



Brussels, 10.12.2013  
COM(2013) 872 final

2013/0423 (NLE)

Proposal for a

**COUNCIL DECISION**

**on the conclusion of the Arrangement with the Principality of Liechtenstein on the modalities of its participation in the European Asylum Support Office**

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

Regulation (EU) No 439/2010 established the European Asylum Support Office<sup>1</sup> to strengthen practical cooperation between Member States on asylum, enhance the implementation of the Common European Asylum System and support Member States whose asylum and reception systems are under particular pressure.

Recital 24 of the Regulation foresees that "to fulfil its purpose, the Support Office should be open to participation by countries which have concluded agreements with the Union by virtue of which they have adopted and apply law of the Union in the fields covered by this Regulation, in particular Iceland, Liechtenstein, Norway and Switzerland". These countries are referred to as the "associate countries".

Accordingly, Article 49 (1) of the Regulation stipulates that "the Support Office shall be open to the participation of Iceland, Liechtenstein, Norway and Switzerland as observers. Arrangements shall be made, specifying in particular the nature, extent and manner in which those countries are to participate in the Support Office's work. Such arrangements shall include provisions relating to participation in initiatives undertaken by the Support Office, financial contributions and staff. As regards staff matters, those arrangements shall, in any event, comply with the Staff Regulations."

The participation of associate countries in the Support Office's work is not only a logical step, having regard to their association to the Dublin system, but also has a clear added value to the Support Office's support offer such as: the exchange of best practices and expertise, the Support Office's permanent and emergency support, the Support Office's information gathering and analysis, the Support Office's early warning and preparedness system.

On that basis the Commission presented on 1 July 2011 a recommendation to the Council in order to authorise the Commission to open negotiations with Iceland, Norway, Switzerland, and Liechtenstein on international agreements establishing such arrangements.

The Commission received the Council authorisation to open negotiations with Iceland, Norway, Switzerland, and Liechtenstein on arrangements on the modalities of these countries' participation in EASO on 27 January 2012.

The negotiations were held jointly with all associate countries. Four rounds of negotiations took place. The final text of the draft Arrangement with Liechtenstein was initialled on 28 June 2013.

Member States have been informed and consulted in the relevant Council Working Groups.

On the part of the Union, the legal basis for the Arrangement is Articles 74 and 78 (1) and (2) in conjunction with Article 218 of the TFEU.

The Commission signed the Arrangement on ... In accordance with Article 218 (6) (a) of the TFEU the European Parliament's consent for the conclusion of the Arrangement was given on [...]

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<sup>1</sup> Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office; OJ L 132/11 of 29.05.2010.

## **2. RESULTS OF NEGOTIATIONS**

The Commission considers that the objectives set by the Council in its negotiating directives were attained and that the draft Arrangement is acceptable to the Union.

The final content of it can be summarised as follows:

The draft Arrangement foresees the full participation of Liechtenstein in the activities of the Support Office [Article 1], representation in the Support Office's Management Board as an observer and without voting rights [Article 2], annual financial contributions of Liechtenstein, to the budget of the Support Office by an annual sum calculated in accordance with its GDP as a percentage of GDP of all States participating in the Support Office's work [Article 3 and Annex I].

In addition Liechtenstein accepted provisions concerning a possible increased contribution if the Union contribution is increased [Article 3 and Annex I];

Furthermore the draft Arrangement foresees the establishment of a committee composed of representatives of the Commission and of the associate countries. For reasons of efficiency, this 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. The committee was not mentioned in the negotiating directives and has been requested by the associate countries in order to allow for an exchange of information and monitor the proper implementation of the Arrangement [Article 11].

## **3. BUDGETARY IMPLICATION**

Article 3 and Annex I of the draft Arrangement describe the provisions related to the annual financial contributions of Liechtenstein to the budget of the Support Office and their possible adaptation to the situation described as per Annex I.

## **4. CONCLUSION**

In light of the above-mentioned results, the Commission proposes that the Council approves, after having received consent from the European Parliament, the Arrangement with Liechtenstein on the modalities of its participation in the European Asylum Support Office.

Proposal for a

## COUNCIL DECISION

### **on the conclusion of the Arrangement with the Principality of Liechtenstein on the modalities of its participation in the European Asylum Support Office**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 74 and 78 (1) and (2) in conjunction with Article 218 (6) (a) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament<sup>2</sup>,

Whereas:

- (1) In accordance with Council Decision 2013/XXX of [...] <sup>3</sup>, the Arrangement between the European Union and Liechtenstein on the modalities of its participation in the European Asylum Support Office was signed by the Commission on [ ], subject to its conclusion.
- (2) The Arrangement should be approved.
- (3) As specified in recital 21 of Regulation (EU) No 439/2010, the United Kingdom and Ireland are taking part and are bound by that Regulation. They should therefore give effect to Article 49 (1) of the Regulation by taking part in this Decision. The United Kingdom and Ireland are therefore taking part in this Decision.
- (4) As specified in recital 22 of Regulation (EU) No 439/2010, Denmark is not taking part and is not bound by that Regulation. Denmark is therefore not taking part in this Decision.

HAS ADOPTED THIS DECISION:

#### *Article 1*

The Arrangement between the European Union and Liechtenstein on the modalities of its participation in the European Asylum Support Office is hereby approved on behalf of the Union.

The text of the Arrangement is attached to this Decision.

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<sup>2</sup> OJ C [...], [...], p. [...].

<sup>3</sup> OJ C [...], [...], p. [...].

*Article 2*

The President of the Council shall designate the person(s) empowered to proceed, on behalf of the European Union, to the notification provided for in Article 13(1) of the Arrangement, in order to express the consent of the European Union to be bound by the Arrangement.

*Article 3*

This Decision shall enter into force on the day of its adoption.

Done at Brussels,

*For the Council*

*The President*

**ANNEX**  
**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 Office<sup>4</sup>, hereinafter referred to as the 'Regulation',

Whereas:

(1) The Regulation states that, to fulfil its purpose, the European Asylum Support Office, hereafter 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 law of the EU in the field covered by this Regulation, in particular, Iceland, Liechtenstein, Norway and Switzerland, hereinafter referred to as the 'associate countries',

(2) Liechtenstein has concluded agreements with the EU, by virtue of which it has adopted and applies law of the EU in the field covered by the Regulation, in particular Liechtenstein has acceded the Agreement between the European Communities 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 Switzerland<sup>5</sup>,

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 the present 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.

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<sup>4</sup> OJ L 132, 29.5.2010, p.11

<sup>5</sup> OJ 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 described 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 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 data.<sup>6</sup>
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 data<sup>7</sup> 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.

*Article 7*  
*Court of Justice*

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.

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<sup>6</sup> OJ L 281, 23.11.1995, p. 31

<sup>7</sup> OJ L 8, 12.1.2011, p. 1

*Article 8*  
*Staff of the Support Office*

1. In accordance with Article 38 (1) and 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 European Union institutions for the purpose of applying these Staff Regulations and the rules 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 Union<sup>8</sup> as well as any rules adopted pursuant to this Protocol relating to staff matters of the Support Office.

*Article 10*  
*Combating fraud*

The provisions with regard to 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.

*Article 11*  
*Committee*

1. A Committee, composed of representatives of the European Commission and Liechtenstein, shall monitor the proper implementation of the 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 this 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.

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<sup>8</sup> OJ C 83 of 30.3.2010, p.266.



*Article 12*

*Annexes*

The Annexes to this Arrangement shall constitute an integral part of the 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 these 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. The Arrangement shall cease to apply six months after the date of such notification.

This Arrangement shall be terminated in case of termination of the Protocol 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 Switzerland.

4. This Arrangement shall be drawn up in one single original 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.

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## ANNEX I

### 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 is 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 calendar 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 in case the financial contribution from the European Union entered in the general budget of the European Union as defined in Article 33 (3) a of the Regulation is increased pursuant to Articles 26, 27 or 41 of the Regulation (EU, Euratom) No 966/2012<sup>9</sup> on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002. In this 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 before 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<sup>10</sup> on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002, the part of these unspent or lowered payment credits corresponding to the percentage of the contribution made by Liechtenstein, is 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.

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<sup>9</sup> OJ L 298, 26.10.2012, p. 1

<sup>10</sup> OJ L 298, 26.10.2012, p. 1

## **ANNEX II**

### **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<sup>11</sup> on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002, with Commission Regulation (EC, Euratom) No 2343/2002<sup>12</sup> 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 Communities 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.
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.

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<sup>11</sup> OJ L 298, 26.10.2012, p. 1

<sup>12</sup> OJ L 181, 10.7.2008, p. 23

*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 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 irregularities<sup>13</sup>.
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, 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.

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<sup>13</sup> OJ L 292, 15.11.1996, p. 2

*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 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 and Commission delegated Regulation (EU) no 1268/2012<sup>14</sup> 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 Union and with Council Regulation (EC, Euratom) No 2988/95<sup>15</sup> on the protection of the European Communities' financial interests.

*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.

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<sup>14</sup> OJ L 362, 31.12.2012, p.1

<sup>15</sup> OJ L 312, 23.12.1995, p. 1