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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	29 September 2023
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	SWD(2023) 755 final
Subject:	COMMISSION STAFF WORKING DOCUMENT Fundamental rights assessment of Montenegro linked to the Proposal for a Council decision on the conclusion, on behalf of the Union, of the Agreement between the European Union and Montenegro on operational activities carried out by the European Border and Coast Guard Agency in Montenegro of 5 April 2023 Accompanying the document Proposal for a COUNCIL DECISION on the conclusion of an Agreement between the European Union and Montenegro on operational activities carried out by the European Border and Coast Guard Agency in Montenegro

Delegations will find attached document SWD(2023) 755 final.

Encl.: SWD(2023) 755 final

EUROPEAN
COMMISSION

Brussels, 29.9.2023
SWD(2023) 755 final

COMMISSION STAFF WORKING DOCUMENT

Fundamental rights assessment of Montenegro linked to the Proposal for a Council decision on the conclusion, on behalf of the Union, of the Agreement between the European Union and Montenegro on operational activities carried out by the European Border and Coast Guard Agency in Montenegro of 5 April 2023

Accompanying the document

Proposal for a
COUNCIL DECISION

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

{COM(2023) 261 final/2}

Pursuant to Recital (88) of the European Border and Coast Guard Regulation (the '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 3 November 2022, the Commission adopted a recommendation to the Council authorising the Commission to negotiate a status agreement with Montenegro. On 18 November 2022, the Council authorised the opening of negotiations. The negotiations of the Agreement between the European Union and Montenegro on operational activities carried out by the European Border and Coast Guard Agency ('the Agency') in Montenegro (the 'Agreement') were successfully finalised on 24 February 2023. In accordance with Council Decision (EU) 2023/1040 of 15 May 2023 on the signing, on behalf of the Union, and provisional application of the Agreement between the European Union and Montenegro on operational activities carried out by the European Border and Coast Guard Agency in Montenegro[3], the Agreement was signed on 16 May 2023, subject to its conclusion at a later date. The agreement became provisionally applicable on 1 July 2023 (i.e., the first day of the second month after its signature) and will enter into force after it has been concluded by both contracting parties.

This assessment aims to determine the situation in Montenegro in view of operational activities of the Agency in this country, in particular whether the situation in Montenegro does not pose a risk of serious or persistent violations being committed of fundamental rights or of international protection obligations. It should be noted that Frontex personnel are already deployed in Montenegro to support border management activities under the current Status Agreement between Montenegro and the European Union[4] and the working arrangement for cooperation between the Police Directorate of Montenegro and Frontex[5], both agreed upon prior to the entry into force of the current European Border and Coast Guard Regulation in 2019. Montenegro was the first non-Member State to host a fully-fledged maritime Frontex joint operation, with the objective to strengthen surveillance at the country's blue borders. However, the 2019 Regulation provides for a broader scope of potential cooperation under a Status Agreement, particularly the potential deployment of the EBCG Standing Corps anywhere on the territory of the third country, rather than just along its borders with the European Union.

This assessment is based on information, data, and reports available to the Commission on the protection of human rights in Montenegro, in particular, the international legal framework for the protection of such rights and obligations applicable in its legal order. This assessment

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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, 14.11.2019, p. 1 ("Regulation (EU) 2019/1896")

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

3 Council Decision (EU) 2023/1040 of 15 May 2023 on the signing, on behalf of the Union, and provisional application of the Agreement between the European Union and Montenegro on operational activities carried out by the European Border and Coast Guard Agency in Montenegro, OJ L 140, 30.5.2023, p. 1

4 Status Agreement between the European Union and Montenegro on actions carried out by the European Border and Coast Guard Agency in Montenegro, OJ L 173, 3.6.2020, p. 3

5 Frontex, Working Arrangement establishing cooperation between the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex) and the Police Directorate of Montenegro, 18 June 2009. Available at: https://prd.frontex.europa.eu/wp-content/uploads/wa_with_montenegro.pdf .

does not affect the overarching obligation under the Regulation of the Agency and its Executive Director to assess whether there are, or are likely to be, serious or persistent violations of fundamental rights or of international protection obligations related to specific activities that are to take place on the basis of this status agreement and to then respond accordingly[6].

The Commission monitors closely the implementation of reforms in Montenegro and the country's alignment with the European Union *acquis* and standards, including in the areas of rule of law and fundamental rights, and provides a detailed assessment of the state of play and the progress made by Montenegro in its enlargement package[7]. The 2022 Report on Montenegro[8] found that Montenegro "is moderately prepared in the area of fundamental rights", with a legislative and institutional framework that is largely in place. The report also found that Montenegro's "legal framework on legal and irregular migration is largely aligned with the EU *acquis*". This was also achieved as a result of the 2021 adoption of the 2021-2025 Strategy on Migration and Reintegration of Returnees[9], which aligned the policy framework with the *acquis* and best practices from the Member States.[10] The country's legal framework on asylum is also largely aligned with the *acquis*, in part also thanks to a cooperation roadmap with the European Union Agency for Asylum, which was signed in 2021 to strengthen Montenegro's "asylum system, including the status determination procedure, the reception conditions, and to develop contingency planning"[11].

This assessment also takes into consideration Montenegro's ratification of international human rights instruments, which represent a strong benchmark of commitment to human rights while providing an overview of applicable human rights standards. Overall, Montenegro engages in regular dialogue with key international human rights organisations and monitoring bodies, including those connected to the United Nations and Council of Europe. For example, in 2021, Montenegro contributed a voluntary report on its implementation of the recommendations stemming from the 2018 Universal Periodic Review, and in 2021 the country was elected to the UN Human Rights Council, where it will serve as a member until 2024.

Montenegro has been a Member State of the Council of Europe since 11 May 2007 and has ratified the European Convention on Human Rights, making it subject to the jurisdiction of the European Court of Human Rights ("ECHR"). Montenegro 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, and the Framework Convention for the Protection of National Minorities.

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6 Regulation (EU) 2019/1896, Article 46.

7 https://neighbourhood-enlargement.ec.europa.eu/document/download/927a32f7-609f-401a-970e-831eee3abd33_en?filename=Montenegro%20Report%202022.pdf.

8 Commission Staff Working Document, "Montenegro 2022 Report". 12 October 2022. Available at: https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-10/Montenegro%20Report%202022.pdf.

9 Government of Montenegro, "STRATEGY ON MIGRATION AND REINTEGRATION OF RETURNEES IN MONTENEGRO FOR THE PERIOD 2021-2025, WITH AN ACTION PLAN FOR 2021 AND 2022.", 1 October 2021. Available at: https://www.gov.me/en/documents/15ef985b-eddb-4a41-a58a-63fee7e8455c .

10 Commission Staff Working Document, "Montenegro 2022 Report". 12 October 2022. Page 56. Available at: https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-10/Montenegro%20Report%202022.pdf.

11 Commission Staff Working Document, "Montenegro 2022 Report". 12 October 2022. Page 57. Available at: https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-10/Montenegro%20Report%202022.pdf.

Montenegro is a party to the 1951 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights and its Optional Protocol and Second Optional Protocol, the International Covenant on Economic, Social and Cultural Rights and to its Optional Protocol. Montenegro is also a party to the Convention on the Elimination of All Forms of Discrimination Against Women and its Optional Protocol, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and to its Optional Protocol. The country has also concluded the Convention on the Rights of the Child and its Optional Protocols on the Involvement of Children in Armed Conflict and on the Sale of Children, Child Prostitution and Child Pornography. Montenegro has also become a party to the Convention on the Rights of Persons with Disabilities and its Optional Protocol and to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, the Protocol against the Smuggling of Migrants by Land, Sea and Air, and the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. Montenegro has signed, but not yet ratified, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

Overall, the legislative and institutional framework to ensure compliance with applicable fundamental rights norms appears to be largely in place and Montenegro continues to meet its international obligations on human rights[12]. At the same time, additional efforts should be made to implement this framework fully; some potential areas of concern should be noted: for instance, the UN Committee against Torture in 2022[13] noted that Montenegrin authorities should inform about the right to legal aid more widely and provide increased and easier access to it, particularly to vulnerable persons[14], while also reiterating that every person should be afforded access to an effective asylum process, featuring procedural safeguards against the risk of refoulement[15]. The UN High Commissioner for Refugees has also alleged the occurrence of some "pushbacks" and "inverse flow of migrants" from Montenegro to Albania[16]. Additionally, the Council of Europe has flagged a number of shortcomings concerning Montenegro's Law on Foreigners of 2018, while providing an overall favourable assessment. The Council of Europe noted that further clarity on 'procedural safeguards and protections for vulnerable persons is needed, in particular in respect of victims of trafficking

12 Commission Staff Working Document, "Montenegro 2022 Report". 12 October 2022. Available at: https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-10/Montenegro%20Report%202022.pdf

13 UN Office of the High Commissioner for Human Rights, UN Committee against Torture publishes findings on Cuba, Iceland, Iraq, Kenya, Montenegro and Uruguay, 13 May 2022. Available at: https://www.ohchr.org/en/press-releases/2022/05/un-committee-against-torture-publishes-findings-cuba-iceland-iraq-kenya .

14 UN Office of the High Commissioner for Human Rights, UN Committee against Torture, Concluding observations on the third periodic report of Montenegro, 2 June 2022, Art. 10. Available at: https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhslVpw9qedE6H7W4xUzcOd4f66D2C4YsBnln952j%2B7cOX99OY1u2JaYUXZ6WLI0H0BFS3DLE1SfLJ4jrP98qIMX%2B2qzUIKiYY8KSFtAn9YisI.

15 UN Office of the High Commissioner for Human Rights, UN Committee against Torture, Concluding observations on the third periodic report of Montenegro, 2 June 2022, Art. 20. Available at: https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhslVpw9qedE6H7W4xUzcOd4f66D2C4YsBnln952j%2B7cOX99OY1u2JaYUXZ6WLI0H0BFS3DLE1SfLJ4jrP98qIMX%2B2qzUIKiYY8KSFtAn9YisI .

16 UNHCR, Western Balkans – Refugees, asylum-seekers and other people in mixed movements (as of September 2022). Available at: https://data.unhcr.org/en/documents/details/96520 .

and accompanied and unaccompanied children'[17]. The 2022 European Commission Report on Montenegro also found that the country should revise its national legislation on the protection of personal data. Montenegro has not yet signed the Protocol amending the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (CETS No. 223) of the Council of Europe. The Agency should proactively address these issues when planning operations in Montenegro.

In the view of the Commission, the fundamental rights situation in Montenegro 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 obligations concerning international protection. Nevertheless, any operational activity in the country must ensure that all relevant safeguards, as required by European Union and international law, and especially the Regulation, are in place. The Agency holds the responsibility to ensure that any operational activity in Montenegro is closely monitored to protect and promote their compliance with fundamental rights as enshrined in the Charter of Fundamental Rights of the European Union[18]. Additionally, the Agency must ensure that anyone participating in a Frontex Joint Operation or any other activity conducted by it in Montenegro is fully cognisant of the fundamental rights standards with which they are obliged to comply.

It must be further underlined that this assessment is not a substitute for the obligations placed on the Executive Director of the Agency and its Fundamental Rights Officer by Article 46 of the Regulation. Should the Executive Director consider that launching an activity in Montenegro could lead to serious or persistent violations of fundamental rights or international protections obligations, it is his or her responsibility not to launch that activity. Similarly, where the Executive Director determines that such serious or persistent violations are occurring, it is solely his or her responsibility to withdraw the financing for the activity in question or suspend or terminate it in whole or in part as deemed appropriate to address the situation.

[17] Council of Europe, Opinion on the Montenegro draft law on foreigners, 16 November 2017, Art. 102. Available at: https://rm.coe.int/srsg-migref-2017-1-final/16807b41a9 .

[18] Regulation (EU) 2019/1896, Articles 10 and 110.