



2018/0409(NLE)

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DRAFT RECOMMENDATION

on the proposal for a Council decision on the conclusion of the status agreement between the European Union and the Republic of Serbia on actions carried out by the European Border and Coast Guard Agency in Republic of Serbia

(COM(2018)0797 – C8-0000/0000 – 2018/0409(NLE))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Péter Niedermüller

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a Council decision on the conclusion of the status agreement between the European Union and the Republic of Serbia on actions carried out by the European Border and Coast Guard Agency in Republic of Serbia
(COM(2018)0797 – C8-0000/0000 – 2018/0409(NLE))**

(Consent)

The European Parliament,

- having regard to the proposal for a Council decision (COM(2018)0797),
 - having regard to the draft status agreement between the European Union and the Republic of Serbia (00000/2018),
 - having regard to the request for consent submitted by the Council in accordance with Article 77(2), points (b) and (d), Article 79(2), point (c), and Article 218(6), second subparagraph, point (a), of the Treaty on the Functioning of the European Union (C8 - 0000/2018),
 - having regard to Rule 99(1) and (4) and Rule 108(7) of its Rules of Procedure,
 - having regard to the recommendation of the Committee on Civil Liberties, Justice and Home Affairs (A8-0000/2019),
1. Gives its consent to conclusion of the agreement;
 2. Instructs its President to forward its position to the Council, the Commission and the governments and parliaments of the Member States and of the Republic of Serbia.

EXPLANATORY STATEMENT

a. Background

The proposed Council Decision aims to approve the Status Agreement between the European Union and the Republic of Serbia on actions carried out by the European Border and Coast Guard Agency ('the Agency') in the Republic of Serbia as foreseen in the Regulation (EU) 2016/1624 on the European Border and Coast Guard.

The aforementioned Regulation foresees different possibilities for the Agency to cooperate with third countries. The concept of a status agreement is to provide a legally binding framework for the operations of the Agency where team members with executive powers would be deployed to the territory of the third country. Article 54(4) of Regulation (EU) 2016/1624 explicitly provides 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.

The purpose of the status agreement is to provide a legally binding framework that should set out the scope of the operation, the rules on civil and criminal liability, and the tasks and powers of the deployed members of the teams. The status agreements should also guarantee the full respect of fundamental rights and should establish dedicated complaints mechanisms to be used in case of fundamental rights violations during these operations.

The Status Agreement with the Republic of Serbia is the second such agreement concluded with a Western Balkan country, after the agreement with Albania.

b. Position of the Rapporteur

The Rapporteur considers that the conclusion of formal, legally-binding agreements in the framework of cooperation between the Agency and third countries - as opposed to the conclusion of informal working arrangements - is crucial to ensure transparency, public scrutiny and democratic oversight on such cooperation. Any such agreements concluded between the European Union and third countries regarding cooperation between the Agency and that third country should be considered carefully, have an added value for the Union, and be strictly necessary and proportionate in terms of purpose and content.

Hence, the conclusion of status agreements is crucial, not only in order to ensure transparency and accountability of the Agency's operational cooperation with third countries, but also in order to ensure a clear framework for cooperation with third countries on the management of the European Union's external borders.

The Status Agreement to which the Parliament is asked to give its consent would allow for joint operations, rapid border interventions and/or return operations to take place on the territory of Serbia with the involvement of the Agency. The return operations would relate solely to third country nationals being returned from the European Union to Serbia.

Under Article 3 of the Status Agreement, an operational plan must be agreed for each joint operation or rapid border intervention. That plan must set out the operational aims and

objectives of the action and include provisions on fundamental rights, including on personal data protection.

Under Article 5 the Executive Director of the Agency has the power to suspend or terminate any action in Serbia, in particular “in cases of breach of fundamental rights, violations of *non-refoulement* principle or of data protection rules.” Article 6 of the Status Agreement lays down detailed rules on the criminal and civil liability of the Agency and its staff in relation to actions undertaken in Serbia.

Article 8 of the Status Agreement is a fundamental rights provision requiring Members of the team (deployed to Serbia) “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.” This article also ensures that the principle of non-discrimination is respected.

When it comes to any future negotiations to establish status agreements, your Rapporteur would call on the Commission to carry out a fundamental rights assessment of the third country in question **prior** to engaging in the negotiations and to communicate promptly the result of such assessment to the European Parliament.

In addition, the Rapporteur would encourage the Commission, in the interests of transparency, and to allow the Parliament to make a proper assessment of the status agreements, to make available promptly all the documents that are necessary for the Parliament to carry out its institutional work and initiating the relevant consent procedures as per Rule 99(1) and (4), and Rule 108(7) of its Rules of Procedure, including the draft versions of the status agreements ahead of its conclusion.

Bearing in mind that your Rapporteur is also the Rapporteur for other status agreements of a similar nature, he notes that there are some substantive differences in the provisions of the different status agreements:

- A provision on the need to refrain from taking measures likely to jeopardise possible criminal proceedings is contained in only one of the status agreements.
- The status agreements have different wording regarding the exceptional right of Members of the Agency’s team to act on behalf of the third country, which could lead to legal uncertainty.
- Equally, the wording on the discrimination clause is not 100% consistent across the three Status Agreements.
- Regarding criminal liability, the binding nature of the Executive Director’s certification - as to whether the alleged criminal offence occurred while the team member was in the course of his/her duties - is not clarified in all the status agreements.
- There are differences in the status agreements regarding the obligation on other Members of the team to give evidence as witnesses in criminal proceedings.

Your Rapporteur calls on the Commission and the Agency to report promptly back to the Parliament - in a meaningful way - on any operational difficulties or divergences on the ground that arise as a result of these differences in the legal framework.

As a conclusion, your Rapporteur finds that the proposed Status Agreement is consistent with the model status agreement as provided for in the Commissions communication on the content and provisions that should be included in the final agreement.

As this agreement enters into implementation phase, the Parliament requests that the Agency promptly informs the European Parliament of the activities conducted as part of the implementation of the Status Agreement and reminds the Agency of its obligation to include an assessment of the cooperation with third countries in its annual reports in accordance with article 54(11) of Regulation (EU) 2016/1624.

In light of the above, the Rapporteur recommends that Parliament endorse the draft Council Decision text.