EU/EC/Switzerland/Liechtenstein agreement: protocol on the accession of Liechtenstein to the EC/Switzerland agreement on Switzerland's association with the implementation, application and development of the Schengen acquis

2006/0251(NLE) - 07/03/2011 - Final act

PURPOSE: to conclude certain provisions of the Protocol between the EU, the Community, Switzerland and the Principality of Liechtenstein allowing Liechtenstein to adhere to the Swiss Confederation's association agreement on the implementation, application and development of the Schengen acquis regarding judicial cooperation in criminal matters and police cooperation.

NON-LEGISLATIVE ACT: Council Decision 2011/349/EU 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*, relating in particular to judicial cooperation in criminal matters and police cooperation.

BACKGROUND: following the authorisation given to the Presidency, assisted by the Commission, on 27 February 2006, negotiations with Liechtenstein and the Swiss Confederation of a Protocol on the accession of Liechtenstein to the Agreement between the EU, the EC and the Swiss Confederation on the latter's association with the implementation, application and development of the Schengen acquis have been finalised. Subject to its conclusion at a later date, the Protocol was signed on behalf of the European Union on 28 February 2008. The Protocol should now be approved on behalf of the EU (which replaced and succeeded the European Community with the entry into force of the Lisbon Treaty on 1 December.)

CONTENT: this Decision approves, on behalf of the EU, the Protocol between the EU, the EC, the Swiss Confederation and Liechtenstein on the accession of Liechtenstein to the Agreement between the EU, the EC and the Swiss Confederation on the latter's association with the implementation, application and development of the Schengen acquis and related documents.

It is recalled that 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 (Schengen agreement). That Agreement (see CNS /2004/0199) anticipated Liechtenstein's possible association with the Schengen acquis.

This Decision aims to conclude that Agreement.

The content of the Protocol may 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 penalty.

- 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 (see CNS/2006/0252), 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 (see CNS/2006/0257) .
- 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 EUR 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.

Territorial provisions: in accordance with the relevant provisions of the Treaty, the United Kingdom and Ireland are taking part in this Decision. The Decision does not prejudice the position of Denmark under 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.

ENTRY INTO FORCE: the Decision enters into force on 7 March 2011. The Protocol enters into force on 7 April 2011.