COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 30.10.2009
COM(2009)606 final

Proposal for a

COUNCIL DECISION

on the signing of the Arrangement between the European Community and the Republic of Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the Swiss Confederation on the participation by those States in the work of the committees which assist the European Commission in the exercise of its executive powers as regards the implementation, application and development of the Schengen *acquis*

EXPLANATORY MEMORANDUM

1. POLITICAL AND LEGAL BACKGROUND

On 18 May 1999, the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concluded an Agreement concerning those states' association with the implementation, application and development of the Schengen *acquis*[1].

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*. On 1 March 2008 the Agreement entered into force[2].

On 21 June 2006, a Protocol between the Council of 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 concluded by the Council of 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* was initialled, hereinafter referred to as the "Association Protocol". The Protocol was signed on 28 February 2008.

The Association Agreements set up a Mixed Committee consisting of representatives of the governments of the Associated States as well as of the Council of the European Union and the Commission of the European Communities.

Consequently, the representatives of the Associated States attend Mixed Committees which meet in form of Council working groups enlarged by the representatives of the Associated States. At Coreper or Council level these are chaired alternately for six-month periods by the representatives of the European Union and by the representative of the Government of the Associated State.

The participation in the Mixed Committee gives the Associated States the opportunity, in good time, to voice any concerns regarding developments of the Schengen *acquis*, which must be adopted by all the Associated States, and the implementation of this *acquis*. After discussion in the Mixed Committee, the measures taken to develop the Schengen *acquis* are adopted by the Council and by the European Parliament through the appropriate decision-taking procedure laid down in the Treaties. Thus, the Associated States participate in decision-shaping but not in decision-taking.

This *sui generis* association with the Schengen *acquis* lead the Council to conclude agreements in the form of an exchange of letters concerning the Committees which assist the Commission in the exercise of its executive powers as regards the implementation, application and development of the Schengen *acquis*, hereinafter referred to as the "Schengen Comitology committees".

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1 OJ L 176, 10.7.1999, p.36.
2 OJ L 53, 27.2.2008, p. 52.

The agreement with Norway and Iceland points out the need to associate them with the work of these committees in order to ensure that these countries are involved in the decision-making process in the field covered by the Association Agreements. The European Community committed itself to negotiate appropriate arrangements for the association of these countries with the work of the Schengen Comitology committees as the need arises.

As far as the Swiss Confederation is concerned, a relevant Declaration of the Commission, as well as an agreement in the form of an exchange of letters between the Council and the Swiss Confederation provide for an explicit commitment by the European Community to negotiate appropriate arrangement for the association of Switzerland with the work of the Schengen Comitology committees.

As regards the Principality Liechtenstein, a relevant Declaration attached to the Association Protocol provides for the participation of Liechtenstein in the Schengen Comitology committees.

Until the Arrangement covered by this document is concluded, the Associated States participate in the work of the Schengen Comitology committees as observers through the above mentioned *ad hoc* exchange of letters.

Although there are two basic Schengen Association agreements, a single Arrangement should be concluded concerning the participation by the Associated States in the work of the Schengen Comitology committees to ensure consistency between and equal treatment of all Associated States.

For efficiency, and to avoid the need to conduct separate negotiations, Liechtenstein has been associated with the negotiations on its participation in the Schengen Comitology committees before conclusion of the Association Protocol is completed. The Arrangement on the participation in the work of the Schengen Comitology committees will not apply to Liechtenstein until the date when the Association Protocol has entered into force.

The authorisation to negotiate an arrangement was given to the Commission on 15 May 2006; however the negotiations were launched with all Associated States only on 17 October 2008 since Norway only got its mandate for negotiations in 2008 and Switzerland requested to wait for the entry into force of its Association Agreement before starting the negotiations. The negotiations were finalised on 30 June 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, point 3 of the first subparagraph of Article 63, Article 66 and the third indent of Article 202, in conjunction with Article 300(2) and (3) of the EC Treaty.

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 between the European Community and the Republic of Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the Swiss Confederation on the participation by those States in the work of the committees which assist the European Commission in the exercise of its executive powers as regards the

implementation, application and development of the Schengen *acquis* is acceptable to the Community.

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

Purpose and scope

The Arrangement provides that the Associated States will be associated as observers with the work of the current and future Comitology committees assisting the Commission in Schengen matters. The list of the Schengen Comitology committees will be regularly updated by the Commission and will be published in the Official Journal.

Consequently, the Arrangement establishes clear rights and obligations to ensure effective participation by the Associated States in the Schengen Comitology committees. It foresees that the representatives of the Associated States shall receive all relevant meeting documents when the meeting of the committee is convened, they may comment on a proposed measure constituting a development of the Schengen *acquis* or voice any problems encountered in applying these measures; however, the representatives from these States will not take part in the voting of these committees and shall withdraw when the Committee moves to a vote.

In accordance with the Arrangement, the Commission will communicate to the Associated States the acts and measures constituting a development of the Schengen *acquis*.

The Arrangement provides that the Associated States will decide independently regarding the implementation of all measures adopted by the Schengen Comitology committee procedures concerning the application and development of the Schengen *acquis* confirming the rules set out in the basic Association Agreements.

The Arrangement also lays down a financial contribution from the Associated States to the administrative expenses resulting from their participation in the Schengen Comitology committees. The travelling costs of the representatives who will participate in the meetings of these committees will not be reimbursed.

It should be emphasised that the participation of the Republic of Iceland, the Kingdom of Norway and the Principality of Liechtenstein in the Committee which assists the Commission in the exercise of its executive powers established by 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 free movement of such data[3] is laid down in the Agreement on the European Economic Area, while the participation of the Swiss Confederation in this Committee is laid down in the exchange of letters annexed to the Association Agreement with Switzerland.

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

Declaration

The Joint declaration on the specific association of the Republic of Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the Swiss Confederation with the implementation,

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

application and development of the Schengen *acquis* underlines that it shall not be regarded as a legal or political precedent for any other field of cooperation between the European Community and those countries.

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 and the Republic of Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the Swiss Confederation on the participation by those States in the work of the committees which assist the European Commission in the exercise of its executive powers as regards the implementation, application and development of the Schengen *acquis*.

Proposal for a

COUNCIL DECISION

on the signing, on behalf of the Community, of the Arrangement between the European Community and the Republic of Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the Swiss Confederation on the participation by those States in the work of the committees which assist the European Commission in the exercise of its executive powers as regards the implementation, application and development of the Schengen *acquis*

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 62, point 3 of the first subparagraph of Article 63, Article 66 and the third indent of Article 202, in conjunction with the second sentence of the first subparagraph of Article 300(2) thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) Following the authorisation given to the Commission on 15 May 2006, negotiations with the Republic of Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the Swiss Confederation regarding the participation by those States in the work of the committees which assist the Commission in the exercise of its executive powers as regards the implementation, application and development of the Schengen *acquis* have been concluded.

(2) Subject to its conclusion at a later date, the Arrangement initialled on 30 June 2009 should be signed and the attached Joint Declaration approved.

(3) This Decision does not prejudice the position of the United Kingdom, under the Protocol integrating the Schengen *acquis* into the framework of the European Union annexed to the Treaty on European Union and to the Treaty establishing the European Community and 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*[4].

(4) This Decision does not prejudice the position of Ireland, under the Protocol integrating the Schengen *acquis* into the framework of the European Union annexed to the Treaty on European Union and to the Treaty establishing the European Community and

[4] OJ L 131, 1.6.2000, p. 43.

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*[5].

(5) This Decision shall not prejudice the position of Denmark, under the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community,

HAS DECIDED AS FOLLOWS:

Article 1

The signing of the Arrangement between the European Community and the Republic of Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the Swiss Confederation on the participation by those States in the work of the committees which assist the European Commission in the exercise of its executive powers as regards the implementation, application and development of the Schengen *acquis* and of the attached Joint Declaration is hereby approved on behalf of the Community, subject to the conclusion of the Arrangement.

The texts of the Arrangement and the Joint Declaration 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 Presiden

[5] OJ L 64, 7.3.2002, p. 20.

ANNEX

ARRANGEMENT

between the European Community and the Republic of Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the Swiss Confederation on the participation by those States in the work of the committees which assist the European Commission in the exercise of its executive powers as regards the implementation, application and development of the Schengen *acquis*

THE EUROPEAN COMMUNITY,

and

THE REPUBLIC OF ICELAND, hereinafter referred to as "Iceland",

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

THE KINGDOM OF NORWAY, hereinafter referred to as "Norway" and

THE SWISS CONFEDERATION, hereinafter referred to as "Switzerland"

Together hereinafter referred to as the "Associated States",

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

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 "Association Agreement with Switzerland",

HAVING REGARD TO the Protocol signed on 28 of 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 "Association Protocol with Liechtenstein",

HAVING REGARD TO the agreement in the form of an exchange of letters concluded on 18 of May 1999 between the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the committees which assist the European Commission in the exercise of its executive powers,

HAVING REGARD TO the agreement in the form of an exchange of letters signed on 26 of October 2004 between the Council of the European Union and the Swiss Confederation on the committees which assist the European Commission in the exercise of its executive powers,

HAVING REGARD TO the Declaration to the Association Protocol with Liechtenstein signed on 28 of February 2008 on the participation in the committees which assist the European Commission in the exercise of its executive powers,

CONSIDERING that new acts or measures of the Schengen *acquis* adopted by the Commission of the European Communities, hereinafter referred to as the "Commission", in the exercise of its executive powers, to which the procedures set out in this Arrangement have been applied, shall be applied simultaneously for the European Union, the European Community and its Member States concerned and for the Associated States,

CONSIDERING the need to ensure the application and uniform implementation of the new acts or measures of the Schengen *acquis* which requires participation of the Associated States in the work of the committees which assist the Commission in the exercise of its executive powers where the decisions on the acts or measures constituting a development of the Schengen *acquis* are taken,

WHEREAS the Association Agreements do not address the detailed rules of the participation of the Associated States in the work of the committees which assist the Commission in the exercise of its executive powers where the decisions on the acts or measures constituting a development of the Schengen *acquis* are taken,

WHEREAS the participation of the Republic of Iceland, the Kingdom of Norway and the Principality of Liechtenstein in the Committee which assists the Commission in the exercise of its executive powers established by 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 free movement of such data[6] is currently laid down in the Agreement on the European Economic Area, while the participation of the Swiss Confederation in this Committee is laid down in the exchange of letters annexed to the Association Agreement with Switzerland,

HAVE AGREED AS FOLLOWS:

Article 1

This Arrangement applies to the acts or measures amending or building upon the Schengen *acquis* adopted by the Commission in the exercise of its executive powers as regards the implementation, application and development of the Schengen *acquis*.

Article 2

1. The Associated States shall be associated as observers with the work of the committees which assist the Commission in the exercise of its executive powers as regards the implementation, application and development of the Schengen *acquis*, hereinafter referred to as the "Schengen Comitology committees", referred to in Annex 1 of this Arrangement.

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

2. When a new act amending or building upon the Schengen *acquis* establishes a new committee which assist the Commission in the exercise of its executive powers, the Associated States shall be associated in the work of this committee as from the entry into force of the act establishing the committee.

3. The list of the Schengen Comitology committees shall be regularly updated by the Commission and shall be published in the Official Journal of the European Communities.

Article 3

1. The representatives of the Associated States shall be associated with the work of the Schengen Comitology committees as outlined in this article.

2. In the Schengen Comitology committees, the Associated States shall have the opportunity:

   – to explain the problems they encounter in respect of a particular act or measure regarding the implementation, application or development of the Schengen *acquis* or respond to the problems encountered by other delegations;

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

3. The Associated States shall have the right to make suggestions in the Schengen Comitology committees. After discussion, the Commission may consider such suggestions with a view to making a proposal or taking an initiative.

4. The Associated States shall not participate in the voting of the Schengen Comitology committees and shall withdraw when the Committee moves to a vote.

5. When the meetings of the Schengen Comitology committees are convened, the Associated States shall receive the agenda, the draft measures on which they are asked to give an opinion and any other relevant working documents at the same time as the Member States of the EU.

6. The principles and conditions concerning public access to the documents of the Schengen Comitology committees shall be the same as those applying to Commission documents[7].

7. For the purpose of the application of this Arrangement and when setting up the procedural aspects of the Schengen Comitology committees, the reference shall be made to this article.

[7] Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p.43).

Article 4

When drafting proposals amending or building upon the provisions of the Schengen *acquis* the Commission shall informally seek advice from experts of the Associated States in the same way as it seeks advice from experts of the Member States of the European Union, hereinafter referred to as the "Member States", for drawing up its proposals.

Article 5

1. The adoption of new acts or measures constituting a development of the Schengen *acquis* shall be reserved to the competent institutions of the European Union[8].

Subject to paragraph 3,

- the acts or measures referred to in paragraph 1 shall enter into force simultaneously for the European Union, the European Community and its Member States concerned and for the Associated States, unless those acts or measures explicitly state otherwise,

- the acceptance by each Associated State of the acts or measures referred to in paragraph 1 creates rights and obligations between that Associated State, of the one part, the European Union, the European Community and those of its Member States bound by those acts and measures, of the other part.

2. The adoption of the acts or measures referred to in paragraph 1 to which the procedures set out in this Arrangement have been applied shall be communicated to the Associated States.

The adoption of acts or measures referred to in paragraph 1 shall be communicated to the Associated States by the Secretariat General of the Commission, with reference to this article, if the adoption of these acts or measures is notified to the Member States.

If the adoption of acts or measures referred to in paragraph 1 is not notified to the Member States by the Secretariat General of the Commission, the adoption of these acts or measures shall be communicated to the Associated States by the Directorate General of the Commission responsible for the adoption of acts or measures concerned, referring to this article.

3. Each Associated State shall decide independently whether to accept the content of the acts or measures referred to in paragraph 1 and whether to implement them into its internal legal order. These decisions shall be notified to the Commission within 30 days of the communication by the Commission of the acts or measures concerned.

For the acceptance by the Associated States of the acts and measures referred to in paragraph 1 and the consequences for not accepting them, the following provisions shall apply:

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[8] At the time of the signature of the present Arrangement these acts or measures are adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (OJ L 184, 17.7.1999, p.23) as last amended by Decision 2006/512/EC of 17 July 2006 (OJ L 200, 22.7.2006, p. 11)

– Iceland and Norway – Article 8 of the Association Agreement with Iceland and Norway;

– Switzerland – Article 7 of the Association Agreement with Switzerland;

– Liechtenstein – Article 5 of the Association Protocol with Liechtenstein.

Article 6

1. As regards administrative costs associated with the implementation of this Arrangement, the Associated States shall make an annual contribution to the general budget of the European Communities in accordance with the percentage of the gross domestic product of their countries in relation to the gross domestic product of all participating States of an amount of EUR 500 000, subject to an annual adjustment to reflect the rate of inflation in the European Union.

The amount of EUR 500 000 shall be adjusted by exchange of letters if the evolution of the number of the Schengen Comitology committees to which the Associated States participate or the frequency of meetings so require.

2. The travelling costs of the representatives who participate in the meetings of the Schengen Comitology committees shall not be reimbursed.

Article 7

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

2. The European Community and the Associated States 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 Associated State.

4. This Arrangement shall enter into force between the European Community and the Associated State concerned on the first day of the second month following the deposit of the respective instrument of approval or ratification with the depositary.

5. As regards Liechtenstein, this Arrangement enters info force only once the Association Protocol with Liechtenstein has entered into force.

Article 8

1. As regards Norway and Iceland, this Arrangement shall be terminated when the respective Association Agreement with Iceland or Norway is terminated.

2. As regards Switzerland, this Arrangement shall be terminated when the Association Agreement with Switzerland is terminated.

3. As regards Liechtenstein, this Arrangement shall be terminated when the Association Protocol with Liechtenstein is terminated.

4. The depositary shall be notified of termination.

Article 9

This Arrangement and the Joint Declaration 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, Swedish, Icelandic and Norwegian languages, each of those texts being equally authentic.

Done at Brussels,

For the European Community

For the Republic of Iceland

For the Principality of Liechtenstein

For the Kingdom of Norway

For the Swiss Confederation

ANNEX 1

List of the existing committees which assist the European Commission in the exercise of its executive powers as regards the implementation, application and development of the Schengen *acquis:*

– The committee established by Council Regulation (EC) No 1683/95 of 29 May 1995 laying down a uniform format for visas[9];

– The committee established by Regulation (EC) No 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II)[10] and by Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II)[11]; this committee also assists the European Commission in the application of the following legal instruments:

  – Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation)[12];

  – Regulation (EC) No 1104/2008 of the Council of 24 October 2008 on migration from the Schengen Information System (SIS1+) to the second generation Schengen Information System (SIS II)[13];

  – Council Decision 2008/839/JHA of 24 October 2008 on migration from the Schengen Information System (SIS1+) to the second generation Schengen Information System (SIS II)[14]

– The committee established by Council Decision 2004/201/JHA of 19 February 2004 on procedures for amending the Sirene Manual and Council Regulation (EC) No 378/2004 of 19 February 2004 on procedures for amending the Sirene Manual[15] - to assist the European Commission in amending the Sirene manual;

– The committee established by Council Decision of 16 March 2005 establishing a secure web-based information and coordination network for a Member States' migration management services (2005/267/EC)[16];

– The committee established by Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code)[17] – to assist the European Commission in the field of external borders;

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9 OJ L 164, 14.7.1995, p. 1- 4.
10 OJ L 381, 28.12.2006, p. 4.
11 OJ L 205, 07.08.2007, p.63.
12 OJ L 218, 13.8.2008, p. 60
13 OJ L 299, 8.11.2008, p. 1.
14 OJ L 299, 8.11.2008, p. 43.
15 OJ L 64, 2.3.2004, p. 5 and 45.
16 OJ L 83, 1.4.2005, p. 48.
17 OJ L 105, 13.4.2006, p. 1.

– The committee "Solidarity and Management of Migration Flows" established by Decision No 574/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the External Borders Fund for the period 2007 to 2013 as part of the General programme "Solidarity and Management of Migration Flows"[18];

– [p.m. The committee established by Regulation (EC) No …/… of the European Parliament and of the Council of … establishing a Community Code on Visas[19] - the 'Visa Committee'].

[18] OJ L 144, 6.6.2007, p. 22.
[19] OJ L …, …, p. ….

JOINT DECLARATION BY THE CONTRACTING PARTIES ON THE SPECIFIC ASSOCIATION WITH THE IMPLEMENTATION, APPLICATION AND DEVELOPMENT OF THE SCHENGEN ACQUIS

The Contracting Parties jointly declare that the specific association of the Republic of Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the Swiss Confederation with the implementation, application and development of the Schengen *acquis* shall not be regarded as a legal or political precedent for any other field of cooperation between the European Community and those States.