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

2004/0192(CNS) - 17/08/2004 - Legislative proposal

PURPOSE : to conclude the Agreement between the European Community and the Principality of Andorra in providing for measures equivalent to those laid down in Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments.

PROPOSED ACT : Council Decision.

CONTENT : by its decision of 16 October 2001, the Council authorised the Commission to negotiate appropriate agreements with Switzerland, the United States of America, Andorra,

Liechtenstein, Monaco and San Marino to ensure that these countries adopt measures

equivalent to those to be applied within the Community to ensure effective taxation of savings

income in the form of interest payments.

The Council identified four elements of this Agreement : Retention and withholding: Switzerland will apply the same rates of retention and withholding as Belgium, Luxembourg and Austria; Revenue sharing: Switzerland will share the revenue of the retention tax and will accept the 75/25 division applied within the Community; Voluntary disclosure of information and a review clause stating that "The Contracting Parties shall consult with each other at least every three years or at the request of either Contracting Party with a view to examining and – if deemed necessary by the Contracting Parties - improving the technical functioning of the Agreement. In any event when Belgium, Luxembourg and Austria change from withholding tax to automatic exchange of information in accordance with the Directive, the Contracting Parties shall consult each other in order to examine whether the changes to the Agreement are necessary taking into account international developments.

This Agreement is accompanied by a Memorandum of Understanding between the European Community and its Member States, of the one part, and the Principality of Andorra of the other part. In accordance with the conclusions of the ECOFIN Council of 21 January 2003, the Memorandum of Understanding confirms that within the transition period provided for by Council Directive 2003/48/EC of 3 June 2003, the European Community will enter into discussions with other important financial centres with a view to promoting adoption by those jurisdictions of measures equivalent to those applied by the Community.

The Memorandum of Understanding also provides that the agreed measures will be implemented in good faith and that the Parties will not act unilaterally to undermine this arrangement without due cause. Should any significant difference between the scope of Council Directive 2003/48/EC and that of the Agreement, in particular with regard to Article 6 of the Agreement, be discovered, the Contracting Parties will immediately enter into discussions with a view to ensuring that the equivalent nature of the measures provided for by the Agreement is maintained.

Lastly, as regards the exchange of information, the Memorandum of Understanding provides that the Principality of Andorra undertakes to make its best endeavour to determine without delay the acceptability of a duly justified request in accordance with its procedural laws. The Memorandum of Understanding

further states that European Union and its Member States will take into account Andorra's decision to provide for measures equivalent to the Directive in their co-operation with Andorra including co-operation on fiscal matters. The signatories agree that in the context of the negotiations foreseen on the exchange of information as set out in Article 10(4) of the Agreement, either party may raise in parallel other taxation issues, including issues related to the elimination of double taxation of income.