

P7_TA(2013)0573

Mandatory automatic exchange of information in the field of taxation *

European Parliament legislative resolution of 11 December 2013 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(2013)0348 – C7-0200/2013 – 2013/0188(CNS))

(Special legislative procedure – consultation)

The European Parliament,

- having regard to the Commission proposal to the Council (COM(2013)0348),
 - having regard to Article 115 of the Treaty on the Functioning of the European Union, pursuant to which the Council consulted Parliament (C7-0200/2013),
 - having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs and the opinion of the Committee on Budgetary Control (A7-0376/2013),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to alter its proposal accordingly, in accordance with Article 293(2) of the Treaty on the Functioning of the European Union;
 3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
 4. Asks the Council to consult Parliament again if it intends to substantially amend the Commission proposal;
 5. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a directive Recital 1

Text proposed by the Commission

(1) In recent years, the challenge posed by tax fraud **and** tax evasion has increased considerably and has become a major focus of concern within the Union and at global level. Unreported and untaxed income is considerably reducing national tax revenues. An increase in the efficiency and effectiveness of tax collection is therefore urgently needed. The automatic exchange of information constitutes an important tool in this regard and the Commission in its Communication of 6 December 2012 containing an Action plan to strengthen the fight against tax fraud and tax evasion⁸ highlighted the need to promote vigorously the automatic exchange of information as the future European and international standard for transparency and exchange of information in tax matters. The European Council on 22 May 2013 requested the extension of automatic information exchange at Union and global levels with a view to combatting tax fraud, tax evasion and aggressive tax planning.

⁸ COM(2012)722 final.

Amendment

(1) In recent years, the challenge posed by tax fraud, tax evasion **and aggressive tax planning** has increased considerably and has become a major focus of concern within the Union and at global level, **especially in times of crisis**. Unreported and untaxed income is considerably reducing national tax revenues, **creating conditions for unfair competition and leading to losses**. An increase in the efficiency and effectiveness of tax collection is therefore urgently needed. ***There should be effective systems in place to improve the efficiency of tax collection and to determine which Member State's tax law is applicable.*** The automatic exchange of information constitutes an important tool in this regard and the Commission in its Communication of 6 December 2012 containing an Action plan to strengthen the fight against tax fraud and tax evasion⁸ highlighted the need to promote vigorously the automatic exchange of information as the future European and international standard for transparency and exchange of information in tax matters. ***The European Parliament, in its resolution of 21 May 2013 on Fight against Tax Fraud, Tax Evasion and Tax Havens⁹, and*** the European Council on 22 May 2013, requested the extension of automatic information exchange at Union and global levels with a view to combatting tax fraud, tax evasion and aggressive tax planning.

⁸ COM(2012)0722 final.

⁹ ***Texts adopted, P7_TA(2013)0205.***

Amendment 2

Proposal for a directive Recital 1 a (new)

Text proposed by the Commission

Amendment

(1a) In the past, tax policy was seen as an exclusively national matter, in which the Union does not matter. Today, tax must be as a result of globalisation, also discussed at the Union level. It would be more efficient and effective for the Commission to coordinate the exchange of information on tax on behalf of Member States than have a series of bilateral agreements between Member States. Different standards for automatic exchange of information vary from country to country. This is unnecessarily complex and imposes unnecessarily high costs for both Member States and financial institutions within the Union.

Amendment 3

Proposal for a directive Recital 1 b (new)

Text proposed by the Commission

Amendment

(1b) The definitions relating to Directive 2011/16/EU should be developed in coordination with the OECD's work in this area, with the purpose of providing clearer explanations, simplifying the regulatory framework and enhancing the coherence of the amendments to that Directive.

Amendment 4

Proposal for a directive Recital 3

Text proposed by the Commission

Amendment

(3) As highlighted by the request of the

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European Council, it is appropriate to bring forward the extension of automatic information exchange already envisaged in Article 8(5) of Directive 2011/16/EU. A Union initiative ensures a coherent, consistent and comprehensive Union-wide approach to the automatic exchange of information in the internal market *which would lead to cost savings both for tax administrations and economic operators.*

European Council, it is appropriate to bring forward the extension of automatic information exchange already envisaged in Article 8(5) of Directive 2011/16/EU. A Union initiative ensures a coherent, consistent and comprehensive Union-wide approach to the automatic exchange of information in the internal market *and is important in order to improve the efficiency of the tax systems and to strengthen the internal market in which the co-existence of 28 national tax systems raises issues of double taxation and distortion of competition. Not only would Member States benefit from the exchange of information on an equal footing, but the Union would be able to take the lead to promote similar standards internationally.*

Amendment 5

Proposal for a directive Recital 3 a (new)

Text proposed by the Commission

Amendment

(3a) Member States should implement administrative cooperation and exchange of information that does not violate taxpayers' procedural rights or their right to privacy.

Amendment 6

Proposal for a directive Recital 3 b (new)

Text proposed by the Commission

Amendment

(3b) In accordance with the OECD report of 19 June 2013 and the St Petersburg G20 Leaders' Declaration of 6 September 2013, the automatic exchange of information should be based on a common global model which ensures adequate confidentiality and the proper use of information exchanged. Expanding

the scope of the automatic exchange of tax information will be the Union's contribution to the work of the OECD and should increase the probability of a coherent global system, based on the new OECD standard to be presented in February 2014.

Amendment 7

Proposal for a directive Recital 3 c (new)

Text proposed by the Commission

Amendment

(3c) When data is submitted to the tax authorities for the purpose of information exchange with other countries, it is important to clarify how those authorities may use that data.

Amendment 9

Proposal for a directive Recital 4 a (new)

Text proposed by the Commission

Amendment

(4a) In order to reduce ambiguities and inconsistencies, and to achieve cost savings, it is essential that the implementation of this Directive is coordinated with the implementation of FATCA.

Amendment 10

Proposal for a directive Recital 5

Text proposed by the Commission

Amendment

(5) The conclusion of parallel and uncoordinated agreements by Member States under Article 19 of Directive 2011/16/EU would lead to distortions that would be detrimental to the smooth

(5) The conclusion of parallel and uncoordinated agreements by Member States under Article 19 of Directive 2011/16/EU would lead to distortions that would be detrimental to the smooth

functioning of the internal Market.
Expanded automatic information exchange on the basis of a Union-wide legislative instrument would remove the need for Member States to invoke that provision, with a view to concluding bilateral or multilateral agreements that may be considered appropriate on the same subject in the absence of relevant Union legislation.

functioning of the internal Market ***and to the Union approach as a whole***. Expanded automatic information exchange on the basis of a Union-wide legislative instrument would remove the need for Member States to invoke that provision, with a view to concluding bilateral or multilateral agreements that may be considered appropriate on the same subject in the absence of relevant Union legislation. ***Therefore, the Union would also be in a better negotiating position to push for higher standards of tax information exchange at a global level.***

Amendment 11

Proposal for a directive Recital 5 a (new)

Text proposed by the Commission

Amendment

(5a) Work is in progress under the auspices of the OECD to develop bilateral and multilateral model agreements on exchanging information. Negotiations are also being held between the USA and many other countries on the implementation of FATCA by means of bilateral agreements. Many of the proposed amendments to Directive 2011/16/EU on administrative cooperation in the field of taxation regulate the same information exchange with which FATCA and the work at the OECD are concerned. The Commission should clarify the relationship between those regulatory provisions in order to ensure that the national tax authorities and the financial institutions responsible for applying those amendments are able to implement them.

Amendment 12

Proposal for a directive Recital 6 a (new)

Text proposed by the Commission

Amendment

(6a) The new categories of income and capital in respect of which this Directive introduces an obligation to exchange information should be established in accordance with their interpretation in the law of the Member State communicating the information.

Amendment 13

Proposal for a directive Recital 7 a (new)

Text proposed by the Commission

Amendment

(7a) The purpose of the existing provision of information to national tax authorities on income from capital and services is, inter alia, to provide a basis for taxation and for exchanges of information with other countries. If the requirement to provide information is now altered and information is obtained purely for the purpose of exchanging it, it is important to make it clear how the national tax authorities are permitted to use that information.

Amendment 15

Proposal for a directive Recital 9 a (new)

Text proposed by the Commission

Amendment

(9a) Each Member State should lay down penalties for breaches of this Directive and should take appropriate measures to ensure compliance therewith.

Amendment 16

Proposal for a directive Recital 10

Text proposed by the Commission

(10) This Directive respects the fundamental rights and observes the principles which are recognised in particular **by** the Charter of Fundamental Rights of the European Union.

Amendment

(10) This Directive respects the fundamental rights and observes the principles which are recognised in particular **in Article 16 of the Treaty on the Functioning of the European Union and in Article 8 of** the Charter of Fundamental Rights of the European Union. ***In light of the sensitivity of the data to be collected, specific attention should be paid to the respect for the right to privacy and to legitimate claims of confidentiality, in particular during any inquiry process.***

Amendment 17

Proposal for a directive

Article 1 – point b

Directive 2011/16/EU

Article 8 – paragraph 3a – subparagraph 1 – introductory part

Text proposed by the Commission

3a. The competent authority of each Member State shall, by automatic exchange, communicate to the competent authority of any other Member State, information regarding taxable periods as from 1 January 2014 concerning the following items which are paid, secured or held by a financial institution for the direct or indirect benefit of a beneficial owner who is a natural person resident in that other Member State:

Amendment

3a. The competent authority of each Member State shall, by automatic exchange, communicate to the competent authority of any other Member State, information regarding taxable periods as from 1 January 2014 concerning the following items, ***in accordance with its national law***, which are paid, secured or held by a financial institution for the direct or indirect benefit of a beneficial owner who is a natural person resident in that other Member State:

Amendment 18

Proposal for a Directive

Article 1 – point b a (new)

Directive 2011/16/EU

Article 8 – paragraph 4

Present text

4. Before 1 July 2016, Member States shall provide the Commission on an annual basis with statistics on the volume of automatic exchanges and, to the extent possible, with information on the administrative and other relevant costs and benefits relating to exchanges that have taken place and any potential changes, for both tax administrations and third parties.

Amendment

(ba) Paragraph 4 is replaced by the following:

"4. Before 1 July 2016, Member States shall provide the Commission on an annual basis with statistics on the volume of automatic exchanges and, to the extent possible, with information on the administrative and other relevant costs and benefits relating to exchanges that have taken place and any potential changes, for both tax administrations and third parties. ***The Commission shall inform the European Parliament of the information received.***"

Amendment 19

Proposal for a directive

Article 1 – point c

Directive 2011/16/EU

Article 8 – paragraph 5 – subparagraph 1

Text proposed by the Commission

5. Before 1 July 2017, the Commission shall submit a report that provides an overview and an assessment of the statistics and information received, 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 paragraph 1, including the condition that information concerning residents in other Member States has to be available, or the items referred to in paragraph 3a, or both.

Amendment

5. Before 1 July 2017, the Commission shall submit ***to the European Parliament and to the Council*** a report that provides an overview and an ***impact*** assessment of the statistics and information received, 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 ***European Parliament and to the*** Council regarding the categories ***of income and capital***, the conditions laid down in paragraph 1, ***or both***, including the condition that information concerning residents in other Member States has to be available, or the items referred to in paragraph 3a, or both.

Amendment 21

Proposal for a directive

Article 1 – paragraph 1 a (new)

Directive 2011/16/EU

Article 18 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

1a. In Article 18, the following paragraph is inserted:

"2a. Member States shall lay down penalties for breaches of this Directive and shall take the measures necessary to ensure compliance therewith. Such penalties shall be effective, proportionate and persuasive."

Amendment 22

Proposal for a directive

Article 1 – paragraph 1 b (new)

Directive 2011/16/EU

Article 19 a (new)

Text proposed by the Commission

Amendment

1b. The following Article is inserted:

"Article 19a

Mandate for negotiations with third countries

From [the date of entry into force of this Directive], only the Commission shall negotiate agreements with third countries on automatic exchange of information (AEOI) on behalf of the Union. From that date Member States shall not engage in bilateral agreements."

Amendment 23

Proposal for a directive

Article 1 – paragraph 1 c (new)

Directive 2011/16/EU

Article 22 – paragraph 1 – point c a (new)

Text proposed by the Commission

Amendment

1c. In Article 22(1), the following point is added:

“(ca) make available the human, technological and financial resources needed for the implementation of this Directive, given the amount and the complexity of information, subject to the automatic exchange starting on 1 January 2015.”

Amendment 24

Proposal for a Directive

Article 1 – paragraph 1 d (new)

Directive 2011/16/EU

Article 23 – paragraph 3

Present text

3. Member States shall communicate to the Commission a yearly assessment of the effectiveness of the automatic exchange of information referred to in Article 8 as well as the practical results achieved. The form and the conditions of communication of that yearly assessment shall be adopted by the Commission in accordance with the procedure referred to in Article 26(2).

Amendment

1d. In Article 23, paragraph 3 is replaced by the following:

“3. Member States shall communicate to the Commission a yearly assessment of the effectiveness of the automatic exchange of information referred to in Article 8 as well as the practical results achieved. The form and the conditions of communication of that yearly assessment shall be adopted by the Commission in accordance with the procedure referred to in Article 26(2). **The Commission shall inform the European Parliament of the assessments by the Member States on an annual basis.**”

Amendment 25

Proposal for a Directive

Article 1 – paragraph 1 e (new)

Directive 2011/16/EU

Article 25

Present text

Amendment

1e. Article 25 is replaced by the following:

Article 25

Data protection

All exchange of information pursuant to this Directive shall be subject to the provisions implementing Directive 95/46/EC. However, Member States shall, for the purpose of the correct application of this Directive, restrict the scope of the obligations and rights provided for in Article 10, Article 11(1), Articles 12 and 21 of Directive 95/46/EC to the extent required in order to safeguard the interests referred to in Article 13(1)(e) of that Directive.

"Article 25

Data protection

1. All exchange of information pursuant to this Directive shall be subject to the provisions implementing Directive 95/46/EC. However, Member States shall, for the purpose of the correct application of this Directive, restrict the scope of the obligations and rights provided for in Article 10, Article 11(1), Articles 12 and 21 of Directive 95/46/EC to the extent ***specifically*** required in order to safeguard the interests referred to in Article 13(1)(e) of that Directive.

2. *Member States shall take appropriate measures to protect the exchanged information from unauthorised access by third parties or by third countries.*"

Amendment 31

Proposal for a directive

Article 2 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. By* [12 months after the date of entry into force of this Directive], the Commission shall review the functioning of this Directive and, if appropriate, submit a legislative proposal to the Council to provide for transparency of information exchanges.