



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for

COUNCIL DECISION

on the signature of a 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

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(presented by the Commission)

EXPLANATORY MEMORANDUM

I. INTRODUCTION

On 26 October 2004, the European Community signed an Agreement with the Swiss Confederation regarding criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland (the "Dublin/Eurodac agreement with Switzerland")¹.

That Agreement anticipated Liechtenstein's possible association with the Dublin/Eurodac acquis and made provision in its Article 15 for Liechtenstein to accede to the Agreement by means of a protocol determining the rights and obligations of each of the contracting parties.

By letter dated 12 October 2001, Liechtenstein had already expressed its interest in joining Switzerland as a contracting party to a possible Schengen and Dublin agreement since an open borders policy for the movement of persons has existed between Switzerland and Liechtenstein for decades. However, Liechtenstein was not associated with the negotiations with Switzerland on account of the absence of an agreement on savings taxation between the European Community and Liechtenstein.

The European Community and Liechtenstein subsequently concluded such an agreement on savings taxation, which has been in operation since 1 July 2005.

By letter dated 10 June 2005, Liechtenstein confirmed its wish to be associated to the Schengen and Dublin/Eurodac acquis.

Following the authorisation given by the Council to the Commission on 27.2.2006, negotiations were held with Liechtenstein and Switzerland. On 21.06.2006, negotiations were finalised and the draft protocol on Liechtenstein's accession to the Dublin/Eurodac agreement with Switzerland was initialled².

The attached proposals are the legal bases for the decisions on the signature and the conclusion of the Protocol. The legal basis of this Protocol is Article 63(1)a, in conjunction with the first sentence of the first subparagraph of Article 300(2) of the Treaty establishing the European Community.

The Council will decide by qualified majority. The European Parliament will be consulted on the conclusion of the Protocol, in accordance with Article 300(3) of the Treaty establishing the European Community.

¹ The same day, the European Union, the European Community and the Swiss Confederation signed an Agreement on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis (the "Schengen acquis association agreement").

² As well as the draft Protocol on its accession to the Schengen Agreement with Switzerland and the draft Protocol on Denmark's participation in the Dublin/Eurodac Agreement with Switzerland and Liechtenstein.

II. RESULTS OF THE NEGOTIATIONS

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

The final content of the Protocol can be summarised as follows:

- Liechtenstein accedes to the Dublin/Eurodac agreement with Switzerland and will have to accept the entire Dublin/Eurodac acquis and the development thereof. If Liechtenstein does not accept future developments of the Dublin/Eurodac acquis, the Protocol will cease to operate.
- Liechtenstein will become a member of the Mixed Committee and will have the right to express its opinion within the Mixed Committee and to preside it.
- The putting into effect of the Dublin/Eurodac Protocol is linked to the putting into effect of the Schengen Protocol, as well as to the putting into effect of the Protocol between the European Community, Switzerland and Liechtenstein on the participation of Denmark and of the Agreement between Liechtenstein and Norway and Iceland on Dublin/Eurodac.
- Specific provisions are laid down for Liechtenstein concerning the time period needed for the implementation of a development of the Dublin/Eurodac acquis, in case constitutional requirements need to be fulfilled by Liechtenstein (18 months) and the financial contribution that Liechtenstein, like Switzerland, has to pay for administrative and operating costs associated with the setting up and operation of the Eurodac central unit. For Liechtenstein, this amounts to 0.071% of the initial costs of €11 675 000 and from budget year 2004 onwards to an annual contribution of 0.071% of the corresponding budgetary appropriations for the financial year in question. Consequently, there are no financial implications for the EU resulting from Liechtenstein's association with the Dublin/Eurodac acquis.

III. CONCLUSIONS

In the light of the above considerations, the Commission proposes that the Council:

- decides that the Protocol be signed on behalf of the Community and authorises the President of the Council to appoint the person duly empowered to sign on behalf of the Community;
- approves, after consulting the European Parliament, the attached 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

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 63(1)(a) thereof, in conjunction with the first sentence of the first subparagraph of Article 300(2),

Having regard to the proposal from the Commission³,

Whereas:

- (1) Following the authorisation given to the Commission on 27 February 2006, negotiations with the Swiss Confederation and the Principality of Liechtenstein of a Protocol 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 been finalised,
- (2) The Protocol caters for the provisional application of certain of its provisions. These provisions should be applied on a provisional basis pending the Protocol's entry into force,
- (3) Subject to its conclusion at a later date, the Protocol initialled in Brussels on 21 June 2006 should be signed,
- (4) The United Kingdom and Ireland, in accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on the European Union and the Treaty establishing the European Community will take part in the adoption and application of this Decision,
- (5) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty establishing the European Community and the Treaty on the European Union, Denmark is not participating to the adoption of this decision and is not bound by or subject to its application;

³ OJ C ...

HAS DECIDED AS FOLLOWS:

Article 1

Subject to its conclusion at a later date, the President of the Council is authorised to appoint the person empowered to sign, on behalf of the Community, 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.

The texts of the Protocol and the related documents are attached to this Decision.

Article 2

In accordance with Article 8 (3) of the Protocol, Article 1, 4 and the first sentence of Article 5(2) of the Protocol and the rights and obligations set out in Articles 2, 3 (1) to (4) 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 shall be applied on a provisional basis as of the date on which this Protocol is signed.

Done at Brussels,

*For the Council
The President*

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on the conclusion of a 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 COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 63(1)(a) thereof, in conjunction with the first sentence of the first subparagraph of Article 300(2) and the first subparagraph of Article 300(3) thereof,

Having regard to the Commission proposal⁴,

Having regard to the opinion of the European Parliament⁵

Whereas:

- (1) Following the authorisation given to the Commission on 27 February 2006, negotiations with the Swiss Confederation and the Principality of Liechtenstein of a Protocol 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 been finalised,
- (2) According to Decision .../...../EC of the Council of [.....], and subject to its final conclusion at a later date, this Protocol has been signed, on behalf of the European Community, on 2006,
- (3) This Protocol should be approved,
- (4) The United Kingdom and Ireland, in accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on the European Union and the Treaty establishing the European Community, are taking part in the adoption and application of this Decision,

⁴ OJ C ...

⁵ OJ C ...

- (5) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on the European Union and the Treaty establishing the European Community, Denmark is not participating to the adoption of this decision and is not bound by or subject to its application;

HAS DECIDED AS FOLLOWS:

Article 1

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 and related documents are approved on behalf of the Community.

The text of the Protocol and related documents are attached to this Decision.

Article 2

The President of the Council is hereby authorised to designate the person empowered to deposit on behalf of the European Community the instrument of approval provided for in Article 8(1) of the Protocol, in order to express the consent of the Community to be bound.

Article 3

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

Done at Brussels,

For the Council
The President

Annex

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 26.10.2004⁶ (hereinafter referred to as the "agreement between the European Community and Switzerland ") and its Article 15 that provides for the possibility of the Principality of Liechtenstein to accede that agreement via a 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 has concluded an agreement with the Republic of Iceland and the Kingdom of Norway on 19 January 2001 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 Convention⁷;

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*;

⁶ ASILE 54, 13049/04

⁷ OJ L 93, 3.4.2001, p.38

WHEREAS a protocol should be concluded between the European Community, the Swiss Confederation and the Principality of Liechtenstein providing for Liechtenstein 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 by the Treaty of Amsterdam 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 the Swiss Confederation in their relations with each other, as provided for in Article 11(1) of the agreement between the European Community and Switzerland;

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 this *acquis* in their relations with each other;

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 data⁸ must be applied by the Principality of Liechtenstein as 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*;

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*;

⁸ OJ L 281, 23.11.1995, p. 31.

WHEREAS this 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 Regulation⁹;
 - Eurodac Regulation¹⁰;
 - Eurodac implementing Regulation¹¹; and
 - the Dublin implementing Regulation¹²

⁹ 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

¹⁰ 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

¹¹ 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

¹² 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

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), 5, 6, 7, 8 (1) second subparagraph and (2), 9, 10 and 11 of the Agreement between the European Community and Switzerland shall apply to Liechtenstein in the way as they apply to Switzerland.

Article 4

A representative of the Government of Liechtenstein becomes 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 European Commission and by the representative of the Government of Liechtenstein or Switzerland.

Article 5

1. Subject to paragraph 2, when 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. This decision shall be notified to the Commission within thirty 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 Council'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. 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 thirty-day time limit referred to in paragraph 2;

(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 months time limit set out in paragraph 3, or does not provide for provisional implementation as envisaged in the same subparagraph from the date laid down for the entry into force of the act or measure concerned;

this Protocol shall be suspended.

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 ninety 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 ninety 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 €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 these 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. Article 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 thirty-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 referred to in Article 11 of the agreement between the European Community and Switzerland that need to be concluded by Liechtenstein are also implemented.
2. In addition, this Protocol shall be implemented 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 each contracting party. The depositary shall be notified of denunciation, which shall take effect six months after notification.
2. In case of denunciation of this Protocol or the Agreement between the European Community and Switzerland by Switzerland or 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 the Protocol referred to in Article 10(2).

Article 12

This Protocol shall be drawn up in triplicates in the Czech, Danish, Dutch, English, Estonian, Finnish, French, Gaelic, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Slovak, Slovenian, Spanish and Swedish languages, each text being equally authentic.

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

Done at

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, the Commission invites experts from the Member States to attend 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 organize 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.

Done at Brussels,

*For the Council
The President*