

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

THE EUROPEAN COMMUNITY, hereinafter referred to as 'the Community'

and

THE REPUBLIC OF ICELAND, hereinafter referred to as 'Iceland',

THE KINGDOM OF NORWAY, hereinafter referred to as 'Norway',

THE SWISS CONFEDERATION, hereinafter referred to as 'Switzerland' and

THE PRINCIPALITY OF LIECHTENSTEIN, hereinafter referred to as 'Liechtenstein',

Hereinafter referred to as the associated States

Hereinafter referred to as 'the Parties'

HAVING REGARD to the Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those States with the implementation, application and development of the Schengen *acquis* (hereinafter referred to as the Association Agreement with Norway and Iceland),

HAVING REGARD 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* (hereinafter referred to as the Association Agreement with Switzerland),

HAVING REGARD to 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* (hereinafter referred to as the Association Protocol with Liechtenstein),

WHEREAS:

- (1) By Decision No 574/2007/EC of the European Parliament and of the Council the Community established the External Borders Fund for the period 2007 to 2013 as part of the General Programme 'Solidarity and Management of Migration Flows' (hereinafter referred to as the Fund).
- (2) That Decision constitutes a development of the Schengen *acquis* within the meaning of the Association Agreement with Norway and Iceland, the Association Agreement with Switzerland and the Association Protocol with Liechtenstein.

- (3) Article 11 of that Decision provides that the third States associated with the implementation, application and development of the Schengen *acquis* participate in the Fund in accordance with its provisions and that 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.
- (4) The Fund constitutes a specific instrument in the context of the Schengen *acquis*, designed to provide for burden sharing and to support financially the implementation of the Schengen *acquis* in the field of external borders and visa policy in Member States.
- (5) To facilitate the calculation of the annual allocations to the States participating in the Fund and the multiannual programming exercise for the associated States, this Agreement defines the annual financial contributions from the associated States in fixed amounts which are subject to a correction mechanism to be applied in the last year of the multiannual programme.

HAVE AGREED AS FOLLOWS:

Article 1

Scope

This Agreement sets out the supplementary rules necessary for the participation in the Fund of the associated States in accordance with 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' (hereinafter referred to as the Decision).

Article 2

Financial management and control

1. The associated States shall take the necessary measures to ensure the compliance with the provisions relevant for the financial management and control which are laid down in the Treaty establishing the European Community (hereinafter 'the EC Treaty') and in secondary Community law.
2. The provisions referred to in paragraph 1 are the following ones:
 - Articles 248 paragraphs 1 to 3, 256, 274 and 280, paragraphs 1 to 3 of the EC Treaty;
 - Articles 27, 28a, 52, 53, point b, 72(2) and 95(2) of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities¹ (hereinafter referred to as the Financial Regulation);

¹ OJ L 248, 16.9.2002, p. 1. Regulation as last amended by Regulation (EC, Euratom) No 1525/2007 (OJ L343, 27.12.2007, p.9)

- the corresponding provisions of Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities²;
- Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities³ and
- Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF).

The Parties may decide to amend this list by mutual agreement.

3. The associated States shall apply the provisions referred to in paragraph 2 in their territory in accordance with this Agreement.

Article 3

Respect for the principle of sound financial management

The appropriations under the Fund spent in the territory of the associated States shall be used in accordance with the principle of sound financial management.

Article 4

Respect for the principle of conflict of interest

All financial actors and any other person involved in budget implementation, management, audit or control acting in the territory of the associated States shall be prohibited from taking any action which may bring their own interests into conflict with those of the Communities.

Article 5

Obligations resulting from the delegation of the implementation

The associated States shall take all the legislative, regulatory and administrative or other measures necessary for protecting the Communities' interests in accordance with the obligations resulting from Article 53, point b, and 95(2) of the Financial Regulation.

² OJ L 357, 31.12.2002, p.1. Regulation as last amended by Regulation (EC, Euratom) No 478/2007 (OJ L 111, 28.4.2007, p. 13)

³ OJ L 292, 15.11.1996, p. 2

Article 6

Enforcement

Decisions taken by the Commission which impose a pecuniary obligation on persons other than States shall also be enforceable in the territory of the associated States.

Enforcement shall be governed by the rules of civil procedure in force in the State in the territory of which it is carried out. The order for its enforcement shall be appended to the decision, without other formality than verification of the authenticity of the decision, by the national authority which the governments of the associated States shall respectively designate for this purpose and shall make known to the Commission.

When these formalities have been completed on application by the Commission, the latter may proceed to enforcement in accordance with the national law, by bringing the matter directly before the competent authority.

Enforcement may be suspended only by a decision of the Court of Justice of the European Communities. However, the courts of the State concerned shall have jurisdiction over complaints that enforcement is being carried out in an irregular manner.

Article 7

Protection of the financial interests of the Communities against fraud

1. As set out in Article 280 of the EC Treaty, the associated States shall
 - a) counter fraud and any other illegal activities affecting the financial interests of the Community through measures which shall act as a deterrent and be such as to afford effective protection;
 - b) take the same measures to counter fraud affecting the financial interests of the Community as they take to counter fraud affecting their own financial interests; and
 - c) coordinate their action aimed at protecting the financial interests of the Community with the Member States and the Commission.
2. To that purpose, the associated States shall adopt equivalent measures to those adopted by the Community in accordance with Article 280(4) of the EC Treaty which are in force at the time of signing this Agreement.

The Parties may decide by mutual agreement to adopt equivalent measures to any subsequent measures adopted by the Community in accordance with this Article.

Article 8

On-the spot checks and inspections by the Commission

Without prejudice to its rights under Articles 35 and 47 of the Decision, the Commission (OLAF) shall be authorised to carry out on-the spot checks and inspections in the territory of

the associated States in accordance with the terms and conditions laid down in Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities as regards the Fund.

The authorities of the associated States shall facilitate the on-the-spot checks and inspections, which may, if the authorities so wish, be carried out jointly with them.

Article 9

Court of Auditors

As set out in Article 248(3) of the EC Treaty and Part One, Title VIII, chapter 1 of the Financial Regulation, the Court of Auditors as established by the EC Treaty shall notably have the possibility to perform audits on the spot on the premises of any body which manages revenue or expenditure on behalf of the Community in the territory of the associated States as regards the Fund including on the premises of any natural or legal person in receipt of payments from the budget.

Audits by the Court of Auditors in the associated States shall be carried out in liaison with national audit bodies or, if these do not have the necessary powers, with the competent national departments. The Court of Auditors and the national audit bodies of the associated States shall cooperate in a spirit of trust while maintaining their independence. These bodies or departments shall inform the Court of Auditors whether they intend to take part in the audit.

The Court of Auditors shall have at least the same rights as the Commission as laid down in Articles 35 and 47 of the Decision and Article 8 of this Agreement.

Article 10

Public procurement

1. Norway, Iceland and Liechtenstein shall apply the provisions of their law on public procurement in accordance with Annex XVI to the EEA Agreement.
2. Switzerland shall apply its national law on public procurement in accordance with the provisions of the WTO Agreement on Government Procurement (GPA).

Switzerland shall provide the Commission with a description of its public procurement procedures together with the description of the management and control system.

Moreover, it shall provide information on the public procurement procedures applied in each final report on the implementation of the annual programme.

Article 11

Financial contributions and allocations

1. The associated States shall make annual payments to the budget of the Fund in accordance with the following tables:

in '000 Euro	2009
annual appropriations (EC budget)	185.500
Norway	5.100
Iceland	260
Switzerland	5.565

For 2009 payments shall be made on the basis of non-revisable fixed amounts⁴.

in '000 Euro	index	2010	2011	2012	2013
foreseen annual appropriations (EC budget)	%	207.500	253.500	349.100	481.200
Norway	2.61	5.408	6.607	9.099	12.542
Iceland	0.04	79	96	132	183
Switzerland	3.35	6.943	8.483	11.682	16.102
Liechtenstein	0.03	62	76	105	144

For 2010-2013 the payments shall be made on the basis of the index indicated in this table, subject to paragraph 4.

2. For 2011-2013, the payments shall be made by 15 February of the budget year concerned, following recovery orders issued by the Commission by 15 December of the preceding year.
3. The contributions foreseen for 2009 shall be due as exceptional contributions in 2010. They shall be paid along with the contributions due for 2010 by 15 February 2010. For Switzerland they shall be paid at the latest one month after the date of the signature of this Agreement.

The allocations foreseen for 2009 to the associated States concerned, established by the Commission in accordance with Articles 14 and 15 of the Decision, shall be due by the Community as exceptional allocations for 2010 as follows:

Norway: 1.611.049 euros
Iceland: 62.148 euros
Switzerland 2.282.112 euros

A single annual programme (2010) will cover both the 2010 allocations and these exceptional allocations.

⁴ Based on GDP of the year 2007

As from 2010 the allocations foreseen for the associated States shall be calculated annually in accordance with Articles 14 and 15 of the Decision.

4. The Parties shall correct the contributions from each associated State for the budget years 2010, 2011, 2012 and 2013 on the basis of the latest available annual GDP figures on 1 May 2012. The correction(s) shall be made to the contribution for 2013.

For the purpose of the corrections, the GDP percentage of the associated State concerned shall be calculated as follows:

- As regards Norway and Iceland, for each its GDP percentage shall be calculated in relation with the GDP of all participating countries, as laid down in Article 12(1) of the Association Agreement with Norway and Iceland;
 - As regards Switzerland, its GDP percentage shall be calculated in relation with the GDP of all participating countries, as laid down in Article 11 of the Association Agreement with Switzerland;
 - As regards Liechtenstein, its GDP percentage shall be calculated in relation with the GDP of all participating countries, as laid down in Article 3 of the Association Protocol with Liechtenstein.
5. The figures in the table in paragraph 1 shall be adjusted by the Parties in case of a change in the total reference amount in Article 13(1) of the Decision or changes in the actual annual appropriations to those foreseen in the table of paragraph 1 as decided by the budgetary authority of the EC in accordance with Article 37 of the Interinstitutional Agreement between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management in the context of the Multiannual Financial Framework of the European Union for the period 2007 - 2013⁵.

Any adjustment shall be proportional to the change in the total reference amount or annual appropriation(s) concerned and shall be applied to the budgetary year(s) affected by the change.

To that end, the Commission shall communicate by letter to the associated States the adjustments in the size of their financial contributions and the arrangements to be followed for the relevant payments or reimbursements.

6. The contribution of Liechtenstein shall only cover the years as from the day referred to in Article 13(6).
7. The Commission may use up to 300.000 euros of the payments made by the associated States each year to finance the administrative expenditure related to staff or external staff necessary for supporting the implementation by the associated States of the Decision and this Agreement.
8. For 2009 and 2010 the Commission shall make the Community budgetary commitments for the budget year concerned on the basis of the amounts allocated to

⁵ OJ C139, 14.6.2006, p.1

the associated States by the Commission in accordance with Articles 14 and 15 of the Decision.

Article 12

Confidentiality

Information communicated or acquired in any form whatsoever pursuant to this Agreement shall be covered by professional secrecy and protected in the same way as similar information is protected by the provisions applicable to the Community institutions and by the laws of the associated States. Such information shall not be communicated to persons other than those within the Community institutions, in the Member States or in the associated States whose functions require them to know it, nor may it be used for purposes other than to ensure effective protection of the financial interests of the Parties.

Article 13

Entry into force

1. The Secretary General of the Council of the European Union shall act as depositary of this Agreement.
2. The European Community, Norway, Iceland, Switzerland and Liechtenstein shall approve this Agreement in accordance with their own procedures.
3. The entry into force of this Agreement shall require approval by the European Community and by at least one other signatory.
4. This Agreement shall enter into force in relation to any party on the first day of the first month following the deposit of its instrument of approval with the depositary.
5. Except for Article 6, the European Community, Norway, Iceland and Switzerland shall apply this Agreement provisionally as from the day following that of its signature, without prejudice to constitutional requirements.
6. The European Community and Liechtenstein shall apply this Agreement provisionally as from the day when the provisions referred to in Article 2 of the Association Protocol with Liechtenstein are put into effect in accordance with Article 10 of that Protocol.

Article 14

Programming and reporting

1. In accordance with Article 27 of the Decision, the associated States shall inform the Commission of the authorities designated for the implementation of their multiannual programme and the annual programmes no later than one month after the signature of this Agreement.

2. The associated States shall submit their draft multiannual programme 2010-2013 to the Commission no later than three months after the signature of this Agreement.
3. The associated States shall submit their draft annual programme for 2010 to the Commission no later than five months after the signature of this Agreement.
4. The associated States shall submit a description of the management and control systems referred to in Article 34(2) of the Decision no later than three months after the signature of this Agreement.
5. The Commission shall approve the multiannual programme within three months of its formal submission and the annual programme 2010 within one month of its formal submission in accordance with the procedures set up in the Decision and provided that the Commission has satisfied itself in accordance with the procedure laid down in Article 34 of the Decision that the associated States have set up management and control systems that comply with Articles 26 to 32 of the Decision.
6. It is not necessary for the associated States to submit the evaluation report foreseen in Article 52(2)(a) of the Decision.

Article 15

Validity and termination

1. Either the Community or an associated State may terminate this Agreement by notifying the other Parties of its decision. The Agreement shall cease to apply three months after the date of such notification. Projects and activities in progress at the time of termination shall continue according to the conditions laid down in this Agreement. The Parties shall settle by mutual agreement any other consequences of termination.
2. As regards Norway and Iceland, this Agreement shall be terminated when the respective Association Agreement with Norway and Iceland is terminated in accordance with Articles 8, paragraphs 4, 11, paragraph 3 or 16 of that Agreement.

As regards Switzerland, this Agreement shall be terminated when the Association Agreement with Switzerland is terminated in accordance with Articles 7, paragraph 4, 10, paragraph 3 or 17 of that Agreement.

As regards Liechtenstein, this Agreement shall be terminated when the Association Protocol with Liechtenstein is terminated in accordance with Articles 5, paragraph 4, 11, paragraph 1 or 11, paragraph 3 of that Protocol.

Article 16

Languages

This Agreement as well as the Declarations annexed thereto shall be drawn up in a single original in the Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian,

Slovak, Slovenian, Spanish, Swedish, Icelandic and Norwegian languages, each of those texts being equally authentic.