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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
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To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
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Subject:	Proposal for a COUNCIL DECISION on the conclusion of the Agreement between the European Union and the Republic of San Marino on several aspects in the field of border management

Delegations will find attached document COM(2026) 443 final.

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Proposal for a

COUNCIL DECISION

on the conclusion of the Agreement between the European Union and the Republic of San Marino on several aspects in the field of border management

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Due to the specific geographical situation of the Republic of San Marino as an enclave in the area without controls at internal borders ("Schengen area"), it is necessary to provide an appropriate legal basis for lifting checks on persons at the borders between Italy and the Republic of San Marino and ensure legal certainty for the Republic of San Marino, in particular in economic terms, as well as to their citizens, residents, tourists, businesses and frontier workers.

The European Union's new Entry/Exit System, replacing manual stamping of passports with digital recording of third-country nationals entering the Schengen area, is in full operational deployment at all external borders of the 29 participating countries since 10 April 2026. In the absence of the Agreement, the full deployment of the Entry/Exit System would result in third-country national residents in the Republic of San Marino being automatically registered as overstayers in the Entry/Exit System due to the lack of their registered exit when leaving the Schengen area and entering the Republic of San Marino (given the geographical situation of the Republic of San Marino, systematic checks cannot always be carried out). The overstay would then have a negative impact on these *bona fide* third-country nationals, in particular, concerning their applications for a Schengen visa, or an ETIAS[1] travel authorisation, long-stay visa or residence permit. It is therefore necessary to provide a legal basis for residence permits issued by the Republic of San Marino to have a Schengen-wide effect, similar to residence permits issued by Schengen States.

The Agreement will also close a current security gap, as the issuance of residence permits by the Republic of San Marino to third-country nationals is not subject to any verification by the Member States while their holders can *de facto* access and move freely in the Schengen area without having a valid Schengen visa or in the future an ETIAS travel authorisation. The Agreement therefore includes rules for the Republic of San Marino to submit residence permit applications to Italy for a security check whereas the issuance of the residence permit by the Republic of San Marino is conditional on the assessment made by Italy.

The Commission Recommendation for the Council Decision authorising the opening of negotiations on an agreement between the European Union and the Republic of San Marino was adopted on 8 March 2024. The Council adopted the decision to authorise the opening of negotiations on 30 May 2024. The negotiations were completed on 26 January 2026.

The Commission conducted the negotiations in consultation with the Frontiers Working Party of the Council and kept the European Parliament fully informed.

• Consistency with existing policy provisions in the policy area

The agreement addresses the long-standing discrepancies between the EU legal framework encompassed in the Schengen *acquis* and the *de facto* specific situation of the Republic of San Marino as an enclave in the Schengen area and provides an appropriate legal basis for lifting border checks on persons at the borders between Italy and the Republic of San Marino. In the absence of the agreement systematic border checks would need to be carried out in accordance with the Schengen Borders Code[2].

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1 European Travel Information and Authorisation System ('ETIAS').

2 Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code).

The agreement also addresses the consequences of the full deployment of the Entry/Exit System and ETIAS on third-country nationals holding resident permits issued by the Republic of San Marino.

- **Consistency with other Union policies**

The Association Agreement with the Republic of San Marino[3] is being finalised. The Agreement on border management and the Association Agreement are legally separate and can be signed independently. Their scope covers different issues, except for short stays of EU citizens and their family members in the Republic of San Marino and the short stays of Sammarinese citizens in the Schengen area. Concerning those issues, the Agreement on border management is drafted in a flexible manner to ensure that its provisions cover both the situation where the Association Agreement is not (yet) applicable and the situation where the agreements apply in parallel.

A separate agreement with the same content on border management has also been negotiated with the Principality of Andorra and a proposal for a Council decision for conclusion is submitted in parallel.

2. LEGAL BASIS AND PROPORTIONALITY

- **Substantive legal basis**

Given that the main objectives and components of the Agreement between the European Union and the Republic of San Marino on several aspects in the field of border management are to provide an appropriate legal basis for the absence of border control between Italy and the Republic of San Marino; to provide rules for stay and residence of Union citizens and Sammarinese nationals in the Union and the Republic of San Marino, and to improve the security and trust as regards the residence permits issued by the Republic of San Marino to third-country nationals as well as the visa-free status of Sammarinese nationals, the substantive legal bases are Article 77(2), points (b) and (c), TFEU and Article 79(2) point (c) TFEU.

Given the subject matter of the envisaged agreement, it is appropriate for the Commission to submit the proposal to the Council.

- **Procedural legal basis**

In accordance with Article 218(6) TFEU, where the agreement relates to matters outside of the common foreign and security policy (CFSP), the Council is to adopt a decision concluding the agreement on a proposal by the Commission as negotiator.

Given that Article 77(2), points (b) and (c), TFEU and Article 79(2) point (c) TFEU are the substantive legal bases, the Council is to adopt the decision concluding the agreement after obtaining the consent of the European Parliament, in accordance with Article 218(6), point (a), TFEU.

In addition, Article 218(7) TFEU has been added as a legal basis as it is appropriate for the Council to authorise the Commission to approve on the EU's behalf certain modifications to the Agreement that are to be adopted by a simplified procedure or by a body set up by the Agreement.

[3] Agreement establishing an association between the European Union and its Member States, of the one part, and the Principality of Andorra and the Republic of San Marino, each as separate Party, of the other part.

Therefore, the procedural legal basis for the proposed decision on concluding the agreement is Article 218(6), second subparagraph, point (a), TFEU and Article 218(7) TFEU.

- **Union competence and Proportionality**

The Union is competent to conclude this international agreement with the Republic of San Marino on several aspects in the field of border management including granting Schengen-wide effect to the residence permits issued by the Republic of San Marino to third-country nationals.

This envisaged agreement is required to solve issues of falsely presumed overstay and to close the identified security gaps. The envisaged agreement does not go beyond what is necessary to achieve the objectives at stake since these cannot be achieved by the Member States alone.

- **Choice of the instrument**

This proposal for a Council decision is submitted in accordance with Article 218(6) TFEU, which envisages the adoption by the Council of a decision concluding the agreement. There exists no other legal instrument that could be used in order to achieve the objective pursued by this proposal.

3. OTHER ELEMENTS

- **Implementation by bodies established under the Agreement**

Article 10 establishes a Joint Committee that will oversee the implementation of the Agreement. It will in particular ensure the proper functioning and the effective implementation of the Agreement; endeavour to resolve any dispute arising from the interpretation, implementation or application of the Agreement; make recommendations and adopt decisions, where appropriate, and facilitate specific aspects of cooperation based on the Agreement and amend Annex I in order to replace the list of European Union legal acts to be implemented by the Republic of San Marino. The Joint Committee may also advise on any proposal to amend or modify the Agreement. The Joint Committee is comprised of representatives of the Union and of the Republic of San Marino who will meet at least once a year. The Joint Committee takes decisions by consensus. The decisions shall be binding on the Parties, which shall take all the necessary measures to implement them. The Member States applying the Schengen *acquis* in full under Union law, as well as the States that apply the Schengen *acquis* in full under international law and which have acceded to the Agreement may attend the meetings of the Joint Committee.

- **Implementation and application of the Agreement in the Union**

In accordance with Article 216(2) TFEU, agreements concluded by the Union are binding upon the institutions of the Union and its Member States.

Any dispute regarding the interpretation or application of the Agreement is to be resolved by consultations between the Parties in the Joint Committee. Disputes will be referred to national or international tribunal or third party for settlement, only if the Parties decide so as a result of these consultations.

The Agreement also provides the possibility for the Parties to take swift, autonomous and operational measures to protect their security interests, by suspending the implementation of their obligations in part or in whole.

In accordance with the Treaties, the Commission will also act on behalf of the Union at all steps of the procedure regarding dispute settlement under Part Three Dispute Settlement and Horizontal Provisions of the Agreement.

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

The Agreement is premised on the existence of democracy, the rule of law and respect for human rights, as well as a high level of personal data protection, all of which are defined as essential elements in the Agreement. A breach of any of these essential elements allows the Parties to suspend the operation of the Agreement in whole or in part. The Republic of San Marino also affirms its commitment to apply Union *acquis* on personal data protection.

The Agreement consists of three Parts (further divided into Titles and Chapters), and an Annex I setting out the list of legal acts that the Republic of San Marino shall implement, as follows:

Part One (Institutional Provisions) contains the provisions setting out the basis for cooperation, principles of interpretation and definitions and the institutional framework. It highlights that the Agreement is without prejudice to the sovereignty, jurisdiction, and territorial integrity of the Republic of San Marino and the Member States applying the Schengen *acquis* in full under Union law, as well as the States that apply the Schengen *acquis* in full under international law and which have acceded to the Agreement.

Part One outlines the essential elements of the relationship: safeguard of human rights and fundamental freedoms, democratic principles, rule of law including the Republic of San Marino's commitment to apply Union *acquis* on personal data protection.

Part One also establishes the Joint Committee responsible for managing and supervising the implementation and application of the Agreement, facilitating the resolution of disputes.

Part Two (Circulation of Persons) sets out the rules for the elimination of border checks on persons at borders between the Republic of San Marino and the Schengen area.

Residence permits issued by the Republic of San Marino will have a Schengen-wide effect, and will allow their holders visa-free access to the Schengen area for up to 90 days in any 180-day period in line with the relevant provisions of Union law[4] as well as exempt the holder from the obligation to register in the Entry/Exit System and from the obligation to hold a visa or ETIAS travel authorisation to enter and stay in the Schengen area. Acquiring and maintaining the right to reside in the Republic of San Marino will be conditional on the existence of a genuine connection with the country based on actual and regular physical presence (as per recent case law of the Court of Justice[5]).

Part Two also provides for a series of compensatory measures in order to strengthen the security of the Schengen area:

– The issuance or renewal of residence permits by the Republic of San Marino will be conditional on a security assessment to be carried out by Italy. This will include in particular checks in the relevant EU, national, and international databases. The scope does not include nationals of Iceland, Liechtenstein, Norway and Switzerland due to their free movement rights within the Union, as well as Monegasque and Andorran nationals as these persons already have access to the Schengen area on the basis of

[4] In particular, Articles 6(1), 21, 8(1), (2) Schengen Borders Code (Regulation (EU) 2016/399); Articles 18, 21, 22 Convention Implementing the Schengen Agreement (CISA).

[5] CJEU (Grand Chamber), (Case C-181/23), Judgment of 29 April 2025 – Commission v Malta (Citizenship by investment), ECLI:EU:C:2025:283.

their nationalities and are exempt from the Entry/Exit System and the obligation to have an ETIAS travel authorisation.

– Police cooperation between the Republic of San Marino, and the Schengen States will be strengthened, including in areas of information exchange and cross-border operational cooperation (cross-border surveillance, cross-border 'hot pursuit' of criminal suspects, the organisation of joint patrols and other joint operations).

The Agreement also includes provisions on the visa-free status of EU nationals in the Republic of San Marino and Sammarinese nationals in the Schengen area. The visa-free status is also part of the Association Agreement between the EU and the Republic of San Marino and the Principality of Andorra and once applicable, the Association Agreement will prevail. In the meantime, this Agreement ensures EU citizens' right to visa-free entry into and short stays in the Republic of San Marino. In addition, the already existing possibility for Sammarinese nationals to use the same lanes as EU citizens at external border crossing points was formalised.

Part Three (Dispute Settlement and Horizontal Provisions) contains provisions on dispute settlement and fulfilment of obligations, supervision and enforcement.

The Agreement establishes efficient and effective arrangements for the resolution of disputes and enforcement, in full respect of the autonomy of the Parties' respective legal orders. It provides for the possibility of autonomous measures, including the suspension of the application of the Agreement in whole or in part based on security grounds. It includes arrangements for dispute settlement first by the Joint Committee and, if consensus is not reached, by national or international tribunal or third party.

Part Four (Final Provisions) covers various elements ranging from the relationship with other agreements, amendments, review of the implementation, confidential information and classified and sensitive non-classified information, termination and territorial application. The Agreement includes an accession clause for countries that apply the Schengen *acquis* under international law (Denmark and the Schengen Associated Countries: Iceland, Liechtenstein, Norway, and Switzerland). The accession clause enables the five countries to accede to the Agreement with a declaration deposited at the Council, instead of concluding separate bilateral agreements with the Republic of San Marino. This solution results in a significant reduction of administrative burden for all parties and provides for legal transparency and equal terms for these countries when it comes to common provisions (e.g. Joint Committee and dispute resolution).

- **Text of the Agreement and notifications**

The text of the Agreement is submitted to the Council together with this proposal. The text of a declaration is submitted together with this proposal.

In accordance with the Treaties, it is for the Commission to proceed to make the notification provided for in Article 54 of the Agreement, in order to express the consent of the Union to be bound by the 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 Articles 77(2), points (b) and (c), and 79(2), point (c), in conjunction with Article 218(6), second subparagraph, point (a), and Article 218(7), thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament[1],

Whereas:

(1) In accordance with Council Decision […] of […][2], the Agreement between the European Union and the Republic of San Marino on several aspects in the field of border management (the 'Agreement') was signed on […], subject to its conclusion at a later date, and has been applied on a provisional basis since […], pending its entry into force.

(2) The Agreement allows for persons to cross the borders at any crossing point between San Marino and the States participating in the Schengen area, without being subject to border checks. The Agreement further establishes compensatory measures to safeguard the security of the Schengen area, including through a security assessment of third-country nationals applying for a residence permit in San Marino, as well as strengthened police cooperation. In circumstances where the subject matter of the Agreement is intrinsically linked to the functioning of the area without controls at internal borders, the Agreement allows for States that participate in the Schengen area, exclusively under international law, to accede to the Agreement.

(3) With a view to enabling the Union to take rapid and effective action to protect its interests in accordance with the Agreement, and in accordance with the conditions set out in the corresponding provisions of the Agreement, the Commission should be empowered to take, in consultation with the Council, remedial measures, such as the suspension of the Agreement, in cases of breaches of certain provisions of the Agreement or non-fulfillement of certain conditions, notably in the areas of circulation of persons.

(4) In circumstances where Denmark as well as certain third countries participate in the Schengen area without controls at internal borders exclusively under International law, it should be possible for those States to accede to the Agreement with a view to ensuring the coherence and well functioning of that area. It is also appropriate that a declaration of the Member States in relation to which the Agreement applies and the

[1] Consent published in OJ L, ….
[2] OJ L, ….

acceding States should be made to ensure that effective dialogue, consultation and coordination can take place between them.

(5) 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, the Kingdom of 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*, the Kingdom of Denmark is, in accordance with Article 4 of that Protocol, to decide within a period of six months after the Council has adopted this Decision whether it will implement it in its national law.

(6) This Decision constitutes a development of the provisions of the Schengen *acquis* in which Ireland does not take part in accordance with Protocol No 19 on the Schengen *acquis* integrated into the framework of the European Union, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, and, subject to the application of Article 4 of that Protocol, Ireland is not bound by it or subject to its application.

(7) As regards Cyprus, this Decision constitutes an act building upon, or otherwise relating to, the Schengen *acquis* within the meaning of Article 3(2) of the 2003 Act of Accession.

(8) The Agreement should be approved and the declaration should be made,

HAS ADOPTED THIS DECISION:

Article 1

The Agreement between the European Union and the Republic of San Marino on several aspects in the field of border management is hereby approved[3].

Article 2

The position to be taken, on behalf of the Union as regards decisions of the Joint Committee modifying Annex I to the Agreement pursuant to point (d) of Article 10(3) in conjunction with Article 39, shall be adopted by the Commission after consulting the Council.

Article 3

1. Decision of the Union to take the following measures under the Agreement shall be taken by the Commission in accordance with the conditions set out in the corresponding provisions of the Agreement:

   (a) the suspension of the implementation of obligations in accordance with Articles 42 and 43;

   (b) the suspension of the Agreement or application of measures as set out in Article 41;

   (c) the measures as consequence of a withdrawal as set out in Article 52(6).

2. The Commission shall inform the Council in a timely manner of its intention to adopt the proposed measures set out in paragraph 1 and take into account the possible views expressed. The Commission shall also inform the European Parliament, as appropriate.

[3] The text of the Agreement is published in OJ L, …., ELI … .

3. The Commission may also adopt measures reinstating the rights and obligations under the Agreement as they existed prior to the adoption of measures listed in paragraph 1.

Article 4

The declaration is hereby approved[4].

Article 5

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

Done at Brussels,

For the Council
The President

[4] The Declaration is published in OJ L, …, ELI….