Basic information

2004/0199(CNS) CNS - Consultation procedure Decision	Procedure completed
EC/Switzerland agreement: agreement on the Schengen acquis **Subject** 6.40.11 Relations with industrialised countries 7.10.02 Schengen area, Schengen acquis **Geographical area** Switzerland	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
LIBE Civil Liberties, Justice and Home Affairs	KIRKHOPE Timothy (PPE-DE)	25/11/2004

Committee for opinion	Rapporteur for opinion	Appointed
AFET Foreign Affairs	The committee decided not to give an opinion.	08/12/2004

Committee for opinion on the legal basis	Rapporteur for opinion	Appointed
JURI Legal Affairs	MEDINA ORTEGA Manuel (PSE)	21/09/2004

Council of the European Union

Council configuration	Meetings	Date
General Affairs	2711	2006-02-27
Transport, Telecommunications and Energy	2625	2004-11-29

European Commission

Commission DG	Commissioner
External Relations	

Key events

Date	Event	Reference	Summary

14/09/2004	Initial legislative proposal published	COM(2004)0593	
22/10/2004	Legislative proposal published	13054/2004	Summary
14/12/2004	Committee referral announced in Parliament		
13/06/2005	Vote in committee		
20/06/2005	Committee report tabled for plenary, 1st reading/single reading	A6-0201/2005	
06/07/2005	Debate in Parliament		
07/07/2005	Decision by Parliament	T6-0293/2005	Summary
07/07/2005	Results of vote in Parliament		
13/10/2005	Decision by Parliament	T6-0375/2005	Summary
13/10/2005	Results of vote in Parliament		
27/02/2006	Act adopted by Council after consultation of Parliament		
27/02/2006	End of procedure in Parliament		
27/02/2008	Final act published in Official Journal		

Technical information

Procedure reference	2004/0199(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	International agreement
Legislative instrument	Decision
Legal basis	EC Treaty (after Amsterdam) EC 062 EC Treaty (after Amsterdam) EC 063-p3 EC Treaty (after Amsterdam) EC 300-p2/3-a1 EC Treaty (after Amsterdam) EC 095 EC Treaty (after Amsterdam) EC 066
Stage reached in procedure	Procedure completed

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee opinion	JURI	PE355.789	06/04/2005	
Committee report tabled for plenary, 1st reading/single reading		A6-0201/2005	20/06/2005	
Text adopted by Parliament, partial vote at 1st reading /single reading		T6-0293/2005 OJ C 157 06.07.2006, p. 0405-0464 E	07/07/2005	Summary
Text adopted by Parliament, 1st reading/single reading		T6-0375/2005 OJ C 233 28.09.2006, p. 0016-0091 E	13/10/2005	Summary

Council of the EU

Document type	Reference	Date	Summary
Legislative proposal	13054/2004	22/10/2004	Summary

European Commission

Document type	Reference	Date	Summary
Initial legislative proposal	COM(2004)0593	14/09/2004	
Commission response to text adopted in plenary	SP(2005)4593	24/11/2005	

Additional information

Source	Document	Date
European Commission	EUR-Lex	

Final act

Decision 2008/0146
OJ L 053 27.02.2008, p. 0001 Summary

EC/Switzerland agreement: agreement on the Schengen acquis

2004/0199(CNS) - 22/10/2004 - Legislative proposal

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

PROPOSED ACT : Council Decision (Conclusion of an Agreement).

CONTENT : negotiations between the European Community and the Swiss Confederation on Seven Agreements were concluded in June 1999. All those Agreements entered simultaneously into force on 1 June 2002 (please refer to AVC/1999/0103 to 1999/0109). Attached to the agreements, the Swiss Confederation made a declaration on migration and asylum policy declaring its intention to participate in the EU system for coordinating asylum policies and proposing that negotiations be entered into for the conclusion of a convention parallel to the Dublin Convention.

Following the authorization given to the Commission on 17 June 2002, negotiations were held with the Swiss Confederation on its association with the implementation, application and development of the Schengen Acquis as well as with the legislation establishing Eurodac and the legislation on the State responsible for examining requests for asylum (which has been adopted subsequently and which will be referred to as "Dublin" Regulation). According to the negotiating directives, the agreements follow the model of the agreements with Norway and Island - concerning the latter's association with the implementation, application and development of the Schengen acquis and concerning the criteria and

mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or Iceland or Norway - adapted to the specific constitutional requirements of Switzerland (refer to CNS/2004/0200).

Lastly, it is considered that the texts are in accordance with the negotiating directives adopted by the Council on 17 June 2002. The sole exception to the principle of full acceptance of the current and future Schengen acquis is the derogation granted to Switzerland in respect of the acceptance of future acquis related to requests for search and seizure in respect of offences in the field of direct taxation, which if committed in Switzerland, would not be punishable under Swiss law with a custodial penalty. This derogation was necessary in order to conclude an Agreement with Switzerland in the field of savings taxation, which in turn was necessary for the entry into force of Council directive 2003/48/EC of 3.6.2000 on taxation of savings income in the form of interest payments. COREPER approved this derogation on 17.5.2004 as part of an overall compromise with Switzerland in a wide range of sectors, which was agreed upon in the EU/Switzerland summit on 19.5.2004.

The following points are highlighted in order to show the differences with or adaptations to the corresponding Agreements concluded with Norway and Iceland:

- A single act for different procedures : as the Commission has clearly indicated in its declaration made at the time of the adoption of the directives for negotiation for the agreement on the Schengen acquis, it is regrettable that these directives foresaw a single agreement, including elements from the first as well as from the third pillar. These elements from different pillars are of a fundamentally different nature (the elements from the first pillar are of a Community law nature, including supremacy and possible direct effect, whereas the elements from the third pillar are not), they are subject to different procedures with respect to approval and conclusion (e.g. the third pillar elements are not subject to an opinion of Parliament) and are subject to the ECJ's jurisdiction to different degrees. In order to take account of these differences, the Commission proposes to adopt the Agreement on the Schengen acquis, by two separate acts, one based on the Community Treaty and the other on the Union Treaty, each decision indicating by a reference to Council Decision 1999/436/EC which parts of the Schengen acquis, covered by the Agreement, fall within the Community Treaty and which within the Treaty on European Union. This will particularly assist the Court as to the extent of its jurisdiction.

- 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.

- Derogation : Switzerland accepts the Schengen acquis and its development in its entirety. 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;

- Participation of the costs : the calculation of the percentage determining the annual contribution of Switzerland to the administrative costs is based on the relevant Norwegian and Icelandic contributions, in relation to the GDP of these three countries;

- 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 and thus the creation of a third Mixed Committee once Liechtenstein would be associated with the Schengen acquis. Liechtenstein can take part in the present organisational structure;

- Preconditions : the Schengen acquis can only be implemented by Switzerland after the Council decides that all preconditions for that implementation have been fulfilled by Switzerland and that controls at its external borders are effective;

- 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;

- Comitology : a Mixed Committee will be established in order to address all Council items relevant for the implementation, application and development of the Schengen acquis and the Dublin/EURODAC acquis.

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.

EC/Switzerland agreement: agreement on the Schengen acquis

2004/0199(CNS) - 13/10/2005 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted the resolution drafted by Timothy **KIRKHOPE** (EPP-ED, UK) and approved the proposal for a Council decision as amended by Parliament on 7 July 2005 (please refer to the relevant summary) and approved conclusion of the agreement.

EC/Switzerland agreement: agreement on the Schengen acquis

2004/0199(CNS) - 07/07/2005 - Text adopted by Parliament, partial vote at 1st reading/single reading

The report drafted by Timothy **KIRKHOPE** (EPP-ED, UK) approving the proposed Council decision subject to two amendments concerning the legal basis has been referred back to the Civil Liberties Committee for further analysis.

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.