

PROTOCOL AMENDING THE CONVENTION ON MU-  
TUAL ADMINISTRATIVE ASSISTANCE IN TAX MAT-  
TERS

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MESSAGE

FROM

**THE PRESIDENT OF THE UNITED STATES**

TRANSMITTING

THE PROTOCOL AMENDING THE CONVENTION ON MUTUAL AD-  
MINISTRATIVE ASSISTANCE IN TAX MATTERS, DONE AT PARIS  
ON MAY 27, 2010 (THE "PROPOSED PROTOCOL"), WHICH WAS  
SIGNED BY THE UNITED STATES ON MAY 27, 2010



MAY 17, 2012.—Treaty was read the first time, and together with the  
accompanying papers, referred to the Committee on Foreign Relations  
and ordered to be printed for the use of the Senate



## LETTER OF TRANSMITTAL

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THE WHITE HOUSE, *May 17, 2012.*

*To the Senate of the United States:*

I transmit herewith, for the advice and consent of the Senate to its ratification, the Protocol Amending the Convention on Mutual Administrative Assistance in Tax Matters, done at Paris on May 27, 2010 (the “proposed Protocol”), which was signed by the United States on May 27, 2010. The existing Convention on Mutual Administrative Assistance in Tax Matters, done at Strasbourg on January 25, 1988, entered into force for the United States on January 4, 1995 (the “existing Convention”). I also transmit, for the information of the Senate, the report of the Department of State, which includes an Overview of the proposed Protocol.

The proposed Protocol amends the existing Convention in order to bring it into conformity with current international standards on exchange of information, as reflected in the Organization for Economic Co-operation and Development’s (OECD) Model Tax Convention on Income and Capital and the current U.S. Model Income Tax Convention. Furthermore, it updates the existing Convention’s rules regarding the confidentiality and permitted uses of exchanged tax information, and opens the existing Convention to adherence by countries other than OECD and Council of Europe members. The Protocol entered into force on January 6, 2011, following ratification by five parties to the existing Convention.

I recommend that the Senate give early and favorable consideration to the proposed Protocol and give its advice and consent to its ratification.

BARACK OBAMA.



## LETTER OF SUBMITTAL

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DEPARTMENT OF STATE,  
*Washington, March 25, 2011.*

The PRESIDENT,  
*The White House.*

THE PRESIDENT: I have the honor to submit to you, with a view to its transmission to the Senate for advice and consent to ratification, the Protocol Amending the Convention on Mutual Administrative Assistance in Tax Matters done at Paris May 27, 2010 (the “proposed Protocol”) which was signed by the United States on May 27, 2010. The Convention on Mutual Administrative Assistance in Tax Matters, done at Strasbourg January 25, 1988 (the “existing Convention”), entered into force for the United States on January 4, 1995. The proposed Protocol amends the existing Convention in order to bring it into conformity with current international standards on exchange of information, as reflected in the Organization for Economic Co-operation and Development (OECD)’s Model Tax Convention on Income and Capital and the current U.S. Model Income Tax Convention. Furthermore, it updates the Convention’s rules regarding the confidentiality and permitted uses of exchanged tax information, and opens the Convention to adherence by countries other than OECD and Council of Europe members (subject to the unanimous consent of the parties to the Convention). The Protocol entered into force on January 6, 2011, following ratification by five parties to the existing Convention. An overview of the proposed Protocol amending the Convention is enclosed in this report.

The proposed Protocol is self-executing. I recommend that the proposed Protocol be transmitted to the Senate for its advice and consent to ratification. The Department of the Treasury and the Department of State cooperated in the negotiation of the proposed Protocol, and the Department of the Treasury joins the Department of State in recommending that the proposed Protocol be transmitted to the Senate as soon as possible for its advice and consent to ratification.

Respectfully submitted.

HILLARY RODHAM CLINTON.

Enclosures: As stated.



## OVERVIEW

The Convention on Mutual Administrative Assistance on Tax Matters (the “existing Convention”), provides for the exchange of information between the Parties that is foreseeably relevant for the administration or enforcement of their domestic tax laws. Only member States of the Council of Europe and Member countries of the OECD are eligible to join the existing Convention.

The proposed Protocol was negotiated to bring the existing Convention into conformity with current international standards regarding the exchange of information. As of February 1, 18 States have signed and five States have ratified the proposed Protocol, which entered into force on January 6. This overview describes the provisions of the proposed Protocol.

## ARTICLE I

Article I of the proposed Protocol amends the Preamble of the existing Convention. Paragraph 1 revises the recital that States should not carry out measures or supply information except in conformity with their domestic law and practice by deleting the reference regarding conformity to domestic law and practice. The replacement recital provides that States should carry out measures or supply information, while preserving the recital that such information sharing should take account of the necessity of protecting the confidentiality of information and taking account of international instruments for the protection of privacy and flow of personal data. Paragraph 2 adds a recital to the existing Convention noting that a new cooperative international information exchange environment has emerged, and that it is desirable in this context for a multilateral instrument for information exchange to be made available to the widest number of States in order to obtain the benefits of this new environment.

## ARTICLE II

Article II of the proposed Protocol amends Article 4 (General provisions) of the existing Convention. It replaces the existing paragraph 1 of Article 4 with a new paragraph 1 that requires the Parties to exchange any information that is foreseeably relevant for the administration or enforcement of their domestic laws concerning the taxes covered by the existing Convention. Article II of the proposed Protocol also deletes paragraph 2 of Article 4 of the existing Convention, which required the requesting Party to obtain prior authorization from the supplying Party in order to use the supplied information as evidence before a criminal court in the absence of a mutual agreement between the relevant Parties to waive the authorization requirement. These revisions ensure that exchange of information for both civil and criminal matters is covered under the Convention, and bring the existing Convention into clos-

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er conformity with current internationally agreed standards, which are also reflected in the OECD's Model Tax Convention on Income and Capital (the "OECD Model") and the 2006 U.S. Model Income Tax Convention (the "U.S. Model").

### ARTICLE III

Article III of the proposed Protocol amends Article 18 (Information to be provided by the applicant state) of the existing Convention. The existing Convention specifies that a request for assistance shall indicate, where appropriate, the name, address, and other particulars to identify the subject of the request. In some situations, however, the name of the person under examination is not known to the applicant Party, but it may have other information sufficient to identify the person. Article III amends paragraph 1.b of Article 18 of the existing Convention to provide that a requesting Party may provide the name, address, "or" any other identifying particulars of the person in respect of whom the request is made. This amendment is intended to provide for an efficient and effective exchange of information between the Parties. Article III also makes a conforming change to the existing Convention to address deletions to the existing Convention made by Article IV and V of the proposed Protocol (described below).

### ARTICLE IV

Article IV of the proposed Protocol deletes Article 19 (Possibility of declining a request) of the existing Convention, the body of which appears in revised but substantially similar form at paragraph 2.g of Article 21 (Protection of persons and limits to the obligation to provide assistance) of the existing Convention, as amended by the Article V of the proposed Protocol (described below).

### ARTICLE V

Article V of the proposed Protocol substantially revises Article 21 (Protection of persons and limits to the obligation to provide assistance) of the existing Convention, which relates to the protection of the rights or safeguards of persons and the limits of a Party's obligation to provide assistance to another Party. Subparagraphs 2 (b) and (d) of Article 21, which specify the circumstances under which the existing Convention does not impose obligations on the requested State, are revised to delete references to "essential interests" of a party as such references are not needed and not used in modern agreements for the exchange of information for tax purposes. New subparagraph 2 (g) provides that a requested state is not obligated to provide administrative assistance if the applicant State has not pursued all reasonable measures under its laws or administrative practice, except where recourse to such measures would give rise to disproportionate difficulty. New subparagraph (h) provides that a requested State is not obliged to provide assistance if the administrative burden is clearly disproportionate to the benefit to be derived by the applicant State.

The revised Article 21 also adds two important new paragraphs. A new paragraph 3 provides that when information is requested by the applicant State in accordance with the amended Convention,



the requested State is obligated to use its information-gathering powers to obtain the requested information, even though the requested State may not need such information for its own tax purposes. The obligation is subject to certain other limitations contained in the Convention, but in no case are such limitations to be construed to permit a requested State to decline to supply information solely because it has no domestic interest in such information. Paragraph 4 provides that a requested State may not decline to provide information solely because that information is held by a bank, other financial institution, nominee, or persons acting in an agency or fiduciary capacity, or because it relates to ownership interests in a person. These paragraphs are based on the language of paragraphs 4 and 5 of Article 26 of the OECD Model and the U.S. Model, and represent key components of the modern international standard with respect to exchange of information for tax purposes.

## ARTICLE VI

Article VI of the proposed Protocol revises paragraphs 1 and 2 of Article 22 (Secrecy) of the existing Convention. These amendments concerning disclosure of information provided under the Convention bring the confidentiality rules of the existing Convention regarding exchanged information and the limitations regarding the use of such information into conformity with the current OECD and U.S. Models.

## ARTICLE VII

Article VII of the proposed Protocol replaces paragraph 2 of Article 27 (Other international agreements or arrangements) of the existing Convention. The amendment clarifies that Parties that are Member States of the European Union can apply, in their mutual relations, the possibilities of assistance provided by the Convention in so far as they allow a wider cooperation than the possibilities offered by the applicable European Union rules. This paragraph applies only between Member States of the European Union, and in no way prejudices the application of the Convention between member States of the European Union and other Parties to the Convention.

## ARTICLE VIII

Article VIII of the proposed Protocol amends Article 28 (Signature and entry into force of the Convention) of the existing Convention by adding four new paragraphs. Three of the new paragraphs provide procedural rules regarding the effective dates of the provisions of the proposed Protocol.

New paragraph 4 provides that any country that is a member of the OECD or the Council of Europe which becomes a Party after the proposed Protocol enters into force will be a Party to the Convention as amended by the proposed Protocol, unless it expresses a different intention in writing.

Most importantly, a new paragraph 5 expands the States that may become Parties to the Convention by providing that, once the proposed Protocol enters into force, any State that is not a member

of the Council of Europe or of the OECD may request to be invited to sign and ratify the Convention. It further provides that decisions to invite such States must be taken by consensus of the Parties to the Convention.

New paragraphs 6 and 7 of Article 28 provide rules for the effective dates of the provisions of the proposed Protocol. New paragraph 6 provides that the amendments have effect for administrative assistance related to taxable periods beginning on or after January 1 of the year following the year in which the Convention, as amended by the proposed Protocol, entered into force in respect of a Party, or where there is no taxable period, for administrative assistance related to charges to tax arising on or after January 1 of the year following the year in which the Convention, as amended by the proposed Protocol, entered into force in respect of a Party. However, new paragraph 7 provides that, for criminal tax matters the Convention, as amended by the proposed Protocol, shall have effect in relation to any earlier taxable period or charge to tax, from the date of entry into force in respect of a Party.

Article VIII of the proposed Protocol also amends Article 30, paragraph 1 of the existing Convention to permit a Party to take a reservation to the new paragraph 7 of Article 28 limiting, with respect to criminal tax matters, the effect of the Convention, as amended by the proposed Protocol, to three years preceding the year the amended Convention enters into force for a Party.

#### ARTICLE IX

Article IX provides rules for the signature and entry into force of the proposed Protocol. The proposed Protocol is open for signature by signatories to the existing Convention. The proposed Protocol enters into force on the first day of the month following the expiration of a period of three months after the date of ratification by five parties to the existing Convention. A Party that ratifies the proposed Protocol after the proposed Protocol has entered into force will be bound by the proposed Protocol beginning on the first day of the month following the expiration of a period of three months after the date of deposit of its instrument of ratification.

#### ARTICLE X

Article X of the proposed Protocol describes the functions of the two Depositaries of the Convention, the Council of Europe, and the OECD, with respect to the proposed Protocol.

**PROTOCOL AMENDING  
THE CONVENTION ON MUTUAL  
ADMINISTRATIVE ASSISTANCE  
IN TAX MATTERS**

**PROTOCOLE D'AMENDEMENT  
À LA CONVENTION CONCERNANT  
L'ASSISTANCE ADMINISTRATIVE  
MUTUELLE EN MATIÈRE FISCALE**

**Preamble**

The member States of the Council of Europe and the member countries of the Organisation for Economic Co-operation and Development (OECD), signatories of this Protocol,

Considering that the Convention on Mutual Administrative Assistance in Tax Matters, done at Strasbourg on 25 January 1988 (hereinafter "the Convention"), was concluded before agreement was reached on the internationally agreed standard to exchange information in tax matters;

Considering that a new cooperative environment has emerged since the Convention was concluded;

Considering that it is desirable that a multilateral instrument is made available to allow the widest number of States to obtain the benefit of the new co-operative environment and at the same time to implement the highest international standards of co-operation in the tax field;

Have agreed as follows:

**Article I**

- 1 The seventh recital of the Preamble to the Convention shall be deleted and replaced by the following:

"Convinced therefore that States should carry out measures or supply information, having regard to the necessity of protecting the confidentiality of information, and taking account of international instruments for the protection of privacy and flows of personal data;"

- 2 The following shall be added after the seventh recital of the Preamble to the Convention:

"Considering that a new co-operative environment has emerged and that it is desirable that a multilateral instrument is made available to allow the widest number of States to obtain the benefits of the new co-operative environment and at the same time implement the highest international standards of co-operation in the tax field;"

**Article II**

Article 4 of the Convention shall be deleted and replaced by the following:

**"Article 4 – General provision**

- 1 The Parties shall exchange any information, in particular as provided in this section, that is foreseeably relevant for the administration or enforcement of their domestic laws concerning the taxes covered by this Convention.
- 2 Deleted.

### **Préambule**

Les Etats membres du Conseil de l'Europe et les pays membres de l'Organisation de Coopération et de Développement Economiques (OCDE), signataires du présent Protocole,

Considérant que la Convention concernant l'assistance administrative mutuelle en matière fiscale, faite à Strasbourg le 25 janvier 1988 (ci-après « la Convention »), a été conclue avant que la norme relative à l'échange de renseignements en matière fiscale soit internationalement reconnue ;

Considérant qu'un nouveau cadre de coopération s'est mis en place après la conclusion de la Convention ;

Considérant qu'il est souhaitable de disposer d'un instrument multilatéral pour permettre au plus grand nombre d'Etats de bénéficier du nouveau cadre de coopération et également d'appliquer les normes internationales de coopération les plus élevées dans le domaine fiscal ;

Sont convenus de ce qui suit :

### **Article I**

- 1 Le septième considérant du préambule de la Convention est supprimé et remplacé par ce qui suit :

« Convaincus dès lors que les Etats devraient prendre des mesures ou fournir des renseignements en tenant compte de la nécessité de protéger la confidentialité des renseignements ainsi que des instruments internationaux relatifs à la protection de la vie privée et au flux de données de caractère personnel ; »

- 2 Il est ajouté ce qui suit après le septième considérant du préambule de la Convention :

« Considérant qu'un nouveau cadre de coopération s'est mis en place et qu'il est souhaitable de disposer d'un instrument multilatéral pour permettre au plus grand nombre d'Etats de bénéficier du nouveau cadre de coopération et également d'appliquer les normes internationales de coopération les plus élevées dans le domaine fiscal ; »

### **Article II**

L'article 4 de la Convention est supprimé et remplacé par ce qui suit :

#### **« Article 4 – Disposition générale**

- 1 Les Parties échangent, notamment comme il est prévu dans la présente section, les renseignements vraisemblablement pertinents pour l'administration ou l'application de leurs législations internes relatives aux impôts visés par la présente Convention.
- 2 Supprimé.

- 3 Any Party may, by a declaration addressed to one of the Depositaries, indicate that, according to its internal legislation, its authorities may inform its resident or national before transmitting information concerning him, in conformity with Articles 5 and 7."

**Article III**

- 1 The term "and" in paragraph 1.b of Article 18 of the Convention shall be replaced by the term ", or".
- 2 The reference to "Article 19" in paragraph 1.f of Article 18 of the Convention shall be replaced by a reference to "Article 21.2.g".

**Article IV**

Article 19 of the Convention shall be deleted.

**Article V**

Article 21 of the Convention shall be deleted and replaced by the following:

**"Article 21 – Protection of persons and limits to the obligation to provide assistance**

- 1 Nothing in this Convention shall affect the rights and safeguards secured to persons by the laws or administrative practice of the requested State.
- 2 Except in the case of Article 14, the provisions of this Convention shall not be construed so as to impose on the requested State the obligation:
- a to carry out measures at variance with its own laws or administrative practice or the laws or administrative practice of the applicant State;
  - b to carry out measures which would be contrary to public policy (ordre public);
  - c to supply information which is not obtainable under its own laws or its administrative practice or under the laws of the applicant State or its administrative practice;
  - d to supply information which would disclose any trade, business, industrial, commercial or professional secret, or trade process, or information, the disclosure of which would be contrary to public policy (ordre public);
  - e to provide administrative assistance if and insofar as it considers the taxation in the applicant State to be contrary to generally accepted taxation principles or to the provisions of a convention for the avoidance of double taxation, or of any other convention which the requested State has concluded with the applicant State;
  - f to provide administrative assistance for the purpose of administering or enforcing a provision of the tax law of the applicant State, or any requirement connected therewith, which discriminates against a national of the requested State as compared with a national of the applicant State in the same circumstances;
  - g to provide administrative assistance if the applicant State has not pursued all reasonable measures available under its laws or administrative practice, except where recourse to such measures would give rise to disproportionate difficulty;
  - h to provide assistance in recovery in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the applicant State.

- 3 Une Partie peut, par une déclaration adressée à l'un des dépositaires, indiquer que, conformément à sa législation interne, ses autorités peuvent informer son résident ou ressortissant avant de fournir des renseignements le concernant en application des articles 5 et 7. »

#### **Article III**

- 1 Le terme « et » au paragraphe 1.b de l'article 18 de la Convention est remplacé par le terme «, ou ».
- 2 La référence à « l'article 19 » au paragraphe 1.f de l'article 18 de la Convention est remplacée par une référence à « l'article 21.2.g ».

#### **Article IV**

L'article 19 de la Convention est supprimé.

#### **Article V**

L'article 21 de la Convention est supprimé et remplacé par ce qui suit :

##### **« Article 21 – Protection des personnes et limites de l'obligation d'assistance**

- 1 Aucune disposition de la présente Convention ne peut être interprétée comme limitant les droits et garanties accordés aux personnes par la législation ou la pratique administrative de l'État requis.
- 2 Sauf en ce qui concerne l'article 14, les dispositions de la présente Convention ne peuvent être interprétées comme imposant à l'État requis l'obligation :
- a de prendre des mesures qui dérogent à sa législation ou à sa pratique administrative, ou à la législation ou à la pratique administrative de l'État requérant ;
  - b de prendre des mesures qui seraient contraires à l'ordre public ;
  - c de fournir des renseignements qui ne pourraient être obtenus sur la base de sa législation ou de sa pratique administrative, ou de la législation ou de la pratique administrative de l'État requérant ;
  - d de fournir des renseignements qui révéleraient un secret commercial, industriel, professionnel ou un procédé commercial, ou des renseignements dont la communication serait contraire à l'ordre public ;
  - e d'accorder une assistance administrative si et dans la mesure où il estime que l'imposition de l'État requérant est contraire aux principes d'imposition généralement admis ou aux dispositions d'une convention en vue d'éviter la double imposition ou de toute autre convention qu'il a conclue avec l'État requérant ;
  - f d'accorder une assistance administrative afin d'appliquer ou exécuter une disposition de la législation fiscale de l'État requérant, ou de satisfaire une obligation s'y rattachant, qui est discriminatoire à l'encontre d'un ressortissant de l'État requis par rapport à un ressortissant de l'État requérant qui se trouve dans les mêmes circonstances ;
  - g d'accorder une assistance administrative si l'État requérant n'a pas épuisé toutes les mesures raisonnables prévues par sa législation ou sa pratique administrative, à moins que le recours à de telles mesures ne donne lieu à des difficultés disproportionnées ;
  - h d'accorder une assistance au recouvrement dans les cas où la charge administrative qui en résulte pour cet État est nettement disproportionnée par rapport aux avantages qui peuvent en être tirés par l'État requérant.

- 3 If information is requested by the applicant State in accordance with this Convention, the requested State shall use its information gathering measures to obtain the requested information, even though the requested State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations contained in this Convention, but in no case shall such limitations, including in particular those of paragraphs 1 and 2, be construed to permit a requested State to decline to supply information solely because it has no domestic interest in such information.
- 4 In no case shall the provisions of this Convention, including in particular those of paragraphs 1 and 2, be construed to permit a requested State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person."

#### **Article VI**

Paragraphs 1 and 2 of Article 22 shall be deleted and replaced with the following:

- "1 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 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.
- 2 Such information shall in any case be disclosed only to persons or authorities (including courts and administrative or supervisory bodies) concerned with the assessment, collection or recovery of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, taxes of that Party, or the oversight of the above. Only the persons or authorities mentioned above may use the information and then only for such purposes. They may, notwithstanding the provisions of paragraph 1, disclose it in public court proceedings or in judicial decisions relating to such taxes."

#### **Article VII**

Paragraph 2 of Article 27 of the Convention shall be deleted and replaced by the following:

- "2 Notwithstanding paragraph 1, those Parties which are member States of the European Union can apply, in their mutual relations, the possibilities of assistance provided for by the Convention in so far as they allow a wider co-operation than the possibilities offered by the applicable European Union rules."

#### **Article VIII**

- 1 The following paragraphs shall be added at the end of Article 28 of the Convention:
  - "4 Any member State of the Council of Europe or any member country of OECD which becomes a Party to the Convention after the entry into force of the Protocol amending this Convention, opened for signature on the 27<sup>th</sup> day of May 2010 (the "2010 Protocol"), shall be a Party to the Convention as amended by that Protocol, unless they express a different intention in a written communication to one of the Depositaries.



- 3 Si des renseignements sont demandés par l'Etat requérant conformément à la présente Convention, l'Etat requis utilise les pouvoirs dont il dispose pour obtenir les renseignements demandés, même s'il n'en a pas besoin à ses propres fins fiscales. L'obligation qui figure dans la phrase précédente est soumise aux limitations prévues par la présente Convention, sauf si ces limitations, et en particulier celles des paragraphes 1 et 2, sont susceptibles d'empêcher l'Etat requis de communiquer des renseignements uniquement parce que ceux-ci ne présentent pas d'intérêt pour lui dans le cadre national.
- 4 En aucun cas les dispositions de cette Convention, et en particulier celles des paragraphes 1 et 2, ne peuvent être interprétées comme permettant à un Etat requis de refuser de communiquer des renseignements uniquement parce que ceux-ci sont détenus par une banque, un autre établissement financier, un mandataire ou une personne agissant en qualité d'agent ou de fiduciaire, ou parce que ces renseignements se rattachent aux droits de propriété d'une personne.»

#### **Article VI**

Les paragraphes 1 et 2 de l'article 22 sont supprimés et remplacés par ce qui suit :

- «1 Les renseignements obtenus par une Partie en application de la présente Convention sont tenus secrets et protégés dans les mêmes conditions que celles prévues pour les renseignements obtenus en application de la législation de cette Partie et, en tant que de besoin pour assurer le niveau nécessaire de protection des données à caractère personnel, conformément aux garanties qui peuvent être spécifiées par la Partie fournissant les renseignements comme étant requises au titre de sa législation.
- 2 Ces renseignements ne sont communiqués en tout cas qu'aux personnes ou autorités (y compris les tribunaux et les organes administratifs ou de surveillance) concernées par l'établissement, la perception ou le recouvrement des impôts de cette Partie, par les procédures ou les poursuites pénales concernant ces impôts, ou par les décisions sur les recours se rapportant à ces impôts ou par le contrôle de ce qui précède. Seules lesdites personnes ou autorités peuvent utiliser ces renseignements et uniquement aux fins indiquées ci-dessus. Elles peuvent, nonobstant les dispositions du paragraphe 1, en faire état au cours d'audiences publiques de tribunaux ou dans des jugements concernant lesdits impôts.»

#### **Article VII**

Le paragraphe 2 de l'article 27 de la Convention est supprimé et remplacé par ce qui suit :

- «2 Nonobstant les dispositions du paragraphe 1, les Parties qui sont Etats membres de l'Union européenne, peuvent appliquer, dans leurs relations mutuelles, les possibilités d'assistance prévues par la Convention, dans la mesure où elles permettent une coopération plus large que celles offertes par les règles applicables de l'Union européenne. »

#### **Article VIII**

- 1 Les paragraphes suivants sont ajoutés à la fin de l'article 28 de la Convention :

«4 Tout Etat membre du Conseil de l'Europe ou pays membre de l'OCDE qui devient Partie à la Convention après l'entrée en vigueur du Protocole amendant la présente Convention, ouvert à la signature le 27 mai 2010 (le « Protocole de 2010 »), sera Partie à la Convention telle qu'amendée par ce Protocole, sauf s'il exprime une intention différente dans une notification écrite adressée à l'un des dépositaires.

5 After the entry into force of the 2010 Protocol, any State which is not a member of the Council of Europe or of the OECD may request to be invited to sign and ratify this Convention as amended by the 2010 Protocol. Any request to this effect shall be addressed to one of the Depositaries, who shall transmit it to the Parties. The Depositary shall also inform the Committee of Ministers of the Council of Europe and the OECD Council. The decision to invite States which so request to become Party to this Convention shall be taken by consensus by the Parties to the Convention through the co-ordinating body. In respect of any State ratifying the Convention as amended by the 2010 Protocol in accordance with this paragraph, this Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of ratification with one of the Depositaries.

6 The provisions of this Convention, as amended by the 2010 Protocol, shall have effect for administrative assistance related to taxable periods beginning on or after 1 January of the year following the one in which the Convention, as amended by the 2010 Protocol, entered into force in respect of a Party, or where there is no taxable period, for administrative assistance related to charges to tax arising on or after 1 January of the year following the one in which the Convention, as amended by the 2010 Protocol, entered into force in respect of a Party. Any two or more Parties may mutually agree that the Convention, as amended by the 2010 Protocol, shall have effect for administrative assistance related to earlier taxable periods or charges to tax.

7 Notwithstanding paragraph 6, for tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the applicant Party, the provisions of this Convention, as amended by the 2010 Protocol, shall have effect from the date of entry into force in respect of a Party in relation to earlier taxable periods or charges to tax."

- 2 The following subparagraph shall be added after subparagraph e of paragraph 1 of Article 30 of the Convention:

"f to apply paragraph 7 of Article 28 exclusively for administrative assistance related to taxable periods beginning on or after 1 January of the third year preceding the one in which the Convention, as amended by the 2010 Protocol, entered into force in respect of a Party, or where there is no taxable period, for administrative assistance related to charges to tax arising on or after 1 January of the third year preceding the one in which the Convention, as amended by the 2010 Protocol, entered into force in respect of a Party."

- 3 The words "and any Party to this Convention" shall be added after the words "member countries of the OECD" in paragraph 1 of Article 32 of the Convention.

#### **Article IX**

- 1 This Protocol shall be open for signature by the Signatories to the Convention. It is subject to ratification, acceptance or approval. A signatory may not ratify, accept or approve this Protocol unless it has previously or simultaneously ratified, accepted or approved the Convention. Instruments of ratification, acceptance or approval shall be deposited with one of the Depositaries.
- 2 This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date on which five Parties to the Convention have expressed their consent to be bound by the Protocol in accordance with the provisions of paragraph 1.

5 Après l'entrée en vigueur du Protocole de 2010, tout Etat qui n'est pas membre du Conseil de l'Europe ou de l'OCDE peut demander à être invité à signer et ratifier la Convention telle qu'amendée par le Protocole de 2010. Toute demande en ce sens devra être adressée à l'un des dépositaires qui la transmettra aux Parties. Le dépositaire en informera également le Comité des Ministres du Conseil de l'Europe et le Conseil de l'OCDE. La décision d'inviter les Etats qui ont demandé à devenir Parties à la Convention sera prise par consensus par les Parties à la Convention par l'intermédiaire de l'organe de coordination. Pour tout Etat qui ratifiera la Convention telle qu'amendée par le Protocole de 2010 conformément au présent paragraphe, la présente Convention entrera en vigueur le premier jour du mois qui suit l'expiration d'une période de trois mois après la date du dépôt de l'instrument de ratification auprès de l'un des dépositaires.

6 Les dispositions de la présente Convention, telle qu'amendée par le Protocole de 2010, s'appliquent à l'assistance administrative couvrant les périodes d'imposition qui débutent le 1<sup>er</sup> janvier, ou après le 1<sup>er</sup> janvier de l'année qui suit celle durant laquelle la Convention, telle qu'amendée par le Protocole de 2010, entrera en vigueur à l'égard d'une Partie ou, en l'absence de période d'imposition, elles s'appliquent à l'assistance administrative portant sur des obligations fiscales prenant naissance le 1<sup>er</sup> janvier, ou après le 1<sup>er</sup> janvier de l'année qui suit celle durant laquelle la Convention, telle qu'amendée par le Protocole de 2010, entrera en vigueur à l'égard d'une Partie. Deux Parties ou plus peuvent convenir que la Convention, telle qu'amendée par le Protocole de 2010, prendra effet pour ce qui concerne l'assistance administrative portant sur des périodes d'imposition ou obligations fiscales antérieures.

7 Nonobstant les dispositions du paragraphe 6, les dispositions de la présente Convention, telle qu'amendée par le Protocole de 2010, prendront effet à compter de sa date d'entrée en vigueur à l'égard d'une Partie, pour ce qui concerne les affaires fiscales faisant intervenir un acte intentionnel passible de poursuites en vertu du droit pénal de la Partie requérante portant sur des périodes d'imposition ou obligations fiscales antérieures. »

2 L'alinéa suivant sera ajouté après l'alinéa e du paragraphe 1 de l'article 30 de la Convention:

« f d'appliquer l'article 28 paragraphe 7 exclusivement pour l'assistance administrative couvrant les périodes d'imposition qui débutent le 1<sup>er</sup> janvier, ou après le 1<sup>er</sup> janvier de la troisième année précédant celle où la Convention, telle qu'amendée par le Protocole de 2010, est entrée en vigueur à l'égard d'une Partie, ou en l'absence de période d'imposition, pour l'assistance administrative portant sur des obligations fiscales prenant naissance le 1<sup>er</sup> janvier ou après le 1<sup>er</sup> janvier de la troisième année précédant celle où la Convention, telle qu'amendée par le Protocole de 2010, est entrée en vigueur à l'égard d'une Partie. »

3 Les termes « et à toute Partie à la présente Convention » seront ajoutés après les termes « pays membres de l'OCDE » au paragraphe 1 de l'article 32 de la Convention.

#### **Article IX**

1 Le présent Protocole est ouvert à la signature des Signataires de la Convention. Il sera soumis à ratification, acceptation ou approbation. Un signataire ne peut ratifier, accepter ou approuver le présent Protocole à moins d'avoir précédemment ou simultanément ratifié, accepté ou approuvé la Convention. Les instruments de ratification, d'acceptation ou d'approbation seront déposés près l'un des dépositaires.

2 Le présent Protocole entrera en vigueur le premier jour du mois qui suit l'expiration d'une période de trois mois après la date à laquelle cinq Parties à la Convention auront exprimé leur consentement à être liées par ce Protocole conformément aux dispositions du paragraphe 1.

- 3 In respect of any Party to the Convention which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

**Article X**

- 1 The Depositary with whom an act, notification or communication has been accomplished, shall notify the member States of the Council of Europe, the member countries of OECD and any Party to the Convention as amended by this Protocol of:
  - a any signature;
  - b the deposit of any instrument of ratification, acceptance or approval;
  - c any date of entry into force of this Protocol in accordance with the provisions of Article IX;
  - d any other act, notification or communication relating to this Protocol.
- 2 The Depositary receiving a communication or making a notification in pursuance of the provisions of paragraph 1 shall inform the other Depositary thereof.
- 3 The Depositaries shall transmit to the member States of the Council of Europe and the member countries of the OECD a certified copy of this Protocol.
- 4 When this Protocol enters into force in accordance with Article IX, one of the Depositaries shall establish the text of the Convention as amended by this Protocol and shall send a certified copy to all the Parties to the Convention as amended by this Protocol.

- 3 Pour toute Partie à la Convention qui exprimera ultérieurement son consentement à être liée par le Protocole, celui-ci entrera en vigueur le premier jour du mois qui suit l'expiration d'une période de trois mois après la date du dépôt de l'instrument de ratification, d'acceptation ou d'approbation.

**Article X**

- 1 Le dépositaire auprès duquel est déposé un acte, une notification ou une communication notifiera aux Etats membres du Conseil de l'Europe, aux pays membres de l'OCDE et à toute Partie à la Convention telle qu'amendée par le présent Protocole :
  - a toute signature ;
  - b le dépôt de tout instrument de ratification, acceptation ou approbation ;
  - c toute date d'entrée en vigueur du présent Protocole conformément aux dispositions de l'article IX ;
  - d tout autre acte, notification ou communication ayant trait au présent Protocole.
- 2 Le dépositaire recevant une communication ou procédant à une notification conformément au paragraphe 1 en informera l'autre dépositaire.
- 3 Les dépositaires communiqueront une copie certifiée conforme de ce Protocole aux États membres du Conseil de l'Europe et aux pays membres de l'OCDE.
- 4 Lorsque le présent Protocole entrera en vigueur conformément à l'article IX, l'un des dépositaires établira le texte de la Convention telle qu'amendée par le présent Protocole et en communiquera une copie certifiée conforme à chacune des Parties à la Convention telle qu'amendée par le présent Protocole.

In witness whereof the undersigned, being duly authorised thereto, have signed the Protocol.

Done at Paris, this 27th day of May 2010, in English and French, both texts being equally authentic, in two copies, one of which shall be deposited in the archives of the Council of Europe and the other in the archives of the OECD.

Certified a true copy of the original, in English and French, deposited in the archives of the Council of Europe and the OECD.

Strasbourg, this

The Director of Legal Advice  
and Public International Law  
(Jurisconsult)  
of the Council of Europe,

En foi de quoi, les soussignés, dûment autorisés à cet effet, ont signé le présent Protocole.

Fait à Paris, le 27 mai 2010, en français et en anglais, les deux textes faisant également foi, en deux exemplaires, dont l'un sera déposé dans les archives du Conseil de l'Europe et l'autre dans les archives de l'OCDE.

Copie certifiée conforme à l'original en langues française et anglaise, déposé dans les archives du Conseil de l'Europe et de l'OCDE.

Strasbourg, le

Le Directeur du Conseil juridique  
et du droit international public  
(Jurisconsulte)  
du Conseil de l'Europe,

Manuel LEZERTUA

or/ou

Paris, this 15 July 2010

Paris, le 15 juillet 2010

The Director,  
Directorate for Legal Affairs  
of the OECD,

Le Directeur,  
Direction des Affaires juridiques  
de l'OCDE,



Nicola BONUCCI