Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Opinion 277 (2010)[1]
Final version

Draft protocol to the Convention on Mutual Administrative Assistance in Tax Matters (ETS No. 127)

Parliamentary Assembly

1. The Parliamentary Assembly welcomes the process launched with a view to amending the Convention on Mutual Administrative Assistance in Tax Matters[2] (ETS No. 127), a joint instrument of the Council of Europe and the Organisation for Economic Co-operation and Development (OECD), and opening it to accession by states that are not members of these organisations. This process provides a timely opportunity to align the convention to the internationally agreed standards of transparency and information exchange in tax matters that have emerged with the new co-operative environment resulting from consultations among G7, G8 and G20 countries eager to tackle tax evasion more effectively.

2. Recalling that the convention originated in Assembly Recommendation 833 (1978) on co-operation between the Council of Europe member states against international tax avoidance and evasion, on the basis of a report by its Committee on Economic Affairs and Development (Doc. 4098), the Assembly reiterates its attachment to the rule of law and to international co-operation that targets economic crime, including tax evasion.

3. The Assembly notes that the current text of the draft protocol is a compromise which attempts to harmonise the positions of different stakeholders. It notes that most provisions have been agreed by consensus within the Committee of Ministers and trusts that the remaining open issues – concerning data protection and enhanced collaboration in information exchange on criminal tax matters – will be resolved in the spirit of co-operation and goodwill.

4. The Assembly underscores the importance of the convention as a major standard-setting step and is convinced that the added value of the protocol amending the convention rests on the multilateral drive to strengthen rather than dilute those standards. What is implicit in the convention should be clarified and rendered more explicit by the protocol. This holds in particular for provisions governing the application of the amended convention as regards criminal charges concerning tax matters. The Assembly expresses a strong preference for retroactivity with regard to data exchange in criminal tax matters, such as partially provided for in the draft protocol via the provision in Article VIII, paragraphs 1 and 2, which relate to, respectively, Article 28 and Article 30, paragraph 1, of the convention.

5. The Assembly therefore:

5.1. urges Austria, Liechtenstein, Luxembourg and Switzerland to show flexibility in accepting the proposed provisions on the entry into force of the protocol;

5.2. asks the Committee of Ministers:

5.2.1. as regards personal data protection standards, to adjust paragraph 1 of Article VI of the draft protocol to read as follows: "Any information obtained by a Party under this convention shall be treated as secret and protected in the same manner as information obtained under the

1. *Text adopted by the Standing Committee,* acting on behalf of the Assembly, on 12 March 2010 (see Doc. 12161, report of the Committee on Economic Affairs and Development, rapporteur: Mr Omtzigt).
2. Doc. 12104.

domestic law of that Party and, to the extent needed to ensure the necessary level of protection of personal data, in accordance with the safeguards which may be specified by the supplying Party as required under its domestic law.";

5.2.2. to insert the words "in relation to earlier taxable periods or charges to tax" after the words "in respect of a Party" in paragraph 7 of Article VIII of the draft protocol;

5.2.3. to end the possibility – foreseen in Article 29 of the convention – to restrict the application of the convention, as amended, to a specified territory or territories in a country and to accept signature and ratification only for the whole territory of a country;

5.2.4. to aim at the adoption of the so-called "disconnection clause" concerning the relationship between the convention and European Union legislation as proposed in document CM(2009)185 final and as agreed with the European Union;

5.2.5. to seek the validation, if necessary by vote, of the proposed provisions governing the entry into force of the protocol, bearing in mind the considerations expressed by the Assembly in paragraph 4 above;

5.2.6. to invite the Assembly's rapporteur to a future meeting of the Rapporteur Group on Legal Co-operation (GR-J) when it deals with the finalisation of the text of the draft protocol in the light of this opinion;

5.2.7. to inform the Parliamentary Assembly on the follow-up given to the above listed proposals;

5.3. asks the OECD's Council and Secretary-General:

5.3.1. to explain why the ministers adopted the protocol to the convention before the conclusion of the Council of Europe's internal consultation process;

5.3.2. to inform the Enlarged Parliamentary Assembly – which is also the OECD assembly – on the follow-up given to the abovementioned proposals.

6. Moreover, the Assembly invites the Committee of Ministers to involve it at an earlier stage when seeking its opinion on a draft legal instrument.