

PROTOCOL

between 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 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

THE EUROPEAN COMMUNITY

and

THE SWISS CONFEDERATION

and

THE PRINCIPALITY OF LIECHTENSTEIN,

hereinafter referred to as the 'Contracting Parties',

HAVING REGARD TO 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 signed on 26 October 2004 ⁽¹⁾ (hereinafter referred to as the 'Agreement between the European Community and Switzerland'),

RECALLING that Article 15 thereof provides for the possibility of the Principality of Liechtenstein acceding to the Agreement between the European Community and Switzerland by way of Protocol,

CONSIDERING the geographical situation of the Principality of Liechtenstein,

CONSIDERING the wish of the Principality of Liechtenstein to be associated to the Community legislation covering the Dublin and Eurodac Regulations (hereinafter referred to as the 'Dublin/Eurodac *acquis*'),

WHEREAS the European Community, on 19 January 2001, concluded an agreement with the Republic of Iceland and the Kingdom of Norway concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Iceland or Norway based on the Dublin Convention ⁽²⁾,

WHEREAS it is desirable that the Principality of Liechtenstein be associated on an equal footing with Iceland, Norway and Switzerland in the implementation, application and development of the Dublin/Eurodac *acquis*,

WHEREAS a Protocol should be concluded between the European Community, the Swiss Confederation and the Principality of Liechtenstein providing for Liechtenstein to enjoy rights and obligations similar to those agreed between the European Community, of the one part, and Iceland and Norway, as well as Switzerland of the other part,

WHEREAS the provisions of Title IV of the Treaty establishing the European Community and the acts adopted on the basis of that Title do not apply to the Kingdom of Denmark pursuant to the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, but it should be made possible for the Swiss Confederation and the Principality of Liechtenstein of the one part and Denmark of the other part to apply the substantive provisions of the Agreement between the European Community and Switzerland in their relations with each other, as provided for in Article 11(1) thereof,

WHEREAS it is necessary to ensure that the States with which the European Community has established an association for the purpose of implementing, applying and developing the Dublin/Eurodac *acquis* also apply that *acquis* in their relations with each other,

⁽¹⁾ OJ L 53, 27.2.2008, p. 52.

⁽²⁾ OJ L 93, 3.4.2001, p. 38.

WHEREAS the smooth operation of the Dublin/Eurodac *acquis* requires that this Protocol be applied simultaneously with the agreements between the various parties associated with or participating in the implementation and development of the Dublin/Eurodac *acquis* governing their mutual relations,

WHEREAS 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 ⁽¹⁾ must be applied by the Principality of Liechtenstein as it is applied by the Member States of the European Union when processing data for the purposes of this Protocol,

HAVING REGARD TO the Protocol on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community, the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* ⁽²⁾,

BEARING IN MIND the link between the Community *acquis* concerning the establishment of criteria and mechanisms for determining the State responsible for examining a request for asylum lodged in one of the Member States and concerning the setting-up of Eurodac and the Schengen *acquis*,

WHEREAS that link requires that the Schengen *acquis* be applied simultaneously with the Community *acquis* concerning the establishment of criteria and mechanisms for determining the State responsible for examining a request for asylum lodged in one of the Member States and concerning the setting-up of Eurodac,

HAVE AGREED AS FOLLOWS:

Article 1

1. In accordance with Article 15 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 (hereinafter referred to as 'the Agreement between the European Community and Switzerland'), the Principality of Liechtenstein (hereinafter referred to as 'Liechtenstein') accedes to that Agreement, under the terms and conditions set out in this Protocol.

2. This Protocol creates reciprocal rights and obligations between the Contracting Parties, in accordance with the rules and procedures set out in herein.

Article 2

1. The provisions of the:

— Dublin Regulation ⁽³⁾,

— Eurodac Regulation ⁽⁴⁾,

— Eurodac implementing Regulation ⁽⁵⁾, and

— the Dublin implementing Regulation ⁽⁶⁾

shall be implemented by Liechtenstein, and applied in its relations with the Member States of the European Union and with Switzerland.

2. The acts and measures taken by the European Community amending or building upon the provisions referred to in paragraph 1 and the decisions taken in accordance with the procedures set out in those provisions, without prejudice to Article 5, shall also be accepted, implemented and applied by Liechtenstein.

3. For the purposes of paragraphs 1 and 2, references to the 'Member States' in the provisions referred to in paragraph 1 shall be deemed to include Liechtenstein.

Article 3

The rights and obligations set out in Articles 2, 3(1) to (4), Articles 5 to 7, Article 8(1) second subparagraph and Article 8(2), Articles 9 to 11 of the Agreement between the European Community and Switzerland shall apply *mutatis mutandis* to Liechtenstein.

⁽¹⁾ OJ L 281, 23.11.1995, p. 31.

⁽²⁾ See page 3 of this Official Journal.

⁽³⁾ Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ L 50, 25.2.2003, p. 1).

⁽⁴⁾ Commission Regulation (EC) No 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ L 222, 5.9.2003, p. 3).

⁽⁵⁾ Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention (OJ L 316, 15.12.2000, p. 1).

⁽⁶⁾ Council Regulation (EC) No 407/2002 of 28 February 2002 laying down certain rules to implement Regulation (EC) No 2725/2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention (OJ L 62, 5.3.2002, p. 1).

Article 4

A representative of the Government of Liechtenstein shall become a member of the Mixed Committee as established by Article 3 of the Agreement between the European Community and Switzerland.

The office of the President of the Mixed Committee shall be held alternately for a period of six months, by the representative of the Commission of the European Communities (hereafter 'the Commission') and by the representative of the Government of Liechtenstein or Switzerland, respectively.

Article 5

1. Subject to paragraph 2, when the Council of the European Union (hereafter 'the Council') adopts acts or measures amending or building upon the provisions of Article 2 and when acts or measures are adopted in accordance with the procedures set out in those provisions, those acts or measures shall be applied simultaneously by the Member States and Liechtenstein, except where express provisions exist to the contrary.

2. The Commission shall notify Liechtenstein without delay of the adoption of the acts or measures referred to in paragraph 1. Liechtenstein shall decide whether to accept their contents and to implement them in its internal legal order. That decision shall be notified to the Commission within 30 days of the adoption of the acts or measures concerned.

3. If the contents of such an act or a measure can become binding on Liechtenstein only after the fulfilment of constitutional requirements, Liechtenstein shall inform the Commission of this at the time of its notification. Liechtenstein shall promptly inform the Council and the Commission in writing upon fulfilment of all constitutional requirements. Where a referendum is not required, notification shall, at the latest, take place 30 days after the referendum deadline expires. If a referendum is required, Liechtenstein shall have a maximum of 18 months from the date of the Commission's notification within which to make its notification. From the date laid down for the entry into force of the act or measure for Liechtenstein and until it has given notification that the constitutional requirements have been met, Liechtenstein shall, where possible, implement the act or measure in question on a provisional basis.

4. If Liechtenstein cannot implement the act or measure at issue on a provisional basis, and if this causes difficulties that disrupt the operation of Dublin/Eurodac cooperation, the situation shall be examined by the Mixed Committee. The European Community may take proportionate, appropriate measures against Liechtenstein to ensure that Dublin/Eurodac cooperation operates smoothly.

5. Acceptance by Liechtenstein of the acts and measures referred to in paragraph 1 shall create rights and obligations between Liechtenstein, Switzerland and the Member States of the European Union.

6. This Protocol shall be suspended if:

(a) Liechtenstein notifies its decision not to accept the contents of an act or measure referred to in paragraph 1 and to which the procedures set out in this Protocol have been applied; or

(b) Liechtenstein does not carry out notification within the 30-day time limit referred to in paragraph 2; or

(c) Liechtenstein does not carry out the notification at the latest 30 days after the referendum deadline has expired or, in the case of a referendum, within the 18-month time limit set out in paragraph 3, or does not provide for provisional implementation as envisaged in the same paragraph from the date laid down for the entry into force of the act or measure concerned.

7. The Mixed Committee shall examine the matter which gave rise to suspension and shall endeavour to deal with the underlying causes of non-acceptance or non-ratification within 90 days. After examining all other options with a view to ensuring that the Protocol continues to operate smoothly, including the possibility of noting that the Contracting Parties' laws and regulations are equivalent, it may decide, on a unanimous basis, to reinstate this Protocol. If this Protocol is still suspended after 90 days, it shall be considered terminated.

Article 6

As regards the administrative and operating costs associated with the setting up and operation of the Eurodac central unit, Liechtenstein shall make a contribution to the general budget of the European Communities amounting to 0,071 % of an initial reference amount of EUR 11 675 000 and, from the 2004 financial year, an annual contribution amounting to 0,071 % of the corresponding budgetary appropriations for the financial year in question.

Article 7

This Protocol shall not affect agreements between Liechtenstein and Switzerland in so far as they are compatible with this Protocol. If such agreements are incompatible with this Protocol, the latter shall prevail.

Article 8

1. This Protocol shall be ratified or approved by the Contracting Parties. Instruments of ratification or approval shall be deposited with the Secretary-General of the Council, who shall be the depositary.

2. This Protocol shall enter into force on the first day of the month following notification by the depositary to the Contracting Parties that the final instrument of ratification or approval has been deposited.

3. Articles 1, 4 and the first sentence of Article 5(2) of this Protocol and the rights and obligations set out in Articles 2, 3(1) to (4) of the Agreement between the European Community and Switzerland shall apply provisionally to Liechtenstein as of the date on which this Protocol is signed.

Article 9

With respect to acts or measures adopted after this Protocol has been signed but before it enters into force, the 30-day period referred to in Article 5(2), last sentence shall start to run from the day of entry into force of this Protocol.

Article 10

1. This Protocol shall be applied only if the agreements to be concluded by Liechtenstein and referred to in Article 11 of the Agreement between the European Community and Switzerland are also implemented.

2. In addition, this Protocol shall be applied only if the Protocol concluded 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* is also implemented.

Article 11

1. This Protocol may be denounced by any Contracting Party. The depositary shall be notified of denunciation, which shall take effect six months after notification.

2. In case of denunciation by Switzerland of this Protocol or of the Agreement between the European Community and Switzerland, or in case of the termination of the Agreement between the European Community and Switzerland with respect to Switzerland, the Agreement between the European Community and Switzerland and this Protocol shall remain in force with respect to the relations between the European Community on the one part and Liechtenstein on the other part.

3. This Protocol shall be considered to have been terminated if Liechtenstein terminates one of the agreements referred to in Article 11 of the Agreement between the European Community and Switzerland that have been concluded by Liechtenstein, or terminates the Protocol referred to in Article 10(2).

Article 12

This Protocol shall be drawn up in triplicate 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 text being equally authentic.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries have hereunto set their hands.

Съставено в Брюксел на двадесет и осми февруари две хиляди и осма година.

Hecho en Bruselas, el veintiocho de febrero de dos mil ocho.

V Bruselu dne dvacátého osmého února dva tisíce osm.

Udfærdiget i Bruxelles den otteogtyvende februar to tusind og otte.

Geschehen zu Brüssel am achtundzwanzigsten Februar zweitausendacht.

Kahe tuhande kaheksanda aasta veebruarikuu kahekümne kaheksandal päeval Brüsselis.

Έγινε στις Βρυξέλλες, στις είκοσι οκτώ Φεβρουαρίου δύο χιλιάδες οκτώ.

Done at Brussels on the twenty-eighth day of February in the year two thousand and eight.

Fait à Bruxelles, le vingt-huit février deux mille huit.

Fatto a Bruxelles, addì ventotto febbraio duemilaotto.

Briselē, divtūkstoš astotā gada divdesmit astotajā februārī.

Priimta du tūkstančiai aštuntų metų vasario dvidešimt aštuntą dieną Briuselyje.

Kelt Brüsszelben, a kétezer-nyolcadik év február huszonnyolcadik napján.

Magħmul fi Brussell, fit-tmienja u ghoxrin jum ta' Frar tas-sena elfejn u tmienja.

Gedaan te Brussel, de achtentwintigste februari tweeduizend acht.

Sporządzono w Brukseli dnia dwudziestego ósmego lutego roku dwa tysiące ósmego.

Feito em Bruxelas, em vinte e oito de Fevereiro de dois mil e oito.

Încheiat la Bruxelles, la douăzeci și opt februarie în anul două mii opt.

V Bruseli dňa dvadsiateho ôsmeho februára dvetisícosem.

V Bruslju, dne osemindvajsetega februarja leta dva tisoč osem.

Tehty Brysselissä kahdentenäkymmenentenäkahdeksantena päivänä helmikuuta vuonna kaksituhattakahdeksan.

Som skedde i Bryssel den tjugoåttonde februari tjugohundraåtta.

За Европейската общност
 Por la Comunidad Europea
 Za Evropské společenství
 For Det Europæiske Fællesskab
 Für die Europäische Gemeinschaft
 Euroopa Ühenduse nimel
 Για την Ευρωπαϊκή Κοινότητα
 For the European Community
 Pour la Communauté européenne
 Per la Comunità europea
 Eiropas Kopienas vārdā
 Europos bendrijos vārdā
 az Európai Közösség részéről
 Għall-Komunità Ewropea
 Voor de Europese Gemeenschap
 W imieniu Wspólnoty Europejskiej
 Pela Comunidade Europeia
 Pentru Comunitatea Europeană
 Za Európske spoločenstvo
 Za Evropsko skupnost
 Euroopan yhteisön puolesta
 På Europeiska gemenskapens vägnar

За Конфедерация Швейцария
 Por la Confederación Suiza
 Za Švýcarskou konfederaci
 For Det Schweiziske Forbund
 Für die Schweizerische Eidgenossenschaft
 Šveitsi Konföderatsiooni nimel
 Για την Ελβετική Συνομοσπονδία
 For the Swiss Confederation
 Pour la Confédération suisse
 Per la Confederazione svizzera
 Šveices Konfederācijas vārdā
 Šveicarijos Konfederacijos vardu
 A Svájci Államszövetség részéről
 Għall-Konfederazzjoni Żvizzera
 Voor de Zwitserse Bondsstaat
 W imieniu Konfederacji Szwajcarskiej
 Pela Confederação Suíça
 Pentru Confederația Elvețiană
 Za Švajčiarsku konfederáciu
 Za Švicarsko konfederacijo
 Sveitsin valaliiton puolesta
 För Schweiziska edsförbundet

За Княжество Лихтенщайн
 Por el Principado de Liechtenstein
 Za Lichtenštejnské knížectví
 For Fyrstendømmet Liechtenstein
 Für das Fürstentum Liechtenstein
 Liechtensteini Vürstiriigi nimel
 Για το Πριγκιπάτο του Λιχτενστάιν
 For the Principality of Liechtenstein
 Pour la Principauté de Liechtenstein
 Per il Principato del Liechtenstein
 Lihtenšteinas Firstistes vārdā
 Lichtenšteino Kunigaikštystės vardu
 A Liechtensteini Hercegség részéről
 Għall-Prinċipat ta' Liechtenstein
 Voor het Vorstendom Liechtenstein
 W imieniu Księstwa Liechtensteinu
 Pelo Principado do Liechtenstein
 Pentru Principatul Liechtenstein
 Za Lichtenštajnské kniežatstvo
 Za Kneževino Lihtenštajn
 Liechtensteinin ruhtinaskunnan puolesta
 För Furstendömet Liechtenstein

FINAL ACT

The plenipotentiaries

of the EUROPEAN COMMUNITY

and

of the SWISS CONFEDERATION

and

of the PRINCIPALITY OF LIECHTENSTEIN,

hereinafter referred to as 'the Contracting Parties'

meeting in Brussels on the twenty-eighth day of February in the year 2008 for the signature of the Protocol between 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 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, have adopted the Protocol.

The plenipotentiaries of the Contracting Parties have taken note of the following Declarations listed below and annexed to this Final Act:

— Common Declaration of the Contracting Parties on a close dialogue,

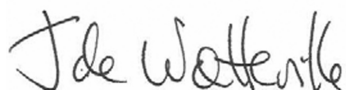
— Declaration by Liechtenstein on Article 5(3),

— Joint Declaration on joint meetings of the Mixed Committees.

За Европейската общност
 Por la Comunidad Europea
 Za Evropské společenství
 For Det Europæiske Fællesskab
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 Pela Comunidade Europeia
 Pentru Comunitatea Europeană
 Za Európske spoločenstvo
 Za Evropsko skupnost
 Euroopan yhteisön puolesta
 På Europeiska gemenskapens vägnar



За Конфедерация Швейцария
 Por la Confederación Suiza
 Za Švýcarskou konfederaci
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 Za Švajčiarsku konfederáciu
 Za Švicarsko konfederacijo
 Sveitsin valaliiton puolesta
 För Schweiziska edsförbundet



За Княжество Лихтенщайн
 Por el Principado de Liechtenstein
 Za Lichtenštejské knížectví
 For Fyrstendømmet Liechtenstein
 Für das Fürstentum Liechtenstein
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 För Furstendömet Liechtenstein



COMMON DECLARATION OF THE CONTRACTING PARTIES ON A CLOSE DIALOGUE

The Contracting Parties stress the importance of a close, productive dialogue between all parties participating in the implementation of the provisions listed in Article 2(1) of this Protocol.

In accordance with Article 3(1) of the Agreement between the European Community and Switzerland, at Mixed Committee meetings with a view to holding exchanges of views with Switzerland, the Commission will invite experts from the Member States to hear experts from Liechtenstein on all the matters dealt with in the Agreement between the European Community and Switzerland.

The Contracting Parties note that the Member States are prepared to accept this invitation and to take part in these exchanges of views with Liechtenstein on all the matters dealt with in the Agreement between the European Community and Switzerland.

DECLARATION BY LIECHTENSTEIN ON ARTICLE 5(3)

(Time limit for accepting new developments in the Dublin/Eurodac *acquis*)

The maximum time limit of 18 months laid down in Article 5(3) covers both the approval and the implementation of the act or measure. It includes the following stages:

- the preparatory stage,
- the parliamentary procedure,
- the referendum deadline of 30 days,
- where applicable the referendum (organisation and voting),
- the sanctioning of the ruling prince.

The Government of Liechtenstein shall inform the Council and the Commission without delay of the completion of each of the stages.

The Government of Liechtenstein undertakes to use every means at its disposal to ensure that the abovementioned stages are completed as swiftly as possible.

JOINT DECLARATION ON JOINT MEETINGS OF THE MIXED COMMITTEES

The delegation of the European Commission,

The delegations representing the Governments of the Republic of Iceland and the Kingdom of Norway,

The delegation representing the Government of the Swiss Confederation,

The delegation representing the Government of the Principality of Liechtenstein,

Note that Liechtenstein accedes to the Mixed Committee established by 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 via a Protocol to this Agreement.

Have decided to organise the meetings of the Joint Committees, established by the Agreement between the European Community and Iceland and Norway concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Iceland or Norway, on the one hand, and 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 as complemented by the Protocol on the accession of Liechtenstein, on the other hand, jointly.

Note that holding these meetings jointly calls for a pragmatic arrangement regarding the office of presidency of such meetings when that presidency is to be held by the associated States according to 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 Switzerland as complemented by the Protocol on the accession of Liechtenstein or the Agreement between the European Community and the Republic of Iceland and the Kingdom of Norway concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Iceland or Norway.

Note the wish of the associated States to cede, as necessary, the exercise of their presidencies and rotate it among them in alphabetical order of name as from the entry into force 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 Switzerland as complemented by the Protocol on the accession of Liechtenstein.
