COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 4.6.2009
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2009/0073 (CNS)

Proposal for a

COUNCIL DECISION

on the signing, on behalf of the Community, of the Arrangement between the European Community, of the one part, and the Swiss Confederation and the Principality of Liechtenstein, of the other part, on the modalities of the participation by those States in the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union

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on the conclusion, on behalf of the Community, of the Arrangement between the European Community, of the one part, and the Swiss Confederation and the Principality of Liechtenstein, of the other part, on the modalities of the participation by those States in the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union

EXPLANATORY MEMORANDUM

1. POLITICAL AND LEGAL BACKGROUND

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[1] provides for countries associated with the implementation, application and development of the Schengen *acquis* to participate in the Agency. The detailed rules of their participation are to be specified in further arrangements to be concluded between the European Community and those countries.

On 15 February 2007 the European Community and the Republic of Iceland and the Kingdom of Norway concluded an Arrangement on participation by those States in the Agency[2].

On 26 October 2004 the European Union, the European Community and the Swiss Confederation signed the Agreement concerning the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* (hereinafter referred to as "the Schengen Agreement"). On 1 March 2008 the Schengen Agreement entered into force[3].

Article 16 of the Schengen Agreement provides for Liechtenstein's association with the Schengen *acquis* by means of a Protocol to the Schengen Agreement determining the rights and obligations of each of the contracting parties. The Protocol was signed on 28 February 2008 and is expected to be concluded in 2009.

For efficiency, and to avoid the need to conduct separate negotiations, Liechtenstein has been associated with the negotiations on its participation in the Agency before conclusion of the Protocol is completed. The Arrangement on the modalities of the participation in the Agency will not apply to Liechtenstein until the date when the Protocol is put into effect.

Following the authorisation given to the Commission on 11 March 2008, negotiations were held with Switzerland and Liechtenstein. The negotiations were finalised on 19 January 2009 and the draft Arrangement was initialled.

The Member States have been informed and consulted in the Frontiers Working Party and the Working Party on the European Free Trade Association (EFTA) within the Council.

The legal basis for the Arrangement is Article 62(2)(a) and Article 66 in conjunction with the first sentence of the first subparagraph of Article 300(3) of the EC Treaty.

The attached proposals constitute the legal instruments for signature and conclusion of the Arrangement. The Council will decide by qualified majority. The European Parliament will have to be formally consulted on conclusion of the Arrangement, in accordance with Article 300(3) of the EC Treaty.

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1 OJ L 349, 25.11.2004, p. 1.
2 OJ L 188, 20.7.2007, p. 15.
3 OJ L 53, 27.2.2008, p. 52.

2. OUTCOME OF THE NEGOTIATIONS

The Commission considers that the objectives set by the Council in its negotiating directives have been attained and that the draft arrangement on the modalities of the participation by the Swiss Confederation and the Principality of Liechtenstein in the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union is acceptable to the Community.

The final content of the draft Arrangement can be summarised as follows:

Purpose and scope

This Arrangement establishes clear and unambiguous legally binding rights and obligations to ensure effective participation by Switzerland and Liechtenstein in the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union.

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

The special situations of Denmark, the United Kingdom and Ireland are reflected in the preamble.

Declarations

Two joint declarations are attached to the Arrangement covering:

- voting rights, and

- application of the provisions on the civil liability in relation to deployment of rapid border intervention teams.

3. CONCLUSIONS

In the light of the above-mentioned results, the Commission proposes that the Council:

– decide that the Arrangement be signed on behalf of the Community and authorise the President of the Council to appoint the person(s) duly empowered to sign on behalf of the Community;

– approve, after consultation of the European Parliament, the attached Arrangement between the European Community, of the one part, and the Swiss Confederation and the Principality of Liechtenstein, of the other part, on the modalities of the participation by those States in the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union.

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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,

Whereas:

(1) 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[4] provides for countries associated with the implementation, application and development of the Schengen *acquis* to participate in the Agency. The modalities of their participation are to be specified in further arrangements to be concluded between the Community and those countries.

(2) Following the authorisation given to the Commission on 11 March 2008, negotiations with the Swiss Confederation and the Principality of Liechtenstein for an Arrangement on the modalities of the participation by those States 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) Subject to its possible conclusion at a later date, the Arrangement initialled on 19 January 2009 should be signed and the Joint Declarations approved.

(4) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark is not taking part in the adoption of this Decision and is not bound by it, or subject to application thereof. Since this Decision builds upon the Schengen *acquis* under the provisions of Title IV of Part Three of the Treaty establishing the European Community, Denmark should, in accordance with Article 5

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

of the same Protocol, decide within a period of six months after the Council has adopted this Decision whether it will implement it in its national law or not.

(5) This Decision constitutes a development of provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance 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*[5]. The United Kingdom is therefore not taking part in its adoption of this Decision and is not bound by it or subject to application thereof.

(6) This Decision constitutes a development of provisions of the Schengen *acquis* in which Ireland does not take part, in accordance 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*[6]. Ireland is therefore not taking part in adoption of this Decision and is not bound by it or subject to application thereof,

HAS DECIDED AS FOLLOWS:

Article 1

The signing of the Arrangement between the European Community, of the one part, and the Swiss Confederation and the Principality of Liechtenstein, of the other part, on the modalities of the participation by those States in the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union and the attached Joint Declarations is hereby approved on behalf of the Community, subject to the conclusion of the Arrangement.

The texts of the Arrangement and the Joint Declarations are attached to this Decision.

Article 2

The President of the Council is hereby authorised to designate the person(s) empowered to sign the Arrangement on behalf of the Community, subject to conclusion thereof.

Done at Brussels,

For the Council
The President

[5] OJ L 131, 1.6.2000, p. 43.
[6] OJ L 64, 7.3.2002, p. 20.

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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,

Having regard to the opinion of the European Parliament[7]

Whereas:

(1) 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[8], provides for countries associated with the implementation, application and development of the Schengen *acquis* to participate in the Agency. The modalities of their participation are to be specified in further arrangements to be concluded between the Community and those countries.

(2) Following the authorisation given to the Commission on 11 March 2008, negotiations with the Swiss Confederation and the Principality of Liechtenstein for an Arrangement on the modalities of the participation by those States 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) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark is not taking part in the adoption of this Decision and is not bound by it, or subject to application thereof. Since this Decision builds upon the Schengen *acquis* under the provisions of Title IV of Part Three of the Treaty

[7] OJ C…

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

establishing the European Community, Denmark should, in accordance with Article 5 of the same Protocol, decide within a period of six months after the Council has adopted this Decision whether it will implement it in its national law or not.

(4) This Decision constitutes a development of provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance 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*[9]. The United Kingdom is therefore not taking part in adoption of this Decision and is not bound by it or subject to application thereof.

(5) This Decision constitutes a development of provisions of the Schengen *acquis* in which Ireland does not take part, in accordance 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*[10]. Ireland is therefore not taking part in adoption of this Decision and is not bound by it or subject to application thereof.

(6) The Arrangement should be concluded,

HAS DECIDED AS FOLLOWS:

Article 1

The Arrangement between the European Community, of the one part, and the Swiss Confederation and the Principality of Liechtenstein, of the other part, on the modalities of the participation by those States 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 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 Community the instrument of approval provided for in Article 9(4) of the Arrangement in order to express the consent of the Community to be bound.

Done at Brussels,

For the Council
The President

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9 OJ L 131, 1.6.2000, p. 43.
10 OJ L 64, 7.3.2002, p. 20.

ANNEX

ARRANGEMENT

between the European Community, of the one part, and the Swiss Confederation and the Principality of Liechtenstein, of the other part, on the modalities of the participation by those States 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,

of the one part, and

THE SWISS CONFEDERATION, hereinafter referred to as "Switzerland", and

THE PRINCIPALITY OF LIECHTENSTEIN, hereinafter referred to as "Liechtenstein",

of the other part,

HAVING REGARD TO the Agreement signed on 26 October 2004 between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*, hereinafter referred to as "the Agreement",

HAVING REGARD TO the Protocol signed on 28 February 2008 between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*, hereinafter referred to as "the Protocol",

HAVING REGARD TO the Joint Declaration by the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union attached to the above-mentioned Protocol,

HAVING REGARD TO the Arrangement between the European Community and the Republic of Iceland and the Kingdom of Norway on the modalities of the participation by those States in the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union[11],

WHEREAS:

(1) By Council Regulation (EC) No 2007/2004[12], hereinafter referred to as "the Regulation", the European Community established 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".

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[11] OJL 188, 20.7.2007, p. 19.

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

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

(3) The Regulation confirms that countries associated with the implementation, application and development of the Schengen *acquis* should participate fully in activities of the Agency, albeit with limited voting rights.

(4) The Principality of Liechtenstein does not have external borders to which the Schengen Borders Code applies.

(5) The Agreement and the Protocol do not address the modalities of the association of Switzerland and Liechtenstein 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 the association with the Agency should be settled in an additional arrangement between the Parties to the Agreement and the Protocol.

HAVE AGREED AS FOLLOWS:

Article 1

The Management Board

1. Switzerland and Liechtenstein shall be represented on the Management Board of the Agency, as laid down in Article 21(3) of the Regulation.

2. Switzerland shall have voting rights:

   (a) as regards decisions on specific activities to be carried out at its external borders. Proposals for such decisions shall require a vote in favour of their adoption by its representative on the Management Board;

   (b) 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 for 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 Switzerland;

   (c) as regards decisions on risk analysis (development of the common integrated risk analysis, general and specific risk analysis), directly affecting Switzerland, under Article 4;

   (d) as regards decisions on training activities under Article 5, except on establishment of the common core curriculum.

3. Liechtenstein shall have voting rights:

   (a) 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 for 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 Liechtenstein;

(b) as regards decisions on risk analysis (development of the common integrated risk analysis, general and specific risk analysis), directly affecting Liechtenstein, under Article 4;

(c) as regards decisions on training activities under Article 5, except on establishment of the common core curriculum.

Article 2

Financial contribution

Switzerland shall contribute to the budget of the Agency in accordance with the percentage laid down in Article 11(3) of the Agreement.

Liechtenstein shall contribute to the budget of the Agency in accordance with Article 3 of the Protocol which refers to the contribution method laid down in Article 11(3) of the Agreement.

Article 3

Protection and confidentiality of data

1. 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[13] shall apply where personal data are forwarded by the Agency to the authorities of Switzerland and Liechtenstein.

2. Regulation (EC) No 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[14] shall apply to data forwarded by the authorities of Switzerland and Liechtenstein to the Agency.

3. Switzerland and Liechtenstein 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 the law of Switzerland and Liechtenstein and shall enjoy in Switzerland and Liechtenstein the most extensive legal capacity accorded to legal persons under the law of Switzerland and Liechtenstein. It may, in particular, acquire or dispose of movable and immovable property and may be party to legal proceedings.

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13 OJ L 281, 23.11.1995, p. 31.
14 OJ L 8, 12.1.2001, p. 1.

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

1. Switzerland and Liechtenstein 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.

2. Disputes regarding civil liability shall be resolved in accordance with Article 10b(4) of the Regulation as amended by Regulation (EC) No 863/2007 of the European Parliament and of the Council of 11 July 2007 establishing a mechanism for the creation of Rapid Border Intervention Teams and amending Council Regulation (EC) No 2007/2004 as regards that mechanism and regulating the tasks and powers of guest officers[15].

Article 7

Privileges and immunities

1. Switzerland and Liechtenstein shall apply to the Agency and to its staff the Protocol on the Privileges and Immunities of the European Communities which is set out in the Annex to this Arrangement.

2. The Annex to this Arrangement, including as regards Switzerland the Appendix on the procedure for application of the Protocol on Privileges and Immunities, shall form an integral part of this Arrangement.

Article 8

Staff

1. Switzerland and Liechtenstein shall apply the rules relating to the Agency's staff matters adopted pursuant to the Protocol on the Privileges and Immunities of the European Communities.

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

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[15] OJ L 199, 31.7.2007, p. 30.

3. Nationals of Switzerland and Liechtenstein may not, however, be appointed to the posts of Executive Director or Deputy Executive Director of the Agency.

4. Nationals of Switzerland and Liechtenstein may not be elected as Chairperson or Deputy Chairperson of the Management Board.

Article 9

Entry into force

1. The Secretary-General of the Council of the European Union shall act as depositary of this Arrangement.

2. The European Community, Switzerland and Liechtenstein shall approve this Arrangement in accordance with their own procedures.

3. The entry into force of this Arrangement shall require approval by the European Community and by at least one other Party to this Arrangement.

4. This Arrangement shall enter into force in relation to any Party to this Arrangement on the first day of the first month following the deposit of its instrument of approval with the depositary.

5. As regards Liechtenstein, this Arrangement shall apply as from the date when the Protocol is put into effect.

Article 10

Validity and termination

1. This Arrangement shall be concluded for an unlimited period.

2. This Arrangement shall cease to be in force six months after the Agreement is denounced by Switzerland or by decision of the Council of the European Union, or is otherwise terminated in accordance with the procedures described in Articles 7(4), 10 or 17 of the Agreement.

3. This Arrangement shall cease to be in force six months after the Protocol is denounced by Liechtenstein or by decision of the Council of the European Union or is otherwise terminated in accordance with the procedure described in Articles 3, 5(4), 11(1) or 11(3) of the Protocol.

This Arrangement, as well as the Joint Declarations annexed thereto shall be drawn up in one single original in the Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages, each of those texts being equally authentic.

Done at Brussels, […]

For the European Community

For the Swiss Confederation

For the Principality of Liechtenstein

ANNEX

(Article 7)

Protocol on the Privileges and Immunities of the European Communities

THE HIGH CONTRACTING PARTIES,

CONSIDERING that, in accordance with Article 28 of the Treaty establishing a Single Council and a Single Commission of the European Communities, these Communities and the European Investment Bank shall enjoy in the territories of the Member States such privileges and immunities as are necessary for the performance of their tasks,

HAVE AGREED upon the following provisions, which shall be annexed to this Treaty:

CHAPTER I

PROPERTY, FUNDS, ASSETS AND OPERATIONS OF THE EUROPEAN COMMUNITIES

Article 1

The premises and buildings of the Communities shall be inviolable. They shall be exempt from search, requisition, confiscation or expropriation. The property and assets of the Communities shall not be the subject of any administrative or legal measure of constraint without the authorisation of the Court of Justice.

Article 2

The archives of the Communities shall be inviolable.

Article 3

The Communities, their assets, revenues and other property shall be exempt from all direct taxes. The governments of the Member States shall, wherever possible, take the appropriate measures to remit or refund the amount of indirect taxes or sales taxes included in the price of movable or immovable property, where the Communities make, for their official use, substantial purchases the price of which includes taxes of this kind. These provisions shall not be applied, however, so as to have the effect of distorting competition within the Communities.

No exemption shall be granted in respect of taxes and dues which amount merely to charges for public utility services.

Article 4

The Communities shall be exempt from all customs duties, prohibitions and restrictions on imports and exports in respect of articles intended for their official use; articles so imported shall not be disposed of, whether or not in return for payment, in the territory of the country into which they have been imported, except under conditions approved by the government of that country.

The Communities shall also be exempt from any customs duties and any prohibitions and restrictions on import and exports in respect of their publications.

Article 5

The European Coal and Steel Community may hold currency of any kind and operate accounts in any currency.

CHAPTER II

COMMUNICATIONS AND *LAISSEZ-PASSER*

Article 6

For their official communications and the transmission of all their documents, the institutions of the Communities shall enjoy in the territory of each Member State the treatment accorded by that State to diplomatic missions.

Official correspondence and other official communications of the institutions of the Communities shall not be subject to censorship.

Article 7

1. *Laissez-passer* in a form to be prescribed by the Council, which shall be recognised as valid travel documents by the authorities of the Member States, may be issued to members and servants of the institutions of the Communities by the Presidents of these institutions. These *laissez-passer* shall be issued to officials and other servants under conditions laid down in the Staff Regulations of officials and the Conditions of Employment of other servants of the Communities. The Commission may conclude agreements for these *laissez-passer* to be recognised as valid travel documents within the territory of third countries.

2. The provisions of Article 6 of the Protocol on the Privileges and Immunities of the European Coal and Steel Community shall, however, remain applicable to members and servants of the institutions who are at the date of entry into force of this Treaty in possession of the *laissez-passer* provided for in that Article, until the provisions of paragraph 1 of this Article are applied.

CHAPTER III

MEMBERS OF THE EUROPEAN PARLIAMENT

Article 8

No administrative or other restriction shall be imposed on the free movement of Members of the European Parliament travelling to or from the place of meeting of the European Parliament.

Members of the European Parliament shall, in respect of customs and exchange control, be accorded:

(a) by their own government, the same facilities as those accorded to senior officials travelling abroad on temporary official missions;

(b) by the government of other Member States, the same facilities as those accorded to representatives of foreign governments on temporary official missions.

Article 9

Members of the European Parliament shall not be subject to any form of inquiry, detention or legal proceedings in respect of opinions expressed or votes cast by them in the performance of their duties.

Article 10

During the sessions of the European Parliament, its Members shall enjoy:

(a) in the territory of their own State, the immunities accorded to members of their parliament;

(b) in the territory of any other Member State, immunity from any measure of detention and from legal proceedings.

Immunity shall likewise apply to Members while they are travelling to and from the place of meeting of the European Parliament.

Immunity cannot be claimed when a Member is found in the act of committing an offence and shall not prevent the European Parliament from exercising its right to waive the immunity of one of its Members.

CHAPTER IV

REPRESENTATIVES OF MEMBER STATES TAKING PART IN THE WORK OF THE INSTITUTIONS OF THE EUROPEAN COMMUNITIES

Article 11

Representatives of Member States taking part in the work of the institutions of the Communities, their advisers and technical experts shall, in the performance of their duties and during their travel to and from the place of meeting, enjoy the customary privileges, immunities and facilities.

This Article shall also apply to members of the advisory bodies of the Communities.

CHAPTER V

OFFICIALS AND OTHER SERVANTS OF THE EUROPEAN COMMUNITIES

Article 12

In the territory of each Member State and whatever their nationality, officials and other servants of the Communities shall:

(a) subject to the provisions of the Treaties relating, on the one hand, to the rules on the liability of officials and other servants towards the Communities and, on the other hand, to the jurisdiction of the Court in disputes between the Communities and their officials and other servants, be immune from legal proceedings in respect of acts performed by them in their official capacity, including their words spoken or written. They shall continue to enjoy this immunity after they have ceased to hold office;

(b) together with their spouses and dependent members of their families, not be subject to immigration restrictions or to formalities for registration of aliens;

(c) in respect of currency or exchange regulations, be accorded the same facilities as are customarily accorded to officials of international organisations;

(d) enjoy the right to import free of duty their furniture and effects at the time of first taking up their post in the country concerned, and the right to re-export free of duty their furniture and effects, on termination of their duties in that country, subject in either case to the conditions considered to be necessary by the government of the country in which this right is exercised;

(e) have the right to import free of duty a motor car for their personal use, acquired either in the country of their last residence or in the country of which they are nationals on the terms ruling in the home market in that country, and to re-export it free of duty, subject in either case to the conditions considered to be necessary by the government of the country concerned.

Article 13

Officials and other servants of the Communities shall be liable to a tax for the benefit of the Communities on salaries, wages and emoluments paid to them by the Communities, in accordance with the conditions and procedure laid down by the Council, acting on a proposal from the Commission.

They shall be exempt from national taxes on salaries, wages and emoluments paid by the Communities.

Article 14

In the application of income tax, wealth tax and death duties and in the application of conventions on the avoidance of double taxation concluded between Member States of the Communities, officials and other servants of the Communities who, solely by reason of the performance of their duties in the service of the Communities, establish their residence in the territory of a Member State other than their country of domicile for tax purposes at the time of entering the service of the Communities, shall be considered, both in the country of their actual residence and in the country of domicile for tax purposes, as having maintained their domicile in the latter country provided that it is a member of the Communities. This provision shall also apply to a spouse, to the extent that the latter is not separately engaged in a gainful occupation, and to children dependent on and in the care of the persons referred to in this Article.

Movable property belonging to persons referred to in the preceding paragraph and situated in the territory of the country where they are staying shall be exempt from death duties in that country; such property shall, for the assessment of such duty, be considered as being in the

country of domicile for tax purposes, subject to the rights of third countries and to the possible application of provisions of international conventions on double taxation.

Any domicile acquired solely by reason of the performance of duties in the service of other international organisations shall not be taken into consideration in applying the provisions of this Article.

Article 15

The Council shall, acting unanimously on a proposal from the Commission, lay down the scheme of social security benefits for officials and other servants of the Communities.

Article 16

The Council shall, acting on a proposal from the Commission and after consulting the other institutions concerned, determine the categories of officials and other servants of the Communities to whom the provisions of Article 12, the second paragraph of Article 13 and Article 14 shall apply, in whole or in part.

The names, grades and addresses of officials and other servants included in such categories shall be communicated periodically to the governments of the Member States.

CHAPTER VI

PRIVILEGES AND IMMUNITIES OF MISSIONS OF THIRD COUNTRIES ACCREDITED TO THE EUROPEAN COMMUNITIES

Article 17

The Member State in whose territory the Communities have their seat shall accord the customary diplomatic immunities and privileges to missions of third countries accredited to the Communities.

CHAPTER VII

GENERAL PROVISIONS

Article 18

Privileges, immunities and facilities shall be accorded to officials and other servants of the Communities solely in the interests of the Communities.

Each institution of the Communities shall be required to waive the immunity accorded to an official or other servant wherever that institution considers that the waiver of such immunity is not contrary to the interests of the Communities.

Article 19

The institutions of the Communities shall, for the purpose of applying this Protocol, cooperate with the responsible authorities of the Member States concerned.

Article 20

Articles 12 to 15 and Article 18 shall apply to Members of the Commission.

Article 21

Articles 12 to 15 and Article 18 shall apply to the Judges, the Advocates-General, the Registrar and the Assistant Rapporteurs of the Court of Justice and to the Members and Registrar of the Court of First Instance, without prejudice to the provisions of Article 3 of the Protocol on the Statute of the Court of Justice relating to immunity from legal proceedings of Judges and Advocates-General.

Article 22

This Protocol shall also apply to the European Investment Bank, to the members of its organs, to its staff and to the representatives of the Member States taking part in its activities, without prejudice to the provisions of the Protocol on the Statute of the Bank.

The European Investment Bank shall in addition be exempt from any form of taxation or imposition of a like nature on the occasion of any increase in its capital and from the various formalities which may be connected therewith in the State where the Bank has its seat. Similarly, its dissolution or liquidation shall not give rise to any imposition. Finally, the activities of the Bank and of its organs carried on in accordance with its Statute shall not be subject to any turnover tax.

Article 23

This Protocol shall also apply to the European Central Bank, to the members of its organs and to its staff, without prejudice to the provisions of the Protocol on the Statute of the European System of Central Banks and the European Central Bank.

The European Central Bank shall, in addition, be exempt from any form of taxation or imposition of a like nature on the occasion of any increase in its capital and from the various formalities which may be connected therewith in the State where the bank has its seat. The activities of the Bank and of its organs carried on in accordance with the Statute of the European System of Central Banks and of the European Central Bank shall not be subject to any turnover tax.

The above provisions shall also apply to the European Monetary Institute. Its dissolution or liquidation shall not give rise to any imposition.

Appendix to the ANNEX

Procedure for application in Switzerland of the Protocol on Privileges and Immunities

1. Extension of application to Switzerland

References in the Protocol on the Privileges and Immunities of the European Communities (hereinafter referred to as "the Protocol") to "Member States" shall be understood to apply equally to Switzerland, unless the following provisions determine otherwise.

2. Exemption of the Agency from indirect taxation (including VAT)

Goods and services exported from Switzerland shall not be subject to Swiss value added tax (VAT). In the case of goods and services provided to the Agency in Switzerland for its official use, in accordance with the second paragraph of Article 3 of the Protocol, exemption from VAT shall be granted by way of refund. Exemption from VAT shall be granted if the actual purchase price of the goods and services mentioned in the invoice or equivalent document totals at least 100 Swiss francs (inclusive of tax).

The VAT refund shall be granted on presentation to the Federal Tax Administration's VAT Main Division of the Swiss forms provided for the purpose. As a rule, refund applications shall be processed within the three months following the date on which they were lodged together with the necessary supporting documents.

3. Procedure for the application of the rules relating to the Agency's staff

As regards the second paragraph of Article 13 of the Protocol, Switzerland shall exempt, accordance with the principles of its national law, officials and other servants of the Agency within the meaning of Article 2 of Regulation (Euratom, ECSC, EEC) No 549/69 of the Council of 25 March 1969 (OJ L 74, 27.3.1969, p. 1) from federal, cantonal and communal taxes on salaries, wages and emoluments paid to them by the Community and subject to an internal tax for its own benefit.

Switzerland shall not be considered as a Member State within the meaning of point 1 above for the purposes of application of Article 14 of the Protocol.

Officials and other servants of the Agency and members of their families who are members of the social insurance system applicable to officials and other servants of the Community shall not be under any obligation to be members of the Swiss social security system.

The Court of Justice of the European Communities shall have exclusive jurisdiction in any matters concerning relations between the Agency or the Commission and its staff with regard to application of Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 (OJ L 56, 4.3.1968, p. 1) and the other provisions of Community law laying down working conditions.

JOINT DECLARATION BY THE EUROPEAN COMMUNITY AND THE GOVERNMENT OF THE SWISS CONFEDERATION AND THE GOVERNMENT OF LIECHTENSTEIN CONCERNING THE ARRANGEMENT ON THE MODALITIES OF THE PARTICIPATION BY THE SWISS CONFEDERATION AND THE PRINCIPALITY OF LIECHTENSTEIN 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 Swiss Confederation

and

the Government of the Principality of Liechtenstein,

Having concluded the Arrangement on the modalities of the participation by the Swiss Confederation and the Principality of Liechtenstein 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,

Hereby jointly declare that:

The voting rights provided for in the Arrangement are justified by the special relations with Switzerland and Liechtenstein flowing from the association of these States with the implementation, application and development of the Schengen *acquis*.

Those voting rights are of an exceptional nature attributable to the specific nature of the Schengen cooperation and the special position of Switzerland and Liechtenstein.

They may therefore not be regarded as a legal or political precedent for any other field of cooperation between the parties to the Arrangement 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.

JOINT DECLARATION BY THE CONTRACTING PARTIES ON THE APPLICATION OF THE PROVISIONS ON THE CIVIL LIABILITY

In case where a rapid border intervention team is deployed within the framework of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, Article 10 (4) of Regulation (EC) No 863/2007 of the European Parliament and of the Council of 11 July 2007 establishing a mechanism for the creation of Rapid Border Intervention Teams and amending Council Regulation (EC) No 2007/2004 as regards that mechanism and regulating the tasks and powers of guest officers shall apply as regards civil liability.