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A7-0214/2014

21.3.2014

REPORT

on the recommendation for a Council decision concerning the accession of Croatia to the Convention of 23 July 1990 on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (COM(2013)0586 – C7-0381/2013 – 2013/0308(CNS))

Committee on Economic and Monetary Affairs

Rapporteur: Sławomir Nitras

Symbols for procedures

| | |
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| * | Consultation procedure |
| *** | Consent procedure |
| ***I | Ordinary legislative procedure (first reading) |
| ***II | Ordinary legislative procedure (second reading) |
| ***III | Ordinary legislative procedure (third reading) |

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the ■ symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the recommendation for a Council decision concerning the accession of Croatia to the Convention of 23 July 1990 on the elimination of double taxation in connection with the adjustment of profits of associated enterprises
(COM(2013)0586 – C7-0381/2013 – 2013/0308(CNS))**

(Special legislative procedure – consultation)

The European Parliament,

- having regard to the Commission recommendation to the Council (COM(2013)0586),
 - having regard to Article 3(4) and (5) of the Act of Accession of Croatia, pursuant to which the Council consulted Parliament (C7-0381/2013),
 - having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs (A7-0214/2014),
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 and national parliaments of Croatia and of the other Member States.

Amendment 1

Proposal 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

Amendment

The Arbitration Convention, as amended by the Protocol of 25 May 1999, the Conventions of 21 December 1995 and of

8 December 2004, Decision 2008/492/EC, as well as this Decision, enters into force on **XXX [date]** between Croatia and each of the other Member States of the European Union.

8 December 2004, Decision 2008/492/EC, as well as this Decision, enters into force on ... * between Croatia and each of the other Member States of the European Union.

**** OJ please insert date: the day following that of publication of this Decision in the Official Journal of the European Union.***

Justification

Taking into account the experience with the previous decisions amending The Arbitration Convention and in order to remove any doubts regarding the possible retroactive effect, it is suggested that the date of entry into force of the Arbitration Convention is specified not by providing specific date, but 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 Croatia 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, 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 and the Council Decision of 23 June 2008 concerning the accession of Bulgaria and Romania to the Arbitration Convention.

The Arbitration Convention establishes legal framework for the elimination of double taxation in connection with the adjustment of profits of associated enterprises by setting out, inter alia, an arbitration procedure that allows companies to ask for a review of the adjustment of profits of associated enterprises and dispute resolution mechanisms where double taxation occurs between enterprises of different Member States. The Convention thus enhances the conditions for cross-border activities in the Internal Market.

The 2011 Act of Accession of Croatia has introduced a simplified system for the accession of Croatia to the Arbitration Convention. According to Article 3(4) of the Act of Accession Croatia accedes to the Convention and all amending protocols. On the basis of Article 3(5), the Council must adopt a decision in order to determine the date on which the Arbitration Convention shall enter into force for Croatia and to make all the necessary adjustments to the Convention. 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 2011 Accession Treaty, the rapporteur fully supports the Commission's recommendation and looks forward to seeing the accession of Croatia to the Arbitration Convention and the related instruments completed in the shortest time period.

The rapporteur wishes to point out the issue of the date of entry into force of the amended Arbitration Convention. The proposed text suggests that the date of entry into force shall be specified in this Decision.

Taking into account the experience with the previous decisions amending The Arbitration Convention and doubts raised at that time it shall be noted that by specifying the date in the Decision's text it might give a rise to the risk that the Decision takes the effect later than the date of entry into force specified for the Arbitration Convention (i.e. setting the retroactive date of entry into force of the Arbitration Convention).

In order to remove any doubts regarding retroactive effect, 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 the time needed for the competent authorities to establish appropriate procedures for effective functioning of the Convention.

PROCEDURE

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| Title | Accession of Croatia 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(2013)0586 – C7-0381/2013 – 2013/0308(CNS) |
| Date of consulting Parliament | 24.10.2013 |
| Committee responsible Date announced in plenary | ECON 18.11.2013 |
| Rapporteur(s) Date appointed | Śławomir Nitras 19.11.2013 |
| Discussed in committee | 17.2.2014 17.3.2014 |
| Date adopted | 18.3.2014 |
| Result of final vote | +: 40 -: 0 0: 0 |
| Members present for the final vote | Marino Baldini, Burkhard Balz, Jean-Paul Bisset, Sharon Bowles, George Sabin Cutaş, Rachida Dati, Leonardo Domenici, Derk Jan Eppink, Elisa Ferreira, Ildikó Gáll-Pelcz, Jean-Paul Gauzès, Sven Giegold, Sylvie Goulard, Liem Hoang Ngoc, Gunnar Hökmark, Syed Kamall, Jürgen Klute, Philippe Lamberts, Werner Langen, Ivana Maletić, Arlene McCarthy, Marlene Mizzi, Śławomir Nitras, Ivari Padar, Anni Podimata, Antolín Sánchez Presedo, Peter Simon, Theodor Dumitru Stolojan, Sampo Terho, Ramon Tremosa i Balcells, Corien Wortmann-Kool, Pablo Zalba Bidegain |
| Substitute(s) present for the final vote | Lajos Bokros, Sari Essayah, Ashley Fox, Robert Goebbels, Anne E. Jensen, Olle Ludvigsson, Petru Constantin Luhan, Nils Torvalds |
| Date tabled | 21.3.2014 |