

## COUNCIL DECISION

of 26 July 2010

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

(2010/490/EU)

THE COUNCIL OF THE EUROPEAN UNION,

- (3) As consequence of the entry into force of the Treaty of Lisbon on 1 December 2009, the European Union has replaced and succeeded the European Community.

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 77(2)(b) and Article 74 in conjunction with Article 218(6)(a)(v) thereof,

- (4) In accordance with Articles 1 and 2 of the Protocol on the Position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application. Given that this Decision builds upon the Schengen *acquis*, Denmark shall, in accordance with Article 4 of the Protocol, decide within a period of six months after the Council has decided on this Decision whether it will implement it in its national law.

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament,

Whereas:

- (1) Article 21(3) of Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union<sup>(1)</sup> provides for countries associated with the implementation, application and development of the Schengen *acquis* to participate in the Agency. The modalities of their participation are to be specified in further arrangements to be concluded between the Union and those countries.

- (5) This Decision constitutes a development of the provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis*<sup>(2)</sup>. The United Kingdom is therefore not taking part in the adoption of this Decision and is not bound by it or subject to its application.

- (2) Following the authorisation given to the Commission on 11 March 2008, negotiations with the Swiss Confederation and the Principality of Liechtenstein for an Arrangement on the modalities of the participation by those States in the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union have been concluded.

- (6) This Decision constitutes a development of the provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis*<sup>(3)</sup>. Ireland is therefore not taking part in the adoption of this Decision and is not bound by it or subject to its application.

<sup>(1)</sup> OJ L 349, 25.11.2004, p. 1.

<sup>(2)</sup> OJ L 131, 1.6.2000, p. 43.

<sup>(3)</sup> OJ L 64, 7.3.2002, p. 20.

(7) The Arrangement should be concluded,

HAS ADOPTED THIS DECISION:

*Article 1*

The Arrangement between the European Community, of the one part, and the Swiss Confederation and the Principality of Liechtenstein, of the other part, on the modalities of the participation by those States in the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union<sup>(1)</sup> (‘the Arrangement’) is hereby approved on behalf of the Union.

*Article 2*

The President of the Council is hereby authorised to designate the person(s) empowered to deposit on behalf of the Union the instrument of approval provided for in Article 9(4) of the Arrangement in order to express the consent of the Union to be bound and make the following notification:

‘As a consequence of the entry into force of the Treaty of Lisbon on 1 December 2009, the European Union has

replaced and succeeded the European Community and from that date exercises all rights and assumes all obligations of the European Community. Therefore, references to “European Community” in the text of the Arrangement are, where appropriate, to be read as “European Union”.’

*Article 3*

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

*Article 4*

This Decision shall be published in the *Official Journal of the European Union*.

Done at Brussels, 26 July 2010.

*For the Council*

*The President*

S. VANACKERE

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<sup>(1)</sup> See page 4 of this Official Journal.