



2023/0187(CNS)

9.10.2023

DRAFT REPORT

on the proposal for a Council directive on Faster and Safer Relief of Excess
Withholding Taxes
(COM(2023)0324 – C9-0204/2023 – 2023/0187(CNS))

Committee on Economic and Monetary Affairs

Rapporteur: Herbert Dorfmann

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 on Faster and Safer Relief of Excess Withholding Taxes

(COM(2023)0324 – C9-0204/2023 – 2023/0187(CNS))

(Special legislative procedure – consultation)

The European Parliament,

- having regard to the Commission proposal to the Council (COM(2023)0324),
 - having regard to Article 115 of the Treaty on the Functioning of the European Union, pursuant to which the Council consulted Parliament (C9-0204/2023),
 - having regard to Rule 82 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs (A9-0000/2023),
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 order to strengthen Member States' ability to prevent and fight against potential fraud or abuse, which is currently hampered by fragmentation and a general lack of reliable and timely information on investors, it is therefore necessary to put in place a common framework for the relief of excess withholding taxes on cross-border investments in securities that is resilient to a risk of tax fraud or abuse. This framework should lead to convergence among the various relief procedures applied in the EU while ensuring transparency and certainty on investors' identity for securities' issuers, withholding tax agents, financial intermediaries and Member States, as the case may be. To this effect, the framework should rely on automated procedures, such as the digitalisation of the certificate of tax residence (in terms of procedure and form), which is a pre-requisite for investors to have access to any relief or refund procedures. Such a framework should also be flexible enough to duly take into account the various systems applicable in different Member States while ensuring greater convergence and providing appropriate anti-abuse tools to mitigate risks of tax fraud, evasion and avoidance.

Amendment

(2) In order to strengthen Member States' ability to prevent and fight against potential fraud or abuse, which is currently hampered by fragmentation and a general lack of reliable and timely information on investors, it is therefore necessary to put in place a common framework for the relief of excess withholding taxes on cross-border investments in securities that is resilient to a risk of tax fraud or abuse. This framework should lead to convergence among the various relief procedures applied in the EU while ensuring transparency and certainty on investors' identity for securities' issuers, withholding tax agents, financial intermediaries and Member States, as the case may be. To this effect, the framework should rely on automated procedures, such as the digitalisation of the certificate of tax residence (in terms of procedure and form), which is a pre-requisite for investors to have access to any relief or refund procedures. Such a framework should also be flexible enough to duly take into account the various systems applicable in different Member States while ensuring greater convergence and providing appropriate anti-abuse tools to mitigate risks of tax fraud, evasion and avoidance. ***For the success of the framework, it is necessary that Member States equip the tax administrations with tools to deal with refund/relief at source procedures in a secure and timely manner and increase their efforts in providing digitalised, automated and better-coordinated key features. For this purpose, it is also necessary to train the relevant staff supervising the digital tools.***

Or. en

Amendment 2

Proposal for a directive Recital 4 a (new)

Text proposed by the Commission

Amendment

(4 a) To ensure the effectiveness of the tax consequences of entities being determined as being shell entities, as foreseen by the Commission’s proposal for a Council directive laying down rules to prevent the misuse of shell entities for tax purposes and amending Directive 2011/16/EU^{1a} (UNSHELL Directive), it is necessary that the procedures for imposing tax consequences in the UNSHELL Directive and the procedures for issuing an electronic tax residency certificate in this Directive are aligned. The Council should therefore clarify the interaction between the tax consequences defined in the UNSHELL Directive and the issuing of an electronic tax residency certificate defined in this Directive.

^{1a} COM(2021)0565.

Or. en

Amendment 3

Proposal for a directive Recital 6

Text proposed by the Commission

Amendment

(6) As the financial intermediaries most often engaged in the securities’ payment chains are large institutions as defined in the Capital Requirements Regulation (CRR)²⁹ as well as central securities depositories providing withholding tax agent services, these entities should be obliged to request registration on the national registers of Member States established as above. Other financial intermediaries should be allowed

(6) As the financial intermediaries most often engaged in the securities’ payment chains are large institutions as defined in the Capital Requirements Regulation (CRR)²⁹ as well as central securities depositories providing withholding tax agent services, these entities should be obliged to request registration on the national registers of Member States established as above. Other financial intermediaries should be allowed

to request registration at their discretion. Registration should be requested by the financial intermediary itself by submitting an application to the competent authority designated by the Member State, including evidence that the financial intermediary meets certain requirements. The purpose of the requirements is to verify that the requesting intermediary meets the requirements of relevant EU regulation and supervised for compliance therewith. Where the financial intermediary is established outside the EU, it is required to be subject to legislation in the third country of its residence that is comparable for the purposes of this Directive and the third country of residence is neither on Annex I of the EU list of non-cooperative jurisdictions nor on the EU list of high-risk third countries (anti-money laundering list). Compliance of a third country financial intermediary with the relevant EU requirements relates solely for the purposes set out in this Directive and has no impact on the exercising or application of any other rights and obligations under other EU legislation. Once registered, financial intermediaries should be considered “certified financial intermediaries” in the respective Member State and be subject to the relevant reporting and notification obligations under this Directive while granted the right to request application of the relief procedures set out in this Directive. The Member States that maintain a national register should also take action to remove therefrom any certified financial intermediary that so requests or no longer meets the respective requirements. Furthermore, these Member States can decide to provide for the removal from their national register of certified financial intermediaries found to have violated their obligations a number of times. Where a Member State takes such action of removal, it should inform other Member States that maintain a national register accordingly in order to allow them to assess the removal of the same certified

to request registration at their discretion. Registration should be requested by the financial intermediary itself by submitting an application to the competent authority designated by the Member State, including evidence that the financial intermediary meets certain requirements. The purpose of the requirements is to verify that the requesting intermediary meets the requirements of relevant EU regulation and supervised for compliance therewith. Where the financial intermediary is established outside the EU, it is required to be subject to legislation in the third country of its residence that is comparable for the purposes of this Directive and the third country of residence is neither on Annex I of the EU list of non-cooperative jurisdictions nor on the EU list of high-risk third countries (anti-money laundering list). ***Registration of a third country financial intermediary should be implemented with a minimum of administrative efforts. The Commission should assist Member States to ensure that there is a coordinated understanding regarding comparable legislation in third countries.*** Compliance of a third country financial intermediary with the relevant EU requirements relates solely for the purposes set out in this Directive and has no impact on the exercising or application of any other rights and obligations under other EU legislation. Once registered, financial intermediaries should be considered “certified financial intermediaries” in the respective Member State and be subject to the relevant reporting and notification obligations under this Directive while granted the right to request application of the relief procedures set out in this Directive. The Member States that maintain a national register should also take action to remove therefrom any certified financial intermediary that so requests or no longer meets the respective requirements. Furthermore, these Member States can decide to provide for the removal from their national register of

financial intermediary from their own national register. National legislation of the Member States concerned applies to the rights and obligations of parties concerned, including for appeal, in relation to any decision taken by a Member State in connection with registration and removal from their national register.

certified financial intermediaries found to have violated their obligations a number of times. Where a Member State takes such action of removal, it should inform other Member States that maintain a national register accordingly in order to allow them to assess the removal of the same certified financial intermediary from their own national register. National legislation of the Member States concerned applies to the rights and obligations of parties concerned, including for appeal, in relation to any decision taken by a Member State in connection with registration and removal from their national register.

²⁹ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 Text with EEA relevance (OJ L 176, 27.6.2013, p. 1–337)

²⁹ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 Text with EEA relevance (OJ L 176, 27.6.2013, p. 1–337)

Or. en

Amendment 4

Proposal for a directive Recital 14

Text proposed by the Commission

(14) Any processing of personal data carried out within the framework of this Directive should comply with Regulation (EU) 2016/679 of the European Parliament and of the Council³¹. Financial intermediaries and Member States may process personal data under this Directive solely with the objective of serving a general public interest, namely for the purposes of combating tax fraud, tax evasion and tax avoidance, safeguarding tax revenues and promoting fair taxation, which strengthen opportunities for social, political and economic inclusion in Member States. To allow the effective

Amendment

(14) Any processing of personal data carried out within the framework of this Directive should comply with Regulation (EU) 2016/679 of the European Parliament and of the Council³¹. Financial intermediaries and Member States may process personal data under this Directive solely with the objective of serving a general public interest, namely for the purposes of combating tax fraud, tax evasion and tax avoidance, safeguarding tax revenues and promoting fair taxation, which strengthen opportunities for social, political and economic inclusion in Member States. To allow the effective

pursuit of this objective, it is necessary to restrict certain rights of individuals provided by the aforementioned Regulation, especially the right to be notified on the processing of their data and the scope thereof as well as the right to consent on certain types of data processing.

pursuit of this objective, it is necessary to restrict certain rights of individuals provided by the aforementioned Regulation, ***insofar as the exercise of such rights may jeopardise investigations,*** especially the right to be notified on the processing of their data and the scope thereof as well as the right to consent on certain types of data processing. ***As soon as the circumstances that justified the restriction no longer apply, the rights of the data subjects should be reinstated.***

³¹ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1)

³¹ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1)

Or. en

Amendment 5

Proposal for a directive Article 4 – paragraph 2 – introductory part

Text proposed by the Commission

2. Member States shall issue the eTRC within ***one*** working ***day*** from submission of a request, subject to paragraph 4. The eTRC shall comply with the technical requirements of Annex I and shall include the following information:

Amendment

2. Member States shall issue the eTRC within ***three*** working ***days*** from submission of a request, subject to paragraph 4. The eTRC shall comply with the technical requirements of Annex I and shall include the following information:

Or. en

Amendment 6

Proposal for a directive Article 4 – paragraph 2 – point g

Text proposed by the Commission

Amendment

(g) any additional information that may be relevant where the certificate is issued to serve purposes other than relief of withholding tax under this Directive or information required to be included in a tax residence certificate under EU law.

deleted

Or. en

Amendment 7

Proposal for a directive Article 4 – paragraph 4

Text proposed by the Commission

Amendment

4. If more than **one** working **day is** required to verify the tax residency of a specific taxpayer, the Member State shall inform the person requesting the certificate of the additional time needed and the reasons for the delay.

4. If more than **three** working **days are** required to verify the tax residency of a specific taxpayer, the Member State shall inform the person requesting the certificate of the additional time needed and the reasons for the delay.

Or. en

Amendment 8

Proposal for a directive Article 7 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) if the requesting financial intermediary is a credit institution, an authorisation in the jurisdiction of residence for tax purposes to perform custodial activities under points (12) or (14) of Annex I of Directive 2013/36/EU or comparable legislation of a third country; if the requesting financial intermediary is an investment firm, an authorisation in the jurisdiction of residence for tax purposes to perform custodial activities under Section B(1) of Annex I of Directive 2014/65/EU or comparable legislation of a third country

(b) if the requesting financial intermediary is a credit institution, an authorisation in the jurisdiction of residence for tax purposes to perform custodial activities under points (12) or (14) of Annex I of Directive 2013/36/EU or comparable legislation of a third country; if the requesting financial intermediary is an investment firm, an authorisation in the jurisdiction of residence for tax purposes to perform custodial activities under Section B(1) of Annex I of Directive 2014/65/EU or comparable legislation of a third country

or; if the requesting financial intermediary is a central securities depository, an authorisation in the jurisdiction of residence for tax purposes under Regulation EU 909/2014 or comparable legislation of a third country of residence;

or; if the requesting financial intermediary is a central securities depository, an authorisation in the jurisdiction of residence for tax purposes under Regulation EU 909/2014 or comparable legislation of a third country of residence; ***the Commission shall issue guidance on minimum standards for comparable legislation;***

Or. en

Amendment 9

Proposal for a directive Article 19 – title

Text proposed by the Commission

Amendment

Evaluation

Evaluation ***and review***

Or. en

Amendment 10

Proposal for a directive Article 19 – paragraph 1

Text proposed by the Commission

Amendment

1. The Commission shall examine and evaluate the functioning of this Directive, after national rules transposing the Directive come into effect, every 5 years. A report on the evaluation of the Directive, including on a potential need to amend specific provisions thereof, will be submitted to the European Parliament and the Council by December 2031 and every 5 years.

1. The Commission shall examine and evaluate the functioning of this Directive, after national rules transposing the Directive come into effect, every 3 years. A report on the evaluation of the Directive, including on a potential need to amend specific provisions thereof, will be submitted to the European Parliament and the Council by December 2031 and every 3 years. ***In the evaluation report, the Commission shall:***

Or. en

Amendment 11

Proposal for a directive Article 19 – paragraph 1 – point a (new)

Text proposed by the Commission

Amendment

(a) examine further possible measures to facilitate self-processed withholding tax claims for small investors who engage directly with tax authorities without the intermediation of certified financial intermediaries;

Or. en

Amendment 12

Proposal for a directive

Article 19 – paragraph 1 – point b (new)

Text proposed by the Commission

Amendment

(b) conduct a comprehensive analysis of the development of the service fees financial intermediaries charge registered owners for the implementation of the quick refund procedure and the relief at source procedure;

Or. en

Amendment 13

Proposal for a directive

Article 19 – paragraph 1 – point c (new)

Text proposed by the Commission

Amendment

(c) examine whether a relief at source system could be envisaged as a procedure for all Member States.

Or. en

Amendment 14

Proposal for a directive

Article 19 – paragraph 1 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

The Commission may submit, where appropriate, a legislative proposal to the Council.

Or. en

Amendment 15

Proposal for a directive Article 19 – paragraph 2

Text proposed by the Commission

Amendment

2. Member States shall communicate to the Commission relevant information for the evaluation of the Directive in improving withholding tax relief procedures to reduce double taxation as well as combat tax abuse, in accordance with paragraph 3.

2. Member States shall communicate to the ***European Parliament and the*** Commission relevant information for the evaluation of the Directive in improving withholding tax relief procedures to reduce double taxation as well as combat tax abuse, in accordance with paragraph 3.

Or. en

Amendment 16

Proposal for a directive Article 20 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall restrict data subject's rights under Articles 15 to 19 of Regulation (EU) 2016/679 of the European Parliament and of the Council⁴⁵ only to the extent and only as long as it is strictly necessary for their competent authorities to mitigate the risk of tax fraud, evasion or avoidance in Member States, in particular by verifying that the correct withholding tax rate is applied for the registered owner, or by verifying that the registered owner obtains the relief if so entitled in a timely manner.

1. Member States shall restrict data subject's rights under Articles 15 to 19 of Regulation (EU) 2016/679 of the European Parliament and of the Council⁴⁵, ***insofar as the exercise of such rights may jeopardise investigations and*** only to the extent and only as long as it is strictly necessary for their competent authorities to mitigate the risk of tax fraud, evasion or avoidance in Member States, in particular by verifying that the correct withholding tax rate is applied for the registered owner, or by verifying that the registered owner obtains the relief if so entitled in a timely manner.

⁴⁵ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (OJ L 119, 4.5.2016, p. 1).

⁴⁵ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (OJ L 119, 4.5.2016, p. 1).

Or. en

Amendment 17

Proposal for a directive Article 20 – paragraph 3

Text proposed by the Commission

3. Information, including personal data, processed in accordance with this Directive shall be retained only as long as necessary to achieve the purposes of this Directive, in accordance with each data controller's domestic rules on statute of limitations, but in any case no longer than **10** years.

Amendment

3. Information, including personal data, processed in accordance with this Directive shall be retained only as long as necessary to achieve the purposes of this Directive, in accordance with each data controller's domestic rules on statute of limitations, but in any case no longer than **5** years.

Or. en

EXPLANATORY STATEMENT

Your rapporteur appreciates the efforts by the Commission to improve the patchwork of withholding tax procedures and to introduce a common EU-wide system for withholding tax on dividend or interest payments. The Commission proposal rightly respects the principles of simplification, subsidiarity and proportionality and suggests a system for tax authorities to exchange information and improve cooperation with each other.

In doing so, the Commission makes an effort to remove tax barriers to cross-border investments, bring down burdensome, costly and lengthy procedures and improve conditions to reduce the risks of tax fraud and abuse. With these suggestions, the Commission makes another step forward towards the completion of the Capital Markets Union. However, the success of FASTER depends on the commitment of Member States' they need to speed up efforts in providing digitalized, automated and better-coordinated key features.

Your rapporteur recognizes that this proposal is a first step towards making withholding tax claims more streamlined and efficient across the EU, however, sees room for improvement regarding the application of the advantages of the proposals towards investors and taxpayers, which should be further explored in a comprehensive review procedure. In particular regarding possible measures to facilitate self-processed withholding tax claims for small investors, a comprehensive analysis on the development of service fees charged by financial intermediaries, as well as an examination on the universal application of a relief at source system in all Member States. Furthermore, your rapporteur sees room for being more precise in the areas of clarifying the interaction between FASTER and the UNSHELL Directive, of better protecting personal data of tax payers, and of a coordinated understanding of "comparable legislation" when it comes to the registration of a third country financial intermediary.