COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 26.4.2006
COM(2006) 178 final

2006/0063 (CNS)

Proposal for a

COUNCIL DECISION

on the signature, on behalf of the European Community, of an Arrangement between the European Community and the Republic of Iceland and the Kingdom of Norway on the modalities of those states' participation in the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union

Proposal for a

COUNCIL DECISION

on the conclusion, on behalf of the European Community, of an Arrangement between the European Community and the Republic of Iceland and the Kingdom of Norway on the modalities of those states' participation in the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union

(presented by the Commission)

EXPLANATORY MEMORANDUM

On 18 May 1999, the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concluded an Agreement concerning those states' association with the implementation, application and development of the Schengen *acquis.*

According to Article 21 (3) of Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, countries associated with the implementation, application and development of the Schengen *acquis* shall participate in the Agency. Certain modalities of their participation shall be regulated in separate agreements (so called "arrangements").

Following the authorization given to the Commission on 7 October 2004, negotiations on an Arrangement were held with the Republic of Iceland and the Kingdom of Norway. The negotiations were finalised on 18 May 2005 and the draft Arrangement initialled.

The Arrangement deals with the following issues: the exceptional limited voting rights of representatives of the Republic of Iceland and the Kingdom of Norway in the Management Board of the Agency, the financial contribution of the Republic of Iceland and the Kingdom of Norway to the budget of the Agency, the protection and confidentiality of data, the legal status of the Agency in the Republic of Iceland and the Kingdom of Norway, the liability of the Agency, recognition by the Republic of Iceland and the Kingdom of Norway of the jurisdiction of Court of Justice of the European Communities over the Agency, privileges and immunities of the Agency and its staff, and access for Icelandic and Norwegian nationals to be engaged under contract by the Executive Director of the Agency.

A joint declaration is enclosed in the Arrangement, emphasising that the granting of limited voting rights to the Republic of Iceland and the Kingdom of Norway, despite the fact that the Agency is a Community body, in no way may be regarded as a legal or political precedent. This declaration will be published in the Official Journal together with the Arrangement.

The legal basis of the Arrangement is Article 62 (2) (a) and Article 66 in conjunction with Article 300 of the Treaty establishing the European Community.

Proposal for a

COUNCIL DECISION

on the signature, on behalf of the European Community, of an Arrangement between the European Community and the Republic of Iceland and the Kingdom of Norway on the modalities of those states' participation in the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission[1],

Whereas:

(1) According to Article 21 (3) of Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, countries associated with the implementation, application and development of the Schengen *acquis* shall participate in the Agency. Certain modalities of their participation shall be regulated in separate agreements (so called "arrangements").

(2) Following the authorization given to the Commission on 7 October 2004, negotiations with the Republic of Iceland and the Kingdom of Norway for an Arrangement on the modalities of those states' participation in the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union have been concluded.

(3) A draft of the Arrangement has been submitted by the Commission to the Council.

(4) Subject to its conclusion at a later date, it is desirable to sign the Arrangement that was initialled on 18 May 2005,

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 the behalf of the European Community, the

[1] OJ C […], […], p. […].

Arrangement on the modalities of the participation of Iceland and Norway in the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union.

The text of the Arrangement is attached to this Decision.

Done at Brussels,

For the Council
The President

2006/0063 (CNS)

Proposal for a

COUNCIL DECISION

on the conclusion, on behalf of the European Community, of an Arrangement between the European Community and the Republic of Iceland and the Kingdom of Norway on the modalities of those states' participation in the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 62 (2) (a) and Article 66 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[2],

Having regard to the opinion of the European Parliament[3],

Whereas:

(1) According to Article 21 (3) of Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, countries associated with the implementation, application and development of the Schengen *acquis* shall participate in the Agency. Certain modalities of their participation shall be regulated in separate agreements (so called "arrangements").

(2) Following the authorization given to the Commission on 7 October 2004, negotiations with the Republic of Iceland and the Kingdom of Norway for an Arrangement on the modalities of those states' participation in the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union have been concluded.

(3) According to Council Decision …/…/EC of ……2006, and pending its final conclusion at a later date, this Arrangement has been signed on behalf of the European Community on …. 2006.

(4) This Arrangement should be concluded,

HAS DECIDED AS FOLLOWS:

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2 OJ C […], […], p. […].

3 OJ C […], […], p. […].

Article 1

The Arrangement on the modalities of the participation of Iceland and Norway in the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union is hereby approved on behalf of the European Community.

The text of the Arrangement is 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 9 of the Arrangement in order to express the consent of the Community to be bound.

Done at Brussels,

For the Council
The President

ANNEX

ARRANGEMENT

between the European Community and the Republic of Iceland and the Kingdom of Norway on the modalities of those states' participation in the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union

The European Community,

represented by the Council of the European Union,

of the one part,

and

the Republic of Iceland (hereinafter referred to as "Iceland"),

and

the Kingdom of Norway (hereinafter referred to as "Norway"),

of the other part,

HAVING REGARD TO the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning those states' association with the implementation, application and development of the Schengen *acquis* of 18 May 1999 (hereinafter referred to as "the Agreement");

WHEREAS

(1) The European Community has established by Council Regulation (EC) No 2007/2004 of 26 October 2004[4] (hereinafter referred to as "the Regulation") the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (hereinafter referred to as "the Agency");

(2) The Regulation constitutes a development of the Schengen *acquis* within the meaning of the Agreement;

(3) The Regulation confirms in Recital 23 and Article 21 (3) that countries associated with the implementation, application and development of the Schengen *acquis* shall participate fully in activities of the Agency, albeit with limited voting rights;

(4) The Agreement does not address the modalities of the association of Iceland and Norway with the activities of new bodies set up by the European Union in the framework of the further development of the Schengen *acquis* and certain aspects of that association with the Agency should be settled in an additional arrangement

[4] OJ L 349, 25.11.2004, p. 1.

between the Contracting Parties to the Agreement;

HAVE AGREED AS FOLLOWS:

Article 1
The Management Board

Iceland and Norway shall be represented in the Management Board of the Agency as laid down in Article 21 (3) of the Regulation.

They shall have voting rights:

- As regards decisions on specific activities to be carried out at, or in the vicinity of, their external borders; proposals for such decisions shall require a vote in favour of their adoption by their representative in the Management Board;

- As regards decisions on specific activities under Article 3 (joint operations and pilot projects at external borders), Article 7 (Management of technical equipment), Article 8 (support to Member States in circumstances requiring increased technical and operational assistance at external borders) and Article 9 (1), first sentence (joint return operations) to be carried out with human resources and/or equipment made available by Iceland and/or Norway;

- As regards decisions on risk analysis (development of the common integrated risk analysis, general and specific risk analysis), directly affecting them, under Article 4;

- As regards decisions on training activities under Article 5, except the establishment of the common core curriculum.

Article 2
Financial contribution

Iceland and Norway shall contribute to the budget of the Agency on the scale laid down in Article 12 (1) of the Agreement.

Article 3
Protection and confidentiality of data

1. Directive 95/46/EC shall apply where personal data are forwarded by the Agency to Icelandic and Norwegian authorities.

2. Regulation (EC) 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data shall apply to data forwarded by the Icelandic and Norwegian authorities to the Agency.

3. Iceland and Norway shall respect the rules on confidentiality of documents held by the

Agency, as set out in the Rules of Procedure of the Management Board.

Article 4
Legal status

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

Article 5
Liability

The liability of the Agency shall be governed as provided for in Article 19 (1), (3) and (5) of the Regulation.

Article 6
Court of Justice

Iceland and Norway shall recognise the jurisdiction of the Court of Justice of the European Communities over the Agency, as provided for in Article 19 (2) and (4) of the Regulation.

Article 7
Privileges and immunities

Iceland and Norway shall apply to the Agency and to its staff the Protocol on the Privileges and Immunities of the European Communities and applicable rules adopted pursuant to the Protocol.

Article 8
Staff

1. By way of derogation from Article 12 (2) (a) of the Conditions for employment of other servants of the European Communities, Icelandic and Norwegian nationals enjoying their full rights as citizens may be engaged under contract by the Executive Director of the Agency.

2. Nationals of Iceland and Norway cannot, however, be appointed to the posts of Executive Director or Deputy Executive Director of the Agency.

3. Nationals of Iceland and Norway cannot be elected as Chairperson or Deputy Chairperson of the Management Board.

Article 9
Entry into force

1. This Arrangement shall enter into force one month following the day on which the Secretary General of the Council, who shall act as its depositary, has established that all formal requirements concerning the expression of the consent by or on behalf of the Parties to this Arrangement to be bound by it have been fulfilled.

2. This Arrangement shall apply provisionally as from the date following that of its signature.

Article 10
Validity and termination

1. This Arrangement is concluded for an unlimited period.

2. This Arrangement shall cease to be in force 6 months after the Agreement is denounced by Iceland or by Norway or by decision of the Council of the European Union or is otherwise terminated in accordance with the procedures described in Articles 11 and 16 of the Agreement.

   The agreement mentioned under Article 17 of the Agreement shall also cover the consequences of termination of the present Arrangement.

The Arrangement, as well as the Declaration annexed to it, are drawn up in duplicate in the Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Slovenian, Slovak, Spanish and Swedish languages, each of those texts being equally authentic.

Done at….on the day…of ….in the year two thousand and six.

For the Council of the European Union,

For the Republic of Iceland,

For the Kingdom of Norway

Joint Declaration by the European Community and the Governments of the Republic of Iceland and the Kingdom of Norway concerning the agreement on the arrangements for the participation of the Republic of Iceland and the Kingdom of Norway in the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union:

The European Community, the Government of the Republic of Iceland and the Government of the Kingdom of Norway,

Having concluded an agreement on the arrangements for the participation of the Republic of Iceland and the Kingdom of Norway in the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union in accordance with Article 21 (3) of Council Regulation (EC) No 2007/2004 of 26 October 2004,

Hereby jointly declare that:

The voting rights provided for in the said agreement are justified by the special relations with Iceland and Norway flowing from the association of these States with the implementation, application and development of the Schengen *acquis* as recognised in the Schengen protocol to the Treaty of Amsterdam and in the draft treaty establishing a constitution for Europe.

These voting rights are of an exceptional nature attributable to the specific nature of Schengen cooperation and the special position of Norway and Iceland.

They may therefore not be regarded as a legal or political precedent for any other field of cooperation between the parties to the said agreement or for the participation of other third countries in other agencies of the Union.

In no circumstances may these voting rights be exercised in respect of decisions of a regulatory or legislative nature.