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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	7 February 2024
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	SWD(2024) 20 final
Subject:	COMMISSION STAFF WORKING DOCUMENT Fundamental rights assessment of the Republic of Albania linked to the Proposal for a Council decision on the conclusion, on behalf of the Union, of the Agreement between the European Union and the Republic of Albania on the operational activities carried out by the European Border and Coast Guard Agency in the Republic of Albania of 7 July 2023 Accompanying the document Proposal for a COUNCIL DECISION on the conclusion, on behalf of the Union, 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 SWD(2024) 20 final.

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EUROPEAN
COMMISSION

Brussels, 7.2.2024
SWD(2024) 20 final

COMMISSION STAFF WORKING DOCUMENT

Fundamental rights assessment of the Republic of Albania linked to the Proposal for a Council decision on the conclusion, on behalf of the Union, of the Agreement between the European Union and the Republic of Albania on the operational activities carried out by the European Border and Coast Guard Agency in the Republic of Albania of 7 July 2023

Accompanying the document

Proposal for a
COUNCIL DECISION

on the conclusion, on behalf of the Union, 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

{COM(2023) 397 final/2}

Pursuant to Recital 88 of the European Border and Coast Guard ('EBCG') Regulation (the 'Regulation')[1], where the Commission recommends that the Council authorise it to negotiate a status agreement with a third country, it should assess the fundamental rights situation 'relevant to the areas covered by the status agreement in that third country'.

On 25 October 2022, the Commission adopted a recommendation for the Council to authorise the Commission to negotiate a status agreement with the Republic of Albania ('Albania'). On 18 November 2022 the Council authorised the opening of negotiations. The negotiations 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 ('the Agency') in the Republic of Albania (the 'Agreement') were successfully finalised on 23 February 2023. In accordance with Council Decision (EU) 2023/2105 of 7 September 2023 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[2], the Agreement[3] was signed on 15 September 2023, subject to the conclusion at a later date. The agreement will enter into force after it has been concluded by both contracting parties.

Frontex and the Albanian Ministry of Interior have had a working arrangement since 2009, which was renewed in 2021[4]. In addition, Frontex personnel are already deployed in Albania to support border management activities under the current Status Agreement[5]. Albania was the first third country to host a fully-fledged joint operation of Frontex. However, the 2019 Regulation provides for a broader scope of potential cooperation under a Status Agreement, particularly the potential deployment of the EBCG Standing Corps anywhere on the territory of the third country, rather than just along its borders with the European Union.

Since 22 May 2019, border management teams deployed by Frontex and their Albanian counterparts have cooperated in border management activities at the Greek-Albanian border and in the Adriatic Sea. In 2023, the Agency and the Albanian Ministry of the Interior signed a memorandum of understanding ('MoU') on enhancing cooperation on upholding fundamental rights. The MoU reiterates the need for regular exchange of information and recognises the need for both sides to assist one another in investigating complaints concerning any potential misconduct by Frontex or Albanian border management staff in the context of Frontex operational activities in Albania. In parallel, the Agency's Fundamental Rights Officer signed a separate

[1] Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard, OJ L 295, 14.11.2019, p. 1.
[2] Council Decision (EU) 2023/2105 of 7 September 2023 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, OJ L, 2023/2105, 05.10.2023.
[3] https://data.consilium.europa.eu/doc/document/ST-11944-2023-INIT/en/pdf
[4] Frontex, Working Arrangement on operational cooperation between the European Border and Coast Guard Agency (Frontex) and the Ministry of Interior of the Republic of Albania (MoI), 17 March 2021.
[5] Status Agreement between the European Union and the Republic of Albania on actions carried out by the European Border and Coast Guard Agency in the Republic of Albania, OJ L 46, 18.2.2019, p. 3.

agreement on cooperation and information exchange with Albania's A-status[6] national human rights institution and ombuds institution, the *People's Advocate of Albania*[7].

This assessment aims to determine the situation in Albania, in view of the operational activities of the Agency in this country, in particular whether the situation in Albania does not pose a risk of serious or persistent violations of fundamental rights or of international protection obligations being committed. The assessment is based on information, data, and reports available to the Commission on the protection of human rights in Albania, in particular the legal framework for the protection of such rights and obligations applicable in its legal order.

It must be further underlined that this assessment does not substitute the obligations placed on the Executive Director of the Agency and its Fundamental Rights Officer by Article 46 of the Regulation. Should the Executive Director consider that launching an activity in the Republic of Albania could lead to serious or persistent violations of fundamental rights or international protections obligations, it is their responsibility not to launch that activity. Similarly, where the Executive Director determines that such serious or persistent violations are occurring, it is solely their responsibility to withdraw the financing for the activity in question or suspend or terminate it in whole or in part as deemed appropriate to address the situation.

The Commission monitors closely the implementation of reforms in Albania and the country's alignment with the Charter of Fundamental Rights of the European Union, the European Union *acquis* and standards, including in the areas of rule of law and fundamental rights, and provides a detailed assessment of the state of play and the progress made by Albania in its enlargement package[8]. The Commission's 2022 Report on Albania[9] notes that Albania 'complies overall with international human rights instruments and has ratified most international conventions on the protection of fundamental rights'[10]. Moreover, the country's legal framework on asylum is found to be 'largely aligned with the EU *acquis* but needs updating and must provide a clear framework for managing and coordinating migration'[11]. Of relevance for this document, the report indicates specifically that in 2022, no progress has been made regarding referrals to asylum procedures and the implementation of return procedures, in line with the legal framework. The report also notes that the 'capacities of the Border and Migration Police to identify persons with specific needs

[6] National human rights institutions (NHRIs) that have been assessed by the Global Alliance of National Human Rights Institutions (GANHRI) as complying with the so-called 'Paris Principles' are accredited with 'A status'. 'A status' NHRIs have independent participation rights at the UN Human Rights Council, its subsidiary bodies and some General Assembly bodies and mechanisms. They are eligible for full membership of GANHRI. See: Accreditation - GANHRI

[7] Frontex, "Frontex and Albania boost cooperation on fundamental rights protection", 6 June 2023. Available at: https://www.frontex.europa.eu/media-centre/news/news-release/frontex-and-albania-boost-cooperation-on-fundamental-rights-protection-4yTxlP

[8] European Union Agency for Fundamental Rights, "Albania joins FRA as observer", 4 December 2020. Available at: http://fra.europa.eu/en/news/2020/albania-joins-fra-observer.

[9] Commission Staff Working Document, Albania 2022 Report. 12 October 2022. Available at: https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-10/Albania%20Report%202022.pdf

[10] European Commission, Key findings of the 2022 Report on Albania, 12 October 2022. Available at: https://ec.europa.eu/commission/presscorner/detail/en/country_22_6091

[11] European Commission, Key findings of the 2022 Report on Albania, 12 October 2022. Available at: https://ec.europa.eu/commission/presscorner/detail/en/country_22_6091

remain insufficient'[12]. While Frontex must take such dynamics into account when designing its operational activities in the country, it is also important to note that Frontex staff have had in-depth training and expertise in the identification of all categories of vulnerable persons and in the provision of appropriate support and referral. The enhanced fundamental rights provisions of the Regulation and of the new Agreement, in conjunction with the MoU, should contribute to improvements in the situation in Albania, including in terms of transparency and accountability. Overall, in order to fulfil its mandate and to prevent any potential involvement in violations of fundamental rights, the Agency should cooperate closely with its Fundamental Rights Office to ensure that its operational plans appropriately and proactively feature adequate safeguards and mitigating measures.

Furthermore, the Republic of Albania maintains open and ongoing dialogue with key international human rights organisations and monitoring bodies. In 2020, Albania joined the Management Board of the EU Agency for Fundamental Rights (FRA) as an Observer, also appointing a National Liaison Officer to connect FRA and Albania, allowing the country to benefit from the Agency's expertise and advice[13]. Similarly, Albania has benefitted from cooperation with the European Union Agency for Asylum (EUAA, then EASO), with which it agreed on a Roadmap for Cooperation 2020-2022[14]. The Roadmap overall succeeded in supporting the Albanian authorities in the areas of reception and asylum, and contributed to the 'first steps towards alignment of the asylum procedure in Albania with the [Common European Asylum System ('CEAS')] and EU standards'[15]. Through the Roadmap, the EUAA also provided important guidance on the improvement of reception conditions, addressing identified needs, such as lacking appropriate reception conditions, compared to EU standards and the need to provide separate facilities for unaccompanied minors[16]. In the context of the implementation of the Roadmap, Albania appears to have increasingly involved the International Organization for Migration, the UN High Commissioner for Refugees, the EU Delegation, and civil society[17], in what can be seen as a testament to the overall positive commitment of the Albanian authorities to involve external expertise to monitor and improve the fundamental rights standards of their reception and asylum system. Continued and enhanced operational cooperation with Frontex, as well as with its

[12] Commission Staff Working Document, Albania 2022 Report. 12 October 2022. Page 48. Available at: https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-10/Albania%20Report%202022.pdf

[13] EU Agency for Fundamental Rights, "Albania joins FRA as observer". 4 December 2020. Available at: http://fra.europa.eu/en/news/2020/albania-joins-fra-observer

[14] EASO, "Roadmap for cooperation between EASO and Albania (2020 – 2022): strengthening the asylum and reception systems in line with the Common European Asylum System and EU standards". Available at : https://euaa.europa.eu/sites/default/files/2022-02/AL_RM_Cover.pdf

[15] European Union Agency for Asylum, External evaluation of the EUAA's Roadmap for cooperation with Albania, 18 April 2023. Page 4. Available at: https://euaa.europa.eu/publications/external-evaluation-euaas-roadmap-cooperation-albania.

[16] European Union Agency for Asylum, External evaluation of the EUAA's Roadmap for cooperation with Albania, 18 April 2023. Page 11. Available at: https://euaa.europa.eu/publications/external-evaluation-euaas-roadmap-cooperation-albania.

[17] European Union Agency for Asylum, External evaluation of the EUAA's Roadmap for cooperation with Albania, 18 April 2023. Page 15. Available at: https://euaa.europa.eu/publications/external-evaluation-euaas-roadmap-cooperation-albania.

Fundamental Rights Office, should build upon this momentum, thereby also supporting Albania in its alignment with EU standards.

This assessment also takes into consideration Albania's ratification of international human rights instruments. These instruments represent a strong benchmark of commitment to human rights while providing an overview of applicable human rights standards in Albania. Albania has been a Member State of the Council of Europe since 13 July 1995 and has ratified the European Convention on Human Rights, making it subject to the jurisdiction of the European Court of Human Rights ('ECtHR'). The Republic of Albania is a party to the revised European Social Charter, the Council of Europe Convention on Action against Trafficking in Human Beings, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, and the Framework Convention for the Protection of National Minorities.

Albania is a party to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights and its Optional Protocol and Second Optional Protocol, and the International Covenant on Economic, Social and Cultural Rights, although it has not yet signed its Optional Protocol. The Republic of Albania is also a party to the Convention on the Elimination of All Forms of Discrimination Against Women and its Optional Protocol, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and to its Optional Protocol. The country has also concluded the Convention on the Rights of the Child and its Optional Protocols on the Involvement of Children in Armed Conflict and on the Sale of Children, Child Prostitution and Child Pornography. It is also a party to the Convention against Transnational Organized Crime, including its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children and its Protocol against the Smuggling of Migrants by Land, Sea and Air. Albania has also acceded to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, as well as the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. While it has become a party to the Convention on the Rights of Persons with Disabilities, Albania has not yet signed its Optional Protocol.

Overall, the legislative and institutional framework to ensure compliance with applicable fundamental rights norms appears to be largely in place and Albania continues to meet its international obligations on human rights. At the same time, as also flagged in the Commission's 2022 Report on Albania, Albania has been affected by recurrent and significant breaches of personal data[18]; therefore, additional efforts have to be made to fully implement the legal framework, including its alignment with the EU General Data Protection Regulation[19]. However, as concerns Frontex operations, the risk of the Agency being affected is low and can be further

[18] Commission Staff Working Document, Albania 2022 Report. 12 October 2022. Page 29. Available at: https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-10/Albania%20Report%202022.pdf

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

mitigated by ensuring that the operational plans reflect the safeguards proposed by the Agency's Data Protection Officer to best respond to the specific cases that may arise.

In addition, the presence of Frontex in Albania since 2019 has enabled the Fundamental Rights Officer to collect occasional testimonies of incidents including of irregular returns and alleged ill-treatment of migrants. These allegations have been reported mostly by migrants and civil society organisations, but also by officers of the Frontex Standing Corps who have witnessed or acquired knowledge of potential violations of fundamental rights. On the basis of this reporting, the Fundamental Rights Officer has launched a number of Serious Incident Reports concerning possible misconduct by staff of the Albanian authorities. The information gathered during these investigations, some of which may still be ongoing, also enables the Fundamental Rights Office to better advise the Agency on how to contribute to improving the situation on the ground, and to continue to prevent any involvement of the Agency's staff in any potentially illegal practices. As the Fundamental Rights Office mentions in its 2022 Annual Report, "no allegations were reported involving Frontex deployed staff as perpetrators in incidents that could be considered violations of fundamental rights"[20]. Additionally, the allegations in question appear to refer to individual incidents, and their frequency and nature do not presently appear to be systemic or pervasive. Nevertheless, these allegations require the continued attention of and follow-up by the national authorities concerned, which should prioritise conducting fact-finding investigations and implementing remedies and safeguards to prevent similar situations.

These alleged incidents also underline the need for Frontex to ensure that all necessary fundamental rights safeguards, particularly when suggested *ad hoc* by the Fundamental Rights Office, are appropriately reflected in the operational plan for its activities in the country and agreed upfront between Frontex and the Albanian authorities.

The operational plan, which sets out the conditions for the enhanced presence of Frontex in the country, would provide additional resources to the Albanian authorities in the management of the external borders in full compliance with fundamental rights. At the same time, the operational plan would also have to ensure that the Standing Corps and Fundamental Rights Monitors can carry out a more comprehensive mapping of any fundamental rights concerns, also enabling the Agency to monitor the situation in a continuous manner and respond appropriately, as well as to provide advice to national and Frontex staff on how to conduct border management activities in full compliance with fundamental rights. Lastly, deployments by Frontex at more external border sections of Albania entail broader access to the reporting mechanisms of the Agency, meaning the Serious Incident Reporting mechanism, the complaints mechanism, and the whistleblowing protection mechanism. Any complaints received would be investigated either by the Fundamental Rights Office or the People's Advocate of Albania, depending on the entity concerned, in line with the agreement between the two parties.

In the view of the Commission, although individual incidents of concern have been reported and should be investigated fully and transparently by the responsible authorities, overall the

[20] Frontex, 2023. The Fundamental Rights Officer Annual Report 2022, page 13. Available at: https://www.frontex.europa.eu/assets/fundamental/FRO_annual_report_2022.pdf

fundamental rights situation in the Republic of Albania at the time of the negotiation and conclusion of the status agreement with that country does not preclude operational activities on account of a risk of serious or persistent violations of fundamental rights or obligations concerning international protection. Nevertheless, any operational activity in the country must ensure that all relevant safeguards, as required by European Union and international law are in place. The Agency holds the responsibility to ensure that any operational activities in Albania are closely monitored, in line with Article 110 of the Regulation, to protect and promote their compliance with fundamental rights as enshrined in the Charter of Fundamental Rights of the European Union. Additionally, the Agency must ensure that anyone participating in a Frontex joint operation or any other activity conducted by it in Albania is fully cognisant of the fundamental rights standards with which they are obliged to comply.