Basic information

2016/0010(CNS) CNS - Consultation procedure Directive	Procedure completed
Taxation: scope of the mandatory automatic exchange of information in the EU Amending Directive 2011/16/EU 2009/0004(CNS) **Subject** 2.50.08 Financial services, financial reporting and auditing 2.80 Cooperation between administrations 3.45.04 Company taxation	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
ECON Economic and Monetary Affairs	ROSATI Dariusz (PPE)	21/01/2016
	Shadow rapporteur MAUREL Emmanuel (S&D) RUOHONEN-LERNER Pirkko (ECR) VAN NIEUWENHUIZEN Cora (ALDE) VIEGAS Miguel (GUE/NGL) SCOTT CATO Molly (Verts/ALE) KAPPEL Barbara (ENF)	

Committee for opinion	Rapporteur for opinion	Appointed
LIBE Civil Liberties, Justice and Home Affairs	The committee decided not to give an opinion.	

Council of the European Union

European Commission

Commission DG	Commissioner
Taxation and Customs Union	MOSCOVICI Pierre

Key events

Date	Event	Reference	Summary
28/01/2016	Legislative proposal published	COM(2016)0025	Summary
25/02/2016	Committee referral announced in Parliament		
26/04/2016	Vote in committee		
28/04/2016	Committee report tabled for plenary, 1st reading/single reading	A8-0157/2016	Summary
11/05/2016	Debate in Parliament		
12/05/2016	Decision by Parliament	T8-0221/2016	Summary
12/05/2016	Results of vote in Parliament		
25/05/2016	Act adopted by Council after consultation of Parliament		
25/05/2016	End of procedure in Parliament		
03/06/2016	Final act published in Official Journal		

Technical information

Procedure reference	2016/0010(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Directive
Amendments and repeals	Amending Directive 2011/16/EU 2009/0004(CNS)
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/8/05632

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE576.877	23/02/2016	
Amendments tabled in committee		PE580.441	22/03/2016	
Committee report tabled for plenary, 1st reading/single reading		A8-0157/2016	28/04/2016	Summary
Text adopted by Parliament, 1st reading/single reading		T8-0221/2016	12/05/2016	Summary

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2016)0025	28/01/2016	Summary
Commission response to text adopted in plenary	SP(2016)411	15/06/2016	

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	CZ_SENATE	COM(2016)0025	18/03/2016	
Contribution	PT_PARLIAMENT	COM(2016)0025	31/03/2016	
Reasoned opinion	SE_PARLIAMENT	PE580.759	14/04/2016	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	CES1284/2016	27/04/2016	

Additional information

Source	Document	Date
European Parliament	Briefing	
European Commission	EUR-Lex	

Final act

Directive 2016/0881
OJ L 146 03.06.2016, p. 0008 Summary

Taxation: scope of the mandatory automatic exchange of information in the EU

2016/0010(CNS) - 28/01/2016 - Legislative proposal

PURPOSE: to further extend the scope of the mandatory exchange of information in the field of taxation in the EU.

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: as Multi National Enterprise (MNE) Groups are active in different countries, they have the possibility of engaging in **aggressive tax planning practices** that are not available for domestic companies. When MNEs do so, purely domestic companies, **normally small and medium-sized**

enterprises (SMEs) may be particularly affected as their tax burden is higher than that of MNE Groups. On the other hand, all Member States may suffer **revenue losses** and there is the **risk of competition** to attract MNE Groups by offering them further tax benefits. There is therefore a problem for the proper functioning of the Internal Market.

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. 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 evasion** 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 Conclusions of 18 December 2014 cite "an urgent need to advance efforts in the fight against tax avoidance and aggressive tax planning, both at the global and EU levels". Since December 2014, the Commission has quickly launched the first steps towards an EU approach. In the meanwhile the **Organisation for Economic Cooperation and Development** (OECD) has finalized its work in defining the global rules and standards to these ends.

This Directive amending Council Directive 2011/16/EU as part of the Commission's **Anti- Tax Avoidance Package**, addresses the political priority of fighting against tax avoidance and aggressive tax planning. It also responds to the demands from the European Parliament outlined in its resolution of 21 May 2013.

IMPACT ASSESSMENT: no impact assessment was carried out for this proposal given that the proposal is in line with international developments at the level of the OECD and its work on Base Erosion and Profit Shifting (BEPS) where most EU Member States participate.

To provide up-to-date analysis and evidence, a **separate Staff Working Document** accompanying the proposal provides an extensive overview of existing academic work and economic evidence in the field of base erosion and profit shifting.

CONTENT: in order to tackle tax fraud and evasion and aggressive tax planning, the proposal seeks to **amend Directive 2011/16/EU** on administrative cooperation in the field of taxation, as amended by Directive 2014/107/EU and by Council Directive EU 2015/2376 by introducing a specific requirement for the AEOI on country-by-country report.

The main amendments introduced by the proposal are as follows:

Mandatory automatic exchange of information on country-by-country report:

- the Directive requires MNE Groups to provide annually and for each tax jurisdiction in which they do business **certain information** including the amount of revenue, the profit before income tax, the income tax paid and accrued, the number of employees, the stated capital, the retained earnings and the tangible assets. This information will enable the tax authorities to react to harmful tax practices through changes in the legislation or adequate risk assessments and tax audits. Increased transparency should also incentivize MNE Groups to pay their fair share of tax in the country where profits are made
- in order to ensure an appropriate balancing of reporting burden and benefit to tax administrations, only MNE Groups with total consolidated group revenue **equal or higher than EUR 750 000 000**, will be obliged to file the country-by-country report;
- the Directive requires Member States, once they have received the country-by-country report, to share the information with the Member States in which, on the basis of the information in the report, companies of the MNE Group are either resident for tax purposes, or are subject to tax with respect to the business carried out through a permanent establishment.
- **Standard form and practical arrangements**:
- the automatic exchange of information on country-by-country report shall be carried out using the standard form provided in the Annex to the Directive. The Commission shall, by means of implementing acts, adopt **the linguistic arrangements** for that exchange by 31 December 2016;
- information communicated shall be provided by electronic means using the common communication network (CCN) developed by the Union. The Commission shall, by means of implementing acts, adopt the necessary practical arrangements for the upgrading of the CCN network.

Penalties: Member States shall lay down the rules on penalties applicable to infringements of national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented.

BUDGETARY IMPLICATIONS: the impact on expenditure (including human resources) is estimated at EUR 3.79 billion of the proposal on the EU Budget is presented in the financial statement accompanying the proposal, and will be met within available resources.

The costs of the additional IT tools to facilitate the communication of information between Member States would be funded out of the FISCALIS 2020 programme.

Taxation: scope of the mandatory automatic exchange of information in the EU

2016/0010(CNS) - 12/05/2016 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 567 votes to 30, with 53 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.

Parliament approved the Commission proposal subject to the following amendments:

To avoid distortion of competition: Parliament noted in a recital that when Multi National Enterprise (MNE) Groups engage in aggressive tax planning practices that are not available for domestic companies, **small and medium-sized enterprises (SMEs) may be particularly affected** as they usually pay an effective rate of tax that is much closer to statutory rates than MNEs, resulting in distortions to, and malfunctions of, the Internal Market as well as distortion of competition to the detriment of SMEs. To avoid distortion of competition, domestic companies should not face disadvantages due to their size or lack of cross-border trade.

Furthermore, the amended text stressed that it is of vital importance for the Union that tax rules are designed not to **impair growth or investments**, put Union companies at a competitive disadvantage, nor increase the risk of **double taxation** and that they are designed to minimise costs and administrative burdens for companies.

Associate the Commission with the automatic exchange of information: Parliament considered that the Commission should be associated with the automatic exchange of information and access to **country-by-country reports**, as do the national tax authorities, in full respect for confidentiality.

Moreover, the Commission should make use of the country-by-country reports to assess the compliance of Member States with Union State aid rules, as there is also a State aid dimension to unfair tax practices in the field of corporate taxation.

Country-by-country reports: the mandatory automatic exchange of country-by-country reports between Member States and with the Commission should in each case include the communication of a defined set of basic information which should be based on uniform definitions. The automatic exchange of information shall take place as soon as possible.

Parliament stated that the country-by-country report shall contain the following information as regards:

- **public subsidies received**, the value of assets and annual cost of maintaining them, and sales and purchases made by the Group;
- **the future European tax identification number (TIN)** of the Multi National Enterprise (MNE) Group referred to in the Commission's 2012 Action Plan to strengthen the fight against fraud and tax evasion.

In order to enhance transparency for citizens, the Commission shall publish the **country-by-country reports**, based on the information contained in the centralised register of country-by-country reports. In doing so, the Commission shall comply with the provisions on confidentiality.

Evaluation: the Commission shall **submit a yearly consolidated report to the European Parliament and the Council** concerning the Member States' yearly assessments of the effectiveness of the automatic exchange of information, as well as the practical results achieved.

In the event that the Commission's impact assessment on the consequences of public disclosure of country-by-country information determines that there are no negative consequences for Multinational Groups, the Commission shall **promptly propose legislation to make the information publicly available**.

The Commission shall review the effectiveness of this Directive within three years after its entry into force.

Responsibility of Member States: it is stated, in a recital, that Member States should be responsible for enforcing the reporting obligation of the MNEs through, for instance, introducing steps to **penalise MNEs in the event of non-reporting**. Member States should ensure that they maintain or increase the level of human, technical and financial resources dedicated to the automatic exchange of information between tax administrations and to data processing within tax administrations.

Professional secrecy: an amendment stipulated that it should be possible for information not to be exchanged under this Directive where such exchange would lead to the disclosure of a commercial, industrial or professional secret or of a commercial process, or of information the disclosure of which would be contrary to public policy.

Lastly, Parliament stipulated in a recital that regard should be given to the European Parliament's resolution of 25 November 2015 on tax rulings and other measures similar in nature or effect.

Taxation: scope of the mandatory automatic exchange of information in the EU

2016/0010(CNS) - 28/04/2016 - 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 Dariusz ROSATI (EPP, PL) on the proposal for a Council directive amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation.

Associate the Commission with the automatic exchange of information: Members considered that the Commission should be associated with the automatic exchange of information and access to country-by-country reports, as do the national tax authorities, in full respect for confidentiality.

The Commission should also have access to the information exchanged between Member States' tax authorities in order to ensure compliance with the relevant competition rules.

Moreover, **third countries** would be able to obtain the information requested by all Member States; it is stated in this regard that the work of sharing the reports with third countries has already begun under the OECD's Multinational Competent Authority Agreement, and it shall be guaranteed that third countries can get the required information from all Member States.

Scope and conditions of mandatory automatic exchange of information on country-by-country report: the automatic exchange of information shall take place as soon as possible.

Members stated that the country-by-country report shall contain the following information as regards:

- public subsidies received, the value of assets and annual cost of maintaining them, and sales and purchases made by the Group;
- the future European tax identification number (TIN) of the Multi National Enterprise (MNE) Group referred to in the Commission's 2012 Action Plan to strengthen the fight against fraud and tax evasion.

In order to enhance transparency for citizens, the Commission shall publish the **country-by-country reports**, based on the information contained in the centralised register of country-by-country reports. In doing so, the Commission shall comply with the provisions on confidentiality.

Evaluation: the Commission shall **submit a yearly consolidated report to the European Parliament and the Council** concerning the Member States' yearly assessments of the effectiveness of the automatic exchange of information, as well as the practical results achieved.

In the event that the Commission's impact assessment on the consequences of public disclosure of country-by-country information determines that there are no negative consequences for Multinational Groups, the Commission shall **promptly propose legislation to make the information publicly available**.

The Commission shall review the effectiveness of this Directive within three years after its entry into force.

Lastly, Members stipulated in a recital that regard should be given to the European Parliament's resolution of 25 November 2015 on tax rulings and other measures similar in nature or effect.

Taxation: scope of the mandatory automatic exchange of information in the EU

2016/0010(CNS) - 25/05/2016 - Final act

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

LEGISLATIVE ACT: Council Directive (EU) 2016/881 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation.

CONTENT: the Council Directive amends Directive 2011/16/EU on administrative cooperation by introducing into the latter a new article establishing the scope of application and conditions relating to the **mandatory automatic exchange of information regarding country-by-country reporting.**

As multinational enterprise groups (MNE Groups) are active in different countries, they have the possibility of engaging in aggressive tax-planning practices that are not available for domestic companies. **Enhancing transparency for MNE Groups** towards tax authorities is therefore an essential part of tackling base erosion and profit shifting. It could have the effect of giving MNE Groups an incentive to abandon certain practices and pay their fair share of tax in the country where profits are made.

On 19 July 2013 the **Organisation for Economic Development and Cooperation** (OECD) published its Action Plan on Base Erosion and Profit Shifting ('BEPS Action Plan'), which is a major initiative to modify existing international tax rules. The work on Action 13 of the BEPS Action Plan resulted in a **set of standards for providing information** for MNE Groups, including the country-by-country report.

OECD standards must be taken into account when establishing the rules on the country-by-country report.

The main points of the Directive are as follows:

Scope: MNE Groups that are established or operate within the EU, with **total consolidated group revenue equal or higher than EUR 750 000 000,** will be obliged to file the country-by-country report.

The competent authority of a Member State where the country-by-country report was received **must communicate by means of automatic exchange**, the country-by-country report to any other Member State in which, on the basis of the information in the country-by-country report, one or more Constituent Entities of the MNE Group of the Reporting Entity are either resident for tax purposes or subject to tax with respect to the business carried out through a permanent establishment. This communication shall take place within 15 months of the last day of the Fiscal Year of the MNE Group to which the country-by-country report relates.

Exchange of information: the country-by country-report must include:

- for each tax jurisdiction in which the MNE Group carries out its activities, aggregated information on: (i) revenues, (ii) profit (loss) before income tax, (iii) income tax paid (on cash basis); (iv) income tax accrued (current year); (v) stated capital; (vi) accumulated earnings; (vii) number of employees; (viii) tangible assets other than cash and cash equivalents;

- the list of all the Constituent Entities of the MNE Group included in each aggregation per tax jurisdiction, the tax jurisdiction of organisation or incorporation if different from tax jurisdiction of residence, and the nature of the main business activities carried out by the Constituent Entity.

Information communicated between Member States will be used for the purposes of assessing high-level transfer-pricing risks and other risks related to base erosion and profit shifting.

Standard form: the automatic exchange of information on the country-by-country report will be carried out using the standard form provided in Annex III. The information will be provided by electronic means using the common communication network defined in Directive 2011/16/EU (CCN network).

Timetable: the first country-by-country report shall be communicated for the fiscal year of the MNE Group commencing on or after 1 January 2016, which shall take place within 18 months of the last day of that fiscal year.

Penalties: Member States shall lay down the rules on penalties applicable to infringements of national provisions adopted pursuant to the Directive and take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.

ENTRY INTO FORCE: 3.6.2016.

TRANSPOSITION: by 4.6.2017.

APPLICATION: from 5.6.2017.