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 (Parliaments 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.