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To: Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union

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Liechtenstein Sectoral Adaptations - Review

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

Liechtenstein Sectoral Adaptations - Review

1. INTRODUCTION

Article 5(2) of Protocol 15 of the Agreement on the European Economic Area (EEA Agreement) on transitional periods on the free movement of persons¹ stated that Liechtenstein could maintain in force quantitative limitations for new residents until 1 January 1998 with regard to EU citizens and nationals of other European Free Trade Association (EFTA) States, to be gradually reduced. Decision No 1/95 of 10 March 1995² of the EEA Council on the entry into force of the Agreement on the European Economic Area for the Principality of Liechtenstein included a Declaration by the EEA Council on the free movement of persons. This 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'.

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 No 191/1999³ 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, EU citizens and nationals of other EEA countries wishing to take up residence in Liechtenstein have to obtain a residence permit. The Sectoral Adaptations establish a minimum number of permits to be issued to EU citizens and nationals of other EEA countries every year, constituting a yearly net increase in the residing EU/EEA population of 1.75 % (for economically active people) and 0.5 % (for economically inactive people) respectively⁴ of their number in 1998. Obtaining a residence permit, however, is not a prerequisite to work in Liechtenstein.

In the course of the 2004 enlargement of the European Union, 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 carried out in 2014. After the first two

¹ OJ L 1, 3.1.1994, p. 176.

² OJ L 86, 20.4.1995, p. 58.

³ EEA Joint Committee Decision No 191/1999 of 17 December 1999 amending Annexes VIII (Right of establishment) and V (Free movement of workers) to the EEA Agreement, OJ L 74, 15.3.2001, p. 29.

⁴ 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 IV

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 [...]

reviews, the specific arrangements remained unchanged. The third review (for the period 2014-2018) was due to take place in 2019 but was delayed.

This Communication constitutes the third review and addresses the question whether it is appropriate to continue applying these restrictions to the number of residence permits granted by Liechtenstein.

2. SECTORAL ADAPTATIONS IN PRACTICE

Liechtenstein issues yearly reports on how it applies the Sectoral Adaptations. It then shares the reports with its EU counterparts and the EFTA Surveillance Authority. The information provided below is based on the reports by Liechtenstein for the years 2014 until 2018.

On the basis of the Sectoral Adaptations, the Liechtenstein authorities must make available a minimum of 56 new residence permits and around 300 new short-term permits (not exceeding 12 months) a year to EU citizens and nationals of other EEA countries exercising an economic activity in Liechtenstein. Liechtenstein fulfilled its quota obligations for new permits for each of the years reported on (table 2 below). A supplementary quota of 16 permits per year is available for persons who are not exercising an economic activity and who wish to take up residence in Liechtenstein.

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. These family members also have the right to take up an economic activity.

Table 1: Number of applications by economically active and economically inactive persons 2014-2018

Year	Number of applications by economically active persons	Number of applications by economically inactive persons
2014	517	16
2015	488	44
2016	599	71
2017	657	94
2018	706	133

Table 2: Number of permits awarded to economically active and economically inactive persons 2014-2018

Year	Number of permits awarded to economically active persons	Number of permits awarded to economically inactive persons
2014	70	17
2015	67	22

2016	58	16
2017	70	16
2018	69	17

3. THE 2019 REVIEW

The current review process started in 2019, and, due to delays, is being completed in 2023 with a view to a timely launch of the 2024 review for the period 2019-2023.

The figures provided by Liechtenstein for the period 2014-2018 (see table 1 above) show an increase in the number of applications for residence permits by economically active persons and a significant increase in the number of applications for residence permits by inactive persons. The number of applications is substantially higher than the minimum quota of permits to be awarded.

In the consultations between the European Commission 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. Liechtenstein took the position that the specific arrangements for Liechtenstein should not be changed and that the 2019-2023 review should take place before May 2024.

In the course of the review and as specified in Decision 1/95 of the EEA Council, the Commission had to take into account 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 first circumstance being a constant, in relation to the second one, the Commission notes that in the reference period 2014-2018, Liechtenstein's population has grown by 1 014 people from 37 366 to 38 380 people, which represents a 2.7% increase. For the same period, the number of non-national residents grew from 6 451 at the beginning of 2014 to 6 855 at the beginning of 2018, an increase of 6.3%. In 2018, out of the 38 380 people, 34% were non-national residents.⁵ This data shows that the proportion of non-national residents in Liechtenstein remained high through the reference period.

The European Free Trade Association (EFTA) working party of the Council was debriefed about this issue on 24 January 2023 and subsequently on 7 February 2023. No Member State raised concerns about the continuation of the regime for 2014-2018.

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 at this point in time. Nevertheless, the Commission notes that the formula to calculate the annual quota and the basis for the calculation have remained unchanged in the last 24 years.

⁵ Annual Reports on application of EEA Joint Committee Decision No. 191/1999 in the area of free movement of persons in Liechtenstein (2014-2018)

In light of the shared objective of providing for the fullest possible realization of the free movement of persons, as stated by the EEA Agreement, the parties could examine whether a modification of the Sectoral Adaptations would be appropriate in the context of the fourth review of the sectoral adaptations scheduled to take place in 2024.