COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 20.12.2007
COM(2007) 839 final

2007/0283 (CNS)

Recommendation for a

COUNCIL DECISION

concerning the accession of Bulgaria and Romania to the Convention of 23 July 1990 on the elimination of double taxation in connection with the adjustment of profits of associated enterprises

Proposal for a

COUNCIL DECISION

amending Annex I to the Act of Accession of Bulgaria and Romania

(presented by the Commission)

EXPLANATORY MEMORANDUM

The 2005 Act of accession of Bulgaria and Romania[1] has introduced a simplified system for the accession of Bulgaria and Romania to the conventions (and protocols) concluded by the Member States on the basis of Art. 34 TEU (previously Art. K.3 TEU) or Art. 293 EC. It is indeed not anymore necessary, as in the past, to negotiate and conclude specific accession protocols to these conventions (which would have implied ratification by 27 States): Article 3(3) of the Act provides simply that Bulgaria and Romania accede to these conventions and protocols by virtue of the Act of Accession.

Article 3(3) and 3(4) of the Act of Accession provide that, to that effect, the Council shall adopt a decision in order to determine the date on which these conventions shall enter into force for Bulgaria and Romania and to make all the necessary adjustments to these conventions required by reason of the accession of the two new Member States (which would include, in any event, the adoption of the conventions in the Bulgarian and Romanian languages, so that these versions can be "equally authentic"). The Council shall act on a recommendation of the Commission, after consulting the European Parliament.

Annex I to the Act of Accession gives the list of the conventions and protocols concerned.

The list includes the Convention 90/436/EEC of 23 July 1990 on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (the so-called Arbitration Convention), the Convention of 21st December 1995 on the accession of Austria, Finland and Sweden to the Arbitration Convention and the Protocol of 25 May 1999 amending the Arbitration Convention.

In the period preceding the accession of Bulgaria and Romania to the European Union, the Member States have signed on 8 December 2004 a Convention on the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia, to the Arbitration Convention.

Therefore it is appropriate to provide for the accession of Bulgaria and Romania to the Arbitration Convention as amended by the Convention of 8 December 2004 and that Convention should be added to Annex I of the Act of Accession. To that effect, and in line with Article 3(6) of the Act of Accession the Commission has prepared a proposal for a Council Decision to add to the list the Convention of 8 December 2004 on the accession of the ten new Member states to Convention 90/436/EEC.

The Commission Recommendation for a Council Decision is intended to make the adjustments required by reason of the accession of Bulgaria and Romania to the aforementioned Convention, in accordance with Article 3(4) of the Act of Accession.

[1] OJ 21.6.2005, L 157, p. 203.

2007/0283 (CNS)

Recommendation for a

COUNCIL DECISION

concerning the accession of Bulgaria and Romania to the Convention of 23 July 1990 on the elimination of double taxation in connection with the adjustment of profits of associated enterprises

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union,

Having regard to the Treaty establishing the European Community,

Having regard to the Act of Accession of Bulgaria and Romania, and in particular Article 3(4) thereof,

Having regard to the recommendation from the Commission[2],

Having regard to the opinion of the European Parliament[3],

Whereas:

(1) Convention 90/436/EEC of 23 July 1990, on the elimination of double taxation in connection with the adjustment of profits of associated enterprises[4] (hereinafter referred to as "the Arbitration Convention") was signed at Brussels on 23 July 1990 and entered into force on 1 January 1995.

(2) The Arbitration Convention was amended by a Protocol[5], signed on 25 May 1999, which entered into force on 1 November 2004.

(3) Austria, Finland and Sweden acceded to the Arbitration Convention by a Convention[6] signed on 21 December 1995.

(4) The Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia, acceded to the Arbitration Convention by a Convention[7] signed on 8 December 2004.

---

2 OJ C , , p. .
3 OJ C , , p. .
4 OJ L 225, 20. 8.1990, p.10.
5 OJ C 202, 16.7.1999, p. 1.
6 OJ C 26, 31.1.1996, p. 1.
7 OJ C 160, 30.6.2005, p. 1.

(5) Article 3(3) of the Act of Accession of 2005 provides that Bulgaria and Romania accede to the conventions and protocols concluded between the Member States listed in Annex I to the Act of Accession, including the Arbitration Convention. They are to enter into force in relation to Bulgaria and Romania on the date determined by the Council.

(6) In accordance with Article 3(4) of the Act of Accession of 2005 the Council is to make all adjustments required by reason of accession to those conventions and protocols,

HAS DECIDED AS FOLLOWS:

Article 1

The Arbitration Convention is amended as follows:

(1) In Article 2(2), points (a) to (y) are replaced by the following:

(i) in Belgium:

(a) impôt des personnes physiques/personenbelasting

(b) impôt des sociétés/vennootschapsbelasting

(c) impôt des personnes morales/rechtspersonenbelasting

(d) impôt des non-résidents/belasting der niet-verblijfhouders

(e) taxe communale et la taxe d'agglomération additionnelles à l'impôt des personnes physiques/aanvullende gemeentebelasting en agglomeratiebelasting op de personenbelasting

(ii) in Bulgaria:

(a) данък върху доходите на физическите лица

(b) корпоративен данък

(iii) in the Czech Republic:

(a) daň z příjmů fyzických osob

(b) daň z příjmů právnických osob

(iv) in Denmark:

(a) indkomstskat til staten

(b) den kommunale indkomstskat

(c) den amtskommunale indkomstskat

(v) in Germany:

(a) Einkommensteuer

(b) Koerperschaftsteuer

(c) Gewerbesteuer, in so far as this tax is based on trading profits

(vi) in Estonia:

(a) tulumaks

(vii) in Greece:

(a) foros eisodimatos fysikon prosopon

(b) foros eisodimatos nomikon prosopon

(c) eisfora yper ton epicheiriseon ydrefsis kai apochetefsis

(viii) in Spain:

(a) Impuesto sobre la Renta de las Personas Físicas

(b) Impuesto sobre Sociedades

(c) Impuesto sobre la Renta de no Residentes

(ix) in France:

(a) impôt sur le revenu

(b) impôt sur les sociétés

(x) in Ireland:

(a) Income Tax

(b) Corporation Tax

(xi) in Italy:

(a) imposta sul reddito delle persone fisiche

(b) imposta sul reddito delle società

(c) imposta regionale sulle attività produttive

(xii) in Cyprus:

(a) Φόρος Εισοδήματος

(b) Έκτακτη Εισφορά για την Άμυνα της Δημοκρατίας

(xiii) in Latvia:

(a) uzņēmumu ienākuma nodoklis

(b) iedzīvotāju ienākuma nodoklis

(xiv) in Lithuania:

(a) Gyventojų pajamų mokestis

(b) Pelno mokestis

(xv) in Luxembourg:

(a) impôt sur le revenu des personnes physiques

(b) impôt sur le revenu des collectivités

(c) impôt commercial, in so far as this tax is based on trading profits

(xvi) in Hungary:

(a) személyi jövedelemadó

(b) társasági adó

(c) osztalékadó

(xvii) in Malta:

(a) taxxa fuq l-income

(xviii) in the Netherlands:

(a) inkomstenbelasting

(b) vennootschapsbelasting

(xix) in Austria:

(a) Einkommensteuer

(b) Körperschaftsteuer

(xx) in Poland:

(a) podatek dochodowy od osób fizycznych

(b) podatek dochodowy od osób prawnych

(xxi) in Portugal:

(a) imposto sobre o rendimento das pessoas singulares

(b) imposto sobre o rendimento das pessoas colectivas

(c) derrama para os municípios sobre o imposto sobre o rendimento das pessoas colectivas

(xxii) in Romania:

(a) impozitul pe venit

(b) impozitul pe profit

(c) impozitul pe veniturile obținute din România de nerezidenți

(xxiii) in Slovenia:

(a) dohodnina

(b) davek od dobička pravnih oseb

(xxiv) in Slovakia:

(a) daň z príjmov právnických osôb

(b) daň z príjmov fyzických osôb

(xxv) in Finland:

(a) valtion tuloverot/de statliga inkomstskatterna

(b) yhteisöjen tulovero/inkomstskatten för samfund

(c) kunnallisvero/kommunalskatten

(d) kirkollisvero/kyrkoskatten

(e) korkotulon lähdevero/källskatten å ränteinkomst

(f) rajoitetusti verovelvollisen lähdevero/källskatten för begränsat skattskyldig

(xxvi) in Sweden:

(a) statlig inkomstskatt

(b) kupongskatt

(c) kommunal inkomstskatt

(xxvii) in the United Kingdom:

(a) Income Tax

(b) Corporation Tax.

(2) In Article 3(1), the following indents are added:

– in Bulgaria:

Министъра на финансите или негов упълномощен представител,

– in Romania:

Agenția Națională de Administrare Fiscala.

Article 2

The Arbitration Convention, as amended by the Protocol of 25 May 1999, the Conventions of 21 December 1995 and of 8 December 2004 and this Decision, drawn up in the Bulgarian and Romanian languages and annexed to this Decision, shall be authentic under the same conditions as the other texts of the Arbitration Convention and the Protocol.

Article 3

The Arbitration Convention, as amended by the Protocol of 25 May 1999, the Conventions of 21 December 1995 and of 8 December 2004 and this Decision, enters into force on 1 January 2007 between Bulgaria, Romania and the other Member States for which the Arbitration Convention is in force. It enters into force between Bulgaria, Romania and each of the other Member States on the day the Arbitration Convention enters into force for the other Member State concerned.

Article 4

This Decision shall take effect on the day following that of its publication in the Official Journal of the European Union.

Done at Brussels, […]

For the Council
The President
[…]

ANNEX

Text of the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises, as amended by the Protocol of 25 May 1999, the Conventions of 21 December 1995 and of 8 December 2004 in the Bulgarian and Romanian languages.

Proposal for a

COUNCIL DECISION

amending Annex I to the Act of Accession of Bulgaria and Romania

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the European Union,

Having regard to the Treaty establishing the European Community,

Having regard to the Act of accession of Bulgaria and Romania, and in particular Article 3(6) thereof,

Having regard to the proposal from the Commission[8],

Whereas:

(1) Article 3(3) of the Act of Accession of 2005 provides that Bulgaria and Romania accede to the conventions and protocols concluded between the Member States, listed in its Annex I.

(2) In the period preceding the accession of Bulgaria and Romania to the European Union, the Member States have signed on 8 December 2004 a Convention on the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia, to the Convention of 23 July 1990 on the elimination of double taxation in connection with the adjustment of profits of associated enterprises[9] (hereafter "the Arbitration Convention").

(3) It is appropriate to provide for the accession of Bulgaria and Romania to the Arbitration Convention as amended by the Convention of 8 December 2004. To that effect, that Convention should be added to Annex I of the Act of Accession of 2005,

HAS DECIDED AS FOLLOWS:

Article 1

Annex I to the Act of Accession of 2005 is amended as follows:

In point 2, the following indent is added:

---

8 OJ C , , p. .

9 OJ L 225, 20. 8.1990, p. 10.

« - Convention of 8 December 2004 on the accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic to the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (OJ C 160, 30.6.2005, p. 1). »

Article 2

This Decision shall take effect on the day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels, […]

For the Council
The President