COMMISSION OF THE EUROPEAN COMMUNITIES

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2008/0234 (CNS)

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

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(presented by the Commission)

EXPLANATORY MEMORANDUM

1. BACKGROUND OF THE NEGOTIATIONS

In the context of the negotiations with the Principality of Liechtenstein concerning its association with the implementation, application and development of the Schengen acquis,[1] it became apparent that specific comprehensive anti-fraud negotiations with Liechtenstein could address the fact that according to the Liechtenstein domestic law, legal assistance is excluded for certain specific offences regarding taxes, customs or infringements of foreign trade provisions. The Commission therefore submitted a proposal for a negotiating mandate for an Agreement between the European Community and its Member States, of the one part, and the Principality of Liechtenstein, of the other, to combat fraud and all other illegal activity to the detriment of their financial interests. [2]

The negotiations were conducted by the Commission following the authorization given by the Council on 7 November 2006.

The Commission respected fully the negotiating directives attached to the Council decision by taking into account, in particular, the position of Liechtenstein as a financial centre, its integration in the EEA, the current Community acquis and foreseeable future developments in the area of co-operation, covering all financial interests, especially in the field of taxation.

The comprehensive approach of the negotiations is reflected in Articles 7 and 25 of the Agreement where it is stated that more favourable provisions of bilateral or multilateral Agreements between the Parties are not affected by the provisions contained in the Agreement, in particular with regard to the Agreement between the European Community and 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[3] (the Liechtenstein Savings Tax Agreement).

Administrative cooperation is shaped in accordance with the standards of the Convention on mutual assistance and cooperation between customs administrations[4] (the Naples II Convention) and on Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation.[5] The provisions on recovery are inspired by Council Directive 76/308/EEC of 15 March 1976 on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures resulting from operations forming part of the system of financing the European

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1 Council Decisions 2008/261/EC and 2008/262/EC of 28 February 2008, OJ L 83, 26.3.2008, p. 3.
2 Council Doc. 12977/06.
3 OJ L 379, 24.12.2004, p. 84.
4 OJ C 24, 23.1.1998, p. 2.
5 OJ L 336, 27.12.1977, p. 15.

Agricultural Guidance and Guarantee Fund, and of the agricultural levies and customs duties.[6]

The provisions on judicial cooperation are inspired from the Convention Implementing the Schengen Agreement[7] (the SIC), the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union[8] (the EU Mutual Assistance Convention) and the Protocol to the EU Mutual Assistance Convention.[9].

The negotiations were concluded on 27 June 2008. The Commission is therefore submitting to the Council the attached draft decisions on the signing and on the conclusion of the Agreement on behalf of the European Community.

2. RESULTS OF THE NEGOTIATIONS

2.1. Illegal activities in connection with the trade of goods and services

The prime aim of the Agreement is to complement the envisaged association of Liechtenstein to the Schengen area, with those provisions in the field of administrative and judicial assistance of the Community acquis, which are at present neither covered by the EEA nor the Schengen acquis, but which are necessary to grant each other full assistance on fraud and all other illegal activities, including customs and indirect tax offences in connection with the trade of goods and services. In that respect, the Agreement between the European Community and its Member States and the Swiss Confederation to counter fraud and all other illegal activities affecting their financial interests[10] (the Swiss Anti-Fraud Agreement) has served as model. This objective was fulfilled, especially since the negotiated Agreement allows for:

- administrative assistance and assistance in recovery, including for illegal activities affecting grants and public procurement, which at the present are not covered by the EEA-Agreement,[11]

- judicial co-operation, including the evasion of value-added tax, in particular allowing for searches and seizure and access to bank information, which as such is not foreseen by Liechtenstein's association to the Schengen area, given that Liechtenstein declared explicitly that tax offences being investigated by the Liechtenstein authorities may not give rise to an appeal before a court competent inter alia to hear criminal matters.

2.2. Fraudulent activities affecting direct taxes

Liechtenstein's participation in the EEA and its envisaged adherence to the Schengen acquis has justified tackling also illegal activities affecting all forms of taxation,

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6 OJ L 73, 19.3.1976, p. 18.
7 OJ L 239, 22.9.2000.
8 OJ C 197, 12.7.2000, p. 3.
9 OJ C 326, 21.11.2001, p. 2.
10 Council Document 12352/04.
11 OJ L 1, 3.1.1994, p. 171.

including direct taxes, from the start of the negotiations. However, there still remains a difference in the treatment of direct taxes in relation to other trade-related levies, such as customs and indirect taxes. This difference is due to the less advanced state of integration of Community legislation and European Union law in the field of direct taxes.

Another aim of the Agreement is thus to ensure that Liechtenstein will grant administrative and judicial assistance on fraud affecting direct taxes beyond and besides of what is foreseen in the Liechtenstein Savings Tax Agreement. In this regard, the Agreement is innovative insofar as Liechtenstein up to now denied any assistance for fraudulent activities affecting direct taxation and as the Agreement is the first one negotiated on a European level to cover all forms of taxes. The Agreement is broader in scope in relation to the model of the Swiss Anti-Fraud Agreement, since it leads to aligning Liechtenstein's providing for assistance on fraud affecting direct taxation with the European standards. It allows for:

- administrative assistance for (document related) fraudulent conduct affecting direct taxes, under the same conditions as granted amongst the Member States under Community legislation, allowing for integrating future reforms and enhancements of the assistance level within the European Community into the Agreement via the Joint Committee,

- recovery assistance for (document related) fraudulent conduct affecting direct taxes as is granted amongst the Member States under Community legislation,

- judicial co-operation for (document related) fraudulent conduct affecting direct taxes, including searches and seizure and access to bank information, which at present would not be covered by Liechtenstein’s association to Schengen.

As regards assistance with respect to foundations and other forms of investment which are controlled by a fiduciary and where the founder and the beneficial owner of the foundation are not publicly registered, the contracting parties need to employ all their information and control powers in order to respond to a request for assistance in the form of information exchange. Pursuant to Article 11(2), the fact that the information is held by a fiduciary does not affect the admissibility of a request for assistance with the consequence, that the tax authorities of the requested contracting party will in case of a need obtain the necessary information from the fiduciary who as an economic operator will be obliged to cooperate as set out in Article 19.

3. PROVISIONS OF THE AGREEMENT

3.1. General Provisions

- Articles 1 and 2 – "Objective" and "General Scope":

These Articles define the subject matter and scope of the Agreement, covering administrative assistance and judicial cooperation for the protection of the Communities' financial interests and the financial interests of the Member States.

Within the scope of the Agreement, Article 2(1)(a) covers all fraud and other illegal activity extending to all indirect taxes (VAT and excise duties) and customs offences, including smuggling, corruption, bribery and laundering of the proceeds of the activities subject to Article 2(3). Procedures for the award of contracts are considered to be those leading to the conclusion of "public contracts" as set out in Directive 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts.[12]

Article 2(1)(b) further covers fraud and other fraudulent conduct affecting all direct taxes (taxes on income and capital). Article 2(1)(c) finally allows for assistance in recovery for amounts lost due to the activities listed in Article 2(1)(a) and (b).

Assistance for money laundering, as set out in Article 2(3), is inspired from Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing[13] and refers also to Liechtenstein's obligations under the EEA to take-over the Community acquis in this respect.

The main definitions of relevance for the scope of the Agreement are laid down in Article 2(4). This is particularly important for the definition of direct taxes in Article 2(4)(e), covering private and business income, as well as of fraudulent conduct affecting direct taxes in Article 2(4)(f), which not only lists in an exemplary way some of the possible conducts amounting to tax fraud, but also defines the submission of incomplete tax returns as a fraudulent conduct.

- Article 3 – "Minor cases":

This Article intends to avoid being faced with an excessively high number of assistance requests relating to minor points.

- Article 4 – "Ordre public":

This Article includes the relevant grounds of public order in accordance with Article 2(b) of the European Convention on Mutual assistance in Criminal Matters of the Council of Europe (Strasbourg 20.4.1959).

- Article 5 – "Transmission of information":

This Article is inspired by the Liechtenstein Savings Tax Agreement. Article 5(2) makes a differentiated approach between information concerning illegal activities in connection with the trade of goods and service (point a) and fraudulent activities affecting direct taxes (point b) so as to respect the different advancement of the Community acquis in these subjects. It should be noted that Article 5(2)(b) does not require the explicit agreement of the competent authority supplying the initial information but the explicit opposition of that authority.

- Article 6 - “Confidentiality”

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[12] OJ L 134, 30.4.2004, p. 114, incorporated into the EEA by Decision of the EEA Joint Committee No 68/2006 of 2 June 2006 amending Annex XVI (Procurement) to the EEA Agreement, OJ L 245, 7.9.2006, p. 22.

[13] OJ L 309, 25.11.2005, p. 15.

This Article refers to the confidentiality requirements applying to the handling of assistance requests by the requested Party.

3.2. Administrative assistance

- Article 7 - "Relationships with other Agreements"

The Agreement does not repeal the EEA-Agreement's Protocol 11 on mutual assistance in customs matters,[14] which can continue to apply, especially for customs aspects outside the scope of the anti-fraud Agreement, and the Liechtenstein Savings Tax Agreement.

- Article 8 - "Extent of Administrative Assistance"

This Article corresponds to the Naples II Convention, as administrative assistance corresponds to the standards of the Naples II Convention as far as appropriate. This includes the use of information for the purposes of the Agreement. The anti-fraud agreement's scope goes beyond the exclusively customs-related scope of the Naples II Convention.

- Article 9 - "Statute of limitations"

This Article is inspired by a similar provision foreseen in Article 10(2) of the Liechtenstein Savings Tax Agreement.

- Article 10 - "Powers"

This Article corresponds to the Naples II Convention, as the provisions of the Agreement will apply within the limits of the powers conferred by national law on each authority concerned in the framework of national proceedings, and do not amend or extend these powers.

- Article 11 - "Limits to exchange of information"

Article 11(1) is inspired by Article 8 of Directive 77/799/EEC and therefore limited to fraudulent activities affecting direct taxes.

While still respecting the standards of the Naples II Convention in the field of administrative assistance, Article 11(2) excludes that the banking secrecy or an ownership interest in a legal person (or other structure which can be qualified as a person) can be opposed to a request for assistance in form of exchange ofinformation. Respective conflicting provisions, for instance under domestic Liechtenstein law, would not be applicable for the purposes of the implementation of the anti-fraud agreement. The provisions under Article 11(2) prevail.

The provision also allows for forwarding of information, which a requested authority already possesses as foreseen similarly in Article 7 of Protocol 11 to the EEA-Agreement.

[14] OJ L 1, 3.1.1994, p. 171.

The term "bank" used throughout the Agreement – alone, in connection with "other financial institution" or even with specific issues such as "information" or "accounts" – is considered to cover "credit institutions" and "financial institutions" as defined in Article 4(1) and (5) of Directive 2006/48/EC relating to the taking up and pursuit of the business of credit institution.[15]

- Article 12 - "Proportionality".

This Article reflects the concern already contained in Article 3 but within the limits of the administrative assistance.

- Article 13 - "Central Departments"

This Article is in line with the content of Article 5 of the Naples II Convention and reflects the negotiating brief's requirement for clear identification of the relevant authorities at central level. The central departments empowered to process the requests for administrative assistance are designated by each Party.

- Article 14 - "Request for information"-, Article 15 - "Request for surveillance"- and Article 16 -"Notification and transmission by post"

These Articles of the Agreement are in line with the content of Articles 10, 11 and 13 of the Naples II Convention.

Article 14(4) is an innovation, insofar as it will allow introducing delays for answering requests in assistance as soon as appropriate Community legislation foreseeing such delays amongst the Member States will come into force.

Article 15 concerns the trade in goods. It is therefore limited in subject matter to illegal activities in connection with the trade of goods and service.

Article 16(2) takes into account the standards set out in Directive 77/799/EC on mutual assistance in the field of direct taxation. Article 16(3) aims to ensure that grant recipients and contractors for the Communities residing in Liechtenstein may be contacted directly by the awarding institution and may respond to requests for documents and information directed to them by the latter in connection with the grants and contracts concerned.

- Article 17 - "Request for investigations"- and Article 18- "Presence of authorised staff of the authority of the requesting contracting Party"

These Articles are in line with the content of Article 12 of the Naples II Convention. Two joint declarations, similar to declarations on corresponding articles in the Swiss Anti-Fraud Agreement, will ensure an application towards Liechtenstein at the same level as towards the Swiss confederation.

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[15] OJ L 177, 30.6.2006, p. 1. Directive 2006/48/EC is a recast of Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions (OJ L 126, 26.5.2000, p. 1), which was incorporated into the EEA by Decision of the EEA Joint Committee No 15/2001 of 28 February 2001 amending Annex IX (Financial services) to the EEA Agreement, OJ L 117, 26.4.2001, p. 13.

Article 18 covers the possibility of authorised staff to be present during the execution of the request for assistance and to consult the documents, to propose questions and suggest measures of investigation in order to contribute to the efficiency of mutual assistance and, where appropriate, to have access to the same premises and documents and information as the staff of the requested authority.

- Article 19 - “Duty to cooperate”

This Article is a corollary of Articles 17 and 18 and reflects similar obligations on traders in the Member States in respect of investigations conducted by their authorities. The second sentence is inspired by the principles of Directive 77/799/EC.

- Article 20 – “Form and content of the request for assistance”

This Article is in line with the content of Article 9 of the Naples II Convention.

- Article 21 - “Use of information”

This Article is similar to Article 11 of Protocol 11 to the EEA-Agreement and it reflects a speciality rule. The use of information will remain confined to the protection of the Parties' financial interests as defined in Article 2.

The Agreement does not contain provisions on spontaneous administrative assistance or on seconded officers. This omission is due to the reduced Liechtenstein administrative capacities.

- Article 22 – "Joint Operations" and Article 23 – “Joint special investigation teams”

These Articles are in line with the content of similar measures covered in the Naples II Convention. They are drafted in such a way as to leave the application of the measures to the discretion of the Parties' authorities.

Article 22 (3) was inserted with regard to fraudulent activities affecting direct taxes and is specifically inspired by Article 8b of Directive 77/799/EC.

Articles 23(4) to (6) are taken from the corresponding provision on Joint special investigation teams in the Naples II Convention.

- Article 24 - “Recovery”

This Article takes over the essence of Articles 6, 7, 9, 10, and 13 of Directive 76/308/EEC. The explicit reference to the German term "Vollstreckungstitel" in Article 24(2) allows avoiding any doubt on the quality of the acts that may be enforced by assistance on recovery.

With regard to fraudulent activities affecting direct taxes, a joint declaration clarifies that recovery assistance is only granted within the scope of the Agreement set out in Article 2 and that thus the requesting authority should not omit to provide the requested authority with the necessary information to allow the latter to verify whether assistance must be provided under the Agreement.

3.3. Mutual legal assistance

- Article 25 - "Relationship with other Agreements"

This Article is based on the same rationale of the complementarity of international instruments as Article 1 of the EU Mutual Assistance Convention.

- Article 26 - "Procedures in which assistance is given"

This Article is in line with the content of Article 49 of the SIC and Article 3 of the EU Mutual Assistance Convention. This Article is now focused on the proceedings where judicial assistance is afforded including as regards those facts or offences for which a legal person could be liable. Article 26(2) has been maintained with the aim of extending the measures laid down in the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of the Council of Europe (Strasbourg 8.11.1990) to offences covered by the anti-fraud Agreement.

- Article 27 - "Transmission of requests"

The direct transmission of requests is in line with Article 6 of the EU Mutual Assistance Convention.

- Article 28 - "Service by post"

This Article is in line with the content of Article 52 of the SIC and Article 5 of the EU Mutual Assistance Convention.

- Article 29 - "Provisional measures"

This Article corresponds to Article 24 of the Second Additional Protocol of 8 November 2001 to the European Convention on Mutual Assistance in Criminal Matters of the Council of Europe (Strasbourg 20.4.1959). Paragraph 2 corresponds to Article 11 of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (Strasbourg 8.11.1990).

- Article 30 - "Presence of the authorities of the requesting Contracting Party"

This Article is in line with Article 4 of the European Convention on Mutual Assistance in Criminal Matters of the Council of Europe (Strasbourg 20.4.1959). Due to the small size of Liechtenstein, the requests for presence of foreign authorities may be exceptionally refused in line with what is foreseen in Article 2 of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters of the Council of Europe (Strasbourg 20.4.1959). It is also inspired on Article 12(2) of the Naples II Convention.

- Article 31 - "Search and seizures"

Judicial cooperation, including search and seizures, will be granted alike for illegal activities in connection with the trade of goods and service and, additionally fraudulent activities affecting direct taxes. Article 31(1)(a) reproduces the wording of Article 51(a) of the SIC. Due to specificities in the Liechtenstein law, Article 31(2) is different from the Swiss Anti-Fraud Agreement. Whereas Article 31(1)(a) covers the

administrative fiscal offences concerning customs and excise duties which are subject to appeal to the Swiss Federal Criminal Court under the terms of the customs union between Switzerland and Liechtenstein, Article 31(2) is a commitment by Liechtenstein to provide assistance for searches and seizure even for the evasion of value-added tax, which is a purely administrative offence under Liechtenstein law and which as a tax offence being investigated by the Liechtenstein authorities may not give rise to an appeal before a court competent inter alia to hear criminal matters. This provision does not create an obligation for the other contracting parties.

Article 31(3) corresponds to the Community anti-laundering standards under Directive 2005/60/EC.

- Article 32 - "Request for banking and financial information"

Requests for information on bank accounts, on banking transactions and requests for the monitoring of banking transactions can refer also to fraudulent activities affecting direct taxes covered by the Agreement and will be treated in compliance with the standards laid down in the Protocol to the EU Mutual Assistance Convention,[16] including, if necessary, the non-disclosure to the person concerned of investigative measures.

- Article 33 - "Controlled deliveries".

This Article is modelled on Article 12 of the EU Mutual Assistance Convention, but since it concerns the trade in goods, it is limited in subject matter to illegal activities in connection with the trade of goods and service.

- Article 34 - "Handing over for confiscation or return"

This Article is inspired by Article 8 of the EU Mutual Assistance Convention.

- Article 35 – "Speeding up mutual assistance"

This Article aims at avoiding excessively long cooperation procedures. The text is in full compliance with Article 4(2), (3) and (4) of the EU Mutual Assistance Convention.

- Article 36 - "Use of evidence"

This Article is in accordance with Article 23 of the EU Mutual Assistance Convention.

- Article 37 - "Spontaneous transmission of evidence"

This Article is based on Article 7 of the EU Mutual Assistance Convention. The additional reference in the Agreement to spontaneous transmission of evidence does not presuppose any substantive change compared with existing rules since the evidential value will of course be determined by criminal procedural law in the country of prosecution. The difference in criminal procedural law between

[16] OJ C326, 21.11.2001, p. 1.

Liechtenstein and Switzerland justified not foreseeing in this Agreement a provision on civil claims as in the Swiss Anti-Fraud Agreement, since that provision was only inserted to redress a specific situation under Swiss case law.

3.4. Final Provisions

- Article 38 - “Joint Committee” and Article 39 - "Dispute settlement"

This Article sets up a Joint Committee for managing the Agreement, whose competencies are mainly to allow future developments in the technical standards of mutual assistance between the Member States, be it where already foreseeable as concerns delays for answering requests (Article 14 (4)), be it where a reform of the Community and European Union law should be agreed, in particular the envisaged reform of Directive 77/799/EEC (Article 38 (5)). Due to the possible impact of these powers on the sovereignty of the Parties, Article 38 (5) contains a constitutional reserve.

Insofar as these adaptations may not be sufficient to obtain future new Community standards of mutual assistance, the Joint Committee is called upon to make recommendations on revising the Agreement as a whole (Article 38 (6)).

The Joint Committee has also a role to play in the implementation of provisions where the practice may determine the good functioning of the co-operation (Joint Declarations to Article 2(4)(f) and Article 24), including settling disputes (Article 39).

- Article 40 -“Territorial scope”

This Article is in line with the standard provisions on the matter.

- Article 41 - “Entry into force”

This Agreement stipulates that the Secretary-General of the European Union will act as the depository.

- Article 42 -“Denunciation”

This Article contains the possibilities of denouncing the Agreement.

- Article 43 -“Temporal application”

This Article contains differentiated provisions for the application of the Agreement to requests concerning illegal activities committed after the signature of the Agreement but before its entry into force.

Whereas temporal application for illegal activities in connection with the trade of goods and service (point a) is regulated in the same way as the corresponding provision in the Swiss Anti-fraud Agreement, the new element of assistance for fraudulent activities affecting direct taxes (point b) requires a longer transition period. This longer transition period has been requested by Liechtenstein for better ensuring legal certainty in the direct tax field.

- Article 44 - “Extension of the Agreement to the new Members of the EU”

This Article is designed to make it easier to extend the Agreement to the new Member States.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 280 in conjunction with the first sentence of the first subparagraph of Article 300 (2) thereof,

Having regard to the proposal from the Commission[17],

Whereas:

(1) Following the authorisation by the Council on 7 November 2006 the Commission has negotiated, on behalf of the Community and its Member States, 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.

(2) Subject to its conclusion at a later date, it is desirable to sign the Agreement that was initialled on .

HAS DECIDED AS FOLLOWS:

Sole Article

Subject to its conclusion at a later date, the President of the Council is hereby authorized to designate the person(s) empowered to sign, on behalf of the European Community, 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.

[17] OJ C , , p. .

Done at Brussels,

For the Council
The President

2008/0234 (CNS)

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 280 in conjunction with the first sentence of the first subparagraph of Article 300 (2) and the first subparagraph of Article 300(3) thereof,

Having regard to the proposal from the Commission[18],

Having regard to the opinion of the European Parliament[19],

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.

(2) According to Council Decision […/…]/EC of , and subject to its conclusion at a later date, the Agreement was signed on behalf of the European Community on .

(3) The Agreement establishes a Joint Committee with decision-making powers in certain areas and it is thus necessary to specify who represents the Community within this Committee.

(4) The Agreement should be approved.

HAS DECIDED AS FOLLOWS:

Article 1

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

[18] OJ C , , p. .
[19] OJ C , , p. .

illegal activity to the detriment of their financial interests is hereby approved on behalf of the European Community.

The text of the Agreement is attached to this Decision.

Article 2

The Community shall be represented on the Joint Committee set up under Article 38 of the Agreement by the Commission.

The position to be taken by the Community in the course of the implementation of the Agreement as regards decisions or recommendations of the Joint Committee shall be laid down by the Council on a proposal from the Commission. The Council shall act by qualified majority, unless a different majority is foreseen with regard to the subject matter discussed in the Joint Committee.

Article 3

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 Community[20].

Article 4

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

Done at Brussels,

For the Council
The President

[20] 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 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

THE EUROPEAN COMMUNITY,

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,

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 Community 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.

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 all 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 Communities and the Principality of Liechtenstein, through fraudulent conduct contrary to the legislation covering direct taxes;

   (c) 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;

(c) ”indirect taxes” as referred to in paragraph (1)(a) shall be regarded as customs duties, value added tax, special tax on consumption and excise duties;

(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;

(d) “direct taxes” referred to in paragraph (1)(b) are taxes on income and capital, irrespective whether income or capital are of private or of business origin and irrespective of the manner in which these taxes are levied, which are imposed on total income, on total capital, or on elements of income or of capital of a natural or legal person, including taxes on gains from the disposal of movable or immovable property, taxes on the amount of wages or salaries paid by enterprises, as well as taxes on capital appreciation;

(e) “fraudulent 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 by natural or legal persons and incorrect business records. Any of the following activities, if committed intentionally, constitutes “fraudulent 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 natural or legal persons and incorrect business records.

Article 3 Minor cases

1. The authority of the requested Party may refuse a request for cooperation 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)(c) 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 Community 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.

(e) As regards assistance in respect of activities covered by Article 2(1)(a) and Article 2(1)(c) 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.

(f) As regards assistance in respect of activities covered by Article 2(1)(b) and Article 2(1)(c) 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.

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

(g) as regards assistance in respect of activities covered by Article 2(1)(a), and Article 2(1)(c) in combination with Article 2(1)(a), the provisions applicable to mutual legal assistance in criminal matters, or more extensive obligations in the field of administrative assistance, or more favourable provisions of bilateral or multilateral cooperation arrangements between the Parties, in particular the Protocol 11 on mutual assistance in customs matters of the EEA Agreement and;

(h) as regards assistance in respect of activities covered by Article 2(1)(b), and Article 2(1)(c) in combination with Article 2(1)(b), the provisions applicable to mutual legal assistance in criminal matters, or more extensive obligations in the field of administrative assistance, or more favourable provisions of bilateral or multilateral cooperation arrangements between 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.[21]

Article 8 Extent of the Administrative Assistance

1. The Parties shall provide each other with mutual assistance to combat illegal activities to which this Agreement applies, 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.

[21] OJ L 379, 24.12.2004, p. 84.

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.

Article 10 Powers

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.

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.

Article 11 Limits to exchange of information

1. Administrative assistance in respect of activities covered by Article 2(1)(b) 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. A Party shall not reject a request for administrative assistance in the form of exchange of 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, nor when the information is already available to its competent administrative authorities.

Article 12 Proportionality

The authority of the requested Party may refuse a request for cooperation where it is clear that:

(i) the number and nature of the requests made by the requesting Party in the course of a given period impose disproportionate administrative burdens on the authority of the requested Party;

(j) 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.

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. At the request of the authority of the requesting Party, the authority of the requested Party shall provide the former, within the limits of the scope of this Agreement, with all the information available to it or to other authorities of the same Party to enable it to prevent, detect, prosecute and punish the illegal activities to which the Agreement applies or needed to recover a claim. The authority of the requested Party shall undertake all requisite administrative inquiries needed to gather such information.

2. 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.

3. 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.

4. 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 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 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:

   (k) the requesting authority;

   (l) the measure requested;

   (m) the object and the grounds for the request;

   (n) the legislation, rules and other legal provisions involved;

   (o) the clearest and fullest indications possible of the natural or legal persons to be investigated;

   (p) 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 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 form 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. More favourable provisions of bilateral or multilateral Agreements between the Parties are not affected.

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:

   (q) 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;

   (r) in civil actions joined to criminal proceedings, as long as the criminal court has not yet taken a final decision in the criminal proceedings;

   (s) 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:

   (t) 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;

   (u) 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:

   (v) 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;

   (w) 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:

   (x) 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;

   (y) 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;

   (z) include all information available which may facilitate the execution of the request.

5. A Party shall not invoke banking secrecy as grounds for rejecting all cooperation on a request for mutual legal assistance from another Party.

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:

(aa) 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.

(bb) where the facts on which the request is based constitute another offence for which assistance ought also to be given;

(cc) 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, consisting of representatives of the Parties, and shall be responsible for the sound application of this Agreement. To that end, it shall make recommendations and take decisions in the cases provided for by the Agreement. It shall act by mutual agreement.

2. The Joint Committee 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.

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 with regard to future developments on matters of mutual administrative assistance insofar as they have been agreed by the Member States of the European Community to be included in European Community legislation or in a European Union legal act. 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 Treaty establishing the European Community is applicable in accordance with the conditions provided for by that Treaty.

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, 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 Community 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:

(dd) in respect of activities covered by Article 2(1)(a) and Article 2(1)(c) in combination with Article 2(1)(a), concerning those illegal activities committed at least six months after it was signed; and

(ee) in respect of activities covered by Article 2(1)(b) and Article 2(1)(c) in combination with Article 2(1)(b), concerning those illegal activities committed at least one year after it was signed.

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 may, by written notification to the Parties, 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 Community 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 2nd 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 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.

Other declarations:

Declaration by Liechtenstein on Article 11(2)

Beyond the scope of this Agreement, the Principality of Liechtenstein declares its readiness to negotiate comprehensive bilateral agreements for the elimination of double taxation, integrating the OECD standard on exchange of information as contained in Article 26 of the Model Tax Convention on Income and on Capital as approved by the OECD Committee on

Fiscal Affairs on 1st June 2004, with the Member States of the European Community that are willing to do so.

LEGISLATIVE FINANCIAL STATEMENT

1. NAME OF THE PROPOSAL:

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.

2. ABM / ABB FRAMEWORK

Policy Area(s) concerned and associated Activity/Activities:

Title 24 — Fight against fraud, and

Title 14 — Taxation and customs union.

3. BUDGET LINES

3.1. Budget lines (operational lines and related technical and administrative assistance lines (ex- B..A lines)) including headings:

3.2. Duration of the action and of the financial impact:

From its ratification by the European Community, all Member States and the Principality of Liechtenstein.

3.3. Budgetary characteristics:

non applicable

4. SUMMARY OF RESOURCES

4.1. Financial Resources

4.1.1. Summary of commitment appropriations (CA) and payment appropriations (PA)

Not applicable

4.1.2. Compatibility with Financial Programming

☑ Proposal is compatible with existing financial programming.

☐ Proposal will entail reprogramming of the relevant heading in the financial perspective.

☐ Proposal may require application of the provisions of the Interinstitutional Agreement (i.e. flexibility instrument or revision of the financial perspective).

4.1.3. Financial impact on Revenue

☑ Proposal has no financial implications on revenue

☐ Proposal has financial impact – the effect on revenue is as follows:

4.2. Human Resources FTE (including officials, temporary and external staff) – see detail under point 8.2.1.

Annual requirements	Year n	n + 1	n + 2	n + 3	n + 4	n + 5 and later
Total number of human resources	0,1	0,1	0,1	0,1	0,1	0,1

5. CHARACTERISTICS AND OBJECTIVES

5.1. Need to be met in the short or long term

No specific need to be met in the short or long term.

5.2. Value-added of Community involvement and coherence of the proposal with other financial instruments and possible synergy

The Community value-added lies in providing a more effective legal basis for administrative and judicial cooperation with Liechtenstein against fraud affecting the Community financial interests, including VAT and excise fraud and money-laundering of relevant proceeds.

5.3. Objectives, expected results and related indicators of the proposal in the context of the ABM framework

Expected results concern mainly the reduction of the potential risk for resources and expenditure of the budget of the European Communities by way of an increased co-operation with Liechtenstein.

The Commission's participation in the Joint Committee set up according to Article 38 of the Agreement allows for smooth application of the Agreement in practice.

5.4. Method of Implementation (indicative)

☑ ***Centralised Management***

- ☑ directly by the Commission
- ☐ indirectly by delegation to:
  - ☐ executive Agencies
  - ☐ bodies set up by the Communities as referred to in art. 185 of the Financial Regulation
  - ☐ national public-sector bodies/bodies with public-service mission

☐ ***Shared or decentralised management***

- ☐ with Member states
- ☐ with Third countries

☐ ***Joint management with international organisations (please specify)***

Relevant comments: The main impact on the EC budget are the administrative costs running up due to the Commission's participation in the Joint Committee set up according to Article 38 of the Agreement.

6. MONITORING AND EVALUATION

6.1. Monitoring system

The monitoring is sufficiently guaranteed for due to the mechanisms related to administrative expenditure for personnel and missions evolving by the participation once a year Joint Committee set up according to Article 38 of the Agreement.

6.2. Evaluation

6.2.1. Ex-ante evaluation

Expenses will be limited to mission cost.

6.2.2. Measures taken following an intermediate/ex-post evaluation (lessons learned from similar experiences in the past)

Due to the limitation of expenses to mission cost an intermediate/ex-post evaluation is not foreseen.

6.2.3. Terms and frequency of future evaluation

See point 6.2.2.

7. ANTI-FRAUD MEASURES

The Agreement is an anti-fraud measure.

8. DETAILS OF RESOURCES

8.1. Objectives of the proposal in terms of their financial cost

Not applicable.

8.2. Administrative Expenditure

8.2.1. Number and type of human resources

Types of post		Staff to be assigned to management of the action using existing and/or additional resources (**number of posts/FTEs**)					
		Year n	Year n+1	Year n+2	Year n+3	Year n+4	Year n+5
Officials or temporary staff (XX 01 01)	A*/AD	0,1	0,1	0,1	0,1	0,1	0,1
	B*, C*/AST						
Staff financed by art. XX 01 02							

Other staff financed by art. XX 01 04/05						
TOTAL	0,1	0,1	0,1	0,1	0,1	0,1

8.2.2. Description of tasks deriving from the action

One meeting per year of the mixed Committee provided for under Article 38 of the Agreement and as needed.

8.2.3. Sources of human resources (statutory)

☑ Posts currently allocated to the management of the programme to be replaced or extended

☐ Posts pre-allocated within the APS/PDB exercise for year n

☐ Posts to be requested in the next APS/PDB procedure

☐ Posts to be redeployed using existing resources within the managing service (internal redeployment)

☐ Posts required for year n although not foreseen in the APS/PDB exercise of the year in question

8.2.4. Other Administrative expenditure included in reference amount (XX 01 04/05 – Expenditure on administrative management)

EUR million (to 3 decimal places)

Budget line (number and heading)	Year n	Year n+1	Year n+2	Year n+3	Year n+4	Year n+5 and later	TOTAL
1 Technical and administrative assistance (including related staff costs)							
Executive agencies							
Other technical and administrative assistance							
- *intra muros*							
- *extra muros*							
Total Technical and administrative assistance							

8.2.5. Financial cost of human resources and associated costs <u>not</u> included in the reference amount

EUR million (to 3 decimal places)

Type of human resources	Year n	Year n+1	Year n+2	Year n+3	Year n+4	Year n+5 and later
Officials and temporary staff (XX 01 01)	0.1	0.1	0.1	0.1	0.1	0.1
Staff financed by Art XX 01 02 (auxiliary, END, contract staff, etc.) (specify budget line)						
Total cost of Human Resources and associated costs (NOT in reference amount)	0,011	0,011	0,011	0,011	0,011	0,011

Calculation– ***Officials and Temporary agents***

Not applicable. 117 000 x 0,1 staff

Calculation– ***Staff financed under art. XX 01 02***

Not applicable.

8.2.6. Other administrative expenditure <u>not</u> included in reference amount

EUR million (to 3 decimal places)

	Year n	Year n+1	Year n+2	Year n+3	Year n+4	Year n+5 and later	TOTAL
XX 01 02 11 01 – Missions24,.010600.010211 - Missions.	0,010 0,010	0,010 0,010	0,010 0,010	0,010 0,010	0,010 0,010	0,010 0,010	0,120
XX 01 02 11 02 – Meetings & Conferences							
XX 01 02 11 03 – Committees 24.010600.010211 – Committees	0,005	0,005	0,005	0,005	0,005	0,005	0,030
XX 01 02 11 04 – Studies & consultations							
XX 01 02 11 05 - Information systems							
2 Total Other Management Expenditure (24.010600.0201) **joint operations and joint investigations teams**	0,020	0,020	0,020	0,020	0,020	0,020	0,120
3 Other expenditure of an administrative nature (specify including reference to budget line)							
Total Administrative expenditure, other than human resources and associated costs (NOT included in reference amount)	0,045	0,045	0,045	0,045	0,045	0,045	0,270

Calculation - ***Other administrative expenditure <u>not</u> included in reference amount***

Committees 1 meeting per year with 3 participants from OLAF and 3 from other DGs.

2 Joint operations per year.