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Delegations will find attached document COM(2024) 109 final ANNEX.

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Brussels, 8.3.2024
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ANNEX

ANNEX

to the

Recommendation for a Council Decision

**authorising the opening of negotiations on an agreement between the European Union
and the Republic of San Marino on several aspects in the field of border management**

ANNEX

DIRECTIVES FOR THE NEGOTIATION OF AN AGREEMENT BETWEEN

the European Union and the Republic of San Marino on several aspects in the field of border management

I. PURPOSE AND SCOPE OF THE AGREEMENT

1. The purpose of the agreement is to (i) provide an appropriate legal basis for the absence of border control between Italy and San Marino; (ii) put in place legal solutions relating to the consequences of the upcoming entry into operation of the new EU information systems, including the Entry/Exit System ('EES')¹ and the European Travel Information and Authorisation System ('ETIAS')², in view of the particular geographical situation of San Marino and its special relation with Italy; (iii) improve the security and trust as regards the residence permits issued by San Marino to third-country nationals.
2. The scope of the agreement encompasses rules relating to the border management between Italy and San Marino for the purpose described in paragraph (1) of this annex, as well as the relating and necessary safeguards.

II. CONTENT OF THE AGREEMENT

GENERAL PRINCIPLES

3. The envisaged agreement between the Union and San Marino should be without prejudice to the issues of sovereignty and jurisdiction.
4. The envisaged agreement between the Union and San Marino should be negotiated in full respect of the territorial integrity of its Member States as guaranteed by Article 4(2) of the Treaty on European Union.
5. The agreement should not prevent the conclusion of implementing administrative arrangements of an operational nature between Italy and San Marino on matters covered by this agreement insofar as their provisions are compatible with those of the agreement and with Union law.

BASIS FOR COOPERATION

6. Respect for and safeguarding of human rights and fundamental freedoms, democratic principles, the rule of law including San Marino's continued commitment to respect

¹ Regulation (EU) 2017/2226 of the European Parliament and of the Council of 30 November 2017 establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third-country nationals crossing the external borders of the Member States and determining the conditions for access to the EES for law enforcement purposes, and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 767/2008 and (EU) No 1077/2011 (*OJ L 327, 9.12.2017, p. 20*) ('EES Regulation').

² Regulation (EU) 2018/1240 of the European Parliament and of the Council of 12 September 2018 establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 1077/2011, (EU) No 515/2014, (EU) 2016/399, (EU) 2016/1624 and (EU) 2017/2226 (*OJ L 236, 19.9.2018, p. 1*) ('ETIAS Regulation').

the European Convention on Human Rights (ECHR) should constitute essential elements for the envisaged relationship.

7. In view of the importance of data flows, the agreement should affirm the Parties' commitment to ensuring a high level of personal data protection, and fully respect, on a dynamic alignment basis, the Union's personal data protection rules, including Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and Directive (EU) 2016/680 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and the interpretation and supervision thereof by the European Data Protection Board and the Court of Justice of the European Union.

CIRCULATION OF PERSONS

8. Under the agreement, the Parties should ensure that their laws allow crossing between the Schengen area and San Marino without checks at a border crossing point and granting Schengen-wide effect of residence permits issued to third-country nationals by San Marino. The agreement should not provide for the participation of San Marino in the Schengen *acquis* or for its association to its implementation, application and development. Sammarinese authorities should not have access to databases reserved under Union law to Member States or countries associated with the Schengen or Dublin *acquis*.
9. The agreement should provide that in case a third-country national intends to arrive directly in San Marino, San Marino ensures that they first undergo border checks carried out by Italy.
10. The agreement should provide that third-country nationals who are legally resident in San Marino have visa-free access to the Schengen area for up to 90 days in any 180-day period in line with the relevant provisions of Union law and they will be exempted from the requirements under the EES and ETIAS Regulations. Third-country nationals legally residing in the Union should also benefit from equivalent facilitation in San Marino.
11. Lifting the legal obligation to carry out border checks on persons when crossing the border between the territory of San Marino and the Schengen area requires, as a condition, comprehensive safeguards in order to preserve the security and integrity of Schengen area.
12. In terms of safeguards:
[Residence permits]
 - (a) The agreement should provide that acquiring and maintaining the right to reside in San Marino would be conditional on the existence of a real connection with San Marino to be established on the basis of actual and regular physical presence over an appropriate period of time and of other objective and verifiable criteria to the exclusion of investment in San Marino's economy and real estate, or of predetermined financial payments to Sammarinese authorities.
 - (b) The agreement should provide that San Marino undertakes to only issue or renew residence permits to third-country nationals upon the positive opinion of Italy issued

within a set timeframe. Italy would be competent to issue a binding opinion based on its security assessment, in particular on the basis of checks in national or Union databases including EU restrictive measures, prior to the issuance or renewal of a residence permit for third-country nationals valid for San Marino following a request by Sammarinese authorities for persons fulfilling the relevant conditions under law applicable in the territory of San Marino and provided that the condition provided for in point (a) of this paragraph is fulfilled. The agreement should specify that residence permits to third-country nationals are issued in a uniform format clearly marked as valid for San Marino and that they would need to be notified to the Commission by Italy pursuant to Article 39 of the Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders.³

- (c) The agreement should provide that San Marino withdraws residence permits issued to third-country nationals upon the request of Italy following the security assessment carried out by Italy, in particular checks in national or Union databases, including EU restrictive measures. San Marino should inform Italy thereof without delay.
- (d) In case San Marino withdraws a residence permit issued to a third-country national of its own motion, it should inform Italy thereof without delay.
- (e) The agreement should provide that the issuance or renewal of a residence permit for a third-country national valid for San Marino would not oblige a Member State to withdraw an alert for the purposes of refusal of entry from the Schengen Information System.
- (f) The agreement should provide that the residence permits already issued by San Marino to third-country nationals legally resident in San Marino at the time of the entry into force of this agreement would be replaced by residence permits issued in accordance with the agreement within two years from its entry into force. The agreement should provide that existing residence permits issued by San Marino to third-country nationals are notified to Italy, who should perform checks in the relevant national and Union databases and may request the competent authorities in San Marino to withdraw these permits on grounds of public policy or internal security. In such a case San Marino would undertake to withdraw the residence permit.

[Visas]

- (g) The agreement should also provide that in case San Marino was to issue short-stay or long-stay visas to third-country nationals in the future, the agreement would need to be revised accordingly.

[Non-resident third-country nationals]

- (h) The agreement should provide that, except for residents in San Marino, time spent by third-country nationals in San Marino would be counted as time spent in the Schengen area for the purpose of the calculation of authorised stay within the Schengen area.
13. Subject to the entry into application of the agreement with San Marino on the basis of which San Marino applies Directive 2004/38/EC of the European Parliament and

³ Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code), (OJ L 077 23.3.2016, p. 1).

of the Council⁴, the provisions outlined in point 12 should not apply to third-country nationals to whom Directive 2004/38/EC applies.

14. The agreement should provide for rules on the exchange of information between the law enforcement authorities of San Marino and Italy, including information on criminal records and information on wanted and missing persons and objects, both upon request and on their own initiative, where this is relevant for the prevention, detection or investigation of crime in San Marino or in Italy, the safeguards against and the prevention of threats to public safety.
15. Furthermore, in order to ensure the high level of security and trust, the agreement should contain rules providing for the possibility of cross-border operational cooperation, such as the possibility of cross-border surveillance, cross-border 'hot pursuit' of criminal suspects, the organisation of joint patrols and other joint operations. There should also be rules allowing for the performance of enhanced police checks in the areas near the land border between the Schengen area and the territory of San Marino, for both law enforcement and migration purposes.
16. The agreement should provide for a mechanism whereby future relevant developments of Union law would, where necessary, be reflected in adaptations to the agreement. The agreement should also include a provision whereby the agreement would be terminated by the Union in case the adaptation is not effected.
17. The agreement should provide for a mechanism to evaluate its implementation.
18. The agreement should provide that the Union could suspend unilaterally all provisions related to the circulation of persons between the Union and San Marino in case of non-respect of the safeguards provided for in the agreement.

INSTITUTIONAL PROVISIONS

19. The agreement should allow for its periodical review.
20. The agreement should be established for an indefinite period of time and could be terminated at the request of either Party, with prior notice to the other Party of three months. In such a case, the border control between Italy and San Marino would need to be introduced.
21. In order to ensure the proper functioning of the agreement, it should establish efficient and effective arrangements for its management, supervision, implementation and review, and for the resolution of disputes and enforcement, in full respect of the autonomy of the Parties' respective legal orders.
22. The agreement should provide for the possibility of autonomous measures, including the suspension of the application of the agreement, as well as any supplementing agreements, in whole or in part in the event of a breach of essential elements.
23. The agreement should establish a governing body responsible for managing and supervising the implementation and operation of the agreement, facilitating the

⁴ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ L 158, 30.4.2004, p. 77).

resolution of disputes. It should take decisions and make recommendations concerning its evolution. The governing body should comprise the Parties' representatives at an appropriate level, reach decisions by mutual consent, and meet as often as required to fulfil its tasks. If necessary, that body could also establish specialised sub-committees to assist it in the performance of its tasks.

24. The agreement should include appropriate arrangements for dispute settlement by an independent arbitration panel whose decisions are binding on the Parties and enforcement, including provisions for expedient problem-solving.
25. The agreement should provide that should a dispute raise a question of interpretation of Union law, which may also be indicated by either Party, the arbitration panel should refer the question to the Court of Justice of the European Union (CJEU) as the sole arbiter of Union law, for a binding ruling. The arbitration panel should decide the dispute in accordance with the ruling given by the CJEU.
26. The agreement should provide that where a Party fails to take measures necessary to comply with the binding resolution of a dispute within a reasonable period of time, the other Party would be entitled to request financial compensation or take proportionate and temporary measures, including suspension of its obligations within the scope of the agreement.
27. The agreement should provide that in case of an alleged failure by one Party to comply with its obligations under the agreement, the other Party would be entitled to interim remedial measures, including the suspension of a part or the whole of the agreement, that are proportionate to the alleged failure and the economic and societal impact thereof, and provided that this Party initiates a dispute settlement procedure regarding the alleged breach.
28. The agreement, which should be equally authentic in all official languages of the Union, should include a language clause to that effect.