EC/Switzerland and Liechtenstein Arrangement: participation of Switzerland and Liechtenstein in the activities of Frontex

2009/0073(NLE) - 26/07/2010 - Final act

PURPOSE: to conclude the Arrangement for Switzerland and Lichtenstein to participate in the activities of FRONTEX.

LEGISLATIVE ACT: Council Decision 2010/490/EU on the conclusion, on behalf of the Union, of the Arrangement between the European Community, of the one part, and the Swiss Confederation and the Principality of Liechtenstein, of the other part, on the modalities of the participation by those States in the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union.

CONTENT: this Decision approves the Arrangement between the EC and Switzerland and Liechtenstein, on the modalities of the participation by those States in the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the EU.

The Arrangement sets out the modalities of the participation by those States in the FRONTEX Agency. In accordance with the FRONTEX Regulation (Council Regulation (EC) No 2007/2004), countries associated with the implementation, application and development of the Schengen acquis shall participate in the Agency, **albeit with limited voting rights**.

Rights accorded to Switzerland and Liechtenstein, in accordance with the Arrangement: Switzerland and Liechtenstein shall be represented on the Management Board of the Agency.

- Switzerland shall have voting rights:

- as regards decisions on specific activities to be carried out at its external borders;
- as regards decisions on specific activities under Article 3 of the Frontex Regulation (joint operations and pilot projects at external borders), Article 7 (management of technical equipment), Article 8 (support for Member States in circumstances requiring increased technical and operational assistance at external borders) and Article 9(1), first sentence (joint return operations) to be carried out with human resources and/or equipment made available by Switzerland;
- as regards decisions on risk analysis (development of the common integrated risk analysis, general and specific risk analysis), directly affecting Switzerland, under Article 4;
- as regards decisions on training activities under Article 5, except on establishment of the common core curriculum.

- Liechtenstein shall have voting rights:

- as regards decisions on specific activities under Article 3 (joint operations and pilot projects at external borders), Article 7 (management of technical equipment), Article 8 (support for Member States in circumstances requiring increased technical and operational assistance at external borders) and Article 9(1), first sentence (joint return operations) to be carried out with human resources and /or equipment made available by Liechtenstein;
- as regards decisions on risk analysis (development of the common integrated risk analysis, general and specific risk analysis), directly affecting Liechtenstein, under Article 4;
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as regards decisions on training activities under Article 5, except on establishment of the common core curriculum.

Financial contribution: provisions are laid down for Switzerland and Liechtenstein as regards the financial contribution to the budget in accordance with a percentage laid down the Agreement signed on 26 October 2004 between the EU, the EC and Switzerland on Switzerland's association with the implementation, application and development of the Schengen *acquis* Arrangement.

Protection and confidentiality of data: provisions are also set out for these two countries as regards the protection of individuals with regard to the processing of personal data and on the free movement of such data (in particular data forwarded by the Agency to the authorities of Switzerland and Liechtenstein). Switzerland and Liechtenstein shall respect the rules on confidentiality of documents held by the Agency.

Further measures are also provided so that Switzerland and Liechtenstein respect:

- the legal status of the Agency (which shall have legal personality under the law of Switzerland and the law of Liechtenstein);
- the rules on the liability of the Agency;
- the rules onjurisdiction (the countries shall recognise the jurisdiction of the Court of Justice over the Agency);
- the rules on disputes regarding civil liability (in accordance with Regulation (EC) No 863/2007 establishing a mechanism for the creation of Rapid Border Intervention Teams and amending Council Regulation (EC) No 2007/2004 as regards that mechanism and regulating the tasks and powers of guest officers.

Privileges and immunities – Staff: Switzerland and Liechtenstein shall apply the rules relating to the Agency's staff matters adopted pursuant to the Protocol on the Privileges and Immunities of the European Communities (as set out in the Annex to the Arrangement), except for specific derogations stipulating that nationals of Switzerland and Liechtenstein enjoying their full rights as citizens may be engaged under contract by the Executive Director of the Agency. Nationals of Switzerland and Liechtenstein may not, however, be appointed to the posts of Executive Director or Deputy Executive Director of the Agency.

Validity of the Arrangement: the Arrangement shall be concluded for an unlimited period.

It should be noted that the Arrangement includes two specific declarations:

- the first on voting rights provided for in the Arrangement are justified by the special relations with Switzerland and Liechtenstein flowing from the association of these States with the implementation, application and development of the Schengen acquis. These voting rights are of an exceptional nature attributable to the specific nature of the Schengen cooperation and the special position of Switzerland and Liechtenstein. They may therefore not be regarded as a legal or political precedent for any other field of cooperation between the parties to the Arrangement or for the participation of other third countries in other agencies of the Union. In no circumstances may these voting rights be exercised in respect of decisions of a regulatory or legislative nature;
- the second concerns civil responsibility in cases where a rapid border intervention team is deployed.

Territorial application: in accordance with Articles 1 and 2 of the Protocol on the Position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application. Given that this Decision builds upon the Schengen acquis, Denmark shall decide within a period of six months after the Council has decided on this Decision whether it will implement it in its national law. On the other hand, the United Kingdom and Ireland shall not take part in the adoption of this Decision and shall not be bound by it or subject to its application.

ENTRY INTO FORCE: the Decision shall enter into force on 26/07/2010. The Agreement shall enter into force as soon as all the necessary procedures have been accomplished.