

Opinion of the European Economic and Social Committee on the ‘Proposal for a Council directive amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation’

COM(2013) 348 final — 2013/0188 (CNS)

(2014/C 67/12)

Rapporteur: **Mr DANDEA**

On 27 June 2013, the Council decided to consult the European Economic and Social Committee, under Article 115 of the Treaty on the Functioning of the European Union, on the

Proposal for a Council directive amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation

COM(2013) 348 final — 2013/0188 (CNS).

The Section for Economic and Monetary Union and Economic and Social Cohesion, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 4 October 2013.

At its 493rd plenary session, held on 16 and 17 October 2013 (meeting of 16 October 2013), the European Economic and Social Committee adopted the following opinion by 142 votes to 2 with 6 abstentions.

1. Conclusions and recommendations

1.1 The EESC welcomes the proposal for a directive⁽¹⁾ amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation (AEOI), and believes that it represents a significant step forward in the implementation of the action plan to strengthen the fight against tax fraud and tax evasion⁽²⁾.

1.2 As far as the Committee is concerned, this proposal cannot be viewed in isolation from other European and international initiatives aimed at greater exchange of information between tax administrations, such as the extension of the 2005 European Savings Directive; the FATCA arrangements, under which a number of European countries are trying to reach a bilateral agreement with the United States, not least to guarantee their own rights; and the existing directive on the automatic exchange of information, the extension of which is now being sought.

1.3 Given that the Member States lose billions of euros each year as a result of tax fraud and tax evasion, the EESC considers the Commission’s proposal to speed up the implementation of certain provisions of Directive 2011/16/EU on AEOI to be justified.

1.4 The Commission proposes adding five further categories to the categories of income subject to AEOI. The EESC agrees

that these new categories of income should be included since they are more likely to be affected by tax fraud than those already in the directive.

1.5 Since tax evasion and fraud are global issues, they cannot be combatted solely within the EU. The EESC would therefore urge the Commission and the Member States to redouble their negotiating efforts, in the OECD and other global bodies, to promote AEOI as an international standard.

1.6 The EESC in particular urges Member States to ensure that the future standard for AEOI takes into account the EU legal requirements, experience and expertise in this area. It invites Member States to adopt a coordinated position to this end so that the European standpoint carries more weight in international discussions.

1.7 With regard to these international and European initiatives, the Committee also believes that efforts should be made to create the broadest possible level playing field involving as many countries as possible so as to avoid, as far as possible, any possible negative economic or other repercussions for the Union.

1.8 For the sake of simplicity and efficiency, from the point of view of cost-savings, and for the benefit of everyone involved, the EESC takes the view that efforts must be made to harmonise the various systems for exchanging information that are associated with each of the initiatives and to reorganise them into a single framework. This should at least happen at European level. Moreover, the underlying rules should be clear and should be proportionate to the desired outcomes.

⁽¹⁾ COM(2013) 348 final.

⁽²⁾ COM(2012) 722 final.

1.9 The EESC calls on the Member States to ensure that the human, technological and financial resources needed to implement AEOI successfully are made available, given the complexity and volume of the information to be subject to transfer between Member States as from 2015. The training of officials who are to be responsible for the exchange of information must be a priority.

1.10 If the new instruments to combat tax violations are to be effective, the EESC believes that both the Commission and the Member States must step up their efforts to simplify and harmonise tax legislation.

2. Proposal for a Council Directive amending Directive 2011/16/EU

2.1 In view of the increase in tax fraud and tax evasion over recent years, and their serious impact on Member States' tax revenue, losing them billions of euros each year, the Commission has drawn up this proposal for a directive to amend certain provisions of Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation.

2.2 The objective of the Commission's proposal is to expand the scope of AEOI in the EU beyond that provided for in the existing system.

2.3 The Commission proposes amending Article 8 of the directive to introduce new categories of income to be subject to AEOI, removing the reference to a threshold below which a Member State may not wish to receive information from other Member States and accelerating the implementation of the provisions of the current directive on extending the automatic exchange of information.

2.4 The new categories of income to be subject to AEOI are: **dividends, capital gains, any income generated with respect to the assets held in a financial account, any amount with respect to which the financial institution is the obligor or debtor, including any redemption payments, and account balances.** The Member States will have to send information regarding this income as from 2015.

2.5 Taking account of consultations with Member States, the Commission proposes removing the threshold below which Member States can currently choose not to receive a particular type of information, pointing out that it is not practical and that Member States agree that it should be removed.

2.6 For the new categories of income that would be subject to AEOI, the Commission does not maintain the **condition of availability of information** which is currently in place for the

categories of income referred to in Article 8(1). This approach speeds up the extension and implementation of the mandatory automatic exchange of information.

2.7 The Commission's proposal is in line with the initiative of some Member States to conclude agreements with the USA in relation to its Foreign Account Tax Compliance Act (FATCA), thus obliging them to provide wider cooperation in accordance with Article 19 of the Directive on Administrative Cooperation with other Member States.

3. General comments

3.1 This proposal for a directive is one of the measures in the action plan⁽³⁾ to strengthen the fight against tax fraud and tax evasion presented by the Commission at the end of 2012 at the request of the European Council. In its opinion⁽⁴⁾, the EESC welcomed the presentation of the plan and expressed its support for the Commission in combating these practices which affect the internal market.

3.2 The Member States lose billions of euros each year as a result of tax fraud and tax evasion. Given that they erode the tax base and thus oblige Member States to increase taxes, the Committee believes that tax fraud⁽⁵⁾ and tax evasion⁽⁶⁾, as well as being illegal, are immoral practices that significantly affect the functioning of the internal market and distort the fairness of tax systems vis-à-vis taxpayers.

3.3 Tax fraud and tax evasion are global issues. Measures to combat them within the internal market should therefore be complemented with agreements within the OECD, the G8, the G20 and other bodies, to develop AEOI as an international standard. The EESC welcomes the efforts of some Member States which have already concluded agreements with the USA in relation to the FATCA. In accordance with Article 19 of the Directive on Administrative Cooperation, these will give Member States the option of wider cooperation in the field of automatic exchange of information. The EESC however welcomes the fact that the proposal for extending mandatory exchange of information offers Member States a uniform EU legal basis that will guarantee legal certainty and a level-playing field for both competent authorities and economic operators. The EESC also considers it important that the future global standard for automatic exchange of information should take into account the EU legal requirements, experience and expertise in this area.

⁽³⁾ Idem.

⁽⁴⁾ OJ C 198, 10.7.2013, p. 34.

⁽⁵⁾ Tax fraud is a form of deliberate evasion of tax which is generally punishable under criminal law. The term includes situations in which deliberately false statements are submitted or fake documents are produced. (Definition extracted from COM(2012) 351 final).

⁽⁶⁾ Tax evasion generally comprises illegal arrangements where liability to tax is hidden or ignored, i.e. the taxpayer pays less tax than he is legally obligated to pay by hiding income or information from the tax authorities (Definition extracted from COM(2012) 351 final).

3.4 The sheer complexity of Member States' tax systems and the major differences between them may prove to be significant obstacles to the implementation of AEOI. The EESC believes that, in order to ensure that the new instruments to combat tax fraud and tax evasion function efficiently and effectively, the Commission and the Member States should step up their efforts to simplify and harmonise tax legislation.

4. Specific comments

4.1 In the proposal for a directive, the Commission wishes to include five new categories of income in AEOI: dividends, capital gains, any income generated with respect to the assets held in a financial account, any amount with respect to which the financial institution is the obligor or debtor, including any redemption payments, and account balances. The EESC agrees that these new categories should be included since, given their nature and scale, they are more likely to be affected by tax fraud than those already in the directive.

4.2 For the new categories of income subject to automatic information exchange, the Commission does not maintain the condition of availability of information. For these categories of income, Member States will have to forward the data recorded

as from tax year 2014. The EESC welcomes the Commission's proposal, which will speed up the implementation of AEOI laid down in Directive 2011/16/EU.

4.3 The automatic exchange of tax information requires a significant amount of information to be received by each Member State from all of the other Member States. The EESC calls on the Member States to ensure that the human, technological and financial resources needed to implement AEOI as from 2015 are made available.

4.4 Given the complexity of the data to be subject to the AEOI system, the EESC calls on the Member States to provide training for officials who will work with this system in order to ensure that it functions efficiently.

4.5 In the proposal for a directive, the Commission has made no changes to the condition of availability of information in relation to the categories of income referred to in Article 8(1) of the Directive 2011/16/EU. The EESC recommends that the Member States make efforts to ensure that this data can be collected as from 2017, when, in accordance with the current provisions of the directive, they should be included in the AEOI system.

Brussels, 16 October 2013.

The President
of the European Economic and Social Committee
Henri MALOSSE
