

III

(Preparatory acts)

EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

508TH EESC PLENARY SESSION OF 27 AND 28 MAY 2015

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(2015) 135 final — 2015/0068 (CNS)]

and the Proposal for a Council Directive repealing Council Directive 2003/48/EC

[COM(2015) 129 final — 2015/0065 (CNS)]

(2015/C 332/07)

Rapporteur-general: Petru Sorin DANDEA

On 31 March 2015, the Council of the European Union 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(2015) 135 final — 2015/0068 (CNS)]

and the

Proposal for a Council Directive repealing Council Directive 2003/48/EC

[COM(2015) 129 final — 2015/0065 (CNS)].

On 17 March 2015, the Committee Bureau instructed the Section for Economic and Monetary Union and Economic and Social Cohesion to prepare the Committee's work on the subject.

Given the urgent nature of the work, the European Economic and Social Committee appointed Petru Sorin Dandea as rapporteur-general at its 508th plenary session, held on 27 and 28 May 2015 (meeting of 27 May), and adopted the following opinion by 148 votes to 11, with 15 abstentions.

1. Conclusions and recommendations

1.1. The EESC welcomes the proposal for a directive presented by the European Commission, through which the Commission is continuing to implement the measures included in the action plan to strengthen the fight against tax fraud and tax evasion ⁽¹⁾.

⁽¹⁾ COM(2012) 722 final — An Action Plan to strengthen the fight against tax fraud and tax evasion.

1.2. The EESC endorses the move to include within the scope of the automatic exchange of information (AEOI), covered by Council Directive 2011/16/EU, information on advance tax rulings and advance pricing arrangements, which are used, in some situations, by businesses with cross-border activities to develop arrangements that ultimately erode the tax base in the Member States and undermine the efficiency of the internal market.

1.3. The EESC is against tax avoidance: although not illegal, it is an immoral practice allowing businesses that engage in it to pay, in absolute terms, much lower taxes than those paid by individuals or SMEs.

1.4. The EESC considers that the measures set out in the proposal for a directive may do much to reduce the income lost to the Member States and therefore recommends that they be adopted as swiftly as possible.

1.5. Information on advance tax rulings and advance pricing arrangements is very important and can help the Member States to trace artificial transactions. Nonetheless, the EESC would point out that proving that a transaction is artificial is often fraught with difficulty, and thus recommends that the Member States make efforts to ensure that the provisions of the proposal for a directive are transposed correctly.

1.6. The EESC recommends that the European Commission step up its negotiating efforts in the OECD with a view to adoption of the BEPS (Base Erosion and Profit Shifting) standard and to its incorporation of the provisions of the proposal for a directive. BEPS, along with the AEOI standard, constitute the most useful tools for tackling tax avoidance and evasion at global level.

1.7. The EESC welcomes the Commission proposal repealing Council Directive 2003/48/EC (Directive on taxation of savings income — the Savings Directive). Council Directive 2014/107/EU amending Council Directive 2011/16/EU covers all of the financial products, including those covered by the Savings Directive. The proposed repeal is aimed at preventing the parallel application of two standards, and simplifying the rules.

2. Commission proposals

2.1. On 18 March 2015, the European Commission presented three documents ⁽²⁾ intended to implement some of the measures set out in the action plan to strengthen the fight against tax fraud and tax evasion ⁽³⁾. The first of these, COM(2015) 135 final, is a proposal for a Council Directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation. The second document, COM(2015) 136 final, sets out the progress made and the measures through which the Commission intends to increase tax transparency. The third document, COM(2015) 129 final, is a proposal for a Council Directive repealing Council Directive 2003/48/EC (Directive on taxation of savings income — the Savings Directive).

2.2. With the proposal for a Directive amending Directive 2011/16/EU, the Commission wants to ensure comprehensive and effective administrative cooperation between tax administrations by providing for the mandatory automatic exchange of information regarding advance cross-border rulings and advance pricing arrangements used by businesses. In some cases, these practices can result in a low level of taxation in the Member State that issues the ruling, and, at the same time, may substantially reduce the income to be taxed in the other Member States involved.

⁽²⁾ COM(2015) 135 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) 136 final — Communication from the Commission to the European Parliament and the Council on tax transparency to fight tax evasion and avoidance.

COM(2015) 129 final — Proposal for a Council Directive repealing Council Directive 2003/48/EC.
⁽³⁾ COM(2012) 722 final — An Action Plan to strengthen the fight against tax fraud and tax evasion.

2.3. The proposal for a Council Directive repealing Council Directive 2003/48/EC (Directive on taxation of savings income — the Savings Directive) is necessary because, with the adoption on 9 December 2014 of Council Directive 2014/107/EU amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation (AEOI), which aligns EU legislation with the global standard on the automatic exchange of financial account information, this directive will now also cover savings, along with the other categories of income. For this reason, the Savings Directive should be repealed so as to prevent the parallel application of two standards, which would also mean an additional and disproportionate administrative burden for companies.

2.4. The Communication from the Commission to the European Parliament and the Council on tax transparency to fight tax evasion and avoidance sets out the progress made in implementing the measures included in the action plan to strengthen the fight against tax fraud and tax evasion. The Commission also presents the measures that could be implemented in the future.

3. General comments

3.1. With the proposal for a Directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation, the Commission is continuing to implement the measures included in the action plan 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 plan and supported the Commission with regard to combating these problems, which are harming the internal market.

3.2. The proposal for a directive includes advance cross-border tax rulings and advance pricing arrangements in the categories of information subject to mandatory automatic exchange of information. These rulings are often requested by businesses from tax administrations in order to obtain confirmation of the legality of business operations. The practice of tax rulings is not a problem in itself, and is used by many Member States. However, tax rulings are sometimes used by businesses to develop arrangements to reduce their tax liabilities, thereby eroding the tax base in the Member States and undermining the efficiency of the internal market. The EESC endorses the move to make this information subject to mandatory automatic exchange of information; the Member States need this information to combat aggressive tax planning.

3.3. The changes recommended by the Commission will enable the Member States to identify any arrangements put in place by businesses that reduce national tax bases, such as transfer pricing, which results in reduced tax liabilities in jurisdictions other than those in which the income was generated. The EESC has stated its disapproval of such practices on many occasions: although not illegal, they are immoral in that they cause the Member States to increase the tax paid by small taxpayers (businesses or individuals) which, in the final analysis and in absolute terms, end up paying more in taxes than big businesses.

3.4. The Commission acknowledges that tax avoidance, fraud and evasion have a major cross-border dimension, as globalisation and increased mobility of taxpayers are conducive to these phenomena. The EESC considers that the measures set out in the proposal for a directive may do much to reduce the income lost to the Member States and therefore recommends that they be adopted as swiftly as possible.

3.5. Including savings in the categories of income subject to the mandatory automatic exchange of information regulated by the Directive on administrative cooperation in the field of taxation simplifies the regulatory system while at the same time making taxation more transparent. The EESC endorses the proposal for a Directive repealing Council Directive 2003/48/EC (Directive on taxation of savings income — the Savings Directive), as the objective pursued by Directive 2003/48/EC is taken up and expanded upon by Council Directive 2014/107/EU amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation.

⁽⁴⁾ Opinion of the European Economic and Social Committee on the 'Communication from the Commission to the European Parliament and the Council — An action plan to strengthen the fight against tax fraud and tax evasion' (OJ C 198, 10.7.2013, p. 34).

4. Specific comments

4.1. The aggressive tax planning carried out by certain businesses with cross-border activities costs Member State budgets hundreds of billions in losses each year. The EESC endorses the move to include advance tax rulings and advance pricing arrangements issued by Member State administrations among the categories of information subject to the mandatory automatic exchange of information governed by Article 8(a), paragraph 5 of Directive 2011/16/EU, and considers that this amendment is necessary with a view to boosting tax transparency and combating this damaging phenomenon.

4.2. The fact that, in accordance with the provisions of the proposal for a directive, the Member States will have access to information regarding these two types of rulings does not guarantee that the arrangements used by businesses to avoid the payment of taxes will cease to exist. In most cases, these arrangements exploit loopholes in Member State legislation or mismatches between national legislative systems. The Committee recommends that the Commission and the Member States keep working to simplify and harmonise the legal framework at European and national levels.

4.3. Information on advance tax rulings and advance pricing arrangements is very important and can help the Member States to trace artificial transactions. By implementing the General Anti-Abuse Rule (GAAR) laid down in Directive 2011/96/EU (Directive on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States — the Parent and Subsidiary Directive), the Member States will be able to recover tax income lost as a result of artificial transactions. Nonetheless, the EESC would point out that proving that a transaction is artificial is often fraught with difficulty.

4.4. The EESC reiterates the proposal made in a previous opinion, calling for the Member States to establish a procedure whereby businesses that make use of tax avoidance or carry out their own activities through jurisdictions known to be tax havens are denied access to public and European funds.

4.5. Given the sheer volume of information that will be subject to mandatory automatic exchange of information and given that the categories listed in Article 8 will be supplemented by other types of information, the EESC recommends that the Member States provide the human and IT resources needed for the proper implementation of the measures set out in the proposal for a directive. Moreover, the EESC considers that national tax administration staff with AEOI responsibilities need to be trained to correctly use the forms that are to be prepared in conjunction with the Commission, which are to facilitate the exchange of information and the recording of such information in the future central registry to be operated by the Commission.

4.6. Following the changes implemented in 2013 and those recommended in the present proposal for a directive, Directive 2011/16/EU provides for the exchange of information for all the main types of income recorded by natural persons and for even more types in the case of legal persons. This means that information on income generated in the European Union will be available to the Member States. Frequently, arrangements put in place by businesses that use aggressive tax planning involve jurisdictions and territories outside the EU. Given that the Commission's proposal for a directive is more ambitious than the BEPS project (Base Erosion and Profit Shifting) being negotiated at OECD level, the EESC recommends that the Commission and the Member States step up their efforts to cooperate in order to make the BEPS standard and the AEOI standard real global standards.

4.7. The EESC welcomes the Commission proposal repealing Council Directive 2003/48/EC (Directive on taxation of savings income — the Savings Directive). In practice, as explained above, Council Directive 2014/107/EU amending Council Directive 2011/16/EU covers all of the financial products, including those covered by the Savings Directive. The aim of this proposal for a directive is to avoid the parallel application of two standards on the exchange of financial account information. This will simplify the tax rules and make them more transparent.

Brussels, 27 May 2015.

The President
of the European Economic and Social Committee
Henri MALOSSE
