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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	15 March 2022
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	SWD(2022) 70 final
Subject:	COMMISSION STAFF WORKING DOCUMENT Fundamental Rights Assessment of the Republic of Moldova Accompanying the Proposal for a COUNCIL DECISION on the conclusion of an Agreement between the European Union and the Republic of Moldova on operational activities carried out by the European Border and Coast Guard Agency in the Republic of Moldova

Delegations will find attached document SWD(2022) 70 final.

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EUROPEAN
COMMISSION

Brussels, 15.3.2022
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COMMISSION STAFF WORKING DOCUMENT

Fundamental Rights Assessment of the Republic of Moldova

Accompanying the

Proposal for a COUNCIL DECISION

on the conclusion of an Agreement between the European Union and the Republic of Moldova on operational activities carried out by the European Border and Coast Guard Agency in the Republic of Moldova

{COM(2022) 124 final}

Pursuant to Recital (88) of the European Border and Coast Guard 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."[2]

On 9 March 2022, the Commission adopted a recommendation[3] that the Council authorise it to negotiate a status agreement with the Republic of Moldova (hereinafter "Moldova") in light of the extraordinary influx of people seeking refuge in Moldova following Russia's invasion of Ukraine on 24 February 2022. On 14 March, the Council authorised the opening of negotiations and adopted the negotiation directives for the Commission. The negotiating directives limit the territorial scope of the possible deployment of border management teams from the European Border and Coast Guard standing corps to areas under the control of the constitutional authorities of the Republic of Moldova. Consequently, this assessment will not address the situation in the Transnistrian region. Furthermore, the Agency support requested by Moldovan authorities to be realised under a status agreement is limited to:

- support carrying out screening and debriefing of those arriving at its borders;
- support carrying out border checks of people entering Moldova; and
- support in detecting and combatting migrant smuggling, trafficking in human beings, stolen vehicles, smuggling of drugs, weapons, and the like.

The focus of this assessment will thus be to examine whether Agency operational activities in Moldova to accomplish the aforementioned goals are feasible without serious or persistent violations of fundamental rights or of international protection obligations being committed.[4] It must be noted that this assessment is based on information, data and reports available to the Commission on the protection of human rights in Moldova, in particular, as regards the international legal framework for the protection of such rights 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 such violations are being or are likely to be committed in practice and to then respond accordingly, as per the Regulation.

It is observed, first of all, that Moldova acceded to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol (hereinafter jointly referred to as the 1951 Convention) in 2002. The State acceded to the 1954 Convention relating to the Status of Stateless Persons (the 1954 Convention) and the 1961 Convention on the Reduction of Statelessness (the 1961 Convention) in 2012.

According to the United Nations High Commissioner for Refugees, Moldovan authorities have shown an unprecedented mobilisation to provide assistance to Ukrainian refugees.[5] The Moldovan government cooperates with UNHCR and other humanitarian organisations to

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1 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 (hereinafter "the Regulation").

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

3 Recommendation for a Council Decision authorising the opening of negotiations on a status agreement between the European Union and the Republic of Moldova on operational activities carried out by the European Border and Coast Guard Agency in the Republic of Moldova, COM(2022) 114 final.

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

5 https://gov.md/en/content/unhcr-experience-we-have-not-had-much-cooperation-and-openness-moldova-un-high-commissioner.

provide protection and assistance to refugees, returnees, asylum seekers, stateless persons, and other vulnerable persons. Moldova has shown willingness to investigate and prosecute even senior officials for violating the principle of **non-refoulement**.[6] Moldova has laws in place to grant **asylum, protection and refugee status** in line with European and international standards. Refugees receive identification documents and financial support provided by UNHCR.[7] Asylum seekers have access to health care and are accommodated by Moldova's Bureau of Migration and Asylum.

In a statement issued on 9 March 2022, following a recent mission to Moldova, the Council of Europe Commissioner for Human Rights acknowledged Moldova's humanitarian response to the situation in Ukraine. The Commissioner noted that "Moldovan authorities, NGOs and many ordinary citizens have stood up to the daunting challenge by mustering a humanitarian response, coordinating the provision of assistance to meet the basic needs of the arriving people, making reception centres available, and ensuring medical, psychosocial and administrative support."[8]

In the framework of the EU-Moldova Mobility Partnership, Moldova made good progress on adopting and implementing migration- and asylum-related legislation and on making its migration management system more efficient.[9] The country is currently rolling out a new National Strategy on Migration and Asylum.[10] The government is progressively surmounting the challenges it faces – for instance, creating a proper governmental mechanism for the rehabilitation of victims of trafficking in human beings including children.[11]

Moldova has ratified the European Convention on Human Rights and is subject to the jurisdiction of the European Court of Human Rights. Moldova 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.[12]

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6 Balkan Insight, Moldovan Ex-Secret Services Director Sentenced for Turkey Renditions, September 9, 2020, at https://balkaninsight.com/2020/09/09/moldovan-ex-secret-services-director-sentenced-for-turkey-renditions/ .

7 https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/moldova/ .

8 https://www.coe.int/en/web/commissioner/-/more-support-urgently-needed-to-assist-people-fleeing-the-war-in-ukraine-and-countries-of-arrival-in-particular-the-republic-of-moldova

9 https://eeas.europa.eu/archives/docs/enp/pdf/2015/repulic-of-moldova-enp-report-2015_en.pdf.

10 https://www.icmpd.org/file/download/56850/file/CareFor%2520project%2520description%2520%2528EN%2529.pdf

11 Report of the Working Group on the Universal Periodic Review* Republic of Moldova , https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/436/71/PDF/G1643671.pdf .

12 https://ijrcenter.org/country-factsheets/country-factsheets-europe/moldova-factsheet/#:~:text=Moldova%20is%20a%20party%20to,against%20Trafficking%20in%20Human%20Beings

Given the above, with the relevant safeguards in place (as required by the Regulation), the fundamental rights situation in Moldova at the time of the conclusion of the status agreement with that country does not preclude the launch of operational activities on account of the stipulation of Article 46(4) of Regulation (EU) 2019/1896. It must be underlined, however, that this assessment cannot be considered as a substitute for the obligations placed on the Executive Director and the Frontex Fundamental Rights Officer by the Regulation. In particular, if the Executive Director considers that serious or persistent violations of fundamental rights or international protection obligations are occurring, it is his sole responsibility to withdraw the financing for that activity, or suspend or terminate it, in whole or in part.[13]

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