



# Procedure file

Basic information		
CNS - Consultation procedure Directive	<a href="#">2008/0215(CNS)</a>	Procedure completed
Taxation of savings income in the form of interest payments		
Amending Directive 2003/48/EC <a href="#">2001/0164(CNS)</a>		
Subject		
2.50.02 Savings		
2.70.01 Direct taxation		

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	<b>ECON</b> Economic and Monetary Affairs		22/04/2008
		PSE <a href="#">HAMON Benoît</a>	
European Parliament	Committee for opinion	Rapporteur for opinion	Appointed
	<b>JURI</b> Legal Affairs		19/01/2009
	<b>LIBE</b> Civil Liberties, Justice and Home Affairs	The committee decided not to give an opinion.	
Council of the European Union	Council configuration	Meeting	Date
	<a href="#">Agriculture and Fisheries</a>	<a href="#">3307</a>	24/03/2014
	<a href="#">Economic and Financial Affairs ECOFIN</a>	<a href="#">3302</a>	11/03/2014
	<a href="#">Economic and Financial Affairs ECOFIN</a>	<a href="#">3238</a>	14/05/2013
	<a href="#">Economic and Financial Affairs ECOFIN</a>	<a href="#">3067</a>	14/02/2011
	<a href="#">Economic and Financial Affairs ECOFIN</a>	<a href="#">2990</a>	19/01/2010
	<a href="#">Economic and Financial Affairs ECOFIN</a>	<a href="#">2948</a>	09/06/2009
	<a href="#">Economic and Financial Affairs ECOFIN</a>	<a href="#">2911</a>	02/12/2008
European Commission	Commission DG	Commissioner	
	<a href="#">Taxation and Customs Union</a>	ŠEMETA Algirdas	


Key events			
13/11/2008	Legislative proposal published	<a href="#">COM(2008)0727</a>	Summary
02/12/2008	Resolution/conclusions adopted by Council		
04/12/2008	Committee referral announced in Parliament		
31/03/2009	Vote in committee		Summary

03/04/2009	Committee report tabled for plenary, 1st reading/single reading	<a href="#">A6-0244/2009</a>	
23/04/2009	Debate in Parliament		
24/04/2009	Results of vote in Parliament		
24/04/2009	Decision by Parliament	<a href="#">T6-0325/2009</a>	Summary
09/06/2009	Debate in Council	<a href="#">2948</a>	Summary
19/01/2010	Debate in Council	<a href="#">2990</a>	
14/02/2011	Debate in Council	<a href="#">3067</a>	Summary
14/05/2013	Debate in Council	<a href="#">3238</a>	
11/03/2014	Debate in Council	<a href="#">3302</a>	Summary
24/03/2014	Act adopted by Council after consultation of Parliament		
24/03/2014	End of procedure in Parliament		
15/04/2014	Final act published in Official Journal		

### Technical information

Procedure reference	2008/0215(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Directive
	Amending Directive 2003/48/EC <a href="#">2001/0164(CNS)</a>
Legal basis	Treaty on the Functioning of the EU TFEU 115
Stage reached in procedure	Procedure completed
Committee dossier	ECON/6/69755

### Documentation gateway

Legislative proposal		<a href="#">COM(2008)0727</a>	13/11/2008	EC	Summary
Document attached to the procedure		<a href="#">SEC(2008)2767</a>	13/11/2008	EC	
Document attached to the procedure		<a href="#">SEC(2008)2768</a>	13/11/2008	EC	
Committee draft report		<a href="#">PE418.010</a>	16/12/2008	EP	
Amendments tabled in committee		<a href="#">PE419.936</a>	19/02/2009	EP	
Committee opinion		<a href="#">PE419.959</a>	30/03/2009	EP	
Committee report tabled for plenary, 1st reading/single reading		<a href="#">A6-0244/2009</a>	03/04/2009	EP	
Text adopted by Parliament, 1st reading/single reading		<a href="#">T6-0325/2009</a>	24/04/2009	EP	Summary
Economic and Social Committee: opinion, report		<a href="#">CES0884/2009</a>	13/05/2009	ESC	

Commission response to text adopted in plenary		<a href="#">SP(2009)3507</a>	25/06/2009	EC
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<b>Additional information</b>	
National parliaments	<a href="#">IPEX</a>
European Commission	<a href="#">EUR-Lex</a>

<b>Final act</b>
<a href="#">Directive 2014/48</a> <a href="#">OJ L 111 15.04.2014, p. 0050</a> Summary

## Taxation of savings income in the form of interest payments

**PURPOSE:** to amend Directive 2003/48/EC on taxation of savings income in the form of interest payments.

**PROPOSED ACT:** Council Directive.

**CONTENT:** this proposal is intended to amend Directive 2003/48/EC on taxation of savings income in the form of interest payments (the ?EUSD?), with a view to closing existing loopholes and eliminating tax evasion. Experience has shown that the directive can be circumvented. Since 2005, the Savings Directive has ensured that paying agents either report interest income received by taxpayers resident in other EU Member States or levy a withholding tax on the interest income received.

The Commission proposal seeks to extend the scope of the Directive, so as to ensure better the taxation of interest payments which are channelled through intermediate tax-exempted structures. It also proposes to extend the scope of the Directive to income equivalent to interest obtained through investments in some innovative financial products as well as in certain life insurances products. Moreover, simplification of the technical operation of the Directive should lead to a more user friendly system and more efficient implementation.

Determining the effective beneficial owner of interest payments: the first review of the Directive has shown that, at present, it is relatively easy for individuals to circumvent the rules by using interposed legal persons or arrangements (like certain foundations or trusts) which are not taxed on their income.

The Commission proposes the following :

- for interest payments made by paying agents established in the EU to certain intermediate structures established outside the EU, the Commission proposes that those paying agents subject to anti-money laundering obligations are required to use the information already available to them within this framework to establish the actual beneficial owner of these payments. When the latter is an individual resident in another EU Member State, the paying agent would consider the payment concerned as directly made to this individual.
- for interest payments made to certain untaxed intermediate structures established within the EU, including some non-charitable trusts and foundations, those structures will be always obliged to apply the provisions of the Directive (exchange of information or withholding tax) upon receipt of any interest payment from any upstream economic operator wherever established.

Extending the scope to income equivalent to interest payments: the EUSD can also be circumvented by using innovative financial vehicles instead of a classical savings account in a bank.

Therefore, the Commission proposes extending the scope of the Directive to income from:

- securities where the investor receives: a) a return on capital whose conditions are defined at the issuing date; and b) a guarantee where, at the end of the term of the securities, at least 95% of the capital invested will be reimbursed. All securities meeting these two conditions will be included in the scope, regardless of whether the underlying assets behind those securities include debt claims or not. Typical examples are structured products like those "index linked certificates" whose performance is defined ex ante as being a function of the possible positive trend of a market indicator or to the increase in value of a basket of underlying securities, whilst the possible negative results of the market indicator or of the underlying securities has no or minimal influence on the right for the holder to be reimbursed the capital invested;
- those life insurance contracts whose positive performance (beyond the guarantee of reimbursement of the capital invested) is strictly linked to income from debt claims or equivalent income and where the mortality or longevity risk covered under the contract is merely ancillary (lower than 5% of capital insured as an average over the duration of the contract).

**Administrative burden:** the proposal brings a major reduction of administrative burden for individuals who opt for exchange of information in Austria, Belgium or Luxembourg where they receive interest payments and therefore claim exemption from withholding tax. The proposal asks that the paying agent will directly report information to the tax authorities, at the request of the individual who authorize it, in place of levying the withholding tax.

**Income from investment funds:** currently, income obtained by individuals through some investment funds (mainly investment funds subject to the UCITS Directive) is already within the scope of the Directive. The Commission proposes to extend the scope of the Directive to all investment funds or schemes, wherever located and independent of their legal form and regulatory regime, having invested in debt claims or other equivalent securities. For this purpose, all the current references to the UCITS Directive for investment funds established in the EU will be replaced by a reference to the registration of the fund in accordance with the domestic rules of any of the Member States. For investment funds established outside the EU, a broad definition of investment funds or schemes based on concepts prevailing at OECD level will be used.

Technical improvements: the proposal contains provisions which are beneficial for the activity of paying agents, such as a clearer treatment of investment funds established in a country different from the one of the paying agent and a clearer guidance for Member States in order to avoid possible cases of duplication of paying agent responsibilities.

Annex: the introduction of the new annex (indicative compliance list) will bring more clarity and legal certainty to paying agents. Annex 1 is based on an analysis of the tax regime of the specific entity or legal arrangement in the corresponding named jurisdiction mentioned. Only those entities and legal arrangements to which EU resident individuals can have access as beneficial owners and which are not subject to effective taxation on their income in that jurisdiction are mentioned in the list. Its purpose is to facilitate the job of the paying agents in executing the application of the Directive. Appropriate procedures are provided to amend the list if the information contained in it needs to be updated.

Money from foundations : the effect of the proposal is as follows :

- if the trust or foundation (or other equivalent entity or arrangement) is established outside the EU in a jurisdiction listed in annex I of the Directive (because it is untaxed), the Commission proposes that the paying agents established in the Union and subject to anti-money laundering obligations would be required to use the information already available to them within this framework to determine the effective beneficial owner of these payments. When the latter is an individual resident in another EU Member State, the paying agent would consider the payment concerned as directly made to this individual, without taking into account the formal transit of the payment through the intermediate structure. For instance, if a bank established within the EU pays interest to a trust established in Switzerland or in Hong-Kong and if it knows, under the anti-money-laundering provisions, that the effective beneficial owner of the trust is an individual resident in the EU, the bank will be required to apply the provisions of the Directive at the time of the payment to the trust as if this payment was directly made to this individual.
- if the trust or foundation (or other equivalent entity or arrangement) is established within the EU and is not taxed on its income under the general rules for direct taxation applicable in the Member State, the provisions of the Directive (exchange of information or withholding tax) should apply upon receipt of the payment by this entity. To facilitate the task of economic operators, the Commission has established a first list of such entities or arrangements established in the EU. This list is to be found in annex III of the directive and will be completed and updated with the assistance of Member States through comitology. For instance, if a trust established within the EU receives interests from an economic operator (bank, financial institution, independent professional) wherever established, it will be obliged to apply the provisions of the Directive (exchange of information or withholding tax) upon receipt of the payment, regardless of the actual distribution of any sum to the individual beneficial owner.

## Taxation of savings income in the form of interest payments

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The Committee on Economic and Monetary Affairs adopted the report by Benoît HAMON (PES, FR) amending, under the consultation procedure, the proposal for a Council directive amending Directive 2003/48/EC on taxation of savings income in the form of interest payments.

The main amendments are as follows:

Aim: the amended text states that the Directive aims to:

-enable savings income in the form of interest payments made in one Member State to beneficial owners who are individuals resident for tax purposes in another Member State to be made subject to effective taxation in accordance with the laws of the latter

Member State;

- ensure a minimum of effective taxation of savings income in the form of interest payments made in one Member State to beneficial owners who are individuals resident for tax purposes in another Member State.

Members note that the purpose of the Directive is redefined in the light of the option given to Member States to choose the exchange of information or withholding tax for the payment of interest.

Both economic operators and paying agents have obligations under the Directive.

Definition of beneficial owner: this is slightly amended in the new text.

Definition of paying agent: the committee made some changes and deleted the provision which states the option of being treated as an investment fund for those entities and legal arrangements to whose assets or income no beneficial owner is immediately entitled at the moment of receipt of the payment.

Definition of interest payment: this provision is amended, particularly with regard to the threshold 5% of the biometric risk for life insurance risk.

Transitional periods: the transition period shall end no later than 1 July 2014 or at the end of the first full fiscal year following the later of the dates given below, provided that this is earlier than 1 July 2014, inter alia: the date on which the Council agrees by unanimity that Hong Kong, Singapore and other Countries and territories listed under Annex I are committed to exchange of information upon request as defined in the OECD Model Agreement with respect to interest payments, made by paying agents established within their territory to beneficial owners resident in the territory to which the Directive applies.

Revenue sharing: Member States levying withholding tax shall retain 10% of their revenue and transfer 90% of the revenue to the Member State of residence of the beneficial owner of the interest.

Review: by 31st of December 2010, the Commission shall present a comparative study analysing advantages and weaknesses of both the systems of exchange of information and of the withholding tax so as to assess the objective of effective suppression of fiscal fraud and evasion. That comparative study should take into consideration, in particular, aspects of transparency, respect of fiscal sovereignty of the Member States, fiscal justice and administrative burden attached to any of the two systems.

The Commission shall examine, in particular, the appropriateness of extending the scope to all sources of financial income, including dividends

and capital gains, as well as to payments made to all legal persons

Annex I: the committee extended both the list of jurisdictions concerned as well as that of the legal entities and arrangements. Annex I contains the list of legal forms of entities and legal arrangements to which Article 2(3) applies because of the presence within the territory of specific countries or jurisdictions of their place of effective management.

## Taxation of savings income in the form of interest payments

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The European Parliament adopted by 351 votes to 27 with 20 abstentions a legislative resolution amending, under the consultation procedure, the proposal for a Council directive amending Directive 2003/48/EC on taxation of savings income in the form of interest payments.

The main amendments are as follows:

Aim: the amended text states that the Directive aims to:

- enable savings income in the form of interest payments made in one Member State to beneficial owners who are individuals resident for tax purposes in another Member State to be made subject to effective taxation in accordance with the laws of the latter Member State;
- ensure a minimum of effective taxation of savings income in the form of interest payments made in one Member State to beneficial owners who are individuals resident for tax purposes in another Member State.

The purpose of the Directive is redefined in the light of the option given to Member States to choose the exchange of information or withholding tax for the payment of interest.

Both economic operators and paying agents have obligations under the Directive.

Definition of beneficial owner: this is slightly amended in the new text.

Definition of interest payment: the general principle under this Directive is that "interest payment" means any revenue arising from the investment of capital where the return is fixed ex ante and the substance of the return arising from a transaction is similar to any interest income. In order to ensure a consistent interpretation of this provision throughout the Member States, it shall be complemented by a list of the financial products concerned. The Commission shall adopt this list in accordance with the regulatory procedure.

Further amendments are made to the provision on interest payment, particularly with regard to insurance contracts structured products and dividends.

Transitional periods: the transition period shall end no later than 1 July 2014 or at the end of the first full fiscal year following the later of the dates given below, provided that this is earlier than 1 July 2014:

- the date of entry into force of the latest agreement between the EC, following a unanimous decision of the Council, and Switzerland, Liechtenstein, San Marino, Monaco and Andorra, providing for the exchange of information upon request as defined in the OECD Model Agreement' with respect to interest payments, as defined in this Directive, made by paying agents established within their respective territories to beneficial owners resident in the territory to which the Directive applies, in addition to the simultaneous application by those same countries of a withholding tax on such payments;
- the date on which the Council agrees by unanimity that the United States of America is committed to exchange of information upon request as defined in the OECD Model Agreement with respect to interest payments, as defined in this Directive;
- the date on which the Council agrees by unanimity that Hong Kong, Singapore and other countries and territories listed under Annex I are committed to exchanging information upon request as defined in the OECD Model Agreement with respect to interest payments, as above.

Parliament also noted that so long as Hong Kong, Singapore and other countries and territories listed in Annex I do not all apply measures identical or equivalent to those provided for in this Directive, capital flight towards those countries and territories could imperil the attainment of the objectives of the Directive. It is therefore necessary for the Community to take appropriate action in order to ensure that an agreement is reached with those countries and territories under which they will apply such measures

Revenue sharing: Member States levying withholding tax shall retain 10% of their revenue and transfer 90% of the revenue to the Member State of residence of the beneficial owner of the interest.

Review: by 31st of December 2010, the Commission shall present a comparative study analysing advantages and weaknesses of both the systems of exchange of information and of the withholding tax so as to assess the objective of effective suppression of fiscal fraud and evasion. That comparative study should take into consideration, in particular, aspects of transparency, respect of fiscal sovereignty of the Member States, fiscal justice and administrative burden attached to any of the two systems.

The Commission shall examine, in particular, the appropriateness of extending the scope to all sources of financial income, including dividends and capital gains, as well as to payments made to all legal persons

Annex I: Parliament extended both the list of jurisdictions concerned as well as that of the legal entities and arrangements. Annex I contains the list of legal forms of entities and legal arrangements to which Article 2(3) applies because of the presence within the territory of specific countries or jurisdictions of their place of effective management.

## Taxation of savings income in the form of interest payments

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The Council took note of a progress report on a draft directive concerning taxation on interest payments.

## Taxation of savings income in the form of interest payments

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The Council held an orientation debate on:

- a draft directive aimed at strengthening the provisions of directive 2003/48/EC on the taxation of savings interest;
- a [draft anti-fraud and tax information exchange agreement with Liechtenstein](#);
- a draft decision authorising the Commission to negotiate anti-fraud and tax information exchange agreements with Andorra, Monaco and San Marino, as well as a new agreement with Switzerland.

The presidency intends, in the light of comments made by ministers, to take work forward in the Council's high-level working group on taxation so as to enable the Council to make progress as soon as possible.

As regards taxation of savings interest, the proposed amendments to directive 2003/48/EC are intended to reflect developments in savings products and in investor behaviour since it was first applied in 2005. They set out to enlarge the directive's scope to include all savings income, as well as products that generate interest or equivalent income, and to avoid circumvention of the directive.

Directive 2003/48/EC requires the member states to exchange information so as to enable interest payments made in one member state to residents of other Member States to be taxed in accordance with the laws of the state of tax residence. For a transitional period, Luxembourg and Austria impose instead a withholding tax on interest paid to savers resident in other Member States.

Equivalent measures to those provided for in the directive are applied by Andorra, Liechtenstein, Monaco, San Marino and Switzerland, under agreements concluded with the EU, and in ten dependent and associated territories of the Netherlands and the United Kingdom (Guernsey, Jersey, the Isle of Man and seven Caribbean territories), under bilateral agreements concluded with each of the member states.

The draft agreement with Liechtenstein covers fraud as relates to both direct and indirect taxation. It uses a definition of fraud that covers both natural and legal persons (e.g. companies) and includes not just false documents and false tax returns, but also the submission of incomplete tax returns. The text provides for cooperation between the parties through the exchange of information that is foreseeably relevant to tax administrations. It allows the parties to trigger administrative assistance that cannot be refused on the sole grounds that the information requested is held by a bank or other financial institution, and legal assistance for acts that are punishable under the laws of the parties. Implementing measures, such as seizure, are foreseen for acts that are punishable by prison sentence by both parties.

The draft agreement with Liechtenstein may later serve as a model for the negotiation of agreements with Andorra, Monaco and San Marino, as well as the negotiation of a new agreement with Switzerland that would extend existing provisions on indirect taxation to also cover direct taxation.

## Taxation of savings income in the form of interest payments

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The Council discussed strengthening EU rules on the exchange of information concerning the taxation of savings income.

The amendments to directive 2003/48/EC are intended to prevent its circumvention, reflecting changes to savings products and developments in investor behaviour since it came into force in 2005. In particular, they aim to:

- enlarge the scope of directive 2003/48/EC to include life insurance contracts, as well as a broader coverage of investment funds;
- require tax authorities, using a "look-through" approach, to take steps to identify who is benefiting from interest payments.

The European Council in December called for the amending directive to be adopted by March, given its significance in combating tax fraud and tax evasion.

Once the European Council has politically endorsed this on 20 and 21 March, the formal adoption of the directive will take place at the Council formation meeting following the European Council.

## Taxation of savings income in the form of interest payments

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**PURPOSE:** to ensure effective taxation of savings income in the form of cross-border interest payments which are generally included in all Member States in the taxable income of resident individuals.

**LEGISLATIVE ACT:** Council Directive 2014/48/EU amending Directive 2003/48/EC on taxation of savings income in the form of interest payments.

**CONTENT:** Directive 2003/48/EC requires the Member States to exchange information automatically so as to enable interest payments made in one Member State to residents of other Member States to be taxed in accordance with the laws of the state of tax residence.

The amending Directive strengthens EU rules on the exchange of information on savings income, aimed at enabling the member states to better clamp down on tax fraud and tax evasion.

**Scope:** the Directive enlarges the scope of directive 2003/48/EC, reflecting changes to savings products and developments in investor behaviour since it came into force in 2005.

The scope now covers new types of savings income and products that generate interest or equivalent income. It includes life insurance contracts containing a guarantee of income return or whose performance is at more than 40 % linked to income from debt claims or equivalent income covered by Directive 2003/48/EC should be included in the scope of that Directive.

The text also provides for a broader cover of investment funds. As regards investment funds not established in a Member State of the European Union or of the European Economic Area, it is necessary to make clear that the Directive encompasses interest and equivalent income from all those funds, irrespective of their legal form and of how they are placed with investors.

**Beneficial owners:** the Directive introduces measures to improve the quality of information used to establish the identity and residence of beneficial owners. In this regard, the paying agent should use both date and place of birth and, if any, the tax identification numbers or equivalent allocated by Member States.

Paying agents should apply a look-through approach to payments made to certain entities or legal arrangements established or having their place of effective management in certain countries or territories where Directive 2003/48/EC or measures to the same or equivalent effect do not apply.

In order to reduce the administrative burden on paying agents, an indicative list of entities and legal arrangements in the third countries and jurisdictions concerned by this measure is set out in an Annex.

New provisions seek to avoid the circumvention of Directive 2003/48/EC through artificial channelling of an interest payment via an economic operator established outside the Union.

Each Member State allocating tax identification numbers or equivalent shall, by 31 December 2014, inform the Commission about the structure and format of these numbers as well as of the official documentation containing information on allocated identification numbers.

Definition of interest payment: the Directive clarifies the definition of interest payment to ensure that not only direct investments in debt claims but also indirect investments are taken into account in the calculation of the percentage of the assets invested in such instruments.

Furthermore, in order to facilitate the application by paying agents of the Directive to income arising from undertakings for collective investment established in other countries, it should be made clear that the calculation of the composition of the assets for the treatment of certain income of such undertakings is governed by the rules laid down in the Member State of the European Union or of the European Economic Area in which they are established.

Report: the Commission shall report to the Council every three years on the operation of this Directive on the basis of the statistics, which shall be provided by each Member State to the Commission.

ENTRY INTO FORCE: 15.04.2014.

TRANSPOSITION: 01.01.2016 at the latest.