

Procedure file

Basic information		
NLE - Non-legislative enactments Decision	2009/0073(NLE)	Procedure completed
EC/Switzerland and Liechtenstein Arrangement: participation of Switzerland and Liechtenstein in the activities of Frontex		
Subject 7.10.04 External borders crossing and controls, visas		
Geographical area Liechtenstein Switzerland		

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	LIBE Civil Liberties, Justice and Home Affairs		01/12/2009
		NI CLAEYS Philip	
	Former committee responsible		
	LIBE Civil Liberties, Justice and Home Affairs		
	Committee for opinion	Rapporteur for opinion	Appointed
AFET Foreign Affairs	The committee decided not to give an opinion.		
Former committee for opinion			
AFET Foreign Affairs			
Council of the European Union	Council configuration	Meeting	Date
	General Affairs	3028	26/07/2010
	Education, Youth, Culture and Sport	2993	15/02/2010
	General Affairs	2957	27/07/2009
European Commission	Commission DG	Commissioner	
	Justice and Consumers	MALMSTRÖM Cecilia	

Key events			
04/06/2009	Preparatory document	COM(2009)0255	Summary
19/10/2009	Committee referral announced in Parliament		
02/12/2009	Additional information		Summary
09/02/2010	Legislative proposal published	05707/2010	Summary

31/05/2010	Vote in committee		Summary
02/06/2010	Committee report tabled for plenary, 1st reading/single reading	A7-0172/2010	
06/07/2010	Results of vote in Parliament		
06/07/2010	Decision by Parliament	T7-0251/2010	Summary
26/07/2010	Act adopted by Council after consultation of Parliament		
26/07/2010	End of procedure in Parliament		
16/09/2010	Final act published in Official Journal		

Technical information

Procedure reference	2009/0073(NLE)
Procedure type	NLE - Non-legislative enactments
Procedure subtype	Consent by Parliament
Legislative instrument	Decision
Legal basis	Treaty on the Functioning of the EU TFEU 218-p6a; Treaty on the Functioning of the EU TFEU 077-p2
Other legal basis	Rules of Procedure EP 165
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/7/00319

Documentation gateway

Preparatory document	COM(2009)0255	04/06/2009	EC	Summary
Document attached to the procedure	10701/2009	15/07/2009	CSL	Summary
Legislative proposal	05707/2010	09/02/2010	CSL	Summary
Committee draft report	PE440.137	09/04/2010	EP	
Committee report tabled for plenary, 1st reading/single reading	A7-0172/2010	02/06/2010	EP	
Text adopted by Parliament, 1st reading/single reading	T7-0251/2010	06/07/2010	EP	Summary

Additional information

National parliaments	IPEX
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Final act

Decision 2010/490 OJ L 243 16.09.2010, p. 0002 Summary

PURPOSE: to enable Switzerland and Liechtenstein to participate in the activities of FRONTEX.

PROPOSED ACT: Council Decision

BACKGROUND: [Council Regulation \(EC\) No 2007/2004](#) establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the EU (FRONTEX) provides for countries associated with the Schengen acquis to participate in the Agency. The detailed rules of their participation must be specified in further arrangements to be concluded between the EC and those countries.

In October 2004, the EU, the EC and the Swiss Confederation signed the Agreement concerning the Swiss Confederation's association with the Schengen Agreement. On 1 March 2008 the Schengen Agreement entered into force. The Schengen Agreement provides for Liechtenstein's association with the Schengen acquis by means of a Protocol to the Schengen Agreement determining the rights and obligations of each of the contracting parties. The Protocol was signed on 28 February 2008 and is expected to be concluded in 2009.

For efficiency, and to avoid the need to conduct separate negotiations, Liechtenstein has been associated with the negotiations on its participation in the Agency before conclusion of the Protocol is completed, which were finalised on 19 January 2009 and led to the draft Arrangement.

The European Parliament will be formally consulted on conclusion of the Arrangement.

IMPACT ASSESSMENT: the proposal was not subject to an impact assessment.

CONTENT: this Arrangement establishes clear and legally binding rights and obligations to ensure effective participation by Switzerland and Liechtenstein in the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the EU. The Arrangement deals with the following issues:

- the limited voting rights of representatives of Switzerland and Liechtenstein on the Management Board of the Agency;
- the financial contribution by Switzerland and Liechtenstein to the budget of the Agency;
- protection and confidentiality of data;
- the legal status of the Agency in Switzerland and Liechtenstein;
- the liability of the Agency;
- recognition by Switzerland and Liechtenstein of the jurisdiction of the Court of Justice of the European Communities over the Agency;
- privileges and immunities of the Agency and its staff;
- access for nationals of Switzerland and Liechtenstein to be engaged under contract by the Executive Director of the Agency.

The special situations of Denmark, the United Kingdom and Ireland are reflected in the preamble.

Two joint declarations are attached to the Arrangement covering:

1. voting rights, and
2. application of the provisions on the civil liability in relation to deployment of rapid border intervention teams.

FINANCIAL IMPLICATIONS: not applicable.

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

This document presents the text of the Arrangement between the European Community, Switzerland and Liechtenstein on the modalities of the participation of these countries in the activities of the Frontex Agency, as was signed by the parties on 19 January 2009.

The main elements of this Arrangement can be summarised as follows:

Purpose: this Arrangement lays down the modalities of the participation of Switzerland and Liechtenstein in the activities of the Frontex Agency. [Council Regulation \(EC\) No 2007/2004](#) (Frontex Regulation) confirms that countries associated with the implementation, application and development of the Schengen acquis should participate fully in activities of 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;
- 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 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 on jurisdiction (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](#) of the European Parliament and of the Council 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:

1. 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;
2. the second concerns civil responsibility in cases where a rapid border intervention team is deployed.

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

The Lisbon Treaty, which entered into force on 1 December 2009, amended the EU's two core treaties, the Treaty on European Union (TEU) and the Treaty establishing the European Community (EC Treaty). The latter was renamed the Treaty on the Functioning of the European Union (TFEU).

These changes had various consequences for many ongoing procedures. First of all, the articles of the TEU and of the old EC Treaty that constitute the legal basis of all the proposals founded on those Treaties were renumbered in accordance with the table of equivalences mentioned in Article 5 of the Lisbon Treaty.

In addition, some proposals underwent a change to their legal basis going beyond a mere change to their numbering, and this resulted in changes to the type of procedure.

The Lisbon Treaty also introduced new concepts of decision-making procedure. The old "codecision procedure" was extended to new areas and renamed the "ordinary legislative procedure". A new "consent procedure" replaced the old "assent procedure". New interinstitutional procedures were also set up for the adoption of certain non-legislative acts, for example the conclusion of some international agreements.

The ongoing proposals concerned by these changes were formally modified by the Commission in a Communication published on 2 December 2009 ([COM\(2009\)0665](#)).

In the case of the proposal for a Council Decision on the signing, on behalf of the Community, 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, the entry into force of the Lisbon Treaty had the following impacts:

- the old legal basis - Treaty/EC/Art 62(2), Art.66, Art.300(2) first para and (3) first para.- became Art 77(2), Art.74, Art 218 (6)(a). Please note that the numbering of the old legal basis corresponds to the consolidated version of the Treaty that was applicable immediately before the entry into force of the Lisbon Treaty, and may differ from the references in the original Commission proposal;
- the proposal, which had previously fallen under the old consultation procedure (CNS), was classified as an interinstitutional non-legislative procedure (NLE).

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

PURPOSE: to conclude, on behalf of the Union, of the Arrangement between the European Community, of the one part, Switzerland and 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 (FRONTEX).

PROPOSED ACT: Council Decision.

CONTENT: this proposal aims to conclude, on behalf of the Union, the Agreement between European Community, Switzerland and Liechtenstein on the modalities of the participation by those States in the FRONTEXT Agency.

In accordance with the FRONTEXT Regulation ([Council Regulation \(EC\) No 2007/2004](#)), countries associated with the implementation, application and development of the Schengen acquis shall participate in the Agency. The modalities of their participation are to be specified in further arrangements to be concluded between the Union and those countries. These arrangements set out in this document.

As consequence of the entry into force of the Treaty of Lisbon on 1 December 2009, the European Union has replaced and succeeded the European Community. The procedures to be followed by the Union in order to conclude the Agreement are governed by Article 218(6) (a) of the Treaty on the Functioning of the European Union (TFEU) which states that the Council shall adopt a decision concluding the agreement.

Territorial application: in accordance with 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.

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

The Committee on Civil Liberties, Justice and Home Affairs adopted the report drafted by Philip CLAEYS (NI, BE) recommending that the European Parliament give its consent to the conclusion of the arrangement between the European Union, 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.

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

The European Parliament adopted a legislative resolution in which it gives its consent to the conclusion of the arrangement between the European Union, 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 (FRONTEXT).

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

PURPOSE: to conclude the Arrangement for Switzerland and Liechtenstein to participate in the activities of FRONTEXT.

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 FRONTEXT Agency. In accordance with the FRONTEXT 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;
- 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 on jurisdiction (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.