



Council of the  
European Union

Brussels, 26 October 2022  
(OR. en)

14063/22

LIMITE

FRONT 391  
COWEB 130  
MIGR 321

**COVER NOTE**

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From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	25 October 2022
To:	General Secretariat of the Council

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No. Cion doc.:	COM(2022) 693 final
Subject:	Recommendation for a COUNCIL DECISION authorising the opening of negotiations on a status 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

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Delegations will find attached document COM(2022) 693 final.

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Encl.: COM(2022) 693 final



Brussels, 25.10.2022  
COM(2022) 693 final

**SENSITIVE\***

Recommendation for a

**COUNCIL DECISION**

**authorising the opening of negotiations on a status 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**

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## **EXPLANATORY MEMORANDUM**

### **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)<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, has the task 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. This cooperation should focus 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 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 2021<sup>6</sup>.

The Republic of Serbia (‘Serbia’) lies on the Western Balkans migration route, which sees significant irregular migration towards the core of the European Union from Asia Minor, through the Balkan Peninsula. Between January and August 2022, 87 190 irregular border crossings and attempts had been registered by Frontex at the European Union’s external borders on the Western Balkan route, out of which 2 153 were registered at the border of Serbia with the Republic of Albania and another 2 010 at the border with Bosnia and Herzegovina. This year there has been a particularly strong increase in arrivals on the Western Balkans route. Movements along this route are influenced by several factors, including economic pressures, rising inflation, conditions in key countries of origin, insecurity along the Syrian border, as well as an increasing number of people arriving by air to Serbia and other partners in the region due to their visa-free regimes.

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 the ensuing rise in asylum applications are putting significant pressure on some European Union Member States, leading to the need for common, coordinated action at the Union level,

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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 Regulation (EU) 2019/1896.

<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.

based on the principles of fair sharing of responsibility and solidarity enshrined in the Pact on Migration and Asylum<sup>7</sup>.

In 2017, the negotiations for a status agreement<sup>8</sup> between the Union and Serbia were opened on the basis of the previous European Border and Coast Guard Regulation (Regulation (EU) 2016/1624<sup>9</sup>), and the agreement was concluded on 20 May 2020<sup>10</sup>. However, the aforementioned regulation was repealed and replaced by Regulation (EU) 2019/1896.

Joint operations conducted on the basis of this status agreement are limited to Serbia's borders with the European Union. Frontex, on 16 June 2021, launched a joint operation in Serbia: *Operation Serbia Land* is carried out on Serbia's land border with Bulgaria, with 66 standing corps officers currently deployed.

Given that Serbia 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 national authorities of Serbia remains high. A status agreement based on Regulation (EU) 2019/1896 would allow for the deployment of European Border and Coast Guard standing corps teams to Serbia'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*

Migration management is a central field in which the European Union has been providing significant support to Serbia, in the form of human resources and funds in order to accompany the EU accession process, with a particular emphasis on strengthening Serbia's asylum and migration management system as well as improving the management of its borders.

Since 2015, the European Union has provided more than EUR 158 million to Serbia to address the immediate needs of refugees, asylum-seekers and migrants and to help Serbia strengthen its migration and integrated border management capacities. In addition, under IPA III so far, EUR 57.25 million have been allocated to further support migration management in Serbia. Serbia also benefits from the regional actions "Support to Regional Security in the Western Balkans" and "Support to protection-sensitive migration management systems".

#### *Existing bilateral agreements*

Inter alia, Serbia has a readmission agreement<sup>11</sup> with the European Union as well as a visa facilitation agreement<sup>12</sup>. Serbia's Ministry of Interior of concluded a working arrangement

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

<sup>8</sup> 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. 3–15).

<sup>9</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).

<sup>10</sup> 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. 1–2).

<sup>11</sup> Agreement between the European Community and the Republic of Serbia on the readmission of persons residing without authorisation (OJ L 334, 19.12.2007, p. 46–64).

with the European Border and Coast Guard Agency in 2009. Cooperation with the EU Agency for Asylum continues, with the agreement to extend their current roadmap for cooperation until December 2023. Serbia is a party to the Police Cooperation Convention in South-East Europe and has signed agreements on border crossings, local border traffic and on joint locations/joint border crossings with several of its neighbours. Serbia has also signed a readmission agreement with Bosnia and Herzegovina, Montenegro, North Macedonia as well as the United Kingdom.

#### *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 or 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 attached to the status agreement should state the desirability that similar agreements be concluded between Serbia and each of those associated countries.

- **Consistency with other Union policies**

Reinforcing controls along the borders of Serbia will positively impact the management of the Union's external borders as well as that of the borders of Serbia itself. The conclusion of a status agreement under the current Regulation (EU) 2019/1896 would tie into the wider objectives and priorities for cooperation as set out in the European Union's Stabilisation and Association Agreement with Serbia<sup>13</sup>.

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

## **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 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 Serbia falls within the exclusive competence of the European Union. In accordance with Article

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<sup>12</sup> Agreement between the European Community and the Republic of Serbia on the facilitation of the issuance of visas – Declarations (OJ L 334, 19.12.2007, p. 137–147).

<sup>13</sup> Stabilisation and Association Agreement between the European Communities and their Member States of the one part, and the Republic of Serbia, of the other part (OJ L 278, 18.10.2013, p. 16–473).

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 will allow the European Border and Coast Guard Agency to deploy European Border and Coast Guard teams to Serbia, using all the possibilities offered by Regulation (EU) 2019/1896. Without such a tool, only bilateral deployments by Member States can be used to develop and implement European integrated border management at Serbia's non-European Union borders and support Serbia in managing the significant number of migrants seeking to transit its territory. A common approach 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 Serbia 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.<sup>14</sup>

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<sup>14</sup> [210720-euco-final-conclusions-en.pdf \(europa.eu\)](https://european-council.europa.eu/media/eu-co-ordinating-institution/~/media/2020/07/20200714_Council_Conclusions_to_the_Multiannual_Financial_Framework_Agreement_en.pdf)

## **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 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 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>15</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 the Republic of Serbia on operational activities carried out by the European Border and Coast Guard Agency in the Republic of Serbia.
- (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>16</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>15</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>16</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 the Republic of Serbia on operational activities carried out by the European Border and Coast Guard Agency on the territory of the Republic of Serbia.

*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*