

## II

(Information)

## INFORMATION FROM EUROPEAN UNION INSTITUTIONS AND BODIES

## COUNCIL

**Revised Code of Conduct for the effective implementation of the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises**

(2009/C 322/01)

THE COUNCIL OF THE EUROPEAN UNION AND THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES, MEETING WITHIN THE COUNCIL,

HAVING REGARD to the Convention of 23 July 1990 on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (the 'Arbitration Convention'),

ACKNOWLEDGING the need both for Member States, as Contracting States to the Arbitration Convention, and for taxpayers to have more detailed rules to implement efficiently the Arbitration Convention,

NOTING the Commission Communication of 14 September 2009 on the work of the EU Joint Transfer Pricing Forum (JTPF) in the period March 2007 to March 2009, based on the reports of the JTPF on penalties and transfer pricing, and on the interpretation of some provisions of the Arbitration Convention,

EMPHASISING that this Code of Conduct is a political commitment and does not affect the Member States' rights and obligations or the respective spheres of competence of the Member States and the European Union resulting from the Treaty on European Union and the Treaty on the Functioning of the European Union,

ACKNOWLEDGING that the implementation of this Code of Conduct should not hamper solutions at a more global level,

TAKING NOTE of the conclusions of the JTPF report on penalties,

HEREBY ADOPT THE FOLLOWING REVISED CODE OF CONDUCT:

Without prejudice to the respective spheres of competence of the Member States and the European Union, this revised Code of Conduct concerns the implementation of the Arbitration Convention and certain related issues concerning mutual agreement procedures under double taxation treaties between Member States.

**1. Scope of the Arbitration Convention****1.1. EU triangular transfer pricing cases**

- (a) For the purpose of this Code of Conduct, a EU triangular case is a case where, in the first stage of the Arbitration Convention procedure, two EU competent authorities cannot fully resolve any double

taxation arising in a transfer pricing case when applying the arm's length principle because an associated enterprise situated in (an)other Member State(s) and identified by both EU competent authorities (evidence based on a comparability analysis including a functional analysis and other related factual elements) had a significant influence in contributing to a non-arm's length result in a chain of relevant transactions or commercial/financial relations and is recognised as such by the taxpayer suffering the double taxation and having requested the application of the provisions of the Arbitration Convention.

- (b) The scope of the Arbitration Convention includes all EU transactions involved in triangular cases among Member States.

### 1.2. *Thin capitalisation* <sup>(1)</sup>

The Arbitration Convention makes clear reference to profits arising from commercial and financial relations but does not seek to differentiate between these specific profit types. Therefore, profit adjustments arising from financial relations, including a loan and its terms, and based on the arm's length principle are to be considered within the scope of the Arbitration Convention.

<sup>(1)</sup> Reservations: Bulgaria holds the view that profit adjustments arising from an adjustment to the price of a loan (i.e. the interest rate) fall within the scope of the Arbitration Convention. On the contrary, Bulgaria considers that the Arbitration Convention does not cover cases of profit adjustments based on adjustments to the amount of financing. In principle the grounds for such adjustments lay in the domestic legislation of Member States. The operation of varying national rules and the absence of an internationally recognized arms' length set of guidelines to be applied to a 'business' capital structure, to a great extent challenge the arms' length character of profit adjustments based on adjustments to the amount of a loan.

The Czech Republic shall not apply the mutual agreement procedure under the Arbitration Convention in case that is a subject to the anti-abuse rules under the domestic law.

The Netherlands endorses the view that an adjustment of the interest rate (pricing of the loan) which is based on national legislation based on the arm's length principle falls within the scope of the Arbitration Convention. Adjustments of the amount of the loan as well as adjustments of the deductibility of the interest based on a thin capitalization approach under the arm's length principle or adjustments based on anti-abuse legislation based on the arm's length principle are considered to fall outside the scope of the Arbitration Convention. The Netherlands will preserve its reservation until there is guidance from the OECD on how to apply the arm's length principle to thin capitalization of associated enterprises.

Greece considers that adjustments which fall within the scope of Arbitration Convention are those of the interest rate of a loan. Adjustments concerning the amount of a loan and the deductibility of accrued interest related to a loan should not apply to Arbitration Convention, due to domestic legislation limitations in force.

Hungary considers only those cases fall within the scope of the AC where double taxation is due to the adjustment of the interest rate of the loan and the adjustment is based on the ALP.

Italy considers that the Arbitration Convention may be invoked in case of double taxation due to a price adjustment of a financial transaction not in accordance with the arm's length principle. Conversely, it cannot be invoked to solve double taxation arising from adjustments to the amount of loans, or double taxation occurred because of the differences in domestic rules on the allowed amount of financing or on interest deductibility.

Latvia's understanding is that the Arbitration Convention cannot be invoked in case of double taxation arising as a result of application of general national legislation on adjustments of the amount of a loan or on deductibility of interest payments, that is not based on the arm's length principle provided for in Article 4 of the Arbitration Convention.

Therefore, Latvia considers that only adjustments of interest deductions performed under national legislation based on the arm's length principle are within the scope of the Arbitration Convention.

Poland considers that procedure stipulated by Arbitration Convention may be applicable only in the case of interest adjustments. While adjustments concerning amount of a loan should not be covered by the Convention. In our opinion it is quite impossible to define how capital structure should look in practice in order to be in line with arm's length principle.

Portugal considers that the Arbitration Convention cannot be invoked to resolve cases of double taxation caused by adjustments to profits arising either from corrections to the amount of a loan contracted between associated companies or to interest payments based on domestic anti-abuse measures. Nevertheless, Portugal admits to review its position once consensus is reached at international level, namely through guidance from the OECD, on the application of the arm's length principle to the amount of debts (involving thin capitalisation situations) between associated companies.

Slovakia is of the opinion that an adjustment of the interest rate which is based on national legislation based on the arm's length principle should fall within the scope of the Arbitration Convention but the adjustments to profits arising as a result of the application of anti-abuse rules under domestic legislation should fall outside the scope of the Arbitration Convention.

## 2. Admissibility of a case

On the basis of Article 18 of the Arbitration Convention, Member States are recommended to consider that a case is covered by the Arbitration Convention when the request is presented in due time after the date of entry into force of accession by new Member States to the Arbitration Convention, even if the adjustment applies to earlier fiscal years.

## 3. Serious penalties

As Article 8(1) provides for flexibility in refusing to give access to the Arbitration Convention due to the imposition of a serious penalty, and considering the practical experience acquired since 1995, Member States are recommended to clarify or revise their unilateral declarations in the Annex to the Arbitration Convention in order to better reflect that a serious penalty should only be applied in exceptional cases like fraud.

## 4. The starting point of the three-year period (deadline for submitting the request according to Article 6(1) of the Arbitration Convention)

The date of the 'first tax assessment notice or equivalent which results or is likely to result in double taxation within the meaning of Article 1 of the Arbitration Convention, e.g. due to a transfer pricing adjustment' <sup>(1)</sup>, is considered as the starting point for the three-year period.

As far as transfer pricing cases are concerned, Member States are recommended to apply this definition also to the determination of the three-year period as provided for in Article 25.1 of the OECD Model Tax Convention on Income and on Capital and implemented in the double taxation treaties between Member States.

## 5. The starting point of the two-year period (Article 7(1) of the Arbitration Convention)

- (a) For the purpose of Article 7(1) of the Arbitration Convention, a case will be regarded as having been submitted according to Article 6(1) when the taxpayer provides the following:
- (i) identification (such as name, address, tax identification number) of the enterprise of the Member State that presents its request and of the other parties to the relevant transactions;
  - (ii) details of the relevant facts and circumstances of the case (including details of the relations between the enterprise and the other parties to the relevant transactions);
  - (iii) identification of the tax periods concerned;
  - (iv) copies of the tax assessment notices, tax audit report or equivalent leading to the alleged double taxation;
  - (v) details of any appeals and litigation procedures initiated by the enterprise or the other parties to the relevant transactions and any court decisions concerning the case;
  - (vi) an explanation by the enterprise of why it considers that the principles set out in Article 4 of the Arbitration Convention have not been observed;
  - (vii) an undertaking that the enterprise shall respond as completely and quickly as possible to all reasonable and appropriate requests made by a competent authority and have documentation at the disposal of the competent authorities; and

<sup>(1)</sup> Reservation: The tax authority Member from Italy considers 'the date of the first tax assessment notice or equivalent reflecting a transfer pricing adjustment which results or is likely to result in double taxation within the meaning of Article 1' as the starting point of the three-year period, since the application of the existing Arbitration Convention should be limited to those cases where there is a transfer pricing 'adjustment'.

(viii) any specific additional information requested by the competent authority within two months upon receipt of the taxpayer's request.

- (b) The two-year period starts on the latest of the following dates:
- (i) the date of the tax assessment notice, i.e. a final decision of the tax administration on the additional income, or equivalent;
  - (ii) the date on which the competent authority receives the request and the minimum information as stated under point (a).

## 6. Mutual agreement procedures under the Arbitration Convention

### 6.1. General provisions

- (a) The arm's length principle will be applied, as advocated by the OECD, without regard to the immediate tax consequences for any particular Member State.
- (b) Cases will be resolved as quickly as possible having regard to the complexity of the issues in the particular case in question.
- (c) Any appropriate means for reaching a mutual agreement as expeditiously as possible, including face-to-face meetings, will be considered. Where appropriate, the enterprise will be invited to make a presentation to its competent authority.
- (d) Taking into account the provisions of this Code of Conduct, a mutual agreement should be reached within two years of the date on which the case was first submitted to one of the competent authorities in accordance with point 5(b) of this Code of Conduct. However, it is recognised that in some situations (e.g. imminent resolution of the case or particularly complex transactions, or triangular cases), it may be appropriate to apply Article 7(4) of the Arbitration Convention (providing for time limits to be extended) to agree a short extension.
- (e) The mutual agreement procedure should not impose any inappropriate or excessive compliance costs on the person requesting it, or on any other person involved in the case.

### 6.2. EU triangular transfer pricing cases

- (a) As soon as the competent authorities of the Member States have agreed that the case under discussion is to be considered a EU triangular case, they should immediately invite the other EU competent authority(ies) to take part in the proceedings and discussions as (an) observer(s) or as (an) active stakeholder(s) and decide together which is their favoured approach. Accordingly, all information should be shared with the other EU competent authority(ies) through for example exchanges of information. The other competent authority(ies) should be invited to acknowledge the actual or possible involvement of 'their' taxpayer(s).
- (b) One of the following approaches may be adopted by the competent authorities involved to resolve double taxation arising from EU triangular cases under the Arbitration Convention:
  - (i) the competent authorities can decide to take a multilateral approach (immediate and full participation of all the competent authorities concerned); or
  - (ii) the competent authorities can decide to start a bilateral procedure, whereby the two parties to the bilateral procedure are the competent authorities that identified (based on a comparability analysis including a functional analysis and other related factual elements) the associated enterprise situated in another Member State that had a significant influence in contributing to a non-arm's length result in the chain of relevant transactions or commercial/financial relations, and should invite the other EU competent authority(ies) to participate as (an) observer(s) in the mutual agreement procedure discussions; or

- (iii) the competent authorities can decide to start more than one bilateral procedure in parallel and should invite the other EU competent authority(ies) to participate as (an) observer(s) in the respective mutual agreement procedure discussions.

Member States are recommended to apply a multilateral procedure to resolve such double taxation cases. However this should always be agreed by all the competent authorities, based on the specific facts and circumstances of the case. If a multilateral approach is not possible and a two or more parallel bilateral procedures are started, all relevant competent authorities should be involved in the first stage of the Arbitration Convention procedure either as Contracting States in the initial Arbitration Convention application or as observers.

- (c) The status of observer may change to that of stakeholder depending on the development of the discussions and evidence presented. If the other competent authority(ies) want(s) to participate in the second stage (arbitration), it (they) has (have) to become (a) stakeholder(s).

The fact that the other EU competent authority(ies) remain(s) throughout as (a) party(ies) to the discussions as (an) observer(s) only has no consequences for the application of the provisions of the Arbitration Convention (e.g. timing issues and procedural issues).

Participation as (an) observer(s) does not bind the other competent authority(ies) to the final outcome of the Arbitration Convention procedure.

In the procedure, any exchange of information must comply with the normal legal and administrative requirements and procedures.

- (d) The taxpayer(s) should, as soon as possible, inform the tax administration(s) involved that (an) other party(ies), in (an) other Member State(s), could be involved in the case. That notification should be followed in a timely manner by the presentation of all relevant facts and supporting documentation. Such an approach will not only lead to quicker resolution but also guard against the failure to resolve double taxation issues due to differing procedural deadlines in the Member States.

### 6.3. *Practical functioning and transparency*

- (a) In order to minimise costs and delays caused by translation, the mutual agreement procedure, in particular the exchange of position papers, should be conducted in a common working language, or in a manner having the same effect, if the competent authorities can reach agreement on a bilateral (or multilateral) basis.
- (b) The enterprise requesting the mutual agreement procedure will be kept informed by the competent authority to which it made the request of all significant developments that affect it during the course of the procedure.
- (c) The confidentiality of information relating to any person that is protected under a bilateral tax convention or under the law of a Member State will be ensured.
- (d) The competent authority will acknowledge receipt of a taxpayer's request to initiate a mutual agreement procedure within one month from the receipt of the request and at the same time inform the competent authority(ies) of the other Member State(s) involved in the case attaching a copy of the taxpayer's request.
- (e) If the competent authority believes that the enterprise has not submitted the minimum information necessary for the initiation of a mutual agreement procedure as stated under point 5(a), it will invite the enterprise, within two months upon receipt of the request, to provide it with the specific additional information it needs.
- (f) Member States undertake that the competent authority will respond to the enterprise making the request in one of the following forms:

- (i) if the competent authority does not believe that profits of the enterprise are included, or are likely to be included, in the profits of an enterprise of another Member State, it will inform the enterprise of its doubts and invite it to make any further comments;
  - (ii) if the request appears to the competent authority to be well-founded and it can itself arrive at a satisfactory solution, it will inform the enterprise accordingly and make as quickly as possible such adjustments or allow such reliefs as are justified;
  - (iii) if the request appears to the competent authority to be well-founded but it is not itself able to arrive at a satisfactory solution, it will inform the enterprise that it will endeavour to resolve the case by mutual agreement with the competent authority of any other Member State concerned.
- (g) If a competent authority considers a case to be well-founded, it should initiate a mutual agreement procedure by informing the competent authority(ies) of the other Member State(s) of its decision and attach a copy of the information as specified under point 5(a) of this Code of Conduct. At the same time it will inform the person invoking the Arbitration Convention that it has initiated the mutual agreement procedure. The competent authority initiating the mutual agreement procedure will also inform — on the basis of information available to it — the competent authority(ies) of the other Member State(s) and the person making the request whether the case was presented within the time limits provided for in Article 6(1) of the Arbitration Convention and of the starting point for the two-year period of Article 7(1) of the Arbitration Convention.

#### 6.4. Exchange of position papers

- (a) Member States undertake that when a mutual agreement procedure has been initiated, the competent authority of the country in which a tax assessment, i.e. a final decision of the tax administration on the income, or equivalent has been made, or is intended to be made, which contains an adjustment that results, or is likely to result, in double taxation within the meaning of Article 1 of the Arbitration Convention, will send a position paper to the competent authority(ies) of the other Member State(s) involved in the case setting out:
- (i) the case made by the person making the request;
  - (ii) its view of the merits of the case, e.g. why it believes that double taxation has occurred or is likely to occur;
  - (iii) how the case might be resolved with a view to the elimination of double taxation together with a full explanation of the proposal.
- (b) The position paper will contain a full justification of the assessment or adjustment and will be accompanied by basic documentation supporting the competent authority's position and a list of all other documents used for the adjustment.
- (c) The position paper will be sent to the competent authority(ies) of the other Member State(s) involved in the case as quickly as possible taking account of the complexity of the particular case and no later than four months from the latest of the following dates:
- (i) the date of the tax assessment notice, i.e. final decision of the tax administration on the additional income, or equivalent;
  - (ii) the date on which the competent authority receives the request and the minimum information as stated under point 5(a).

- (d) Member States undertake that, where a competent authority of a country in which no tax assessment or equivalent has been made, or is not intended to be made, which results, or is likely to result, in double taxation within the meaning of Article 1 of the Arbitration Convention, e.g. due to a transfer pricing adjustment, receives a position paper from another competent authority, it will respond as quickly as possible taking account of the complexity of the particular case and no later than six months after receipt of the position paper.
- (e) The response should take one of the following two forms:
- (i) if the competent authority believes that double taxation has occurred, or is likely to occur, and agrees with the remedy proposed in the position paper, it will inform the other competent authority(ies) accordingly and make such adjustments or allow such relief as quickly as possible;
  - (ii) if the competent authority does not believe that double taxation has occurred, or is likely to occur, or does not agree with the remedy proposed in the position paper, it will send a responding position paper to the other competent authority(ies) setting out its reasons and proposing an indicative time scale for dealing with the case taking into account its complexity. The proposal will include, whenever appropriate, a date for a face-to-face meeting, which should take place no later than 18 months from the latest of the following dates:
    - (aa) the date of the tax assessment notice, i.e. final decision of the tax administration on the additional income, or equivalent;
    - (bb) the date on which the competent authority receives the request and the minimum information as stated under point 5(a).
- (f) Member States will further undertake any appropriate steps to speed up all procedures wherever possible. In this respect, Member States should envisage to organise regularly, and at least once a year, face-to-face-meetings between their competent authorities to discuss pending mutual agreement procedures (provided that the number of cases justifies such regular meetings).

#### 6.5. *Double taxation treaties between Member States*

As far as transfer pricing cases are concerned, Member States are recommended to apply the provisions of points 1, 2 and 3 also to mutual agreement procedures initiated in accordance with Article 25(1) of the OECD Model Convention on Income and on Capital, implemented in the double taxation treaties between Member States.

### **7. Proceedings during the second phase of the Arbitration Convention**

#### 7.1. *List of independent persons*

- (a) Member States commit themselves to inform without any further delay the Secretary-General of the Council of the names of the five independent persons of standing, eligible to become a member of the advisory commission as referred to in Article 7(1) of the Arbitration Convention and inform, under the same conditions, of any alteration of the list.
- (b) When transmitting the names of their independent persons of standing to the Secretary-General of the Council, Member States will join a curriculum vitae of those persons, which should, among other things, describe their legal, tax and especially transfer pricing experience.
- (c) Member States may also indicate on their list those independent persons of standing who fulfil the requirements to be elected as Chairman.
- (d) The Secretary General of the Council will address every year a request to Member States to confirm the names of their independent persons of standing or give the names of their replacements.

- (e) The aggregate list of all independent persons of standing will be published on the Council's website.
- (f) Independent persons of standing do not have to be nationals of or resident in the nominating State, but do have to be nationals of a Member State and resident within the territory to which the Arbitration Convention applies.
- (g) Competent authorities are recommended to draw up an agreed declaration of acceptance and a statement of independence for the particular case, to be signed by the selected independent persons of standing.

#### 7.2. *Establishment of the advisory commission*

- (a) Unless otherwise agreed between the Member States concerned, the Member State that issued the first tax assessment notice, i.e. final decision of the tax administration on the additional income, or equivalent which results, or is likely to result, in double taxation within the meaning of Article 1 of the Arbitration Convention, takes the initiative for the establishment of the advisory commission and arranges for its meetings, in agreement with the other Member State(s).
- (b) Competent authorities should establish the advisory commission no later than six months following expiry of the period referred to in Article 7 of the Arbitration Convention. Where one competent authority does not do this, another competent authority involved is entitled to take the initiative.
- (c) The advisory commission will normally consist of two independent persons of standing in addition to its Chairman and the representatives of the competent authorities. For triangular cases, where an advisory commission is to be set up under the multilateral approach, Member States will have regard to the requirements of Article 11(2) of the Arbitration Convention, introducing as necessary additional rules of procedure, to ensure that the advisory commission, including its Chairman, is able to adopt its opinion by a simple majority of its members.
- (d) The advisory commission will be assisted by a secretariat for which the facilities will be provided by the Member State that initiated the establishment of the advisory commission unless otherwise agreed by the Member States concerned. For reasons of independence, this secretariat will function under the supervision of the Chairman of the advisory commission. Members of the secretariat will be bound by the secrecy provisions as stated in Article 9(6) of the Arbitration Convention.
- (e) The place where the advisory commission meets and the place where its opinion is to be delivered may be determined in advance by the competent authorities of the Member States concerned.
- (f) Member States will provide the advisory commission before its first meeting, with all relevant documentation and information and in particular all documents, reports, correspondence and conclusions used during the mutual agreement procedure.

#### 7.3. *Functioning of the advisory commission*

- (a) A case is considered to be referred to the advisory commission on the date when the Chairman confirms that its members have received all relevant documentation and information as specified in point 7.2(f).
- (b) The proceedings of the advisory commission will be conducted in the official language or languages of the Member States involved, unless the competent authorities decide otherwise by mutual agreement, taking into account the wishes of the advisory commission.
- (c) The advisory commission may request from the party from which a statement or document emanates to arrange for a translation into the language or languages in which the proceedings are conducted.



- (d) Whilst respecting Article 10 of the Arbitration Convention, the advisory commission may request Member States and in particular the Member State that issued the first tax assessment notice, i.e. final decision of the tax administration on the additional income, or equivalent, which resulted, or may result, in double taxation within the meaning of Article 1 of the Arbitration Convention, to appear before the advisory commission.
- (e) The costs of the advisory commission procedure, which will be shared equally by the Member States concerned, will be the administrative costs of the advisory commission and the fees and expenses of the independent persons of standing.
- (f) Unless the competent authorities of the Member States concerned agree otherwise:
  - (i) the reimbursement of the expenses of the independent persons of standing will be limited to the reimbursement usual for high ranking civil servants of the Member State which has taken the initiative to establish the advisory commission;
  - (ii) the fees of the independent persons of standing will be fixed at EUR 1 000 per person per meeting day of the advisory commission, and the Chairman will receive a fee higher by 10 % than that of the other independent persons of standing.
- (g) Actual payment of the costs of the advisory commission procedure will be made by the Member State which has taken the initiative to establish the advisory commission, unless the competent authorities of the Member States concerned decide otherwise.

#### 7.4. *Opinion of the advisory commission*

Member States would expect the opinion to contain:

- (a) the names of the members of the advisory commission;
- (b) the request; the request contains:
  - (i) the names and addresses of the enterprises involved;
  - (ii) the competent authorities involved;
  - (iii) a description of the facts and circumstances of the dispute;
  - (iv) a clear statement of what is claimed;
- (c) a short summary of the proceedings;
- (d) the arguments and methods on which the decision in the opinion is based;
- (e) the opinion;
- (f) the place where the opinion is delivered;
- (g) the date on which the opinion is delivered;
- (h) the signatures of the members of the advisory commission.

The decision of the competent authorities and the opinion of the advisory commission will be communicated as follows:

- (i) Once the decision has been taken, the competent authority to which the case was presented will send a copy of the decision of the competent authorities and the opinion of the advisory commission to each of the enterprises involved.

- (ii) The competent authorities of the Member States can agree that the decision and the opinion may be published in full. They can also agree to publish the decision and the opinion without mentioning the names of the enterprises involved and with deletion of any further details that might disclose the identity of the enterprises involved. In both cases, the enterprises' consent is required and prior to any publication the enterprises involved must have communicated in writing to the competent authority to which the case was presented that they do not have objections to publication of the decision and the opinion.
- (iii) The opinion of the advisory commission will be drafted in three (or more in the case of triangular cases) original copies, one to be sent to each competent authority of the Member States involved and one to be transmitted to the Secretariat-General of the Council for archiving. If there is agreement on the publication of the opinion, the latter will be rendered public in the original language(s) on the website of the Commission.

#### **8. Tax collection and interest charges during cross-border dispute resolution procedures**

- (a) Member States are recommended to take all necessary measures to ensure that the suspension of tax collection during cross-border dispute resolution procedures under the Arbitration Convention can be obtained by enterprises engaged in such procedures under the same conditions as those engaged in a domestic appeals or litigation procedure although these measures may imply legislative changes in some Member States. It would be appropriate for Member States to extend these measures to the cross-border dispute resolution procedures under double taxation treaties between Member States.
- (b) Considering that, during mutual agreement procedure negotiations, a taxpayer should not be adversely affected by the existence of different approaches to interest charges and refunds during the time it takes to complete the mutual agreement procedure, Member States are recommended to apply one of the following approaches:
  - (i) tax to be released for collection and repaid without attracting any interest; or
  - (ii) tax to be released for collection and repaid with interest; or
  - (iii) each case to be dealt with on its merits in terms of charging or repaying interest (possibly during the mutual agreement procedure).

#### **9. Accession of new Member States to the Arbitration Convention**

Member States will endeavour to sign and ratify the conventions on accession of new Member States to the Arbitration Convention as soon as possible and in any event no later than two years after their accession to the EU.

#### **10. Final provisions**

In order to ensure the even and effective application of this Code of Conduct, Member States are invited to report to the Commission on its practical functioning every two years. On the basis of these reports, the Commission intends to report to the Council and may propose a review of the provisions of this Code of Conduct.

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