



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

COUNCIL DECISION

on the signature, on behalf of the European Union, and on the provisional application of certain provisions of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis

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(presented by the Commission)

EXPLANATORY MEMORANDUM

I. INTRODUCTION

On 26 October 2004, the European Union, the European Community and the Swiss Confederation signed an Agreement on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis (the “Schengen agreement with Switzerland”)¹.

That Agreement anticipated Liechtenstein's possible association with the Schengen acquis and made provision in its Article 16 for Liechtenstein to accede to the Agreement by means of a protocol determining the rights and obligations of each of the contracting parties.

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

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

By letter dated 10 June 2005 Liechtenstein confirmed that it wished to be associated with the Schengen and Dublin/Eurodac acquis.

Following the authorization given by the Council to the Commission on 27.2.2006, negotiations were held with Liechtenstein and Switzerland. On 21.6.2006 negotiations were finalised and the draft protocol on Liechtenstein's accession to the Schengen agreement with Switzerland was initialled².

Given the fact that the Schengen agreement with Switzerland to which Liechtenstein accedes covers both first and third pillar items, the Commission proposes to follow the approach chosen for the signature and adoption of the Schengen agreement with Switzerland. The Commission proposes thus to adopt the Protocol by two separate acts, one based on the Treaty establishing the European Community (Articles 62, 63 (3), 66 and 95) and one based on the Treaty on European Union (Articles 24 and 38).

Concerning the decision based on the Treaty establishing the European Community, the Council will decide by unanimity given the fact that Article 63 point 3 a) requires a unanimous vote of the Member States. The European Parliament will have to be consulted on the conclusion of the Agreement in accordance with Article 300 (3) of the EC Treaty.

¹ The same day the European Community signed an Agreement with 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 “Dublin/Eurodac agreement with Switzerland”).

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

II. RESULTS OF THE NEGOTIATIONS

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

The final content can be summarised as follows:

Liechtenstein accedes to the Schengen agreement with Switzerland and will have the same rights and obligations as Switzerland. Liechtenstein will have to accept the entire Schengen acquis and the development thereof, with the sole exception granted also to Switzerland (Article 7 (5) of the Schengen agreement with Switzerland):

If provisions of a new Schengen 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, Liechtenstein does not need to implement these 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 Liechtenstein, would not be punishable under Liechtenstein law with a custodial penalty³.

Apart from this exception, if Liechtenstein does not accept future developments of the Schengen acquis, the Protocol will cease to operate.

Liechtenstein will become a member of the Mixed Committee and will have the right to express its opinion within the Mixed Committee and to preside it.

The putting into effect of the Schengen protocol is linked to the putting into effect of the Dublin/Eurodac protocol, as well as to the putting into effect of the respective agreements between Liechtenstein and Denmark and between Liechtenstein and Norway and Iceland on Schengen.

Specific provisions are laid down for Liechtenstein concerning the time period needed for the implementation of a development of the Schengen acquis, in case constitutional requirements need to be fulfilled by Liechtenstein (18 months) and the financial contribution that Liechtenstein has to pay for the administrative costs of the Council Working Groups, which meet in form of the Mixed Committee. The overall amount of these administrative costs are laid down in the Swiss agreement with an amount of € 8 100 000 and Liechtenstein will have to pay 0.071% of it. In addition, like Switzerland, Liechtenstein will have to contribute to the operational costs linked to the implementation of the Schengen acquis according to its GDP. Consequently, there are no financial implications for the EU resulting from Liechtenstein's association with the Schengen acquis.

Given the existing cooperation with Switzerland in the field of visa policy and security matters which includes the use of common databases, Liechtenstein may use the technical infrastructure of Switzerland for its access to the Schengen Information System and the Visa Information System.

³ Article 5 (5) a of the Protocol

III. CONCLUSIONS:

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

- decides that the Protocol be signed on behalf of the European Union, on the one hand, and of the European Community, on the other hand, and authorises the President of the Council to appoint the person duly empowered to sign on behalf of the European Union, on the one hand, and of the European Community, on the other hand;
- approves, after consulting the European Parliament, the attached Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis on behalf of the European Union, on the one hand, and of the European Community, on the other hand.

Proposal for a

COUNCIL DECISION

on the signature, on behalf of the European Union, and on the provisional application of certain provisions of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis

THE COUNCIL OF THE EUROPEAN UNION,

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

Whereas:

- (1) Following the authorization given to the Presidency, assisted by the Commission, on 27 February 2006, negotiations with the Principality of Liechtenstein and the Swiss Confederation of a Protocol on the accession of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis have been finalised;
- (2) Subject to its conclusion at a later date, it is desirable to sign the Protocol that was initialled in Brussels on 21 June 2006;
- (3) The protocol caters for the provisional application of certain of its provisions. These provisions should be applied on a provisional basis pending the Protocol's entry into force.
- (4) As far as the development of the Schengen acquis is concerned, which falls under Title VI of the Treaty on European Union, it is appropriate to make Council Decision 1999/437/EC⁴ 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 applicable, mutatis mutandis, to the relations with Liechtenstein upon signature;
- (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

⁴ OJ L 176 of 10.7.1999, p. 31.

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 acquis⁵;

- (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 acquis⁶;

HAS DECIDED AS FOLLOWS:

Article 1

Subject to its conclusion at a later date, the President of the Council is hereby authorised to designate the person empowered to sign, on behalf of the European Union, the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis and related documents.

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

Article 2

This decision applies to the fields covered by the provisions listed in Article 2 (1) and (2) of the Protocol and to their development to the extent that such provisions have a legal base within the Treaty on European Union, or to the extent that it has been determined under Decision 1999/436/EC⁷, that they have such a base.

Article 3

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

⁵ OJ L 131, 01.06.2000, p. 43

⁶ OJ L 064, 07.03.2002, p.20

⁷ OJ L 176 of 10.7.1999, p. 17.

Article 4

In accordance with Article 9 (2) of the Protocol, Articles 1, 4 and 5 (2) (a) first sentence of this Protocol and the rights and obligations set out in Articles 3 (1) (2) (3) and (4), 4, 5, and 6 of the Agreement on the Swiss association with the implementation, application and development of the Schengen acquis shall be applied on a provisional basis as of the time of signature of this Protocol, pending its entry into force.

Done at Brussels,

*For the Council
The President*

Proposal for a

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on the signature, on behalf of the European Community, and on the provisional application of certain provisions of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 62, 63 point 3 a) and b), 66 and 95 in conjunction with the second sentence of the first subparagraph of Article 300(2) thereof,

Having regard to the proposal from the Commission⁸,

Whereas:

- (1) Following the authorization given to the Commission on 27 February 2006, negotiations with the Principality of Liechtenstein and the Swiss Confederation of a Protocol on the accession of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis have been finalised;
- (2) Subject to its conclusion at a later date, it is desirable to sign the Protocol that was initialled in Brussels on 21 June 2006;
- (3) The Protocol caters for the provisional application of certain of its provisions. These provisions should be applied on a provisional basis pending the Protocol's entry into force.
- (4) As far as the development of the Schengen acquis is concerned, which falls under the Treaty establishing the European Community, it is appropriate to make Council Decision 1999/437/EC⁹ 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 applicable, mutatis mutandis, to the relations with Liechtenstein upon signature;

⁸ OJ C , , p. .

⁹ OJ L 176 of 10.7.1999, p. 31.

- (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 acquis¹⁰;
- (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 acquis¹¹;
- (7) This Decision shall not prejudice the position of the Denmark, under the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community.

HAS DECIDED AS FOLLOWS:

Article 1

Subject to its conclusion at a later date, the President of the Council is hereby authorised to designate the person empowered to sign, on behalf of the European Community, the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis and related documents.

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

Article 2

This decision applies to the fields covered by the provisions listed in Article 2 (1) and (2) of the Protocol and to their development to the extent that such provisions have a legal base within the Treaty establishing the European Community, or to the extent that it has been determined under Decision 1999/436/EC¹², that they have such a base.

Article 3

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

¹⁰ OJ L 131, 01.06.2000, p. 43

¹¹ OJ L 064, 07.03.2002, p.20

¹² OJ L 176 of 10.7.1999, p. 17.

Article 4

In accordance with Article 9 (2) of the Protocol, Articles 1, 4 and 5 (2) (a) first sentence of this Protocol and the rights and obligations set out in Articles 3 (1) (2) (3) and (4), 4, 5, and 6 of the Agreement on the Swiss association with the implementation, application and development of the Schengen acquis shall be applied on a provisional basis as of the time of signature of this Protocol, pending its entry into force.

Done at Brussels,

*For the Council
The President*

Proposal for a

COUNCIL DECISION

on the conclusion on behalf of the European Union of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis

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 authorization given to the Presidency, assisted by the Commission, on 27 February 2006, negotiations with the Principality of Liechtenstein and the Swiss Confederation of a Protocol on the accession of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis have been finalised;
- (2) According to Council Decision/..../CE of2006, and subject to its conclusion at a later date, the Protocol has been signed on behalf of the European Union on2006;
- (3) This Protocol should be approved;
- (4) As far as the development of the Schengen acquis is concerned, which falls under Title VI of the Treaty on European Union, it is appropriate to make Council Decision 1999/437/EC¹³ 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 applicable, mutatis mutandis, to the relations with Liechtenstein;
- (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

¹³ OJ L 176 of 10.7.1999, p. 31.

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 acquis¹⁴;

- (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 acquis¹⁵;

HAS DECIDED AS FOLLOWS:

Article 1

The Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis and related documents are hereby approved on behalf of the European Union.

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

Article 2

This decision applies to the fields covered by the provisions listed in Article 2 (1) and (2) of the Protocol and to their development to the extent that such provisions have a legal base within the Treaty on European Union, or to the extent that it has been determined under Decision 1999/436/EC¹⁶, that they have such a base.

Article 3

The provisions of Council Decision 1999/437/EC shall apply, in the same way, to the association of Liechtenstein 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 9 of the protocol, in order to express the consent of the European Union to be bound.

¹⁴ OJ L 131, 01.06.2000, p. 43

¹⁵ OJ L 064, 07.03.2002, p.20

¹⁶ OJ L 176 of 10.7.1999, p. 17.

Article 5

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

Done at Brussels,

For the Council
The President

Proposal for a

COUNCIL DECISION

on the conclusion, on behalf of the European Community, of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 62, 63 point 3 a) and b), 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 Commission¹⁷,

Having regard to the opinion of the European Parliament,

Whereas:

- (1) Following the authorization given to the Commission on 27 February 2006, negotiations with the Principality of Liechtenstein and the Swiss Confederation of a Protocol on the accession of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis have been finalised;
- (2) According to Council Decision/..../CE of2006, and subject to its conclusion at a later date, the Protocol has been signed on behalf of the European Community on2006;
- (3) This protocol should be approved;
- (4) As far as the development of the Schengen acquis is concerned, which falls under the Treaty establishing the European Community, it is appropriate to make Council Decision 1999/437/EC¹⁸ 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

¹⁷ OJ C , , p. .

¹⁸ OJ L 176 of 10.7.1999, p. 31.

implementation, application and development of the Schengen acquis applicable, mutatis mutandis, to the relations with Liechtenstein;

- (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 acquis¹⁹;
- (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 acquis²⁰;
- (7) This Decision shall not prejudice the position of the Denmark, under the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community.

HAS DECIDED AS FOLLOWS:

Article 1

The Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis and related documents are hereby approved on behalf of the European Community.

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

Article 2

This decision applies to the fields covered by the provisions listed in Article 2 (1) and (2) of the Protocol and to their development to the extent that such provisions have a legal base within the Treaty establishing the European Community, or to the extent that it has been determined under Decision 1999/436/EC²¹, that they have such a base.

Article 3

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

¹⁹ OJ L 131, 01.06.2000, p. 43

²⁰ OJ L 064, 07.03.2002, p.20

²¹ OJ L 176 of 10.7.1999, p. 17.

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 9 of the Protocol, in order to express the consent of the European Community to be bound.

Article 5

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

Done at Brussels,

For the Council
The President

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

The European Union

and

The European Community

and

The Swiss Confederation

and

The Principality of Liechtenstein,

hereinafter referred to as "the Contracting Parties",

HAVING REGARD TO the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis signed on 26.10.2004 and its article 16 that provides for the possibility of the Principality of Liechtenstein to accede to that Agreement via a protocol;

CONSIDERING the geographical situation of the Principality of Liechtenstein

CONSIDERING the close ties between the Principality of Liechtenstein and the Swiss Confederation expressed by an area without internal border controls between the Principality of Liechtenstein and the Swiss Confederation.

CONSIDERING the wish of the Principality of Liechtenstein to respectively maintain and establish an area without border control with all Schengen countries and therefore to be associated with 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 Norway²² associated the latter two States with the implementation, application and development of the Schengen acquis;

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

²² OJ L 176, 10.7.1999, p. 36.

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

WHEREAS the provisions of Title IV of the Treaty establishing the European Community and the acts adopted on the basis of that Title do not apply to the Kingdom of Denmark pursuant to the Protocol on the position of Denmark annexed by the Treaty of Amsterdam to the Treaty on European Union and to the Treaty establishing the European Community, and whereas the decisions designed to develop the Schengen *acquis* in application of 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.²³

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 Protocol 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 Protocol on the accession of the Principality of Liechtenstein to the agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in one of the Member States or in Switzerland

BEARING IN MIND the link between the Schengen *acquis* and 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.

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:

²³ OJ L 131, 1.6.2000, p. 43 and OJ L 64, 7.3.2002, p. 20.

Article 1

In accordance with Article 16 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 (hereinafter referred to as "Association Agreement"), the Principality of Liechtenstein (hereinafter referred to as "Liechtenstein") accedes to that agreement under the terms and conditions set out in this Protocol.

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

Article 2

1. The provisions of the Schengen acquis listed in Annex A and Annex B to the Association Agreement as they apply to the Member States of the European Union shall be implemented and applied by Liechtenstein under the conditions envisaged in these Annexes.
2. In addition, the provisions of the acts of the European Union and of the European Community listed in the Annex to this Protocol which have replaced or developed provisions of the Schengen acquis shall be implemented and applied by Liechtenstein.
3. The acts and measures taken by the European Union and the European Community amending or developing the provisions of the Schengen acquis, to which the procedures set out in the Association Agreement, in conjunction with this Protocol, have been applied, shall also, without prejudice to Article 5, be accepted, implemented and applied by Liechtenstein.

Article 3

The rights and obligations set out in Articles 3 (1), (2), (3) and (4), 4, 5, 6, 8, 9, 10, 11 (2), (3) and (4), and Article 13 of the Association Agreement shall apply to Liechtenstein.

Article 4

The office of the President of the Mixed Committee as established by Article 3 of the Association Agreement shall, at the level of experts be held by the representative of the European Union. At the level of senior officials and Ministers it shall alternately, for a period of six months, be held by the representative of the European Union and by the representative of the Government of Liechtenstein or Switzerland.

Article 5

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 Liechtenstein, unless those acts or measures explicitly state otherwise. In this context,

due account shall be taken of the period of time indicated by Liechtenstein in the Mixed Committee as being necessary to enable it to fulfil its constitutional requirements.

2. (a) The Council of the European Union hereafter referred to as "the Council" shall notify Liechtenstein immediately of the adoption of the acts or measures referred to in paragraph 1 to which the procedures set out in this Protocol have been applied. Liechtenstein 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 of the European Communities hereafter referred to as "the Commission" within thirty days of the adoption of the acts or measures concerned.

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

If Liechtenstein 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 Liechtenstein to ensure that Schengen cooperation operates smoothly.

3. Acceptance by Liechtenstein of the acts and measures referred to in paragraph 2 creates rights and obligations between Liechtenstein, 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, and Switzerland on the other hand.

4. Where:

(a) Liechtenstein 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 Protocol have been applied; or

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

(c) Liechtenstein does not carry out the notification at the latest 30 days after the referendum deadline has expired or, in the case of a referendum, within the 18 months 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 Protocol shall be considered terminated unless the Mixed Committee, after carrying out a careful examination of ways of continuing the Protocol, decides otherwise within

ninety days. Termination of this Protocol shall take effect three months after the expiry of the ninety-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, Liechtenstein may notify the Council and the Commission within the period of thirty 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 Liechtenstein, would not be punishable under Liechtenstein law with a custodial penalty. In that case this Protocol 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 Liechtenstein 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 thirty days of the agreement reached in the Mixed Committee.

Article 6²⁴

In fulfilling its obligation with regard to the [reference to the legal instruments establishing the Schengen Information System and Visa Information System], Liechtenstein may use the technical infrastructure of Switzerland for its access to the Schengen Information System and the Visa Information System.

Article 7

As regards the administrative costs associated with implementing this protocol, Liechtenstein shall make an annual contribution to the general budget of the European Communities of 0.071% of an amount of EUR 8 100 000, subject to annual adjustment to reflect inflation in the European Union.

Article 8

1. This Protocol shall not affect the Agreement on the European Economic Area or any other agreement concluded between the European Community and Liechtenstein.

²⁴

If the legal instruments SIS and VIS are not adopted before the signature of the protocol, the article would read as follows: in fulfilling its obligation with regard to the legal instruments establishing the Schengen Information System II and the Visa Information System, Liechtenstein may use the technical infrastructure of Switzerland for its access to these systems.

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

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

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

Article 9

1. This Protocol 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 Protocol.

2. Articles 1, 4 and 5 (2) (a) first sentence of this Protocol and the rights and obligations set out in Articles 3 (1) (2) (3) and (4), 4, 5, and 6 of the Association Agreement shall apply provisionally to Liechtenstein as of the time of signature of this Protocol.

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

Article 10

1. The provisions referred to in Article 2 shall be put into effect by Liechtenstein 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 referred to in Article 2 after consulting the Mixed Committee and after having satisfied itself that the preconditions for implementation of the relevant provisions have been fulfilled by Liechtenstein.

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 their Treaty of Accession, only some of the provisions referred to in Article 2 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 and Liechtenstein, on the one part and between Liechtenstein, 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, on the other part.

3. This Protocol shall be applied only if the Agreements referred to in Article 13 of the Association Agreement that need to be concluded by Liechtenstein are also implemented.

4. Moreover, this Protocol shall be applied only if the Protocol between the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland is also implemented.

Article 11

1. This Protocol may be denounced by Liechtenstein or by Switzerland or by decision of the Council acting by unanimity of its Members. The depositary shall be notified of denunciation, which shall take effect six months after notification.

2. In case of denunciation of this Protocol or the Association Agreement by Switzerland or the termination of the Association Agreement with respect to Switzerland the Association Agreement and this Protocol shall remain in force with respect to the relations between the European Union and the European Community on the one part and Liechtenstein on the other part. In such a case, the Council shall decide after consultation of Liechtenstein on the necessary measures. However, these measures shall be binding upon Liechtenstein only if they are accepted by it.

3. This Protocol shall be considered to have been terminated if Liechtenstein terminates one of the agreements referred to in Article 13 of the Association Agreement that have been concluded by Liechtenstein or the Protocol referred to in Article 10 (4).

Article 12

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

In witness whereof, the undersigned plenipotentiaries have hereunto set their hands.

Done at... on...

Annex to the protocol on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis.

Liechtenstein will apply the following acts from the date set by the Council in accordance with Article 10.

- Council Regulation No 2007/2004/EC of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (OJ L 349 of 25.11.2004, p. 1);
- Council Regulation No 2133/2004/EC of 13 December 2004 on the requirement for the competent authorities of the Member States to stamp systematically the travel documents of third country nationals when crossing the external borders of the Member States and amending the provisions of the Convention implementing the Schengen Agreement and the common manual to this end (OJ L 369 of 16.12.2004, p. 5)
- Council Regulation No 2252/2004/EC of 13 December 2004 on standards for security features and biometrics in passports and travel documents issued by Member States (OJ L 385 of 29.12.2004, p. 1); Commission Decision of 28.2.2005 laying down the technical specifications on the standards for security features and biometrics in passports and travel documents issued by Member States (C(2005) 409 final)
- Council Decision No 2005/211/JHA of 24 February 2005 concerning the introduction of some new functions for the Schengen Information System, including in the fight against terrorism (OJ L 68 of 15.3.2005, p. 44),
- Council Decision 2005/719/JHA of 12 October 2005 fixing the date of application of certain provisions of Decision 2005/211/JHA concerning the introduction of some new functions for the Schengen Information System, including in the fight against terrorism (OJ L 271 of 15.10.2005, p. 54),
- Council Decision 2005/727/JHA of 12 October 2005 fixing the date of application of certain provisions of Decision 2005/211/JHA concerning the introduction of some new functions for the Schengen Information System, including the fight against terrorism (OJ L 273 of 19.10.2005, p. 25),
- Council Decision 2006/228/JHA of 9 March 2006 fixing the date of application of certain provisions of Decision 2005/211/JHA concerning the introduction of some new functions for the Schengen Information System, including the fight against terrorism (OJ L 81 of 18.3.2006, p. 45),
- Council Decision 2006/229/JHA of 9 March 2006 fixing the date of application of certain provisions of Decision 2005/211/JHA concerning the introduction of some new functions for the Schengen Information System, including in the fight against terrorism (OJ L 81 of 18.3.2006, p. 46);

- Council Decision N° 2005/267/EC of 16 March 2005 establishing a secure web-based Information and Coordination Network for Member States' Migration Management Services (OJ L 83 of 1.4.2005, p. 48)
- Council Regulation (EC) No 851/2005 of 2 June 2005 amending Regulation (EC) No 539/2001 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 as regards the reciprocity mechanism (OJ L 141 of 4.6.2005, p. 3)
- Council Decision 2005/451/JHA of 13 June 2005 fixing the date of application of certain provisions of Regulation (EC) No 871/2004 concerning the introduction of some new functions for the Schengen Information System, including in the fight against terrorism (OJ L 158 of 21.6.2005, p. 26)
- Regulation (EC) No 1160/2005 of the European Parliament and of the Council of 6 July 2005 amending the Convention implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders, as regards access to the Schengen Information System by the services in the Member States responsible for issuing registration certificates for vehicles (OJ L 191 of 22.7.2005, p. 18)
- Recommendation 2005/761/EC of the European Parliament and of the Council of 28 September 2005 to facilitate the issue by the Member States of uniform short-stay visas for researchers from third countries travelling within the Community for the purpose of carrying out scientific research (OJ L 289 of 3.11.2005, p. 23)
- Council Decision 2005/728/JHA of 12 October 2005 fixing the date of application of certain provisions of Regulation (EC) No 871/2004 concerning the introduction of some new functions for the Schengen Information System, including in the fight against terrorism (OJ L 273 of 19.10.2005, p. 26)
- Regulation (EC) No 2046/2005 of the European Parliament and of the Council of 14 December 2005 relating to measures envisaged to facilitate the procedures for applying for and issuing visas for members of the Olympic family taking part in the 2006 Olympic and/or Paralympic Winter Games in Turin (OJ L 334 of 20.12.2005, p. 1)
- Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 105 of 13.4.2006, p.1)
- Council Decision 2006/440/EC of 1 June 2006 amending Annex 12 to the Common Consular Instructions and Annex 14a to the Common Manual on the fees to be charged corresponding to the administrative costs of processing visa applications (OJ L 175 of 29.6.2006, p. 77)
- Council Decision (2006/628/EC) of 24 July 2006 fixing the date of application of Article 1(4) and (5) of Regulation (EC) No 871/2004 concerning the introduction of some new functions for the Schengen Information System, including in the fight against terrorism (OJ L 256 of 20.9.2006, p. 15)

- Council Decision 2006/631/JHA of 24 July 2006 fixing the date of application of certain provisions of Decision 2005/211/JHA concerning the introduction of some new functions for the Schengen Information System, including in the fight against terrorism (OJ L 256 of 20.9.2006, p. 18)
- Commission Decision (2006/648/EC) of 22 September 2006 laying down the technical specifications on the standards for biometric features related to the development of the Visa Information System (*notified under document number C(2006) 3699*), (OJ L 267 of 27.9.2006, p.41 and corrigendum OJ L 271 of 30.9.2006, p. 85)
- Council Decision (2006/684/EC) of 5 October 2006 amending Annex 2, Schedule A, to the Common Consular Instructions on the visa requirements for holders of Indonesian diplomatic and service passports (OJ L 208 of 12.10.2006, p. 29)

Joint declarations of the Contracting parties:

Joint declaration of the Contracting parties on the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union:

The Contracting Parties take note that further arrangements shall be concluded for the association of Switzerland and Liechtenstein to the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union following the example of the arrangements agreed with Norway and Iceland.

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 Liechtenstein 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 Liechtenstein in proceedings in which Liechtenstein 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, Liechtenstein 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 European Community and Liechtenstein on external relations

The European Community and Liechtenstein agree that the European Community undertakes to encourage third countries or international organisations with which it concludes agreements in areas linked to Schengen cooperation including the visa policy to conclude similar agreements with the Principality of Liechtenstein, without prejudice to the latter's competence to conclude such agreements.

Declaration by Liechtenstein on mutual assistance in criminal matters

Liechtenstein declares that tax offences being investigated by the Liechtenstein authorities may not give rise to an appeal before a court competent *inter alia* to hear criminal matters.

Declaration by Liechtenstein on Article 5 (2)(b) (Time limit for accepting new developments in the Schengen acquis)

The maximum time limit of 18 months laid down in Article 5(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 of 30 days
- where applicable the referendum (organisation and voting)
- the sanctioning of the ruling prince.

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

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

Declaration by Liechtenstein on the application of the European Convention on Mutual Assistance in Criminal Matters and the European Convention on Extradition

Liechtenstein 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 by the European Community on the External Borders Fund for the period 2007-2013:

The European Community is currently establishing an External Borders Fund for the period 2007-2013, for which further arrangements shall be concluded with the third countries associated with the Schengen acquis.

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 Liechtenstein.

Participation in Committees that assist the European Commission in the exercise of its executive powers:

The Council authorized the Commission on 1 June 2006 to open negotiations with the Republic of Iceland, the Kingdom of Norway, the Swiss Confederation and the Principality of Liechtenstein with a view to concluding an agreement on the latter's association with the work of the committees which assist the European Commission in the exercise of its executive powers as regards the implementation, application and development of the Schengen acquis.

Until conclusion of such an agreement, the agreement in the form of an exchange of letter 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 applies to Liechtenstein taking into account that as far as 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 the free movement of such data is concerned, the participation of Liechtenstein is laid down by Article 100 of the Agreement on the European Economic Area.

COMMON DECLARATION ON JOINT MEETINGS

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,

The delegation representing the government of the Principality of Liechtenstein,

Note that Liechtenstein accedes to the Mixed Committee established by agreement on the association of Switzerland with the implementation, application and development of the Schengen *acquis* via a protocol to this agreement.

Have decided to organize 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* as complemented by the Protocol on the association of Liechtenstein, on the other hand, jointly, no matter the level of the meeting.

Note that holding these meetings jointly calls for 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* as complemented by the Protocol on the association of Liechtenstein 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* and as of the entry into force of the Protocol on the association of Liechtenstein.

Done at on