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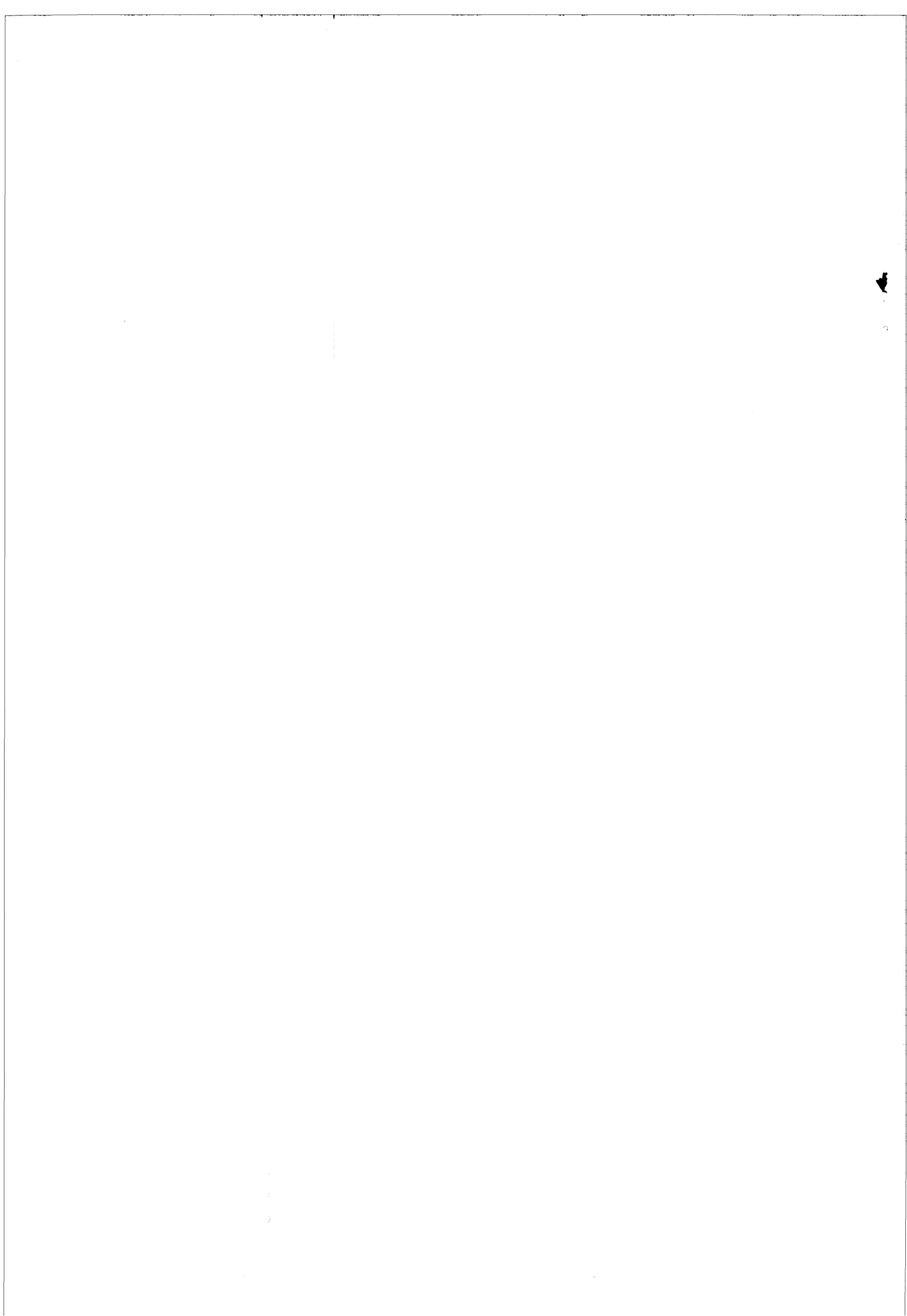
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Recommendation for a

COUNCIL DECISION

authorizing the Commission to negotiate a multilateral Convention
on administrative assistance in tax matters within the
Council of Europe

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(submitted to the Council by the Commission)

EXPLANATORY MEMORANDUM

1. Following the colloquium on international tax avoidance and evasion, organized by the Assembly of the Council of Europe in Strasbourg in March 1980, the Committee of Ministers of that organization instructed a committee of national experts to prepare by 31 December 1985 a draft multilateral Convention on mutual assistance in combating international tax avoidance and evasion.

   The Convention is to be a joint instrument of the Council of Europe and the OECD and only the member countries of one or other of these organizations will be able to accede to it.

2. The Commission welcomes this initiative by the Council of Europe. It has always maintained, as indeed has the Council of Ministers of the European Communities , that measures to combat international tax avoidance and evasion would increase in effectiveness as their geographical scope expanded.

3. The Commission   was   invited to take part as an observer in the meetings of the committee of experts, which met in Strasbourg in November 1982 and April 1983. A third meeting is to take place from 22 to 25 November 1983.

   The committee of experts decided to base its work on a text drawn up for this purpose within the OECD. The administrative assistance provided for in the text covers all taxes - including compulsory social security contributions - whether levied for the benefit of the State or for regional and local authorities. It covers the following fields :

   - the exchange of information for the purpose of assessing and collecting taxes ;
   - assistance in recovery ;
   - service of documents.

4. The measures provided for in the preliminary draft of the Convention are partly covered by Community provisions governing relations between Member States. This is the case with the following :

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- the exchange of information in the field of direct taxation, covered by
  Council Directive 77/799/EEC of 19 December 1977 [1];

- the exchange of information on value added tax, covered by Council Direc-
  tive 79/1070/EEC of 6 December 1979 [2];

- mutual assistance for the recovery of claims in respect of value added
  tax, covered by Council Directive 79/1071/EEC of 6 December 1979 [3];

- mutual assistance for the exchange of information and the recovery of so-
  cial security contributions, provided for by Articles 84 and 92 of Coucil
  Regulation (EEC) No 1408/71 of 14 June 1971 [4].

As far as these fields are concerned, the Court of Justice has clearly esta-
blished the principle that, in the fields in which "the Community adopts
provisions laying down common rules, the Member States no longer have the
right to undertake obligations with third countries which affect those rules
or alter their scope." In such cases, the Community has sole authority.

Since the multilateral Convention is likely to affect the above mentioned
common rules or to alter their scope, it is for the Community to participate
in the Convention. Consequently, it is the Commission which must conduct
the negotiations relating to these fields (see Article 228 of the Treaty).
The same procedure was followed in preparing a number of international con-
ventions both within the Council of Europe and within the United Nations
(e.g. on the environment, fisheries, etc.).

In the annexed draft Recommendation, the Commission therefore proposes that
the Council authorize it to negotiate, if necessary in consultation with
the Member States, the part of the Convention falling within the powers of
the Community.

5. In the areas of the Convention which are not yet covered by Community rules,
   there is at the very least a obligation on the Member States, enshrined in
   Article 116 of the EEC Treaty, to proceed by common action. The relevant
   problems were examined in the two Commission staff papers sent to the
   Council on 28 March and 11 October 1983.

6. For the reasons set out above, the Commission requests the Council to adopt
   the attached Recommendation for a Decision.

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(1) OJ N° L 336, 27.12.1977
(2) OJ N° L 331, 27.12.1979
(3) OJ N° L 331, 27.12.1979
(4) OJ N° L 230, 22.8.1983

Recommendation for a

COUNCIL DECISION

authorizing the Commission to negotiate a multilateral Convention on
administrative assistance in tax matters within the Council of Europe

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic
Community,

Having regard to the Recommendation from the Commission,

Whereas the provisions of the multilateral Convention on
administrative assistance in tax matters which is being prepared within
the Council of Europe are likely to affect the common rules existing within
the Community in this field ;

Whereas the Community should therefore participate in that
Convention, insofar as the provisions thereof relate to matters covered by
common rules,

HAS DECIDED AS FOLLOWS:

Sole Article

1. In the work of the Committee of Experts on Tax Law set up within the
   Council of Europe, the Commission is hereby authorized to negotiate the
   multilateral Convention on administrative assistance in tax matters,
   insofar as the work of the Committee relates to matters covered by common
   rules.

2. The Commission shall conduct the negotiations in consultation, insofar as
   this proves necessary, with the representatives of the Member States and
   in accordance with the directives contained in the Annex, subject to any
   directives which the Council may later adopt.

Done at Brussels   For the Council
                                                    The Président

A N N E X

- The Convention will not affect the common rules on mutual assistance inside the Community.

- Every endeavour must be made to ensure that Convention rules follow as closely as possible existing Community legislation.

- The system provided by the Convention may go beyond that existing at the present time inside the Community.