

# European Communities

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EUROPEAN PARLIAMENT

## Working Documents

1976 - 1977

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8 November 1976

DOCUMENT 372/76

### Report

drawn up on behalf of the Committee on Economic and Monetary Affairs

on the proposal from the Commission of the European Communities to the Council (Doc. 67/76) for a directive concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation

Rapporteur: Mr J. de BROGLIE

1.2.1

PE 46.018/fin.



By letter of 22 April 1976 the President of the Council of the European Communities requested the European Parliament, pursuant to Article 99 of the EEC Treaty, to deliver an opinion on the proposal from the Commission of the European Communities to the Council for a directive on mutual assistance by the competent authorities of the Member States in the field of direct taxation.

The President of the European Parliament referred this proposal to the Committee on Economic and Monetary Affairs on 10 May 1976.

On 23 September 1976 the Committee on Economic and Monetary Affairs appointed Mr de Broglie rapporteur.

It considered this proposal at its meetings of 30 September and 19 October 1976.

At its meeting of 19 October 1976 the committee adopted the motion for a resolution by 7 votes to 0 with 3 abstentions.

Present: Mr Van der Hek, chairman; Mr Cointat, vice-chairman; Mr de Broglie, rapporteur; Mr Artzinger, Mr Delmotte, Mr Glinne (deputizing for Mr Thornley), Mr Lange, Mr Prescott, Mr Starke and Mr Suck.

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The Committee on Economic and Monetary Affairs hereby submits to the European Parliament the following motion for a resolution, together with explanatory statement:

MOTION FOR A RESOLUTION

embodying the opinion of the European Parliament on the proposal from the Commission of the European Communities <sup>to the Council</sup> relating to a directive concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation

The European Parliament,

- having regard to the proposal from the Commission of the European Communities to the Council<sup>1</sup>;
  - having been consulted by the Council pursuant to Article 99 of the Treaty establishing the EEC (Doc. 67/76);
  - having regard to the report of the Committee on Economic and Monetary Affairs (Doc. 372/76);
1. Notes that the tax evasion and avoidance practices which exploit the disparities between the tax laws of the Member States have seriously damaging repercussions internationally as well as within the Community, not only because of the budgetary losses that they entail, but also because they breach the principles of fair taxation and cause distortions in capital movements and conditions of competition;
  2. Approves, therefore, in line with the recommendation already made in the resolution of the European Parliament of 12 December 1974<sup>2</sup>, the principle of mutual assistance by the competent authorities of the Member States in the field of direct taxation;

As regards the consultation procedure

3. Fears that the essentially bilateral procedure provided for in Article 9 might give rise to the application of different methods and hence to taxation disparities and distortions of competition within the Community, and considers it unsatisfactory in this respect that the Commission should be informed only ex post facto (Article 9(3) ;

<sup>1</sup> OJ No. C 94 of 27.4.1976, p. 2

<sup>2</sup> OJ No. C 5 of 8.1.1975, resolution, p.39, point 16

4. Notes that the proposed directive contains no details of the sanctions to be applied for unreasonable delays or an unsubstantiated refusal on the part of the authorities of a Member State to furnish the necessary information.

As regards the limitations on the exchange of information

5. Considers that, because of their vagueness, the two general limitations on the exchange of information between Member States, based on considerations of public policy and the condition of reciprocity (Article 8 (2) and (3)), are unlikely to promote effective mutual assistance between the competent authorities of the Member States;
6. While accepting that there is an evident need to ensure strict control of the disclosure of information gathered in this area, also invites the Commission, in this same connection, to submit a proposal for a regulation to provide at Community level for appeals against the assessment made by the authorities of a Member State of the confidential nature of tax information and its disclosure, in the interests both of the states requesting the information where it is unjustifiably withheld and of the taxpayer where it is used for irregular purposes;
7. Approves, subject to these reservations, this proposal for a directive, which is the first measure designed to establish a mutual assistance procedure at Community level, made necessary by the inability of the national tax authorities to cope with the problem of international tax evasion and avoidance.

EXPLANATORY STATEMENT

This proposal for a directive follows on from the Council resolution of 10 February 1975 on the measures to be taken by the Community in order to combat international tax evasion and avoidance.

I. OBJECTIVE

1. In its communication to the Council (Doc. COM(76) 1930), the Commission gives prominence to those of its proposals concerning the development of international assistance and cooperation relating to information, supervision and recovery of tax.

Tax evasion and avoidance practices which exploit the disparities between the tax laws of the Member States have serious damaging repercussions both at national and Community level; they result in budgetary losses, breach the principles of fair taxation and cause distortions in capital movements and the conditions of competition.

If they are to be effective, measures to combat these practices must, of necessity, be organized on as wide an international basis as possible.

2. The European Parliament fully approves the principle of mutual assistance by the competent authorities of the Member States, as set out in this proposal for a directive, whose scope is confined to questions of direct taxation<sup>1</sup>. This initial measure forms part of an essential programme of action to regulate the activities of international firms. Its purpose is to establish at Community level taxation control machinery, made necessary by the inability of the national tax authorities to cope with the problem of international tax evasion and avoidance.

Having endorsed the principle of the proposal, consideration must be given first to the consultation procedure for which it provides and then to the restrictions it imposes on its application.

II. MUTUAL ASSISTANCE PROCEDURE

3. The mutual assistance procedure established by the proposal allows for different methods of consultation and for the setting up of consultation bodies.

<sup>1</sup> See Leenhardt report, Doc. 292/74, page 12, point 16 of explanatory statement.

(a) the different consultation methods

Three types of consultation are proposed :

- exchange on request (Article 2) :

This type of consultation relates to specific cases and may be rejected by the State from which the information is requested, if it appears that the requesting State has not exhausted its own usual sources of information.

- automatic exchange (Article 9) :

Automatic exchange invariably relates to certain categories of information (dividends, royalties, frontier workers' pay), on which the competent authorities of the Member States have decided to hold consultations by prior agreement under the consultation procedure set out in Article 9.

- spontaneous exchange (Article 4) :

This Article deals with the compulsory transmission of information other than that provided on request or by prior agreement, in the five sets of circumstances set out in Article 4 (a) to (e) (abnormal reduction in or exemption from tax, improper exploitation of a double taxation agreement, tax savings resulting from artificial transfers of profits within groups of undertakings, etc.,).

(b) consultation bodies

4. For the purpose of determining the detailed rules governing the various consultation procedures and ensuring that the regulations are applied and interpreted in a uniform manner, the proposal for a directive stipulates that the consultations are to be held within a committee between the competent authorities of the two Member States concerned in the case of matters of bilateral interest. The results of such bilateral consultations on matters covered by the directive are to be transmitted to the Commission which must in turn inform the competent authorities of the other Member States. Hence, the Commission and the other Member States are to be informed of arrangements made under these consultations - which are mainly based on bilateral relations - only when they are over. The danger of such a procedure is that it might result in differences of treatment and create new taxation disparities and distortions of competition within the Community, especially where the methods of exchanging information are those provided for in Articles 3 and 4.

Both the obligation to inform the Commission provided for in Article 9(3) and the procedure for pooling experience provided for in Article 10 seem inadequate to ensure that similar systems are established throughout the Community.



5. Finally, it should be noted that the information obtained following such consultations, particularly in connection with transfer pricing within groups of companies, might lead one Member State to adjust the taxable profits of a company without a corresponding adjustment being made by the other Member State. In view of this, the Commission was asked to submit to the Council by July 1976 at the latest a proposal for an ad hoc directive to deal with such cases of double taxation<sup>1</sup>.

### III. LIMITATIONS

6. As a first step, the present proposal provides that collaboration between administrations is to be carried out subject to the conditions and limitations of the legislation of each Member State.

To assess the real scope of the proposal, it is therefore necessary to assess its limitations.

These limitations stem as much from the sovereignty exercised by the Member States in matters of fiscal policy as from requirements regarding the observance of secrecy.

#### (a) Limitations relating to the fiscal sovereignty of Member States

7. It must be pointed out that there is no strict obligation on the Member States to hold consultations. In fact, the proposal contains no clause penalizing an unjustified refusal to divulge information: on the contrary, there are many exemptions to the obligation to provide information.

The reasons to be given for refusing to comply with a request for information from a Member State is left entirely to the discretion of the Member State to which the request is addressed. Thus, information may be refused '... if it appears that the competent authority of the Member State making the request has not exhausted its own usual sources of information' (Article 2).

Articles 3 and 4 contain no provision relating to a refusal to provide information and Article 5 specifies that if the authority called upon to furnish information refuses to do so, it has merely to inform the requesting authority without delay, 'indicating the nature of the obstacles or the reasons for the refusal'.

Finally, the exchange of information is subject to the two general limitations set out in Article 8, which are based on public policy (Article 8 (2) and reciprocity (Article 8 (3))).

<sup>1</sup> Doc. 67/76, p.3, para.10.

From an examination of these limitations, which are bound up with the fiscal sovereignty of the Member States, it would appear that the exchange of information is in far too many cases left to the sole discretion of the Member States, thereby substantially reducing the scope and effectiveness which we may legitimately expect from this proposal for a directive.

A further criticism is that the cooperation procedure set out in Article 10 and relating to transfer pricing is extremely vague.

(b) Secrecy

8. Without disputing the need to safeguard the rights of taxpayers and to avoid indiscretions and improper disclosures in promoting such exchanges of information between the Member States, it may nevertheless be argued that the powers conferred by the proposal on the authorities of the Member States are excessive (ref. in particular the reciprocity rule laid down by Article 7 (3)). The question that needs to be asked is whether, in the interests of fair taxation and of the taxpayer, the Member States should be recognized as enjoying sole discretion on the confidentiality of fiscal information and its disclosure.

Taken as a whole, these limitations detract considerably from the scope of the proposal, the result being that its effectiveness - an essential consideration in a measure designed to combat international tax evasion - would seem in the last analysis to depend all too often on the 'goodwill' of the authorities of the Member States, which is to be regretted.