Opinion of the European Committee of the Regions — tax transparency package

(2015/C 423/14)

Rapporteur:	Hicham IMANE (BE/PES), Member of the Walloon Parliament
Reference documents:	Proposal for a Council directive repealing Council Directive 2003/48/EC
	COM(2015) 129 final
	Proposal for a Council Directive amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation
	COM(2015) 135 final
	Communication from the Commission to the European Parliament and the Council on tax transparency to fight tax evasion and avoidance
	COM(2015) 136 final

I. **RECOMMENDATIONS FOR AMENDMENTS** (COM(2015) 135 final)

Amendment 1

Recital 8

Text proposed by the Commission	*CoR amendment*
(8) Member States should exchange the basic information to be communicated also with the Commission. This would enable the Commission at any point in time to monitor and evaluate the effective application of the automatic exchange of information on advance cross-border rulings and advance pricing arrangements. Such communication will not discharge a Member State from its obligations to notify any State aid ***to the Commission***.	(8) Member States should exchange the basic information to be communicated also with the Commission. This would enable the Commission at any point in time to monitor and evaluate the effective application of the automatic exchange of information on advance cross-border rulings***, rulings designed to reduce the tax base under domestic taxation law based on the structure of a group of companies***, and advance pricing arrangements. Such communication will not discharge a Member State from its obligations to notify ***to the Commission*** any State aid ***relating to company taxation that could constitute a State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union***.

Reason

Legal specification of the scope of the State aid concerned.

Amendment 2

Recital 12

Text proposed by the Commission	*CoR amendment*
(12) In order to enhance the efficient use of resources, facilitate the exchange of information and avoid the need for Member States each to make similar developments to their systems to store information, specific provision should be made for the establishment of a central directory accessible to all Member States and the Commission where Member States ***would*** upload and store information ***instead of exchanging it by email***. The practical arrangements necessary for the establishment of such a directory should be adopted by the Commission in accordance with the procedure referred to in Article 26(2) of Directive 2011/16/EU.	(12) In order to enhance the efficient use of resources, facilitate the exchange of information and avoid the need for Member States each to make similar developments to their systems to store information, specific provision should be made for the establishment of a central directory accessible to all Member States and the Commission where Member States ***will*** upload and store information. The practical arrangements necessary for the establishment of such a directory should be adopted by the Commission in accordance with the procedure referred to in Article 26(2) of Directive 2011/16/EU***, guaranteeing Member States the option of identifying the beneficiary or beneficiaries of the ruling***.

Reason

Uploading and storing relevant information in the central directory should not be presented as optional. Nor is this process incompatible with additional exchange of information by email.

Amendment 3

Article 1, new Article 8a(2)

Text proposed by the Commission	*CoR amendment*
2. The competent authority of a Member State shall also communicate information to the competent authorities of all other Member States as well as to the European Commission on advance cross-border rulings and advance pricing arrangements ***issued within a period beginning 10 years before the entry into force but*** still valid on the date of entry into force of this Directive;	2. The competent authority of a Member State shall also communicate information to the competent authorities of all other Member States as well as to the European Commission on advance cross-border rulings***, rulings designed to reduce the tax base under domestic taxation law based on the structure of a group of companies***, and advance pricing arrangements still valid on the date of entry into force of this Directive. ***This information will also be stored in the central directory.***

Reason

This amendment takes account of the concern expressed by different public authorities that the transmission of all tax rulings issued in the last 10 years but which are not necessarily still valid would constitute an excessive administrative burden.

Amendment 4

Article 1, new Article 8a(3)

Text proposed by the Commission	*CoR amendment*
3. ***Paragraph 1 shall not apply in a case where an advance cross-border ruling exclusively concerns and involves the tax affairs of one or more natural persons.***	

Reason

This proposal to restrict the scope of application looks like a step backwards compared with Directive 2011/16/EU.

Amendment 5

Article 1, new Article 8a(3)(a)

Text proposed by the Commission	*CoR amendment*
	3(a) ***Companies engaging in cross-border transactions which employ more than 250 people or have annual sales of over EUR 50 million or whose balance sheet total exceeds EUR 43 million shall notify the Commission directly of all advance cross-border rulings, rulings designed to reduce the tax base under domestic taxation law based on the structure of a group of companies, and advance transfer pricing arrangements to which all entities of the company are subject in the Member States of the European Union. The Commission shall publish a directory of the information submitted to it by these large multinational companies.***

Reason

Large multinational companies should be subject to special transparency requirements entailing disclosure of advance cross-border rulings and advance cross-border arrangements country-by-country, given that these are the companies most likely to benefit from distortions in competition, and so as to enable customers to hold them accountable for the ethical standards of their tax behaviour.

Amendment 6

Article 1, new Article 8a(4)(b)

Text proposed by the Commission	*CoR amendment*
(b) in respect of the information exchanged pursuant to paragraph 2: before 31 December ***2016***.	(b) in respect of the information exchanged pursuant to paragraph 2: before 31 December ***2015***.

Reason

There is no reason that notifying advance cross-border rulings issued and advance pricing arrangements that are still valid on the date the amended directive enters into effect should be subject to a deadline different from the date by which the Member States must adopt and publish the legal, regulatory and administrative provisions necessary to comply with the amended Directive (see Article 2 of the proposal for a Directive).

Amendment 7

Article 1, new Article 8a(5)(f)

Text proposed by the Commission	*CoR amendment*
	(f) as soon as it is available, the European tax identification number (TIN) as outlined in the Commission's action plan on the fight against tax fraud and tax evasion of 2012.

Amendment 8

Article 1, new Article 8a(6)

Text proposed by the Commission	*CoR amendment*
6. To facilitate the exchange the Commission shall adopt any measures and practical arrangements necessary for the implementation of this Article, including measures to standardise the communication of the information set out in paragraph 5 of this Article, as part of the procedure for establishing the standard form provided in Article 20(5).	6. To facilitate the exchange the Commission shall adopt any measures and practical arrangements necessary for the implementation of this Article, including measures to standardise the communication of the information set out in paragraph 5 of this Article, as part of the procedure for establishing the standard form provided in Article 20(5). ***In Member States where decentralised territorial or administrative subdivisions hold tax powers, the Commission shall provide assistance to Member States to ensure that they fulfil their responsibility to provide training and support to such subdivisions.***

Reason

The transparency requirements laid down by the proposed Directive can also be applied to territorial or administrative subdivisions. Even though the Member States are responsible for providing training and support to these subdivisions, the Commission must ensure that its legislative proposals have practical effect.

Amendment 9

Article 1, new Article 8a(8)

Text proposed by the Commission	*CoR amendment*
8. Member States may, in accordance with Article 5, request additional information, including the full text of an advance cross-border ruling or an advance pricing arrangement, from the Member State which issued it.	8. Member States — ***and, where necessary, their territorial or administrative subdivisions, including local authorities*** — may, in accordance with Article 5, request additional information, including the full text of an advance cross-border ruling or an advance pricing arrangement, from the Member State which issued it.

Reason

The transparency requirements provided for in the proposal for a Directive apply not only to the central tax authorities of the Member States, but also to territorial or administrative subdivisions, including local authorities ([1]). It must therefore also be possible for these bodies to request such additional information where necessary.

Amendment 10

Article 1, new Article 8a(10)

Text proposed by the Commission	*CoR amendment*
	10. The Commission must examine all sanctions to be established in instances of refusal or omission of information exchange.

II. **POLICY RECOMMENDATIONS**

THE EUROPEAN COMMITTEE OF THE REGIONS

1. welcomes the Commission's proposals, which mark a significant milestone in the European Union's response to the realisation that tax evasion and avoidance represent forgone tax receipts of an estimated one trillion euros annually for the EU, bearing in mind that tax revenue represents some 90 % of total public revenues. This loss of revenue seriously jeopardises the efficiency and equity of EU taxation systems. It increases the tax burden on all individuals and companies and effectively reduces the public funding available for public and private investment; the resulting distortions in competition which influence the choice of business location undermine the EU's objective of economic, social and territorial cohesion;

2. therefore supports the Commission's proposal to widen the scope of application of Directive 2011/16/EU with respect to automatic and mandatory exchange of information on taxation so as to include information on advance cross-border rulings, rulings intended to reduce the tax base under domestic tax law based on the structure of a group of companies, and advance transfer pricing arrangements, given that these are used by certain companies with transnational operations to establish structures that result in an erosion of the tax base in the Member States and thus undermine the efficiency of the internal market;

3. points out that the package presented by the Commission does not condemn the practice of tax rulings: such procedures are legal in 22 EU Member States and a company locating in a given national territory has legitimate reasons for checking in advance the amount of tax to which it will be liable. However, opaque arrangements should not be allowed to cause distortions of competition and fiscal erosion that would decrease total public revenues in Europe;

4. emphasises that the transparency requirements provided for in the proposal for a Directive apply not just to Member States' central tax authorities but also to territorial or administrative subdivisions, including local authorities. It therefore seems reasonable that these bodies should also be allowed to issue requests for information and, given the limited resources at their disposal, that the Commission should be able where necessary to provide them with assistance and training;

([1]) Article 2 of Directive 2011/16/EU.

5. wonders why the Commission proposal does not include specific penalty mechanisms for Member States that fail to comply with the transparency requirements;

6. believes that the Directive amending Directive 2011/16/EU would provide a new basis on which the Commission could negotiate a BEPS (Base Erosion and Profit Shifting) standard at OECD level that is more ambitious than the draft currently under negotiation;

7. notes that the Commission uses Article 115 TFEU on completing the internal market as the legal basis for its proposal for a Directive amending Directive 2011/16/EU rather than Article 113 TFEU on tax harmonisation. As Article 115 TFEU concerns a sphere of shared competence, the subsidiarity principle applies. In point 2.3 of its explanatory memorandum the Commission nevertheless presents entirely persuasive arguments on the added value of legislating at European Union level and on compliance with the subsidiarity and proportionality principles;

8. observes that, even if the EU does not have direct authority over national tax systems, the Commission can investigate whether certain tax regimes constitute illegal State aid to certain companies by granting selective tax advantages. Given the breadth of ongoing investigations — involving 21 Member States with an average 5-10 of tax rulings per Member State investigated, with another two Member States still to submit their overview of tax rulings issued since 2010 ([2]) — it would seem necessary for the Commission to draw up guidelines on the design of tax rulings as they relate to State aid;

9. agrees that it makes sense to repeal Council Directive 2003/48/EC on taxation of savings income ('Directive on taxation of savings income') given that Council Directive 2014/107/EU amending Council Directive 2011/16/EU covers all financial products, including those governed by the Directive on taxation of savings income, and given the need to avoid two rules being applied in parallel;

10. welcomes the Commission's presentation of an action plan for corporate taxation in June 2015 that will include other measures aimed at combating tax avoidance and harmful tax competition, and in particular its commitment to submit in 2016 a new proposal on introducing a common consolidated corporate tax base (CCCTB), which would be obligatory at least for multinational enterprises. By way of reminder, according to figures provided by the European Commission in 2011, the CCCTB plan would allow companies in the European Union to save EUR 700 million annually in compliance costs and EUR 1,3 billion through consolidation; therefore reiterates it call to the Commission to consult the CoR on its new CCCTB proposal.

Brussels, 14 October 2015.

The President
of the European Committee of the Regions

Markku MARKKULA

([2]) http://europa.eu/rapid/press-release_IP-15-5140_en.htm?locale=en