



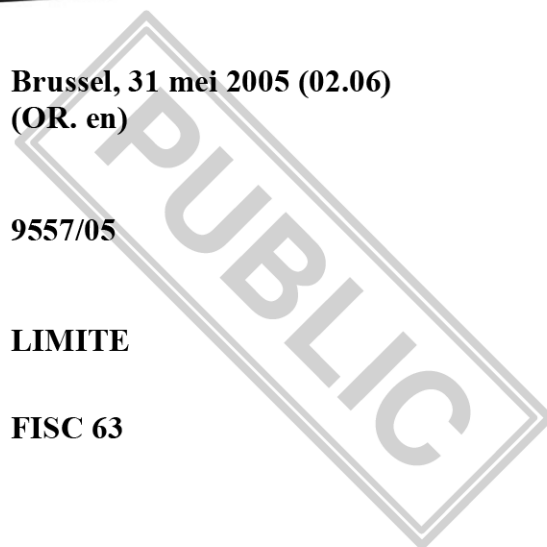
**RAAD VAN
DE EUROPESE UNIE**

**Brussel, 31 mei 2005 (02.06)
(OR. en)**

9557/05

LIMITE

FISC 63



NOTA

van:	het Raadssecretariaat en de Commissiediensten
aan:	het Comité van permanente vertegenwoordigers / de Raad
op:	7 juni 2005
Betreft:	Overeenkomsten inzake spaargelden tussen de Gemeenschap en de 5 Europese derde landen

1. In de bijlage gaat een verslag¹ van de Commissiediensten over de stand van zaken met betrekking tot de overeenkomsten betreffende belastingheffing op inkomsten uit spaargelden met de 5 Europese derde landen.
2. Het Raadssecretariaat bevestigt dat het kennisgevingen heeft ontvangen betreffende de vervulling van de binnenlandse eisen voor de tijdige inwerkingtreding van die overeenkomsten:
 - van Andorra: brief van 26 april 2005;
 - van Liechtenstein: brief van 27 mei 2005;
 - van Monaco: brief van 31 mei 2005;
 - van San Marino: certificaat van 16 maart 2005;
 - van Zwitserland: nota van 13 mei 2005.

¹ De Commissie heeft dit verslag alleen in het Engels ingediend.

SAVINGS TAX AGREEMENTS WITH THIRD COUNTRIES

CURRENT STATE OF AFFAIRS

31 MAY 2005

1. BACKGROUND

Relationship between the Directive and the Agreements with the third countries and territories

The requirement to apply the provisions of Directive 2003/48/EC ("the Directive") and of the savings Agreements is conditional on the application by each and every other Member State, third State¹ or territory² of its respective provisions from the same date.

Date of application of the Directive and Agreements

On 19 July 2004 the Council, by Decision (2004/587/EC), postponed the application date of the Directive to 1 July 2005. The provisions on the Agreements between the Community and the third States and between the Member States and the relevant territories are also intended to apply from this date.

Each of the Agreements between the EC and the third States encompasses:

- Withholding tax with revenue sharing (on the same terms as Belgium, Luxembourg and Austria);
- Exchange of information on request in cases of tax fraud and comparable misbehaviour;
- Option for voluntary disclosure in lieu of the withholding tax;
- Review clause taking into account international developments.

¹ Switzerland, Andorra, Liechtenstein, Monaco, San Marino

² Anguilla, Guernsey, Jersey, British Virgin Islands Cayman Islands, Isle of Man, Montserrat, Turks and Caicos Islands, Aruba, Netherlands Antilles

The principal elements of the bilateral Agreements between Member States and relevant territories

Guernsey, Jersey, British Virgin Islands, Isle of Man, Turks and Caicos Islands, and Netherlands Antilles: withholding tax during the transitional period on the same terms as Belgium, Luxembourg and Austria.

Anguilla, Cayman Islands, Montserrat and Aruba: automatic provision of information on the same terms as all Member States except Belgium, Luxembourg and Austria.

2. STAGE OF DEVELOPMENT OF THE FILE

Switzerland

The Agreement on savings income taxation with Switzerland was initialled on 25 June 2004. The Memorandum of Understanding (MoU) and the exchange of letters (the latter confirming that the relevant conditions have been met for the application date of the Agreement to begin on 1 July 2005), were also initialled at the same time.

The signature of these instruments took place on 26 October 2004 (text published in the OJ of the EU N°. L385 of 29 December 2004).

The Agreement on savings income taxation would have been subject to a referendum in Switzerland, had it been requested within 100 days following the publication of the results of the ratification by the Swiss Parliament in the Swiss official journal, which took place on 21 December 2004 (<http://www.admin.ch/ch/f/ff/2004/6743.pdf>). The 100 day period expired on 31 March 2005 without any such request, and so there will be no referendum in Switzerland on the Agreement on savings income taxation.

No formal linkage exists between this Agreement and the other agreements signed with Switzerland in the framework of the so-called "Bilateral II" package, so the ratification and entry into force of the Agreement on savings income taxation is not conditional on any referendum initiative concerning the other agreements of this package.

The notification by Switzerland to the EU Council Secretariat of the ratification of the Agreement on savings income taxation took place on 13 May 2005, in time for application of the provisions of the Agreement as of July 1, 2005.

As far as the implementation of the Agreement is concerned, the Swiss authorities are preparing guidelines which are intended to be binding on their paying agents. Following publication of a first draft of these guidelines in October 2004, a new version of these guidelines was published both in German (<http://www.estv.admin.ch/data/dvs/druck/euz/euz.htm>) and in French (<http://www.estv.admin.ch/data/dvs/index/f/index.htm>) on 1 April 2005, which also followed a meeting between the Swiss authorities and the Commission services which took place on 28 February 2005. Reservations by the Swiss authorities on some specific points in these new draft guidelines are indicated in "grey": these specific points could be subject to further changes, probably published by mid-June, depending also on the interpretation of the Directive by EU Member States.

A letter dated 20 April 2005 was sent by Commissioner Kovács to the Swiss Minister of Finance in order to inform him about the ECOFIN conclusion on 12 April 2005 and to ask confirmation that Switzerland will apply Article 7 (4) of its Agreement in a manner which is totally consistent with the interpretation of Article 6 (6) of the Directive which was agreed by Member States and the Commission on that occasion. The Swiss Minister of Finance committed its tax administration to this interpretation by letter dated 23 May 2005.

Andorra

The Community signed the Agreement and MoU with Andorra on 15 November 2004 in Brussels (in the margins of the Education, Youth and Culture Council; text published in the OJ of the EU N°. L359 of 4 December 2004), subject to the subsequent adoption of the Council Decision on the conclusion (i.e. ratification) of the Agreement which took place on 22 December 2004. Ratification was approved by Andorran's national parliament at its last session on 21 February 2005 before the forthcoming parliamentary elections in that country. The ratification bill was published on 23 March 2005 in the Andorran Official Journal (<http://www.bopa.ad/bopa.nsf>), then signed by the two Heads of State (the "co-Princes" of Andorra are the Bishop of Urgell – who is expected to sign before mid-April – and the President of the French Republic) and finally notified to the EU Council on 26 April 2005, in conformity with the commitments taken in writing by the Andorran authorities to provide for notification before end April. The formal entry into force of the Agreement will take place on 1st June 2005 and the possibility to apply it from 1st July 2005 is already ensured. The parliamentary elections took place on 24 April 2005 and the new national assembly is discussing, under fast track procedure, the draft bill containing the detailed implementation rules for the Agreement, with a view to adopting it by the beginning of June.

A letter dated 20 April 2005 was sent by Commissioner Kovács to the Andorran Minister of Finance in order to inform her about the ECOFIN conclusion on 12 April 2005 and to ask confirmation that Andorra will apply Article 6 (5) of its Agreement in a manner which is totally consistent with the interpretation of Article 6 (6) of the Directive which was agreed by Member States and the Commission on that occasion. The Andorran Minister of Finance replied favourably in a letter dated 26 April 2005 which was received by Commission services on 13 May.

Liechtenstein

The Agreement with Liechtenstein has been closely modelled on that with Switzerland. Initialling took place on 30 July 2004. The Agreement was signed on 7 December 2004 (text published in the OJ of the EU N°. L379 of 24 December 2004).

On 21 April 2005, Liechtenstein's national parliament (Landtag)¹, elected on 11 and 13 March 2005, unanimously adopted the bill authorising the Prince to ratify the agreement.

A referendum could have been forced by the collection of a petition of 1,700 signatures (10% of the voting population) by 23 May 2005, thirty days following publication in the Liechtenstein Legal Gazette (LGBI) of the ratification bill voted by Landtag. The thirty days period expired without any such request, and so there will be no referendum in Liechtenstein on the Agreement on savings income taxation.

The notification by the Principality to the EU Council Secretariat of the ratification of the Agreement on savings income taxation took place on 27 May 2005, in time for application of the provisions of the Agreement as of July 1, 2005.

As far as the implementation of the Agreement is concerned, the Liechtenstein authorities are preparing guidelines which are intended to be binding on their paying agents and are modelled on those published and regularly updated by Switzerland on its website.

A letter dated 20 April 2005 was sent by Commissioner Kovács to the Liechtenstein's Prime Minister and Minister of Finance in order to inform him about the ECOFIN conclusion on 12 April 2005 and to ask confirmation that Liechtenstein will apply Article 7 (4) of its Agreement in a manner which is totally consistent with the interpretation of Article 6 (6) of the Directive which was agreed by Member States and the Commission on that occasion. On 4 May, the Liechtenstein's Prime Minister informed Mr Kovács that its Government is presently examining the matter and that a formal answer will be provided in a short term.

¹ The text submitted to the Landtag corresponds in substance to the one published for consultation on the following website: http://www.llv.li/amtstellen/llv-rk-amts-geschaefte-vernehmlassungen/llv-rk-amts-geschaefte-vernehmlassungen-abgelaufene_2005.htm
Liechtenstein's legislative website: <http://www.gesetze.li/> will advise the adoption of the ratification bill once this has occurred

Monaco

The Agreement with Monaco was initialled on 25 October 2004 and signed on 7 December 2004 (text published in the OJ of the EU N°. L19 of 21 January 2005).

Ratification by Monaco will not be subject to the risk of referenda. The national parliament unanimously adopted the ratification bill by a vote on 28 April 2005. The ratification bill was promulgated as Law nr. 1297 of 12 May 2005 by Prince Albert II and published on 20 May 2005 by the official "Journal de Monaco" (it should also soon appear on the government's website: www.gouv.mc).

The notification by the Principality to the EU Council Secretariat of the ratification of the Agreement on savings income taxation took place on 31 May 2005, in time for application of the provisions of the Agreement as of July 1, 2005.

The spring parliamentary session has already been asked to examine, under fast track procedure, and in any case to adopt before 1st July 2005, the draft amendments to the national penal code (criminal law) with a view to introducing the offence of tax fraud with regard to the taxation of savings income in the form of interest payments.

A letter dated 20 April 2005 was sent by Commissioner Kovács to the Monaco's Minister of Finance in order to inform him about the ECOFIN conclusion on 12 April 2005 and to ask confirmation that Monaco will apply Article 6 (4) of its Agreement in a manner which is totally consistent with the interpretation of Article 6 (6) of the Directive which was agreed by Member States and the Commission on that occasion. The Monaco's Minister of Finance committed its tax administration to this interpretation by letter dated 30 May 2005.

San Marino

The Agreement with San Marino was initialled on 12 July 2004 and signed on 7 December 2004 (text published in the OJ of the EU N°. L381 of 28 December 2004).

Ratification was approved by San Marino's national parliament ("Consiglio generale") at its session on 16 March 2005, in the form of an article to a "Decreto Reggenziale", which has been signed by the two Heads of State ("Capitani Reggenti") and by the State Secretary for Internal Affairs under n. 42 on 22 March 2005. This ratification bill has been published in the San Marino's Official Journal ("Bollettino Ufficiale") and is going to appear on the parliament website (<http://www.consigliograndeegenerale.sm/>). Ratification by San Marino is not subject to the risk of referenda.

The San Marino's Mission in Brussels notified the ratification instruments to the EU Council Secretariat on 6 April 2005, so the formal entry into force of the Agreement will take place on 1st June 2005 and the possibility to apply it from 1st July 2005 is already ensured.

The national assembly has already adopted on 24 May 2005, under fast track procedure, the bill containing the detailed implementation rules for the Agreement, to be published soon in the San Marino's Official Journal ("Bollettino Ufficiale") and on the parliament website (<http://www.consigliograndeegenerale.sm/>).

A letter dated 20 April 2005 was sent by Commissioner Kovács to the San Marino's Minister of Finance in order to inform him about the ECOFIN conclusion on 12 April 2005 and to ask confirmation that San Marino will apply Article 6 (5) of its Agreement in a manner which is totally consistent with the interpretation of Article 6 (6) of the Directive which was agreed by Member States and the Commission on that occasion. The San Marino Minister of Finance replied favourably by letter dated 18 May 2005.

Ratification by the Community

The Council Decision concerning the signature and adoption of the Agreement with Switzerland was adopted on 2 June 2004 and formally notified to Switzerland on 4 February 2005. The Council also adopted on 26 October 2004 the text of the exchange of letters concerning the date of application of the Agreement and informed the European Parliament accordingly.

Regarding Andorra, the EP issued its favourable Opinion at its 17 November 2004 Plenary session. Parliament also gave a favourable Opinion concerning the proposal for the ratification of the Liechtenstein Agreement (at its Plenary of 17 November 2004) and favourable Opinions on the proposals concerning the ratification of the Agreements with San Marino and Monaco (at the Plenary of 2 December 2004). In each case this followed the adoption by the Committee on Economic and Monetary Affairs (ECON) of the respective reports drafted by Mr Gauzès on each of these proposals.

With Parliament having issued its Opinions, and all the Agreements having been signed, the Community then proceeded with ratification. Coreper approved (on 20 December 2004) the proposals for the conclusion of the Agreements with the four States (Andorra, Liechtenstein, Monaco and San Marino) and the (Agriculture and Fisheries) Council adopted them on 22 December 2004. The Council's Secretariat general formally notified this Decision to the four States concerned on 27 January 2005.

Memorandum of Understanding

All of the Agreements are accompanied by their respective Memorandum of Understanding (MoU), which were published together with the Agreements in the OJ of the EU. These instruments are simply political statements and are not legally binding. They typically refer to possible future co-operation between the third country and the Community and/or Member States. Accordingly, with the exception of the MoU with Monaco (in which only matters of Community competence are dealt with), Member States are also signatories.