COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 21.10.2004
COM(2004) 643 final/2

2004/0241 (CNS)

Corrigendum:
Nouveau n° d'acronyme.
Concerne les 3 versions linguistiques
pages 1 et 11.

Proposal for a

COUNCIL DECISION

on the signature of the Agreement between the European Community and the Republic of San Marino providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments and the approval and signature of the accompanying Memorandum of Understanding

Proposal for a

COUNCIL DECISION

on the conclusion of the Agreement between the European Community and the Republic of San Marino providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments

(presented by the Commission)

EXPLANATORY MEMORANDUM

By its Decision of 16 October 2001, the Council authorised the Commission to negotiate with Switzerland, the 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. The Commission was to conduct these negotiations in close conjunction with the Presidency of the Council and in close and regular consultation with the High-Level Working Party set up by Coreper Decision of 13 June 2001[1] and appointed by the Council as a special committee to assist the Commission in that task.

Following the Decision of 16 October 2001, the Commission wrote to the above third countries asking for negotiations to commence even though it was only after the ECOFIN Council's approval of a text of the draft Directive, on 13 December 2001, that these negotiations could really begin. A large number of meetings at both political and technical level have been held since. In accordance with the Council Decision of 16 October 2001, the Commission conducted these negotiations in close conjunction with the successive Presidencies of the Council. The Commission made regular oral progress reports of these negotiations to the Council and the Parliament and presented a Communication on the negotiations with third countries on taxation of savings income to the ECOFIN Council of 3 December 2002[2]. At the ECOFIN Council's request, negotiations on taxation of savings income have continued since.

On 3 June 2003, the Council stated that the draft Agreement with Switzerland, as submitted by the Commission on 28 May 2003 constituted the final offer for an Agreement between the EU and that country. The minutes also state:

– *"The four elements of this agreement relating to the Savings Taxation constitute also the basis for agreements between the European Union and Liechtenstein, Andorra, Monaco and San Marino. …."*

Earlier that year, on 21 January 2003, the Council had determined the four elements to be:

- *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*

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 if changes to the agreement are necessary taking into account international developments.

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1 OJ C 183, 29.6.2001, p.1

2 SEC (2002) 1287 final, 27.11.2002

Switzerland grants exchange of information on request for all criminal or civil cases of fraud or similar misbehaviour on the part of taxpayers……."

The Agreement with San Marino, which includes these four elements, is now being presented to the Council for signature and conclusion. The Agreement is accompanied by an ancillary Memorandum of Understanding (hereinafter MoU) between the Republic of San Marino and the European Community together with each of its Member States. In accordance with the ECOFIN Council conclusions of 21 January 2003, the MoU confirms that, during the transitional period provided for in Council Directive 2003/48/EC of 3 June 2003[3], the European Community 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. The MoU also 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.

The MoU adds that the conclusion of fiscal agreements with Member States of the European Union and San Marino's commitment to provide, within this framework, for information exchange in accordance with the standards of the OECD would enhance wider economic and tax cooperation. Recognising the efforts made by San Marino, consultations could take place between San Marino and the Member States of the European Union with the objective of eliminating or reducing, on a bilateral basis, double taxation in relation to different forms of income.

The MoU also states that the parties shall enter into consultations as soon as possible with a view to:

– examining the conditions for gradually improving mutual free access to the financial markets of both Parties. A preliminary condition is the need for the relevant prudential rules, and the supervision of the San Marino's operators concerned, to be of a kind that will preserve the proper functioning of the internal market in the sectors in question. Any possible Agreement in this field must be founded on the adoption and the implementation, by the Republic of San Marino, in the relevant business sectors, of the existing, and future, « acquis communautaire ». Such an Agreement should also provide that the Republic of San Marino undertakes to implement other Community rules, both current and those to be introduced in future, for example in matters of competition and taxation, which are also relevant to ensure the proper functioning of the internal market in the sectors in question;

– examining the possibilities of simplifying the procedures laid down in their Agreement on Customs Union and Cooperation. In this regard, the Republic of San Marino is ready to adopt computerised procedures similar to the INTRASTAT system;

[3] OJ L 157, 26.06.2003, p.38

– examining the possibilities for access by nationals of the Republic of San Marino to research, study and higher training programmes implemented by the European Community;

The Commission considers that the text of the Agreement is in accordance with the negotiating directives adopted by the Council on 16 October 2001. The Council gave its political agreement to the text on 2 June this year and the Council High-Level Working Party mentioned above confirmed its consensus on the details of the Agreement and of the MoU on 9 June.

The Commission proposes that the Council approve the attached proposals:

– for a decision on the signature of the Agreement providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments, and on approval and signature of the accompanying MoU, and

– for a decision on the conclusion of the above Agreement under the procedures set by Article 300 of the Treaty establishing the European Community.

Article 300 (2) of the Treaty establishing the European Community stipulates that the Council shall act unanimously when the agreement covers a field for which unanimity is required for the adoption of internal rules. As the internal rules in the field covered by this Agreement have been adopted on the basis of Article 94 of the Treaty, the Commission considers that the Council should act unanimously to approve the proposal for a decision. According to the ECOFIN Council conclusions of 21 January 2003, the Council agrees that the Agreement with the Republic of San Marino should be entered into on the basis of unanimity.

Proposal for a

COUNCIL DECISION

on the signature of the Agreement between the European Community and the Republic of San Marino providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments and the approval and signature of the accompanying Memorandum of Understanding

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 94 in conjunction with the first subparagraph of paragraph 2 of Article 300 thereof,

Having regard to the proposal from the Commission[4],

Whereas:

(1) On 16 October 2001, the Council authorised the Commission to negotiate with the Republic of San Marino an appropriate agreement for securing the adoption by the Republic of San Marino of measures equivalent to those to be applied within the Community to ensure effective taxation of savings income in the form of interest payments.

(2) The text of the Agreement which is the result of the negotiations reflects duly the negotiating directives issued by the Council. It is accompanied by a Memorandum of Understanding between the European Community and its Member States, of the one part, and the Republic of San Marino of the other part.

(3) Subject to the adoption at a later date of a decision on the conclusion of the Agreement, it is desirable to sign the two documents that were initialled on 12 July 2004 and have confirmation of the Council approval of the Memorandum of Understanding,

HAS DECIDED AS FOLLOWS:

Sole Article

Subject to the adoption at a later date of a Decision on the conclusion of the Agreement, the President of the Council is hereby authorised to designate the persons empowered to sign the Agreement between the European Community and the Republic of San Marino providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments, the accompanying Memorandum of

[4] OJ C …, ……..2004, p…

Understanding and the letters referred to in Article 21, paragraph 2 of the Agreement and in the last paragraph of the Memorandum of Understanding on behalf of the Community.

The text of the above Memorandum of Understanding is approved by the Council as attached to this Decision.

Done at Brussels,

For the Council
The President

ANNEX

Memorandum of understanding

Between

the European Community, the Kingdom of Belgium, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of Hungary, the Republic of Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, the Republic of Slovenia, the Slovak Republic, the Republic of Finland, the Kingdom of Sweden, the United Kingdom of Great Britain and Northern Ireland

and

the Republic of San Marino

MEMORANDUM OF UNDERSTANDING

Between

the European Community,
the Kingdom of Belgium,
the Czech Republic,
the Kingdom of Denmark,
the Federal Republic of Germany,
the Republic of Estonia,
the Hellenic Republic,
the Kingdom of Spain,
the French Republic,
Ireland,
the Italian Republic,
the Republic of Cyprus,
the Republic of Latvia,
the Republic of Lithuania,
the Grand Duchy of Luxembourg,
the Republic of Hungary,
the Republic of Malta,
the Kingdom of the Netherlands,
the Republic of Austria,
the Republic of Poland,
the Portuguese Republic,
the Republic of Slovenia,
the Slovak Republic,
the Republic of Finland,
the Kingdom of Sweden,
the United Kingdom of Great Britain and Northern Ireland

and

the Republic of San Marino

When an Agreement providing for measures equivalent to those laid down in the Council Directive 2003/48/EC of 3 June 2003 on the taxation of savings income in the form of interest payments (hereinafter "the Directive") was concluded, the European Community, the Kingdom of Belgium, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of Hungary, the Republic of Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, the Republic of Slovenia, the Slovak Republic, the Republic of Finland, the Kingdom of Sweden, the United Kingdom of Great Britain and Northern Ireland and the Republic of San Marino signed this Memorandum of Understanding supplementing this Agreement.

1. The signatories to this Memorandum of Understanding consider that the Agreement between the Republic of San Marino and the European Community providing for measures equivalent to those laid down in the Directive is a balanced and acceptable

agreement protecting the interests of both Parties. Consequently, they shall apply in good faith the measures agreed and shall refrain from taking any unilateral action which might jeopardise this Agreement without reasonable cause. If a serious discrepancy is discovered between the scope of the Directive as adopted on 3 June 2003 (Council Directive 2003/48/EC) and that of the Agreement, in particular as concerns Articles 4 and 6 of the Agreement, the Contracting Parties shall consult each other forthwith in accordance with Article 15, paragraph 1 of the Agreement to ensure that the equivalent nature of the measures provided for by the Agreement is safeguarded. The signatories to this Memorandum of Understanding note that the definition of tax fraud for the purposes of Article 13 of the Agreement concerns only needs relating to the taxation of savings within the framework of this Agreement and is without prejudice to developments and/or decisions relating to tax fraud under other circumstances and in other fora.

2. During the transitional period provided for in the Directive, the European Community shall 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.

3. Considering that the Republic of San Marino wishes to be further integrated in the European economic environment, and that it considers its full participation in the European banking and financial system as therefore appropriate and desirable, the Republic and the European Community shall enter into consultations as soon as possible with a view to identify the conditions for reaching a mutual recognition of the prudential measures and systems of the respective Parties on financial services, including insurance. In this context, the Republic of San Marino, in order to preserve the proper functioning of the internal market in the sectors in question, undertakes to adopt and implement, in the relevant business sectors, the relevant existing, and future, "acquis communautaire", including the relevant prudential rules and the supervision of the San Marino operators concerned. Any possible Agreement in this field may also provide that the Republic of San Marino undertakes to implement other relevant Community rules, both current and those to be introduced in future, for example in matters of competition and taxation.

4. In this context of deepening relations, the conclusion of fiscal agreements with Member States of the European Union and San Marino's commitment to provide, within this framework, for information exchange in accordance with the standards of the OECD would enhance wider economic and tax cooperation. Recognising the efforts made by San Marino, consultations could take place between San Marino and the Member States of the European Union with the objective of eliminating or reducing, on a bilateral basis, double taxation in relation to different forms of income.

5. The European Community and the Republic of San Marino shall also enter into consultations with a view to:

   – defining forms for simplifying the procedures laid down in their Agreement on Customs Union and Cooperation. In this regard, the Republic of San Marino is ready to adopt computerised procedures even similar to the INTRASTAT system;

– better exploring the existing possibilities for nationals and enterprises from the Republic of San Marino to participate in research and development Community programmes and activities.

Signed at ..... on ..... in duplicate in the Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Spanish and Swedish languages, each of these texts being equally authentic.

The Czech, Estonian, Hungarian, Latvian, Lithuanian, Maltese, Polish, Slovak and Slovenian language versions shall be authenticated by the Contracting Parties on the basis of an exchange of letters. They shall also be authentic, in the same way as for the languages referred to in the previous paragraph.

Signatures

2004/0241 (CNS)

Proposal for a

COUNCIL DECISION

on the conclusion of the Agreement between the European Community and the Republic of San Marino providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 94 in conjunction with the first subparagraph of paragraph 2, the first subparagraph of paragraph 3 and paragraph 4 of Article 300 thereof,

Having regard to the proposal from the Commission[5],

Having regard to the opinion of the European Parliament[6],

Whereas:

(1) On 16 October 2001, the Council authorised the Commission to negotiate with the Republic of San Marino an appropriate agreement for securing the adoption by the Republic of San Marino of measures equivalent to those to be applied within the Community to ensure effective taxation of savings income in the form of interest payments.

(2) The text of the Agreement which is the result of the negotiations reflects duly the negotiating directives issued by the Council. It is accompanied by a Memorandum of Understanding between the European Community and its Member States, of the one part, and the Republic of San Marino of the other part, the text of which is attached to Council Decision …/…/EC of … 2004.

(3) The application of the provisions of the Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments depends on the application by the Republic of San Marino of measures equivalent to those contained in this Directive, in accordance with an Agreement entered into by the Republic of San Marino with the European Community.

(4) According to Council Decision …/…/EC of … 2004, and subject to the adoption at a later date of a Decision on the conclusion of the Agreement, the Agreement was signed on behalf of the European Community on … 2004.

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5 OJ C …, ……..2004, p…

6 OJ C …, ……..2004, p…

(5) The Agreement should be approved on behalf of the Community.

(6) It is necessary to provide for a simple and rapid procedure for possible adaptations of Annexes I and II to the Agreement,

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement between the European Community and the Republic of San Marino providing for measures equivalent to those laid down in Directive 2003/48/EC on taxation of savings income in the form of interest payments is hereby approved on behalf of the European Community.

The text of the Agreement is attached to this Decision.

Article 2

The Commission is hereby authorised to approve, on behalf of the Community, amendments to the Annexes to the Agreement which ensure that they correspond to the data relating to the competent authorities resulting from the notifications referred to in Article 5(a) of Directive 2003/48/EC and in the Annex thereto.

Article 3

The President of the Council shall effect the notification provided for in Article 16, paragraph 1 of the Agreement on behalf of the Community[7].

Article 4

This Decision shall be published in the *Official Journal of the European Union.*

Done at Brussels,

For the Council
The President

[7] The date of entry into force of the Agreement will be published in the Official Journal of the European Union by the General Secretariat of the Council.

ANNEX

Agreement between the European Community and the Republic of San Marino providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments

Agreement

between

the European Community

and

the Republic of San Marino

providing for measures equivalent to those laid down in the

Council Directive 2003/48/EC of 3 June 2003

on taxation of savings income in the form of interest payments

The European Community

and

the Republic of San Marino

hereinafter referred to as a "Contracting Party" or the "Contracting Parties" as the context may require,

have concluded the following Agreement:

Article 1

Aim

1. The purpose of this Agreement between the European Community and the Republic of San Marino is to consolidate and extend the existing close relations between the two Parties by establishing measures equivalent to those laid down in the Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments made to beneficial owners, individuals, resident for tax purposes in a Member State of the European Community, hereinafter referred to as the Directive.

2. The Republic of San Marino shall take the necessary measures and specifically provide for provisions on procedures and penalties, to ensure that the tasks necessary for the implementation of this Agreement are carried out by paying agents established within its territory, irrespective of the place of establishment of the debtor of the debt-claim producing the interest.

Article 2

Definition of beneficial owner

1. For the purposes of this Agreement, "beneficial owner" means any individual who receives an interest payment or any individual for whom an interest payment is secured, unless he provides evidence that it was not received or secured for his own benefit, that is to say that:

   (a) he acts as a paying agent within the meaning of Article 4, or

   (b) he acts on behalf of a legal person, an investment fund or a comparable or equivalent body for common investments in securities, or

   (c) he acts on behalf of another individual who is the beneficial owner and discloses to the paying agent the identity of that beneficial owner in accordance with Article 3.

2. Where a paying agent has information suggesting that the individual who receives an interest payment or for whom an interest payment is secured may not be the beneficial owner, and where neither paragraph 1(a) nor 1(b) applies to that individual, that agent shall take reasonable steps to establish the identity of the beneficial owner in accordance with Article 3. If the paying agent is unable to identify the beneficial owner, that agent shall treat the individual in question as the beneficial owner.

Article 3

Identity and residence of beneficial owners

In order to establish the identity and residence of the beneficial owner within the meaning of Article 2, the paying agent shall keep record of the family name, the first name and the data concerning the address and residence status in accordance with the Republic of San Marino Law against usury and money-laundering. For contractual relations entered into, or transactions carried out in the absence of contractual relations, on or after 1 January 2004, for individuals presenting a passport or official identity card issued by a Member State who declare themselves to be resident in a country other than a Member State or the Republic of San Marino, residence shall be established by means of a tax residence certificate issued by the competent authority of the country in which the individual claims to be resident. Failing the presentation of such a certificate, the Member State which issued the passport or other official identity document shall be considered the country of residence.

Article 4

Definition of paying agent

For the purposes of this Agreement, “paying agent” in the Republic of San Marino shall mean banks under San Marino banking law, as well as economic operators including natural and legal persons resident or established in the Republic of San Marino, partnerships and permanent establishments of foreign companies, which, even occasionally, accept, hold, invest or transfer assets of third parties or merely pay or secure interests in the course of their business.

Article 5

Definition of competent authority

1. For the purposes of this Agreement the competent authorities of the Contracting Parties shall mean those listed in Annex I.

2. The competent authorities of countries not included in the Contracting Parties shall mean those authorities of such countries which are competent for the purposes of bilateral or multilateral conventions, or, failing that, which are competent to issue certificates of residence for tax purposes.

Article 6

Definition of interest payment

1. For the purposes of this Agreement, "interest payment" means:

   (a) interest paid, or credited to an account, relating to debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures; penalty charges for late payments shall not be regarded as interest payments;

   (b) interest accrued or capitalised at the sale, refund or redemption of the debt-claims referred to in (a);

   (c) income deriving from interest payments either directly or through an entity referred to in Article 4, paragraph 2 of the Directive, distributed by

      (i) undertakings for collective investment or comparable or equivalent bodies for common investments in securities established within the territory referred to in Article 19,

      (ii) an entity domiciled in a Member State, which exercises the option under Article 4, paragraph 3 of the Directive and informs the paying agent of this fact,

      (iii) undertakings for collective investment or comparable or equivalent bodies for common investment in securities established outside the territory referred to in Article 19;

   (d) income realised upon the sale, refund or redemption of shares or units in the following undertakings and entities, if they invest directly or indirectly via other undertakings for collective investment or entities referred to below more than 40% of their assets in debt-claims as referred to in (a):

(i) undertakings for collective investment or comparable or equivalent bodies for common investments in securities established within the territory referred to in Article 19,

(ii) an entity domiciled in a Member State, which exercises the option under Article 4, paragraph 3 of the Directive and informs the paying agent of this fact,

(iii) undertakings for collective investment or comparable or equivalent bodies for common investment in securities established outside the territory referred to in Article 19.

However, the Republic of San Marino shall have the option of including income mentioned under (d) in the definition of interest only to the extent that such income corresponds to gains directly or indirectly deriving from interest payments within the meaning of (a) and (b).

2. As regards paragraph 1(c) and (d), when a paying agent has no information concerning the proportion of the income which derives from interest payments, the total amount of the income shall be considered an interest payment.

3. As regards paragraph 1(d), when a paying agent has no information concerning the percentage of the assets invested in debt-claims or in shares or units as defined in that paragraph, that percentage shall be considered to be above 40%. Where that agent cannot determine the amount of income realised by the beneficial owner, the income shall be deemed to correspond to the proceeds of the sale, refund or redemption of the shares or units.

4. As regards paragraph 1(b) and (d), the Republic of San Marino shall have the option of requiring paying agents in its territory to annualise the interest over a period of time which may not exceed one year, and treating such annualised interest as an interest payment even if no sale, redemption or refund occurs during that period.

5. By way of derogation from paragraphs 1(c) and (d), the Republic of San Marino shall have the option of excluding from the definition of interest payment any income referred to in those provisions from undertakings or entities established within its territory where the investment in debt-claims referred to in paragraph 1(a) of such entities has not exceeded 15% of their assets.

The exercise of such option by the Republic of San Marino, once notified to the other Contracting Party, shall be binding on both Contracting Parties.

6. The percentage referred to in paragraph 1(d) and paragraph 3 shall after 31 December 2010 be 25%.

7. The percentages referred to in paragraph 1(d) and in paragraph 5 shall be determined by reference to the investment policy as laid down in the fund rules or instruments of incorporation of the undertakings or entities concerned and, failing which, by reference to the actual composition of the assets of the undertakings or entities concerned.

Article 7

Withholding tax

1. Where the beneficial owner is resident in a Member State of the European Community, the Republic of San Marino shall levy a withholding tax at a rate of 15% during the first three years from the date of application of this Agreement, 20% for the subsequent three years and 35% thereafter.

2. The paying agent shall levy withholding tax as follows:

   (a) in the case of an interest payment within the meaning of Article 6, paragraph 1(a): on the amount of interest paid or credited;

   (b) in the case of an interest payment within the meaning of Article 6, paragraph 1(b) or (d): on the amount of interest or income referred to in those paragraphs or by a levy of equivalent effect to be borne by the recipient on the full amount of the proceeds of the sale, redemption or refund;

   (c) in the case of an interest payment within the meaning of Article 6, paragraph 1(c): on the amount of income referred to in that paragraph;

   (d) where the Republic of San Marino exercises the option under Article 6, paragraph 4: on the amount of annualised interest.

3. For the purposes of points (a) and (b) of paragraph 2, withholding tax is levied pro rata to the period of holding of the debt-claim by the beneficial owner. When the paying agent is unable to determine the period of holding on the basis of information in its possession, it shall treat the beneficial owner as having held the debt-claim throughout its period of existence unless he provides evidence of the date of acquisition.

4. Taxes other than that provided for in this Agreement on the same interest payment, and in particular the withholding taxes levied by the Republic of San Marino on San Marino's source interest income, shall be credited against the amount of the withholding tax calculated in accordance with this article.

5. The imposition of withholding tax by the paying agent located in the Republic of San Marino shall not preclude the Member State of the European Community where the beneficial owner has his residence for tax purposes from taxing the income in accordance with its domestic law. In cases where a taxpayer declares his interest income obtained from a paying agent located in the Republic of San Marino to the tax authorities in the Member State of the European Community where he has his residence, that interest income shall be subject to taxation there at the same rates as those applied to interest earned domestically.

Article 8

Revenue sharing

1. The Republic of San Marino shall retain 25% of its revenue from the withholding tax referred to in Article 7 and transfer 75% of the revenue to the Member State of the

European Community where the beneficial owner of the interest payment has his residence.

2. Such transfers shall take place in one instalment per Member State of the European Community at the latest within a period of 6 months following the end of the tax year of the Republic of San Marino.

3. The Republic of San Marino shall take the necessary measures to ensure the proper functioning of the revenue sharing system.

Article 9

Voluntary disclosure

1. The Republic of San Marino shall provide for a procedure which allows the beneficial owner as defined in Article 2 to avoid the withholding tax referred to in Article 7 by expressly authorising his paying agent established in the Republic of San Marino to report the interest payments to the competent authority of the Republic of San Marino. Such authorisation shall cover all interest payments made to, or secured for the immediate benefit of, the beneficial owner by that paying agent.

2. The minimum amount of information to be reported by the paying agent in case of express authorisation by the beneficial owner shall consist of:

   (a) the identity and residence of the beneficial owner established in accordance with Article 3 of this Agreement, supplemented when available by the tax identification number allocated by the Member State of the European Community where the beneficial owner has his residence;

   (b) the name and address of the paying agent;

   (c) the account number of the beneficial owner or, where there is none, identification of the debt-claim giving rise to the interest, and

   (d) the amount of the interest payment established in accordance with Article 6 of this Agreement.

3. The competent authority of the Republic of San Marino shall communicate the information referred to in Paragraph 2 to the competent authority of the Member State of the European Community where the beneficial owner has his residence. Such communications shall be automatic and shall take place at least once a year, within 6 months following the end of the tax year in the Republic of San Marino, for all interest payments made during that year.

Article 10

Elimination of double taxation

1. The Member State of the European Community where the beneficial owner has his residence for tax purposes shall ensure the elimination of any double taxation which might

result from the imposition of the withholding tax referred to in Article 7, in accordance with the provisions of paragraphs 2 and 3.

2. If interest received by a beneficial owner has been subject to the withholding tax referred to in Article 7 in the Republic of San Marino, the Member State of the European Community where the beneficial owner has his residence for tax purposes shall grant him a tax credit equal to the amount of the tax withheld in accordance with its national law. Where this amount exceeds the amount of tax due in accordance with its national law on the total amount of the interest payment which has been subject to the withholding tax referred to in Article 7, the Member State of the European Community where the beneficial owner has his residence for tax purposes shall repay to him the excess amount of tax withheld.

3. If, in addition to the withholding tax referred to in Article 7, interest received by a beneficial owner has been subject to any other type of withholding tax and the Member State of the European Community where the beneficial owner has his residence for tax purposes grants a tax credit for such withholding tax in accordance with its national law or double taxation conventions, such other withholding tax shall be credited before the procedure in paragraph 2 is applied.

4. The Member State of the European Community where the beneficial owner has his residence for tax purposes may replace the tax credit mechanism referred to in paragraphs 2 and 3 by a refund of the withholding tax referred to in Article 7.

Article 11

Negotiable debt securities

1. From the date of application of this Agreement for as long as at least one Member State of the European Community also applies similar provisions, and until 31 December 2010 at the latest domestic and international bonds and other negotiable debt securities which have been first issued before 1 March 2001 or for which the original issuing prospectuses have been approved before that date by the authorities which are competent for this purpose in the issuing state shall not be considered as debt-claims within the meaning of Article 6, paragraph 1 (a), provided that no further issues of such negotiable debt securities are made on or after 1 March 2002.

However, for as long as at least one Member State of the European Community also applies provisions similar to those of Article 7 of this Agreement, the provisions of the present Article shall continue to apply beyond 31 December 2010 in respect of negotiable debt securities:

– which contain gross-up and early redemption clauses and

– where the paying agent, as defined in Article 4, is established in the Republic of San Marino and

– where that paying agent pays interest directly to, or secures the payment of interest for the immediate benefit of, a beneficial owner resident in a Member State of the European Community.

If and when all Member States of the European Community cease to apply provisions similar to those of Article 7 of this Agreement, the provisions of the present Article shall continue to apply only in respect of those negotiable securities:

– which contain gross-up and early redemption clauses and

– where the issuer's paying agent is established in the Republic of San Marino and

– where that paying agent pays interest directly to, or secures the payment of interest for the immediate benefit of, a beneficial owner resident in a Member State of the European Community.

If a further issue is made on or after 1 March 2002 of an aforementioned negotiable debt security issued by a Government or a related entity acting as a public authority or whose role is recognised by an international Agreement (listed in Annex II to this Agreement), the entire issue of such a security, consisting of the original issue and any further issue shall be considered a debt-claim within the meaning of Article 6, paragraph 1 point (a).

If a further issue is made on or after 1 March 2002 of an aforementioned negotiable debt security issued by any other issuer not covered by the fourth subparagraph, such further issue shall be considered a debt-claim within the meaning of Article 6, paragraph 1 point (a).

2. This Article does not prevent the Republic of San Marino and the Member States of the European Community from continuing to levy a tax on revenues deriving from the aforementioned negotiable debt-claims in paragraph 1 in accordance with their national law.

Article 12

Other withholding taxes - Relationships with other Agreements

1. This Agreement shall not preclude the parties from levying other types of withholding tax than that referred to in this Agreement in accordance with their national laws or double taxation conventions.

2. The provisions of the double taxation conventions between the Republic of San Marino and the Member States of the European Community shall not prevent the levying of the withholding tax for which this Agreement provides.

Article 13

Exchange of information on request

1. The competent authorities of the Republic of San Marino and of any Member State of the European Community shall exchange information on conduct constituting tax fraud under the laws of the requested State, or the like for income covered by this Agreement. “The like” only includes offences with the same level of wrongfulness as is the case for tax fraud under the laws of the requested State, resulting in any prejudice for the taxation interests of

the requesting State. In response to a duly justified request, the requested State shall provide information with respect to the conduct that the requesting State is investigating, or may investigate, on a criminal or non criminal basis.

2. In determining whether information may be provided in response to a request, the requested State shall apply the statute of limitations applicable under the laws of the requesting State.

3. The requested State shall provide information where the requesting State has a reasonable suspicion that the conduct would constitute tax fraud or the like. The requesting State's suspicion of tax fraud or the like may be based on:

   a) documents, whether authenticated or not, and including but not limited to business records, books of account, or bank account information;

   b) testimonial information from the taxpayer;

   c) information obtained from an informant or other third person that has been independently corroborated or is otherwise likely to be credible; or

   d) circumstantial evidence.

4. The competent authority of the requesting State shall provide the following elements to the competent authority of the requested State when making a request for information under this Agreement to demonstrate the foreseeable relevance of the information to the request:

   (a) the identity of the person under examination or investigation;

   (b) a statement of the information sought including its nature and the form in which the requesting State wishes to receive the information from the requested State;

   (c) the tax purpose for which the information is sought;

   (d) grounds for believing that the information requested is held in the requested State or is in the possession or control of a person within the jurisdiction of the requested State;

   (e) to the extent known, the name and address of any person believed to be in possession of the requested information;

   (f) a statement that the request is in conformity with the law and administrative practices of the requesting State, that if the requested information was within the jurisdiction of the requesting State then the competent authority of the requesting State would be able to obtain the information under the laws of the requesting State or the normal course of administrative practice and that it is in conformity with this Agreement;

   (g) a statement that the requesting State has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

5. The competent authority of the requested State shall forward the requested information as promptly as possible to the requesting State.

6. The Republic of San Marino shall enter into bilateral negotiations with each of the Member States in order to define individual categories of cases falling under "the like" in accordance with the procedure of taxation applied by those countries.

Article 14

Confidentiality

Any information received by a Contracting Party under this Agreement shall be treated as confidential and may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the Contracting Party concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Agreement. Such persons or authorities shall use such information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. The information may not be disclosed to any other person or entity or authority or any other jurisdiction without the express written consent of the competent authority of the requested Party.

Article 15

Consultation and Review

1. If any disagreement arises between the competent authority of the Republic of San Marino and one or more of the other competent authorities listed in Annex I as to the interpretation or application of this Agreement, they shall endeavour to resolve this by mutual agreement. They shall immediately notify the Commission of the European Communities and the competent authorities of the other Member States of the results of their consultations. In relation to issues of interpretation the Commission may take part in consultations at the request of any of the competent authorities listed in Annex I.

2. The Contracting Parties shall consult 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 and assessing international developments. The consultations shall be held within one month of the request or as soon as possible in urgent cases.

3. On the basis of such an assessment, the Contracting Parties may consult each other in order to examine whether changes to the Agreement are necessary taking into account international developments.

4. As soon as sufficient experience of the full implementation of this Agreement is available, the Contracting Parties shall consult each other in order to examine whether changes to this Agreement are necessary taking into account international developments.

5. For the purposes of the consultations referred to in paragraphs 1, 2 and 3, the Contracting Parties shall inform each other of possible developments which could impact on the proper functioning of this Agreement. This shall also include any relevant agreement between one of the Contracting Parties and a third country.

Article 16

Signing, Entry into force and Termination

1. This Agreement requires ratification or approval by the Contracting Parties in accordance with their own procedures. The Contracting Parties shall notify each other of the completion of these procedures. The Agreement shall enter into force on the first day of the second month following the last notification.

2. Subject to the fulfilment of its constitutional requirements concerning entering into international agreements and without prejudice to Article 17, the Republic of San Marino shall effectively implement and apply this Agreement as from 1 July 2005 and notify the European Community thereof.

3. This Agreement shall remain in force until terminated by a Contracting Party.

4. Either Contracting Party may terminate this Agreement by giving notice to the other. In such a case, the Agreement shall cease to have effect twelve months after the serving of notice.

Article 17

Implementing regulation

1. The application of this Agreement shall be conditional on the adoption and implementation by the dependent or associated territories of the Member States of the European Community mentioned in the report from the Council (Economic and Financial Affairs) to the European Council of Santa Maria de Feira of June 19/20, 2000, as well as by the United States of America, the Swiss Confederation, Andorra, Liechtenstein, and Monaco, respectively, of measures which conform with or are equivalent to those contained in the Directive or in this Agreement.

2. The Contracting Parties shall decide, by common accord, at least six months before the date referred to in Article 16*,* paragraph 2, whether the condition set out in the above paragraph will be met having regard to the dates of entry into force of the relevant measures in the third countries and dependent or associated territories concerned. If the Contracting Parties do not decide that the condition will be met, they shall, by common accord, adopt a new date for the purposes of Article 16*,* paragraph 2.

3. The application of this Agreement or parts thereof may be suspended by either Contracting Party with immediate effect through notification to the other should the Directive or part of the Directive cease to be applicable either temporarily or permanently in accordance with European Community law or in the event that a Member State should suspend the application of its implementing legislation.

4. Either Contracting Party may suspend the application of this Agreement through notification to the other in the event that one of the third countries or territories referred to in paragraph 1 should subsequently cease to apply the measures referred to in that paragraph. Suspension of application shall take place no earlier than two months after

notification. Application of this Agreement shall resume as soon as the measures are reinstated.

Article 18

Claims and Final Settlement

1. Should this Agreement be terminated or its application be suspended either in full or in part, the claims of individuals in accordance with Article 10 shall remain unaffected.

2. The Republic of San Marino will, in such case, establish a final account by the end of the applicability of the Agreement and make a final payment to the Member States of the European Community.

Article 19

Territorial Scope

This Agreement shall apply, on the one hand, to the territories in which the Treaty establishing the European Communities is applied and under the conditions laid down in that Treaty and, on the other hand, to the territory of the Republic of San Marino.

Article 20

Annexes

1. The Annexes form part of this Agreement**.**

2. The list of competent authorities contained in Annex I can be amended by simple notification to the other Contracting Party by the Republic of San Marino, as far as the authority mentioned at point (a) of that Annex is concerned, and by the European Community as far as the other authorities are concerned.

The list of related entities contained in Annex II can be amended by mutual agreement.

Article 21

Languages

1. This Agreement shall be drawn up in duplicate in the Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Spanish and Swedish languages, the texts in each of these languages being equally authentic.

2. The Czech, Estonian, Hungarian, Latvian, Lithuanian, Maltese, Polish, Slovak and Slovenian language versions shall be authenticated by the Contracting Parties on the basis

of an exchange of letters. They shall also be authentic, in the same way as for the languages referred to in paragraph 1.

IN WITNESS WHEREOF the undersigned Plenipotentiaries have hereunder set their hands

Done at ....., this .....

For

For

Annex I

List of competent authorities of the Contracting Parties

The following are "competent authorities" of the Contracting Parties for the purposes of this Agreement:

(a) in the Republic of San Marino: Il Segretario di Stato per le Finanze e il Bilancio or an authorised representative;

(b) in the Kingdom of Belgium: De Minister van Financiën/Le Ministre des Finances or an authorised representative,

(c) in the Czech Republic: Ministr financí or an authorised representative,

(d) in the Kingdom of Denmark: Skatteministeren or an authorised representative,

(e) in the Federal Republic of Germany: Der Bundesminister der Finanzen or an authorised representative,

(f) in Republic of Estonia: Rahandusminister or an authorised representative,

(g) in the Hellenic Republic: Ο Υπουργός Οικονομίας και Οικονομικών or an authorised representative,

(h) in the Kingdom of Spain: El Ministro de Economía y Hacienda or an authorised representative,

(i) in the French Republic: Le Ministre chargé du budget or an authorised representative,

(j) in Ireland: The Revenue Commissioners or their authorised representative,

(k) in the Italian Republic: Il Capo del Dipartimento per le Politiche Fiscali or an authorised representative,

(l) in Republic of Cyprus: Υπουργός Οικονομικών or an authorised representative,

(m) in Republic of Latvia: Finanšu ministrs or an authorised representative,

(n) in Republic of Lithuania: Finansų ministras or an authorised representative,

(o) in the Grand Duchy of Luxembourg: Le Ministre des Finances or an authorised representative; however for the purposes of article 13 the competent authority shall be "le Procureur Général d'Etat luxemburgeois",

(p) in Republic of Hungary: A pénzügyminiszter or an authorised representative,

(q) in Republic of Malta: Il-Ministru responsabbli għall-Finanzi or an authorised representative,

(r) in the Kingdom of the Netherlands: De Minister van Financiën or an authorised representative,

(s) in the Republic of Austria: Der Bundesminister für Finanzen or an authorised representative,

(t) in the Republic of Poland: Minister Finansów or an authorised representative,

(u) in the Portuguese Republic: O Ministro das Finanças or an authorised representative,

(v) in the Republic of Slovenia: Minister za finance or an authorised representative,

(w) in the Slovak Republic: Minister financií or an authorised representative,

(x) in the Republic of Finland: Valtiovarainministeriö/Finansministeriet or an authorised representative,

(y) in the Kingdom of Sweden: Finansdepartementet or an authorised representative,

(z) in the United Kingdom of Great Britain and Northern Ireland and in the European territories for whose external relations the United Kingdom is responsible: the Commissioners of Inland Revenue or their authorised representative and the competent authority in Gibraltar, which the United Kingdom will designate in accordance with the Agreed Arrangements relating to Gibraltar authorities in the context of EU and EC instruments and related treaties notified to the Member States and institutions of the European Union of 19 April 2000, a copy of which shall be notified to the Republic of San Marino by the Secretary General of the Council of the European Union, and which shall apply to this Agreement.

Annex 2

List of related entities

For the purposes of Article 11 of this Agreement, the following entities will be considered to be a "*related entity acting as a public authority or whose role is recognised by an international treaty*":

ENTITIES WITHIN THE EUROPEAN UNION:

Belgium

– Vlaams Gewest (Flemish Region)

– Région wallonne (Walloon Region)

– Région bruxelloise/Brussels Gewest (Brussels Region)

– Communauté française (French Community)

– Vlaamse Gemeenschap (Flemish Community)

– Deutschsprachige Gemeinschaft (German-speaking Community)

Spain

– Xunta de Galicia (Regional Executive of Galicia)

– Junta de Andalucía (Regional Executive of Andalusia)

– Junta de Extremadura (Regional Executive of Extremadura)

– Junta de Castilla- La Mancha (Regional Executive of Castilla- La Mancha)

– Junta de Castilla- León (Regional Executive of Castilla- León)

– Gobierno Foral de Navarra (Regional Government of Navarre)

– Govern de les Illes Balears (Government of the Balearic Islands)

– Generalitat de Catalunya (Autonomous Government of Catalonia)

– Generalitat de Valencia (Autonomous Government of Valencia)

– Diputación General de Aragón (Regional Council of Aragon)

– Gobierno de las Islas Canarias (Government of the Canary Islands)

– Gobierno de Murcia (Government of Murcia)

– Gobierno de Madrid (Government of Madrid)

– Gobierno de la Comunidad Autónoma del País Vasco/Euzkadi (Government of the Autonomous Community of the Basque Country)

– Diputación Foral de Guipúzcoa (Regional Council of Guipúzcoa)

– Diputación Foral de Vizcaya/Bizkaia (Regional Council of Vizcaya)

– Diputación Foral de Alava (Regional Council of Alava)

– Ayuntamiento de Madrid (City Council of Madrid)

– Ayuntamiento de Barcelona (City Council of Barcelona)

– Cabildo Insular de Gran Canaria (Island Council of Gran Canaria)

– Cabildo Insular de Tenerife (Island Council of Tenerife)

– Instituto de Crédito Oficial (Public Credit Institution)

– Instituto Catalán de Finanzas (Finance Institution of Catalonia)

– Instituto Valenciano de Finanzas (Finance Institution of Valencia)

Greece

– Οργανισμός Τηλεπικοινωνιών Ελλάδος (National Telecommunications Organisation)

– Οργανισμός Σιδηροδρόμων Ελλάδος (National Railways Organisation)

– Δημόσια Επιχείρηση Ηλεκτρισμού (Public Electricity Company)

France

– La Caisse d'amortissement de la dette sociale (CADES) (Social Debt Redemption Fund)

– L'Agence française de développement (AFD) (French Development Agency)

– Réseau Ferré de France (RFF)(French Rail Network)

– Caisse Nationale des Autoroutes (CNA) (National Motorways Fund)

– Assistance publique Hôpitaux de Paris (APHP) (Paris Hospitals Public Assistance)

– Charbonnages de France (CDF) (French Coal Board)

– Entreprise minière et chimique (EMC)(Mining and Chemicals Company)

Italy

– Regions

– Provinces

– Municipalities

– Cassa Depositi e Prestiti (Deposits and Loans Fund)

Latvia

– Pašvaldības (Local governments)

Poland

– gminy (communes)

– powiaty (districts)

– województwa (provinces)

– związki gmin (associations of communes)

– związki powiatów (association of districts)

– związki województw (association of provinces)

– miasto stołeczne Warszawa (capital city of Warsaw)

– Agencja Restrukturyzacji i Modernizacji Rolnictwa (Agency for Restructuring and Modernisation of Agriculture)

– Agencja Nieruchomości Rolnych (Agricultural Property Agency)

Portugal

– Região Autónoma da Madeira (Autonomous Region of Madeira)

– Região Autónoma dos Açores (Autonomous Region of Azores)

– Municipalities

Slovakia

– mestá a obce (municipalities)

– Železnice Slovenskej republiky (Slovak Railway Company)

– Štátny fond cestného hospodárstva (State Road Management Fund)

– Slovenské elektrárne (Slovak Power Plants)

– Vodohospodárska výstavba (Water Economy Building Company)

INTERNATIONAL ENTITIES :

– European Bank for Reconstruction and Development

– European Investment Bank

– Asian Development Bank

– African Development Bank

– World Bank / IBRD / IMF

– International Finance Corporation

– Inter-American Development Bank

– Council of Europe Social Development Fund

– EURATOM

– European Community

– Corporación Andina de Fomento (CAF) (Andean Development Corporation)

– Eurofima

– European Coal & Steel Community

– Nordic Investment Bank

– Caribbean Development Bank

The provisions of Article 11 are without prejudice to any international obligations that the Contracting Parties may have entered into with respect to the abovementioned international entities.

ENTITIES IN THIRD COUNTRIES :

The entities that meet the following criteria :

1. The entity is clearly considered to be a public entity according to the national criteria.

2. Such public entity is a non-market producer which administers and finances a group of activities, principally providing non-market goods and services, intended for the benefit of the community and which are effectively controlled by general government.

3. Such public entity is a large and regular issuer of debt.

4. The State concerned is able to guarantee that such public entity will not exercise early redemption in the event of gross-up clauses