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2013/0422 (NLE)

Proposal for a

COUNCIL DECISION

on the conclusion of the Arrangement with the Swiss Confederation on the modalities of its participation in the European Asylum Support Office

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Regulation (EU) No 439/2010 established the European Asylum Support Office[1] to strengthen practical cooperation between Member States on asylum, enhance the implementation of the Common European Asylum System and support Member States whose asylum and reception systems are under particular pressure.

Recital 24 of the Regulation foresees that "to fulfil its purpose, the Support Office should be open to participation by countries which have concluded agreements with the Union by virtue of which they have adopted and apply law of the Union in the fields covered by this Regulation, in particular Iceland, Liechtenstein, Norway and Switzerland". These countries are referred to as the "associate countries".

Accordingly, Article 49 (1) of the Regulation stipulates that "the Support Office shall be open to the participation of Iceland, Liechtenstein, Norway and Switzerland as observers. Arrangements shall be made, specifying in particular the nature, extent and manner in which those countries are to participate in the Support Office's work. Such arrangements shall include provisions relating to participation in initiatives undertaken by the Support Office, financial contributions and staff. As regards staff matters, those arrangements shall, in any event, comply with the Staff Regulations."

The participation of associate countries in the Support Office's work is not only a logical step, having regard to their association to the Dublin system, but also has a clear added value to the Support Office's support offer such as: the exchange of best practices and expertise, the Support Office's permanent and emergency support, the Support Office's information gathering and analysis, the Support Office's early warning and preparedness system.

On that basis the Commission presented on 1 July 2011 a recommendation to the Council in order to authorise the Commission to open negotiations with Iceland, Norway, Switzerland, and Liechtenstein on international agreements establishing such arrangements.

The Commission received the Council authorisation to open negotiations with Iceland, Norway, Switzerland, and Liechtenstein on arrangements on the modalities of these countries' participation in EASO on 27 January 2012.

The negotiations were held jointly with all associate countries. Four rounds of negotiations took place. The final text of the draft Arrangement with Switzerland was initialled on 28 June 2013.

Member States have been informed and consulted in the relevant Council Working Groups.

On the part of the Union, the legal basis for the Arrangement is Articles 74 and 78 (1) and (2) in conjunction with Article 218 of the TFEU.

The Commission signed the Arrangement on ... In accordance with Article 218 (6) (a) of the TFEU the European Parliament's consent for the conclusion of the Arrangement was given on […]

[1] Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office; OJ L 132/11 of 29.05.2010.

2. RESULTS OF NEGOTIATIONS

The Commission considers that the objectives set by the Council in its negotiating directives were attained and that the draft Arrangement is acceptable to the Union.

The final content of it can be summarised as follows:

The draft Arrangement foresees the full participation of Switzerland in the activities of the Support Office [Article 1], representation in the Support Office's Management Board as an observer and without voting rights [Article 2], annual financial contributions of Switzerland, to the budget of the Support Office by an annual sum calculated in accordance with its GDP as a percentage of GDP of all States participating in the Support Office's work [Article 3 and Annex I].

In addition Switzerland accepted provisions concerning a possible increased contribution if the Union contribution is increased [Article 3 and Annex I];

Furthermore the draft Arrangement foresees the establishment of a committee composed of representatives of the Commission and of the associate countries. For reasons of efficiency, this committee shall meet jointly with the corresponding Committees set up with other associated countries participating on the basis of Article 49 (1) of the Regulation. The committee was not mentioned in the negotiating directives and has been requested by the associate countries in order to allow for an exchange of information and monitor the proper implementation of the Arrangement [Article 11].

3. BUDGETARY IMPLICATION

Article 3 and Annex I of the draft Arrangement describe the provisions related to the annual financial contributions of Switzerland to the budget of the Support Office and their possible adaptation to the situation described as per Annex I.

4. CONCLUSION

In light of the above-mentioned results, the Commission proposes that the Council approves, after having received consent from the European Parliament, the Arrangement with the Swiss Confederation on the modalities of its participation in the European Asylum Support Office.

2013/0422 (NLE)

Proposal for a

COUNCIL DECISION

on the conclusion of the Arrangement with the Swiss Confederation on the modalities of its participation in the European Asylum Support Office

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 74 and 78 (1) and (2) in conjunction with Article 218 (6) (a)] thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament[2],

Whereas:

(1) In accordance with Council Decision 2013/XXX of [...][3], the Arrangement between the European Union and the Swiss Confederation on the modalities of its participation in the European Asylum Support Office was signed by the Commission on [ ], subject to its conclusion.

(2) The Arrangement should be approved.

(3) As specified in recital 21 of Regulation (EU) No 439/2010, the United Kingdom and Ireland are taking part and are bound by that Regulation. They should therefore give effect to Article 49 (1) of the Regulation by taking part in this Decision. The United Kingdom and Ireland are therefore taking part in this Decision.

(4) As specified in recital 22 of Regulation (EU) No 439/2010, Denmark is not taking part and is not bound by that Regulation. Denmark is therefore not taking part in this Decision.

HAS ADOPTED THIS DECISION:

Article 1

The Arrangement between the European Union and the Swiss Confederation on the modalities of its participation in the European Asylum Support Office is hereby approved on behalf of the Union.

The text of the Arrangement is attached to this Decision.

Article 2

The President of the Council shall designate the person(s) empowered to proceed, on behalf of the European Union, to the notification provided for in Article 13(1) of the Arrangement, in order to express the consent of the European Union to be bound by the Arrangement.

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[2] OJ C […], […], p. […].

[3] OJ C […], […], p. […].

Article 3

This Decision shall enter into force on the day of its adoption.

Done at Brussels,

For the Council
The President

ANNEX

ARRANGEMENT
BETWEEN THE EUROPEAN UNION AND THE SWISS CONFEDERATION ON THE MODALITIES OF ITS PARTICIPATION IN THE EUROPEAN ASYLUM SUPPORT OFFICE

THE EUROPEAN UNION, hereinafter referred to as the 'EU',

of the one part, and

THE SWISS CONFEDERATION, hereinafter referred to as 'Switzerland',

of the other part,

Having regard to Article 49 (1) of Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office[4], hereinafter referred to as the 'Regulation',

Whereas

(1) The Regulation states that, to fulfil its purpose, the European Asylum Support Office, hereafter referred to as the "Support Office", should be open to participation by countries which have concluded agreements with the EU by virtue of which they have adopted and apply law of the EU in the field covered by this Regulation, in particular, Iceland, Liechtenstein, Norway and Switzerland, hereinafter referred to as the 'associate countries',

(2) Switzerland has concluded agreements with the EU, by virtue of which it has adopted and applies law of the EU in the field covered by the Regulation, in particular 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[5],

HAVE AGREED AS FOLLOWS:

Article 1
Extent of participation

Switzerland shall participate fully in the work of the Support Office and be entitled to receive support actions from the Support Office as described in the Regulation and in accordance with the terms set out by the present Arrangement.

Article 2
Management Board

Switzerland shall be represented in the Management Board of the Support Office as an observer without the right to vote.

[4] OJ L 132, 29.5.2010, p. 11
[5] OJ L 53, 27.2.2008, p. 5

Article 3
Financial contribution

1. Switzerland shall contribute to the revenue of the Support Office an annual sum calculated in accordance with its Gross Domestic Product (GDP) as a percentage of the GDP of all participating States in accordance with the formula described in Annex I.

2. The financial contribution referred to in paragraph 1 shall be incurred as from the day following the entry into force of this Arrangement. The first financial contribution shall be reduced proportionally to the remaining time in year after the entry into force of this Arrangement.

Article 4
Data Protection

1. Switzerland shall apply its national rules concerning the protection of individuals with regard to the processing of personal data and on the free movement of such data.[6]

2. For the purpose of this Arrangement, 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[7] shall apply to the processing of personal data carried out by the Support Office.

3. Switzerland shall respect the rules on confidentiality of documents held by the Support Office, as set out in the Rules of Procedure of the Management Board.

Article 5
Legal status

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

Article 6
Liability

The liability of the Support Office shall be governed by Article 45 (1), (3) and (5) of the Regulation.

Article 7
Court of Justice

Switzerland shall recognise the jurisdiction of the Court of Justice of the European Union over the Support Office, as provided for in Article 45 (2) and (4) of the Regulation.

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6 Commission Decision of 26 July 2000 pursuant to Directive 95/46/EC of the European Parliament and of the Council on the adequate protection of personal data provided in Switzerland, OJ L 215, 25.8.2000, p. 1

7 OJ L 8, 12.1.2011, p. 1

Article 8
Staff of the Support Office

1. In accordance with Article 38 (1) and 49 (1) of the Regulation, the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Union, the rules adopted jointly by the European Union institutions for the purpose of applying these Staff Regulations and the rules adopted by the Support Office according to Article 38 (2) of the Regulation apply to nationals of Switzerland recruited as staff members by the Support Office.

2. By way of derogation from Article 12 (2) (a) and Article 82 (3) (a) of the Conditions of Employment of Other Servants of the European Union, nationals of Switzerland enjoying their full rights as citizens may be engaged under contract by the Executive Director of the Support Office according to the existing rules for selection and engagement of staff adopted by the Support Office.

3. Article 38 (4) of the Regulation shall apply mutatis mutandis to the nationals of Switzerland.

4. Nationals of Switzerland may not, however, be appointed to the post of Executive Director of the Support Office.

Article 9
Privileges and immunities

1. Switzerland shall apply to the Support Office and to its staff the Protocol on the Privileges and Immunities of the European Union which is set out in Annex II to this Arrangement, as well as any rules adopted pursuant to this Protocol relating to staff matters of the Support Office.

2. The procedure for the application of the Protocol on the Privileges and Immunities of the European Union is laid out in the Appendix to Annex II.

Article 10
Combating fraud

The provisions with regard to Article 44 of the Regulation relating to financial control by the EU in Switzerland concerning the participants in the activities of the Support Office are set out in Annex III.

Article 11
Committee

1. A Committee, composed of representatives of the European Commission and Switzerland, shall monitor the proper implementation of the Arrangement and ensure a continuous process of information provision and exchange of views in this respect. For practical reasons, the Committee shall meet jointly with the corresponding Committees set up with other associate countries participating on the basis of Article 49 (1) of the Regulation. It shall meet upon request by either Switzerland or the European Commission. The Management Board of the Support Office shall be informed about the work of this Committee.

2. Information about foreseen EU legislation, which either directly affects or amends the Regulation or is expected to have implications relating to the financial contribution laid down in Article 3 of this Arrangement, shall be shared and an exchange of views thereon shall take place in the Committee.

Article 12
Annexes

The Annexes to this Arrangement shall constitute an integral part of the Arrangement.

Article 13
Entry into force

1. The Contracting Parties shall approve this Arrangement in accordance with their own internal procedures. They shall notify each other of the completion of these procedures.

2. This Arrangement shall enter into force on the first day of the first month following the day of the last notification referred to in paragraph 1.

Article 14
Termination and validity

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

2. Each Contracting Party may, after consultations within the Committee, denounce this Arrangement by notifying the other Contracting Party. The Arrangement shall cease to apply six months after the date of such notification.

3. This Arrangement shall be terminated in case of termination 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[8].

4.This Arrangement shall be drawn up in one single original in the Bulgarian, Croatian, 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.

……

[8] OJ L 53, 27.2.2008, p. 5

ANNEX I

FORMULA TO CALCULATE THE CONTRIBUTION

1. The financial contribution of Switzerland to the revenue of the Support Office defined in Article 33 (3) (d) of the Regulation is calculated in the following way:

The most updated final figures of the Gross Domestic Product (GDP) of Switzerland available on 31 March of each year shall be divided by the sum of the GDP figures of all the States participating in the Support Office available for the same year. The obtained percentage will be applied to the part of the authorised Support Office's revenue as defined in Article 33 (3) (a) of the Regulation in the year under consideration to obtain the amount of the financial contribution of Switzerland.

2. The financial contribution shall be paid in Euro.

3. Switzerland shall pay its financial contribution no later than 45 days after receiving the debit note. Any delay in payment shall give rise to the payment of default interest by Switzerland on the outstanding amount from the due date. The interest rate shall be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the Official Journal of the European Union, in force on the first calendar day of the month in which the deadline falls, increased by 3.5 percentage points.

4. Switzerland's financial contribution shall be adapted in accordance with this Annex in case the financial contribution from the European Union entered in the general budget of the European Union as defined in Article 33 (3) (a) of the Regulation is increased pursuant to Articles 26, 27 or 41 of the Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002[9]. In this case, the difference shall be due 45 days after receiving the debit note.

5. In the event that payment credits of the Support Office received from the EU according to Article 33 (3) (a) of the Regulation related to a year N are not spent before 31 December of year N or that the Support Office budget of the year N has been lowered according to Articles 26, 27 or 41 of the Regulation (EU, Euratom) No 966/2012, the part of these unspent or lowered payment credits corresponding to the percentage of the contribution made by Switzerland, is transferred to the budget of year N+1 of the Support Office. Switzerland's contribution to the Support Office's budget of year N+1 will be reduced accordingly.

[9] OJ L 298, 26.10.2012, p. 1

ANNEX II

PROTOCOL (No 7)
ON THE PRIVILEGES AND IMMUNITIES OF THE EUROPEAN UNION
THE HIGH CONTRACTING PARTIES,

CONSIDERING that, in accordance with Article 343 of the Treaty on the Functioning of the European Union and Article 191 of the Treaty establishing the European Atomic Energy Community ('EAEC'), the European Union and the EAEC 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 the Treaty on European Union, the Treaty on the Functioning of the European Union and the Treaty establishing the European Atomic Energy Community:

CHAPTER I

PROPERTY, FUNDS, ASSETS AND OPERATIONS OF THE EUROPEAN UNION

Article 1

The premises and buildings of the Union shall be inviolable. They shall be exempt from search, requisition, confiscation or expropriation. The property and assets of the Union 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 Union shall be inviolable.

Article 3

The Union, its 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 Union makes, for its 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 Union.

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

Article 4

The Union shall be exempt from all customs duties, prohibitions and restrictions on imports and exports in respect of articles intended for its 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 Union shall also be exempt from any customs duties and any prohibitions and restrictions on import and exports in respect of its publications.

CHAPTER II

COMMUNICATIONS AND LAISSEZ-PASSER

Article 5
(ex Article 6)

For their official communications and the transmission of all their documents, the institutions of the Union 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 Union shall not be subject to censorship.

Article 6
(ex Article 7)

Laissez-passer in a form to be prescribed by the Council, acting by a simple majority, 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 Union 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 Union.

The Commission may conclude agreements for these laissez-passer to be recognised as valid travel documents within the territory of third countries.

CHAPTER III

MEMBERS OF THE EUROPEAN PARLIAMENT

Article 7
(ex 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 8
(ex 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 9
(ex 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 UNION

Article 10
(ex Article 11)

Representatives of Member States taking part in the work of the institutions of the Union, 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 Union.

CHAPTER V

OFFICIALS AND OTHER SERVANTS OF THE EUROPEAN UNION

Article 11
(ex Article 12)

In the territory of each Member State and whatever their nationality, officials and other servants of the Union 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 Union and, on the other hand, to the jurisdiction of the Court of Justice of the European Union in disputes between the Union and its 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 the 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 12
(ex Article 13)

Officials and other servants of the Union shall be liable to a tax for the benefit of the Union on salaries, wages and emoluments paid to them by the Union, in accordance with the conditions and procedure laid down by the European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure and after consultation of the institutions concerned.

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

Article 13
(ex 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 Union, officials and other servants of the Union who, solely by reason of the performance of their duties in the service of the Union, 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 Union, 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 Union. 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 14
(ex Article 15)

The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure and after consultation of the institutions concerned, shall lay down the scheme of social security benefits for officials and other servants of the Union.

Article 15
(ex Article 16)

The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, and after consulting the other institutions concerned, shall determine the categories of officials and other servants of the Union to whom the provisions of Article 11, the second paragraph of Article 12, and Article 13 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 UNION

Article 16
(ex Article 17)

The Member State in whose territory the Union has its seat shall accord the customary diplomatic immunities and privileges to missions of third countries accredited to the Union.

CHAPTER VII

GENERAL PROVISIONS

Article 17
(ex Article 18)

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

Each institution of the Union 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 Union.

Article 18
(ex Article 19)

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

Article 19
(ex Article 20)

Articles 11 to 14 and Article 17 shall apply to the President of the European Council. They shall also apply to Members of the Commission.

Article 20
(ex Article 21)

Articles 11 to 14 and Article 17 shall apply to the Judges, the Advocates-General, the Registrars and the Assistant Rapporteurs of the Court of Justice of the European Union, without prejudice to the provisions of Article 3 of the Protocol on the Statute of the Court of Justice of the European Union relating to immunity from legal proceedings of Judges and Advocates-General.

Article 21
(ex 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 22
(ex 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.

Appendix to ANNEX II

PROCEDURE FOR THE APPLICATION IN SWITZERLAND OF THE PROTOCOL ON PRIVILEGES AND IMMUNITIES

1. Extension of application to Switzerland

Wherever the Protocol on the privileges and immunities of the European Union (hereinafter called 'the Protocol') contains references to Member States, the references shall be understood to apply equally to Switzerland, unless the following provisions determine otherwise.

2. Exemption of the Support Office 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 Support Office 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 Swiss 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 Support Office's staff

As regards the second paragraph of Article 12 of the Protocol, Switzerland shall exempt, according to the principles of its national law, officials and other servants of the Support Office within the meaning of Article 2 of Regulation (Euratom, ECSC, EEC) No 549/69 of the Council of 25 March 1969 determining the categories of officials and other servants of the European Communities to whom the provisions of Article 12, the second paragraph of Article 13 and Article 14 of the Protocol on the Privileges and Immunities of the Communities[10] apply, from federal, cantonal and communal taxes on salaries, wages and emoluments paid to them by the EU 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 application of Article 13 of the Protocol.

Officials and other servants of the Support Office and members of their families who are members of the social insurance system applicable to officials and other servants of the EU shall not be obliged to be members of the Swiss social security system.

The Court of Justice of the European Union shall have exclusive jurisdiction in any matters concerning relations between the Support Office or the European Commission and its staff with regard to the application of the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Union and the other provisions of EU law laying down working conditions.

[10] OJ L 74, 27.3.1969, p. 1, as last amended by Council Regulation (EC) No 371/2009, OJ L 121, 15.5.2009, p. 1

ANNEX III

FINANCIAL CONTROL AS REGARDS SWISS PARTICIPANTS IN ACTIVITIES OF THE SUPPORT OFFICE

Article 1
Direct communication

The Support Office and the European Commission shall communicate directly with all persons or entities established in Switzerland and participating in activities of the Support Office, as contractors, participants in Support Office programmes, recipients of payments from the Support Office or the EU budget, or subcontractors. Such persons may send directly to the European Commission and to the Support Office all relevant information and documentation which they are required to submit on the basis of the instruments referred to in this Arrangement and of contracts or agreements concluded and any decisions taken pursuant to them.

Article 2
Audits

1. In accordance with Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002[11], with Commission Regulation (EC, Euratom) No 2343/2002 of 23 December 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities[12] and with the other instruments referred to in this Arrangement, contracts or agreements concluded and decisions taken with beneficiaries established in Switzerland may provide for scientific, financial, technological or other audits to be conducted at any time on the premises of the beneficiaries and of their subcontractors by Support Office and European Commission officials or by other persons mandated by the Support Office and the European Commission.

2. Support Office and European Commission officials and other persons mandated by the Support Office and the European Commission shall have appropriate access to sites, works and documents and to all the information required in order to carry out such audits, including in electronic form. This right of access shall be stated explicitly in the contracts or agreements concluded to implement the instruments referred to in this Arrangement.

3. The European Court of Auditors is to have the same rights as the European Commission.

4. The audits may take place until five years after the expiry of this Arrangement or under the terms of the contracts or agreements concluded and the decisions taken.

5. The Swiss Federal Audit Office shall be informed in advance of audits conducted on Swiss territory. This information shall not be a legal condition for carrying out such audits.

[11] OJ L 298, 26.10.2012, p. 1

[12] OJ L 357, 31.12.2002, p. 72, as last amended by Commission Regulation (EC, Euratom) No 652/2008, OJ L 181, 10.7.2008, p. 23

Article 3
On-the-spot checks

1. Under this Arrangement, the European Commission (OLAF) shall be authorised to carry out on-the-spot checks and inspections on Swiss territory, under the terms and conditions set out in Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities[13].

2. On-the-spot checks and inspections shall be prepared and conducted by the European Commission in close cooperation with the Swiss Federal Audit Office or with other competent Swiss authorities appointed by the Swiss Federal Audit Office, which shall be notified in good time of the object, purpose and legal basis of the checks and inspections, so that they can provide all the requisite help. To that end, the officials of the competent Swiss authorities may participate in the on-the-spot checks and inspections.

3. If the Swiss authorities concerned so wish, the on-the-spot checks and inspections may be carried out jointly by the European Commission and by them.

4. Where the participants in the programme resist an on-the-spot check or inspection, the Swiss authorities, acting in accordance with national rules, shall give the European Commission inspectors such assistance as they need to allow them to discharge their duty in carrying out an on-the-spot check or inspection.

5. The European Commission shall report as soon as possible to the Swiss Federal Audit Office any fact or suspicion relating to an irregularity which has come to its notice in the course of the on-the-spot check or inspection. In any event the European Commission is required to inform the aforementioned authority of the result of such checks and inspections.

Article 4
Information and consultation

1. For the purposes of proper implementation of this Annex, the competent Swiss and EU authorities shall exchange information regularly and, at the request of one of the Contracting Parties, shall conduct consultations.

2. The competent Swiss authorities shall inform the Support Office and the European Commission without delay of any fact or suspicion which has come to their notice relating to an irregularity in connection with the conclusion and implementation of the contracts or agreements concluded in application of the instruments referred to in this Arrangement.

Article 5
Confidentiality

Information communicated or acquired in any form whatever pursuant to this Annex shall be covered by professional secrecy and protected in the same way as similar information is protected by Swiss law and by the corresponding provisions applicable to the EU institutions. Such information shall not be communicated to persons other than those within the EU institutions, in the Member States, or in Switzerland whose functions require them to know it, nor may it be used for purposes other than to ensure effective protection of the financial interests of the Contracting Parties.

[13] OJ L 292, 15.11.1996, p. 2

Article 6
Administrative measures and penalties

Without prejudice to application of Swiss criminal law, administrative measures and penalties may be imposed by the Support Office or the European Commission in accordance with Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002[14] and Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union[15] and with Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests[16].

Article 7
Recovery and enforcement

Decisions taken by the Support Office or the European Commission within the scope of this Arrangement which impose a pecuniary obligation on persons other than States shall be enforceable in Switzerland. The enforcement order shall be issued, without any further control than verification of the authenticity of the act, by the authority designated by the Swiss government, which shall inform the Support Office or the European Commission thereof. Enforcement shall take place in accordance with the Swiss rules of procedure. The legality of the enforcement decision shall be subject to control by the Court of Justice of the European Union.

Judgments given by the Court of Justice of the European Union pursuant to an arbitration clause shall be enforceable on the same terms.

[14] OJ L 298, 26.10.2012, p. 1
[15] OJ L 362, 31.12.2012, p. 1
[16] OJ L 312, 23.12.1995, p. 1