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EUROPEAN COMMISSION

Brussels, 23.11.2009  
COM(2009)648 final

2008/0234 (CNS)

Amended Proposal for a

**COUNCIL DECISION**

**on the conclusion, on behalf of the European Union, of the  
Cooperation Agreement  
between the European Union 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  
and to ensure exchange of information on tax matters**

## EXPLANATORY MEMORANDUM

### 1. 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<sup>1</sup>.

This proposal was adopted following the authorization given by the Council on 7 November 2006.

### 2. OBJECTIVE OF THE AMENDED PROPOSAL

Following the conclusions adopted by the ECOFIN Council on 10 February 2009, Liechtenstein is expected to encompass in the agreement with the European Union at least a similar scope of obligations as it had agreed with third Countries. The Council also mandated the Commission to obtain 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 Commission has, therefore, in close liaison with the Council, in particular through the work carried out in the framework of the EFTA Working Party and the Working Party on Tax Questions (direct taxation), negotiated with Liechtenstein several issues including:

- 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 in a way to properly reflect OECD standards, specifying that assistance on request through exchange of information shall include information that is foreseeably relevant to the determination, assessment,

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<sup>1</sup> COM(2008) 839 final.

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 appears 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, the Principality of Liechtenstein raised the main following issues:

- the context of the Agreement is for Liechtenstein characterized 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 to conclude 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 Commission has regularly presented progress reports on its negotiation with Liechtenstein to the Council.

On 9 June 2009, recalling the Council Conclusions of 10 February 2009, the Council urged the Commission to swiftly present the negotiating result on the anti-fraud

agreement with Liechtenstein and noted the intention of the Commission to present negotiating directives for anti-fraud agreements with Monaco, Andorra, San Marino and Switzerland.

The discussions carried out within the Council working groups (EFTA Working Party and Working Party on Tax Questions - direct taxation) helped to prepare an informal revised draft; the Commission incorporated the requests and overcome the concerns of the Member States as far as possible. This draft was submitted to COREPER on 8 and 14 October 2009 for discussion.

At the ECOFIN Council, on 20 October, the Council concluded that it would come back to the issue in December.

The amended proposal takes into account these recent developments. In addition, it also takes into account the new provisions of the Treaty on the Functioning of the European Union, in particular with regard to the legal bases.

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

### **3. MODIFICATIONS INTRODUCED**

- Title of the Agreement and Article 1 - "Objective"

The title and this Article 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).

- Article 2 - "General Scope"

This Article is amended to reflect the extension of the scope of the Agreement. To that end, Article 2(1)(c) has been added 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).

Moreover, in Article 2(1)(a), the term "all" has been deleted before "the Parties", as it does not bring any added value and in Article 2(1)(b), (e) and (f), the term "fraudulent" has been deleted.

A new definition of direct taxes has been drafted in Article 2(4)(e); this definition is in line with the definition of Article 3 of the OECD Model Agreement for exchange of information on tax matters.

Article 2(4)(b) and Article 2(4)(d) have been amended to cover the omission of correct declarations and the evasion of customs duties and indirect taxes in line with the definition in Article 2(4)(f) regarding the conduct contrary to the legislation covering direct taxes.

An additional definition of the person is added in Article 2(4)(g). This definition takes on board the definition proposed by the Swedish Presidency in the compromise for the draft directive on administrative cooperation in the field of taxation.

A new paragraph 5 is inserted in Article 2 to precise that the exchange of information is without regard to whether the person to whom the information relates is, or whether the information is held by, a resident of a Party, as well as what is meant by the authorities of the Parties. This is in line with Article 2 of the OECD Model Agreement for exchange of information on tax matters as well as with the obligations agreed by Liechtenstein with the United States of America (Article 2 of the USA/Liechtenstein Agreement<sup>2</sup>).

Finally, the omission to comply with a legal requirement to submit a tax return is foreseen (Article 2(4)(f)(vi)).

- Article 3 - “Minor cases”

This Article has been amended so as to abandon the threshold with regard to the exchange of information concerning tax matters.

- Article 4 - “Ordre public”

This Article has not been modified. However, it has to be pointed out that this provision has to be interpreted in a very restrictive way in order to preserve essential interests of one Party. It may not be interpreted in a way that it would allow to hinder the proper functioning of the Agreement.

- Article 5 - “Transmission of information and evidence”

Article 5(2)(b) has been amended to add the reference on Article 2(1)(c).

- Article 6 - “Confidentiality”

This Article has not been amended. This provision has to be read in the light of Article 21 regarding the use of information.

- Article 7 - “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.

- Article 8 - “Extent of Administrative Assistance”

This Article is amended so as to mention explicitly the administrative cooperation through the exchange of information in the field of the taxes covered by the Agreement.

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<sup>2</sup> Agreement between the Government of the United States of America and the government of the Principality of Liechtenstein on tax cooperation and the exchange of information relating to taxes.

- Article 9 - “Statute of limitations”

The last sentence is added so as to precise 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. This is in line with the obligations agreed by Liechtenstein with the United States of America (Article 7(5) of the USA/Liechtenstein Agreement).

- Article 10 - “Powers”

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 United States of America (Article 5(6)) and with the 2002 OECD Model Agreement for Exchange of information on tax matters.

Two footnotes have been inserted in order to indicate that establishments and foundations will be translated in German as Anstalten and Stiftungen.

A link is made with the new definition of the person in Article 2(4)(g).

- Article 11 - “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 (new paragraph 3), in line with the obligations agreed by Liechtenstein with the United States of America (Article 7(3) of the USA/Liechtenstein Agreement).

- Article 12 - “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 (Article 9 according to which the “Incidence of costs incurred in providing assistance shall be agreed by the Contracting Parties” and commentary).

In the second paragraph concerning the obligation to exhaust the usual sources of information, the exception when recourse to such means would give rise to disproportionate difficulties has been added.

- Article 14 - “Request for information”

The new wording of this Article is in line with the obligations agreed by Liechtenstein with the United States of America (Article 5 of the USA/Liechtenstein Agreement) which are inspired by the 2002 OECD Model Agreement for exchange of information on tax matters.

- Article 18a- “Presence of authorised staff of the authority of the requesting Party with regard to tax cooperation”

These new provisions concerning tax cooperation are inserted following the extension of the scope of the Agreement (new Article 2(1)(c)). This is in line with

the 2002 OECD Model Agreement for exchange of information on tax matters (Article 6 and commentary, in particular paragraphs 66 to 70) and is inspired by the obligations agreed by Liechtenstein with the United States of America (Article 6 of the USA/Liechtenstein Agreement).

- Article 20a - “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 United States of America (Article 5(2) of the USA/Liechtenstein Agreement).

This Article should be interpreted in the light of the joint declaration regarding this provision, in particular where the identity of the account holder is unknown.

- Article 21 – “Use of information”

This Article has not been modified. However, it should be noted that judicial proceedings under this Article shall mean both civil and criminal proceedings.

- Article 24 – “Recovery”

In addition to the explanations provided for in the explanatory memorandum of the initial proposals adopted on 10 December 2008, it is worth indicating that the provision of Article 24(2) are without prejudice, where necessary, to additional requirements under domestic law.

- Article 25 - “Relationship with other Agreements”

As pointed out under Article 7, this Article is also amended in order to make it clear, in a complementary way, that the provisions of title III do not prevent more extensive cooperation on the basis of other instruments, in particular bilateral Agreements.

- Article 31 - “Searches and seizures”

This Article has not been amended. However, it should be noted that the list of conditions for the admissibility of requests foreseen in this Article is exhaustive.

- Article 32 - “Request for banking and financial information”

Article 32(5) has been redrafted in order to better reflect the OECD standard. In this paragraph, “Party” shall mean requested Party.

In addition to the explanations provided for in the explanatory memorandum of the initial proposals adopted on 10 December 2008, it has to be pointed out that the limits for rejecting a request for information should not be different between administrative assistance and mutual legal assistance.

- Article 33 - “Controlled deliveries”

This Article has not been modified. However, it should be noted that this provision has to be read in the light of Article 8(2).

- Article 38 - “Joint Committee”

Article 38(1) and (2) have been slightly amended, in particular in order to clarify that decisions, to be taken by unanimity, cover both practical modalities for the implementation of the Agreement in addition to decisions foreseen in another Article in the Agreement.

Article 38(2) specifies what is meant by all the Parties.

- Article 41 - “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 the Principality of Liechtenstein has notified its instrument of ratification.

The Union legal order allows for such provisional application.

Traditional own resources have to be understood in the light of Council Decision of 7 June 2007 on the system of the European Communities' own resources<sup>3</sup> (this concept covers the list under in Article 2(1)(a), but not VAT).

- Article 43 - “Temporal application”

This Article is amended to specify temporal application rules with regard to the assistance through exchange of information for the determination, assessment, enforcement and collection of direct and indirect taxes (new Article 2(1)(c)).

The wording of Article 43(c) is inspired by Article 15 of the 2002 OECD Model Agreement for exchange of information on tax matters. This 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.

#### 4. CONCLUSION

The Commission modifies its proposal as follows:

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<sup>3</sup> OJ L 163, 23.06.2007, p. 17.

Amended Proposal for a

**COUNCIL DECISION**

**on the conclusion, on behalf of the European Union, of the  
Cooperation Agreement  
between the European Union 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  
and to ensure exchange of information on tax matters**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 325(4) in conjunction with Article 218(6)(a) thereof,

Having regard to the proposal from the Commission<sup>4</sup>,

Having regard to the consent of the European Parliament<sup>5</sup>,

Whereas:

- (1) On 7 November 2006, the Council authorised the Commission to negotiate with the Principality of Liechtenstein an Agreement to counter fraud and all other illegal activities to the detriment of public financial interests, including the resources and expenditures, in particular grants and taxes and the Council asked, on 10 February 2009, to include all necessary changes to ensure effective administrative assistance and access to information with regard to all forms of investments, in particular foundations and trusts.
- (2) In accordance with Council Decision [.../...]/ of , and subject to its conclusion at a later date, the Agreement was signed on behalf of the European Union on .
- (3) In accordance with Article 17(1) of the Treaty on European Union, the Commission shall represent the Union in the Joint Committee established by the Cooperation Agreement. The positions to be adopted on the Union's behalf when the Joint Committee is called upon to adopt acts having legal effects, will be established in accordance with Article 218(9) of the Treaty on the Functioning of the European Union.
- (4) The Agreement should be approved,

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<sup>4</sup> OJ C , , p. .

<sup>5</sup> OJ C , , p. .

HAS ADOPTED THIS DECISION:

*Article 1*

The Cooperation Agreement between the European Union 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 and to ensure exchange of information on tax matters is hereby approved on behalf of the European Union.

The text of the Agreement is attached to this Decision.

*Article 2*

The President of the Council is hereby authorised to designate the person empowered to effect the notification provided for in Article 41(2) of the Agreement on behalf of the European Union<sup>6</sup>.

*Article 3*

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

Done at Brussels,

*For the Council  
The President*

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<sup>6</sup> The date of entry into force of the Agreement will be published in the Official Journal of the European Union by the Secretary-General of the Council of the European Union.

**ANNEX**

Cooperation Agreement

between the European Union 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 and to ensure exchange of information on tax matters

THE EUROPEAN UNION,

THE KINGDOM OF BELGIUM,

REPUBLIC OF BULGARIA,

THE CZECH REPUBLIC,

THE KINGDOM OF DENMARK,

THE FEDERAL REPUBLIC OF GERMANY,

THE REPUBLIC OF ESTONIA,

IRELAND,

THE HELLENIC REPUBLIC,

THE KINGDOM OF SPAIN,

THE FRENCH REPUBLIC,

THE ITALIAN REPUBLIC,

THE REPUBLIC OF CYPRUS,

THE REPUBLIC OF LATVIA,

THE REPUBLIC OF LITHUANIA,

THE GRAND DUCHY OF LUXEMBOURG,

THE REPUBLIC OF HUNGARY,

THE REPUBLIC OF MALTA,

THE KINGDOM OF THE NETHERLANDS,

THE REPUBLIC OF AUSTRIA,

THE REPUBLIC OF POLAND,

THE PORTUGUESE REPUBLIC,

ROMANIA,

THE REPUBLIC OF SLOVENIA,

THE SLOVAK REPUBLIC,

THE REPUBLIC OF FINLAND,

THE KINGDOM OF SWEDEN,

THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, of the one part,

and

THE PRINCIPALITY OF LIECHTENSTEIN, of the other part,

Hereinafter referred to as the Parties,

DESIRING to be effective in combating fraud and any other illegal activity to the detriment of the Parties financial interests and in ensuring administrative cooperation for the determination, assessment, enforcement and collection of direct and indirect taxes,

TAKING NOTE that this Agreement integrates the standards of the OECD as expressed in the Model Agreement on exchange of information on tax matters,

HAVING REGARD to Liechtenstein's membership of the European Economic Area and thereby to its participation in the four freedoms,

HAVE DECIDED TO CONCLUDE THIS AGREEMENT:

# TITLE I GENERAL PROVISIONS

## *Article 1 - Objective*

The objective of this Agreement is to extend administrative assistance and mutual legal assistance between the European Union and its Member States, of the one part, and the Principality of Liechtenstein, of the other part, so as to combat fraud and any other illegal activity to the detriment of their financial interests as referred to in Article 2 and to provide administrative cooperation through the exchange of information between the Parties that is foreseeably relevant for the determination, assessment, enforcement and collection of taxes covered under this Agreement.

## *Article 2 - General Scope*

1. This Agreement is applicable to:
  - (a) the administrative and criminal law prevention, detection, investigation, prosecution and repression of fraud and any other illegal activity to the detriment of the respective financial interests of the Parties, concerning:
    - trade in goods contrary to customs and agricultural legislation;
    - trade contrary to legislation covering indirect taxes, as they are defined in paragraph (4)(c);
    - the charging or retention of funds – including their use for purposes other than those for which they were initially granted – from the budget of the Parties or budgets managed by them or on their behalf, such as grants and refunds;
    - procedures for the award of contracts by the Parties;
  - (b) the administrative and criminal law prevention, detection, investigation, prosecution and repression of illegal activities to the detriment of the respective financial interests of the Member States of the European Union and the Principality of Liechtenstein, through conduct contrary to the legislation covering direct taxes;
  - (c) the administrative cooperation through exchange of information that is foreseeably relevant to the administration and the enforcement of domestic laws of the parties concerning direct and indirect taxes, including information concerning the determination, assessment, enforcement or collection of taxes with respect to persons subject to such taxes as well as the recovery and enforcement of tax claims or the related investigation or prosecution;
  - (d) the seizure and recovery of amounts due or wrongly received as a result of the illegal activities referred to in paragraphs (1)(a) and (1)(b).

2. Cooperation within the meaning of Titles II (Administrative assistance) and III (Mutual legal assistance) may not be withheld on the sole ground that the request relates to an offence treated as a tax offence in the requested Party or that the legislation of the requested Party does not provide for the same type of tax, duty, levy, expenditure, grant or refund or does not contain the same type of rules or the same legal characterisation of the facts as the legislation of the requesting Party.
3. The scope of this Agreement includes the laundering of the proceeds of the activities covered by paragraph (1)(a) provided that the laundering is covered by the scope of Directive 2005/60/EC, incorporated into the EEA Agreement with Decision of the EEA Joint Committee No 87/2006 of 7 July 2006 amending Annex IX (Financial services) to the EEA Agreement, or that the activities which constitute the predicate offence are punishable under the law of both the requesting and the requested Parties by a penalty involving deprivation of liberty or a detention order of a maximum period of more than six months.
4. For the purpose of this Agreement:
  - (a) "fraud and any other illegal activity" as referred to in paragraph (1)(a) extends to smuggling, corruption and laundering of the proceeds of the activities covered by paragraph (1)(a), subject to paragraph (3);
  - (b) "trade in goods contrary to customs and agricultural legislation" as referred to in paragraph (1)(a) is to be understood independently of the passage (departure, destination or transit) or otherwise of the goods through the territory of the other Party and includes the omission of correct declarations and the evasion of customs duties committed by the means of the intentional use of false, falsified or incorrect documents, incomplete tax returns submitted by natural or legal persons and incorrect business records;
  - (c) "indirect taxes" as referred to in paragraphs (1)(a) and (1)(c) shall be regarded as indirect taxes of every kind and description at the moment of signature including customs duties, value added tax, special tax on consumption and excise duties; the Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes;
  - (d) "trade contrary to legislation covering indirect taxes" referred to in paragraph (1)(a) is to be understood independently of the passage (departure, destination or transit) or otherwise of the goods or services through the territory of the other Party and includes the omission of correct declarations and the evasion of indirect taxes committed by the means of the intentional use of false, falsified or incorrect documents, incomplete tax returns submitted by natural or legal persons and incorrect business records;
  - (e) "direct taxes" referred to in paragraphs (1)(b) and (1)(c) are direct taxes of every kind and description at the moment of signature including taxes on income, profits and capital, as well as taxes on net wealth and estate, inheritance and gift, irrespective of the manner in which these taxes are levied, which are imposed by or on behalf of the Parties or political subdivisions or local authorities of the Parties; the Agreement shall apply also to any identical

or substantially similar taxes that are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes.

- (f) “conduct contrary to the legislation covering direct taxes” referred to in paragraph (1)(b) consists in the evasion of direct taxes committed by the means of the intentional use of false, falsified or incorrect documents, including incomplete tax returns submitted a person and incorrect business records. Any of the following activities, if committed intentionally, constitutes “conduct contrary to the legislation covering direct taxes”:
- (i) preparing, causing to be prepared, signing, or filing any document that:
    - is required by law to be filed to evidence to the tax authorities the amount of taxable income,
    - serves as the basis for an assessment of tax, and
    - is false as to any matter necessary to the assessment of such tax;
  - (ii) keeping a double set of books;
  - (iii) making false entries or alterations or false invoices or documents;
  - (iv) destroying books or records; or
  - (v) concealing assets or covering up any sources of income by means of the use of false, falsified or incorrect documents, including incomplete tax returns submitted by a person and incorrect business records
  - (vi) omitting to comply with a legal requirement to submit a tax return;
- (g) “person” is to be understood as a natural, legal person, or where the legislation in force so provides, an association of persons recognised as having the capacity to perform legal acts but lacking the legal status of a legal person and any other legal arrangement of whatever nature and form, which has legal personality or not, owning or managing assets which, including income derived there from, are subject to any of the taxes covered by this Agreement.

5. Information shall be exchanged in accordance with this Agreement by the competent authority of the requested Party without regard to whether the person to whom the information relates is, or whether the information is held by, a resident of a Party. However, a requested Party is not obliged to provide information which is neither held by its authorities (to be understood as all government agencies, political subdivisions and local authorities) nor in the possession or control of persons who are within its territorial jurisdiction.

### *Article 3 Minor cases*

1. The authority of the requested Party may refuse a request for cooperation, except requests concerning exchange of information in tax matters, where the alleged

amount of tax or duty underpaid or evaded, or of the grant or refund misused, does not exceed EUR 25000 or, as regards Article 2(1)(d) in combination with Article 2(1)(a), where the presumed value of the goods exported or imported without authorisation does not exceed EUR 100000. The minimum amount of tax or duty underpaid, or of the grant or refund misused, or the minimum value of goods as referred to before may consist of operations, which are interdependent, whose generating fact is prolonged in time and whose financial impact is greater than the threshold, while each operation considered in isolation remains below the threshold. The thresholds shall not apply if, given the circumstances or the identity of the suspect, the case is deemed to be extremely serious by the requesting Party.

2. The authority of the requested Party shall inform the authority of the requesting Party without delay of its reasons for refusing the request for cooperation.

#### *Article 4      Ordre public*

Cooperation may be refused if the requested Party considers that execution of the request is likely to prejudice its sovereignty, security, ordre public or other essential interests.

#### *Article 5      Transmission of information and evidence*

1. Information and evidence transmitted or received under this Agreement, whatever its form, shall be subject to professional confidentiality and shall enjoy the protection enjoyed by comparable information conferred by the domestic law of the Party receiving it and by the corresponding provisions applicable to the Community institutions.

In particular, such information and evidence may not be divulged to persons other than those who, in the Union institutions, its Member States or the Principality of Liechtenstein, are required by their functions to be acquainted with it, nor used by them for purposes that are not within the scope of this Agreement. Such persons shall use the information and evidence only for such purposes, unless the use for a specified different purpose is expressly permitted by the competent authority of the requested Party, if, under the legislation of this Party, such information and evidence could, in similar circumstances, be used for similar purposes. Such persons may disclose the information in public court proceedings or in judicial decisions.

2. The information and evidence obtained by the requesting Party under this Agreement may be transmitted to any Party if this Party is conducting an investigation in respect of which cooperation is not excluded or if there are clear indications that this Party could usefully conduct such an investigation.
  - (a) As regards assistance in respect of activities covered by Article 2(1)(a) and Article 2(1)(d) in combination with Article 2(1)(a) the requesting Party shall inform the requested Party to which other Party of this Agreement and for which purpose the information will be transmitted.
  - (b) As regards assistance in respect of activities covered by Article 2(1)(b) and Article 2(1)(d) in combination with Article 2(1)(b), the requesting Party may transmit information and evidence to another Party of this Agreement if the

requested Party which supplied the information does not expressly oppose to it at the moment when it supplies the information or, as regards the administrative cooperation covered by Article 2(1)(c), only with the consent of the requested Party which supplied the information.

No such transmission may serve any purpose other than those of this Agreement.

3. The transmission of information and evidence obtained pursuant to this Agreement by a Party to another Party or to more than one Party may not be open to appeal in the Party initially requested.
4. Any Party to which information or evidence is transmitted in conformity with paragraph (2) shall respect such limits as are put by the requested Party on the use of the information by the requesting Party of the first transmission.
5. The transmission of information and evidence obtained under this Agreement by a Party to a third State shall be subject to authorisation from the Party from which the information or evidence originated.

#### *Article 6      Confidentiality*

The requesting Party may ask the requested Party to ensure that the request and the content thereof remain confidential, except in so far as this is incompatible with the execution of the request. If the requested Party cannot comply with confidentiality requirements, it shall inform the authority of the requesting Party in advance.

## **Title II      ADMINISTRATIVE ASSISTANCE**

### **Chapter 1 General provisions**

#### *Article 7      Relationship with other Agreements*

This Title shall not affect

- (a) as regards assistance in respect of activities covered by Article 2(1)(a), and Article 2(1)(c) and Article 2(1)(d) in combination with Article 2(1)(a), the provisions applicable to mutual legal assistance in criminal matters, or the provisions of bilateral or multilateral agreements or arrangements concluded or to be concluded between the Parties in so far as they entail a more extensive cooperation in the field of administrative assistance than the cooperation foreseen in this Agreement which constitutes minimum rules on exchange of information and assistance between all the Parties, in particular the Protocol 11 on mutual assistance in customs matters of the EEA Agreement and;
- (b) as regards assistance in respect of activities covered by Article 2(1)(b), and Article 2(1)(c) and Article 2(1)(d) in combination with Article 2(1)(b), the provisions applicable to mutual legal assistance in criminal matters, or the provisions of bilateral or multilateral agreements or arrangements concluded or

to be concluded between the Parties in so far as they entail a more extensive cooperation in the field of administrative assistance than the cooperation foreseen in this Agreement which constitutes minimum rules on exchange of information and assistance between all the Parties, in particular the Agreement between the European Community and the Principality of 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.<sup>7</sup>

#### *Article 8      Extent of the Administrative Assistance*

1. The Parties shall provide each other with mutual assistance to combat fraud and any other illegal activities to which this Agreement applies and to provide administrative cooperation through the exchange of information for taxes covered under this Agreement, in particular in preventing and detecting operations and other acts of commission and omission contrary to the relevant legislation and in conducting investigations relating thereto.
2. The assistance provided for by this Title shall apply to all administrative authorities in the Parties acting within the scope of Article 2 and in the exercise of administrative investigation powers or criminal prosecution powers, including cases where these authorities exercise powers at the request of the judicial authorities.

If a criminal investigation is conducted by or under the direction of a judicial authority, such authority shall determine whether related requests for mutual assistance or cooperation in that connection shall be submitted on the basis of the provisions applicable to mutual legal assistance in criminal matters or on the basis of this Title.

#### *Article 9      Statute of limitations*

In determining whether information or other assistance provided for by this Title may be provided in response to a request, the requested Party shall apply the statute of limitations applicable under the laws of the requesting Party instead of the statute of limitations of the requested Party. In the field of taxation, the expiration of a statute of limitations for taxes of the requested Party shall not preclude the requested Party from obtaining and providing the requested information.

#### *Article 10      Powers*

1. Without prejudice to paragraph 2 the authorities of the Parties shall apply this Title within the limits of the powers conferred on them by their domestic law. Nothing in this Title may be construed as affecting the powers conferred under domestic provisions upon the authorities of the Parties within the meaning of this Title.

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<sup>7</sup> OJ L 379, 24.12.2004, p. 84.

They shall proceed as if they were acting on their behalf or at the request of another authority of the same Party. To that end they shall exercise all the legal powers which they enjoy under their domestic law in meeting the request.

2. For the purposes of Article 14 of this Agreement, each Party shall ensure that it has the authority to obtain and provide, through its competent authorities:

a) information held by banks, other financial institutions, and any person, including nominees and trustees, acting in an agency or fiduciary capacity;

b) information regarding the legal and the beneficial ownership of companies and other legal entities, including, in particular, establishments<sup>8</sup>, including information on all persons in an ownership chain;

c) in the case of partnerships, information regarding the identities of the members of the partnership;

d) in the case of trusts, information on the settlors, trustees, beneficiaries and protector;

e) in the case of foundations<sup>9</sup>, information on the founders, members of the foundation council, and beneficiaries;

f) information on any person as defined in Article 2(4)(g).

#### *Article 11 Limits to exchange of information*

1. Without prejudice to Article 10(2), administrative assistance in respect of activities covered by Article 2(1)(b) and Article 2(1)(c) does not impose any obligation upon a Party from which information is requested to carry out inquiries or to communicate information, if it would be contrary to its legislation or administrative practices for the competent administrative authorities of that Party to conduct such inquiries or to collect the information sought. In case of such assistance, the provision of information may be refused where it would lead to the disclosure of a commercial, industrial or professional secret or of a commercial process, or of information whose disclosure would be contrary to Article 4, or the competent authority of a Party may decline transmission of information when the requesting Party is unable, for reasons of fact or law, to provide the same type of information.

2. In no case shall the provisions of paragraph 1 be construed to permit a Party to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person or because it has no interest in such information.

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<sup>8</sup> The interpretation of the term “establishment” and of the equivalent terms in all authentic languages of this Agreement shall be based on the interpretation of the term “Anstalt” in the German Version of the Agreement.

<sup>9</sup> The interpretation of the term “foundation” and of the equivalent terms in all authentic languages of this Agreement shall be based on the interpretation of the term “Stiftung” in the German Version of the Agreement.

3. 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.

*Article 12 Costs and obligation to exhaust the usual sources of information*

1. Costs incurred in providing assistance shall be borne by the requested Party, unless the competent authorities of the Parties otherwise agree because of significant constraints. The competent authority of the requested Party shall consult the competent authority of the requesting Party whether in providing assistance upon a specific request, significant costs are to be foreseen.
2. The authority of the requested Party may refuse a request for cooperation where it is clear that the authority of the requesting Party has not exhausted the usual sources of information which, in the circumstances, it could have used to obtain the information sought without running the risk of jeopardising the chances of achieving the desired result, except when recourse to such means would give rise to disproportionate difficulties.

*Article 13 Central departments*

1. Each Party shall designate one or more central departments empowered to process requests for administrative assistance under this Title.

These departments shall call on all competent administrative authorities for the execution of the assistance requested.

2. The central departments shall communicate directly with each other.
3. The activities of the central departments shall not, especially in urgent cases, preclude direct cooperation between the other authorities in the Parties having power to act in matters to which this Agreement applies. The central departments shall be informed of all action in which a call is made on any action involving such direct cooperation.
4. The Parties, when making the notification provided for by Article 41(2), shall announce which are the authorities regarded as the central departments for the purposes of this Article.

## Chapter 2 Assistance on request

### *Article 14 Requests for information*

1. The competent authority of the requested Party shall provide on request by the requesting party information for the purposes referred to in Article 1 of this Agreement and in accordance with its further provisions.
2. Information shall be obtained and exchanged under this Agreement without regard to whether the requested Party needs such information for its own purposes or whether the conduct being investigated would constitute a crime under the laws of the requested Party if it had occurred in the territory of the requested Party.
3. If the information in the possession of the competent authority of the requested Party is not sufficient to enable to comply with the request of information, the requested Party shall take all relevant information gathering measures to provide the requesting Party with the information requested, notwithstanding that the requested Party may not, at that time, need such information for its own tax purposes. Privileges under the laws and practices of the requesting Party shall not apply in the execution of a request by the requested Party and such matters shall be reserved for resolution by the requesting Party.
4. Each Party shall take all necessary measures to obtain the information requested, and if specifically requested, the information shall be provided in the form specified by the competent authority of the requesting Party, including depositions of witnesses and authenticated copies of original documents. The reports and other documents, or certified copies of or extracts from the reports or documents, on which the information notified is based and which are available to the authorities of the requested Party or which have been produced or obtained to meet the request shall be attached to the information that is supplied.
5. By agreement between the authority of the requesting Party and the authority of the requested Party, and in accordance with the latter's detailed instructions, staff duly authorised for the purpose by the authority of the requesting Party may have access to documents and information to which paragraph (1) applies, held in the offices of the authorities of the requested Party, which refers to specific illegal activities falling within the scope of this Agreement. Such staff shall be authorised to make copies of that documentation.
6. The Joint Committee set up in accordance with Article 38 shall establish the deadlines within which the authority of the requested Party shall confirm receipt of a request to the authority of the requesting Party and, if necessary, notify the authority of the requesting Party of deficiencies in the request or whether it encounters obstacles in furnishing the information or it refuses to furnish the information.

### *Article 15 Requests for surveillance*

At the request of the authority of the requesting Party, the authority of the requested Party shall wherever possible exercise surveillance over trade in goods in breach of the legislation referred to in Article 2(1)(a). Such surveillance may relate to a person suspected on reasonable grounds of having participated or of participating in the commission of such illegal

activities or of performing acts preparatory to the commission of such illegal activities, or to the premises, means of transport and goods connected with such activities.

#### *Article 16 Notification and transmission by post*

1. At the request of the authority of the requesting Party, the authority of the requested Party shall notify the addressee or cause him to be notified, in accordance with the domestic provisions of the requested Party, of all instruments or decisions emanating from the relevant authorities of the requesting Party which are within the scope of this Agreement.
2. Requests for notification, which shall specify the object of the instrument or decision to be notified, shall specify the name and address of the addressee, together with any other information which may facilitate identification of the addressee and shall be accompanied by a translation in an official language of the requested Party or in a language acceptable to that Party. The requested authority shall inform the requesting authority immediately of its response to the request for notification and shall notify it, in particular, of the date of notification of the decision or instrument to the addressee.
3. The Parties may post acts of notification and requests for information and documents directly to persons residing in the other Party's territory. If these acts of notification and requests for information are sent to the operators concerned by the third and fourth indents of Article 2(1)(a) residing in the other Party's territory, such persons may respond thereto and provide the relevant documents and information in the form provided for by the rules and arrangements under which the funds were granted.
4. Nothing in the Agreement shall be construed as invalidating any service of documents by a Party in accordance with its laws.

#### *Article 17 Requests for investigations*

1. At the request of the requesting Party, the requested Party shall undertake all useful administrative investigations, or order such investigations to be undertaken, into operations or forms of conduct that constitute illegal activities to which this Agreement applies or which prompt the requesting authority to suspect on reasonable grounds that such illegal activities have been committed.
2. The requested Party shall make use of all investigation facilities allowed by its legal system as if it were acting on its own behalf or at the request of another internal authority, including the involvement or authorisation of the judicial authorities where required.

This provision shall be without prejudice to the duty of economic operators to cooperate under Article 19.

The authority of the requested Party shall communicate the results of such investigations to the authority of the requesting Party. Article 14(2) shall apply *mutatis mutandis*.

3. The authority of the requested Party shall extend assistance to all circumstances, objects and persons apparently linked to the object of the request for assistance, without any need for a supplementary request. In cases of doubt, the authority of the requested Party shall first contact the authority of the requesting Party.

*Article 18 Presence of authorised staff from the authority of the requesting Party*

1. By agreement between the authority of the requesting Party and the authority of the requested Party, officials appointed by the authority of the requesting Party may be present at the administrative investigations referred to in the previous Article. Their presence shall not require the consent of the person or economic operator being investigated.
2. Staff of the authority of the requested Party shall at all times conduct the investigations. Staff of the authority of the requesting Party may not of their own motion exercise the powers conferred on the staff of the authority of the requested Party.

However, they shall have access to the same premises and the same documents as the staff of the authority of the requested Party, through them and for the sole purposes of the investigation in hand.

3. Conditions may be attached to the authorisation.
4. The information brought to the knowledge of the authority of the requesting Party may not be used as evidence until the transmission of the documents relating to execution has been authorised.

*Article 18a Presence of authorised staff from the authority of the requesting Party with regard to tax cooperation*

1. As regards assistance in respect of activities covered by Article 2(1)(c), by reasonable notice given in advance, the authorities of the requested Party may allow officials of the requesting Party to enter the territory of the requested party, to the extent permitted under its domestic laws, to interview individuals and examine records with the prior written consent of the individuals concerned. The competent authority of the requesting Party shall notify the competent authority of the requested Party of the time and place of the intended meeting with the individuals concerned. At the option of the requested Party, an official of the requested Party may attend such meeting.
2. At the request of the competent authority of the requesting Party, insofar as this is permitted under the legislation of the requested Party, the competent authority of the requested Party may permit representatives of the competent authority of the requesting Party to be present at the appropriate part of a tax examination in the territory of the requested Party, in which case the competent authority of the requested Party conducting the examination shall, as soon as possible, notify the competent authority of the requesting party of the time and place of the examination, the authority or person authorized to carry out the examination and the procedures and conditions required by the requested Party for the conduct of the examination.

All decisions regarding the conduct of the examination shall be made by the requested Party conducting the examination.

*Article 19 Duty to cooperate*

Economic operators shall be required to cooperate with the execution of the request for administrative assistance by giving access to their premises, means of transport and documentation and providing all relevant information. The requesting Party may ask the requested Party to enforce the fulfilment of this duty within the limits set by the requested Party's domestic law for investigations of the same nature undertaken by its administrative authorities and aimed at ensuring the respect of such law.

*Article 20 Form and content of requests for assistance*

1. Requests for assistance shall be made in writing. They shall be accompanied by such documents as are regarded as helpful to the reply.

In cases of urgency, oral requests shall be accepted, but they must be confirmed in writing at the earliest possible opportunity.

2. Requests shall be accompanied by the following information:

- (a) the requesting authority;
- (b) the measure requested;
- (c) the object and the grounds for the request;
- (d) the legislation, rules and other legal provisions involved;
- (e) the clearest and fullest indications possible of the natural or legal persons to be investigated;
- (f) a summary of the relevant facts and of the enquiries already carried out, except in cases provided for in Article 16.

3. Requests shall be made in an official language of the requested Party or in a language that is acceptable to that Party.

4. Incorrect or incomplete requests may be corrected or completed. The measures needed to act on the request shall be carried out in the meantime.

5. Requests addressed to non-competent authorities shall be forwarded without delay to the competent authority.

*Article 20a Form and content of requests for assistance in tax matters*

Requests in respect of activities covered by Article 2(1)(c) shall be framed with the greatest degree of specificity possible and shall specify in writing the following information:

- a) the identity of the person under examination or investigation;
- b) the period of time with respect to which the information is requested;
- c) the nature of the information requested and the form in which the requesting Party would prefer to receive it;
- d) the matter under the requesting Party's law with respect to which the information is sought;
- e) the reasons for believing that the information requested is foreseeably relevant to tax administration and enforcement of the requesting Party with respect to the person identified under a) of this paragraph;
- f) grounds for believing that the information requested is present in the requested Party or is in the possession or control of a person within the jurisdiction of the requested Party;
- g) to the extent known, the name and address of any person believed to be in possession or control of the information requested;
- h) a statement that the requesting party would be able to obtain and provide the requested information if a similar request were made by the requested Party;
- i) a statement that the requesting Party has pursued all reasonable means available in its own territory to obtain information, except where that would give rise to disproportionate difficulty.

#### *Article 21 Use of information*

1. The information obtained shall be used exclusively for the purposes of this Agreement. Where a Party asks to use such information for other purposes, it shall request the prior written agreement of the supplying authority. Such use shall then be subject to any restrictions laid down by that authority.
2. Paragraph (1) shall not preclude the use of the information in judicial or administrative proceedings for failure to comply with the legislation to which the request for administrative assistance applies if the same forms of assistance would be available for these proceedings. The relevant authority of the Party which supplied the information shall be advised without delay of such use.
3. The Parties may use the information obtained and the documents consulted in accordance with this Agreement by way of evidence in their reports and depositions and in proceedings and prosecutions in the courts.

### **Chapter 3 Special forms of cooperation**

#### *Article 22 Joint operations*

1. On imports, exports and transit of goods, where the volume of transactions and the resultant risks in terms of taxes and grants are such that there are likely to be major

losses to the budget of the Parties, those Parties may agree to conduct joint cross-border operations for the prevention and prosecution of illegal activities to which this Agreement applies.

2. The coordination and planning of such cross-border operations shall be the responsibility of the central department or of an office designated by it.
3. Where the tax situation of one or more persons liable to tax is of common or complementary interest to the Parties, the Parties may agree to conduct simultaneous controls, in their own territory, with a view to exchanging the information thus obtained, whenever they would appear to be more effective than controls conducted by one Party alone.

#### *Article 23 Joint special investigation teams*

1. The authorities of several Parties may by agreement among themselves establish a joint special investigation team located in a Party.
2. The joint team shall conduct difficult investigations entailing the mobilisation of substantial resources and shall coordinate joint actions.
3. Participation in such a team shall not have the effect of conferring on the representatives of the participating Parties' authorities the power to act in the territory of the Party in which the investigations are conducted.
4. Where officers of the Party engage in activities in the territory of another Party and cause damage by their activities, the Party in whose territory the damage was caused shall make good the damage, in accordance with its national legislation in the same way as it would have done if the damage had been caused by its own officers. That Party will be reimbursed in full by the Party whose officers have caused the damage for the amounts it has paid to the victims or to other entitled persons or institutions.
5. Without prejudice to the exercise of its rights vis-à-vis third parties and notwithstanding the obligation to make good damages according to the second sentence of paragraph 4, each Party shall refrain, in the case provided for in the first sentence of paragraph 4, from requesting reimbursement of the amount of damages it has sustained from another Party.
6. In the course of the operation, officers on mission in the territory of another Party shall be treated in the same way as officers of that State as regards infringements committed against them or by them.

## **Chapter 4 Recovery**

#### *Article 24 Recovery*

1. At the request of the requesting Party, the requested Party shall proceed to the recovery of claims to which this Agreement applies as if they were its own claims.

2. The request for recovery of a claim shall be accompanied by an official copy or a certified copy of the instrument permitting enforcement (“Vollstreckungstitel”), issued by the requesting Party and, where appropriate, the original or a certified copy of other documents needed for recovery.
3. The requested Party shall take precautionary measures to ensure recovery of a claim.
4. The authority of the Party requested shall transfer to the authority of the requesting Party the amount of the claim that it has recovered. In agreement with the requesting Party, it may deduct a percentage corresponding to the administrative costs it has incurred.
5. Notwithstanding paragraph (1), claims to be recovered shall not necessarily enjoy the same priority status as comparable claims arising in the requested Party.

## **Title III MUTUAL LEGAL ASSISTANCE**

### *Article 25 Relationship with other Agreements*

1. The purpose of this Title is to supplement the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959, and the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 8 November 1990, and to facilitate their application between the Parties.
2. This Title does not prevent more extensive cooperation on the basis of bilateral or multilateral Agreements between the Parties.

### *Article 26 Procedures in which mutual legal assistance shall be afforded*

1. Mutual legal assistance shall also be afforded when one of the following conditions arises:
  - (a) in proceedings brought by the administrative authorities in respect of acts which are punishable under the national law of one of the two Parties, or in both, by virtue of being infringements of the rules of law, and where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters;
  - (b) in civil actions joined to criminal proceedings, as long as the criminal court has not yet taken a final decision in the criminal proceedings;
  - (c) for offences or infringements which a legal person of the requesting Party may be liable.
2. Assistance shall also be given for the purposes of investigations and proceedings for the seizure and confiscation of the instruments and products of these illegal activities.

### *Article 27 Transmission of requests*

1. Requests under this Title shall be presented by the authority of the requesting Party either via a relevant central authority of the requested Party or direct to the Party's authority which is empowered to execute the requesting Party's request. The authority of the requesting Party and, where appropriate, the authority of the Party requested shall send a copy of the request to its central authority for information.
2. All documents relating to requests or the execution thereof may be sent by the same channels. They, or at least a copy, must be sent directly to the authority of the requesting Party.
3. If the authority of the Party receiving a request has no power to authorise assistance, it shall forthwith forward it to the competent authority.

4. Defective or incomplete requests shall be applied if they contain the information needed to satisfy them, without prejudice to subsequent regularisation by the authority of the requesting Party. The authority of the Party requested shall inform without delay the authority of the requesting Party of the defects and allow it time to regularise them.

The authority of the Party requested shall without delay send the authority of the requesting Party all other indications that may help it to complete its request or extend it to include other measures.

5. The Parties, when making the notification provided for by Article 41(2), shall announce which are the competent central authorities for the purposes of this Article.

#### *Article 28 Service by post*

1. As a rule the Parties shall, in proceedings for illegal activities covered by this Agreement, send procedural documents intended for persons who are in the territory of the other Party directly by post.
2. If the authority of the Party that issued the documents knows or has reason to believe that the addressee understands only some other language, the documents, or at least the most important passages thereof, shall be accompanied by a translation into that other language.
3. The authority of the serving Party shall advise the addressee that no measure of restraint or punishment may be enforced directly by that authority in the territory of the other Party.
4. All procedural documents shall be accompanied by a report indicating that the addressee may obtain information from the authority identified in the report regarding his or her rights and obligations concerning the documents.

#### *Article 29 Provisional measures*

1. Within the limits of its domestic law and its respective powers and at the request of the authority of the requesting Party, the competent authority of the requested Party shall order the necessary provisional measures for the purpose of maintaining an existing situation, protecting endangered legal interests or preserving evidence, if the request for mutual assistance does not appear manifestly inadmissible.
2. Preventive freezing and seizure of instruments, assets and proceeds of offences shall be ordered in cases where assistance is requested. If the proceeds of an offence no longer exist in whole or in part, the same measures shall be ordered in relation to assets located within the territory of the requested Party corresponding in value to the proceeds in question.

*Article 30 Presence of the authorities of the requesting Party*

1. The requested Party may, at the request of the requesting Party, authorise the representatives of the latter Party's authorities to attend the execution of the request for mutual legal assistance. Their presence shall not require the consent of the person concerned by the measure.

Requests for the presence of such representatives shall not be refused where that presence is likely to render the execution of the request for assistance more responsive to the needs of the requesting Party and, therefore, likely to avoid the need for supplementary requests for assistance.

Conditions may be attached to the authorisation.

2. The persons present shall have access to the same premises and the same documents as the representatives of the requested Party, through them and for the sole purposes of execution of the request for mutual legal assistance. In particular they may be authorised to put or propose questions and suggest measures of investigation.
3. Their presence shall not result in facts being divulged to persons other than those authorised by virtue of the preceding paragraphs in breach of judicial confidentiality or the rights of the person concerned. The information brought to the knowledge of the authority of the requesting Party may not be used as evidence until the decision on transmission of the documents relating to execution has acquired the force of *res judicata*.

*Article 31 Searches and seizures*

1. The Parties may not make the admissibility of requests for search or seizure dependent on conditions other than the following:
  - (a) the act giving rise to the requests is punishable under the law of both Parties by a penalty involving deprivation of liberty or a detention order of a maximum period of at least six months, or is punishable under the law of one of the two Parties by an equivalent penalty and under the law of the other Party by virtue of being an infringement of the rules of law which is being prosecuted by the administrative authorities, and where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters;
  - (b) execution of the requests is consistent with the law of the requested Party.
2. Requests for purposes of search or seizure regarding matters falling within Article 2(1)(a) shall also be executed by Liechtenstein when the act giving rise to the request is punishable under Liechtenstein law as evasion of tax and the requesting Party equally executes such requests for the same kind of act.
3. Requests for purposes of search and seizure for laundering offences referred to in Article 2(3) shall also be admissible provided that the activities making up the predicate offence are punishable under the law of the two Parties by a penalty involving deprivation of liberty or a detention order of a maximum of more than six months.

*Article 32 Requests for banking and financial information*

1. Where the conditions of Article 31 are met, the requested Party shall execute requests for assistance in obtaining and transmitting banking and financial data, including:
  - (a) the identification of and information concerning bank accounts opened at banks established in its territory and where persons under investigation are the account holders, authorised signatories or in effective control;
  - (b) the identification of and information concerning banking transactions and operations conducted from, to or via one or more bank accounts or by specified persons during a specified period.
2. To the extent authorised by virtue of its law governing criminal proceedings for similar domestic cases, the requested Party may order surveillance of banking operations conducted from, to or via one or more bank accounts or by specified persons during a specified period, and transmission of the results to the requesting Party. The decision to monitor transactions and transmit the results shall be taken in each individual case by case by the competent authorities of the requested Party and shall comply with that Party's national legislation. The details regarding the monitoring shall be determined by agreement between the competent authorities of the requesting and requested Parties.
3. Each Party shall take the necessary measures to ensure that the financial institutions do not disclose to the customer concerned or to third persons that measures are being executed at the request of the requesting Party or that an investigation is under way, for such time as is necessary to avoid compromising the results.
4. The authority of the Party issuing the request shall:
  - (a) state the reasons why it considers that the information requested is likely to be of substantial value for the purpose of the investigation into the offence;
  - (b) state on what grounds it presumes that banks in the requested Party hold the relevant accounts and, to the extent available, indicate which banks might be concerned;
  - (c) include all information available which may facilitate the execution of the request.
5. A Party shall not reject cooperation on a request for mutual legal assistance from another Party solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person, or because it has no interest in such information.

*Article 33 Controlled deliveries*

1. As regards assistance concerning Article 2(1)(a) and Article 2(1)(c) in combination with Article 2(1)(a), the competent authority in the requested Party shall undertake to

ensure that, at the request of the authority of the requesting Party, controlled deliveries may be permitted in its territory within the framework of criminal investigations into extraditable offences.

2. The decision to carry out controlled deliveries shall be taken in each individual case by the competent authorities of the requested Party, with due regard for its national law.
3. Controlled deliveries shall take place in accordance with the procedures provided for in the law of the requested Party. The right to act and to direct and control operations shall lie with the competent authorities of that Party.

#### *Article 34 Handing-over for confiscation or return*

1. At the request of the requesting Party and without prejudice to the rights of bona fide third parties, the requested Party may place objects, documents, funds or other items of value at the disposal of the requesting Party with a view to their return to their rightful owners. The requested Party may not refuse to hand funds over on the sole ground that they correspond to a tax or customs debt.
2. The requested Party may waive the return of objects, documents, funds or other items of value either before or after handing them over to the requesting Party if the restitution of such objects, documents, funds or other items of value to the rightful owner may be facilitated thereby. The rights of bona fide third parties shall not be affected.
3. In the event of a waiver before handing over the objects, documents, funds or other items of value to the requesting Party, the requested Party shall exercise no security right or other right of recourse under tax or customs legislation in respect of these articles. A waiver as referred to in paragraph (2) shall be without prejudice to the right of the requested Party to collect taxes or duties from the rightful owner.

#### *Article 35 Speeding up assistance*

1. The authority of the requested Party shall execute the request for mutual legal assistance as soon as possible, taking as full account as possible of the procedural deadlines and other deadlines indicated by the authority of the requesting Party. That Party shall explain the reasons for the deadline.
2. If the request cannot, or cannot fully, be executed in accordance with the requirements set by the authority of the requesting Party, the authority of the requested Party shall promptly inform the authority of the requesting Party and indicate the conditions under which it might be possible to execute the request. The authorities of the requesting and the requested Parties may subsequently agree on further action to be taken concerning the request, where necessary by making such action subject to the fulfilment of those conditions.

If it is foreseeable that the deadline set by the authority of the requesting Party for executing its request cannot be met and if the reasons referred to in the second sentence of paragraph (1) indicate explicitly that any delay will lead to substantial

impairment of the proceedings being conducted by that authority, the authority of the requested Party shall promptly indicate the estimated time needed for execution of the request. The authority of the requesting Party shall promptly indicate whether the request is to be upheld nonetheless. The authorities of the requesting and requested Parties may subsequently agree on further action to be taken concerning the request.

*Article 36 Use of information and evidence*

Information and evidence transmitted in the course of the assistance procedure may be used for the following purposes in addition to the purposes of the assistance procedure for which it was supplied:

- (a) in criminal proceedings in the requesting Party against other persons who participated in the commission of the offence for which assistance was given, provided that the mutual assistance would have been possible also regarding these other persons. In such a case the requesting Party shall inform the requested Party on such a use.
- (b) where the facts on which the request is based constitute another offence for which assistance ought also to be given;
- (c) in proceedings for the confiscation of the instrumentalities and proceeds of offences for which assistance ought to be given and in proceedings for damages in respect of facts for which assistance had been given.

*Article 37 Spontaneous transmission*

1. Within the limits of their domestic law and their powers, the judicial authorities of a Party may spontaneously transmit information or evidence as regards illegal activities covered by this Agreement to the judicial authorities of another Party, when they consider that such information or evidence might assist the recipient Party's authority in initiating or carrying out investigations or proceedings, or might lead to a request for mutual legal assistance by that authority.
2. The authority of the Party transmitting the information may, in accordance with its domestic law, impose conditions on the use of the information by the authority of the recipient Party.
3. All the authorities of the Parties shall be bound by such conditions.

## TITLE IV FINAL PROVISIONS

### *Article 38 Joint Committee*

1. A Joint Committee shall be established and shall be responsible for the sound application of this Agreement. To that end, it shall make recommendations and take decisions provided for by the Agreement, or for setting up practical modalities for the implementation of the Agreement. It shall also monitor the implementation of the Agreement.
2. The Joint Committee shall be composed of representatives of all the Parties, i.e. the European Union, the Member States and the Principality of Liechtenstein. It shall adopt its Rules of Procedure, which shall include provisions governing the convening of meetings, the designation of the Chair and the determination of his or her functions. It shall make its recommendations and take its decisions by unanimity.
3. The Joint Committee shall meet as required but no less than once every year. Any Party may request that a meeting be convened.
4. The Joint Committee may decide to establish working parties or expert groups to assist it in the performance of its tasks.
5. The Joint Committee may take decisions on technical adaptations reflecting developments of the Union law on matters of mutual administrative assistance. If such a decision can be binding on a Party only after the fulfilment of its constitutional requirements, the decision shall enter into force on the first day of the second month following the last notification on the fulfilment of these constitutional requirements, unless otherwise decided by the Joint Committee.
6. If a Party wishes the Agreement to be revised, it shall lay a proposal before the Joint Committee, which shall make recommendations, notably for the commencement of negotiations.

### *Article 39 Dispute settlement*

1. Each Party may submit to the Joint Committee a dispute relating to the interpretation or application of this Agreement, in particular if it considers that another Party is failing repeatedly to take action on requests for cooperation made to it.
2. The Joint Committee shall endeavour to settle the dispute as quickly as possible. The Joint Committee shall be supplied with all relevant items of information to assist its detailed examination of the situation with a view to identifying a satisfactory solution. To that end, the Joint Committee shall examine all possibilities of preserving the sound operation of this Agreement.

#### *Article 40 Territorial scope*

This Agreement shall apply in the Principality of Liechtenstein and in the territories to which the Treaties on which the Union is founded are applicable in accordance with the conditions provided for by those Treaties.

#### *Article 41 Entry into force*

1. This Agreement is concluded for an indefinite period.
2. It shall be ratified or approved by the Parties in accordance with their respective procedures. It shall enter into force on the first day of the second month after the last notification of instruments of ratification or approval.
3. Notifications shall be sent to the Secretary-General of the Council of the European Union, who shall be the depository of this Agreement.
4. Until the entry into force of this Agreement, Titles I, II and IV shall be provisionally applied between the European Union and the Principality of Liechtenstein on a reciprocal basis, on the condition that all Parties have signed the Agreement, from the first day of the month following the notification by the Principality of Liechtenstein of its instrument of ratification in so far as they regard:
  - income covered by the taxation on savings, as defined in the Agreement between the European Community and the Principality of 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 signed on 7 December 2004,
  - information exchange and mutual assistance on fraud and any other illegal activity in the area of traditional own resources and Community funds.
5. Until the entry into force of this Agreement, each Party may, at the time of the notification referred to in paragraph (2) or at any other subsequent time, declare that it shall consider itself bound by the Agreement in its relations with any other Party having made the same declaration. These declarations shall take effect ninety days after the date of receipt of the notification.

#### *Article 42 Denunciation*

The European Union, acting on its behalf and on behalf of all its Member States, or the Principality of Liechtenstein may denounce this Agreement by notifying the other Party of its decision. The denunciation shall take effect six months after the date of receipt of the notification of the denunciation.

#### *Article 43 Temporal Application*

The provisions of this Agreement shall be applicable to requests:

- (a) in respect of activities covered by Article 2(1)(a) and Article 2(1)(d) in combination with Article 2(1)(a), concerning those illegal activities committed at least six months after it was signed; and
- (b) in respect of activities covered by Article 2(1)(b) and Article 2(1)(d) in combination with Article 2(1)(b), concerning those illegal activities committed at least one year after it was signed.
- (c) in respect of activities covered by Article 2(1)(c) for the full taxable period commencing after the Agreement was signed. First requests can be made after 1 January 2011.

*Article 44 Extension of the Agreement to the new Member States of the EU*

1. Any State which becomes a Member State of the European Union shall, by written notification to the Secretariat of the Council become a Party to this Agreement.
2. The text of the Agreement in the language of the new acceding Member State as established by the Council of the European Union shall be authenticated by an exchange of letters between the European Union and the Principality of Liechtenstein. It shall be considered to be authentic within the meaning of Article 45.
3. This Agreement shall enter into force in relation to any new Member State of the European Union which accedes to it ninety days after the receipt of its instrument of accession, or on the date of entry into force of this Agreement if it was not yet in force when that ninety-day period expired.
4. If this Agreement is not yet in force when the newly acceding State notifies its instrument of accession, Article 41(4) shall apply.

*Article 45 Authentic texts*

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

Signatures

## **Joint declarations of the Parties:**

### *Joint declaration of the Parties on Article 17(2)*

The Parties hereby agree that in Article 17(2) of the Agreement the term "investigation facilities" includes the questioning of persons, the searching of premises and means of transport, the copying of documents, the requesting of information and the seizing of objects, documents and items of value.

### *Joint declaration of the Parties on Article 18(2)*

The Parties hereby agree that the 2<sup>nd</sup> subparagraph in Article 18(2) of the Agreement also means that those present may in particular be authorised to put questions and propose measures of investigation.

### *Joint declaration of the Parties on Article 20a*

The Parties agree, regarding the implementation of Article 20a on form and content of requests for assistance in tax matters, that the commentary to the OECD Model Agreement on Exchange of Information on Tax Matters should be a source of interpretation.

In this respect, while Article 20a(a) to (i) contains important procedural requirements that are intended to ensure that fishing expeditions do not occur, it needs to be interpreted liberally so as not to frustrate effective exchange of information. In particular, where a Party is asking for account information but the identity of the accountholder is unknown, Article 20a(a) may be satisfied by supplying the account number or equivalent identifying information.

### *Joint declaration of the Parties on Article 24*

The Parties hereby agree that the authorities of the requesting Party will confirm that their request relates to a claim falling within the scope of this Agreement. Rules on this confirmation and on recovery assistance will be adopted by the Joint Committee, referred to in Article 38.

### *Joint declaration of the Parties on Article 31(2)*

The Parties take note that "evasion of tax" under Liechtenstein law is to be understood as evasion of tax pursuant to Article 75 of the Liechtenstein Law on Value Added Tax of 16 June 2000.

### *Joint declaration of the Parties on Article 38(5)*

The Parties agree that a Party may submit to the Joint Committee relevant information on developments in their co-operation with third countries with relevance to further combating fraud and other illegal activity to the detriment of public financial interests, which the Joint

Committee may then consider in view of improving the good functioning of co-operation between the Parties.

*Joint declaration of the Parties on Article 11(2)*

Beyond the scope of this Agreement, the Parties declare their readiness to examine requests from another Party to negotiate comprehensive bilateral agreements for the elimination of double taxation.

Without prejudice to Article 39 of the current Agreement, the Parties shall consider ways to resolve conflicts in the field of direct taxation.

*Joint Declaration of the Parties on Article 12(1)*

The Parties agree, regarding the implementation of Article 12(1) on costs, that the commentary which is part of the OECD Model Agreement on Exchange of Information on Tax Matters should be a source of interpretation. Costs that would be incurred in the ordinary course of administering the domestic tax laws of the requested Party would normally be expected to be borne by the requested Party when such costs are incurred for purposes of responding to a request for information. Such costs would normally cover routine tasks such as obtaining and providing copies of documents.

Article 12(1) is without prejudice to existing or future bilateral Agreements between Member States and the Principality of Liechtenstein if such bilateral Agreements do not address the question of cost sharing or contain different provisions.

*Joint declaration of the Parties on review*

The Parties will review, as far as opportune, this agreement taking into account the cooperation attained in agreements concluded between the European Union and its Member States on the one side and the other EFTA countries as well as Andorra, Monaco and San Marino on the other side.

*Joint declaration of the Parties on non-discrimination*

The Parties assert their commitment to the principle of non-discrimination as expressed in the Agreement on the European Economic Area, taking into account the extent of cooperation for the attainment of the objective defined in Article 1.