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Subject:	Recommendation for a COUNCIL DECISION authorising the opening of negotiations on a status agreement between the European Union and the Republic of Albania on operational activities carried out by the European Border and Coast Guard Agency in the Republic of Albania

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Delegations will find attached document COM(2022) 690 final.

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Encl.: COM(2022) 690 final



Brussels, 25.10.2022  
COM(2022) 690 final

**SENSITIVE\***

Recommendation for a

**COUNCIL DECISION**

**authorising the opening of negotiations on a status agreement between the European Union and the Republic of Albania on operational activities carried out by the European Border and Coast Guard Agency in the Republic of Albania**

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## 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’ or ‘Frontex’) is to cooperate with third countries in relation to the areas covered by the European Border and Coast Guard Regulation (‘the EBCG Regulation’)<sup>1</sup> ‘including through the possible operational deployment of border management teams in third countries’<sup>2</sup>. Specifically, the Agency, as part of the European Border and Coast Guard, is to ensure European integrated border management<sup>3</sup>, 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 countries of origin or transit for irregular migration<sup>4</sup>. 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<sup>5</sup> 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 EBCG 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 required by Article 76(1) of said regulation. The Commission adopted this model on 21 December 2021<sup>6</sup>.

Albania lies on the Western Balkans migration route, which sees significant irregular migration towards the core of the European Union, both via land and across the Adriatic Sea. Between January and August 2022, 87 190 irregular border crossings and attempts were registered by Frontex at the European Union’s external borders on the Western Balkan route; 16 000 such crossings and attempts were registered during the month of August alone – the highest monthly total since 2016. Between January and July 2022, nearly 3 000 irregular border crossings and attempts were registered along Albania’s borders.

People in irregular movement remain targets of organised criminal groups engaged in people smuggling and are at great risk of human rights violations. The increase in irregular arrivals and ensuing rise in asylum applications is also putting significant pressure on some European Union Member States, leading to the need for common, coordinated action at Union level, based on the principles of fair sharing of responsibility and solidarity enshrined in the Pact on Migration and Asylum<sup>7</sup>.

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<sup>1</sup> Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard.

<sup>2</sup> Article 10(1)(u) of the EBCG Regulation.

<sup>3</sup> Article 71(1) of Regulation (EU) 2019/1896.

<sup>4</sup> Article 3(g) of Regulation (EU) 2019/1896.

<sup>5</sup> Article 73(1) of Regulation (EU) 2019/1896.

<sup>6</sup> 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.

<sup>7</sup> [Migration and Asylum Package: New Pact on Migration and Asylum documents adopted on 23 September 2020 | European Commission \(europa.eu\)](#)

Albania was the first country to agree on a status agreement with the European Union. This agreement, based on the previous EBCG Regulation (Regulation (EU) 2016/1624<sup>8</sup>) was signed in October 2018 and the agreement entered into force on 1 May 2019.

Joint operations conducted on the basis of this status agreement are limited to Albania's land borders with the European Union and portions of the Adriatic Sea. Working within these limitations, Frontex has launched two joint operations in Albania, Joint Operation Albania Land at Albania's land border with Greece (launched on 22 May 2019) and Joint Operation Albania Sea at Albania's sea border (launched on 24 March 2021). There are currently around 140 Frontex officers deployed in these joint operations which have resulted in improving border control by curbing irregular migration and fighting cross-border crime.

Given that Albania is a neighbouring third country that remains an important country of transit for irregular migration to the European Union, the value of cooperation between the European Border and Coast Guard Agency and the relevant authorities of Albania remains high. Albania has been a model for the successful deployment of Frontex joint operations to third countries, and it therefore represents an ideal candidate for the expansion of such cooperation. A status agreement based on Regulation (EU) 2019/1896 would allow for the deployment of European Border and Coast Guard standing corps teams to Albania's borders with countries that are not members of the European Union. These teams could support the country's national authorities' efforts to ensure that anyone entering the country does so in compliance with the relevant legislation.

#### *EU-funded programmes*

Albania benefits from several regional IPA-funded projects strengthening the institutional capacities in the area of mixed migration management and European integrated border management. A regional initiative implemented jointly by Frontex, the EUAA and the IOM, in partnership with UNHCR, supports the development and implementation of a comprehensive migration management system, including building EURODAC-compatible IT systems of identification and registration of mixed migration flows. Under the third phase of the initiative, which was launched in 2022 with a duration of 4 years, Frontex is expected to develop a Masterplan with Albania to develop such an IT system.

With regards to bilateral allocations, the Annual Action Plan in favour of Albania for 2022 (EU4LEA) will support the rule of law through strengthening the track record of proactive investigations, prosecutions, and final convictions in the fight against organised crime in Albania, including on trafficking in human beings and irregular migration cases. Tailored assistance to the implementation of policies on migration from the Albanian State Police / Border Police will be deployed in line with European Union requirements in strengthening European integrated border management (EIBM) and migration management. The action will be implemented in Indirect Management with a Member State Organisation and/or international organisation and will focus to: (i) strengthening of border police capacities in identifying migrants with specific needs; (ii) enforcement of screening and return procedures in compliance with the Law on foreigners; and (iii) ensuring that its return mechanism for irregular migrants is in line with the *acquis* including fully respecting fundamental rights.

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<sup>8</sup> 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. 1–76).

Between 2022 and 2026, Frontex will implement a border security programme to strengthen capacities of Western Balkans partners to host Frontex joint operations, combat irregular migration and cross-border crime, align better with EIBM standards, and improve information sharing through gradual integration into the EUROSUR framework.

Albania cooperates actively with Europol and Interpol on countering cross border criminal activities, including Europol's European Migrant Smuggling Centre, the EMPACT platform for combating migrant smuggling, the joint cross border police operations. Cooperation is also implemented through the Western Balkans Risk Analysis Network (WB RAN), within which Frontex and WB RAN members prepare an annual risk analysis for the Western Balkans.

#### *Existing bilateral agreements*

Under Albania's existing status agreement with the European Union, Frontex officers are deployed at a border crossing point with Greece and at the National Coordination Centre in Tirana. Albania's Ministry of Interior has had a working arrangement with Frontex since 2009; the arrangement was renewed in March 2021, making it one of two working arrangements agreed under the current Regulation. Under the framework of this working arrangement, Frontex staff are deployed in an advisory function (without executive powers) at Tirana airport and Muriqan border crossing point (near the border with Montenegro).

#### *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 Albania in a manner that binds Norway, Iceland, Switzerland and Liechtenstein. To ensure that border guards and other relevant staff sent by those countries to Albania benefit from the same status as provided for in the future status agreement, a joint declaration attached to the status agreement should state the desirability that similar agreements be concluded between Albania and each of those associated countries.

- **Consistency with other Union policies**

Reinforcing controls along the borders of Albania will positively impact the management of the Union's external borders as well as the borders of Albania itself. The conclusion of a revised status agreement would contribute to further supporting Albania's accession negotiation process, and tie into the wider objectives and priorities for cooperation as set out in the European Union's Stabilisation and Association Agreement with Albania<sup>9</sup>.

The conclusion of a revised 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 promote convergence on foreign and security matters between the Union and Albania.

## **2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

- **Legal basis**

The legal basis for this recommendation is Article 218(3) and (4) TFEU.

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<sup>9</sup> OJ L 107, 28.4.2009, pp. 166-502.

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 has 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 negotiated and concluded with Albania falls within the exclusive competence of the European Union. In accordance with Article 73(3) of Regulation (EU) 2019/1896, the proposed status agreement will be based on the model agreement adopted by the Commission.

- **Subsidiarity and Proportionality**

*The need for a common approach*

A status agreement in line with Regulation (EU) 2019/1896 will allow, *inter alia*, for the deployment of European Border and Coast Guard teams by the European Border and Coast Guard Agency, using all the possibilities offered by that regulation including, in particular, the deployment to Albania’s borders with other third countries. Without such a tool, only bilateral deployments by Member States can be used to develop and implement European integrated border management at Albania’s non-European Union borders and support Albania in managing the significant number of migrants seeking to transit its territory. The extension of the already existing common approach to all of Albania’s borders is therefore needed to better manage the country’s borders as a whole.

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

As this will be a new agreement under Regulation (EU) 2019/1896, an evaluation or fitness check of an existing instrument under this Regulation cannot be carried out. Impact assessments are not required for the negotiation of status agreements, as there are no alternative policy options available to the Commission.

- **Fundamental rights**

In line with recital 88 of Regulation (EU) 2019/1896, the Commission will assess the fundamental rights situation relevant to the areas covered by the status agreement in Albania and inform the European Parliament thereof.

The envisaged agreement will contain 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 will provide 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**

The European Data Protection Supervisor shall be consulted on the provisions of the draft status agreement related to the transfer of data if those provisions, as they will result from the negotiations with Albania, should differ substantially from the model 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.

Recommendation for a

## COUNCIL DECISION

### **authorising the opening of negotiations on a status agreement between the European Union and the Republic of Albania on operational activities carried out by the European Border and Coast Guard Agency in the Republic of Albania**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 218(3) and (4) thereof,

Having regard to the recommendation from the European Commission,

Whereas:

- (1) 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<sup>10</sup> 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.
- (2) Negotiations should be opened with a view to concluding an international agreement with Albania on operational activities carried out by the European Border and Coast Guard Agency in Albania.
- (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<sup>11</sup>; 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<sup>7</sup>, 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,

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<sup>10</sup> 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).

<sup>11</sup> 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).



HAS ADOPTED THIS DECISION:

*Article 1*

The Commission is hereby authorised to open negotiations, on behalf of the Union, for a status agreement with Albania on operational activities carried out by the European Border and Coast Guard Agency on the territory of Albania.

*Article 2*

The negotiating directives are set out in the Annex.

*Article 3*

The negotiations shall be conducted in consultation with [name of the special committee to be inserted by the Council].

*Article 4*

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council  
The President*