



EUROPEAN COMMISSION

TFGR - TASK FORCE FOR GREECE

Brussels, 17 November 2011
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M. I. Plaskovitis
Secretary General
Hellenic Ministry of Finance
Nikis Str. 5-7
101 80 Athens

Subject: Agreement with Switzerland: cooperation in the area of taxation

Dear Mr Plaskovitis,

As a follow-up to our previous discussions related to the negotiation of a potential agreement between Greece and Switzerland on cooperation in the area of taxation I would like to update you on the position of the Commission services, notably on the legal limitations surrounding the conclusion of such an agreement.

The Commission does not generally question the competence of Member States to enter into bilateral tax agreements with other Member States or with third countries. However, such agreements should not include any aspects which overlap with areas in which common action by the European Union has been taken or is envisaged, thus establishing exclusive Community competence. The agreement in place since 2005 between the EU and Switzerland aims at mirroring the provisions of Directive 2003/48/EC on taxation of savings income. It thus falls under exclusive EU competence, to the extent that it covers "interest payments" within the meaning of the Directive and provides for mechanisms for their taxation in accordance with the laws of the States of residence of the beneficial owner. Moreover, bearing in mind that the Commission has tabled a proposal, currently under negotiation within the Council and the European Parliament, which intends, inter alia, to extend the notion of interest payments, exclusive competence has also been established with respect to payments made on account of certain savings products, based on securities but including a commitment towards the investor that he receives a minimum percentage of the capital invested, as well as on account of certain life insurance products;

While I understand that the conclusion of a tax agreement is of great political significance for Greece in helping to improve its public finances and to combat tax evasion, I would like to make you aware that a bilateral agreement between Greece and Switzerland will have to respect the following:

- Concerning regularisation of the past, persons resident in Greece would in general be allowed to retrospectively pay taxes on their existing banking relationships in

Switzerland; however, bearing in mind exclusive Community competence in the field of VAT, the matter is different in this respect.

- On the contrary, concerning the future, any bilateral agreement should be limited in scope, covering those assets that are not already covered either by Directive 2003/48/EC and corresponding agreements or those included in the proposal for modification of the Directive. This means that only dividends, capital gains and wealth tax can be covered by such a bilateral agreement, provided that those are already covered by the existing Greek laws in force at the time of the conclusion of the agreement.

- In case the scope of such an agreement would provide for a broader cooperation in the field of financial services, the same considerations apply with respect to other EU law texts establishing EU external competence in areas where the EU has achieved harmonisation, notably banking and provision of other investment services.

In case you wish to continue with the preparation and negotiation of such an agreement, I would like to offer the assistance of the Commission services on both legal and technical questions in order to help you ensure that the agreement is in conformity with EU law.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Horst Reichenbach', with a stylized flourish at the end.

Horst Reichenbach
Head of TFGR