

Basic information

2009/0004(CNS)

CNS - Consultation procedure
Directive

Taxation: administrative cooperation

Amended by [2013/0188\(CNS\)](#)
Amended by [2015/0068\(CNS\)](#)
Amended by [2016/0010\(CNS\)](#)
Amended by [2016/0209\(CNS\)](#)
Amended by [2017/0138\(CNS\)](#)
Amended by [2020/0081\(CNS\)](#)
Amended by [2020/0148\(CNS\)](#)
Amended by [2022/0413\(CNS\)](#)
Amended by [2024/0276\(CNS\)](#)
See also [2017/2013\(INI\)](#)

Subject

2.70 Taxation
2.80 Cooperation between administrations

Procedure completed

Key players

European
Parliament

Committee responsible

ECON Economic and Monetary Affairs

Rapporteur

ALVAREZ Magdalena (S&D)

Appointed

21/07/2009

Former committee responsible

ECON Economic and Monetary Affairs

Former rapporteur

Appointed

Committee for opinion

CONT Budgetary Control

Rapporteur for opinion

The committee decided not to give an opinion.

Appointed

JURI Legal Affairs

The committee decided not to give an opinion.

Former committee for opinion

CONT Budgetary Control

Former rapporteur for opinion

Appointed

JURI Legal Affairs

Council of the European Union	Council configuration	Meetings	Date
	Economic and Financial Affairs ECOFIN	3038	2010-10-19
	Economic and Financial Affairs ECOFIN	3067	2011-02-15
	Economic and Financial Affairs ECOFIN	2990	2010-01-19
	Economic and Financial Affairs ECOFIN	2972	2009-11-10
European Commission	Commission DG	Commissioner	
	Taxation and Customs Union	ŠEMETA Algirdas	

Key events			
Date	Event	Reference	Summary
02/02/2009	Legislative proposal published	COM(2009)0029 	Summary
19/02/2009	Committee referral announced in Parliament		
19/10/2009	Committee referral announced in Parliament		
10/11/2009	Debate in Council		Summary
19/01/2010	Debate in Council		
27/01/2010	Vote in committee		Summary
01/02/2010	Committee report tabled for plenary, 1st reading/single reading	A7-0006/2010	
08/02/2010	Debate in Parliament		
10/02/2010	Decision by Parliament	T7-0013/2010	Summary
10/02/2010	Results of vote in Parliament		
19/10/2010	Debate in Council		Summary
15/02/2011	Act adopted by Council after consultation of Parliament		
15/02/2011	End of procedure in Parliament		
11/03/2011	Final act published in Official Journal		

Technical information	
Procedure reference	2009/0004(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Directive
Amendments and repeals	Amended by 2013/0188(CNS) Amended by 2015/0068(CNS)

	Amended by 2016/0010(CNS) Amended by 2016/0209(CNS) Amended by 2017/0138(CNS) Amended by 2020/0081(CNS) Amended by 2020/0148(CNS) Amended by 2022/0413(CNS) Amended by 2024/0276(CNS) See also 2017/2013(INI)
Legal basis	Treaty on the Functioning of the European Union TFEU 113 Treaty on the Functioning of the European Union TFEU 115
Other legal basis	Rules of Procedure EP 165
Stage reached in procedure	Procedure completed
Committee dossier	ECON/7/00236

Documentation gateway				
European Parliament				
Document type	Committee	Reference	Date	Summary
Committee draft report		PE430.610	13/11/2009	
Amendments tabled in committee		PE430.966	11/12/2009	
Committee report tabled for plenary, 1st reading/single reading		A7-0006/2010	01/02/2010	
Text adopted by Parliament, 1st reading/single reading		T7-0013/2010	10/02/2010	Summary
European Commission				
Document type		Reference	Date	Summary
Legislative proposal		COM(2009)0029 	02/02/2009	Summary
Commission response to text adopted in plenary		SP(2010)1339	17/03/2010	
Follow-up document		SWD(2017)0462 	18/12/2017	Summary
Follow-up document		COM(2018)0844 	17/12/2018	Summary
National parliaments				
Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	CZ_SENATE	COM(2009)0029	22/06/2009	
Other institutions and bodies				
Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	CES1212/2009	16/07/2009	

EDPS	Document attached to the procedure	N7-0019/2010 OJ C 101 20.04.2010, p. 0001	06/01/2010	Summary
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Additional information		
Source	Document	Date
National parliaments	IPEX	
European Commission	EUR-Lex	

Final act	
Directive 2011/0016 OJ L 064 11.03.2011, p. 0001	Summary

Taxation: administrative cooperation

2009/0004(CNS) - 02/02/2009 - Legislative proposal

PURPOSE: to improve administrative cooperation in the field of taxation.

PROPOSED ACT: Council Directive.

BACKGROUND: Member States' need for mutual assistance in the field of taxation and especially for direct taxation is growing rapidly in a globalised era. There is a tremendous development of the mobility of taxpayers, of the number of cross border transactions and of the internationalisation of financial instruments, which makes it more and more difficult for Member States to assess taxes due properly, while they stick to national sovereignty as regards the level of taxes.

This increasing difficulty in assessing taxes correctly affects the functioning of taxation systems and entails double taxation, which itself incites to tax fraud and tax evasion, while the powers of controls remain at national level. It thus jeopardises the functioning of the internal market.

Directive 77/799/EEC, even with its later amendments, was designed in a different context from the present internal market requirements. Today, Directive 77/799/EEC is no longer able to meet the new requirements of administrative cooperation. Therefore, it must be repealed and replaced by a new legal instrument. That instrument should apply to direct taxes and indirect taxes that are not yet covered by other Community legislation. To this end, a new Directive is considered to be the proper instrument in terms of effective administrative cooperation.

CONTENT: the Commission proposes to the Council to adopt a new Directive on administrative cooperation in the field of taxation. The aim is to create a legal instrument of high quality for enhancing administrative cooperation in the field of taxation, in order to allow a smooth functioning of the internal market by circumventing the negative effects of harmful tax practices. Such an approach will have to effect to bring this cooperation into line with the existing provisions in the field of VAT and excise duties administrative cooperation.

The Commission proposes in particular to:

- extend cooperation between Member States to **cover taxes of any kind**. The scope extends to indirect taxes not yet covered by European Union legislation on administrative cooperation. It means that apart from VAT and excise duties, the Directive applies to all the other indirect taxes (together with direct taxes) to make cooperation more effective;
- introduce a procedure devoted to the **exchange of information on request and administrative enquiries** by regulating the time limits for the provision of information;
- prescribe the **automatic exchange of information** for a number of income types to be defined under the comitology procedure. For other types of income, it allows Member States to conclude supplementary agreements;
- introduce **compulsory spontaneous exchange of information** concerning refunds of taxes made by national tax authorities to non residents, notably where taxation is deemed to take place in the Member State of destination of the information, and the effectiveness of the control system may be facilitated by the information provided by the Member State of origin;
- allow **officials** of one country to actively participate in administrative enquiries on the territory of another country;
- allow for recovery assistance to be requested in an **early stage of the recovery process**, if this leads to an increase of the recovery chances;
- provide that Member States' competent authorities shall send **feedback** to other Member States, as soon as possible and no later than three months after making use of any answer to a request for information or spontaneous information;
- provide that exchanges of information should be made through **standardized forms, formats and channel of communication**;

- provide the same level of cooperation to their EU partners as they have agreed to with any **third country**, thus stressing the specific EU dimension.

The question of **bank secrecy** is also tackled in the draft Directive: the proposal contains a provision by which a requested Member State cannot refuse to supply information concerning a taxpayer of the requesting Member State solely because this information is held by a bank or other financial institution. As such, the proposal abolishes bank secrecy in the relations between tax authorities when a requesting Member State is assessing the tax situation of one of its resident taxpayers.

Taxation: administrative cooperation

2009/0004(CNS) - 10/02/2010 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 561 votes to 97, with 15 abstentions, a legislative resolution amending, under the special legislative procedure (consultation), the proposal for a Council directive on administrative cooperation in the field of taxation.

The amendments adopted in plenary aim to strengthen certain aspects of the proposal in order to improve the efficiency of administrative cooperation on the following issues:

Scope: Parliament considered it necessary to insert a definition which is broad enough to cover not just natural and legal persons, any other legal instrument or arrangement, regardless of its nature or form and whether or not it has legal personality, that may own and manage assets, including income therefrom, that are subject to any of the taxes covered by this Directive.

Exchange of information on request: each Member State shall develop appropriate control systems for its single taxation liaison office, in the interests of transparency and cost-effectiveness, and shall draw up a publicly accessible report, in the context of an annual monitoring exercise, accordingly.

Automatic exchange of information: in order to ensure the effectiveness of such automatic exchange of information, it is necessary to determine the categories and define the fields to which its application is mandatory. Accordingly, the following specific categories of income and capital : (a) income from work; (b) directors' emoluments; (c) dividends; (d) capital gains; (e) royalties; (f) life insurance products not covered by other Community legal instruments on the exchange of information and other similar measures; (g) pensions; (h) ownership of property and income derived therefrom. In addition, there should be the possibility of establishing a double limit depending on the categories for which information is communicated and/or the amount that triggers the mechanism. The information shall be communicated at least annually, and no later than six months after the end of the financial year in the Member State in which the information has been obtained. The competent authority in one Member State may notify the competent authority of another Member State that it does not wish to receive information on the categories of income and capital referred to above or that it does not wish to receive information on such income and capital that is not above a certain threshold. In such a case, that competent authority shall also inform the Commission thereof.

Respect for privacy: in the framework of automatic exchange of information, Member States must ensure customer privacy. Such information should also be protected under Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data

Presence and participation in administrative enquiries: in order to ensure that the presence of officials of the tax administration of one Member State in the territory of another Member State is not counter-productive and does not detract from the usefulness of cooperation, the proposal suggesting that the powers of officials of the tax administration of one Member State be equal to those in the territory of another Member State is removed. The amended text states that where officials of the requesting authority are present during administrative enquiries, they may, in agreement with the requested authority and in accordance with the guidelines laid down by the latter, take part in that enquiry.

Procedures: in order to enhance the applicability and effectiveness of this Directive, the same level of obligation should apply both to the communication of information already available by the requested authority and to conducting the administrative enquiries necessary to obtain such information.

Limits of administrative cooperation: in relation to the lifting of banking secrecy, and in order to ensure that the effectiveness of this measure is not restricted by additional requirements, the reference to the residence in the requesting country of the person on whom the information is sought is removed. This is consistent with the standards followed within the OECD.

Evaluation: the Commission shall evaluate and report annually to the European Parliament and the Council on the functioning of the automatic exchange of information. On the basis of its evaluation, the Commission shall propose measures to improve the scope and quality of the automatic exchange requirement in order to enhance the smooth functioning of the internal market.

In order to improve the exchange of information between the different national authorities, MEPs propose to monitor cases where the Member States have refused to communicate information or conduct an administrative inquiry.

Delegated acts: the Commission should be empowered to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union in respect of technical improvements to the categories of income and capital that are subject to the automatic exchange of information and to the thresholds of income above which the information exchange must be carried out. In view of the specific nature of the administrative cooperation, the empowerment should be for an indeterminate period of time. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

The European Parliament or the Council may object to a delegated act within a period of four months from the date of notification. At the initiative of the European Parliament or the Council that period shall be extended by two months. If, on expiry of that period, neither the European Parliament nor the Council has objected to the delegated act, it shall be published in the Official Journal of the European Union and shall enter into force at the date stated therein.

Taxation: administrative cooperation

2009/0004(CNS) - 06/01/2010 - Document attached to the procedure

OPINION OF THE EUROPEAN DATA PROTECTION SUPERVISOR on the proposal for a Council Directive on administrative cooperation in the field of taxation

The European Data Protection Supervisor (EDPS) has not been consulted as required by Article 28(2) of Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. The current opinion is therefore based on Article 41(2) of the same Regulation.

Unfortunately, the EDPS has only recently become aware of the current proposal. This can be explained by the fact that awareness of data protection requirements in relation to taxation matters is still in its initial phase. The EDPS sees signs that this awareness is increasing, but emphasises that much more can and must be achieved in this respect.

The current proposal is a clear example of a lack of data protection awareness since the issue of data protection has almost completely been ignored. Consequently, the proposal contains several elements which do not comply with the applicable data protection requirements. Because of the failure to properly address the data protection impact of the proposed cooperation, the EDPS still considers it necessary to present his view on the matter. The EDPS expresses the wish that the comments set out in this opinion will still be taken into account and will foster the system of administrative cooperation to be developed in a way which respects the right to data protection of the European citizens.

In the current Opinion the **EDPS has advised the legislator:**

- to include a reference to Directive 95/46/EC at least in the recitals of the proposed Directive and preferably in a substantive provision as well, stating that the provisions of the Directive are without prejudice to the national rules which implement Directive 95/46/EC;
- to include a reference to Regulation (EC) No 45/2001 at least in the recitals of the proposed Directive and preferably in a substantive provision as well, stating that the Commission, when it processes personal data on the basis of the Directive, is bound by the provisions of Regulation (EC) No 45/2001;
- to define more clearly the responsibility of the Commission for the maintenance and security of the CCN network and to emphasise the obligations of the Member States in this respect and to put this all in the light of requirements stemming from Directive 95/46/EC and Regulation (EC) No 45/2001;
- as regards the data exchange between competent authorities upon request or spontaneously, to specify the kind of personal information that can be exchanged, to better define the purposes for which personal data can be exchanged and assess the necessity of the transfer, or at least assure that the necessity principle is respected;
- to add to Article 15(1) of the proposal that processing of the information for other purposes than those referred to in Article 2 'is subject to the conditions set out in Article 13 of Directive 95/46/EC';
- to adopt a provision in which the transparency of the information exchange is addressed;
- to make explicit in Article 23(2) that a transfer of personal data to a third country should be in conformity with the domestic rules implementing the provisions of Chapter IV of Directive 95/46/EC;
- to include in Article 24 a fourth paragraph stating that 'where implementing measures relate to the processing of personal data, the European Data Protection Supervisor shall be consulted'.

Taxation: administrative cooperation

2009/0004(CNS) - 15/02/2011 - Final act

PURPOSE: to lay down the rules and procedures for administrative cooperation between Member States with regard to taxation.

LEGISLATIVE ACT: Council Directive 2011/16/EU on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC.

CONTENT: this Directive lays down the rules and procedures under which Member States shall cooperate with each other with a view to exchanging information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Member States concerning the taxes referred to in the text. It also lays down provisions for the exchange of information by electronic means, as well as rules and procedures under which Member States and the Commission are to cooperate on matters concerning coordination and evaluation. The Directive does not affect the application in Member States of the rules on mutual assistance in criminal matters. It is also without prejudice to the fulfilment of any obligations of the Member States in relation to wider administrative cooperation ensuing from other legal instruments, including bilateral or multilateral agreements.

The rules focus on three areas: 'spontaneous' exchange, exchange 'on request' and 'automatic' exchange of information between national administrations on the financial situation of non-residents, with a view to combating fraud and tax evasion.

Exchange of information on request: this means the exchange of information based on a request made by the requesting Member State to the requested Member State in a specific case.

Automatic exchange means the systematic communication of predefined information to another Member State, without prior request, at pre-established regular intervals.

Spontaneous exchange is defined as non-systematic communication, at any moment and without prior request, of information to another Member State;

Scope and conditions of mandatory automatic exchange of information: the text specifies that 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 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: (a) income from employment; (b) director's fees; (c) life insurance products not covered by other Union legal instruments on exchange of information and other similar measures; (d) pensions; (e) ownership of and income from immovable property.

Available information refers 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.

Report on automatic exchange: 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 of income and capital and/or the conditions laid down in, including the condition that information concerning residents in other Member States has to be available. When examining a proposal put forward 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 exchange, communicate to the competent authority of any other Member State, information regarding taxable periods as from 1 January 2017 concerning residents in that other Member State, on at least three of the specific categories of income and capital listed in the text, as they are to be understood under the national legislation of the Member State communicating the information; and (b) the list of categories be **extended to include dividends, capital gains and royalties**.

ENTRY INTO FORCE: 11 March 2011.

TRANSPOSITION: 1 January 2013.

Taxation: administrative cooperation

2009/0004(CNS) - 19/10/2010

The Council examined a draft directive aimed at strengthening cooperation between the member states in the field of direct taxation. It asked the Permanent Representatives Committee to oversee further technical work with a view to enabling it to reach political agreement at its meeting on 17 November.

The Council's discussion focused on provisions regarding the automatic exchange of information on certain categories of income and capital.

Taxation: administrative cooperation

2009/0004(CNS) - 10/11/2009

The Council examined a draft directive aimed at strengthening cooperation between the Member States in the field of taxation.

It reached **agreement on the text**, whilst noting political reservations by the Austrian and Luxembourg delegations and the need for further work on automatic exchange of information. It asked the Permanent Representatives Committee to re-discuss these issues so that a final position can be taken at the Council meeting on 2 December.

Taxation: administrative cooperation

2009/0004(CNS) - 17/12/2018 - Follow-up document

The Commission presents a report giving an overview and assessment of the statistics and information on the automatic exchanges in the field of direct taxation.

Access to information on the incomes earned and the assets held abroad by resident taxpayers is of great importance for tax authorities. Council Directive on administrative cooperation in the field of direct taxation 2011/16/EU (DAC) sets out a framework for the exchange of information on taxpayers engaged in cross-border activities. It provides, *inter alia*, for the automatic exchange of information (AEOI) on prescribed tax data without prior request from another country, which is mandatory.

The report covers three categories of automatic information exchange.

DAC1

Member States are required to automatically exchange information that is available on five categories of income and capital: income from employment, director's fees, life insurance products, pensions, and ownership of and income from immovable property. The report covers 2015-2017 inclusive. The Commission notes that Member States exchanged information concerning nearly 16 million taxpayers, related to incomes and capital amounting to over EUR 120 billion.

Risk assessment and personal income tax assessment are the most common uses of the information reported in all three years. The overall trend seems to be an increased and more intensive use of the information received. There are no major differences in the use made of information under the various income categories, with the exception of life insurance products, which are systematically less used than the other income types.

DAC2

Member States are required to automatically exchange financial account information, i.e. end-of-year account balance on a reportable account, as well as dividends, interests, gross proceeds and other investment income paid to that account during a year. The information available refers to the period from mid-September 2017 through March 2018. Therefore, no reliable analysis may be made on the possible use of the data. Member States exchanged information concerning a total of some 8.7 million accounts, and financial income about end-of-year account balances amounting to EUR 2,919 billion in total. However, so far, the exchanges have concerned only the existing 'high value accounts' and the 'new accounts' opened in the last months of 2016. The number of accounts is therefore expected to increase once the full reporting scope of DAC2 is implemented. The network of bilateral exchanges is centred on Luxembourg and, to a much smaller extent, Ireland. Again, the report notes that risk assessment is reported as the most common use of DAC2 information, followed by tax assessment.

DAC3

This requires sharing information on advance cross-border tax rulings and advance pricing arrangements issued to a person or group of persons, other than natural persons. DAC3 resulted in a major increase in the transparency of information with almost 18 000 rulings recorded in the central directory in 2017 compared to hardly any being spontaneously exchanged in the years up to 2015. However, it is too early to report on how this additional information has been used.

Costs and benefits

The overall implementation costs of AEOI provisions appear to be approximately EUR 112 million for the period 2012-2017, relating mainly to the development and maintenance of the IT systems which are used to exchange information automatically.

The report states that the main benefits lie in the **increased tax compliance and in the deterrent effect for taxpayers**. However, it is very difficult to quantify the benefits of AEOI in terms of additional tax revenues. However, it is very difficult to quantify the benefits of AEOI in terms of additional tax revenues.

Conclusions

The report states that Member States have recognised that the tax information received via AEOI can be used in different ways. The tax authorities mainly use the information for risk assessment and personal income tax assessment. However, several Member States still make very limited if any use of the information they receive.

Member States often send information which do not include all necessary identification elements that would permit an automated matching of this information with the one available nationally. The Commission suggests the following:

Improve quality of information: the [EU Fiscalis programme](#) for tax cooperation can provide support for both improving AEOI data quality and making sure information exchanged is used efficiently and effectively to create a fairer tax system for the benefit of Europe and its citizens.

Member States should:

- review the quality of the information they collect before they send it;
- give timely and constructive feedback on information received to those sending it, so that AEOI quality can raise overtime.

Make better use of data received via AEOI: Member States should:

- agree on some common key indicators for benefits and assessment methods;
- develop a common methodology to estimate the benefits of AEOI reliably and comprehensively;
- ensure AEOI information is part of the tax risk management cycle and that it is used more for awareness campaign to improve voluntary compliance as well as for audits, combining all AEOI flows together as well as information obtained nationally and received via other means of administrative cooperation (e.g. simultaneous controls, presences in other tax administrations during enquiries and through exchange of information on request and spontaneously);
- share knowledge of best practices for full and efficient use of the data, for example by using advanced analytics techniques, such as data mining.

Taxation: administrative cooperation

This Commission staff working document concerns the application of Council Directive (EU) No 2011/16/EU on administrative cooperation in the field of direct taxation.

It contains qualitative and quantitative information on the application of the Directive 2011/16/EU (the Directive or DAC) since its entry into force on 1 January 2013.

As a reminder, the Directive aims to ensure a strong legal basis for administrative cooperation within the Union leading to a higher degree of transparency: wide in scope, it provides for a comprehensive framework for administrative cooperation, while improving the timeline for the exchange of information on request and spontaneously. Its operation enhances the automatic exchange of information, allowing for a broad use of the information exchanged and ensuring a level playing field between the Member States.

The main findings in the report may be summarised as follows:

- **the organisation in the Member States:** all Member States have designated a competent authority, typically their tax administration, for the purposes of the Directive. They have also designated a central liaison office (CLO) within their competent authorities who have principal responsibility for contacts with other Member States. The number of staff members dedicated to administrative cooperation in the field of direct taxation differed in 2013-2014 widely between Member States. Overall, they reported that relatively few staff is dedicated to administrative cooperation;
- **the exchange of information on request (EOIR):** the competent authority of a Member State sends a request for information to another to get information that is foreseeably relevant to the administration and enforcement of the domestic laws of the requesting Member State. Since 2013, overall Member States have sent each other nearly 35 000 requests for information. The Commission services acknowledge the efforts made by the Member States to comply with the time limits established by the Directive but would encourage them to continue exchanging good quality information and to improve the timeliness of the replies.
- **the automatic exchange of information (AEOI) in administrative cooperation:** this means sending predefined tax data regularly without prior request from one Member State to the Member State where a taxpayer is resident. Before 1 January 2019, the Commission shall submit a report that provides an overview of AEOI; the
- **the spontaneous exchange of information (SEOI):** since 2013, all Member States have sent information spontaneously: overall around 70 000 SEOI exchanges have taken place between Member States.