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Proposal for a

COUNCIL DECISION

on the signing, on behalf of the Union, of the Agreement between the European Union and the Republic of North Macedonia on operational activities carried out by the European Border and Coast Guard Agency in the Republic of North Macedonia

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’) 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 shall 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 provided for in Article 76(1) of the same regulation. The Commission adopted this model on 21 December 2021⁵.

During the peak of the European migration and refugee crisis, hundreds of thousands of asylum seekers and migrants arrived in the European Union via the Western Balkans with the Republic of North Macedonia (‘North Macedonia’) lying on one of the primary routes for irregular mixed movement, predominantly from Greece towards Serbia. While the number of arrivals to the European Union has gone down since then, the migratory route through North Macedonia is still heavily used. The official number of irregular arrivals in North Macedonia in 2021 stands at 20 874. People in irregular movement remain targets of organised criminal groups engaged in people smuggling. They are at risk of human rights violations along the route. Five migrants died in 2021 while on the move in the country.

In 2017, the European Commission opened negotiations with North Macedonia for a status agreement on the basis of the previous European Border and Coast Guard Regulation (Regulation (EU) 2016/1624). Negotiations were successfully finalised by the initialling of the draft status agreement by the Commission and North Macedonia on 18 July 2018. However, the status agreement was not immediately signed and, in 2019, the aforementioned Regulation was repealed and replaced by Regulation (EU) 2019/1896.

On 29 July 2022, the Commission received the Council authorisation to open negotiations with North Macedonia for an agreement on operational activities to be carried out by the

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.

European Border and Coast Guard Agency in North Macedonia. The European Commission, on behalf of the European Union, and North Macedonia held negotiations on the agreement on 25 August 2022. The Commission considers that the objectives set by the Council in its negotiating directives were attained and that the agreement is acceptable for the Union.

The attached proposal for a Council Decision constitutes the legal basis for the signing of the of the Agreement between the European Union and the Republic of North Macedonia on operational activities carried out by the European Border and Coast Guard Agency in the Republic of North Macedonia.

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

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; Ireland is therefore not taking part in the adoption of this Decision and is not bound by it nor subject to its application. In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, 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 nor subject to its application.

- **Consistency with other Union policies**

Reinforcing controls along the borders of North Macedonia will positively impact the management of the Union's external borders as well as the borders of North Macedonia 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 North Macedonia.⁶

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 management and promoting convergence on foreign and security matters between the Union and North Macedonia.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis for this proposal is Article 77(2)(b) and (d) and Article 79(2)(c) TFEU in conjunction with Article 218(5) 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

⁶ [http://data.europa.eu/eli/agree_internation/2004/239\(2\)/2021-09-09](http://data.europa.eu/eli/agree_internation/2004/239(2)/2021-09-09).

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 shall have 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 signed and concluded with North Macedonia falls within the exclusive power of the European Union. In accordance with Article 73(3) of the Regulation (EU) 2019/1896, the proposed status agreement will be on the basis of the model agreement adopted by the Commission as concerns the new elements, while building on the text of the agreement already achieved with North Macedonia in 2018.

- **Subsidiarity (for non-exclusive competence)**

The need for a common approach

A status agreement will allow for the deployment in North Macedonia of European Border and Coast Guard teams by the European Border and Coast Guard Agency, 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 and support North Macedonia in managing a significant number of migrants seeking to transit its territory. A common approach is therefore needed to better manage the borders of North Macedonia.

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

As this will be a new agreement, no evaluation or fitness checks of existing instruments could be carried out. No impact assessment is required for the negotiation of a status agreement.

- **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 North Macedonia 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.

5. OTHER ELEMENTS

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

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

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 77(2)(b) and (d) and Article 79(2)(c) TFEU in conjunction with Article 218(5) thereof,

Having regard to the proposal 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) 2019/1896¹ 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) On 29 July 2022, the Council authorised the Commission to open negotiations with the Republic of North Macedonia for an agreement on operational activities carried out by the European Border and Coast Guard Agency in the Republic of North Macedonia (the ‘Agreement’).
- (3) These negotiations were successfully concluded by the initialling of the Agreement.
- (4) 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/EC²; Ireland is therefore not taking part in the adoption of this Decision and is not bound by it or subject to its application,
- (5) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark³, 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,

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).

² 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).

³ Protocol (No 22) on the position of Denmark, OJ C 326, 26.10.2012, p. 299–303.

- (6) The Agreement should be signed on behalf of the Union, subject to its conclusion at a later date. The declaration attached to the agreement should be approved on behalf of the Union,

HAS ADOPTED THIS DECISION:

Article 1

The signing of the Agreement between the European Union and the Republic of North Macedonia on operational activities carried out by the European Border and Coast Guard Agency in the Republic of North Macedonia (the ‘Agreement’), is hereby approved on behalf of the Union, subject to the conclusion of the said Agreement.

The text of the Agreement is attached to this Decision.

Article 2

The Declaration attached to this Decision shall be approved on behalf of the Union.

Article 3

The Council Secretariat General shall establish the instrument of full powers to sign the Agreement, subject to its conclusion, for the person(s) indicated by the Commission.

Article 4

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

Done at Brussels,

*For the Council
The President*