of Macedonia. Further strengthening security at the external borders is also in line with the European Agenda on Security.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis for this proposal for a Council Decision is Article 77(2)(b) and (d) and Article 79(2)(c) TFEU in conjunction with Article 218(6)(a) TFEU.

The competence of the European Union to conclude a status agreement is explicitly provided for in Article 54(4) of Regulation (EU) 2016/1624 which states that, in cases where it is envisaged that European Border and Coast Guard teams will be deployed to a third country in actions where the team members will have executive powers, or where other actions in third countries require it, a status agreement shall be concluded by the Union with the third country concerned.

Pursuant to Article 3(2) TFEU, the Union shall have exclusive competence for the conclusion of an international agreement when its conclusion is provided for in a legislative act of the Union. Article 54(4) of Regulation (EU) 2016/1624 provides for the conclusion of a status agreement by the European Union with the third country concerned. Consequently, the attached agreement with the former Yugoslav Republic of Macedonia falls within the exclusive competence of the European Union.

- **Subsidiarity (for non-exclusive competence)**

Not applicable.

- **Proportionality**

A status agreement will allow for the deployment of European Border and Coast Guard teams by the European Border and Coast Guard Agency in the former Yugoslav Republic of Macedonia instead of bilateral deployment by Member States in case of a sudden influx of migrants.

A common approach is therefore needed to better manage the borders of the former Yugoslav Republic of Macedonia.

- **Choice of the instrument**

This proposal is in accordance with Article 218(6) (a) TFEU, which envisages the adoption by the Council of decisions on international agreements, after consent of the European Parliament. There exists no other legal instrument that could be used in order to achieve the objective expressed in the proposal.

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

- **Ex-post evaluations/fitness checks of existing legislation**

Not applicable

- **Stakeholder consultations**

Not applicable

- **Collection and use of expertise**

Not applicable

- **Impact assessment**

No impact assessment has been required for the negotiation on the status agreement.

- **Regulatory fitness and simplification**

As this will be a new agreement, no evaluation or fitness checks of existing instruments could be carried out.

- **Fundamental rights**

The draft status agreement contains provisions ensuring that fundamental rights of persons affected by the actions of members of the team involved in an action coordinated by the European Border and Coast Guard Agency are protected.

Provisions on fundamental rights are further explained under point 5 'Other elements'.

4. BUDGETARY IMPLICATIONS

The status agreement in itself does not entail financial implications. It is indeed the actual deployment of teams of the European Border and Coast Guard Agency on the basis of an Operational Plan and relevant Grant Agreement that will entail costs borne by the budget of the European Border and Coast Guard Agency. Future operations under the status agreement will be financed through the European Border and Coast Guard Agency's own resources.

The financial statement annexed to the proposal for a Regulation on a European Border and Coast Guard on the expenditure of the European Border and Coast Guard Agency evaluated at EUR 6.090 million on average each year for 2017-2020 the reinforced cooperation with third countries (including possible joint operations with neighbouring countries).

5. OTHER ELEMENTS

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

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

The former Yugoslav Republic of Macedonia and the European Border and Coast Guard Agency shall jointly evaluate each joint operation or rapid border intervention.

In particular, the European Border and Coast Guard Agency, the former Yugoslav Republic of Macedonia and the Member States participating to a specific action shall draw up a report at the end of each action on the application of provisions of the agreement including on the processing of personal data.

- **Explanatory documents (for directives)**

Not applicable.

- **Detailed explanation of the specific provisions of the proposal**

Scope of the agreement

Under this Agreement, the European Border and Coast Guard Agency shall be able to deploy European Border and Coast Guard teams with executive powers in the former Yugoslav Republic of Macedonia to carry out joint operations and rapid border interventions. While this agreement does not extend the scope of the Agreement between the European Community and the former Yugoslav Republic of Macedonia on the readmission of persons residing without authorisation ('EC-former Yugoslav Republic of Macedonia readmission agreement')², teams of the European Border and Coast Guard Agency shall also be allowed, in the course of a specific return operation, to assist the former Yugoslav Republic of Macedonia in identifying the persons to be readmitted to the former Yugoslav Republic of Macedonia, in line with the EC-former Yugoslav Republic of Macedonia readmission agreement.

European Border and Coast Guard teams may be deployed on the territory of the former Yugoslav Republic of Macedonia only in regions bordering the EU external borders and members of the team shall have executive powers in those areas of the former Yugoslav Republic of Macedonia as set out in the Operational Plan.

Launching an action

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

Operational Plan

Before each joint operation or rapid border intervention, an Operational Plan must be agreed between the Agency and the former Yugoslav Republic of Macedonia. That Operational Plan must also be agreed by the Member State or Member States bordering the operational area.

The 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 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.

² O.J., 19.12.2007, L 334/7.

Tasks and powers of the members of the team

As a general rule, the teams shall have the authority to perform the tasks and exercise the executive powers required for border control and return operations. They shall respect the laws and regulations of the former Yugoslav Republic of Macedonia.

Teams shall only act in the territory of the former Yugoslav Republic of Macedonia under instructions from and in the presence of border guards or other relevant staff of the former Yugoslav Republic of Macedonia.

Members of the team shall wear where appropriate their own uniform, visible personal identification and a blue armband with the insignias of the European Union and of the Agency on their uniforms. They shall also carry an accreditation document in order to be clearly identified by the national authorities of the former Yugoslav Republic of Macedonia.

Members of the team may carry service weapons, ammunition and equipment as authorised according to their own State's national law and the law of the former Yugoslav Republic of Macedonia. The Agency shall be beforehand notified by the authorities of the former Yugoslav Republic of Macedonia of the permissible service weapons, ammunition and equipment and of the relevant legal framework and conditions for their use.

Members of the team may use force, including service weapons, ammunition and equipment, with the consent of their own State and of the authorities of the former Yugoslav Republic of Macedonia, in the presence of border guards or other relevant staff of the former Yugoslav Republic of Macedonia, and in accordance with the national law of the former Yugoslav Republic of Macedonia. The authorities of the former Yugoslav Republic of Macedonia may authorise members of the team to use force also in the absence of their border guards. The Agency shall be beforehand notified by the authorities of the former Yugoslav Republic of Macedonia of the permissible use of physical force and means of coercion, as well as the conditions for their use.

Prior to the deployment of the deployment of the members of the team, the authorities of the the former Yugoslav Republic of Macedonia shall inform the Agency of the national databases which may be consulted in accordance with the national legislation of the former Yugoslav Republic of Macedonia. National databases shall be accessed only by authorized persons from the former Yugoslav Republic of Macedonia and data may only be shared with members of the team if necessary.

Suspension and termination of the action

Both the Agency and the authorities of the former Yugoslav Republic of Macedonia may suspend or terminate the action, if they deem that the provisions of the Agreement or of the Operational Plan are not respected by the other party.

Privileges and immunities of the members of the team

Members of the team shall enjoy immunity from the criminal jurisdiction of the former Yugoslav Republic of Macedonia in respect of all acts performed in the exercise of the official functions ('on duty') while they will not enjoy such immunity for acts committed 'off duty'.

The Operational Plan shall precisely set out the actions immune from the criminal jurisdiction of the former Yugoslav Republic of Macedonia.

In the event of an allegation of a criminal offence being committed by a member of the team, the Executive Director of the Agency, prior to the initiation of the proceeding before the

court, shall certify to the competent judicial authorities of the former Yugoslav Republic of Macedonia whether the act in question was performed in the exercise of their official functions or not. The Executive Director of the Agency shall take his or her decision after careful consideration of any representation made by the competent authority of the Member State which has deployed the border guard or other relevant staff member and the competent authorities of the former Yugoslav Republic of Macedonia. The certification by the Executive Director of the Agency shall be binding upon the jurisdiction of the former Yugoslav Republic of Macedonia.

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

A similar regime applies for the civil and administrative liability of the members of the team.

The immunity of members of the teams from the criminal, civil and administrative jurisdiction of the former Yugoslav Republic of Macedonia may be waived by the Member State which has deployed the concerned border guard or other relevant staff. Such a waiver must always be an express waiver.

The agreement provides for a mechanism aiming at compensating damages. The compensation mechanism is based on Article 42 of the Regulation (EU) 2016/1624 on the European Border and Coast Guard. If the damage is caused by a member of a team 'on duty', the former Yugoslav Republic of Macedonia shall be liable. If the damage is caused 'on duty' by a member of a team from a participating Member State by gross negligence or wilful misconduct or if the act was committed 'off duty', the former Yugoslav Republic of Macedonia may request via the Executive Director of the Agency that compensation be paid by the participating Member State concerned. If the damage is caused by a staff member of the Agency, the former Yugoslav Republic of Macedonia may request that compensation be paid by the Agency.

No measures of execution may be taken in respect of members of the team, except in the case where a civil proceeding not related to their official functions is instituted against them.

Property of members of the team necessary for the fulfilment of their official functions shall be free from seizure. 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.

Members of the team shall be exempt from social security provisions which may be in force in the former Yugoslav Republic of Macedonia with respect to services rendered for the Agency. They shall also be exempt from any form of taxation in the former Yugoslav Republic of Macedonia on the salary and emoluments paid to them by the Agency or their Member States, as well as on any income received from outside the former Yugoslav Republic of Macedonia.

The authorities of the former Yugoslav Republic of Macedonia shall permit the entry and exit 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 personal baggage of members of the team shall not be inspected, unless there are serious grounds or considering that it contains articles that are not for the personal use of members of the team, or articles whose import or export is prohibited by the law or subject to quarantine regulations of the former Yugoslav Republic of Macedonia. Inspection of such personal baggage shall be conducted only in the presence of the member(s) of the team concerned or an authorised representative of the Agency.

Papers, correspondence and property of members of the team shall be inviolable, except in case of measures of execution. Members of the team shall not be obliged to give evidence as witnesses.

Accreditation document

The Agency shall, in cooperation with the former Yugoslav Republic of Macedonia, issue an accreditation document to members of the team for the purposes of identification vis-à-vis the authorities of the former Yugoslav Republic of Macedonia as proof of the holder's rights to perform the tasks and exercise the powers conferred under this Agreement and in the Operational Plan. The accreditation document, in combination with a valid travel document, grants the member of the team access to the former Yugoslav Republic of Macedonia without the need for a visa or prior authorisation.

Fundamental rights

In the performance of their tasks and in the exercise of their powers, members of the team shall 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. 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 those fundamental rights and freedoms shall be proportionate to the objectives pursued by such measures and respect the essence of these fundamental rights and freedoms.

Each Party must have a complaint mechanism in place to deal with allegations of a breach of fundamental rights committed by its staff. The Agency has established the complaint mechanism referred to in Article 72 of the Regulation (EU) 2016/1624 on the European Border and Coast Guard and therefore satisfies this obligation. The Ombudsman of the former Yugoslav Republic of Macedonia could deal with such allegations, except if the authorities of the former Yugoslav Republic of Macedonia decide to set up a mechanism specifically tasked to deal with complaints lodged under this Agreement.

Processing of personal data

Personal data shall be processed by members of the team when necessary in accordance with the rules applicable to the Agency and the EU Member States. Processing of personal data by the authorities of the former Yugoslav Republic of Macedonia shall be subject to its national laws.

The Agency, the participating Member States and the authorities of the former Yugoslav Republic of Macedonia shall draw up a common report on the processing of personal data by members of the team at the end of each action. This report shall be sent to the Agency's Fundamental Rights Officer and Data Protection Officer, as well as to the competent authority for the protection of personal data in the former Yugoslav Republic of Macedonia. The Agency's Fundamental Rights Officer and Data Protection Officer shall report to the Executive Director of the Agency.

Disputes and interpretation

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

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

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

Competent authorities for the implementation of the Agreement

For the former Yugoslav Republic of Macedonia, the competent authority for the implementation of this Agreement is the Ministry of Internal Affairs. For the European Union, it is the European Border and Coast Guard Agency.

Joint Declaration

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

Proposal for a

COUNCIL DECISION

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

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 Parliament³,

Whereas:

- (1) In accordance with Council Decision 2018/XXX of [...], the status agreement between the European Union and the former Yugoslav Republic of Macedonia on actions carried out by the European Border and Coast Guard Agency in the former Yugoslav Republic of Macedonia, was signed by [...] on [...], subject to its conclusion.
- (2) Pursuant to Article 54(4) of Regulation (EU) 2016/1624, in cases where it is envisaged that European Border and Coast Guard teams will be deployed to a third country in actions where the team members will have executive powers, or where other actions in third countries require it, a status agreement shall be concluded by the Union with the third country concerned. The status agreement shall cover all aspects that are necessary for carrying out the actions.
- (3) Thanks to this status agreement European Border and Coast Guard teams, in accordance with the Operational Plan, can be swiftly deployed on the territory of the former Yugoslav Republic of Macedonia, respond to the current shift in migratory flows towards the coastal route and assist in external border management and fight against migrant smuggling.
- (4) This Decision constitutes a development of the provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC⁴; the United Kingdom is therefore not taking part in the adoption of this Decision and is not bound by it or subject to its application.
- (5) 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/EC⁵;

³ OJ C , , p.

⁴ Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis* (O.J. 1.6.2000, L 131/43).

⁵ Council Decision 2002/192/EC of 28 February 2002 concerning the Ireland's request to take part in some of the provisions of the Schengen *acquis* (O.J. 7.3.2002, L 64/20).

Ireland is therefore not taking part in the adoption of this Decision and is not bound by it or subject to its application.

- (6) 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.
- (7) The status agreement should therefore be approved on behalf of the European Union,

HAS ADOPTED THIS DECISION:

Article 1

The status agreement between the European Union and the former Yugoslav Republic of Macedonia on actions carried out by the European Border and Coast Guard Agency in the former Yugoslav Republic of Macedonia, is hereby approved on behalf of the Union.

The text of the agreement is attached to this Decision.

Article 2

The President of the Council shall designate the person empowered to give, on behalf of the European Union, the notification provided for in Article 12(5) of the Agreement.

Article 3

This Decision shall enter into force on the day of its adoption.

Done at Brussels,

For the Council
The President



Brussels, 5.9.2018
COM(2018) 611 final

ANNEX

ANNEX

to the

Proposal for a Council Decision

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

ANNEX
STATUS AGREEMENT

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

THE EUROPEAN UNION,

and THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA,

Hereinafter referred to as 'the Parties',

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

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

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

WHEREAS a legal framework in the form of a status agreement should be established for the situations where the team members of the European Border and Coast Guard Agency will have executive powers on the territory of the former Yugoslav Republic of Macedonia,

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

HAVE DECIDED TO CONCLUDE THE FOLLOWING AGREEMENT:

Article 1

Scope of the Agreement

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

actions in which the members of a team of the Agency and competent authorities in the former Yugoslav Republic of Macedonia participate.

2. This Agreement does not extend the scope of the Agreement between the European Community and the former Yugoslav Republic of Macedonia on the readmission of persons residing without authorisation ('EC-former Yugoslav Republic of Macedonia readmission agreement'). With regard to return operations as defined in Article 2(4), this Agreement only concerns the provision of operational support for return operations which are carried out in accordance with the EC-former Yugoslav Republic of Macedonia readmission agreement.
3. This agreement shall only apply in the territory of the former Yugoslav Republic of Macedonia and the members of the team shall have executive powers in those areas of the former Yugoslav Republic of Macedonia as set out in the Operational Plan.

Article 2

Definitions

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

- (1) 'action' means a joint operation, a rapid border intervention or a return operation;
- (2) 'joint operation' means an action aimed at tackling illegal immigration or cross-border crime or aimed at providing increased technical and operational assistance at the border of the former Yugoslav Republic of Macedonia neighbouring a Member State and deployment of Members of a team of the Agency on the territory of the former Yugoslav Republic of Macedonia for a given period of time, in accordance with the Operational Plan;
- (3) 'rapid border intervention' means an action aimed at rapidly responding to a situation of specific and disproportionate challenges, at the borders of the former Yugoslav Republic of Macedonia neighbouring a Member State for a limited period of time in accordance with the Operational Plan;
- (4) 'return operation' means an operation that is coordinated by the Agency and involves technical and operational reinforcement being provided by one or more Member States under which returnees from one or more Member States are returned either on a forced or voluntary basis to the former Yugoslav Republic of Macedonia in line

- with the Agreement between the European Community and the former Yugoslav Republic of Macedonia on the readmission of persons residing without authorisation;
- (5) 'border control' means the control of persons carried out at a border in response exclusively to an intention to cross or the act of crossing that border, regardless of any other consideration, consisting of border checks at border crossing points and border surveillance between border crossing points;
- (6) 'Member of a team' means a member either of the Agency staff or a member of a team of border guards from participating Member States, including border guards that are seconded by Member States to the Agency to be deployed during an action; it may include other relevant staff whose functions will be defined in the Operational Plan;
- (7) 'Member State' means a Member State of the European Union;
- (8) 'home Member State' means the Member State of which a member of a team is a border guard or other relevant staff member;
- (9) 'personal data' means any information relating to an identified or identifiable natural person; an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;
- (10) 'participating Member State' means a Member State which participates in the action in the former Yugoslav Republic of Macedonia by providing technical equipment, border guards and other relevant staff deployed as part of the team;
- (11) 'Agency' means the European Border and Coast Guard Agency established by Regulation (EU) 2016/1624 on the European Border and Coast Guard;
- (12) 'Executive powers of the members of a team' means powers necessary to perform the tasks required for border control and return operations which are conducted on the territory of the former Yugoslav Republic of Macedonia during the joint action as included in the Operational Plan.

Article 3

Launching the Action

1. The initiative to launch an action can be proposed to the competent authorities of the former Yugoslav Republic of Macedonia by the Agency. The competent authorities of the former Yugoslav Republic of Macedonia may request the Agency to consider launching an action.
2. Carrying out an action requires the consent of both competent authorities of the former Yugoslav Republic of Macedonia and the Agency.

Article 4

Operational Plan

An Operational Plan, that has the agreement of the Member State or Member States bordering the operational area, shall be agreed between the Agency and the former Yugoslav Republic of Macedonia for each joint operation or rapid border intervention. The plan shall set out in detail the organisation and procedural aspects of the joint operation or rapid border intervention, including a description and an assessment of the situation, with modus operandi, the operational aim and objectives, the type of technical equipment to be deployed, the implementation plan, the cooperation with other third countries, other Union Agencies and bodies or international organisations, the provisions in respect of fundamental rights including personal data protection, the foreseeable duration of the action, the geographical area where the action will take place, a description of the tasks, responsibilities, including the respect for fundamental rights, and special instructions for the members of the team, as well as permissible consultation of databases and permissible use of service weapons, ammunition and equipment in the former Yugoslav Republic of Macedonia, the composition of the members of the teams, as well as the deployment of other relevant staff, command and control provisions, including the names and ranks of the border guards of the former Yugoslav Republic of Macedonia responsible for cooperating with the Agency team members, in particular the names and ranks of the border guards of the former Yugoslav Republic of Macedonia who are in command during the period of deployment of the members of the team on the territory of the former Yugoslav Republic of Macedonia, and the place of the members of the team in the chain of command, the type of the technical equipment which will be used; the coordination, command, control, communication and reporting structure, the organisational arrangements and logistics, the evaluation and the financial aspects of the joint operation or rapid border intervention. The evaluation of the joint operation or of the rapid border intervention shall be conducted jointly by the former Yugoslav Republic of Macedonia and by the Agency.

Article 5

Tasks and powers of the members of the team

1. Members of the team shall have the authority to perform the tasks and exercise the executive powers required for border control and return operations.
2. Members of the team shall respect the laws and regulations of the former Yugoslav Republic of Macedonia.
3. Members of the team may only perform tasks and exercise powers on the territory of the former Yugoslav Republic of Macedonia under instructions from and, in the presence of border guards or other relevant staff of the former Yugoslav Republic of Macedonia. The former Yugoslav Republic of Macedonia shall issue where appropriate instructions to the team in accordance with the Operational Plan.

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

In cases where the instructions issued to the team are not in compliance with the Operational Plan, the Coordinating Officer shall immediately report to the Executive Director of the Agency. The Executive Director may take appropriate measures, including the suspension or the termination of the action.

4. Members of the team shall wear where appropriate their own uniform while performing their tasks and exercising their powers. Members of the team shall also wear where appropriate visible personal identification and a blue armband with the insignias of the European Union and of the Agency on their uniforms. For the purposes of identification vis-à-vis the national authorities of the former Yugoslav Republic of Macedonia, members of the team shall at all times carry an accreditation document referred to in Article 8.
5. While performing their tasks and exercising their powers, members of the team may carry service weapons, ammunition and equipment as authorised according to the home Member State's national law and the law of the former Yugoslav Republic of Macedonia. The former Yugoslav Republic of Macedonia shall, in advance of the deployment of the members of the team, notify the Agency of the permissible service

weapons, ammunition and equipment and of the relevant legal framework and conditions for their use.

6. While performing their tasks and exercising their powers, members of the team shall be authorised to use force, including service weapons, ammunition and equipment, with the consent of the home Member State and the former Yugoslav Republic of Macedonia, in the presence of border guards or other relevant staff of the former Yugoslav Republic of Macedonia and in accordance with the national law of the former Yugoslav Republic of Macedonia. The former Yugoslav Republic of Macedonia may authorise members of the team to use force in the absence of border guards or other relevant staff of the former Yugoslav Republic of Macedonia. The former Yugoslav Republic of Macedonia, in advance of the deployment of the members of the team, shall notify the Agency of the permissible use of physical force and means of coercion, as well as the conditions for their use.
7. The former Yugoslav Republic of Macedonia shall, in advance of the deployment of the members of the team, inform the Agency of the national databases which may be consulted. That consultation shall be carried out in accordance with the national legislation of the former Yugoslav Republic of Macedonia.

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

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

Article 6

Suspension and Termination of the Action

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

Operational Plan are not respected by the Agency or by any participating Member State. The former Yugoslav Republic of Macedonia shall notify the Agency the reasons thereof.

3. In particular, the Executive Director of the Agency or the Minister of Interior of the former Yugoslav Republic of Macedonia may suspend or terminate the action in cases of breach of fundamental rights, violation of *non-refoulement* principle or of data protection rule.
4. Termination of the action shall not affect any rights or obligations arising out of the application of this Agreement or the Operational Plan before such termination.

Article 7

Privileges and immunities of the members of the team

1. The privileges and immunities granted to the members of the team of the Agency aim at ensuring successful exercise of their official functions in the course of the actions carried out in accordance with the Operational Plan on the territory of the former Yugoslav Republic of Macedonia.
2. Papers, correspondence and property of members of the team shall be inviolable, except in case of measures of execution which are permitted pursuant to paragraph 8.
3. Members of the team shall enjoy immunity from the criminal jurisdiction of the former Yugoslav Republic of Macedonia in respect of all acts performed by them in the exercise of their official functions in the course of the actions carried out in accordance with the Operational Plan.

In the event of an allegation of a criminal offence being committed by a member of the team, the Executive Director of the Agency and the competent authority of the home Member State shall be notified immediately. Prior to the initiation of the proceeding before the court, the Executive Director of the Agency shall, after careful consideration of any representation of the competent authority of the home Member State and the competent authorities of the former Yugoslav Republic of Macedonia, certify to the competent judicial authorities of the former Yugoslav Republic of Macedonia whether the act in question was performed in the exercise of their official functions in the course of the actions carried out in accordance with the Operational Plan. Pending this certification, the Agency and the home Member State shall refrain from taking any measure likely to jeopardise possible subsequent criminal

prosecution of the member of the team by the competent authorities of the former Yugoslav Republic of Macedonia.

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

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

4. Members of the team shall enjoy immunity from the civil and administrative jurisdiction of the former Yugoslav Republic of Macedonia in respect of all acts performed by them in the exercise of their official functions in the course of the actions carried out in accordance with the Operational Plan.

If any civil proceeding is instituted against members of the team before any court of the former Yugoslav Republic of Macedonia, the Executive Director of the Agency and the competent authority of the home Member State shall be notified immediately. Prior to the initiation of the proceeding before the court, the Executive Director shall, after careful consideration of any representation of the competent authority of the home Member State and of the competent authority of the former Yugoslav Republic of Macedonia, certify to the competent judicial authorities of the former Yugoslav Republic of Macedonia whether the act in question was performed by Members of the team in the exercise of their official functions in the course of the actions carried out in accordance with the Operational Plan.

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

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

5. The immunity of members of the teams from the criminal, civil and administrative jurisdiction of the former Yugoslav Republic of Macedonia in accordance with paragraphs 3 and 4 of this article may be waived by the home Member State as the case may be. Such a waiver must always be an express waiver.
6. Members of the team shall not be obliged to give evidence as witnesses.
7. In case of damage caused by a member of a team in the exercise of official functions in the course of the actions carried out in accordance with the Operational Plan, the former Yugoslav Republic of Macedonia shall be liable for any damage.

In case of damage caused by gross negligence or wilful misconduct or if the act was not committed in the exercise of official functions by a member of the team from a participating Member State, the former Yugoslav Republic of Macedonia may request, via the Executive Director of the Agency, that compensation be paid by the participating Member State concerned.

In case of damage caused by gross negligence or wilful misconduct or if the act was not committed in the exercise of official functions by a member of the team who is a staff member of the Agency, the former Yugoslav Republic of Macedonia may request that compensation be paid by the Agency.

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

Property of members of the team, which is certified by the Executive Director of the Agency to be necessary for the fulfilment of their official functions, shall be free from seizure for the satisfaction of a judgment, decision or order. In civil proceedings, members of the team shall not be subject to any restrictions on their personal liberty or to any other measures of constraint.

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

10. Members of the team shall, with respect to services rendered for the Agency, be exempt from social security provisions which are in force in the former Yugoslav Republic of Macedonia.
11. Members of the team shall be exempt from any form of taxation in the former Yugoslav Republic of Macedonia on the salary and emoluments paid to them by the Agency or the home Member States, as well as on any income received from outside the former Yugoslav Republic of Macedonia.
12. The former Yugoslav Republic of Macedonia shall, in accordance with laws and regulations in force, permit the entry of articles for the personal use of members of the team, and shall grant exemption from all customs duties, taxes, and related charges other than charges for storage, transport and similar services, in respect of such articles. The former Yugoslav Republic of Macedonia shall also allow the export of such articles.
13. The personal baggage of members of the team shall be exempt from inspection, unless there are serious grounds or considering that it contains articles that are not for the personal use of members of the team, or articles whose import or export is prohibited by the law or subject to quarantine regulations of the former Yugoslav Republic of Macedonia. Inspection of such personal baggage shall be conducted only in the presence of the member(s) of the team concerned or an authorised representative of the member (s) of the team.

Article 8

Accreditation document

1. The Agency shall, in cooperation with the former Yugoslav Republic of Macedonia, issue a document in the official languages of the Parties to each member of the team for the purposes of identification vis-à-vis the national authorities of the former Yugoslav Republic of Macedonia and as proof of the holder's rights to perform the tasks and exercise the powers referred to in Article 5 of this Agreement and in the Operational Plan. The document shall include the following information on the member: name and nationality; rank or job title; a recent digitised photograph and tasks authorised to be performed during the deployment.

2. The accreditation document, in combination with a valid travel document, grants the member of the team access to the former Yugoslav Republic of Macedonia without the need for a visa or prior authorisation.
3. The accreditation document shall be returned to the Agency at the end of the action.

Article 9

Fundamental Rights

1. Members of the team shall, in the performance of their tasks and in the exercise of their powers, fully respect fundamental rights and freedoms, including as regards access to asylum procedures, human dignity and the prohibition of torture, inhuman or degrading treatment, the right to liberty, the principle of non-refoulement and the prohibition of collective expulsions, the rights of the child and the right to respect for private and family life. While performing their tasks and exercising their powers, they shall not arbitrarily discriminate against persons on any grounds including sex, racial or ethnic origin, religion or belief, disability, age, sexual orientation or gender identity. Any measures interfering with fundamental rights and freedoms taken in the performance of their tasks and in the exercise of their powers shall be proportionate to the objectives pursued by such measures and respect the essence of these fundamental rights and freedoms.
2. Each Party shall have a complaint mechanism to deal with allegations of a breach of fundamental rights committed by its staff in the exercise of their official functions in the course of a joint operation, rapid border intervention or return operation performed under this Agreement.

Article 10

Processing of personal data

1. Processing of personal data shall only take place when necessary for the implementation of this Agreement by the former Yugoslav Republic of Macedonia, the Agency or participating Member States.
2. Processing of personal data by the former Yugoslav Republic of Macedonia shall be subject to its national laws.
3. Processing of personal data for administrative purposes by the Agency and the participating Member State(s), including in case of transfer of personal data to the

former Yugoslav Republic of Macedonia, shall be subject to Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters and measures adopted by the Agency for the application of Regulation (EC) No 45/2001 as referred to in Article 45 (2) of Regulation (EU) 2016/1624.

4. In case the processing involves the transfer of personal data, Member States and the Agency shall indicate, at the moment of transferring personal data to the former Yugoslav Republic of Macedonia, any restrictions on access to it or use of it, in general or specific terms, including as regards transfer, erasure or destruction. Where the need for such restrictions becomes apparent after the transfer of personal data, they shall inform the former Yugoslav Republic of Macedonia accordingly.
5. Personal data collected for administrative purposes during the action may be processed by the Agency, the participating Member States and the former Yugoslav Republic of Macedonia in line with the applicable data protection legislation.
6. The Agency, the participating Member States and the former Yugoslav Republic of Macedonia shall draw up a common report on the application of paragraphs 1 to 5 of this Article at the end of each action. This report shall be sent to the Agency's Fundamental Rights Officer and Data Protection Officer, as well as to the competent authority for the protection of personal data in the former Yugoslav Republic of Macedonia. The Agency's Fundamental Rights Officer and Data Protection Officer shall report to the Executive Director of the Agency.

Article 11

Disputes and interpretation

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

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

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

Article 12

Entry into force, duration and termination of the Agreement

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

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

4. This Agreement may be amended at any time by mutual consent of both Parties in writing. Amendments shall enter into force in accordance with paragraph 1 of this Article.
5. Notifications made in accordance with this Article shall be sent, in the case of the European Union, to the General Secretariat of the Council of the European Union and, in the case of the former Yugoslav Republic of Macedonia, to the Ministry of Foreign Affairs.

Article 13

Relation with other agreements

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

Article 14

Competent authorities for the implementation of the agreement

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

**JOINT DECLARATION WITH REGARD TO ICELAND, NORWAY,
SWITZERLAND AND LIECHTENSTEIN**

The Contracting Parties take note of the close relationship between the European Union and Norway, Iceland, Switzerland and Liechtenstein, particularly by virtue of the Agreements of 18 May 1999 and 26 October 2004 concerning the association of those countries with the implementation, application and development of the Schengen acquis.

In such circumstances it is desirable that the authorities of Norway, Iceland, Switzerland and Liechtenstein, on the one hand, and the former Yugoslav Republic of Macedonia, on the other hand, conclude, without delay, bilateral agreements on actions carried out by the European Border and Coast Guard Agency in the former Yugoslav Republic of Macedonia in terms similar to those of this Agreement.

JOINT DECLARATION

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

Com 611 (2018)

Information Note

1. Proposal

COM(18) 611: Proposal for a Council Decision on the conclusion of the status agreement between the European Union and the former Yugoslav Republic of Macedonia on actions carried out by the European Border and Coast Guard Agency in the former Yugoslav Republic of Macedonia

2. Date of Commission document

5/9/18

3. Number of Commission document

COM (2018) 611

4. Number of Council document:

0318/18

5. Dealt with in Brussels by

Justice & Home Affairs, Frontiers Working Group

6. Department with primary responsibility

Department of Justice & Equality

7. Other Departments involved

Department of Foreign Affairs & Trade

8. Background to, Short summary and aim of the proposal

Under this Agreement, the European Border and Coast Guard Agency shall be able to deploy European Border and Coast Guard teams with executive powers in the former Yugoslav Republic of Macedonia to carry out joint operations and rapid border interventions. While this agreement does not extend the scope of the Agreement between the European Community and the former Yugoslav Republic of Macedonia on the readmission of persons residing without authorisation ('EC-former Yugoslav Republic of Macedonia readmission agreement')⁶, teams of the European Border and Coast Guard Agency shall also be allowed, in the course of a specific return operation, to assist the former Yugoslav Republic of Macedonia in identifying the persons to be readmitted to the former Yugoslav Republic of Macedonia, in line with the EC-former Yugoslav Republic of Macedonia readmission agreement.

European Border and Coast Guard teams may be deployed on the territory of the former Yugoslav Republic of Macedonia only in regions bordering the EU external borders and members of the team shall have executive powers in those areas of the former Yugoslav Republic of Macedonia as set out in the Operational Plan.

9. Legal basis of the proposal

The legal basis for this proposal for a Council Decision is Article 77(2)(b) and (d) and Article 79(2)(c) TFEU in conjunction with Article 218(6)(a)TFEU.

The competence of the European Union to conclude a status agreement is explicitly provided for in Article 54(4) of Regulation (EU) 2016/1624 which states that, in cases where it is envisaged that European Border and Coast Guard teams will be deployed to a third country in actions where the team members will have executive powers, or where other actions in third countries require it, a status agreement shall be concluded by the Union with the third country concerned.

Pursuant to Article 3(2) TFEU, the Union shall have exclusive competence for the conclusion of an international agreement when its conclusion is provided for in a legislative act of the Union. Article 54(4) of Regulation (EU) 2016/1624 provides for the conclusion of a status agreement by the European Union with the third country concerned. Consequently, the attached agreement with the former Yugoslav Republic of Macedonia falls within the exclusive competence of the European Union.

10. Voting Method

QMV

11. Role of the EP

Co-decision

12. Category of proposal

Of some significance

13. Implications for Ireland & Ireland's Initial View'

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/EC5;

Ireland is therefore not taking part in the adoption of this Decision and is not bound by it or subject to its application

14. Impact on the public

Not applicable

15. Have any consultations with Stakeholders taken place or are there any plans to do so?

Not applicable

16. Are there any subsidiarity issues for Ireland?

No

17. Anticipated negotiating period

Not known

18. Proposed implementation date

Not known

19. Consequences for national legislation

N/A

20. Method of Transposition into Irish law

N/A

21. Anticipated Transposition date

N/A

22. Consequences for the EU budget in Euros annually

The status agreement in itself does not entail financial implications. It is indeed the actual deployment of European Border and Coast Guard teams on the basis of an Operational Plan and relevant Grant Agreement that will entail costs borne by the budget of the European Border and Coast Guard Agency. Future operations under the status agreement will be financed through the European Border and Coast Guard Agency's own resources.

The financial statement annexed to the proposal for a Regulation on a European Border and Coast Guard on the expenditure of the European Border and Coast Guard Agency evaluated at EUR 6.090 million on average each year for 2017-2020 the reinforced cooperation with third countries (including possible joint operations with neighbouring countries).

23. Contact name, telephone number and e-mail address of official in Department with primary responsibility

*Mark Dunne, Border Management Unit, INIS, Dept. of Justice and Equality, 01-6167727,
mxdunne@justice.ie*

Date 3/10/18