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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, on behalf of the European Union, of the Agreement between the European Union and the Principality of Liechtenstein on supplementary rules in relation to the instrument for financial support for border management and visa policy, as part of the Integrated Border Management Fund

Delegations will find attached document COM(2023) 550 final.

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Proposal for a

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EXPLANATORY MEMORANDUM

In June 2018, the Commission brought forward a proposal for a Regulation of the European Parliament and of the Council establishing, as part of the Integrated Border Management Fund, the instrument for financial support for border management and visa [COM(2018/473)].

Regulation (EU) 2021/1148 of the European Parliament and of the Council establishing the Instrument for Financial Support for Border Management and Visa Policy for the period 2021-2027 (hereinafter referred to as 'the BMVI Regulation') was adopted on 7 July 2021.

The purpose of the BMVI Regulation is to express solidarity through financing assistance to those (Member) States that apply the Schengen acquis provisions on external borders. It constitutes a development of the Schengen acquis to which the countries associated to the implementation, application and further development of the Schengen acquis participate ('Schengen associated countries' or 'associated countries').

The Principality of Liechtenstein notified on 18 August 2021 its decision to accept the content of the BMVI Regulation and to implement it in its internal legal order. The Commission presents the present proposal prior to having received the notification of the Principality of Liechtenstein on fulfilment of its constitutional requirements to avoid shortening the time of the actual application of the BMVI Regulation in the Principality of Liechtenstein. In line with recital 75 of the BMVI Regulation, the conclusion of such arrangement should take place after the country concerned has informed in writing of the fulfilment of all its internal requirements.

Paragraph 6 of Article 7 of the BMVI Regulation provides that 'arrangements' should be made to specify the nature and modes of the participation in the BMVI of countries associated with the implementation, application and development of the Schengen acquis, in accordance with the relevant provisions of the respective association agreements. These arrangements take the form of agreements concluded by the Union with the Schengen associated countries in accordance with Article 216 TFEU.

The agreements should also define the financial contribution from these countries to the Union budget for the BMVI. The financial contributions should be calculated in accordance with each associated country's gross domestic product as a percentage of the gross domestic product of all participating states.

By virtue of the Schengen association agreements, the associated countries must fully accept the Union measures, including the BMVI Regulation, which develop or build upon the Schengen acquis.

The Union budget allocated to the BMVI should be implemented in accordance with Regulation (EU, Euratom) 2018/1046 (hereafter the 'Financial Regulation'). Schengen associated countries must also take the necessary measures to ensure compliance with the provisions relevant for the financial management and control which are laid down in the TFEU and in Union law that derives its legal basis from the TFEU.

The agreements also introduce specific mechanisms for swift adjustments to the agreements, in the event of changes to key Union legislation relevant to the implementation, such as the Financial Regulation.

For budgetary and financial controls, the Member States are subject to horizontal obligations (e.g. the competence of the Court of Auditors, of the European Anti-Fraud Office (OLAF), of the EPPO and of the Commission), either derived from the Treaty directly or from secondary Union legislation. These obligations apply to the Member States ipso facto and are therefore

not laid down in the BMVI Regulation. Consequently, these obligations need to be extended to the associated countries via the Agreement concerned by the present proposal.

The agreements also contain a provision on European Travel Information and Authorisation System (ETIAS). This is necessary in view of Article 86 of Regulation (EU) 2018/1240 of the European Parliament and of the Council of 12 September 2018 establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 1077/2011, (EU) No 515/2014, (EU) 2016/399, (EU) 2016/1624 and (EU) 2017/2226, which specifies that any remaining revenue generated by the ETIAS after covering the costs of its operation and maintenance will be assigned to the Union budget. To apply Article 86 of Regulation (EU) 2018/1240 in an equitable manner to all participating States to that Regulation, the associated countries' contribution to the thematic facility of the Instrument should be proportionally reduced if and when remaining revenue is assigned to the Union budget.

The Union should conclude agreements with each of the four Schengen associated countries. This proposal concerns the agreement with the Principality of Liechtenstein.

The text of the Agreement is similar to the ones for the other Schengen associated countries with some exceptions, mainly related to the management mode.

In accordance with the negotiation mandate, Liechtenstein will not have a programme, considering its specific situation (no external borders, burden to comply with the shared management regulatory framework, the Common Provisions Regulation[1], not proportionate to its initial allocation of EUR 8 million for the period 2021-2027). Liechtenstein will instead receive its allocation under direct management. The Agreement therefore provides that Liechtenstein will apply the entire Title VIII – Grants of the Financial Regulation. Unlike the other Schengen associated countries, there is no need for an adjustment to the mid-term review mechanism in the basic act, in the absence of any of the circumstances identified in Article 28 of the BMVI that would allow Liechtenstein to benefit. The Agreement sets out how the funding will become accessible to Liechtenstein (via grant agreements, annual exchange with the Commission on needs).

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The purpose of this proposal is the conclusion of an agreement between the Union and the Principality of Liechtenstein on this country's contribution to the instrument for financial support for Border Management and Visa Policy for the period 2021-2027 and on the supplementary rules necessary for this participation. It concerns the third generation of this kind of arrangement.

• Consistency with existing policy provisions in the policy area

Not applicable.

• Consistency with other Union policies

Not applicable.

[1] Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy (OJ L 231, 30.6.2021, p. 159).

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The present proposal for the conclusion of the Agreement is based on Articles 77(2), 218(6)(a) and Article 218(7) of the Treaty on the Functioning of the European Union.

• Subsidiarity (for non-exclusive competence)

In accordance with Article 3(2) of the Treaty on the Functioning of the European Union and as referred to in Article 7(6) of Regulation (EU) No 2021/1148, the proposal falls within exclusive competence of the Union and thus the subsidiarity principle does not apply.

• Proportionality

This proposal is necessary in order to implement the requirement enshrined in Article 7(6) of Regulation (EU) No 2021/1148 whereby arrangements shall be made with countries associated with the implementation, application and development of the Schengen *acquis* in order to specify the nature and modes of the participation in the Instrument for Financial Support for Border Management and Visa, as part of the Integrated Border Management Fund.

• Choice of the instrument

Not applicable.

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

• Ex-post evaluations/fitness checks of existing legislation

Not applicable.

• Stakeholder consultations

Not applicable.

• Collection and use of expertise

Not applicable.

• Impact assessment

Not applicable, considering that the proposal is linked to the programme management and aims at concluding an international agreement, which was negotiated on the basis of the negotiating directives established by the Council. The Principality of Liechtenstein will follow the rules defined in the Regulation establishing the Instrument for Financial Support for Border Management and Visa Policy and the applicable articles of the Financial Regulation similarly as EU Member States.

• Regulatory fitness and simplification

Not applicable.

• Fundamental rights

Not applicable.

4. BUDGETARY IMPLICATIONS

Article 10 and the Annex of the draft Agreement describe the provisions related to the annual financial contributions of the associated country to the budget of the Integrated Border Management Fund.

5. OTHER ELEMENTS

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

All monitoring, reporting, performance and evaluation requirements set in the Regulation (EU) 2021/1148 (will) apply to the Principality of Liechtenstein.

- **Explanatory documents (for directives)**

Not applicable.

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

Not needed.

In light of the abovementioned considerations, the Commission proposes that the Council approves, after having received consent from the European Parliament, the Agreement with the Principality of Liechtenstein on supplementary rules in relation to the instrument for financial support for border management and visa policy, as part of the Integrated Border Management Fund, for the period 2021 to 2027.

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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), in conjunction with Article 218(6)(a) and Article 218(7) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament[2],

Whereas:

(1) On 21 February 2022, the Council authorised the Commission to open negotiations[3] with Iceland, the Kingdom of Norway, the Swiss Confederation and the Principality of Liechtenstein for the arrangements on the financial contributions of the associated countries and the supplementary rules necessary for their participation, including provisions ensuring the protection of the Union's financial interests and the powers of audit of the Court of Auditors, to be concluded pursuant Regulation (EU) 2021/1148 of the European Parliament and of the Council[4]. The negotiations with the Principality of Liechtenstein were successfully concluded by the initialling of the Agreement on 16 June 2023.

(2) In accordance with Council Decision [XXX] of […][5], the Agreement between the European Union and the Principality of Liechtenstein on supplementary rules in relation to the instrument for financial support for border management and visa policy, as part of the Integrated Border Management Fund was signed on […], subject to its conclusion at a later date.

(3) Pursuant to Article 218(7) of the Treaty on the Functioning of the European Union, it is appropriate for the Council to authorise the Commission to approve modifications to the Agreement that are necessary with a view to adjusting references to the Financial Regulation whenever that Regulation is updated.

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2 OJ C , , p. .

3 Council decision (EU) 2022/442 of 21 February 2022 authorising the opening of negotiations with Iceland, the Kingdom of Norway, the Swiss Confederation and the Principality of Liechtenstein with a view to concluding agreements between the European Union and those countries on supplementary rules in relation to the Instrument for Financial Support for Border Management and Visa Policy, as part of the Integrated Border Management Fund (OJ L 90, 18.3.2022, p.116).

4 Regulation (EU) 2021/1148 of the European Parliament and of the Council of 7 July 2021 establishing, as part of the Integrated Border Management Fund, the Instrument for Financial Support for Border Management and Visa Policy (OJ L 251, 15.7.2021, p. 48).

5 OJ L , , p. .

(4) Regulation (EU) 2021/1148 builds upon the Schengen acquis, and Denmark, in accordance with Article 4 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, has decided to implement that Regulation in its national law. In accordance with Articles 1 and 2 of Protocol No 22, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application.

(5) 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[6]. Ireland is therefore not taking part in the adoption of this Decision and is not bound by it or subject to its application.

(6) The Agreement should be approved on behalf of the Union,

HAS ADOPTED THIS DECISION:

Article 1

The Agreement between the European Union and the Principality of Liechtenstein on supplementary rules in relation to the instrument for financial support for borders management and visa policy, as part of the Integrated Border Management Fund, for the period 2021 to 2027 is hereby approved on behalf of the Union.

The text of the Agreement is attached to this Decision.

Article 2

The Commission shall proceed, on behalf of the European Union, to the notification provided for in Article 13(1) of the Agreement, in order to express the consent of the European Union to be bound by the Agreement.

Article 3

The Commission is authorised to agree, on behalf of the Union, any modification of Article 2 paragraph 1, second subparagraph, (a) of the Agreement to take into account any amendment, repeal, replacement or recast of the Financial Regulation pursuant to Article 2, paragraph 2 letter (b) of the Agreement.

Article 4

This Decision shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels,

For the Council
The President

[6] 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).