



INDUSTRIE- UND FINANZKONTOR  
WEALTH PRESERVATION EXPERTS

# NEWS

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## ON THE PATH TO A WATCHDOG STATE

The automatic exchange of information (AEI) is a major talking point at present. Before the year is out, this procedure is to be adopted as an OECD benchmark regulation and declared a generally applicable global standard. But what lies beneath the surface of it all?

Wherever you look throughout the world these days, a chasm is gradually opening up between the grassroots populace and the «classe politique». A prime example of this is the steadily waning voter turnout percentages, as recently seen in the European parliamentary elections. People are losing trust and confidence in their politicians. The knee-jerk reaction of policymakers is to introduce even more stringent control mechanisms – a phenomenon which is not just something new to recent years. Since time immemorial, human beings have had the desire to exert control over

**To exert control, it is necessary to gather as much knowledge as you can about others.**

others, first and foremost because it ensures their own security. So it comes as little surprise that politicians around the globe generally agree that the activities of citizens need to be monitored in order to «safeguard the common good». But the line of demarcation between the common good and self-interest is extremely thin; and it is questionable whether certain measures actually serve to achieve the oft-proclaimed deterrence of terrorism, money laundering and the like, or instead fulfil other self-serving political purposes.

To exert control, it is necessary to gather as much knowledge as you can about others. In this sense, the AEI is a means to an end and the OECD (Organisation for Economic Cooperation and Development) an instrument for its imple-

mentation. The financial and economic crisis that emerged in 2008 paved the way for propagating the idea that the AEI is a necessary measure. It has opened the floodgates of envy and makes the AEI look like an ideal way of «getting back at the rich». But many people fail to realise that the debacle was caused by decades of irresponsible budget policies. They are also unaware that the AEI expands the state's arsenal of surveillance armaments and thus represents a further milestone on the path towards transparent citizenship. America's FATCA programme is a pilot project for testing the bureaucratic viability of the AEI.

It would appear that we are witnessing the dawn of a new self-conception of government: away from the days when the state actually did safeguard the common good of its citizenry, off in the direction of a world where the state has the primary task of depriving its citizens of their freedom to decide and act on their own – and then ceding those responsibilities to an elite. At which point, private ownership becomes subject to state arbitrariness and populist votes, and once again private wealth is endangered.



*Michael von und zu Liechtenstein  
Chairman of the Board*

# THE AUTOMATIC EXCHANGE OF INFORMATION

The automatic exchange of information (AEI) is being viewed as a «bête noire» surrounded by all sorts of myths and half-truths. That can understandably lead to a certain degree of anxiety. The following essay is intended as a means of shedding some light on this spectre and pointing up facts about the AEI.

Following the outbreak of the global financial crisis and in response to massive pressure from major industrialised nations, the Liechtenstein government went on the offensive in March 2009 by declaring that in future the Principality would apply the OECD standards for transparency and the exchange of information in tax-related matters. Last November, the government went further by signing the *Convention on Mutual Administrative Assistance in Tax Matters* as formulated by the OECD and European Council. This multilateral pact, which came into existence in 2011, has already been embraced by more than 50 countries – and

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with that, Tax Information Exchange Agreements (TIEA) have become superfluous.

In combination with Art. 26 of the *OECD Model Convention on the Avoidance of Double Taxation* the Administrative Assistance Convention (AAC) forms the basis for all kinds of information exchange, e.g. upon request, spontaneously and in certain instances even automatically. In terms of collaboration in tax matters, the AAC stands by the exchange of information upon request or spontaneously. For its part, the AEI recommends the Convention as an «option for bilateral agreements». With this recommendation, the AAC has paved the way for currently ongoing discussions. At present, work is being done on a *global standard for AEI*, which in turn is to be taken into account in bilateral negotiations.

The Liechtenstein government endeavours to pursue a comprehensive approach in its bilateral negotiations. It takes the view that fruitful collaboration in the tax realm must include more than just the automatic exchange of information, namely also means of resolving past and future issues, agreements on the avoidance of double taxation, as well as formal recognition of Liechtenstein's traditional legal entities (i.e. trusts and foundations). It will maintain this stance in future bilateral negotiations.

Route 66 to a global standard

But now back to the current efforts to compose a *global standard for the AEI*: the major industrialised and emerging nations (G20) as well as the European Union have strived for quite some time now to institutionalise the automatic exchange of information. That has been recognisable in the past for example in the continuous further development of the EU Savings Directive and the *OECD Model Convention on the Avoidance of Double Taxation*. America's FATCA (Foreign Account Tax Compliance Act) programme initiated in 2010 gave further stimulus to these efforts, and in 2013 the «AEI as a Global Standard» project gained considerable momentum.

On the occasion of their April 2013 meeting, the G20 finance ministers voiced the opinion that the AEI needs to become an international standard. And already in September 2013, the G20 heads of government adopted a corresponding timetable. Then this past February, the OECD used the G20 meeting in Sydney as a venue for presenting an initial draft version of a *global standard for automatic exchange of financial account information*, including an OECD model convention. The draft version will now be finalised, confirmed by the G20 nations this fall, and ultimately adopted by the OECD *Global Forum on Transparency and Exchange of Information for Tax Purposes*. At that point, the new *global standard on AEI* will acquire formal validity and be used as the basis for negotiating bilateral agreements and a revision of the EU Savings Directive.

Now it remains to be seen how that standard is formulated concretely in terms of its reporting and due diligence rules, as well as its corresponding model agreement; not to mention the point in time when it actually must be applied. It is already presumable that the AEI will pertain to all types of return on capital (e.g. interest income, dividends, insurance benefits, etc.) as well as bank account balances and proceeds from the sale of financial assets – and that both natural and legal persons, including trusts and foundations, will be affected. Precisely in which form is currently unknown.

What is the purpose of it all?

The medium-term goal of the new *global standard for automatic exchange of financial account information* is obviously to add transparency to the tax situation of natural persons and legal entities by also assessing for tax purposes those assets that are located outside the given country of residence. The long-term objective here is to close so-called «tax loopholes» and gain the ability to enforce the legally

defined tax claims of a country of residence; not to mention a general ratcheting-up of the obligation to disclose. To achieve that, tax authorities should be in a position to work together transnationally and exchange automatically the information necessary to achieve those goals. Also, the exchange of data is to be systematised and conducted regularly.

### Even in times of increasing transparency, there remains latitude for action and structuring.

Being emphasised as a positive aspect of this new global standard is that it creates a generally valid understanding of what an AEI in tax matters constitutes and what its key features should be. Also, such a globally applicable standard should to the greatest possible extent hinder any «disadvantageous competitive gap between nations».

The AEI becomes problematic when data protection gets circumvented and the shared details are not used exclusively for the originally intended purpose (namely the rightful compliance with tax obligations). The danger is great that data protection will not function properly in actual practice. For that reason, it will be of decisive importance in future negotiations that extreme care be taken to ensure that a general right to total transparency of one's wealth circumstances cannot automatically arise from the justifiable tax claims.

As already mentioned in previous issues of I&F-News, there are many reasons why one's wealth circumstances should be treated confidentially outside the tax domain. Thus it should be the declared goal to protect one's legitimate private sphere especially in times of increasingly transparent citizenship. The Liechtenstein government is fully aware of that fact. Liechtenstein is a member of the OECD *Global Forum on Transparency and Exchange of Information for Tax Purposes* and as such is an active contributor to the process surrounding the AEI.

#### Where is the leeway?

Even in times of increasing transparency, there remains latitude for action and structuring. The key in this whole matter is that private individuals take the proper steps at the right time, namely:

1. By (re)structuring wealth:

Now is the time to consider carefully what should be accomplished with one's various assets over the long run. The task is to reorient your wealth matrix by closely examining whether your existing asset structures can be preserved also in this new (tax) legislative environment without them having a negative impact on your heirs/beneficiaries. This process can include:

- with a view towards wealth preservation and estate planning, determining whether the assets under discussion are optimally structured – e.g. whether it is possible to parcel them out to various legal entities;
- in the case of internationally situated structures, examining whether they can be furnished with the substance necessary to pass muster under the new legislation;
- while taking into account the future investment and capital allocation plans, also considering the tax planning aspects in terms of their effect on the coming generations.

2. By maintaining room for manoeuvre:

Ensuring your personal freedom to act is a further significant dimension of wealth preservation:

- securing your own (residential) mobility;
- shifting certain assets to neutral third countries; and
- actively using your family connections throughout the world to your best advantage.

At this point it can be seen that, in the light of day, the «bête noire» is not as scary as it originally appeared to be. By taking the proper precautions at the proper time, you can protect yourself from others' arbitrariness and unjustified appropriation even in a time of heightened transparency. Or to say it differently: for wealth, our world is no safe haven; but it can be under certain circumstances.



Francis von Seilern-Aspang  
Managing Director, CEO

# WHAT WE CAN LEARN FROM BUMBLEBEES

Igor Iwanowitsch Sikorski, the noted designer and constructor of helicopters, is said to have stated: «Calculations have shown that, due on one hand to the relationship between wing surface and flapping frequency, and on the other to its bodyweight, a bumblebee can't fly. But the bumblebee doesn't know anything about these calculations, so it probably flies by mistake!»

Dealing with wealth and values is frequently comparable to the behaviour of a bumblebee. Despite their lack of any aerodynamic properties, individuals often execute some of the most improvident loop-the-loops with their wealth – even though they don't intend to. The vast majority of them mainly desire safety, protection and predictability, especially when it comes to estate planning. For wealth, our world is no safe haven. Too multifaceted are the intra- and extra-familial influences that can affect one's fortune; too diverse the vulnerabilities to risks and threats. Yet in principle, each wealth matrix can be made more calculable and secure. It all depends on the fundament! A fortune which is to be preserved for generations to come requires clear visions and goals; value principles; arrangements that are put down in writing; as well as suitable structuring and protection mechanisms.

We at Industrie- und Finanzkontor assist people by giving their wealth and cherished values a future. We help to create intra-familial stability, economic security and legal inviolability. For 65 years now we have availed of our «wealth preservation toolbox» in advising and accompanying clients from around the globe. The key components of that toolbox are:

- instruments for devising a system of family governance;
- know-how in intra- and extra-familial wealth planning;
- know-how in legal and tax planning;
- know-how in succession and estate planning;
- an array of legal instruments for creating asset structures;
- know-how in the area of philanthropy; and
- strategic accompaniment and controlling with regard to holistic asset management.

Those clients are families and private individuals who – in response to government over-indebtedness, wealth redistribution tendencies, indiscriminate shotgun approaches to fiscal policy, etc. – are bewildered and seek assistance from

Industrie- und Finanzkontor. We help them by giving them the opportunity to focus from a greater distance on the entirety of their wealth situation so that the big picture comes into view. That in turn produces an objective, forward-looking basis for decision making. We develop comprehensive solutions that are suited to the given client's needs and take into account all relevant transnational, tax, regulatory and legal aspects. In accomplishing that, we make use of various domestic and international forms of legal entity – because only with them can one's fortune be properly structured. We have accompanied many of our clients already for generations. In close collaboration with their members, we formulate family visions, family constitutions and guidelines for resolving internal conflicts, as well as structure the family fortune, define the principles governing asset distributions, etc. In doing so, we draw on a broad network of international experts (attorneys, tax advisors, banks, asset managers, etc.), all of whom stand ready to assist us in addressing country-specific issues.

Oh, and by the way: Igor Sikorski's previously mentioned paradox concerning the flight capacity of a bumblebee has been scientifically refuted. Thanks to the flapping frequency (a bumblebee's wings flap up to two hundred times a second in a circular fashion), a tornado-like air vortex is generated. That results in a low-pressure area under the wings which in turn provides the necessary lift to keep the chubby creature in the air. With this example, it can be seen that many things considered given are, upon closer inspection, not irrefutable. We at Industrie- und Finanzkontor resolve paradoxes in the realm of family fortunes and, in that capacity, act as a kind of «flight guidance system» for wealthy private individuals.



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