



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

COUNCIL DECISION

on the signature, on behalf of the European Community, of the Agreement between the European Community and the Swiss Confederation concerning the latter's participation in the European Environment Agency and the European Environment Information and Observation Network

Proposal for a

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on the conclusion, on behalf of the European Community, of the Agreement between the European Community and the Swiss Confederation concerning the latter's participation in the European Environment Agency and the European Environment Information and Observation Network

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. INTRODUCTION

The European Environment Agency was created by Council Regulation (EEC) 1210/90 of 7 May 1990, as amended by Council Regulation (EC) 933/99 of 29 April 1999. The overall task of the Agency is to produce objective, reliable and comparable information for those concerned with the implementation of the European Environment Policy. The trans-boundary nature of environmental problems means that the Agency must work in close co-operation with third countries in Europe. Switzerland is the only major country of Western Europe outside the Agency's network and it would be of mutual interest to have the Swiss as members of the Agency, particularly for reporting on the Alps.

Article 19 of the Regulation allows third country membership. Switzerland made a formal application to join the Agency in July 1999. The Commission negotiated with Switzerland pursuant to the authorisation given to it by the Council on 20 July 2000 and has rounded off the negotiations with the initialling of the Agreement on 25 June 2004.

The Commission hereby proposes two Council Decisions for the signature and the conclusion, on behalf of the European Community, of the Agreement on the participation of Switzerland in the European Environment Agency and the European Environment Information and Observation Network (EIONET).

2. COUNCIL DECISION AUTHORISING THE COMMISSION TO CONDUCT NEGOTIATIONS ON THE PARTICIPATION OF SWITZERLAND IN THE EEA

On the basis of a Commission proposal¹, the Council decided on 20 July 2000 to authorise the Commission to conduct negotiations on the participation of Switzerland in the European Environment Agency.

The main objective of the negotiations were to ensure that the arrangements for the participation of Switzerland as an observer without the right to vote in the European Environment Agency are in conformity with the Treaty of the Union, Regulation 1210/90, as amended by Regulation 933/99 on the establishment of the European Environment Agency and the EIONET and relevant Community legislation.

A further objective was that the financial contribution from Switzerland to the Agency represents the full costs of its participation. For the calculation of this annual figure, the objective was that the Agency's annual subvention should be divided by the number of Member States.

The Commission was requested to report to the Council on the results of the negotiations and, where appropriate, on any problem that may arise during the negotiations. In addition, the Council requested the Commission to take account of on-going negotiations in other areas.

In addition to the negotiation directives, the Council adopted a Declaration by which it emphasised that, while authorising the Commission to negotiate with Switzerland on its

¹ SEC(1999) 2129 final of 22 December 1999.

participation in the Agency, it would at the same time consider the result of the negotiations not only on the basis of its own merits but also in the light of progress achieved in other areas to be negotiated in parallel with Switzerland in order to achieve an overall balance of mutual advantage.

3. THE NEGOTIATIONS

The Commission started the negotiations in 2001. During that year an overall agreement was reached on most substantial issues in line with the negotiating directives the Council has issued. Subsequent negotiations focused on horizontal items relevant to the general relations between Switzerland and the European Union, such as the application of the Protocol on Privileges and Immunities.

4. DRAFT AGREEMENT

The Agreement with Switzerland grants the country conditions for participation, similar to those governing the participation of the current non-EU Member States of the Agency (Liechtenstein, Iceland and Norway), as well as to those which were negotiated for the participation of the candidate countries².

As to Switzerland's financial contribution, an agreement was reached along the lines of the Council's negotiating directive on this issue.

On the substance, the Agreement states that Switzerland takes full part in the work programme of the Agency and will comply with the obligations of the Agency Regulation.

Switzerland will have to establish an infrastructure for providing uniform environmental data and information on the state of the environment in its territory. Switzerland will contribute financially to the Agency budget to cover the cost of its participation. It will also have the right to participate in the Management Board of the Agency without the right to vote.

The Agreement is concluded for an unlimited period. For this reason, a Joint Committee has been set up in Article 16 to allow for technical adaptations, including the incorporation to Annex I of the Agreement of future Community legislation relevant to the functioning of the Agency.

The Parties will sign and then ratify the Agreement in accordance with their own procedures. It will enter into force when both Parties have notified each other that their respective procedures have been completed.

² It is noted that Annex III on the Protocol on Privileges and Immunities (PPI) contains an Appendix on its modalities of application in the case of Switzerland. The Appendix clarifies in point 2 certain practical modalities of application of the tax exemption to the Agency, taking into account the characteristics of the Swiss fiscal system. This approach is in line with comparable clarifications made bilaterally with EU Member States for the practical application of the PPI. In view of the preference expressed by Switzerland, point 3 contains a waiver of its rights under Article 14 of the PPI: it will not require that officials of the Agency having Swiss nationality be considered as having maintained their domicile in Switzerland. As a final clarification, the Appendix recalls the exclusive jurisdiction of the European Court of Justice on all matters between the Agency and its officials.

For its part, the Agency will treat Switzerland as a Member State, through equal treatment in terms of provisions of environmental data and information and analysis, staffing provisions, contracts to third parties and appointments of and participation in Topic Centres.

Annex III on the Protocol on Privileges and Immunities (PPI) contains an Appendix on the modalities of application in Switzerland. To ensure that Swiss authorities, in particular the sub-federal authorities, will correctly apply the PPI to the Agency and the institutions of the Community involved in its operation, point 1 assimilates Switzerland to an EU Member State for this purpose. Point 2 of the Appendix clarifies certain practical modalities of application of the tax exemption to the Agency (for instance the minimum price of goods of services subject to exoneration), taking into account the characteristics of the Swiss fiscal system. This approach is in line with comparable arrangements for the practical application of the PPI that have been concluded bilaterally between the Commission or the Agency and the EU Member States. As Switzerland does not automatically take PPI-relevant secondary legislation on board, point 3 of the Appendix specifies in detail the implications of the exemption contained in Article 13(2) of the PPI. It also clarifies that officials of the Agency and their family members having Swiss nationality or with other links to Switzerland will not be bound to take part in the Swiss social security system. In addition, in view of the preference expressed by Switzerland and in line with the interpretation given by Member States, point 3 clarifies that the extension of the right of taxation under Article 14 of the PPI shall apply only within the European Union, and therefore does not require that such officials be considered as having maintained their domicile in Switzerland. As a final clarification, the Appendix recalls the exclusive jurisdiction of the European Court of Justice on all legal disputes between the Agency and its officials concerning staff matters.

5. SIGNATURE AND CONCLUSION OF THE AGREEMENT

5.1. Legal basis

Negotiations enabling the Agency to be opened to the participation of Switzerland are possible under Article 19 of Council Regulation (EEC) 1210/1990, modified by Regulation 933/1999 on the establishment of the European Environment Agency and EIONET.

The text in the above mentioned Article comprises the necessary rules on procedure for the opening of the Agency to countries which are not members of the Union, but which share the concern of the Community and the Member States for the objectives of the Agency. In order to conclude such Agreement, the procedure of Article 300 paragraphs 2 and 3 of the Treaty applies.

Following this procedure, the Commission is now proposing two Council Decisions on the signature and conclusion of the Agreement, with the objective to allow Switzerland to participate in the European Environment Agency.

5.2. Financial implications

According to the Agreement, Switzerland will contribute financially to the European Environment Agency to cover the full cost involved of its participation to the EEA work programme. In accordance with the negotiating directives issued by the Council, this full cost, and thus Switzerland's contribution, is calculated as the annual Community subvention, divided by the number of EU Member States.

For the Community there are thus no negative financial implications.

6. BENEFITS OF THE AGREEMENT

Benefits of the participation of Switzerland in the Agency are several:

- The participation will help to bring Swiss monitoring systems and methods for data collection and data treatment in line with those used by the other countries participating in the Agency, which will facilitate the provision of reliable and comparable information on the state of environment in Europe.
- The participation of Switzerland will also support integrated assessment and environmental reporting of the ecosystems that are shared by Switzerland and its neighbouring countries.
- The European Environment Agency will be able to report on the state of the environment of a larger part of Europe, including Switzerland. Being an enclave within the territory of the European Union, the participation of this country is particularly important for coherent environmental reporting.
- Inclusion of Switzerland in all other reporting activities of the Agency.

7. RECOMMENDATION

An agreement was reached with Switzerland on the modalities and conditions of its participation in the European Environment Agency, in line with the negotiation directives issued by the Council to the Commission.

It is therefore possible for the Community to sign and conclude the Agreement with Switzerland concerning its participation in the European Environment Agency and the European Environment Information and Observation Network.

Proposal for a

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on the signature, on behalf of the European Community, of the Agreement between the European Community and the Swiss Confederation concerning the latter's participation in the European Environment Agency and the European Environment Information and Observation Network

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175(1) in conjunction with the first sentence of the first subparagraph of Article 300(2) thereof,

Having regard to the proposal from the Commission³,

Whereas:

- (1) The activities of the European Environment Agency and the European Environment Information and Observation Network, established by Council Regulation (EEC) No 1210/90 of 7 May 1990⁴, have already been extended to other European countries by means of bilateral agreements entered into by the European Community, taking into account the transboundary nature of environmental issues and the importance of enhancing international cooperation in the field of environment.
- (2) The Council authorised the Commission on 20 July 2000, on behalf of the Community, to negotiate with the Swiss Confederation an agreement concerning the participation in the European Environment Agency and the European Environment Information and Observation Network. The result of the negotiations duly reflects the negotiating directives issued by the Council.
- (3) Subject to its conclusion at a later date, it is desirable to sign the Agreement that was initialled on 25 June 2004,

HAS DECIDED AS FOLLOWS:

Sole Article

Subject to its conclusion at a later date, the President of the Council is hereby authorized to designate the person empowered to sign, on behalf of the European Community, the Agreement between the European Community and the Swiss Confederation concerning the

³ OJ C [...], [...], p. [...].

⁴ OJ L 120, 11.5.1990, p. 1.

latter's participation in the European Environment Agency and the European Environment Information and Observation Network.

Done at Brussels,

*For the Council
The President*

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175(1) in conjunction with the first sentence of the first subparagraph of Article 300(2), the first sentence of the first subparagraph of Article 300(3) and Article 300(4) thereof,

Having regard to the proposal from the Commission⁵,

Having regard to the opinion of the European Parliament⁶,

Whereas:

- (1) The activities of the European Environment Agency and the European Environment Information and Observation Network, established by Council Regulation (EEC) No 1210/90 of 7 May 1990⁷, have already been extended to other European countries by means of bilateral agreements entered into by the European Community, taking into account the transboundary nature of environmental issues and the importance of enhancing international cooperation in the field of environment.
- (2) On 20 July 2000, the Council authorised the Commission to negotiate with the Swiss Confederation an agreement concerning the participation in the European Environment Agency and the European Environment Information and Observation Network.
- (3) According to Council Decision .../.../CE of ... 2004, and subject to its conclusion at a later date, the Agreement was signed on behalf of the European Community on ... 2004.
- (4) The Agreement should be approved by the Community,

⁵ OJ C [...], [...], p. [...].

⁶ OJ C [...], [...], p. [...].

⁷ OJ L 120, 11.5.1990, p. 1.

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement between the European Community and the Swiss Confederation concerning the latter's participation in the European Environment Agency and the European Environment Information and Observation Network is hereby approved on behalf of the European Community.

The text of the Agreement is attached to this Decision.

Article 2

The President of the Council shall effect the notification provided for in Article 20 of the Agreement on behalf of the European Community⁸.

Article 3

The Community shall be represented on the Joint Committee set up under Article 16 of the Agreement by the Commission.

The position to be taken by the Community as regards decisions of the Joint Committee shall be adopted by the Council, acting by qualified majority on a proposal from the Commission, for matters relating to the financial contribution of Switzerland and for any substantial derogation regarding the incorporation of acts of Community legislation to Annex I and for any amendment to Annex III.

For all other decisions of the Joint Committee, including the regular incorporation of acts of Community legislation to Annex I, subject to any technical adjustment needed, and matters relating to the internal functioning of the Joint Committee, the Community position shall be adopted by the Commission.

Article 4

This Decision shall be published in the *Official Journal of the European Union*.

Done at Brussels,

For the Council
The President

⁸ The date of entry into force of the Agreement will be published in the *Official Journal of the European Union* by the General Secretariat of the Council.

ANNEX

AGREEMENT

between the European Community and the Swiss Confederation concerning the participation of Switzerland to the European Environment Agency and the European Environment Information and Observation Network

THE EUROPEAN COMMUNITY, hereinafter referred to as “the Community”, and

THE SWISS CONFEDERATION, hereinafter referred to as “Switzerland”,

Hereinafter together referred to as the “Contracting Parties”,

RECOGNIZING the transboundary nature of environmental issues and the importance of enhancing international cooperation in the field of environment,

TAKING INTO ACCOUNT Council Regulation (EEC) No 1210/90 on the establishment of the European Environment Agency and the European Environment Information and Observation Network, as amended by Council Regulation (EC) No 933/1999 and Regulation (EC) No 1641/2003 of the European Parliament and of the Council,

TAKING INTO ACCOUNT that the activities of the European Environment Agency and the European Environment Information and Observation Network have already extended to other European countries by means of bilateral agreements entered into by the European Community,

HAVE AGREED AS FOLLOWS:

Article 1

Switzerland shall participate fully in the European Environment Agency, hereinafter referred to as the “Agency”, and the European Environment Information and Observation Network (EIONET) and shall apply the acts listed in Annex I to the present Agreement.

Article 2

Switzerland shall contribute financially to the activities referred to under Article 1 (Agency and EIONET) in accordance to the following:

The annual contribution for a given year shall be calculated on the basis of the Community subvention to the budget of the Agency for that given year, divided by the number of Member States of the European Union.

The further terms and conditions on the Financial Contribution of Switzerland are set out in Annex II to this Agreement.

Article 3

Switzerland shall participate fully, without the right to vote, in the Agency Management Board and shall be associated with the work of the Scientific Committee of the Agency.

Article 4

Switzerland shall, within six months from the entry into force of this Agreement, inform the Agency of the main component elements of its national information networks as set out in the acts listed in Annex I.

Article 5

Switzerland shall in particular designate from among the institutions referred to in Article 4 or from among other organisations established in its territory a “national focal point” for co-ordinating and/or transmitting the information to be supplied at national level to the Agency and to the institutions or bodies forming part of the EIONET, including the topic centres referred to under Article 6.

Article 6

Switzerland may also, within the period laid down in Article 4, identify the institutions or other organisations established in its territory, which could be specifically entrusted with the task of co-operating with the Agency as regards certain topics of particular interest. An institution thus identified should be in a position to conclude an agreement with the Agency to act as a topic centre of the network for specific tasks. These centres shall co-operate with other institutions, which form part of the network.

Article 7

Within six months of receiving the information referred to in Articles 4, 5 and 6, the Management Board of the Agency shall review the main elements of the network to take account of the participation of Switzerland.

Article 8

Switzerland should under the condition that confidentiality is protected provide data according to the obligations and practice established in the Agency work programme.

Article 9

The Agency may agree with the institutions or bodies designated by Switzerland and which form part of the network, as referred to in Articles 4, 5 and 6, upon the necessary arrangements, in particular contracts, for successfully carrying out the tasks which it may entrust to them.

Article 10

Environmental data supplied to or emanating from the Agency may be published and shall be made accessible to the public, provided that confidential information is afforded the same degree of protection in Switzerland as it is afforded within the Community.

Article 11

The Agency shall have legal personality in Switzerland and it shall enjoy in Switzerland the most extensive legal capacity accorded to legal persons under its laws.

Article 12

Switzerland shall apply to the Agency the Protocol on the Privileges and Immunities of the European Communities, which is set out as Annex III to this Agreement.

Article 13

By way of derogation from Article 12(2)(a) of the Council Regulation No 259/68 on Staff Regulations of officials and the conditions of employment of other servants of the European Communities, nationals of Switzerland enjoying their full rights as citizens may be engaged under contract by the Executive Director of the Agency.

Article 14

The provisions relating to financial control by the Community in Switzerland concerning the participants in the activities of the Agency or EIONET are set out in Annex IV.

Article 15

The Contracting Parties shall take any general or specific measures required to fulfil their obligations under the Agreement. They shall see to it that the objectives set out in the Agreement are attained.

Article 16

1. A Joint Committee, composed of representatives of the Contracting Parties, shall ensure the good application of the Agreement. It shall meet upon request of a Contracting Party.
2. The Joint Committee shall hold an exchange of views on the implications of new Community legislation modifying Regulation No 1210/90, or any other legal instrument referred to in this Agreement, including, if appropriate, on any expected implications relating to the financial contribution laid down in Article 2 of this Agreement and Annex II thereof.

3. In conformity with the respective internal procedures of the Contracting Parties, the Joint Committee may adopt a decision amending the Annexes to this Agreement or decide any other measure to safeguard the proper functioning of the Agreement.
4. The Joint Committee shall act by mutual agreement.

Article 17

The Annexes to this Agreement, including the Appendix thereto, shall form an integral part thereof.

Article 18

This Agreement shall apply, on the one hand, to the territories in which the Treaty establishing the European Community is applied and under the terms laid down in this Treaty and, on the other hand, to the territory of Switzerland.

Article 19

This Agreement is concluded for an unlimited period. Either Contracting Party may denounce this Agreement by notifying the other Contracting Party. This Agreement shall cease to apply six months after the date of such notification.

Article 20

This Agreement will be approved by the Contracting Parties in accordance with their own internal procedures. It shall enter into force on the first day of the second month following the day on which the Contracting Parties notify each other that the procedures necessary to this end have been completed.

Article 21

This Agreement is drawn up in duplicate in the Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Polish, Slovak, Slovenian, Spanish, Swedish and Portuguese languages, each of these texts being equally authentic.

Done at (...), on (...)

For the European Community

For the Swiss Confederation

ANNEX I

APPLICABLE ACTS

Wherever acts specified in this Annex contain references to Member States of the European Community, or a requirement for a link with the latter, the references shall, for the purpose of the Agreement, be understood to apply equally to Switzerland or to the requirement of a link with Switzerland.

- Council Regulation (EEC) No 1210/90 of 7 May 1990 on the establishment of the European Environment Agency and the European Environment Information and Observation Network (OJ L 120, 11.5.1990, p. 1), as amended by:
- Council Regulation (EC) No 933/1999 of 29 April 1999 (OJ L 117, 5.5.1999, p. 1);
- Regulation (EC) No 1641/2003 of the European Parliament and of the Council of 22 July 2003 (OJ L 245, 29.9.2003, p. 1).

ANNEX II

FINANCIAL CONTRIBUTION OF SWITZERLAND TO THE EUROPEAN ENVIRONMENT AGENCY

1. The financial contribution to be paid by Switzerland to the budget of the European Union to participate in the Agency will be calculated by dividing the annual Community subsidy to the Agency for a given year by the number of Member States of the European Union.
2. The contribution of Switzerland will be managed in accordance with the financial regulation applicable to the general budget of the European Union.

Travel costs and subsistence costs incurred by representatives and experts of Switzerland for the purposes of taking part in the Agency activities or meetings related to the implementation of the Agency's work programme shall be reimbursed by the Agency on the same basis as and in accordance with the procedures currently in force for the Member States of the European Union.

3. After the entry into force of this Agreement and at the beginning of each following year, the Commission of the European Communities, hereinafter referred to as “the Commission”, will send to Switzerland a call for funds corresponding to its contribution to the Agency under this Agreement. For the first calendar year of its participation Switzerland will pay a contribution calculated from the date of participation to the end of the year on a pro rata basis. For the following years the contribution will be in accordance to this Agreement.
4. This contribution shall be expressed in Euro and paid into a Euro bank account of the Commission.
5. Switzerland will pay its contribution according to the call for funds by 1 May provided that the call for funds is sent by the Commission before 1 April, or at the latest in a period of 30 days after the call for funds is sent.
6. Any delay in the payment of the contribution shall give rise to the payment of interest by Switzerland on the outstanding amount from the due date. The interest rate corresponds to the rate applied by the European Central Bank, on the due date, for its operations in Euro, increased by 1.5 percentage points.

ANNEX III

PROTOCOL ON THE PRIVILEGES AND IMMUNITIES OF THE EUROPEAN COMMUNITIES

THE HIGH CONTRACTING PARTIES,

CONSIDERING that, in accordance with Article 28 of the Treaty establishing a Single Council and a Single Commission of the European Communities, these Communities and the European Investment Bank shall enjoy in the territories of the Member States such privileges and immunities as are necessary for the performance of their tasks,

HAVE AGREED upon the following provisions, which shall be annexed to this Treaty.

CHAPTER I

PROPERTY, FUNDS, ASSETS AND OPERATIONS OF THE EUROPEAN COMMUNITIES

Article 1

The premises and buildings of the Communities shall be inviolable. They shall be exempt from search, requisition, confiscation or expropriation.

The property and assets of the Communities shall not be the subject of any administrative or legal measure of constraint without the authorisation of the Court of Justice.

Article 2

The archives of the Communities shall be inviolable.

Article 3

The Communities, their assets, revenues and other property shall be exempt from all direct taxes.

The governments of the Member States shall, wherever possible, take the appropriate measures to remit or refund the amount of indirect taxes or sales taxes included in the price of movable or immovable property, where the Communities make, for their official use, substantial purchases the price of which includes taxes of this kind. These provisions shall not be applied, however, so as to have the effect of distorting competition within the Communities.

No exemption shall be granted in respect of taxes and dues which amount merely to charges for public utility services.

Article 4

The Communities shall be exempt from all customs duties, prohibitions and restrictions on imports and exports in respect of articles intended for their official use: articles so imported shall not be disposed of, whether or not in return for payment, in the territory of the country into which they have been imported, except under conditions approved by the government of that country.

The Communities shall also be exempt from any customs duties and any prohibitions and restrictions on import and exports in respect of their publications.

Article 5

The European Coal and Steel Community may hold currency of any kind and operate accounts in any currency.

CHAPTER II

COMMUNICATIONS AND LAISSEZ PASSER

Article 6

For their official communications and the transmission of all their documents, the institutions of the Communities shall enjoy in the territory of each Member State the treatment accorded by that State to diplomatic missions.

Official correspondence and other official communications of the institutions of the Communities shall not be subject to censorship.

Article 7

1. Laissez passer in a form to be prescribed by the Council, which shall be recognized as valid travel documents by the authorities of the Member States, may be issued to members and servants of the institutions of the Communities by the Presidents of these institutions. These laissez passer shall be issued to officials and other servants under conditions laid down in the Staff Regulations of officials and the Conditions of Employment of other servants of the Communities.

The Commission may conclude agreements for these laissez passer to be recognised as valid travel documents within the territory of third countries.

2. The provisions of Article 6 of the Protocol on the privileges and immunities of the European Coal and Steel Community shall, however, remain applicable to members and servants of the institutions who are at the date of entry into force of this Treaty in possession of the laissez passer provided for in that Article, until the provisions of paragraph 1 of this Article are applied.

CHAPTER III

MEMBERS OF THE EUROPEAN PARLIAMENT

Article 8

No administrative or other restriction shall be imposed on the free movement of Members of the European Parliament travelling to or from the place of meeting of the European Parliament.

Members of the European Parliament shall, in respect of customs and exchange control, be accorded:

- (a) by their own government, the same facilities as those accorded to senior officials travelling abroad on temporary official missions;
- (b) by the government of other Member States, the same facilities as those accorded to representatives of foreign governments on temporary official missions.

Article 9

Members of the European Parliament shall not be subject to any form of inquiry, detention or legal proceedings in respect of opinions expressed or votes cast by them in the performance of their duties.

Article 10

During the sessions of the European Parliament, its Members shall enjoy:

- (a) in the territory of their own State, the immunities accorded to members of their parliament;
- (b) in the territory of any other Member State, immunity from any measure of detention and from legal proceedings.

Immunity shall likewise apply to Members while they are travelling to and from the place of meeting of the European Parliament.

Immunity cannot be claimed when a Member is found in the act of committing an offence and shall not prevent the European Parliament from exercising its right to waive the immunity of one of its Members.

CHAPTER IV

REPRESENTATIVES OF MEMBER STATES TAKING PART IN THE WORK OF THE INSTITUTIONS OF THE EUROPEAN COMMUNITIES

Article 11

Representatives of Member States taking part in the work of the institutions of the Communities, their advisers and technical experts shall, in the performance of their duties and during their travel to and from the place of meeting, enjoy the customary privileges, immunities and facilities.

This Article shall also apply to members of the advisory bodies of the Communities.

CHAPTER V

OFFICIALS AND OTHER SERVANTS OF THE EUROPEAN COMMUNITIES

Article 12

In the territory of each Member State and whatever their nationality, officials and other servants of the Communities shall:

- (a) subject to the provisions of the Treaties relating, on the one hand, to the rules on the liability of officials and other servants towards the Communities and, on the other hand, to the jurisdiction of the Court in disputes between the Communities and their officials and other servants, be immune from legal proceedings in respect of acts performed by them in their official capacity, including their words spoken or written. They shall continue to enjoy this immunity after they have ceased to hold office;
- (b) together with their spouses and dependent members of their families, not be subject to immigration restrictions or to formalities for the registration of aliens;
- (c) in respect of currency or exchange regulations, be accorded the same facilities as are customarily accorded to officials of international organisations;
- (d) enjoy the right to import free of duty their furniture and effects at the time of first taking up their post in the country concerned, and the right to re export free of duty their furniture and effects, on termination of their duties in that country, subject in either case to the conditions considered to be necessary by the government of the country in which this right is exercised;
- (e) have the right to import free of duty a motor car for their personal use, acquired either in the country of their last residence or in the country of which they are nationals on the terms ruling in the home market in that country, and to re export it free of duty, subject in either case to the conditions considered to be necessary by the government of the country concerned.

Article 13

Officials and other servants of the Communities shall be liable to a tax for the benefit of the Communities on salaries, wages and emoluments paid to them by the Communities, in accordance with the conditions and procedure laid down by the Council, acting on a proposal from the Commission.

They shall be exempt from national taxes on salaries, wages and emoluments paid by the Communities.

Article 14

In the application of income tax, wealth tax and death duties and in the application of conventions on the avoidance of double taxation concluded between Member States of the Communities, officials and other servants of the Communities who, solely by reason of the performance of their duties in the service of the Communities, establish their residence in the territory of a Member State other than their country of domicile for tax purposes at the time of entering the service of the Communities, shall be considered, both in the country of their actual residence and in the country of domicile for tax purposes, as having maintained their domicile in the latter country provided that it is a member of the Communities. This provision shall also apply to a spouse, to the extent that the latter is not separately engaged in a gainful occupation, and to children dependent on and in the care of the persons referred to in this Article.

Movable property belonging to persons referred to in the preceding paragraph and situated in the territory of the country where they are staying shall be exempt from death duties in that country; such property shall, for the assessment of such duty, be considered as being in the country of domicile for tax purposes, subject to the rights of third countries and to the possible application of provisions of international conventions on double taxation.

Any domicile acquired solely by reason of the performance of duties in the service of other international organisations shall not be taken into consideration in applying the provisions of this Article.

Article 15

The Council shall, acting unanimously on a proposal from the Commission, lay down the scheme of social security benefits for officials and other servants of the Communities.

Article 16

The Council shall, acting on a proposal from the Commission and after consulting the other institutions concerned, determine the categories of officials and other servants of the Communities to whom the provisions of Article 12, the second paragraph of Article 13, and Article 14 shall apply, in whole or in part.

The names, grades and addresses of officials and other servants included in such categories shall be communicated periodically to the governments of the Member States.

CHAPTER VI
PRIVILEGES AND IMMUNITIES OF MISSIONS OF THIRD COUNTRIES
ACCREDITED TO THE EUROPEAN COMMUNITIES

Article 17

The Member State in whose territory the Communities have their seat shall accord the customary diplomatic immunities and privileges to missions of third countries accredited to the Communities.

CHAPTER VII
GENERAL PROVISIONS

Article 18

Privileges, immunities and facilities shall be accorded to officials and other servants of the Communities solely in the interests of the Communities.

Each institution of the Communities shall be required to waive the immunity accorded to an official or other servant wherever that institution considers that the waiver of such immunity is not contrary to the interests of the Communities.

Article 19

The institutions of the Communities shall, for the purpose of applying this Protocol, cooperate with the responsible authorities of the Member States concerned.

Article 20

Articles 12 to 15 and Article 18 shall apply to Members of the Commission.

Article 21

Articles 12 to 15 and Article 18 shall apply to the Judges, the Advocates General, the Registrar and the Assistant Rapporteurs of the Court of Justice, without prejudice to the provisions of Article 3 of the Protocols on the Statute of the Court of Justice concerning immunity from legal proceedings of Judges and Advocates General.

Article 22

This Protocol shall also apply to the European Investment Bank, to the members of its organs, to its staff and to the representatives of the Member States taking part in its activities, without prejudice to the provisions of the Protocol on the Statute of the Bank.

The European Investment Bank shall in addition be exempt from any form of taxation or imposition of a like nature on the occasion of any increase in its capital and from the various formalities which may be connected therewith in the State where the Bank has its seat. Similarly, its dissolution or liquidation shall not give rise to any imposition. Finally, the activities of the Bank and of its organs carried on in accordance with its Statute shall not be subject to any turnover tax.

Article 23

This Protocol shall also apply to the European Central Bank, to the members of its organs and to its staff, without prejudice to the provisions of the Protocol on the Statute of the European System of Central Banks and the European Central Bank.

The European Central Bank shall, in addition, be exempt from any form of taxation or imposition of a like nature on the occasion of any increase in its capital and from the various formalities which may be connected therewith in the State where the Bank has its seat. The activities of the Bank and of its organs carried on in accordance with the Statute of the European System of Central Banks and of the European Central Bank shall not be subject to any turnover tax.

The above provisions shall also apply to the European Monetary Institute. Its dissolution or liquidation shall not give rise to any imposition.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries have signed this Protocol.

Done at Brussels this eighth day of April in the year one thousand nine hundred and sixty five.

APPENDIX TO ANNEX III

Procedure for the application in Switzerland of the Protocol on privileges and immunities

1. Extension of application to Switzerland

Wherever the Protocol on the privileges and immunities of the European Communities (hereinafter called “the Protocol”) contains references to Member States, the references are to be understood to apply equally to Switzerland, unless the following provisions determine otherwise.

2. Exemption of the Agency from indirect taxation (including VAT)

Goods and services exported from Switzerland are not to be subject to Swiss value added tax (VAT). In the case of goods and services provided to the Agency in Switzerland for its official use, in accordance with the second paragraph of Article 3 of the Protocol exemption from VAT is by way of refund. Exemption from VAT is granted if the actual purchase price of the goods and services mentioned in the invoice or equivalent document totals at least 100 Swiss francs (inclusive of tax).

The VAT refund is to be granted on presentation to the Federal Tax Administration's VAT Main Division of the Swiss forms provided for the purpose. As a rule, refund applications must be processed within the three months following the date on which they were lodged together with the necessary supporting documents.

3. Procedure for the application of the rules relating to the Agency's staff

As regards the second paragraph of Article 13 of the Protocol, Switzerland must exempt, according to the principles of its national law, officials and other servants of the Agency within the meaning of Article 2 of Regulation No 549/69 of the Council of 25 March 1969 (OJ L 74, 23.7.1969, p. 1) from federal, cantonal and communal taxes on salaries, wages and emoluments paid to them by the Community and subject to an internal tax for its own benefit.

Switzerland is not to be considered as a Member State within the meaning of point 1 above for the application of Article 14 of the Protocol.

Officials and other servants of the Agency and members of their families who are members of the social insurance system applicable to officials and other servants of the Community are not obliged to be members of the Swiss social security system.

The Court of Justice of the European Communities is to have exclusive jurisdiction in any matters concerning relations between the Agency or the Commission and its staff with regard to the application of Regulation (EEC, Euratom, ECSC) No 259/68 of the Council and the other provisions of Community law laying down working conditions.

ANNEX IV

FINANCIAL CONTROL AS REGARDS SWISS PARTICIPANTS IN ACTIVITIES OF THE EUROPEAN ENVIRONMENT AGENCY AND EIONET

1. Direct communication

The Agency and the Commission will communicate directly with all persons or entities established in Switzerland and participating in activities of the Agency or EIONET, as contractors, participants in Agency programmes, recipients of payments from the Agency or the Community budget, or subcontractors. Such persons may send directly to the Commission and to the Agency any relevant information and documentation which they are required to communicate on the basis of the instruments to which this Agreement relates and of contracts or agreements concluded and any decisions taken pursuant to them.

2. Audits

1. In accordance with Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 and the financial regulation adopted by the Management Board of the Agency on 26 March 2003, with Commission Regulation (EC, Euratom) No 2343/2002 of 23 December 2002 and with the other instruments referred to in this Agreement, contracts or agreements concluded and decisions taken with beneficiaries established in Switzerland may provide for scientific, financial, technological or other audits to be conducted at any time on the premises of the beneficiaries and of their subcontractors by Agency and Commission officials or by other persons authorised by the Agency and the Commission.
2. Agency and Commission officials and other persons authorised by the Commission must have appropriate access to sites, works and documents and to all the information required in order to carry out such audits, including in electronic form. This right of access must be explicitly included in the contracts or agreements concluded pursuant to the instruments referred to in this Agreement.
3. The Court of Auditors is to have the same rights as the Commission.
4. The audits may take place five years after the expiry of this Agreement or under the terms of the contracts or agreements concluded and the decisions taken.
5. The Swiss Federal Audit Office is to be informed in advance of audits conducted on Swiss territory. This information will not be a legal condition for carrying out such audits.

3. On-the-spot checks

1. Under this Agreement the Commission (OLAF) is authorised to carry out on-the-spot checks and inspections on Swiss territory, under the terms and conditions set out in Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996.
2. On-the-spot checks and inspections are to be prepared and conducted by the Commission in close cooperation with the Swiss Federal Audit Office or with other

competent authorities of Switzerland appointed by the Swiss Federal Audit Office, which must be notified in good time of the object, purpose and legal basis of the checks and inspections, so that they can provide all the requisite help. To that end, the officials of the Swiss competent authorities may participate in the on-the-spot checks and inspections.

3. If the Swiss competent authorities concerned so wish, the on-the-spot checks and inspections may be carried out jointly by the Commission and the Swiss competent authorities.
4. Where the participants in the programme resist an on-the-spot check or inspection, the Swiss authorities, acting in accordance with national rules, will give the Commission inspectors such assistance as they need to allow them to discharge their duty in carrying out an on-the-spot check or inspection.
5. The Commission is to report as soon as possible to the Swiss Federal Audit Office any fact or suspicion relating to an irregularity which has come to its notice in the course of the on-the-spot check or inspection. In any event the Commission is required to inform the aforementioned authority of the result of such checks and inspections.

4. Information and consultation

1. For the purposes of proper implementation of this Annex, the competent Swiss and Community authorities are to exchange information regularly and, at the request of one of the Parties, conduct consultations.
2. The competent Swiss authorities are to inform the Agency and the Commission without delay of any fact or suspicion which has come to their notice relating to an irregularity in connection with the conclusion and implementation of the contracts or agreements concluded in application of the instruments referred to in this Agreement.

5. Confidentiality

Information communicated or acquired in any form whatever pursuant to this Annex will be covered by professional confidentiality and protected in the same way as similar information is protected by the national legislation of Switzerland and by the corresponding provisions applicable to the Community institutions. Such information may not be communicated to persons other than those within the Community institutions or in Switzerland whose functions require them to know it nor may it be used by Community institutions for purposes other than to ensure effective protection of the financial interests of the contracting Parties.

6. Administrative measures and penalties

Without prejudice to application of Swiss criminal law, administrative measures and penalties may be imposed by the Agency or the Commission in accordance with Regulations (EC, Euratom) No 1605/2002 of 25 June 2002 and (EC, Euratom) No 2342/2002 of 23 December 2002 and with Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests.

7. Recovery and enforcement

Decisions taken by the Agency or the Commission within the scope of this Agreement which impose a pecuniary obligation on persons other than States must be enforceable in Switzerland. The enforcement order must be issued, without any further control than verification of the authenticity of the act, by the authority designated by the Swiss government, which must inform the Agency or the Commission thereof. Enforcement must take place in accordance with the Swiss rules of procedure. The legality of the enforcement decision is subject to control by the Court of Justice of the European Communities.

Judgments given by the Court of Justice of the European Communities pursuant to an arbitration clause are enforceable on the same terms.

LEGISLATIVE FINANCIAL STATEMENT

Policy area(s): Environment

Activit(y/ies): Environment policy development

TITLE OF ACTION: Participation of Switzerland in the European Environment Agency

1. BUDGET LINE(S) + HEADING(S)

07 04 01 01 and 07 04 01 02 (For information)

6033 (income)

2. OVERALL FIGURES

The revenues accruing from the participation of Switzerland will be channelled directly through to the Agency via the Community budget (see table below under point 2, section “Financial Impact on Revenue”). The amount channelled through is calculated as the annual Community subvention to the Agency divided by the number of Member States.

Period of application:

The period of application is in principle unlimited and starts when the procedures for ratification have been finalised (Articles 19 and 20 of the draft Agreement).

Overall multiannual estimate on expenditure:

a) Schedule of commitment appropriations/payment appropriations (financial intervention)
(see point 6.1.1)

The period is unlimited. The table below shows the estimate amounts for the years 2005 and 2006 in line with current financial perspectives. The amounts for subsequent years will increase or decrease in proportion to the Community subvention to the Agency as long as the number of EU Member States remains unchanged at 25.

Compatibility with the financial programming and the financial perspective

- ☒ Proposal compatible with the existing financial programming
- ☐ This proposal will entail reprogramming of the relevant heading in the financial perspective
- ☐ This may entail application of the provisions of the Interinstitutional Agreement.

Financial impact on revenue:

- ☐ No financial implications (involves technical aspects regarding implementation of a measure)

OR

- ☒ Financial impact – the effect on revenue is as follows:

€ million

		Prior to action (Year n-1)	Situation following action	
Budget line	Revenue		2005	2006
Item 6033	a) Revenue in absolute terms	0	1.076	1.080
	b) Change in Revenue	Δ		0.004

The revenues will be entered as earmarked revenues into the Community budget (item 6033).

For explanation see above tables on expenditure.

3. BUDGET CHARACTERISTICS

Type of expenditure		New	EFTA participation	Participation applicant countries	Heading Financial Perspective
Non-comp	Diff	YES	YES	NO ⁽¹⁾	No 3

(1) But applicant countries do participate in core funding for the Agency.

4. LEGAL BASIS

- Article 19 of the Council Regulation (EEC) 1210/1990 modified by Regulation 933/1999 on the establishment of the European Environment Agency, which opens the membership of the Agency up to non-EU countries.
- The proposed Council Decision on the conclusion of the agreement between the European Community and the Switzerland concerning Switzerland's participation in the European Environment Agency and the European Environment Information and Observation Network, to which this legislative financial statement is annexed.

5. DESCRIPTION AND GROUNDS

Need for Community intervention: objectives pursued

Participation of Switzerland in the Agency will help to bring Swiss monitoring systems and methods for data collection and data treatment in line with those used by the other countries participating in the Agency, which will facilitate the provision of reliable and comparable information on the state of environment in Europe. It will also support integrated assessment and environmental reporting of the ecosystems

that are shared by Switzerland and its neighbouring countries. The Agency will be able to report on the state of the environment of a larger part of Europe, including Switzerland, and Switzerland will also be included in all other reporting activities of the Agency.

Methods of implementation

The Commission will pass on the contribution from Switzerland to the Agency as part of the annual subsidy. The Agency is responsible for implementation of the actions and management of the resources involved.

6. FINANCIAL IMPACT

Swiss membership of the Agency as proposed will have no overall financial impact on the Commission.

7. IMPACT ON STAFF AND ADMINISTRATIVE EXPENDITURE

Swiss membership of the Agency will have no impact on human resources in the Commission. It will have an impact on the human resources in the Agency, as adopted in the annual EEA establishment plan.

8. FOLLOW-UP AND EVALUATION

Follow-up arrangements

All the procedures for the implementation and the follow-up of this programme will be in compliance with the provisions of Commission Regulation (EC, Euratom) No 2343/2002 of 23 December 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities

9. ANTI-FRAUD MEASURES

Anti-fraud measures are included in the conventions and contracts agreed between the European Environment Agency and the beneficiaries: these measures include the possibility to carry out financial, scientific or other specific audits. Moreover, the EEA has an internal auditing function, which shall advise on dealing with risks, by issuing independent opinions on the quality of management and control systems. The Commission's internal auditor shall also exercise the same powers with respect to the EEA as with respect to Commission departments.

Furthermore, the Court of Auditors shall scrutinise the accounts of the European Environment Agency in accordance with Article 248 of the EC Treaty. Moreover, this scrutiny shall be governed by Articles 139 to 144 of the Financial Regulation applicable to the general budget of the European Communities.

In addition, the European Anti Fraud Office may carry out on-the-spot checks and inspections in accordance with the Council Regulation (Euratom, EC) No 2185/96 and Parliament and Council Regulation (EC) no 1073/1999 from signature of the Contract up to five years after payment of the balance.