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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Subject:	ANNEX to the Proposal for a COUNCIL DECISION on the conclusion of the Arrangement with the Kingdom of Norway, the Republic of Iceland, the Swiss Confederation and the Principality of Liechtenstein on the participation by those States in the European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice

Delegations will find attached document COM(2018) 606 final ANNEX.

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Brussels, 3.9.2018
COM(2018) 606 final

ANNEX

ANNEX

to the

Proposal for a COUNCIL DECISION

on the conclusion of the Arrangement with the Kingdom of Norway, the Republic of Iceland, the Swiss Confederation and the Principality of Liechtenstein on the participation by those States in the European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice

ANNEX

ARRANGEMENT

BETWEEN THE EUROPEAN UNION, OF THE ONE PART, AND THE KINGDOM OF NORWAY, THE
REPUBLIC OF ICELAND, THE SWISS CONFEDERATION AND THE PRINCIPALITY OF LIECHTENSTEIN,
OF THE OTHER PART ON THE PARTICIPATION BY THOSE STATES IN THE

EUROPEAN AGENCY FOR THE OPERATIONAL MANAGEMENT OF LARGE-SCALE IT SYSTEMS IN
THE AREA OF FREEDOM, SECURITY AND JUSTICE

THE EUROPEAN UNION,

of the one part, and

THE KINGDOM OF NORWAY,

hereinafter referred to as 'Norway',

THE REPUBLIC OF ICELAND,

hereinafter referred to as 'Iceland',

THE SWISS CONFEDERATION,

hereinafter referred to as 'Switzerland', and

THE PRINCIPALITY OF LIECHTENSTEIN

hereinafter referred to as 'Liechtenstein',

of the other part

Having regard to the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning association of those States with the implementation, application and development of the Schengen *acquis*¹, hereinafter referred to as 'the Iceland and Norway Schengen Association Agreement'.

Having regard to the Agreement between the European Community and the Republic of Iceland and the Kingdom of Norway concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Iceland or Norway², hereinafter referred to as 'the Iceland and Norway Dublin/Eurodac Association Agreement'.

Having regard to the Agreement between the European Union, the European Community and Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*³, hereinafter referred to as 'the Switzerland Schengen Association Agreement'.

Having regard to the Agreement between the European Community and Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland⁴, hereinafter referred to as 'the Switzerland Dublin/Eurodac Association Agreement'.

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*⁵, hereinafter referred to as 'the Liechtenstein Schengen Association Protocol'.

Having regard to the Protocol between 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 Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland⁶, hereinafter referred to as the 'Liechtenstein Dublin/Eurodac Association Protocol'.

WHEREAS

¹ OJ L 176, 10.7.1999, p. 36.

² OJ L 93, 3.4.2001, p. 40.

³ OJ L 53, 27.2.2008, p. 52.

⁴ OJ L 53, 27.2.2008, p. 5.

⁵ OJ L 160, 18.6.2011, p. 21.

⁶ OJ L 160, 18.6.2011, p. 39.

- (1) By Regulation (EU) No 1077/2011 of the European Parliament and of the Council of 25 October 2011 (hereinafter referred to as 'the Regulation'), the European Union established the European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice⁷ (hereinafter referred to as 'the Agency'),
- (2) As regards Iceland and Norway, the Regulation constitutes, insofar as it relates to SIS II, VIS and the EES, a development of the provisions of the Schengen *acquis* within the meaning of the Iceland and Norway Schengen Association Agreement. Insofar as it relates to Eurodac and DubliNet, the Regulation constitutes a new measure within the meaning of the Iceland and Norway Dublin/Eurodac Association agreement.
- (3) As regards Switzerland, the Regulation constitutes, insofar as it relates to SIS II, VIS and the EES a development of the provisions of the Schengen *acquis* within the meaning of the Switzerland Schengen Association agreement. Insofar as it relates to Eurodac and DubliNet, the Regulation constitutes a new measure within the meaning of the Switzerland Dublin/Eurodac Association Agreement.
- (4) As regards Liechtenstein, the Regulation constitutes, insofar as it relates to SIS II, VIS and the EES, a development of the provisions of the Schengen *acquis* within the meaning of the Liechtenstein Schengen Association Protocol. Insofar as it relates to Eurodac and DubliNet, the Regulation constitutes a new measure within the meaning of the Liechtenstein Dublin/Eurodac Association Protocol.
- (5) The Regulation provides that, under the relevant provisions of their association agreements, arrangements shall be made in order to specify, inter alia, the nature and extent of, and the detailed rules for the participation of countries associated with the implementation, application and development of the Schengen *acquis* and Dublin and Eurodac-related measures in the work of the Agency, including provisions on financial contributions, staff and voting rights.
- (6) The Association Agreements do not address the modalities of the association of Iceland, Norway, Switzerland and Liechtenstein with the activities of new bodies set up by the European Union in the framework of further development of the Schengen and Eurodac related measures, and certain aspects of the association with the Agency should be settled in an additional arrangement between the Contracting Parties to the Agreements.
- (7) Gross National Product figures are no longer collected by Eurostat and therefore the financial contributions of Norway and Iceland should be calculated on the basis of Gross Domestic Product figures as is the case for the contributions of Switzerland and Liechtenstein despite the reference to Gross National Product contained in the Iceland and Norway Schengen Association Agreement and the Iceland and Norway Dublin/Eurodac Association Agreement.

⁷ OJ L 286, 1.11.2011, p.1, as last amended by Regulation (EU) No 2017/2226 of the European Parliament and of the Council of 30 November 2017 establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third country nationals crossing the external borders of the Member States and determining the conditions for access to the EES for law enforcement purposes, and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 767/2008 and (EU) No 1077/2011, OJ L 327, 9.12.2017, p. 20.

HAVE AGREED AS FOLLOWS:

Article 1
Extent of participation

Norway, Iceland, Switzerland and Liechtenstein shall participate fully in the activities of the Agency as described in the Regulation and in accordance with the terms set out by the present Arrangement.

Article 2
Management Board

1. Norway, Iceland, Switzerland and Liechtenstein shall be represented in the Management Board of the Agency as laid down in Article 13(5) of the Regulation.
2. Limited to the information systems in which they participate, they shall have voting rights:
 - as regards decisions on testing and on technical specifications concerning the development and operational management of the systems and the communication infrastructure;
 - as regards decisions on tasks relating to training on the technical use of SIS II, VIS, Eurodac and the EES under Articles 3, 4, 5 and 5a of the Regulation respectively except on establishment of the common core curriculum;
 - as regards decisions on tasks relating to training on the technical use of other large-scale information systems, under Article 6 of the Regulation except on establishment of the common core curriculum;
 - as regards decisions on adoption of the reports on the technical functioning of SIS II VIS and the EES, under Article 12(1)(t) of the Regulation;
 - as regards decisions on adoption of the annual report on the activities of the Central System of Eurodac, under Article 12(1)(u) of the Regulation;
 - as regards decisions on the adoption of the reports on the development of the EES, under Article 12(1)(sa);
 - as regards decisions on publication of statistics related to SIS II under Article 12(1)(w) of the Regulation;
 - as regards decisions on compilation of statistics on the work of the Central System of Eurodac, under Article 12(1)(x) of the Regulation;
 - as regards decisions on the publication of statistics related to the EES under Article 12(1)(xa);
 - as regards decisions on the annual publication of the list of competent authorities authorised to search directly the data contained in SIS II, under Article 12(1)(y) of the Regulation;
 - as regards decisions on the annual publication of the list of units pursuant to Article 27(2) of Regulation (EU) No 603/2013 under Article 12(1)(z) of the Regulation;
 - as regards decisions on the list of competent authorities pursuant to Article 65(2) of Regulation (EU) 2017/2226;

- as regards decisions on reports on the technical functioning of other large-scale IT systems entrusted to the Agency by a new legislative act or measure which constitutes a development of the provisions of the Schengen acquis within the meaning of the Iceland and Norway Schengen Association Agreement, the Switzerland Schengen Association Agreement and the Liechtenstein Schengen Association Protocol or by a new legislative act or measure within the meaning of the Iceland and Norway Dublin/Eurodac Association Agreement, the Switzerland Dublin/Eurodac Association Agreement and the Liechtenstein Dublin/Eurodac Association Protocol;
- as regards decisions on the publication of statistics related to other large-scale IT systems entrusted to the Agency by a new legislative act or measure which constitutes a development of the provisions of the Schengen acquis within the meaning of the Iceland and Norway Schengen Association Agreement, the Switzerland Schengen Association Agreement and the Liechtenstein Schengen Association Protocol or by a new legislative act or measure within the meaning of the Iceland and Norway Dublin/Eurodac Association Agreement, the Switzerland Dublin/Eurodac Association Agreement and the Liechtenstein Dublin/Eurodac Association Protocol;
- as regards decisions on the annual publication of the list of competent authorities which have access to the data recorded in other large-scale IT systems entrusted to the Agency by a new legislative act or measure which constitutes a development of the provisions of the Schengen acquis within the meaning of the Iceland and Norway Schengen Association Agreement, the Switzerland Schengen Association Agreement and the Liechtenstein Schengen Association Protocol or by a new legislative act or measure within the meaning of the Iceland and Norway Dublin/Eurodac Association Agreement, the Switzerland Dublin/Eurodac Association Agreement and the Liechtenstein Dublin/Eurodac Association Protocol.

If the abovementioned decisions are taken in the context of the multiannual and/or the annual work programme, the voting procedures in the Management Board shall ensure that Norway, Iceland, Switzerland and Liechtenstein are enabled to vote.

3. Norway, Iceland, Switzerland and Liechtenstein shall be allowed to express opinions on all issues on which they are not entitled to vote.

Article 3 ***Advisory Groups***

1. Norway, Iceland, Switzerland and Liechtenstein shall be represented in the Advisory Groups of the Agency as laid down in Article 19(2) of the Regulation.
2. They shall have voting rights as regards the opinions of the Advisory Groups on the decisions referred to under Article 2.
3. They shall be allowed to express opinions on all issues on which they are not entitled to vote.

Article 4
Financial contributions

1. The individual contributions of Norway, Iceland, Liechtenstein and Switzerland to the revenue of the Agency shall be limited to the information systems in which the respective state participates.
2. Norway, Iceland, Switzerland and Liechtenstein shall contribute to the revenue of the Agency, as regards SIS II and VIS, an annual sum calculated in accordance with the percentage of the Gross Domestic Product (GDP) of their countries in relation with the GDP of all participating States in accordance with the formula described in Annex I, pursuant to Article 11(3) of the Switzerland Schengen Association Agreement and Article 3 of the Liechtenstein Schengen Association Protocol, which refers to the contribution method referred to in Article 11(3) of the Switzerland Schengen Association Agreement and by way of derogation from Article 12(1) of the Iceland and Norway Schengen Association Agreement, which refers to Gross National Product.
3. Norway, Iceland, Switzerland and Liechtenstein shall contribute to the revenue of the Agency, as regards the EES, an annual sum calculated in accordance with the percentage of the Gross Domestic Product (GDP) of their countries in relation with the GDP of all participating States in accordance with the formula described in Annex I, pursuant to Article 11(3) of the Switzerland Schengen Association Agreement and Article 3 of the Liechtenstein Schengen Association Protocol, which refers to the contribution method referred to in Article 11(3) of the Switzerland Schengen Association Agreement and by way of derogation from Article 12(1) of the Iceland and Norway Schengen Association Agreement, which refers to Gross National Product.
4. Norway, Iceland, Switzerland and Liechtenstein shall contribute to the revenue of the Agency, as regards Eurodac, an annual sum, calculated in accordance with the formula described in Annex I in accordance with Article 9(1) first subparagraph of the Iceland and Norway Dublin/Eurodac Association Agreement, Article 8(1) first subparagraph of the Switzerland Dublin/Eurodac Association Agreement and Article 6 of the Liechtenstein Dublin/Eurodac Association Protocol.
5. Norway, Iceland, Switzerland and Liechtenstein shall contribute to the revenue of the Agency as regards DubliNet, an annual sum calculated in accordance with the percentage of the Gross Domestic Product (GDP) of their countries in relation with the GDP of all participating States calculated in accordance with the formula described in Annex I, pursuant to Article 8(1) second subparagraph of the Switzerland Dublin/Eurodac Association Agreement, to Article 3 of the Liechtenstein Dublin/Eurodac Association Protocol, which refers to the contribution method referred to in Article 8(1) second subparagraph of the Switzerland Dublin/Eurodac Association Agreement, and by way of derogation from Article 9(1) second subparagraph of the Iceland and Norway Dublin/Eurodac Association Agreement which refers to Gross National Product.

6. As far as titles 1 and 2 of the Agency budget are concerned, the financial contribution mentioned under paragraphs 2 and 4 is due as of 1 December 2012, date on which the agency took up its responsibilities. The financial contribution mentioned under paragraph 5 is due as of 31 July 2014, date on which the technical support for the operational management of DubliNet was transferred to the Agency. The financial contribution mentioned under paragraph 3 is due as from 29 December 2017, date on which the Agency became responsible for the development and operational management of the EES. The financial contributions shall be payable as from the day following the entry into force of this Arrangement, including the amounts due for the period between 1 December 2012 and the date of its entry into force.

As far as title 3 of the Agency budget is concerned, the financial contribution mentioned under paragraphs 2 and 4 is due and payable as of 1 December 2012, the financial contribution mentioned under paragraph 5 as of 31 July 2014 and the financial contribution mentioned under paragraph 3 as of 29 December 2017 on the basis of the respective Association Agreements.

7. When a new legislative act or measure which constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Iceland and Norway Schengen Association Agreement, the Switzerland Schengen Association Agreement and the Liechtenstein Schengen Association Protocol extends the mandate of the Agency by entrusting it with the development and/or operational management of other large-scale information systems, Norway, Iceland, Switzerland and Liechtenstein shall contribute to the revenue of the Agency an annual sum calculated in accordance with the percentage of the GDP of their countries in relation with the GDP of all participating States in accordance with the formula described in Annex I, pursuant to Article 11(3) of the Switzerland Schengen Association Agreement and Article 3 of the Liechtenstein Schengen Association Protocol, which refers to the contribution method referred to in Article 11(3) of the Switzerland Schengen Association Agreement, and by way of derogation from Article 12(1) of the Iceland and Norway Schengen Association Agreement, which refers to Gross National Product.
8. When a new legislative act or measure within the meaning of the Iceland and Norway Dublin/Eurodac Association Agreement, the Switzerland Dublin/Eurodac Association Agreement and the Liechtenstein Dublin/Eurodac Association Protocol extends the mandate of the Agency by entrusting it with the development and/or operational management of other large-scale information systems, Norway, Iceland, Switzerland and Liechtenstein shall contribute to the revenue of the Agency an annual sum calculated in accordance with the percentage of the GDP of their countries in relation with the GDP of all participating States in accordance with the formula described in Annex I, pursuant to Article 8(1) second subparagraph of the Switzerland Dublin/Eurodac Association Agreement, to Article 3 of the Liechtenstein Dublin/Eurodac Association Protocol, which refers to the contribution method referred to in Article 8(1) second subparagraph of the Switzerland Dublin/Eurodac Association Agreement, and by way of derogation from Article 9(1) second subparagraph of the Iceland and Norway Dublin/Eurodac Association Agreement which refers to Gross National Product.

9. If Norway, Iceland, Switzerland and Liechtenstein have already contributed to the development or operational management of a large-scale IT system through other EU funding instruments, or if the development and/or operational management of a large-scale IT system is financed by fees or other assigned revenues, the relevant contributions of Norway, Iceland, Switzerland and Liechtenstein to the Agency shall be adjusted accordingly.

Article 5
Legal status

The Agency shall have legal personality under the law of Norway, Iceland, Switzerland and Liechtenstein and shall enjoy in these States the most extensive legal capacity accorded to legal persons under the law of these States. It may, in particular, acquire or dispose of movable and immovable property and may be party to legal proceedings.

Article 6
Liability

The liability of the Agency shall be governed by Article 24(1), (3) and (5) of the Regulation.

Article 7
Court of Justice

Norway, Iceland, Switzerland and Liechtenstein shall recognise the jurisdiction of the Court of Justice of the European Union over the Agency, as provided for in Article 24(2) and (4) of the Regulation.

Article 8
Privileges and immunities

Norway, Iceland, Switzerland and Liechtenstein shall apply to the agency and to its staff the rules governing privileges and immunities laid down in Annex II to this Arrangement, which are derived from the Protocol on Privileges and Immunities of the European Union as well as any rules adopted pursuant to that Protocol relating to staff matters of the Agency.

Article 9
Staff of the Agency

1. In accordance with Article 20(1) and 37 of the Regulation, the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Union, the rules adopted jointly by the European Union institutions for the purpose of applying these Staff Regulations and the rules adopted by the Agency according to Article 20(8) of the Regulation shall apply to nationals of Norway, Iceland, Switzerland and Liechtenstein recruited as staff of the Agency.

2. By way of derogation from Article 12(2)(a) and Article 82(3)(a) of the Conditions of employment of other servants of the European Union, nationals of Norway, Iceland, Switzerland and Liechtenstein enjoying their full rights as citizens may be engaged under contract by the Executive Director of the Agency according to the existing rules for selection and engagement of staff adopted by the Agency.
3. Article 20(6) of the Regulation shall apply *mutatis mutandis* to the nationals of Norway, Iceland, Switzerland and Liechtenstein.
4. Nationals of Norway, Iceland, Switzerland and Liechtenstein may not, however, be appointed to the post of Executive Director of the Agency.

Article 10
Seconded officials and experts

As regards seconded officials and experts, the following provisions apply:

- (i) any emoluments, allowances and other payments paid by the Agency shall be exempt from national taxes;
- (ii) for as long as they remain covered by the social security system in the country from which they are seconded to the Agency, they shall be exempt from all compulsory contributions to the social security organisations of the host countries of the Agency. Consequently, during that time they shall not be covered by the social security regulations of the host country of the Agency in which they work, unless they voluntarily join the social security system of that country.

The provisions of this subparagraph shall apply, *mutatis mutandis*, to the members of the family forming part of the household of the seconded experts, unless they are employed by an employer other than the Agency or receive social security benefits from a host country of the Agency.

Article 11
Combating fraud

1. As far as Norway is concerned the provisions set out in Article 35 of the Regulation shall be applied and the European Anti-Fraud Office (OLAF) and the Court of Auditors may exercise the powers conferred on them.

OLAF and the Court of Auditors shall inform *Riksrevisjonen* in good time of any intention to carry out on-the-spot-checks or audits which, if the Norwegian authorities so wish, may be carried out jointly with *Riksrevisjonen*.

2. As far as Iceland is concerned the provisions set out in Article 35 of the Regulation shall be applied and the European Anti-Fraud Office (OLAF) and the Court of Auditors may exercise the powers conferred on them.

OLAF and the Court of Auditors shall inform *Ríkisendurskoðun* in good time of any intention to carry out on-the-spot-checks or audits which, if the Icelandic authorities so wish, may be carried out jointly with *Ríkisendurskoðun*.

3. As far as Switzerland is concerned the provisions with regard to Article 35 of the Regulation relating to financial control by the EU in Switzerland concerning the Swiss participants in the activities of the Agency are set out in Annex III.
4. As far as Liechtenstein is concerned the provisions with regard to Article 35 of the Regulation relating to financial control by the EU in Liechtenstein concerning the participants from Liechtenstein in the activities of the Agency are set out in Annex IV.

Article 12
Dispute settlement

1. In the case of a dispute about the application of this arrangement, the matter shall be officially entered as a matter of dispute on the agenda of the Mixed Committee at ministerial level.
2. The Mixed Committee shall have ninety days from the date of adoption of the agenda on which the dispute has been entered within which to settle the dispute.
3. In case where a dispute concerning Schengen related matters cannot be settled by the Mixed Committee within the period of ninety days envisaged in paragraph 2, a further period of thirty days shall be observed for reaching a final settlement. If no final settlement is reached, this Arrangement shall be terminated with respect to the State the dispute concerns six months after the expiry of the thirty day period.
4. In a case where a dispute concerning Eurodac related matters cannot be settled by the Joint/Mixed Committee within the period of ninety days envisaged in paragraph 2, a further period of ninety days shall be observed for reaching a final settlement. If the Joint/Mixed Committee has not taken a decision at the end of that period, this Arrangement shall be considered terminated with respect to the State the dispute concerns at the end of the last day of that period.

Article 13
Annexes

The Annexes to this Arrangement shall constitute an integral part of this Arrangement.

Article 14
Entry into force

1. The Secretary-General of the Council of the European Union shall act as depositary of this Arrangement.
2. The European Union, Norway, Iceland, Switzerland and Liechtenstein shall approve this Arrangement in accordance with their own procedures.
3. The entry into force of this Arrangement shall require approval by the European Union and at least one other Party to the Arrangement.

4. This Arrangement shall enter into force in relation to any Party to this Arrangement on the first day of the first month following the deposit of its instrument of approval with the depositary.

Article 15
Validity and termination

1. This Arrangement shall be concluded for an unlimited period.
2. As regards Iceland and Norway, this Arrangement shall cease to be in force six months after the Iceland and Norway Schengen Association Agreement is denounced by Iceland or by Norway or by decision of the Council of the European Union, or is otherwise terminated in accordance with the procedures described in Article 8(4), 11(3) or 16 of that Agreement. It shall also cease to be in force six months after the Iceland and Norway Dublin/Eurodac Association Agreement is terminated or denounced in accordance with the procedures described in Article 4(7), 8(3) or 15 of that Agreement.

The agreement referred to in Article 17 of the Iceland and Norway Schengen Association Agreement shall also cover the consequences of termination of the present Arrangement.

3. As regards Switzerland, this Arrangement shall cease to be in force six months after the Switzerland Schengen Association Agreement is denounced by Switzerland or by decision of the Council of the European Union, or is otherwise terminated in accordance with the procedures described in Articles 7(4), 10(3) or 17 of the Switzerland Schengen Association Agreement. It shall also cease to be in force six months after the Switzerland Dublin/Eurodac Association Agreement is terminated or denounced in accordance with the procedures described in Article 4(7), 7(3) or 16 of that Agreement.
4. As regards Liechtenstein, this Arrangement shall cease to be in force six months after the Liechtenstein Schengen Association Protocol is denounced by Liechtenstein or by decision of the Council of the European Union, or is otherwise terminated in accordance with the procedures described in Article 3, 5(4), 11(1) or 11(3) of the Liechtenstein Schengen Association Protocol. It shall also cease to be in force six months after the Liechtenstein Dublin/Eurodac Association Protocol is terminated or denounced in accordance with the procedures described in Article 3, 5(7), 11(1) or 11(3) of that Protocol.
5. This Arrangement shall be drawn up in one single original in the Bulgarian, Spanish, Czech, Danish, German, Estonian, Greek, English, French, Irish, Croatian, Italian, Latvian, Lithuanian, Hungarian, Maltese, Dutch, Polish, Portuguese, Romanian, Slovak, Slovenian, Finnish, Swedish, Icelandic and Norwegian languages, each of those texts being equally authentic.

ANNEX I

Formula to calculate the contribution

1. The financial contribution of Norway, Iceland, Switzerland and Liechtenstein to the revenue of the Agency referred to under Article 32(1)(b) of the Regulation is calculated as follows:

Title 3

- 1.1. As regards SIS II , VIS and the EES and any other large-scale information systems which are entrusted to the Agency by a legislative act or measure which constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Iceland and Norway Schengen Association Agreement, the Switzerland Schengen Association Agreement and the Liechtenstein Schengen Association Protocol, the most updated final figures of the Gross Domestic Product (GDP) of each associated country available when the invoicing is done in year n+1 for year n shall be divided by the sum of the GDP figures of all the States participating in the Agency available for year n. The obtained percentage will be multiplied by the total payments for title 3 of the Agency budget for the above mentioned systems executed in year n in order to obtain the contribution for each associated country.
- 1.2. As regards Eurodac, the contribution of each associated country shall consist of an annual sum of a fixed percentage (for Liechtenstein it is 0,071%, for Norway it is 4,995%, for Iceland it is 0,1% and for Switzerland it is 7,286%) of the relevant budget appropriations for the budgetary year. The contribution of each associated country is calculated in year n+1 and is obtained by multiplying the fixed percentage by the total payments for title 3 of the Agency budget for Eurodac executed in the year n.
- 1.3. As regards DubliNet and any other large-scale information systems which are entrusted to the Agency by a legislative act or measure within the meaning of the Iceland and Norway Dublin/Eurodac Association Agreement, the Switzerland Dublin/Eurodac Association Agreement and the Liechtenstein Dublin/Eurodac Association Protocol, the most updated final figures of the GDP of each associated country available when the invoicing is done in year n+1 for year n shall be divided by the sum of the GDP figures of all the States participating in the Agency available for year n. The obtained percentage will be multiplied by the total payments for title 3 of the Agency budget for the above mentioned systems executed in year n in order to obtain the contribution for each associated country.

Titles 1 and 2

- 1.4. The contribution of each associated country to titles 1 and 2 of the Agency budget for the systems referred to under 1.1, 1.2 and 1.3 shall be obtained by dividing the most updated final figures of the GDP of each associated country available when the invoicing is done in year n+1 for year n by the sum of the GDP figures of all the States participating in the Agency available for year n. The obtained percentage will be multiplied by the total payments for titles 1 and 2 of the Agency budget for the systems referred to under 1.1, 1.2 and 1.3 executed in year n.
- 1.5. Should there be any additional large-scale IT systems entrusted to the Agency in which the associated countries would not participate, the calculation regarding the contribution of the associated countries to titles 1 and 2 shall be revised accordingly.
2. The financial contribution shall be paid in Euro.
3. Each associated country shall pay its financial contribution no later than 45 days after receiving of the debit note. Any delay in the payment of the contribution shall give rise to the payment of default interest on the outstanding amount from the due date. The interest rate shall be the rate applied by the European Central Bank to its main refinancing operations, as published in the C series of the Official Journal of the European Union, in force on the first calendar day of the months in which the deadline falls, increased by 3.5 percentage points.
4. Each associated country's financial contribution shall be adapted in accordance with this Annex in case of an amendment to the financial contribution from the European Union entered in the general budget of the European Union in accordance with Article 41 of the Financial Regulation.⁸

⁸

OJ L 298, 26.10.2012, p. 1.

ANNEX II

Privileges and immunities

1. The premises and buildings of the Agency shall be inviolable. They shall be exempt from search, requisition, confiscation or expropriation. The property and assets of the Agency shall not be the subject of any administrative or legal measure of constraint without the authorisation of the Court of Justice.
2. The archives of the Agency shall be inviolable.
3. The Agency, its assets, revenues and other property shall be exempt from all direct taxes.

Goods and services exported to the Agency for its official use from Norway, Iceland, Switzerland and Liechtenstein shall not be subject to any indirect duties and taxes.

In the case of goods and services provided to the Agency in Norway, Iceland, Switzerland and Liechtenstein for its official use, exemption from VAT shall be granted by way of refund or remit.

In the case of goods provided to the Agency in Norway, Iceland, Switzerland and Liechtenstein for its official use, exemption from excise duty shall be granted by way of refund or remit.

Any other indirect taxes payable by the Agency in Norway, Iceland, Switzerland and Liechtenstein shall be refunded or remitted.

As a rule, refund applications shall be processed within three months.

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

The modalities of exemption from VAT, excise duty and other indirect taxes in Norway, Iceland, Switzerland and Liechtenstein are laid down in the Appendices to this Annex. Norway, Iceland, Switzerland and Liechtenstein shall notify the Commission and the Agency of any modification to their respective Appendix. Such notification shall, if possible, be given two months before the modifications enter into force. The European Commission shall inform the Member States of the Union of the modifications.

4. The Agency shall be exempt from all customs duties, prohibitions and restrictions on imports and exports in respect of articles intended for its 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 Agency shall also be exempt from any customs duties and any prohibitions and restrictions on import and exports in respect of its publications.

5. For its official communications and the transmission of all its documents, the Agency shall enjoy in the territory of each associated country the treatment accorded by that State to diplomatic missions.

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

6. Representatives of Member States of the Union, as well as those of Norway, Iceland, Switzerland and Liechtenstein taking part in the work of the Agency, 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.

7. In the territory of Norway, Iceland, Switzerland and Liechtenstein and whatever their nationality, staff members of the Agency within the meaning of Article 1 of Regulation (Euratom, ECSC, EEC) No 549/69 of the Council of 25 March 1969⁹ 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 Union and, on the other hand, to the jurisdiction of the Court of Justice of the European Union in disputes between the Agency and its staff members, 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) in respect of currency or exchange regulations, be accorded the same facilities as are customarily accorded to officials of international organisations.

8. Staff members of the Agency shall be liable to a tax for the benefit of the Union on salaries, wages and emoluments paid to them by the Agency, in accordance with the conditions and procedure laid down by the European Parliament and the Council.

Staff members of the Agency within the meaning of Article 2 of Regulation (Euratom, ECSC, EEC) No 549/69 of the Council of 25 March 1969 shall be exempt from national, federal, cantonal, regional, municipal and communal taxes on salaries, wages and emoluments paid by the Agency. As regards Switzerland, this exemption shall be granted according to the principles of its national law.

⁹ Regulation (Euratom, ECSC, EEC) No 549/69 of the Council of 25 March 1969 determining the categories of officials and other servants of the European Communities to whom the provisions of Article 12, the second paragraph of Article 13 and Article 14 of the Protocol on the Privileges and Immunities of the Communities apply, OJ L 74, 27.3.1969 p.1 as last amended by Council Regulation (EC) No 371/2009, OJ L 121, 15.5.2009, p. 1.

Staff members of the Agency shall not be obliged to be members of the Norwegian, Icelandic, Swiss or Liechtenstein social security system provided they are already covered by the scheme of social security benefits for officials and other servants of the Union. Members of the family of staff members of the Agency forming part of their household shall be covered by the Joint Sickness Insurance Scheme of the EU provided that they are not employed by another employer than the Agency and provided that they do not receive social security benefits from a Member State or from Norway, Iceland, Switzerland or Liechtenstein.

9. 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 Norway, Iceland, Switzerland or Liechtenstein and Member States of the Union, staff members of the Agency within the meaning of Article 3 of Regulation (Euratom, ECSC, EEC) No 549/69 of the Council of 25 March 1969 who, solely by reason of the performance of their duties in the service of the Agency, establish their residence in the territory of a Member State of the Union which was not their country of domicile for tax purposes at the time of entering the service of the Agency, 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 State of the Union, or that it is Norway, Iceland, Switzerland or Liechtenstein. 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 provision.

Movable property belonging to persons referred to in the preceding paragraph and situated in the territory of a Member State of the Union 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 two preceding paragraphs.

10. Privileges, immunities and facilities shall be accorded to staff members of the Agency solely in the interests of the Agency.

The Executive Director of the Agency shall be required to waive the immunity accorded to one of its staff members in all cases where such immunity would impede the course of justice and wherever he considers that the waiver of such immunity is not contrary to the interests of the Agency or the Union.

11. The Agency shall, for the purpose of applying the provisions of this Annex, cooperate with the responsible authorities of the associated countries or Member States concerned.

Appendix 1 to Annex II

Norway:

Exemption from VAT shall be granted by way of refund.

The VAT refund shall be granted on presentation to the Norwegian Tax Administration's Tax office (Skatt Øst) Main Division of the Norwegian forms provided for the purpose. As a rule, refund applications shall be processed within the three months following the date on which they were lodged together with the necessary supporting documents.

Exemption from excise duties and any other indirect taxes shall be granted by way of refund. The same procedure shall apply as for VAT refunds.

Appendix 2 to Annex II

Iceland:

Exemption from VAT shall be granted by way of refund.

Exemption from VAT shall be granted if the actual purchase price of the goods and services mentioned in the invoice or equivalent document totals at least 36.400 Icelandic króna (inclusive of tax).

The VAT refund shall be granted on presentation to the Icelandic Directorate of Internal Revenue (Ríkisskattstjóri) of the Icelandic forms provided for the purpose. As a rule, refund applications shall be processed within the three months following the date on which they were lodged together with the necessary supporting documents.

Exemption from excise duties and any other indirect taxes shall be granted by way of refund. The same procedure shall apply as for VAT refunds.

Appendix 3 to Annex II

Switzerland:

Exemption from VAT, excise duty and any other indirect taxes shall be granted by way of remit on presentation to the goods or services supplier of the Swiss forms provided for the purpose.

Exemption from VAT shall be 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).

Appendix 4 to Annex II

Liechtenstein:

Exemption from VAT, excise duty and any other indirect taxes shall be granted by way of remit on presentation to the goods or services supplier of the Liechtenstein forms provided for the purpose.

Exemption from VAT shall be 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).

ANNEX III

Financial control as regards Swiss participants in activities of the Agency

Article 1

Direct communication

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

Article 2

Audits

1. In accordance with Regulation (EU, Euratom) No 966/2012 of the European Parliament and the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002¹⁰, with 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 Communities¹¹ and with the other instruments referred to in this Arrangement, 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 European Commission officials or by other persons mandated by the Agency and the European Commission.
2. Agency and European Commission officials and other persons mandated by the Agency and the European Commission shall 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 shall be stated explicitly in the contracts or agreements concluded to implement the instruments referred to in this Arrangement.
3. The European Court of Auditors is to have the same rights as the European Commission.

¹⁰ OJ L 298, 26.10.2012, p. 1.

¹¹ OJ L 357, 31.12.2002, p. 72, as last amended by Commission Regulation (EC, Euratom) No 652/2008, OJ L 181, 10.7.2008, p. 23.

4. The audits may take place until five years after the expiry of this Arrangement or under the terms of the contracts or agreements concluded and the decisions taken.
5. The Swiss Federal Audit Office shall be informed in advance of audits conducted on Swiss territory. This information shall not be a legal condition for carrying out such audits.

Article 3
On-the-spot checks

1. Within the framework of this Arrangement, the European Commission (OLAF) may carry out investigations, including on-the-spot checks and inspections on Swiss territory, in accordance with the terms and conditions laid down in Council Regulation (Euratom, EC) No 2185/96 and Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the European Union.
2. On-the-spot checks and inspections shall be prepared and conducted by OLAF in close cooperation with the Swiss Federal Audit Office or with other competent Swiss authorities designated by the Swiss Federal Audit Office, which shall 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 competent Swiss authorities may participate in the on-the-spot checks and inspections.
3. If the Swiss authorities concerned so wish, the on-the-spot checks and inspections may be carried out jointly by OLAF and them.
4. Where the participants in the programme resist an on-the-spot check or inspection, the Swiss authorities, acting in accordance with national rules, shall give OLAF investigators such assistance as they need to allow them to discharge their duty in carrying out an on-the-spot check or inspection.
5. OLAF shall report as soon as possible to the Swiss Federal Audit Office or other competent Swiss authorities designated by 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 OLAF shall inform the aforementioned authorities of the result of such checks and inspections.

Article 4
Information and consultation

1. For the purposes of proper implementation of this Annex, the competent Swiss and EU authorities shall exchange information regularly and, at the request of one of the Contracting Parties, shall conduct consultations.
2. The competent Swiss authorities shall 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 Arrangement.

Article 5
Confidentiality

Information communicated or acquired in any form whatever pursuant to this Annex shall be covered by professional secrecy and protected in the same way as similar information is protected by Swiss law and by the corresponding provisions applicable to the EU institutions.

Such information shall not be communicated to persons other than those within the EU institutions, in the Member States, or in Switzerland 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 Contracting Parties.

Article 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 European Commission in accordance with Regulation (EU, Euratom) No 966/2012 of the European Parliament and the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002¹², with Commission delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union¹³ and with Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests¹⁴.

¹² OJ L 298, 26.10.2012, p. 1.

¹³ OJ L 362, 31.12.2012, p. 1.

¹⁴ OJ L 312, 23.12.1995, p. 1.

Article 7
Recovery and enforcement

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

Judgments given by the Court of Justice of the European Union pursuant to an arbitration clause shall be enforceable on the same terms.

ANNEX IV

Financial control as regards participants from Liechtenstein in activities of the Agency

Article 1

Direct communication

The Agency and the European Commission shall communicate directly with all persons or entities established in Liechtenstein and participating in activities of the Agency, as contractors, participants in the Agency programmes, recipients of payments from the Agency or the EU budget, or subcontractors. Such persons may send directly to the European Commission and to the Agency all relevant information and documentation which they are required to submit on the basis of the instruments referred to in this Arrangement and of contracts or agreements concluded and any decisions taken pursuant to them.

Article 2

Audits

1. In accordance with Regulation (EU, Euratom) No 966/2012 of the European Parliament and the Council on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002¹⁵, with 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 Communities¹⁶ and with the other instruments referred to in this Arrangement, contracts or agreements concluded and decisions taken with beneficiaries established in Liechtenstein 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 European Commission officials or by other persons mandated by the Agency and the European Commission.
2. Agency and European Commission officials and other persons mandated by the Agency and the European Commission shall 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 shall be stated explicitly in the contracts or agreements concluded to implement the instruments referred to in this Arrangement.
3. The European Court of Auditors shall have the same rights as the European Commission.

¹⁵ OJ L 298, 26.10.2012, p. 1.

¹⁶ OJ L 357, 31.12.2002, p. 72, as last amended by Commission Regulation (EC, Euratom) No 652/2008, OJ L 181, 10.7.2008, p. 23.

4. The audits may take place until five years after the expiry of this Arrangement or under the terms of the contracts or agreements concluded and the decisions taken.
5. The National Audit Office of Liechtenstein shall be informed in advance of audits conducted on the territory of Liechtenstein. This information shall not be a legal condition for carrying out such audits.

Article 3
On-the-spot checks

1. Within the framework of this Arrangement, the European Commission (OLAF) may carry out investigations, including on-the-spot checks and inspections on the territory of Liechtenstein, in accordance with the terms and conditions laid down in Council Regulation (Euratom, EC) No 2185/96 and Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the European Union.
2. On-the-spot checks and inspections shall be prepared and conducted by OLAF in close cooperation with the National Audit Office of Liechtenstein or with other competent authorities in Liechtenstein designated by National Audit Office, which shall 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 competent authorities in Liechtenstein may participate in the on-the-spot checks and inspections.
3. If the authorities of Liechtenstein concerned so wish, the on-the-spot checks and inspections may be carried out jointly by OLAF and them.
4. Where the participants in the programme resist an on-the-spot check or inspection, the authorities of Liechtenstein, acting in accordance with national rules, shall give OLAF investigators such assistance as they need to allow them to discharge their duty in carrying out an on-the-spot check or inspection.
5. OLAF shall report as soon as possible to the National Audit Office of Liechtenstein or other competent Liechtenstein authorities designated by the National Audit Office of Liechtenstein 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 OLAF shall inform the aforementioned authorities of the result of such checks and inspections.

Article 4
Information and consultation

1. For the purposes of proper implementation of this Annex, the competent authorities of Liechtenstein and the EU shall exchange information regularly and, at the request of one of the Contracting Parties, shall conduct consultations.
2. The competent authorities of Liechtenstein shall inform the Agency and the European 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 Arrangement.

Article 5
Confidentiality

Information communicated or acquired in any form whatever pursuant to this Annex shall be covered by professional secrecy and protected in the same way as similar information is protected by Liechtenstein law and by the corresponding provisions applicable to the EU institutions. Such information shall not be communicated to persons other than those within the EU institutions, in the Member States, or in Liechtenstein 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 Contracting Parties.

Article 6
Administrative measures and penalties

Without prejudice to application of Liechtenstein criminal law, administrative measures and penalties may be imposed by the Agency or the European Commission in accordance with Regulation (EU, Euratom) No 966/2012 of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002¹⁷ and Commission Delegated Regulation (EU) no 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union¹⁸ and with Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests¹⁹.

¹⁷ Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002, OJ L 298, 26.10.2012, p. 1.

¹⁸ Commission delegated Regulation (EU) no 1268/2012 of 29/10/2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union OJ L 362, 31.12.2012, p. 1.

¹⁹ OJ L 312, 23.12.1995, p. 1.

Article 7
Recovery and enforcement

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

Judgments given by the Court of Justice of the European Union pursuant to an arbitration clause shall be enforceable on the same terms.