



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

COUNCIL DECISION

**on the signature of 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 of 3 June 2003 on taxation of savings income in the form
of interest payments and the approval and signature of the accompanying
Memorandum of Understanding**

Proposal for a

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**on the conclusion of 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 of 3 June 2003 on taxation of savings income in the form
of interest payments**

(presented by the Commission)

EXPLANATORY MEMORANDUM

By its decision of 16 October 2001, the Council authorised the Commission to negotiate appropriate agreements with Switzerland, the United States of America, Andorra, Liechtenstein, Monaco and San Marino to ensure that these countries adopt measures equivalent to those to be applied within the Community to ensure effective taxation of savings income in the form of interest payments. The Commission was instructed to conduct these negotiations in close conjunction with the Presidency of the Council, and in close and regular consultation with the High-Level Working Party set up by Coreper Decision of 13 June 2001¹ and appointed by the Council as a special committee to assist the Commission in that task.

Following the decision of 16 October 2001, the Commission wrote to the above non-EU countries to request the opening of negotiations even though it was only after the ECOFIN Council's approval of a text of the draft directive, on 13 December 2001, that the negotiations could really begin. A large number of meetings at both political and technical level have since been held. In accordance with the Council decision of 16 October 2001, the Commission conducted the negotiations in close conjunction with successive Presidencies of the Council. It made regular oral progress reports to the Council and Parliament, and presented a communication on the negotiations with third countries on taxation of savings income to the ECOFIN Council on 3 December 2002.²

On 3 June 2003 the Council stated that the draft agreement with Switzerland submitted by the Commission on 28 May 2003 constituted the final offer for an agreement between the EU and Switzerland. The Council minutes also state:

“The four elements of this agreement relating to savings taxation also constitute the basis for agreements between the European Union and Liechtenstein, Andorra, Monaco and San Marino...”

On 21 January 2003 the Council identified these four elements as:

“- Retention and withholding: Switzerland will apply the same rates of retention and withholding as Belgium, Luxembourg and Austria ...

- Revenue sharing: Switzerland will share the revenue of the retention tax and will accept the 75/25 division applied within the Community ...

- Voluntary disclosure of information

Review clause stating that “The Contracting Parties shall consult with each other at least every three years or at the request of either Contracting Party with a view to examining and – if deemed necessary by the Contracting Parties – improving the technical functioning of the Agreement. In any event when Belgium, Luxembourg and Austria change from withholding tax to automatic exchange of information in accordance with the Directive, the Contracting Parties shall consult each other in order to examine whether the changes to the Agreement are necessary taking into account international developments.

¹ OJ C 183, 29.6.2001, p. 1.

² SEC (2002) 1287 final, 27.11.2002.

Switzerland grants exchange of information on request for criminal or civil cases of fraud or similar misbehaviour on the part of taxpayers... ”.

The Agreement with Liechtenstein, which includes these four elements, is now being presented to the Council for signature and conclusion. It is accompanied by a Memorandum of Understanding between the European Community and its Member States, of the one part, and the Principality of Liechtenstein of the other part. In accordance with the conclusions of the ECOFIN Council of 21 January 2003, the Memorandum of Understanding confirms that within the transition period provided for by Council Directive 2003/48/EC of 3 June 2003,³ the European Community will enter into discussions with other important financial centres with a view to promoting adoption by those jurisdictions of measures equivalent to those applied by the Community. The Memorandum of Understanding also provides that the agreed measures will be implemented in good faith and that the Parties will not act unilaterally to undermine this arrangement without due cause. Should any significant difference between the scope of Council Directive 2003/48/EC and that of the Agreement, in particular with regard to Article 6 of the Agreement, be discovered, the Contracting Parties will immediately enter into discussions with a view to ensuring that the equivalent nature of the measures provided for by the Agreement is maintained. As regards the exchange of information, the Memorandum of Understanding provides that the Principality of Liechtenstein undertakes to make its best endeavour to determine without delay the acceptability of a duly justified request in accordance with its procedural laws. The Memorandum of Understanding further states that European Union and its Member States will take into account Liechtenstein's decision to provide for measures equivalent to the Directive in their co-operation with Liechtenstein including co-operation on fiscal matters. The signatories agree that in the context of the negotiations foreseen on the exchange of information as set out in Article 10(4) of the Agreement, either party may raise in parallel other taxation issues, including issues related to the elimination of double taxation of income.

The Commission considers that the text of the Agreement is in accordance with the negotiating directives adopted by the Council on 16 October 2001. The Council gave its political agreement to the text on 2 June this year and the Council High-Level Working Party mentioned above confirmed its consensus on the details of the Agreement and of the accompanying Memorandum of Understanding on 9 June.

The Commission proposes that the Council approve the attached proposals:

- for a decision on the signature of the Agreement providing for measures equivalent to those laid down in Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments, and on the approval and signature of the accompanying Memorandum of Understanding, and
- for a decision on the conclusion of the above Agreement under the procedures set by Article 300 of the Treaty establishing the European Community.

Article 300(2) of the Treaty establishing the European Community stipulates that the Council shall act unanimously when the Agreement covers a field for which unanimity is required for the adoption of internal rules. As the internal rules in the field covered by this Agreement have been adopted on the basis of Article 94 of the Treaty, the Commission considers that the

³ OJ L 157, 26.6.2003, p. 38.

Council should act unanimously to approve the proposal for a decision. According to the ECOFIN Council conclusions of 21 January 2003, the Council agrees that the Agreement with the Principality of Liechtenstein should also be adopted on the basis of unanimity.

Proposal for a

COUNCIL DECISION

on the signature of 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 of 3 June 2003 on taxation of savings income in the form of interest payments and the approval and signature of the accompanying Memorandum of Understanding

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 94 in conjunction with the first subparagraph of paragraph 2 of Article 300 thereof,

Having regard to the proposal of the Commission,⁴

Whereas:

- (1) On 16 October 2001 the Council authorised the Commission to negotiate with the Principality of Liechtenstein an appropriate agreement for securing the adoption by the Principality of measures equivalent to those to be applied within the Community to ensure effective taxation of savings income in the form of interest payments.
- (2) The text of the Agreement which is the result of the negotiations reflects duly the negotiating directives issued by the Council. It is accompanied by a Memorandum of Understanding between the European Community and its Member States, of the one part, and the Principality of Liechtenstein of the other part.
- (3) Subject to the adoption at a later date of a Decision on the conclusion of the Agreement it is desirable to sign the two documents that were initialled on 30 July 2004 and have confirmation of the Council approval of the Memorandum of Understanding,

HAS DECIDED AS FOLLOWS:

Sole Article

Subject to the adoption at a later date of a Decision on the conclusion of the Agreement the President of the Council is hereby authorised to designate the persons empowered to sign the Agreement, the accompanying Memorandum of Understanding and the Letters referred to in Article 21 paragraph 2 of the Agreement and in the last paragraph of the Memorandum of Understanding on behalf of the European Community.

⁴ OJ C [...] [...], p. [...]

The text of the abovementioned Memorandum of Understanding, attached to this Decision, is approved by the Council.

Done at Brussels, [...]

For the Council
The President

Annex

Memorandum of Understanding

between

the European Community,
the Kingdom of Belgium,
the Czech Republic,
the Kingdom of Denmark,
the Federal Republic of Germany,
the Republic of Estonia,
the Hellenic Republic,
the Kingdom of Spain,
the French Republic,
Ireland,
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,
the Republic of Slovenia,
the Slovak Republic,
the Republic of Finland,
the Kingdom of Sweden,
the United Kingdom of Great Britain and Northern Ireland
and
the Principality of Liechtenstein

The European Community, the Kingdom of Belgium, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, 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, Poland, the Portuguese Republic, the Republic of Slovenia, the Slovak Republic, the Republic of Finland, the Kingdom of Sweden, the United Kingdom of Great Britain and Northern Ireland

and

the Principality of Liechtenstein, hereinafter referred to as “Liechtenstein”

have agreed as follows:

1. INTRODUCTION

Liechtenstein and the European Community are entering into an Agreement providing for measures equivalent to those laid down in Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments (hereinafter the Directive). This Memorandum of Understanding complements that Agreement.

2. DISCUSSIONS FOR SECURING EQUIVALENT MEASURES WITH OTHER THIRD COUNTRIES.

During the transitional period provided for in the Directive, the European Community will enter into discussions with other important financial centres with a view to promoting the adoption by those jurisdictions of measures equivalent to those to be applied by the Community.

3. DECLARATION OF INTENT

The signatories of this Memorandum of Understanding declare that they consider the Agreement referred to in point 1 and this Memorandum to provide an acceptable and balanced arrangement that can be considered as safeguarding the interests of the parties. They will therefore implement the agreed measures in good faith and will not act unilaterally to undermine this arrangement without due cause.

If any significant difference between the coverage of the Directive as adopted on 3 June 2003 and that of the Agreement should be discovered, in particular with regard to Article 6 of the Agreement, the Contracting Parties will immediately enter into consultations in accordance with Article 13 (1) of the Agreement with a view to ensuring that the equivalent nature of the measures provided for in the Agreement is maintained.

Liechtenstein undertakes to make its best endeavour to determine without delay the acceptability of a duly justified request for exchange of information according to Article 10, in accordance with its procedural laws.

The European Union and its Member States will take into account Liechtenstein's decision to provide for measures equivalent to those laid down in the Directive in their cooperation with Liechtenstein, including the cooperation in fiscal matters. The Signatories agree in this context that either party to negotiations foreseen in article 10 paragraph 4 of the Agreement may raise in parallel with such negotiations other taxation issues, including issues related to the elimination or reduction of double taxation of income.

Signed at on in duplicate in Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Spanish and Swedish languages, the texts in each of these languages being equally authentic.

The Czech, Estonian, Hungarian, Latvian, Lithuanian, Maltese, Polish, Slovak and Slovenian language versions shall be authenticated by the Contracting Parties on the basis of an exchange of letters. They shall also be authentic, in the same way as for the languages referred to in the preceding paragraph.

Signatures

Proposal for a

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on the conclusion of 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 of 3 June 2003 on taxation of savings income in the form of interest payments

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 94 in conjunction with the first subparagraph of paragraph 2, the first subparagraph of paragraph 3 and paragraph 4 of Article 300 thereof,

Having regard to the proposal of the Commission,⁵

Having regard to the opinion of the European Parliament,⁶

Whereas:

- (1) On 16 October 2001 the Council authorised the Commission to negotiate with the Principality of Liechtenstein an appropriate agreement for securing the adoption by the Principality of measures equivalent to those to be applied within the Community to ensure effective taxation of savings income in the form of interest payments.
- (2) The text of the Agreement which is the result of the negotiations duly reflects the negotiating directives issued by the Council. It is accompanied by a Memorandum of Understanding between the European Community and its Member States, of the one part, and the Principality of Liechtenstein of the other part, the text of which is attached to the Council Decision/.../EC of.....2004.
- (3) The application of the provisions of Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments depends on the application by the Principality of Liechtenstein of measures equivalent to those contained in this Directive, in accordance with an agreement concluded by the Principality of Liechtenstein with the European Community.

⁵ OJ C [...] [...], p. [...]

⁶ OJ C [...] [...], p. [...]

- (4) According to Council Decision/....../EC of2004, and subject to the adoption at a later date of a Decision on the conclusion of the Agreement, the Agreement was signed on behalf of the European Community on2004.
- (5) This Agreement should be approved on behalf of the Community.
- (6) It is necessary to provide for a simple and rapid procedure for possible adaptations of Annexes I and II to the Agreement,

HAS DECIDED AS FOLLOWS:

Article 1

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 of 3 June 2003 on taxation of savings income in the form of interest payments is hereby approved on behalf of the European Community.

The text of the Agreement is attached to this Decision.

Article 2

The Commission is hereby authorised to approve, on behalf of the Community, the amendments to the Annexes to the Agreement which are required to ensure that they correspond to the information relating to the competent authorities notified under Article 5(a) of Directive 2003/48/EC and to the information in the Annex thereto.

Article 3

The President of the Council shall give the notification provided for in the first paragraph of Article 16 of the Agreement on behalf of the Community.⁷

Article 4

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

Done at Brussels [...],

*For the Council
The President*

⁷ The date of entry into force of the Agreement will be published in the Official Journal of the European Union by the General Secretariat of the Council.

Annex
Agreement
between
the European Community
and
the Principality of Liechtenstein
providing for measures equivalent to those laid down in
Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income
in the form of interest payments⁸

The European Community, hereinafter referred to as Community, and
the Principality of Liechtenstein, hereinafter referred to as Liechtenstein,
or as a “Contracting Party” or the “Contracting Parties” as the context may require,
reaffirming the common interest in further developing the privileged relationship between
the Community and Liechtenstein, have agreed to conclude the following Agreement:

Article 1

Retention by Liechtenstein Paying Agents

- (1) Interest payments which are made to beneficial owners within the meaning of Article 4 who are residents of a Member State of the European Union, hereinafter referred to as Member State, by a paying agent established on the territory of Liechtenstein, shall, subject to Article 2, be subject to a retention from the amount of the interest payment. The rate of retention shall be 15% during the first three years from the date of application of this Agreement, 20% for the subsequent three years and 35% thereafter.
- (2) Liechtenstein shall take the necessary measures to ensure that the tasks required for the implementation of this Agreement are carried out by paying agents established within the territory of Liechtenstein and specifically provide for provisions on procedures and penalties.

⁸ Hereafter referred to as the Directive

Article 2

Voluntary disclosure

- (1) Liechtenstein shall provide for a procedure which allows the beneficial owner as defined in Article 4 to avoid the retention specified in Article 1 by expressly authorising his paying agent in Liechtenstein to report the interest payments to the competent authority of that Member State. Such authorisation shall cover all interest payments made to the beneficial owner by that paying agent.
- (2) The minimum amount of information to be reported by the paying agent in case of express authorisation by the beneficial owner shall consist of:
 - a) the identity and residence of the beneficial owner established in accordance with Article 5;
 - b) the name and address of the paying agent;
 - c) the account number of the beneficial owner or, where there is none, identification of the debt-claim giving rise to the interest, and
 - d) the amount of the interest payment calculated in accordance with Article 3.
- (3) The competent authority of Liechtenstein shall communicate the information referred to in paragraph 2 to the competent authority of the Member State of residence of the beneficial owner. Such communications shall be automatic and shall take place at least once a year, within 6 months following the end of the tax year in Liechtenstein, for all interest payments made during that year.
- (4) Where the beneficial owner opts for this voluntary disclosure procedure or otherwise declares his interest income obtained from a Liechtenstein paying agent to the tax authorities in his Member State of residence, the interest income concerned shall be subject to taxation in that Member State at the same rates as those applied to similar income arising in that State.

Article 3

Basis of assessment for retention

- (1) The paying agent shall withhold the retention in accordance with Article 1 (1) as follows:
 - a) in the case of an interest payment within the meaning of Article 7 (1) (a): on the gross amount of interest paid or credited;

- b) in the case of an interest payment within the meaning of Article 7 (1) (b) or (d): on the amount of interest or revenue referred to in those subparagraphs;
 - c) in the case of an interest payment within the meaning of Article 7 (1) (c): on the amount of interest referred to in that subparagraph.
- (2) For the purposes of paragraph 1, the retention shall be deducted on a pro rata basis for the period during which the beneficial owner holds a debt-claim. If the paying agent is unable to determine the period on the basis of the information made available to him, the paying agent shall consider the beneficial owner to have been in possession of the debt-claim for the entire period of its existence, unless the latter provides evidence of the date of acquisition.
- (3) Taxes and retentions other than the retention provided for in this Agreement on the same payment of interest shall be credited against the amount of the retention calculated in accordance with this Article. This in particular includes the Liechtenstein Couponsteuer at a rate of 4%.

Article 4

Definition of beneficial owner

- (1) For the purposes of this Agreement “beneficial owner“ shall mean any individual who receives an interest payment or any individual for whom an interest payment is secured, unless such individual can provide evidence that the interest payment was not received or secured for his or her own benefit. An individual is not deemed to be the beneficial owner when he or she:
 - a) acts as a paying agent within the meaning of Article 6 or
 - b) acts on behalf of a legal person, an investment fund or a comparable or equivalent body for common investments in securities or
 - c) acts on behalf of another individual who is the beneficial owner and who discloses to the paying agent his or her identity and state of residence.
- (2) Where a paying agent has information suggesting that the individual who receives an interest payment or for whom an interest payment is secured may not be the beneficial owner, that agent shall take reasonable steps to establish the identity of the beneficial owner. If the paying agent is unable to identify the beneficial owner, that paying agent shall treat the individual in question as the beneficial owner.

Article 5

Identity and residence of beneficial owners

In order to establish the identity and residence of the beneficial owner as defined in Article 4, the paying agent shall keep a record of the name, first name, address and residence details in accordance with the Liechtenstein legal provisions against money laundering. For contractual relations entered into, or transactions carried out in the absence of contractual relations, on or after 1 January 2004, for individuals presenting a passport or official identity card issued by a Member State who declare themselves to be resident in a State other than a Member State or Liechtenstein, residence shall be established by means of a tax residence certificate issued by the competent authority of the State in which the individual claims to be resident. Failing the presentation of such a certificate, the Member State which issued the passport or other official identity document shall be considered the State of residence.

Article 6

Definition of paying agent

For the purposes of this Agreement, “paying agent” in Liechtenstein shall mean banks under Liechtenstein banking law, securities dealers, natural and legal persons resident or established in Liechtenstein including economic operators regulated by the Liechtenstein Persons-and-Companies Act (PGR), partnerships and permanent establishments of foreign companies, which even occasionally, accept, hold, invest or transfer assets of third parties or merely pay or secure the payment of interest in the course of their business.

Article 7

Definition of Interest Payment

- (1) For the purposes of this Agreement “interest payment” shall mean:
- a) interest paid, or credited to an account, relating to debt-claims of every kind including interest paid on fiduciary deposits by Liechtenstein paying agents for the benefit of beneficial owners as defined in Article 4, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures, but excluding interest from loans between private individuals not acting in the

course of their business. Penalty charges for late payment shall not be regarded as interest payments;

- b) interest accrued or capitalised at the sale, refund or redemption of the debt-claims referred to in (a);
 - c) income deriving from interest payments either directly or through an entity referred to in Article 4 (2) of Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments, hereafter referred to as the "Directive", distributed by
 - (i) undertakings for collective investment domiciled in a Member State or in Liechtenstein,
 - (ii) entities domiciled in a Member State, which exercise the option under Article 4 (3) of the Directive and which inform the paying agent of this fact,
 - (iii) undertakings for collective investment established outside the territory of the Contracting Parties,
 - d) income realised upon the sale, refund or redemption of shares or units in the following undertakings and entities, if they invest directly or indirectly via other undertakings for collective investment or entities referred to below more than 40% of their assets in debt-claims as referred to in (a):
 - (i) undertakings for collective investment domiciled in a Member State or in Liechtenstein,
 - (ii) entities domiciled in a Member State, which exercise the option under Article 4 (3) of the Directive and which inform the paying agent of this fact,
 - (iii) undertakings for collective investment established outside the territory of the Contracting Parties.
- (2) As regards subparagraph 1 (c), when a paying agent has no information concerning the proportion of the income which derives from interest payments, the total amount of the income shall be considered an interest payment.
- (3) As regards subparagraph 1 (d), when a paying agent has no information concerning the percentage of the assets invested in debt-claims or in shares or units as defined in that subparagraph, that percentage shall be considered to be above 40 %. Where that agent cannot determine the amount of income realised by the beneficial owner, the income shall be deemed to correspond to the proceeds of the sale, refund or redemption of the shares or units.

- (4) Income relating to undertakings or entities which have invested up to 15% of their assets in debt-claims within the meaning of subparagraph 1 (a) shall not be considered an interest payment in accordance with subparagraph 1(c) and (d).
- (5) The percentage referred to in subparagraph 1 (d) and paragraph 3 shall, as from 1 January 2011, be 25 %.
- (6) The percentages referred to in subparagraph 1 (d) and paragraph 4 shall be determined by reference to the investment policy as laid down in the fund rules or instruments of incorporation of the undertakings or entities concerned and, failing such rules, by reference to the actual composition of the assets of the undertakings or entities concerned.

Article 8

Revenue sharing

- (1) Liechtenstein shall keep 25 % of the revenue generated by the retention under this Agreement and transfer 75 % of the revenue to the Member State of residence of the beneficial owner.
- (2) Such transfers shall take place for each year in one instalment per Member State at the latest within a period of 6 months following the end of the tax year in Liechtenstein.

Article 9

Elimination of double taxation

- (1) If interest received by a beneficial owner has been subject to retention by a paying agent in Liechtenstein, the Member State of residence for tax purposes of the beneficial owner shall grant him a tax credit equal to the amount of the retention. Where this amount exceeds the amount of tax due on the total amount of interest subject to retention in accordance with its national law, the Member State of residence for tax purposes shall repay the excess amount of tax withheld to the beneficial owner.
- (2) If interest received by a beneficial owner has been subject to taxes and retentions other than as provided for in this Agreement and the Member State of residence for tax purposes grants a tax credit for such taxes and retentions in accordance with its national law or double taxation conventions, such other taxes and retentions shall be credited before the procedure in paragraph 1 is applied. The Member State of residence for tax purposes shall accept certificates issued by Liechtenstein paying agents as proper evidence of the tax or retention on the

understanding that the competent authority of the Member State of residence for tax purposes will be able to obtain from the Liechtenstein competent authority verification of the information contained in the certificates issued by Liechtenstein paying agents.

- (3) The Member State of residence for tax purposes of the beneficial owner may replace the tax credit mechanism referred to in paragraphs 1 and 2 by a refund of the retention referred to in Article 1.

Article 10

Exchange of information

- (1) The competent authorities of Liechtenstein and any Member State shall exchange information on conduct constituting tax fraud under the laws of the requested State, or the like for income covered by this Agreement. "The like" includes only offences with the same level of wrongfulness as is the case for tax fraud under the laws of the requested State. In response to a duly justified request, the requested State shall provide in accordance with its procedural laws information with respect to matters that the requesting State is investigating, or may investigate, on a civil or criminal basis. Any information received by Liechtenstein or a Member State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to taxes on income covered by the Agreement. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.
- (2) In determining whether information may be provided in response to a request, the requested State shall apply the statute of limitations applicable under the laws of the requesting State instead of the statute of limitations of the requested State.
- (3) The requested State shall provide information where the requesting State has a reasonable suspicion that the conduct would constitute tax fraud or the like. The requesting State's suspicion of tax fraud or the like may be based on:
 - a) Documents, whether authenticated or not, and including but not limited to business records, books of account, or bank account information;
 - b) Testimonial information from the taxpayer;

- c) Information obtained from an informant or other third person that has been independently corroborated or otherwise is likely to be credible; or
 - d) Circumstantial evidence.
- (4) If requested by any of the Member States, Liechtenstein shall enter into bilateral negotiations with that State in order to define individual categories of cases falling under "the like" in accordance with the procedure of taxation applied by that State.

Article 11

Competent Authorities

For the purposes of this Agreement the competent authorities shall mean those authorities listed in Annex I.

Article 12

Consultation

If any disagreement arises between the competent authority of Liechtenstein and one or more of the other competent authorities referred to in Article 11 as to the interpretation or application of this Agreement, they shall endeavour to resolve this by mutual agreement. They shall immediately notify the Commission of the European Communities and the competent authorities of the other Member States of the results of their consultations. In relation to issues of interpretation the Commission may take part in consultations at the request of any of the competent authorities.

Article 13

Review

- (1) The Contracting Parties shall consult each other at least every three years or at the request of either Contracting Party with a view to examining and - if deemed necessary by the Contracting Parties – improving the technical functioning of this Agreement and assessing international developments. The consultations shall be held within one month of the request or as soon as possible in urgent cases.

- (2) On the basis of such an assessment, the Contracting Parties may consult each other in order to examine whether changes to this Agreement are necessary taking into account international developments.
- (3) As soon as sufficient experience of the full implementation of Article 1 (1) is available, the Contracting Parties shall consult each other in order to examine whether changes to this Agreement are necessary taking into account international developments.
- (4) For the purposes of the consultations referred to in paragraphs 1, 2 and 3 each Contracting Party shall inform the other Contracting Party of possible developments which could affect the proper functioning of this Agreement. This shall also include any relevant agreement between one of the Contracting Parties and a third State.

Article 14

Relationship to bilateral Double Taxation Conventions

The provisions of the double taxation conventions between Liechtenstein and the Member States shall not prevent the levying of the retention for which this Agreement provides.

Article 15

Transitional provisions for negotiable debt securities⁹

- (1) From the date of application of this Agreement for as long as at least one Member State also applies similar provisions, and until 31 December 2010 at the latest domestic and international bonds and other negotiable debt securities which have been first issued before 1 March 2001 or for which the original issuing prospectuses have been approved before that date by the competent authorities of the issuing State shall not be considered as debt-claims within the meaning of Article 7 (1) (a) of this Agreement, provided that no further issues of such negotiable debt securities are made on or after 1 March 2002.

However, for as long as at least one Member State also applies similar provisions, the provisions of this Article shall continue to apply beyond 31 December 2010 in respect of such negotiable debt securities:

⁹ As in the Directive, these transitional provisions also apply to negotiable debt securities held through investment funds

- which contain gross-up and early redemption clauses and
- where the paying agent, as defined in Article 6, is established in Liechtenstein and
- where that paying agent pays interest directly to, or secures the payment of interest for the immediate benefit of, a beneficial owner resident in a Member State.

If and when all Member States cease to apply similar provisions, the provisions of this Article shall continue to apply only in respect of those negotiable securities:

- which contain gross-up and early redemption clauses and
- where the issuer's paying agent is established in Liechtenstein and
- where that paying agent pays interest directly to, or secures the payment of interest for the immediate benefit of, a beneficial owner resident in a Member State.

If a further issue is made on or after 1 March 2002 of an aforementioned negotiable debt security issued by a Government or a related entity acting as a public authority or whose role is recognised by an international Agreement (listed in Annex II to this Agreement), the entire issue of such a security, consisting of the original issue and any further issue shall be considered a debt-claim within the meaning of Article 7 (1) (a).

If a further issue is made on or after 1 March 2002 of an aforementioned negotiable debt security issued by any other issuer not covered by the fourth subparagraph, such further issue shall be considered a debt-claim within the meaning of Article 7 (1) (a).

- (2) This Article does not prevent Liechtenstein and the Member States from continuing to levy a tax on revenues deriving from the aforementioned negotiable debt-claims referred to in paragraph 1 in accordance with their national law.

Article 16

Signing, Entry into force and Duration of Validity

- (1) This Agreement requires ratification or approval by the Contracting Parties in accordance with their own procedures. The Contracting Parties shall notify each other of the completion of these procedures. The Agreement shall enter into force on the first day of the second month following the last notification.

- (2) Subject to the fulfilment of the constitutional requirements of Liechtenstein and the requirements of Community law concerning entering into international agreements and without prejudice to Article 17, Liechtenstein and where applicable the Community shall effectively implement and apply this Agreement by 1 July 2005 and notify each other thereof.
- (3) This Agreement shall remain in force until terminated by a Contracting Party.
- (4) Either Contracting Party may terminate this Agreement by giving notice to the other. In such a case, the Agreement shall cease to have effect twelve months after the serving of notice.

Article 17

Application and Suspension of Application

- (1) The application of this Agreement shall be conditional on the adoption and implementation by the dependent or associated territories of the Member States mentioned in the report from the Council (Economic and Financial Affairs) to the European Council of Santa Maria de Feira of June 19/20, 2000, as well as by the United States of America, Switzerland, Andorra, Monaco and San Marino, respectively, of measures which conform with or are equivalent to those contained in the Directive or in this Agreement and providing for the same dates of implementation.
- (2) The Contracting Parties shall decide, by common accord, at least six months before the date referred to in Article 16 (2), whether the condition set out in paragraph 1 will be met having regard to the dates of entry into force of the relevant measures in the third countries and dependent or associated territories concerned. If the Contracting Parties do not decide that the condition will be met, they shall, by common accord, adopt a new date for the purposes of Article 16(2).
- (3) The application of this Agreement or parts thereof may be suspended by either Contracting Party with immediate effect through notification to the other should the Directive or part of the Directive cease to be applicable either temporarily or permanently in accordance with European Community law or in the event that a Member State should suspend the application of its implementing legislation.
- (4) Either Contracting Party may suspend the application of this Agreement through notification to the other in the event that one of the third States or territories referred to in paragraph 1 should subsequently cease to apply the measures referred to in that paragraph. Suspension of application shall take place no earlier than two months after notification. Application of this Agreement shall resume as soon as the measures are reinstated.

Article 18

Claims and Final Settlement

- (1) Should this Agreement be terminated or its application be suspended either in full or in part, the claims of individuals in accordance with Article 9 shall remain unaffected.
- (2) Liechtenstein shall, in such case, establish a final account by the end of the period of applicability of this Agreement and make a final payment to the Member States.

Article 19

Territorial Scope

This Agreement shall apply, on the one hand, to the territories in which the Treaty establishing the European Communities is applied and under the conditions laid down in that Treaty and, on the other hand, to the territory of Liechtenstein.

Article 20

Annexes

- (1) The Annexes form part of this Agreement.
- (2) The list of competent authorities contained in Annex I can be amended by simple notification to the other Contracting Party by the Principality of Liechtenstein, as far as the authority mentioned at point (a) of that Annex is concerned, and by the European Community as far as the other authorities are concerned.

The list of related entities contained in Annex II can be amended by mutual agreement.

Article 21

Languages

- (1) This Agreement shall be drawn up in duplicate in the Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Spanish and Swedish languages, the texts in each of these languages being equally authentic.

- (2) The Czech, Estonian, Hungarian, Latvian, Lithuanian, Maltese, Polish, Slovak and Slovenian language versions shall be authenticated by the Contracting Parties on the basis of an exchange of letters. They shall also be authentic, in the same way as for the languages referred to in paragraph 1.

IN WITNESS WHEREOF the undersigned Plenipotentiaries have hereunder set their hands

Done at, this

For

For

ANNEX I

List of competent authorities

The following are "competent authorities" for the purposes of this Agreement:

- a) in the Principality of Liechtenstein: Die Regierung des Fürstentums Liechtenstein or an authorised representative,
- b) in the Kingdom of Belgium: De Minister van Financiën/Le Ministre des Finances or an authorised representative,
- c) in the Czech Republic: Ministr financí or an authorised representative,
- d) in the Kingdom of Denmark: Skatteministeren or an authorised representative,
- e) in the Federal Republic of Germany: Der Bundesminister der Finanzen or an authorised representative,
- f) in the Republic of Estonia: Rahandusminister or an authorised representative,
- g) in the Hellenic Republic: Ο Υπουργός Οικονομίας και Οικονομικών or an authorised representative,
- h) in the Kingdom of Spain: El Ministro de Economía y Hacienda or an authorised representative,
- i) in the French Republic: Le Ministre chargé du budget or an authorised representative,
- j) in Ireland: The Revenue Commissioners or their authorised representative,
- k) in the Italian Republic: Il Capo del Dipartimento per le Politiche Fiscali or an authorised representative,
- l) in the Republic of Cyprus: Υπουργός Οικονομικών or an authorised representative,
- m) in the Republic of Latvia: Finanšu ministrs or an authorised representative,
- n) in the Republic of Lithuania: Finansų ministras or an authorised representative,
- o) in the Grand Duchy of Luxembourg: Le Ministre des Finances or an authorised representative; however for the purposes of article 10 the competent authority shall be "le Procureur Général d'Etat luxembourgeois",
- p) in the Republic of Hungary: A pénzügyminiszter or an authorised representative,

- q) in the Republic of Malta: Il-Ministru responsabbli għall-Finanzi or an authorised representative,
- r) in the Kingdom of the Netherlands: De Minister van Financiën or an authorised representative,
- s) in the Republic of Austria: Der Bundesminister für Finanzen or an authorised representative,
- t) in the Republic of Poland: Minister Finansów or an authorised representative,
- u) in the Portuguese Republic: O Ministro das Finanças or an authorised representative,
- v) in the Republic of Slovenia: Minister za finance or an authorised representative,
- w) in the Slovak Republic: Minister financií or an authorised representative,
- x) in the Republic of Finland: Valtiovarainministeriö/Finansministeriet or an authorised representative,
- y) in the Kingdom of Sweden: Finansdepartementet or an authorised representative,
- z) in the United Kingdom of Great Britain and Northern Ireland and in the European territories for whose external relations the United Kingdom is responsible: the Commissioners of Inland Revenue or their authorised representative and the competent authority in Gibraltar, which the United Kingdom will designate in accordance with the Agreed Arrangements relating to Gibraltar authorities in the context of EU and EC instruments and related treaties notified to the Member States and institutions of the European Union of 19 April 2000, a copy of which shall be notified to Liechtenstein by the Secretary General of the Council of the European Union, and which shall apply to this Agreement.

ANNEX II

List of related entities

For the purposes of Article 15 of this Agreement, the following entities will be considered to be a *"related entity acting as a public authority or whose role is recognised by an international treaty"*:

ENTITIES WITHIN THE EUROPEAN UNION:

Belgium

- Vlaams Gewest (Flemish Region)
- Région wallonne (Walloon Region)
- Région bruxelloise/Brussels Gewest (Brussels Region)
- Communauté française (French Community)
- Vlaamse Gemeenschap (Flemish Community)
- Deutschsprachige Gemeinschaft (German-speaking Community)

Spain

- Xunta de Galicia (Regional Executive of Galicia)
- Junta de Andalucía (Regional Executive of Andalusia)
- Junta de Extremadura (Regional Executive of Extremadura)
- Junta de Castilla- La Mancha (Regional Executive of Castilla- La Mancha)
- Junta de Castilla- León (Regional Executive of Castilla- León)
- Gobierno Foral de Navarra (Regional Government of Navarra)
- Govern de les Illes Balears (Government of the Balearic Islands)
- Generalitat de Catalunya (Autonomous Government of Catalonia)
- Generalitat de Valencia (Autonomous Government of Valencia)
- Diputación General de Aragón (Regional Council of Aragon)
- Gobierno de las Islas Canarias (Government of the Canary Islands)
- Gobierno de Murcia (Government of Murcia)
- Gobierno de Madrid (Government of Madrid)

- Gobierno de la Comunidad Autónoma del País Vasco/Euzkadi (Government of the Autonomous Community of the Basque Country)
- Diputación Foral de Guipúzcoa (Regional Council of Guipúzcoa)
- Diputación Foral de Vizcaya/Bizkaia (Regional Council of Vizcaya)
- Diputación Foral de Alava (Regional Council of Alava)
- Ayuntamiento de Madrid (City Council of Madrid)
- Ayuntamiento de Barcelona (City Council of Barcelona)
- Cabildo Insular de Gran Canaria (Island Council of Gran Canaria)
- Cabildo Insular de Tenerife (Island Council of Tenerife)
- Instituto de Crédito Oficial (Public Credit Institution)
- Instituto Catalán de Finanzas (Finance Institution of Catalonia)
- Instituto Valenciano de Finanzas (Finance Institution of Valencia)

Greece

- Οργανισμός Τηλεπικοινωνιών Ελλάδος (National Telecommunications Organisation)
- Οργανισμός Σιδηροδρόμων Ελλάδος (National Railways Organisation)
- Δημόσια Επιχείρηση Ηλεκτρισμού (Public Electricity Company)

France

- La Caisse d'amortissement de la dette sociale (CADES) (Social Debt Redemption Fund)
- L'Agence française de développement (AFD) (French Development Agency)
- Réseau Ferré de France (RFF)(French Rail Network)
- Caisse Nationale des Autoroutes (CNA) (National Motorways Fund)
- Assistance publique Hôpitaux de Paris (APHP) (Paris Hospitals Public Assistance)
- Charbonnages de France (CDF) (French Coal Board)
- Entreprise minière et chimique (EMC)(Mining and Chemicals Company)

Italy

- Regions

- Provinces
- Municipalities
- Cassa Depositi e Prestiti (Deposits and Loans Fund)

Latvia

- Pašvaldības (local governments)

Poland

- gminy (communes)
- powiaty (districts)
- województwa (provinces)
- związki gmin (associations of communes)
- związki powiatów (associations of districts)
- związki województw (associations of provinces)
- miasto stołeczne Warszawa (capital city of Warsaw)
- Agencja Restrukturyzacji i Modernizacji Rolnictwa (Agency for Restructuring and Modernisation of Agriculture)
- Agencja Nieruchomości Rolnych (Agricultural Property Agency)

Portugal

- Região Autónoma da Madeira (Autonomous Region of Madeira)
- Região Autónoma dos Açores (Autonomous Region of Azores)
- Municipalities

Slovakia

- mestá a obce (municipalities)
- Železnice Slovenskej republiky (Slovak Railway Company)
- Štátny fond cestného hospodárstva (State Road Management Fund)
- Slovenské elektrárne (Slovak Power Plants)
- Vodohospodárska výstavba (Water Economy Building Company)

INTERNATIONAL ENTITIES:

- European Bank for Reconstruction and Development
- European Investment Bank
- Asian Development Bank
- African Development Bank
- World Bank / IBRD / IMF
- International Finance Corporation
- Inter-American Development Bank
- Council of Europe Social Development Fund
- EURATOM
- European Community
- Corporación Andina de Fomento (CAF) (Andean Development Corporation)
- Eurofima
- European Coal & Steel Community
- Nordic Investment Bank
- Caribbean Development Bank

The provisions of Article 15 are without prejudice to any international obligations that the Contracting Parties may have entered into with respect to the above mentioned international entities.

ENTITIES IN THIRD COUNTRIES :

The entities that meet the following criteria :

- 1) The entity is clearly considered to be a public entity according to the national criteria.
- 2) Such public entity is a non-market producer which administers and finances a group of activities, principally providing non-market goods and services, intended for the benefit of the community and which are effectively controlled by general government.
- 3) Such public entity is a large and regular issuer of debt.
- 4) The State concerned is able to guarantee that such public entity will not exercise early redemption in the event of gross-up clauses.