

B. PROTOCOLS ANNEXED TO THE TREATY ON EUROPEAN UNION AND TO THE TREATY ESTABLISHING THE EUROPEAN COMMUNITY

Protocol integrating the Schengen *acquis* into the framework of the European Union

THE HIGH CONTRACTING PARTIES,

NOTING that the Agreements on the gradual abolition of checks at common borders signed by some Member States of the European Union in Schengen on 14 June 1985 and on 19 June 1990, as well as related agreements and the rules adopted on the basis of these agreements, are aimed at enhancing European integration and, in particular, at enabling the European Union to develop more rapidly into an area of freedom, security and justice,

DESIRING to incorporate the abovementioned agreements and rules into the framework of the European Union,

CONFIRMING that the provisions of the Schengen *acquis* are applicable only if and as far as they are compatible with the European Union and Community law,

TAKING INTO ACCOUNT the special position of Denmark,

TAKING INTO ACCOUNT the fact that Ireland and the United Kingdom of Great Britain and Northern Ireland are not parties to and have not signed the abovementioned agreements; that provision should, however, be made to allow those Member States to accept some or all of the provisions thereof,

RECOGNISING that, as a consequence, it is necessary to make use of the provisions of the Treaty on European Union and of the Treaty establishing the European Community concerning closer cooperation between some Member States and that those provisions should only be used as a last resort,

TAKING INTO ACCOUNT the need to maintain a special relationship with the Republic of Iceland and the Kingdom of Norway, both States having confirmed their intention to become bound by the provisions mentioned above, on the basis of the Agreement signed in Luxembourg on 19 December 1996,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty establishing the European Community,

Article 1

The Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Finland and the Kingdom of Sweden, signatories to the Schengen agreements, are authorised to establish closer cooperation among themselves within the scope of those agreements and related provisions, as they are listed in the Annex to this Protocol, hereinafter referred to as the 'Schengen *acquis*'. This cooperation shall be conducted within the institutional and legal framework of the European Union and with respect for the relevant provisions of the Treaty on European Union and of the Treaty establishing the European Community.

Article 2

1. From the date of entry into force of the Treaty of Amsterdam, the Schengen *acquis*, including the decisions of the Executive Committee established by the Schengen agreements which have been adopted before this date, shall immediately apply to the thirteen Member States referred to in Article 1, without prejudice to the provisions of paragraph 2 of this Article. From the same date, the Council will substitute itself for the said Executive Committee.

The Council, acting by the unanimity of its Members referred to in Article 1, shall take any measure necessary for the implementation of this paragraph. The Council, acting unanimously, shall determine, in conformity with the relevant provisions of the Treaties, the legal basis for each of the provisions or decisions which constitute the Schengen *acquis*.

With regard to such provisions and decisions and in accordance with that determination, the Court of Justice of the European Communities shall exercise the powers conferred upon it by the relevant applicable provisions of the Treaties. In any event, the Court of Justice shall have no jurisdiction on measures or decisions relating to the maintenance of law and order and the safeguarding of internal security.

As long as the measures referred to above have not been taken and without prejudice to Article 5(2), the provisions or decisions which constitute the Schengen *acquis* shall be regarded as acts based on Title VI of the Treaty on European Union.

2. The provisions of paragraph 1 shall apply to the Member States which have signed accession protocols to the Schengen agreements, from the dates decided by the Council, acting with the unanimity of its Members mentioned in Article 1, unless the conditions for the accession of any of those States to the Schengen *acquis* are met before the date of the entry into force of the Treaty of Amsterdam.

Article 3

Following the determination referred to in Article 2(1), second subparagraph, Denmark shall maintain the same rights and obligations in relation to the other signatories to the Schengen agreements, as before the said determination with regard to those parts of the Schengen *acquis* that are determined to have a legal basis in Title IIIa of the Treaty establishing the European Community.

With regard to those parts of the Schengen *acquis* that are determined to have legal base in Title VI of the Treaty on European Union, Denmark shall continue to have the same rights and obligations as the other signatories to the Schengen agreements.

Article 4

Ireland and the United Kingdom of Great Britain and Northern Ireland, which are not bound by the Schengen *acquis*, may at any time request to take part in some or all of the provisions of this *acquis*.

The Council shall decide on the request with the unanimity of its members referred to in Article 1 and of the representative of the Government of the State concerned.

Article 5

1. Proposals and initiatives to build upon the Schengen *acquis* shall be subject to the relevant provisions of the Treaties.

In this context, where either Ireland or the United Kingdom or both have not notified the President of the Council in writing within a reasonable period that they wish to take part, the authorisation referred to in Article 5a of the Treaty establishing the European Community or Article K.12 of the Treaty on European Union shall be deemed to have been granted to the Member States referred to in Article 1 and to Ireland or the United Kingdom where either of them wishes to take part in the areas of cooperation in question.

2. The relevant provisions of the Treaties referred to in the first subparagraph of paragraph 1 shall apply even if the Council has not adopted the measures referred to in Article 2(1), second subparagraph.

Article 6

The Republic of Iceland and the Kingdom of Norway shall be associated with the implementation of the Schengen *acquis* and its further development on the basis of the Agreement signed in Luxembourg on 19 December 1996. Appropriate procedures shall be agreed to that effect in an Agreement to be concluded with those States by the Council, acting by the unanimity of its Members mentioned in Article 1. Such Agreement shall include provisions on the contribution of Iceland and Norway to any financial consequences resulting from the implementation of this Protocol.

A separate Agreement shall be concluded with Iceland and Norway by the Council, acting unanimously, for the establishment of rights and obligations between Ireland and the United Kingdom of Great Britain and Northern Ireland on the one hand, and Iceland and Norway on the other, in domains of the Schengen *acquis* which apply to these States.

Article 7

The Council shall, acting by a qualified majority, adopt the detailed arrangements for the integration of the Schengen Secretariat into the General Secretariat of the Council.

Article 8

For the purposes of the negotiations for the admission of new Member States into the European Union, the Schengen *acquis* and further measures taken by the institutions within its scope shall be regarded as an *acquis* which must be accepted in full by all States candidates for admission.

*ANNEX***SCHENGEN ACQUIS**

1. The Agreement, signed in Schengen on 14 June 1985, between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders.
 2. The Convention, signed in Schengen on 19 June 1990, between the Kingdom of Belgium, the Federal Republic of Germany, the French Republic, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands, implementing the Agreement on the gradual abolition of checks at their common borders, signed in Schengen on 14 June 1985, with related Final Act and common declarations.
 3. The Accession Protocols and Agreements to the 1985 Agreement and the 1990 Implementation Convention with Italy (signed in Paris on 27 November 1990), Spain and Portugal (signed in Bonn on 25 June 1991), Greece (signed in Madrid on 6 November 1992), Austria (signed in Brussels on 28 April 1995) and Denmark, Finland and Sweden (signed in Luxembourg on 19 December 1996), with related Final Acts and declarations.
 4. Decisions and declarations adopted by the Executive Committee established by the 1990 Implementation Convention, as well as acts adopted for the implementation of the Convention by the organs upon which the Executive Committee has conferred decision making powers.
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