

April 2016

Tax transparency – automatic exchange of information on base erosion and profit shifting

[Council Directive 2011/16](#) on administrative cooperation in the field of taxation and
repealing Directive 77/799

This briefing is one in a series of 'Implementation Appraisals' on the operation of existing EU legislation in practice. Each such briefing focuses on a specific EU law which is likely to be amended or reviewed, as foreseen in the European Commission's Annual Work Programme. Implementation Appraisals aim to provide a succinct overview of material publicly available on the implementation, application and effectiveness of an EU law to date - drawing on available input from the EU institutions and external organisations. They are provided to assist parliamentary committees in their consideration of the new proposals, once tabled.

EP committee responsible at time of adoption of the EU legislation: Committee on Economic and Monetary Affairs (ECON)

Date of adoption of EP opinion on current legislation in plenary: [10 February 2010](#)

Deadline for transposition: 1 January 2013, with the exception of Article 8, for which a deadline of 1 January 2015 applies (see Article 29 of the Directive)

Planned date for review of legislation in question: Every five years after 1 January 2013, the Commission shall submit a report on the application of this Directive to the European Parliament and to the Council (see Article 27 of the Directive).

Timeline for new amending legislation: The legislative proposal amending the existing Directive was adopted by the European Commission on [28 January 2016](#).

1. Background

This implementation appraisal¹ focuses on [Directive 2011/16](#) on administrative cooperation in the field of taxation and repealing Directive 77/799 on mutual assistance by the competent authorities of the Member States in the field of direct taxation and taxation of insurance premiums. An earlier [proposal](#) modifying various elements of Directive 2011/16 was adopted on 8 December 2015.² Mutual assistance between the Member States (MS) in the field of taxation was established at European level in the late 1970s. Directive 77/799 enabled the MS to exchange information on direct taxation. However, because of a need to address new challenges such as increased taxpayer mobility and a growing volume of cross-border transactions, this directive was repealed and replaced by [Directive 2011/16](#). The directive was intended to respond to the Member States' need for

¹ See also [Implementation appraisal](#) on Tax transparency – automatic exchange of information between EU Member States on their tax rulings, EPRS, September 2015.

² Pursuant to Article 115 of Treaty on Functioning of the European Union, the Council has to adopt the proposal in accordance with a special legislative procedure after consulting the European Parliament. The consultation of the European Parliament is mandatory.

enhanced mutual assistance, including an exchange of mutual information in order to enable them to better assess taxes due. Pursuant to its Article 1(1), it 'lays down the rules and procedures under which the Member States shall cooperate with each other with a view to exchanging information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Member States concerning the taxes'. The main goal of the directive is to enhance transparency in the field of taxation, which is linked with combating tax evasion and improving the efficiency of tax collection.

In 2012, the Commission adopted [Commission Implementing Regulation \(EU\) No 1156/2012](#) laying down detailed rules for implementing certain provisions of Directive 2011/16 on administrative cooperation in the field of taxation. This implementing regulation was amended by [Commission Implementing Regulation \(EU\) No 1353/2014](#). In 2014, Directive 2011/16 was amended by [Council Directive 2014/107](#) as regards mandatory automatic exchange of information in the field of taxation. In December 2015, the directive was amended again. [Council Directive 2015/2376](#) broadened the scope of mandatory automatic exchange of information on advance cross-border rulings and advance pricing arrangements and it set out clearer obligations for the tax authorities of the MS.³ It provided tax authorities additional instruments to tackle tax fraud, tax evasion and aggressive tax planning especially in the context of tax rulings and advance pricing arrangements.

The lack of automatic exchange of information could potentially lead to a situation where the MS are unaware of the tax rulings⁴ of other MS or unaware of the effect these 'foreign' rulings have on their own tax bases. Because of this, and because of the fact that tax avoidance, tax fraud and tax evasion also have a cross-border dimension, an effective solution to the problem could be achieved by the MS taking common harmonised action. The European Commission in its annual Work Programme 2016 ([CWP 2016](#)) therefore announced that it intends to present an additional set of measures to enhance transparency of the corporate tax system and fight tax avoidance, also through implementing international standards on base erosion and profit-shifting. In this context, on 28 January 2016, the Commission proposed the [Anti-Tax Avoidance Package](#) that includes:

- a [Communication on the Package](#),
- the [proposal](#) for the new Anti-Tax Avoidance Directive,
- the [revision](#) of the Administrative Cooperation Directive 2011/16,
- a [Recommendation](#) on Tax Treaties and
- a [Communication](#) on an External Strategy for Effective Taxation.

The goal of this package is to enhance the smooth functioning of the Single Market and to support its ability to secure sustainable growth, employment and competitiveness.⁵ The package partially broadens the 2015 [Tax Transparency Package](#) that was the first step in a broad Commission agenda against corporate tax avoidance and which led to [amendment](#) of Directive 2011/16.

Base Erosion and Profit Shifting (BEPS) – tax planning strategies that exploit the gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations where there is little or no economic activity, resulting in little or no overall corporate tax being paid (See also, OECD Briefing).

³ By 31 December 2016, the MS have to adopt and publish the laws, regulations and administrative provisions necessary to comply with Directive 2015/2376. The MS have an obligation to apply these measures from 1 January 2017.

⁴ Pursuant to the European Commission [Fact Sheet](#) (Combating corporate tax avoidance: Commission presents Tax Transparency Package), a tax ruling is a confirmation that tax authorities give to taxpayers on how their tax will be calculated. Tax rulings tend to provide legal certainty for taxpayers, often by confirming the tax treatment of a large or complex commercial transaction.

⁵ Staff Working Document (SWD) accompanying the proposal: Communication from the Commission to the European Parliament and the Council – Anti Tax Avoidance Package: Next Steps towards delivering effective taxation and greater tax transparency in the EU, p. 25.

Proposal for a Directive amending Directive 2011/16 as regards mandatory automatic exchange of information in the field of taxation (the Proposal)⁶

The proposal addresses the political priority of fighting against tax avoidance and aggressive tax planning. It intends to impose specific transparency requirements on the multinational enterprise groups.⁷ Its purpose is to ensure that Directive 2011/16 continues to provide 'comprehensive and effective administrative co-operation between tax administrations by providing for the mandatory automatic exchange of information regarding country-by-country reports'.⁸ Furthermore, it intends to foster fair competition between different business operators, to protect the tax base of the MS and to achieve a certain degree of uniformity in implementing the actions included in the OECD [final reports on the Action Plan on Base Erosion and Profit Shifting \(BEPS\)](#) (see further).⁹ The proposal expands the scope of automatic exchange of information between the tax authorities in the EU.¹⁰

The present proposal requires the multinational enterprises to provide various types information, for instance, amount of revenue, the profit before income tax or the income tax paid. These enterprises have to provide the data annually and for every jurisdiction in which they conduct their business. According to the Commission, these data should 'enable the tax authorities to react to harmful tax practices through changes in the legislation or adequate risk assessments or tax audits'.¹¹ While requiring the multinational enterprises to provide a comprehensible set of data, the proposal foresees that the enterprises should provide the data only in the country of their residence and not in the countries where they operate. It is the MS and their tax authorities who have to share this information with the other MS on the basis of a report provided by the multinational enterprises. The proposal specifies that only those multinational enterprises with a total consolidated revenue equal or higher to 750 000 000 euro are obliged to submit the so-called country-by-country report.¹² The proposal has been designed to allow mandatory automatic exchange of information on these reports.¹³ This exchange of information has to take place within 15 months after the last day of the fiscal year of the multinational enterprise to which the country-by-country report relates. The proposal also establishes penalties for these enterprises in case of not providing the reports.

The proposal is not accompanied by any impact assessment. Instead, its Explanatory Memorandum refers to the strong link with the OECD BEPS project, the additional evidence provided by the staff working document (see further), the extensive involvement of stakeholders and an urgent current demand for a coordinated action at the EU level.¹⁴

European Commission [Staff Working Document](#) (SWD): Communication from the Commission to the European Parliament and the Council – Anti Tax Avoidance Package: Next Steps towards delivering effective taxation and greater tax transparency in the EU¹⁵

According to the SWD the existing corporate tax rules need a reform as they do not reflect the current increasingly globalised, mobile and digital economic environment. In order to clarify the rules and to provide a coherent and co-ordinated reform of international tax rules, the OECD adopted a package of measures against BEPS. According to the Commission, it is essential for the EU that the MS implement this package in a coordinated way, especially with regard to the functioning of the Single Market and the coherent application

⁶ COM(2016)25.

⁷ Ibid., p. 2.

⁸ Ibid., p. 3.

⁹ Ibid., p. 4.

¹⁰ In connection with the proposal, see also other related EPRS publications, for example, the upcoming briefings on understanding the OECD BEPS' action plan and CBCR implementing action 13 BEPS, due to be published in April 2016.

¹¹ Ibid., p. 2.

¹² Ibid., p. 2.

¹³ Proposed Article 8aa.

¹⁴ Proposal, p. 8.

¹⁵ SWD(2016) 6 final.

and interpretation of the proposed standards.¹⁶ This requires an action at EU level. The Commission identifies various problems of the MS with the lack of coordinated rules, especially those linked with the determination of the taxable profits which derive from economic activity carried out by multinational enterprises in their territory. The Commission notes that EU level action will restore a level playing field across the businesses active in the EU. In this context, it claimed that there is evidence suggesting that there is a growing trend of avoiding taxation through the use of cross-border structures. Therefore, the Commission advocates a coherent EU approach towards the outside world. The Commission also refers to [Parliament's calls](#) for a coordinated EU approach in the fight against tax avoidance.

2. EU-level reports, evaluations and studies

European Commission [Study on Structures of Aggressive Tax Planning and Indicators \(January 2016\)](#)¹⁷

The main purpose of the study is to identify the critical indicators of aggressive tax planning and to review the corporate income tax systems in the MS on the basis of these indicators. It then intends to determine the areas for action in the fight against tax avoidance.

The study identified 33 indicators of aggressive tax planning existing in the MS such as, for example, tax deduction for dividends paid, no interest-limitation rules or excess profits rulings.¹⁸ It also determined seven¹⁹ structures that are most commonly used by companies when engaging in aggressive tax planning. After the assessment of the data received the study found that, for example:

- base erosion and profit shifting can occur in MS,
- a large of group of MS do not apply a beneficial-owner test when accepting a claim for a reduction or exemption of withholding tax,
- a large group of the MS do not have controlled foreign corporation anti-abuse rules,
- a majority of MS do not have rules to counter the mismatching tax qualification of a local partnership or company by another state.²⁰

Based on the information collected, the study concluded that the rules in place can be only partially efficient to prevent the aggressive tax planning and thus an update of the rules is required.

[OECD Final reports on the Action Plan on Base Erosion and Profit Shifting \(October 2015\)](#)

In these reports, the OECD laid down new or reinforced international standards and various concrete measures which should help the countries to tackle base erosion and profit shifting. The EU and the MS have actively contributed to this project.²¹ According to the Commission, it is essential that the MS implement these reports in a coordinated way, especially with regard to the functioning of the Single Market and a coherent application and interpretation of the proposed standards.²² The Action Plan includes 15 actions through which the existing gaps in international tax rules, which allow multinational enterprises to legally but artificially shift profits to low or no-tax jurisdictions, should be closed.²³ These actions include the need to:

- address the tax challenges of the digital economy (Action 1),
- neutralise the effects of hybrid mismatch arrangements (Action 2),
- strengthen controlled foreign company rules (Action 3),
- limit base erosion via interest deductions and other financial payments (Action 4),

¹⁶ Ibid., p. 25.

¹⁷ The study was outsourced by the Europe Commission and carried out in 2015.

¹⁸ For the list of indicators see the Study, p. 55 - 57.

¹⁹ Ibid., p. 25 - 50.

²⁰ Ibid., p. 8 - 10.

²¹ For example, the European Commission has [participated](#) in various meetings with the OECD when developing the project.

²² [Staff Working Document](#), p. 25.

²³ [OECD Policy brief](#), October 2015, BEPS Update No. 3.

- counter harmful tax practices more effectively, taking into account transparency and substance (Action 5),
- prevent treaty abuse (Action 6),
- prevent the artificial avoidance of permanent establishment status (Action 7),
- assure that transfer pricing outcomes are in line with value creation (Actions 8-10),
- measuring and monitoring BEPS (Action 11),
- require taxpayers to disclose their aggressive tax planning arrangements (Action 12),
- re-examine transfer pricing documentation (Action 13),
- make dispute resolution mechanisms more effective (Action 14) and
- develop a multilateral instrument (Action 15).²⁴

EP Study: Bringing transparency, coordination and convergence to corporate tax policies in the European Union: I – Assessment of the magnitude of aggressive corporate tax planning (September 2015)²⁵

The study estimates that revenue losses for the EU as a result of corporate tax avoidance could amount to around 50-70 billion euro per annum, representing the sum lost to profit shifting. However, this figure only represents a lower-end estimate of lost revenue. If other tax regime issues, such as special tax arrangements, inefficiencies in collection and other practices are included, the study estimates that the revenue losses for the EU due to corporate tax avoidance could amount to around 160-190 billion euro per year.²⁶ The study assesses that the corporate income tax efficiency is only around 75 per cent.

Furthermore, the study claims that complete solutions to the BEPS, were they available and implemented across the EU, would have a positive impact on the tax revenues of all MS. It estimates that a comprehensible solution to a BEPS problem would annually add 11.5 billion euro in revenues. Again, the study explains that this figure is likely to be at the lower end of what could reasonably be expected to be recovered through EU-level regulation.²⁷

The study notes further that aggressive tax-planning is increasingly occurring through spillovers, such as base spillovers through relocation, base spillovers through profit-shifting and strategic spillovers (seen most commonly with highly mobile capital and the registration of intellectual property).²⁸ With regard to these practices the study concentrates on examples of Germany, Ireland and the UK. Furthermore, the study considers that individualised tax arrangements between major multinational enterprises and the national tax authorities can lead to various inefficiencies, including organisational, productive, informational and with regard to public goods provision.²⁹

Communication from the European Commission: A Fair and Efficient Corporate Tax System in the European Union: 5 Key Areas for Action (June 2015)³⁰

In this action plan the Commission sets out a more comprehensive European approach to corporate taxation. This approach has four objectives:

- to re-establish the link between taxation and where economic activity takes place,
- to ensure that MS can correctly value corporate activity in their jurisdiction,
- to create a competitive and growth-friendly corporate tax environment for the EU, and
- to protect the Single Market and secure a strong EU approach to external corporate tax issues.

²⁴ See, for example, OECD/G20 Base Erosion and Profit Shifting Project, [Explanatory Statement](#), OECD (2015). The Actions are analysed by the Commission in the above-mentioned Staff Working Document.

²⁵ Study by the European Parliamentary Research Service (EPRS), European Added Value Unit, with the input from external contractors.

²⁶ Ibid., p. 4.

²⁷ Ibid.

²⁸ Ibid., p. 5.

²⁹ Ibid., p. 35.

³⁰ COM(2015)0302.

The action plan also presents five key areas where EU action would be the most effective way to address corporate tax challenges and to target particular types of tax abuse:³¹

- the Common Consolidated Corporate Tax Base,
- ensuring effective taxation where profits are generated,
- additional measures for a better tax environment for business,
- further progress on tax transparency, and
- EU tools for coordination.

The action plan notes that, apart from the proposal amending Directive 2011/16, there are two other possible measures to foster transparency, namely, a common approach to non-cooperative tax jurisdictions and proceeding with work on corporate tax transparency. Furthermore, the action plan claims that cooperation between MS is the essential element in tackling tax avoidance and aggressive tax planning, and that Directive 2011/16 plays a significant role in this area, although its instruments, such as exchange of best practices between tax authorities and cooperation between MS on tax inspections and audits, are not yet being used to their full effect.³² In this context, the Commission intends to launch a discussion with the MS to determine how a strategic approach to controlling and auditing cross-border companies can be taken forward.

First Report of the Commission AEFI expert group³³ on the implementation of Directive 2014/107 for automatic exchange of financial account information (March 2015)

In this 2015 report, the Commission's Expert Group on Automatic Exchange of Financial Account Information for Direct Taxation Purposes (AEFI)³⁴ discussed the implementation of Directive 2014/107 amending Directive 2011/16. The report includes a list of the major outstanding issues regarding the implementation of this Directive. The AEFI Group also developed a list of broad recommendations on these issues, such as:

- provide an achievable implementation timetable,
- respect fundamental rights (concerning privacy),
- issue further implementing guidelines,
- resolve definitional issues in the context of the common reporting standard,
- adapt the due diligence procedures for existing accounts,
- ensure the coherence of, and a level playing field regarding, the lists of excluded accounts and entities,
- minimise the administrative burden and align the compliance regime,
- resolve IT issues and develop the schema for reporting,
- provide developing countries with support for automatic exchange of information,
- develop a cross-border withholding tax relief at source system, and
- create a more effective global system of automatic exchange of information.

Communication from the European Commission on an Action Plan to strengthen the fight against tax fraud and tax evasion (December 2012)³⁵

In December 2012, the Commission adopted an Action Plan to strengthen the fight against tax fraud and tax evasion. This Action Plan was communicated to Parliament and the Council. It set out concrete steps to enhance administrative cooperation, support the development of the existing tax policy and combat tax fraud and tax evasion. It presented various short-term, mid-term and long-term actions. In all three types of action the Commission identified the need to enhance and maintain cooperation, including the exchange of information

³¹ Ibid., p. 7.

³² Ibid., p. 14.

³³ AEFI is an Expert Group on Automatic Exchange of Financial Account Information for Direct Taxation Purposes.

³⁴ Based on the report, the AEFI Group provides advice to ensure that EU legislation on automatic exchange of financial account information is effectively aligned with and fully compatible with the OECD global standard on automatic exchange of financial account information. 2015 Report, p. 3.

³⁵ COM(2012)0722.

between competent authorities in the field of taxation. In the short term, the Commission noted that the MS should make the widest possible use of the laws to organise simultaneous controls and to facilitate cooperation between tax administrators. In the mid-term, the exchange of information in the field of taxation should concentrate on developing a computerised format for automatic exchange of information, the use of an EU tax identification number and appropriate IT support. With regard to developing a computerised format for exchange of information, the communication noted that the Commission is already developing formats for automatic exchange of information pursuant to Directive 2011/16. In the long term, the Commission highlighted a need to study the feasibility (both legal and practical) of having a single legal instrument for administrative cooperation for all taxes.

Short-term actions (before 2013)	
- Tackle mismatches and strengthen anti-abuse provisions, ³⁶	■
- Promote EU standards, instruments and tools, ³⁷	
- Enhance tax compliance, ³⁸	
- Enhance tax governance, ³⁹	
- Enhance administrative cooperation, ⁴⁰ and	
- Action regarding third countries. ⁴¹	
Mid-term actions (to be taken by 2014)	
- Enhance exchange of information in the field of taxation, ⁴²	■
- Tackle trends and schemes of tax fraud and tax evasion, ⁴³ and	
- Enhance tax compliance. ⁴⁴	■
Long-term actions (beyond 2014)	
- A methodology for joint audits by dedicated teams of trained auditors, ⁴⁵	■
- Develop mutual direct access to national databases, ⁴⁶ and	
- Elaborate a single legal instrument for administrative cooperation for all taxes. ⁴⁷	

■ = the goal has been achieved.

■ = the actions have been taken.

■ = the goal has not yet been achieved.

Communication from the European Commission on concrete ways to reinforce the fight against tax fraud and tax evasion including in relation to third countries (June 2012)⁴⁸

In this 2012 communication, the Commission outlined the possibilities enabling the improvement of tax compliance and reduction of tax fraud, tax evasion and aggressive tax planning. According to the Commission, these aims can be achieved mainly through better use of existing legislation, through the adoption of pending Commission proposals⁴⁹ or in other ways, including strengthening existing tools, enhancing exchange of

³⁶ For example, the Commission addressed loopholes in the Parent-Subsidiary Directive ([IP/13/1149](#)).

³⁷ For example, the Commission proposed a simplified, standard VAT form ([IP/13/988](#)).

³⁸ In order to improve tax compliance, the Commission proposed a simplified, standard VAT form ([IP/13/988](#)).

³⁹ The Commission established a Platform on Tax Good Governance ([IP/13/351](#)).

⁴⁰ It is unclear whether, and to what extent, foreign officials can be present in the tax offices or on the premises of taxpayers.

⁴¹ The Commission renegotiated tax agreements with Switzerland, Andorra, Monaco, San Marino and Liechtenstein (MEMO/12/353).

⁴² Directive 2011/16 was amended by Directive 2014/107 as regards mandatory automatic exchange of information in the field of taxation.

⁴³ The Commission has taken various steps to tackle tax fraud and tax evasion schemes ([MEMO/13/1096](#)).

⁴⁴ A number of further actions to enhance tax compliance have been taken. For example, a [one-stop shop](#) for telecommunications has been set up.

⁴⁵ It appears that there is currently no methodology for joint audits carried out by dedicated teams of trained auditors.

⁴⁶ See, a [‘Taxes in Europe’ database](#), an online tool covering the main taxes in force in the Member States.

⁴⁷ At present, there is no single legal instrument for administrative cooperation for all taxes.

⁴⁸ COM(2012)0351.

⁴⁹ For instance, the proposal to amend the Savings Directive (COM(2008)0727). This proposal was adopted by the Council in 2014, after [consultation](#) of Parliament, as Directive 2014/48 amending Directive 2003/48.

information, tackling tax fraud and tax evasion trends and schemes, ensuring high levels of taxpayer compliance and enhancing tax governance.

Regarding the exchange of information in the tax field, the Commission noted that this exchange would provide the tax authorities with invaluable information on income received and assets owned by their taxpayers. The communication also highlighted the promotion of an automatic exchange of information. In this context, the Commission noted that it has developed various computerised formats for income, including those covered by Directive 2011/16. According to the communication, the EU plays a key role in promoting its standard of automatic exchange of information and in developing international standards of transparency and exchange of information in tax matters. The communication also announced the adoption and communication of an action plan strengthening the fight against tax fraud and tax evasion (see the previous paragraph).

3. European Parliament position / Questions from Members of the European Parliament⁵⁰

European Parliament [resolution](#) of 25 March 2015 on the Annual Tax Report⁵¹

Parliament took the view that tax rulings can be an important instrument with a view to creating legal certainty for businesses. At the same time, it regretted the lack of transparency with which such rulings have been used in the MS. According to Parliament, national legislatures should be permitted to inspect the content of tax rulings, in order to enact appropriate national legislation to prevent tax avoidance. It welcomed the announcement of a Commission proposal on compulsory exchange of information on cross-border rulings. It highlighted that the proposal must contain an obligation for the MS to inform each other on rulings adopted. The MS should be obliged to notify the Commission of such rulings, of their underlying general principles and of their precise budgetary impact on the tax base. Based on this information, the Commission would be in a better position to exercise its role as guardian of fair competition within the single market. Parliament stressed the need for national authorities to exchange information on best practices. It also called upon the Commission to intensify its use of EU State aid rules against aggressive tax planning, and to investigate all tax ruling cases to verify that they are not contravening EU State aid rules by providing selective tax benefits for some companies.

In June 2015, the Commission [followed-up](#) on the Parliament's resolution.⁵² It noted that in 2015 there were several international agreements with third countries on automatic exchange of information in the pipeline. Furthermore, the Commission explained that for a long time already it has enforced the state aid rules in the area of direct business taxation. It noted that it has asked all MS to provide information on their tax rulings which it intended to analyse in the course of 2015/2016. Once the analyses is finalised, the Commission intends to verify whether there is evidence that individual tax measures provide advantages to individual companies. Furthermore, the Commission informed that it intends to come up with proposals against tax havens and tax avoidance including enhancing cooperation between national tax authorities to harmonise the methodology and sharing the best practices in this area. To this end the Commission intended to submit [the Transparency Package](#) in 2015.

⁵⁰ Apart from resolutions mentioned here, Parliament has also dealt with the issue of tax transparency in various legislative resolutions, such as, European Parliament [resolution](#) of 27 October 2015 on the proposal for a Council directive amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation (P8-TA-PROV(2015)0369), European Parliament [resolution](#) of 11 December 2013 on the proposal for a Council directive amending Directive 2011/16 as regards mandatory automatic exchange of information in the field of taxation (P7-TA(2013)0573) or European Parliament [resolution](#) of 10 February 2010 on the proposal for a Council directive on administrative cooperation in the field of taxation (P7-TA(2010)0013).

⁵¹ P8-TA(2015)0089.

⁵² SP(2015)345.

European Parliament [resolution](#) of 21 May 2013 on Fight against Tax Fraud, Tax Evasion and Tax Havens⁵³

With regard to combating tax fraud and tax evasion Parliament stressed that the EU should take the leading role in discussions on these issues. It called on the Commission to take action with regard to the transparency of tax payments of multinational companies. Furthermore, Parliament called on the Commission to identify the areas where EU regulations and administrative cooperation between MS could be improved in order to reduce tax fraud. Parliament also emphasised the potential of e-government in terms of increasing transparency and combating fraud. The Commission was also called on to introduce proposals for a harmonised tackling of tax fraud under criminal law. With regard to tax evasion and aggressive tax planning, Parliament called upon the Commission to introduce country-by-country reporting for cross-border companies in all sectors. Parliament asked that the transparency of payments transactions was enhanced by requiring disclosure of various data, including the nature of the company's activities and its geographical location, turn-over, profit or loss before tax or tax on profit or loss. Parliament also urged the Commission to take actions on companies' aggressive tax planning units.

European Parliament [resolution](#) of 19 April 2012 on the call for concrete ways to combat tax fraud and tax evasion⁵⁴

In this resolution, Parliament considers that one of the prerequisites for dealing with tax avoidance is strengthening the transparency of company registries. At the same time, Parliament called on the Commission to identify areas in which improvements to both EU legislation and administrative cooperation between MS could be made in order to reduce tax fraud. It also called on the MS to ensure smooth cooperation and coordination between their tax systems and to allocate adequate resources to the national services that are empowered to combat tax fraud. Last, but not least, it called on the Commission to report on the possibility of EU coordination in amending bilateral agreements between MS.

In September 2012, the Commission came forward with a [follow-up](#) to this resolution.⁵⁵ The Commission noted that EU coordination in order to amend MS' bilateral agreements was the best way to address tax avoidance. As a result, it intended to facilitate effective administrative cooperation between the tax administrations of the MS by providing them with the practical tools they need, such as standardised electronic formats for the exchange of information. With regard to Parliament's call to identify the areas in which improvements to legislation and administrative cooperation can be implemented, the Commission noted that the MS need to make the best use of their tools. As regards direct taxation, the Commission intended to go further in combating tax havens and aggressive tax planning. It also noted that in 2012 it intended to present a communication on combating tax fraud.⁵⁶

European Parliament [resolution](#) of 2 February 2012 on the Annual Tax Report⁵⁷

Parliament called upon the Commission to share information about best practices in the MS and in other OECD countries concerning the provision of tax information to citizens and businesses, and it asked the Commission to develop efficient tools to facilitate and encourage the exchange of this information and best practices on taxation. It also called upon the Commission to identify the areas in which improvements to both EU legislation and administrative cooperation between MS can be made in order to reduce tax fraud and to notify and make public tax rulings by national authorities for companies operating cross-border.

In June 2012, the Commission came forward with a [follow up](#) to this resolution.⁵⁸ As regards the information on best practices, the Commission noted that it intended to engage in improving the provision of information to

⁵³ P7-TA(2013)0205.

⁵⁴ 2012/2599(RSP).

⁵⁵ SP(2012)487.

⁵⁶ See above communication on concrete ways to reinforce the fight against tax fraud and tax evasion including in relation to third countries.

⁵⁷ P7-TA(2012)0030.

businesses and citizens through a [webpage](#) dedicated to citizens' cross-border tax issues that would complement the information on the [Your Europe Citizens' Portal](#). The information would be provided in a user-friendly way. The Commission agreed with Parliament that EU tax systems should be more growth-friendly, transparent and efficient, and informed Parliament about its intention to present a communication on strengthening good governance in the tax area in relation to tax havens, uncooperative jurisdictions and aggressive tax planning.⁵⁹ The Commission also informed Parliament about the implementation of Directive 2011/16 and about development of the formats that should facilitate the automatic exchange of information.

Written questions

[Written question by MEP Claudia Tapardel, July 2015](#)

The MEP asked the Commission about the steps it intends to take in order to eliminate tax evasion. The MEP furthermore inquired whether the present EU legislation ensures a transparent and fair tax system.

[Answer given by Mr Moscovici on behalf of the Commission, September 2015](#)

The Commission pointed out that in March 2015 it had presented a [Tax Transparency Package](#) that included a proposal which subsequently led to adoption of Directive 2015/2376. It noted that an improved access to information by the national tax authorities should allow the MS to detect certain abusive tax practices and take necessary actions. The Commission also informed that a public consultation on whether companies should have to publicly disclose certain tax information was started in June 2015.

[Written question by a group of MEPs, April 2015](#)

In April 2015 a group of MEPs asked the Commission about the timeline for the adoption of proposed acts in the field of taxation and tax transparency. They also asked about the ability of the proposals to achieve the desired goals, and questioned a decision to set aside Parliament's role as co-legislator on the issue, which is directly related to transparency and accountability.

[Answer given by Mr Moscovici on behalf of the Commission, August 2015](#)

The Commission informed the MEPs that in March 2015 it adopted a [proposal](#) for an automatic exchange of information on tax rulings. In June 2015 it also presented an [Action plan](#) on fair and efficient corporate tax system in the EU. By these initiatives the Commission intended to significantly improve their ability to fight against tax avoidance of companies at EU level. Concerning the Parliament's role in tax issues, the Commission referred to Article 115 TFEU which requires that Parliament is only consulted.

[Written question by MEP Dimitrios Papadimoulis, March 2015](#)

In connection with the Tax Transparency Package proposed by the Commission, the MEP asked whether the Council intends to support the Commission's proposal and make it obligatory both to exchange information on tax rulings and to have them published.

[Reply from the Council, June 2015](#)

The Council informed the MEP that a technical analysis of the Commission proposal and negotiations are still ongoing and it was therefore too early to predict their outcome. However, the Council confirmed that it will consider any further EU legislation upon presentation of the relevant proposals by the European Commission.

[Written question by MEP Patrick Le Hyaric, June 2013](#)

With regard to a 2013 [OECD report](#), 'A Step Change in Tax Transparency', and the conclusions of the US Accountability Office that 21 of the 50 'offshore jurisdictions' are countries linked to the European Union, the MEP asked about the Commission's position on tax transparency and tax havens and about its intentions with regard to the latter.

⁵⁸ SP(2012)260.

⁵⁹ See point 2 above (EU-level reports, evaluations and studies).

Answer given by Mr Šemeta on behalf of the Commission, August 2013

The Commission replied that it has a long-established policy on promoting good governance in tax matters vis-à-vis third countries, which is based on transparency, exchange of information and fair tax competition stemming from the criteria for identifying so-called tax havens as laid down in the Commission Recommendation of 6 December 2012⁶⁰ regarding measures intended to encourage third countries to apply minimum standards of good governance in tax matters. In connection with the list of 50 offshore jurisdictions, the Commission argued that the list disregards important developments on transparency and exchange of information and is therefore more of historical value. The Commission concluded that it is actively engaged in promoting automatic exchange of information as the global standard, underlined by its recent legislative proposal to extend the scope of the automatic exchange of information under Directive 2011/16.

MEPs have also asked other questions partially related to the field of tax transparency and the application (and breaches) of the directive in question.⁶¹

4. European Economic and Social Committee (EESC)

In its [opinion](#) of 9 December 2015 on the Commission Communication, 'A fair and efficient corporate tax system in the European Union: 5 key areas for action', the EESC endorsed a compulsory, common, consolidated, corporate tax base for transnational companies. With regard to profit shifting, the EESC recommended to adopt targeted legal measures that would discourage companies with cross-border activities from continuing to engage in profit shifting to Member States with lower tax rates. It also argued that adoption of the OECD BEPS plan could significantly reduce the cases in which businesses can avoid corporate tax on the grounds of current EU legislation. In this regard, the EESC also recommended the simplification and harmonisation of the existing tax legislation at both EU and national levels.⁶²

5. European Commission public consultation

Between 17 June and 9 September 2015 the Commission carried out a [public consultation on further corporate tax transparency](#). The Commission intended to collect and analyse the necessary evidence that would allow it to make changes in the area of tax transparency, especially in order to increase pressure on enterprises to geographically align taxes paid in a country with actual profits, to increase public or peer pressure on countries to take measures that contribute to more efficient and fairer tax competition between MS, and to assist national tax authorities.⁶³ The consultation was organised around three main areas: transparency by whom, transparency towards whom and transparency of what type of information. The '[factual summary](#) of the responses to the public consultation' showed that civil society supports the EU taking the lead in this global endeavour. It also showed that the EU should be at the forefront and possibly go beyond the OECD's BEPS actions. The responses to the public consultation furthermore underlined that the objectives of the new EU initiative on tax transparency should ensure that, for example, businesses should pay tax where they actually make profit and that there should be a fairer competition between multinational enterprises and SMEs.

⁶⁰ C(2012)8805.

⁶¹ See, for example, [E-000053-16](#), [E-007341/2013](#), [E-000730-14](#), [E-007003/2015](#), [E-007002/2015](#), [P-005648/2015](#), [E-005752-15](#), [E-002334-15](#), [E-010901/2014](#), [E-009133/2014](#), [E-009649/2014](#), [P-006045-13](#).

⁶² See also the EESC [opinion](#) of April 2013 on the 'Communication from the Commission to the European Parliament and the Council — An action plan to strengthen the fight against tax fraud and tax evasion'.

⁶³ [Consultation document](#), p. 2.

6. Conclusion

Although the provisions of the existing Directive 2011/16 require an automatic exchange of information in the field of taxation, the Commission's new proposal would go further towards strengthening and broadening administrative cooperation in this field. The proposal establishes broader cooperation between the MS with regard to preventing tax evasion and tax fraud by multinational enterprises. In this context it obliges multinational enterprises to provide country-by-country reports to national tax authorities. Failure to provide these reports may lead to sanctions. The national tax authorities can subsequently exchange the reports with tax authorities of other Member States. The proposal also introduces a new set of obligations for the application of a mandatory automatic exchange of information in the field of taxation, especially in the context of the principles adopted by the OECD in 2015 directed at prevention and combating base erosion and profit shifting by multinational enterprises.

Parliament, as well as the European Economic and Social Committee, has repeatedly called for more actions to be taken in the tax field to enhance transparency and combat tax evasion and tax fraud. Furthermore, the abovementioned studies and the OECD final reports on base erosion and profit shifting have pointed to a need for coordinated actions to combat tax evasion and tax fraud. As these negative practices are burdensome for the European and world economy, broadening administrative cooperation between MS and clearly defining obligations for MS and enterprises, such as foreseen in the new Commission proposal, could support these aims.

7. Other sources of reference

- [Analysis of EU Tax Rulings Disclosure Directive](#), W. Byrnes, LPB Network, 19 March 2015.
- [Corporate Taxation in Europe: Let's get it together!](#), W.P. De Groen, CEPS Commentary, 16 February 2015.
- [A European approach to corporate tax](#), M. Mariniello, Bruegel Comments, 29 January 2015.
- [Does Exchange of Information between Tax Authorities Influence Multinationals' Use of Tax Havens?](#), J. Braun & A. Weichenrieder, SAFE Working Paper No 89, 23 February 2015.
- EPRS EP In depth analysis: [Tax policy in the EU](#) (February 2015)
- EPRS EP Study: [Bringing transparency, coordination and convergence to corporate tax policies in the European Union II](#) – Evaluation of the European Added Value of the recommendations in the ECON legislative own-initiative draft report
- EPRS EP Plenary At a Glance: [Tax transparency background](#) (April 2016)

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