EC/Liechtenstein agreement: cooperation to combat fraud and other illegal activity to the detriment of their financial interests

2008/0234(NLE) - 10/12/2008 - Initial legislative proposal

PURPOSE: to conclude an agreement with Liechtenstein to combat fraud and any other illegal activity.

BACKGROUND: in the context of the negotiations with Liechtenstein concerning its association with the Schengen acquis, it became apparent that specific comprehensive anti-fraud negotiations with Liechtenstein could address the fact that according to the Liechtenstein domestic law, legal assistance is excluded for certain specific offences regarding taxes, customs or infringements of foreign trade provisions.

Negotiations were therefore conducted by the Commission to conclude such an agreement and led to the conclusion of this draft agreement on 27 June 2008.

CONTENT: the draft agreement provides for the following main elements:

Illegal activities in connection with the trade of goods and services: the prime aim of the Agreement is to complement the envisaged association of Liechtenstein to the Schengen area, with those provisions in the field of administrative and judicial assistance of the Community acquis, which are at present neither covered by the EEA nor the Schengen acquis, but which are necessary to grant each other full assistance on fraud and all other illegal activities, including customs and indirect tax offences in connection with the trade of goods and services. In that respect, the Agreement between the European Community and its Member States and Switzerland to counter fraud and all other illegal activities affecting their financial interests (see CNS/2004/0187) has served as a model.

The draft agreement provides for:

- administrative assistance and assistance in recovery, including for illegal activities affecting grants and public procurement, which at the present are not covered by the EEA-Agreement;
- judicial co-operation, including the evasion of value-added tax, in particular allowing for searches and seizure and access to bank information, which as such is not foreseen by Liechtenstein's association to the Schengen area, given that Liechtenstein declared explicitly that tax offences being investigated by the Liechtenstein authorities may not give rise to an appeal before a court competent inter alia to hear criminal matters.

Fraudulent activities affecting direct taxes: Liechtenstein's participation in the EEA and its envisaged adherence to the Schengen acquis has justified tackling also illegal activities affecting all forms of taxation, including direct taxes, from the start of the negotiations. However, there still remains a difference in the treatment of direct taxes in relation to other trade-related levies, such as customs and indirect taxes. This difference is due to the less advanced state of integration of Community legislation and European Union law in the field of direct taxes. Another aim of the Agreement is thus to ensure that Liechtenstein will grant administrative and judicial assistance on fraud affecting direct taxes beyond and besides of what is foreseen in the Liechtenstein Savings Tax Agreement. In this regard, the Agreement is innovative insofar as it is the first one negotiated on a European level to cover all forms of taxes. The

Agreement is broader in scope in relation to the model of the Swiss Anti-Fraud Agreement, since it leads to aligning Liechtenstein's providing for assistance on fraud affecting direct taxation with the European standards.

It provides for:

- administrative assistance for (document related) fraudulent conduct affecting direct taxes, under the same conditions as granted amongst the Member States under Community legislation, allowing for integrating future reforms and enhancements of the assistance level within the European Community into the Agreement via the Joint Committee;
- recovery assistance for (document related) fraudulent conduct affecting direct taxes as is granted amongst the Member States under Community legislation;
- judicial co-operation for (document related) fraudulent conduct affecting direct taxes, including searches and seizure and access to bank information, which at present would not be covered by Liechtenstein's association to Schengen.

As regards assistance with respect to foundations and other forms of investment which are controlled by a fiduciary and where the founder and the beneficial owner of the foundation are not publicly registered, the contracting parties need to employ all their information and control powers in order to respond to a request for assistance in the form of information exchange. Pursuant to the provisions of the agreement, the fact that the information is held by a fiduciary does not affect the admissibility of a request for assistance with the consequence, that the tax authorities of the requested contracting party will in case of a need obtain the necessary information from the fiduciary who as an economic operator will be obliged to cooperate.

Other specific provisions: more favourable provisions of bilateral or multilateral Agreements between the Parties are not affected by the provisions contained in the Agreement, in particular with regard to the Agreement between the European Community and Liechtenstein providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments. Administrative cooperation is shaped in accordance with the standards of the 'Naples II Convention' and Council Directive 77/799/EEC concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation. The provisions on recovery are inspired by Council Directive 76/308/EEC on mutual assistance for the recovery of claims resulting from operations forming part of the system of financing the European Agricultural Guidance and Guarantee Fund, and of the agricultural levies and customs duties. The provisions on judicial cooperation are inspired from the Convention Implementing the Schengen Agreement, the EU Convention on Mutual Assistance in Criminal Matters and the Protocol to that Convention.