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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	7 July 2023
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2023) 399 final
Subject:	Proposal for a COUNCIL DECISION on the signing, on behalf of the Union, and provisional application of the Agreement between the European Union and the Republic of Albania on operational activities carried out by the European Border and Coast Guard Agency in the Republic of Albania

Delegations will find attached document COM(2023) 399 final.

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Proposal for a

COUNCIL DECISION

on the signing, on behalf of the Union, and provisional application of the Agreement between the European Union and the Republic of Albania on operational activities carried out by the European Border and Coast Guard Agency in the Republic of Albania

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

One of the tasks of the European Border and Coast Guard Agency (the 'Agency') is to cooperate with third countries in relation to the areas covered by the European Border and Coast Guard Regulation (Regulation (EU) 2019/1896) (the 'Regulation') 'including through the possible operational deployment of border management teams in third countries'[1]. Specifically, the Agency, as part of the European Border and Coast Guard, is to ensure European integrated border management[2], one component of which is cooperation with third countries in the areas covered by the Regulation, focusing in particular on neighbouring third countries and countries of origin or transit for irregular migration[3]. The Agency may cooperate with the authorities of third countries competent in matters covered by the Regulation to the extent required for the fulfilment of its tasks[4] and may carry out actions related to European integrated border management on the territory of a third country subject to the agreement of that third country.

Pursuant to Article 73(3) of the Regulation, in circumstances requiring the deployment of border management teams from the European Border and Coast Guard standing corps to a third country where the members of the teams will exercise executive powers, a status agreement should be concluded by the Union with the third country concerned. Such a status agreement should be based on the model that the Commission has drawn up as required by Article 76(1) of that Regulation. The Commission adopted this model on 21 December 2021[5].

The Republic of Albania lies on the Western Balkans migration route, which sees significant irregular migration towards the European Union, both via land and across the Adriatic Sea. In 2022, more than 144 000 irregular border crossings and attempts were registered by the Agency at the European Union's external borders on the Western Balkan route. Irregular migrants are targeted by organised criminal groups engaged in people smuggling and are at great risk of human rights violations. The high level of irregular arrivals and asylum applications is also putting significant pressure on some European Union Member States, leading to the need for common, coordinated action at Union level.

Albania was the first country to agree on a status agreement with the European Union. This agreement, based on the previous EBCG Regulation (Regulation (EU) 2016/1624[6]), was signed in October 2018 and entered into force on 1 May 2019.[7]

Joint operations conducted on the basis of that status agreement are however limited to Albania's land borders with the European Union and portions of the Adriatic Sea. Acting

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1 Article 10(1)(u) of Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard.

2 Article 71(1) of Regulation (EU) 2019/1896.

3 Article 3(g) of Regulation (EU) 2019/1896.

4 Article 73(1) of Regulation (EU) 2019/1896.

5 Communication COM(2021) 829 - Model status agreement as referred to in Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624.

6 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 L 251, 16.9.2016, p. 1.

7 OJ L 46, 18.2.2019, p. 3.

within this limited framework, Frontex has launched two joint operations in Albania, Joint Operation Albania Land at Albania's land border with Greece (launched on 22 May 2019) and Joint Operation Albania Sea at Albania's sea border (launched on 24 March 2021). There are currently around 150 Frontex officers deployed in these joint operations which have resulted in improving border control by curbing irregular migration and fighting cross-border crime.

On 18 November 2022, and following the entry into force of Regulation (EU) 2019/1896 which extended the scope of the status agreements, the Commission received Council authorisation to open negotiations with the Republic of Albania as well as Montenegro, Serbia and Bosnia and Herzegovina, for an agreement on operational activities to be carried out by the European Border and Coast Guard Agency in those countries based on this new Regulation. On 30 November 2022, a meeting was organised by the Commission with the four aforementioned countries, in which the main novelties of the model status agreement were highlighted. The European Commission, on behalf of the European Union, and the Republic of Albania held formal negotiations in view of an agreement on 22 and 23 February 2023 in Tirana. The Commission considers that the objectives set by the Council in its negotiating directives were attained and that the agreement is acceptable for the Union.

The attached proposal for a Council Decision constitutes the legal basis for the signing of the Agreement between the European Union and the Republic of Albania on operational activities carried out by the European Border and Coast Guard Agency in the Republic of Albania .

Situation of the Schengen associated countries

The present proposal builds upon the Schengen *acquis* in the field of management of the external borders. The Union has nevertheless no power to conclude a status agreement with the Republic of Albania in a manner that binds Norway, Iceland, Switzerland and Liechtenstein. To ensure that border guards and other relevant staff sent by those countries to the Republic of Albania benefit from the same status as provided for in the future status agreement, joint declarations attached to the status agreement should state the desirability that similar agreements be concluded between the Republic of Albania and each of those associated countries.

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/EC[8]; Ireland is therefore not taking part in the adoption of this Decision and is not bound by it nor subject to its application. 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 nor subject to its application.

- **Consistency with other Union policies**

Reinforcing controls on the territory of the Republic of Albania will positively impact the management of the Union's external borders as well as the borders of the Republic of Albania itself. The conclusion of a status agreement would tie into the wider objectives and priorities

[8] Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen acquis, OJ L 64, 7.3.2002, p. 20.

for cooperation as set out in the European Union's Stabilisation and Association Agreement with the Republic of Albania.[9]

The conclusion of a status agreement could also support the wider efforts and commitments of the European Union to further develop cooperation and capabilities[10] in order to contribute to crisis response management and promoting convergence on foreign and security matters between the Union and the Republic of Albania.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The legal basis for this proposal is Article 77(2)(b) and (d) and Article 79(2)(c) TFEU in conjunction with Article 218(5) TFEU.

The competence of the European Union to conclude a status agreement is explicitly provided for in Article 73(3) of Regulation (EU) 2019/1896, which states that '[i]n circumstances requiring the deployment of border management teams from the standing corps to a third country where the members of the teams will exercise executive powers, a status agreement […] shall be concluded by the Union with the third country concerned'.

Pursuant to Article 3(2) of the Treaty on the Functioning of the European Union, 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 73(3) of Regulation (EU) 2019/1896 provides for a status agreement to be 'concluded by the Union with the third country concerned'. Consequently, the agreement to be signed and concluded with the Republic of Albania falls within the exclusive power of the European Union. In accordance with Article 73(3) of the Regulation (EU) 2019/1896, the proposed status agreement is based on the model agreement adopted by the Commission in December 2021[11], taking into account the previously agreed provisions of the existing status agreement with the Republic of Albania[12].

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

• Ex-post evaluations/fitness checks of existing legislation

As this will be a new agreement, no evaluation or fitness checks of existing instruments could be carried out. No impact assessment is required for the negotiation of a status agreement.

• Fundamental rights

As set out in recital 88 of Regulation (EU) 2019/1896, the Commission will assess the fundamental rights situation relevant to the areas covered by the status agreement in the Republic of Albania and inform the European Parliament thereof.

The envisaged agreement will contain practical measures related to the respect of fundamental rights and shall ensure that fundamental rights are fully respected during activities organised on the basis of the agreement. The agreement will provide for an independent and effective complaints mechanism in accordance with the relevant provisions of Regulation (EU)

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9 OJ L 107, 28.4.2009, p. 166.

10 Such as training, situational awareness, equipment, ability to react, staff deployment etc.

11 Communication COM(2021) 829.

12 OJ L 46, 18.2.2019, p. 3.

2019/1896 to monitor and ensure respect for fundamental rights in all the activities organised on the basis of the agreement.

- **Data protection**

The European Data Protection Supervisor will be consulted on the provisions of the status agreement related to the transfer of data if those provisions differ substantially from the model status agreement.

4. BUDGETARY IMPLICATIONS

A status agreement in and of itself does not entail any financial implications. The actual deployment of border guard teams on the basis of an operational plan would entail costs borne by the budget of the Agency. Future operations under a status agreement will be financed through the Agency's own resources as provided for in the Union's annual budget cycle.

The Union contribution for the European Border and Coast Guard Agency already forms part of the Union's budget as laid out in the Council Conclusions to the Multiannual Financial Framework Agreement.

5. OTHER ELEMENTS

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

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

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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) TFEU in conjunction with Article 218(5) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) In circumstances requiring the deployment of border management teams from the standing corps of the European Border and Coast Guard to a third country where the members of the teams will exercise executive powers, Article 73(3) of Regulation (EU) 2019/1896[13] calls for a status agreement to be concluded by the Union with the third country concerned on the basis of Article 218 of the Treaty on the Functioning of the European Union.

(2) On 18 November 2022, the Council authorised the Commission to open negotiations with the Republic of Albania for an agreement on operational activities carried out by the European Border and Coast Guard Agency in the Republic of Albania (the 'Agreement')[14].

(3) These negotiations were successfully concluded.

(4) 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/EC[15]; Ireland is therefore not taking part in the adoption of this Decision and is not bound by it or subject to its application,

(5) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark[16], 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. Given that this Decision builds upon the Schengen *acquis*, Denmark shall, in accordance with Article 4 of that Protocol, decide within a period of six months after the Council has decided on this Decision whether it will implement it in its national law,

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13 Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624, OJ L 295, 14.11.2019, p. 1.

14 OJ L 300, 21.11.2022, p. 23.

15 Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis*, OJ L 64, 7.3.2002, p. 20.

16 Protocol (No 22) on the position of Denmark, OJ C 326, 26.10.2012, p. 299.

(6) The Agreement should be signed on behalf of the Union, subject to its conclusion at a later date. The declaration attached to the agreement should be approved on behalf of the Union,

(7) With a view to ensuring the possibility of an urgent deployment of the European Border and Coast Guard standing corps on the territory of the Repblic of Albania, the Agreement should be applied as from the date of notification of the completion of internal procedures by the Parties to this effect.

HAS ADOPTED THIS DECISION:

Article 1

The signing of the Agreement between the European Union and the Republic of Albania on operational activities carried out by the European Border and Coast Guard Agency in the Republic of Albania (the 'Agreement'), is hereby approved on behalf of the Union, subject to the conclusion of the said Agreement.

The text of the Agreement is attached to this Decision.

Article 2

The Declaration attached to this Decision shall be approved on behalf of the Union.

Article 3

The Council Secretariat General shall establish the instrument of full powers to sign the Agreement, subject to its conclusion, for the person(s) indicated by the Commission.

Article 4

The Agreement shall be applied provisionally, in accordance with Article 22(2) of the Agreement, as from the date of notification of the completion of internal procedures by the Parties to this effect.

Article 5

This Decision shall enter into force on […][17]

Done at Brussels,

For the Council
The President

[17] The date of entry into force of the Agreement will be published in the *Official Journal of the European Union* by the General Secretariat of the Council.