**SPECIAL LEGISLATIVE PROCEDURE - CONSULTATION**

**European Parliament 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**

**1.** **Rapporteur:** Dariusz ROSATI (EPP/PL)

**2.** **EP reference number:** A8-0157/2016 / P8\_TA-PROV(2016)0221

**3.** **Date of adoption of the resolution:** 12 May 2016

**4.** **Subject:** Mandatory automatic exchange of information of Country-by-country reports

**5.** **Interinstitutional reference number:** 2016/0010(CNS)

**6.** **Legal basis:** Articles 113 and 115 of the TFEU

**7.** **Competent Parliamentary Committee:** Committee on Economic and Monetary Affairs (ECON)

**8.** **Commission's position:** The main amendments are related to:

* the public availability of the Country-by-country reports,
* the content of the Country-by-country reports,
* the role of the Commission in the exchange of information,
* the review and assessment of the Directive.

The Commission cannot accept the amendments proposed.

**a)** **Public availability of the Country-by-country reports** (**Amendments** **31** and **37**)

The amendments request the Commission to publish the Country-by-country reports (CBCR).

The Commission's position is that the public availability of the CBCR is addressed by the Commission proposal adopted on 12 April 2016 to amend the Accounting Directive (Directive 2013/34/EU). The public availability of the CBCR should therefore be discussed in the context of the Commission proposal of 12 April, which is based on co-decision.

The current proposal of the Commission deals only with the exchange of information between EU tax authorities. Therefore these amendments are not acceptable for the Commission.

**b)** **Content of the Country-by-country reports** (**Amendments** **23** and **24**)

According to **amendment** **23**, the CBCR should also include information on public subsidies received, the value of assets and annual cost of maintaining them, and sales and purchases. **Amendment** **24** requires that the CBCR should also include the future European tax identification number (TIN) referred to in the Commission's 2012 Action Plan to strengthen the fight against fraud and tax evasion.

The amendments are not acceptable for the Commission. The reason is that they breach the key objective of the proposal, which is to implement into EU law the results of the OECD's Base Erosion and Profit Shifting (BEPS) Action 13 agreed and endorsed by the G20. Departing from it would not be acceptable for the Commission as this would result in creating an EU standard and not transposing what has been agreed and endorsed by the G20. The administrative burden for multinationals would increase significantly if each country enlarges the content of the report.

**c)** **The role of the Commission** (**Amendment** **22**: The CBCR reports should also be shared with the Commission; **Amendments**: **4**, **5**, **9**, **10**, **11**, **15**, **16**, **17**, **18**, **19**, **20**, **26**, **27**, **32**: The Commission should be informed about the exchange of information between national tax authorities.)

These amendments are not acceptable for the Commission. The Commission is not a competent authority and therefore not entitled to receive the information, which should be used by Member States' tax authorities to make risk assessments in the area of transfer pricing, clearly an area the Commission is not competent in. In addition, the Commission is not a tax authority and does not play any role in the administration and enforcement of the domestic tax laws of the Member States. Sharing this set of CBCR information with the Commission would go beyond the OECD agreement, which is based on a confidentiality clause. Finally, the Directive on Administrative Cooperation in Articles 23 and 27 already includes certain reporting requirements for Member States to the Commission and for the Commission to Council and European Parliament (see point d)).

**d)** **The review and assessment** **of the Directive** **and related reporting** (**Amendments** **29**, **30** and **33**)

The Commission considers that the proposed amendments should not be accepted. Article 23 on Evaluation of the Directive on Administrative Cooperation already requires Member States to communicate to the Commission any relevant information necessary for the evaluation of the effectiveness of administrative cooperation as well as a yearly assessment of the effectiveness including practical results achieved. In addition, Article 27 provides that "every five years after 1 January 2013, the Commission shall submit a report on the application of this Directive to the European Parliament and to the Council".

The Commission considers that the Directive adopted by the Council on 25 May strikes a good balance and provides a proportionate solution in this respect. The Commission will monitor the functioning and effectiveness of the Directive and propose changes, if necessary, in due time.

**e)** **Include the CBCR within the categories mentioned in Article 8 (1)** *(Scope and conditions for mandatory Automatic Exchange of information*). (**Amendment** **21**)

This is not acceptable for the Commission. The amendment would not add any new substantive element. It would create confusion as Article 8(1) refers to the period as from 1 January 2014.

**f)** **Designation of a Constituent entity** (**Amendment** **34**)

When the multinational entities' Group opts for designating one Constituent Entity to file the country-by-country report, it should preferably be the one with the highest turnover.

There is no need to include this amendment, as it would provide multinational entities an option that already exists in the proposal. Therefore, the Commission cannot accept the proposed amendment.

**g)** **Tax fraud** (**Amendment** **28**)

The amendment suggests adding reference to "tax fraud" in Article 23 (2).

Such an addition would cause confusion, since the expression "tax evasion" already covers tax fraud.

**9.** **Outlook for amendment of the proposal**: The Commission will not table a modified proposal.

**10.** **Outlook for the adoption of the proposal**: The proposal was adopted by the ECOFIN Council on 25 May 2016.