



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 11.10.2004
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Proposal for a

COUNCIL DECISION

on the signature of the Agreement in the form of an exchange of letters between the European Community and the Swiss Confederation on the date of application of the Agreement between the European Community and the Swiss Confederation 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

(presented by the Commission)

EXPLANATORY MEMORANDUM

On 2 June 2004, the Council adopted a Decision on the signing and conclusion of the Agreement between the European Community and the Swiss Confederation providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments¹.

Pursuant to Article 17(2) of the Agreement, the parties must effectively implement and apply it by 1 January 2005. However, Article 18(1) provides that the application of the Agreement will be conditional on the adoption and implementation by the dependent or associated territories of the Member States mentioned in the report of the Council (Economic and Financial Questions) to the European Council of Santa Maria da Feira of 19 and 20 June 2000, as well as by the United States of America, Andorra, Liechtenstein, Monaco and San Marino respectively of measures which conform with or are equivalent to those contained in the Directive or the Agreement, with the exception of article 15 of the Agreement, and providing for the same dates of implementation.

Article 18 (2) provides that the Contracting Parties shall decide, by common accord, at least six months before the date referred to in Article 17(2) (1 January 2005), whether the condition set out in paragraph 1 will be met having regard to the dates of entry into force of the relevant measures in the third States and dependent or associated territories concerned. Article 18 (2) of the Agreement also provides that 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 17(2).

The Contracting Parties did not, prior to 30 June 2004, decide that the condition in Article 18(1) would be met. In the negotiations between the Community and Switzerland, it became clear that Switzerland will not be in the position to apply the measures provided for in the Agreement from 1 January 2005. Nor will it be possible for all the third countries concerned to implement and apply their respective agreements effectively before that date. Subject to the fulfilment of its constitutional requirements, Switzerland will, however, be able to apply these measures from 1 July 2005. The Swiss Government will do its utmost to ensure that the date of 1 July 2005 will be respected.

In view of the foregoing, the Council noted that the condition set out in Article 17 (2) of Council Directive 2003/48/EC² will not be met with respect to Switzerland in relation to the date of application of 1 January 2005 and invited the Commission to present a proposal providing for 1 July 2005 as the new date of application of the Directive. On 25 June 2004, the Commission adopted a proposal for a Council Decision on the date of application of the Directive³. This proposal was adopted by the Council on 19 July 2004.⁴

It is necessary to also reflect this new date of application in the Agreement between the Community and Switzerland. In accordance with Article 18 (2) of the Agreement, a draft exchange of letters was initialled on 25 June 2004, expressing the agreement of the Contracting Parties to adopt the date of 1 July 2005 as the new date for the purposes of Article 17 (2) of the Agreement. It may be noted that Switzerland is obliged to apply the provisions

¹ OJ L , .2004, p

² OJ L 157, 26.6.2003, p.38

³ OJ C , .2004, p

⁴ OJ L 257, 4.8.2004, p. 7

of the Agreement as from 1 July 2005 only if all Member States and each of the countries and territories mentioned in Article 18 (1) of the Agreement apply the savings tax measures mentioned therein from that same date. The same condition also applies for each Member State.

The proposal for a Council Decision provides for the signature of this exchange of letters.

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THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission⁵,

Whereas:

- (1) Article 17 (2) of the Agreement between the European Community and the Swiss Confederation 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 provides that, subject to the conditions set out therein, Switzerland and where applicable the Community shall effectively implement and apply this Agreement from 1 January 2005.
- (2) However, pursuant to Article 18(1), the application of the Agreement is conditional on the adoption and implementation by certain dependent or associated territories of the Member States and by the United States of America, Andorra, Liechtenstein, Monaco and San Marino respectively of measures which conform with or are equivalent to those contained in the Directive or the Agreement. Under Article 18(2), if the Contracting Parties do not, at least six months prior to 1 January 2005, decide that the condition will be met, they shall, by common accord, adopt a new date for the purposes of Article 17(2).
- (3) The Contracting Parties made no such decision six months prior to 1 January 2005. Not all the third countries in question will be in a position to implement their respective Agreements by that date. Moreover, it will only be possible for Switzerland to implement and apply this Agreement from 1 July 2005 and this on the condition that Swiss constitutional requirements will be met by that date. It appears that each of the third countries and dependent or associated territories referred to in Article 18 (1) of the Agreement will also be able to meet the conditions set out in that paragraph by 1 July 2005.

⁵ OJ C , .2004, p

- (4) In accordance with Article 18 (2) of the Agreement, the date of 1 July 2005 should therefore be adopted as the new date for the purposes of Article 17 (2) of the Agreement.
- (5) It is desirable to sign the Agreement in the form of an exchange of letters which was initialled on 25 June 2004.

HAS DECIDED AS FOLLOWS:

Article 1

The President of the Council is hereby authorised to designate the persons empowered to sign on behalf of the Community the Agreement in the form of an exchange of letters between the European Community and the Swiss Confederation on the date of application of the Agreement between the European Community and the Swiss Confederation 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.

The text of the Agreement is attached to this Decision.

Article 2

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

Done at Brussels,

For the Council
The President

ANNEX

Agreement in the form of an exchange of letters between the European Community and the Swiss Confederation on the date of application of the Agreement between the European Community and the Swiss Confederation 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

A. Letter of the European Community

Sir,

I have the honour to refer to the Agreement between the European Community and the Swiss Confederation 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 Agreement, which will be ratified or approved by the Contracting Parties in accordance with their own procedures, will be applied from a date determined in accordance with the procedure set out in Article 18 (2) of the Agreement.

Article 18(2) provides that the Contracting Parties shall decide by common accord at least six months before the date referred to in Article 17(2) of the Agreement (1 January 2005) whether the condition set out in article 18(1) of the Agreement will be met and if they do not decide that the condition will be met shall adopt, by common accord, a new date for application of the Agreement.

Article 18(1) provides that the application of the Agreement will be conditional on the adoption and implementation by the dependent or associated territories of the Member States mentioned in the report of the Council (Economic and Financial Questions) to the European Council of Santa Maria da Feira of 19 and 20 June 2000, as well as by the United States of America, Andorra, Liechtenstein, Monaco and San Marino respectively of measures which conform with or are equivalent to those contained in the Directive or the Agreement, with the exception of article 15 of the Agreement, and providing for the same dates of implementation.

On the basis of the negotiations that have taken place between the European Community and the Swiss Confederation I understand that it will in accordance with Article 17 (2) of the Agreement only be possible for the Swiss Confederation to apply the Agreement from 1 July 2005 and this on the understanding that Swiss constitutional requirements will be met by that date.

I request your confirmation that the date of 1 July 2005 is acceptable to you as the new date for application of the Agreement as provided for in Article 18(2) of the Agreement and that the Swiss Government will do its utmost to ensure that this date will be respected. I also request you to confirm that on the basis of the information provided in the negotiations held on 21 June 2004, and without prejudice to the next paragraph the Swiss Confederation accepts that the conditions of Article 18(1) will be met.

I accept that Switzerland is obliged to apply the provisions of the Agreement as from 1 July 2005 only if all EU Member States and each of the countries and territories mentioned in Article 18 (1) of the Agreement apply the savings tax measures mentioned therein from that same date. The same condition shall also apply for each EU Member State.

Please accept, Sir, the assurance of our highest consideration,

B. Letter of the Swiss Confederation

Sir,

I have the honour to acknowledge receipt of your letter of, which reads as follows:

'Sir,

I have the honour to refer to the Agreement between the European Community and the Swiss Confederation 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 Agreement, which will be ratified or approved by the Contracting Parties in accordance with their own procedures, will be applied from a date determined in accordance with the procedure set out in Article 18 (2) of the Agreement.

Article 18(2) provides that the Contracting Parties shall decide by common accord at least six months before the date referred to in Article 17(2) of the Agreement (1 January 2005) whether the condition set out in article 18(1) of the Agreement will be met and if they do not decide that the condition will be met shall adopt, by common accord, a new date for application of the Agreement.

Article 18(1) provides that the application of the Agreement will be conditional on the adoption and implementation by the dependent or associated territories of the Member States mentioned in the report of the Council (Economic and Financial Questions) to the European Council of Santa Maria da Feira of 19 and 20 June 2000, as well as by the United States of America, Andorra, Liechtenstein, Monaco and San Marino respectively of measures which conform with or are equivalent to those contained in the Directive or the Agreement, with the exception of article 15 of the Agreement, and providing for the same dates of implementation.

On the basis of the negotiations that have taken place between the European Community and the Swiss Confederation I understand that it will in accordance with Article 17 (2) of the Agreement only be possible for the Swiss Confederation to apply the Agreement from 1 July 2005 and this on the understanding that Swiss constitutional requirements will be met by that date.

I request your confirmation that the date of 1 July 2005 is acceptable to you as the new date for application of the Agreement as provided for in Article 18(2) of the Agreement and that the Swiss Government will do its utmost to ensure that this date will be respected. I also request you to confirm that on the basis of the information provided in the negotiations held on 21 June 2004, and without prejudice to the next paragraph the Swiss Confederation accepts that the conditions of Article 18(1) will be met.

I accept that Switzerland is obliged to apply the provisions of the Agreement as from 1 July 2005 only if all EU Member States and each of the countries and territories mentioned in Article 18 (1) of the Agreement apply the savings tax measures mentioned therein from that same date. The same condition shall also apply for each EU Member State.

Please accept, Sir, the assurance of our highest consideration,'

On the basis of the negotiations that have taken place between the European Community and the Swiss Confederation I am able to confirm the agreement of the Swiss Confederation to a

new date of application of the aforementioned Agreement of 1 July 2005 on the condition that Swiss constitutional requirements will be met by that date. I confirm that the Swiss Government will do its utmost to ensure that this date will be respected.

I confirm that subject to technical verification by my services of the information provided in the negotiations held on 21 June 2004, which will be confirmed by me in advance of the signing of the Agreement on the basis of finalised versions of the appropriate agreements, the Swiss Confederation accepts that the conditions of Article 18(1) will be met without prejudice to the point made in the following paragraph.

I agree that Switzerland is obliged to apply the provisions of the Agreement as from 1 July 2005 only if all EU-Member States and each of the countries and territories mentioned in Art. 18 (1) of the Agreement apply the savings tax measures mentioned therein from that same date. I accept that the same condition shall also apply for each EU Member State.

Please accept, Sir, the assurance of our highest consideration,