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Delegations will find attached document COM(2022) 692 final.

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SENSITIVE*

Recommendation for a

COUNCIL DECISION

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

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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 (Regulation (EU) 2019/1896) ‘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 management², 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.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 tasks⁴ 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 Regulation (EU) 2019/1896, 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 2021⁵.

Montenegro 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 only – the highest monthly total since 2016. Between January and August 2022, 2 010 irregular border crossings and attempts were registered at the border of Montenegro and Bosnia and Herzegovina and another 2 153 at Montenegro’s border with Albania.

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 Asylum⁶.

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.

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

Starting in 2017, the European Commission negotiated a status agreement with Montenegro on the basis of the previous European Border and Coast Guard Regulation (Regulation (EU) 2016/1624⁷). This agreement was signed in October 2019; the Council adopted the relevant decision on the conclusion of the agreement in May 2020 and the agreement entered into force on 1 July 2020⁸.

Joint operations conducted on the basis of this status agreement are limited to Montenegro's borders with the European Union – presently 14 km of land border with the Republic of Croatia and portions of the Adriatic Sea. Frontex has launched two joint operations in Montenegro: *Operation Montenegro Land* at Montenegro's land border with Croatia (launched on 15 July 2020) and *Operation Montenegro Sea* along its maritime boundary with Italy (launched 14 October 2020).

Already in October 2021, the Montenegrin Ministry of the Interior informed the European External Action Service that it wished to start negotiations on a status agreement based on the new European Border and Coast Guard Regulation (EU) 2019/1896, which allows also for joint operations at borders other than those with the European Union, in order to allow for Frontex deployments to the full length of the country's borders. Therefore, on 20 May 2022, the Commission services presented the model status agreement under the 2019 Regulation to Montenegrin authorities, highlighting the differences in relation to the status agreement currently in force.

Given that Montenegro 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 Montenegro remains high. Montenegro has been a model for the successful deployment of Frontex joint operations to third countries, therefore it 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 Montenegro'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

Montenegro benefits from several IPA-funded projects strengthening the institutional capacities in the area of mixed migration management and European integrated border management.

Under the IPA 2022 budget line, it is proposed that Montenegro will benefit from a second sector budget support programme on European integrated border management for an overall value of EUR 15 million. The programme, still subject to approval and adoption, aims to support Montenegro in the implementation of its European integrated border management strategy. In addition, it is expected to contribute to securing the external border, reducing irregular migration and cross-border crime.

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. 1–76).

⁸ Council Decision (EU) 2020/729 of 26 May 2020 on the conclusion of the Status Agreement between the European Union and Montenegro on actions carried out by the European Border and Coast Guard Agency in Montenegro.

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

Previous regional support under IPA has funded projects on identifying and registering migration flows with the aim of creating a database that is compatible with European Union standards. Building on this, a new, IPA-funded "Individual measure to strengthen border management capacities in favour of the Western Balkans for 2022" for Montenegro is planned in 2022, aiming at (i) upgrading the capacities to identify, register, screen and process information on migrants in line with Union and international standards, (ii) procuring border surveillance equipment, (iii) establishing a National Coordination Centre compatible with EUROSUR standards and (iv) improving border-crossing points.

Existing bilateral agreements

Montenegro has bilateral cooperation with Member States in the areas of migration and border management, especially with Germany, Italy, Spain, Croatia, Slovakia and Austria. Cooperation with the European Union Agency for Asylum continues under an agreed roadmap to strengthen capacity in the areas of asylum and reception.

Under Montenegro's existing status agreement with the European Union, Frontex officers are deployed at a border crossing point with Croatia and at the National Coordination Centre in Podgorica. The Police Directorate of Montenegro has had a working arrangement with Frontex since 2009, under the framework of which Frontex staff are deployed in an advisory function to the country's two international airports and its border crossing points with neighbouring third countries.

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 Montenegro in a manner that binds Norway, Iceland, Switzerland and Liechtenstein. To ensure that border guards and other relevant staff sent by those countries to Montenegro 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 Montenegro and each of those associated countries.

- **Consistency with other Union policies**

Reinforcing controls along the borders of Montenegro will positively impact the management of the Union's external borders as well as the borders of Montenegro 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 Montenegro.⁹

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

⁹ OJ L 108, 29.4.2010, p. 3.

management and promote convergence on foreign and security matters between the Union and Montenegro.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The legal basis for this recommendation is Article 218(3) and (4) 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 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 Montenegro falls within the exclusive competence of the European Union. In accordance with Article 73(3) of the 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 Montenegro’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 Montenegro’s non-European Union borders and support Montenegro in managing a significant number of migrants seeking to transit its territory. The extension of the existing common approach to all of Montenegro’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 Montenegro 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 status agreement related to the transfer of data if those provisions 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.¹⁰

5. OTHER ELEMENTS

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

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

¹⁰ [210720-euco-final-conclusions-en.pdf \(europa.eu\)](https://europa.eu/210720-euco-final-conclusions-en.pdf)

Recommendation for a

COUNCIL DECISION

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

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) 2019/1896¹¹ 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 Montenegro on operational activities carried out by the European Border and Coast Guard Agency in Montenegro.
- (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/EC¹²; 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 Denmark⁷, 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,

¹¹ 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).

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).

HAS ADOPTED THIS DECISION:

Article 1

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

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*