COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 23.11.2006
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2006/0235 (AVC)

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Proposal for a

COUNCIL DECISION

on the approval of an exchange of letters between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, authenticating the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons, as drawn up in the Czech, Estonian, Hungarian, Latvian, Lithuanian, Maltese, Polish, Slovak and Slovenian languages

(presented by the Commission)

EXPLANATORY MEMORANDUM

The ten new Member States joined the European Union on 1 May 2004. Concerning the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons (hereinafter the Agreement), the Act of Accession specifies that it does not apply to the new Member States. Instead, the new Member States have to accede to the Agreement, in accordance with Article 6 (2) of the Act of Accession, through the conclusion of a separate Enlargement Protocol with Switzerland.[1] Negotiations began in 2003 and a draft Enlargement Protocol was initialled by the negotiators on 2 July 2004.

The Agreement is a mixed international agreement with the European Community and its Member States as Contracting Parties. Article 9(3) of the Enlargement Protocol specifies that the new language versions of the Agreement will be equally authentic. This provision is in line with Regulation No 1/1958 of 15 April 1958 determining the languages to be used in the European Community.[2] The temporary exception regarding the Maltese language as provided for in Regulation (EC) No 930/2004 of 1 May 2004 does not apply to the Agreement.[3]

As it appeared that the new language versions of the Agreement would not be available for the scheduled date of signature of the Enlargement Protocol on 26 October 2004, the negotiators suggested that the Contracting Parties should proceed with the signature and authenticate the new language versions of the Agreement at a later stage following the entry into force of the Enlargement Protocol. Accordingly, Article 9(3) of the Enlargement Protocol requires the Contracting Parties to authenticate the Agreement, as well as the Declarations annexed thereto, as drawn up in the Czech, Estonian, Hungarian, Latvian, Lithuanian, Maltese, Polish, Slovak and Slovenian languages on the basis of an exchange of letters. The Enlargement Protocol entered into force on 1 April 2006. Agreement on the content of the proposed exchange of letters has been reached between the services of the Commission and the Swiss Federal Government, subject to legal verification.

With regard to the European Community, the exchange of letters authenticating the new language versions constitutes an international agreement modifying the Agreement. As this Agreement was concluded on the basis of Articles 310 and 300 of the EC Treaty, the exchange of letters has to follow the same procedure. Council Decision No 2006/245/EC of 27 February 2006 approving the conclusion of the Enlargement Protocol does not provide for a simplified procedure for the conclusion of the exchange of letters.[4] Accordingly, the assent of the European Parliament is necessary, as the exchange of letters amends the Agreement, which is based on Article 310 of the EC Treaty. With regard to ratification by the Member States, however, the simplified procedure provided for in Article 6(2) of the Act of Accession can be used.

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1 OJ L 236, 23.9.2003, p. 33.
2 OJ 17, 6.10.1958, p. 385/58. Regulation as last amended by the 2003 Act of Accession.
3 OJ L 169, 1.5.2004, p. 1.
4 OJ L 89, 28.3.2006, p. 28.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 310, in conjunction with Article 300, paragraph 2, first subparagraph, and Article 300 paragraph 3, second subparagraph, thereof,

Having regard to the Treaty of Accession of 16 April 2003, and in particular Article 1(2) thereof,

Having regard to the Act of Accession annexed to the Treaty of Accession, and in particular Article 6 paragraph 2 thereof,

Having regard to the proposal from the Commission[5],

Having regard to the assent of the European Parliament[6],

Whereas:

(1) The Protocol of 26 October 2004 to the Agreement on the free movement of persons entered into force on 1 April 2006.[7]

(2) Article 9 paragraph 3 of the Protocol of 26 October 2004 provides for the Contracting Parties to authenticate the Agreement on the free movement of persons, as well as the Declarations annexed thereto, as drawn up in the Czech, Estonian, Hungarian, Latvian, Lithuanian, Maltese, Polish, Slovak and Slovenian languages on the basis of an exchange of letters.

HAS DECIDED AS FOLLOWS:

Article 1

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5 OJ C […], […], p. […].
6 OJ C […], […], p. […].
7 OJ L 89, 28.3.2006, p. 30.

The exchange of letters between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, authenticating the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons, as drawn up in the Czech, Estonian, Hungarian, Latvian, Lithuanian, Maltese, Polish, Slovak and Slovenian languages, is hereby approved on behalf of the European Community and its Member States.

The exchange of letters is attached to this Decision.

Article 2

The President of the Council is hereby authorised to designate the persons(s) empowered to sign the exchange of letters on behalf of the European Community and its Member States.

Done at Brussels,

For the Council
The President

ANNEX

AGREEMENT IN THE FORM OF AN EXCHANGE OF LETTERS

between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, authenticating the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons, as drawn up in the Czech, Estonian, Hungarian, Latvian, Lithuanian, Maltese, Polish, Slovak and Slovenian languages

A. Letter from the European Community and its Member States

Brussels, [date]

Excellency,

The Protocol of 26 October 2004 to the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons, regarding the participation, as contracting parties, of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic, pursuant to their accession to the European Union, (hereinafter referred to as the Protocol) entered into force on 1 April 2006.

Article 9 paragraph 3 of the Protocol provides for the Contracting Parties to authenticate the Agreement, as well as the Declarations annexed thereto, as drawn up in the Czech, Estonian, Hungarian, Latvian, Lithuanian, Maltese, Polish, Slovak and Slovenian languages on the basis of an exchange of letters.

On behalf of the European Community and its Member States, the Kingdom of Belgium, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of Hungary, the Republic of Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, the Republic of Slovenia, the Slovak Republic, the Republic of Finland, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland, I propose to the Swiss Confederation that the enclosed texts be accepted as the authentic Czech, Estonian, Hungarian, Latvian, Lithuanian, Maltese, Polish, Slovak and Slovenian language versions of the Agreement, including the Final Act, with the exception of Annex II and Annex III. These two Annexes to the Agreement shall be adopted in all authentic languages by decision of the Joint Committee.

I should be grateful if you would confirm the agreement of the Swiss Confederation to the foregoing.

Please accept, Sir, the assurance of my highest consideration.

For the Council of the European Union

The President

H.E. Mr Bernhard Marfurt
Head of the Swiss Mission to the European Union
Place du Luxembourg 1
1050 Brussels

B. Letter from the Swiss Confederation

Brussels, [date]

Excellency,

I have the honour to acknowledge receipt of your letter of today's date with the following content:

[…]

I can confirm the agreement of the Swiss Confederation to the foregoing.

Please accept, Sir, the assurance of my highest consideration.

For the Swiss Confederation

The Ambassador

[…]
President of the
Council of the European Union
1048 Brussels