



Council of the
European Union

Brussels, 18 August 2015
(OR. en)

11469/15

Interinstitutional File:
2015/0175 (NLE)

FISC 101
ECOFIN 662
AELE 35
FL 3

PROPOSAL

From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 7 August 2015

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of
the European Union

No. Cion doc.: COM(2015) 395 final

Subject: Proposal for a COUNCIL DECISION on the conclusion, on behalf of the
European Union, of the Amending Protocol 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

Delegations will find attached document COM(2015) 395 final.

Encl.: COM(2015) 395 final



Brussels, 7.8.2015
COM(2015) 395 final

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Proposal for a

COUNCIL DECISION

on the conclusion, on behalf of the European Union, of the Amending Protocol 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

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Following the adoption of Council Directive 2003/48/EC, the Savings Directive, and in order to preserve the level playing field of economic operators, the EU signed Agreements with Switzerland, Andorra, Liechtenstein, Monaco and San Marino providing for measures equivalent to those laid down in the Directive. Member States also signed agreements with the dependent territories of the United Kingdom and the Netherlands.

More recently, the importance of automatic exchange of information as a means to combat cross-border tax fraud and tax evasion by ensuring full tax transparency and cooperation between tax administrations worldwide has also been recognised at the international level. The Organisation for Economic Cooperation and Development (OECD) was mandated by the G20 to develop a single global standard for automatic exchange of financial account information. The Global Standard was released by the OECD Council in July 2014.

Following the adoption of a proposal to update the Savings Directive, the Commission adopted on 17 June 2011 a recommendation for a mandate to initiate negotiations with Switzerland, Liechtenstein, Andorra, Monaco and San Marino, in order to upgrade the EU's Agreements with those countries in line with international developments and to ensure that those countries continue to apply measures equivalent to those in the EU. On 14 May 2013, the Council reached an agreement on the Negotiating Mandate by concluding that negotiations should be aligned with the recent developments at global level where it was agreed to promote automatic exchange of information as an international standard.

In its communication of 6 December 2012 containing an Action Plan to strengthen the fight against tax fraud and tax evasion, the Commission highlighted the need to promote vigorously the automatic exchange of information as the future European and international standard for transparency and exchange of information in tax matters.

On the basis of a proposal presented by the Commission in June 2013, the Council on 9 December 2014 adopted Directive 2014/107/EU amending Directive 2011/16/EU and extending the mandatory automatic exchange of information between EU tax authorities to a full range of financial items in accordance with the Global Standard. The amendment ensures a coherent, consistent and comprehensive Union-wide approach to the automatic exchange of financial account information in the Internal Market.

As Directive 2014/107/EU is generally broader in scope than Directive 2003/48/EC and provides that in cases of overlap of scope, Directive 2014/107/EU prevails, on 18 March 2015 the Commission adopted a proposal to repeal Directive 2003/48/EC.

In order to minimise costs and administrative burdens both for tax administrations and for economic operators, it is crucial to ensure that the amendment of the existing Savings Agreement with Liechtenstein is in line with EU and international

developments. This will increase tax transparency in Europe and will be the legal basis for implementing the OECD Global Standard on automatic exchange of information between Liechtenstein and the EU.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

The legal basis for this proposal is provided by Article 115 of the Treaty on the Functioning of the European Union, in conjunction with Article 218(5) and (8) second subparagraph. The substantive legal basis is provided by Article 115 TFEU.

Article 1 of the Amending Protocol annexed to this Proposal for Council Decision changes the title of the existing Agreement in order to better reflect the contents of the Agreement, as amended by that Amending Protocol. It also replaces the existing articles and Annexes with a new set of provisions comprising 10 Articles, an Annex I that reflects the OECD Common Reporting Standard which is part of the Global Standard, an Annex II that reflects important parts of the OECD Commentaries to the Global Standard and an Annex III that lists the Competent Authorities of Liechtenstein and of each Member State.

The new Articles reflect the articles of the OECD Model Competent Authority agreement for the implementation of the Global Standard, with minor adaptations to reflect the particular legal context of an EU Agreement. In Article 1 there is no definition of Tax Identification Number (TIN), since there is already a definition of TIN in Section VIII(E)(5) of Annex I. Article 5 includes a full set of provisions on exchange of information upon request that follows the latest text of the OECD Model Tax Convention. Article 6 includes a more detailed set of provisions on data protection. Article 7 provides for an additional stage of consultation before any Member State or Liechtenstein undertake to suspend the Agreement. Article 8 features provisions on amendments to the Agreement, including a quick mechanism for provisional application by one of the Contracting Parties of amendments to the Global Standard, on the condition of consent by the other Party. Article 10 defines the territorial scope.

Annex I follows both the OECD Common Reporting Standard and Annex I to the Directive on Administrative Cooperation. Annex II implements key parts of the CRS Commentaries and corresponds to Annex II to the Directive on Administrative Cooperation. The minor deviations from Annex I or II to the Directive on Administrative Cooperation are justified by the re-alignment of the text to the OECD Common Reporting Standard (CRS) requested by the Liechtenstein negotiators. Those include the following:

1. In Section I(D) the reference to the reporting of place of birth is realigned to the CRS.
2. The definitions of “International Organisation” and “Central Bank” in Section VIII(B)(3) and (4) have been realigned to the CRS in order to enable them to apply also in the context of the exemption from the look-through for Passive non-financial entities (NFEs) in Section VIII(D)(9)(c).
3. In Annex II the definition of “Residence of a Financial Institution” is aligned to the CRS Commentaries in order to cover cases where the residence of another

Financial Institution should be determined, e.g. for the look-through for Passive NFEs.

Article 2 of the Amending Protocol includes provisions on the entry into force and application. It deals with issues on the transition from the existing Agreement to the amended Agreement, with regard to requests for information, credits available to beneficial owners for withholding tax, final payments of withholding tax by Liechtenstein to Member States and final exchange of information under the voluntary disclosure mechanism.

Article 3 lists the languages in which the Amending Protocol is signed.

The revised Agreement is supplemented by two Joint Declarations of the contracting parties.

The first Joint Declaration makes a link to the Commentaries to the Global Standard and Article 26 of the OECD Model Tax Convention on Income and on Capital. The second Declaration concerns the expected date of entry into force of the revised Agreement.

The proposal does not go beyond what is necessary or appropriate to achieve the expected objectives.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

The Amending Protocol implements the Global Standard between EU Member States and Liechtenstein. The different stakeholders were already consulted on various occasions during the development of the OECD Global Standard.

EU Member States have also been consulted and informed during the negotiation between the Commission and Liechtenstein. The Commission reported to the European Council at its meeting in March 2014 and in December 2014 on the state of play of savings negotiations with Liechtenstein.

The Commission has also consulted the new Expert Group on automatic exchange of financial account information that provides advice to ensure that EU legislation on automatic exchange of information in direct taxation is effectively aligned and fully compatible with the OECD Global Standard on automatic exchange of financial account information. The Expert Group includes representatives from organisations representing the financial sector and organisations campaigning against tax evasion and tax avoidance.

4. BUDGETARY IMPLICATIONS

The proposal does not have any budgetary implications

5. OTHER ELEMENTS

None

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 115 in conjunction with Article 218 (6) (b) and (8), second subparagraph, thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Parliament¹,

After consultation of the European Data Protection Supervisor,

Whereas:

- (1) In accordance with Decision 2015/XXX/EU, the Amending Protocol 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 was signed on XX XXXX 2015, subject to its conclusion at a later date.
- (2) The text of the Amending Protocol, which is the result of the negotiations, duly reflects the negotiating directive issued by the Council as it aligns the aforementioned Agreement with the latest developments at international level concerning automatic exchange of information, namely, with the Global Standard for automatic exchange of financial account information in tax matters developed by the Organisation for Economic Cooperation and Development (OECD). The Union, its Member States and the Principality of Liechtenstein have actively participated in the work of the Global Forum of the OECD for supporting the development and implementation of this Standard. The text of the Agreement, as amended by this Amending Protocol, is the legal basis for implementing the Global Standard in the relations between the European Union and the Principality of Liechtenstein.
- (3) The Amending Protocol should be approved on behalf of the Union,

¹ OJ C , , p . .

HAS ADOPTED THIS DECISION:

Article 1

The Amending Protocol 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 is hereby approved on behalf of the European Union.

The text of the Amending Protocol is attached to this Decision.

Article 2

- (1) The President of the Council shall, on behalf of the Union, give the notification provided for in Article 3 (1) of the Amending Protocol.
- (2) The Commission shall inform the Principality of Liechtenstein and the Member States of the notifications given in accordance with Article 1(1)d of the Agreement between the European Union and the Principality of Liechtenstein on the automatic exchange of financial account information to improve international tax compliance as resulting from the Amending Protocol.

Article 3

This Decision shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union

Done at Brussels,

*For the Council
The President*