



2016/0338(CNS)

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DRAFT REPORT

on the proposal for a Council directive on Double Taxation Dispute Resolution Mechanisms in the European Union
(COM(2016)0686 – C8-0035/2017 – 2016/0338(CNS))

Committee on Economic and Monetary Affairs

Rapporteur: Michael Theurer

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the ■ symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a Council directive on Double Taxation Dispute Resolution Mechanisms in the European Union (COM(2016)0686 – C8-0035/2017 – 2016/0338(CNS))

(Special legislative procedure – consultation)

The European Parliament,

- having regard to the Commission proposal to the Council (COM(2016)0686),
 - having regard to Article 115 of the Treaty on the Functioning of the European Union, pursuant to which the Council consulted Parliament (C8-0035/2017),
 - having regard to the reasoned opinion submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the Swedish Parliament, asserting that the draft legislative act does not comply with the principle of subsidiarity,
 - having regard to its resolutions of 25 November 2015¹ and of 6 July 2016² on tax rulings and other measures similar in nature or effect,
 - having regard to Rule 78c of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs (A8-0000/2017),
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 Recital 1

¹ Texts adopted, P8_TA(2015)0408.

² Texts adopted, P8_TA(2016)0310.

Text proposed by the Commission

(1) Situations, in which different Member States tax the same income or capital twice can create serious tax obstacles for businesses operating cross border. They create an excessive tax burden for businesses and are likely to cause economic distortions and inefficiencies, as well as to have a negative impact on cross border investment and growth.

Amendment

(1) ***Businesses must pay their fair share of tax where they make their profits, but double taxation should be avoided.*** Situations, in which different Member States tax the same income or capital twice can create serious tax obstacles for businesses operating cross border. They create an excessive tax burden for businesses and are ***one of the big obstacles to the internal market as they are*** likely to cause economic distortions and inefficiencies, as well as to have a negative impact on cross border investment and growth.

Or. en

Amendment 2

**Proposal for a directive
Recital 1 a (new)**

Text proposed by the Commission

Amendment

(1a) On 25 November 2015, the European Parliament adopted a resolution on tax rulings and other measures similar in nature or effect, where it contested the usefulness of the arbitration convention and considered that this instrument should be reshaped and be made more efficient, or replaced by an EU dispute mechanism with more effective mutual agreement procedures. On 6 July 2016, the European Parliament adopted a resolution on tax rulings and other measures similar in nature or effect, where it stressed that the setting of a clear timeframe for dispute resolution procedures is key to enhancing the effectiveness of the systems.

Or. en

Amendment 3

Proposal for a directive

Recital 2

Text proposed by the Commission

(2) For this reason, it is necessary that mechanisms available in the Union ensure the resolution of double taxation disputes and the effective elimination of the double taxation at stake.

Amendment

(2) ***Current dispute resolution procedures are too long, costly and often do not result in an agreement. Some businesses rather accept double taxation than spending money and time in burdensome procedures to eliminate double taxation.*** For this reason, it is necessary that mechanisms available in the Union ensure the ***enforceable*** resolution of double taxation disputes and the effective ***and timely*** elimination of the double taxation at stake.

Or. en

Amendment 4

Proposal for a directive

Recital 3

Text proposed by the Commission

(3) The currently existing mechanisms provided for in bilateral tax treaties do not achieve the provision of a full relief from double taxation in a timely manner in all cases. The existing Convention on the elimination of double taxation in connection with the adjustments of profits of associated enterprises (90/436/EEC)¹ ('the Union Arbitration Convention') has a limited scope as it is only applicable to transfer pricing disputes and attribution of profits to permanent establishments. The monitoring exercise carried out as part of the implementation of the Union

Amendment

(3) The currently existing mechanisms provided for in bilateral tax treaties do not achieve the provision of a full relief from double taxation in a timely manner in all cases. The existing Convention on the elimination of double taxation in connection with the adjustments of profits of associated enterprises (90/436/EEC)¹ ('the Union Arbitration Convention') has a limited scope as it is only applicable to transfer pricing disputes and attribution of profits to permanent establishments. The monitoring exercise carried out as part of the implementation of the Union

Arbitration Convention has revealed some important shortcomings, in particular as regards access to the procedure and the length and the *effective* conclusion of the procedure.

¹ OJ L 225, 20.8.1990, p. 10.

Arbitration Convention has revealed some important shortcomings, in particular as regards access to the procedure and the length and the *absence of a final binding and timely* conclusion of the procedure.

¹ OJ L 225, 20.8.1990, p. 10.

Or. en

Amendment 5

Proposal for a directive Recital 5

Text proposed by the Commission

(5) The introduction of an effective and efficient framework for resolution of tax disputes which ensures legal certainty and a business friendly environment for investments is therefore a crucial action in order to achieve a fair and efficient corporate tax system in the Union. ***The double taxation dispute resolution mechanisms should also create a harmonised and transparent framework for solving double taxation issues and as such provide benefits to all taxpayers.***

Amendment

(5) The introduction of an effective and efficient framework for resolution of tax disputes which ensures legal certainty and a business friendly environment for investments is therefore a crucial action in order to achieve a fair and efficient corporate tax system in the Union. ***Member States should dedicate an adequate level of human, technical and financial resources to competent authorities for this purpose.***

Or. en

Amendment 6

Proposal for a directive Recital 5 a (new)

Text proposed by the Commission

Amendment

(5a) The Union has the potential to become a model and a global leader in terms of tax transparency and

coordination. The double taxation dispute resolution mechanisms should therefore also create a harmonised and transparent framework for solving double taxation issues and as such provide benefits to all taxpayers. At least an abstract of the final decisions have to be published and made available by the Commission in a common data format also on a centrally managed webpage.

Or. en

Amendment 7

Proposal for a directive Recital 11

Text proposed by the Commission

(11) The Commission should review the application of this Directive after a period of five years *and* Member States should provide the Commission with appropriate input to support this review,

Amendment

(11) The Commission should review the application of this Directive after a period of five years. Member States should provide the Commission with appropriate input to support this review. *At the end of its review, the Commission should present a report to the European Parliament and the Council, including an assessment on extension of the scope of this Directive to cover all cross-border double taxation situations and if appropriate, an amending legislative proposal,*

Or. en

Amendment 8

Proposal for a directive Article 3 – paragraph 2

Text proposed by the Commission

2. The competent authorities shall

Amendment

2. The competent authorities shall

acknowledge receipt of the complaint within one month from the receipt of the complaint. They shall also inform the competent authorities of the other Member States concerned on the receipt of the complaint.

acknowledge receipt of the complaint within one month from the receipt of the complaint. They shall also inform the competent authorities of the other Member States concerned on the receipt of the complaint *without delay*.

Or. en

Amendment 9

Proposal for a directive Article 3 – paragraph 5

Text proposed by the Commission

5. The competent authorities of the Member States concerned shall take a decision on the acceptance and admissibility of the complaint of a taxpayer within *six* months of the receipt thereof. The competent authorities shall inform the taxpayers and the competent authorities of the other Member States of their decision.

Amendment

5. The competent authorities of the Member States concerned shall take a decision on the acceptance and admissibility of the complaint of a taxpayer within *three* months of the receipt thereof. The competent authorities shall inform the taxpayers and the competent authorities of the other Member States of their decision *without delay*.

Or. en

Amendment 10

Proposal for a directive Article 4 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Where the competent authorities of the Member States concerned decide to accept the complaint according to Article 3(5), they shall endeavour to eliminate the double taxation by mutual agreement procedure within *two years* starting from the last notification of one of the Member States' decision on the acceptance of the

Amendment

Where the competent authorities of the Member States concerned decide to accept the complaint according to Article 3(5), they shall endeavour to eliminate the double taxation by mutual agreement procedure within *18 months* starting from the last notification of one of the Member States' decision on the acceptance of the

complaint.

complaint.

Or. en

Amendment 11

Proposal for a directive

Article 4 – paragraph 1 – subparagraph 2

Text proposed by the Commission

The period of *two years* referred to in the first subparagraph may be extended by up to six months at the request of a competent authority of a Member State concerned, if the requesting competent authority provides justification in writing. That extension shall be subject to the acceptance by taxpayers and the other competent authorities.

Amendment

The period of *18 months* referred to in the first subparagraph may be extended by up to six months at the request of a competent authority of a Member State concerned, if the requesting competent authority provides justification in writing. That extension shall be subject to the acceptance by taxpayers and the other competent authorities.

Or. en

Amendment 12

Proposal for a directive

Article 4 – paragraph 4

Text proposed by the Commission

4. Where the competent authorities of the Member States concerned have not reached an agreement to eliminate the double taxation within the period provided for in paragraph 1, each competent authority of the Member States concerned shall inform the taxpayers indicating the reasons for the failure to reach agreement.

Amendment

4. Where the competent authorities of the Member States concerned have not reached an agreement to eliminate the double taxation within the period provided for in paragraph 1, each competent authority of the Member States concerned shall inform the taxpayers *without delay* indicating the reasons for the failure to reach agreement.

Or. en

Amendment 13

Proposal for a directive Article 5 – paragraph 2

Text proposed by the Commission

2. Where the competent authorities of the Member States concerned have not taken a decision on the complaint within *six* months following receipt of a complaint by a taxpayer, the complaint shall be deemed to be rejected.

Amendment

2. Where the competent authorities of the Member States concerned have not taken a decision on the complaint within ***three*** months following receipt of a complaint by a taxpayer, the complaint shall be deemed to be rejected.

Or. en

Amendment 14

Proposal for a directive Article 6 – paragraph 2 – subparagraph 1

Text proposed by the Commission

The Advisory Commission shall adopt a decision on the admissibility and acceptance of the complaint within *six* months from the date of notification of the last decision rejecting the complaint under Article 5(1) by the competent authorities of the Member States concerned. By default of any decision notified in the *six* month period, the complaint is deemed to be rejected.

Amendment

The Advisory Commission shall adopt a decision on the admissibility and acceptance of the complaint within ***three*** months from the date of notification of the last decision rejecting the complaint under Article 5(1) by the competent authorities of the Member States concerned. By default of any decision notified in the ***three*** month period, the complaint is deemed to be rejected.

Or. en

Amendment 15

Proposal for a directive Article 6 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Where the Advisory Commission confirms the existence of double taxation and the admissibility of the complaint, the mutual agreement procedure provided for in Article 4 shall be initiated at the request of one of the competent authorities. The competent authority concerned shall notify the Advisory Commission, the other competent authorities concerned and the taxpayers of that request. The period of **two years** provided for in Article 4(1) shall start from the date of the decision taken by the Advisory Commission on the acceptance and admissibility of the complaint.

Amendment

Where the Advisory Commission confirms the existence of double taxation and the admissibility of the complaint, the mutual agreement procedure provided for in Article 4 shall be initiated at the request of one of the competent authorities. The competent authority concerned shall notify the Advisory Commission, the other competent authorities concerned and the taxpayers of that request. The period of **18 months** provided for in Article 4(1) shall start from the date of the decision taken by the Advisory Commission on the acceptance and admissibility of the complaint.

Or. en

Amendment 16

Proposal for a directive

Article 6 – paragraph 4 – subparagraph 1

Text proposed by the Commission

The Advisory Commission shall be set up no later than **fifty calendar days** after the end of the **six-month** period provided for in Article 3(5), if the Advisory Commission is set up in accordance with paragraph 1.

Amendment

The Advisory Commission shall be set up no later than **one month** after the end of the **three-month** period provided for in Article 3(5), if the Advisory Commission is set up in accordance with paragraph 1.

Or. en

Amendment 17

Proposal for a directive

Article 6 – paragraph 4 – subparagraph 2

Text proposed by the Commission

The Advisory Commission shall be set up no later than **fifty calendar days** after the end of the period provided for in Article 4(1) if the Advisory Commission is set up in accordance with paragraph 2.

Amendment

The Advisory Commission shall be set up no later than **one month** after the end of the period provided for in Article 4(1) if the Advisory Commission is set up in accordance with paragraph 2.

Or. en

Amendment 18

**Proposal for a directive
Article 7 – paragraph 2**

Text proposed by the Commission

2. Appointment of the independent persons and their substitutes according to paragraph 1 shall be referred to a competent court of a Member State only after the end of the **fifty-day** period referred to in Article 6(4) and within two weeks after the end of that period.

Amendment

2. Appointment of the independent persons and their substitutes according to paragraph 1 shall be referred to a competent court of a Member State only after the end of the **one month** period referred to in Article 6(4) and within two weeks after the end of that period.

Or. en

Amendment 19

**Proposal for a directive
Article 8 – paragraph 4 – subparagraph 2**

Text proposed by the Commission

Independent persons of standing must be nationals of a Member State and resident within the Union. They must be competent **and** independent.

Amendment

Independent persons of standing must be nationals of a Member State and resident within the Union. They must be competent, independent, **impartial and of high integrity**.

Or. en

Amendment 20

Proposal for a directive

Article 10 – paragraph 1 – introductory part

Text proposed by the Commission

1. Member States shall provide that within the period of **fifty calendar days** as provided for in Article 6(4), each competent authority of the Member States concerned notifies the taxpayers on the following:

Amendment

1. Member States shall provide that within the period of **one month** as provided for in Article 6(4), each competent authority of the Member States concerned notifies the taxpayers on the following:

Or. en

Amendment 21

Proposal for a directive

Article 10 – paragraph 1 – subparagraph 2

Text proposed by the Commission

The date referred to in point (b) of the first subparagraph shall be set no later than **6** months after the setting up of the Advisory Commission or Alternative Dispute Resolution Commission.

Amendment

The date referred to in point (b) of the first subparagraph shall be set no later than **three** months after the setting up of the Advisory Commission or Alternative Dispute Resolution Commission.

Or. en

Amendment 22

Proposal for a directive

Article 10 – paragraph 3

Text proposed by the Commission

3. In absence or incompleteness of notification of the Rules of Functioning to the taxpayers, the Member States shall

Amendment

3. In absence or incompleteness of notification of the Rules of Functioning to the taxpayers, the Member States shall

provide that the independent persons and the chair shall complete the Rules of Functioning according to Annex II and send it to the taxpayer within two weeks from the expiry date of the *fifty calendar days* provided in Article 6(4). When the independent persons and the chair do not agree on the Rules of Functioning or do not notify them to the taxpayers, the taxpayers can refer to the competent court of their state of residence or establishment in order to draw all legal consequences and implement the Rules of Functioning.

provide that the independent persons and the chair shall complete the Rules of Functioning according to Annex II and send it to the taxpayer within two weeks from the expiry date of the *one month period* provided in Article 6(4). When the independent persons and the chair do not agree on the Rules of Functioning or do not notify them to the taxpayers, the taxpayers can refer to the competent court of their state of residence or establishment in order to draw all legal consequences and implement the Rules of Functioning.

Or. en

Amendment 23

Proposal for a directive Article 13 – paragraph 1

Text proposed by the Commission

1. The Advisory Commission or Alternative Dispute Resolution Commission shall deliver its opinion no later than *six* months after the date it was set up to the competent authorities of the Member States concerned.

Amendment

1. The Advisory Commission or Alternative Dispute Resolution Commission shall deliver its opinion no later than *three* months after the date it was set up to the competent authorities of the Member States concerned.

Or. en

Amendment 24

Proposal for a directive Article 14 – paragraph 1

Text proposed by the Commission

1. The competent authorities shall agree within *six* months of the notification of the opinion of the Advisory Commission or Alternative Dispute Resolution

Amendment

1. The competent authorities shall agree within *three* months of the notification of the opinion of the Advisory Commission or Alternative Dispute

Commission on the elimination of the double taxation.

Resolution Commission on the elimination of the double taxation.

Or. en

Amendment 25

Proposal for a directive Article 15 – paragraph 2

Text proposed by the Commission

2. The submission of the dispute to the mutual agreement procedure or to the dispute resolution procedure shall **not** prevent a Member State from initiating or continuing judicial proceedings or proceedings for administrative and criminal penalties in relation to the same matters.

Amendment

2. The submission of the dispute to the mutual agreement procedure or to the dispute resolution procedure shall prevent a Member State from initiating or continuing judicial proceedings or proceedings for administrative and criminal penalties in relation to the same matters.

Or. en

Justification

It is vital that no sanctions are imposed on the taxpayer in relation to the same matters until a binding decision is taken.

Amendment 26

Proposal for a directive Article 15 – paragraph 3 – point a

Text proposed by the Commission

(a) **six** months referred to in Article 3(5);

Amendment

(a) **three** months referred to in Article 3(5);

Or. en

Amendment 27

Proposal for a directive Article 15 – paragraph 3 – point b

Text proposed by the Commission

(b) *two years* referred to in Article 4(1).

Amendment

(b) *18 months* referred to in Article 4(1).

Or. en

Amendment 28

Proposal for a directive Article 16 – paragraph 5

Text proposed by the Commission

5. The competent authorities shall notify the information to be published in accordance with paragraph 3 to the Commission without delay.

Amendment

5. The competent authorities shall notify the information to be published in accordance with paragraph 3 to the Commission without delay. *The Commission shall make this information available in a commonly used data format on a centrally managed webpage.*

Or. en

Amendment 29

Proposal for a directive Article 21 a (new)

Text proposed by the Commission

Amendment

Article 21a

Review

After a period of five years, the Commission shall, on the basis of public consultation and in the light of the discussions with competent authorities,

start a review on the application and the scope of this Directive.

The Commission shall submit a report to the European Parliament and the Council, including, if appropriate, an amending legislative proposal.

Or. en

Amendment 30

**Proposal for a directive
Annex I – heading 5 – point 2 a (new)**

Text proposed by the Commission

Amendment

Gewerbsteuer

Or. en

Amendment 31

**Proposal for a directive
Annex I – heading 12 – point 2 a (new)**

Text proposed by the Commission

Amendment

Imposta regionale sulle attività produttive

Or. en

EXPLANATORY STATEMENT

Your rapporteur emphasises that businesses must pay their fair share of tax where they make their profits, but they should pay tax only once. At present, double taxation represents one of the biggest obstacles to the Single Market as it creates barriers for cross-border investments and have a long term detrimental effect on growth. Yet, current dispute resolution procedures available in the EU are not efficient enough. Some taxpayers rather accept double taxation than spending money and time in burdensome procedures that do not guarantee a final binding decision eliminating double taxation. The Commission indicates that there are currently around 900 double taxation disputes in the EU with EUR 10.5 billion at stake.

The rapporteur recalls that already in November 2015, the European Parliament in its resolution considered that the arbitration convention should be replaced by an EU dispute mechanism with more effective mutual agreement procedures. Furthermore, in its July 2016 resolution, the European Parliament stressed that setting of a clear timeframe for dispute resolution procedures is key to enhancing the effectiveness of the systems. To this end, your rapporteur welcomes the Commission proposal which addresses previous calls of the European Parliament.

Your rapporteur proposes the following main improvements to the Commission's text:

- National authorities do not often have incentives to act quickly and solve double taxation disputes as demonstrated by cases lasting often two years or even longer. Thus, the rapporteur believes that there is a considerable room for improvement in the performance of competent authorities and therefore proposes to accelerate different procedural stages. To this end, Member States should dedicate an adequate level of human, technical and financial resources.
- The rapporteur further emphasises that independent persons appointed to advisory commissions and alternative dispute resolution commissions besides being competent and independent must be also impartial and of high integrity.
- When a taxpayer submits a complaint requesting the resolution of the double taxation, the rapporteur considers that it is vital not to impose sanctions on the taxpayer in relation to the same matters until a binding decision is taken.
- Your rapporteur stresses that the Union has the potential to become a model and a global leader in terms of tax transparency. To create a harmonised and transparent framework of the double taxation dispute resolution mechanisms he proposes that in addition to publishing at least an abstract of the final decisions by competent authorities, the Commission should made available such information also on a centrally managed webpage for the benefit of all taxpayers. The rapporteur believes that this could lead to reducing a total number of future disputes arising from the same issues between same Member States.
- Furthermore, the rapporteur considers that the Commission should review application of this Directive after five years with regard to the possible extension of its scope to cover all double taxation situations (such as indirect taxes, personal income taxes, inheritance taxes, taxation of occupational pensions). At the end of its review, the Commission should present a report to the European Parliament and the Council, including an amending legislative proposal.

- At the current stage, the rapporteur proposes to extend the scope of this Directive to German Gewerbesteuer and Italian Imposta regionale sulle attività produttive which might also cause double taxation cases.

To conclude, your rapporteur would like to underline the importance of a fair and effective corporate taxation system in encouraging businesses to reap full benefits of the Single Market.