

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) - 01/12/2006 - Legislative proposal

PURPOSE: to sign and provisionally apply 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.

PROPOSED ACT: Council Decision.

CONTENT: 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.

Following the authorisation given by the Council to the Commission in February 2006, negotiations were held with Liechtenstein and Switzerland. In June 2006, negotiations were finalised and the draft protocol on Liechtenstein's accession to the Schengen agreement with Switzerland was initialled.

Given the fact that the Schengen agreement with Switzerland to which Liechtenstein accedes covers both 1st and 3rd pillar items, the Commission proposes to follow the approach chosen for the signature and adoption of the Schengen agreement with Switzerland. The Commission proposes thus to adopt the Protocol by two separate acts, one based on the Treaty establishing the European Community (Articles 62, 63 (3), 66 and 95) and one based on the Treaty on European Union (Articles 24 and 38).

Concerning the decision based on the Treaty establishing the European Community, the Council will decide by unanimity given the fact that Article 63 point 3 a) requires a unanimous vote of the Member States. The European Parliament will have to be consulted on the conclusion of the Agreement in accordance with Article 300 (3) of the EC Treaty.

Content of the protocol: the final content can 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.