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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: Arrangement between the European Union and the Principality of Liechtenstein
on the modalities of its participation in the European Asylum Support Office

ARRANGEMENT
BETWEEN THE EUROPEAN UNION
AND THE PRINCIPALITY OF LIECHTENSTEIN
ON THE MODALITIES OF ITS PARTICIPATION
IN THE EUROPEAN ASYLUM SUPPORT OFFICE

THE EUROPEAN UNION, hereinafter referred to as the "EU",

of the one part, and

THE PRINCIPALITY OF LIECHTENSTEIN, hereinafter referred to as "Liechtenstein",

of the other part,

Having regard to Article 49(1) of Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office¹, hereinafter referred to as the "Regulation",

WHEREAS

- (1) The Regulation states that, to fulfil its purpose, the European Asylum Support Office, hereinafter referred to as the "Support Office", should be open to participation by countries which have concluded agreements with the EU by virtue of which they have adopted and apply EU law in the field covered by the Regulation, in particular, Iceland, Liechtenstein, Norway and Switzerland, hereinafter referred to as the "associate countries",

¹ OJ EU L 132, 29.5.2010, p. 11.

- (2) Liechtenstein has concluded agreements with the EU, by virtue of which it has adopted and applies EU law in the field covered by the Regulation, in particular Liechtenstein has acceded to the Agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland¹,

HAVE AGREED AS FOLLOWS:

ARTICLE 1

Extent of participation

Liechtenstein shall participate fully in the work of the Support Office and be entitled to receive support actions from the Support Office as described in the Regulation and in accordance with the terms set out by this Arrangement.

ARTICLE 2

Management Board

Liechtenstein shall be represented in the Management Board of the Support Office as an observer without the right to vote.

¹ OJ EU L 160, 18.6.2011, p. 39.

ARTICLE 3

Financial contribution

1. Liechtenstein shall contribute to the revenue of the Support Office an annual sum calculated in accordance with its Gross Domestic Product (GDP) as a percentage of the GDP of all participating States in accordance with the formula laid down in Annex I.
2. The financial contribution referred to in paragraph 1 shall be incurred as from the day following the entry into force of this Arrangement. The first financial contribution shall be reduced proportionally to the remaining time in the year after the entry into force of this Arrangement.

ARTICLE 4

Data Protection

1. In applying this Arrangement, Liechtenstein shall process data in line with Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data¹.

¹ OJ EC L 281, 23.11.1995, p. 31.

2. For the purpose of this Arrangement, Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data¹ shall apply to the processing of personal data carried out by the Support Office.

3. Liechtenstein shall respect the rules on confidentiality of documents held by the Support Office, as set out in the Rules of Procedure of the Management Board.

ARTICLE 5

Legal status

The Support Office shall have legal personality under the law of Liechtenstein and shall enjoy in Liechtenstein the most extensive legal capacity accorded to legal persons under the law of Liechtenstein. It may, in particular, acquire or dispose of movable and immovable property and may be party to legal proceedings.

ARTICLE 6

Liability

The liability of the Support Office shall be governed by Article 45(1), (3) and (5) of the Regulation.

¹ OJ EC L 8, 12.1.2001, p. 1.

ARTICLE 7

Court of Justice of the European Union

Liechtenstein shall recognise the jurisdiction of the Court of Justice of the European Union over the Support Office, as provided for in Article 45(2) and (4) of the Regulation.

ARTICLE 8

Staff of the Support Office

1. In accordance with Article 38(1) and Article 49(1) of the Regulation, the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Union, the rules adopted jointly by the E U institutions for the purpose of applying those Staff Regulations and Conditions of Employment and the implementing measures adopted by the Support Office according to Article 38(2) of the Regulation apply to nationals of Liechtenstein recruited as staff members by the Support Office.
2. By way of derogation from Article 12(2)(a) and Article 82(3)(a) of the Conditions of Employment of Other Servants of the European Union, nationals of Liechtenstein enjoying their full rights as citizens may be engaged under contract by the Executive Director of the Support Office according to the existing rules for selection and engagement of staff adopted by the Support Office.

3. Article 38(4) of the Regulation shall apply mutatis mutandis to the nationals of Liechtenstein.
4. Nationals of Liechtenstein may not, however, be appointed to the post of Executive Director of the Support Office.

ARTICLE 9

Privileges and immunities

Liechtenstein shall apply to the Support Office and to its staff the Protocol on the Privileges and Immunities of the European Union¹ as well as any rules adopted pursuant to that Protocol relating to staff matters of the Support Office.

ARTICLE 10

Combating fraud

The provisions concerning Article 44 of the Regulation relating to financial control by the EU in Liechtenstein concerning the participants in the activities of the Support Office are set out in Annex II.

¹ OJ EU C 83, 30.3.2010, p. 266.

ARTICLE 11

Committee

1. A Committee, composed of representatives of the European Commission and Liechtenstein, shall monitor the proper implementation of this Arrangement and ensure a continuous process of information provision and exchange of views in this respect. For practical reasons, the Committee shall meet jointly with the corresponding Committees set up with other associated countries participating on the basis of Article 49(1) of the Regulation. It shall meet upon request by either Liechtenstein or the European Commission. The Management Board of the Support Office shall be informed about the work of the Committee.
2. Information about foreseen EU legislation, which either directly affects or amends the Regulation or is expected to have implications relating to the financial contribution laid down in Article 3 of this Arrangement, shall be shared and an exchange of views thereon shall take place in the Committee.

ARTICLE 12

Annexes

The Annexes to this Arrangement shall constitute an integral part of this Arrangement.

ARTICLE 13

Entry into force

1. The Contracting Parties shall approve this Arrangement in accordance with their own internal procedures. They shall notify each other of the completion of those procedures.
2. This Arrangement shall enter into force on the first day of the first month following the day of the last notification referred to in paragraph 1.

ARTICLE 14

Termination and validity

1. This Arrangement shall be concluded for an unlimited period.
2. Each Contracting Party may, after consultations within the Committee, denounce this Arrangement by notifying the other Contracting Party. This Arrangement shall cease to apply six months after the date of such notification.

3. This Arrangement shall be terminated in case of termination of the Protocol between the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland¹.

4. This Arrangement shall be drawn up in duplicate in the Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages, each of those texts being equally authentic.

Done at..., on ...day of ... in the year.

.....

For the European Union

.....

For the Principality of Liechtenstein

¹ OJ EU L 160, 18.6.2011, p. 39.

Formula to calculate the contribution

1. The financial contribution of Liechtenstein to the revenue of the Support Office defined in Article 33(3)(d) of the Regulation shall be calculated in the following way:

The most updated final figures of the Gross Domestic Product (GDP) of Liechtenstein available on 31 March of each year shall be divided by the sum of the GDP figures of all the States participating in the Support Office available for the same year. The obtained percentage will be applied to the part of the authorised Support Office's revenue as defined in Article 33(3)(a) of the Regulation in the year under consideration to obtain the amount of the financial contribution of Liechtenstein.

2. The financial contribution shall be paid in euro.

3. Liechtenstein shall pay its financial contribution no later than 45 days after receiving the debit note. Any delay in payment shall give rise to the payment of default interest by Liechtenstein on the outstanding amount from the due date. The interest rate shall be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the Official Journal of the European Union, in force on the first day of the month in which the deadline falls, increased by 3,5 percentage points.

4. Liechtenstein's financial contribution shall be adapted in accordance with this Annex when the financial contribution from the European Union entered in the general budget of the EU as defined in Article 33(3)(a) of the Regulation is increased pursuant to Articles 26, 27 or 41 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002¹. In such a case, the difference shall be due 45 days after receiving the debit note.

5. In the event that payment credits of the Support Office received from the EU according to Article 33(3)(a) of the Regulation related to a year N are not spent by 31 December of year N, or that the Support Office budget of the year N has been lowered according to Articles 26, 27 or 41 of the Regulation (EU, Euratom) No 966/2012, the part of these unspent or lowered payment credits corresponding to the percentage of the contribution made by Liechtenstein shall be transferred to the budget of year N+1 of the Support Office. Liechtenstein's contribution to the Support Office's budget of year N+1 will be reduced accordingly.

¹ OJ EU L 298, 26.10.2012, p. 1.

Financial control as regards participants from Liechtenstein
in activities of the Support Office

ARTICLE 1

Direct communication

The Support Office and the European Commission shall communicate directly with all persons or entities established in Liechtenstein and participating in activities of the Support Office, as contractors, participants in Support Office programmes, recipients of payments from the Support Office or the EU budget, or subcontractors. Such persons may send directly to the European Commission and to the Support Office all relevant information and documentation which they are required to submit on the basis of the instruments referred to in this Arrangement and of contracts or agreements concluded and any decisions taken pursuant to them.

ARTICLE 2

Audits

1. In accordance with Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002¹, with Commission Regulation (EC, Euratom) No 2343/2002 of 23 December 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities² and with the other instruments referred to in this Arrangement, contracts or agreements concluded and decisions taken with beneficiaries established in Liechtenstein may provide for scientific, financial, technological or other audits to be conducted at any time on the premises of the beneficiaries and of their subcontractors by Support Office and European Commission officials or by other persons mandated by the Support Office and the European Commission.

2. Support Office and European Commission officials and other persons mandated by the Support Office and the European Commission shall have appropriate access to sites, works and documents and to all the information required in order to carry out such audits, including in electronic form. This right of access shall be stated explicitly in the contracts or agreements concluded to implement the instruments referred to in this Arrangement.

¹ OJ EU L 298, 26.10.2012, p. 1.

² OJ EC L 357, 31.12.2002, p. 72, as last amended by Commission Regulation (EC, Euratom) No 652/2008 (OJ EU L 181, 10.7.2008, p. 23).

3. The European Court of Auditors shall have the same rights as the European Commission.
4. The audits may take place until five years after the expiry of this Arrangement or under the terms of the contracts or agreements concluded and the decisions taken.
5. The National Audit Office of Liechtenstein shall be informed in advance of audits conducted on the territory of Liechtenstein. This information shall not be a legal condition for carrying out such audits.

ARTICLE 3

On-the-spot checks

1. Under this Arrangement, the European Commission (OLAF) shall be authorised to carry out on-the-spot checks and inspections on the territory of Liechtenstein, under the terms and conditions set out in Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities¹.

¹ OJ EC L 292, 15.11.1996, p. 2.

2. On-the-spot checks and inspections shall be prepared and conducted by the European Commission in close cooperation with the National Audit Office of Liechtenstein or with other competent authorities in Liechtenstein appointed by National Audit Office of Liechtenstein, which shall be notified in good time of the object, purpose and legal basis of the checks and inspections, so that they can provide all the requisite help. To that end, the officials of the competent authorities in Liechtenstein may participate in the on-the-spot checks and inspections.
3. If the authorities of Liechtenstein concerned so wish, the on-the-spot checks and inspections may be carried out jointly by the European Commission and by them.
4. Where the participants in the programme resist an on-the-spot check or inspection, the authorities of Liechtenstein, acting in accordance with national rules, shall give the European Commission inspectors such assistance as they need to allow them to discharge their duty in carrying out an on-the-spot check or inspection.
5. The European Commission shall report as soon as possible to the National Audit Office of Liechtenstein any fact or suspicion relating to an irregularity which has come to its notice in the course of the on-the-spot check or inspection. In any event, the Commission is required to inform the aforementioned authority of the result of such checks and inspections.

ARTICLE 4

Information and consultation

1. For the purposes of proper implementation of this Annex, the competent authorities of Liechtenstein and the EU shall exchange information regularly and, at the request of one of the Contracting Parties, shall conduct consultations.
2. The competent authorities of Liechtenstein shall inform the Support Office and the European Commission without delay of any fact or suspicion which has come to their notice relating to an irregularity in connection with the conclusion and implementation of the contracts or agreements concluded in application of the instruments referred to in this Arrangement.

ARTICLE 5

Confidentiality

Information communicated or acquired in any form whatever pursuant to this Annex shall be covered by professional secrecy and protected in the same way as similar information is protected by Liechtenstein law and by the corresponding provisions applicable to the EU institutions. Such information shall not be communicated to persons other than those within the EU institutions, in the Member States, or in Liechtenstein whose functions require them to know it, nor may it be used for purposes other than to ensure effective protection of the financial interests of the Contracting Parties.

ARTICLE 6

Administrative measures and penalties

Without prejudice to application of Liechtenstein criminal law, administrative measures and penalties may be imposed by the Support Office or the European Commission in accordance with Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002¹ and Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union² and with Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests³.

¹ OJ EU L 298, 26.10.2012, p. 1.

² OJ EU L 362, 31.12.2012, p.1.

³ OJ EC L 312, 23.12.1995, p. 1.

ARTICLE 7

Recovery and enforcement

Decisions taken by the Support Office or the European Commission within the scope of this Arrangement which impose a pecuniary obligation on persons other than States shall be enforceable in Liechtenstein. The enforcement order shall be issued, without any further control than verification of the authenticity of the act, by the authority designated by the government of Liechtenstein, which shall inform the Support Office or the European Commission thereof. Enforcement shall take place in accordance with the rules of procedure of Liechtenstein. The legality of the enforcement decision shall be subject to control by the Court of Justice of the European Union.

Judgments given by the Court of Justice of the European Union pursuant to an arbitration clause shall be enforceable on the same terms.