

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 concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association 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) The Community established by Decision No 574/2007/EC of the European Parliament and of the Council 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 are to 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 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 referred to as '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 Communities⁽¹⁾ (hereinafter referred to as the 'Financial Regulation'),

— 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 Communities⁽²⁾,

— 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⁽³⁾, 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)⁽⁴⁾.

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 on 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 laid down in Article 53, point b, and 95(2) of the Financial Regulation.

⁽¹⁾ OJ L 248, 16.9.2002, p. 1. Regulation as last amended by Council Regulation (EC) No 1525/2007 (OJ L 343, 27.12.2007, p. 9).

⁽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.

⁽⁴⁾ OJ L 136, 31.5.1999, p. 1.

*Article 6***Enforcement**

Decisions taken by the Commission which impose a pecuniary obligation on persons other than States shall 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 end, 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. Iceland, Norway 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:

EUR thousand	2009
Annual appropriations (EC budget)	185 500
Iceland	260
Norway	5 100
Switzerland	5 565

For 2009 payments shall be made on the basis of non-revisable fixed amounts ⁽¹⁾.

EUR thousand	Index ⁽²⁾	2010	2011	2012	2013
Foreseen annual appropriations (EC budget)	%	207 500	253 500	349 100	481 200
Iceland	0,04	79	96	132	183
Norway	2,61	5 408	6 607	9 099	12 542
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:

Iceland: EUR 62 148

Norway: EUR 1 611 049

Switzerland: EUR 2 282 112

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

⁽¹⁾ Based on GDP of the year 2007.

⁽²⁾ Index figures are rounded up.

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 Iceland and Norway, 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 Point 37 of the Interinstitutional Agreement between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management⁽¹⁾ in the context of the Multiannual Financial Framework of the European Union for the period 2007-2013.

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 EUR 300 000 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 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 Community, Iceland, Norway, 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 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 Community, Iceland, Norway and Switzerland shall apply this Agreement provisionally as from the day following that of its signature, without prejudice to constitutional requirements.

6. The 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. 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.

⁽¹⁾ OJ C 139, 14.6.2006, p. 1.

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 Iceland and Norway, this Agreement shall be terminated when the respective Association Agreement with Norway and Iceland is terminated in accordance with Articles 8, paragraph 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.

Съставено в Брюксел на деветнадесети март две хиляди и десета година.

Hecho en Bruselas, el diecinueve de marzo de dos mil diez.

V Bruselu dne devatenáctého března dva tisíce deset.

Udfærdiget i Bruxelles den nittende marts to tusind og ti.

Geschehen zu Brüssel am neunzehnten März zweitausendzehn.

Kahe tuhanda kümnenda aasta märtsikuu üheksateistkümnendal päeval Brüsselis.

Έγινε στις Βρυξέλλες, στιςδέκα εννέα Μαρτίου δύο χιλιάδες δέκα.

Done at Brussels on the nineteenth day of March in the year two thousand and ten.

Fait à Bruxelles, le dix-neuf mars deux mille dix.

Fatto a Bruxelles, addì diciannove marzo duemiladieci.

Briselē, divi tūkstoši desmitā gada deviņpadsmitajā martā.

Priimta du tūkstančiai dešimtų metų kovo devynioliktą dieną Briuselyje.

Kelt Brüsszelben, a kétézer-tizedik év március tizenkilencedik napján.

Magħmul fi Brussell, id-dsatax-il jum ta' Marzu tas-sena elfejn u għaxra.

Gedaan te Brussel, de negentiende maart tweeduizend tien.

Sporządzono w Brukseli dnia dziewiętnastego marca roku dwa tysiące dziesiątego.

Feito em Bruxelas, em dezanove de Março de dois mil e dez.

Înceiat la Bruxelles, la nouăsprezece martie două mii zece.

V Bruseli dňa devätnásteho marca dvetisícdesať.

V Bruslju, dne devetnajstega marca leta dva tisoč deset.

Tehty Brysselissä yhdeksäntenätoista päivänä maaliskuuta vuonna kaksituhattakymmenen.

Som skedde i Bryssel den nittonde mars tjugohundratio.

Gjört í Brussel hinn nítjándi dag marsmánaðar árið tvö þúsund og tíu.

Utfærdiget i Brussel, den nittende mars totusenogti.

За Европейската общност
For the European Community
Por la Comunidad Europea
Za Evropské společenství
For Det Europæiske Fællesskab
Für die Europäische Gemeinschaft
Euroopa Ühenduse nimel
Για την Ευρωπαϊκή Κοινότητα
Pour la Communauté européenne
Per la Comunità europea
Eiropas Kopienas vārdā
Europos bendrijos vardu
Az Európai Közösség részéről
Għall-Komunità Ewropea
Voor de Europese Gemeenschap
W imieniu Wspólnoty Europejskiej
Pela Comunidade Europeia
Pentru Comunitatea Europeană
Za Európske spoločenstvo
Za Evropsko skupnost
Euroopan yhteisön puolesta
På Europeiska gemenskapens vägnar



Fyrir hönd Islands



For Kongeriket Norge



Für die Schweizerische Eidgenossenschaft
Pour la Confédération suisse
Per la Confederazione svizzera



Für das Fürstentum Liechtenstein



JOINT DECLARATION BY THE EUROPEAN COMMUNITY AND LIECHTENSTEIN ON THE LATTER'S PARTICIPATION IN THE EXTERNAL BORDERS FUND IN APPLICATION OF DECISION No 574/2007/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

THE EUROPEAN COMMUNITY AND LIECHTENSTEIN

- Having regard to the geographic situation of Liechtenstein in that it lacks external borders and a consular network which would be at the basis for developing a programme to implement the Fund, and
- Recognising Liechtenstein's commitment to pursue the objectives of the Schengen *acquis* as well as its solidarity with the States that apply the Schengen provisions on external borders,

agree that Liechtenstein can choose not to participate in the implementation of the Fund, provided that it contributes financially to the Fund in accordance with Article 11 of 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. Accordingly, Liechtenstein will contribute to the Fund but waive the right to receive allocations under the Fund in accordance with Articles 14 and 15 of Decision No 574/2007/EC of the European Parliament and of the Council.

Should Liechtenstein at a later stage wish to participate, it shall inform the Commission well in advance and the necessary practical arrangements to ensure the application of Decision No 574/2007/EC of the European Parliament and of the Council, the implementing rules and this Agreement shall be laid down in an Exchange of Letters.

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**DECLARATION BY THE GOVERNMENT OF NORWAY ON THE DIRECT ENFORCEABILITY OF DECISIONS
BY THE EUROPEAN COMMUNITY INSTITUTIONS REGARDING PECUNIARY OBLIGATIONS ADDRESSED
TO ENTERPRISES LOCATED IN NORWAY**

The attention of the Contracting Parties is drawn to the fact that the present constitution of Norway does not provide for direct enforceability of decisions by the European Community institutions regarding pecuniary obligations addressed to enterprises located in Norway. Norway acknowledges that such decisions should continue to be addressed directly to these enterprises and that they should fulfil their obligations in accordance with the present practice. The said constitutional limitations to direct enforceability of decisions by European Community institutions regarding pecuniary obligations do not apply to subsidiaries and assets in the territory of the Community belonging to enterprises located in Norway. If difficulties should arise, Norway is prepared to enter into consultations and work towards a mutually satisfactory solution.

DECLARATION BY THE EUROPEAN COMMUNITY

The Commission will keep the situation referred to in Norway's unilateral declaration under constant review. It may at any time initiate consultations with Norway with a view to finding satisfactory solutions to such problems as may arise.

Joint Declaration by the European Union and the Republic of Iceland, the Kingdom of Norway, the Swiss Confederation and the Principality of Liechtenstein on the signature of 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

As a 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 and from that date the European Union exercises all rights and assumes all obligations of the European Community.

Therefore, references to 'the European Community' in the text of the aforementioned Agreement, signed today, are, where appropriate, to be read as 'the European Union'.

Done at Brussels on *19 March* 2010.

For the European Union



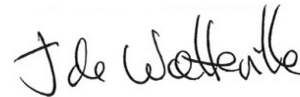
For the Republic of Iceland



For the Kingdom of Norway



For the Swiss Confederation



For the Principality of Liechtenstein