

Basic information

2015/0068(CNS)

CNS - Consultation procedure
Directive

Procedure completed

Taxation: mandatory automatic exchange of information

Amending Directive 2011/16/EU 2009/0004(CNS)

Subject

2.70 Taxation
2.80 Cooperation between administrations
3.45.04 Company taxation

Key players

European
Parliament

Committee responsible

ECON Economic and Monetary Affairs

Rapporteur

FERBER Markus (PPE)

Appointed

28/04/2015

Shadow rapporteur

BAYET Hugues (S&D)

LOONES Sander (ECR)

JEŽEK Petr (ALDE)

MATIAS Marisa (GUE/NGL)

SCOTT CATO Molly (Verts
/ALE)

ZANNI Marco (EFDD)

Committee for opinion

CONT Budgetary Control

Rapporteur for opinion

The committee decided not
to give an opinion.

Appointed

16/06/2015

IMCO Internal Market and Consumer Protection

The committee decided not
to give an opinion.

JURI Legal Affairs

DZHAMBAZKI Angel (ECR)

31/08/2015

LIBE Civil Liberties, Justice and Home Affairs

The committee decided not
to give an opinion.

Council configuration

Meetings

Date

| | | | |
|-------------------------------|---------------------------------------|------------------|------------|
| Council of the European Union | Economic and Financial Affairs ECOFIN | 3435 | 2015-12-08 |
| | Economic and Financial Affairs ECOFIN | 3413 | 2015-10-06 |
| European Commission | Commission DG | Commissioner | |
| | Taxation and Customs Union | MOSCOVICI Pierre | |

| Key events | | | |
|------------|---|--|---------|
| Date | Event | Reference | Summary |
| 18/03/2015 | Legislative proposal published | COM(2015)0135  | Summary |
| 15/04/2015 | Committee referral announced in Parliament | | |
| 13/10/2015 | Vote in committee | | |
| 20/10/2015 | Committee report tabled for plenary, 1st reading/single reading | A8-0306/2015 | Summary |
| 26/10/2015 | Debate in Parliament |  | |
| 27/10/2015 | Decision by Parliament | T8-0369/2015 | Summary |
| 27/10/2015 | Results of vote in Parliament |  | |
| 08/12/2015 | Act adopted by Council after consultation of Parliament | | |
| 08/12/2015 | End of procedure in Parliament | | |
| 18/12/2015 | Final act published in Official Journal | | |

| Technical information | |
|----------------------------|--|
| Procedure reference | 2015/0068(CNS) |
| Procedure type | CNS - Consultation procedure |
| Procedure subtype | Legislation |
| Legislative instrument | Directive |
| Amendments and repeals | Amending Directive 2011/16/EU 2009/0004(CNS) |
| Other legal basis | Rules of Procedure EP 165 |
| Stage reached in procedure | Procedure completed |
| Committee dossier | ECON/8/03107 |

| Documentation gateway | | | | |
|-----------------------|-----------|-----------|------|---------|
| European Parliament | | | | |
| Document type | Committee | Reference | Date | Summary |
| | | | | |

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|---|------|--------------|------------|---------|
| Committee draft report | | PE560.586 | 14/07/2015 | |
| Amendments tabled in committee | | PE565.165 | 29/09/2015 | |
| Committee opinion | JURI | PE565.191 | 14/10/2015 | |
| Committee report tabled for plenary, 1st reading/single reading | | A8-0306/2015 | 20/10/2015 | Summary |
| Text adopted by Parliament, 1st reading/single reading | | T8-0369/2015 | 27/10/2015 | Summary |

European Commission

| Document type | Reference | Date | Summary |
|--|--|------------|---------|
| Legislative proposal | COM(2015)0135  | 18/03/2015 | Summary |
| Document attached to the procedure | SWD(2015)0060 | 18/03/2015 | |
| Commission response to text adopted in plenary | SP(2015)750 | 10/12/2015 | |

National parliaments

| Document type | Parliament /Chamber | Reference | Date | Summary |
|------------------|---------------------|---------------|------------|---------|
| Contribution | DE_BUNDES RAT | COM(2015)0135 | 18/05/2015 | |
| Contribution | PT_PARLIAMENT | COM(2015)0135 | 18/05/2015 | |
| Contribution | BE_CHAMBER | COM(2015)0135 | 26/05/2015 | |
| Contribution | ES_PARLIAMENT | COM(2015)0135 | 26/05/2015 | |
| Contribution | RO_SENATE | COM(2015)0135 | 26/05/2015 | |
| Reasoned opinion | SE_PARLIAMENT | PE560.592 | 04/06/2015 | |
| Contribution | SK_PARLIAMENT | COM(2015)0135 | 01/07/2015 | |
| Contribution | IT_SENATE | COM(2015)0135 | 29/07/2015 | |
| Contribution | FR_ASSEMBLY | COM(2015)0135 | 28/09/2015 | |
| Contribution | RO_CHAMBER | COM(2015)0135 | 28/09/2015 | |

Other institutions and bodies

| Institution/body | Document type | Reference | Date | Summary |
|------------------|--|--------------|------------|---------|
| EESC | Economic and Social Committee: opinion, report | CES1828/2015 | 27/05/2015 | |
| CofR | Committee of the Regions: opinion | CDR2697/2015 | 14/10/2015 | |

Additional information

| Source | Document | Date |
|--------|----------|------|
|--------|----------|------|

Final act

Directive 2015/2376
OJ L 332 18.12.2015, p. 0001

Summary

Taxation: mandatory automatic exchange of information

2015/0068(CNS) - 08/12/2015 - Final act

PURPOSE: to ensure the mandatory automatic exchange of information between tax administrations regarding advance cross-border rulings and advance pricing arrangements, in order to prevent corporate tax evasion.

LEGISLATIVE ACT: Council Directive (EU) 2015/2376 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation.

CONTENT: this Directive amends [Directive 2011/16/EU](#) on administrative cooperation, so as to ensure **the mandatory automatic exchange of information between Member States regarding advance cross-border rulings and advance pricing arrangements**.

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. **Rulings concerning tax-driven structures** have, in certain cases, led to a low level of taxation of artificially high amounts of income in the country issuing, amending or renewing the advance ruling and left artificially low amounts of income to be taxed in any other countries involved.

The Directive **will improve transparency** regarding advance cross-border rulings made by Member States concerning the manner in which taxation will be dealt with.

Scope: the Amending directive provides that the competent authorities of a Member States communicate to the competent authorities of all Member States, by automatic exchange, a defined set of basic information on tax rulings issued or amended.

A new Article is inserted into the existing Directive, setting out the scope and conditions for the mandatory automatic exchange of information, which is sufficiently broad to cover a wide range of situations, these being:

- unilateral advance pricing arrangements and/or decisions;
- bilateral or multilateral advance pricing arrangements and decisions;
- arrangements or decisions determining existence or absence of a permanent establishment, and of facts with a potential impact on the tax base of a permanent establishment;
- arrangements or decisions determining tax status of a hybrid entity in one Member State which relates to a resident of another jurisdiction;
- arrangements or decisions on assessment basis for depreciation of an asset in one Member State that is acquired from a group company in another jurisdiction.

Under a set of very strict conditions, **the Directive excludes** from the mandatory automatic exchange bilateral or multilateral advance pricing arrangements **with third countries** following the framework of existing international treaties with those countries, where the provisions of those treaties do not permit disclosure of the information received under that treaty to a third party country.

Conditions and arrangements for the exchange of information: the Directive establishes **regular intervals** for the communication of the information. It also provide for the mandatory automatic exchange of advance cross-border rulings and advance pricing arrangements that were issued, amended or renewed within a period **beginning five years before 1 January 2017** and which are still valid on 1 January 2014.

However, particular persons or groups of persons with a group wide annual net turnover of **less than EUR 40 000 000** could be excluded, under certain conditions, from such mandatory automatic exchange.

Standard form: in order that the mandatory automatic exchange of information should in each case include the communication of a defined set of basic information that would be accessible to all Member States, the Commission is empowered to adopt practical arrangements necessary to standardise the communication by establishing a standard form to be used for the exchange of information.

In developing such a standard form for the mandatory automatic exchange of information, it should take account of **work performed at the OECD's Forum on Harmful Tax Practices**, where a standard form for information exchange is being developed, in the context of the Action Plan on Base Erosion and Profit Shifting.

Statistics on automatic exchanges: before 1 January 2018, Member States must 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.

Secure central directory: in order to facilitate the exchange of information, specific provision is made for the establishment of a central directory, accessible to all Member States and the Commission, to which Member States would upload and store information, instead of exchanging that information by secured email.

Confidentiality: information communicated to the Commission will be kept confidential by the Commission and may not be used for any purposes other than those required to determine whether and to what extent Member States comply with this Directive. The provision of information should not lead to the disclosure of a commercial, industrial or professional secret or of a commercial process, or disclosure of information which would be contrary to public policy.

ENTRY INTO FORCE: 18.12.2015.

TRANSPOSITION: by 31.12.2016.

APPLICATION: from 01.01.2017.

Taxation: mandatory automatic exchange of information

2015/0068(CNS) - 27/10/2015 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 572 votes to 90, with 30 abstentions, in the framework of a special legislative procedure (Parliament's consultation), a legislative resolution on the proposal for a Council directive amending [Directive 2011/16/EU](#) as regards mandatory automatic exchange of information in the field of taxation.

Following the LuxLeaks scandal, the European Parliament expressed its strong determination not to tolerate tax fraud and tax avoidance as well as to advocate for a fair distribution of the tax burden between citizens and companies.

Parliament approved the Commission proposal subject to the following amendments:

Limited scope of the exchange of information: Members **rejected the proposal from the Commission to limit the scope of mandatory exchange of information to cross-border tax rulings and transfer pricing arrangements**. Members considered that the Directive should apply to **all tax rulings** and not just cross border rulings and advance pricing arrangements, given that **purely national transactions can also have cross-border effects**. That is particularly true of cascade transactions, where the advance tax ruling or price arrangement concerns the first national transactions, without taking into consideration the next (cross-border) transactions.

Moreover, **the definitions** of advance rulings and advance pricing arrangements should cover tax arrangements regardless of the formal or informal manner in which they were issued, and irrespective of their binding or non-binding nature.

Quicker exchanges: Members proposed that information should be **exchanged immediately**, and **at the latest one month after** the advance rulings or advance pricing arrangements have been issued or amended.

No retroactive effect: the Commission proposed that the mandatory exchange mechanism should apply to tax rulings issued in the ten years before it enters into force. Parliament called for mechanism to apply to all rulings that are still valid on the day the directive enters into force.

Member States shall:

- notify the Commission and other Member States at an early stage about any relevant change in their tax ruling practice (application formalities, decision process, etc.).
- **notify the Commission and other Member States about any relevant changes to their domestic laws on corporate taxation** (introduction of a new allowance, relief, exception, incentive or similar measure etc.) that could have an impact on their effective tax rates or on any other Member State's tax revenue.

Secure central directory and transparency: on 31 December 2016 at the latest, the Commission shall develop a **secure central directory** where information to be communicated in the framework of this Directive must be recorded in order to satisfy the automatic exchange of information. Member States shall ensure that all information communicated during the transitional period where the secure central directory is not yet developed is **uploaded into the secure central directory by 1 April 2017**. The Commission and the Member States shall have access to the information recorded in this directory.

In order to enhance **transparency** for citizens, **the Commission should publish, before 1 October 2017, and on an annual basis thereafter, a summary of the main tax rulings** agreed in the previous year, based on information contained in the secure central directory and in compliance with the **confidentiality** provisions.

That report should include at least: (i) a description of the issues addressed in the tax ruling, (ii) a description of the criteria used to determine an advance pricing arrangement and, (iii) the identification of the Member State(s) most likely to be affected.

The **personal data** should be processed for specific, explicit and legitimate purposes and only if adequate, relevant and not excessive in relation to the purposes.

Parliament also suggested that by 26 June 2017, a **Union-wide register for beneficial ownership** should be operational, which will aid in tracking down possible tax avoidance and profit shifting.

Penalties: the Commission shall examine all penalties to be established in the event of refusal or omission of information exchange.

OECD developments: 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.

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

The resolution recalled that the fundamental principle of the **Member States' sovereignty in tax matters** should be upheld where direct taxes are concerned and that the current proposal does not jeopardise the subsidiarity principle.

Reporting: every three years after entry into force, the Commission shall submit a report on the application of this Directive.

Taxation: mandatory automatic exchange of information

2015/0068(CNS) - 20/10/2015 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Economic and Monetary Affairs adopted, in the framework of a special legislative procedure (Parliament's consultation), the report by Markus FERBER (EPP, DE) on the proposal for a Council directive amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation.

The committee called on the European Parliament to approve the Commission proposal as amended.

The report noted that following the LuxLeaks scandal and by means of this report, the European Parliament expresses its strong determination not to tolerate tax fraud and tax avoidance as well as to advocate for a fair distribution of the tax burden between citizens and companies.

The main amendments made to the proposal concern the following issues:

Limited scope of the exchange of information: Members **rejected the limited the scope of mandatory exchange of information to cross-border tax rulings and transfer pricing arrangements**. They considered that the Directive should apply to **all tax rulings** and not just cross border rulings and advance pricing arrangements, given that purely national transactions can also have cross-border effects. That is particularly true of cascade transactions, where the advance tax ruling or price arrangement concerns the first national transactions, without taking into consideration the next (cross-border) transactions.

Quicker exchanges: Members proposed that information should be **exchanged immediately**, and at the latest one month after the advance rulings or advance pricing arrangements have been issued or amended.

Secure central directory and transparency: on 31 December 2016 at the latest, the Commission shall develop a **secure central directory** where information to be communicated in the framework of this Directive must be recorded in order to satisfy the automatic exchange of information. Member States shall ensure that all information communicated during the transitional period where the secure central directory is not yet developed is uploaded into the secure central directory by 1 April 2017. The Commission and the Member States shall have access to the information recorded in this directory.

In order to enhance **transparency** for citizens, **the Commission should publish, before 1 October 2017, and on an annual basis thereafter, a summary of the main tax rulings** agreed in the previous year, based on information contained in the secure central directory and in compliance with the **confidentiality** provisions.

Penalties: the Commission shall examine all penalties to be established in the event of refusal or omission of information exchange.

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

Reporting: every three years after entry into force, the Commission shall submit a report on the application of this Directive.

Taxation: mandatory automatic exchange of information

2015/0068(CNS) - 18/03/2015 - Legislative proposal

PURPOSE: to ensure the mandatory automatic exchange of information between tax administrations regarding advance cross-border rulings and advance pricing arrangements.

PROPOSED ACT: Council Directive.

ROLE OF THE EUROPEAN PARLIAMENT: the Council adopts the act after consulting the European Parliament but without being obliged to follow its opinion.

BACKGROUND: 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. 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/EU](#) need to be enhanced in order to achieve this.

In its [resolution of 21 May 2013](#), the European Parliament emphasised that the EU should take a leading role in global discussions on the fight against tax fraud, tax avoidance and tax havens, in particular in relation to promoting the exchange of information.

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.

The Commission work programme for 2015 lists among its priorities that of a fairer approach to taxation including by ensuring automatic exchange of information on tax ruling which is precisely the purpose of this proposal.

CONTENT: the draft directive amends Directive 2011/16/EU on administrative cooperation, as amended by [Directive 2014/107/EU](#), so as to ensure the **mandatory automatic exchange of information** regarding **advance cross-border rulings and advance pricing arrangements**, under certain conditions.

A new Article is inserted into the existing Directive, setting out **the scope and conditions** for the mandatory automatic exchange of information on types of tax rulings and transfer pricing arrangements. The new Article provides that the competent authorities of a Member State shall, by automatic exchange, communicate information about defined tax rulings that they issue or amend to the competent authorities of all other Member States. This obligation is extended to **rulings issued in the ten years before the date on which the proposed Directive takes effect** that are still valid on the date of entry into force of the Directive.

The proposed Directive also enables the possible creation by the Commission of a **secure central directory** concerning information communicated in the framework of this proposal. This central directory would both facilitate the exchange of information and support Member States in their job of studying and reacting to rulings exchanged between Member States.

BUDGETARY IMPLICATIONS: the impact on expenditure (operational appropriations) is estimated at EUR 2,100 million for the period 2016-2020. The costs of the additional IT tools and the possible central directory that the Commission may develop in the future to facilitate the communication of information between Member States as well as to provide for its storage would be funded out of the [FISCALIS 2020](#) programme which provides financial support for activities to improve administrative cooperation between tax authorities in the EU.