

Procedure file

| Basic information | | | |
|---|---|--|-------------------------|
| CNS - Consultation procedure Directive | 2017/0138(CNS) | Procedure completed | |
| Taxation: mandatory automatic exchange of information in relation to reportable cross-border arrangements | | | |
| Amending Directive 2011/16/EU 2009/0004(CNS) | | | |
| Key players | | | |
| European Parliament | Committee responsible  ECON Economic and Monetary Affairs | Rapporteur  MAUREL Emmanuel | Appointed 06/07/2017 |
| | | Shadow rapporteur  MARTUSCIELLO Fulvio | |
| | |  RUOHONEN-LERNER Pirkko | |
| | |  WIERINCK Lieve | |
| | |  SCOTT CATO Molly | |
| | |  ENF KAPPEL Barbara | |
| Committee for opinion | | | |
| |  Budgetary Control | Rapporteur for opinion The committee decided not to give an opinion. | Appointed |
| |  Legal Affairs | The committee decided not to give an opinion. | |
| |  Civil Liberties, Justice and Home Affairs | The committee decided not to give an opinion. | |
| Council of the European Union European Commission | Commission DG Taxation and Customs Union | Commissioner MOSCOVICI Pierre | |
| Key events | | | |
| 21/06/2017 | Legislative proposal published | COM(2017)0335 | Summary |

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|------------|---|------------------------------|---------|
| 06/07/2017 | Committee referral announced in Parliament | | |
| 24/01/2018 | Vote in committee | | |
| 31/01/2018 | Committee report tabled for plenary, 1st reading/single reading | A8-0016/2018 | Summary |
| 01/03/2018 | Results of vote in Parliament | | |
| 01/03/2018 | Debate in Parliament | | |
| 01/03/2018 | Decision by Parliament | T8-0050/2018 | Summary |
| 25/05/2018 | Act adopted by Council after consultation of Parliament | | |
| 25/05/2018 | End of procedure in Parliament | | |
| 05/06/2018 | Final act published in Official Journal | | |

Technical information

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| Procedure reference | 2017/0138(CNS) |
| Procedure type | CNS - Consultation procedure |
| Procedure subtype | Legislation |
| Legislative instrument | Directive |
| | Amending Directive 2011/16/EU 2009/0004(CNS) |
| Legal basis | Treaty on the Functioning of the EU TFEU 113; Treaty on the Functioning of the EU TFEU 115 |
| Other legal basis | Rules of Procedure EP 159 |
| Stage reached in procedure | Procedure completed |
| Committee dossier | ECON/8/10283 |

Documentation gateway

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|---|-------------------------------|------------|-----|---------|
| Legislative proposal | COM(2017)0335 | 21/06/2017 | EC | Summary |
| Document attached to the procedure | SWD(2017)0236 | 21/06/2017 | EC | |
| Document attached to the procedure | SWD(2017)0237 | 21/06/2017 | EC | |
| Committee draft report | PE613.436 | 22/11/2017 | EP | |
| Amendments tabled in committee | PE615.388 | 18/12/2017 | EP | |
| Economic and Social Committee: opinion, report | CES3232/2017 | 18/01/2018 | ESC | |
| Committee report tabled for plenary, 1st reading/single reading | A8-0016/2018 | 31/01/2018 | EP | Summary |
| Text adopted by Parliament, 1st reading/single reading | T8-0050/2018 | 01/03/2018 | EP | Summary |
| Commission response to text adopted in plenary | SP(2018)178 | 24/04/2018 | EC | |

Final act

[Directive 2018/822](#)

Taxation: mandatory automatic exchange of information in relation to reportable cross-border arrangements

PURPOSE: to strengthen the Union's fiscal transparency framework by introducing new rules for intermediaries in tax planning.

PROPOSED ACT: Council Directive.

ROLE OF THE EUROPEAN PARLIAMENT: the Council shall adopt the act after consultation of the European Parliament but without being obliged to follow the opinion of the European Parliament.

BACKGROUND: improving transparency, particularly through the exchange of information between tax administrations, is one of the main pillars of the Commission's strategy to combat tax avoidance and evasion.

Tax planning structures have become ever-more sophisticated. They consist of arrangements which develop across various jurisdictions and shift taxable profits towards beneficial tax regimes or have the effect of reducing the taxpayer's overall tax bill.

Recent revelations, such as the Panama Papers, have highlighted how certain intermediaries actively assist clients to evade tax, usually through complex cross-border arrangements often involving often involving a company located in a jurisdiction which is low tax or non-transparent.

[Council Directive 2014/107/EU](#), amending [Directive 2011/16/EU](#) on administrative cooperation between tax authorities within the Union introduced a common reporting standard (CRS) for financial account information within the Union.

The standard that was developed within the OECD Global Forum prescribes for the automatic exchange of information on financial accounts held by non-tax residents and establishes a framework for this exchange worldwide.

The Commission considers it crucial that information which may escape from the scope of this Directive be captured through placing an obligation on intermediaries to report on potentially aggressive tax planning arrangements.

The aim is to increase transparency and access to the right information at an early stage, as this should allow the authorities to improve the speed and accuracy of their risk assessment and make timely and informed decisions on how to protect their tax revenues.

IMPACT ASSESSMENT: the preferred option is the use of an EU Directive (binding instrument) requiring Member States to introduce a mandatory disclosure regime on potentially aggressive tax planning regime combined with exchange of information.

CONTENT: the proposal amends Directive 2011/16/EU on administrative cooperation in the field of taxation in order to provide for the mandatory disclosure of potentially aggressive tax planning arrangements and to extend the scope of the automatic exchange of information between tax authorities to include such arrangements.

Communication and automatic exchange of information: the proposal obliges intermediaries (e.g. tax advisors, accountants, banks, lawyers) who design or promote tax planning arrangements that have a cross-border element to provide information to tax authorities.

The disclosed information shall be exchanged automatically amongst national tax authorities. In practice, the rules propose that the exchange is carried out through submitting the disclosed arrangements to a central directory which all Member States have access to. The Commission will also have limited access to the exchanged information.

Regarding the operational aspects of the mandatory automatic exchange of information, the proposed Directive refers to the mechanism introduced by [Council Directive \(EU\) 2015/2376](#), i.e. common communication network (CCN). This will serve as a common framework for the exchanges and for this purpose its scope will be enlarged.

Burden of disclosure: the obligation of disclosure concerns those persons (i.e. natural or legal persons or entities without legal personality) who are identified as intermediaries.

The obligation to report a cross-border scheme shall be borne by the taxpayer (company or individuals) using the scheme: (i) when the intermediary providing the cross-border scheme is not based in the EU, or where the intermediary is bound by professional privilege or secrecy rules; (ii) when it is developed by in-house tax consultants or lawyers.

List of hallmarks: the proposal includes a compilation of the features and elements of transactions that present a strong indication of tax avoidance or abuse. These features and elements are referred to as 'hallmarks' and it suffices that an arrangement fall within the scope of one of those to be treated as reportable to the tax authorities. Intermediaries must make this report to their tax authorities within five days of giving such an arrangement to their client.

The subsequent automatic exchange of information on these arrangements shall happen every quarter of a year.

Penalties: Member States shall lay down penalties against the violation of national rules that implement this Directive and ensure that these penalties actually apply in practice, that they are proportionate and have a dissuasive effect.

BUDGETARY IMPACT: the impact on expenditure is estimated at EUR 0.686 million over five years.

DELEGATED ACTS: the proposal contains provisions empowering the Commission to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the EU.

Taxation: mandatory automatic exchange of information in relation to reportable cross-border

arrangements

The Committee on Economic and Monetary Affairs adopted, following the consultation procedure, a report by Emmanuel MAUREL (S&D, FR) on the proposal for a Council Directive amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements.

The committee recommended that the European Parliament approve the Commission proposal subject to the following amendments:

Objectives of the Directive: Members pointed out that the Directive shall aim to significantly limit the catastrophic consequences of tax evasion and tax avoidance on the public accounts and to improve the functioning of the internal market through discouraging the use of cross-border aggressive tax planning arrangements.

An amendment stressed that the automatic exchange of information between tax administrations, and ensuring coordination with financial intelligence units dealing with money-laundering and terrorist financing, are crucial in order to provide these authorities with the necessary information to enable them to take action where they observe aggressive tax practices.

Automatic and mandatory exchange of information on cross-border arrangements: the proposal obliges each Member State to take the necessary measures to ensure that intermediaries provide information to the relevant tax authorities on reported cross-border arrangements.

Members have suggested that while conducting statutory audits of statements of their clients, auditors shall be subject to identification and disclosure obligations regarding potential breaches of the audited entity or its intermediaries of the identification and disclosure obligations which the auditor has become aware. Each Member State shall take the necessary measures to require auditors to file information with the competent authorities on such breaches within 10 working days, beginning on the day after the publication of their audits reports.

Each Member State may, where appropriate, take the necessary measures to give intermediaries the right to a waiver from filing information on a reportable cross-border arrangement or series of such arrangements where they are entitled to a legal professional privilege under the national law of that Member State. In such circumstances, the obligation to file information on such an arrangement or series of arrangements shall be the responsibility of the taxpayer and intermediaries shall inform in writing taxpayers of this responsibility due to the privilege, keeping an acknowledgment of receipt signed by the taxpayer

The taxpayer shall report the information on the reportable cross-border arrangement or series of arrangements to the competent authorities within 10 working days.

Each Member State shall take the measures necessary to assess the tax arrangements disclosed through the exchange of information provided for by this Directive, as well as make available to their tax authorities the resources required.

Reporting formats shall be succinct and easy to use so as not to hinder concrete action against reported practices.

Commission access to information: the Commission shall be able to access relevant information so that it can monitor the proper functioning of this Directive and carry out its responsibilities under competition policies.

Lastly, in order to enhance legal certainty for intermediaries and taxpayers, the Commission shall publish a list of the reported cross-border arrangements that could potentially be used for tax avoidance purposes, without making any reference to the intermediary or taxpayer.

Penalties: appropriate penalties should be imposed to prevent and suppress potentially aggressive cross-border tax planning arrangements. The exchange of information between tax authorities regarding the imposition of penalties and situations where the Member State has refrained from imposing penalties should also be automatic.

Member States shall submit to the Commission and make publicly available a list of intermediaries and taxpayers on whom penalties have been imposed under this Directive, including names, nationalities and residences.

Inclusion of a new measure: every two years, the Commission shall publish a draft update of the list of hallmarks that define aggressive tax planning to include any new or modified tax evasion and tax avoidance arrangements that will have been identified since the previous update was published and should be brought into force within four months of the publication of the draft update.

Taxation: mandatory automatic exchange of information in relation to reportable cross-border arrangements

The European Parliament adopted by 541 votes to 33, with 61 abstentions, following the consultation procedure, a 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 in relation to reportable cross-border arrangements.

Parliament approved the Commission proposal subject to the following amendments:

Objectives of the Directive: Parliament considered that it is key not to compromise the principle of tax equality in a context where the gap between corporate tax rates in the Member States and between Member States is widening. It stated that the Directive shall aim to significantly limit the catastrophic consequences of tax evasion and tax avoidance on the public accounts and to improve the functioning of the internal market through discouraging the use of cross-border aggressive tax planning arrangements.

Members also stressed the urgency of a better exchange of information on tax avoidance arrangements, given the various easy options that the use of intellectual property rights give for the artificial transfer of profits.

Automatic and mandatory exchange of information on cross-border arrangements: the proposal obliges each Member State to take the necessary measures to ensure that intermediaries provide information to the relevant tax authorities on reported cross-border arrangements.

Members have suggested that while conducting statutory audits of statements of their clients, auditors shall be subject to identification and disclosure obligations regarding potential breaches of the audited entity or its intermediaries of the identification and disclosure obligations which the auditor has become aware. Each Member State shall take the necessary measures to require auditors to file information with the competent authorities on such breaches within 10 working days, beginning on the day after the publication of their audits reports.

Each Member State may, where appropriate, take the necessary measures to give intermediaries the right to a waiver from filing information on a reportable cross-border arrangement or series of such arrangements where they are entitled to a legal professional privilege under the national law of that Member State. In such circumstances, the obligation to file information on such an arrangement or series of arrangements shall be the responsibility of the taxpayer and intermediaries shall inform in writing taxpayers of this responsibility due to the privilege, keeping an acknowledgment of receipt signed by the taxpayer. The taxpayer shall report the information on the reportable cross-border arrangement or series of arrangements to the competent authorities within 10 working days.

Each Member State shall take the necessary measures to require intermediaries, auditors and taxpayers to file information on reportable cross-border arrangements that are active on the date of entry into force of this Directive and those that will enter into force thereafter.

Reporting formats shall be succinct and easy to use so as not to hinder concrete action against reported practices.

Commission access to information: the Commission shall be able to access relevant information so that it can monitor the proper functioning of this Directive and carry out its responsibilities under competition policies.

In order to enhance legal certainty for intermediaries and taxpayers, the Commission shall publish a list of the reported cross-border arrangements that could potentially be used for tax avoidance purposes, without making any reference to the intermediary or taxpayer.

Each year, Member States shall submit to the Commission a list of the cross-border arrangements that are regarded by the relevant tax authority as being compliant with this Directive.

Penalties: appropriate penalties should be imposed to prevent and suppress potentially aggressive cross-border tax planning arrangements. The exchange of information between tax authorities regarding the imposition of penalties and situations where the Member State has refrained from imposing penalties should also be automatic.

Member States shall submit to the Commission and make publicly available a list of intermediaries and taxpayers on whom penalties have been imposed under this Directive, including names, nationalities and residences.

Inclusion of a new measure: every two years, the Commission shall publish a draft update of the list of hallmarks that define aggressive tax planning to include any new or modified tax evasion and tax avoidance arrangements that will have been identified since the previous update was published and should be brought into force within four months of the publication of the draft update.

Taxation: mandatory automatic exchange of information in relation to reportable cross-border arrangements

PURPOSE: to improve the functioning of the internal market by discouraging the use of aggressive cross-border tax planning arrangements.

LEGISLATIVE ACT: Council Directive (EU) 2018/822 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements.

CONTENT: this Directive amends [Directive 2011/16/EU](#) on administrative cooperation in the field of taxation in order to provide for the mandatory disclosure of potentially aggressive tax planning arrangements and to extend the scope of the automatic exchange of information between tax authorities to include such arrangements.

Some financial intermediaries and other tax advisory service providers appear to have actively assisted their clients in concealing capital abroad. Reporting on potentially aggressive cross-border tax planning arrangements will help to detect the risks of tax evasion at an earlier stage and to take measures to remedy deficiencies to avoid revenue losses.

Communication and automatic exchange of information: the revised Directive obliges intermediaries (e.g. tax advisors, accountants, banks, lawyers) who design or promote tax planning arrangements that have a cross-border element to provide information to tax authorities.

Each Member State shall take the necessary measures to require intermediaries to file information that is within their knowledge, possession or control on reportable cross-border arrangements with the competent authorities within 30 days beginning: (i) on the day after the reportable cross-border arrangement is made available for implementation; or (ii) on the day after the reportable cross-border arrangement is ready for implementation; or (iii) when the first step in the implementation of the reportable cross-border arrangement has been made, whichever occurs first.

To facilitate the work of Member States' administrations, the subsequent automatic exchange of information on such arrangements could take place every quarter.

The information received shall be exchanged automatically through a secure central directory to which all Member States shall have access. The Commission shall also have restricted access to the information exchanged.

Reporting obligation: to ensure the proper functioning of the internal market and to prevent loopholes in the proposed framework of rules, the reporting obligation shall be placed upon all actors that are usually involved in designing, marketing, organising or managing the implementation of a reportable cross-border transaction or a series of such transactions, as well as those who provide assistance or advice. It shall not be ignored either that, in certain cases, the reporting obligation would not be enforceable upon an intermediary due to a legal professional privilege or where there is no intermediary because, for instance, the taxpayer designs and implements a scheme in-house.

List of hallmarks: aggressive tax planning schemes have evolved over the years to become increasingly complex and are subject to constant modification and adjustment. Rather than defining the concept of aggressive tax planning, the Directive sets out in Annex IV a list of features (called hallmarks) of transactions that present a strong indication of tax avoidance or abuse.

Penalties: the Directive leaves it to the Member States to determine the penalties applicable in the event of infringement of national rules transposing the Directive into national law. These penalties must be effective, proportionate and dissuasive.

Member States shall communicate to the Commission a yearly assessment of the effectiveness of the automatic exchange of information as well as the practical results achieved.

ENTRY INTO FORCE: 25.6.2018.

TRANSPOSITION: no later than 31.12.2019.

APPLICATION: from 1.7.2020.