



**2017/0138(CNS)**

22.11.2017

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## **DRAFT REPORT**

on the proposal for a Council Directive amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements  
(COM(2017)0335 – C8-0195/2017 – 2017/0138(CNS))

Committee on Economic and Monetary Affairs

Rapporteur: Emmanuel Maurel

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

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

### ***Amendments to a draft act***

#### **Amendments by Parliament set out in two columns**

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

#### **Amendments by Parliament in the form of a consolidated text**

New text is highlighted in ***bold italics***. Deletions are indicated using either the ▯ symbol or ~~strikeout~~. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a Council Directive amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements  
(COM(2017)0335 – C8-0195/2017 – 2017/0138(CNS))**

**(Special legislative procedure – consultation)**

The European Parliament,

- having regard to the Commission proposal to the Council (COM(2017)0335),
  - having regard to Articles 113 and 115 of the Treaty on the Functioning of the European Union, pursuant to which the Council consulted Parliament (C8-0195/2017),
  - having regard to Rule 78c of its Rules of Procedure,
  - having regard to the report of the Committee on Economic and Monetary Affairs (A8-0000/2017),
1. Approves the Commission proposal as amended;
  2. Calls on the Commission to alter its proposal accordingly, in accordance with Article 293(2) of the Treaty on the Functioning of the European Union;
  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, the Commission and the national parliaments.

### **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

*Amendment*

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

various jurisdictions and move taxable profits 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 which hinder them from applying growth-friendly tax policies. **In addition, there are huge differences in effective tax rates, and tax equality among taxpayers is no longer adhered to**. 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 harmful tax practices and to close loopholes through enacting legislation or by undertaking adequate risk assessments and carrying out tax audits.

Or. fr

## Amendment 2

### 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

#### *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 **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 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

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.

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 **and carry out its fiscal state aid monitoring tasks**. Such access to information by the Commission does not discharge a Member State from its obligations to notify any state aid to the Commission.

Or. fr

### Amendment 3

#### Proposal for a directive

##### Recital 7

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

(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.

###### *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, **and where appropriate sanctions are applied to prevent and put a stop to these practices**. 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.

Or. fr

## Amendment 4

### 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 actually apply in practice, that they are ***financial and*** proportionate and have a dissuasive effect.

Or. fr

## Amendment 5

### 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 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;

Or. fr

## Amendment 6

### Proposal for a directive Article 1 – paragraph 1 – point 1 – point b

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

*Amendment*

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 ***or a controlled foreign company of any kind*** which is not situated in that jurisdiction and the arrangement or series of arrangements forms part or the whole of the business of that permanent establishment;

Or. fr

**Amendment 7**

**Proposal for a directive**

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

Directive 2011/16/EU

Article 3 – point 21 – paragraph 1

*Text proposed by the Commission*

"intermediaries" means any person that carries the responsibility vis-à-vis the taxpayer for designing, marketing, organising or managing the implementation of the tax aspects of a reportable cross-border arrangement, or series of such arrangements, in the course of providing services relating to taxation. "Intermediaries" also means any such person that undertakes to provide, directly or by means of other persons to which it is related, material aid, assistance or advice with respect to designing, marketing, organising or managing the tax aspects of a reportable cross-border arrangement.

*Amendment*

"intermediaries" means any person that carries the responsibility vis-à-vis the taxpayer for designing, marketing, organising or managing the implementation of the tax aspects of a reportable cross-border arrangement, or series of such arrangements, in the course of providing services relating to taxation, ***accounting, legal matters or finance***. "Intermediaries" also means any such person that undertakes to provide, directly or by means of other persons to which it is related, material aid, assistance or advice with respect to designing, marketing, organising or managing the tax aspects of a reportable cross-border arrangement.

Or. fr

## Amendment 8

### 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.*

Or. fr

## Amendment 9

### Proposal for a directive

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

Directive 2011/16/EU

Chapter II – section II – Article 8 a a a – paragraph 2 – subparagraph 2

*Text proposed by the Commission*

*Amendment*

Intermediaries may only be entitled to a waiver under the first subparagraph to the extent that they *operate within the limits of the relevant national laws that define their professions*.

Intermediaries may only be entitled to a waiver under the first subparagraph to the extent that they *are explicitly granted this right under national law*.

Or. fr

## Amendment 10

### Proposal for a directive

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

Directive 2011/16/EU

Chapter II – section II – Article 8 a a a – paragraph 4

*Text proposed by the Commission*

*Amendment*

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

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.

between **1 November 1993** and 31 December 2018. Intermediaries and taxpayers, as appropriate, shall file information on those reportable cross-border arrangements by 31 March 2019.

Or. fr

#### *Justification*

*La rétroactivité se justifie par le fait que de nombreux dispositifs transfrontières mis en place avant l'entrée en vigueur de la directive, potentiellement extrêmement dommageables aux finances publiques, demeureront en vigueur sans être notifiés sans cela. La charge de travail pour les services fiscaux sera plus importante. Mais c'est aux Etats membres, comme le souligne régulièrement la Commission dans ses communications et le Parlement européen dans ses rapports et résolutions, de fournir aux administrations fiscales les moyens techniques, financiers et humains nécessaires à ces tâches, ce n'est pas au législateur de s'adapter aux mauvaises décisions prises concernant les administrations fiscales, mais l'inverse.*

#### **Amendment 11**

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

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

Directive 2011/16/EU

Chapter II – section II – Article 8 a a a – paragraph 6 - point a

#### *Text proposed by the Commission*

(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;

#### *Amendment*

(a) the identification of intermediaries 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;

Or. fr

#### **Amendment 12**

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

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

Directive 2011/16/EU

Chapter II – section II – Article 8 a a a – paragraph 6 - point c

*Text proposed by the Commission*

*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 a commercial, industrial or professional secret or of a commercial process, or of information whose disclosure would be contrary to public policy;***

(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;

Or. fr

*Justification*

*La référence aux protections liées à la directive sur le secret des affaires n'a pas de sens ici. En effet, les informations dont il est question ne sont transmises qu'aux administrations fiscales nationales qui sont tenues par le secret fiscal, et qui, par ailleurs, à travers les accords préalables de prix de transfert qu'ils négocient par exemple, reçoivent déjà des informations protégées par le secret commercial. Par conséquent cette mention pourrait même s'avérer être un obstacle à la transmission des montages par les intermédiaires fiscaux. Cela vaut également pour la mention à l'ordre public dont les autorités nationales sont les garantes.*

**Amendment 13**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 2**

Directive 2011/16/EU

Chapter II – section II – Article 8 a a a – paragraph 8

*Text proposed by the Commission*

*Amendment*

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

Or. fr

## Amendment 14

### 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 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 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.

#### *Amendment*

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 framework of **Articles 8, 8a, 8aa and 8aaa** shall be recorded in order to satisfy the automatic exchange provided for in those paragraphs.

Or. fr

#### *Justification*

*The Commission is to establish a central register for the mandatory automatic exchange of information. This amendment reiterates Parliament's wish, stated in the report on DAC 5 – the previous occasion on which the directive was modified – for the Commission to have horizontal, confidential access to information exchanged under the directive.*

## Amendment 15

### 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 shall have access to the information recorded in that directory. The Commission shall also have access to the information recorded in that directory, **subject to the requirement of confidentiality concerning the exchange of information**. The necessary practical arrangements shall be adopted by the Commission in accordance with the

procedure referred to in Article 26(2).

Or. fr

## **Amendment 16**

### **Proposal for a directive**

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

Directive 2011/16/EU

Article 23 – paragraph 3 a (new)

*Text proposed by the Commission*

*Amendment*

**3a** *The Member States shall each year submit to the Commission a list of those intermediaries and taxpayers on whom the penalties set out in this Directive have been imposed. The list shall contain the name, nationality and place of residence for tax purposes of each intermediary or taxpayer. It shall be made public.*

Or. fr

## **Amendment 17**

### **Proposal for a directive**

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

Directive 2011/16/EU

Article 23 – paragraph 3 b (new)

*Text proposed by the Commission*

*Amendment*

**3b** *The Member States shall each year submit to the Commission a list of the main kinds of cross-border arrangements which have been penalised, classified according to the hallmarks set out in Annex IV. The list shall be made public, as a dissuasive measure, in the form of an evaluation of the main arrangements on which a penalty is imposed under this Directive.*

Or. fr

## Amendment 18

### Proposal for a directive

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

Directive 2011/16/EU

Article 1 a – paragraph 25

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

#### *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, **financial, punitive** and dissuasive.

Or. fr

## Amendment 19

### Proposal for a directive

#### ANNEX IV – paragraph 2

#### *Text proposed by the Commission*

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.

#### *Amendment*

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.

Or. fr

## **Amendment 20**

### **Proposal for a directive**

#### **ANNEX IV – point A – paragraph 3 a (new)**

*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 European Union.***

Or. fr