



2020/0148(CNS)

9.12.2020

DRAFT REPORT

on the proposal for a Council Directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation
(COM(2020)0314 – C9-0213/2020 – 2020/0148(CNS))

Committee on Economic and Monetary Affairs

Rapporteur: Sven Giegold

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 on administrative cooperation in the field of taxation (COM(2020)0314 – C9-0213/2020 – 2020/0148(CNS))

(Special legislative procedure – consultation)

The European Parliament,

- having regard to the Commission proposal to the Council (COM(2020)0314),
 - having regard to Articles 113 and 115 of the Treaty on the Functioning of the European Union, pursuant to which the Council consulted Parliament (C9-0213/2020),
 - having regard to Rule 82 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs (A9-0000/2020),
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 2

Text proposed by the Commission

(2) In the past years, the Commission has been monitoring the application and, in 2019, completed an evaluation of Directive 2011/16/EU⁴. While significant improvements have been made in the field of automatic exchange of information,

Amendment

(2) In the past years, the Commission has been monitoring the application and, in 2019, completed an evaluation of Directive 2011/16/EU⁴. While significant improvements have been made in the field of automatic exchange of information,

there is still a need to improve existing provisions that relate to all forms of exchanges of information and administrative cooperation.

there is still a need to improve existing provisions that relate to all forms of exchanges of information and administrative cooperation. ***In addition, Member States' capacity to process the amount of financial information received should be enhanced and tax administrations' financial, human and IT resources should be increased.***

⁴ European Commission, Commission Staff Working Document, Evaluation of the Council Directive 2011/16/EU on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC, SWD(2019) 328 final.

⁴ European Commission, Commission Staff Working Document, Evaluation of the Council Directive 2011/16/EU on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC, SWD(2019) 328 final.

Or. en

Amendment 2

Proposal for a directive Recital 3

Text proposed by the Commission

(3) Pursuant to Article 5 of Directive 2011/16/EU, following a request of a requesting authority, the requested authority is to communicate to the requesting authority any information it has in its possession, or that it obtains as a result of administrative enquiries, which is foreseeably relevant to the administration and enforcement of the domestic laws of the Member States concerning the taxes falling within the scope of that Directive. To ensure effectiveness of the exchanges of information and prevent unjustified refusals of requests, as well as to provide legal clarity and certainty for both tax administrations and taxpayers, the standard of foreseeable relevance should be clearly delineated. In this context, it should also be clarified that the standard of foreseeable relevance should not apply to requests for

Amendment

(3) Pursuant to Article 5 of Directive 2011/16/EU, following a request of a requesting authority, the requested authority is to communicate to the requesting authority any information it has in its possession, or that it obtains as a result of administrative enquiries, which is foreseeably relevant to the administration and enforcement of the domestic laws of the Member States concerning the taxes falling within the scope of that Directive. To ensure effectiveness of the exchanges of information and prevent unjustified refusals of requests, as well as to provide legal clarity and certainty for both tax administrations and taxpayers, the standard of foreseeable relevance should be clearly delineated ***in line with the jurisprudence of the Court of Justice of the European Union which states that the term***

additional information following an exchange of information in accordance with Article 8a of Directive 2011/16/EU concerning an advance cross-border ruling or an advance pricing arrangement.

'foreseeable relevance' is intended to provide for exchange of information in tax matters to the widest possible extent. In this context, it should also be clarified that the standard of foreseeable relevance should not apply to requests for additional information following an exchange of information in accordance with Article 8a of Directive 2011/16/EU concerning an advance cross-border ruling or an advance pricing arrangement.

Or. en

Amendment 3

Proposal for a directive Recital 4 a (new)

Text proposed by the Commission

Amendment

(4a) In order to keep taxpayers correctly and fully informed, the competent authorities of Member States should disclose the income categories of which the information is automatically shared with competent authorities of other Member States and third countries or jurisdictions.

Or. en

Amendment 4

Proposal for a directive Recital 16

Text proposed by the Commission

Amendment

(16) The evaluation of Directive 2011/16/EU carried out by the Commission demonstrated the need for consistent monitoring of the effectiveness in the application of that Directive and of the national transposing provisions enabling

(16) The evaluation of Directive 2011/16/EU carried out by the Commission demonstrated the need for consistent monitoring of the effectiveness in the application of that Directive and of the national transposing provisions enabling

this application. In order for the Commission to continue to properly monitor and evaluate the effectiveness of the automatic exchanges of information under Directive 2011/16/EU, Member States should be obliged to communicate the statistics on such exchanges to the Commission on an annual basis.

this application. In order for the Commission to continue to properly monitor and evaluate the effectiveness of the automatic exchanges of information under Directive 2011/16/EU, Member States should be obliged to communicate the statistics on such exchanges to the Commission on an annual basis. ***They should also communicate to the Commission, on an annual basis, relevant information related to obstacles for the proper implementation of that Directive.***

Or. en

Amendment 5

Proposal for a directive Recital 19

Text proposed by the Commission

(19) Multilateral controls carried out with the support of the Fiscalis 2020 programme established by Regulation (EU) No 1286/2013 of the European Parliament and of the Council⁵ have demonstrated the benefit of co-ordinated controls of one or more taxpayers that are of common or complementary interest to two or more tax administrations in the Union. As there is no explicit legal base for conducting joint audits, such joint actions are currently conducted based on the combined provisions of Directive 2011/16/EU regarding the presence of foreign officials in the territory of other Member States and on simultaneous controls. However, in many cases this practice has proven to be insufficient and lacking legal clarity and certainty.

⁵ Regulation (EU) No 1286/2013 of the

Amendment

(19) Multilateral controls carried out with the support of the Fiscalis 2020 programme established by Regulation (EU) No 1286/2013 of the European Parliament and of the Council⁵ have demonstrated the benefit of co-ordinated controls of one or more taxpayers that are of common or complementary interest to two or more tax administrations in the Union. ***Therefore, on-site inspections and joint audits should be part of the Union framework of cooperation between tax administrations.*** As there is no explicit legal base for conducting joint audits, such joint actions are currently conducted based on the combined provisions of Directive 2011/16/EU regarding the presence of foreign officials in the territory of other Member States and on simultaneous controls. However, in many cases this practice has proven to be insufficient and lacking legal clarity and certainty.

⁵ Regulation (EU) No 1286/2013 of the

European Parliament and of the Council of 11 December 2013 establishing an action programme to improve the operation of taxation systems in the European Union for the period 2014-2020 (Fiscalis 2020) and repealing Decision No 1482/2007/EC (OJ L 347, 20.12.2013, p. 25).

European Parliament and of the Council of 11 December 2013 establishing an action programme to improve the operation of taxation systems in the European Union for the period 2014-2020 (Fiscalis 2020) and repealing Decision No 1482/2007/EC (OJ L 347, 20.12.2013, p. 25).

Or. en

Amendment 6

Proposal for a directive Recital 21

Text proposed by the Commission

(21) In order to ensure the effectiveness of the process, responses to requests for joint audits should be provided within a given timeframe. Rejections of requests should be duly justified. The procedural arrangements applicable to a joint audit should be those of the Member State where the relevant audit action takes place. Accordingly, evidence collected during a joint audit should be mutually recognised by the participating Member State(s). It is equally important that the competent authorities agree on the facts and circumstances of the case and endeavour to reach an agreement on how to interpret the tax position of the audited person(s). In order to ensure that the outcome of a joint audit can be implemented in the participating Member States, the final report should have equivalent legal value to the relevant national instruments that are issued as a result of an audit in the participating Member States. Where necessary, Member States should provide the legal framework for the performance of a corresponding adjustment.

Amendment

(21) In order to ensure the effectiveness of the process, responses to requests for joint audits should be provided within a given timeframe. Rejections of requests should be duly justified **and subject to a right of response by the requesting authority**. The procedural arrangements applicable to a joint audit should be those of the Member State where the relevant audit action takes place. Accordingly, evidence collected during a joint audit should be mutually recognised by the participating Member State(s). It is equally important that the competent authorities agree on the facts and circumstances of the case and endeavour to reach an agreement on how to interpret the tax position of the audited person(s). In order to ensure that the outcome of a joint audit can be implemented in the participating Member States, the final report should have equivalent legal value to the relevant national instruments that are issued as a result of an audit in the participating Member States. Where necessary, Member States should provide the legal framework for the performance of a corresponding adjustment.

Or. en

Amendment 7

Proposal for a directive Recital 24 a (new)

Text proposed by the Commission

Amendment

(24a) It is equally important to emphasise that not only the exchange of information between tax authorities but also the sharing of best practices contributes to more efficient tax collection. In line with the Fiscalis 2020 Programme, Member States should give priority to the sharing of best practices among tax authorities.

Or. en

Amendment 8

Proposal for a directive Recital 26 a (new)

Text proposed by the Commission

Amendment

(26a) Any processing of personal data carried out within the framework of Directive 2011/16/EU should continue to comply with Regulations (EU) 2016/679 and (EU) 2018/1725. The data processing provided for in Directive 2011/16/EU has the sole objective of serving a general public interest in the field of taxation, namely, combating tax fraud, tax avoidance and tax evasion, safeguarding tax revenues, and promoting fair taxation, which strengthens opportunities for social, political and economic inclusion in the Member States. Therefore, in Directive 2011/16/EU, the references to the relevant Union law on data protection should be updated and supplemented by the rules set out in this Directive.

Amendment 9

Proposal for a directive

Article 1 – paragraph 1 – point 4 – point a

Directive 2011/16/EU

Article 8 – paragraph 1 – subparagraph 1 – introductory part

Text proposed by the Commission

The competent authority of each Member State shall, by automatic exchange, communicate to the competent authority of any other Member State all information that is available concerning residents in that other Member State, on the following specific categories of income and capital as they are to be understood under the national legislation of the Member State which communicates the information:

Amendment

The competent authority of each Member State shall, by automatic exchange, communicate to the competent authority of any other Member State all information that is available ***or could reasonably be made available*** concerning residents in that other Member State, on the following specific categories of income and capital as they are to be understood under the national legislation of the Member State which communicates the information:

Or. en

Amendment 10

Proposal for a directive

Article 1 – paragraph 1 – point 4 – point a

Directive 2011/16/EU

Article 8 – paragraph 1 – subparagraph 3

Text proposed by the Commission

Member States shall inform the Commission annually of ***at least two*** categories of income and capital mentioned in the first subparagraph with regard to which they communicate information concerning residents of another Member State.

Amendment

Member States shall inform the Commission annually of ***all*** categories of income and capital mentioned in the first subparagraph with regard to which they communicate information concerning residents of another Member State.

Or. en

Amendment 11

Proposal for a directive

Article 1 – paragraph 1 – point 4 – point a

Directive 2011/16/EU

Article 8 – paragraph 2

Text proposed by the Commission

2. Before 1 January 2023, Member States shall inform the Commission of **at least four** categories listed in paragraph 1 in respect of which the competent authority of each Member State shall, by automatic exchange, communicate to the competent authority of any other Member State, information concerning residents in that other Member State. The information shall concern taxable periods starting on or after 1 January 2024.

Amendment

2. Before 1 January 2023, Member States shall inform the Commission of **all** categories listed in paragraph 1 in respect of which the competent authority of each Member State shall, by automatic exchange, communicate to the competent authority of any other Member State, information concerning residents in that other Member State. The information shall concern taxable periods starting on or after 1 January 2024.

Or. en

Amendment 12

Proposal for a directive

Article 1 – paragraph 1 – point 4 – point a a (new)

Directive 2011/16/EU

Article 8 – paragraph 3 – subparagraph 1

Text proposed by the Commission

Amendment

(aa) In paragraph 3, the first subparagraph is deleted.

Or. en

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02011L0016-20200701>

Amendment 13

Proposal for a directive

Article 1 – paragraph 1 – point 4 – point b a (new)

Directive 2011/16/EU

Article 8 – paragraph 3a – subparagraph 2 – point a

Present text

(a) the name, address, TIN(s) and date and place of birth (in the case of an individual) of each Reportable Person that is **an** Account Holder of the account and, in the case of any Entity that is an Account Holder and that, after application of due diligence rules consistent with the Annexes, is identified as having one or more Controlling Persons that is a Reportable Person, the name, address, and TIN(s) of the Entity and the name, address, TIN(s) and date and place of birth of each Reportable Person;

Amendment

(ba) In paragraph 3a, second subparagraph, point a is replaced by the following:

(a) the name, address, TIN(s) and date and place of birth (in the case of an individual) of each Reportable Person that is **the ultimate beneficial** Account Holder of the account and, in the case of any Entity that is an Account Holder and that, after application of due diligence rules consistent with the Annexes, is identified as having one or more Controlling Persons that is a Reportable Person, the name, address, and TIN(s) of the Entity and the name, address, TIN(s) and date and place of birth of each Reportable Person;

Or. en

Amendment 14

Proposal for a directive

Article 1 – paragraph 1 – point 5 – point -a (new)

Directive 2011/16/EU

Article 8a – paragraph 1

Present text

The competent authority of a Member State, where an advance cross-border ruling or an advance pricing arrangement was issued, amended or renewed **after 31 December 2016** shall, by automatic exchange, communicate information thereon to the competent authorities of all other Member States as well as to the European Commission, with the limitation of cases set out in paragraph 8 of this Article, in accordance with applicable practical arrangements adopted pursuant to Article 21.

Amendment

(-a) Paragraph 1 is replaced by the following:

"The competent authority of a Member State where an advance cross-border ruling, an advance pricing arrangement, **or another type of informal arrangement with a cross-border nature**, was issued, amended or renewed shall, **provided that ruling or arrangement is still valid and without prejudice to paragraph 4**, by automatic exchange communicate information thereon to the competent authorities of all other Member States as well as to the European Commission, with the limitation of cases set out in paragraph

8 of this Article, in accordance with applicable practical arrangements adopted pursuant to Article 21."

Or. en

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02011L0016-20200701>

Amendment 15

Proposal for a directive

Article 1 – paragraph 1 – point 5 – point -a a (new)

Directive 2011/16/EU

Article 8a – paragraph 2 – subparagraph 4

Text proposed by the Commission

Amendment

(-aa) In paragraph 2, the fourth subparagraph is deleted.

Or. en

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02011L0016-20200701>

Amendment 16

Proposal for a directive

Article 1 – paragraph 1 – point 5 – point -a b (new)

Directive 2011/16/EU

Article 8a – paragraph 4

Text proposed by the Commission

Amendment

(-ab) Paragraph 4 is deleted.

Or. en

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02011L0016-20200701>

Amendment 17

Proposal for a directive

Article 1 – paragraph 1 – point 5 – point -a c (new)

Directive 2011/16/EU

Article 8a – paragraph 4 a (new)

Text proposed by the Commission

Amendment

(-ac) The following paragraph is inserted:

"4a. The information identified in paragraph 6 shall, for advance rulings such as domestic tax rulings and other informal arrangements excluded under paragraph 1, be exchanged pursuant to paragraphs 1 and 2."

Or. en

Amendment 18

Proposal for a directive

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

Directive 2011/16/EU

Article 8a – paragraph 6 – point a

Present text

Amendment

(a) the identification of the person, **other than a natural person**, and where appropriate the group of persons to which it belongs;

(aa) In paragraph 6, point a is replaced by the following:

"(a) the identification of the person, **including natural persons**, and where appropriate the group of persons to which it belongs;"

Or. en

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02011L0016-20200701>

Amendment 19

Proposal for a directive

Article 1 – paragraph 1 – point 5 – point b

Directive 2011/16/EU

Article 8a – paragraph 6 – point b

Text proposed by the Commission

Amendment

(b) a summary of the advance cross-border ruling or advance pricing

(b) a summary of the advance cross-border ruling or advance pricing

arrangement, including a description of the relevant business activities or transactions or series of transactions and any other information that could assist the competent authority in assessing a potential tax risk, 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.

arrangement, including a description of the relevant business activities or transactions or series of transactions, ***all relevant direct and indirect tax implications such as the effective tax rates***, and any other information that could assist the competent authority in assessing a potential tax risk, 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.

Or. en

Amendment 20

Proposal for a directive

Article 1 – paragraph 1 – point 6

Directive 2011/16/EU

Article 8ac – paragraph 2 – subparagraph 1 – point h

Text proposed by the Commission

(h) the Financial Account Identifier to which the Consideration is paid or credited, insofar as it is available to the Reporting Platform Operator ***and the competent authority of the Member State where the Seller is resident has not notified the competent authorities of all other Member States that it does not intend to use the Financial Account Identifier for this purpose;***

Amendment

(h) the Financial Account Identifier to which the Consideration is paid or credited, insofar as it is available to the Reporting Platform Operator;

Or. en

Amendment 21

Proposal for a directive

Article 1 – paragraph 1 – point 7 – point b

Directive 2011/16/EU

Article 8b – paragraph 2

(b) **Paragraph 2 is deleted.**

deleted

Or. en

Amendment 22

Proposal for a directive

Article 1 – paragraph 1 – point 7 – point b a (new)

Directive 2011/16/EU

Article 8b – paragraph 2

Present text

2. Before 1 January **2019**, the Commission shall submit a report that provides an overview and an assessment of the statistics and information received under paragraph 1 of this Article, on issues such as the administrative and other relevant costs and benefits of the automatic exchange of information, as well as practical aspects linked thereto. **If appropriate**, the Commission shall present a proposal to the Council regarding the categories and the conditions laid down in Article 8(1), including the condition that information concerning residents in other Member States has to be available, or the items referred to in Article 8(3a), **or both**.

When examining a proposal presented by the Commission, the Council shall assess further strengthening of the efficiency and functioning of the automatic exchange of information and raising the standard thereof, with the aim of providing that:

(a) **the competent authority of each Member State shall, by automatic**

Amendment

(ba) In Article 8b, paragraph 2 is replaced by the following:

2. Before 1 January **2022**, the Commission shall submit a report that provides an overview and an assessment of the statistics and information received under paragraph 1 of this Article, on issues such as the **effective use of the data received by Member States for tax or other purposes**, administrative and other relevant costs and benefits of the automatic exchange of information, as well as practical aspects linked thereto. The Commission shall present a proposal to the Council regarding the categories and the conditions laid down in Article 8(1), including the condition that information concerning residents in other Member States has to be available **or be made available**, and the items referred to in Article 8(3a), **including beneficial ownership**.

When examining a proposal presented by the Commission, the Council shall assess further strengthening of the efficiency and functioning of the automatic exchange of information and raising the standard thereof, with the aim of providing that:

(a) **the lists of categories of income and capital laid down in Article 8(1) be**

exchange, communicate to the competent authority of any other Member State, information regarding taxable periods as from 1 January 2019 concerning residents in that other Member State, on all categories of income and capital listed in Article 8(1), as they are to be understood under the national legislation of the Member State communicating the information; and

(b) the lists of categories and items laid down in Articles 8(1) and 8(3a) be extended to include other categories and items, including royalties.

made available by Member States, even if not currently available, and accordingly exchanged;

(b) the lists of items laid down in Article 8(3a) be extended to include the ultimate beneficial ownership data and to tackle circumvention through second or multiple tax residencies;

(c) Member States be generally allowed to use the information received for other purposes than those referred to in Article 16(1);

(d) effective use of the data received is correctly evaluated.

Or. en

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02011L0016-20200701>

Amendment 23

Proposal for a directive

Article 1 – paragraph 1 – point 8 – point a

Directive 2011/16/EU

Article 11 – paragraph 1

Text proposed by the Commission

With a view to exchanging the information referred to in Article 1(1), the competent authority of a Member State may request the competent authority of another Member State that officials authorised by the former and in accordance with the procedural arrangements laid down by the latter:

- (a) be present in the offices where the administrative authorities of the requested Member State carry out their duties;
- (b) be present during administrative

Amendment

With a view to exchanging the information referred to in Article 1(1), the competent authority of a Member State may request the competent authority of another Member State that officials authorised by the former and in accordance with the procedural arrangements laid down by the latter:

- (a) be present in the offices where the administrative authorities of the requested Member State carry out their duties;
- (b) be present during administrative

enquiries carried out in the territory of the requested Member State;

(c) participate in the administrative enquiries carried out by the requested Member State through the use of electronic means of communication, where appropriate.

A competent authority shall respond to a request in accordance with the first subparagraph within 30 days, to confirm its agreement or communicate its reasoned refusal to the requesting authority.

Where the requested information is contained in documentation to which the officials of the requested authority have access, the officials of the requesting authority shall be given copies thereof.

enquiries carried out in the territory of the requested Member State;

(c) participate in the administrative enquiries carried out by the requested Member State through the use of electronic means of communication, where appropriate.

A competent authority shall respond to a request in accordance with the first subparagraph within 30 days, to confirm its agreement or communicate its reasoned refusal to the requesting authority.

In cases where a reasoned refusal is provided, the requesting authority may contact again the competent authority with additional elements, in order to obtain an authorisation for its official to carry out the tasks referred to in paragraph 1 (a), (b) or (c). The competent authority shall respond to the second request within 30 days of receipt of such request.

Where the requested information is contained in documentation to which the officials of the requested authority have access, the officials of the requesting authority shall be given copies thereof

Or. en

Amendment 24

Proposal for a directive

Article 1 – paragraph 1 – point 10

Directive 2011/16/EU

Article 12a – paragraph 2

Text proposed by the Commission

2. Where a competent authority of one Member **State** requests a competent authority of another Member State (or other Member States) to conduct a joint audit of one or more persons of common or complementary interest to all their

Amendment

2. Where a competent authority of one **or more** Member **States** requests a competent authority of another Member State (or other Member States) to conduct a joint audit of one or more persons of common or complementary interest to all

respective Member States, the requested authorities shall respond to the request within 30 days from the receipt of the request.

their respective Member States, the requested authorities shall respond to the request within 30 days from the receipt of the request.

Or. en

Amendment 25

Proposal for a directive

Article 1 – paragraph 1 – point 10

Directive 2011/16/EU

Article 12a – paragraph 3 – introductory part

Text proposed by the Commission

3. A request for a joint audit by a competent authority of a Member State may be rejected on justified grounds **and, in particular**, for **any of** the following reasons:

Amendment

3. A request for a joint audit by a competent authority of a Member State may be rejected on justified grounds for the following reasons:

Or. en

Amendment 26

Proposal for a directive

Article 1 – paragraph 1 – point 10

Directive 2011/16/EU

Article 12a – paragraph 4 – subparagraph 2

Text proposed by the Commission

Where a requested authority rejects the request, it shall inform the requesting person(s) of the grounds for doing so.

Amendment

Where a requested authority rejects the request, it shall inform the requesting person(s) **on which of the two grounds referred to in paragraph 3 the request was rejected.**

Or. en

Amendment 27

Proposal for a directive

Article 1 – paragraph 1 – point 12 – point b

Directive 2011/16/EU

Article 16 – paragraph 2

Text proposed by the Commission

2. ***With the permission of the competent authority of the Member State communicating information pursuant to this Directive, and only in so far as this is allowed under the legislation of the Member State of the competent authority receiving the information,*** information and documents received pursuant to this Directive may be used for other purposes than those referred to in paragraph 1.

The competent authority of each Member State shall communicate to the competent authorities of all other Member States a list of purposes for which, in accordance with its domestic law, information and documents may be used other than those referred to in paragraph 1. The competent authority that receives information may use the received information and documents without the permission referred to in the first subparagraph for any of the purposes listed by the communicating Member State.

Amendment

2. Information and documents received pursuant to this Directive ***by a competent authority of a Member State*** may be used for other purposes than those referred to in paragraph 1 ***only insofar as that is allowed under the laws of the Member State of the competent authority receiving the information.***

Or. en

Amendment 28

Proposal for a directive

Article 1 – paragraph 1 – point 12 – point b a (new)

Directive 2011/16/EU

Article 16 – paragraph 4

Text proposed by the Commission

Amendment

(ba) Paragraph 4 is deleted.

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02011L0016-20200701>

Amendment 29

Proposal for a directive

Article 1 – paragraph 1 – point 17

Directive 2011/16/EU

Article 23 – paragraph 2

Text proposed by the Commission

2. Member States shall examine and evaluate, in their jurisdiction, the effectiveness of administrative cooperation in accordance with this Directive in combating tax evasion and tax avoidance and shall communicate annually the results of their evaluation to the Commission.

Amendment

2. Member States shall examine and evaluate, in their jurisdiction, the effectiveness of administrative cooperation in accordance with this Directive in combating tax evasion and tax avoidance and shall communicate annually the results of their evaluation to the Commission.

Those results shall be made public, taking into account taxpayers' rights and confidentiality. The information shall not be disaggregated to such a level that it can be attributed to a single taxpayer.

Amendment 30

Proposal for a directive

Article 1 – paragraph 1 – point 17 a (new)

Directive 2011/16/EU

Article 23a – paragraph 1

Present text

1. Information communicated to the Commission pursuant to this Directive shall be kept confidential ***by the Commission in accordance with the provisions applicable to Union authorities and may not be used for any purposes other than those required to determine***

Amendment

(17a) In Article 23a, paragraph 1 is replaced by the following:

1. Information communicated to the Commission pursuant to this Directive shall be kept confidential, ***insofar as that information can be attributed to a single taxpayer and its disclosure would infringe taxpayers' rights.***

whether and to what extent Member States comply with this Directive.

Or. en

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02011L0016-20200701>

Amendment 31

Proposal for a directive

Article 1 – paragraph 1 – point 18

Directive 2011/16/EU

Article 23a – paragraph 2 – subparagraph 1

Text proposed by the Commission

2. Information communicated to the Commission by a Member State under Article 23, as well as any report or document produced by the Commission using such information, may be transmitted to other Member States. Such transmitted information shall be covered by the obligation of official secrecy and enjoy the protection extended to similar information under the national law of the Member State which received it.

Amendment

2. Information communicated to the Commission by a Member State under Article 23, as well as any report or document produced by the Commission using such **attributable** information, may be transmitted to other Member States. Such transmitted information shall be covered by the obligation of official secrecy and enjoy the protection extended to similar information under the national law of the Member State which received it.

Or. en

Amendment 32

Proposal for a directive

Article 1 – paragraph 1 – point 18

Directive 2011/16/EU

Article 23a – paragraph 2 – subparagraph 2

Text proposed by the Commission

Reports and documents produced by the Commission, referred to in the first subparagraph, may be used by the Member States only for analytical purposes, and shall not be published or made available to any other person or body without the express agreement of the

Amendment

deleted

Commission.

Or. en

Justification

The Rapporteur doubts that this paragraph is in line with the existing Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents

Amendment 33

Proposal for a directive

Article 1 – paragraph 1 – point 18

Directive 2011/16/EU

Article 23a – paragraph 2 – subparagraph 3

Text proposed by the Commission

Notwithstanding the first and second subparagraphs, the Commission ***may*** publish annually anonymised summaries of the statistical data that Member States communicate to it in accordance with Article 23(4).

Amendment

The Commission ***shall*** publish annually anonymised summaries of the statistical data that Member States communicate to it in accordance with Article 23(4).

Or. en

Amendment 34

Proposal for a directive

Article 1 – paragraph 1 – point 20

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, 8ab and 8ac, and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate 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, 8ab and 8ac, and shall take all measures necessary to ensure that they are implemented, ***in accordance with Annex V***. The penalties provided for shall be

dissuasive.

effective, proportionate and dissuasive.

Or. en

Amendment 35

Proposal for a directive

Article 1 – paragraph 1 – point 20 a (new)

Directive 2011/16/EU

Article 25b (new)

Text proposed by the Commission

Amendment

(20a) The following Article is added:

"Article 25b

Review clause

Two years after the entry into force of this Directive, the Commission shall assess the implementation of the obligation to report by the Reporting Platform Operators and it may present legislative proposals for the creation of a European supervisor if deemed appropriate."

Or. en

Amendment 36

Proposal for a directive

Annex I

Directive 2011/16/EU

ANNEX V – paragraph 2 a (new)

Text proposed by the Commission

Amendment

This Annex also lays down several proposals for penalties, in accordance with Article 25a, which can be applied by Member States.

Or. en

Amendment 37

Proposal for a directive

Annex I

Directive 2011/16/EU

ANNEX V – Section I – point A – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. “Excluded Reporting Platform Operator” means a Reporting Platform Operator whose revenues do not exceed EUR 100.000 for a period of 3 years.

Or. en

Amendment 38

Proposal for a directive

Annex I

Directive 2011/16/EU

ANNEX V – Section I – point A – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. “Excluded Relevant Activity” means any non-remunerated and non-monetary exchange of goods and services.

Or. en

Amendment 39

Proposal for a directive

Annex I

Directive 2011/16/EU

ANNEX V – Section IV – point C – paragraph 1 a (new)

Text proposed by the Commission

Amendment

Within two years of the entry into force of this Directive, the Commission shall assess the efficiency of the administrative procedures and the quality of implementation of due diligence

*procedures and reporting requirements.
The assessment may be accompanied by
legislative proposals if improvement is
needed.*

Or. en

Amendment 40

Proposal for a directive

Annex I

Directive 2011/16/EU

ANNEX V – Section IV – point F a (new)

Text proposed by the Commission

Amendment

Fa. Penalties for infringements

Member States shall lay down the rules on penalties applicable to infringements of reporting obligations by Reporting Platform Operators. The penalties provided for shall be effective, proportionate and dissuasive. Member States are invited to ensure a common set of sanctions to ensure similar penalties in the Union and avoid registration shopping based on the severity of penalties applied.

Member States are especially encouraged to consider as penalties options for restrictions of regulated means of payment or the charging of additional consequential fees per transaction.

Or. en

EXPLANATORY STATEMENT

On 15 July 2020, the Commission published a Tax Package, which contains three separate but complementary initiatives, including an Action Plan for fair and simple taxation supporting the recovery and a legislative proposal to amend the Directive on Administrative Cooperation (DAC7).

The DAC7 proposal aims at extending the EU tax transparency rules to digital platforms. If adopted, this proposal foresees that Member States will automatically exchange information on income generated by sellers on digital platforms. This will not only allow national authorities to identify situations where tax should be paid, but will also reduce the administrative burden placed on platforms, which have to deal with different national reporting requirements. In addition, the underreporting of revenues obtained through digital platforms leads to unfair competition between the traditional economy and the digital platform economy. Furthermore, the proposal suggests a series of adjustments to the Directive, including provisions for joint audits between tax authorities, an explicit reference to the possibility for group requests by a Member State to another or the clarification of the concept of foreseeable relevance, among others.

The challenges posed by the digitalisation of the economy need to be addressed to ensure that income and revenues gained via digital platforms are correctly reported to tax authorities. Only with a reliable system of reporting obligations and traceability of taxable events for tax authorities can we ensure that income earned by sellers are properly taxed in the respective Member States and contribute to increasing Member States' tax revenues. In addition, the COVID-19 crisis reminded us of the importance of protecting public finance and of the need to raise revenues to address the economic and social impacts of the pandemic as well as to finance the needed future investments in Europe.

Considering the above, the DAC7 proposal is an important step to continue the fight against tax fraud, tax evasion and tax avoidance and enhance the cooperation and exchange of information between tax authorities in the Union. The Commission's proposal is therefore to be welcomed, as it brings us one step closer to a full exchange of information on all revenues and assets earned and owned by taxpayers in the EU. DAC7 constitutes therefore another step towards an economic globalisation that is reconciled with fair and even taxation of income and wealth. Member States will only regain the possibility to tax all income and wealth earned or owned across borders by their citizens in an efficient, even and fair way, if information on earning and wealth flow automatically across borders. The DAC and the global CRS system have brought us closer towards this objective. But in particular, real estate, trusts, shares of companies below the 25% ownership threshold, some forms of capital gains and crypto assets need to be included fully in automatic information exchange in the near future. Therefore, the beneficial and not only the legal owner has to be effectively known. Member States also need to work on the availability of data and not just rely on existing data.

However, this proposal can in the meantime be positively amended through the following recommendations:

- Not only available information should be automatically shared under article 8 but also that information that could be reasonably made available by the Member State;

- Member States should be generally free to use the information received for other purposes than tax purposes. As such, the required permission by the competent authority of the sending state has been deleted and the Member State of the competent authority receiving can use the information insofar as this is allowed under the legislation of the Member State of the competent authority receiving the information;
- Strengthen the exchange of information on cross-border rulings and advance pricing agreements by enlarging the scope to informal rulings and domestic tax rulings;
- The evaluation and analysis shared by Member States to the European Commission should be published insofar those evaluations do not disclose any information that can be attributable to a specific taxpayer;
- Include the obligation for the Commission to publish annually anonymised summaries of the statistical data received by Member States;
- Include a definition of excluded Relevant Activities and Reporting Platform Operators in order to reduce bureaucratic burden on small platforms and allow non-monetary and non-remunerated activities to be out of scope;
- Mention certain type of penalties that Member States can use in case platforms are not fulfilling their obligation and call for a harmonisation of penalties across Member States in order to support the even and effective implementation by all platforms;
- Insert a review clause for the Commission to assess the efficiency of the implementation of this reporting obligation and consider the possibility of a European supervisor in charge of the Directive's enforcement, if deemed necessary.

It is to be noted, that the Council has reached an agreement at technical level, which the Ministers support. This agreement unfortunately weakens the DAC7 proposal in certain key areas. These key areas, as enumerated below, should be left unchanged, as proposed by the European Commission:

- On joint audits, the Council's agreement severely weakens the proposal on different fronts as put forward by the European Commission including the deletion of justified grounds for the rejection of a joint audit by competent authorities, the extension of several deadlines to respond, the deletion of the possibility for persons to request a joint audit and weakening the requirements for a final report;
- On "Reportable Sellers", the Council proposes to add an arbitrary ceiling and threshold for activities of rental of immovable property;
- On the application of the provisions in the directive, the Council has proposed to delay it for an additional year. The Commission had proposed the directive to be applicable as of January 2022. The Council proposes now 2023 and even suggests a derogation for joint audits rules; these would only be applicable as of January 2024.

Finally, it is to be deplored that the Council will seemingly not consider the European Parliament's views. These actions should be interpreted as going against the principles of

sincere cooperation, and the European Parliament's role in a consultative process as stated in article 115 TFEU. In this context, it is worth reiterating the need to move to qualified majority in tax matters. The European Parliament's role in scrutinising the design and implementation of the Directives on Administrative Cooperation on matters of taxation should be taken seriously.