

**AMENDMENTS 001-042**

by the Committee on Economic and Monetary Affairs

**Report****Emmanuel Maurel****A8-0016/2018**

Mandatory automatic exchange of information in the field of taxation

Proposal for a directive (COM(2017)0335 – C8-0195/2017 – 2017/0138(CNS))

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**Amendment 1****Proposal for a directive****Recital 2***Text proposed by the Commission*

(2) Member States find it increasingly difficult to protect their national tax bases from erosion as tax planning structures have evolved to be particularly sophisticated and often take advantage of the increased mobility of both capital and persons within the internal market. **These** structures commonly consist of arrangements which are developed across various jurisdictions and move taxable profits towards more beneficial tax regimes or have the effect of reducing the **taxpayer's overall tax bill**. As a result, Member States often experience considerable reductions in their tax revenues **which hinder them** from applying growth-friendly tax policies. It is therefore critical that Member States' tax authorities obtain comprehensive and relevant information about **potentially aggressive tax** arrangements. This information would enable those authorities to be able to promptly react against

*Amendment*

(2) Member States find it increasingly difficult to protect their national tax bases from erosion as **aggressive and complex** tax planning structures have evolved to be particularly sophisticated and often take advantage of the increased mobility of both capital and persons within the internal market. **Those** structures commonly consist of arrangements which are developed across various jurisdictions and move **the** taxable profits of corporations and individuals towards more beneficial tax regimes or have the effect of reducing the **fiscal impact on taxpayers**. As a result, Member States often experience considerable reductions in their tax revenues. **In addition, the spread of the corporate tax rates within Member States and between Member States is rising, and it is key not to compromise the principle of tax equality. This is hindering Member States** from applying growth-friendly tax policies. It is therefore critical that Member

harmful tax practices and to close loopholes through enacting legislation or by undertaking adequate risk assessments and carrying out tax audits.

States' tax authorities obtain comprehensive and relevant information about arrangements ***facilitating tax evasion and tax avoidance***. This information would enable those authorities to be able to promptly react against harmful tax practices and to close loopholes through enacting legislation or by undertaking adequate risk assessments and carrying out tax audits. ***A lack of reaction from tax authorities on reported schemes should not however be interpreted as implicit clearance by them. Reporting formats should be succinct and user-friendly so that the volume of information that could be generated by this Directive does not inhibit meaningful action on schemes that are being reported.***

## Amendment 2

### Proposal for a directive

#### Recital 3

##### *Text proposed by the Commission*

(3) Considering that most of the potentially aggressive tax planning arrangements span across more than one jurisdiction, the disclosure of information about those arrangements would bring additional positive results where that information was also exchanged amongst Member States. In particular, the automatic exchange of information between tax administrations *is* crucial in order to provide these authorities with the necessary information to enable them to take action where they observe aggressive tax practices.

##### *Amendment*

(3) Considering that most of the potentially aggressive tax planning arrangements span across more than one jurisdiction, the disclosure of information about those arrangements would bring additional positive results where that information was also exchanged amongst Member States. In particular, the automatic exchange of information between tax administrations, ***and ensuring coordination with financial intelligence units dealing with money-laundering and terrorist financing, are*** crucial in order to provide these authorities with the necessary information to enable them to take action where they observe aggressive tax practices. ***However, Member States should be encouraged to establish similar disclosure requirements for arrangements that exist solely in their own jurisdiction.***

## Amendment 3

## Proposal for a directive

### Recital 4

*Text proposed by the Commission*

(4) Recognising how a transparent framework for developing business activity could contribute to clamping down on tax avoidance and evasion in the internal market, the Commission has been called on to embark on initiatives on the mandatory disclosure of potentially aggressive tax planning arrangements along the lines of Action 12 of the OECD Base Erosion and Profit Shifting (BEPS). In this context, the European Parliament has called for tougher measures against intermediaries who assist in arrangements that may lead to tax avoidance and evasion.

*Amendment*

(4) Recognising how a transparent framework for developing business activity could contribute to clamping down on tax avoidance and evasion in the internal market, the Commission has been called on to embark on initiatives on the mandatory disclosure of potentially aggressive tax planning arrangements along the lines of Action 12 of the OECD Base Erosion and Profit Shifting (BEPS). In this context, the European Parliament has ***demonstrated the crucial role of intermediaries in advising, creating and managing tax schemes*** and called for tougher measures against intermediaries who assist in arrangements that may lead to tax avoidance and evasion.

### Amendment 4

## Proposal for a directive

### Recital 5

*Text proposed by the Commission*

(5) It is necessary to recall how certain financial intermediaries and other providers of tax advice ***seem to*** have actively assisted their clients to conceal money offshore. Furthermore, although the CRS introduced by Council Directive (EU) 2014/107<sup>27</sup> is a significant step forward in establishing a tax transparent framework within the Union, at least in terms of financial account information, it can still be improved.

*Amendment*

(5) It is necessary to recall how certain financial intermediaries and other providers of tax advice, ***and auditors,*** have actively assisted their clients to conceal money offshore. Furthermore, although the CRS introduced by Council Directive (EU) 2014/107<sup>27</sup> is a significant step forward in establishing a tax transparent framework within the Union, at least in terms of financial account information, it can still be improved. ***In addition, the capacity of Member States to process the amount of financial account information received should be enhanced accordingly and tax administrations' financial, human and IT resources should be increased, where necessary, and kept at adequate levels.***

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<sup>27</sup> Council Directive (EU) 2014/107 of 9 December 2014 amending Directive

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2011/16/EU as regards mandatory automatic exchange of information in the field of taxation (OJ L 359, 16.2.2014, p. 1).

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## Amendment 5

### Proposal for a directive

#### Recital 6

##### *Text proposed by the Commission*

(6) The disclosure of potentially aggressive tax planning arrangements of a cross-border dimension can contribute effectively to the efforts for creating an environment of fair taxation in the internal market. In this light, an obligation on intermediaries to inform tax authorities on certain cross-border arrangements that could potentially be used for tax avoidance purposes would constitute a step in the right direction. In order to develop a more comprehensive policy, it would also be significant that as a second step, following disclosure, the tax authorities share information with their peers in other Member States. Such arrangements should also enhance the effectiveness of the CRS. In addition, it would be crucial to grant the Commission access to ***a sufficient amount of*** information so that it can monitor the proper functioning of this Directive. Such access to information by the Commission does not discharge a Member State from its obligations to notify any state aid to the Commission.

##### *Amendment*

(6) The disclosure of potentially aggressive tax planning arrangements of a cross-border dimension can contribute effectively to the efforts for creating an environment of fair taxation in the internal market. In this light, an obligation on intermediaries, ***auditors and, where appropriate, taxpayers*** to inform tax authorities on certain cross-border arrangements that could potentially be used for tax avoidance purposes would constitute a ***necessary*** step in the right direction. In order to develop a more comprehensive policy, it would also be significant that as a second step, following disclosure, the tax authorities ***automatically*** share information with their peers in other Member States. Such arrangements should also enhance the effectiveness of the CRS. In addition, it would be crucial to grant the Commission access to ***relevant*** information so that it can monitor the proper functioning of this Directive ***and carry out its responsibilities under competition policies***. Such access to information by the Commission does not discharge a Member State from its obligations to notify any state aid to the Commission. ***Finally, in order to enhance legal certainty for intermediaries and taxpayers, the Commission should publish a list of the reported cross-border arrangements that could potentially be used for tax avoidance purposes, without making any reference to the intermediary or taxpayer.***

## Amendment 6

### Proposal for a directive

#### Recital 6 a (new)

*Text proposed by the Commission*

*Amendment*

***(6a) Recent tax-related leaks have also underlined the need for a better exchange of information on aggressive tax planning arrangements. To highlight one example, it is scandalous that despite various inquiries on Apple's tax practices, its recent Jersey-based tax avoidance structure was only revealed with the Paradise Papers leak.***

## Amendment 7

### Proposal for a directive

#### Recital 7

*Text proposed by the Commission*

*Amendment*

(7) It is acknowledged that the disclosure of potentially aggressive cross-border tax planning arrangements would stand a better chance of achieving its envisaged deterrent effect where the relevant information reached the tax authorities at an early stage, in other words before the disclosed arrangements are actually implemented. Where the disclosure obligation is shifted to taxpayers, it would be practical to place the obligation to disclose those potentially aggressive cross-border tax planning arrangements at a slightly later stage, ***as taxpayers may not be aware of the nature of the arrangements at the time of the inception.*** To facilitate Member States' administrations, the subsequent automatic exchange of information on these arrangements could take place every quarter.

(7) It is acknowledged that the disclosure of potentially aggressive cross-border tax planning arrangements would stand a better chance of achieving its envisaged deterrent effect where the relevant information reached the tax authorities at an early stage, in other words before the disclosed arrangements are actually implemented. ***In addition, appropriate penalties should be imposed to prevent and suppress those arrangements.*** Where the disclosure obligation is shifted to taxpayers, it would be practical to place the obligation to disclose those potentially aggressive cross-border tax planning arrangements at a slightly later stage. To facilitate Member States' administrations, the subsequent automatic exchange of information on these arrangements could take place every quarter.

## Amendment 8

### Proposal for a directive

#### Recital 9 a (new)

*Text proposed by the Commission*

*Amendment*

***(9a) The constantly growing role and importance of intellectual property rights in the business models and tax structures of large corporations further underline the urgency of a better exchange of information on tax avoidance arrangements, given the various easy options that the use of intellectual property rights give for the artificial transfer of profits.***

## **Amendment 9**

### **Proposal for a directive Recital 9 b (new)**

*Text proposed by the Commission*

*Amendment*

***(9b) The lack of comprehensive, public country-by-country reporting on relevant financial figures of major multinational enterprises has contributed to the poor reliability of aggregated data on offshore structures, highlighted by the fact that many of the recent high-profile tax avoidance structures are not visible in the current commercial corporate financial account databases. Those statistical gaps hinder the attempts of tax authorities to conduct risk assessments on risk jurisdictions and underline the need for a greater exchange of information on tax planning structures.***

## **Amendment 10**

### **Proposal for a directive Recital 10**

*Text proposed by the Commission*

*Amendment*

(10) Given that the primary objective of such legislation should focus on ensuring the proper functioning of the internal market, it would be critical not to regulate at the level of the Union beyond what is

(10) Given that the primary objective of such legislation should focus on ensuring the proper functioning of the internal market ***and limiting tax evasion and tax avoidance***, it would be critical not to

necessary to achieve the envisaged aims. This is why it would be necessary to limit any common rules on disclosure to cross-border situations, namely situations in either more than one Member State or a Member State and a third country. In such circumstances, due to the potential impact on the functioning of the internal market, one *can justify* the need for enacting a common set of rules, rather than leaving the matter to be dealt with at the national level.

regulate at the level of the Union beyond what is necessary to achieve the envisaged aims. This is why it would be necessary to limit any common rules on disclosure to cross-border situations, namely situations in either more than one Member State or a Member State and a third country. In such circumstances, due to the potential impact on the functioning of the internal market, one *justifies* the need for enacting a common set of rules, rather than leaving the matter to be dealt with at the national level. ***If a Member State implements further national reporting measures of a similar nature, the additional information collected should be shared with other Member States if relevant.***

## Amendment 11

### Proposal for a directive Recital 11

#### *Text proposed by the Commission*

(11) Considering that the disclosed arrangements should have a cross-border dimension, it would be important to share the relevant information with the tax authorities in other Member States in order to ensure the maximum effectiveness of this Directive in deterring aggressive tax planning practices. The mechanism for the exchange of information in the context of advance cross-border rulings and advance pricing arrangements should also be used to accommodate the mandatory and automatic exchange of disclosed information on potentially aggressive cross-border tax planning arrangements amongst tax authorities in the Union.

#### *Amendment*

(11) Considering that the disclosed arrangements should have a cross-border dimension, it would be important to share the relevant information with the tax authorities in other Member States in order to ensure the maximum effectiveness of this Directive in deterring aggressive tax planning practices. The mechanism for the exchange of information in the context of advance cross-border rulings and advance pricing arrangements ***should be available to the public and*** should also be used to accommodate the mandatory and automatic exchange of disclosed information on potentially aggressive cross-border tax planning arrangements amongst tax authorities in the Union.

## Amendment 12

### Proposal for a directive Recital 11 a (new)

***(11a) Since all Member States might not have an incentive to design and implement effective penalties and in order to ensure the consistent implementation of this Directive across Member States, the exchange of information between tax authorities regarding the imposition of penalties and situations where the Member State has refrained from imposing penalties should also be automatic.***

### **Amendment 13**

#### **Proposal for a directive Recital 13**

*Text proposed by the Commission*

(13) In order to improve the prospects for effectiveness of this Directive, Member States should lay down penalties against the violation of national rules that implement this Directive and ensure that these penalties actually apply in practice, that they are proportionate and ***have a*** dissuasive ***effect***.

*Amendment*

(13) In order to improve the prospects for effectiveness of this Directive, Member States should lay down penalties against the violation of national rules that implement this Directive and ensure that these penalties, ***including financial penalties***, actually apply ***promptly*** in practice, that they are ***effective***, proportionate and dissuasive. ***Member States should submit to the Commission and make publicly available a list of intermediaries and taxpayers on whom penalties have been imposed under this Directive, including names, nationalities and residences.***

### **Amendment 14**

#### **Proposal for a directive Recital 14**

*Text proposed by the Commission*

(14) In order to supplement or amend certain non-essential elements of this Directive, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union

*Amendment*

(14) In order to supplement or amend certain non-essential elements of this Directive, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union

should be delegated to the Commission in connection with updating the hallmarks **in order to include in** the list of hallmarks **potentially aggressive tax planning arrangements or series of arrangements in response to updated information on those arrangements or series of arrangements which is derived from the mandatory disclosure of such arrangements.**

should be delegated to the Commission in connection with updating the hallmarks. **Every two years, the Commission should publish a draft update of** the list of hallmarks **that define aggressive tax planning to include any new or modified tax evasion and tax avoidance arrangements that will have been identified since the previous update was published and should be brought into force within four months of the publication of the draft update.**

## Amendment 15

### Proposal for a directive Recital 15 a (new)

*Text proposed by the Commission*

*Amendment*

**(15a) In order to ensure the uniform use and interpretation of hallmarks, the Commission should regularly monitor the activities of tax authorities, in accordance with this Directive.**

## Amendment 16

### Proposal for a directive Recital 18

*Text proposed by the Commission*

*Amendment*

(18) Since the **objective** of this Directive, namely to improve the functioning of the internal market through discouraging the use of cross-border aggressive tax planning arrangements, cannot sufficiently be achieved by the Member States acting individually in an uncoordinated fashion but can rather be better achieved at Union level by reason of the fact that it targets schemes which are developed to potentially take advantage of market inefficiencies that originate in the interaction amongst disparate national tax rules, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on **the** European

(18) Since the **objectives** of this Directive, namely **to significantly limit the catastrophic consequences of tax evasion and tax avoidance on the public accounts and** to improve the functioning of the internal market through discouraging the use of cross-border aggressive tax planning arrangements, cannot sufficiently be achieved by the Member States acting individually in an uncoordinated fashion but can rather be better achieved at Union level by reason of the fact that it targets schemes which are developed to potentially take advantage of market inefficiencies that originate in the interaction amongst disparate national tax rules, the Union may

Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve *that objective*, especially considering that it is limited to arrangements of a cross-border dimension of either more than one Member State or a Member State and a third country.

adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve *those objectives*, especially considering that it is limited to arrangements of a cross-border dimension of either more than one Member State or a Member State and a third country.

## Amendment 17

### Proposal for a directive

#### Article 1 – paragraph 1 – point 1 – point b

Directive 2011/16/EU

Article 3 – point 18 – point c

#### *Text proposed by the Commission*

(c) one or more of the parties to the arrangement or series of arrangements carries on a business in another jurisdiction through a permanent establishment situated in that jurisdiction and the arrangement or series of arrangements forms part or the whole of the business of that permanent establishment;

#### *Amendment*

(c) one or more of the parties to the arrangement or series of arrangements carries on a business *activity* in another jurisdiction through a permanent establishment *or a controlled foreign company of any kind* situated in that jurisdiction and the arrangement or series of arrangements forms part or the whole of the business of that permanent establishment;

## Amendment 18

### Proposal for a directive

#### Article 1 – paragraph 1 – point 1 – point b

Directive 2011/16/EU

Article 3 – point 18 – point d

#### *Text proposed by the Commission*

(d) one or more of the parties to the arrangement or series of arrangements carries on a business in another jurisdiction *through a permanent establishment which is not situated* in that jurisdiction *and the arrangement or series of arrangements*

#### *Amendment*

(d) one or more of the parties to the arrangement or series of arrangements carries on a business *activity* in another jurisdiction *without creating a taxable presence* in that jurisdiction;

*forms part or the whole of the business of that permanent establishment;*

## **Amendment 19**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 1 – point b**

Directive 2011/16/EU

Article 3 – point 20

*Text proposed by the Commission*

20. "hallmark" means ***a typical characteristic or feature of*** an arrangement or series of arrangements which is listed in Annex IV.

*Amendment*

20. "hallmark" means an arrangement or series of arrangements which is listed in Annex IV.

## **Amendment 20**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 1 – point b**

Directive 2011/16/EU

Article 3 – point 23 – point c a (new)

*Text proposed by the Commission*

*Amendment*

***(ca) a taxpayer is the beneficial owner of another taxpayer within the meaning of Directive (EU) 2015/849.***

## **Amendment 21**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 2**

Directive 2011/16/EU

Article 8aaa – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***1a. While conducting statutory audits of statements of their clients, auditors shall be subject to identification and disclosure obligations regarding potential breaches by the audited entity, or its intermediaries, of the identification and disclosure obligations set out in this Article of which the auditor has become aware. Each***

***Member State shall take the necessary measures to require auditors to file information with the competent authorities on such breaches within 10 working days, beginning on the day after the publication of their audit reports.***

## **Amendment 22**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 2**

Directive 2011/16/EU

Article 8aaa – paragraph 2 – subparagraph 1

#### *Text proposed by the Commission*

Each Member State ***shall*** take the necessary measures to give intermediaries the right to a waiver from filing information on a reportable cross-border arrangement or series of such arrangements where they are entitled to a legal professional privilege under the national law of that Member State. In such circumstances, the obligation to file information on such an arrangement or series of arrangements shall be the responsibility of the taxpayer and intermediaries shall inform taxpayers of this responsibility due to the privilege.

#### *Amendment*

Each Member State ***may, where appropriate,*** take the necessary measures to give intermediaries the right to a waiver from filing information on a reportable cross-border arrangement or series of such arrangements where they are entitled to a legal professional privilege under the national law of that Member State. In such circumstances, the obligation to file information on such an arrangement or series of arrangements shall be the responsibility of the taxpayer and intermediaries shall inform ***in writing*** taxpayers of this responsibility due to the privilege, ***keeping an acknowledgment of receipt signed by the taxpayer. The taxpayer shall report the information on the reportable cross-border arrangement or series of arrangements to the competent authorities within 10 working days.***

## **Amendment 23**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 2**

Directive 2011/16/EU

Article 8aaa – paragraph 4

*Text proposed by the Commission*

4. Each Member State shall take the necessary measures to require intermediaries and taxpayers to file information on reportable cross-border arrangements that **were implemented between [date of political agreement] and 31 December 2018. Intermediaries and taxpayers, as appropriate, shall file information on those reportable cross-border arrangements by 31 March 2019.**

*Amendment*

4. Each Member State shall take the necessary measures to require intermediaries, **auditors** and taxpayers to file information on reportable cross-border arrangements that **are active on ... [date of entry into force of this Directive] and those that will enter into force thereafter.**

**Amendment 24**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 2**

Directive 2011/16/EU

Article 8aaa – paragraph 4 a (new)

*Text proposed by the Commission*

*Amendment*

**4a. Each Member State shall take the measures necessary to assess the tax arrangements disclosed through the exchange of information provided for by this Directive, as well as make available to their tax authorities the resources required.**

**Amendment 25**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 2**

Directive 2011/16/EU

Article 8aaa – paragraph 6 – point a

*Text proposed by the Commission*

*Amendment*

(a) the identification of intermediaries and taxpayers, including their name, residence for tax purposes, and taxpayer identification number (TIN) and, where appropriate, the persons who are associated enterprises to the intermediary or taxpayer;

(a) the identification of intermediaries **or, where applicable, auditors** and taxpayers, including their name, **nationality**, residence for tax purposes, and taxpayer identification number (TIN) and, where appropriate, the persons who are associated enterprises to the intermediary or taxpayer;

## Amendment 26

### Proposal for a directive

#### Article 1 – paragraph 1 – point 2

Directive 2011/16/EU

Article 8aaa – paragraph 6 – point c

*Text proposed by the Commission*

(c) a summary of the content of the reportable cross-border arrangement or series of such arrangements, including a reference to the name by which they are commonly known, if any, and a description in abstract terms of the relevant business activities or arrangements, without leading to the disclosure of ***a commercial***, industrial or professional secret ***or of a commercial process***, or of information whose disclosure would be contrary to public policy;

*Amendment*

(c) a summary of the content of the reportable cross-border arrangement or series of such arrangements, including a reference to the name by which they are commonly known, if any, and a description in abstract terms of the relevant business activities or arrangements, without leading to the disclosure of ***intellectual property***, industrial or professional secret, or of information whose disclosure would be contrary to public policy;

## Amendment 27

### Proposal for a directive

#### Article 1 – paragraph 1 – point 2

Directive 2011/16/EU

Article 8aaa – paragraph 6 – point d

*Text proposed by the Commission*

(d) the date ***that*** the implementation of the reportable cross-border arrangement or of the first step in a series of such arrangements ***is to start or started***;

*Amendment*

(d) the ***starting*** date ***of*** the implementation of the reportable cross-border arrangement or of the first step in a series of such arrangements;

## Amendment 28

### Proposal for a directive

#### Article 1 – paragraph 1 – point 2

Directive 2011/16/EU

Article 8aaa – paragraph 6 – point e

*Text proposed by the Commission*

(e) details of the national tax provisions ***the application of which creates a tax***

*Amendment*

(e) details of the national tax provisions ***forming the basis for the reportable***

*advantage*, if applicable;

*arrangements or series of arrangements*, if applicable;

## Amendment 29

### Proposal for a directive

#### Article 1 – paragraph 1 – point 2

Directive 2011/16/EU

Article 8aaa – paragraph 6 – point h

#### *Text proposed by the Commission*

(h) the identification of any person in the other Member States, if any, likely to be affected by the reportable cross-border arrangement or series of such arrangements indicating to which Member States the affected intermediaries or taxpayers are linked.

#### *Amendment*

(h) the identification of any person in the other Member States, if any, likely to be affected by the reportable cross-border arrangement or series of such arrangements indicating to which Member States the affected intermediaries, *auditors* or taxpayers are linked.

## Amendment 30

### Proposal for a directive

#### Article 1 – paragraph 1 – point 2

Directive 2011/16/EU

Article 8aaa – paragraph 7

#### *Text proposed by the Commission*

7. To facilitate the exchange of information referred to in paragraph 5 of this Article, the Commission shall adopt the practical arrangements necessary for the implementation of this Article, including measures to standardise the communication of the information set out in paragraph 6 of this Article, as part of the procedure for establishing the standard form provided for in Article 20(5).

#### *Amendment*

7. To facilitate the exchange of information referred to in paragraph 5 of this Article, the Commission shall adopt the practical arrangements, *and provide sufficient resources*, necessary for the implementation of this Article, including measures to standardise the communication of the information set out in paragraph 6 of this Article, as part of the procedure for establishing the standard form provided for in Article 20(5).

## Amendment 31

### Proposal for a directive

#### Article 1 – paragraph 1 – point 2

Directive 2011/16/EU  
Article 8aaa – paragraph 8

*Text proposed by the Commission*

8. The Commission shall **not** have access to information referred to in points **(a)**, **(c)** and **(h)** of paragraph 6.

*Amendment*

8. The Commission shall have access to information referred to in points **(b)**, **(c)**, **(d)**, **(e)**, **(f)** and **(g)** of paragraph 6. ***Without making any reference to the respective intermediary or taxpayer, the Commission shall make publicly available a list of the reported cross-border arrangements.***

## **Amendment 32**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 4**

Directive 2011/16/EU

Article 21 – paragraph 5 – subparagraph 1

*Text proposed by the Commission*

The Commission shall by 31 December 2017 develop and provide with technical and logistical support a secure **Member State** central directory on administrative cooperation in the field of taxation where information to be communicated in the framework of paragraphs 1 and 2 of Article 8a shall be recorded in order to satisfy the automatic exchange provided for in those paragraphs.

*Amendment*

The Commission shall by 31 December 2017 develop and provide with technical and logistical support a secure central directory on administrative cooperation in the field of taxation, ***with access limited to the Member States and the Commission***, where information to be communicated in the framework of paragraphs 1 and 2 of Article 8a shall be recorded in order to satisfy the automatic exchange provided for in those paragraphs.

## **Amendment 33**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 4**

Directive 2011/16/EU

Article 21 – paragraph 5 – subparagraph 2

*Text proposed by the Commission*

The Commission shall by 31 December 2018 develop and provide with technical and logistical support a secure **Member State** central directory on administrative cooperation in the field of taxation where information to be communicated in the

*Amendment*

The Commission shall by 31 December 2018 develop and provide with technical and logistical support a secure central directory on administrative cooperation in the field of taxation ***with access limited to the Member States and the Commission***,

framework *of paragraphs 5, 6 and 7* of Article 8aaa shall be recorded in order to satisfy the automatic exchange provided for in *those paragraphs*.

where information to be communicated in the framework of Article 8aaa shall be recorded in order to satisfy the automatic exchange provided for in *that Article*. ***Additionally, information exchanged under the automatic exchange provided for in Articles 8, 8a and 8aa, shall also be accessible through the central directory, with access limited to the Member States and the Commission.***

## Amendment 34

### Proposal for a directive

#### Article 1 – paragraph 1 – point 4

Directive 2011/16/EU

Article 21 – paragraph 5 – subparagraph 3

#### *Text proposed by the Commission*

The competent authorities of all Member States shall have access to the information recorded in that directory. ***The Commission shall also have access to the information recorded in that directory, however within the limitations set out in Articles 8a(8) and 8aaa(8)***. The necessary practical arrangements shall be adopted by the Commission in accordance with the procedure referred to in Article 26(2).

#### *Amendment*

The competent authorities of all Member States ***and the Commission*** shall have access to the information recorded in that directory. The necessary practical arrangements shall be adopted by the Commission in accordance with the procedure referred to in Article 26(2).

## Amendment 35

### Proposal for a directive

#### Article 1 – paragraph 1 – point 5

Directive 2011/16/EU

Article 23 – paragraph 3

#### *Text proposed by the Commission*

3. Member States shall communicate to the Commission a yearly assessment of the effectiveness of the automatic exchange of information referred to in Articles 8, 8a, 8aa and 8aaa ***as well as the practical results achieved***. The Commission shall, by means of implementing acts, adopt the form and the conditions of communication

#### *Amendment*

3. Member States shall communicate to the Commission a yearly assessment of the effectiveness of the automatic exchange of information referred to in Articles 8, 8a, 8aa and 8aaa; ***the quality and quantity of information exchanged; and the legislative changes proposed or implemented based on the loopholes in***

for that yearly assessment. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 26(2)..

***the regulatory framework revealed by this information.*** The Commission shall, by means of implementing acts, adopt the form and the conditions of communication for that yearly assessment. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 26(2). ***Based on those assessments the Commission shall put forward legislative proposals to close loopholes in existing law.***

## **Amendment 36**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 5 a (new)**

Directive 2011/16/EU

Article 23 – paragraph 3 a (new)

*Text proposed by the Commission*

*Amendment*

***(5a) in Article 23, the following paragraph is inserted:***

***‘3a. Member States shall communicate to the Commission the number of arrangements or series of arrangements disclosed, as classified in Annex IV, together with a description of such arrangements, the nationalities of taxpayers benefiting from such arrangements and the number and the extent of penalties imposed on intermediaries or taxpayers disclosing such arrangements. The Commission shall produce a yearly public report containing that information.’***

## **Amendment 37**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 5 b (new)**

Directive 2011/16/EU

Article 23 – paragraph 3 b (new)

*Text proposed by the Commission*

*Amendment*

***(5b) in Article 23, the following***

*paragraph is inserted:*

***‘3b. Each year, Member States shall submit to the Commission a list of the cross-border arrangements that are regarded by the relevant tax authority as being compliant with this Directive.’***

## **Amendment 38**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 6**

Directive 2011/16/EU

Article 23aa – paragraph 1

#### *Text proposed by the Commission*

The Commission shall be empowered to adopt delegated acts in accordance with Article 26a to amend Annex IV, in order to include in the list of hallmarks potentially aggressive tax planning arrangements or series of arrangements in response to updated information on those arrangements or series of arrangements which is derived from the mandatory disclosure of such arrangements..

#### *Amendment*

The Commission shall be empowered to adopt delegated acts in accordance with Article 26a to amend Annex IV, in order to include in the list of hallmarks potentially aggressive tax planning arrangements or series of arrangements in response to updated information on those arrangements or series of arrangements, which is derived from the mandatory disclosure of such arrangements. ***It shall do so every two years acting on the basis of the information that will be available regarding new or modified tax evasion and tax avoidance arrangements, publishing its new criteria in draft form four months prior to bringing them into force.***

## **Amendment 39**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 7**

Directive 2011/16/EU

Article 25a – paragraph 1

#### *Text proposed by the Commission*

Member States shall lay down the rules on penalties applicable to infringements of national provisions adopted pursuant to this Directive and concerning Articles 8aa and

#### *Amendment*

Member States shall lay down the rules on penalties applicable to infringements of national provisions adopted pursuant to this Directive and concerning Articles 8aa and

8aaa, and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.

8aaa, and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive. ***The Commission may publish an indicative table of penalties.***

#### **Amendment 40**

##### **Proposal for a directive**

##### **Article 1 – paragraph 1 – point 8**

Directive 2011/16/EU

Article 26a – paragraph 5 a (new)

*Text proposed by the Commission*

*Amendment*

***5a. By ... [three years after the date of entry into force of this Directive] and every three years thereafter, the Commission shall submit a report on the application of this Directive to the European Parliament and to the Council.***

#### **Amendment 41**

##### **Proposal for a directive**

##### **Annex 1**

Directive 2011/16/EU

Annex IV – Main benefit test – paragraph 1

*Text proposed by the Commission*

*Amendment*

The test will be satisfied where the main ***benefit*** of an arrangement or of a series of arrangements is to obtain a tax advantage if it can be established that the advantage is the outcome which one may expect to derive from such an arrangement, or series of arrangements, including through taking advantage of the specific way that the arrangement or series of arrangements are structured.

The test will be satisfied where ***one of*** the main ***benefits*** of an arrangement or of a series of arrangements is to obtain a tax advantage if it can be established that the advantage is the outcome which one may expect to derive from such an arrangement, or series of arrangements, including through taking advantage of the specific way that the arrangement or series of arrangements are structured.

#### **Amendment 42**

##### **Proposal for a directive**

##### **Annex 1**

*Text proposed by the Commission*

*Amendment*

***3a. An arrangement or series of arrangements which results in effective taxation which is below the minimum legal tax rate in force for companies in the Union.***