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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.:	COM(2022) 124 final
Subject:	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 COM(2022) 124 final.

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Brussels, 15.3.2022
COM(2022) 124 final

2022/0087 (NLE)

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

{SWD(2022) 70 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

One of the tasks of the European Border and Coast Guard Agency is to cooperate with third countries in relation to the areas covered by the European Border and Coast Guard Regulation (Regulation (EU) 2019/1896) (the 'Regulation') 'including through the possible operational deployment of border management teams in third countries.'[1] Specifically, the Agency, as part of the European Border and Coast Guard, is to ensure European integrated border management[2], one component of which is cooperation with third countries in the areas covered by the European Border and Coast Guard Regulation 'focusing in particular on neighbouring third countries and on […] countries of origin or transit for illegal immigration.'[3] The Agency may cooperate with the authorities of third countries competent in matters covered by the Regulation to the extent required for the fulfilment of its tasks[4] and may carry out actions related to European integrated border management on the territory of a third country subject to the agreement of that third country.

Pursuant to Article 73(3) of the Regulation, in circumstances requiring the deployment of border management teams from the European Border and Coast Guard standing corps to a third country where the members of the teams will exercise executive powers, a status agreement shall be concluded by the Union with the third country concerned. Such a status agreement should be based on the model that the Commission has drawn up as provided for in Article 76(1) of the same regulation. The Commission adopted this model on 21 December 2021.[5]

As of 11 March 2022, over 310 000 refugees had entered the Republic of Moldova ('Moldova') from Ukraine following the Russian Federation's invasion of Ukraine on 24 February 2022. In just the first two weeks of the war, more than two million refugees – around 4% of Ukraine's population – mainly fled westward from the encroaching Russian forces.[6]

Moldovan border management authorities are thus now facing the twin challenges of regulating the influx and subsequent outflow of potentially hundreds of thousands of refugees, including monitoring the smuggling of weapons. Furthermore, some 12% of the territory of the country is not under the control of Moldovan authorities, including a large portion of Moldova's border with Ukraine. With a status agreement in place, Moldovan authorities supported by border management teams of the European Border and Coast Guard Agency will be in a much better position to quickly respond to the current challenges.

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1 Article 10(1)(u) of 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. 1-131.

2 Article 71(1) of Regulation (EU) 2019/1896.

3 Article 3(1)(g) of Regulation (EU) 2019/1896.

4 Article 73(1) of Regulation (EU) 2019/1896.

5 Communication COM(2021) 829 - Model status agreement as referred to in 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.

6 https://data2.unhcr.org/en/situations/ukraine

On 14 March 2022, the Commission received the Council authorisation to open negotiations with the Republic of Moldova on a status agreement with the Republic of Moldova.

The European Commission, on behalf of the European Union, and Moldova held negotiations on the status agreement on 14 March 2022. The status agreement was initialled by the heads of the negotiating teams.

In view of ensuring the possibility for an urgent deployment of the European Border and Coast Guard standing corps on the territory of Moldova, in light of the influx of refugees into Moldova from Ukraine following the Russian Federation's invasion of that country, the agreement should be applied provisionally upon its signature, pending the completion of the procedures necessary for its entry into force.

The attached proposal for a Council Decision constitutes the legal instrument for concluding the status agreement between the European Union and the Republic of Moldova.

Situation of the Schengen associated countries

The present proposal builds upon the Schengen *acquis* in the field of external borders. The Union has nevertheless no power to conclude a status agreement with Moldova in a manner that binds Norway, Iceland, Switzerland or Liechtenstein. To ensure that border guards and other relevant staff sent by those countries to Moldova benefit from the same status as provided for in the status agreement, joint declarations attached to the status agreement should state the desirability that similar agreements be concluded between Moldova and each of those associated countries.

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; Ireland is therefore not taking part in the adoption of this Decision and is not bound by it nor subject to its application.

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, Denmark is not taking part in the adoption of this Decision and is not bound by it nor subject to its application.

- **Consistency with existing policy provisions in the policy area**

A working arrangement on establishing operational cooperation between the European Border and Coast Guard Agency and the Border Guard Service of the Republic of Moldova has been in place since 2008. It was concluded under the previous EBCG Regulation, Regulation (EU) 2016/1624 on the European Border and Coast Guard.[7] It includes general commitments on the development of information exchange and risk analyses, training and exchange of best practices as well as coordination of certain joint operational measures and pilot projects in the area of border management.

[7] Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending, OJ L 251, 16.09.2016, p. 1.

- **Consistency with other Union policies**

Strengthening controls along the borders of Moldova will positively impact the Union's external borders, in particular those of Romania, as well as the borders of the Republic of Moldova itself. Support to border controls by European Union Border Assistance Mission to Ukraine and Moldova will add to, and complement, the assistance provided by the border management teams. Also, the conclusion of a status agreement would tie into the wider objectives and priorities for cooperation and the work towards achieving the objectives of political association and economic integration as set out in the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, and the Republic of Moldova. Strengthened cooperation in border management would also be complementary to the long-term Eastern Partnership policy objectives beyond 2020, as detailed in the Joint Communication of March 2020 and the Joint Staff Working Document of July 2021, and endorsed at the 6th Eastern Partnership Summit in 2021.

The conclusion of a status agreement could also support the wider efforts and commitments of the European Union to further develop capabilities in order to contribute to crisis response management and promoting convergence on foreign and security matters between the Union and the Republic of Moldova.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis for this proposal for a Council Decision is Article 77(2)(b) and (d) and Article 79(2)(c) TFEU in conjunction with is Article 218(6)(a) TFEU.

The competence of the European Union to conclude a status agreement is explicitly provided for in Article 73(3) of Regulation (EU) 2019/1896, which states '[i]n circumstances requiring the deployment of border management teams from the standing corps to a third country where the members of the teams will exercise executive powers, a status agreement […] shall be concluded by the Union with the third country concerned'.

Pursuant to Article 3(2) of the Treaty on the Functioning of the European Union, the Union shall have exclusive competence for the conclusion of an international agreement when its conclusion is provided for in a legislative act of the Union. Article 73(3) of Regulation (EU) 2019/1896 provides for a status agreement to be 'concluded by the Union with the third country concerned'. Consequently, the attached agreement with the Republic of Moldova falls within the exclusive power of the European Union. In accordance with Article 73(3) of the Regulation (EU) 2019/1896, the proposed status agreement largely follows the model agreement adopted by the Commission on 21 December 2021.

The consent of the European Parliament is required for the conclusion of this agreement pursuant to Article 218(6)(a)(v) TFEU.

- **Subsidiarity and proportionality**

The need for a common approach

A status agreement will allow for the deployment to the Republic of Moldova of border management teams by the European Border and Coast Guard Agency, using all the

possibilities offered by Regulation (EU) 2019/1896. Without such a tool, only bilateral deployments by Member States could be used to develop and implement European integrated border management and support Moldova in managing the dramatic increase in refugees seeking to enter its territory. Such a bilateral approach would be neither efficient nor appropriate.

A common approach is needed to better manage Moldova's borders and as a concerted Union-effort in response to the ongoing Russian aggression against Ukraine.

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

As this will be a new agreement, no evaluation or fitness checks of existing instruments could be carried out. No impact assessment is required for the negotiation of a status agreement.

- **Ex-post evaluations/fitness checks of existing legislation**

As this will be a new agreement, no evaluation or fitness checks of existing instruments could be carried out. No impact assessment is required for the negotiation of a status agreement.

- **Fundamental rights**

In line with Recital (88) of Regulation (EU) 2019/1896, the Commission assessed the fundamental rights situation relevant to the areas covered by the status agreement in the Republic of Moldova and informed the European Parliament thereof.

The agreement contains practical measures related to the respect of fundamental rights and shall ensure that fundamental rights are fully respected during activities organised on the basis of the agreement. The agreement provides for an independent and effective complaints mechanism in accordance with the relevant provisions of Regulation (EU) 2019/1896 to monitor and ensure respect for fundamental rights in all the activities organised on the basis of the agreement.

Areas of main concern as regards the rule of law and the respect of fundamental rights in the Republic of Moldova include respect for universal human rights, ensuring the functioning of democratic institutions and the need for legislative reforms relating to the justice and law enforcement agencies, including anticorruption.[8] These will need to be taken into account appropriately during the preparation of any joint operation or deployment action.

- **Data protection**

The provisions of the status agreement related to the transfer of data do not differ substantially from the model status agreement. Therefore, the European Data Protection Supervisor does not have to be consulted.

[8] Association Agenda recommendation, Annex to COM(2022) 69 final, p. 10.

4. BUDGETARY IMPLICATIONS

The status agreement in itself does not entail any financial implications. The actual deployment of border guard teams on the basis of an operational plan will entail costs borne by the budget of the European Border and Coast Guard Agency. Future operations under the status agreement will be financed through the European Border and Coast Guard Agency's own resources.

The European Union contribution for the European Border and Coast Guard Agency already forms part of the Union's budget as based on the Legislative Financial Statement accompanying the implementation of the 2019 Regulation establishing the European Border and Coast Guard. For the period of 2021-2027, a total Union contribution of EUR 6 320 million is provided in accordance with the Multiannual Financial Framework agreement. These amounts will be complemented by the corresponding contribution of the Schengen associated countries.

5. OTHER ELEMENTS

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

The Commission will ensure proper monitoring of the implementation of the status agreement.

The Republic of Moldova and the European Border and Coast Guard Agency shall jointly evaluate each joint operation or rapid border intervention.

In particular, the European Border and Coast Guard Agency, Moldova and the Member States participating to a specific action shall draw up a report at the end of each action on the application of provisions of the agreement including on the processing of personal data.

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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

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 77(2)(b) and (d) and Article 79(2)(c) in conjunction with Article 218(6)(a) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament[9],

Whereas:

(1) In accordance with Council Decision 2022/XXX of […], 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, was signed by […] on […..], subject to its conclusion at a later date.

(2) In circumstances requiring the deployment of border management teams from the standing corps of the European Border and Coast Guard to a third country where the members of the teams will exercise executive powers, Article 73(3) of Regulation (EU) 2019/1896[10] calls for a status agreement to be concluded by the Union with the third country concerned on the basis of Article 218 of the Treaty on the Functioning of the European Union,

(3) 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[11]; Ireland is therefore not taking part in the adoption of this Decision and is not bound by it or subject to its application.

(4) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark[12], annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Decision and is not

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9 OJ C , , p. .

10 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, 14.11.2019, p. 1).

11 Council Decision 2002/192/EC of 28 February 2002 concerning the Ireland's request to take part in some of the provisions of the Schengen acquis, OJ L 64, 7.3.2002, p. 20–23.

12 Protocol (No 22) on the position of Denmark, OJ C 326, 26.10.2012, p. 299–303.

bound by it or subject to its application. Given that this Decision builds upon the Schengen acquis, Denmark shall, in accordance with Article 4 of that Protocol, decide within a period of six months after the Council has decided on this Decision whether it will implement it in its national law.

(5) The status agreement should therefore be approved on behalf of the European Union,

HAS ADOPTED THIS DECISION:

Article 1

The Agreement between the European Union and the Republic of Moldova on operational activities carried out by the European Border and Coast Guard Agency in Moldova (the 'Agreement'), 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 its Article XX of the Agreement, in order to express the consent of the European Union to be bound by the Agreement.

Article 3

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

Done at Brussels,

For the Council
The President