EC/Norway, Iceland, Switzerland and Liechtenstein agreement: supplementary rules in relation to the External Borders Fund for the period 2007 to 2013

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PURPOSE : to conclude, on behalf of the EC, an Agreement between the EC and Iceland, Norway, the Swiss Confederation and Liechtenstein on supplementary rules in relation to the External Borders Fund for the period 2007 to 2013.

PROPOSED ACT: Council Decision.

BACKGROUND: in May 1999, the Council, Iceland and Norway concluded an Agreement concerning those states' association with the implementation, application and development of the Schengen acquis. A similar agreement was concluded with Switzerland in 2004. In June 2006, a Protocol between the Council, the EC, Switzerland and Liechtenstein on the latter’s accession to the 2004 Agreement was initialled, signed on 28 February 2008 and is expected to be concluded in 2009.

According to Article 11 of Decision No 574/2007/EC of the European Parliament and of the Council establishing the External Borders Fund for the period 2007 to 2013 as part of the General programme 'Solidarity and Management of Migration Flows' the states associated with the implementation, application and development of the Schengen acquis shall participate in the Fund in accordance with the provisions of the Decision. Moreover, arrangements shall be concluded specifying supplementary rules necessary for such participation, including provisions ensuring the protection of the Community's financial interests and the auditing power of the Court of Auditors.

This is the aim of the present proposal.

CONTENT: the Agreement should provide for the application of rules in the jurisdiction of Norway, Iceland, Switzerland and Liechtenstein aiming at enabling the Commission to assume final responsibility for the implementation of the budget of the Fund in these states.

Neither the Decision nor the above-mentioned Schengen association agreements provide for such rules. Following the authorisation given by the Council to the Commission on 20 December 2007, negotiations were held with the countries involved and negotiations were finalised on 30 June 2009 when the draft Agreement was initialled.

The proposal sets out the content of the draft Agreement.

As regards the rules aiming at enabling the Commission to assume final responsibility for the implementation of the budget of the Fund in these states, the Agreement deals with the following aspects of the financial management and control of the Fund:

- the principle of sound financial management;
- the principle on avoiding conflict of interest;
- the necessary measures resulting from the delegation of the implementation of EU funds to the associated States;

- the enforcement of pecuniary obligations;
- the protection of the financial interests of the Communities against fraud;
- on-the-spot checks and inspections, the Court of Auditors, public procurement.

The Agreement sets out arrangements for the financial contributions from these states to the budget of the Fund, and lays down fixed amounts for these contributions for the period 2009-2013. The advantage of fixed amounts is that it facilitates the process of calculating the total amount of annual appropriations available for the Fund. The fixed amounts, however, are subject to a correction mechanism to be applied in the last year of the multiannual programme, bearing in mind the calculation methods based on GDP as laid down in the respective Schengen association agreements. Further, adjustment is made possible in case of a change in the total reference amount in Article 13(1) of the Decision or of changes to the annual appropriations foreseen in the text. Given the expected timing for the conclusion of this Agreement, the contributions for 2009 are only due, as exceptional contributions, in 2010. In the same vein, the allocations envisaged for 2009 for the associated countries, as communicated in July 2008, will be due, exceptionally, only in 2010. The timing for the payment of these contributions is also laid down.

The Agreement sets out some specific arrangements for the associated States on the submission of programmes and reports, in the light of the delay in launching their participation in the Fund. Parties have agreed that this Agreement shall apply provisionally as from the day following that of its signature, without prejudice to constitutional requirements. An exception to this principle is made for the application of Article 6 on the enforceability of pecuniary obligations, which requires specific legislative action in the associated States.

For efficiency, and to avoid the need to conduct separate negotiations, Liechtenstein has been associated with the negotiations on its participation in the Fund before the conclusion of the Protocol. This Agreement will not apply to Liechtenstein until the date when the Protocol is put into effect.

One joint declaration is attached to the Agreement relating to the choice of Liechtenstein not to participate in the Fund, without prejudice to its obligations to contribute financially to the Fund. Moreover, there is an exchange of declarations between Norway and the EC on the application of the principle of direct enforceability of decisions by the EC. This exchange of declarations is based on the one attached to the Schengen Association Agreement with Norway.

Accordingly, the Commission proposes that the Council:

- decide that the Agreement be signed on behalf of the Community and authorise the President of the Council to appoint the person(s) duly empowered to sign on behalf of the Community;
- approve, after consultation of the European Parliament, the Agreement between the European Community, and Iceland, Norway, Switzerland and Liechtenstein on supplementary rules in relation to the External Borders Fund for the period 2007 to 2013.