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Legislation

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DECISIONS

COUNCIL

COUNCIL DECISION

of 28 January 2008

on the conclusion, on behalf of the European Community, of 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*

(2008/146/EC)

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, and Articles 66 and 95, in conjunction with the second sentence of the first subparagraph of Article 300(2) and the first subparagraph of Article 300(3) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament ⁽¹⁾,

Whereas:

- (1) Following the authorisation given to the Commission on 17 June 2002, negotiations with the Swiss Authorities, regarding the association of Switzerland with the implementation, application and development of the Schengen *acquis* have been concluded.
- (2) In accordance with Council Decision 2004/860/EC ⁽²⁾, and subject to its conclusion at a later date, 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* has been signed on behalf of the European Community on 26 October 2004.

(3) The Agreement should now be approved.

(4) As far as the development of the Schengen *acquis*, which falls under the Treaty establishing the European Community, is concerned the provisions of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis* ⁽³⁾, apply *mutatis mutandis* to relations with Switzerland.

(5) 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⁾.

(6) 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 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⁾.

⁽¹⁾ Opinion of 13 October 2005 (not yet published in the Official Journal).

⁽²⁾ OJ L 370, 17.12.2004, p. 78.

⁽³⁾ OJ L 176, 10.7.1999, p. 31.

⁽⁴⁾ OJ L 131, 1.6.2000, p. 43.

⁽⁵⁾ OJ L 64, 7.3.2002, p. 20.

- (7) This Decision does 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,

development to the extent that such provisions have, or, in accordance with Decision 1999/436/EC ⁽²⁾, have been determined to have, a legal base within the Treaty establishing the European Community.

HAS DECIDED AS FOLLOWS:

Article 1

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*, and the related documents consisting of the Final Act, of the Agreement in the form of an Exchange of Letters on the Committees that assist the Commission in the exercise of its executive powers, and the Joint Declaration on joint meetings of the Mixed Committees are hereby approved on behalf of the European Community.

The text of the Agreement, the Final Act, the Exchange of Letters, and the Joint Declaration are attached to this Decision ⁽¹⁾.

Article 2

This Decision applies to the fields covered by the provisions listed in Annexes A and B of the Agreement and to their

Article 3

The provisions of Article 1 to 4 of Council Decision 1999/437/EC shall apply, in the same way, to the association of Switzerland with the implementation, application and development of the Schengen *acquis*, which falls under the Treaty establishing the European Community.

Article 4

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 14 of the Agreement, in order to express the consent of the Community to be bound.

Article 5

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

Done at Brussels, 28 January 2008.

For the Council

The President

D. RUPEL

⁽¹⁾ See page 52 of this Official Journal.

⁽²⁾ OJ L 176, 10.7.1999, p. 17.

COUNCIL DECISION

of 28 January 2008

on the conclusion on behalf of the European Community 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

(2008/147/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 63(1)(a), 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 proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

- (1) Following the authorisation given to the Commission on 17 June 2002, negotiations with the Swiss Authorities, regarding 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 concluded;
- (2) In accordance with a Council Decision of 25 October 2004, and subject to its final conclusion at a later date, 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 has been signed on behalf of the European Community on 26 October 2004;
- (3) The Agreement should now be approved;
- (4) The Agreement establishes a Mixed Committee with decision-making powers in certain areas and it is thus necessary to specify who represents the Community within this Committee;
- (5) It is further necessary to provide for a procedure laying down how a Community position is adopted;
- (6) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty

on European Union and the Treaty establishing the European Community, the United Kingdom and Ireland are taking part in the adoption and application of this Decision;

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

HAS DECIDED AS FOLLOWS:

Article 1

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 the related documents consisting of the Final Act and the Joint Declaration on joint meetings of the Mixed Committees are hereby approved on behalf of the European Community.

The texts of the Agreement, the Final Act, and the Joint Declaration 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 12 of the Agreement, in order to express the consent of the Community to be bound.

Article 3

The Commission shall represent the Community in the Mixed Committee established by Article 3 of the Agreement.

Article 4

1. The position of the Community within the Mixed Committee with regard to the adoption of its Rules of Procedure as required under Article 3(2) of the Agreement shall be taken by the Commission after consultation of a special committee designated by the Council.

2. For all other Mixed Committee decisions, the position of the Community shall be adopted by the Council, acting by qualified majority, on a proposal by the Commission.

Article 5

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

Done at Brussels, 28 January 2008.

For the Council

The President

D. RUPEL

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,

hereinafter referred to as the 'Contracting Parties',

WHEREAS the Council of the European Union has adopted 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 ⁽¹⁾ (hereinafter referred to as the Dublin Regulation), which replaced the Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities, signed in Dublin on 15 June 1990 ⁽²⁾ (hereinafter referred to as the Dublin Convention), and whereas the Commission of the European Communities has adopted 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, ⁽³⁾ hereinafter referred to as the 'Dublin implementing Regulation';

WHEREAS the Council of the European Union has adopted 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 with a view to helping to determine the Contracting Party responsible for examining an asylum application in accordance with the Dublin Convention ⁽⁴⁾ (hereinafter referred to as the Eurodac Regulation) and 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 ⁽⁵⁾ (hereinafter referred to as the Eurodac implementing Regulation);

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 ⁽⁶⁾ (hereinafter referred to as the protection of personal data Directive) is to be applied by the Swiss Confederation as applied by the Member States of the European Union when processing data for the purposes of this Agreement;

CONSIDERING the geographical position of the Swiss Confederation;

WHEREAS the participation of the Swiss Confederation in the Community *acquis* covered by the Dublin and Eurodac Regulations (hereinafter referred to as the Dublin/Eurodac *acquis*) will help to strengthen cooperation between the European Community and the Swiss Confederation;

WHEREAS the European Community has 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 ⁽⁷⁾ based on the Dublin Convention;

⁽¹⁾ OJ L 50, 25.2.2003, p. 1.

⁽²⁾ OJ C 254, 19.8.1997, p. 1.

⁽³⁾ OJ L 222, 5.9.2003, p. 3.

⁽⁴⁾ OJ L 316, 15.12.2000, p. 1.

⁽⁵⁾ OJ L 62, 5.3.2002, p. 1.

⁽⁶⁾ OJ L 281, 23.11.1995, p. 31. Directive as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 3.10.2003, p. 1).

⁽⁷⁾ OJ L 93, 3.4.2001, p. 38.

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

WHEREAS an Agreement should be concluded between the European Community and the Swiss Confederation containing rights and obligations similar to those agreed between the European Community, of the one part, and Iceland and Norway, of the other part;

CONVINCED of the need to organise cooperation between the European Community and the Swiss Confederation as regards the implementation, practical application and further development of the Dublin/Eurodac *acquis*;

WHEREAS it is necessary, in order to associate the Swiss Confederation with the activities of the European Community in the fields covered by this Agreement and to enable it to participate in those activities, to set up a committee in accordance with the institutional model established for the association of Iceland and Norway;

WHEREAS cooperation in the areas covered by the Dublin and Eurodac regulations is based on the principles of freedom, democracy, the rule of law and respect for human rights, as guaranteed in particular by the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950;

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 Denmark to apply the substantive provisions of this Agreement in their relations with each other;

WHEREAS it is necessary to ensure that the States with which the European Union 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 Agreement 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;

CONSIDERING the association of the Swiss Confederation with the implementation, application and development of the Schengen *acquis*;

BEARING IN MIND the link between the Schengen *acquis* and the Dublin/Eurodac *acquis*;

WHEREAS this link requires that the Dublin/Eurodac *acquis* be applied simultaneously with the Schengen *acquis*,

HAVE AGREED AS FOLLOWS:

Article 1

1. The provisions of the

- Dublin Regulation;
- Eurodac Regulation;
- Eurodac implementing Regulation; and,
- the Dublin implementing Regulation

shall be implemented by the Swiss Confederation, hereinafter referred to as 'Switzerland', and applied in its relations with the Member States of the European Union, hereinafter referred to as 'the Member States'.

2. The Member States shall apply the Regulations referred to in paragraph 1 to Switzerland.

3. 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 shall also, without prejudice to Article 4, be accepted, implemented and applied by Switzerland.

4. The provisions of the protection of personal data Directive as applicable to the Member States with regard to data processed for the purposes of implementing and applying the provisions referred to in paragraph 1 shall be implemented and applied, *mutatis mutandis*, by Switzerland.

5. 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 Switzerland.

Article 2

1. When new legislation is drafted amending or building upon the provisions of Article 1, the Commission of the European Communities, hereinafter referred to as the 'Commission', shall informally consult the Swiss experts in the same way as it consults the experts of the Member States when drafting its proposals.

2. When transmitting its proposals referred to in paragraph 1 to the European Parliament and the Council of the European Union, hereinafter referred to as the 'Council', the Commission shall transmit copies thereof to Switzerland.

At the request of one of the Contracting Parties, a preliminary exchange of views may be held in the Mixed Committee set up pursuant to Article 3.

3. The Contracting Parties shall consult each other again, at the request of one of their number, in the Mixed Committee, at important points in the stage prior to adoption of the legislation referred to in paragraph 1, in a continuous process of information provision and consultation.

4. The Contracting Parties shall work together in good faith during the information provision and consultation stage with a view to facilitating the activities of the Mixed Committee at the end of the process, in accordance with this Agreement.

5. The Swiss Government's representatives shall have the right to put forward suggestions in the Mixed Committee as regards the matters referred to in paragraph 1.

6. The Commission shall ensure that the Swiss experts participate as widely as possible, depending on the areas concerned, in preparing draft measures to be submitted subsequently to the committees which assist the Commission in the exercise of its executive powers. Accordingly, when drawing up its proposals, the Commission shall consult the Swiss experts on the same basis as the experts from the Member States.

7. Where the matter is referred to the Council in accordance with the procedure applying to the type of committee in question, the Commission shall transmit to the Council the views of the Swiss experts.

Article 3

1. A Mixed Committee shall be established consisting of representatives of the Contracting Parties.

2. The Mixed Committee shall adopt its own Rules of Procedure by consensus.

3. The Mixed Committee shall meet at the initiative of its President or at the request of any of its members.

4. The Mixed Committee shall meet at the appropriate level, depending on needs, with a view to examining the implementation and practical application of the provisions referred to in Article 1 and to holding an exchange of views on drawing up acts and measures amending or building upon the provisions referred to in Article 1.

All exchanges of information concerning this Agreement shall be deemed to have taken place in accordance with the Mixed Committee's terms of reference.

5. The office of President of the Mixed Committee shall be held alternately, for a period of six months, by the representative of the European Community and by the representative of the Swiss Government.

Article 4

1. Subject to paragraph 2, when the Council adopts acts or measures amending or building upon the provisions of Article 1 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 Switzerland, except where express provisions exist to the contrary.

2. The Commission shall notify Switzerland without delay of the adoption of the acts or measures referred to in paragraph 1. Switzerland 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 acts or measures can become binding on Switzerland only after the fulfilment of constitutional requirements, Switzerland shall inform the Commission of this at the time of its notification. Switzerland shall promptly inform the Commission in writing upon fulfilment of all constitutional requirements. Where a referendum is not required, notification shall take place as soon as the referendum deadline expires. If a referendum is required, Switzerland shall have a maximum of two years from the date of the Commission's notification in which to effect notification. From the date laid down for the entry into force of the act or measure for Switzerland and until it has given notification that the constitutional requirements have been met, Switzerland shall, where possible, implement the act or measure in question on a provisional basis.

4. If Switzerland 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, necessary measures against Switzerland to ensure that Dublin/Eurodac cooperation operates smoothly.

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

6. If:
- (a) Switzerland 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 Agreement have been applied; or if
 - (b) Switzerland does not carry out notification within the thirty-day time limit referred to in paragraph 2, or if
 - (c) Switzerland does not carry out notification after the referendum deadline has expired or, in the case of a referendum, within the two-year 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 Agreement shall be suspended.

7. The Mixed Committee shall examine the matter which gave rise to suspension and shall endeavour to deal with the causes of non-acceptance or non-ratification within 90 days. After examining all other options with a view to ensuring that the Agreement 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 Agreement. If this Agreement is still suspended after 90 days, it shall cease to be applicable.

Article 5

1. In order to achieve the Contracting Parties' objective of ensuring the most uniform possible application and interpretation of the provisions referred to in Article 1, the Mixed Committee shall keep under constant review developments in the case-law of the Court of Justice of the European Communities, hereinafter referred to as the 'Court of Justice', and in the case-law relating to such provisions of the competent Swiss courts. To that end the Contracting Parties shall ensure the prompt mutual transmission of such case-law.

2. Switzerland shall have the right to submit statements of case or written observations to the Court of Justice in cases where a court in a Member State has applied to the Court of Justice for a preliminary ruling concerning the interpretation of the provisions referred to in Article 1.

Article 6

1. Each year Switzerland shall report to the Mixed Committee on the way in which its administrative authorities and courts have applied and interpreted the provisions referred to in

Article 1, as interpreted, where relevant, by the Court of Justice.

2. If, within two months of being notified of a substantial divergence between Court of Justice case-law and that of Switzerland's courts or of a substantial divergence between the authorities of the Member States concerned and the Swiss authorities in their application of the provisions referred to in Article 1, the Mixed Committee is unable to ensure a uniform application and interpretation, the procedure provided for in Article 7 shall be initiated.

Article 7

1. In the event of a dispute about the application or interpretation of this Agreement or where the situation provided for in Article 6(2) occurs, the matter shall be officially entered as a matter of dispute on the agenda of the Mixed Committee.

2. The Mixed Committee shall have 90 days to settle the dispute, counting from the date of adoption of the agenda on which the dispute has been placed.

3. Where the dispute cannot be settled by the Mixed Committee within the 90-day deadline provided for in paragraph 2, this deadline shall be extended by a further 90 days with a view to reaching a final settlement. If, at the end of that period, the Mixed Committee has not taken a decision, this Agreement shall cease to be applicable at the end of the last day of the period in question.

Article 8

1. With regard to the administrative and operating costs associated with the setting-up and operation of the Eurodac central unit, Switzerland shall make a contribution to the general budget of the European Communities amounting to 7,286 % of an initial reference amount of EUR 11 675 000 and, from the 2004 financial year, an annual contribution amounting to 7,286 % of the corresponding budgetary appropriations for the financial year in question.

As for the other administrative and operating costs associated with implementing this Agreement, Switzerland shall contribute to the general budget of the European Communities an annual sum calculated in accordance with its gross domestic product as a percentage of the gross domestic product of all the participating States.

2. Switzerland shall have the right to receive documents pertaining to this Agreement and, at meetings of the Mixed Committee, to request interpreting into an official language of the institutions of the European Communities of its choosing.

Article 9

The Swiss national supervisory body entrusted with data protection and the independent supervisory body established pursuant to Article 286(2) of the Treaty establishing the European Community shall cooperate to the extent necessary to carry out their duties and, in particular, shall exchange any relevant information. The two bodies shall determine arrangements governing their mutual cooperation by joint agreement.

Article 10

1. This Agreement shall not affect in any respect the other agreements concluded between the European Community and Switzerland.

2. This Agreement shall not affect in any respect any future agreements concluded with Switzerland by the European Community.

Article 11

1. The Kingdom of Denmark may request to participate in this Agreement. The Contracting Parties, acting with the consent of the Kingdom of Denmark, shall lay down the conditions governing such participation in a protocol to this Agreement.

2. Switzerland shall conclude an agreement with the Republic of Iceland and the Kingdom of Norway on the creation of reciprocal rights and obligations pursuant to their respective associations with the implementation, application and development of the Dublin/Eurodac *acquis*.

Article 12

1. This Agreement 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 Agreement 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 2, 3 and the first sentence of Article 4(2) shall apply provisionally as of the date on which this Agreement is signed.

Article 13

With respect to acts or measures adopted after this Agreement has been signed but before it enters into force, the thirty-day period referred to in the last sentence of Article 4(2) shall start to run from the day of entry into force of this Agreement.

Article 14

1. This Agreement shall be applied only if the agreements referred to in Article 11 are also implemented.

2. In addition, this Agreement shall be implemented only if the Agreement concluded between the European Union, the European Community and the Swiss Confederation concerning the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* is also implemented.

Article 15

1. Liechtenstein may accede to this Agreement.

2. The accession of Liechtenstein shall be the subject of a protocol to this Agreement setting out all the consequences of accession, including the creation of rights and obligations between Liechtenstein and Switzerland, and between Liechtenstein, of the one part, and the European Community and its Member States, in so far as they are bound by this Agreement, of the other part.

Article 16

1. Each Contracting Party may terminate this Agreement by sending a declaration in writing to the depositary. This declaration shall take effect six months after being deposited.

2. This Agreement shall be considered to have been denounced if Switzerland denounces one of the agreements referred to in Article 11 or the agreement referred to in Article 14(2).

Article 17

1. This Agreement shall be drawn up in duplicate in the Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Polish, Portuguese, Slovenian, Slovak, Spanish and Swedish languages, each of these texts being equally authentic.

2. The Maltese language version of this Agreement shall be authenticated by the Contracting Parties on the basis of an Exchange of Letters. It shall also be authentic in the same way as for the languages referred to in paragraph 1.

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

Hecho en Luxemburgo, el veintiséis de octubre de dos mil cuatro.

V Lucemburku dne dvacátého šestého října dva tisíce čtyři.

Udfærdiget i Luxembourg den seksogtyvende oktober to tusind og fire.

Geschehen zu Luxemburg am sechszwanzigsten Oktober zweitausendvier.

Kahe tuhanda neljanda aasta oktoobrikuu kahekümne kuuendal päeval Luxembourgis.

Έγινε στο Λουξεμβούργο, στις είκοσι έξι Οκτωβρίου δύο χιλιάδες τέσσερα.

Done at Luxembourg on the twenty-sixth day of October in the year two thousand and four.

Fait à Luxembourg, le vingt-six octobre deux mille quatre.

Fatto a Lussemburgo, addì ventisei ottobre duemilaquattro.

Luksemburgā, divi tūkstoši ceturtdā gada divdesmit sestajā oktobrī.

Priimta du tūkstančiai ketvirtų metų spalio dvidešimt šeštą dieną Liuksemburge.

Kelt Luxembourgban, a kettőezer-negyedik év október havának huszonhatodik napján.

Magħmula fil-Lussemburgu fis-sitta u ghoxrin jum ta' Ottubru tas-sena elfejn u erbgħa.

Gedaan te Luxemburg, de zesentwintigste oktober tweeduizend vier.

Sporządzono w Luksemburgu dnia dwudziestego szóstego października roku dwa tysiące czwartego.

Feito no Luxemburgo, em vinte e seis de Outubro de dois mil e quatro.


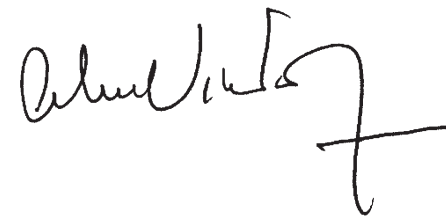
V Luxemburgu dvadsiateho šiesteho oktobra dvetisícčtyri.

V Luxembourggu, dne šestindvajsetega oktobra leta dva tisoč štiri.

Tehty Luxemburgissa kahdentenäkymmenentenäkuudentena päivänä lokakuuta vuonna kaksituhattaneljä.

Som skedde i Luxemburg den tjugosjätte oktober tjugohundrafyra.

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 vardu
az Európai Közösség részéről
Għall-Komunità Ewropea
Voor de Europese Gemeenschap
W imieniu Wspólnoty Europejskiej
Pela Comunidade Europeia
Za Európske spoločenstvo
Za Evropsko skupnost
Euroopan yhteisön puolesta
På Europeiska gemenskapens vägnar

Für die Schweizerische Eidgenossenschaft
Pour la Confédération suisse
Per la Confederazione svizzera



—

FINAL ACT

The plenipotentiaries have adopted the Joint Declarations listed below and annexed to this Final Act:

1. Joint Declaration of the Contracting Parties on a close dialogue;
2. Joint Declaration of the Contracting Parties on Directive 95/46/EC of the European Parliament and the Council on data protection.

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

1. Declaration by Switzerland on Article 4(3) (time limit for accepting new developments in the Dublin/Eurodac *acquis*);
2. Declaration of the European Commission on the committees that assist the European Commission in the exercise of its executive powers.

Hecho en Luxemburgo, el veintiséis de octubre de dos mil cuatro.

V Lucemburku dne dvacátého šestého října dva tisíce čtyři.

Udfærdiget i Luxembourg den seksogtyvende oktober to tusind og fire.

Geschehen zu Luxemburg am sechsundzwanzigsten Oktober zweitausendvier.

Kahe tuhande neljanda aasta oktoobrikuu kahekümne kuuendal päeval Luxembourgis.

Έγινε στο Λουξεμβούργο, στις είκοσι έξι Οκτωβρίου δύο χιλιάδες τέσσερα.

Done at Luxembourg on the twenty-sixth day of October in the year two thousand and four.

Fait à Luxembourg, le vingt-six octobre deux mille quatre.

Fatto a Lussemburgo, addì ventisei ottobre duemilaquattro.

Luksemburgā, divi tūkstoši ceturtdā gada divdesmit sestajā oktobrī.

Priimta du tūkstančiai ketvirtų metų spalio dvidešimt šeštą dieną Liuksemburge.

Kelt Luxembourgban, a kettőezer-negyedik év október havának huszonhatodik napján.

Magħmula fil-Lussemburgu fis-sitta u għoxrin jum ta' Ottubru tas-sena elfejn u erbgħa.

Gedaan te Luxemburg, de zesentwintigste oktober tweeduizend vier.

Sporządzono w Luksemburgu dnia dwudziestego szóstego października roku dwa tysiące czwartego.

Feito no Luxemburgo, em vinte e seis de Outubro de dois mil e quatro.

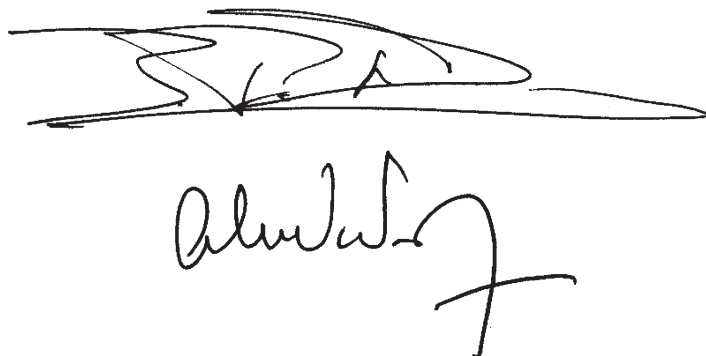
V Luxemburgu dvadsiateho šiesteho oktobra dvetisícčtyri.

V Luxembourggu, dne šestindvajsetega oktobra leta dva tisoč štiri.

Tehty Luxemburgissa kahdentenkymmenentenäkuudentena päivänä lokakuuta vuonna kaksituhattaneljä.

Som skedde i Luxemburg den tjugosjätte oktober tjugohundrafyra.

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 vardu
az Európai Közösség részéről
Għall-Komunità Ewropea
Voor de Europese Gemeenschap
W imieniu Wspólnoty Europejskiej
Pela Comunidade Europeia
Za Európske spoločenstvo
Za Evropsko skupnost
Euroopan yhteisön puolesta
På Europeiska gemenskapens vägnar

A handwritten signature in black ink, appearing to be 'Alvina', written in a cursive style.

Für die Schweizerische Eidgenossenschaft
Pour la Confédération suisse
Per la Confederazione svizzera

A handwritten signature in black ink, appearing to be 'Hein', written in a cursive style.

JOINT DECLARATIONS OF THE CONTRACTING PARTIES

JOINT 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 1(1) of the Agreement.

In accordance with Article 3(1) of the Agreement, the Commission invites experts from the Member States to attend Mixed Committee meetings with a view to holding exchanges of views with Switzerland on all the matters dealt with in the Agreement.

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

JOINT DECLARATION OF THE CONTRACTING PARTIES ON DIRECTIVE 95/46/EC OF THE EUROPEAN PARLIAMENT
AND THE COUNCIL ON DATA PROTECTION

As part of the Agreement, the Contracting Parties agree that, as regards Directive 95/46/EC of the European Parliament and 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, participation by the Swiss Confederation's representatives shall reflect the concept established by the Exchange of Letters on the committees that assist the European Commission in the exercise of its executive powers and annexed to the agreement concluded between the European Union, the European Community and the Swiss Confederation concerning the latter's association with the implementation, application and development of the Schengen *acquis*.

OTHER DECLARATIONS**DECLARATION BY SWITZERLAND ON ARTICLE 4(3) (TIME LIMIT FOR ACCEPTING NEW DEVELOPMENTS IN THE DUBLIN/EURODAC ACQUIS);**

The maximum time limit of two years laid down in Article 4(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 (100 days from the official publication of the act) and, where applicable,
- the referendum (organisation and voting).

The Federal Council shall inform the Council and the Commission without delay of the completion of each of these stages.

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

DECLARATION OF THE EUROPEAN COMMISSION ON THE COMMITTEES THAT ASSIST THE EUROPEAN COMMISSION IN THE EXERCISE OF ITS EXECUTIVE POWERS.

At present, the committees that assist the European Commission in the exercise of its executive powers regarding the implementation, application and development of the Dublin/Eurodac *acquis* are:

- the committee set up by Article 27 of Regulation (EC) No 343/2003 (Dublin Committee), and
- the committee set up by Regulation (EC) No 2725/2000 (Eurodac Committee).

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,

- Have decided to organise the meetings of the Mixed 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, 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 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.
-

Information relating to the entry into force of 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*,⁽¹⁾ as well as 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⁽²⁾

The procedures necessary for the entry into force of 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*, as well as 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, both signed in Luxembourg on 26 October 2004, having been completed on 1 February 2008, these Agreements, in accordance with their Articles 14(1) and 12(2) respectively, will enter into force simultaneously on 1 March 2008.

⁽¹⁾ See page 52. of this Official Journal.

⁽²⁾ See page 5. of this Official Journal.

COUNCIL DECISION

of 22 March 2007

concerning the conclusion of an Agreement in the form of an Exchange of Letters recording the common understanding renewing and modifying the Agreement on international cooperation on research and development activities in the domain of intelligent manufacturing systems (IMS) between the European Community and Australia, Canada, the EFTA countries of Norway and Switzerland, Korea, Japan and the United States of America

(2008/148/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 170, in conjunction with Article 300(2) and the first subparagraph of Article 300(3) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament ⁽¹⁾,

Whereas:

- (1) Decision No 1513/2002/EC of the European Parliament and of the Council of 27 June 2002 establishing the sixth framework programme of the European Community for research, technological development and demonstration activities, contributing to the creation of the European research Area and to innovation (2002 to 2006) ⁽²⁾ provides for international cooperation in the field of manufacturing research.
- (2) Decision No 1982/2006/EC of the European Parliament and of the Council of 18 December 2006 concerning the seventh framework programme of the European Community for research, technological development and demonstration activities (2007 to 2013) ⁽³⁾, provides for a continuance of international cooperation.
- (3) An agreement was concluded by exchanges of letters between the Community and Australia, Canada, the EFTA countries of Norway and Switzerland, Korea, Japan and the United States of America ⁽⁴⁾ recording the common understanding on the principles of international cooperation on research and development activities in the domain of intelligent manufacturing systems (hereinafter the IMS Agreement). The IMS Agreement expired in April 2005. As it appeared to be an added value in enhancing research in the field of intelligent manufacturing systems, the Commission requested a negotiation mandate to renew the IMS Agreement.

- (4) By Decision of 29 November 2005, the Council authorised the Commission to negotiate on behalf of the Community with Australia, Canada, the EFTA countries of Norway and Switzerland, Korea, Japan and the United States of America the renewal and modification of the IMS Agreement.
- (5) Negotiations were held in accordance with the negotiation mandate and the results are integrated in the Terms of Reference for the international cooperation activities in the field of intelligent manufacturing systems, which set out the framework for the cooperation. These Terms of Reference are attached to an Agreement in the form of an Exchange of Letters recording the common understanding renewing and modifying the Agreement on international cooperation on research and development activities in the domain of intelligent manufacturing systems (IMS) between the European Community, Australia, Canada, the EFTA countries of Norway and Switzerland, Korea, Japan and the United States of America (hereinafter the Agreement in the form of an Exchange of Letters). Modifications of the previous scheme relate to the governance of IMS and its budgetary operations.
- (6) The IMS Terms of Reference stipulate that the chair of the IMS governance rotates among the participants in the IMS scheme. In order to fulfil this duty, it is provided for the Community to host the interregional IMS secretariat in Europe.
- (7) The Agreement in the form of an Exchange of Letters should be approved,

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement in the form of an Exchange of Letters recording the common understanding renewing and modifying the Agreement on international cooperation on research and development activities in the domain of intelligent manufacturing systems (IMS) between the European Community and Australia, Canada, the EFTA countries of Norway and Switzerland, Korea, Japan and the United States of America is hereby approved on behalf of the Community.

The text of the Agreement in the form of an Exchange of Letters is attached to this Decision.

⁽¹⁾ Opinion delivered on 14 December 2006 (not yet published in the Official Journal).

⁽²⁾ OJ L 232, 29.8.2002, p. 1. Decision as amended by Decision No 786/2004/EC (OJ L 138, 30.4.2004, p. 7).

⁽³⁾ OJ L 412, 30.12.2006, p. 1.

⁽⁴⁾ OJ L 161, 18.6.1997, p. 2 and OJ L 151, 7.6.2001, p. 35.

Article 2

The President of the Council is hereby authorised to designate the person empowered to sign the Agreement in the form of an Exchange of Letters in order to bind the Community ⁽¹⁾.

Done at Brussels, 22 March 2007.

For the Council

The President

W. TIEFENSEE

⁽¹⁾ The date of entry into force of the Agreement will be published in the *Official Journal of the European Union* by the General Secretariat of the Council.

AGREEMENT

in the form of an Exchange of Letters recording the common understanding renewing and modifying the agreement on international cooperation on research and development activities in the domain of intelligent manufacturing systems (IMS) between the European Community and Australia, Canada, the EFTA countries of Norway and Switzerland, Korea, Japan and the United States of America

A. *Letter from the European Community*

Sir,

I refer to the Agreement on research and development activities in the domain of intelligent manufacturing systems (IMS) concluded in 1997 and in 2001 respectively between the European Community and Australia, Canada, the EFTA countries of Norway and Switzerland, Korea, Japan and the United States of America.

The purpose of this letter is to record the common understanding reached on the renewal and modification of this cooperation agreement as set out in the Terms of Reference which are attached to this letter.

Participating regions will work cooperatively to boost industrial competitiveness, solve problems facing manufacturing worldwide, and develop advanced manufacturing technologies and systems. Such cooperation will ensure a balance of benefits and contributions, be of industrial relevance and be based on the principle of mutual interest and understanding.

Funding of cooperate activities will be subject to the availability of funds and to the applicable laws and regulations of the participating regions. Each participating region will fund its own participation and will contribute, in funding or in kind, in an equitable manner to the costs of the Interregional IMS Secretariat. The latter will operate and proceed according the principles set out in the ToR. The European Community is prepared to host the Interregional Secretariat when its turn will be decided jointly by the participating regions.

This cooperation agreement will have a duration of 10 years. Each participating region may withdraw any time subject to 12 months notice. The participants will review the scheme five years after its launch.

The European Community and Norway reserve the option to act as a single European region.

This letter, together with its acceptance by the participating regions, endorses the ToR and records the common understanding on the principles of cooperation on IMS. I would be pleased to receive your early confirmation of this understanding.

On behalf of the European Community

ANNEX

**TERMS OF REFERENCE FOR A SCHEME FOR INTERNATIONAL COOPERATION IN ADVANCED
MANUFACTURING FOR INTELLIGENT MANUFACTURING SYSTEMS**

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1. PREAMBLE

This document sets forth the terms of reference for the partners of the intelligent manufacturing systems (IMS) scheme for international cooperation in research and development in intelligent manufacturing systems. These terms of reference are not intended to create obligations under international or domestic law.

2. PURPOSE

The IMS scheme is an international and multilateral cooperation scheme in which Participants work cooperatively to boost industrial competitiveness, solve problems facing manufacturing worldwide, and develop advanced manufacturing technologies and systems to benefit humanity. Its purposes are to:

- enhance knowledge-based manufacturing in industry to improve the quality of life and citizens and improve the global environment,
- share manufacturing knowledge and to transfer it to future generations,
- increase the participation of SMEs in international collaborative activities,
- adapt educational and training activities to support the knowledge-based manufacturing industries, and
- contribute to establishing common, global norms and standards.

3. RATIONALE

Manufacturing has been and continues to be an important element in the global economy. It remains a primary generator of wealth and is critical to establishing a sound economic basis for economic growth.

Properly managed international cooperation in research and development in advanced manufacturing can help improve manufacturing operations⁽¹⁾. IMS provides the framework within which cooperative research and development activities can flourish. IMS:

- provides a structure for global, 'forward-thinking' syntheses (e.g. roadmaps, analyses, foresight),
- fosters the creation of networks to reinforce interaction and collaborative research and development,
- fosters the development of consortia to undertake collaborative research and development projects (including cooperative work on pre-standardisation topics),
- provides an intellectual property rights management framework (Technical Appendix 1) for international collaboration and dissemination activities, and
- disseminates research results broadly.

4. OPERATING PRINCIPLES

IMS collaborative activities proceed on the following bases:

- contributions to, and benefits from such cooperation, are equitable and balanced,
- collaborative projects have industrial relevance,
- collaborative project should include where possible academic participation,
- collaborative projects are carried out by inter-regional, geographically distributed consortia,
- collaborative projects can occur throughout the full innovation cycle,

⁽¹⁾ The IMS collaboration scheme was launched in 1995, following the conclusion of a successful Feasibility Study. The duration of the initial IMS collaboration scheme was set at ten years up to 2005. Based on the experience gained in this initial phase, the partners to the IMS scheme decided to expand and improve on the initial phase. The Next-Phase IMS Working Group set up by the parties of IMS and the IMS International Steering Committee recommended that the partners to IMS renew the scheme with a modified framework for international multilateral collaboration in IMS.

- IMS project activities under government sponsorship or using government resources should not involve competitive research and development,
- results of collaborative projects are shared through a process of controlled information diffusion, and
- there should be protection for an equitable allocation of any intellectual property right created or furnished during cooperation projects.

5. STRUCTURE AND FUNDING

IMS is governed by a management structure that consists of:

- an International Steering Committee,
- an Inter-Regional Secretariat, and
- Regional Secretariats.

5.1. *Funding for the management structure*

- Each participant will fund its own participation,
- Each participant will determine the method by which its own participation will be funded,
- Each participant will contribute in an equitable manner in funding or in kind to defray the costs of operating the Inter-Regional Secretariat,
- Each participant will be responsible for supporting its own delegation, and
- Each Participant will have the right to audit the operations of the management structure.
- Principles for setting up and executing the IRS budget shall be in accordance with Technical Appendix 2.

5.2. *Funding for the Projects*

- Each participant will fund its own participation, and
- Each participant will determine the method by which its own participation will be funded.

6. MANAGEMENT STRUCTURE

6.1. *IMS International Steering Committee*

The IMS International Steering Committee will oversee the IMS scheme. Members must be eminent representatives of the participants' industrial, academic, or governmental/public administration sectors who are knowledgeable in manufacturing issues. Members must be willing and able to devote the necessary time and effort involved in guiding the IMS scheme.

6.1.2. Composition. Two members and one observer from each participant will normally comprise a participant's delegation.

Selection of delegation members is at the discretion of each participant, in accordance with the appropriate laws and provisions of their respective participant governments/public administrations. Designation of alternate delegation members is recommended, but not mandatory.

Each delegation will have a head of delegation who will serve as the chief spokesperson for the delegation. Selection of the head of delegation is at the discretion of each participant, in accordance with the appropriate laws and provisions of their respective participant governments/public administrations.

Each participant's delegation to the meetings of the IMS International Steering Committee may be accompanied by two representatives from its designated Regional Secretariat. Additional attendance is at the discretion of the chair of the IMS International Steering Committee.

- 6.1.3. Consensus. The IMS International Steering Committee will reach decisions by consensus of its members.
- 6.1.4. Chair. The chair of the IMS International Steering Committee will rotate among the participants and will be decided by the IMS International Steering Committee. The term of each chair will last for 30 months. During the term when a participant chairs, that participant also is responsible for organising the Inter-Regional Secretariat. The participant which is to take the following term will serve as vice chair.
- 6.1.5. Responsibilities. The IMS International Steering Committee will determine policies and strategies for undertaking, and for the evolution of, the IMS scheme, including the matter of new participants. It will also:
- provide overall guidance, set strategic priorities, review, amend, and update Technical Appendices 3, 4, 5, 7, and 8 and additional Technical Appendices within the scope of these terms of reference, and oversee the implementation of IMS,
 - oversee the Inter-Regional Secretariat and approve its budget,
 - provide international promotion for IMS and for manufacturing as a generic discipline,
 - endorse projects as provided in Section 10,
 - set performance metrics of the scheme and provide a regular report in respect of same,
 - ensure activities undertaken under this scheme are done in a manner consistent with the purpose, principles and structure agreed upon by the participants,
 - foster communication among the International IMS Steering Committee, the Inter-Regional Secretariats, and the project consortium members,
 - sponsor and approve new IMS documents, and
 - form interim task forces or committees (*e.g.*, for technical or legal issues), if necessary, to accomplish its work.

6.2. *Inter-Regional Secretariat*

The participant that chairs the International Steering Committee will be responsible for organising and managing the Inter-Regional Secretariat. The Inter-Regional Secretariat's primary role is to execute the policies and actions as decided by the IMS International Steering Committee. The responsibilities of the IMS Inter-Regional Secretariat are listed in Technical Appendix 4.

6.3. *Regional Secretariats*

The governments/public administrations and public organisations of the participants will organise and manage their respective Regional Secretariats in a manner they see fit. The responsibilities of the IMS Regional Secretariat are listed in Technical Appendix 5.

7. TRANSITION TO AND COMMENCEMENT OF THE IMS SCHEME

7.1. *Transition*

It is the intention of the participants that IMS projects endorsed under the original scheme should be considered to be continued to be endorsed by the current ISC and its successor upon commencement of the new IMS scheme. Other IMS activities, including processing of applications to become a participant, shall continue without interruption.

7.2. *Commencement*

The IMS scheme will commence upon:

- the ratification of the Terms of Reference for the IMS Scheme by at least three (3) participants. Participants under the pre-existing IMS Scheme become new participants under this scheme when they ratify these Terms of Reference;

- the appointment of the members to the IMS International Steering Committee; and,
- the designation of the Regional Secretariats.

8. DURATION OF THE IMS SCHEME

participants will review the scheme every five years to determine whether it should be continued, modified or terminated. A participant may withdraw at any time subject to 12 months' notice to other participants.

9. ADMISSION OF NEW PARTICIPANTS

The IMS International Steering Committee can admit new participants. The procedures for admission of new participants are set forth in Technical Appendix 6.

10. FORMATION AND EVALUATION OF PROJECT CONSORTIA AND OTHER COLLABORATIVE INSTRUMENTS

The IMS International Steering Committee shall have the authority to set the procedures for: (i) project consortia and formation, evaluation and review; these procedures are set forth in Technical Appendix 7; and (ii) other collaborative instruments within the scope of these Terms of Reference.

11. SMALL AND MEDIUM-SIZED ENTERPRISES

The participants individually and the IMS International Steering Committee will develop mechanisms to enlist SMEs directly and indirectly in the IMS scheme. A representative list of these mechanisms is in Technical Appendix 8.

12. DISSEMINATION OF RESULTS

Dissemination of information is of the utmost importance and is required in the IMS scheme. However, all information dissemination must comply with the intellectual property rights provisions in Technical Appendix 1. This includes the dissemination of interim and final project technical results.

Information dissemination will occur at the project, regional and inter-regional levels. This dissemination shall be, but not limited to, written reports, international symposia, and publications by members of the academic sector.

*Technical Appendix 1***Intellectual property rights provisions for research and development projects**

OBJECTIVES

These provisions lay down mandatory requirements as well as recommended principles for PARTNERS which wish to participate in a PROJECT conducted within the Intelligent Manufacturing Systems Scheme (IMS SCHEME). The objectives of these provisions are to provide adequate protection for intellectual property rights used in and generated during joint research and development PROJECTS under the IMS SCHEME while ensuring:

- that contributions and benefits by PARTICIPANTS, from cooperation in such PROJECTS, are equitable and balanced,
- that the proper balance is struck between the need for flexibility in PARTNERS' negotiations and the need for uniformity of procedure among PROJECTS and among PARTNERS, and
- that the results of the research will be shared by the PARTNERS through a process that protects and equitably allocates any intellectual property rights created or furnished during the cooperation.

*Article 1***Definitions**

- 1.1. ACCOUNTING. The sharing of any consideration such as royalties or other license fees by one PARTNER with another PARTNER when the first PARTNER which solely or jointly owns FOREGROUND discloses, licenses or assigns it to a third party.
- 1.2. AFFILIATE. Any legal entity directly or indirectly owned or controlled by, or owning or controlling, or under the same ownership or control as, any PARTNER. Common ownership or control through government does not in itself create AFFILIATE status.

Ownership or control shall exist through the direct or indirect:
 - ownership of more than 50 % of the nominal value of the issued equity share capital, or
 - ownership of more than 50 % of the shares entitling the holders to vote for the election of directors or persons performing similar functions, or right by any other means to elect or appoint directors, or persons performing similar functions, who have a majority vote, or,
 - ownership of 50 % of the shares, and the right to control management or operation of the company through contractual provisions.
- 1.3. BACKGROUND: All information and INTELLECTUAL PROPERTY RIGHTS except BACKGROUND RIGHTS owned or controlled by a PARTNER or its AFFILIATE and which are not FOREGROUND.
- 1.4. BACKGROUND RIGHTS: Patents for inventions and design and utility models, and applications therefor as soon as made public, owned or controlled by a PARTNER or its AFFILIATES, a license for which is necessary for the work in a PROJECT or for the commercial exploitation of FOREGROUND, and which are not FOREGROUND.
- 1.5. CONFIDENTIAL INFORMATION: All information which is not made generally available and which is only made available in confidence by law or under written confidentiality agreements.
- 1.6. CONSORTIUM: Three or more GROUPS which have agreed to carry out jointly a PROJECT.
- 1.7. COOPERATION AGREEMENT: The one or more signed agreements among all PARTNERS in a CONSORTIUM concerning the conduct of the PROJECT.
- 1.8. FOREGROUND: All information and INTELLECTUAL PROPERTY RIGHTS first created, conceived, invented or developed in the course of work in a PROJECT.
- 1.9. GROUP: All PARTNERS in a given PROJECT from the geographic area of a PARTICIPANT.
- 1.10. IMS SCHEME: The Intelligent Manufacturing Systems Scheme.

- 1.11. INTELLECTUAL PROPERTY RIGHTS: All rights defined by Article 2(viii) of the Convention Establishing the World Intellectual Property Organisation signed at Stockholm on 14 July 1967 (see Technical Appendix 1.A.), excluding trademarks, service marks and commercial names and designations.
- 1.12. NON-PROFIT INSTITUTIONS: Any legal entity, either public or private, established or organised for purposes other than profit-making, which does not itself commercially exploit FOREGROUND.
- 1.13. PARTICIPANT: Australia, Canada, the European Union and Norway, Japan, Korea, Switzerland, the United States and any other country or geographic region whose participation in the IMS SCHEME may be approved in the manner determined by the PARTICIPANTS.
- 1.14. PARTNER: Any legal or natural person participating as a contracting party to the COOPERATION AGREEMENT for a given PROJECT.
- 1.15. PROJECT: Any research and development project carried out by a CONSORTIUM within the IMS SCHEME.
- 1.16. SUMMARY INFORMATION: A description of the objectives, status and results of a PROJECT which does not disclose CONFIDENTIAL INFORMATION.

Article 2

Mandatory provisions

Each COOPERATION AGREEMENT must contain substantive terms and conditions that are fully consistent with each of the provisions 2.1 through 2.13 in this Article and the definitions used in each COOPERATION AGREEMENT shall be those specified in Article 1 of this document.

Where a PROJECT or a potential PARTNER or its AFFILIATES is subject to government requirements, whether by law or agreement, and such requirements will affect rights or obligations pursuant to the COOPERATION AGREEMENT, the potential PARTNER shall disclose to the other PARTNERS all such requirements of which it is aware prior to signing the COOPERATION AGREEMENT. PARTNERS must ensure that ownership, use, disclosure and licensing of FOREGROUND will comply with these mandatory provisions if the PROJECT is subject to government requirements.

PARTNERS will, at the outset of a PROJECT, promptly notify one another of their AFFILIATES which will be involved in the performance of the PROJECT, and will notify one another of any changes in the AFFILIATES so involved during the life of the PROJECT. At the time of entering into a COOPERATION AGREEMENT, and immediately after new legal entities have come to meet the AFFILIATE definition, PARTNERS may exclude AFFILIATES from the rights and obligations set forth in these provisions in accordance with the terms of the COOPERATION AGREEMENT.

Written Agreement

- 2.1. PARTNERS shall enter into a written COOPERATION AGREEMENT that governs their participation in a PROJECT consistent with this document.

Ownership

- 2.2. FOREGROUND shall be owned solely by the PARTNER or jointly by the PARTNERS creating it.
- 2.3. A PARTNER which is the sole owner of FOREGROUND may disclose and non-exclusively license that FOREGROUND to third parties without ACCOUNTING to any other PARTNER.
- 2.4. A PARTNER which is a joint owner of FOREGROUND may disclose and non-exclusively license that FOREGROUND to third parties without the consent of and without ACCOUNTING to any other PARTNER, unless otherwise agreed in the COOPERATION AGREEMENT.
- 2.5. A PARTNER may assign its sole and/or joint ownership interests in its BACKGROUND, BACKGROUND RIGHTS and FOREGROUND to third parties without the consent of and without ACCOUNTING to any other PARTNER.

PARTNERS who assign any of their rights to BACKGROUND RIGHTS or FOREGROUND must make each assignment subject to the COOPERATION AGREEMENT and must require each assignee to agree in writing to be bound to the assignor's obligations under the COOPERATION AGREEMENT in respect of the assigned rights.

Dissemination of information

- 2.6. SUMMARY INFORMATION shall be available to all PARTNERS in other PROJECTS and to the committees formed under the IMS SCHEME.

- 2.7. The CONSORTIUM will make available at the end of the PROJECT a public report setting out SUMMARY INFORMATION about the PROJECT.

License rights

Foreground

- 2.8. Each PARTNER and its AFFILIATES may use FOREGROUND, royalty-free, for research and development and for commercial exploitation. Commercial exploitation includes the rights to use, make, have made, sell and import.

However, in exceptional circumstances,

- PARTNERS may agree in their COOPERATION AGREEMENT to pay a royalty to PARTNERS which are NON-PROFIT INSTITUTIONS for commercial exploitation of FOREGROUND which is solely owned by such NON-PROFIT INSTITUTIONS; and
 - PARTNERS may agree in their COOPERATION AGREEMENT to pay a royalty to PARTNERS which are NON-PROFIT INSTITUTIONS for commercial exploitation of FOREGROUND which is jointly owned with such NON-PROFIT INSTITUTIONS, provided such royalties are both small and consistent with the principle that contributions and benefits in the IMS SCHEME must be balanced and equitable.
- 2.9. A non-owning PARTNER and its AFFILIATES may not disclose or sub-license FOREGROUND to third parties except that each PARTNER or its AFFILIATES may, in the normal course of business:
- disclose FOREGROUND in confidence solely for the purposes of manufacturing, having manufactured, importing or selling products,
 - sub-license any software forming part of FOREGROUND in object code, or
 - engage itself in the rightful provision of products or services that inherently disclose the FOREGROUND.

Background

- 2.10. A PARTNER in a PROJECT may, but is not obligated to, supply or license its BACKGROUND to other PARTNERS.
- 2.11. PARTNERS and their AFFILIATES may use another PARTNER'S or its AFFILIATES' BACKGROUND RIGHTS solely for research and development in the PROJECT without additional consideration, including, but not limited to, financial consideration.
- 2.12. PARTNERS and their AFFILIATES must grant to other PARTNERS and their AFFILIATES a license of BACKGROUND RIGHTS on normal commercial conditions when such license is necessary for the commercial exploitation of FOREGROUND unless:
- the owning PARTNER or its AFFILIATE is by reason of law or by contractual obligation existing before signature of the COOPERATION AGREEMENT unable to grant such licenses and such BACKGROUND RIGHTS are specifically identified in the COOPERATION AGREEMENT; or
 - the PARTNERS agree, in exceptional cases, on the exclusion of BACKGROUND RIGHTS specifically identified in the COOPERATION AGREEMENT.

Survival of rights

- 2.13. The COOPERATION AGREEMENT shall specify that the rights and obligations of PARTNERS and AFFILIATES concerning FOREGROUND, BACKGROUND and BACKGROUND RIGHTS shall survive the natural expiration of the term of the COOPERATION AGREEMENT.

*Article 3***Provisions that need to be addressed in the Cooperation Agreement**

PARTNERS shall address each of the following items in their COOPERATION AGREEMENT:

Publication of results

- 3.1. PARTNERS shall address the issue of the consent required, if any, from the other PARTNERS for publication of the results from the PROJECT other than SUMMARY INFORMATION.
- 3.2. PARTNERS shall address the issue of whether PARTNERS which are NON-PROFIT INSTITUTIONS may, for academic purposes, publish FOREGROUND which they solely own, provided that adequate procedures for protecting FOREGROUND are taken in accordance with Articles 3.3 and 3.4.

Protection of foreground

- 3.3. PARTNERS shall identify the steps they will take to seek legal protection of FOREGROUND by means of INTELLECTUAL PROPERTY RIGHTS and upon making an invention shall notify other PARTNERS in the same PROJECT in a timely manner of the protection sought and provide a summary description of the invention.
- 3.4. PARTNERS shall address the issue of prompt notification of all other PARTNERS in the same PROJECT and, upon request and on mutually agreed conditions, disclosure of the invention and reasonably cooperate in such protection being undertaken by another PARTNER in the same PROJECT in the event and to the extent that a PARTNER or PARTNERS which own FOREGROUND do not intend to seek such protection.

Confidential information

- 3.5. PARTNERS shall identify the measures they will take to ensure that any PARTNER which has received CONFIDENTIAL INFORMATION only uses or discloses this CONFIDENTIAL INFORMATION by itself or its AFFILIATES as far as permitted under the conditions under which it was supplied.

Dispute settlement and applicable laws

- 3.6. PARTNERS shall agree in their COOPERATION AGREEMENT on the manner in which disputes will be settled.
- 3.7. PARTNERS shall agree in their COOPERATION AGREEMENT on the law which will govern the COOPERATION AGREEMENT

*Article 4***Optional provisions**

PARTNERS may, but are not required to address each of the following provisions in their COOPERATION AGREEMENT:

- AFFILIATE PROVISIONS,
- ANTITRUST/COMPETITION LAW ISSUES,
- CANCELLATION AND TERMINATION,
- EMPLOYER/EMPLOYEE RELATIONSHIPS,
- EXPORT CONTROLS AND COMPLIANCE,
- FIELD OF THE AGREEMENT,
- INTENT OF THE PARTIES,
- LICENSING PARTNERS IN OTHER PROJECTS,
- LICENSOR'S LIABILITY ARISING FROM LICENSEE'S USE OF LICENSED TECHNOLOGY,
- LOANED OR ASSIGNED EMPLOYEES AND RESULTING RIGHTS,

-
- NEW PARTNERS AND WITHDRAWAL OF PARTNERS FROM PROJECTS,
 - POST COOPERATION AGREEMENT BACKGROUND,
 - PROTECTION, USE AND NON-DISCLOSURE OBLIGATIONS REGARDING CONFIDENTIAL INFORMATION,
 - RESIDUAL INFORMATION,
 - ROYALTY RATES FOR BACKGROUND RIGHT LICENSES,
 - SOFTWARE SOURCE CODE,
 - TAXATION,
 - TERM/DURATION OF AGREEMENT.

There are likely to be other provisions the PARTNERS will need to put into their COOPERATION AGREEMENTS depending on the particular circumstances of their PROJECT. PARTNERS should seek their own expert advice on this and note that no additional terms may conflict with Articles 1 and 2 of these provisions.

*Technical Appendix 1.A***Convention establishing the World Intellectual Property Organisation (Stockholm, 14 July 1967)**

Article 2(viii) defines Intellectual Property to include:

'... the rights to literary, artistic and scientific works; performances of performing artists; phonograms, and broadcasts; inventions in all fields of human endeavour; scientific discoveries; industrial designs; trade marks, service marks, and commercial names and designations; protection against unfair competition; and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.'

*Technical Appendix 2***Financial accountability and principles for setting up and executing the IRS budget**

ISC and IRS members should avoid conflicts of interest in so far as decisions relating to the IRS budget are concerned.

All revenue and expenditures must be incorporated in a single set of accounts ⁽¹⁾ to be approved by the ISC.

The balance between revenue and expenditure must be respected at all times ⁽²⁾.

The budget shall be annual with exceptional carry-overs ⁽³⁾.

There should be no transfers of appropriations between line items of budget expenditure, unless formally approved by the ISC.

All revenues shall constitute a common pool ⁽⁴⁾.

All expenditures shall be reasonable, justified and in accordance with the principles of sound financial management.

The IRS shall respond to all reasonable requests to report on its financial activities.

Regional contributions shall be based on fair principles, and will be paid in accordance with a defined schedule subject to late fees. Regional contributions will be based on the approved IRS budget and will be structured in different tiers, related directly to the size and level of development of each participant's economy. The Initial participants will be allocated in two tiers as follows:

- Tier 1: European Union and Norway, Japan, United States,
- Tier 2: Australia, Canada, Korea, Switzerland.

The maximum amounts for the contributions will be CAD 200 000 or equivalent per annum for Tier 1; and CAD 125 000 or equivalent per annum for Tier 2.

The foregoing principles shall be incorporated in a document on IRS operational guidelines.

⁽¹⁾ Revenue and expenditures need to be in one single budgetary document; which is subject to approval.

⁽²⁾ Expenditures should not be increased simply to keep revenues and expenditures in balance.

⁽³⁾ By way of example, an 'exceptional carry over' may be made as a provision against negative cashflow from year to year, to preserve operational flexibility.

⁽⁴⁾ All contributions shall form a common pool and no members' contribution/revenue can be designated for use with a certain purpose only; concomitantly, no expenditure may be assigned to a particular contribution.

*Technical Appendix 3***IMS technical themes**

In general, any project that addresses the IMS Scheme objectives as set forth in these terms of reference is considered an appropriate topic for an IMS Project. IMS projects might also address one or more of the following technical themes:

1. Total product life cycle issues

- Future general models of manufacturing systems. Examples for that theme are the proposals of 'agile manufacturing', 'fractal factory', 'bionic manufacturing', 'holistic enterprise integration', etc.
- Intelligent communication network systems for information processes in manufacturing. To understand the productivity of global distribution and global sourcing, the communication networks and tools and their applications have to be improved.
- Environment protection, minimum use of energy and materials. Environment, energy and materials questions have reached a complexity that can only be handled via cooperation with a variety of specialists. Due to the fact that the conditions in that field are very different in different regions a common understanding and harmonised views for the response of manufacturing technologies to environment protection are necessary.
- New ideas and methods for recyclability that are globally accepted should be developed under the IMS umbrella.

Harmonised assessment and economic justification models for new manufacturing systems.

2. Process issues

To enable the needs for rapid response to changing requirements and to saving human and material resources and to improving working conditions for employees the following themes can be identified.

- Clean manufacturing processes that can minimise effects on environment. Process emission minimised systems. Process disposal minimised systems.
- Factory (process) life-cycle pre-assessed systems.

Minimum consumption of energy. Energy efficient processes that can meet manufacturing requirements with minimum consumption of energy. Integrated cycled process for less energy consumption.

- Modules of energy conservation type. Production management technology of energy conservation type.
- Technology innovation in manufacturing processes. Methods that can quickly produce different products through 'Rapid Prototyping Methods'. Manufacturing processes that can flexibly respond to changes in labour conditions, changes of products or materials.
- Improvement in the flexibility and autonomy of processing modules that compose manufacturing systems. Open distributed systems and their modules that can match both unmanned, man-machine mixed and labour intensive systems, and can metamorphologically architect system components in correspondence with changes of products.
- Improvement in interaction or harmony among various components and functions of manufacturing. Open infrastructure for manufacturing. Inter-connected information systems such as 'remote ID' among respective modules.

3. Strategy/planning/design tools

Manufacturing takes place in a global economy. How and where raw materials are transformed is a strategic decision. The decision is complicated in terms of what to make and where to make or buy it, in what is becoming a single global economy.

Many of today's manufacturing organisations are designed using vertical and hierarchical structures. The move towards hierarchical structures is and will continue to require major changes in organisations, systems and work practices. We need methodologies and tools to help us to define appropriate manufacturing strategies and to design appropriate organisations and business/work processes.

Methods and tools to support business process re-engineering. Modelling tools to support the analyses and development of manufacturing strategies.

Design support tools to support planning in an extended enterprise or virtual enterprise environment.

4. Human/organisation/social issues

- Promotion and development projects for improved image of manufacturing. Manufacturing engineers tend to be at the bottom of the pay scale relevant to other engineers, and the profession as a whole has a lower stature. Therefore ITC considers as projects globally recognised, strong professional societies and educational institutions for the promotion of manufacturing as a discipline. These proposals include the creation of international organisations to promote manufacturing.
- Improved capability of manufacturing workforce/education, training. Engineering education has often tended to emphasise theory over process. In addition, basic education has not always met the needs of industry, producing graduates with often-inadequate skills. This has led to industries that are poor at turning innovation into successful products. This necessitates a change in priorities and closer ties between industry and educational institutions. As well, changes in system organisation means that training within companies is a continuous process which seeks to update the skills and increase the potential of employees — the crucial elements in any system.
- Autonomous offshore plants (integration of supplementary business functions in subsidiaries). Offshore plants were originally meant to increase market share and decrease production costs: development of the transplant labour forces were a secondary consideration. However, giving more autonomy to these plants enables them to react more flexibly to changing conditions in the areas where they are based, and is consistent with organisational ideas of decentralisation, empowerment and hierarchy flattening. It also serves to contribute to domestic development in the countries where the plants are located and further the IMS goal of spreading widely basic manufacturing knowledge.
- Corporate technical memory — keeping, developing, accessing. Often in a manufacturing enterprise knowledge and sources of information are isolated or locked. 'Organisational learning' is a strategy for translating such knowledge into a framework or a model that leads to better decision-making and could be an important theme within IMS.
- Appropriate performance measures for new paradigms. New paradigms of manufacturing must offer superiority in performance from the points of view of costs, quality, delivery and flexibility. The first three are familiar performance criteria used for mass production, while flexibility is a key attribute of new paradigm manufacturing. To increase the acceptance of new paradigms performance evaluation methods should be developed.

5. Virtual/extended enterprise issues

The extended enterprise is an expression of the market-driven requirement to embrace external resources in the enterprise without owning them. Core business focus is the route to excellence but product/service delivery requires the amalgam of multiple world-class capabilities. Changing markets require a fluctuating mix of resources. The extended enterprises which can be likened to the ultimate customisable, reconfigurable, manufacturing resource is the goal. The operation of the extended enterprise requires take up of communications and database technologies that are near to the current state of the art. However, the main challenge is organisational rather than technological.

Research and development opportunities in this area are:

- methodologies to determine and support information processes and logistics across the value chain in the extended enterprise,
 - architecture (business, functional and technical) to support engineering cooperation across the value chain, e.g., concurrent engineering across the extended enterprise,
 - methods and approaches to assign cost/liability/risk and reward to elements of the extended enterprise,
 - team working across individual units within the extended enterprise.
-

*Technical Appendix 4***Responsibilities of the IMS Inter-Regional Secretariat**

The Inter-Regional Secretariat will have responsibility to:

1. provide logistics for inter-regional meetings and proposals,
 2. maintain and distribute IMS meeting materials and other documents,
 3. provide logistics for inter-regional publicity at the direction of the International Steering Committee,
 4. educate new and prospective participants,
 5. disseminate information during, and upon the conclusion of, projects,
 6. assist with inter-regional consortia formation,
 7. organise and arrange studies and/or work as requested by the International IMS Steering Committee, and
 8. undertake other appropriate tasks as assigned by the International Steering Committee.
-

*Technical Appendix 5***Responsibilities of the IMS Regional Secretariats**

To support the IMS Scheme, the Regional Secretariats will:

1. provide regional logistics for inter-regional meetings and proposals,
 2. maintain and distribute IMS meeting materials and other documents within respective regions,
 3. provide logistics for regional meetings and promotion,
 4. disseminate information during and upon the conclusion of projects within respective regions,
 5. assist in consortium formation within and across respective regions,
 6. support regional delegations in attending the International IMS Steering Committee meetings,
 7. facilitate regional selections and reviews, and
 8. work with regional infrastructure groups to facilitate the IMS Scheme.
-

*Technical Appendix 6***Admission of new participants**

Procedures for admission of new participants to the IMS scheme are as follows:

1. The admission process begins with a letter of inquiry/interest from a ministerial or senior government/public administration level in the prospective participant, addressed to the chair of the IMS International Steering Committee.
2. Each IMS head of delegation shall be alerted to the receipt of this letter of inquiry/interest. Each IMS participant is chartered to evaluate the application and respond through its respective head of delegation to the chair of the IMS International Steering Committee.
3. If all IMS participants accept the application, the chair of the IMS International Steering Committee shall inform, in writing, the applicant that if the applicant can ratify these Terms of Reference, then the IMS scheme will admit the applicant as a full participant.

This process shall be completed as soon as practical, and in no case should take longer than three months after receipt of the letter of inquiry/interest.

*Technical Appendix 7***Project consortia formation and evaluation**

The Regional Secretariats together with the Inter-Regional Secretariat provide assistance in forming consortia for IMS projects.

A. *Basic consortium formation document*

Each consortium will prepare a basic document that explains the:

- IMS technical themes addressed by the project,
- industrial relevance of the project,
- project work plans, organisation and structure,
- basic information, including contact information, of project partners,
- a consortium cooperation agreement that addresses the intellectual property provisions and other legal requirements for the consortium, and
- other relevant information to facilitate project endorsement.

B. *International coordinating partner*

An international coordinating partner must be appointed by each consortium. The appointed international coordinating partner must be an entity with the necessary resources and expertise to lead the project to its completion. International coordinating partner duties include:

- coordinate consortia formation,
- coordinate preparation of full proposal and cooperation agreements,
- act as the primary contact for all communication between the consortium and the International Steering Committee and Inter-Regional Secretariat, and
- facilitate successful execution of the project.

C. *List of interested entities*

Within a region, its Regional Secretariat will distribute to all organisations in the industrial, academic and governmental sectors identified as potential project partners the basic document, the domestic funding opportunities, and the domestic agenda for the IMS scheme. The Regional Secretariat will compile a list of interested entities. The list must include the area of interest and the capabilities of each of the interested entities.

D. *Exchange of project proposals*

Any entity can submit preliminary proposals to its Regional Secretariat for transmittal to, and posting by, the Inter-Regional Secretariat.

Regional Secretariats will distribute these proposals to interested entities within their Regions. Based on the information, potential partners can strive to form international consortia.

E. *Evaluation, selection and review of projects*

Proposals and projects must be consistent with the purpose and the principles of the scheme, and the intellectual property provisions set forth in Technical Appendix 1.

1. Project selection criteria

- Industrial relevance
- Compliance with the technical themes in Appendix 3 as may be amended from time to time by the IMS International Steering Committee
- Scientific and technical merit
- Adoption, commercialisation and exploitation potential
- The IMS International Steering Committee shall assess compliance with the IPR provisions in Technical Appendix 1
- Value-added.

2. Consortium SELECTION Criteria

- Inter-Regional DISTRIBUTION OF PARTNERS. Consortium partners must be from at least three participants. Partners from applicant Regions may participate in consortia on a case-by-case basis.
- Balanced Contributions and Benefits. The consortium partners will show how the contributions to, and the benefits from, participation are equitable and balanced. To this end, partners' contributions to the project should be identified by scale and scope.
- Inter-regional leadership. The inter-regional consortium must appoint an international coordinating partner for the consortium to carry out the duties described in Section B above.
- Dissemination of results. The consortium must commit to and submit a plan to disseminate project results, including the lessons learned in forming and managing IMS consortium, and non-proprietary technical results permitted by the IPR provisions.

3. Project endorsement

The project endorsement process consists of three stages. The IMS International Steering Committee and Inter-Regional Secretariat will endeavour to move the entire endorsement process expeditiously.

- Project abstract evaluation. The consortium must submit an abstract of the planned research. This abstract shall be submitted to the Regional Secretariats for initial regional reviews. Each delegation will make a recommendation to the International IMS Steering Committee. Proposers of unapproved projects will be given feedback as to why they did not receive support.
- Full proposal evaluation. The consortium must submit a final proposal using a standardised format for detailed evaluation by all regions. The final proposal shall include the formal commitment of each partner to the principles, the structure and the IPR provisions of the IMS scheme, and will include a signed consortium cooperation agreement.
- Final endorsement. Final endorsement will be made by the IMS International Steering Committee based on the regional recommendations and the submitted proposals.

F. Project review

The IMS International Steering Committee, through the Inter-Regional Secretariat, will monitor and review progress regularly. To facilitate this, each consortium will submit an annual summary report, in a standardised format, to the IMS International Steering Committee.

Any region may review progress of partner(s) from its region at any time as it sees fit.

*Technical Appendix 8***Role of IMS vis-à-vis small and medium-sized enterprises (SMEs), universities and government research institutes**

All regions should consider activities such as:

- A. Clear and well documented advice on IPR issues.
- B. A 'road map' of existing constraints in law or custom in the participants' territories, and their practical implications.
- C. Help desks for answering simple queries.
- D. An electronic partner search facility specifically oriented to SMEs.
- E. An electronic register of 'expressions of interest' by SMEs, which are looking for opportunities to join existing or emerging project clusters.
- F. An ongoing 'case-book' of IMS experiences with donations from project teams.
- G. Dissemination events specifically geared to various SME sectors.

The list is not exhaustive, and research should continue alongside the evolving scheme, to monitor the participation of SMEs, and to identify further needs.

The items listed above also are useful for encouraging the participating of universities and government research institutes. Harnessing the educational role of universities in dissemination of results of research through to the next generation of practitioners is necessary.

B. *Letter from Australia*

Sir,

I acknowledge receipt of your letter of ... which reads as follows:

'I refer to the Agreement on research and development activities in the domain of intelligent manufacturing systems (IMS) concluded in 1997 and in 2001 respectively between the European Community and Australia, Canada, the EFTA countries of Norway and Switzerland, Korea, Japan and the United States of America.

The purpose of this letter is to record the common understanding reached on the renewal and modification of this cooperation agreement as set out in the Terms of Reference which are attached to this letter.

Participating regions will work cooperatively to boost industrial competitiveness, solve problems facing manufacturing worldwide, and develop advanced manufacturing technologies and systems. Such cooperation will ensure a balance of benefits and contributions, be of industrial relevance and be based on the principle of mutual interest and understanding.

Funding of cooperate activities will be subject to the availability of funds and to the applicable laws and regulations of the participating regions. Each participating region will fund its own participation and will contribute, in funding or in kind, in an equitable manner to the costs of the Interregional IMS Secretariat. The latter will operate and proceed according the principles set out in the ToR. The European Community is prepared to host the Interregional Secretariat when its turn will be decided jointly by the participating regions.

This cooperation agreement will have duration of 10 years. Each participating region may withdraw any time subject to 12 months notice. The participants will review the scheme five years after its launch.

The European Community and Norway reserve the option to act as a single European region.

This letter, together with its acceptance by the participating regions, endorses the ToR and records the common understanding on the principles of cooperation on IMS. I would be pleased to receive your early confirmation of this understanding.'

I have the honor to confirm that my Government is in agreement with the contents of your letter.

For the Government of Australia

C. *Letter from Canada*

Sir,

I acknowledge receipt of your letter of which reads as follows:

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This letter, together with its acceptance by the participating regions, endorses the ToR and records the common understanding on the principles of cooperation on IMS. I would be pleased to receive your early confirmation of this understanding.'

I have the honor to confirm that my Government is in agreement with the contents of your letter.

For the Government of Canada

D. *Letter from Norway*

Sir,

I acknowledge receipt of your letter of which reads as follows:

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The purpose of this letter is to record the common understanding reached on the renewal and modification of this cooperation agreement as set out in the Terms of Reference which are attached to this letter.

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Funding of cooperate activities will be subject to the availability of funds and to the applicable laws and regulations of the participating regions. Each participating region will fund its own participation and will contribute, in funding or in kind, in an equitable manner to the costs of the Interregional IMS Secretariat. The latter will operate and proceed according the principles set out in the ToR. The European Community is prepared to host the Interregional Secretariat when its turn will be decided jointly by the participating regions.

This cooperation agreement will have duration of 10 years. Each participating region may withdraw any time subject to 12 months notice. The participants will review the scheme five years after its launch.

The European Community and Norway reserve the option to act as a single European region.

This letter, together with its acceptance by the participating regions, endorses the ToR and records the common understanding on the principles of cooperation on IMS. I would be pleased to receive your early confirmation of this understanding.'

I have the honor to confirm that my Government is in agreement with the contents of your letter.

For the Government of Norway

E. *Letter from Switzerland*

Sir,

I acknowledge receipt of your letter of which reads as follows:

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The purpose of this letter is to record the common understanding reached on the renewal and modification of this cooperation agreement as set out in the Terms of Reference which are attached to this letter.

Participating regions will work cooperatively to boost industrial competitiveness, solve problems facing manufacturing worldwide, and develop advanced manufacturing technologies and systems. Such cooperation will ensure a balance of benefits and contributions, be of industrial relevance and be based on the principle of mutual interest and understanding.

Funding of cooperate activities will be subject to the availability of funds and to the applicable laws and regulations of the participating regions. Each participating region will fund its own participation and will contribute, in funding or in kind, in an equitable manner to the costs of the Interregional IMS Secretariat. The latter will operate and proceed according the principles set out in the ToR. The European Community is prepared to host the Interregional Secretariat when its turn will be decided jointly by the participating regions.

This cooperation agreement will have duration of 10 years. Each participating region may withdraw any time subject to 12 months notice. The participants will review the scheme five years after its launch.

The European Community and Norway reserve the option to act as a single European region.

This letter, together with its acceptance by the participating regions, endorses the ToR and records the common understanding on the principles of cooperation on IMS. I would be pleased to receive your early confirmation of this understanding.'

I have the honor to confirm that my Government is in agreement with the contents of your letter.

For the Government of the Swiss Confederation

F. *Letter from Korea*

Sir,

I acknowledge receipt of your letter of... which reads as follows:

'I refer to the Agreement on research and development activities in the domain of intelligent manufacturing systems (IMS) concluded in 1997 and in 2001 respectively between the European Community and Australia, Canada, the EFTA countries of Norway and Switzerland, Korea, Japan and the United States of America.

The purpose of this letter is to record the common understanding reached on the renewal and modification of this cooperation agreement as set out in the Terms of Reference which are attached to this letter.

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This cooperation agreement will have duration of 10 years. Each participating region may withdraw any time subject to 12 months notice. The participants will review the scheme five years after its launch.

The European Community and Norway reserve the option to act as a single European region.

This letter, together with its acceptance by the participating regions, endorses the ToR and records the common understanding on the principles of cooperation on IMS. I would be pleased to receive your early confirmation of this understanding.'

I have the honor to confirm that my Government is in agreement with the contents of your letter.

For the Government of the Republic of Korea

G. *Letter from Japan*

Sir,

I acknowledge receipt of your letter of which reads as follows:

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Funding of cooperate activities will be subject to the availability of funds and to the applicable laws and regulations of the participating regions. Each participating region will fund its own participation and will contribute, in funding or in kind, in an equitable manner to the costs of the Interregional IMS Secretariat. The latter will operate and proceed according the principles set out in the ToR. The European Community is prepared to host the Interregional Secretariat when its turn will be decided jointly by the participating regions.

This cooperation agreement will have duration of 10 years. Each participating region may withdraw any time subject to 12 months notice. The participants will review the scheme five years after its launch.

The European Community and Norway reserve the option to act as a single European region.

This letter, together with its acceptance by the participating regions, endorses the ToR and records the common understanding on the principles of cooperation on IMS. I would be pleased to receive your early confirmation of this understanding.'

I have the honor to confirm that my Government is in agreement with the contents of your letter.

For the Government of Japan

H. *Letter from the United States of America*

Sir,

I acknowledge receipt of your letter of which reads as follows:

'I refer to the Agreement on research and development activities in the domain of intelligent manufacturing systems (IMS) concluded in 1997 and in 2001 respectively between the European Community and Australia, Canada, the EFTA countries of Norway and Switzerland, Korea, Japan and the United States of America.

The purpose of this letter is to record the common understanding reached on the renewal and modification of this cooperation agreement as set out in the Terms of Reference which are attached to this letter.

Participating regions will work cooperatively to boost industrial competitiveness, solve problems facing manufacturing worldwide, and develop advanced manufacturing technologies and systems. Such cooperation will ensure a balance of benefits and contributions, be of industrial relevance and be based on the principle of mutual interest and understanding.

Funding of cooperate activities will be subject to the availability of funds and to the applicable laws and regulations of the participating regions. Each participating region will fund its own participation and will contribute, in funding or in kind, in an equitable manner to the costs of the Interregional IMS Secretariat. The latter will operate and proceed according the principles set out in the ToR. The European Community is prepared to host the Interregional Secretariat when its turn will be decided jointly by the participating regions.

This cooperation agreement will have duration of 10 years. Each participating region may withdraw any time subject to 12 months notice. The participants will review the scheme five years after its launch.

The European Community and Norway reserve the option to act as a single European region.

This letter, together with its acceptance by the participating regions, endorses the ToR and records the common understanding on the principles of cooperation on IMS. I would be pleased to receive your early confirmation of this understanding.'

I have the honor to confirm that my Government is in agreement with the contents of your letter.

For the Government of the United States of America

Information relating to the entry into force of the Agreement in the form of an Exchange of Letters recording the common understanding renewing and modifying the Agreement on international cooperation on research and development activities in the domain of intelligent manufacturing systems (IMS) between the European Community and Australia, Canada, the EFTA countries of Norway and Switzerland, the Korea, Japan and the United States of America ⁽¹⁾.

The aforementioned Agreement, in accordance with its point 7(2), has entered into force between the European Community and Japan, Korea, Norway and the United States of America on 4 January 2008.

⁽¹⁾ See page 21 of this Official Journal.

III

(Acts adopted under the EU Treaty)

ACTS ADOPTED UNDER TITLE VI OF THE EU TREATY

COUNCIL DECISION

of 28 January 2008

on the conclusion on behalf of the European Union of 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*

(2008/149/JHA)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 24 and Article 38 thereof,

Having regard to the recommendation of the Presidency,

Whereas:

- (1) Following the authorisation given to the Presidency, assisted by the Commission, on 17 June 2002, negotiations with the Swiss Authorities, regarding the association of Switzerland with the implementation, application and development of the Schengen *acquis* have been concluded.
- (2) In accordance with Council Decision 2004/849/EC ⁽¹⁾, and subject to its conclusion at a later date, 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* has been signed on behalf of the European Community on 26 October 2004.
- (3) The Agreement should now be approved.
- (4) As far as the development of the Schengen *acquis*, which falls under Title VI of the Treaty on European Union, is concerned the provisions of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis* ⁽²⁾, apply *mutatis mutandis* to relations with Switzerland.

(5) 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/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* ⁽³⁾.

(6) 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 Council Decision 2002/193/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis* ⁽⁴⁾.

HAS DECIDED AS FOLLOWS:

Article 1

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*, and the related documents consisting of the Final Act, the Agreement in the form of an Exchange of Letters on the Committees that assist the Commission in the exercise of its executive powers, and the Joint Declaration on joint meetings of Mixed Committees are hereby approved on behalf of the European Union.

The text of the Agreement, the Final Act, the Exchange of Letters, and the Joint Declaration are attached to this Decision.

⁽¹⁾ OJ L 368, 17.12.2004, p. 78.

⁽²⁾ OJ L 176, 10.7.1999, p. 31.

⁽³⁾ OJ L 131, 1.6.2000, p. 43.

⁽⁴⁾ OJ L 64, 7.3.2002, p. 20.

Article 2

This Decision applies to the fields covered by the provisions listed in Annexes A and B of the Agreement and to their development to the extent that such provisions have, or, in accordance with Decision 1999/436/EC ⁽¹⁾, have been determined to have, a legal base within the Treaty on European Union.

Article 3

The provisions of Articles 1 to 4 of Council Decision 1999/437/EC shall apply, in the same way, to the association of Switzerland with the implementation, application and development of the Schengen *acquis*, which falls under Title VI of the Treaty on European Union.

Article 4

The President of the Council is hereby authorised to designate the person empowered to deposit on behalf of the European

Union the Instrument of approval provided for in Article 14 of the Agreement, in order to express the consent of the European Union to be bound.

Article 5

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

Done at Brussels, 28 January 2008.

For the Council

The President

D. RUPEL

⁽¹⁾ OJ L 176, 10.7.1999, p. 17.

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**

THE EUROPEAN UNION,

THE EUROPEAN COMMUNITY,

and

THE SWISS CONFEDERATION,

hereinafter referred to as 'the Contracting Parties',

WHEREAS with the entry into force of the Treaty of Amsterdam, the European Union has set itself the objective of maintaining and developing the Union as an area of freedom, security and justice, in which the free movement of persons is assured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime;

WHEREAS the Schengen *acquis*, which is integrated into the framework of the European Union, constitutes part of the provisions designed to achieve this area of freedom, security and justice insofar as these provisions create an area without internal border controls and provide for compensatory measures to ensure a high level of security;

CONSIDERING the geographical position of the Swiss Confederation;

WHEREAS the participation of the Swiss Confederation in the Schengen *acquis* and in its further development will, on the one hand, enable certain obstacles to the free movement of persons resulting from the geographical position of the Swiss Confederation to be eliminated and, on the other hand, strengthen cooperation between the European Union and the Swiss Confederation in the fields covered by the Schengen *acquis*;

WHEREAS the Agreement concluded on 18 May 1999 by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway ⁽¹⁾ associated the latter two States with the implementation, application and development of the Schengen *acquis*;

WHEREAS it is desirable that the Swiss Confederation be associated on an equal footing with Iceland and Norway in the implementation, application and development of the Schengen *acquis*;

WHEREAS an agreement should be concluded between the European Union, the European Community and the Swiss Confederation containing rights and obligations similar to those agreed between the Council of the European Union, of the one part, and Iceland and Norway, of the other part;

CONVINCED of the need to organise cooperation between the European Union and the Swiss Confederation as regards the implementation, practical application and further development of the Schengen *acquis*;

WHEREAS it is necessary, in order to associate the Swiss Confederation with the activities of the European Union in the fields covered by this Agreement and to enable it to participate in those activities, to set up a committee in accordance with the institutional model established for the association of Iceland and Norway;

WHEREAS Schengen cooperation is based on the principles of freedom, democracy, the rule of law and respect for human rights, as guaranteed in particular by the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950;

⁽¹⁾ OJ L 176, 10.7.1999, p. 36.

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, and whereas the decisions designed to develop the Schengen *acquis* pursuant to that Title which Denmark has transposed into its domestic law are only liable to create international-law obligations between Denmark and the other Member States;

WHEREAS the United Kingdom of Great Britain and Northern Ireland and Ireland participate in certain provisions of the Schengen *acquis*, in accordance with the decisions taken pursuant to the Protocol integrating the Schengen *acquis* into the framework of the European Union and annexed by the Treaty of Amsterdam to the Treaty on European Union and to the Treaty establishing the European Community⁽¹⁾;

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

WHEREAS the smooth operation of the Schengen *acquis* requires that this Agreement be applied simultaneously with the agreements between the various parties associated with or participating in the implementation and development of the Schengen *acquis* governing their mutual relations;

HAVING REGARD TO the Agreement on the association of the Swiss Confederation with the implementation, application and development of the Community *acquis* concerning the establishment of criteria and mechanisms to determine the State responsible for examining a request for asylum lodged in one of the Member States and concerning the setting-up of the 'Eurodac system';

BEARING IN MIND the link between the Schengen *acquis* and the Community *acquis*;

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 the 'Eurodac' system,

HAVE AGREED AS FOLLOWS:

Article 1

1. The Swiss Confederation, hereinafter referred to as 'Switzerland', shall be associated with the activities of the European Community and the European Union in the fields covered by the provisions referred to in Annexes A and B to this Agreement and their further development.

2. This Agreement creates reciprocal rights and obligations in accordance with the procedures set out herein.

Article 2

1. The provisions of the Schengen *acquis* as listed in Annex A to this Agreement as they apply to the Member States of the European Union, hereinafter referred to as 'Member States', shall be implemented and applied by Switzerland.

2. The provisions of the acts of the European Union and of the European Community listed in Annex B to this Agreement, to the extent that they have replaced and/or developed corresponding provisions of, or provisions adopted pursuant to, the

Convention signed in Schengen on 19 June 1990 implementing the Agreement on the gradual abolition of checks at common borders, hereinafter referred to as the Convention Implementing the Schengen Agreement, shall be implemented and applied by Switzerland.

3. The acts and measures taken by the European Union and the European Community amending or building upon the provisions referred to in Annexes A and B, to which the procedures set out in this Agreement have been applied, shall also, without prejudice to Article 7, be accepted, implemented and applied by Switzerland.

Article 3

1. A Mixed Committee is hereby established, consisting of representatives of the Swiss Government, members of the Council of the European Union, hereinafter referred to as the 'Council', and members of the Commission of the European Communities, hereinafter referred to as the 'Commission'.

⁽¹⁾ OJ L 131, 1.6.2000, p. 43 and OJ L 64, 7.3.2002, p. 20.

2. The Mixed Committee shall adopt its own Rules of Procedure by consensus.

3. The Mixed Committee shall meet at the initiative of its President or at the request of any of its members.

4. Subject to Article 4(2), the Mixed Committee shall meet at the level of Ministers, senior officials or experts, as circumstances require.

5. The office of President of the Mixed Committee shall be held:

- at the level of experts: by the representative of the European Union,
- at the level of senior officials and Ministers: alternately, for a period of six months, by the representative of the European Union and by the representative of the Swiss Government.

Article 4

1. The Mixed Committee shall address, in accordance with this Agreement, all matters covered by Article 2 and shall ensure that any concern entertained by Switzerland is duly considered.

2. In the Mixed Committee at ministerial level, the representatives of Switzerland shall have the opportunity:

- to explain the problems they encounter in respect of a particular act or measure or to respond to the problems encountered by other delegations,
- to express themselves on any questions concerning the drawing up of provisions of concern to them or the implementation thereof.

3. Meetings of the Mixed Committee at ministerial level shall be prepared by the Mixed Committee at the level of senior officials.

4. The representative of the Swiss Government shall have the right to make suggestions in the Mixed Committee relating to the matters mentioned in Article 1. After discussion, the Commission or any Member State may consider such suggestions with a view to making a proposal or taking an initiative, in accordance with the rules of the European Union, for the adoption of an act or measure of the European Community or the European Union.

Article 5

Without prejudice to Article 4, the Mixed Committee shall be informed about the preparation within the Council of any acts or measures which may be relevant to this Agreement.

Article 6

When drafting new legislation in a field which is covered by this Agreement, the Commission shall informally seek advice from Swiss experts in the same way as it seeks advice from experts of the Member States for drawing up its proposals.

Article 7

1. The adoption of new acts or measures related to the matters referred to in Article 2 shall be reserved to the competent institutions of the European Union. Subject to paragraph 2, such acts or measures shall enter into force simultaneously for the European Union, the European Community and its Member States concerned and for Switzerland, unless those acts or measures explicitly state otherwise. In this context, due account shall be taken of the period of time indicated by Switzerland in the Mixed Committee as being necessary to enable it to fulfil its constitutional requirements.

2. (a) The Council shall notify Switzerland immediately of the adoption of the acts or measures referred to in paragraph 1 to which the procedures set out in this Agreement have been applied. Switzerland shall decide whether to accept their contents and to implement them in its internal legal order. This decision shall be notified to the Council and to the Commission within 30 days of the adoption of the acts or measures concerned.

(b) If the contents of such an act or measure can become binding on Switzerland only after the fulfilment of constitutional requirements, Switzerland shall inform the Council and the Commission of this at the time of its notification. Switzerland shall promptly inform the Council and the Commission in writing upon fulfilment of all constitutional requirements. Where a referendum is not required, notification shall take place as soon as the referendum deadline expires. If a referendum is required, Switzerland shall have a maximum of two years 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 Switzerland and until it has given notification that the constitutional requirements have been met, Switzerland shall, where possible, implement the act or measure in question on a provisional basis.

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

3. Acceptance by Switzerland of the acts and measures referred to in paragraph 2 creates rights and obligations between Switzerland, on the one hand, and the European Union, the European Community and the Member States, in so far as they are bound by these acts and measures, on the other hand.

4. Where:
- (a) Switzerland notifies its decision not to accept the contents of an act or measure referred to in paragraph 2 and to which the procedures set out in this Agreement have been applied; or
 - (b) Switzerland does not carry out notification within the 30-day time limit referred to in paragraph 2(a) or paragraph 5(a); or
 - (c) Switzerland does not carry out notification after the referendum deadline has expired or, in the case of a referendum, within the two-year time limit set out in paragraph 2(b), 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 Agreement shall be considered terminated unless the Mixed Committee, after carrying out a careful examination of ways of continuing the Agreement, decides otherwise within 90 days. Termination of this Agreement shall take effect three months after the expiry of the 90-day period.

- 5. (a) If provisions of a new act or measure have the effect of no longer allowing Member States to subject compliance with requests for mutual assistance in criminal matters or the recognition of orders from other Member States to search premises and/or seize items of evidence to the conditions set out in Article 51 of the Convention Implementing the Schengen Agreement, Switzerland may notify the Council and the Commission within the period of 30 days referred to in paragraph 2, point (a) that it will not accept or implement those provisions in its internal legal order where they apply to search and seizure requests or orders made for the purposes of investigating or prosecuting offences in the field of direct taxation which, if committed in Switzerland, would not be punishable under Swiss law with a custodial penalty. In that case this Agreement shall not be considered terminated, contrary to the provisions of paragraph 4.
- (b) The Mixed Committee shall convene within two months following a request by one of its members and, taking into account international developments, shall discuss the situation resulting from notification pursuant to point (a).

Once the Mixed Committee has unanimously reached an agreement on the full acceptance and implementation by Switzerland of the relevant provisions of the new act or measure, paragraphs 2, point (b), 3 and 4 shall apply. The information referred to in the first sentence of paragraph 2, point (b) shall be provided within 30 days of the agreement reached in the Mixed Committee.

Article 8

- 1. In order to achieve the Contracting Parties' objective of ensuring the most uniform possible application and

interpretation of the provisions referred to in Article 2, the Mixed Committee shall keep under constant review developments in the case-law of the Court of Justice of the European Communities, hereinafter referred to as the 'Court of Justice', and in the case-law relating to such provisions of the competent Swiss courts. To that end a mechanism shall be set up to ensure regular mutual transmission of such case-law.

- 2. Switzerland shall have the right to submit statements of case or written observations to the Court of Justice in cases where a court in a Member State has applied to the Court of Justice for a preliminary ruling concerning the interpretation of the provisions referred to in Article 2.

Article 9

- 1. Each year Switzerland shall report to the Mixed Committee on the way in which its administrative authorities and courts have applied and interpreted the provisions referred to in Article 2, as interpreted, where relevant, by the Court of Justice.

- 2. If, within two months of being notified of a substantial divergence between Court of Justice case-law and that of Switzerland's courts or of a substantial divergence between the authorities of the Member States concerned and the Swiss authorities in their application of the provisions referred to in Article 2, the Mixed Committee is unable to ensure a uniform application and interpretation, the procedure provided for in Article 10 shall be initiated.

Article 10

- 1. In the event of a dispute about the application of this Agreement or where the situation provided for in Article 9(2) occurs, the matter shall be officially entered as a matter of dispute on the agenda of the Mixed Committee, meeting at ministerial level.

- 2. The Mixed Committee shall have 90 days to settle the dispute, counting from the date of adoption of the agenda on which the dispute has been placed.

- 3. Where the dispute cannot be settled by the Mixed Committee within the 90-day deadline provided for in paragraph 2, this deadline shall be extended by 30 days with a view to reaching a final settlement.

If no final settlement is reached, this Agreement shall be terminated six months after the expiry of the 30-day period.

Article 11

- 1. As regards the administrative costs associated with implementing this Agreement, Switzerland shall make an annual contribution to the general budget of the European Communities of 7,286 % of an amount of EUR 8 100 000, subject to annual adjustment to reflect inflation in the European Union.

2. As regards the costs of developing the second generation Schengen Information System (SIS II), Switzerland shall contribute to the general budget of the European Communities an annual sum for the relevant financial years starting from the 2002 financial year, calculated in accordance with its gross domestic product as a percentage of the gross domestic product of all the participating States.

The contribution for the financial years preceding the entry into force of this Agreement shall be payable when the Agreement enters into force.

3. In cases where the operating costs associated with implementing this Agreement are not charged to the general budget of the European Communities but are directly payable by the participating Member States, Switzerland shall contribute to these costs in accordance with its gross domestic product, calculated as a percentage of the gross domestic product of all the participating States.

Where the operating costs are charged to the general budget of the European Community, Switzerland shall share in these costs by contributing to the said budget an annual sum, calculated in accordance with its gross domestic product as a percentage of the gross domestic product of all the participating States.

4. Switzerland shall have the right to receive documents drawn up by the Commission or the Council pertaining to this Agreement and, at meetings of the Mixed Committee, to request interpreting into an official language of the institutions of the European Communities of its choosing.

Article 12

1. This Agreement shall not affect in any respect the agreements concluded between the European Community and Switzerland, or between the European Community and its Member States, of the one part, and Switzerland, of the other part.

2. This Agreement shall not affect the agreements binding Switzerland, of the one part, and one or more Member States, of the other part, in so far as they are compatible with this Agreement. If these agreements are incompatible with this Agreement, the latter shall prevail.

3. This Agreement shall not affect in any respect any future agreements concluded with Switzerland by the European Community, or between the European Community and its Member States, of the one part, and Switzerland, of the other part, or agreements concluded on the basis of Articles 24 and 38 of the Treaty on European Union.

Article 13

1. Switzerland shall conclude an agreement with the Kingdom of Denmark on the creation of rights and obligations between Denmark and Switzerland as regards the provisions of Article 2 which come under Title IV of the Treaty establishing the European Community; 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 shall therefore apply to these provisions.

2. Switzerland shall conclude an agreement with the Republic of Iceland and the Kingdom of Norway on the creation of reciprocal rights and obligations by virtue of those States' participation in the implementation, application and development of the Schengen *acquis*.

Article 14

1. This Agreement shall enter into force one month after the day on which the Secretary General of the Council, in his capacity as its depositary, has established that all the formal requirements have been met as regards the expression of consent by, or on behalf of, the Parties to be bound by this Agreement.

2. Articles 1, 3, 4, 5, 6 and 7(2)(a), first sentence, shall apply provisionally as of the time of signature of this Agreement.

3. With respect to acts or measures adopted after this Agreement has been signed but before it enters into force, the 30-day period referred to in Article 7(2)(a), last sentence shall start to run from the day of entry into force of this Agreement.

Article 15

1. The provisions referred to in Annexes A and B and those already adopted pursuant to Article 2(3) shall be put into effect by Switzerland on a date to be fixed by the Council, acting by unanimity of its Members representing the governments of those Member States which apply all the provisions of Annexes A and B, after consulting the Mixed Committee and after having satisfied itself that the preconditions for implementation of the relevant provisions have been fulfilled by Switzerland and that controls at its external borders are effective.

The Members of the Council representing the governments of Ireland and of the United Kingdom of Great Britain and Northern Ireland shall be involved in taking this decision in so far as it relates to the provisions of the Schengen *acquis* and the acts based on it or related to it in which these Member States participate.

The Members of the Council representing the governments of the Member States to which, in accordance with the Treaty of Accession, only some of the provisions of Annexes A and B apply shall be involved in taking this decision in so far as it relates to the provisions of the Schengen *acquis* that are already applicable to them.

2. Implementation of the provisions referred to in paragraph 1 shall create rights and obligations between Switzerland, of the one part, and, depending on the case, the European Union, the European Community and the Member States, in so far as they are bound by these provisions, of the other part.

3. This Agreement shall be applied only if the agreements referred to in Article 13 are also implemented.

4. Moreover, this Agreement shall be applied only if the agreement between the European Community and Switzerland on the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in any of the Member States or in Switzerland is also implemented.

Article 16

1. Liechtenstein may accede to this Agreement.
2. The accession of Liechtenstein shall be the subject of a protocol to this Agreement setting out all the consequences of accession, including the creation of rights and obligations between Liechtenstein and Switzerland, and between Liechtenstein, of the one part, and the European Union, the European Community and its Member States, in so far as they are bound by the provisions of the Schengen *acquis*, of the other part.

Article 17

1. This Agreement may be terminated by Switzerland or by decision of the Council acting by unanimity of its Members. The

depository shall be notified of termination, which shall take effect six months after notification.

2. This Agreement shall be considered to have been terminated if Switzerland terminates one of the agreements referred to in Article 13 or the agreement referred to in Article 15(4).

Article 18

1. This Agreement shall be drawn up in duplicate in the Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Polish, Portuguese, Slovak, Slovenian, Spanish and Swedish languages, each text being equally authentic.
2. The Maltese language version shall be authenticated by the Contracting Parties on the basis of an Exchange of Letters. It shall also be authentic, in the same way as for the languages referred to in paragraph 1.

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

Hecho en Luxemburgo, el veintiséis de octubre de dos mil cuatro.

V Lucemburku dne dvacátého šestého října dva tisíce čtyři.

Udfærdiget i Luxembourg den seksogtyvende oktober to tusind og fire.

Geschehen zu Luxemburg am sechszwanzigsten Oktober zweitausendvier.

Kahe tuhande neljanda aasta oktoobrikuu kahekümne kuuendal päeval Luxembourgis.

Έγινε στο Λουξεμβούργο, στις είκοσι έξι Οκτωβρίου δύο χιλιάδες τέσσερα.

Done at Luxembourg on the twenty-sixth day of October in the year two thousand and four.

Fait à Luxembourg, le vingt-six octobre deux mille quatre.

Fatto a Lussemburgo, addì ventisei ottobre duemilaquattro.

Luksemburgā, divi tūkstoši ceturtdā gada divdesmit sestajā oktobrī.

Priimta du tūkstančiai ketvirtų metų spalio dvidešimt šeštą dieną Liuksemburge.

Kelt Luxembourgban, a kettőezer-negyedik év október havának huszonhatodik napján.

Magħmula fil-Lussemburgu fis-sitta u għoxrin jum ta' Ottubru tas-sena elfejn u erbgħa.

Gedaan te Luxemburg, de zesentwintigste oktober tweeduizend vier.

Sporządzono w Luksemburgu dnia dwudziestego szóstego października roku dwa tysiące czwartego.

Feito no Luxemburgo, em vinte e seis de Outubro de dois mil e quatro.

V Luxemburgu dvadsiateho šiesteho oktobra dvetisícčtyri.

V Luxembourg, dne šestindvajsetega oktobra leta dva tisoč štiri.

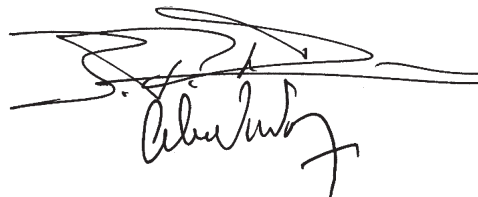
Tehty Luxemburgissa kahdentenäkymmenentenäkuudentena päivänä lokakuuta vuonna kaksituhattaneljä.

Som skedde i Luxemburg den tjugosjätte oktober tjugohundrafyra.

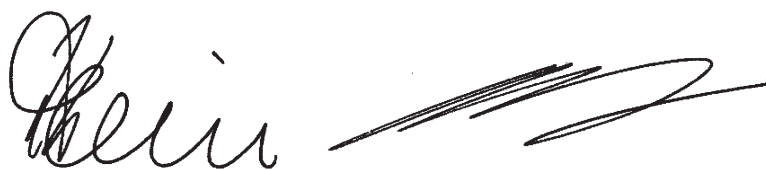
Por la Unión Europea
 Za Evropskou unii
 For Den Europæiske Union
 Für die Europäische Union
 Euroopa Liidu nimel
 Για την Ευρωπαϊκή Ένωση
 For the European Union
 Pour l'Union européenne
 Per l'Unione europea
 Eiropas Savienības vārdā
 Europos Sąjungos vardu
 az Európai Unió részéről
 Ghall-Unjoni Ewropea
 Voor de Europese Unie
 W imieniu Unii Europejskiej
 Pela União Europeia
 Za Európsku úniu
 Za Evropsko unijo
 Euroopan unionin puolesta
 På Europeiska unionens vägnar



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 vardu
 az Európai Közösség részéről
 Ghall-Komunità Ewropea
 Voor de Europese Gemeenschap
 W imieniu Wspólnoty Europejskiej
 Pela Comunidade Europeia
 Za Európske spoločenstvo
 za Evropsko skupnost
 Euroopan yhteisön puolesta
 På Europeiska gemenskapens vägnar



Für die Schweizerische Eidgenossenschaft
 Pour la Confédération suisse
 Per la Confederazione svizzera



ANNEX A

(Article 2(1))

Part 1 of this Annex refers to the 1985 Schengen Agreement and the Convention implementing this Agreement, signed in Schengen on 19 June 1990. Part 2 refers to the instruments of accession and Part 3 to the relevant Schengen secondary legislation.

PART 1

The provisions of the Agreement signed in Schengen on 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders.

All provisions of the Convention signed in Schengen on 19 June 1990 between the Kingdom of Belgium, the Federal Republic of Germany, the French Republic, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands, implementing the Schengen Agreement of 14 June 1985, with the exception of:

Article 2(4) on controls on goods

Article 4, as far as controls on baggage are concerned

Article 10(2)

Article 19(2)

Articles 28 to 38 and related definitions

Article 60

Article 70

Article 74

Articles 77 to 91 insofar as they are covered by Council Directive 91/477/EEC of 18 June 1991 on control of the acquisition and possession of weapons

Articles 120 to 125 on the movement of goods

Articles 131 to 133

Article 134

Articles 139 to 142

Final Act: Declaration 2

Final Act: Declarations 4, 5 and 6

Minutes

Joint Declaration

Declaration by Ministers and State Secretaries.

PART 2

The provisions of the Accession Agreements and Protocols to the Schengen Agreement and the Schengen Convention with the Italian Republic (signed in Paris on 27 November 1990), the Kingdom of Spain and the Portuguese Republic (signed in Bonn on 25 June 1991), the Hellenic Republic (signed in Madrid on 6 November 1992), the Republic of Austria (signed in Brussels on 28 April 1995) and the Kingdom of Denmark, the Republic of Finland and the Kingdom of Sweden (signed in Luxembourg on 19 December 1996), with the exception of:

1. The Protocol, signed in Paris on 27 November 1990, on accession of the Government of the Italian Republic to the Agreement between the Governments of the Member States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at common borders signed at Schengen on 14 June 1985.

2. The following provisions of the Agreement, signed in Paris on 27 November 1990, on accession of the Italian Republic to the Convention, signed at Schengen on 19 June 1990, implementing the Schengen Agreement of 14 June 1985 between the Governments of the Member States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at common borders, its Final Act and related Declarations:

Article 1

Articles 5 and 6

Final Act: Part I

Final Act: Part II, Declarations 2 and 3

Declaration by Ministers and State Secretaries.

3. The Protocol, signed in Bonn on 25 June 1991, on accession of the Government of the Kingdom of Spain to the Agreement between the Governments of the Member States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at common borders signed at Schengen on 14 June 1985, as amended by the Protocol on Accession by the Government of the Italian Republic, signed in Paris on 27 November 1990, and its accompanying Declarations.

4. The following provisions of the Agreement signed in Bonn on 25 June 1991 on accession of the Kingdom of Spain to the Convention, signed at Schengen on 19 June 1990, implementing the Schengen Agreement of 14 June 1985 between the Governments of the Member States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at common borders, to which the Italian Republic acceded under the Agreement signed in Paris on 27 November 1990, its Final Act and related Declarations:

Article 1

Articles 5 and 6

Final Act: Part I

Final Act: Part II, Declarations 2 and 3

Final Act: Part III, Declarations 3 and 4

Declaration by Ministers and State Secretaries.

5. The Protocol, signed in Bonn on 25 June 1991, on accession of the Government of the Portuguese Republic to the Agreement between the Governments of the Member States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at common borders signed at Schengen on 14 June 1985, as amended by the Protocol on Accession by the Government of the Italian Republic, signed in Paris on 27 November 1990, and its accompanying Declarations.

6. The following provisions of the Agreement, signed in Bonn on 25 June 1991, on accession of the Portuguese Republic to the Convention, signed at Schengen on 19 June 1990, implementing the Schengen Agreement of 14 June 1985 between the Governments of the Member States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at common borders, to which the Italian Republic acceded under the Agreement signed in Paris on 27 November 1990, its Final Act and related Declarations:

Article 1

Article 7 and 8

Final Act: Part I

Final Act: Part II, Declarations 2 and 3

Final Act: Part III, Declarations 2, 3, 4 and 5

Declaration by Ministers and State Secretaries.

7. The Protocol signed in Madrid on 6 November 1992 on accession of the Government of the Hellenic Republic to the Agreement between the Governments of the Member States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of controls at their common borders signed at Schengen on 14 June 1985, as amended by the Protocols on accession by the Government of the Italian Republic, signed in Paris on 27 November 1990, and by the Governments of the Kingdom of Spain and the Portuguese Republic, signed in Bonn on 25 June 1991, and its accompanying Declarations.

8. The following provisions of the Agreement signed in Madrid on 6 November 1992 on accession of the Hellenic Republic to the Convention, signed at Schengen on 19 June 1990, implementing the Schengen Agreement of 14 June 1985 between the Governments of the Member States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at common borders, to which acceded the Italian Republic under the Agreement signed in Paris on 27 November 1990, and the Kingdom of Spain and the Portuguese Republic under the Agreements signed in Bonn on 25 June 1991, its Final Act and related Declarations:

Article 1

Articles 6 and 7

Final Act: Part I

Final Act: Part II, Declarations 2, 3 and 4

Final Act: Part III, Declarations 1 and 3

Declaration by Ministers and State Secretaries.

9. The Protocol, signed in Brussels on 28 April 1995, on accession of the Government of the Republic of Austria to the Agreement between the Governments of the Member States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at common borders signed at Schengen on 14 June 1985, as amended by the Protocols on accession by the Government of the Italian Republic, the Kingdom of Spain and the Portuguese Republic, and the Hellenic Republic, signed on 27 November 1990, 25 June 1991 and 6 November 1992 respectively.

10. The following provisions of the Agreement signed in Brussels on 28 April 1995 on accession of the Republic of Austria to the Convention, signed at Schengen on 19 June 1990, implementing the Schengen Agreement of 14 June 1985 between the Governments of the Member States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at common borders, to which acceded the Italian Republic, the Kingdom of Spain and the Portuguese Republic, and the Hellenic Republic, under the Agreements signed on 27 November 1990, 25 June 1991 and 6 November 1992 respectively, and its Final Act:

Article 1

Articles 5 and 6

Final Act: Part I

Final Act: Part II, Declaration 2

Final Act: Part III

11. The Protocol signed in Luxembourg on 19 December 1996 on accession of the Government of the Kingdom of Denmark to the Agreement on the gradual abolition of checks at common borders signed at Schengen on 14 June 1985 and its related Declaration.
12. The following provisions of the Agreement signed in Luxembourg on 19 December 1996 on accession of the Kingdom of Denmark to the Convention implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders, signed at Schengen on 19 June 1990, and its Final Act and related Declarations:

Article 1

Article 7 and 8

Final Act: Part I

Final Act: Part II, Declaration 2

Final Act: Part III

Declaration by Ministers and State Secretaries.
13. The Protocol signed in Luxembourg on 19 December 1996 on accession of the Government of the Republic of Finland to the Agreement on the gradual abolition of checks at common borders signed at Schengen on 14 June 1985 and its related Declaration.
14. The following provisions of the Agreement signed in Luxembourg on 19 December 1996 on accession of the Republic of Finland to the Convention implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders, signed at Schengen on 19 June 1990, and its Final Act and related Declaration:

Article 1

Articles 6 and 7

Final Act: Part I

Final Act: Part II, Declaration 2

Final Act: Part III, except the Declaration on the Åland Islands

Declaration by Ministers and State Secretaries.
15. The Protocol signed in Luxembourg on 19 December 1996 on accession of the Government of the Kingdom of Sweden to the Agreement on the gradual abolition of checks at common borders signed at Schengen on 14 June 1985 and its related Declaration.
16. The following provisions of the Agreement signed in Luxembourg on 19 December 1996 on accession of the Kingdom of Sweden to the Convention implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders, signed at Schengen on 19 June 1990, and its Final Act and related Declaration:

Article 1

Articles 6 and 7

Final Act: Part I

Final Act: Part II, Declaration 2

Final Act: Part III

Declaration by Ministers and State Secretaries.

PART 3

A. The following Decisions of the Executive Committee:

SCH/Com-ex (93) 10 14.12.1993	Confirmation of the Declarations by the Ministers and State Secretaries of 19 June 1992 and 30 June 1993, on entry into force
SCH/Com-ex (93) 14 14.12.1993	Improving practical cooperation between the judicial authorities to combat drug trafficking
SCH/Com-ex (93) 21 14.12.1993	Extending the uniform visa
SCH/Com-ex (93) 24 14.12.1993	Common procedures for cancelling, rescinding or shortening the length of validity of the uniform visa
SCH/Com-ex (94) 1 Rev 2 26.4.1994	Adjustment measures aiming to remove obstacles and restrictions on traffic flows at road border crossing points at internal borders
SCH/Com-ex (94) 15 Rev 21.11.1994	Introducing a computerised procedure for consulting the central authorities referred to in Article 17(2) of the implementing convention
SCH/Com-ex (94) 16 Rev 21.11.1994	acquisition of common entry and exit stamps
SCH/Com-ex (94) 17 Rev 4 22.12.1994	Introducing and applying the Schengen system in airports and aerodromes
SCH/Com-ex (94) 25 22.12.1994	Exchanges of statistical information on the issue of uniform visas
SCH/Com-ex (94) 28 Rev 22.12.1994	Certificate provided for in Article 75 for the transportation of drugs and/or psychotropic substances
SCH/Com-ex (94) 29 Rev 2 22.12.1994	Entry into force of the Convention implementing the Schengen Agreement of 19 June 1990
SCH/Com-ex (95) PV 1 Rev (Point 8)	Common visa policy
SCH/Com-ex (95) 20 Rev 2 20.12.1995	Approval of document SCH/I (95) 40 Rev 6 concerning the procedure for implementing Article 2(2) of the Convention
SCH/Com-ex (95) 21 20.12.1995	Swift exchange between the Schengen States of statistical and tangible data on possible malfunctions at the external borders
SCH/Com-ex (96) 13 Rev 27.6.1996	Principles for issuing Schengen visas in accordance with Article 30(1)(a) of the Convention implementing the Schengen Agreement
SCH/Com-ex (97) 39 Rev 15.12.1997	Guiding Principles for means of proof and indicative evidence within the framework of readmission agreements between Schengen States
SCH/Com-ex (98) 1 Rev 2 21.4.1998	Report on the activities of the task force
SCH/Com-ex (98) 12 21.4.1998	Exchange at local level of statistics on visas
SCH/Com-ex (98) 18 Rev 23.6.1998	Measures to be taken in respect of countries posing problems with regard to the issue of documents required to remove their nationals from Schengen territory READMISSION — VISA
SCH/Com-ex (98) 19 23.6.1998	Monaco VISA — EXTERNAL BORDERS — SIS
SCH/Com-ex (98) 21 23.6.1998	Stamping of passports of visa applicants VISAS

SCH/Com-ex (98) 26 def 16.9.1998	Setting-up of the Schengen implementing Convention Standing Committee
SCH/Com-ex (98) 29 Rev 23.6.1998	Catch-all clause to cover the whole technical Schengen <i>acquis</i>
SCH/Com-ex (98) 35 Rev 2 16.9.1998	Forwarding the Common Manual to EU applicant States
SCH/Com-ex (98) 37 def 2 16.9.1998	Action plan to combat illegal immigration
SCH/Com-ex (98) 51 Rev 3 16.12.1998	Cross-border police cooperation in the area of crime prevention and detection
SCH/Com-ex (98) 52 16.12.1998	Handbook on cross-border police cooperation
SCH/Com-ex (98) 56 16.12.1998	Manual of documents on which a visa may be affixed
SCH/Com-ex (98) 57 16.12.1998	Introduction of a harmonised form for invitations, proof of accommodation, and the acceptance of obligations of maintenance support
SCH/Com-ex (98) 59 Rev 16.12.1998	Coordinated deployment of document advisers
SCH/Com-ex (99) 1 Rev 2 28.4.1999	Schengen standards in drugs situation
SCH/Com-ex (99) 5 28.4.1999	SIRENE Manual update
SCH/Com-ex (99) 6 28.4.1999	Telecoms situation
SCH/Com-ex (99) 7 Rev 2 28.4.1999	Liaison officers
SCH/Com-ex (99) 8 Rev 2 28.4.1999	Payments to informers and infiltrators
SCH/Com-ex (99) 10 28.4.1999	Illegal trade in weapons
SCH/Com-ex (99) 13 28.4.1999	Adoption of new versions of the Common Manual and the Common Consular Instructions
SCH/Com-ex (99) 14 28.4.1999	Manual of documents on which a visa may be affixed
SCH/Com-ex (99) 18 28.4.1999	Improvement of police cooperation with regard to the prevention and detection of crime

B. The following Declarations of the Executive Committee:

Declaration	Subject
SCH/Com-ex (96) Decl 5 18.4.1996	Determination of the concept of third-country 'alien'
SCH/Com-ex (96) Decl 6 Rev. 2 26.6.1996	Declaration on extradition
SCH/Com-ex (97) Decl 13 Rev. 2 21.4.1996	Abduction of minors

C. The following Decisions of the Central Group:

Decision	Subject
SCH/C (98) 117 27.10.1998	Action plan to combat illegal immigration
SCH/C (99) 25 22.3.1999	General principles for the remuneration of informants and infiltrators

ANNEX B

(Article 2(2))

Switzerland will apply the following acts from the date set by the Council in accordance with Article 15.

If by that date a Convention or a Protocol referred to by an act marked below by an asterisk has not yet entered into force in all the Member States of the European Union at the time of adoption of the act concerned, Switzerland will apply the relevant provisions of these instruments only from the date on which the Convention or the Protocol at issue is in force for all the said Member States.

- Council Directive 91/477/EEC of 18 June 1991 on control of the acquisition and possession of weapons (OJ L 256, 13.9.1991, p. 51) and Commission Recommendation 93/216/EEC of 25 February 1993 on the European firearms pass (OJ L 93, 17.4.1993, p. 39) as modified by Commission Recommendation 96/129/EC of 12 January 1996 (OJ L 30, 8.2.1996, p. 47);
- Council Regulation (EC) No 1683/95 of 29 May 1995 laying down a uniform format for visas (OJ L 164, 14.7.1995, p. 1) as amended by Council Regulation (EC) No 334/2002 of 18 February 2002 (OJ L 53, 23.2.2002, p. 7); Commission Decision of 7 February 1996 and Commission Decision of 3 June 2002 laying down further technical specifications for the uniform format for visas (not published);
- Council 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 (OJ L 281, 23.11.1995, p. 31);
- Council Act of 29 May 2000 establishing in accordance with Article 34 of the Treaty on European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union [provisions referred to in Article 2(1) of the Convention] (OJ C 197, 12.7.2000, p. 1);*
- Council Decision 2000/586/JHA of 28 September 2000 establishing a procedure for amending Articles 40(4) and (5), 41(7) and 65(2) of the Convention implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders (OJ L 248, 3.10.2000, p. 1);
- Council Decision 2000/645/EC of 17 October 2000 correcting the Schengen *acquis* as contained in Schengen Executive Committee SCH/Com-ex (94)15 Rev (OJ L 272, 25.10.2000, p. 24);
- Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (OJ L 81, 21.3.2001, p. 1) as amended by Council Regulation (EC) No 2414/2001 of 7 December 2001 (OJ L 327, 12.12.2001, p. 1) and by Council Regulation (EC) No 453/2003 of 6 March 2003 (OJ L 69, 13.3.2003, p. 10);
- Council Decision 2001/329/EC of 24 April 2001 updating Part VI and Annexes 3, 6 and 13 of the Common Consular Instructions and Annexes 5(a), 6(a) and 8 to the Common Manual (OJ L 116, 26.4.2001, p. 32);
- Council Regulation (EC) No 1091/2001 of 28 May 2001 on freedom of movement with a long-stay visa (OJ L 150, 6.6.2001, p. 4);
- Council Decision 2001/420/EC of 28 May 2001 on the adaptation of Parts V and VI and Annex 13 of the Common Consular Instructions on Visas and Annex 6a to the Common Manual with regard to long-stay visas valid concurrently as short-stay visas (OJ L 150, 6.6.2001, p. 47);
- Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals (OJ L 149, 2.6.2001, p. 34) and Council Decision 2004/191/EC of 23 February 2004 setting out the criteria and practical arrangements for the compensation of the financial imbalances resulting from the application of Directive 2001/40/EC on the mutual recognition of decisions on the expulsion of third country nationals (OJ L 60, 27.2.2004, p. 55);

- Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985 (OJ L 187, 10.7.2001, p. 45);
- Council Act of 16 October 2001 establishing, in accordance with Article 34 of the Treaty on European Union, the Protocol to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union [provision referred to in Article 15 of the Protocol] (OJ C 326, 21.11.2001, p. 1);*
- Council Regulation (EC) No 2424/2001 of 6 December 2001 on the development of the second generation Schengen Information System (SIS II) (OJ L 328, 13.12.2001, p. 4);
- Council Decision 2001/886/JHA of 6 December 2001 on the development of the second generation Schengen Information System (SIS II) (OJ L 328, 13.12.2001, p. 1);
- Council Decision 2002/44/EC of 20 December 2001 amending Part VII and Annex 12 to the Common Consular Instructions and Annex 14a to the Common Manual (OJ L 20, 23.1.2002, p. 5);
- Council Regulation (EC) No 333/2002 of 18 February 2002 on a uniform format for forms for affixing the visa issued by Member States to persons holding travel documents not recognised by the Member State drawing up the form (OJ L 53, 23.2.2002, p. 4) and Commission Decision of 12 August 2002 laying down the technical specifications for the uniform format for affixing the visa issued by Member States to persons holding travel documents not recognised by the Member State drawing up the form (not published);
- Council Decision 2002/352/EC of 25 April 2002 on the revision of the Common Manual (OJ L 123, 9.5.2002, p. 47);
- Council Decision 2002/354/EC of 25 April 2002 on the adaptation of Part III of, and the creation of an Annex 16 to, the Common Consular Instructions (OJ L 123, 9.5.2002, p. 50);
- Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals (OJ L 157, 15.6.2002, p. 1) and Commission Decision of 14 August 2002 laying down the technical specifications for the uniform format for residence permits for third country nationals (not published);
- Council Decision 2002/585/EC of 12 July 2002 on the adaptation of Parts III and VIII of the Common Consular Instructions (OJ L 187, 16.7.2002, p. 44);
- Council Decision 2002/586/EC of 12 July 2002 on the amendment of Part VI of the Common Consular Instructions (OJ L 187, 16.7.2002, p. 48);
- Council Decision 2002/587/EC of 12 July 2002 on the revision of the Common Manual (OJ L 187, 16.7.2002, p. 50);
- Council Framework Decision 2002/946/JHA of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence (OJ L 328, 5.12.2002, p. 1);
- Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence (OJ L 328, 5.12.2002, p. 17);
- Council Regulation (EC) No 415/2003 of 27 February 2003 on the issue of visas at the border, including the issue of such visas to seamen in transit (OJ L 64, 7.3.2003, p. 1);
- The provisions of the 1995 Convention on simplified extradition procedure between the Member States of the European Union (OJ C 78, 30.3.1995, p. 2) and of the 1996 Convention relating to extradition between the Member States of the European Union (OJ C 313, 23.10.1996, p. 12) referred to in Council Decision 2003/169/JHA of 27 February 2003 determining which provisions of the 1995 Convention on simplified extradition procedure between the Member States of the European Union and of the 1996 Convention relating to extradition between the Member States of the European Union constitute developments of the Schengen *acquis* in accordance with the Agreement concerning the Republic of Iceland's and the Kingdom of Norway's association with the implementation, application and development of the Schengen *acquis* (OJ L 67, 12.3.2003, p. 25);*
- Council Decision 2003/170/JHA of 27 February 2003 on the common use of liaison officers posted abroad by the law enforcement agencies of the Member States [except Article 8] (OJ L 67, 12.3.2003, p. 27);

- Council Regulation (EC) No 693/2003 of 14 April 2003 establishing a specific Facilitated Transit Document (FTD), a Facilitated Rail Transit Document (FRTD) and amending the Common Consular Instructions and the Common Manual (OJ L 99, 17.4.2003, p. 8);
- Council Regulation (EC) No 694/2003 of 14 April 2003 on uniform formats for Facilitated Transit Documents (FTD) and Facilitated Rail Transit Documents (FRTD) provided for in Regulation (EC) No 693/2003 (OJ L 99, 17.4.2003, p. 15);
- Council Decision No 2003/454 of 13 June 2003 amending Annex 12 of the Common Consular Instructions and Annex 14a of the Common Manual on visa fees (OJ L 152, 20.6.2003, p. 82);
- Council Regulation (EC) No 1295/2003 of 15 July 2003 relating to measures envisaged to facilitate the procedures for applying for and issuing visas for members of the Olympic family taking part in the 2004 Olympic or Paralympic Games in Athens (OJ L 183, 22.7.2003, p. 1);
- Council Decision 2003/585/EC of 28 July 2003 amending Annex 2, Schedule A, of the Common Consular Instructions and Annex 5, Schedule A, of the Common Manual on the visa requirements for holders of Pakistani diplomatic passports (OJ L 198, 6.8.2003, p. 13);
- Council Decision 2003/586/EC of 28 July 2003 on the amendment of Annex 3, Part I, of the Common Consular Instructions and Annex 5a, Part I of the Common Manual on third country nationals subject to airport visa requirements (OJ L 198, 6.8.2003, p. 15);
- Council Decision 2003/725/JHA of 2 October 2003 amending the provisions of Article 40(1) and (7) of the Convention implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders (OJ L 260, 11.10.2003, p. 37);
- Council Directive 2003/110/EC of 25 November 2003 on assistance in cases of transit for the purposes of removal by air (OJ L 321, 6.12.2003, p. 26);
- Council Decision 2004/14/EC of 22 December 2003 amending the third subparagraph (Basic criteria for examining applications) of Part V of the Common Consular Instructions (OJ L 5, 9.1.2004, p. 74);
- Council Decision 2004/15/EC of 22 December 2003 amending point 1.2 of Part II of the Common Consular Instructions and drawing up a new Annex thereto (OJ L 5, 9.1.2004, p. 76);
- Council Decision 2004/17/EC of 22 December 2003 amending Part V, point 1.4, of the Common Consular Instructions and Part I, point 4.1.2 of the Common Manual as regards inclusion of the requirement to be in possession of travel medical insurance as one of the supporting documents for the grant of a uniform entry visa (OJ L 5, 9.1.2004, p. 79);
- Council Regulation (EC) No 377/2004 of 19 February 2004 on the creation of an immigration liaison officers network (OJ L 64, 2.3.2004, p. 1);
- Council Decision 2004/466/EC of 29 April 2004 amending the Common Manual in order to include provisions for targeted border controls on accompanied minors (OJ L 157, 30.4.2004, p. 136);
- Corrigendum to Council Decision 2004/466/EC of 29 April 2004 amending the Common Manual in order to include provisions for targeted border controls on accompanied minors (OJ L 195, 2.6.2004, p. 44);
- Council Regulation (EC) No 871/2004 of 29 April 2004 concerning the introduction of some new functions for the Schengen Information System, including the fight against terrorism (OJ L 162, 30.4.2004, p. 29);
- Council Directive 2004/82/EC of 29 April 2004 on the obligation for carriers to communicate passenger data (OJ L 261, 6.8.2004, p. 24);
- Council Decision 2004/573/EC of 29 April 2004 on the organisation of joint flights for the removal, from the territory of two or more Member States, of third-country nationals who are the subjects of individual removal orders (OJ L 261, 6.8.2004, p. 28);

- Council Decision 2004/574/EC of 29 April 2004 amending the Common Manual (OJ L 261, 6.8.2004, p. 36);
 - Council Decision 2004/581/EC of 29 April 2004 determining the minimum indications to be used on signs at border posts (OJ L 261, 6.8.2004, p. 119);
 - Council Decision 2004/512/EC of 8 June 2004 establishing the Visa Information System (VIS) (OJ L 213, 15.6.2004, p. 5).
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FINAL ACT

The plenipotentiaries have adopted the joint declarations listed below and annexed to this Final Act:

1. Joint Declaration of the Contracting Parties on parliamentary consultation;
2. Joint Declaration of the Contracting Parties on external relations;
3. Joint Declaration of the Contracting Parties on Article 23(7) of the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between Member States of the European Union.

The plenipotentiaries have also taken note of the declarations listed below and annexed to this Final Act:

1. Declaration by Switzerland on mutual assistance in criminal matters;
2. Declaration by Switzerland on Article 7(2)(b) (time limit for accepting new developments in the Schengen *acquis*);
3. Declaration by Switzerland on the application of the European Convention on Mutual Assistance in Criminal Matters and the European Convention on Extradition;
4. Declaration of the European Commission on the transmission of proposals;
5. Declaration of the European Commission on the committees that assist the European Commission in the exercise of its executive powers.

Hecho en Luxemburgo, el veintiséis de octubre de dos mil cuatro.

V Lucemburku dne dvacátého šestého října dva tisíce čtyři.

Udfærdiget i Luxembourg den seksogtyvende oktober to tusind og fire.

Geschehen zu Luxemburg am sechszwanzigsten Oktober zweitausendvier.

Kahe tuhande neljanda aasta oktoobrikuu kahekümne kuuendal päeval Luxembourgis.

Έγινε στο Λουξεμβούργο, στις είκοσι έξι Οκτωβρίου δύο χιλιάδες τέσσερα.

Done at Luxembourg on the twenty-sixth day of October in the year two thousand and four.

Fait à Luxembourg, le vingt-six octobre deux mille quatre.

Fatto a Lussemburgo, addì ventisei ottobre duemilaquattro.

Luksemburgā, divi tūkstoši ceturtdā gada divdesmit sestajā oktobrī.

Priimta du tūkstančiai ketvirtų metų spalio dvidešimt šeštą dieną Liuksemburge.

Kelt Luxembourgban, a kettőezer-negyedik év október havának huszonhatodik napján.

Magħmula fil-Lussemburgu fis-sitta u għoxrin jum ta' Ottubru tas-sena elfejn u erbgħa.

Gedaan te Luxemburg, de zesentwintigste oktober tweeduizend vier.

Sporządzono w Luksemburgu dnia dwudziestego szóstego października roku dwa tysiące czwartego.

Feito no Luxemburgo, em vinte e seis de Outubro de dois mil e quatro.

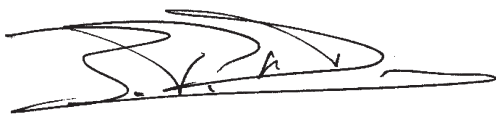
V Luxemburgu dvadsiateho šiesteho oktobra dvetisícčtyri.

V Luxembourg, dne šestindvajsetega oktobra leta dva tisoč štiri.

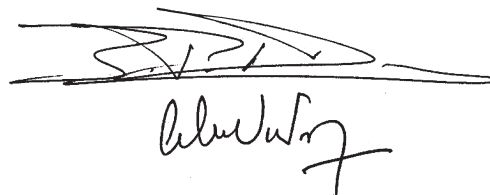
Tehty Luxemburgissa kahdentenäkymmenentenäkuudentena päivänä lokakuuta vuonna kaksituhattaneljä.

Som skedde i Luxemburg den tjugosjätte oktober tjugohundrafyra.

Por la Unión Europea
 Za Evropskou unii
 For Den Europæiske Union
 Für die Europäische Union
 Euroopa Liidu nimel
 Για την Ευρωπαϊκή Ένωση
 For the European Union
 Pour l'Union européenne
 Per l'Unione europea
 Eiropas Savienības vārdā
 Europos Sąjungos vardu
 az Európai Unió részéről
 Ghall-Unjoni Ewropea
 Voor de Europese Unie
 W imieniu Unii Europejskiej
 Pela União Europeia
 Za Európsku úniu
 Za Evropsko unijo
 Euroopan unionin puolesta
 På Europeiska unionens vägnar



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 vardu
 az Európai Közösség részéről
 Ghall-Komunità Ewropea
 Voor de Europese Gemeenschap
 W imieniu Wspólnoty Europejskiej
 Pela Comunidade Europeia
 Za Európske spoločenstvo
 za Evropsko skupnost
 Euroopan yhteisön puolesta
 På Europeiska gemenskapens vägnar



Für die Schweizerische Eidgenossenschaft
 Pour la Confédération suisse
 Per la Confederazione svizzera




JOINT DECLARATIONS OF THE CONTRACTING PARTIES

JOINT DECLARATION OF THE CONTRACTING PARTIES ON PARLIAMENTARY CONSULTATION

The Contracting Parties consider that matters covered by this Agreement should be discussed at the European Parliament-Switzerland interparliamentary meetings.

JOINT DECLARATION OF THE CONTRACTING PARTIES ON EXTERNAL RELATIONS

The Contracting Parties agree that the European Community undertake to encourage third countries or international organisations with which it concludes agreements in areas linked to Schengen cooperation to conclude similar agreements with the Swiss Confederation, without prejudice to the latter's competence to conclude such agreements.

JOINT DECLARATION OF THE CONTRACTING PARTIES ON ARTICLE 23(7) OF THE CONVENTION OF 29 MAY 2000
ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS BETWEEN MEMBER STATES OF THE EUROPEAN UNION

The Contracting Parties agree that Switzerland may, subject to the provisions of Article 23(1)(c) of the Convention on Mutual Assistance in Criminal Matters between Member States of the European Union, in the circumstances of a particular case, demand, unless the Member State concerned has obtained the consent of the data subject, that personal data not be used for the purposes referred to in Article 23(1)(a) and (b) without the prior consent of Switzerland in proceedings in which Switzerland could have refused or restricted the transmission or use of personal data under the Convention or the instruments referred to in Article 1 thereof.

If, in a particular case, Switzerland refuses to give its consent to a request from a Member State pursuant to the above provisions, it must give reasons for its decision in writing.

OTHER DECLARATIONS

DECLARATION BY SWITZERLAND ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS

Switzerland declares that tax offences in the direct tax field being investigated by the Swiss authorities may not give rise, when this Agreement enters into force, to an appeal before a court competent *inter alia* to hear criminal matters.

DECLARATION BY SWITZERLAND ON ARTICLE 7(2)(b)**(Time limit for accepting new developments in the schengen *acquis*)**

The maximum time limit of two years laid down in Article 7(2)(b) 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 (100 days from the official publication of the act) and, where applicable;
- the referendum (organisation and voting).

The Federal Council shall inform the Council and the Commission without delay of the completion of each of these stages.

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

DECLARATION BY SWITZERLAND ON THE APPLICATION OF THE EUROPEAN CONVENTION ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS AND THE EUROPEAN CONVENTION ON EXTRADITION

Switzerland undertakes to refrain from invoking its reservations and declarations made when ratifying the European Convention on Extradition of 13 December 1957 and the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 in so far as they are incompatible with this Agreement.

DECLARATION OF THE EUROPEAN COMMISSION ON THE TRANSMISSION OF PROPOSALS

When forwarding proposals relating to this Agreement to the Council of the European Union and to the European Parliament, the Commission shall forward copies of such proposals to Switzerland.

DECLARATION OF THE EUROPEAN COMMISSION ON THE COMMITTEES THAT ASSIST THE EUROPEAN COMMISSION IN THE EXERCISE OF ITS EXECUTIVE POWERS.

At present, in addition to the committee set up by Article 31 of 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, 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* are:

- the committee set up by Article 6 of Council Regulation (EC) No 1683/95 of 29 May 1995 laying down a uniform format for visas (Visa Committee); and
 - the committee set up by Article 5 of Council Decision of 6 December 2001 (2001/886/JAI) and by Article 5 of Council Regulation (EC) No 2424/2001 of 6 December 2001, both instruments that refer to the development of the second generation Schengen information system (SIS II) (SIS II Committee).
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AGREEMENT**in the form of an Exchange of Letters between the Council of the European Union and the Swiss federation on the committees that assist the European Commission in the exercise of its executive powers**A. *Letter from the European Community*

Sir,

The Council refers to the negotiations concerning the Agreement on the association of the Swiss Confederation with the implementation, application and development of the Schengen *acquis* and has taken due note of the request of the Swiss Confederation, in the spirit of its participation in the decision-making process in the fields covered by the Agreement and in order to enhance the smooth operation of the Agreement, to be fully associated with the work of the committees which assist the European Commission in the exercise of its executive powers.

The Council notes that in future, when such procedures will be applied in the fields covered by the Agreement, there will indeed be a need to associate the Swiss Confederation with the work of these committees, *inter alia*, in order to ensure that the procedures of the Agreement have been applied to the acts or measures concerned, so that these may become binding on the Swiss Confederation.

The European Community undertakes to negotiate appropriate arrangements with a view to associating the Swiss Confederation with the work of these committees.

As regards 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:

- The European Commission shall ensure that the experts from the Swiss Confederation participate as widely as possible, where a specific point concerns the application of the Schengen *acquis* and exclusively for that point, in preparing draft measures to be submitted subsequently to the committee established under Article 31 of that Directive, which assists the European Commission in the exercise of its executive powers. Accordingly, when drawing up its proposals, the European Commission shall consult the experts from the Swiss Confederation on the same basis as the experts from the Member States;
- Under the second subparagraph of Article 29(2) of the said Directive, the Swiss Confederation may appoint a representative of the supervisory authority or of the authorities designated by the Swiss Confederation to participate as an observer, without voting rights, in meetings of the group for the protection of individuals with regard to the processing of personal data. Participation will take place on the basis of an ad hoc invitation where a specific point concerns the application of the Schengen *acquis* and exclusively for that point.

I would be obliged if you would confirm that your Government is in agreement with the above.

Please accept, Sir, the assurance of my highest consideration.

B. *Reply from the Swiss Confederation*

Sir,

Thank for your letter dated ..., worded as follows:

'The Council refers to the negotiations concerning the Agreement on the association of the Swiss Confederation with the implementation, application and development of the Schengen *acquis* and has taken due note of the request of the Swiss Confederation, in the spirit of its participation in the decision-making process in the fields covered by the Agreement and in order to enhance the smooth operation of the Agreement, to be fully associated with the work of the committees which assist the European Commission in the exercise of its executive powers.

The Council notes that in future, when such procedures will be applied in the fields covered by the Agreement, there will indeed be a need to associate the Swiss Confederation with the work of these committees, *inter alia*, in order to ensure that the procedures of the Agreement have been applied to the acts or measures concerned, so that these may become binding on the Swiss Confederation.

The European Community undertakes to negotiate appropriate arrangements with a view to associating the Swiss Confederation with the work of these committees.

As regards 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:

- The European Commission shall ensure that the experts from the Swiss Confederation participate as widely as possible, where a specific point concerns the application of the Schengen *acquis* and exclusively for that point, in preparing draft measures to be submitted subsequently to the committee established under Article 31 of that Directive, which assists the European Commission in the exercise of its executive powers. Accordingly, when drawing up its proposals, the European Commission shall consult the experts from the Swiss Confederation on the same basis as the experts from the Member States;
- Under the second subparagraph of Article 29(2) of the said Directive, the Swiss Confederation may appoint a representative of the supervisory authority or of the authorities designated by the Swiss Confederation to participate as an observer, without voting rights, in meetings of the group for the protection of individuals with regard to the processing of personal data. Participation will take place on the basis of an ad hoc invitation where a specific point concerns the application of the Schengen *acquis* and exclusively for that point.

I would be obliged if you would confirm that your Government is in agreement with the above.'

It is my pleasure to inform you that the Federal Council has indicated its agreement to the above arrangements.

Please accept, Sir, the assurance of my highest consideration.

JOINT DECLARATION ON JOINT MEETINGS OF MIXED COMMITTEES

The Delegations representing the Governments of the Member States of the European Union,

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,

- have decided to organise the meetings of the Mixed Committees, established by the Agreement on the association of Iceland and Norway with the implementation, application and development of the Schengen *acquis*, on the one hand, and the agreement on the association of Switzerland with the implementation, application and development of the Schengen *acquis*, on the other hand, jointly, no matter the level of the meeting.
 - 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 Union, the European Community and the Swiss Confederation concerning the latter's association with the implementation, application and development of the Schengen *acquis* or the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen *acquis*.
 - 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 of the entry into force of the Agreement between the European Union, the European Community and the Swiss Confederation concerning the latter's association with the implementation, application and development of the Schengen *acquis*.
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