Council of the European Union

Brussels, 15 October 2024
(OR. en)

7900/1/24
REV 1

Interinstitutional File:
2024/0074(NLE)

FRONT 94
COWEB 37
MIGR 130

PROPOSAL

No. Cion doc.:	COM(2024) 161 final/2
Subject:	Proposal for a COUNCIL DECISION on the conclusion, on behalf of the Union, of the Agreement between the European Union and the Republic of Serbia on operational activities carried out by the European Border and Coast Guard Agency in the Republic of Serbia

Delegations will find attached document COM(2024) 161 final/2.

Encl.: COM(2024) 161 final/2

EUROPEAN
COMMISSION

Brussels, 15.10.2024
COM(2024) 161 final/2

2024/0074 (NLE)

ADDENDUM
This document replaces COM(2024)161 of 18.03.2024
Concerns all language versions
Insertion of the reference to the linked Commission Staff Working Document SWD(2024)237 final

The text shall read as follows:

Proposal for a

COUNCIL DECISION

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

{SWD(2024) 237 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 (the '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 Regulation, focusing in particular on neighbouring third countries and countries of origin or transit for irregular migration[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 should 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 Regulation. The Commission adopted this model on 21 December 2021[5].

The Republic of Serbia ('Serbia') is geographically situated on one of the primary routes for irregular mixed migratory movement towards the European Union. In 2023, Frontex registered around 99 000 irregular border crossings at the European Union's external borders on the Western Balkan route as well as more than 25 000 irregular border crossings at Serbia's non-EU borders. Irregular migrants are targeted by organised criminal groups engaged in people smuggling and are at great risk of human rights violations. The high level of irregular arrivals and asylum applications is also putting significant pressure on some European Union Member States, leading to the need for common, coordinated action at Union level.

In 2020, the Union and Serbia concluded a status agreement[6] based on Regulation (EU) 2016/1624[7], which was repealed and replaced by the Regulation. Due to the limited scope of

---

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).

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

3 Article 3(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 Council Decision (EU) 2020/865 of 26 May 2020 on the conclusion of the Status Agreement between the European Union and the Republic of Serbia on actions carried out by the European Border and Coast Guard Agency in the Republic of Serbia (OJ L 202, 25.6.2020, p. 1).

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 Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC (OJ L 251, 16.9.2016, p. 1).

Regulation (EU) 2016/1624, joint operations conducted on the basis of this Status agreement are limited to Serbia's borders with the European Union. Acting within this limited framework, Frontex is conducting *Joint Operation Serbia* (previously *Joint Operation Serbia Land)* at Serbia's land borders with Hungary and Bulgaria. On 12 February 2024, 99 standing corps officers were deployed in this operation, which has resulted in improving border control by curbing irregular migration and fighting cross-border crime.

On 18 November 2022, following the entry into force of Regulation (EU) 2019/1896 which extended the scope of the status agreements thereunder, the Commission received the Council's authorisations to open negotiations with Serbia[8], as well as Montenegro, Albania and Bosnia and Herzegovina, for agreements on operational activities to be carried out by the European Border and Coast Guard Agency in those countries based on this new Regulation. On 30 November 2022, a meeting was organised by the Commission with the four aforementioned countries, in which the main novelties of the model status agreement were highlighted. The Commission, on behalf of the European Union, and Serbia held formal negotiations in view of an agreement on 14 September and 7 November 2023. The Commission considers that the objectives set by the Council in its negotiating directives were attained and that the agreement is acceptable for the Union.

The draft agreement departs from the model status agreement[9] by providing a limited immunity of the team members from criminal jurisdiction[10] and by providing a limited exception to the inviolability of buildings, premises and assets of the Agency[11]. These derogations from the model are acceptable given Serbia's status as a recognised candidate for accession to the European Union, the fact that the current status agreement with Serbia provides comparable provisions and operations under that agreement are proceeding commendably and that similar or identical derogations were accepted for all of Serbia's neighbours who recently negotiated similar agreements with the Union.

The attached proposal for a Council Decision constitutes the legal basis for the conclusion of the Agreement between the European Union and the Republic of Serbia on operational activities carried out by the European Border and Coast Guard Agency in the Republic of Serbia.

Situation of the Schengen associated countries

The present proposal builds upon the Schengen *acquis* in the field of management of the external borders. The Union has nevertheless no power to conclude a status agreement with Serbia in a manner that binds Norway, Iceland, Switzerland and Liechtenstein. To ensure that border guards and other relevant staff sent by those countries to Serbia benefit from the same status as provided for in the future status agreement, a joint declaration was attached to the Proposal for a Council decision on the signing of the status agreement stating the desirability that similar agreements be concluded between Serbia and each of those associated countries.

---

8 OJ L 300, 21.11.2022, p. 29.

9 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.

10 See Article 12(3) of the draft agreement.

11 See Article 11(5) of the draft agreement.

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[12]; 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 other Union policies**

Reinforcing controls on the territory of Serbia will positively impact the management of the Union's external borders as well as the borders of Serbia itself. The conclusion of a status agreement would tie into the wider objectives and priorities for cooperation as set out in the European Union's Stabilisation and Association Agreement with Serbia. [13]

The conclusion of a status agreement could also support the wider efforts and commitments of the European Union to further develop cooperation and capabilities[14] in order to contribute to crisis response management and promote convergence on foreign and security matters between the Union and Serbia.

2. LEGAL BASISAND PROPORTIONALITY

The legal basis for this proposal is Article 77(2)(b) and (d) and Article 79(2)(c) TFEU in conjunction with 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 that '[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 agreement to be signed and concluded with the Republic of Serbia 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 is based on the model agreement adopted by the Commission in December 2021[15], taking into account the previously agreed provisions of the existing status agreement with the Republic of Serbia[16].

The provisions of the proposed agreement do not go beyond what is necessary to achieve its objectives, namely, on the basis of the model status agreement, covering all aspects that are necessary for carrying out the actions of border management teams from the standing corps deployed to a third country where the members of the teams will exercise executive powers, in particular, the scope of the operation, provisions on civil and criminal liability, the tasks

[12] 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).
[13] OJ L 278, 18.10.2013, p. 16.
[14] Such as training, situational awareness, equipment, ability to react, staff deployment etc.
[15] Communication COM(2021) 829.
[16] OJ L 202, 25.6.2020, p. 3.

and powers of the members of the teams, measures related to the establishment of an antenna office and practical measures related to the respect of fundamental rights.

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.

- **Fundamental rights**

As set out in recital 88 of Regulation (EU) 2019/1896, the Commission has assessed the fundamental rights situation relevant to the areas covered by the status agreement in Serbia and will inform the European Parliament thereof.

The envisaged agreement contains practical measures related to the respect of fundamental rights and ensures 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.

- **Data protection**

Since the provisions of the status agreement related to the transfer of personal data do not differ substantially from the model status agreement, and in line with Regulation (EU) 2019/1896, the European Data Protection Supervisor has not been consulted on the provisions of this status agreement.

4. BUDGETARY IMPLICATIONS

A status agreement in and of itself does not entail any financial implications. The actual deployment of border guard teams on the basis of an operational plan would entail costs borne by the budget of the Agency. Future operations under a status agreement will be financed through the Agency's own resources as provided for in the Union's annual budget cycle.

The Union contribution for the European Border and Coast Guard Agency already forms part of the Union's budget as laid out in the Council Conclusions to the Multiannual Financial Framework Agreement.

5. OTHER ELEMENTS

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

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

2024/0074 (NLE)

Proposal for a

COUNCIL DECISION

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

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[1],

Whereas:

(1) In accordance with Council Decision (EU) 2024/XXX[2], the Agreement between the European Union and the Republic of Serbia on operational activities carried out by the European Border and Coast Guard Agency in the Republic of Serbia (the 'Agreement') was signed on [...], subject to its conclusion at a later date.

(2) Pursuant to Article 73(3) of Regulation (EU) 2019/1896 of the European Parliament and of the Council[3], 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, a status agreement is 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[4]; Ireland is therefore not taking part in the adoption of this Decision and is not bound by it nor subject to its application.

(4) 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 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.

---

1 OJ C, , p. .

2 Council Decision (EU) 2024/XXXX of XXX.

3 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).

4 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).

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

HAS ADOPTED THIS DECISION:

Article 1

The Agreement between the European Union and the Republic of Serbia on operational activities carried out by the European Border and Coast Guard Agency in the Republic of Serbia (the 'Agreement') is hereby approved on behalf of the Union[5].

Article 2

The Commission shall proceed, on behalf of the Union, to the notification provided for in Article 22(1) of the Agreement in order to express the consent of the Union to be bound by the Agreement.

Article 3

This Decision shall enter into force on the day of its adoption[6].

Done at Brussels,

For the Council
The President

[5] The text of the Agreement is published in OJ L … , p. .

[6] The date of entry into force of the Agreement will be published in the *Official Journal of the European Union* by the General Secretariat of the Council.