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P8_TA(2015)0369

Mandatory automatic exchange of information in the field of taxation *

European Parliament legislative resolution of 27 October 2015 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)0135 — C8-0085/2015 — 2015/0068(CNS))

(Special legislative procedure — consultation)

(2017/C 355/21)

The European Parliament,

— having regard to the Commission proposal to the Council (COM(2015)0135),

— having regard to Article 115 of the Treaty on the Functioning of the European Union, pursuant to which the Council consulted Parliament (C8-0085/2015),

— having regard to Rule 59 of its Rules of Procedure,

— having regard to the report of the Committee on Economic and Monetary Affairs and the opinion of the Committee on Legal Affairs (A8-0306/2015),

1. Approves the Commission proposal as amended;

2. Calls on the Commission to alter its proposal accordingly, in accordance with Article 293(2) of the Treaty on the Functioning of the European Union;

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 substantially amend the Commission proposal;

5. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a directive

Citation 2 a (new)

Text proposed by the Commission	*Amendment*
	Having regard to the Charter of Fundamental Rights of the European Union, in particular the respect for the right to the protection of personal data and the freedom to conduct a business,

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Amendment 2

Proposal for a directive

Recital 1

Text proposed by the Commission	*Amendment*
(1) The challenge posed by cross-border tax avoidance, aggressive tax planning and harmful tax competition has increased considerably and has become a major focus of concern within the Union and at global level. Tax base erosion is considerably reducing national tax revenues, which hinders Member States in applying growth-friendly tax policies. ***In particular***, rulings concerning tax-driven structures ***lead*** to a low level of taxation of artificially high amounts of income in the country giving the advance ruling and ***may leave*** artificially low amounts of income to be taxed in any other countries involved. An increase in transparency is therefore urgently required. The tools and mechanisms established by Council Directive 2011/16/EU [13] need to be enhanced in order to achieve this.	(1) The challenge posed by cross-border tax avoidance, aggressive tax planning and harmful tax competition has increased considerably and has become a major focus of concern within the Union and at global level. Tax base erosion is considerably reducing national tax revenues, which hinders Member States in applying growth-friendly tax policies***, causes distortions of competition to the detriment of undertakings — particularly SMEs — which pay the correct amounts of tax and shifts taxation towards less mobile factors such as labour and consumption***. ***However, in specific cases***, rulings concerning tax-driven structures ***have led*** to a low level of taxation of artificially high amounts of income in the country giving the advance ruling and ***have left*** artificially low amounts of income to be taxed in any other countries involved***, thereby reducing the tax base in those Member States***. An increase in ***targeted*** transparency ***and exchange of information*** is therefore urgently required ***at least in accordance with OECD standards***. The tools and mechanisms established by Council Directive 2011/16/EU [13] need to be enhanced in order to achieve this.
[13] Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC (OJ L 64, 11.3.2011, p. 1).	[13] Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC (OJ L 64, 11.3.2011, p. 1).

Amendment 3

Proposal for a directive

Recital 1 a (new)

Text proposed by the Commission	*Amendment*
	(1a) Following the LuxLeaks scandal and by means of this report, the European Parliament expresses its strong determination not to tolerate tax fraud and tax avoidance as well as to advocate for a fair distribution of the tax burden between citizens and companies.

Amendment 4

Proposal for a directive

Recital 2

Text proposed by the Commission	*Amendment*
(2) The European Council, in its conclusions of 18 December 2014, underlined the urgent need to advance efforts in the fight against tax avoidance and aggressive tax planning, both at the global and ***Union*** levels. Stressing the importance of transparency, the European Council welcomed the Commission's intention to submit a proposal on the automatic exchange of information on tax rulings in the Union.	(2) The European Council, in its conclusions of 18 December 2014, underlined the urgent need to advance efforts in the fight against tax avoidance and aggressive tax planning, both at the global and ***European*** levels. Stressing the importance of transparency ***and corresponding information exchange***, the European Council welcomed the Commission's intention to submit a proposal on the automatic exchange of information on tax rulings in the Union.

Amendment 5

Proposal for a directive

Recital 4

Text proposed by the Commission	*Amendment*
(4) However, the efficient spontaneous exchange of information in respect of advance cross-border rulings and advance pricing arrangements is hindered by several important practical difficulties such as the discretion permitted to the issuing Member State to decide which other Member States should be informed.	(4) However, the efficient spontaneous exchange of information in respect of advance cross-border rulings and advance pricing arrangements is hindered by several important practical difficulties such as the discretion permitted to the issuing Member State to decide which other Member States should be informed ***and the weak monitoring system which makes it difficult for the Commission to identify any violation of the requirement to exchange information.***

Amendment 6

Proposal for a directive

Recital 4 a (new)

Text proposed by the Commission	*Amendment*
	(4a) An efficient exchange and processing of tax information and the resulting peer pressure would have a strong deterrent effect against the introduction of harmful tax practices and would allow Member States and the Commission to have all the relevant information at their disposal in order to take action against such practices.

Amendment 7

Proposal for a directive

Recital 5

Text proposed by the Commission	*Amendment*
(5) The possibility that the provision of information may be refused where it would lead to the disclosure of a commercial, industrial or professional secret or of a commercial process, or of information whose disclosure would be contrary to public policy ***should*** not apply to provisions of mandatory automatic exchange of information on advance ***cross-border*** rulings and advance pricing arrangements in order not to reduce the effectiveness of these exchanges. The limited nature of the information that is required to be shared with all Member States ***should ensure*** sufficient protection of those commercial interests.	(5) The possibility that the provision of information may be refused where it would lead to the disclosure of a commercial, industrial or professional secret or of a commercial process, or of information whose disclosure would be contrary to public policy ***must*** not apply to provisions of mandatory automatic exchange of information on advance rulings and advance pricing arrangements in order not to reduce the effectiveness of these exchanges. The limited nature of the information that is required to be shared with all Member States ***ensures*** sufficient protection of those commercial interests.

Amendment 8

Proposal for a directive

Recital 5 a (new)

Text proposed by the Commission	*Amendment*
	(5a) Advance tax rulings and price arrangements can have a cross-border dimension even though they relate to purely national transactions. That is particularly true of cascade transactions, where the advance tax ruling or price arrangement concerns the first national transactions, without taking into consideration the next (cross-border) transactions.

Amendment 9

Proposal for a directive

Recital 5 b (new)

Text proposed by the Commission	*Amendment*
	(5b) In order to avoid arbitrary distinctions between tax arrangements that arise in the context of different national administrative practices, the definitions of advance rulings and advance pricing arrangements should cover tax arrangements regardless of the formal or informal manner in which they were issued, and irrespective of their binding or non-binding nature.

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Amendment 10
Proposal for a directive
Recital 5 c (new)

Text proposed by the Commission	*Amendment*
	(5c) Advance tax rulings facilitate the consistent and transparent application of the law.

Amendment 11
Proposal for a directive
Recital 5 d (new)

Text proposed by the Commission	*Amendment*
	(5d) Transparent tax rules provide legal certainty for taxpayers and businesses and generate investment.

Amendment 12
Proposal for a directive
Recital 6

Text proposed by the Commission	*Amendment*
(6) In order to reap the benefits of the mandatory automatic exchange of advance ***cross-border*** rulings and advance pricing arrangements, the information should be communicated ***promptly*** after they are issued ***and therefore regular intervals for the communication of the information should be established***.	(6) In order to reap the benefits of the mandatory automatic exchange of advance rulings and advance pricing arrangements, the information ***concerning them*** should be communicated ***immediately*** after they are issued. ***Efficient and effective penalties can be developed in cases of non-compliance.***

Amendment 13
Proposal for a directive
Recital 7

Text proposed by the Commission	*Amendment*
(7) The mandatory automatic exchange of advance ***cross-border*** rulings and advance pricing arrangements should in each case include communication of a defined set of basic information to all Member States. The Commission should adopt any measures necessary to standardise the communication of such information under the procedure laid down in Directive 2011/16/EU for establishing a standard form to be used for the exchange of information. That procedure should also be used in the adoption of any necessary measures and practical arrangements for the implementation of the information exchange.	(7) The mandatory automatic exchange of advance rulings and advance pricing arrangements should in each case include communication of a defined set of basic information to all Member States. The Commission should adopt any measures necessary to standardise the communication of such information under the procedure laid down in Directive 2011/16/EU for establishing a standard form to be used for the exchange of information. That procedure should also be used in the adoption of any necessary measures and practical arrangements for the implementation of the information exchange.

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Amendment 14

Proposal for a directive

Recital 8

Text proposed by the Commission	*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***, since the Commission should be able to assess independently if such information is relevant for detecting illegal state aid***. This ***basic information should*** enable the Commission at any point in time to ***efficiently*** monitor and evaluate the effective application of the automatic exchange of information on advance rulings and advance pricing arrangements ***and to ensure that rulings do not have a negative impact on the internal market***. Such communication will not discharge a Member State from its obligations to notify any state aid to the Commission.

Amendment 15

Proposal for a directive

Recital 8 a (new)

Text proposed by the Commission	*Amendment*
	(8a) Before 1 October 2018 Member States should provide the Commission with an ex-post analysis of the effectiveness of this Directive.

Amendment 16

Proposal for a directive

Recital 9

Text proposed by the Commission	*Amendment*
(9) Feedback by the receiving Member State to the Member State sending the information is a necessary element of the operation of an effective system of automatic information exchange. It is therefore appropriate to provide for measures enabling the provision of feedback in cases where the information has been used and where no feedback can be provided under other provisions of Directive 2011/16/EU.	(9) Feedback by the receiving Member State to the Member State sending the information is a necessary element of the operation of an effective system of automatic information exchange***, as it encourages administrative cooperation between Member States***. It is therefore appropriate to provide for measures enabling the provision of feedback in cases where the information has been used and where no feedback can be provided under other provisions of Directive 2011/16/EU. ***That would make it more difficult to circumvent the information for purposes of fraud.***

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Amendment 17

Proposal for a directive

Recital 10

Text proposed by the Commission	*Amendment*
(10) A Member State should be able to rely on Article 5 of Directive 2011/16/EU as regards the exchange of information on request to obtain additional information, including the full text of advance ***cross-border*** rulings or advance pricing arrangements, from the Member State having issued such rulings or arrangements.	(10) A Member State should be able to rely on Article 5 of Directive 2011/16/EU as regards the exchange of information on request to obtain additional information, including the full text of advance rulings or advance pricing arrangements, from the Member State having issued such rulings or arrangements ***and any texts which effect subsequent changes***.

Amendment 18

Proposal for a directive

Recital 10 a (new)

Text proposed by the Commission	*Amendment*
	(10a) The expression 'information that is foreseeably relevant' as referred to in Article 1(1) of Directive 2011/16/EU should be clarified in order to prevent interpretations whose purpose is tax avoidance.

Amendment 19

Proposal for a directive

Recital 11

Text proposed by the Commission	*Amendment*
(11) Member States should take all measures necessary to remove any obstacle that might hinder the effective and widest possible mandatory automatic exchange of information on advance ***cross-border*** rulings and advance pricing arrangements.	(11) Member States should take all measures necessary to remove any obstacle that might hinder the effective and widest possible mandatory automatic exchange of information on advance rulings and advance pricing arrangements.

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Amendment 20

Proposal for a directive

Recital 12 a (new)

Text proposed by the Commission	*Amendment*
	(12a) ***In order to enhance transparency for citizens, the Commission should publish a summary of the main tax rulings agreed in the previous year, based on information contained in the secure central directory. That report should include at least a description of the issues addressed in the tax ruling, a description of the criteria used to determine an advance pricing arrangement and identify the Member State(s) most likely to be affected. In doing so, the Commission should comply with the confidentiality provisions laid down in this Directive.***

Amendment 21

Proposal for a directive

Recital 12 b (new)

Text proposed by the Commission	*Amendment*
	(12b) ***It is desirable that the Member States ask their competent authorities to allocate human resources from among their existing staff to gather and analyse such information.***

Amendment 22

Proposal for a directive

Recital 12 c (new)

Text proposed by the Commission	*Amendment*
	(12c) ***By 26 June 2017, a Union-wide register for beneficial ownership should be operational, which will aid in tracking down possible tax avoidance and profit shifting. The creation of a central register for automatic exchange of advance tax rulings or price arrangements between Member States, which would be accessible to tax authorities and responsible administrations in the Member States and the Commission would be significant.***

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Amendment 23

Proposal for a directive

Recital 15

Text proposed by the Commission	*Amendment*
(15) The existing provisions regarding confidentiality should be amended to reflect the extension of mandatory automatic exchange of information to advance ***cross-border*** rulings and advance pricing arrangements.	(15) The existing provisions regarding confidentiality should be amended to reflect the extension of mandatory automatic exchange of information to advance rulings and advance pricing arrangements.

Amendment 24

Proposal for a directive

Recital 15 a (new)

Text proposed by the Commission	*Amendment*
	(15a) It is essential that the fundamental principle of the Member States' sovereignty in tax matters is upheld where direct taxes are concerned and that the current proposal does not jeopardise the subsidiarity principle.

Amendment 25

Proposal for a directive

Recital 16

Text proposed by the Commission	*Amendment*
(16) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, this Directive seeks to ensure full respect for the right to the protection of personal data and the freedom to conduct a business.	(16) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, this Directive seeks to ensure full respect for the right to the protection of personal data and the freedom to conduct a business. ***The personal data should be processed for specific, explicit and legitimate purposes and only if adequate, relevant and not excessive in relation to the purposes. Any restriction of those rights should only be imposed provided that the conditions set out in the Charter of Fundamental Rights are complied with. Subject to the principle of proportionality, restrictions may be imposed provided that they comply with the necessary and true objectives of general interest recognised by the law, or satisfy the need to protect the rights and liberties of others.***

Amendment 26

Proposal for a directive

Recital 17

Text proposed by the Commission	*Amendment*
(17) Since the objective of this Directive, namely the efficient administrative cooperation between Member States under conditions compatible with the proper functioning of the Internal Market, cannot be sufficiently achieved by the Member States but can rather, by reason of the uniformity and effectiveness required, be better achieved at ***Union*** level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.	(17) Since the objective of this Directive, namely the efficient administrative cooperation between Member States under conditions compatible with the proper functioning of the Internal Market, cannot be sufficiently achieved by the Member States but can rather, by reason of the uniformity and effectiveness required, be better achieved at ***European*** level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

Amendment 27

Proposal for a directive

Article 1 — point 1 — point a

Directive 2011/16/EU

Article 3 — point 9 — point a

Text proposed by the Commission	*Amendment*
(a) for the purposes of Article 8(1) and Article 8a, the systematic communication of predefined information to another Member State, without prior request, at pre-established regular intervals. For the purposes of Article 8(1), reference to available information relates to information in the tax files of the Member State communicating the information, which is retrievable in accordance with the procedures for gathering and processing information in that Member State.	(a) for the purposes of Article 8(1) and Article 8a, the systematic communication of predefined information to another Member State, without prior request, ***which, in respect of Article 8(1), takes place*** at pre-established regular intervals. For the purposes of Article 8(1), reference to available information relates to information in the tax files of the Member State communicating the information, which is retrievable in accordance with the procedures for gathering and processing information in that Member State.

Amendment 28

Proposal for a directive

Article 1 — paragraph 1 — point 1 — point b

Directive 2011/16/EU

Article 3 — point 14 — introductory part

Text proposed by the Commission	*Amendment*
14. 'advance ***cross-border*** ruling' means any agreement, communication, or any other instrument or action with similar effects, including one issued in the context of a tax audit, which:	14. 'advance ruling' means any agreement, communication, or any other instrument or action with similar effects, including one issued in the context of a tax audit ***and irrespective of its formal, informal, legally binding or non-binding nature***, which:

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Amendment 29

Proposal for a directive

Article 1 — paragraph 1 — point 1 — point b

Directive 2011/16/EU

Article 3 — point 14 — point a

Text proposed by the Commission	*Amendment*
(a) is given by, or on behalf of, the government or the tax authority of a Member State, or any territorial or administrative subdivisions thereof, ***to any*** person;	(a) is given ***or published*** by, or on behalf of, the government or the tax authority of a Member State, or any territorial or administrative subdivisions thereof, ***on which one or more persons can rely***;

Amendment 30

Proposal for a directive

Article 1 — point 1 — point b

Directive 2011/16/EU

Article 3 — point 14 — point c

Text proposed by the Commission	*Amendment*
(c) relates to a ***cross-border*** transaction or to the question of whether or not activities carried on by a legal person in the other Member State create a permanent establishment, and;	(c) relates to a transaction or to the question of whether or not activities carried on by a legal person in the other Member State create a permanent establishment, and;

Amendment 31

Proposal for a directive

Article 1 — point 1 — point b

Directive 2011/16/EU

Article 3 — point 14 — subparagraph 2

Text proposed by the Commission	*Amendment*
The ***cross-border*** transaction may involve, but is not restricted to, the making of investments, the provision of goods, services, finance or the use of tangible or intangible assets and does not have to directly involve the person receiving the advance ***cross-border*** ruling;	The transaction may involve, but is not restricted to, the making of investments, the provision of goods, services, finance or the use of tangible or intangible assets and does not have to directly involve the person receiving the advance ruling;

Amendment 32

Proposal for a directive

Article 1 — paragraph 1 — point 1 — point b

Directive 2011/16/EU

Article 3 — point 15 — subparagraph 1

Text proposed by the Commission	*Amendment*
15. 'advance pricing arrangement' means any agreement, communication or any other instrument or action with similar effects, including one issued in the context of a tax audit, given by, or on behalf of, the government or the tax authority of one or more Member States, including any territorial or administrative subdivision thereof, ***to any*** person that determines in advance of ***cross-border*** transactions between associated enterprises, an appropriate set of criteria for the determination of the transfer pricing for those transactions or determines the attribution of profits to a permanent establishment.	15. 'advance pricing arrangement' means any agreement, communication or any other instrument or action with similar effects, including one issued in the context of a tax audit, given ***or published*** by, or on behalf of, the government or the tax authority of one or more Member States, including any territorial or administrative subdivision thereof, ***on which one or more persons can rely,*** that determines in advance of transactions between associated enterprises, an appropriate set of criteria for the determination of the transfer pricing for those transactions or determines the attribution of profits to a permanent establishment.

Amendment 33

Proposal for a directive

Article 1 — point 1 — point b

Directive 2011/16/EU

Article 3 — point 16

Text proposed by the Commission	*Amendment*
16. For the purpose of point 14 'cross-border transaction' means a transaction or series of transactions where:	***deleted***
(a) not all the parties to the transaction or series of transactions are resident for tax purposes in the Member State giving the advance cross-border ruling, or;	
(b) any of the parties to the transaction or series of transactions is simultaneously resident for tax purposes in more than one jurisdiction, or;	
(c) one of the parties to the transaction or series of transactions carries on business in another Member State through a permanent establishment and the transaction or series of transactions forms part or the whole of the business of the permanent establishment. A cross-border transaction or series of transactions shall also include arrangements made by a single legal person in respect of business activities in another Member State which that person carries on through a permanent establishment.	

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Text proposed by the Commission	*Amendment*
For the purpose of point 15 'cross-border transaction' means a transaction or series of transactions involving associated enterprises which are not all resident for tax purposes in the territory of a single Member State.	

Amendment 34

Proposal for a directive

Article 1 — point 3

Directive 2011/16/EU

Article 8a — paragraph 1

Text proposed by the Commission	*Amendment*
1. The competent authority of a Member State issuing or amending an advance ***cross-border*** ruling or an advance pricing arrangement after the date of entry into force of this Directive shall, by automatic exchange, communicate information thereon to the competent authorities of all other Member States as well as to the European Commission.	1. The competent authority of a Member State issuing or amending an advance ruling or an advance pricing arrangement after the date of entry into force of this Directive shall, by automatic exchange, communicate information thereon to the competent authorities of all other Member States as well as to the European Commission.

Amendment 35

Proposal for a directive

Article 1 — point 3

Directive 2011/16/EU

Article 8a — paragraph 2

Text proposed by the Commission	*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 ten 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 rulings and advance pricing arrangements issued before the entry into force but still valid on the date of entry into force of this Directive;

Amendment 36

Proposal for a directive

Article 1 — point 3

Directive 2011/16/EU

Article 8a — paragraph 3

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

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Amendment 37

Proposal for a directive

Article 1 — point 3

Directive 2011/16/EU

Article 8a — paragraph 3 a (new)

Text proposed by the Commission	*Amendment*
	3a. Paragraph 1 shall also apply where the request for an advance ruling relates to a legal structure without legal personality. In that instance, the competent authority of the Member State issuing the advance ruling shall forward the information it has to the competent authorities of all other Member States and shall arrange for the memorandum of incorporation to be transferred to the Member State of residence of each incorporator and each beneficiary.

Amendment 38

Proposal for a directive

Article 1 — point 3

Directive 2011/16/EU

Article 8a — paragraph 4 — point a

Text proposed by the Commission	*Amendment*
(a) in respect of the information exchanged pursuant to paragraph 1: ***within one month following the end of the quarter during which*** the advance ***cross-border*** rulings or advance pricing arrangements have been issued or amended.	(a) in respect of the information exchanged pursuant to paragraph 1: ***immediately and at the latest one month after*** the advance rulings or advance pricing arrangements have been issued or amended.

Amendment 39

Proposal for a directive

Article 1 — paragraph 1 — point 3

Directive 2011/16/EU

Article 8a — paragraph 4 — point b

Text proposed by the Commission	*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: ***within three months following the entry into force;***

Amendment 40

Proposal for a directive

Article 1 — point 3

Directive 2011/16/EU

Article 8a — paragraph 5 — point b

Text proposed by the Commission	*Amendment*
(b) the content of the advance ***cross-border*** ruling or advance pricing arrangement, including a description of the relevant business activities or transactions or series of transactions;	(b) the content of the advance ruling or advance pricing arrangement, including a description of the relevant business activities or transactions or series of transactions;

Amendment 41

Proposal for a directive

Article 1 — paragraph 1 — point 3

Directive 2011/16/EU

Article 8a — paragraph 5 — point b a (new)

Text proposed by the Commission	*Amendment*
	(ba) the criteria used to determine the advance ruling or the advance pricing arrangement, as well as the limitation in time thereof, if any, or the circumstances under which the decision can be revoked;

Amendment 42

Proposal for a directive

Article 1 — point 3

Directive 2011/16/EU

Article 8a — paragraph 5 — point d

Text proposed by the Commission	*Amendment*
(d) the identification of the other Member States likely to be directly or indirectly concerned by the advance ***cross-border*** ruling or advance pricing arrangement;	(d) the identification of the other Member States likely to be directly or indirectly concerned by the advance ruling or advance pricing arrangement;

Amendment 43

Proposal for a directive

Article 1 — point 3

Directive 2011/16/EU

Article 8a — paragraph 5 — point e

Text proposed by the Commission	*Amendment*
(e) the identification of any person, other than a natural person, in the other Member States likely to be directly or indirectly affected by the advance ***cross-border*** ruling or advance pricing arrangement (indicating to which Member State the affected persons are linked).	(e) the identification of any person, other than a natural person, in the other Member States likely to be directly or indirectly affected by the advance ruling or advance pricing arrangement (indicating to which Member State the affected persons are linked).

Amendment 44

Proposal for a directive

Article 1 — paragraph 1 — point 3

Directive 2011/16/EU

Article 8a — paragraph 5 — point e a (new)

Text proposed by the Commission	*Amendment*
	(ea) 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 45

Proposal for a directive

Article 1 — paragraph 1 — point 3

Directive 2011/16/EU

Article 8a — paragraph 5 — point e b (new)

Text proposed by the Commission	*Amendment*
	(eb) a description of the set of criteria used and of the arrangements applicable where, by means of a de jure or de facto mechanism, the taxpayer's taxable base is reduced by derogation from the standard rules of the Member State issuing the opinion, involving, for example, authorisation for a faster rate of amortisation than is customary or deduction of costs not directly incurred or not actually incurred by the taxpayer;

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Amendment 46

Proposal for a directive

Article 1 — paragraph 1 — point 3

Directive 2011/16/EU

Article 8a — paragraph 5 — point e c (new)

Text proposed by the Commission	*Amendment*
	(ec) ***a description of the set of criteria used and of the arrangements applicable where a taxpayer is granted a rate of taxation which is lower than the standard rate in the Member State issuing the opinion;***

Amendment 47

Proposal for a directive

Article 1 — paragraph 1 — point 3

Directive 2011/16/EU

Article 8a — paragraph 5 — point e d (new)

Text proposed by the Commission	*Amendment*
	(ed) ***a description of the set of criteria used and of the mechanism applied where a party to that mechanism is established in a third country in which taxation is either non-existent or much more favourable.***

Amendment 48

Proposal for a directive

Article 1 — paragraph 1 — point 3

Directive 2011/16/EU

Article 8a — paragraph 6

Text proposed by the Commission	*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). ***The Commission shall assist Member States which have endowed decentralised territorial or administrative bodies with tax-related competences in ensuring that they meet their responsibility to provide training and support to those bodies.***

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Amendment 49

Proposal for a directive

Article 1 — paragraph 1 — point 3

Directive 2011/16/EU

Article 8a — paragraph 7

Text proposed by the Commission	*Amendment*
7. The competent authority to which information is communicated pursuant to paragraph 1 shall confirm, if possible by electronic means, the receipt of the information to the competent authority which provided the information immediately and in any event no later than seven working days.	7. The competent authority to which information is communicated pursuant to paragraph 1 shall confirm, if possible by electronic means, the receipt of the information to the competent authority which provided the information immediately and in any event no later than seven working days***, thus facilitating the operation of an effective system of automatic information exchange***.

Amendment 50

Proposal for a directive

Article 1 — point 3

Directive 2011/16/EU

Article 8a — paragraph 8

Text proposed by the Commission	*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 – ***or their territorial or administrative bodies including local authorities if applicable*** – may, in accordance with Article 5, request additional information, including the full text of an advance ruling or an advance pricing arrangement, from the Member State which issued it.

Amendment 51

Proposal for a directive

Article 1 — paragraph 1 — point 3

Directive 2011/16/EU

Article 8a — paragraph 9 a (new)

Text proposed by the Commission	*Amendment*
	9a. Member States shall notify the Commission and other Member States at an early stage about any relevant change in their tax ruling practice (application formalities, decision process, etc.).

Amendment 52

Proposal for a directive

Article 1 — paragraph 1 — point 3

Directive 2011/16/EU

Article 8a — paragraph 9 b (new)

Text proposed by the Commission	*Amendment*
	9b. Member States' tax authorities shall notify the Commission and other Member States about any relevant changes to their domestic laws on corporate taxation (introduction of a new allowance, relief, exception, incentive or similar measure etc.) that could have an impact on their effective tax rates or on any other Member State's tax revenue.

Amendment 53

Proposal for a directive

Article 1 — paragraph 1 — point 3

Directive 2011/16/EU

Article 8b — paragraph 1

Text proposed by the Commission	*Amendment*
1. Before 1 October 2017, Member States shall provide the Commission on an annual basis with statistics on the volume of automatic exchanges under Articles 8 and 8a and, to the extent possible, with information on the administrative and other relevant costs and benefits relating to exchanges that have taken place and any potential changes, for both tax administrations and third parties.	1. Before 1 October 2017, Member States shall provide the Commission on an annual basis with statistics on the volume of automatic exchanges under Articles 8 and 8a***, the types of ruling granted,*** and, to the extent possible, with information on the administrative and other relevant costs and benefits relating to exchanges that have taken place and any potential changes, for both tax administrations and third parties;

Amendment 54

Proposal for a directive

Article 1 — paragraph 1 — point 3

Directive 2011/16/EU

Article 8b — paragraph 2 a (new)

Text proposed by the Commission	*Amendment*
	2a. Before 1 October 2017, and on an annual basis thereafter, the Commission shall publish a report summarising the main cases contained in the secure central directory referred to in Article 21(5). In doing so, the Commission shall comply with the confidentiality provisions laid down in Article 23a.

Amendment 55

Proposal for a directive

Article 1 — paragraph 1 — point 4

Directive 2011/16/EU

Article 14 — paragraph 3

Text proposed by the Commission	*Amendment*
3. Where a Member State makes use of any information communicated by another Member State in accordance with Article 8a, it shall send feedback thereon to the competent authority which provided the information as soon as possible, and no later than three months after the outcome of the use of the requested information is known, except if feedback has already been provided pursuant to paragraph 1 of this Article. The Commission shall determine the practical arrangements in accordance with the procedure referred to in Article 26(2).	3. Where a Member State makes use of any information communicated by another Member State in accordance with Article 8a, it shall send feedback thereon to the ***Commission and the*** competent authority which provided the information as soon as possible, and no later than three months after the outcome of the use of the requested information is known, except if feedback has already been provided pursuant to paragraph 1 of this Article. The Commission shall determine the practical arrangements in accordance with the procedure referred to in Article 26(2).

Amendment 56

Proposal for a directive

Article 1 — point 5

Directive 2011/16/EU

Article 20 — paragraph 5

Text proposed by the Commission	*Amendment*
5. The automatic exchange of information on advance ***cross-border*** rulings and advance pricing arrangements pursuant to Article 8a shall be carried out using a standard form once that form has been adopted by the Commission in accordance with the procedure referred to in Article 26(2).	5. The automatic exchange of information on advance rulings and advance pricing arrangements pursuant to Article 8a shall be carried out using a standard form once that form has been adopted by the Commission in accordance with the procedure referred to in Article 26(2).

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Amendment 57

Proposal for a directive

Article 1 — point 6

Directive 2011/16/EU

Article 21 — paragraph 5

Text proposed by the Commission	*Amendment*
5. The Commission shall develop a secure central directory where information to be communicated in the framework of Article 8a of this Directive ***may*** be recorded in order to satisfy the automatic exchange provided for in paragraphs 1 and 2 of Article 8a. The Commission shall have access to the information recorded in this directory. The necessary practical arrangements shall be adopted by the Commission in accordance with the procedure referred to in Article 26(2).	5. ***On 31 December 2016 at the latest,*** the Commission shall develop a secure central directory where information to be communicated in the framework of Article 8a of this Directive ***must*** be recorded in order to satisfy the automatic exchange provided for in paragraphs 1 and 2 of Article 8a. ***Member States shall ensure that all information communicated in the framework of Article 8a during the transitional period where the secure central directory is not yet developed is uploaded into the secure central directory by 1 April 2017.*** The Commission ***and the Member States*** shall have access to the information recorded in this directory. The necessary practical arrangements shall be adopted by the Commission in accordance with the procedure referred to in Article 26(2).

Amendment 58

Proposal for a directive

Article 1 — paragraph 1 — point 8

Directive 2011/16/EU

Article 23a — paragraph 1

Text proposed by the Commission	*Amendment*
1. Information communicated to the Commission pursuant to this Directive shall be kept confidential by the Commission in accordance with the provisions applicable to Union authorities.	1. Information communicated to the Commission pursuant to this Directive shall be kept confidential by the Commission in accordance with the provisions applicable to Union authorities***, as enshrined in Article 8 of the Charter of Fundamental Rights of the European Union.***

Amendment 59

Proposal for a directive

Article 1 — paragraph 1 — point 8

Directive 2011/16/EU

Article 23a — paragraph 2 — subparagraph 1

Text proposed by the Commission	*Amendment*
2. Information communicated to the Commission by ***a*** Member State under Article 23, as well as any report or document produced by the Commission using such information, may be transmitted to other Member States. Such transmitted information shall be covered by the obligation of official secrecy and enjoy the protection extended to similar information under the national law of the Member State which received it.	2. Information communicated to the Commission by ***an EU or EEA*** Member State under Article 23, as well as any report or document produced by the Commission using such information, may be transmitted to other ***EU*** Member States ***(and in case of reciprocity also EEA Member States)***. Such transmitted information shall be covered by the obligation of official secrecy and enjoy the protection extended to similar information under the national law of the ***EU*** Member State ***(and in case of reciprocity also EEA Member State)*** which received it.

Amendment 60

Proposal for a directive

Article 1 — paragraph 1 — point 8

Directive 2011/16/EU

Article 23a — paragraph 2 — subparagraph 2

Text proposed by the Commission	*Amendment*
Reports and documents produced by the Commission referred to in the first subparagraph may only be used by the Member States for analytical purposes but shall not be published or made available to any other person or body without express agreement of the Commission.	Reports and documents produced by the Commission referred to in the first subparagraph may only be used by the ***EU or EEA*** Member States for analytical purposes but shall not be published or made available to any other person or body without express agreement of the Commission.

Tuesday 27 October 2015

Amendment 61

Proposal for a directive

Article 1 — paragraph 1 — point 8 a (new)

Directive 2011/16/EU

Article 23 b (new)

Text proposed by the Commission	*Amendment*
	(8a) The following Article is inserted:
	'Article 23b
	Penalties
	The Commission shall examine all penalties to be established in the event of refusal or omission of information exchange.'

Amendment 62

Proposal for a directive

Article 1 — paragraph 1– point 9 a (new)

Directive 2011/16/EU

Article 25 a (new)

Text proposed by the Commission	*Amendment*
	(9a) The following Article is inserted:
	'Article 25a
	OECD developments
	This Directive shall be compatible with OECD developments and shall take into consideration the OECD comprehensive set of rules contained in the Standard for Automatic Exchange of Financial Account.'

Amendment 63

Proposal for a directive

Article 1 — paragraph 1– point 9 b (new)

Directive 2011/16/EU

Article 25 b (new)

Text proposed by the Commission	*Amendment*
	(9b) The following Article is inserted:
	'Article 25b
	Further action of Member States
	This Directive shall not preclude Member States from taking further action to develop domestic or agreement-based provisions for the prevention of tax avoidance.'

Amendment 64

Proposal for a directive

Article 1 — paragraph 1 — point 9 c (new)

Directive 2011/16/EU

Article 27

Text proposed by the Commission	*Amendment*
	(9c) Article 27 is replaced by the following: ***'Article 27*** ***Reporting*** ***Every three years after the entry into force of this Directive, the Commission shall submit a report on the application of this Directive to the European Parliament and to the Council.'***