



Council of the
European Union

075215/EU XXV. GP
Eingelangt am 02/09/15

Brussels, 2 September 2015
(OR. en)

11640/15

FL 5
EEE 31
ETS 8
MI 539

COVER NOTE

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	28 September 2015
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

No. Cion doc.:	COM(2015) 411 final
Subject:	COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT Liechtenstein Sectoral Adaptations - Review

Delegations will find attached document COM(2015) 411 final.

Encl.: COM(2015) 411 final



EUROPEAN
COMMISSION

Brussels, 28.8.2015
COM(2015) 411 final

**COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE
EUROPEAN PARLIAMENT**

Liechtenstein Sectoral Adaptations - Review

1. INTRODUCTION

Protocol 15 of the Agreement on the European Economic Area (EEA Agreement) on transitional periods on the free movement of persons stated that Liechtenstein could maintain in force quantitative limitations for new residents until 1 January 1998 with regard to nationals of EC Member States and other EFTA States. Decision No 1/95 of 10 March 1995¹ of the EEA Council on the entry into force of the Agreement on the European Economic Area for the Principality of Liechtenstein included a special Declaration by the EEA Council on the free movement of persons. This Joint Declaration states that a review is to be carried out at the end of a transitional period provided for in Protocol 15 of the EEA Agreement, taking into account Liechtenstein's 'specific geographic situation'. The same Declaration provides some guidance on what this specific situation implies: 'The EEA Council recognises that Liechtenstein has a very small inhabitable area of rural character with an unusually high percentage of non-national residents and employees. Moreover, it acknowledges the vital interest of Liechtenstein to maintain its own national identity.'

After the expiry of Protocol 15 of the EEA Agreement on the free movement of persons, Liechtenstein and the European Union came to a specific arrangement in 1999. This arrangement, known as the 'Sectoral Adaptations', was initially laid down in the Decision of the Joint Committee 191/1999² and then incorporated into Annexes V (Free movement of workers) and VIII (Right of establishment) to the EEA Agreement. Under the Sectoral Adaptations, the free movement of persons applies to Liechtenstein. However, EEA citizens wishing to take up residence in Liechtenstein have to obtain a residence permit. The Adaptations establish a minimum number of permits to be issued to EEA citizens every year, constituting a yearly net increase in the residing EEA population of 1.75 % (for economically active people) and 0.5 % (for economically inactive people) respectively³ of

¹ OJ L 86, 20.4.1995, p. 58.

² EEA JCD M 191/1999 of 17 December 1999 amending Annexes VIII (Right of establishment) and V (Free movement of workers) to the EEA Agreement.

³ Annex VIII (Right of establishment):
'Title II

1. The number of residence permits available annually for nationals of Iceland, Norway or an EU Member State exercising an economic activity in Liechtenstein shall be determined in such a way that the yearly net increase from the previous year in the number of economically active nationals of those countries resident in Liechtenstein is not less than 1.75 % of their number on 1 January 1998.
[...]
2. The Liechtenstein authorities shall grant residence permits in a way that is not discriminatory and does not distort competition. Half of the net increase in the permits available shall be granted in accordance with a procedure that gives an equal chance to all applicants.
3. Residents who have a short-term permit and who exercise an economic activity shall be included in the quota.
[...]
The number of short-term permits available for the purposes of exercising an economic activity shall not deviate by more than 10 % from what it was in 1997.

Title III

Family members of nationals of Iceland, Norway and EU Member States residing lawfully in Liechtenstein shall have the right to obtain a permit of the same validity as that of the person on whom they depend. They shall have the right to take up an economic activity, in which case they will be included in the number of permits granted to economically active persons.

Title V

A supplementary annual quota of 0,5% of the basis referred to in point II shall be available for persons who wish to take up residence [...]

their number in 1998. Obtaining residence permits, however, is not a prerequisite to work in Liechtenstein.

In the course of the 2004 enlargement, these arrangements, first agreed for a term of five years, were continued, subject to the requirement that they should be reviewed every five years. Following the first review in 2009, a second review was launched in 2014.

This Communication is part of that review. Its focus is on whether Liechtenstein should be allowed to continue applying these restrictions to the number of residence permits it grants.

2. SECTORAL ADAPTATIONS IN PRACTICE

Liechtenstein issues yearly reports on how it applies the Adaptations. It then shares the reports with its EU counterparts and the European Free Trade Association (EFTA) Surveillance Authority. The information provided below is based on the report Liechtenstein submitted in 2014.

The Liechtenstein authorities can issue a minimum of 56 new residence permits and around 300 new short-term permits (not exceeding 12 months) a year to EEA citizens exercising an economic activity in Liechtenstein. Every year Liechtenstein fulfils its quota obligations for new permits. The number of short-term permits is usually below 300. A supplementary quota is available for people who are not exercising an economic activity and who wish to take up residence in Liechtenstein. This quota is around 20 permits a year. There are no restrictions preventing family members of a holder of a residence permit from joining their spouse/family and taking up residence in Liechtenstein. They also have the right to take up an economic activity.

Year	Number of applications by economically active people	Number of applications by economically inactive people
2001	502	53
2002	516	45
2003	467	31
2004	500	24
2005	436	16
2006	555	26
2007	615	33
2008	801	44
2009	657	33
2010	587	25
2011	598	41

2012	483	27
2013	464	16

Following the 2009 review, the specific arrangements remained unchanged.

3. THE 2014 REVIEW

The current review process started in 2014.

The latest figures provided by Liechtenstein (see table above) show a significant decline in the number of applications for residence permits by economically active and inactive people, following a peak in 2008. The number of applications nevertheless remains 16-23 times higher than the allocable minimum quota, in particular for economically active people.

In the consultations between the European Commission, the European External Action Service and Liechtenstein on a possible change to the current rules, Liechtenstein argued that its absorption capacity remained rather limited and had not changed during the review period. It also argued that the Joint Declaration on Liechtenstein's Sectoral Adaptations, attached to the 2014 Agreement on the participation of Croatia in the EEA, basically reconfirmed that Liechtenstein's absorption capacity was unchanged.⁴ Liechtenstein therefore suggested that the specific arrangements for Liechtenstein should not be changed and that the next review should take place before May 2019.

In the course of the review, the Commission assessed whether there had been a change in Liechtenstein's specific geographic situation and in the circumstances described in Decision No 1/95 of the EEA Council, namely that (a) Liechtenstein has a very small inhabitable area of rural character; and (b) Liechtenstein has an unusually high percentage of non-national residents and employees and a vital interest in maintaining its national identity.

The result of the assessment is as follows:

(a) Liechtenstein occupies a territory of 160 square kilometres that has not changed;

(b) Liechtenstein's population is 36 925. It has grown by more than 4 000 people since 1998 (32 227), the reference year for the Adaptations, and by around 1 300 since 2009 (35 851), the year of the previous review. This might not seem high in real terms but translates into increases of 14 % and around 3 % respectively. The proportion of foreigners has also been rising, up to 33.5 % in 2012 from 33.3 % the previous year, half of whom are EEA citizens. The number of employees is almost equal to the number of residents (over 35 800 persons), 52 % of whom commute from neighbouring countries.

⁴ 'The Present Contracting Parties and the New Contracting Party,
[...]

- Observing an ongoing high demand from nationals of EU and EFTA States to reside in Liechtenstein, surpassing the net immigration rate set out in the abovementioned sectoral adaptations,
- Considering that the participation of Croatia in the EEA results in a higher number of nationals having the right of invoking the free movement of persons as enshrined in the EEA Agreement,

Agree to duly take into account this factual situation as well as the unchanged absorption capacity of Liechtenstein when reviewing the sectoral adaptations in Annexes V and VIII to the EEA Agreement.'

These numbers seem to confirm the special geographic nature and the limited absorption capacity of Liechtenstein.

The high demand for residence permits, despite the difficulties in obtaining them, is most probably explained by the fact that different tax rules apply to Liechtenstein residents compared with non-residents. As long as these differences remain, it is to be expected that people will want to officially reside in Liechtenstein and will apply in relatively high numbers for residence permits, making it necessary to maintain certain restrictions on the number of annual permits issued.

The Council European Free Trade Association (EFTA) working party was debriefed about this issue on 5 September 2014 and subsequently on 30 April 2015. No Member State raised concerns about the continuation of the current regime.

4. CONCLUSIONS

In view of the above, the Commission does not see the need to make any change to the current rules and considers that the provisions on the Sectoral Adaptations can remain unchanged. A review of these provisions should take place before May 2019.