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Committee on Economic and Monetary Affairs

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DRAFT REPORT

on the proposal for a Council Directive on administrative cooperation in the field of taxation
(COM(2009)0029 – C6-0062/2009 – 2009/0004(CNS))

Committee on Economic and Monetary Affairs

Rapporteur: Magdalena Alvarez

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

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

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in bold italics. In the case of amending acts, passages in an existing provision that the Commission has left unchanged, but that Parliament wishes to amend, are highlighted in bold. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...]. Highlighting in normal italics is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). Suggested corrections of this kind are subject to the agreement of the departments concerned.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a Council Directive on administrative cooperation in the field of taxation

(COM(2009)0029 – C6-0062/2009 – 2009/0004(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal to the Council (COM(2009)0029),
 - having regard to Articles 93 and 94 of the EC Treaty, pursuant to which the Council consulted Parliament (C6-0062/2009),
 - having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs (A7-0000/2009),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;
 3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
 4. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;
 5. Instructs its President to forward its position to the Council and the Commission.

Amendment 1

Proposal for a directive

Recital 3 a (new)

Text proposed by the Commission

Amendment

(3a) During this current period of economic crisis, the Member States are investing heavily in reviving economic activity and creating jobs, an effort which is also resulting in budgetary deficits in the vast majority of countries. This context of collective endeavour underlines the need to muster all available resources, and further strengthens the case for fiscal

equity for citizens who do honour their tax obligations.

Or. es

Justification

With respect to the need for the proposed Directive, attention is drawn to the current economic crisis and the special importance of tax fraud in this context, as these factors reinforce the urgency of adopting this reform.

Amendment 2

**Proposal for a directive
Recital 7 a (new)**

Text proposed by the Commission

Amendment

(7a) With respect to the scope, a definition should be drawn up which is sufficiently comprehensive for these rules to cover and apply to all different legal instruments and arrangements, whether these be traditional trust funds, trusts, foundations or investment companies, or whatever other type of instrument might be created in the different Member States.

Or. es

Justification

With respect to the scope, a definition is needed which is broad enough to cover not just natural and legal persons but also any legal instruments and arrangements that may be created in the different Member States.

Amendment 3

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

Text proposed by the Commission

Amendment

(9a) In order to correctly apply and verify the Member States' different tax regimes, adequate information is needed on taxable activities carried out in other

Member States. Of the different options, the automatic exchange of data seems to be the most effective way of communicating the current information required for correct taxation, especially in cross-border cases. In order to ensure the effectiveness of this method of exchanging information, it is also necessary to determine the categories and define the fields of mandatory application for this automatic exchange. All this should be modulated by the possibility of establishing a double limit depending on the categories for which information is communicated and/or the amount that triggers the mechanism.

Or. es

Justification

With respect to the automatic exchange of information, the field of application is specified and defined by establishing a number of categories of income and capital to which this method of automatic exchange would have to apply. There is also the possibility of establishing a double limit, depending on the categories for which information is communicated and/or the amount that triggers the mechanism.

Amendment 4

Proposal for a directive

Recital 12

Text proposed by the Commission

(12) *It* is important that officials of the tax administration of one Member State are allowed to be present in the territory of another Member State ***and may exercise the powers of inspection conferred on officials of the requested Member State.***

Amendment

(12) ***In order to boost cooperation between Member States' tax administrations, it*** is important that officials of the tax administration of one Member State are allowed to be present in the territory of another Member State.

Or. es

Justification

In order to ensure that the presence of officials of the tax administration of one Member State in the territory of another Member State is not counter-productive and does not detract from

the usefulness of cooperation, the proposal that their powers be equal to those of officials in that State is removed.

Amendment 5

Proposal for a directive Recital 17 a (new)

Text proposed by the Commission

Amendment

(17a) In order to enhance the applicability of this Directive and make it more effective, the same level of obligation should apply both to the communication of information already available by the requested authority and to conducting the administrative enquiries necessary to obtain this information.

Or. es

Justification

It is proposed that the procedure for conducting administrative enquiries be put on the same footing as the communication of information. The same level of obligation is therefore placed on the requested authority as regards communicating information already available and conducting the administrative enquiries necessary to obtain this information.

Amendment 6

Proposal for a directive Recital 19

Text proposed by the Commission

Amendment

(19) However, a Member States should not refuse to transmit the information because it has no domestic interest or because the information ***relating to a resident of the other Member State*** is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

(19) However, a Member States should not refuse to transmit the information because it has no domestic interest or because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

Or. es

Justification

In relation to the lifting of banking secrecy, and in order to ensure that the effectiveness of this measure is not restricted by additional requirements, the reference to the residence in the requesting country of the person on whom the information is sought is removed. This is consistent with the standards followed within the OECD.

Amendment 7

Proposal for a directive Recital 22

Text proposed by the Commission

(22) An evaluation of the effectiveness of **administrative cooperation** should be made, especially on **the basis of** statistics.

Amendment

(22) ***In order to strengthen and deepen administrative cooperation***, an evaluation should be made of the effectiveness of ***the implementation of this Directive***, based especially on statistics. ***It is also necessary to monitor cases where the Member States have refused to communicate information or conduct an administrative enquiry.***

Or. es

Justification

In order to improve the exchange of information between the different national authorities, it is proposed that cases where the Member States have refused to communicate information or conduct an administrative enquiry should be monitored.

Amendment 8

Proposal for a directive Article 3 – point 6 – point d

Text proposed by the Commission

d) ***any legal arrangement, including partnerships and trusts, whose income or capital*** are subject to any of the taxes covered by this Directive;

Amendment

d) ***any other legal instrument or arrangement, regardless of its nature or form and whether or not it has legal personality, that may own and manage assets, including income from these, that*** are subject to any of the taxes covered by this Directive;

Justification

With respect to the scope, a definition is needed which is broad enough to cover not just natural and legal persons but also any legal instruments and arrangements that may be created in the different Member States.

Amendment 9**Proposal for a directive
Article 8 – paragraph 1***Text proposed by the Commission*

1. The competent authority of each Member States shall, by automatic exchange, **forward** information on specific categories of income and capital **to the other Member States**.

Amendment

1. The competent authority of each Member States shall, by automatic exchange, **communicate to the competent authority of the other Member State** information **relating to persons who are tax resident in that other Member State** on **the following** specific categories of income and capital:

- a) income from work;**
- b) directors' emoluments;**
- c) dividends;**
- d) capital gains;**
- e) royalties;**
- f) life insurance products not covered by other Community legal instruments on the exchange of information and other similar measures;**
- g) pensions;**
- h) ownership of property and income derived from this.**

Justification

With respect to the automatic exchange of information, the field of application is specified and defined by establishing a number of categories of income and capital to which this method of automatic exchange would have to apply. There is also the possibility of establishing a double limit, depending on the categories for which information is

communicated and/or the amount that triggers the mechanism.

Amendment 10

Proposal for a directive Article 8 – paragraph 2

Text proposed by the Commission

Amendment

2. The Commission shall adopt, in accordance with the procedure referred to in Article 24(2), within two years of the entry into force of this Directive:

deleted

a) the categories of income and capital to be covered

b) the type of information to be exchanged;

c) any specific condition or restriction within the categories referred to in point (a);

d) the frequency of the exchanges;

e) the practical arrangements for the exchange of information.

Or. es

Justification

With respect to the automatic exchange of information, the field of application is specified and defined by establishing a number of categories of income and capital to which this method of automatic exchange would have to apply. There is also the possibility of establishing a double limit, depending on the categories for which information is communicated and/or the amount that triggers the mechanism.

Amendment 11

Proposal for a directive Article 8 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. The competent authority in one Member State may notify the competent authority of another Member State that it

does not wish to receive information on the categories of income and capital referred to in paragraphs 1 and 2 of this Article, or that it does not wish to receive information on income and capital that is not above a certain threshold. It shall also inform the Commission thereof.

Or. es

Justification

With respect to the automatic exchange of information, the field of application is specified and defined by establishing a number of categories of income and capital to which this method of automatic exchange would have to apply. There is also the possibility of establishing a double limit, depending on the categories for which information is communicated and/or the amount that triggers the mechanism.

Amendment 12

Proposal for a directive

Article 8 - paragraph 3 b (new)

Text proposed by the Commission

Amendment

3b. The information shall be communicated at least once a year, and not later than six months after the end of the financial year in the Member State in which the information has been obtained.

Or. es

Justification

With respect to the automatic exchange of information, the field of application is specified and defined by establishing a number of categories of income and capital to which this method of automatic exchange would have to apply. There is also the possibility of establishing a double limit, depending on the categories for which information is communicated and/or the amount that triggers the mechanism.

Amendment 13

Proposal for a directive

Article 10 – paragraph 2 – first subparagraph

Text proposed by the Commission

2. Where officials of the requesting authority are present during administrative enquiries pursuant to *the* paragraph 1, they may ***exercise the powers of inspection conferred on officials of the requested authority, under the condition that they exercise these powers in accordance with the laws, regulations or administrative provisions of the requested Member State.***

Amendment

2. Where officials of the requesting authority are present during administrative enquiries pursuant to paragraph 1, they may, ***in agreement with the requested authority and in accordance with the guidelines laid down by the latter, take part in the enquiry.***

Or. es

Justification

In order to ensure that the presence of officials of the tax administration of one Member State in the territory of another Member State is not counter-productive and does not detract from the usefulness of cooperation, the proposal that their powers be equal to those of officials in that State is removed.

Amendment 14

Proposal for a directive

Article 16 – paragraph 1

Text proposed by the Commission

1. The requested authority in one Member State shall provide a requesting authority in another Member State with the information referred to in Article 5 provided that:

a) the number and the nature of the requests for information made by the

Amendment

1. The requested authority in one Member State shall provide a requesting authority in another Member State with the information referred to in Article 5 ***or carry out the administrative enquiry referred to in Article 6*** provided that the requesting authority has exhausted the usual sources of information which it could have used in the circumstances to obtain the information requested, without running the risk of jeopardising the achievement of the desired end.

requesting authority within a specific period do not impose a disproportionate administrative burden on that requested authority;

b) the requesting authority has exhausted the usual sources of information which it could have used in the circumstances to obtain the information requested, without running the risk of jeopardising the achievement of the desired end.

Or. es

Justification

It is proposed that the procedure for conducting administrative enquiries be put on the same footing as the communication of information. The same level of obligation is therefore placed on the requested authority as regards communicating information already available and conducting the administrative enquiries necessary to obtain this information.

Amendment 15

**Proposal for a directive
Article 17 – paragraph 2**

Text proposed by the Commission

2. In no case shall Article 16(2) and (4) be construed as permitting a requested authority of a Member State to decline to supply information ***concerning a person resident for tax purposes in the Member State of the requesting authority*** solely because this information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

Amendment

2. In no case shall Article 16(2) and (4) be construed as permitting a requested authority of a Member State to decline to supply information solely because this information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

Or. es

Justification

In relation to the lifting of banking secrecy, and in order to ensure that the effectiveness of this measure is not restricted by additional requirements, the reference to the residence in the requesting country of the person on whom the information is sought is removed. This is

consistent with the standards followed within the OECD.

Amendment 16

Proposal for a directive

Article 22 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Member States shall notify the Commission on an annual basis of cases where they have refused to communicate information or conduct an administrative enquiry, indicating the reasons for this refusal. The Commission shall assess this information and draw up recommendations on how to reduce the number of such cases in accordance with the provisions of Article 24(3).

Or. es

Justification

In order to improve the exchange of information between the different national authorities, it is proposed to monitor cases where the Member States have refused to communicate information or conduct an administrative enquiry.

EXPLANATORY STATEMENT

Background

Before the end of the previous parliamentary term, the European Commission adopted a number of legislative proposals in the field of combating fraud and tax evasion in the European Union. The proposal for a Directive on administrative cooperation in the field of taxation is a key element of this common strategy.

The importance of this proposal is linked to the special significance of the impact of tax fraud in the EU. In the first instance, tax fraud has serious implications for national budgets from the point of view of public spending in the general interest, particularly on health, education and research. Secondly, it leads to violations of the principle of fair taxation with respect to the citizens and companies that do meet their obligations. And thirdly, it brings about distortions of competition, thereby affecting the operation of the internal market.

At times of economic crisis such as the present when all countries are more acutely affected by deficits, any reduction in resources has an even greater impact. In order to fully grasp the seriousness of this situation, we ought to bear in mind the scale of tax fraud in the European Union which, according to some estimates, amounts to over 200 000 million euros a year, or over 2 % of GDP. If we compare this figure with that for the economic recovery plan proposed by the European Commission to tackle the consequences of the financial crisis, which amounts to 1% of GDP, we see that combating tax fraud poses a major economic challenge.

The crisis has also highlighted the full extent of fiscal engineering and the opaqueness of the market, as well as showing that actions taken in one country have major repercussions on the economy of others.

One of the other reasons that demonstrates the usefulness of this proposal is that citizens and leaders have now become aware of the need to put an end to the sort of scandalous situations that we have experienced recently. At this time of crisis, it is all the more obvious that we do not ignore any source of income for the European economies in order to cover the exceptional expenditure to mitigate the effects of this crisis and to reduce, where necessary, high budget deficits.

The Commission proposal and the rapporteur's assessment

Even though the Directive currently in force is undoubtedly a first step in this direction, as the general idea of administrative cooperation in the field of taxation has effectively been accepted by all the Member States, its implementation has obviously failed to give tangible results. The rapporteur therefore considers that the time has come to propose new improvements in the field of taxation so that developments go hand in hand with the integration of the market. In this respect, the Directive proposed by the Commission represents both a quantitative and qualitative leap forward. Quantitative, because it sets new

obligations; and qualitative because it extends and specifies the existing obligations. The main improvements proposed by the Commission can be summarised as follows:

In **Chapter I**, the scope of the Directive has been extended by introducing a general clause that includes all taxes. It is established, for the first time, that administrative cooperation under the Directive will apply to all direct and indirect taxes, including compulsory social security contributions, with the exception of VAT and excise duties which have their own more advanced rules. This represents progress in comparison to the current Directive which only covers taxes on income and capital and on insurance premiums. The rapporteur is convinced that extending the scope will result in more effective fiscal management.

Chapter II is devoted to the automatic exchange of information and specifies this as the general rule when sharing current information between tax administrations. The proposal states that this is the reference method for exchanging information, which goes even further than the OECD standards. This is a genuine improvement on the current Directive, since preference is currently given to exchange on request. In so saying, it is understood that efforts should continue to be made to refine all methods of information exchange in accordance with the circumstances and type of data specified in each case.

The most striking innovation introduced in **Chapter III** is a more comprehensive rule on the presence of officials from one Member State in the offices of another Member State's administration and their involvement in administrative enquiries. The mere possibility that is mentioned in the current legislation thus becomes a more specific and detailed procedure in this proposal for a Directive, which will probably make the presence and participation of officials from one Member State in another easier, when circumstances recommend such course of action.

Chapter IV contains the most important legislative innovation in the proposal – the lifting of banking secrecy, which can be considered the main regulatory obstacle to administrative cooperation. The rapporteur thinks that Parliament should send the Council a clear message supporting this measure which transposes the intended provision in the OECD's Model Tax Convention. Such legislation is undoubtedly welcome as there is currently a significant level of international consensus on the need to improve fiscal governance, as voiced in the firm statements made by the G20 on ending banking secrecy. The Commission proposal accurately reflects the sentiments of most citizens who are always opposed to any possibility **that there be areas in the field of tax cooperation that might encourage evasion and permit fraud, particularly in a crisis situation when a huge collective effort is required.**

With respect to the international aspects of the proposal, the rapporteur considers the introduction of a most-favoured nation clause to be a very positive step so that the Member States guarantee, between themselves, the same level of cooperation as they have with third countries. This will mean that the Member States conduct all their cooperation relations in the field of taxation in the Community register.

In the light of the above, the rapporteur is thus generally in favour of the Commission proposal. The amendments presented seek to reinforce some elements of the proposal in order to improve the effectiveness of administrative cooperation, with respect to the following aspects:

- With respect to the scope, a definition is needed which is broad enough to cover not just natural and legal persons but also any legal instruments and arrangements that may be created in the different Member States.
- With respect to the automatic exchange of information, the field of application is specified and defined by establishing a number of categories of income and capital to which this method of automatic exchange would have to apply. There is also the possibility of establishing a double limit, depending on the categories for which information is communicated and/or the amount that triggers the mechanism.
- In order to ensure that the presence of officials of the tax administration of one Member State in the territory of another Member State is not counter-productive and does not detract from the usefulness of cooperation, the proposal that their powers be equal to those of officials in that State is removed.
- It is proposed that the procedure for conducting administrative enquiries be put on the same footing as the communication of information. The same level of obligation is therefore placed on the requested authority as regards communicating information already available and conducting the administrative enquiries necessary to obtain this information.
- In relation to the lifting of banking secrecy, and in order to ensure that the effectiveness of this measure is not restricted by additional requirements, the reference to the residence in the requesting country of the person on whom the information is sought is removed. This is consistent with the standards followed within the OECD.
- In order to improve the exchange of information between the different national authorities, it is proposed to monitor cases where the Member States have refused to communicate information or conduct an administrative enquiry.
- Finally, with respect to the need for the proposed Directive, attention is drawn to the current economic crisis and the special importance of tax fraud in this context, as these factors reinforce the urgency of adopting this reform.

Conclusion

The proposal presented by the Commission is a step forward in meeting the need for more effective cooperation measures to combat fraud and tax evasion on a European scale.

The proposal reinforces the national fiscal sovereignty of the different Member States by offering new instruments to manage their own fiscal resources in a more tangible and effective way. At the same time, it helps to advance the process of European integration since it is clear that whenever progress is made in European integration it is all the more necessary to have adequate fiscal integration, from the political, economic and administrative perspectives, as without this integration the European project cannot be achieved.