

EC/Switzerland agreement: taxation of savings income in the form of interest payments (Directive 2003/48/EC)

2004/0027(CNS) - 10/02/2004 - Legislative proposal

PURPOSE : to conclude the Agreement between the EC and the Swiss Confederation providing for measures equivalent to those laid down in Council Directive 2003/48/EC on the taxation of savings income in the form of interest payments and the Memorandum of Understanding **PROPOSED ACT** : Council Decision. **CONTENT** : By its Decision of 16 October 2001, the Council authorised the Commission to negotiate with Switzerland and five other third countries (United States of America, Andorra, Liechtenstein, Monaco and San Marino) appropriate agreements for securing the adoption by these countries of measures equivalent to those to be applied within the Community to ensure effective taxation of savings income in the form of interest payments. In the course of negotiations, the Swiss side requested the extension to Switzerland of the regimes provided for in Council Directive 90/435/EEC on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States and in Council Directive 2003/49/EC on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States. The draft approved by Council includes the Swiss request. However, in respect of Spain, the draft provides that the provision will only apply from the entry into force of a bilateral agreement between Spain and Switzerland on the exchange of information on request in cases of tax fraud or the like with respect to items of income not subject to this Agreement but covered by a bilateral convention or agreement between the two countries. In approving the draft Agreement, the Council took the view that the Community does not have exclusive competence to conclude an agreement with Switzerland on the tax treatment of dividends and of interest and royalty payments as mentioned in article 15 of the draft Agreement. Delegations agreed nevertheless, by way of exception and without creating a precedent, that Member States will not exercise their competence in this particular case. Member States maintain their competence to conclude bilateral agreements with other third countries on the tax treatment of dividends and of interest and royalty payments between companies. The Agreement is now being presented to the Council to be concluded. The accompanying Memorandum of Understanding: -commits Switzerland and Member States to enter into bilateral negotiations with a view to including in their respective double taxation conventions provisions on exchange of information on request for cases falling within the concept of "tax fraud or the like" with respect to items of income not subject to the Agreement but covered by their respective conventions, and with a view to defining individual categories of cases falling under "the like" in accordance with the procedure of taxation applied by those countries; -confirms that, during the transitional period provided for in Council Directive 2003/48/EC, the EC will enter into discussions with other important financial centres with a view to promoting the adoption by those jurisdictions of measures equivalent to those to be applied by the Community; - provides that the agreed measures will be implemented in good faith and that parties will not act unilaterally to undermine this arrangement without due cause. Should any significant difference between the coverage of Council Directive 2003/48/EC and that of the Agreement be discovered, the Contracting Parties will immediately enter into consultations with a view to ensuring that the equivalent nature of the measures provided for in the Agreement is maintained.