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Committee on Civil Liberties, Justice and Home Affairs

2018/0318(NLE)

25.10.2018

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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 former Yugoslav Republic of Macedonia on actions carried out by the European Border and Coast Guard Agency in the former Yugoslav Republic of Macedonia
(COM(2018)0611 – C8-0000/2018 – 2018/0318(NLE))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Bodil Valero

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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(COM(2018)0611 – C8-0000/2018 – 2018/0318(NLE))

(Consent)

The European Parliament,

– having regard to the proposal for a Council decision (COM(2018)0611),

– having regard to [draft agreement between the European Union and FYROM] (XXXXX/2018),

– having regard to the request for consent submitted by the Council in accordance with Article 77(2)(b) and (d), Article 79(2)(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 (A8-0000/2018),

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 former Yugoslav Republic of Macedonia.

EXPLANATORY STATEMENT

a. Background

The proposed Council Decision aims to approve the Status Agreement between the European Union and the Former Yugoslavian Republic of Macedonia (FYROM) on actions carried out by the European Border and Coast Guard Agency in FYROM 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 cover all aspects that are necessary for carrying out the actions of the Agency in third countries. Furthermore, it should set out the scope of the operation, 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 the establishment of dedicated complaints mechanisms to be used in case of fundamental rights violations during these operations.

The Status agreement with FYROM is the second agreement negotiations concluded with a third country in the series of status agreement negotiations started with the Western Balkan countries.

b. Position of the Rapporteur

The Rapporteur considers that the conclusion of formal, legally binding agreements in the framework of cooperation with third countries, as opposed to the conclusion of informal working arrangement, is of crucial importance in order to ensure transparency, public scrutiny and democratic oversight on such cooperation. However, any agreements concluded between the European Union and third countries on actions carried out by the European Border and Coast Guard Agency should be carefully considered, have an added value 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 European Border and Coast Guard 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 EU's external borders. The Status Agreement should also ensure the protection of Fundamental Rights and stress the duty of members of the team to fully respect fundamental rights and freedoms, specifically 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 within the scope of the agreement. Furthermore, they should systematically establish the

obligation to set up and operationalise an effective fundamental rights complaint mechanisms in line with Article 72 of Regulation (EU) 2016/1624, which would ensure the possibility of redress in case of violation of fundamental rights while carrying out operations in the framework of this cooperation.

In order to facilitate a functional and sound operationalisation of the Agency in the future regarding third country cooperation, the full respect of fundamental rights, data protection and privacy are to be taken fully into account in the future agreements as well. Satisfactory legal status of the team members with clear rules regarding criminal, civil and administrative liability are always to be included in order to ensure adequate accountability. When it comes to the future negotiations to establish status agreements, your Rapporteur calls for the Commission to always carry out a human rights/fundamental rights assessment of the third country in question prior to engaging in the negotiations and to promptly communicate the result of such assessment to the European Parliament.

Regarding the development of the European Border and Coast Guard regulation in the field of third country cooperation, the Rapporteur stresses the importance of avoiding the broadening the scope of cooperation with third countries beyond those that share external land border with a Member State, in line with the Agency's mandate to support Member States in the management of EU's external borders.

In view of the conclusion of upcoming Status Agreements with third countries, the Rapporteur calls on the Commission to promptly make available and public 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 Agreement ahead of its conclusion. This would ensure transparency and a proper public scrutiny and democratic oversight of such agreements.

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 European Border and Coast Guard 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.