Basic information

2008/0234(NLE) NLE - Non-legislative enactments Decision	Procedure lapsed or withdrawn
EC/Liechtenstein agreement: cooperation to combat fraud and other illegal activity to the detriment of their financial interests **Subject** 7.30.02 Customs cooperation 7.30.30.06 Action to combat economic fraud and corruption 7.30.30.08 Capital outflow, money laundering 7.40 Judicial cooperation **Geographical area** Liechtenstein	

Key players

Council of the European Union

Council configuration	Meetings	Date
Economic and Financial Affairs ECOFIN	2967	2009-10-20
Economic and Financial Affairs ECOFIN	3067	2011-02-14
Economic and Financial Affairs ECOFIN	2940	2009-05-05
Economic and Financial Affairs ECOFIN	2922	2009-02-10
Economic and Financial Affairs ECOFIN	2990	2010-01-19
Economic and Financial Affairs ECOFIN	2919	2009-01-20

European Commission

Commission DG	Commissioner
European Anti-Fraud Office (OLAF)	ŠEMETA Algirdas

Key events

Date	Event	Reference	Summary
10/12/2008	Initial legislative proposal published	COM(2008)0839	Summary
20/01/2009	Debate in Council		
10/02/2009	Resolution/conclusions adopted by Council		Summary
05/05/2009	Debate in Council		Summary
20/10/2009	Debate in Council		
24/11/2009	Preparatory document	COM(2009)0648	Summary
02/12/2009	Additional information		Summary

19/01/2010	Debate in Council		
14/02/2011	Debate in Council		Summary
21/06/2019	Proposal withdrawn by Commission		

Technical information	
Procedure reference	2008/0234(NLE)
Procedure type	NLE - Non-legislative enactments
Procedure subtype	Consent by Parliament
Legislative instrument	Decision
Legal basis	Treaty on the Functioning of the European Union TFEU 325-p4 Treaty on the Functioning of the European Union TFEU 218-p6a
Stage reached in procedure	Procedure lapsed or withdrawn

Documentation gateway

European Commission

Document type	Reference	Date	Summary
Initial legislative proposal	COM(2008)0839	10/12/2008	Summary
Document attached to the procedure	COM(2009)0644	23/11/2009	Summary
Preparatory document	COM(2009)0648	24/11/2009	Summary

Additional information

Source	Document	Date
National parliaments	IPEX	
European Commission	EUR-Lex	

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

2008/0234(NLE) - 14/02/2011

The Council held an orientation debate on the draft anti-fraud and tax information exchange agreement with Liechtenstein. The dossier is a priority for the Presidency in the months ahead.

The Hungarian Presidency intends, in the light of comments made by ministers, to take work forward in the Council's high-level working group on taxation so as to enable the Council to make progress as soon as possible.

The draft agreement with Liechtenstein covers fraud as relates to both direct and indirect taxation. It uses a definition of fraud that covers both natural and legal persons (e.g. companies) and includes not just false documents and false tax returns, but also the submission of incomplete tax returns.

The text provides for **cooperation between the parties through the exchange of information that is forseeably relevant to tax administrations**. It allows the parties to trigger administrative assistance that cannot be refused on the sole grounds that the information requested is held by a bank or other financial institution, and legal assistance for acts that are punishable under the laws of the parties. Implementing measures, such as seizure, are foreseen for acts that are punishable by prison sentence by both parties.

The draft agreement with Liechtenstein may later serve as a model for the negotiation of agreements with Andorra, Monaco and San Marino, as well as the negotiation of a new agreement with Switzerland that would extend existing provisions on indirect taxation to also cover direct taxation.

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

2008/0234(NLE) - 05/05/2009

The Council was briefed by the Commission on progress in the negotiation of an agreement with Liechtenstein on measures to combat tax fraud.

It agreed to return to the issue at its meeting on 9 June in the light of further developments.

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

2008/0234(NLE) - 24/11/2009 - Preparatory document

PURPOSE: to propose an amended version of the proposal to conclude the Cooperation Agreement between the EU and its Member States, of the one part, and Liechtenstein, of the other part, to combat fraud and any other illegal activity to the detriment of their financial interests and to ensure exchange of information on tax matters.

PROPOSED ACT: Council Decision.

BACKGROUND: on 10 December 2008, the Commission adopted a proposal for a Council Decision on the signing, on behalf of the European Community, of the Cooperation Agreement between the European Community and its Member States, of the one part, and the Principality of Liechtenstein, of the other part, to combat fraud and any other illegal activity to the detriment of their financial interests as well as a proposal for a Council Decision on the conclusion, on behalf of the European Community, of the Cooperation Agreement between the European Community and its Member States, of the one part, and the Principality of Liechtenstein, of the other part, to combat fraud and any other illegal activity to the detriment of their financial interests (see previous initial legislative document – COM(2008)0839).

Following the conclusions adopted by the ECOFIN Council on 10 February 2009, Liechtenstein is expected to encompass in the agreement with the EU at least a similar scope of obligations as it had agreed with third Countries. The Council also mandated the Commission to negotiate changes to ensure effective administrative assistance and access to information with regard to all forms of investments, in particular foundations and trusts.

Liechtenstein, followed by other countries, issued an official statement, by which it recognises the standard for cooperation under the OECD Article 26 of the Model Convention on income and capital (2005). Following the conclusions of the G20 of 2 April 2009, the inclusion of the standards of the OECD model is a logical step. The Council conclusions therefore need to be interpreted in this light. Such a standard should not be restricted to cases of tax fraud and tax evasion but should cover all exchanges of information, including for tax cooperation purposes.

In 2009, the Agreement negotiated with Lichtenstein covered several issues:

- the global coverage of the Agreement needs to be extended to include **tax cooperation** in accordance with the Article 26 OECD standard;
- the general scope should be extended to reflect properly OECD standards, specifying that **assistance on request** through exchange of information shall include information that is foreseeably relevant to the determination, assessment, enforcement and collection of taxes, the recovery and enforcement of tax claims or the investigation or prosecution of tax matters;
- tax evasion including the **omission of submitting a legally required tax return** should be covered and a clarification of what is meant by tax fraud and tax evasion is needed, in particular, to determine the scope for assistance concerning investigations;
- the drafting of the revised agreement should also better reflect the exact wording of the OECD Article 26 standard with regard to the **limits to exchange of information**;
- in order to guarantee full application of the standard of Article 26 of the OECD model, it is necessary to **define the powers which the administration of a requested partner has at its disposal**. The parties must in particular ensure that their administrative authorities have the powers to obtain and provide information held by banks, companies, partnerships, trusts and foundations, in particular regarding ownership and beneficiaries in order to supply this information upon request;
- the Agreement should be revised to give an additional role to the Joint Committee with regard to monitoring and evaluation;
- **the form and content of requests for assistance should be specified** to integrate a description of the content of the request for assistance that mirrors provisions recently agreed by Liechtenstein with third countries;
- the Agreement should allow for its **quick implementation** and provide for a differentiated regime with provisional application of certain Union competences, namely as regards traditional own resources and certain aspects of information exchange provisions.

In the context of these negotiations, Liechtenstein raised the main following issues:

- the context of the Agreement is for Liechtenstein characterised by its membership of the EEA and therefore by its participation in the Internal Market freedoms and its signed association agreements on the Schengen and the Dublin Acquis;
- equal treatment and non-discrimination are fundamental principles and, as such, should be applied by all Member States in their relations with Liechtenstein. It is also an objective for Liechtenstein to obtain equal treatment and non-discrimination with respect to both the other European third countries and the tax information exchange obligations under the Agreement;
- Liechtenstein preserves the possibility of concluding complementary bilateral tax cooperation agreements with individual Member States within their sphere of competence. Such agreements have already been concluded with some Member States.

The amended proposal takes into account these recent developments. It also takes into account the new provisions of the Treaty on the Functioning of the EU (TFEU), in particular with regard to the legal bases.

This Agreement should serve as a **model for negotiating Anti-fraud agreements with other third Countries**.

CONTENT : the principal modifications to the Commission proposal are as follows:

Title of the Agreement and objective: the title and Article 1 of the Agreement are amended to reflect the extension of the objective of the Agreement (covering also assistance through exchange of information that is foreseeably relevant for the determination, assessment, enforcement and collection of taxes).

Objective: the objective of the Agreement is extended and now also covers assistance through exchange of information that is foreseeably relevant for the determination, assessment, enforcement and collection of taxes.

General Scope: this Article is amended to reflect the extension of the scope of the Agreement. Additional clauses are to take into account the Council conclusions of 10 February 2009 and the Liechtenstein commitment of 12 March 2009 to adopt the OECD standard of exchange of information in tax matters (Article 26 of the OECD Model Convention on Income and Capital). A new definition of direct taxes has been drafted in line with the definition of the OECD Model Agreement for exchange of information on tax matters. There is a new definition of “person” proposed by the Swedish Presidency in the compromise for the draft directive on administrative cooperation in the field of taxation. The Agreement is also brought into line with Article 2 of the OECD Model Agreement for exchange of information on tax matters as well as with obligations agreed by Liechtenstein with the United States of America.

Minor cases: this article has been amended so as to abandon the threshold with regard to the exchange of information concerning tax matters.

Relationships with other Agreements: this article is amended in order to make it clear that the Agreement has to be interpreted as providing minimum rules and that bilateral agreements (but also arrangements) may go beyond this minimum in so far as they entail more extensive cooperation in the field of administrative assistance.

Extent of Administrative Assistance: this clause mentions explicitly the administrative cooperation through the exchange of information in the field of the taxes covered by the Agreement.

Statute of limitations: it is stipulated that the expiration of a statute of limitations for taxes of the requested Party shall not preclude this Party from obtaining and providing the requested information.

Powers: this Article is revised in order to reach a similar scope of obligations as Liechtenstein agreed with the United States of America.

Limits to exchange of information: this Article is amended so as to fully take into account the OECD Article 26 Standard (paragraph 2). It is also amended to specify that a request for information shall not be refused on the ground that the tax liability giving rise to the request is contested by the taxpayer, in line with the obligations agreed by Liechtenstein with the USA.

Costs and obligation to exhaust the usual sources of information: the first paragraph has been replaced by a new provision on costs, which is in line with the 2002 OECD Model Agreement for exchange of information on tax matters.

Request for information: the new wording of this Article is in line with the obligations agreed by Liechtenstein with the USA which are inspired by the 2002 OECD Model Agreement for exchange of information on tax matters.

Presence of authorised staff of the authority of the requesting Party with regard to tax cooperation: new provisions concerning tax cooperation are inserted following the extension of the scope of the Agreement This is in line with the 2002 OECD Model Agreement for exchange of information on tax matters and is inspired by the obligations agreed by Liechtenstein with the USA.

Form and content of the request for assistance in tax matters: in line with the Council conclusions of February 2009, this Article is revised in order to reach a similar scope of obligations as Liechtenstein agreed with the USA. The Article should be interpreted in the light of the joint declaration regarding this provision, in particular where the identity of the accountholder is unknown.

Request for banking and financial information: this has been redrafted in order to better reflect the OECD standard.

Entry into force: taking into account the precedent with the Swiss Confederation, a provision is inserted so as to make some specific provisions of the Agreement (Title I and Title II in so far as they regard income covered by the taxation on savings and information exchange and mutual assistance on fraud and any other illegal activity in the area of traditional own resources and Community funds) applicable from the moment the Agreement has been signed by the Parties and Liechtenstein has notified its instrument of ratification.

Temporal application: this Article is amended to specify temporal application rules with regard to assistance through exchange of information for the determination, assessment, enforcement and collection of direct and indirect taxes. The new provision aims at a temporal application regime which is

compatible with the need of a predictable legal framework for existing client relationships. If the Agreement were to be signed before the end of 2009, the first tax year concerned would be 2010 and the first exchange of information based on this specific tax year would be made in 2011.

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.

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

2008/0234(NLE) - 10/02/2009

The Council adopted a series of **conclusions** s regards the anti-fraud agreement with Liechtenstein.

Following the discussion held at the meeting of the Council on 4 November 2008, the Council strongly invites the Commission to continue the negotiations with Liechtenstein, in conformity with the mandate from 2006, in order to obtain such changes in the text of the draft agreement to ensure effective administrative assistance and **access to information with regard to all forms of investment, in particular foundations and trusts**.

As regards the provision of information in **tax matters** to the Member States, the Council expects Liechtenstein to encompass in the agreement with the European Community and its Member States at least a similar scope of obligations as Liechtenstein recently agreed with third countries.

The Council calls on the Commission to report back on progress at one of its forthcoming meetings, at the latest in May 2009

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

2008/0234(NLE) - 23/11/2009 - Document attached to the procedure

PURPOSE: to propose an amended version of the proposal to conclude the Cooperation Agreement between the EU and its Member States, of the one part, and Liechtenstein, of the other part, to combat fraud and any other illegal activity to the detriment of their financial interests and to ensure exchange of information on tax matters (amended proposal on the signing and provisional application of the Cooperation Agreement).

PROPOSED ACT: Council Decision.

BACKGROUND: on 10 December 2008, the Commission adopted a proposal for a Council Decision on the signing, on behalf of the European Community, of the Cooperation Agreement between the European Community and its Member States, of the one part, and the Principality of Liechtenstein, of the other part, to combat fraud and any other illegal activity to the detriment of their financial interests as well as a proposal for a Council Decision on the conclusion, on behalf of the European Community, of the Cooperation Agreement between the European Community and its Member States, of the one part, and the Principality of Liechtenstein, of the other part, to combat fraud and any other illegal activity to the detriment of their financial interests (see previous initial legislative document – COM(2008)0839).

Following the conclusions adopted by the ECOFIN Council on 10 February 2009, Liechtenstein is expected to encompass in the agreement with the EU at least a similar scope of obligations as it had agreed with third Countries. The Council also mandated the Commission to negotiate changes to ensure effective administrative assistance and access to information with regard to all forms of investments, in particular foundations and trusts.

Liechtenstein, followed by other countries, issued an official statement, by which it recognises the standard for cooperation under the OECD Article 26 of the Model Convention on income and capital (2005). Such a standard should not be restricted to cases of tax fraud and tax evasion but should cover all exchanges of information, including for tax cooperation purposes.

In 2009, the Commission renegotiated the 2008 Agreement with Liechtenstein. For information on the content of the Agreement and details of the amendments, please refer to the summary of 24/11/2009.

This proposal, whose contents are the same as the initial proposal, concerns the signature and the provisional application of the Agreement.