



EUROPEAN COMMISSION

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C(2015) 5225 final*

Dear President,

The Commission would like to thank the Bundesrat for its Opinion concerning the Commission 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}.

The Commission welcomes the support expressed by the Bundesrat for the general direction of the proposal which aims to enhance transparency regarding tax practices in the Member States by extending the automatic exchange of information. Enhancing transparency is one instrument that can be used to fight harmful tax practices, which – as broadly agreed in the EU – undermine the functioning of the internal market.

The Commission has proposed an approach which would ensure that a defined set of information regarding tax rulings issued by a Member State would have to be exchanged automatically between all Member States. The Commission's main objective is to eliminate any room for discretion on the side of the Member State issuing a tax ruling to decide with which other Member States the information should be exchanged. The Commission takes note that the Bundesrat takes a different position in that it considers that any exchange of information should be restricted to the Member States that are directly concerned. Existing EU legislation in the area of administrative cooperation allows for discretion and the Commission concluded that this is the main reason why the spontaneous exchange of information between Member States in practice has been very limited in the past.

At the same time the Commission proposal is proportionate because the amount of information to be exchanged in the first step is limited, clearly defined and standardised. The setting up of a central directory to store the information could facilitate the process and thereby reduce the administrative burden. One of the Commission's arguments is that a ruling could only be checked for conformity with existing law once the information that a certain ruling has been issued is shared between all Member States and the Commission.

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The proposal would also require the exchange of a limited set of information for tax rulings issued before the entry into force of the new directive (retroactivity) as a one-off exchange. The Commission takes the view that in order to get a full overview of existing practices in this field it is not sufficient to focus only on future arrangements because rulings issued in the past could still have an impact on future tax declarations. In view of this the proposal is proportionate.

The risk of having to exchange sensitive or confidential information is addressed by the fact that only a very limited set of the information would have to be exchanged between Member States in the first step. In case more detailed information would be requested, criteria already established in the existing Directive under Article 17, such as the commercial, industrial or professionals secrecy rules, will continue to apply.

Given the urgent need for change, the Commission hopes that the new rules can be in place by January 2016. Therefore, swift progress in Council will be necessary to keep to this ambitious timeframe. The date of entry into force of the new requirements has to be realistic and in practice manageable by Member States, but this should not be an argument to delay the implementation. Instead, the current momentum of the debate should be used to achieve the ultimate objective, which is to ensure a broad exchange of information between Member States as soon as possible.

The points made above are based on the proposal presented by the Commission which is currently in the legislative process involving both the European Parliament and the Council in which your government is represented.

The Commission hopes that these clarifications address the issues raised by the Bundesrat and looks forward to continuing our political dialogue in the future.

Yours faithfully,

*Elżbieta Bieńkowska
Member of the Commission*