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TEXTS ADOPTED

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**P8\_TA(2016)0432**

**Access to anti-money-laundering information by tax authorities \***

**European Parliament legislative resolution of 22 November 2016 on the proposal for a Council directive amending Directive 2011/16/EU as regards access to anti-money-laundering information by tax authorities (COM(2016)0452 – C8-0333/2016 – 2016/0209(CNS))**

**(Special legislative procedure – consultation)**

*The European Parliament,*

- having regard to the Commission proposal to the Council (COM(2016)0452),
  - having regard to Articles 113 and 115 of the Treaty on the Functioning of the European Union, pursuant to which the Council consulted Parliament (C8-0333/2016),
  - having regard to Rule 59 of its Rules of Procedure,
  - having regard to the report of the Committee on Economic and Monetary Affairs (A8-0326/2016),
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 substantially amend the Commission proposal;
  5. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

## Amendment 1

### Proposal for a directive Recital -1 (new)

*Text proposed by the Commission*

*Amendment*

***(-1) The role of vehicles, accounts and companies based in tax havens and non-cooperative jurisdictions has emerged as the common denominator in a vast range of operations, generally detected a posteriori, which conceal tax fraud, capital flight and money laundering practices. This fact in itself should call for political and diplomatic action aimed at eliminating offshore centres at a global level.***

## Amendment 2

### Proposal for a directive Recital 1

*Text proposed by the Commission*

*Amendment*

(1) Council Directive 2011/16/EU<sup>11</sup> as amended by Directive 2014/107/EU<sup>12</sup> applies as of 1 January 2016 to 27 Member States and as of 1 January 2017 to Austria. That Directive implements the Global Standard for Automatic Exchange of Financial Account Information in Tax Matters (“Global Standard”) within the Union. As such, it ensures that information on Account Holders of Financial Accounts is reported to the Member State where the Account Holder is resident.

(1) Council Directive 2011/16/EU<sup>11</sup> as amended by **Council** Directive 2014/107/EU<sup>12</sup> applies as of 1 January 2016 to 27 Member States and as of 1 January 2017 to Austria. That Directive implements the Global Standard for Automatic Exchange of Financial Account Information in Tax Matters (“Global Standard”) within the Union. As such, it ensures that information on Account Holders of Financial Accounts is reported to the Member State where the Account Holder is resident, ***with the aim of combating tax evasion, tax avoidance and aggressive tax planning.***

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<sup>11</sup> 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, 11.3.2011, p. 1).

<sup>12</sup> Council Directive 2014/107/EU of 9 December 2014 amending Directive

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<sup>11</sup> 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, 11.3.2011, p. 1).

<sup>12</sup> Council Directive 2014/107/EU of 9 December 2014 amending Directive

2011/16/EU as regards mandatory automatic exchange of information in the field of taxation (OJ L 359, 16.12.2014, p. 1).

2011/16/EU as regards mandatory automatic exchange of information in the field of taxation (OJ L 359, 16.12.2014, p. 1).

### **Amendment 3**

#### **Proposal for a directive Recital 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***(1a) Combating tax evasion and tax avoidance, including in connection with money laundering, is an absolute priority for the Union.***

### **Amendment 4**

#### **Proposal for a directive Recital 3**

*Text proposed by the Commission*

*Amendment*

(3) To ensure effective monitoring of the application by Financial Institutions of the due diligence procedures set forth in Directive 2011/16/EU, the tax authorities need access to AML information. In the absence of such access, those authorities would not be able to monitor, confirm and audit that the Financial Institutions apply properly Directive 2011/16/EU by identifying correctly and reporting the beneficial owners of intermediary structures.

(3) To ensure effective monitoring of the application by Financial Institutions of the due diligence procedures set forth in Directive 2011/16/EU, the tax authorities need ***rapid and complete*** access to AML information ***and to have at their disposal sufficient numbers of suitably skilled staff to perform that task and the ability to exchange such information. That access should be the result of a mandatory automatic exchange of information.*** In the absence of such access ***and the appropriate staff***, those authorities would not be able to monitor, confirm and audit that the Financial Institutions apply properly Directive 2011/16/EU by identifying correctly and reporting the beneficial owners of intermediary structures.

### **Amendment 5**

#### **Proposal for a directive Recital 3 a (new)**

*Text proposed by the Commission*

*Amendment*

**(3a)** *The observed link between tax evasion, tax avoidance and money laundering calls for exploiting, to the maximum extent, synergies stemming from domestic, Union and international cooperation between the different authorities involved in fighting these crimes and abuses. Issues such as beneficial ownership transparency or the extent to which entities such as legal professions are subject to the AML framework in third countries are crucial to enhancing the ability of Union authorities to address tax dodging and money laundering.*

## **Amendment 6**

**Proposal for a directive**

**Recital 3 b (new)**

*Text proposed by the Commission*

*Amendment*

**(3b)** *The Swissleaks, Luxleaks, Panama Papers and Bahamas Leaks revelations, which are individual manifestations of a global phenomenon, have confirmed the paramount need for greater tax transparency and much closer coordination and cooperation between jurisdictions.*

## **Amendment 7**

**Proposal for a directive**

**Recital 3 c (new)**

*Text proposed by the Commission*

*Amendment*

**(3c)** *The mandatory automatic exchange of tax information is recognised internationally, at G20, OECD and Union level, as the most effective instrument in the achievement of international tax transparency. In its communication of 5 July 2016 on further measures to enhance transparency against tax evasion and*

*avoidance<sup>1a</sup>, the Commission stated that ‘there is a strong case for extending the administrative cooperation between tax authorities even further, to cover beneficial ownership information’ and that ‘the automatic exchange of information on beneficial ownership could potentially be integrated into the binding tax transparency framework already in place in the EU’. Moreover, all Member States are already taking part in a pilot project on the exchange of information concerning final beneficial owners of firms and trusts.*

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<sup>1a</sup> COM(2016)0451.

## **Amendment 8**

### **Proposal for a directive Recital 4**

*Text proposed by the Commission*

(4) It is therefore necessary to ensure *the* access by the tax authorities to the AML information, procedures, documents and mechanisms for the performance of their duties in monitoring the proper application of Directive 2011/16/EU.

*Amendment*

(4) *Union rules on the prevention and combating of money laundering have over time incorporated changes in international standards, with the aim of strengthening Member State coordination and responding to the challenges faced at global level, in particular because of the links between money laundering, the funding of terrorism, organised crime and tax evasion and avoidance.* It is therefore necessary to ensure *direct and facilitated* access by the tax authorities to the AML information, procedures, documents and mechanisms for the performance of their duties in monitoring the proper application of Directive 2011/16/EU *and for the functioning of all forms of administrative cooperation referred to in that Directive, and to include that information, where relevant, in the automatic exchanges between Member States, and to provide access to the Commission, on a confidential basis.*

## **Amendment 10**

### **Proposal for a directive Recital 4 b (new)**

*Text proposed by the Commission*

*Amendment*

***(4b) In addition, it is important that tax authorities have adequate information and communications technology (ICT) systems in place that can trace money-laundering activities at an early stage. In that regard tax authorities should have adequate ICT and staff resources that can cope with the large amount of AML information to be exchanged between Member States.***

## **Amendment 11**

### **Proposal for a directive Recital 4 c (new)**

*Text proposed by the Commission*

*Amendment*

***(4c) Moreover, given that the upgraded information exchange and the information leaks have increased the spontaneous exchange and availability of information, it is very important that Member States investigate and act upon all potential wrongdoing.***

## **Amendment 12**

### **Proposal for a directive Recital 4 d (new)**

*Text proposed by the Commission*

*Amendment*

***(4d) Since AML information is in many cases of a cross-border nature, it should be included, where relevant, in the automatic exchange between Member States and should be made available on request to the Commission in the framework of its power to enforce state aid rules. Moreover, given the complexity and the need to verify the reliability of this information, such as in the case of data***

*on beneficial ownership, tax authorities should cooperate on cross-border enquiries.*

### **Amendment 13**

#### **Proposal for a directive Recital 4 e (new)**

*Text proposed by the Commission*

*Amendment*

*(4e) An automatic, mandatory and continuous exchange of information in the field of taxation between the various competent authorities is essential in order to ensure maximum transparency and to have a basic instrument for preventing and combating fraudulent behaviour of all kinds.*

### **Amendment 14**

#### **Proposal for a directive Recital 4 f (new)**

*Text proposed by the Commission*

*Amendment*

*(4f) Given the global character of money laundering activities, international cooperation is key to an effective and efficient fight against such activities.*

### **Amendment 15**

#### **Proposal for a directive Recital 6**

*Text proposed by the Commission*

*Amendment*

(6) Since the objective of this Directive, namely the efficient administrative cooperation between Member States and its effective monitoring under conditions compatible with the proper functioning of the internal market, cannot be sufficiently achieved by the Member States and can therefore, by reason of the uniformity and effectiveness required, be better achieved at Union level, the Union may adopt measures, in

(6) Since the objective of this Directive, namely the efficient administrative cooperation between Member States and its effective monitoring under conditions compatible with the proper functioning of the internal market ***in order to combat tax fraud***, cannot be sufficiently achieved by the Member States and can therefore, by reason of the uniformity and effectiveness required, be better achieved at Union level, the Union

accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on the 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 16**

### **Proposal for a directive**

#### **Recital 7**

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

(7) The customer due diligence carried out by Financial Institutions under Directive 2011/16/EU has already started and the first exchanges are to be finalised by September 2017. Therefore, in order to ensure that the effective monitoring of the application is not delayed, this Amending Directive should enter into force and be transposed by 1 January **2017**.

## **Amendment 17**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point -1 (new)**

Directive 2011/16/EU

Article 2 – paragraph 1

##### *Present text*

1. This Directive shall apply to all taxes of any kind levied by, or on behalf of, a Member State or the Member State's territorial or administrative subdivisions, including the local authorities.

## **Amendment 18**

### **Proposal for a directive**

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

may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on the 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*

(7) The customer due diligence carried out by Financial Institutions under Directive 2011/16/EU has already started and the first exchanges are to be finalised by September 2017. Therefore, in order to ensure that the effective monitoring of the application is not delayed, this Amending Directive should enter into force and be transposed by 1 January **2018**.

##### *Amendment*

***(-1) In Article 2, paragraph 1 is replaced by the following:***

1. This Directive shall apply to all taxes of any kind levied by, or on behalf of, a Member State or the Member State's territorial or administrative subdivisions, including the local authorities, ***as well as to virtual currency exchange services and custodial wallet providers.***



Directive 2011/16/EU  
Article 8 a (new)

*Text proposed by the Commission*

*Amendment*

**(-1a)** *The following article is inserted:*

**“Article 8a**

***The tax authorities of a Member State shall, within three months of their collection, automatically exchange the documents and information referred to in Article 22 of this Directive with any other Member State if the beneficial owner of a firm, or, in the case of a trust, the settlor, one of the trustees, the protector (where relevant), a beneficiary or any other person exercising genuine control over the trust, or, lastly, the holder of an account referred to in Article 32a of Directive (EU) 2015/849 is a taxpayer in that Member State. Access should be provided to the Commission for the completion of its missions, on a confidential basis.”***

## **Amendment 19**

### **Proposal for a directive**

#### **Article 1 – paragraph 1**

Directive 2011/16/EU

Article 22 – paragraph 1 a

*Text proposed by the Commission*

*Amendment*

**(1a)** For the purpose of the implementation and enforcement of the laws of the Member States giving effect to this directive, and to ensure the functioning of the administrative cooperation it establishes, Member States shall provide by law for **access by tax authorities** to the mechanisms, procedures, documents and information referred to in articles 13, 30, 31, 32a **and** 40 of Directive 2015/849/EU of the European Parliament and of the Council\*.

**1a.** For the purpose of the implementation and enforcement of the laws of the Member States giving effect to this directive, and to ensure the functioning of the administrative cooperation it establishes, Member States shall provide by law for tax **authorities’ access** to the **central registers**, mechanisms, procedures, documents and information referred to in Articles 7, 13, **18, 18a, 19, 27,** 30, 31, 32a, 40, **44 and 48** of Directive (EU) 2015/849 of the European Parliament and of the Council\*. **Such access shall be the result of a mandatory automatic exchange of information. Member States shall further**

*guarantee access to that information by including it in a centralised public register of companies, trusts and other structures whose nature or purpose is similar or equivalent.*

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\* Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

\* Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

## **Amendment 20**

### **Proposal for a directive**

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

Directive 2011/16/EU

Article 22 – paragraph 1 b (new)

*Text proposed by the Commission*

*Amendment*

***(1a) In Article 22, the following paragraph is inserted:***

***“1b. For the purpose of the effective use of exchanged data, Member States shall ensure that all information exchanged and obtained shall be investigated in a timely manner, whether that information has been obtained by authorities on request, through spontaneous information exchange by another Member State, or from a public information leak. Should a Member State fail to do this in a timeframe required by national law, it shall publicly communicate the reasons for this failure to the Commission.”***

## **Amendment 21**

### **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 **2016** 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*

1. Member States shall adopt and publish, by 31 December **2017** 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 22**

### **Proposal for a directive**

#### **Article 2 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

They shall apply those provisions from 1 January **2017**.

*Amendment*

They shall apply those provisions from 1 January **2018**.