COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

COUNCIL DECISION

on the signature, on behalf of the European Union, of the Agreement between the European Union, the European Community and the Swiss Confederation, concerning the latter's association with the implementation, application and development of the Schengen Acquis

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Proposal for a

COUNCIL DECISION

on the conclusion on behalf of the European Union of the Agreement between the European Union, the European Community and the Swiss Confederation, concerning the latter's association with the implementation, application and development of the Schengen Acquis

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Proposal for a

COUNCIL DECISION

on the signature, on behalf of the European Community, of the Agreement between the European Community and Switzerland concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland

Proposal for a

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on the conclusion on behalf of the European Community of the Agreement between the European Community and Switzerland concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland

(presented by the Commission)

EXPLANATORY MEMORANDUM

Negotiations between the European Community and the Swiss Confederation on Seven Agreements were concluded in June 1999. All those Agreements entered simultaneously into force on 1 June 2002. Attached to the agreements, the Swiss Confederation made a declaration on migration and asylum policy declaring its intention to participate in the EU system for coordinating asylum policies and proposing that negotiations be entered into for the conclusion of a convention parallel to the Dublin Convention.

Following the authorization given to the Commission on 17 June 2002, negotiations were held with the Swiss Confederation on its association with the implementation, application and development of the Schengen Acquis as well as with the legislation establishing Eurodac[1] and the legislation on the State responsible for examining requests for asylum (which has been adopted subsequently and which will be referred to as "Dublin" Regulation[2]). Consequently, the texts of two separate agreements have been agreed upon.

According to the negotiating directives, the agreements follow the model of the agreements with Norway and Island - concerning the latter's association with the implementation, application and development of the Schengen acquis[3] and concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or Iceland or Norway[4] - adapted to the specific constitutional requirements of Switzerland.

In addition, the negotiating directives requested that Switzerland must accept the Schengen acquis and its development as well as the Dublin/Eurodac acquis and its development without exception and derogation. Furthermore the directives demanded a clear link between the implementation and the termination of the two Agreements. The negotiating directives also requested that Switzerland provide an annual contribution of to the administrative cost and operational costs of Schengen and of Dublin/Eurodac.

The Commission considers that the texts are in accordance with the negotiating directives adopted by the Council on 17 June 2002. The sole exception to the principle of full acceptance of the current and future Schengen acquis is the derogation granted to Switzerland in respect ofg the acceptance of future acquis related to requests for search and seizure in respect of offences in the field of direct taxation, which if committed in Switzerland, would not be punishable under Swiss law with a custodial penalty. This derogation was necessary in order to conclude an Agreement with Switzerland in the field of savings taxation, which in turn was necessary for the entry into force of Council directive 2003/48/EC of 3.6.2000 on taxation of savings income in the form of interest payments[5]. COREPER approved this

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1 Council Regulation N° 2725/2000/EC of 11.12.2000 concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of the Dublin Convention (OJ L 316 of 15.12.2000, p. 1)

2 Council Regulation N° 343/2003/EC of 18.2.2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ L 50 of 25.2.2003, p. 1)

3 OJ L 176 of 10.7.1999, p. 36.

4 OJ L 93 of 3.4.2001, p. 40.

5 O J L 157 of 26.6.2003, p. 38.

derogation on 17.5.2004 as part of an overall compromise with Switzerland in a wide range of sectors, which was agreed upon in the EU/Switzerland summit on 19.5.2004[6].

As far as indirect taxation is concerned, no derogation has been granted as regards both current and future acquis. Switzerland will grant full judicial cooperation under Article 51 of the Schengen Convention concerning cases of indirect tax evasion.[7] Indirect tax evasion is prosecuted in Switzerland by administrative authorities where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters. Therefore, Article 51 a) second alternative of the Schengen Convention is applicable.

Since the two agreements on Schengen and on Dublin/Eurodac are linked, both agreements should be signed simultaneously.

The following points are highlighted in order to show the differences with or adaptations to the corresponding Agreements concluded with Norway and Iceland:

Schengen:

As the Commission has clearly indicated in its declaration made at the time of the adoption of the directives for negotiation for the agreement on the Schengen acquis, it is regrettable that these directives foresaw a single agreement, including elements from the first as well as from the third pillar. These elements from different pillars are of a fundamentally different nature (the elements from the first pillar are of a Community law nature, including supremacy and possible direct effect, whereas the elements from the third pillar are not), they are subject to different procedures with respect to approval and conclusion (e.g. the third pillar elements are not subject to an opinion of Parliament) and are subject to the ECJ's jurisdiction to different degrees. In order to take account of these differences, the Commission proposes to adopt the Agreement on the Schengen acquis, by two separate acts, one based on the Community Treaty and the other on the Union Treaty, each decision indicating by a reference to Council Decision 1999/436/EC[8] which parts of the Schengen acquis, covered by the Agreement, fall within the Community Treaty and which within the Treaty on European Union. This will particularly assist the Court as to the extent of its jurisdiction.

Agreement:

Article 7 (2) b:

Switzerland is granted a two year period for acceptance and implementation of future acquis into its internal legal order in case a referendum is requested. If possible, Switzerland has to apply the development of the acquis on a provisional basis. If Switzerland cannot apply the content of the development on a provisional basis, EU and EC may take proportional and necessary measures against Switzerland in order to ensure the efficient functioning of the Schengen cooperation.

This safeguard clause makes it possible for EU and EC to accept an eventual two year delay for the implementation of future acquis by Switzerland. In this context, Switzerland explained

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6 Council document 9544/04

7 cf non-paper of the services of the Commission on the Schengen acquis concerning letters rogatory for search and seizure, MD 59/03 (EFTA group)

8 OJ L 176 of 10.7.1999, p. 17.

that only 5 % of the measures developing the Schengen acquis and adopted between the integration of the Schengen acquis in the framework of the European Union in 1999 and today could have lead to an eventual referendum.

Article 7 (5):

According to the negotiating directives, Switzerland accepts the Schengen acquis and its development in its entirety. The only exception to this general principle is laid down in Article 7 (5) on the future development of the Schengen acquis and concerns a possible future act or measure relating to a request or order for search and seizure made for the purposes of investigating or prosecuting offences in the field of direct taxation, which, if committed in Switzerland, would not be punishable under Swiss law with a custodial penalty.

Article 11:

The calculation of the percentage determining the annual contribution of Switzerland to the administrative costs is based on the relevant Norwegian and Icelandic contributions, in relation to the GDP of these three countries.

Article 13:

According to Denmark's special position with regard to acts adopted pursuant to Title IV of the Treaty establishing the European Community, Denmark needs to conclude a separate Agreement with Switzerland in order to create rights and obligations with Switzerland in relation to the Schengen acquis adopted pursuant to Title IV.

In addition, Norway and Iceland also need to conclude an agreement with Switzerland in order to create rights and obligations between all associated partners applying the Schengen acquis.

Article 15:

Paragraph 1 lays down the principle that the Schengen acquis can only be implemented by Switzerland after the Council decides that all preconditions for that implementation have been fulfilled by Switzerland and that controls at its external borders are effective.

In addition, paragraph 1 provides for the different scenarios for this decision taking according to the protocols annexed to the Amsterdam Treaty and to the Act of Accession of the ten new Member States.

Paragraph 3 and 4 implement the demand of the negotiating directives to provide for a link between the implementation and termination of the Schengen agreement and the implementation and termination of the agreement on the criteria and mechanism for establishing the State responsible for examining a request for asylum.

Article 16:

Article 16 allows Liechtenstein to join the present Agreement. This provision avoids the conclusion of a separate Agreement with Liechtenstein and thus the creation of a third Mixed Committee once Liechtenstein would be associated with the Schengen acquis. Liechtenstein can take part in the present organisational structure.

Annexes A and B list the Schengen acquis and its development and will be updated until the date of signature.

Final Act:

Declaration 2 makes clear that EU/EC does not exercise external competences on behalf of Switzerland. When negotiations with third countries have an impact on the Schengen acquis (e.g. negotiations on visa waiver agreements) EU/EC will invite third countries to conclude similar agreements with the three associated countries. The declaration can only concern Switzerland, but the same commitment is valid for Norway and Iceland, although it has not been explicitly mentioned in the final Act to the Agreement with these two countries.

Declaration 3 is based on the special provision granted to Luxembourg and is a result of the compromise reached with Switzerland concerning its derogation mentioned in Article 7 (5) of the Agreement.

In declaration 5 Switzerland commits itself to speed up as much as possible the different procedures where a referendum is asked.

Declaration 6 is a consequence of accepting the Schengen acquis without exception and derogation.

Declaration 8 only serves information purposes.

Exchange of letters on Switzerland's participation in Committees assisting the Commission in the exercise of its executive powers:

Like Norway and Iceland, Switzerland will also participate as observer in the work of the Committees assisting the Commission in the exercise of its executive powers. In declaration 2 annexed to the Agreement with Norway and Iceland, the European Union stated that it considers 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[9] to be an integral part of the Schengen acquis. It has not been included in the list of the Schengen acquis attached to the Agreement with Iceland and Norway as the directive already formed part of the EEA acquis and therefore was applied already by Iceland and Norway.

The participation of these two countries in the work of Committees established in the EEA is laid down in Article 100 of the EEA Agreement, which is different to the participation in "Schengen Committees": in Committees dealing with matters which have an impact on the EEA acquis, representatives of EEA countries are not present. Their participation is ensured as wide as possible in the preparatory stage of draft measures. Switzerland is not member of the EEA, but it is excluded that via an association with the Schengen acquis, the rights of Switzerland would go beyond the rights granted to Norway and Iceland which have chosen for an even deeper cooperation with the EU in form of the EEA Agreement.

Consequently, in order to establish equal rights and obligations, Switzerland's position must be the same as that for Iceland and Norway. Since the data protection directive covers areas going beyond the Schengen acquis, information given to Switzerland must be limited to

[9] OJ L 281, 23.11.1995, p. 31

points which are specifically relevant for the application of the Schengen acquis. In addition, Switzerland, like Iceland and Norway, can designate a representative to participate as observer in the "Working Party on the Protection of Individuals with regard to the Processing of Personal Data" (Article 29) concerning those points which are specifically relevant for Schengen.

Common declaration on joint meetings of the Mixed Committees

The Agreement with Iceland and Norway as well as the Agreement with Switzerland establish a Mixed Committee in order to address all Council items relevant for the implementation, application and development of the Schengen acquis. All parties agree that the meetings of these two Mixed Committees shall be held jointly.

In order to maintain the current structure that for the first period of six months of the year the representative of the European Union and for the second period of six months, an associated country presides the Mixed Committee at the level of senior officials and ministers, all associated countries expressed their wish to cede, as necessary, the exercise of their presidencies and rotate it among them in alphabetical order of name.

Dublin/Eurodac:

Agreement:

Article 4 (3) (corresponds on substance to Article 7 (2) b of the Schengen agreement):

Switzerland is granted a two years period for acceptance and implementation of future acquis into its internal legal order in case a referendum is requested. If possible, Switzerland has to apply the development of the acquis on a provisional basis. If Switzerland cannot apply the content of the development on a provisional basis, the EC may take proportional and necessary measures against Switzerland in order to ensure the efficient functioning of the Dublin/Eurodac cooperation.

Article 8:

The calculation of the contribution of Switzerland to the costs of the central unit of Eurodac is based on the relevant Norwegian and Icelandic contributions, in relation to the GDP of these three countries.

Article 11:

According to Denmark's special position with regard to acts adopted pursuant to Title IV of the Treaty establishing the European Community, Denmark needs to be associated via a protocol to the present Agreement in order to create rights and obligations between Denmark and Switzerland in relation to the provisions of Dublin/Eurodac.

In addition, Norway and Iceland need to conclude an agreement with Switzerland in order to create rights and obligations between all associated partners applying the Dublin/Eurodac acquis.

Article 12:

According to this article, some parts of the Agreement, e.g. the creation of the Joint Committee, are provisionally applied upon signature. This provisional application (and a similar provisional application is provided for in Schengen) will allow Switzerland to prepare itself for the technical implementation of the Agreement during the period of ratification.

Article 14:

This article creates the necessary link between the implementation and termination of the agreement on Dublin/Eurodac and the implementation and termination of the Schengen agreement.

Article 15:

As for Schengen, this provision allows Liechtenstein to join the agreement between the EC and Switzerland on Dublin/Eurodac.

Final Act:

Declaration 2 stipulates that Switzerland's position concerning its participation in the data protection directive, laid down in the exchange of letters on Switzerland's participation in Committees assisting the Commission in the exercise of its executive powers annexed to the Schengen Agreement, applies mutatis mutandis for items which specifically concern the application of the Dublin regulation or Eurodac.

Declaration 3 corresponds to the similar declaration made by Switzerland in relation to the Schengen Agreement (declaration 5) by which it commits itself to speed up as much as possible the different procedures in case a referendum is asked.

Declaration 4 only serves information purposes. It is nevertheless worth mentioning that for Dublin/Eurodac the participation in Committees assisting the commission in its exercise of executive powers - in accordance with the Iceland and Norway model for their participation in Dublin/Eurodac - follows the same structure as that foreseen in article 100 of the EEA Agreement (see Article 2 (6) of the Draft Agreement).

Common declaration on joint meetings of the Joint Committees

The Agreement with Iceland and Norway as well as the Agreement with Switzerland establish each a Joint Committee in order to address all items relevant for the implementation, application and development of the Dublin/Eurodac acquis. All parties agree that the meetings of these two Joint Committees shall be held jointly.

In order to prevail the current structure that for the first period of six months of the year the representative of the European Union and for the second period of six months, an associated country presides the Joint Committee, all associated countries expressed their wish to cede, as necessary, the exercise of their presidencies and rotate it among them in alphabetical order of name.

Declarations of the heads of delegations (agreed minutes):

For the sake of completeness, attention is drawn to the following declaration of the heads of delegations in the context of the Schengen Agreement, which, however, do not form part of the Agreement:

Declaration 1 lays down that the General Secretariat of the Council and the Swiss mission are in regular contacts in order to allow Switzerland to proceed as fast as possible with its internal procedures to fulfil its constitutional requirements (e.g. if a Member State lifted an parliamentary reservation etc).

Declaration 2 states that Council Directive 91/477/EEC of 18 June 1991 on control of the acquisition and possession of weapons does not apply to the acquisition or possession of weapons and ammunition by - amongst others - the armed forces. Switzerland requested the Commission's services to verify that its current Swiss system on the loan issuance of military weapons in the framework of young marksmen preservice course, the issuance of military weapons during the military service and the issuance of the service weapon – transformed into a semi-automatic weapon - after the military service, is covered by the above mentioned exemption from the application of the directive.

Declaration 3 reflects the interest to develop, as far as possible, Switzerland's cooperation with Eurojust and with the European Judicial Network.

Proposal for a

COUNCIL DECISION

on the signature, on behalf of the European Union, of the Agreement between the European Union, the European Community and the Swiss Confederation, concerning the latter's association with the implementation, application and development of the Schengen Acquis

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 24 and Article 38 thereof,

Whereas:

(1) Following the authorization given to the Presidency, assisted by the Commission, on 17 June 2002, negotiations with the Swiss Authorities, regarding the association of Switzerland with the implementation, application and development of the Schengen Acquis have been concluded;

(2) Subject to its conclusion at a later date, it is desirable to sign the agreement that was initialled on 25 June 2004;

(3) As far as the development of the Schengen acquis is concerned, which falls under Title VI of the Treaty on European Union, it is appropriate to make Council Decision 1999/437/EC[10] on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen acquis applicable to the relations with Switzerland upon signature;

(4) The United Kingdom is taking part in this Decision, in accordance with Article 5 of the Protocol integrating the Schengen acquis into the framework of the European Union annexed to the Treaty on European Union and to the Treaty establishing the European Community and Article 8(2) of Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen acquis[11];

(5) Ireland is taking part in this Decision in accordance with Article 5 of the Protocol integrating the Schengen acquis into the framework of the European Union annexed to the Treaty on European Union and to the Treaty establishing the European Community

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[10] OJ L 176 of 10.7.1999, p. 31.
[11] OJ L 131, 1.6.2000, p. 43

and Article 6(2) of 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[12];

HAS DECIDED AS FOLLOWS:

Article 1

Subject to its conclusion at a later date, the President of the Council is hereby authorized to designate the person empowered to sign on behalf of the European Union the Agreement between the European Union, the European Community and the Swiss Confederation concerning the latter's association with the implementation, application and development of the Schengen Acquis, and the related documents consisting of the Final Act, of the Exchange of Letters concerning the Committees that will assist the Commission in the exercise of its executive power, and of the Common Declaration on joint meetings of the Mixed Committees.

Article 2

This decision applies to the fields covered by the provisions listed in Annexes A and B of the Agreement and to their development to the extent such provisions have, or, in accordance with Decision 1999/436/EC[13], have been determined to have, a legal base within the Treaty on European Union.

Article 3

The provisions of Council Decision 1999/437/EC shall apply, in the same way, to the association of Switzerland with the implementation, application and development of the Schengen acquis, which falls under Title VI of the Treaty on European Union .

Done at Brussels,

For the Council
The President

[12] OJ L 64, 7.3.2002, p.20
[13] OJ L 176 of 10.7.1999, p. 17.

Proposal for a

COUNCIL DECISION

on the signature, on behalf of the European Community, of the Agreement between the European Union, the European Community and the Swiss Confederation concerning the latter's association with the implementation, application and development of the Schengen Acquis

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 62, 63 (3), 66 and 95 in conjunction with the second sentence of the first subparagraph of Article 300(2) thereof,

Having regard to the proposal from the Commission[14],

Whereas:

(1) Following the authorization given to the Commission on 17 June 2002, negotiations with the Swiss Authorities, regarding the association of Switzerland with the implementation, application and development of the Schengen Acquis have been concluded;

(2) Subject to its conclusion at a later date, it is desirable to sign the agreement that was initialled on 25 June 2004;

(3) As far as the development of the Schengen acquis is concerned, which falls under the Treaty establishing the European Community, it is appropriate to make Council Decision 1999/437/EC[15] on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen acquis applicable to the relations with Switzerland upon signature;

(4) In accordance with the Protocol integrating the Schengen acquis into the framework of the European Union annexed to the Treaty on European Union and to the Treaty establishing the European Community and with Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen acquis[16], the United Kingdom is not participating in this Decision and is not bound by it or subject

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14 OJ C , , p. .
15 OJ L 176 of 10.7.1999, p. 31.
16 OJL 131, 1.6.2000, p. 43

to its application except as concerns the provisions of Articles 26, 27, 75 and 76 of the Schengen Convention and measures building upon them;

(5) In accordance with the Protocol integrating the Schengen acquis into the framework of the European Union annexed to the Treaty on European Union and to the Treaty establishing the European Community and with 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[17], Ireland is not participating in this Decision and is not bound by it or subject to its application, except as concerns the provisions of Articles 26, 27, 75 and 76 of the Schengen Convention and measures building upon them;

(6) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark is not participating in the adoption of this Decision and is not bound by it or subject to its application;

HAS DECIDED AS FOLLOWS:

Article 1

Subject to its conclusion at a later date, the President of the Council is hereby authorized to designate the person empowered to sign on behalf of the European Community the Agreement between the European Union, the European Community and the Swiss Confederation concerning the latter's association with the implementation, application and development of the Schengen Acquis, and the related documents consisting of the Final Act, of the Exchange of Letters concerning the Committees that will assist the Commission in the exercise of its executive power, and of the Common Declaration on joint meetings of the Mixed Committees.

Article 2

This decision applies to the fields covered by the provisions listed in Annexes A and B of the Agreement and to their development to the extent that such provisions have, or, in accordance with Decision 1999/436/EC[18], have been determined to have, a legal base within the Treaty establishing the European Community.

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17 OJ L 64, 7.3.2002, p.20

18 OJ L 176 of 10.7.1999, p. 17.

The provisions of Council Decision 1999/437/EC shall apply, in the same way, to the association of Switzerland with the implementation, application and development of the Schengen acquis, which falls under the Treaty establishing the European Community.

Done at Brussels,

For the Council
The President

Proposal for a

COUNCIL DECISION

on the conclusion on behalf of the European Union of the Agreement between the European Union, the European Community and the Swiss Confederation, concerning the latter's association with the implementation, application and development of the Schengen Acquis

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 24 and Article 38 thereof,

Having regard to the recommendation of the Presidency,

Whereas:

(1) Following the authorization given to the Presidency, assisted by the Commission, on 17 June 2002, negotiations with the Swiss Authorities, regarding the association of Switzerland with the implementation, application and development of the Schengen Acquis have been concluded;

(2) According to a Council Decision …./…./CE of ……2004, and subject to its conclusion at a later date, the Agreement has been signed on behalf of the European Community on ….2004;

(3) The Agreement should now be approved;

(4) As far as the development of the Schengen acquis is concerned, which falls under Title VI of the Treaty on European Union, it is appropriate to make Council Decision 1999/437/EC[19] on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen acquisapplicable to the relations with Switzerland;

(5) The United Kingdom is taking part in this Decision, in accordance with Article 5 of the Protocol integrating the Schengen acquis into the framework of the European Union annexed to the Treaty on European Union and to the Treaty establishing the European Community and Article 8(2) of Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen acquis[20];

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[19] OJ L 176 of 10.7.1999, p. 31.

[20] OJL 131, 1.6.2000, p. 43

(6) Ireland is taking part in this Decision in accordance with Article 5 of the Protocol integrating the Schengen acquis into the framework of the European Union annexed to the Treaty on European Union and to the Treaty establishing the European Community and Article 6(2) of 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[21];

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement between the European Union, the European Community and the Swiss Confederation concerning the latter's association with the implementation, application and development of the Schengen Acquis, and the related documents consisting of the Final Act, of the Exchange of Letters concerning the Committees that will assist the Commission in the exercise of its executive power, and of the Common Declaration on joint meetings of the Mixed Committees are hereby approved on behalf of the European Union.

The text of the Agreement, the Final Act, the Exchange of Letters, and the Common Declaration are attached to this Decision.

Article 2

This decision applies to the fields covered by the provisions listed in Annexes A and B of the Agreement and to their development to the extent such provisions have, or, in accordance with Decision 1999/436/EC[22], have been determined to have, a legal base within the Treaty on European Union.

Article 3

The provisions of Council Decision 1999/437/EC shall apply, in the same way, to the association of Switzerland with the implementation, application and development of the Schengen acquis, which falls under Title VI of the Treaty on European Union.

Article 4

The President of the Council is hereby authorised to designate the person empowered to deposit on behalf of the European Union the Instrument of approval provided for in Article 14 of the Agreement, in order to express the consent of the European Union to be bound.

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21 OJ L 64, 7.3.2002, p.20

22 OJ L 176 of 10.7.1999, p. 17

Article 5

This Decision shall be published in the *Official Journal of the European Union*.

Done at Brussels,

For the Council
The President

2004/0199(CNS)

Proposal for a

COUNCIL DECISION

on the conclusion, on behalf of the European Community, of the Agreement between the European Union, the European Community and the Swiss Confederation concerning the latter's association with the implementation, application and development of the Schengen Acquis

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 62, 63 (3), 66 and 95 in conjunction with the second sentence of the first subparagraph of Article 300(2) and the first subparagraph of Article 300 (3) thereof,

Having regard to the proposal from the Commission[23],

Having regard the opinion of the European Parliament,

Whereas:

(1) Following the authorization given to the Commission on 17 June 2002, negotiations with the Swiss Authorities, regarding the association of Switzerland with the implementation, application and development of the Schengen Acquis have been concluded;

(2) According to a Council Decision …./…./CE of ……2004, and subject to its conclusion at a later date, the Agreement has been signed on behalf of the European Community on ….2004;

(3) The Agreement should now be approved;

(4) As far as the development of the Schengen acquis is concerned, which falls under the Treaty establishing the European Community, it is appropriate to make Council Decision 1999/437/EC[24] on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen acquis applicable to the relations with Switzerland;

(5) In accordance with the Protocol integrating the Schengen acquis into the framework of the European Union annexed to the Treaty on European Union and to the Treaty

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[23] OJ C , , p. .

[24] OJ L 176 of 10.7.1999, p. 31.

establishing the European Community and with Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen acquis[25], the United Kingdom is not participating in this Decision and is not bound by it or subject to its application, except as concerns the provisions of Articles 26, 27, 75 and 76 of the Schengen Convention and measures building upon them;

(6) In accordance with the Protocol integrating the Schengen acquis into the framework of the European Union annexed to the Treaty on European Union and to the Treaty establishing the European Community and with 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[26], Ireland is not participating in this Decision and is not bound by it or subject to its application, except as concerns the provisions of Articles 26, 27, 75 and 76 of the Schengen Convention and measures building upon them;

(7) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark is not participating in the adoption of this Decision and is not bound by it or subject to its application;

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement between the European Union, the European Community and the Swiss Confederation concerning the latter's association with the implementation, application and development of the Schengen Acquis, and the related documents consisting of the Final Act, of the Exchange of Letters concerning the Committees that will assist the Commission in the exercise of its executive power, and of the Common Declaration on joint meetings of the Mixed Committees are hereby approved on behalf of the European Community.

The text of the Agreement, the Final Act, the Exchange of Letters, and the Common Declaration are attached to this Decision.

Article 2

This decision applies to the fields covered by the provisions listed in Annexes A and B of the Agreement and to their development to the extent that such provisions have, or, in accordance with Decision 1999/436/EC[27], have been determined to have, a legal base within the Treaty establishing the European Community.

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25 OJL 131, 1.6.2000, p. 43
26 OJ L 064, 7.3.2002, p.20
27 OJ L 176 of 10.7.1999, p. 17.

Article 3

The provisions of Council Decision 1999/437/EC shall apply, in the same way, to the association of Switzerland with the implementation, application and development of the Schengen acquis, which falls under the Treaty establishing the European Community.

Article 4

The President of the Council is hereby authorised to designate the person empowered to deposit on behalf of the European Community the Instrument of approval provided for in Article 14 of the Agreement, in order to express the consent of the Community to be bound.

Article 5

This Decision shall be published in the *Official Journal of the European Union*.

Done at Brussels,

For the Council
The President

Proposal for a

COUNCIL DECISION

on the signature, on behalf of the European Community, of the Agreement between the European Community and Switzerland concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 63 (1) (a), in conjunction with the first sentence of the first subparagraph of Article 300(2) thereof,

Having regard to the proposal from the Commission[28],

Whereas:

(1) Following the authorization given to the Commission on 17 June 2002, negotiations with the Swiss Authorities, regarding criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland have been concluded;

(2) Subject to its conclusion at a later date, is desirable to sign the agreement that was initialled on 25 June 2004;

(3) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on European Union and the Treaty establishing the European Community, the United Kingdom and Ireland are taking part in the adoption and application of this Decision;

(4) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark is not participating in the adoption of this Decision and is not bound by it or subject to its application;

HAS DECIDED AS FOLLOWS:

Sole Article

Subject to its conclusion at a later date, the President of the Council is hereby authorized to designate the person empowered to sign on behalf of the European Community the

[28] OJ C , , p. .

Agreement between the European Community and Switzerland concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland, and the related documents consisting of the Final Act, and of the Common Declaration on joint meetings of the Joint Committees.

Done at Brussels,

For the Council
The President

2004/0200(CNS)

Proposal for a

COUNCIL DECISION

on the conclusion on behalf of the European Community of the Agreement between the European Community and Switzerland concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 63 (1) (a), in conjunction with the first sentence of the first subparagraph of Article 300(2) and the first subparagraph of Article 300 (3) thereof,

Having regard to the proposal from the Commission[29],

Having regard the opinion of the European Parliament,

Whereas:

(1) Following the authorization given to the Commission on 17 June 2002, negotiations with the Swiss Authorities, regarding the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland have been concluded;

(2) According to a Council Decision …./…./CE of ……2004, and subject to its final conclusion at a later date, this Agreement has been signed on behalf of the European Community on ….2004;

(3) The Agreement should now be approved;

(4) It is also necessary to make arrangements for the application of certain provisions of the Agreement;

(5) The Agreement establishes a Joint Committee with decision-making powers in certain areas and it is thus necessary to specify who represents the Community within this Committee;

(6) It is further necessary to provide for a procedure laying down how a Community position is adopted;

[29] OJ C , , p. .

(7) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on European Union and the Treaty establishing the European Community, the United Kingdom and Ireland are taking part in the adoption and application of this Decision;

(8) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark is not participating in the adoption of this Decision and is not bound by it or subject to its application;

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement between the European Community and Switzerland concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland, and the related documents consisting of the Final Act, and of the Common Declaration on joint meetings of the Joint Committees are hereby approved on behalf of the European Community.

The texts of the Agreement, the Final Act, and the Common Declaration are attached to this Decision.

Article 2

The President of the Council is hereby authorised to designate the person empowered to deposit on behalf of the European Community the Instrument of approval provided for in Article 12 of the Agreement, in order to express the consent of the Community to be bound.

Article 3

The Commission shall represent the Community in the Joint Committee established by Article 3 of the Agreement.

Article 4

1. The position of the Community within the Joint Committee with regard to the adoption of its Rules of Procedure as required under Article 3(2) of the Agreement shall be taken by the Commission after consultation of a special committee designated by the Council.

2. For all other Joint Committee decisions, the position of the Community shall be adopted by the Council, acting by qualified majority, on a proposal by the Commission.

Article 5

This Decision shall be published in the *Official Journal of the European Union*.

Done at Brussels,

For the Council
The President

AGREEMENT

between the European Union, the European Community and the Swiss Confederation on the latter's association with the implementation, application and development of the Schengen *acquis*

THE EUROPEAN UNION,

THE EUROPEAN COMMUNITY,

and

THE SWISS CONFEDERATION,

hereinafter referred to as "the Contracting Parties",

WHEREAS with the entry into force of the Treaty of Amsterdam, the European Union has set itself the objective of maintaining and developing the Union as an area of freedom, security and justice, in which the free movement of persons is assured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime.

WHEREAS the Schengen *acquis*, which is integrated into the framework of the European Union, constitutes part of the provisions designed to achieve this area of freedom, security and justice in so far as these provisions create an area without internal border controls and provide for compensatory measures to ensure a high level of security.

CONSIDERING the geographical position of the Swiss Confederation.

WHEREAS the participation of the Swiss Confederation in the Schengen *acquis* and in its further development will, on the one hand, enable certain obstacles to the free movement of persons resulting from the geographical position of the Swiss Confederation to be eliminated and, on the other hand, strengthen cooperation between the European Union and the Swiss Confederation in the fields covered by the Schengen *acquis*.

WHEREAS the Agreement concluded on 18 May 1999 by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway[30] associated the latter with the implementation, application and development of the Schengen *acquis*.

WHEREAS it is desirable that the Swiss Confederation be associated on an equal footing with Iceland and Norway in the implementation, application and development of the Schengen *acquis*.

WHEREAS an agreement should be concluded between the European Union, the European Community and the Swiss Confederation containing rights and obligations similar to those agreed between the Council of the European Union, of the one part, and Iceland and Norway, of the other part.

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[30] OJ L 176, 10.7.1999, p. 35.

CONVINCED of the need to organise cooperation between the European Union and the Swiss Confederation as regards the implementation, practical application and further development of the Schengen *acquis*.

WHEREAS it is necessary, in order to associate the Swiss Confederation with the activities of the European Union in the fields covered by this Agreement and to enable it to participate in those activities, to set up a committee in accordance with the institutional model established for the association of Iceland and Norway.

WHEREAS Schengen cooperation is based on the principles of freedom, democracy, the rule of law and respect for human rights, as guaranteed in particular by the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950.

WHEREAS the provisions of Title IV of the Treaty establishing the European Community and the acts adopted on the basis of that Title do not apply to the Kingdom of Denmark pursuant to the Protocol on the position of Denmark annexed by the Treaty of Amsterdam to the Treaty on European Union and to the Treaty establishing the European Community, and whereas the decisions designed to develop the Schengen *acquis* in application of that Title which Denmark has transposed into its domestic law are only liable to create international-law obligations between Denmark and the other Member States.

WHEREAS the United Kingdom of Great Britain and Northern Ireland and Ireland participate in certain provisions of the Schengen *acquis*, in accordance with the decisions taken pursuant to the Protocol integrating the Schengen *acquis* into the framework of the European Union and annexed by the Treaty of Amsterdam to the Treaty on European Union and to the Treaty establishing the European Community.[31]

WHEREAS it is necessary to ensure that the States with which the European Union has established an association for the purpose of implementing, applying and developing the Schengen *acquis* also apply this *acquis* in their relations with each other.

WHEREAS the smooth operation of the Schengen *acquis* requires that this Agreement be applied simultaneously with the agreements between the various parties associated with or participating in the implementation and development of the Schengen *acquis* governing their mutual relations.

HAVING REGARD TO the Agreement on the association of the Swiss Confederation with the implementation, application and development of the Community *acquis* concerning the establishment of criteria and mechanisms to determine the State responsible for examining a request for asylum lodged in one of the Member States and concerning the setting-up of the "Eurodac system".

BEARING IN MIND the link between the Schengen *acquis* and the Community *acquis.*

WHEREAS this link requires that the Schengen *acquis* be applied simultaneously with the Community *acquis* concerning the establishment of criteria and mechanisms for

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[31] OJ L 131, 1.6.2000, p. 43 and OJ L 64, 7.3.2002, p. 20.

determining the State responsible for examining a request for asylum lodged in one of the Member States and concerning the setting-up of the “Eurodac” system,

HAVE AGREED AS FOLLOWS:

Article 1

1. The Swiss Confederation, hereinafter referred to as "Switzerland”, shall be associated with the activities of the European Community and the European Union in the fields covered by the provisions referred to in Annexes A and B to this Agreement and their further development.

2. This Agreement creates reciprocal rights and obligations in accordance with the procedures set out herein.

Article 2

1. The provisions of the Schengen *acquis* as listed in Annex A to this Agreement as they apply to the Member States of the European Union, hereinafter referred to as “Member States”, shall be implemented and applied by Switzerland.

2. The provisions of the acts of the European Union and of the European Community listed in Annex B to this Agreement, to the extent that they have replaced and/or developed corresponding provisions of, or provisions adopted pursuant to, the Convention signed in Schengen on 19 June 1990 implementing the Agreement on the gradual abolition of checks at common borders, hereinafter referred to as the Convention Implementing the Schengen Agreement, shall be implemented and applied by Switzerland.

3. The acts and measures taken by the European Union and the European Community amending or building upon the provisions referred to in Annexes A and B, to which the procedures set out in this Agreement have been applied, shall also, without prejudice to Article 7, be accepted, implemented and applied by Switzerland.

Article 3

1. A Mixed Committee is hereby established, consisting of representatives of the Swiss Government, members of the Council of the European Union, hereinafter referred to as the "Council", and members of the Commission of the European Communities, hereinafter referred to as the "Commission".

2. The Mixed Committee shall adopt its own Rules of Procedure by consensus.

3. The Mixed Committee shall meet at the initiative of its President or at the request of any of its members.

4. Subject to Article 4(2), the Mixed Committee shall meet at the level of Ministers, senior officials or experts, as circumstances require.

5. The office of President of the Mixed Committee shall be held:

- at the level of experts: by the representative of the European Union;

- at the level of senior officials and Ministers: alternately, for a period of six months, by the representative of the European Union and by the representative of the Swiss Government.

Article 4

1. The Mixed Committee shall address, in accordance with this Agreement, all matters covered by Article 2 and shall ensure that any concern entertained by Switzerland is duly considered.

2. In the Mixed Committee at ministerial level, the representatives of Switzerland shall have the opportunity:

– to explain the problems they encounter in respect of a particular act or measure or to respond to the problems encountered by other delegations;

– to express themselves on any questions concerning the development of provisions of concern to them or the implementation thereof.

3. Meetings of the Mixed Committee at ministerial level shall be prepared by the Mixed Committee at the level of senior officials.

4. The representative of the Swiss Government shall have the right to make suggestions in the Mixed Committee relating to the matters mentioned in Article 1. After discussion, the Commission or any Member State may consider such suggestions with a view to making a proposal or taking an initiative, in accordance with the rules of the European Union, for the adoption of an act or measure of the European Community or the European Union.

Article 5

Without prejudice to Article 4, the Mixed Committee shall be informed about the preparation within the Council of any acts or measures which may be relevant to this Agreement.

Article 6

When drafting new legislation in a field which is covered by this Agreement, the Commission shall informally seek advice from Swiss experts in the same way as it seeks advice from experts of the Member States for drawing up its proposals.

Article 7

1. The adoption of new acts or measures related to the matters referred to in Article 2 shall be reserved to the competent institutions of the European Union. Subject to paragraph 2, such acts or measures shall enter into force simultaneously for the European Union, the European Community and its Member States concerned and for Switzerland, unless those acts or measures explicitly state otherwise. In this context, due account shall be taken of the period of time indicated by Switzerland in the Mixed Committee as being necessary to enable it to fulfil its constitutional requirements.

2. (a) The Council shall notify Switzerland immediately of the adoption of the acts or measures referred to in paragraph 1 to which the procedures set out in this Agreement have been applied. Switzerland shall decide whether to accept their contents and to implement them in its internal legal order. This decision shall be notified to the Council and to the Commission within thirty days of the adoption of the acts or measures concerned.

(b) If the contents of such an act or measure can become binding on Switzerland only after the fulfilment of constitutional requirements, Switzerland shall inform the Council and the Commission of this at the time of its notification. Switzerland shall promptly inform the Council and the Commission in writing upon fulfilment of all constitutional requirements. Where a referendum is not required, notification shall take place as soon as the referendum deadline expires. If a referendum is required, Switzerland shall have a maximum of two years from the date of the Council's notification within which to make its notification. From the date laid down for the entry into force of the act or measure for Switzerland and until it has given notification that the constitutional requirements have been met, Switzerland shall, where possible, implement the act or measure in question on a provisional basis.

If Switzerland cannot implement the act or measure at issue on a provisional basis, and if this causes difficulties that disrupt the operation of Schengen cooperation, the situation shall be examined by the Mixed Committee. The European Union and the European Community may take proportionate, appropriate measures against Switzerland to ensure that Schengen cooperation operates smoothly.

3. Acceptance by Switzerland of the acts and measures referred to in paragraph 2 creates rights and obligations between Switzerland, on the one hand, and the European Union, the European Community and the Member States, in so far as they are bound by these acts and measures, on the other hand.

4. Where:

(a) Switzerland notifies its decision not to accept the contents of an act or measure referred to in paragraph 2 and to which the procedures set out in this Agreement have been applied; or

(b) Switzerland does not carry out notification within the thirty-day time limit referred to in paragraph 2(a) or paragraph 5(a); or

(c) Switzerland does not carry out notification after the referendum deadline has expired or, in the case of a referendum, within the two-year time limit set out in paragraph 2(b), or does not provide for provisional implementation as envisaged in the same subparagraph from the date laid down for the entry into force of the act or measure concerned;

this Agreement shall be considered terminated unless the Mixed Committee, after carrying out a careful examination of ways of continuing the Agreement, decides otherwise within ninety days. Termination of this Agreement shall take effect three months after the expiry of the ninety-day period.

5. (a) If provisions of a new act or measure have the effect of no longer allowing Member States to subject compliance with requests for mutual assistance in criminal matters or the recognition of orders from other Member States to search premises and/or seize items of evidence to the conditions set out in Article 51 of the Convention Implementing the Schengen Agreement, Switzerland may notify the Council and the Commission within the period of thirty days referred to in paragraph 2, point (a) that it will not accept or implement those provisions in its internal legal order where they apply to search and seizure requests or orders made for the purposes of investigating or prosecuting offences in the field of direct taxation which, if committed in Switzerland, would not be punishable under Swiss law with a custodial penalty. In that case this Agreement shall not be considered terminated, contrary to the provisions of paragraph 4.

(b) The Mixed Committee shall convene within two months following a request by one of its members and, taking into account international developments, shall discuss the situation resulting from notification pursuant to point (a).

Once the Mixed Committee has unanimously reached an agreement on the full acceptance and implementation by Switzerland of the relevant provisions of the new act or measure, paragraphs 2, point (b), 3 and 4 shall apply. The information referred to in the first sentence of paragraph 2, point (b) shall be provided within thirty days of the agreement reached in the Mixed Committee.

Article 8

1. In order to achieve the Contracting Parties' objective of ensuring the most uniform possible application and interpretation of the provisions referred to in Article 2, the Mixed Committee shall keep under constant review developments in the case-law of the Court of Justice of the European Communities, hereinafter referred to as the "Court of Justice", and in the case-law relating to such provisions of the competent Swiss courts. To that end a mechanism shall be set up to ensure regular mutual transmission of such case-law.

2. Switzerland shall have the right to submit statements of case or written observations to the Court of Justice in cases where a court in a Member State has applied to the Court of Justice for a preliminary ruling concerning the interpretation of the provisions referred to in Article 2.

Article 9

1. Each year Switzerland shall report to the Mixed Committee on the way in which its administrative authorities and courts have applied and interpreted the provisions referred to in Article 2, as interpreted, where relevant, by the Court of Justice.

2. If, within two months of being notified of a substantial divergence between Court of Justice case-law and that of Switzerland's courts or of a substantial divergence between the authorities of the Member States concerned and the Swiss authorities in their application of the provisions referred to in Article 2, the Mixed Committee is unable to ensure a uniform application and interpretation, the procedure provided for in Article 10 shall be initiated.

Article 10

1. In the event of a dispute about the application of this Agreement or where the situation provided for in Article 9(2) occurs, the matter shall be officially entered as a matter of dispute on the agenda of the Mixed Committee, meeting at ministerial level.

2. The Mixed Committee shall have ninety days to settle the dispute, counting from the date of adoption of the agenda on which the dispute has been placed.

3. Where the dispute cannot be settled by the Mixed Committee within the ninety-day deadline provided for in paragraph 2, this deadline shall be extended by thirty days with a view to reaching a final settlement.

If no final settlement is reached, this Agreement shall be terminated six months after the expiry of the thirty-day period.

Article 11

1. As regards the administrative costs associated with implementing this Agreement, Switzerland shall make an annual contribution to the general budget of the European Communities of 7.286% of an amount of EUR 8 100 000, subject to annual adjustment to reflect inflation in the European Union.

2. As regards the costs of developing the second generation Schengen Information System (SIS II), Switzerland shall contribute to the general budget of the European Communities an annual sum for the relevant financial years starting from the 2002 financial year, calculated in accordance with its gross domestic product as a percentage of the gross domestic product of all the participating States.

The contribution for the financial years preceding the entry into force of this Agreement shall be payable when the Agreement enters into force.

3. In cases where the operating costs associated with implementing this Agreement are not charged to the general budget of the European Communities but are directly payable by the participating Member States, Switzerland shall contribute to these costs in

accordance with its gross domestic product, calculated as a percentage of the gross domestic product of all the participating States.

Where the operating costs are charged to the general budget of the European Community, Switzerland shall share in these costs by contributing to the said budget an annual sum, calculated in accordance with its gross domestic product as a percentage of the gross domestic product of all the participating States.

4. Switzerland shall have the right to receive documents drawn up by the Commission or the Council pertaining to this Agreement and, at meetings of the Mixed Committee, to request interpreting into an official language of the institutions of the European Communities of its choosing.

Article 12

1. This Agreement shall not affect in any respect the agreements concluded between the European Community and Switzerland, or between the European Community and its Member States, of the one part, and Switzerland, of the other part.

2. This Agreement shall not affect the agreements binding Switzerland, of the one part, and one or more Member States, of the other part, in so far as they are compatible with this Agreement. If these agreements are incompatible with this Agreement, the latter shall prevail.

3. This Agreement shall not affect in any respect any future agreements concluded with Switzerland by the European Community, or between the European Community and its Member States, of the one part, and Switzerland, of the other part, or agreements concluded on the basis of Articles 24 and 38 of the Treaty on European Union.

Article 13

1. Switzerland shall conclude an agreement with the Kingdom of Denmark on the creation of rights and obligations between Denmark and Switzerland as regards the provisions of Article 2 which come under Title IV of the Treaty establishing the European Community; the Protocol on the position of Denmark annexed by the Treaty of Amsterdam to the Treaty on European Union and to the Treaty establishing the European Community shall therefore apply to these provisions.

2. Switzerland shall conclude an agreement with the Republic of Iceland and the Kingdom of Norway on the creation of reciprocal rights and obligations by virtue of those states' participation in the implementation, application and development of the Schengen *acquis*.

Article 14

1. This Agreement shall enter into force one month after the day on which the Secretary General of the Council, in his capacity as its depositary, has established that all the formal requirements have been met as regards the expression of consent by, or on behalf of, the Parties to be bound by this Agreement.

2. Articles 1, 3, 4, 5, 6 and 7(2)(a), first sentence, shall apply provisionally as of the time of signature of this Agreement.

3. With respect to acts or measures adopted after this Agreement has been signed but before it enters into force, the thirty-day period referred to in Article 7(2)(a), last sentence shall start to run from the day of entry into force of this Agreement.

Article 15

1. The provisions referred to in Annexes A and B and those already adopted pursuant to Article 2(3) shall be put into effect by Switzerland on a date to be fixed by the Council, acting by unanimity of its Members representing the governments of those Member States which apply all the provisions of Annexes A and B, after consulting the Mixed Committee and after having satisfied itself that the preconditions for implementation of the relevant provisions have been fulfilled by Switzerland and that controls at its external borders are effective.

The Members of the Council representing the governments of Ireland and of the United Kingdom of Great Britain and Northern Ireland shall be involved in taking this decision in so far as it relates to the provisions of the Schengen *acquis* and the acts based on it or related to it in which these Member States participate.

The Members of the Council representing the governments of the Member States to which, in accordance with the Treaty of Accession, only some of the provisions of Annexes A and B apply shall be involved in taking this decision in so far as it relates to the provisions of the Schengen *acquis* that are already applicable to them.

2. Implementation of the provisions referred to in paragraph 1 shall create rights and obligations between Switzerland, of the one part, and, depending on the case, the European Union, the European Community and the Member States, in so far as they are bound by these provisions, of the other part.

3. This Agreement shall be applied only if the agreements referred to in Article 13 are also implemented.

4. Moreover, this Agreement shall be applied only if the agreement between the European Community and Switzerland on the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in any of the Member States or in Switzerland is also implemented.

Article 16

1. Liechtenstein may accede to this Agreement.

2. The accession of Liechtenstein shall be the subject of a protocol to this Agreement setting out all the consequences of accession, including the creation of rights and obligations between Liechtenstein and Switzerland, and between Liechtenstein, of the one part, and the European Union, the European Community and its Member States, in so far as they are bound by the provisions of the Schengen *acquis*, of the other part.

Article 17

This Agreement may be terminated by Switzerland or by decision of the Council acting by unanimity of its Members. The depositary shall be notified of termination, which shall take effect six months after notification.

Article 18

This Agreement shall be considered to have been terminated if Switzerland terminates one of the agreements referred to in Article 13 or the agreement referred to in Article 15(4).

Done at… on… in the Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Polish, Portuguese, Slovak, Slovenian, Spanish and Swedish languages, each text being equally authentic.

ANNEX A

(Article 2(1))

Part 1 of this Annex refers to the 1985 Schengen Agreement and the Convention implementing this Agreement, signed in Schengen in 1990. Part 2 refers to the instruments of accession and Part 3 to the relevant Schengen secondary legislation.

PART 1

The provisions of the Agreement signed in Schengen on 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders.

All provisions of the Convention signed in Schengen on 19 June 1990 between the Kingdom of Belgium, the Federal Republic of Germany, the French Republic, the Grand Duchy of Luxemburg and the Kingdom of the Netherlands, implementing the Schengen Agreement of 14 June 1985, with the exception of:

Article 2(4) on controls on goods

Article 4, as far as controls on baggage are concerned

Article 10(2)

Article 19(2)

Articles 28 to 38 and related definitions

Article 60

Article 70

Article 74

Articles 77 to 91 in so far as they are covered by Council Directive 91/477/EEC on control of the *acquis*ition and possession of firearms

Articles 120 to 125 on the movement of goods

Articles 131 to 133

Article 134

Articles 139 to 142

Final Act: declaration 2

Final Act: declarations 4, 5 and 6

Minutes

Joint Declaration

Declaration by Ministers and State Secretaries.

PART 2

The provisions of the Accession Agreements and Protocols to the Schengen Agreement and the Schengen Convention with the Italian Republic (signed in Paris on 27 November 1990), the Kingdom of Spain and the Portuguese Republic (signed in Bonn on 25 June 1991), the Hellenic Republic (signed in Madrid on 6 November 1992), the Republic of Austria (signed in Brussels on 28 April 1995) and the Kingdom of Denmark, the Republic of Finland and the Kingdom of Sweden (signed in Luxembourg on 19 December 1996), with the exception of:

1. The Protocol, signed in Paris on 27 November 1990, on accession of the Government of the Italian Republic to the Agreement between the Governments of the Member States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at common borders signed at Schengen on 14 June 1985.

2. The following provisions of the Agreement, signed in Paris on 27 November 1990, on accession of the Italian Republic to the Convention, signed at Schengen on 19 June 1990, implementing the Schengen Agreement of 14 June 1985 between the Governments of the Member States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at common borders, its Final Act and related declarations:

Article 1

Articles 5 and 6

Final Act: Part I

Final Act: Part II, declarations 2 and 3

Declaration by Ministers and State Secretaries.

3. The Protocol, signed in Bonn on 25 June 1991, on accession of the Government of the Kingdom of Spain to the Agreement between the Governments of the Member States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at common borders signed at Schengen on 14 June 1985, as amended by the Protocol on Accession by the Government of the Italian Republic, signed in Paris on 27 November 1990, and its accompanying declarations.

4. The following provisions of the Agreement signed in Bonn on 25 June 1991 on accession of the Kingdom of Spain to the Convention, signed at Schengen on 19 June 1990, implementing the Schengen Agreement of 14 June 1985 between the Governments of the Member States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at common borders, to which the Italian Republic acceded under the Agreement signed in Paris on 27 November 1990, its Final Act and related declarations:

Article 1

Articles 5 and 6

Final Act: Part I

Final Act: Part II, declarations 2 and 3

Final Act: Part III, declarations 3 and 4

Declaration by Ministers and State Secretaries.

5. The Protocol, signed in Bonn on 25 June 1991, on accession of the Government of the Portuguese Republic to the Agreement between the Governments of the Member States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at common borders signed at Schengen on 14 June 1985, as amended by the Protocol on Accession by the Government of the Italian Republic, signed in Paris on 27 November 1990, and its accompanying declarations.

6. The following provisions of the Agreement, signed in Bonn on 25 June 1991, on accession of the Portuguese Republic to the Convention, signed at Schengen on 19 June 1990, implementing the Schengen Agreement of 14 June 1985 between the Governments of the Member States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at common borders, to which the Italian Republic acceded under the Agreement signed in Paris on 27 November 1990, its Final Act and related declarations:

Article 1

Article 7 and 8

Final Act: Part I

Final Act: Part II, declarations 2 and 3

Final Act: Part III, declarations 2, 3, 4 and 5

Declaration by Ministers and State Secretaries.

7. The Protocol signed in Madrid on 6 November 1992 on accession of the Government of the Hellenic Republic to the Agreement between the Governments of the Member States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of controls at their common borders signed at Schengen on 14 June 1985, as amended by the Protocols on accession by the Government of the Italian Republic, signed in Paris on 27 November 1990, and by the Governments of the Kingdom of Spain and the Portuguese Republic, signed in Bonn on 25 June 1991, and its accompanying declarations.

8. The following provisions of the Agreement signed in Madrid on 6 November 1992 on accession of the Hellenic Republic to the Convention, signed at Schengen on 19 June 1990, implementing the Schengen Agreement of 14 June 1985 between the Governments

of the Member States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at common borders, to which acceded the Italian Republic under the Agreement signed in Paris on 27 November 1990, and the Kingdom of Spain and the Portuguese Republic under the Agreements signed in Bonn on 25 June 1991, its Final Act and related declarations:

Article 1

Articles 6 and 7

Final Act: Part I

Final Act: Part II, declarations 2, 3 and 4

Final Act: Part III, declarations 1 and 3

Declaration by Ministers and State Secretaries.

9. The Protocol, signed in Brussels on 28 April 1995, on accession of the Government of the Republic of Austria to the Agreement between the Governments of the Member States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at common borders signed at Schengen on 14 June 1985, as amended by the Protocols on accession by the Government of the Italian Republic, the Kingdom of Spain and the Portuguese Republic, and the Hellenic Republic, signed on 27 November 1990, 25 June 1991 and 6 November 1992 respectively.

10. The following provisions of the Agreement signed in Brussels on 28 April 1995 on accession of the Republic of Austria to the Convention, signed at Schengen on 19 June 1990, implementing the Schengen Agreement of 14 June 1985 between the Governments of the Member States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at common borders, to which acceded the Italian Republic, the Kingdom of Spain and the Portuguese Republic, and the Hellenic Republic, under the Agreements signed on 27 November 1990, 25 June 1991 and 6 November 1992 respectively, and its Final Act:

Article 1

Articles 5 and 6

Final Act: Part I

Final Act: Part II, declaration 2

Final Act: Part III

11. The Protocol signed in Luxembourg on 19 December 1996 on accession of the Government of the Kingdom of Denmark to the Agreement on the gradual abolition of checks at common borders signed at Schengen on 14 June 1985 and its related declaration.

12. The following provisions of the Agreement signed in Luxembourg on 19 December 1996 on accession of the Kingdom of Denmark to the Convention implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders, signed at Schengen on 19 June 1990, and its Final Act and related declarations:

Article 1

Article 7 and 8

Final Act: Part I

Final Act: Part II, declaration 2

Final Act: Part III

Declaration by Ministers and State Secretaries.

13. The Protocol signed in Luxembourg on 19 December 1996 on accession of the Government of the Republic of Finland to the Agreement on the gradual abolition of checks at common borders signed at Schengen on 14 June 1985 and its related declaration.

14. The following provisions of the Agreement signed in Luxembourg on 19 December 1996 on accession of the Republic of Finland to the Convention implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders, signed at Schengen on 19 June 1990, and its Final Act and related declaration:

Article 1

Articles 6 and 7

Final Act: Part I

Final Act: Part II, declaration 2

Final Act: Part III, except the declaration on the Åland Islands

Declaration by Ministers and State Secretaries.

15. The Protocol signed in Luxembourg on 19 December 1996 on accession of the Government of the Kingdom of Sweden to the Agreement on the gradual abolition of checks at common borders signed at Schengen on 14 June 1985 and its related declaration.

16. The following provisions of the Agreement signed in Luxembourg on 19 December 1996 on accession of the Kingdom of Sweden to the Convention implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders, signed at Schengen on 19 June 1990, and its Final Act and related declaration:

Article 1

Articles 6 and 7

Final Act: Part I

Final Act: Part II, declaration 2

Final Act: Part III

Declaration by Ministers and State Secretaries.

PART 3

A. The following Decisions of the Executive Committee:

SCH/COM-EX (93) 14 14.12.1993	IMPROVING PRACTICAL COOPERATION BETWEEN THE JUDICIAL AUTHORITIES TO COMBAT DRUG TRAFFICKING
SCH/COM-EX (93) 21 14.12.1993	EXTENDING THE UNIFORM VISA
SCH/COM-EX (93) 24 14.12.1993	COMMON PROCEDURES FOR CANCELLING, RESCINDING OR SHORTENING THE LENGTH OF VALIDITY OF THE UNIFORM VISA
SCH/COM-EX (94) 1 REV 2 26.4.1994	ADJUSTMENT MEASURES AIMING TO REMOVE OBSTACLES AND RESTRICTIONS ON TRAFFIC FLOWS AT ROAD BORDER CROSSING POINTS AT INTERNAL BORDERS
SCH/COM-EX (94) 15 REV 21.11.1994	INTRODUCING A COMPUTERISED PROCEDURE FOR CONSULTING THE CENTRAL AUTHORITIES REFERRED TO IN ARTICLE 17(2) OF THE IMPLEMENTING CONVENTION
SCH/COM-EX (94) 16 REV 21.11.1994	ACQUISITION OF COMMON ENTRY AND EXIT STAMPS
SCH/COM-EX (94) 17 REV 4 22.12.1994	INTRODUCING AND APPLYING THE SCHENGEN SYSTEM IN AIRPORTS AND AERODROMES
SCH/COM-EX (94) 25 22.12.1994	EXCHANGES OF STATISTICAL INFORMATION ON THE ISSUE OF UNIFORM VISAS
SCH/COM-EX (94) 28 REV 22.12.1994	CERTIFICATE PROVIDED FOR IN ARTICLE 75 FOR THE TRANSPORTATION OF DRUGS AND/OR PSYCHOTROPIC SUBSTANCES
SCH/COM-EX (94) 29 REV 2 22.12.1994	ENTRY INTO FORCE OF THE CONVENTION IMPLEMENTING THE SCHENGEN AGREEMENT OF 19 JUNE 1990
SCH/COM-EX (95) PV 1 REV (POINT 8)	COMMON VISA POLICY

SCH/COM-EX (95) 20 REV 2 20.12.1995	APPROVAL OF DOCUMENT SCH/I (95) 40 REV. 6 CONCERNING THE PROCEDURE FOR IMPLEMENTING ARTICLE 2(2) OF THE CONVENTION
SCH/COM-EX (95) 21 20.12.1995	SWIFT EXCHANGE BETWEEN THE SCHENGEN STATES OF STATISTICAL AND TANGIBLE DATA ON POSSIBLE MALFUNCTIONS AT THE EXTERNAL BORDERS
SCH/COM-EX (96) 13 REV 27.6.1996	PRINCIPLES FOR ISSUING SCHENGEN VISAS IN ACCORDANCE WITH ARTICLE 30(1)(A) OF THE CONVENTION IMPLEMENTING THE SCHENGEN AGREEMENT
SCH/COM-EX (97) 39 REV 15.12.1997	GUIDING PRINCIPLES FOR MEANS OF PROOF AND INDICATIVE EVIDENCE WITHIN THE FRAMEWORK OF READMISSION AGREEMENTS BETWEEN SCHENGEN STATES
SCH/COM-EX (98) 1 REV 2 21.4.1998	REPORT ON THE ACTIVITIES OF THE TASK FORCE
SCH/COM-EX (98) 12 21.4.1998	EXCHANGE AT LOCAL LEVEL OF STATISTICS ON VISAS
SCH/COM-EX (98) 18 REV 23.6.1998	MEASURES TO BE TAKEN IN RESPECT OF COUNTRIES POSING PROBLEMS WITH REGARD TO THE ISSUE OF DOCUMENTS REQUIRED TO REMOVE THEIR NATIONALS FROM SCHENGEN TERRITORY READMISSION – VISA
SCH/COM-EX (98) 19 23.6.1998	MONACO VISA – EXTERNAL BORDERS – SIS
SCH/COM-EX (98) 21 23.6.1998	STAMPING OF PASSPORTS OF VISA APPLICANTS VISAS
SCH/COM-EX (98) 26 DEF 16.9.1998	SETTING-UP OF THE SCHENGEN IMPLEMENTING CONVENTION STANDING COMMITTEE
SCH/COM-EX (98) 29 REV 23.6.1998	CATCH-ALL CLAUSE TO COVER THE WHOLE TECHNICAL SCHENGEN *ACQUIS*

SCH/COM-EX (98) 35 REV 2 16.9.1998	FORWARDING THE COMMON MANUAL TO EU APPLICANT STATES
SCH/COM-EX (98) 37 DEF 2 16.9.1998	ACTION PLAN TO COMBAT ILLEGAL IMMIGRATION
SCH/COM-EX (98) 51 REV 3 16.12.1998	CROSS-BORDER POLICE COOPERATION IN THE AREA OF CRIME PREVENTION AND DETECTION
SCH/COM-EX (98) 52 16.12.1998	HANDBOOK ON CROSS-BORDER POLICE COOPERATION
SCH/COM-EX (98) 56 16.12.1998	MANUAL OF DOCUMENTS ON WHICH A VISA MAY BE AFFIXED
SCH/COM-EX (98) 57 16.12.1998	INTRODUCTION OF A HARMONISED FORM FOR INVITATIONS, PROOF OF ACCOMMODATION, AND THE ACCEPTANCE OF OBLIGATIONS OF MAINTENANCE SUPPORT
SCH/COM-EX (98) 59 REV 16.12.1998	COORDINATED DEPLOYMENT OF DOCUMENT ADVISERS
SCH/COM-EX (99) 1 REV 2 28.4.1999	DRUGS SITUATION
SCH/COM-EX (99) 5 28.4.1999	SIRENE MANUAL
SCH/COM-EX (99) 6 28.4.1999	TELECOMS SITUATION
SCH/COM-EX (99) 7 REV 2 28.4.1999	LIAISON OFFICERS
SCH/COM-EX (99) 8 REV 2 28.4.1999	PAYMENTS TO INFORMERS AND INFILTRATORS

SCH/COM-EX (99) 10 28.4.1999	ILLEGAL TRADE IN WEAPONS
SCH/COM-EX (99) 13 28.4.1999	WITHDRAWAL OF OLD VERSIONS AND ADOPTION OF NEW VERSIONS OF THE COMMON MANUAL AND THE COMMON CONSULAR INSTRUCTIONS
SCH/COM-EX (99) 14 28.4.1999	MANUAL OF DOCUMENTS ON WHICH A VISA MAY BE AFFIXED
SCH/COM-EX (99) 18 28.4.1999	IMPROVEMENT OF POLICE COOPERATION WITH REGARD TO THE PREVENTION AND DETECTION OF CRIME

B. The following Declarations of the Executive Committee:

DECLARATION	SUBJECT
SCH/COM-EX (96) DECL 5 5 18.4.1996	DETERMINATION OF THE CONCEPT OF THIRD-COUNTRY "ALIEN"
SCH/COM-EX (96) DECL 5 6 REV. 2 26.6.1996	DECLARATION ON EXTRADITION
SCH/COM-EX (97) DECL 5 13 REV. 2 21.4.1996	ABDUCTION OF MINORS

C. The following Decisions of the Central Group:

DECISION	SUBJECT
SCH/C (98) 117 27.10.1998	ACTION PLAN TO COMBAT ILLEGAL IMMIGRATION
SCH/C (99) 25 22.3.1999	GENERAL PRINCIPLES FOR THE REMUNERATION OF INFORMANTS AND INFILTRATORS

ANNEX B

(Article 2(2))

Switzerland will apply the following acts from the date set by the Council in accordance with Article 15.

If by that date a Convention or a Protocol referred to by an act marked below by an asterisk has not yet entered into force in all the Member States of the European Union at the time of adoption of the act concerned, Switzerland will apply the relevant provisions of these instruments only from the date on which the Convention or the Protocol at issue is in force for all the said Member States.

– Council Directive 91/477/EEC of 18 June 1991 on control of the acquisition and possession of weapons (OJ L 256, 13.9.1991, p. 51) and Commission Recommendation 93/216/EEC of 25 February 1993 on the European firearms pass (OJ L 93, 17.4.1993, p. 39) as modified by Commission Recommendation 96/129/EC of 12 January 1996 (OJ L 30, 8.2.1996, p. 47);

– Council Regulation No 1683/95/EC of 29 May 1995 laying down a uniform format for visas (OJ L 164, 14.7.1995, p.1) as amended by Council Regulation No 334/2002/EC of 18 February 2002 (OJ L 53, 23.2.2002, p. 7); Commission Decision of 7 February 1996 and Commission Decision of 3 June 2002 laying down further technical specifications for the uniform format for visas (not published);

– Council 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 (OJ L 281, 23.11.1995, p. 31);

– Council Act of 29 May 2000 establishing in accordance with Article 34 of the Treaty on European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union [provisions referred to in Article 2 (1) of the Convention] (OJ C 197, 12.7.2000, p. 1);*

– Council Decision No 2000/586/JHA of 28 September 2000 establishing a procedure for amending Articles 40(4) and (5), 41(7) and 65(2) of the Convention implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders (OJ L 248, 3.10.2000, p. 1);

– Council Decision No 2000/645/EC of 17 October 2000 correcting the Schengen *acquis* as contained in Schengen Executive Committee SCH/Com-ex (94)15 rev. (OJ L 272, 25.10.2000, p. 24);

– Council Regulation No 539/2001/EC of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (OJ L 81, 21.3.2001, p. 1) as amended by Council Regulation No 2414/2001/EC

of 7 December 2001 (OJ L 327, 12.12.2001, p.1) and by Council Regulation No 453/2003/EC of 6 March 2003 (OJ L 69, 13.3.2003, p. 10);

– Council Decision No 2001/329/EC of 24 April 2001 updating Part VI and Annexes 3, 6 and 13 of the Common Consular Instructions and Annexes 5(a), 6(a) and 8 to the Common Manual (OJ L 116, 26.4.2001, p. 32);

– Council Regulation No 1091/2001/EC of 28 May 2001 on freedom of movement with a long-stay visa (OJ L 150, 6.6.2001, p. 4);

– Council Decision No 2001/420/EC of 28 May 2001 on the adaptation of Parts V and VI and Annex 13 of the Common Consular Instructions on Visas and Annex 6a to the Common Manual with regard to long-stay visas valid concurrently as short-stay visas (OJ L 150, 6.6.2001, p. 47);

– Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals (OJ L 149 of 2.6.2001, p. 34) and Council Decision No 2004/191/EC of 23 February 2004 setting out the criteria and practical arrangements for the compensation of the financial imbalances resulting from the application of Directive 2001/40/EC on the mutual recognition of decisions on the expulsion of third country nationals (OJ L 60, 27.2.2004, p. 55);

– Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985 (OJ L 187, 10.7.2001, p. 45);

– Council Act of 16 October 2001 establishing, in accordance with Article 34 of the Treaty on European Union, the Protocol to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union [provision referred to in Article 15 of the Protocol] (OJ C 326, 21.11.2001, p. 1);*

– Council Regulation No 2424/2001/EC of 6 December 2001 on the development of the second generation Schengen Information System (SIS II) (OJ L 328, 13.12.2001, p. 4);

– Council Decision No 2001/886/JHA of 6 December 2001 on the development of the second generation Schengen Information System (SIS II) (OJ L 328, 13.12.2001, p. 1);

– Council Decision No 2002/44/EC of 20 December 2001 amending Part VII and Annex 12 to the Common Consular Instructions and Annex 14a to the Common Manual (OJ L 20, 23.1.2002, p. 5);

– Council Regulation No 333/2002/EC of 18 February 2002 on a uniform format for forms for affixing the visa issued by Member States to persons holding travel documents not recognised by the Member State drawing up the form (OJ L 53, 23.02.2002, p. 4) and Commission Decision of 12 August 2002 laying down the technical specifications for the uniform format for affixing the visa issued by

Member States to persons holding travel documents not recognised by the Member State drawing up the form (not published);

– Council Decision No 2002/352/EC of 25 April 2002 on the revision of the Common Manual (OJ L 123, 09.05.2002, p. 47);

– Council Decision No 2002/354/EC of 25 April 2002 on the adaptation of Part III of, and the creation of an Annex 16 to, the Common Consular Instructions (OJ L 123, 09.05.2002, p. 50);

– Council Regulation No 1030/2002/EC of 13 June 2002 laying down a uniform format for residence permits for third-country nationals (OJ L 157, 15.6.2002, p. 1) and Commission Decision of 14 August 2002 laying down the technical specifications for the uniform format for residence permits for third country nationals (not published);

– Council Decision No 2002/585/EC of 12 July 2002 on the adaptation of Parts III and VIII of the Common Consular Instructions (OJ L 187, 16.7.2002, p. 44);

– Council Decision No 2002/586/EC of 12 July 2002 on the amendment of Part VI of the Common Consular Instructions (OJ L 187, 16.7.2002, p. 48);

– Council Decision No 2002/587/EC of 12 July 2002 on the revision of the Common Manual (OJ L 187, 16.7.2002, p. 50);

– Council Framework Decision No 2002/946/JHA of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence (OJ L 328, 5.12.2002, p. 1);

– Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence (OJ L 328, 5.12.2002, p. 17);

– Council Regulation No 415/2003/EC of 27 February 2003 on the issue of visas at the border, including the issue of such visas to seamen in transit (OJ L 64, 7.3.2003, p. 1);

– The provisions of the 1995 Convention on simplified extradition procedure between the Member States of the European Union (OJ C 78, 30.3.1995, p. 2) and of the 1996 Convention relating to extradition between the Member States of the European Union (OJ C 313, 23.10.1996, p. 12) referred to in Council Decision 2003/169/JHA of 27 February 2003 determining which provisions of the 1995 Convention on simplified extradition procedure between the Member States of the European Union and of the 1996 Convention relating to extradition between the Member States of the European Union constitute developments of the Schengen *acquis* in accordance with the Agreement concerning the Republic of Iceland's and the Kingdom of Norway's association with the implementation, application and development of the Schengen *acquis* (OJ L 67, 12.3.2003, p. 25);*

– Council Decision No 2003/170/JHA of 27 February 2003 on the common use of liaison officers posted abroad by the law enforcement agencies of the Member States [except Article 8] (OJ L 67, 12.3.2003, p. 27);

– Council Regulation No 693/2003/EC of 14 April 2003 establishing a specific Facilitated Transit Document (FTD), a Facilitated Rail Transit Document (FRTD) and amending the Common Consular Instructions and the Common Manual (OJ L 99, 17.4.2003, p. 8);

– Council Regulation No 694/2003/EC of 14 April 2003 on uniform formats for Facilitated Transit Documents (FTD) and Facilitated Rail Transit Documents (FRTD) provided for in Regulation (EC) No 693/2003 (OJ L 99, 17.4.2003, p. 15);

– Council Decision No 2003/454/EC of 13 June 2003 amending Annex 12 of the Common Consular Instructions and Annex 14a of the Common Manual on visa fees (OJ L 152, 20.6.2003, p. 82);

– Council Regulation No 1295/2003/EC of 15 July 2003 relating to measures envisaged to facilitate the procedures for applying for and issuing visas for members of the Olympic family taking part in the 2004 Olympic or Paralympic Games in Athens (OJ L 183, 22.7.2003, p. 1);

– Council Decision No 2003/585/EC of 28 July 2003 amending Annex 2, Schedule A, of the Common Consular Instructions and Annex 5, Schedule A, of the Common Manual on the visa requirements for holders of Pakistani diplomatic passports (OJ L 198, 6.8.2003, p. 13);

– Council Decision No 2003/586/EC of 28 July 2003 on the amendment of Annex 3, Part I, of the Common Consular Instructions and Annex 5a, Part I of the Common Manual on third country nationals subject to airport visa requirements (OJ L 198, 6.8.2003, p. 15);

– Council Decision No 2003/725/JHA of 2 October 2003 amending the provisions of Article 40 (1) and (7) of the Convention implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders (OJ L 260, 11.10.2003, p. 37);

– Council Directive 2003/110/EC of 25 November 2003 on assistance in cases of transit for the purposes of removal by air (OJ L 321, 6.12.2003, p. 26);

– Council Decision No 2004/14/EC of 22 December 2003 amending the third subparagraph (Basic criteria for examining applications) of Part V of the Common Consular Instructions (OJ L 5, 9.1.2004, p. 74);

– Council Decision No 2004/15/EC of 22 December 2003 amending point 1.2 of Part II of the Common Consular Instructions and drawing up a new Annex thereto (OJ L 5, 9.1.2004, p. 76);

– Council Decision No 2004/17/EC of 22 December 2003 amending Part V, point 1.4, of the Common Consular Instructions and Part I, point 4.1.2 of the Common

Manual as regards inclusion of the requirement to be in possession of travel medial insurance as one of the supporting documents for the grant of a uniform entry visa (OJ L 5, 09.01.2004, p. 79);

– Council Regulation No 377/2004/EC of 19 February 2004 on the creation of an immigration liaison officers network (OJ L 64, 2.3.2004, p. 1);

– Council Decision No 2004/466/EC of 29 April 2004 amending the Common Manual in order to include provisions for targeted border controls on accompanied minors (OJ L 157, 30.4.2004, p. 136);

– Corrigendum to Council Decision No 2004/466/EC of 29 April 2004 amending the Common Manual in order to include provisions for targeted border controls on accompanied minors (OJ L 195, 2.6.2004, p. 44);

– Council Regulation No 871/2004/EC of 29 April 2004 concerning the introduction of some new functions for the Schengen Information System, including the fight against terrorism (OJ L 162, 30.4.2004, p. 29);

– Council Directive 2004/82/EC of 29 April 2004 on the obligation for carriers to communicate passenger data (OJ L 261, 6.8.2004, p. 24)

– Council Decision 2004/573/EC of 29 April 2004 on the organisation of joint flights for the removal, from the territory of two or more Member States, of third-country nationals who are the subjects of individual removal orders (OJ L 261, 6.8.2004, p. 28)

– Council Decision 2004/574/EC of 29 April 2004 amending the Common Manual (OJ L 261, 6.8.2004, p. 36)

– Council Decision 2004/581/EC of 29 April 2004 determining the minimum indications to be used on signs at border posts (OJ L 261, 6.8.2004, p. 119)

– Council Decision 2004/512/EC of 8 June 2004 establishing the Visa Information System (VIS) (OJ L 213, 15.6.2004, p. 5)

– *[This list containing the development of the Schengen acquis will be updated according to the adoption of instruments developing the Schengen acquis until the date of signature]*

FINAL ACT

concluded by the European Union, the European Community and the Swiss Confederation concerning the latter's association with the implementation, application and development of the Schengen *acquis*

The plenipotentiaries have adopted the joint declarations listed below and annexed to this Final Act:

1. Common Declaration of the Contracting Parties on parliamentary consultation;

2. Common Declaration of the Contracting Parties on external relations;

3. Common Declaration of the Contracting Parties on Article 23(7) of the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between Member States of the European Union.

The plenipotentiaries have also taken note of the declarations listed below and annexed to this Final Act:

1. Declaration by Switzerland on mutual assistance in criminal matters;

2. Declaration by Switzerland on Article 7(2)(b) (time limit for accepting new developments in the Schengen *acquis*);

3. Declaration by Switzerland on the application of the European Convention on Mutual Assistance in Criminal Matters and the European Convention on Extradition;

4. Declaration of the European Commission on the transmission of proposals;

5. Declaration of the European Commission on the committees that assist the European Commission in the exercise of its executive powers.

Done at , on

For the European Union:

For the European Community:

For the Swiss Confederation:

Common Declaration of the Contracting Parties

Common Declaration of the Contracting Parties on parliamentary consultation

The Contracting Parties consider that matters covered by this Agreement should be discussed at the European Parliament-Switzerland interparliamentary meetings.

Common Declaration of the Contracting Parties on external relations

The Contracting Parties agree that the European Community undertake to encourage third countries or international organisations with which it concludes agreements in areas linked to Schengen cooperation to conclude similar agreements with the Swiss Confederation, without prejudice to the latter's competence to conclude such agreements.

Common Declaration of the Contracting Parties on Article 23(7) of the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between Member States of the European Union

The Contracting Parties agree that Switzerland may, subject to the provisions of Article 23(1)(c) of the Convention on Mutual Assistance in Criminal Matters between Member States of the European Union, in the circumstances of a particular case, demand, unless the Member State concerned has obtained the consent of the data subject, that personal data not be used for the purposes referred to in Article 23(1)(a) and (b) without the prior consent of Switzerland in proceedings in which Switzerland could have refused or restricted the transmission or use of personal data under the Convention or the instruments referred to in Article 1 thereof.

If, in a particular case, Switzerland refuses to give its consent to a request from a Member State pursuant to the above provisions, it must give reasons for its decision in writing.

Other declarations

Declaration by Switzerland on mutual assistance in criminal matters

Switzerland declares that tax offences in the direct tax field being investigated by the Swiss authorities may not give rise, when this Agreement enters into force, to an appeal before a court competent *inter alia* to hear criminal matters.

Declaration by Switzerland on Article 7(2)(b) (time limit for accepting new developments in the Schengen *acquis*)

The maximum time limit of two years laid down in Article 7(2)(b) covers both the approval and the implementation of the act or measure. It includes the following stages:

– the preparatory stage;

– the parliamentary procedure;

– the referendum deadline (100 days from the official publication of the act) and, where applicable;

– the referendum (organisation and voting).

The Federal Council shall inform the Council and the Commission without delay of the completion of each of these stages.

The Federal Council undertakes to use every means at its disposal to ensure that the above-mentioned stages are completed as swiftly as possible.

Declaration by Switzerland on the application of the European Convention on Mutual Assistance in Criminal Matters and the European Convention on Extradition

Switzerland undertakes to refrain from invoking its reservations and declarations made when ratifying the European Convention on Extradition of 13 December 1957 and the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 in so far as they are incompatible with this Agreement.

Declaration of the European Commission on the transmission of proposals

When forwarding proposals relating to this Agreement to the Council of the European Union and to the European Parliament, the Commission shall forward copies of such proposals to Switzerland.

Declaration of the European Commission on the committees that assist the European Commission in the exercise of its executive powers.

At present, in addition to the committee set up by Article 31 of 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,[32] the committees which assist the European Commission in the exercise of its executive powers as regards the implementation, application and development of the Schengen *acquis* are:

– the committee set up by Article 6 of Council Regulation (EC) No 1683/95 of 29 May 1995 laying down a uniform format for visas[33] ("Visa Committee"); and

– the committee set up by Article 5 of Council Decision of 6 December 2001 (2001/886/JAI) and by Article 5 of Council Regulation (EC) No 2424/2001 of 6 December 2001,[34] both instruments that refer to the development of the second generation Schengen information system (SIS II) ("SIS II Committee").

32 OJ L 281, 23.11.1995, p. 31.

33 OJ L 164, 14.7.1995, p. 1. Regulation as last amended by Council Regulation (EC) No 334/2002 of 18.2.2002 (OJ L 53, 23.2.2002, p.7).

34 OJ L 328, 13.12.2001, p. 1 and 4.

AGREEMENT IN THE FORM OF AN EXCHANGE OF LETTERS

between the Council of the European Union and the Swiss Federation on the committees that assist the European Commission in the exercise of its executive powers

A. *Letter from the Community*

Sir,

The Council refers to the negotiations concerning the Agreement concerning the association of the Swiss Confederation with the implementation, application and development of the Schengen *acquis* and has taken due note of the request of the Swiss Confederation, in the spirit of its participation in the decision-making process in the fields covered by the Agreement and in order to enhance the smooth operation of the Agreement, to be fully associated with the work of the committees which assist the European Commission in the exercise of its executive powers.

The Council notes that in future, when such procedures will be applied in the fields covered by the Agreement, there will indeed be a need to associate the Swiss Confederation with the work of these committees, *inter alia* in order to ensure that the procedures of the Agreement have been applied to the acts or measures concerned, so that these may become binding on the Swiss Confederation.

The European Community undertakes to negotiate appropriate arrangements with a view to associating the Swiss Confederation with the work of these committees.

As regards 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:

– The European Commission shall ensure that the experts from the Swiss Confederation participate as widely as possible, where a specific point concerns the application of the Schengen *acquis* and exclusively for that point, in preparing draft measures to be submitted subsequently to the committee established under Article 31 of this Directive, which assists the European Commission in the exercise of its executive powers. Accordingly, when drawing up its proposals, the European Commission shall consult the experts from the Swiss Confederation on the same basis as the experts from the Member States;

– Under the second subparagraph of Article 29(2) of the Directive, the Swiss Confederation may appoint a representative of the supervisory authority or of the authorities designated by the Swiss Confederation to participate as an observer, without voting rights, in meetings of the group for the protection of individuals with regard to the processing of personal data. Participation will take place on the basis of an ad hoc invitation where a specific point concerns the application of the Schengen *acquis* and exclusively for that point.

Could you please confirm that your Government agrees to these arrangements?

Yours faithfully,

B. *Reply from the Swiss Confederation*

Sir,

Thank for your letter dated …, worded as follows:

> "The Council refers to the negotiations concerning the Agreement on the association of the Swiss Confederation with the implementation, application and development of the Schengen *acquis* and has taken due note of the request of the Swiss Confederation, in the spirit of its participation in the decision-making process in the fields covered by the Agreement and in order to enhance the smooth operation of the Agreement, to be fully associated with the work of the committees which assist the European Commission in the exercise of its executive powers.
>
> The Council notes that in future, when such procedures will be applied in the fields covered by the Agreement, there will indeed be a need to associate the Swiss Confederation with the work of these committees, *inter alia* in order to ensure that the procedures of the Agreement have been applied to the acts or measures concerned, so that these may become binding on the Swiss Confederation.
>
> The European Community undertakes to negotiate appropriate arrangements with a view to associating the Swiss Confederation with the work of these committees.
>
> As regards 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:
>
> – The European Commission shall ensure that the experts from the Swiss Confederation participate as widely as possible, where a specific point concerns the application of the Schengen *acquis* and exclusively for such points, in preparing draft measures to be submitted subsequently to the committee established under Article 31 of this Directive, which assists the European Commission in the exercise of its executive powers. Accordingly, when drawing up its proposals, the European Commission shall consult the experts from the Swiss Confederation on the same basis as the experts from the Member States;
>
> – Under the second subparagraph of Article 29(2) of the Directive, the Swiss Confederation may appoint a representative of the supervisory authority or of the authorities designated by the Swiss Confederation to participate as an observer, without voting rights, in meetings of the group for the protection of individuals with regard to the processing of personal data. Participation will take place on the basis of an ad hoc invitation where a specific point concerns the application of the Schengen *acquis* and exclusively for that point.
>
> Could you please confirm that your Government agrees to these arrangements?"

It is my pleasure to inform you that the Federal Council has indicated its agreement to the above arrangements.

Yours faithfully,

COMMON DECLARATION ON JOINT MEETINGS

The delegations representing the governments of the member states of the European Union,

The delegation of the European Commission,

The delegations representing the governments of the Republic of Iceland and the Kingdom of Norway,

The delegation representing the government of the Swiss Confederation,

Have decided to organize the meetings of the Mixed Committees, established by the agreement on the association of Iceland and Norway with the implementation, application and development of the Schengen *acquis*, on the one hand, and the agreement on the association of Switzerland with the implementation, application and development of the Schengen *acquis*, on the other hand, jointly, no matter the level of the meeting.

Note that holding these meetings jointly calls for pragmatic arrangement regarding the office of presidency of such meetings when that presidency is to be held by the associated States according to the Agreement between the European Union, the European Community and the Swiss Confederation concerning the latter's association with the implementation, application and development of the Schengen *acquis* or the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen *acquis*.

Note the wish of the associated States to cede, as necessary, the exercise of their presidencies and rotate it among them in alphabetical order of name as of the entry into force of the Agreement between the European Union, the European Community and the Swiss Confederation concerning the latter's association with the implementation, application and development of the Schengen *acquis*.

Done at on

AGREED MINUTES

of the negotiations on the agreement concluded between the European Union, the European Community and the Swiss Confederation concerning the latter's association with the implementation, application and development of the Schengen *acquis*

The delegations involved in negotiating the agreement

– *declare in respect of Article 7(2)(b) that*

regular, direct contacts will be established between the Council's Secretariat General and the Swiss mission to the European Communities with a view to keeping Switzerland informed of progress in procedures for adopting the relevant European Union acts and measures so that Switzerland can launch its procedure for incorporating the *acquis* as quickly as possible.

– *note, in respect of Annex B to Council Directive 91/477/EEC of 18* June *1991 on control of the acquisition and possession of weapons, that*

the aforementioned Directive does not cover the acquisition and possession by the armed forces, in accordance with national law, of weapons and munitions. The current Swiss system of lending weapons as part of voluntary classes for young marksmen, lending weapons to reservists and allocating service weapons which have been converted into semi-automatic firearms to ex-soldiers is covered by this exception and, as such, is not affected by the Schengen *acquis* but is governed by the relevant Swiss regulation.

– *take note, in respect of Eurojust and the European Judicial Network,*

that it is worthwhile looking into the possibility of Swiss cooperation with the work of Eurojust and, if possible, the European Judicial Network.

Done at... on...

AGREEMENT

between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland

THE EUROPEAN COMMUNITY

and

THE SWISS CONFEDERATION,

hereinafter referred to as the "Contracting Parties",

WHEREAS the Council of the European Union has adopted Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national[35] (hereinafter referred to as the "Dublin Regulation"), which replaced the Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities, signed in Dublin on 15 June 1990[36] (hereinafter referred to as the "Dublin Convention"), and whereas the Commission of the European Communities has adopted Commission Regulation (EC) No 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national,[37] hereinafter referred to as the "Dublin implementing Regulation".

WHEREAS the Council of the European Union has adopted Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of the Dublin Convention with a view to helping to determine the Contracting Party responsible for examining an asylum application in accordance with the Dublin Convention[38] (hereinafter referred to as the "Eurodac Regulation") and Council Regulation (EC) No 407/2002 of 28 February 2002 laying down certain rules to implement Regulation (EC) No 2725/2000 concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of the Dublin Convention[39] (hereinafter referred to as the "Eurodac implementing Regulation").

WHEREAS 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[40] (hereinafter referred to as the "protection of personal data Directive") must be applied by the Swiss Confederation as

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35 OJ L 50, 25.2.2003, p. 1.
36 OJ C 254, 19.8.1997, p.1.
37 OJ L 222, 5.9.2003, p. 3.
38 OJ L 316, 15.12.2000, p. 1.
39 OJ L 62, 5.3.2002, p. 1.
40 OJ L 281, 23.11.1995, p. 31.

applied by the Member States of the European Union when processing data for the purposes of this Agreement.

CONSIDERING the geographical position of the Swiss Confederation.

WHEREAS the participation of the Swiss Confederation in the Community *acquis* covered by the Dublin and Eurodac regulations (hereinafter referred to as the "Dublin/Eurodac *acquis*") will help to strengthen cooperation between the European Community and the Swiss Confederation.

WHEREAS the European Community has concluded an agreement with 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 Norway[41] based on the Dublin Convention.

WHEREAS it is desirable that the Swiss Confederation be associated on an equal footing with Iceland and Norway in the implementation, application and development of the Dublin/Eurodac *acquis*.

WHEREAS an agreement should be concluded between the European Community and the Swiss Confederation containing rights and obligations similar to those agreed between the European Community, of the one part, and Iceland and Norway, of the other part.

CONVINCED of the need to organise cooperation between the European Community and the Swiss Confederation as regards the implementation, practical application and further development of the Dublin/Eurodac *acquis*.

WHEREAS it is necessary, in order to associate the Swiss Confederation with the activities of the European Community in the fields covered by this Agreement and to enable it to participate in those activities, to set up a committee in accordance with the institutional model established for the association of Iceland and Norway.

WHEREAS cooperation in the areas covered by the Dublin and Eurodac regulations is based on the principles of freedom, democracy, the rule of law and respect for human rights, as guaranteed in particular by the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950.

WHEREAS the provisions of Title IV of the Treaty establishing the European Community and the acts adopted on the basis of that Title do not apply to the Kingdom of Denmark pursuant to the Protocol on the position of Denmark annexed by the Treaty of Amsterdam to the Treaty on European Union and to the Treaty establishing the European Community, but it should be made possible for the Swiss Confederation and Denmark to apply the substantive provisions of this Agreement in their relations with each other.

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41 OJ L 93, 3.4.2001, p. 38.

WHEREAS it is necessary to ensure that the States with which the European Union has established an association for the purpose of implementing, applying and developing the Dublin/Eurodac *acquis* also apply this *acquis* in their relations with each other.

WHEREAS the smooth operation of the Dublin/Eurodac *acquis* requires that this Agreement be applied simultaneously with the agreements between the various parties associated with or participating in the implementation and development of the Dublin/Eurodac *acquis* governing their mutual relations.

CONSIDERING the association of the Swiss Confederation with the implementation, application and development of the Schengen *acquis*.

BEARING IN MIND the link between the Schengen *acquis* and the Dublin/Eurodac *acquis*.

WHEREAS this link requires that the Dublin/Eurodac *acquis* be applied simultaneously with the Schengen *acquis*,

HAVE AGREED AS FOLLOWS:

Article 1

1. The provisions of the

– Dublin Regulation;

– Eurodac Regulation;

– Eurodac implementing Regulation; and

– the Dublin implementing Regulation

shall be implemented by the Swiss Confederation, hereinafter referred to as "Switzerland", and applied in its relations with the Member States of the European Union, hereinafter referred to as "the Member States".

2. The Member States shall apply the regulations referred to in paragraph 1 to Switzerland.

3. The acts and measures taken by the European Community amending or building upon the provisions referred to in paragraph 1 and the decisions taken in accordance with the procedures set out in those provisions shall also, without prejudice to Article 4, be accepted, implemented and applied by Switzerland.

4. The provisions of the protection of personal data Directive as applicable to the Member States with regard to data processed for the purposes of implementing and applying the provisions referred to in paragraph 1 shall be implemented and applied, mutatis mutandis, by Switzerland.

5. For the purposes of paragraphs 1 and 2, references to the "Member States" in the provisions referred to in paragraph 1 shall be deemed to include Switzerland.

Article 2

1. When new legislation is drafted amending or building upon the provisions of Article 1, the Commission of the European Communities, hereinafter referred to as the "Commission", shall informally consult the Swiss experts in the same way as it consults the experts of the Member States when drafting its proposals.

2. When transmitting its proposals referred to in paragraph 1 to the European Parliament and the Council of the European Union, hereinafter referred to as the "Council", the European Commission shall transmit copies thereof to Switzerland.

At the request of one of the Contracting Parties, a preliminary exchange of views may be held in the Mixed Committee set up pursuant to Article 3.

3. The Contracting Parties shall consult each other again, at the request of one of their number, in the Mixed Committee, at important points in the stage prior to adoption

of the legislation referred to in paragraph 1, in a continuous process of information provision and consultation.

4. The Contracting Parties shall work together in good faith during the information provision and consultation stage with a view to facilitating the activities of the Mixed Committee at the end of the process, in accordance with this Agreement.

5. The Swiss Government's representatives may put forward suggestions in the Mixed Committee as regards the matters referred to in paragraph 1.

6. The Commission shall ensure that the Swiss experts participate as widely as possible, depending on the areas concerned, in preparing draft measures to be submitted subsequently to the committees which assist the European Commission in the exercise of its executive powers. Accordingly, when drawing up its proposals, the Commission shall consult the Swiss experts on the same basis as the experts from the Member States.

7. Where the matter is referred to the Council in accordance with the procedure applying to the type of committee in question, the Commission must transmit to the Council the views of the Swiss experts.

Article 3

1. A Mixed Committee shall be established consisting of representatives of the Contracting Parties.

2. The Mixed Committee shall adopt its own Rules of Procedure by consensus.

3. The Mixed Committee shall meet at the initiative of its President or at the request of any of its members.

4. The Mixed Committee shall meet at the appropriate level, depending on needs, with a view to examining the implementation and practical application of the provisions referred to in Article 1 and to holding an exchange of views on acts and measures amending or building upon the provisions referred to in Article 1. All exchanges of information concerning this Agreement shall be deemed to have taken place in accordance with the Mixed Committee's terms of reference.

5. The office of President of the Mixed Committee shall be held alternately, for a period of six months, by the representative of the European Community and by the representative of the Swiss Government.

Article 4

1. Subject to paragraph 2, when the Council adopts acts or measures amending or building upon the provisions of Article 1 and when acts or measures are adopted in accordance with the procedures set out in those provisions, those acts or measures shall be applied simultaneously by the Member States and Switzerland, except where express provisions exist to the contrary.

2. The Commission shall notify Switzerland without delay of the adoption of the acts or measures referred to in paragraph 1. Switzerland shall decide whether to accept their contents and to implement them in its internal legal order. This decision shall be notified to the Commission within thirty days of the adoption of the acts or measures concerned.

3. If the contents of such acts or measures can become binding on Switzerland only after the fulfilment of constitutional requirements, Switzerland shall inform the Commission of this at the time of its notification. Switzerland shall promptly inform the Commission in writing upon fulfilment of all constitutional requirements. Where a referendum is not required, notification shall take place as soon as the referendum deadline expires. If a referendum is required, Switzerland shall have a maximum of two years from the date of the Commission's notification in which to effect notification. From the date laid down for the entry into force of the act or measure for Switzerland and until it has given notification that the constitutional requirements have been met, Switzerland shall, where possible, implement the act or measure in question on a provisional basis.

4. If Switzerland cannot implement the act or measure at issue on a provisional basis, and if this causes difficulties that disrupt the operation of Dublin/Eurodac cooperation, the situation shall be examined by the Mixed Committee. The European Community may take proportionate, appropriate measures against Switzerland to ensure that Dublin/Eurodac cooperation operates smoothly.

5. Acceptance by Switzerland of the acts and measures referred to in paragraph 1 shall create rights and obligations between Switzerland and the Member States of the European Union.

6. If:

(a) Switzerland notifies its decision not to accept the contents of an act or measure referred to in paragraph 1 and to which the procedures set out in this Agreement have been applied; or

(b) Switzerland does not carry out notification within the thirty-day time limit referred to in paragraph 2;

(c) Switzerland does not carry out notification after the referendum deadline has expired or, in the case of a referendum, within the two-year time limit set out in paragraph 3, or does not provide for provisional implementation as envisaged in the same subparagraph from the date laid down for the entry into force of the act or measure concerned;

this Agreement shall be suspended.

7. The Mixed Committee shall examine the matter which gave rise to suspension and shall endeavour to deal with the underlying causes of non-acceptance or non-ratification within ninety days. After examining all other options with a view to ensuring that the Agreement continues to operate smoothly, including the possibility of noting that the Contracting Parties' laws and regulations are equivalent, it may decide, on

a unanimous basis, to reinstate this Agreement. If this Agreement is still suspended after ninety days, it shall be considered terminated.

Article 5

1. In order to achieve the Contracting Parties' objective of ensuring the most uniform possible application and interpretation of the provisions referred to in Article 1, the Mixed Committee shall keep under constant review developments in the case-law of the Court of Justice of the European Communities, hereinafter referred to as the "Court of Justice", and in the case-law relating to such provisions of the competent Swiss courts. To that end the Contracting Parties shall ensure the prompt mutual transmission of such case-law.

2. Switzerland shall have the right to submit statements of case or written observations to the Court of Justice in cases where a court in a Member State has applied to the Court of Justice for a preliminary ruling concerning the interpretation of the provisions referred to in Article 1.

Article 6

1. Each year Switzerland shall report to the Mixed Committee on the way in which its administrative authorities and courts have applied and interpreted the provisions referred to in Article 1, as interpreted, where relevant, by the Court of Justice.

2. If, within two months of being notified of a substantial divergence between Court of Justice case-law and that of Switzerland's courts or of a substantial divergence between the authorities of the Member States concerned and the Swiss authorities in their application of the provisions referred to in Article 1, the Mixed Committee is unable to ensure a uniform application and interpretation, the procedure provided for in Article 7 shall be initiated.

Article 7

1. In the event of a dispute about the application or interpretation of this Agreement or where the situation provided for in Article 6(2) occurs, the matter shall be officially entered as a matter of dispute on the agenda of the Mixed Committee.

2. The Mixed Committee shall have ninety days to settle the dispute, counting from the date of adoption of the agenda on which the dispute has been placed.

3. Where the dispute cannot be settled by the Mixed Committee within the ninety-day deadline provided for in paragraph 2, this deadline shall be extended by a further ninety days with a view to reaching a final settlement. If, at the end of that period, the Mixed Committee has not taken a decision, this Agreement shall be considered terminated at the end of the last day of the period in question.

Article 8

1. With regard to the administrative and operating costs associated with the setting-up and operation of the Eurodac central unit, Switzerland shall make a contribution to the general budget of the European Communities amounting to 7.286% of an initial reference amount of €11 675 000 and, from the 2004 financial year, an annual contribution amounting to 7.286% of the corresponding budgetary appropriations for the financial year in question.

As for the other administrative and operating costs associated with implementing this Agreement, Switzerland shall contribute to the general budget of the European Communities an annual sum calculated in accordance with its gross domestic product as a percentage of the gross domestic product of all the participating States.

2. Switzerland shall have the right to receive documents pertaining to this Agreement and, at meetings of the Mixed Committee, to request interpreting into an official language of the institutions of the European Communities of its choosing.

Article 9

The Swiss national supervisory body entrusted with data protection and the independent supervisory body established pursuant to Article 286(2) of the Treaty establishing the European Community shall cooperate to the extent necessary to carry out their duties and, in particular, shall exchange any relevant information. The two bodies shall determine arrangements governing their mutual cooperation by joint agreement.

Article 10

1. This Agreement shall not affect in any respect the other agreements concluded between the European Community and Switzerland.

2. This Agreement shall not affect in any respect any future agreements concluded with Switzerland by the European Community.

Article 11

1. The Kingdom of Denmark may request to participate in this Agreement. The Contracting Parties, acting with the consent of the Kingdom of Denmark, shall lay down the conditions governing such participation in a protocol to this Agreement.

2. Switzerland shall conclude an agreement with the Republic of Iceland and the Kingdom of Norway on the creation of reciprocal rights and obligations pursuant to their respective associations with the implementation, application and development of the Dublin/Eurodac *acquis*.

Article 12

1. This Agreement shall be ratified or approved by the Contracting Parties. Instruments of ratification or approval shall be deposited with the Secretary General of the Council, who shall be the depositary.

2. This Agreement shall enter into force on the first day of the month following notification by the depositary to the Contracting Parties that the final instrument of ratification or approval has been deposited.

3. Articles 2, 3 and 4 of paragraph 2, first sentence, shall apply provisionally as of the date on which this Agreement is signed.

Article 13

With respect to acts or measures adopted after this Agreement has been signed but before it enters into force, the thirty-day period referred to in Article 4(2), last sentence shall start to run from the day of entry into force of this Agreement.

Article 14

1. This Agreement shall be applied only if the agreements referred to in Article 11 are also implemented.

2. In addition, this Agreement shall be implemented only if the agreement concluded between the European Union, the European Community and the Swiss Confederation concerning the latter's association with the implementation, application and development of the Schengen acquis is also implemented.

Article *15*

1. Liechtenstein may accede to this Agreement.

2. The accession of Liechtenstein shall be the subject of a protocol to this Agreement setting out all the consequences of accession, including the creation of rights and obligations between Liechtenstein and Switzerland, and between Liechtenstein, of the one part, and the European Community and its Member States, in so far as they are bound by this Agreement, of the other part.

Article 16

1. Each Contracting Party may terminate this Agreement by sending a declaration in writing to the depositary. This declaration shall take effect six months after being deposited.

2. This Agreement shall be considered to have been terminated if Switzerland terminates one of the agreements referred to in Article 11 or the agreement referred to in Article 14(2).

Done at… on… in duplicate in the Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Polish, Portuguese, Slovak, Slovenian, Spanish and Swedish languages, each text being equally authentic.

FINAL ACT

of the Agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland

The plenipotentiaries have adopted the joint declarations listed below and annexed to this Final Act:

1. Common Declaration of the Contracting Parties on a close dialogue;

2. Common Declaration of the Contracting Parties on Directive 95/46/EC of the European Parliament and the Council on data protection.

The plenipotentiaries have also taken note of the declarations listed below and annexed to this Final Act:

1. Declaration by Switzerland on Article 4(3) (time limit for accepting new developments in the Dublin/Eurodac *acquis*);

2. Declaration of the European Commission on the committees that assist the European Commission in the exercise of its executive powers.

Done at... on...

For the European Community:

For the Swiss Confederation:

Common Declaration of the Contracting Parties

Common Declaration of the Contracting Parties on a close dialogue

The Contracting Parties stress the importance of a close, productive dialogue between all parties participating in the implementation of the provisions listed in Article 1(1) of the Agreement.

In accordance with Article 3(1) of the Agreement, the Commission invites experts from the Member States to attend Mixed Committee meetings with a view to holding exchanges of views with Switzerland on all the matters dealt with in the Agreement.

The Contracting Parties note that the Member States are prepared to accept this invitation and to take part in these exchanges of views with Switzerland on all the matters dealt with in the Agreement.

Common Declaration of the Contracting Parties on Directive 95/46/EC of the European Parliament and the Council on data protection

As part of the Agreement, the Contracting Parties agree that, as regards Directive 95/46/EC of the European Parliament and the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data[42] and on the free movement of such data, participation by the Swiss Confederation's representatives shall reflect the concept established by the exchange of letters on the committees that assist the European Commission in the exercise of its executive powers and annexed to the agreement concluded between the European Union, the European Community and the Swiss Confederation concerning the latter's association with the implementation, application and development of the Schengen *acquis*.

[42] OJ L 281, 23.11.1995, p. 31.

Other declarations

Declaration by Switzerland on Article 4(3) (time limit for accepting new developments in the Dublin/Eurodac *acquis*);

The maximum time limit of two years laid down in Article 4(3) covers both the approval and the implementation of the act or measure. It includes the following stages:

– the preparatory stage;

– the parliamentary procedure;

– the referendum deadline (100 days from the official publication of the act) and, where applicable;

– the referendum (organisation and voting).

The Federal Council shall inform the Council and the Commission without delay of the completion of each of these stages.

The Federal Council undertakes to use every means at its disposal to ensure that the above-mentioned stages are completed as swiftly as possible.

Declaration of the European Commission on the committees that assist the European Commission in the exercise of its executive powers.

At present, the committees that assist the European Commission in the exercise of its executive powers regarding the implementation, application and development of the Dublin/Eurodac *acquis* are:

– the committee set up by Article 27 of Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national[43] (Dublin Committee) and

– the committee set up by Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of the Dublin Convention[44] (Eurodac Committee).

[43] OJ L 50, 25.2.2003, p. 1.
[44] OJ L 316, 15.12.2000, p. 1.

COMMON DECLARATION ON JOINT-MEETINGS

The delegation of the European Commission,

The delegations representing the governments of the Republic of Iceland and the Kingdom of Norway,

The delegation representing the government of the Swiss Confederation,

Have decided to organize the meetings of the Joint Committees, established by the agreement between the European Community and Iceland and 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 Norway, on the one hand, and the agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland, on the other hand, jointly.

Note that holding these meetings jointly calls for a pragmatic arrangement regarding the office of presidency of such meetings when that presidency is to be held by the associated States according to the Agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or Switzerland or 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 Norway.

Note the wish of the associated States to cede, as necessary, the exercise of their presidencies and rotate it among them in alphabetical order of name as from the entry into force of the Agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or Switzerland.

Done at on

LEGISLATIVE FINANCIAL STATEMENT

Policy area(s): **Area of freedom, security and justice**

Activities : **External borders, visa policy and free movement of people**

Policy Strategy and Coordination

TITLE OF ACTION: AGREEMENT BETWEEN THE EUROPEAN UNION, THE EUROPEAN COMMUNITY AND THE SWISS CONFEDERATION CONCERNING THE LATTER'S ASSOCIATION WITH THE IMPLEMENTATION, APPLICATION AND DEVELOPMENT OF THE SCHENGEN ACQUIS

1. BUDGET LINE(S) + HEADING(S)

18.08.02 Système d'information Schengen (SIS II)

18.08.03 Système d'information sur les visas (VIS)

18.02.03 European Agency for the Management of operational cooperation at the external borders

2. OVERALL FIGURES

2.1. Total allocation for action (Part B): 0 € million for commitment

2.2. Period of application:

Start: The Agreement will (probably) enter into force in 2005 (depending on ratifications)

Expiry: The Agreement has no expiry date, but can be cancelled

2.3. Overall multiannual estimate of expenditure:

NOT APPLICABLE

(a) Schedule of commitment appropriations/payment appropriations (financial intervention) *(see point 6.1.1)*

€ million (*to three decimal places)*

	Year [n]	[n+1]	[n+2]	[n+3]	[n+4]	[n+5 and subs. Years]	Total
Commitments							
Payments							

(b) Technical and administrative assistance and support expenditure*(see point 6.1.2)*

Commitments							
Payments							

Subtotal a+b							
Commitments							
Payments							

(c) Overall financial impact of human resources and other administrative expenditure
(see points 7.2 and 7.3)

Commitments/ payments							

TOTAL a+b+c							
Commitments							
Payments							

2.4. Compatibility with financial programming and financial perspective

Proposal is compatible with existing financial programming.

Proposal will entail reprogramming of the relevant heading in the financial perspective.

Proposal may require application of the provisions of the Interinstitutional Agreement.

2.5. Financial impact on revenue:[45]

Proposal has no financial implications (involves technical aspects regarding implementation of a measure)

OR

[x] Proposal has financial impact – the effect on revenue is as follows:

(€ million to two decimal place)

		Prior to action	Situation following action					
Budget line	Revenue	2003	2005	2006	2007	2008	2009	2010
18 08 02	*a) Revenue in absolute terms*		0.73	0.03	0.03	0.03	0.03	0.03
	b) Change in revenue	Δ	0.73	-0.70	-	-	-	-
18 08 03	*a) Revenue in absolute terms*		0.45	0.55	0.55	0.55	0.55	0.55
	b) Change in revenue	Δ	0.45	0.10	-	-	-	-
18 02 03	*a) Revenue in absolute terms*		0.11	0.27	0.27	0.27	0.27	0.27
	b) Change in revenue	Δ	0.11	0.16	-	-	-	-

3. BUDGET CHARACTERISTICS

Type of expenditure		New	EFTA contribution	Contributions form applicant countries	Heading in financial perspective
Non-comp	Diff	NO	NO	NO	**No** 3

4. LEGAL BASIS

Articles 62 and 63 TCE
Articles 24 and 38 TUE

Agreement between the European Union, the European Community and the Swiss Confederation concerning the latter's association with the implementation, application and development of the Schengen acquis (article 11(2) and (3)).

[45] For further information, see separate explanatory note.

5. DESCRIPTION AND GROUNDS

NOT APPLICABLE

5.1. Need for Community intervention [46]

5.1.1. Objectives pursued

N/A

5.1.2. Measures taken in connection with ex ante *evaluation*

N/A

5.1.3. Measures taken following ex post *evaluation*

N/A

5.2. Action envisaged and budget intervention arrangements

N/A

5.3. Methods of implementation

N/A

6. FINANCIAL IMPACT

NOT APPLICABLE

6.1. Total financial impact on Part B - (over the entire programming period)

6.1.1. Financial intervention

Commitments (in € million to three decimal places)

Breakdown	[Year n]	[n+1]	[n+2]	[n+3]	[n+4]	[n+5 and subs. Years]	Total
Action 1							
Action 2							
etc.							
TOTAL							

[46] For further information, see separate explanatory note.

6.1.2. Technical and administrative assistance, support expenditure and IT expenditure (commitment appropriations)

	[Year n]	[n+1]	[n+2]	[n+3]	[n+4]	[n+5 and subs. years]	Total
1) Technical and administrative assistance							
a) Technical assistance offices							
b) Other technical and administrative assistance: - intra muros: - extra muros: *of which for construction and maintenance of computerised management systems*							
Subtotal 1							
2) Support expenditure							
a) Studies							
b) Meetings of experts							
c) Information and publications							
Subtotal 2							
TOTAL							

6.2. Calculation of costs by measure envisaged in Part B (over the entire programming period)[47]

Commitments (in € million to three decimal places)

Breakdown	Type of outputs (projects, files)	Number of outputs (total for years 1…n)	Average unit cost	Total cost (total for years 1…n)
	1	2	3	4=(2X3)
Action 1				
- Measure 1				
- Measure 2				
Action 2				
- Measure 1				
- Measure 2				
- Measure 3				
etc.				
TOTAL COST				

If necessary explain the method of calculation

[47] For further information, see separate explanatory note.

7. IMPACT ON STAFF AND ADMINISTRATIVE EXPENDITURE

NOT APPLICABLE

7.1. Impact on human resources

Types of post		Staff to be assigned to management of the action using existing and/or additional resources		Total	Description of tasks deriving from the action
		Number of permanent posts	Number of temporary posts		
Officials or temporary staff	A B C				*If necessary, a fuller description of the tasks may be annexed.*
Other human resources					
Total					

7.2. Overall financial impact of human resources

Type of human resources	Amount (€)	Method of calculation *
Officials Temporary staff		
Other human resources (specify budget line)		
Total		

The amounts are total expenditure for twelve months.

7.3. Other administrative expenditure deriving from the action

Budget line (number and heading)	Amount €	Method of calculation
Overall allocation (Title A7) A0701 – Missions A07030 – Meetings A07031 – Compulsory committees [1] A07032 – Non-compulsory committees [1] A07040 – Conferences A0705 – Studies and consultations Other expenditure (specify)		
Information systems (A-5001/A-4300)		
Other expenditure - Part A (specify)		
Total		

The amounts are total expenditure for twelve months.

[1] Specify the type of committee and the group to which it belongs.

I.	Annual total (7.2 + 7.3)	€
II.	Duration of action	years
III.	Total cost of action (I x II)	€

8. FOLLOW-UP AND EVALUATION

NOT APPLICABLE

8.1. Follow-up arrangements

N/A

8.2. Arrangements and schedule for the planned evaluation

N/A

9. ANTI-FRAUD MEASURES

N/A

Annex

Explanation of the calculation of Switzerland's contribution:

The calculation of Switzerland's contribution is based on the Agreement with Norway and Iceland (OJ L 176 of 10.7.1999, p. 36)

1. Administrative costs:

1.1. Mixed Committee:

The Agreement creates a Mixed Committee (Article 3). This Mixed Committee meets in form of Council working groups, where Switzerland will participate. Thus Switzerland has to contribute to administrative costs of Council Working groups. At the time of the integration of the Schengen acquis, these costs were estimated to be 300 000 000 BEF. Therefore, this amount has been included in the Agreement with Norway and Iceland. For Switzerland, in Article 11 (1) of the Agreement, an amount of 8 100 000 € has been included. This corresponds to the amount of 300 000 000 BEF in the Norway/Iceland Agreement, converted into €, adapted to the inflation between 1999 and 2003 and finally rounded.

The calculation of the percentage of 7,286 for Switzerland has been negotiated and is based on the GDP of Switzerland, Norway and Iceland in 2001 and the percentages of Norway and Iceland in their Agreement.

As this financial contribution of Switzerland concern costs related to the functioning of Council Working groups, the General Secretariat of the Council will be responsible for the recovery of this financial contribution.

1.2. Other administrative costs:

Although Switzerland will participate in Committees assisting the Commission in the exercise of its executive powers, representatives of Switzerland will not be reimbursed for their travel costs and will not receive a daily subsistence allowance.

There are currently no other administrative costs linked to the implementation of the Agreement.

2. Costs related to the functioning of Schengen:

According to Article 11 (2), Switzerland has to contribute to the costs of the Schengen Information System II (SIS II) from the budgetary year 2002 onwards according to its GDP. Therefore, as the Agreement will probably enter into force in 2005, the amount indicated in the financial statement for 2005 concerns Switzerland's contribution for the budgetary years 2002-2005.

According to Article 11 (3), Switzerland has to contribute to other costs related to Schengen also according to its GDP. Currently, other costs related to Schengen concern the Visa Information System (VIS) and the External Border Agency. For the VIS, the amount of 2005 includes the necessary contribution for 2004. For the External Border Agency, the first budgetary year will be 2005.

The calculation of Switzerland's contribution for the budgetary years 2002 and 2003 are based on the consumption of payment appropriations for the corresponding budget lines.

For the year 2004, the calculation is based on commitment appropriations as set out in the budget.

For 2005, the calculation is based on PDB figures (commitment appropriations). The figures for 2006 are based on existing financial programming (commitment appropriations).

Switzerland's prorata of GDP is calculated on the basis of Eurostat GDP figures.

LEGISLATIVE FINANCIAL STATEMENT

Policy area(s): Area of freedom, security and justice

Activity: Policy Strategy and Coordination

TITLE OF ACTION: AGREEMENT BETWEEN THE EUROPEAN COMMUNITY AND SWITZERLAND CONCERNING THE CRITERIA AND MECHANISMS FOR ESTABLISHING THE STATE RESPONSIBLE FOR EXAMINING A REQUEST FOR ASYLUM LOGED IN A MEMBER STATE OR IN SWITZERLAND

1. BUDGET LINE(S) + HEADING(S)

18.08.04 Eurodac

2. OVERALL FIGURES

2.1. Total allocation for action (Part B): € million for commitment

2.2. Period of application:

Start: The Agreement will (probably) enter into force in 2005 (depending on ratifications)

Expiry: The Agreement has no expiry date, but can be cancelled

2.3. Overall multiannual estimate of expenditure:

NOT APPLICABLE

(a) Schedule of commitment appropriations/payment appropriations (financial intervention) *(see point 6.1.1)*

€ million (*to three decimal places)*

	Year [n]	[n+1]	[n+2]	[n+3]	[n+4]	[n+5 and subs. Years]	Total
Commitments							
Payments							

(b) Technical and administrative assistance and support expenditure*(see point 6.1.2)*

Commitments							
Payments							

Subtotal a+b							
Commitments							
Payments							

(c) Overall financial impact of human resources and other administrative expenditure
(see points 7.2 and 7.3)

Commitments/ payments							

TOTAL a+b+c							
Commitments							
Payments							

2.4. Compatibility with financial programming and financial perspective

Proposal is compatible with existing financial programming.

Proposal will entail reprogramming of the relevant heading in the financial perspective.

Proposal may require application of the provisions of the Interinstitutional Agreement.

2.5. Financial impact on revenue:[48]

Proposal has no financial implications (involves technical aspects regarding implementation of a measure)

OR

[x] Proposal has financial impact – the effect on revenue is as follows (indicative):

[48] For further information, see separate explanatory note.

(€ million to one decimal place)

Budget line	Revenue	Prior to action [Year n-1]	Situation following action [2005]	[2006]	[2007]	[2008]	[2009]	[2010]
18 08 04	*a) Revenue in absolute terms*		1.11	0.11	0.11	0.11	0.11	0.11
	b) Change in revenue	*Δ*	1.11	-1.00	-	-	-	-

3. BUDGET CHARACTERISTICS

Type of expenditure		New	EFTA contribution	Contributions form applicant countries	Heading in financial perspective
Non-comp	Diff	NO	NO	NO	**No 3**

4. LEGAL BASIS

Article 63 TCE

Agreement between the European Community and Switzerland concerning the criteria and mechanisms for establishing the State responsible for examining a request for Asylum lodged in a Member State or in Switzerland (article 8 (1) of the Agreement).

5. DESCRIPTION AND GROUNDS

not applicable

5.1. Need for Community intervention[49]

5.1.1. Objectives pursued

N/A

5.1.2. Measures taken in connection with ex ante *evaluation*

N/A

5.1.3. Measures taken following ex post *evaluation*

N/A

[49] For further information, see separate explanatory note.

5.2. Action envisaged and budget intervention arrangements

N/A

5.3. Methods of implementation

N/A

6. FINANCIAL IMPACT

N/A

6.1. Total financial impact on Part B - (over the entire programming period)

(The method of calculating the total amounts set out in the table below must be explained by the breakdown in Table 6.2.)

6.1.1. Financial intervention

Commitments (in € million to three decimal places)

Breakdown	[Year n]	[n+1]	[n+2]	[n+3]	[n+4]	[n+5 and subs. Years]	Total
Action 1							
Action 2							
etc.							
TOTAL							

6.1.2. Technical and administrative assistance, support expenditure and IT expenditure (commitment appropriations)

	[Year n]	[n+1]	[n+2]	[n+3]	[n+4]	[n+5 and subs. years]	Total
1) Technical and administrative assistance							
a) Technical assistance offices							

b) Other technical and administrative assistance: - intra muros: - extra muros: *of which for construction and maintenance of computerised management systems*							
Subtotal 1							
2) Support expenditure							
a) Studies							
b) Meetings of experts							
c) Information and publications							
Subtotal 2							
TOTAL							

6.2. Calculation of costs by measure envisaged in Part B (over the entire programming period)[50]

(Where there is more than one action, give sufficient detail of the specific measures to be taken for each one to allow the volume and costs of the outputs to be estimated.)

[50] For further information, see separate explanatory note.

Commitments (in € million to three decimal places)

Breakdown	Type of outputs (projects, files)	Number of outputs (total for years 1…n)	Average unit cost	Total cost (total for years 1…n)
	1	2	3	4=(2X3)
Action 1				
- Measure 1				
- Measure 2				
Action 2				
- Measure 1				
- Measure 2				
- Measure 3				
etc.				
TOTAL COST				

If necessary explain the method of calculation

7. IMPACT ON STAFF AND ADMINISTRATIVE EXPENDITURE

N/A

7.1. Impact on human resources

Types of post		Staff to be assigned to management of the action using existing and/or additional resources		Total	Description of tasks deriving from the action
		Number of permanent posts	Number of temporary posts		
Officials or temporary staff	A B C				*If necessary, a fuller description of the tasks may be annexed.*
Other human resources					
Total					

7.2. Overall financial impact of human resources

Type of human resources	Amount (€)	Method of calculation *
Officials Temporary staff		
Other human resources (specify budget line)		
Total		

The amounts are total expenditure for twelve months.

7.3. Other administrative expenditure deriving from the action

Budget line (number and heading)	Amount €	Method of calculation
Overall allocation (Title A7) A0701 – Missions A07030 – Meetings A07031 – Compulsory committees [1] A07032 – Non-compulsory committees [1] A07040 – Conferences A0705 – Studies and consultations Other expenditure (specify)		
Information systems (A-5001/A-4300)		
Other expenditure - Part A (specify)		
Total		

The amounts are total expenditure for twelve months.

[1] Specify the type of committee and the group to which it belongs.

I.	Annual total (7.2 + 7.3)	€
II.	Duration of action	years
III.	Total cost of action (I x II)	€

8. FOLLOW-UP AND EVALUATION

N/A

8.1. Follow-up arrangements

N/A

8.2. Arrangements and schedule for the planned evaluation

N/A

9. ANTI-FRAUD MEASURES

N/A

Annex

1.) Explanation of calculation of revenue (section 2.5).

The calculation of Switzerland's contribution is based on the contribution of Iceland and Norway laid down in the Agreement with Iceland and Norway concerning their association with the Dublin and Eurodac acquis (OJ L 93 of 3.4.2001, p. 38).

The percentage of 7,286 to be paid by Switzerland has been negotiated with Switzerland and is calculated on the basis of the GDP of Switzerland, Norway and Iceland in 2001 and the percentages provided for Norway and Iceland in their Agreement.

It has been negotiated, that Switzerland (like Norway and Iceland) has to contribute to the development of the Central Unit of Eurodac from the budgetary year 2000 onwards. Although the Agreement has been initialled in 2004, for reasons due to the history of the negotiations, the amount indicated in Article 8 of the Agreement is only the sum of the amounts of the budgetary years 2000-2003. But the amount of the budgetary year 2004 is included in the calculation indicated in the financial statement of the budgetary year 2005, which consequently covers Switzerland's contribution for the budgetary years 2000-2005.

The calculation of Switzerland's contribution for the budgetary years 2000-2004 are based on the amounts published in the corresponding budgets.

The calculation for Switzerland's contribution for the budgetary year 2005 is based on PDB figures. The figures for 2006 and subsequent years are based on the existing financial programming for the year 2006.

2.) Costs related to meetings of the Joint Committee:

For the Community, there are no additional human resources or administrative costs involved for the meetings of the Joint Committee created by the Agreement (Article 3). This Joint Committee will meet at the same time as the Joint Committee, which has already been created by the Agreement with Norway and Iceland (OJ L 93 of 2.4.2001, p. 40). See also the Common Declaration on joint meetings of the Joint Committees attached to the Agreement.

Thus in practice, although legally there are two Joint Committees, there will be only one meeting where Norway, Iceland and Switzerland are present at the same time.

Travel costs and daily allowances are not reimbursed for the representatives of Switzerland in this Joint Committee.