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REPORT

on the 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

(COM(2007)0839 – C6-0028/2008 – 2007/0283(CNS))

Committee on Economic and Monetary Affairs

Rapporteur: Mariela Velichkova Baeva

PR_CNS_art51am

Symbols for procedures

- * Consultation procedure
majority of the votes cast
 - **I Cooperation procedure (first reading)
majority of the votes cast
 - **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
 - *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
 - ***I Codecision procedure (first reading)
majority of the votes cast
 - ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
 - ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text
- (The type of procedure depends on the legal basis proposed by the Commission.)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. In the case of amending acts, passages in an existing provision that the Commission has left unchanged, but that Parliament wishes to amend, are highlighted in **bold**. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...]. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). Suggested corrections of this kind are subject to the agreement of the departments concerned.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the 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
(COM(2007)0839 – C6-0028/2008 – 2007/0283(CNS))**

(Consultation procedure)

The European Parliament,

- having regard to the Commission recommendation to the Council (COM(2007)0839),
 - having regard to Article 3(4) of the Act of Accession of the Republic of Bulgaria and Romania, pursuant to which the Council consulted Parliament (C6-0028/2008),
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs (A6-0194/2008),
1. Approves the Commission recommendation as amended;
 2. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
 3. Calls on the Council, when deciding on the date of application of the Convention of 23 July 1990 on the elimination of double taxation in connection with the adjustment of profits of associated enterprises, to take into account Parliament's concerns regarding the need to minimise the tax burden on tax payers;
 4. Asks the Council to consult Parliament again if it intends to amend the Commission recommendation substantially;
 5. Instructs its President to forward its position to the Council, the Commission and the governments of the Republic of Bulgaria, Romania and the other Member States.

Amendment 1

Recommendation for a decision Article 3

Text proposed by the Commission

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

Amendment

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.

into force on ***the day following that of the publication of this Decision in the Official Journal of the European Union*** 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.

Justification

Concerns have been expressed about a retroactive entry into force. In order to remove any doubts under national law, it is suggested that the date of entry into force of the Arbitration Convention is set on the day following that of the publication of this Decision in the Official Journal of the European Union.

EXPLANATORY STATEMENT

The Commission Recommendation for a Council decision concerns the accession of Bulgaria and Romania to 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"), as amended by the Convention of 21st December 1995 on the accession of Austria, Finland and Sweden to the Arbitration Convention, the Protocol of 25 May 1999 amending the Arbitration Convention and the Convention signed on 8 December 2004 by the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia on their accession to the Arbitration Convention.

These set of legal instruments aim at the elimination of double taxation in connection with the adjustment of profits of associated enterprises. The Arbitration Convention sets out an arbitration procedure that allows companies to ask for a review of the adjustment of profits of associated enterprises.

The 2005 Act of accession of Bulgaria and Romania has introduced a simplified system for the accession of Bulgaria and Romania to these conventions. On the basis of Article 3(3) and 3(4) of the Act of Accession, the Council must 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. In doing so, the Council must act on a recommendation of the Commission, after consulting the European Parliament.

In so far as the proposed decision is the implementation of a mandate included in the 2005 Accession Treaty, the rapporteur fully supports the Commission's recommendation and looks forward to seeing the accession of Bulgaria and Romania to the Arbitration Convention and the related instruments completed in the shortest time period.

However, the rapporteur wishes to draw the legislator's attention to the issue regarding the date of entry into force of the amended Arbitration Convention. The proposed text suggests that the amended Arbitration Convention enters into force between Bulgaria, Romania and the Member States, according to the following schedule:

- as regards the Member States for which the Arbitration Convention is already in force: on 1 January 2007;
- as regards the Member States for which the Arbitration Convention is not yet in force: on the day the Arbitration Convention enters into force for those Member States.

This schedule implies that the Decision, when and if approved, will set a retroactive date of entry into force of the Arbitration Convention. Concerns have been expressed about such retroactive effect. In order to remove any doubts under national law, it is suggested that the date of entry into force of the Arbitration Convention is set on the day following that of the publication of this Decision in the Official Journal of the European Union. As regards the date of application, i.e. the date from which the applicability of the procedures under the Arbitration Convention starts to run, the rapporteur, in line with the principles which the Arbitration Convention incorporates, calls on the Council, when deciding on that date, to take into account that such arrangement avoids tax burden for taxpayers.

PROCEDURE

Title	Amendment of Annex I of the Act of 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						
References	COM(2007)0839 – C6-0028/2008 – 2007/0283(CNS)						
Date of consulting Parliament	15.1.2008						
Committee responsible Date announced in plenary	ECON 17.1.2008						
Rapporteur(s) Date appointed	Mariela Velichkova Baeva 15.1.2008						
Discussed in committee	7.4.2008						
Date adopted	19.5.2008						
Result of final vote	<table> <tr> <td>+: </td><td>41</td></tr> <tr> <td>–: </td><td>0</td></tr> <tr> <td>0: </td><td>0</td></tr> </table>	+:	41	–:	0	0:	0
+:	41						
–:	0						
0:	0						
Members present for the final vote	Mariela Velichkova Baeva, Zsolt László Becsey, Pervenche Berès, Sharon Bowles, Udo Bullmann, David Casa, Jonathan Evans, Elisa Ferreira, José Manuel García-Margallo y Marfil, Jean-Paul Gauzès, Donata Gottardi, Benoît Hamon, Gunnar Hökmark, Karsten Friedrich Hoppenstedt, Sophia in 't Veld, Othmar Karas, Wolf Klinz, Christoph Konrad, Kurt Joachim Lauk, Andrea Losco, Astrid Lulling, Florencio Luque Aguilar, Hans-Peter Martin, John Purvis, Bernhard Rapkay, Dariusz Rosati, Antolín Sánchez Presedo, Olle Schmidt, Peter Skinner, Margarita Starkevičiūtė, Ieke van den Burg, Cornelis Visser, Sahra Wagenknecht						
Substitute(s) present for the final vote	Dragoş Florin David, Harald Ettl, Alain Lipietz, Vladimír Maňka, Thomas Mann, Poul Nyrup Rasmussen, Margaritis Schinas, Theodor Dumitru Stolojan						