

Company taxation: parent companies and subsidiaries of different Member States, common system. Recast

2010/0387(CNS) - 04/01/2011 - Legislative proposal

PURPOSE: the recast of Council Directive 90/435/EEC concerning the common taxation system applicable in the case of parent companies and subsidiaries of different Member States.

PROPOSED ACT: Council Directive.

LEGAL BASIS: Article 115 of the Treaty on the Functioning of the European Union (TFEU).

IMPACT ASSESSMENT: no impact assessment was undertaken.

CONTENT: the codification of Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States has been initiated by the Commission, and a relevant [proposal](#) has been submitted to the legislative authority. The new Directive was to have superseded the various acts incorporated in it.

In the course of the legislative procedure, views were expressed by the European Parliament and by the Council that the wording of the second subparagraph of Article 4(3) of Directive 90/435/EEC, as it appeared in Article 4(5) of the proposed codified text, might be understood as establishing a secondary legal basis.

In the light of the judgment of the Court of Justice of 6 May 2008 in Case C-133/06 and for the avoidance of any doubt and for the sake of legal certainty, those two institutions requested that the provision in the proposed codified text be redrafted. Since such a redrafting would imply certain substantive changes, and would therefore go beyond straightforward codification, it was considered necessary that point 8 of the Interinstitutional Agreement of 20 December 1994 – Accelerated working method for official codification of legislative texts – be applied, in the light of the Joint declaration on that point.

The amendment to be made to Article 4(5) of the proposed codified text concerns the insertion of words clarifying that the rules referred to in that provision are adopted by the Council acting in accordance with the procedure provided for in the Treaty. It is therefore appropriate to transform the codification of Directive 90/435/EEC into a recast in order to incorporate the necessary amendment.

BUDGETARY IMPLICATION: the proposal has no implication for the European Union's budget.