



1.9.2015

DRAFT OPINION

of the Committee on Legal Affairs

for the Committee on Economic and Monetary Affairs

on the proposal for a Council directive amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation (COM(2015)0135 – C8-0085/2015 – 2015/0068(CNS))

Rapporteur: Angel Dzhambazki

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AMENDMENTS

The Committee on Legal Affairs calls on the Committee on Economic and Monetary Affairs, as the committee responsible, to take into account the following amendments:

Amendment 1

Proposal for a directive

Recital 1

Text proposed by the Commission

(1) The challenge posed by cross-border tax avoidance, ***aggressive tax planning and harmful tax competition*** has increased considerably and has become a major focus of concern within the Union and at global level. Tax base erosion is considerably reducing national tax revenues, which hinders Member States in applying growth-friendly tax policies. In particular, rulings concerning tax-driven structures lead to a low level of taxation of artificially high amounts of income in the country giving the advance ruling and may leave artificially low amounts of income to be taxed in any other countries involved. An increase in transparency is therefore urgently required. The tools and mechanisms established by Council Directive 2011/16/EU¹³ need to be enhanced in order to achieve this.

¹³ Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC (OJ L 64 of 11.3.2011, p. 1).

Amendment

(1) The challenge posed by cross-border tax avoidance has increased considerably and has become a major focus of concern within the Union and at global level. Tax base erosion is considerably reducing national tax revenues, which hinders Member States in applying growth-friendly tax policies. In particular, rulings concerning tax-driven structures lead to a low level of taxation of artificially high amounts of income in the country giving the advance ruling and may leave artificially low amounts of income to be taxed in any other countries involved. An increase in transparency is therefore urgently required. The tools and mechanisms established by Council Directive 2011/16/EU¹³ need to be enhanced in order to achieve this.

¹³ Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC (OJ L 64 of 11.3.2011, p. 1).

Or. en

Amendment 2

Proposal for a directive

Recital 2

Text proposed by the Commission

(2) The European Council, in its conclusions of 18 December 2014, underlined the urgent need to advance efforts in the fight against tax avoidance **and aggressive tax planning** both at the global and Union levels. Stressing the importance of transparency, the European Council welcomed the Commission's intention to submit a proposal on the automatic exchange of information on tax rulings in the Union.

Amendment

(2) The European Council, in its conclusions of 18 December 2014, underlined the urgent need to advance efforts in the fight against tax avoidance both at the global and **European** levels. Stressing the importance of transparency, the European Council welcomed the Commission's intention to submit a proposal on the automatic exchange of information on tax rulings in the Union.

Or. en

Amendment 3

Proposal for a directive

Recital 12

Text proposed by the Commission

(12) In order to enhance the efficient use of resources, facilitate the exchange of information and avoid the need for Member States each to make similar developments to their systems to store information, specific provision should be made for the establishment of a central directory accessible to all Member States **and the Commission** where Member States would upload and store information instead of exchanging it by email. The practical arrangements necessary for the establishment of such a directory should be adopted by the Commission in accordance with the procedure referred to in Article 26(2) of Directive 2011/16/EU.

Amendment

(12) In order to enhance the efficient use of resources, facilitate the exchange of information and avoid the need for Member States each to make similar developments to their systems to store information, specific provision should be made for the establishment of a central directory accessible to all Member States where Member States would upload and store information instead of exchanging it by email. The practical arrangements necessary for the establishment of such a directory should be adopted by the Commission in accordance with the procedure referred to in Article 26(2) of Directive 2011/16/EU.

Amendment 4**Proposal for a directive****Recital 16***Text proposed by the Commission*

(16) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, this Directive seeks to ensure full respect for the right to the protection of personal data and the freedom to conduct a business.

Amendment

(16) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, this Directive seeks to ensure full respect for the right to the protection of personal data and the freedom to conduct a business. ***Any limitations to those rights should only be imposed provided that they respect the conditions contained in Article 52(1) of the Charter of Fundamental Rights. Subject to the principle of proportionality, limitations may only be imposed if they meet the necessary and genuine objectives^{1a} of the general interest, as recognised by law, or the need to protect the rights and freedoms of others.***

^{1a} In accordance with Article 13 of Directive 95/46/EC, limitations to data subjects' rights may be justified by objectives of general interest or by an important economic or financial interest of a Member State or of the European Union.

Amendment 5**Proposal for a directive****Recital 17**

Text proposed by the Commission

(17) Since the objective of this Directive, namely the efficient administrative cooperation between Member States under conditions compatible with the proper functioning of the Internal Market, cannot be sufficiently achieved by the Member States but can rather, by reason of the uniformity and effectiveness required, be better achieved at **Union** level, the Union may 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 that objective.

Amendment

(17) Since the objective of this Directive, namely the efficient administrative cooperation between Member States under conditions compatible with the proper functioning of the internal market, cannot be sufficiently achieved by the Member States but can rather, by reason of the uniformity and effectiveness required, be better achieved at **European** level, the Union may 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 that objective.

Or. en

Amendment 6

Proposal for a directive
Recital 17 a (new)

Text proposed by the Commission

Amendment

(17a) Having regard to the reasoned opinion of the Swedish Parliament on the principle of subsidiarity sent under Article 6 of Protocol No 2, where it confirms that the current proposal is within the limits of what is necessary for achieving an effective exchange of information, while, on the other hand, considers that the broad manner of the requirement to provide information may generate such a large quantity of information that could impede the attainment of the aim; and where the Swedish Parliament also raises concerns that the present proposal goes beyond what is necessary in some respects, including the long period of

retroactivity;

Or. en

Amendment 7

Proposal for a directive

Article 1 – point 3

Directive 2011/16/EU

Article 8a – paragraph 1

Text proposed by the Commission

1. The competent authority of a Member State issuing or amending an advance cross-border ruling or an advance pricing arrangement after the date of entry into force of this Directive shall, by automatic exchange, communicate information thereon to the competent authorities of all other Member States ***as well as to the European Commission.***

Amendment

1. The competent authority of a Member State issuing or amending an advance cross-border ruling or an advance pricing arrangement after the date of entry into force of this Directive shall, by automatic exchange, communicate information thereon to the competent authorities of all other Member States.

Or. en

Amendment 8

Proposal for a directive

Article 1 – point 3

Directive 2011/16/EU

Article 8a – paragraph 2

Text proposed by the Commission

2. The competent authority of a Member State shall also communicate information to the competent authorities of all other Member States ***as well as to the European Commission*** on advance cross-border rulings and advance pricing arrangements issued within a period beginning ***ten*** years before the entry into force but still valid on the date of entry into force of this Directive;

Amendment

2. The competent authority of a Member State shall also communicate information to the competent authorities of all other Member States on advance cross-border rulings and advance pricing arrangements issued within a period beginning ***five*** years before the entry into force but still valid ***and ongoing*** on the date of entry into force of this Directive;

Amendment 9

Proposal for a directive

Article 2 – paragraph 1 – subparagraph 1

Text proposed by the Commission

1. Member States shall adopt and publish, **by 31 December 2015 at the latest**, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

Amendment

Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

Or. en

Amendment 10

Proposal for a directive

Article 2 – paragraph 1– subparagraph 2

Text proposed by the Commission

They shall apply those provisions **from 1 January 2016**.

Amendment

They shall apply those provisions **12 months after the entry into force of this Directive**.

Or. en