



Council of the
European Union

Brussels, 19 June 2020
(OR. en)

8498/20

**Interinstitutional File:
2020/0081 (CNS)**

**FISC 124
ECOFIN 457**

LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL DIRECTIVE amending Directive 2011/16/EU to address the urgent need to defer certain time limits for the filing and exchange of information in the field of taxation because of the COVID-19 pandemic

COUNCIL DIRECTIVE (EU) 2020/...

of ...

**amending Directive 2011/16/EU to address the urgent need
to defer certain time limits for the filing and exchange of information
in the field of taxation because of the COVID-19 pandemic**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 113 and 115 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Parliament¹,

Having regard to the opinion of the European Economic and Social Committee²,

Acting in accordance with a special legislative procedure,

¹ Opinion of ... (not yet published in the Official Journal).

² Opinion of ... (not yet published in the Official Journal).

Whereas:

- (1) The severe risks to public health and other hindrances caused by the COVID-19 pandemic, as well as lockdown measures imposed by Member States to help contain the pandemic, have had a significant disruptive effect on the capacity of businesses and Member States' tax authorities to carry out some of their obligations pursuant to Council Directive 2011/16/EU¹.
- (2) A number of Member States and persons liable to report information to the competent authorities of Member States under Directive 2011/16/EU have requested the deferral of certain time limits laid down in that Directive. Those time limits concern automatic exchanges of information on financial accounts whose beneficiaries are tax resident in another Member State and on reportable cross-border arrangements that contain at least one of the hallmarks set out in Annex IV to Directive 2011/16/EU ('reportable cross-border arrangements').
- (3) The severe disruption caused by the COVID-19 pandemic to the activities of many financial institutions and persons liable to report reportable cross-border arrangements hampers timely compliance with their reporting obligations pursuant to Directive 2011/16/EU. Financial institutions are currently faced with urgent tasks related to the COVID-19 pandemic.

¹ 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).

- (4) Furthermore, financial institutions and persons liable to report are faced with serious work-related disruptions, primarily due to remote working conditions because of the lockdown in most Member States. Similarly, the capacity of Member States' tax authorities to collect and process data has been negatively affected.
- (5) This situation requires an urgent and, to the extent possible, coordinated response within the Union. For that purpose, it is necessary to provide Member States with the option to defer the time limit for the exchange of information on financial accounts whose beneficiaries are tax resident in another Member State in order to allow Member States to adjust their national time limits for the filing of such information by Reporting Financial Institutions. Moreover, Member States should also be provided with the option to defer the time limits for filing and exchanging information on reportable cross-border arrangements.
- (6) Deferral of the time limits ('deferral') aims to address an exceptional situation and should not disrupt the structure established by, or the functioning of, Directive 2011/16/EU. Consequently, it is necessary for the deferral to be limited and to remain proportionate to the practical difficulties caused by the COVID-19 pandemic with regard to filing and exchanging information.

- (7) In light of the current uncertainty about the evolution of the COVID-19 pandemic, and given that the circumstances that justify the adoption of this Directive might continue to exist for some time, it is appropriate to provide for the possibility of one optional extension of the period of the deferral. Such an extension should take place only if the conditions laid down by this Directive are fulfilled.
- (8) In view of the significant impact of the economic disturbance caused by the COVID-19 pandemic on the budgets, human resources and functioning of Member States' tax authorities, the Council should be empowered to decide unanimously, on a proposal from the Commission, to extend the period of the deferral.
- (9) Any deferral should not affect the essential elements of the obligation to report and exchange information under Directive 2011/16/EU and it should be ensured that no information which becomes reportable during the period of the deferral remains unreported or unexchanged.
- (10) In view of the urgency entailed by the exceptional circumstances caused by the COVID-19 pandemic, the associated public health crisis and its social and economic consequences, it was considered to be appropriate to provide for an exception to the eight-week period referred to in Article 4 of Protocol No 1 on the role of national Parliaments in the European Union, annexed to the Treaty on European Union, to the Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community.

- (11) Directive 2011/16/EU should therefore be amended accordingly.
- (12) Given that Member States need to act within a very short period of time to defer time limits that would otherwise become applicable pursuant to Directive 2011/16/EU, this Directive should enter into force as a matter of urgency,

HAS ADOPTED THIS DIRECTIVE:

Article 1

In Directive 2011/16/EU, the following articles are inserted:

"Article 27a

Optional deferral of time limits because of the COVID-19 pandemic

1. Notwithstanding the time limits for filing information on reportable cross-border arrangements as specified in Article 8ab(12), Member States may take the measures necessary to allow intermediaries and relevant taxpayers to file, by 28 February 2021, information on reportable cross-border arrangements the first step of which was implemented between 25 June 2018 and 30 June 2020.
2. Where Member States take measures as referred to in paragraph 1, they shall also take the measures necessary to allow:
 - (a) notwithstanding Article 8ab(18), the first information to be communicated by 30 April 2021;
 - (b) the period of 30 days for filing information referred to in Article 8ab(1) and (7) to begin by 1 January 2021 where:
 - (i) a reportable cross-border arrangement is made available for implementation or is ready for implementation, or where the first step in its implementation has been made between 1 July 2020 and 31 December 2020; or

- (ii) intermediaries within the meaning of the second paragraph of point 21 of Article 3 provide, directly or by means of other persons, aid, assistance or advice between 1 July 2020 and 31 December 2020;
 - (c) in the case of marketable arrangements, the first periodic report in accordance with Article 8ab(2) to be made by the intermediary by 30 April 2021.
- 3. Notwithstanding the time limit laid down in point (b) of Article 8(6), Member States may take the measures necessary to allow the communication of information referred to in Article 8(3a) that relates to the calendar year 2019 or another appropriate reporting period to take place within 12 months following the end of the calendar year 2019 or the other appropriate reporting period.

Article 27b

Extension of the period of deferral

1. The Council, acting unanimously on a proposal from the Commission, may take an implementing decision to extend the period of deferral of the time limits set out in Article 27a by three months, provided that severe risks to public health, hindrances and economic disturbance caused by the COVID-19 pandemic continue to exist and Member States apply lockdown measures.
2. The proposal for a Council implementing decision shall be submitted to the Council at least one month before the expiry of the relevant deadline."

Article 2

This Directive shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Article 3

This Directive is addressed to the Member States.

Done at ...

For the Council

The President
