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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: COMMISSION STAFF WORKING DOCUMENT Fundamental rights assessment of the Republic of North Macedonia 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 North Macedonia on operational activities carried out by the European Border and Coast Guard Agency in the Republic of North Macedonia of 23 September 2022

Delegations will find attached document SWD(2023) 33 final.

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COMMISSION STAFF WORKING DOCUMENT

Fundamental rights assessment of the Republic of North Macedonia 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 North Macedonia on operational activities carried out by the European Border and Coast Guard Agency in the Republic of North Macedonia of 23 September 2022

On 29 July 2022, the Council authorised the opening of negotiations on a status agreement with North Macedonia. The negotiations of the Agreement between the European Union and the Republic of North Macedonia on operational activities carried out by the European Border and Coast Guard Agency in the Republic of North Macedonia (the ‘Agreement’) were successfully concluded on 25 August 2022. In accordance with Council Decision (EU) 2022/1958 of 13 October 2022 on the signing, on behalf of the Union, of the Agreement between the European Union and the Republic of North Macedonia on operational activities carried out by the European Border and Coast Guard Agency in the Republic of North Macedonia, the Agreement was signed on 26 October 2022, subject to its conclusion at a later date. On 23 September 2022, the Commission adopted a proposal for a Council Decision on the conclusion, on behalf of the Union, of the Agreement between the European Union and the Republic of North Macedonia on operational activities carried out by the European Border and Coast Guard Agency in the Republic of North Macedonia of 23 September 2022¹.

Pursuant to Recital (88) of the European Border and Coast Guard Regulation² (the ‘Regulation’), 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”³. This assessment aims to determine the situation in North Macedonia in view of operational activities of the Agency in this country, in particular whether the situation in North Macedonia does not pose a risk of serious or persistent violations of fundamental rights or of international protection obligations being committed⁴.

This assessment is based on information, data and reports available to the Commission on the protection of human rights and the fulfilment of international protection obligations in North Macedonia, in particular, as regards the international legal framework for the protection of such rights and obligations applicable in its legal order. This assessment does not affect the overarching obligation of the Agency and, in particular, its Executive Director, to assess whether there are, or are likely to be, violations of fundamental rights or international protection obligations related to the activity concerned that are of a serious nature or are likely to persist and to respond accordingly, as required by the Regulation⁵.

The Commission monitors closely the implementation of reforms and the alignment with the EU *acquis* and standards, including in the areas of rule of law and fundamental rights. It provides a detailed assessment of the state of play and the progress made by North Macedonia in its enlargement package⁶. The 2022 Report on North Macedonia⁷ assessed that

¹ COM(2022) 492 final.

² 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, 24.11.2019, p. 1.

³ Recital 88 of Regulation (EU) 2019/1896.

⁴ Art. 46 of Regulation (EU) 2019/1896.

⁵ Art. 46(4) of Regulation (EU) 2019/1896 provides that “[T]he executive director shall, after consulting the fundamental rights officer and informing the Member State concerned, withdraw the financing for any activity by the Agency, or suspend or terminate any activity by the Agency, in whole or in part, if the executive director considers that there are violations of fundamental rights or international protection obligations related to the activity concerned that are of a serious nature or are likely to persist”.

⁶ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. 2022 Communication on EU Enlargement Policy. COM(2022) 528 final of 12.10.2022.

the “legal framework on the protection of fundamental rights is largely in line with European standards”⁸ and “North Macedonia has ratified most international human rights instruments”⁹. The launch of the European Union accession negotiations process with North Macedonia in July 2022 was a major breakthrough and marked the beginning of a new phase in relations between the European Union and North Macedonia. This was a clear recognition of the progress achieved by North Macedonia to advance the European Union reform agenda and to deliver tangible and sustained results, including under the "fundamentals cluster" which covers areas such as the rule of law, fundamental rights, and the functioning of democratic institutions. The Commission immediately launched the analytical review of the European Union *acquis* (screening) process, which is the first step in the negotiating process. The accession negotiations process is conducted in line with the revised enlargement methodology, which puts an even stronger focus on the rule of law and fundamental rights.

North Macedonia acceded to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. The country has been a member of the Council of Europe since 1995 and has ratified the European Convention on Human Rights, making it subject to the jurisdiction of the European Court of Human Rights. North Macedonia 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, the Framework Convention for the Protection of National Minorities, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of Persons with Disabilities, the Convention on the Rights of the Child, and the International Convention on the Elimination of All Forms of Racial Discrimination.

In 2021, the Parliament of North Macedonia ratified the Council of Europe Protocol amending Convention 108 for the Protection of Individuals with regard to Automatic Processing of Personal Data. The same year, the country became the 35th Member State party of the International Holocaust Remembrance Alliance. The country submitted periodic reports under the UN Convention on the Elimination of All Forms of Racial Discrimination, as well as the answers to the questions from periodic reports under the Convention on the Rights of Child.

North Macedonia’s Law on International and Temporary Protection is largely aligned with the European Union *acquis* and relevant implementing legislation is in place. However, the North Macedonia 2022 Report notes that a gap remains in the area of detention for people in irregular movement, as the current legislation does not provide alternatives to detention¹⁰. According to the annual report, “Registration of migrants needs to be carried out in a

⁷ Commission Staff Working Document, North Macedonia 2022 Report accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2022 Communication on EU Enlargement policy, SWD(2022)337 final of 12.10.2022. [North Macedonia Report 2022.pdf \(europa.eu\)](#).

⁸ Commission Staff Working Document, SWD(2022)337 final of 12.10.2022, p. 24. [North Macedonia Report 2022.pdf \(europa.eu\)](#).

⁹ Commission Staff Working Document, SWD(2022)337 final of 12.10.2022, p. 24. [North Macedonia Report 2022.pdf \(europa.eu\)](#).

¹⁰ Commission Staff Working Document, SWD(2022)337 final of 12.10.2022, p. 45. [North Macedonia Report 2022.pdf \(europa.eu\)](#).

systematic manner and protection-sensitive profiling needs to be improved. The country should establish a proper system for managing irregular movement and stop the practice of returning migrants outside a legal framework”. It goes on to note that “In the absence of effective readmission arrangements with the neighbouring countries, the practice of returning apprehended migrants outside of the legal and/or procedural framework to neighbouring countries continued and should be discontinued as a matter of priority”.

Amnesty International reports that, in 2021, some 19 000 individuals transited through North Macedonia, of which at least 388 were “detained in immigration detention centres” to serve as witnesses in proceedings against migrant smugglers¹¹. According to Amnesty International migrants were “pushed back into Greece, often after registration, many reporting abuse and ill-treatment”¹². A report by the Danish Refugee Council – citing other non-governmental organisations – alleges so-called “pushbacks” at the border between North Macedonia and Greece, sometimes accompanied by physical violence¹³.

The government of North Macedonia cooperates with the United Nations High Commissioner for Refugees, the International Organization for Migration and other such organisations to provide protection and assistance to refugees, asylum seekers, migrants and other persons of concern. In December 2021, the Parliament of North Macedonia adopted the “Resolution on Migration Policy and the Action Plan for 2021-2025” to achieve a more favourable protection environment¹⁴.

In the view of the Commission, the fundamental rights situation in North Macedonia 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 of international protection obligations. Of course, any such activity must ensure that the relevant safeguards as required by the Regulation are in place. The Agency must ensure that operational activities in North Macedonia are closely monitored, in line with Article 110 of the Regulation, as well as that anyone participating in a Frontex-organised operational activity is fully cognisant of the fundamental rights standards with which they are obliged to comply.

It must be underlined that this assessment is not a substitute for the obligations placed on the Executive Director of the Agency and the Frontex Fundamental Rights Officer by the Regulation as referred to in Article 46(4) of the Regulation: if the Executive Director considers that launching an activity could lead to serious or persistent violations of fundamental rights or international protection obligations, then it is their responsibility to not launch the activity, and if they consider that such violations are occurring, it is solely their responsibility to withdraw the financing for that activity or suspend or terminate it in whole or in part.

¹¹ <https://www.amnesty.org/en/location/europe-and-central-asia/north-macedonia/report-north-macedonia/> .

¹² <https://www.amnesty.org/en/location/europe-and-central-asia/north-macedonia/report-north-macedonia/> .

¹³ https://drc.ngo/media/mnglzsro/prab-report-january-may-2021- final_10052021.pdf .

¹⁴ <https://www.unhcr.org/623469cd10.pdf> .