

Wednesday 10 February 2010

P7_TC1-COD(2009)0105

Position of the European Parliament adopted at first reading on 10 February 2010 with a view to the adoption of Regulation (EU) No .../2010 of the European Parliament and of the Council amending Regulation (EC) No 1080/2006 on the European Regional Development Fund as regards the eligibility of housing interventions in favour of marginalised communities

(As an agreement was reached between Parliament and Council, Parliament's position corresponds to the final legislative act, Regulation (EU) No 437/2010.)

Administrative cooperation in the field of taxation *

P7_TA(2010)0013

European Parliament legislative resolution of 10 February 2010 on the proposal for a Council directive on administrative cooperation in the field of taxation (COM(2009)0029 – C6-0062/2009 – 2009/0004(CNS))

(2010/C 341 E/20)

(Special legislative procedure – Consultation)

The European Parliament,

- having regard to the Commission proposal to the Council (COM(2009)0029),
 - having regard to Articles 93 and 94 of the EC Treaty, pursuant to which the Council consulted Parliament (C6-0062/2009),
 - having regard to the communication from the Commission to the European Parliament and the Council entitled 'Consequences of the entry into force of the Treaty of Lisbon for ongoing interinstitutional decision-making procedures' (COM(2009)0665),
 - having regard to Articles 113 and 115 of the Treaty on the Functioning of the EU,
 - having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs (A7-0006/2010),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 293(2) of the Treaty on the Functioning of the EU;
 3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
 4. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;
 5. Instructs its President to forward its position to the Council, to the Commission and to the national parliaments.

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TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 1**Proposal for a directive
Recital 9 a (new)**

(9a) In order correctly to apply and verify the Member States' different tax regimes, adequate information is needed on taxable activities carried out in other Member States. Of the different options, the automatic exchange of data seems to be the most effective way of communicating the current information required for accurate taxation, in particular in cross-border cases. In order to ensure the effectiveness of such automatic exchange of information, it is necessary to determine the categories and define the fields to which its application is mandatory. In addition, there should be the possibility of establishing a double limit depending on the categories for which information is communicated and/or the amount that triggers the mechanism.

Amendment 2**Proposal for a directive
Recital 10**

(10) The Member States should exchange automatically any information where a Member State has grounds to believe that a failure of compliance with tax laws has been committed or is likely to have been committed in the other Member State, where there is a risk of inappropriate taxation in the other Member State, or where tax has been or may be evaded or avoided for any reason in the other Member State, and especially where there is an artificial transfer of profits between enterprises in different Member States or where such transactions are carried out between enterprises in two Member States through a third country in order to obtain tax advantages.

(10) The Member States should exchange automatically any information, **while ensuring the protection of customer privacy**, where a Member State has grounds to believe that a failure of compliance with tax laws has been committed or is likely to have been committed in the other Member State, where there is a risk of inappropriate taxation in the other Member State, or where tax has been or may be evaded or avoided for any reason in the other Member State, and especially where there is an artificial transfer of profits between enterprises in different Member States or where such transactions are carried out between enterprises in two Member States through a third country in order to obtain tax advantages.

Amendment 3**Proposal for a directive
Recital 11 a (new)**

(11a) Such information should also be protected under Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ⁽¹⁾ and under Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data ⁽²⁾. The Member States and the Commission should respect the obligations relating to transparency and information with regard to the interested parties in cases involving retrieval of the personal data. An appropriate level of protection, limited storage period, and accountability of the data keeper institution or body should be ensured.

⁽¹⁾ OJ L 281, 23.11.1995, p. 31.

⁽²⁾ OJ L 8, 12.1.2001, p. 1.

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TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 29**Proposal for a directive
Recital 11 b (new)**

(11b) In the cases described in recitals 9, 10 and 11, the information exchange envisaged should not result in individuals or companies being burdened with additional reporting requirements;

Amendment 4**Proposal for a directive
Recital 12**

(12) It is important that officials of the tax administration of one Member State are allowed to be present in the territory of another *Member State and may exercise the powers of inspection conferred on officials of the requested Member State.*

(12) In order to boost cooperation between Member States' tax administrations, it is important that officials of the tax administration of one Member State are allowed to be present in the territory of another.

Amendment 5**Proposal for a directive
Recital 17 a (new)**

(17a) In order to enhance the applicability and effectiveness of this Directive, the same level of obligation should apply both to the communication of information already available by the requested authority and to conducting the administrative enquiries necessary to obtain such information.

Amendment 6**Proposal for a directive
Recital 19**

(19) However, a Member States should not refuse to transmit the information because it has no domestic interest or because the information *relating to a resident of the other Member State* is held by a bank, *other* financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

(19) However, a Member State should not refuse to transmit the information because it has no domestic interest or because the information is held by a bank *or another* financial institution, *or by a* nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

Amendment 7**Proposal for a directive
Recital 20**

(20) It should also be made clear that where a Member State provides a wider cooperation to a third country than is provided for under this Directive, it should not refuse to provide such wider cooperation to the other Member States.

(20) It should also be made clear that where a Member State provides wider cooperation to a third country than is provided for under this Directive, it should not refuse to provide such wider cooperation to the other Member States. *Any transfer of personal data to a third country should be made in accordance with Directive 95/46/EC.*

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TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 8**Proposal for a directive
Recital 22**

(22) An evaluation of the effectiveness of **administrative cooperation should be made**, especially on **the basis of** statistics.

(22) **In order to strengthen and deepen administrative cooperation**, an evaluation **should be made of the effectiveness of the implementation of this Directive, based** especially on statistics. **It is also necessary to monitor cases where the Member States have refused to communicate information or conduct an administrative enquiry.**

Amendment 9**Proposal for a directive
Recital 23 a (new)**

(23a) **The Commission should be empowered to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union in respect of technical improvements to the categories of income and capital that are subject to the automatic exchange of information and to the thresholds of income and capital above which the information exchange must be carried out. In view of the specific nature of the administrative cooperation, the empowerment should be for an indeterminate period of time.**

Amendment 10**Proposal for a directive
Article 3 – point 6 – point d**

(d) any legal arrangement, **including partnerships and trusts, whose income or capital** are subject to any of the taxes covered by this Directive;

(d) any **other legal instrument or arrangement, regardless of its nature or form and whether or not it has legal personality, that may own and manage assets, including income therefrom, that** are subject to any of the taxes covered by this Directive;

Amendment 11**Proposal for a directive
Article 3 – point 8**

8. 'by electronic means' means using electronic equipment for the processing, including digital compression, and storage of data, and employing wires, radio transmission, optical technologies or other electromagnetic means;

8. 'by electronic means' means using electronic equipment for the processing, including digital compression, and storage of data, and employing wires, radio transmission, optical technologies or other electromagnetic means, **where such means can be conducted while guaranteeing secure protection of information;**

Amendment 12**Proposal for a directive
Article 7 a (new) (in Section I 'Exchange of information on request')****Article 7a
Control systems**

Each Member State shall develop appropriate control systems for its single taxation liaison office, in the interests of transparency and cost-effectiveness, and shall draw up a publicly accessible report, in the context of an annual monitoring exercise, accordingly.

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TEXT PROPOSED BY THE COMMISSION

AMENDMENT

Amendment 13**Proposal for a directive****Article 8 – paragraph 1**

1. The competent authority of each Member States shall, by automatic exchange, **forward** information on specific categories of income and capital **to the other Member States**.

1. The competent authority of each Member State shall, by automatic exchange, **communicate to the competent authority of the other Member State** information relating to persons who are tax resident in that other Member State on the following specific categories of income and capital:

- (a) **income from work;**
- (b) **directors' emoluments;**
- (c) **dividends;**
- (d) **capital gains;**
- (e) **royalties;**
- (f) **life insurance products not covered by other Union legal instruments on the exchange of information and other similar measures;**
- (g) **pensions;**
- (h) **ownership of immovable property and income derived therefrom.**

Such information shall be protected under Directive 95/46/EC and Regulation (EC) No 45/2001. The Member States and the Commission shall respect the obligations relating to transparency and information with regard to the interested parties in cases involving retrieval of the personal data. An appropriate level of protection, limited storage period, and accountability of the data keeper institution or body shall be ensured.

Amendment 14**Proposal for a directive****Article 8 – paragraph 2**

2. The Commission shall adopt, **in accordance with the procedure referred to in Article 24(2), within two years of the entry into force of this Directive:**

2. With a view to improving the effectiveness of the assessment of the taxes referred to in Article 2 on the basis of the experience gathered by Member States, the Commission shall adopt, **for the first time by...(*)**, delegated acts in accordance with Articles 22a, 22b and 22c, which:

- (a) **the categories of income and capital to be covered**
 - (b) **the type of information to be exchanged;**
 - (c) **any specific condition or restriction within the categories referred to in point (a);**
 - (d) **the frequency of the exchanges;**
 - (e) **the practical arrangements for the exchange of information.**
- (a) **clarify any specific condition or restriction within the categories referred to in paragraph 1;**
 - (b) **specify for each category of income and capital the threshold above which the information exchange must be carried out.**

(*) OJ please insert date: two years after the entry into force of this Directive.

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Amendment 15**Proposal for a directive
Article 8 – paragraph 2 a (new)**

2a. The Commission shall evaluate and report annually to the European Parliament and the Council on the functioning of the automatic exchange of information. On the basis of its evaluation, the Commission shall propose measures to improve the scope and quality of the automatic exchange requirement in order to enhance the smooth functioning of the internal market.

Amendment 16**Proposal for a directive
Article 8 – paragraph 3 a (new)**

3a. The competent authority in one Member State may notify the competent authority of another Member State that it does not wish to receive information on the categories of income and capital referred to in paragraph 1 or that it does not wish to receive information on such income and capital that is not above a certain threshold. In such a case, that competent authority shall also inform the Commission thereof.

Amendment 17**Proposal for a directive
Article 8 – paragraph 3 b (new)**

3b. The information shall be communicated at least annually and no later than six months after the end of the financial year in the Member State in which the information has been obtained.

Amendment 18**Proposal for a directive
Article 8 – paragraph 4 – subparagraph 1 – introductory part**

4. Where Member States conclude bilateral or multilateral agreements with a view to the correct assessment of the taxes referred to in Article 2, they shall provide for automatic exchange of information relating to certain categories of income and capital. For that purpose, they shall specify in those agreements the following elements:

4. Where Member States conclude bilateral or multilateral agreements with a view to the correct assessment of the taxes referred to in Article 2, they shall provide for automatic exchange of information relating to certain categories of income and capital, **in accordance with Directive 95/46/EC and Regulation (EC) No 45/2001**. For that purpose, they shall specify in those agreements the following elements:

Amendment 19**Proposal for a directive
Article 10 – paragraph 2 – subparagraph 1**

2. Where officials of the requesting authority are present during administrative enquiries pursuant to the paragraph 1, they may ***exercise the powers of inspection conferred on officials of the requested authority, under the condition that they exercise these powers in accordance with the laws, regulations or administrative provisions of the requested Member State.***

2. Where officials of the requesting authority are present during administrative enquiries pursuant to paragraph 1, they may, **in agreement with the requested authority and in accordance with the guidelines laid down by the latter, take part in that enquiry.**

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Amendment 20**Proposal for a directive
Article 17 – paragraph 2**

2. In no case shall Article 16(2) and (4) be construed as permitting a requested authority of a Member State to decline to supply information **concerning a person resident for tax purposes in the Member State of the requesting authority** solely because this information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

2. In no case shall Article 16(2) and (4) be construed as permitting a requested authority of a Member State to decline to supply **relevant** information **within the meaning of Article 5(1)** solely because this information is held by a bank or another financial institution, or by a nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

Amendment 21**Proposal for a directive
Article 22 – paragraph 2 a (new)**

2a. Member States shall notify the Commission annually of any refusals to communicate information or to conduct an administrative enquiry, indicating the reasons for such refusal. The Commission shall assess the information so notified and shall make recommendations with a view to reducing the number of such cases in accordance with Article 24(3).

Amendment 22**Proposal for a directive
Chapter V a – title (new)****CHAPTER Va
DELEGATED ACTS****Amendment 23****Proposal for a directive
Article 22 a (new)****Article 22a****Exercise of the delegation**

- 1. The power to adopt the delegated acts referred to in Article 8(2) shall be conferred on the Commission for an indeterminate period of time.**
- 2. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.**
- 3. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in Articles 22b and 22c.**

Amendment 24**Proposal for a directive
Article 22 b (new)****Article 22b****Revocation of the delegation**

- 1. The delegation of power referred to Article 8(2) may be revoked by the European Parliament or by the Council.**

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2. *The institution which has commenced an internal procedure for deciding whether to revoke the delegation of power shall endeavour to inform the other institution and the Commission, stating the delegated powers which could be subject to revocation.*

3. *The decision of revocation shall put an end to the delegation of the powers specified in that decision. It shall take effect immediately or at a later date specified therein. It shall not affect the validity of the delegated acts already in force. It shall be published in the Official Journal of the European Union.*

Amendment 25

Proposal for a directive Article 22 c (new)

Article 22c

Objections to delegated acts

1. *The European Parliament or the Council may object to a delegated act within a period of four months from the date of notification. At the initiative of the European Parliament or the Council that period shall be extended by two months.*

2. *If, on expiry of that period, neither the European Parliament nor the Council has objected to the delegated act, it shall be published in the Official Journal of the European Union and shall enter into force at the date stated therein.*

3. *If the European Parliament or the Council objects to a delegated act, it shall not enter into force. The institution which objects shall state the reasons for objecting to the delegated act.*

Amendment 26

Proposal for a directive Article 23 – paragraph 1 – subparagraph 1

1. Where the competent authority of a Member State receives information with a view to the correct assessment of the taxes referred in Article 2 from a third country, that authority shall provide that information to the competent authorities of Member States for which that information ***might be useful*** and, in any event, to all those which request it, in so far as this is not excluded by international agreements with that third country.

1. Where the competent authority of a Member State receives information with a view to the correct assessment of the taxes referred in Article 2 from a third country, that authority shall provide that information to the competent authorities of Member States for which that information ***is necessary for an accurate assessment of those taxes*** and, in any event, to all those which request it, in so far as this is not excluded by international agreements with that third country.

Amendment 27

Proposal for a directive Article 23 – paragraph 2 – introductory part

2. Competent authorities may communicate, in accordance with their domestic provisions on the communication of personal data to third countries, information obtained in accordance with this Directive to a third country, provided that all of the following conditions are met:

2. Competent authorities may communicate, in accordance with their domestic provisions on the communication of personal data to third countries, information obtained in accordance with this Directive to a third country. ***Any such transfer of information to a third country shall be made in accordance with Directive 95/46/EC and*** provided that all of the following conditions are met: