



2015/0068(CNS)

14.10.2015

OPINION

of the Committee on Legal Affairs

for the Committee on Economic and Monetary Affairs

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

Rapporteur: Angel Dzhambazki

PA_Legam

AMENDMENTS

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

Amendment 1

Proposal for a directive Citation 2 a (new)

Text proposed by the Commission

Amendment

Having regard to the Charter of Fundamental Rights of the European Union, in particular the respect for the right to the protection of personal data and the freedom to conduct a business,

Amendment 2

Proposal for a directive Recital 1

Text proposed by the Commission

Amendment

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

(1) The challenge posed by cross-border tax avoidance, aggressive tax planning and harmful tax **practices** has increased considerably and has become a major focus of concern within the Union and at global level. Tax base erosion is considerably reducing national tax revenues, which hinders Member States in applying growth-friendly tax policies. **However, some** rulings concerning tax-driven structures led to a low level of taxation of artificially high amounts of income in the country **issuing, amending or reviewing** the advance ruling and **left** artificially low amounts of income to be taxed in any other countries involved. An increase in transparency **and further action at EU level** is therefore urgently required. **Illegitimate tax avoidance models should be abolished.** The tools and mechanisms

enhanced in order to achieve this.

established by Council Directive 2011/16/EU¹³ need to be enhanced in order to achieve this.

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

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

Amendment 3

Proposal for a directive Recital 2

Text proposed by the Commission

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

Amendment

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

Amendment 4

Proposal for a directive Recital 3

Text proposed by the Commission

(3) Directive 2011/16/EU provides for mandatory spontaneous exchange of information between Member States in five specific cases and within certain deadlines. The spontaneous exchange of information in cases where the competent authority of one Member State has grounds for supposing that there may be a loss of tax in another Member State already applies to tax rulings that a Member State gives to a

Amendment

(3) Directive 2011/16/EU provides for mandatory spontaneous exchange of information between Member States in five specific cases and within certain deadlines **and clarifies that Member States are not at liberty to engage in 'fishing expeditions' or to request information that is unlikely to be relevant to the tax affairs of a given taxpayer.** The spontaneous exchange of information in cases where the

specific taxpayer regarding the interpretation or application of tax provisions in the future and that have a cross-border dimension.

competent authority of one Member State has grounds for supposing that there may be a loss of tax in another Member State already applies to tax rulings that a Member State gives to a specific taxpayer regarding the interpretation or application of tax provisions in the future and that have a cross-border dimension.

Amendment 5

Proposal for a directive Recital 5

Text proposed by the Commission

(5) The possibility that the provision of information may be refused where it would lead to the disclosure of a commercial, industrial or professional secret of a commercial process, or of information whose disclosure would be contrary to public policy should not apply to provisions of mandatory automatic exchange of information on advance cross-border rulings and advance pricing arrangements in order not to reduce the effectiveness of these exchanges. The limited nature of the information that is required to be shared with all Member States should ensure sufficient protection of those commercial interests.

Amendment

(5) The possibility that the provision of information may be refused where it would lead to the disclosure of a commercial, industrial or professional secret of a commercial process, or of information whose disclosure would be contrary to public policy should not apply to provisions of mandatory automatic exchange of information on advance cross-border rulings and advance pricing arrangements in order not to reduce the effectiveness, ***role and proper functioning*** of these exchanges. The limited nature of the information that is required to be shared with all Member States should ensure ***a minimum level of*** sufficient protection of those commercial interests.

Amendment 6

Proposal for a directive Recital 5 a (new)

Text proposed by the Commission

Amendment

(5a) Advanced tax rulings ensure the consistent and transparent application of the law.

Amendment 7

Proposal for a directive

Recital 5 b (new)

Text proposed by the Commission

Amendment

(5b) Transparent tax rules provide legal certainty for taxpayers and businesses and generate investment.

Amendment 8

Proposal for a directive

Recital 6

Text proposed by the Commission

Amendment

(6) In order to reap the benefits of the mandatory automatic exchange of advance cross-border rulings and advance pricing arrangements, the information should be communicated ***promptly*** after they are issued ***and therefore regular intervals for the communication of the information should be established.***

(6) In order to reap the benefits of the mandatory automatic exchange of advance cross-border rulings and advance pricing arrangements, the information should be communicated ***without delay*** after they are issued. ***Efficient and effective sanctions can be developed in cases of non-compliance. .***

Amendment 9

Proposal for a directive

Recital 8

Text proposed by the Commission

Amendment

(8) Member States should exchange the basic information ***to be communicated also with the Commission. This would enable the Commission at any point in time to monitor and evaluate the effective application of the automatic exchange of information on advance cross-border rulings and advance pricing arrangements. Such communication will not discharge a Member State from its obligations to notify any state aid to the Commission.***

(8) Member States should exchange the basic information ***with the new central transparent security register for tax matters. The role of the Commission, according to the Treaties, is to seek to ensure the proper application of Union law in the interest of the citizens. In this regard, the Commission should take the necessary steps to monitor compliance with the law to tackle tax avoidance, while respecting tax sovereignty. The fundamental principle of the Member States' sovereignty in tax matters must be***

upheld where direct taxes are concerned and the subsidiarity principle must not be jeopardised. The Commission should apply EU state aid rules effectively and stringently to combat aggressive tax planning. It is of the utmost importance that companies pay taxes in the countries in which they generate their profits.

Amendment 10

Proposal for a directive

Recital 9

Text proposed by the Commission

(9) Feedback by the receiving Member State to the Member State sending the information is a necessary element of the operation of an effective system of automatic information exchange. It is therefore appropriate to provide for measures enabling the provision of feedback in cases where the information has been used and where no feedback can be provided under other provisions of Directive 2011/16/EU.

Amendment

(9) Feedback by the receiving Member State to the Member State sending the information is a necessary element of the operation of an effective system of automatic information exchange, ***as it encourages administrative cooperation between Member States***. It is therefore appropriate to provide for measures enabling the provision of feedback in cases where the information has been used and where no feedback can be provided under other provisions of Directive 2011/16/EU.

Amendment 11

Proposal for a directive

Recital 11

Text proposed by the Commission

(11) Member States should take all measures necessary to remove any obstacle that might hinder the effective and widest possible mandatory automatic exchange of information on advance cross-border rulings and advance pricing arrangements.

Amendment

(11) Member States should take all measures necessary to remove any obstacle that might hinder the effective and widest possible mandatory automatic exchange of information on advance cross-border rulings and advance pricing arrangements ***in order to enhance cooperation and transparency, taking the global OECD standard for standard automatic exchange of information into consideration as a minimum standard and also the fact that Member States have***

committed to measures to prevent tax avoidance by implementing and considering going beyond G20-OECD models for country by country reporting.

Amendment 12

Proposal for a directive Recital 15 a (new)

Text proposed by the Commission

Amendment

(15a) Account should also be taken of the reasoned opinion of the Swedish Parliament on the principle of subsidiarity sent under Article 6 of Protocol No 2, where it confirms that the current proposal is within the limits of what is necessary for achieving an effective exchange of information, while, on the other hand, considers that the broad manner of the requirement to provide information may generate such a large quantity of information that could impede the attainment of the aim; and where the Swedish Parliament also raises concerns that the present proposal goes beyond what is necessary in some respects, including the long period of retroactivity.;

Amendment 13

Proposal for a directive Recital 15 b (new)

Text proposed by the Commission

Amendment

(15b) It is essential that the fundamental principle of the Member sStates' 'sovereignty in tax matters must be upheld where direct taxes are concerned and that the current proposal must does not jeopardise the subsidiarity principle.

Amendment 14

Proposal for a directive

PE565.191v03-00

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Recital 16

Text proposed by the Commission

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

Amendment

(16) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, this Directive seeks to ensure full respect for the right to the protection of personal data and the freedom to conduct a business. ***The personal data must be processed for specific, explicit and legitimate purposes and only if adequate, relevant and not excessive in relation to the purposes. Any restriction of those rights should only be imposed provided that the conditions set out in Article 52(1) of the Charter of Fundamental Rights are complied with. Subject to the principle of proportionality, restrictions may be imposed provided that they comply with the necessary and true objectives of general interest recognised by the law, or satisfy the need to protect the rights and liberties of others.***

Amendment 15

Proposal for a directive

Recital 17

Text proposed by the Commission

(17) Since the objective of this Directive, namely the efficient administrative cooperation between Member States under conditions compatible with the proper functioning of the Internal Market, cannot be sufficiently achieved by the Member States but can rather, by reason of the uniformity and effectiveness required, be better achieved at **Union** level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article,

Amendment

(17) Since the objective of this Directive, namely the efficient administrative cooperation between Member States under conditions compatible with the proper functioning of the Internal Market, cannot be sufficiently achieved by the Member States but can rather, by reason of the uniformity and effectiveness required, be better achieved at **European** level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article,

this Directive does not go beyond what is necessary in order to achieve that objective.

this Directive does not go beyond what is necessary in order to achieve that objective.

Amendment 16

Proposal for a directive

Article 1 – paragraph 1 – point 1 – point a

Directive 2011/16/EU

Article 3 – point 9

Text proposed by the Commission

(a) for the purposes of Article 8(1) and Article 8a, the systematic communication of predefined information to another Member State, without prior request, at preestablished regular intervals. For the purposes of Article 8(1), reference to available information relates to information in the tax files of the Member State communicating the information, which is retrievable in accordance with the procedures for gathering and processing information in that Member State.

Amendment

(a) for the purposes of Article 8(1) and Article 8a, the systematic communication of predefined information to another Member State, without prior request, at preestablished regular intervals, ***in order to reap the benefits of the automatic exchange of information in a regular and proper manner.*** For the purposes of Article 8(1), reference to available information relates to information in the tax files of the Member State communicating the information, which is retrievable in accordance with the procedures for gathering and processing information in that Member State.

Amendment 17

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive 2011/16/EU

Article 8a – paragraph 1

Text proposed by the Commission

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

Amendment

1. The competent authority of a Member State issuing or amending an advance cross-border ruling or an advance pricing arrangement after the date of entry into force of this Directive shall, by automatic exchange, communicate information thereon to the competent authorities of all other Member States, ***and to the newly established central transparent register for tax matters. The Commission shall***

evaluate and monitor the effective application of the automatic exchange of information.

Amendment 18

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive 2011/16/EU

Article 8a – paragraph 2

Text proposed by the Commission

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

Amendment

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

Amendment 19

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive 2011/16/EU

Article 8 a – paragraph 7

Text proposed by the Commission

7. The competent authority to which information is communicated pursuant to paragraph 1 shall confirm, if possible by electronic means, the receipt of the information to the competent authority which provided the information immediately and in any event no later than seven working days.

Amendment

7. The competent authority to which information is communicated pursuant to paragraph 1 shall confirm, if possible by electronic means, the receipt of the information to the competent authority which provided the information immediately and in any event no later than seven working days, *thus facilitating the operation of an effective system of automatic information exchange.*

Amendment 20

Proposal for a directive

Article 1 – paragraph 1 – point 8

Directive 2011/16/EU

Article 23 a – paragraph 1

Text proposed by the Commission

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.

Amendment

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, ***as enshrined in Article 8 of the Charter of Fundamental Rights of the European Union.***

Amendment 21

Proposal for a directive

Article 1 – paragraph 1– point 9 a (new)

Directive 2011/16/EU

Article 25 a (new)

Text proposed by the Commission

Amendment

(9a) The following Article is inserted:

"Article 25a

This Directive shall be compatible with OECD developments and shall take into consideration the OECD comprehensive set of rules contained in the Standard for Automatic Exchange of Financial Account."

Amendment 22

Proposal for a directive

Article 4 – paragraph 1– point 9 b (new)

Directive 2011/16/EU

Article 25 b (new)

Text proposed by the Commission

Amendment

(9b) The following Article is inserted:

"Article 25b

This Directive shall not preclude Member States from taking further action to develop domestic or agreement- based provisions for the prevention of tax avoidance."

PROCEDURE – COMMITTEE ASKED FOR OPINION

Title	Mandatory automatic exchange of information in the field of taxation
References	COM(2015)0135 – C8-0085/2015 – 2015/0068(CNS)
Committee responsible Date announced in plenary	ECON 15.4.2015
Opinion by Date announced in plenary	JURI 15.4.2015
Rapporteur Date appointed	Angel Dzhambazki 31.8.2015
Discussed in committee	15.9.2015
Date adopted	13.10.2015
Result of final vote	+: 13 –: 9 0: 1
Members present for the final vote	Max Andersson, Joëlle Bergeron, Marie-Christine Boutonnet, Kostas Chrysogonos, Therese Comodini Cachia, Mady Delvaux, Rosa Estaràs Ferragut, Laura Ferrara, Enrico Gasbarra, Lidia Joanna Geringer de Oedenberg, Mary Honeyball, Sajjad Karim, Dietmar Köster, Gilles Lebreton, António Marinho e Pinto, Julia Reda, Evelyn Regner, Pavel Svoboda, József Szájer, Axel Voss, Tadeusz Zwiefka
Substitutes present for the final vote	Stefano Maullu
Substitutes under Rule 200(2) present for the final vote	Andrew Lewer