

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

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

THE HIGH CONTRACTING PARTIES,

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

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

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

TAKING INTO ACCOUNT the special position of Denmark,

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

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

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

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

Article 1

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

Article 2

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

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

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

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

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

Article 3

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

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

Article 4

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

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

Article 5

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

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

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

Article 6

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

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

Article 7

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

Article 8

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

*ANNEX***SCHENGEN ACQUIS**

1. The Agreement, signed in Schengen on 14 June 1985, between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders.
 2. The Convention, signed in Schengen on 19 June 1990, between the Kingdom of Belgium, the Federal Republic of Germany, the French Republic, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands, implementing the Agreement on the gradual abolition of checks at their common borders, signed in Schengen on 14 June 1985, with related Final Act and common declarations.
 3. The Accession Protocols and Agreements to the 1985 Agreement and the 1990 Implementation Convention with Italy (signed in Paris on 27 November 1990), Spain and Portugal (signed in Bonn on 25 June 1991), Greece (signed in Madrid on 6 November 1992), Austria (signed in Brussels on 28 April 1995) and Denmark, Finland and Sweden (signed in Luxembourg on 19 December 1996), with related Final Acts and declarations.
 4. Decisions and declarations adopted by the Executive Committee established by the 1990 Implementation Convention, as well as acts adopted for the implementation of the Convention by the organs upon which the Executive Committee has conferred decision making powers.
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Protocol on the application of certain aspects of Article 7a of the Treaty establishing the European Community to the United Kingdom and to Ireland

THE HIGH CONTRACTING PARTIES,

DESIRING to settle certain questions relating to the United Kingdom and Ireland,

HAVING REGARD to the existence for many years of special travel arrangements between the United Kingdom and Ireland,

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

Article 1

The United Kingdom shall be entitled, notwithstanding Article 7a of the Treaty establishing the European Community, any other provision of that Treaty or of the Treaty on European Union, any measure adopted under those Treaties, or any international agreement concluded by the Community or by the Community and its Member States with one or more third States, to exercise at its frontiers with other Member States such controls on persons seeking to enter the United Kingdom as it may consider necessary for the purpose:

- (a) of verifying the right to enter the United Kingdom of citizens of States which are Contracting Parties to the Agreement on the European Economic Area and of their dependants exercising rights conferred by Community law, as well as citizens of other States on whom such rights have been conferred by an agreement by which the United Kingdom is bound; and
- (b) of determining whether or not to grant other persons permission to enter the United Kingdom.

Nothing in Article 7a of the Treaty establishing the European Community or in any other provision of that Treaty or of the Treaty on European Union or in any measure adopted under them shall prejudice the right of the United Kingdom to adopt or exercise any such controls. References to the United Kingdom in this Article shall include territories for whose external relations the United Kingdom is responsible.

Article 2

The United Kingdom and Ireland may continue to make arrangements between themselves relating to the movement of persons between their territories ('the Common Travel Area'), while fully respecting the rights of persons referred to in Article 1, first paragraph, point (a) of this Protocol. Accordingly, as long as they maintain such arrangements, the provisions of

Article 1 of this Protocol shall apply to Ireland under the same terms and conditions as for the United Kingdom. Nothing in Article 7a of the Treaty establishing the European Community, in any other provision of that Treaty or of the Treaty on European Union or in any measure adopted under them, shall affect any such arrangements.

Article 3

The other Member States shall be entitled to exercise at their frontiers or at any point of entry into their territory such controls on persons seeking to enter their territory from the United Kingdom or any territories whose external relations are under its responsibility for the same purposes stated in Article 1 of this Protocol, or from Ireland as long as the provisions of Article 1 of this Protocol apply to Ireland.

Nothing in Article 7a of the Treaty establishing the European Community or in any other provision of that Treaty or of the Treaty on European Union or in any measure adopted under them shall prejudice the right of the other Member States to adopt or exercise any such controls.

Protocol on the position of the United Kingdom and Ireland

THE HIGH CONTRACTING PARTIES,

DESIRING to settle certain questions relating to the United Kingdom and Ireland,

HAVING REGARD to the Protocol on the application of certain aspects of Article 7a of the Treaty establishing the European Community to the United Kingdom and to Ireland,

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

Article 1

Subject to Article 3, the United Kingdom and Ireland shall not take part in the adoption by the Council of proposed measures pursuant to Title IIIa of the Treaty establishing the European Community. By way of derogation from Article 148(2) of the Treaty establishing the European Community, a qualified majority shall be defined as the same proportion of the weighted votes of the members of the Council concerned as laid down in the said Article 148(2). The unanimity of the members of the Council, with the exception of the representatives of the governments of the United Kingdom and Ireland, shall be necessary for decisions of the Council which must be adopted unanimously.

Article 2

In consequence of Article 1 and subject to Articles 3, 4 and 6, none of the provisions of Title IIIa of the Treaty establishing the European Community, no measure adopted pursuant to that Title, no provision of any international agreement concluded by the Community pursuant to that Title, and no decision of the Court of Justice interpreting any such provision or measure shall be binding upon or applicable in the United Kingdom or Ireland; and no such provision, measure or decision shall in any way affect the competences, rights and obligations of those States; and no such provision, measure or decision shall in any way affect the *acquis communautaire* nor form part of Community law as they apply to the United Kingdom or Ireland.

Article 3

1. The United Kingdom or Ireland may notify the President of the Council in writing, within three months after a proposal or initiative has been presented to the Council pursuant to Title IIIa of the Treaty establishing the European Community, that it wishes to take part in the adoption and application of any such proposed measure, whereupon that State shall be entitled to do so. By way of derogation from Article 148(2) of the Treaty establishing the European Community, a qualified majority shall be defined as the same proportion of the weighted votes of the members of the Council concerned as laid down in the said Article 148(2).

The unanimity of the members of the Council, with the exception of a member which has not made such a notification, shall be necessary for decisions of the Council which must be adopted unanimously. A measure adopted under this paragraph shall be binding upon all Member States which took part in its adoption.

2. If after a reasonable period of time a measure referred to in paragraph 1 cannot be adopted with the United Kingdom or Ireland taking part, the Council may adopt such measure in accordance with Article 1 without the participation of the United Kingdom or Ireland. In that case Article 2 applies.

Article 4

The United Kingdom or Ireland may at any time after the adoption of a measure by the Council pursuant to Title IIIa of the Treaty establishing the European Community notify its intention to the Council and to the Commission that it wishes to accept that measure. In that case, the procedure provided for in Article 5a(3) of the Treaty establishing the European Community shall apply *mutatis mutandis*.

Article 5

A Member State which is not bound by a measure adopted pursuant to Title IIIa of the Treaty establishing the European Community shall bear no financial consequences of that measure other than administrative costs entailed for the institutions.

Article 6

Where, in cases referred to in this Protocol, the United Kingdom or Ireland is bound by a measure adopted by the Council pursuant to Title IIIa of the Treaty establishing the European Community, the relevant provisions of that Treaty, including Article 73p, shall apply to that State in relation to that measure.

Article 7

Articles 3 and 4 shall be without prejudice to the Protocol integrating the Schengen *acquis* into the framework of the European Union.

Article 8

Ireland may notify the President of the Council in writing that it no longer wishes to be covered by the terms of this Protocol. In that case, the normal treaty provisions will apply to Ireland.

Protocol on the position of Denmark

THE HIGH CONTRACTING PARTIES,

RECALLING the Decision of the Heads of State or Government, meeting within the European Council at Edinburgh on 12 December 1992, concerning certain problems raised by Denmark on the Treaty on European Union,

HAVING NOTED the position of Denmark with regard to Citizenship, Economic and Monetary Union, Defence Policy and Justice and Home Affairs as laid down in the Edinburgh Decision,

BEARING IN MIND Article 3 of the Protocol integrating the Schengen *acquis* into the framework of the European Union,

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

PART I

Article 1

Denmark shall not take part in the adoption by the Council of proposed measures pursuant to Title IIIa of the Treaty establishing the European Community. By way of derogation from Article 148(2) of the Treaty establishing the European Community, a qualified majority shall be defined as the same proportion of the weighted votes of the members of the Council concerned as laid down in the said Article 148(2). The unanimity of the members of the Council, with the exception of the representative of the government of Denmark, shall be necessary for the decisions of the Council which must be adopted unanimously.

Article 2

None of the provisions of Title IIIa of the Treaty establishing the European Community, no measure adopted pursuant to that Title, no provision of any international agreement concluded by the Community pursuant to that Title, and no decision of the Court of Justice interpreting any such provision or measure shall be binding upon or applicable in Denmark; and no such provision, measure or decision shall in any way affect the competences, rights and obligations of Denmark; and no such provision, measure or decision shall in any way affect the *acquis communautaire* nor form part of Community law as they apply to Denmark.

Article 3

Denmark shall bear no financial consequences of measures referred to in Article 1, other than administrative costs entailed for the institutions.

Article 4

Articles 1, 2 and 3 shall not apply to measures determining the third countries whose nationals must be in possession of a visa when crossing the external borders of the Member States, or measures relating to a uniform format for visas.

Article 5

1. Denmark shall decide within a period of 6 months after the Council has decided on a proposal or initiative to build upon the Schengen *acquis* under the provisions of Title IIIa of the Treaty establishing the European Community, whether it will implement this decision in its national law. If it decides to do so, this decision will create an obligation under international law between Denmark and the other Member States referred to in Article 1 of the Protocol integrating the Schengen *acquis* into the framework of the European Union as well as Ireland or the United Kingdom if those Member States take part in the areas of cooperation in question.

2. If Denmark decides not to implement a decision of the Council as referred to in paragraph 1, the Member States referred to in Article 1 of the Protocol integrating the Schengen *acquis* into the framework of the European Union will consider appropriate measures to be taken.

PART II*Article 6*

With regard to measures adopted by the Council in the field of Articles J.3(1) and J.7 of the Treaty on European Union, Denmark does not participate in the elaboration and the implementation of decisions and actions of the Union which have defence implications, but will not prevent the development of closer cooperation between Member States in this area. Therefore Denmark shall not participate in their adoption. Denmark shall not be obliged to contribute to the financing of operational expenditure arising from such measures.

PART III*Article 7*

At any time Denmark may, in accordance with its constitutional requirements, inform the other Member States that it no longer wishes to avail itself of all or part of this Protocol. In that event, Denmark will apply in full all relevant measures then in force taken within the framework of the European Union.
