# EC/Switzerland agreement: agreement on the Schengen acquis

2004/0199(CNS) - 28/01/2008 - Final act

PURPOSE: to conclude the Agreement between the European Union and Switzerland with a view to its implementation, application and development of the Schengen Acquis.

LEGISLATIVE ACT: Council Decision 2008/146/EC 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.

BACKGROUND: on 1 June 2002, 7 Agreements involving the European Union and Switzerland entered into force simultaneously. They concerned the essential elements of the internal market but were also aimed at simplifying the free movement of persons between the European Union and this country. In the annex to these Agreements, Switzerland made a declaration on immigration and asylum policy in which it expressed its intention to associate itself with the Schengen acquis in particular as regards the coordination of asylum policies. It also proposed to take part in the negotiations with a view to concluding a parallel convention to the Dublin Convention.

This Agreement and the parallel Agreement on the association of Switzerland to the Schengen Acquis (see CNS/2004/0200) are the result of this commitment.

CONTENT: the purpose of this Decision is to approve, on behalf of the Community, the Agreement between Switzerland and the European Union enabling this country to participate in the Schengen Acquis. Switzerland will therefore be associated in all the activities which concern the 1985 Schengen Agreements, Convention and all the legislation stemming from the Schengen Agreement. Annex B of the Agreement lists all the legislative acts concerning the terms of the Agreement.

The Agreement also provides for the setting up of a Mixed Committee composed of Swiss government representatives, members of the Council and of the European Commission. The Swiss authorities shall be consulted on any new proposed measures and shall be informed of any change in legislation. Switzerland will be allowed to put forward proposals through the Mixed Committee.

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.

**Transition period:** Switzerland is granted a two year period for acceptance and implementation of future acquis into its internal legal order in case a referendum is requested. If possible, Switzerland has to apply the development of the acquis on a provisional basis. If Switzerland cannot apply the content of the development on a provisional basis, EU and EC may take proportional and necessary measures against Switzerland in order to ensure the efficient functioning of the Schengen cooperation. This safeguard clause makes it possible for EU and EC to accept an eventual two year delay for the implementation of future acquis by Switzerland. The only exception to this general principle is laid down in Article 7 (5) on the future development of the Schengen acquis and concerns a possible future act or measure relating to a

request or order for search and seizure 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. As regards indirect taxation, as far as indirect taxation is concerned, no derogation has been granted as regards both current and future acquis. Switzerland will grant full judicial cooperation under Article 51 of the Schengen Convention concerning cases of indirect tax evasion.

**Budget implications**: with regard to the administrative and operating costs associated with implementing this Agreement, Switzerland shall make a contribution to the general budget of the European Communities amounting to 7.286% of an initial reference amount of EUR 8 100 000 subject to an annual adjustment reflecting inflation in the EU. As regards the development costs of SIS II to which Switzerland is also associated, Switzerland shall contribute, from the 2002 financial year, an annual sum calculated in accordance with its gross domestic product as a percentage of the gross domestic product of all the participating States.

**Simultaneous implementation of the Agreements**: it is provided to create a link between the implementation and the termination of the Schengen Agreement, on the one had, and, on the other hand, the implementation of and the termination of the Agreement on the mechanisms for determining the state responsible for examining a request for asylum lodged in one of the Member States.

**Bilateral Agreements**: according to Denmark's special position with regard to acts adopted pursuant to Title IV of the Treaty establishing the European Community, Denmark needs to conclude a separate Agreement with Switzerland in order to create rights and obligations with Switzerland in relation to the Schengen acquis adopted pursuant to Title IV. In addition, Norway and Iceland also need to conclude an Agreement with Switzerland in order to create rights and obligations between all associated partners applying the Schengen acquis. An Article allows Liechtenstein to join the present Agreement. This provision avoids the conclusion of a separate Agreement with Liechtenstein on the same issue.

**Various declarations**: it should be noted that several declarations have been made which state in particular that:

1) the EU/EC does not exercise external competences on behalf of Switzerland. When negotiations with third countries have an impact on the Schengen acquis (e.g. negotiations on visa waiver Agreements) EU /EC will invite third countries to conclude similar Agreements with the three associated countries (Switzerland, Norway and Iceland).

2) Switzerland commits itself to speed up as much as possible the different procedures where a referendum is asked.

Lastly, like Norway and Iceland, Switzerland will also participate as observer in the work of the Committees assisting the Commission in the exercise of its executive powers. Measures are also provided which aim to associate Switzerland with the principal provisions of Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data to be an integral part of the Schengen acquis.

ENTRY INTO FORCE (of this Agreement and the parallel Agreement): 1 March 2008.