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2013/0427 (NLE)

Proposal for a

COUNCIL DECISION

**on the conclusion of the Arrangement with the Kingdom of Norway on the modalities of
its participation in the European Asylum Support Office**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Regulation (EU) No 439/2010 established the European Asylum Support Office¹ to strengthen practical cooperation between Member States on asylum, enhance the implementation of the Common European Asylum System and support Member States whose asylum and reception systems are under particular pressure.

Recital 24 of the Regulation foresees that "to fulfil its purpose, the Support Office should be open to participation by countries which have concluded agreements with the Union by virtue of which they have adopted and apply law of the Union in the fields covered by this Regulation, in particular Iceland, Liechtenstein, Norway and Switzerland". These countries are referred to as the "associate countries".

Accordingly, Article 49 (1) of the Regulation stipulates that "the Support Office shall be open to the participation of Iceland, Liechtenstein, Norway and Switzerland as observers. Arrangements shall be made, specifying in particular the nature, extent and manner in which those countries are to participate in the Support Office's work. Such arrangements shall include provisions relating to participation in initiatives undertaken by the Support Office, financial contributions and staff. As regards staff matters, those arrangements shall, in any event, comply with the Staff Regulations."

The participation of associate countries in the Support Office's work is not only a logical step, having regard to their association to the Dublin system, but also has a clear added value to the Support Office's support offer such as: the exchange of best practices and expertise, the Support Office's permanent and emergency support, the Support Office's information gathering and analysis, the Support Office's early warning and preparedness system.

On that basis the Commission presented on 1 July 2011 a recommendation to the Council in order to authorise the Commission to open negotiations with Iceland, Norway, Switzerland, and Liechtenstein on international agreements establishing such arrangements.

The Commission received the Council authorisation to open negotiations with Iceland, Norway, Switzerland, and Liechtenstein on arrangements on the modalities of these countries' participation in EASO on 27 January 2012.

The negotiations were held jointly with all associate countries. Four rounds of negotiations took place. The final text of the draft Arrangement with Norway was initialled on 28 June 2013.

Member States have been informed and consulted in the relevant Council Working Groups.

On the part of the Union, the legal basis for the Arrangement is Articles 74 and 78 (1) and (2) in conjunction with Article 218 of the TFEU.

The Commission signed the Arrangement on [...]. In accordance with Art. 218(6)(a) of the TFEU the European Parliament's consent for the conclusion of the Arrangement was given on [...]

¹ Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office; OJ L 132/11 of 29.05.2010.

2. RESULTS OF NEGOTIATIONS

The Commission considers that the objectives set by the Council in its negotiating directives were attained and that the draft Arrangement is acceptable to the Union.

The final content of it can be summarised as follows:

The draft Arrangement foresees the full participation of Norway in the activities of the Support Office [Article 1], representation in the Support Office's Management Board as an observer and without voting rights [Article 2], annual financial contributions of Norway, to the budget of the Support Office by an annual sum calculated in accordance with its GDP as a percentage of GDP of all States participating in the Support Office's work [Article 3 and Annex I].

In addition Norway accepted provisions concerning a possible increased contribution if the Union contribution is increased [Article 3 and Annex I];

Furthermore the draft Arrangement foresees the establishment of a committee composed of representatives of the Commission and of the associate countries. For reasons of efficiency, this committee shall meet jointly with the corresponding Committees set up with other associated countries participating on the basis of Article 49 (1) of the Regulation. The committee was not mentioned in the negotiating directives and has been requested by the associate countries in order to allow for an exchange of information and monitor the proper implementation of the Arrangement [Article 11].

3. BUDGETARY IMPLICATION

Article 3 and Annex I of the draft Arrangement describe the provisions related to the annual financial contributions of Norway to the budget of the Support Office and their possible adaptation to the situation described as per Annex I.

4. CONCLUSION

In light of the above-mentioned results, the Commission proposes that the Council approves after having received consent from the European Parliament, the Arrangement with Norway on the modalities of its participation in the European Asylum Support Office.

Proposal for a

COUNCIL DECISION

on the conclusion of the Arrangement with the Kingdom of Norway on the modalities of its participation in the European Asylum Support Office

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 74 and 78 (1) and (2) 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 Parliament²,

Whereas:

- (1) In accordance with Council Decision 2013/XXX of [...] ³, the Arrangement between the European Union and Norway on the modalities of its participation in the European Asylum Support Office was signed by the Commission on [], subject to its conclusion.
- (2) The Arrangement should be approved.
- (3) As specified in recital 21 of Regulation (EU) No 439/2010, the United Kingdom and Ireland are taking part and are bound by that Regulation. They should therefore give effect to Article 49 (1) of the Regulation by taking part in this Decision. The United Kingdom and Ireland are therefore taking part in this Decision.
- (4) As specified in recital 22 of Regulation (EU) No 439/2010, Denmark is not taking part and is not bound by that Regulation. Denmark is therefore not taking part in this Decision.

HAS ADOPTED THIS DECISION:

Article 1

The Arrangement between the European Union and Norway on the modalities of its participation in the European Asylum Support Office is hereby approved on behalf of the Union.

The text of the Arrangement is attached to this Decision.

² OJ C [...], [...], p. [...].

³ OJ C [...], [...], p. [...].

Article 2

The President of the Council shall designate the person(s) empowered to proceed, on behalf of the European Union, to the notification provided for in Article 13(1) of the Arrangement, in order to express the consent of the European Union to be bound by the Arrangement.

Article 3

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

Done at Brussels,

For the Council

The President

ANNEX
ARRANGEMENT
BETWEEN THE EUROPEAN UNION AND THE KINGDOM OF NORWAY ON THE
MODALITIES OF ITS PARTICIPATION IN THE
EUROPEAN ASYLUM SUPPORT OFFICE

THE EUROPEAN UNION, hereinafter referred to as the 'EU'

of the one part, and

THE KINGDOM OF NORWAY, hereinafter referred to as 'Norway',

of the other part

Having regard to Article 49(1) of Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office⁴, hereinafter referred to as the 'Regulation',

Whereas:

(1) The Regulation states that, to fulfill its purpose, the European Asylum Support Office, hereafter referred to as the "Support Office", should be open to participation by countries which have concluded agreements with the EU by virtue of which they have adopted and apply law of the EU in the field covered by this Regulation, in particular, Iceland, Liechtenstein, Norway and Switzerland, hereinafter referred to as the 'associate countries',

(2) Norway has concluded agreements with the EU, by virtue of which it has adopted and applies law of the EU in the field covered by the Regulation, in particular the Agreement between the European Community and the Republic of Iceland and the Kingdom of Norway concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Iceland or Norway⁵,

HAVE AGREED AS FOLLOWS:

Article 1
Extent of participation

Norway shall participate fully in the work of the Support Office and be entitled to receive support actions from the Support Office as described in the Regulation and in accordance with the terms set out by the present Arrangement.

Article 2
Management Board

Norway shall be represented in the Management Board of the Support Office as an observer without the right to vote.

⁴ OJ L 132, 29.5.2010, p.11

⁵ OJ L 93, 3.4.2001, p.40

Article 3
Financial contribution

1. Norway shall contribute to the revenue of the Support Office an annual sum calculated in accordance with its Gross Domestic Product (GDP) as a percentage of the GDP of all participating States in accordance with the formula described in Annex I.
2. The financial contribution referred to in Paragraph 1 shall be incurred as from the day following the entry into force or from the time of provisional application of this Arrangement as referred to in Article 13 (3) of the Arrangement. The first financial contribution shall be reduced proportionally to the remaining time in year after the entry into force or from the time of the provisional application of this Arrangement.

Article 4
Data Protection

1. In applying this Arrangement Norway shall process data in line with Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.⁶
2. For the purpose of this Arrangement, Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data⁷ shall apply to the processing of personal data carried out by the Support Office.
3. Norway shall respect the rules on confidentiality of documents held by the Support Office, as set out in the Rules of Procedure of the Management Board.

Article 5
Legal status

The Support Office shall have legal personality under the law of Norway and shall enjoy in Norway the most extensive legal capacity accorded to legal persons under the law of Norway. It may, in particular, acquire or dispose of movable and immovable property and may be party to legal proceedings.

Article 6
Liability

The liability of the Support Office shall be governed by Article 45 (1), (3) and (5) of the Regulation.

Article 7
Court of Justice

Norway shall recognise the jurisdiction of the Court of Justice of the European Union over the Support Office, as provided for in Article 45 (2) and (4) of the Regulation.

⁶ OJ L 281, 23.11.1995, p. 31

⁷ OJ L 8, 12.1.2011, p. 1

Article 8
Staff of the Support Office

1. In accordance with Article 38 (1) and 49 (1) of the Regulation, the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Union, the rules adopted jointly by the European Union institutions for the purpose of applying these Staff Regulations and the rules adopted by the Support Office according to Article 38 (2) of the Regulation apply to nationals of Norway recruited as staff members by the Support Office.
2. By way of derogation from Article 12 (2) (a) and Article 82 (3) (a) of the Conditions of Employment of Other Servants of the European Union, nationals of Norway enjoying their full rights as citizens may be engaged under contract by the Executive Director of the Support Office according to the existing rules for selection and engagement of staff adopted by the Support Office.
3. Article 38 (4) of the Regulation shall apply mutatis mutandis to the nationals of Norway.
4. Nationals of Norway may not, however, be appointed to the post of Executive Director of the Support Office.

Article 9
Privileges and immunities

Norway shall apply to the Support Office and to its staff the Protocol on the Privileges and Immunities of the European Union⁸ as well as any rules adopted pursuant to this Protocol relating to staff matters of the Support Office.

Article 10
Combating fraud

The provisions set out in Article 44 of the Regulation shall be applied and the European Anti-Fraud Office (OLAF) and the Court of Auditors may exercise the powers conferred on them. OLAF and the Court of Auditors shall inform *Riksrevisjonen* in good time of any intention to carry out on-the-spot-checks or audits which, if the Norwegian authorities so wish, may be carried out jointly with *Riksrevisjonen*.

Article 11
Committee

1. A Committee, composed of representatives of the European Commission and Norway, shall monitor the proper implementation of the Arrangement and ensure a continuous process of information provision and exchange of views in this respect. For practical reasons, the Committee shall meet jointly with the corresponding Committees set up with other associated countries participating on the basis of Article 49 (1) of the Regulation. It shall meet upon request by either Norway or the European Commission. The Management Board of the Support Office shall be informed about the work of this Committee.
2. Information about foreseen EU legislation, which either directly affects or amends the Regulation or is expected to have implications relating to the financial contribution laid down in Article 3 of this Arrangement, shall be shared and an exchange of views thereon shall take place in the Committee.

⁸ OJ C 83 of 30.3.2010, p.266.

Article 12

Annex

Annex I to this Arrangement shall constitute an integral part of the Arrangement.

Article 13

Entry into force

1. The Contracting Parties shall approve this Arrangement in accordance with their own internal procedures. They shall notify each other of the completion of these procedures.
2. This Arrangement shall enter into force on the first day of the first month following the day of the last notification referred to in paragraph 1.
3. Upon signature of this Arrangement, the contracting parties may by a mutual agreement declare that it shall apply provisionally as from the day following that of its signature.

Article 14

Termination and validity

1. This Arrangement shall be concluded for an unlimited period.
2. Each Contracting Party may, after consultations within the Committee, denounce this Arrangement by notifying the other Contracting Party. The Arrangement shall cease to apply six months after the date of such notification.
3. This Arrangement shall be terminated in case of termination of the Agreement between the European Community and the Republic of Iceland and the Kingdom of Norway concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Norway or Iceland.
4. This Arrangement shall be drawn up in one single original in the Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish, Swedish and Norwegian languages, each of those texts being equally authentic.

.....

ANNEX I

FORMULA TO CALCULATE THE CONTRIBUTION

1. The financial contribution of Norway to the revenue of the Support Office defined in Article 33 (3) (d) of the Regulation is calculated in the following way:

The most updated final figures of the Gross Domestic Product (GDP) of Norway available on 31 March of each year shall be divided by the sum of the GDP figures of all the States participating in the Support Office available for the same year. The obtained percentage will be applied to the part of the authorised Support Office's revenue as defined in Article 33 (3) (a) of the Regulation in the year under consideration to obtain the amount of the financial contribution of Norway.

2. The financial contribution shall be paid in Euro.

3. Norway shall pay its financial contribution no later than 45 days after receiving the debit note. Any delay in payment shall give rise to the payment of default interest by Norway on the outstanding amount from the due date. The interest rate shall be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the Official Journal of the European Union, in force on the first calendar day of the month in which the deadline falls, increased by 3.5 percentage points.

4. Norway's financial contribution shall be adapted in accordance with this Annex in case the financial contribution from the European Union entered in the general budget of the European Union as defined in Article 33 (3) a of the Regulation is increased pursuant to Articles 26, 27 or 41 of the Regulation (EU, Euratom) No 966/2012⁹ on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002. In this case, the difference shall be due 45 days after receiving the debit note.

5. In the event that payment credits of the Support Office received from the EU according to Article 33 (3) a of the Regulation related to a year N are not spent before 31 December of year N or that the Support Office budget of the year N has been lowered according to Articles 26, 27 or 41 of the Regulation (EU, Euratom) No 966/2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002, the part of these unspent or lowered payment credits corresponding to the percentage of the contribution made by Norway are transferred to the budget of year N+1 of the Support Office. Norway's contribution to the Support Office's budget of year N+1 will be reduced accordingly.

⁹ OJ L 298, 26.10.2012, p. 1