



Council of the European Union
General Secretariat

Brussels, 05 September 2023

WK 10997/2023 INIT

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From:	Presidency
To:	Working Party on Financial Services and the Banking Union (Insurance) Financial Services Attachés
Subject:	Presidency non-paper: Proposal – Amendments to Solvency II & IRRD

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Issue: Cooperation of tax authorities with financial supervisors and resolution authorities

*The proposed amendments enhance the professional secrecy provision to improve the exchange of information between supervisory and tax authorities. Currently, Article 64 Solvency II and IRRD do not provide for a solid legal basis for a supervisory authority or a resolution authority receiving or detecting relevant information to transmit to the tax authorities, except in cases covered by criminal law. Against the background of experiences with fraudulent and tax evading capital markets transactions (e.g. cum-ex or cum-cum schemes), it is necessary to improve the close cooperation of tax authorities with financial supervisory authorities and resolution authorities, without making the supervisory authority assume the responsibilities of the tax authority. **The suggested amendments reflect the wording of recent amendments to the CRD and AIFMD which should also be included in Solvency II and IRRD for reasons of consistency across the financial sector.***

Annex 1: SOLVENCY II

Amendment

Proposal for a Directive

Recital 25a (new)

<i>Text proposed by the Commission</i>	<i>Amendment</i>
	<i>(25a) Notwithstanding current secrecy rules applicable, information exchange between supervisory authorities and tax authorities should be improved. Such exchanges should be in line with national law, and, where the information originates in another Member State, it should only be disclosed with the express agreement of the relevant supervisory authority which has disclosed it.</i>

Amendment

Proposal for a Directive

Article 1 – paragraph 1 – points 34a,34b, 34c (new)

Directive 2009/138/EC

Articles 64 and 68

<i>Text proposed by the Commission</i>	<i>Amendment</i>
	<i>(34a) in Article 64, second paragraph, the words ‘criminal law’ are replaced by ‘criminal or taxation law’;</i>

	<p><i>(34b) in Article 68 (1), the following subparagraph is inserted after the first subparagraph:</i></p> <p><i>'Article 64, first subparagraph, and Article 67 shall not preclude the exchange of information between supervisory authorities and tax authorities in the same Member State to the extent that such exchange is stipulated by national laws of Member States. Where the information originates in another Member State, it shall only be disclosed with the express agreement of the relevant supervisory authority which has disclosed it';</i></p>
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Annex 2: IRRD

Amendment

Proposal for a Directive

Recital 54a (new)

<i>Text proposed by the Commission</i>	<i>Amendment</i>
	<p><i>(54a) Notwithstanding current secrecy rules applicable, information exchange between resolution authorities and supervisory authorities with tax authorities should be improved. Such exchanges should be in line with national law, and, where the information originates in another Member State, it should only be disclosed with the express agreement of the relevant authority which has disclosed it.</i></p>

Amendment

Proposal for a Directive

Articles 64 paragraph 4 subparagraph 1 lit. (c) (new), Article 64 paragraph 4 subparagraph 2 (new) and Article 64 paragraph 6

<i>Text proposed by the Commission</i>	<i>Amendment</i>
	<p><i>4.(c) the exchange of information between resolution authorities, supervisory authorities and national taxation authorities in the same Member State to the extent that such exchange is stipulated by</i></p>

	<i>national laws of Member States. Where this information originates in another Member State, it shall only be disclosed with the express agreement of the relevant authority, which has disclosed it.</i>
6. Paragraphs 1 to 5 of this Article shall be without prejudice to national law concerning the disclosure of information for the purpose of legal proceedings in criminal or civil cases.	6. Paragraphs 1 to 5 of this Article shall be without prejudice to national law concerning the disclosure of information for the purpose of legal proceedings in criminal or civil cases <i>and tax investigations.</i>