## Basic information

| | |
|---|---|
| **2009/0148(NLE)**<br><br>NLE - Non-legislative enactments<br>Decision | Procedure completed |
| EC/Norway, Iceland, Switzerland and Liechtenstein agreement: supplementary rules in relation to the External Borders Fund for the period 2007 to 2013<br><br>**Subject**<br><br>7.10.02 Schengen area, Schengen acquis<br>7.10.04 External borders crossing and controls, visas<br>7.10.06 Asylum, refugees, displaced persons; Asylum, Migration and Integration Fund (AMIF)<br>7.10.08 Migration policy | |

## Key players

### European Parliament

| Committee responsible | Rapporteur | Appointed |
|---|---|---|
| LIBE Civil Liberties, Justice and Home Affairs | VAN DE CAMP Wim (PPE) | 26/01/2010 |
| | Shadow rapporteur<br>FAJON Tanja (S&D)<br>WIKSTRÖM Cecilia (ALDE)<br>KIRKHOPE Timothy (ECR)<br>TRIANTAPHYLLIDES Kyriacos (GUE/NGL) | |

| Committee for opinion | Rapporteur for opinion | Appointed |
|---|---|---|
| AFET Foreign Affairs | The committee decided not to give an opinion. | |

### Council of the European Union

| Council configuration | Meetings | Date |
|---|---|---|
| General Affairs | 3079 | 2011-03-21 |
| Justice and Home Affairs (JHA) | 2979 | 2009-11-30 |

### European Commission

| Commission DG | Commissioner |
|---|---|
| Justice and Consumers | MALMSTRÖM Cecilia |

## Key events

| Date | Event | Reference | Summary |
|---|---|---|---|
| 09/10/2009 | Preparatory document | COM(2009)0525 | Summary |
| 02/12/2009 | Additional information | | Summary |
| 12/04/2010 | Legislative proposal published | 07853/2010 | Summary |
| 06/05/2010 | Committee referral announced in Parliament | | |
| 26/01/2011 | Vote in committee | | Summary |
| 27/01/2011 | Committee report tabled for plenary, 1st reading/single reading | A7-0007/2011 | |
| 15/02/2011 | Decision by Parliament | T7-0046/2011 | Summary |
| 15/02/2011 | Results of vote in Parliament | | |
| 21/03/2011 | Act adopted by Council after consultation of Parliament | | |
| 21/03/2011 | End of procedure in Parliament | | |
| 25/05/2011 | Final act published in Official Journal | | |

## Technical information

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|---|---|
| **Procedure reference** | 2009/0148(NLE) |
| **Procedure type** | NLE - Non-legislative enactments |
| **Procedure subtype** | Consent by Parliament |
| **Legislative instrument** | Decision |
| **Legal basis** | Treaty on the Functioning of the European Union TFEU 218-p6a<br>Treaty on the Functioning of the European Union TFEU 077-p3 |
| **Other legal basis** | Rules of Procedure EP 165 |
| **Stage reached in procedure** | Procedure completed |
| **Committee dossier** | LIBE/7/01248 |

## Documentation gateway

**European Parliament**

| Document type | Committee | Reference | Date | Summary |
|---|---|---|---|---|
| Committee draft report | | PE452.762 | 18/11/2010 | |
| Committee report tabled for plenary, 1st reading/single reading | | A7-0007/2011 | 27/01/2011 | |
| Text adopted by Parliament, 1st reading/single reading | | T7-0046/2011 | 15/02/2011 | Summary |

**Council of the EU**

| Document type | Reference | Date | Summary |
|---|---|---|---|
| Document attached to the procedure | 15954/2009 | 09/02/2010 | |

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|---|---|---|---|
| Document attached to the procedure | 07185/2010 | 05/03/2010 | |
| Legislative proposal | 07853/2010 | 12/04/2010 | Summary |

**European Commission**

| Document type | Reference | Date | Summary |
|---|---|---|---|
| Document attached to the procedure | COM(2009)0524 | 09/10/2009 | Summary |
| Preparatory document | COM(2009)0525 | 09/10/2009 | Summary |

**Additional information**

| Source | Document | Date |
|---|---|---|
| National parliaments | IPEX | |
| European Commission | EUR-Lex | |

**Final act**

Decision 2011/0305
OJ L 137 25.05.2011, p. 0001 Summary

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

2009/0148(NLE) - 09/10/2009 - Document attached to the procedure

PURPOSE: to make provisions on the **signing and provisional application** of an Agreement between the EC and Iceland, Norway, Switzerland and Liechtenstein on supplementary rules in relation to the External Borders Fund 2007-2013.

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.

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

2009/0148(NLE) - 09/10/2009 - Preparatory document

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.

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

2009/0148(NLE) - 15/02/2011 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted a legislative report in which it gives its consent to the conclusion, on behalf of the European Union, of an 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.

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

2009/0148(NLE) - 12/04/2010 - Legislative proposal

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

PROPOSED ACT: Council Decision.

IMPACT ASSESSMENT: no impact assessment has been carried out.

LEGAL BASE: Article 77(2)(d) in conjunction with Article 218(6)(a)(v) of the Treaty on the Functioning of the European Union (TFEU).

CONTENT: this proposal aims to conclude, on behalf of the European Union, an Agreement between the European Community and the Republic of Iceland, the Kingdom of Norway, the Swiss Confederation and the Principality of Liechtenstein on supplementary rules in relation to the External Borders Fund for the period 2007 to 2013 as well as a certain number of related Declarations. For more details of the content of this Agreement, please refer to Council Document 15954/2009 and to the former initial proposal of 09/10/2009.

Overall, the Agreement specifies that, 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, the third countries associated with the implementation, application and development of the Schengen acquis shall participate in the Fund in accordance with its provisions and arrangements should be concluded to specify supplementary rules necessary for such participation, including provisions ensuring the protection of the Community's financial interests and the power of audit of the Court of Auditors.

Following the authorisation given to the Commission on 19 December 2007, negotiations with the countries concerned were concluded on 30 June 2009. The Agreement was finally signed on 19 March 2010 on behalf of the Union, and applied on a provisional basis, pending its conclusion at a later date.

As a consequence of the entry into force of the Treaty of Lisbon on 1 December 2009, a Joint Declaration by the European Union and the countries concerned on the Agreement between the European Community and the Republic of Iceland, the Kingdom of Norway, the Swiss Confederation and the Principality of Liechtenstein on supplementary rules in relation to the External Borders Fund for the period 2007 to 2013 has been agreed by all Parties at the time of the signature, and attached to the Agreement, stating that the European Union has replaced and suceeded the European Community. The procedures to be followed by the Union in order to conclude the Agreement are now covered by the TFEU, which provides that the Council adopt the decision concluding the agreement after Parliament’s consent.

**Territorial provisions**: in accordance with the Protocol on the position of the United Kingdom and Ireland as regards freedom, security and justice annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, these countries shall not participate in the adoption of the application of the Agreement. The same goes for Denmark however it may decide within a period of six months after the Council has decided on this Decision whether it will implement it in its national law.

BUDGETARY IMPLICATION: the proposal has no implication for the Union’s budget.

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

2009/0148(NLE) - 21/03/2011 - Final act

PURPOSE: the conclusion, on behalf of the European Union, an 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.

NON-LEGISLATIVE ACT: Council Decision 2011/305/EU on the conclusion, on behalf of the European Union, of an 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.

BACKGROUND: according to Article 11 of Decision No 574/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the External Borders Fund for the period 2007 to 2013 as part of the General programme ‘Solidarity and Management of Migration Flows’ the third countries associated with the implementation, application and development of the Schengen acquis shall participate in the Fund in accordance with its provisions and arrangements should be concluded to specify supplementary rules necessary for such participation, including provisions ensuring the protection of the Community’s financial interests and the power of audit of the Court of Auditors. Having received the Council’s authorisation, on 20 December 2007, the Commission started negotiations with Iceland, Norway, Switzerland and Liechtenstein, which finally concluded on 30 June 2009.

The Agreement should be concluded on behalf of the EU.

CONTENT: with this Decision; 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, as well as a number of related Declarations are approved on behalf of the Union.

The main provisions of the agreement may be summarised as follows:

**Purpose and scope**: the agreement governs:

Rules enabling the Commission to assume final responsibility for the budget allocated to the Fund in these States: in particular, the agreement lays down provisions regarding financial management and control of the Fund, such as i) the principle of good financial management, ii) respect for the principle on conflict of interest, iii) obligations on the associated States resulting from the delegation of the implementation of EU funds, iv) enforcement of pecuniary obligations, v) protection of the financial interests of the Communities against fraud, vi) on-the-spot checks and controls by the Court of Auditors, vii) public procurement;

**Financial contributions and allocations:** the agreement lays down the amounts of contributions for the period 2009-2013. The fixed nature of these amounts offers an advantage: it facilitates the calculation of the total annual credits made available to the Fund. These fixed amounts are however subject to a correction mechanism. The financial contributions of each State concerned are detailed in the Agreement;

Procedures for the presentation of programmes and reports by the associated countries, given their delayed involvement in the Fund.

**Special provisions regarding application**: the Parties have agreed that this agreement shall be provisionally applicable from the day following its signature, without prejudice to constitutional requirements. An exception to this principle is provided for in regard to the application of Article 6 regarding enforcement of pecuniary obligations which requires the adoption of specific legislative measures in the associated States.

In the interests of efficiency and to avoid having to conduct separate negotiations with it, Liechtenstein was associated, before the conclusion of the protocol, in the negotiations regarding participation in the Fund. This agreement only applies to Liechtenstein from the date of entry into force of the protocol that associates this country with the Schengen acquis.

**Declarations**: a joint declaration is attached to the agreement. This concerns Liechtenstein’s wish not to participate in the Fund, without prejudice to its obligation to contribute to it financially. There is also an exchange of declarations between Norway and the European Community on the application of the principle of direct enforceability of decisions by the European Community.

**Territorial provisions:** in accordance with the Protocol on the position of the United Kingdom and Ireland with regard to the area of freedom, security and justice annexed to the Treaty on the EU and the TFEU, these States do not participate in the adoption and application of the agreement. The same goes for Denmark, although this country may decide, within a period of six months from the date of the adoption of the decision by the Council, whether it will transpose this agreement into its national legislation.

ENTRY INTO FORCE: the decision enters into force on 21.03.2011. The agreement applies provisionally from the moment of its signature.