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'I' ITEM NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee

Subject: Proposal for a Council Directive amending Directive 2011/16/EU to address the urgent need for deferring certain time limits for the filing and exchange of information in the field of taxation due to the COVID-19 pandemic

- Decision to use the written procedure for the adoption
- Decision to derogate from the 8-week period provided for in Article 4 of Protocol 1 on the role of national parliaments in the EU

1. The Commission on 8 May 2020 issued a proposal for a Council Directive amending Directive 2011/16/EU to address the urgent need for deferring certain time limits for the filing and exchange of information in the field of taxation due to the COVID-19 pandemic¹.
2. The objective of the draft Directive is to foresee a mechanism for a limited and temporary deferral of some of the time limits relating to reporting and exchange of information on financial accounts and on reportable cross-border arrangements. To be noted, the draft Directive is designed to ensure that deferral of the time limits should not affect the essential elements of the obligation to report and exchange information under this Directive and should ensure that no such information which becomes reportable during the period of deferral remains unreported or unexchanged.

¹ Doc. 7883/20.

3. The opinions of the European Parliament and of the European Economic and Social Committee are pending. Taking into account the exceptional situation, the European Parliament was asked to submit its opinion by 30 June 2020 and the European Economic and Social Committee by 14 June 2020.
4. Following the informal consultations with the Member States by the Council Presidency, at the meeting of Fiscal Attachés on 26 May 2020 all delegations could support the Presidency compromise text of the draft Directive that is set out in the Annex to this note.
5. Against this background, the Permanent Representatives Committee is invited to:
 - confirm its agreement on the text of the draft Council Directive amending Directive 2011/16/EU to address the urgent need for deferring certain time limits for the filing and exchange of information in the field of taxation due to the COVID-19 pandemic, as set out in the Annex to this note, with a view that the Council adopts the Directive, subject to receiving the opinions of the European Parliament and of the European Economic and Social Committee by the given deadlines, as well as legal-linguistic revision;
 - confirm its agreement that, in view of the urgency of the matter, the Council decides to derogate, on the basis of the second subparagraph of Article 3(3) of the Council's Rules of Procedure, from the eight-week period referred to in the first subparagraph of that Article;
 - decide, in accordance with the first subparagraph of Article 12(1) of the Council's Rules of Procedure and Article 1 of Council Decision (EU) 2020/430, as extended by Council Decision (EU) 2020/702², that the Council uses the written procedure for adoption of the Directive.

² OJ L 165, 27.5.2020, p. 38.

DRAFT

COUNCIL DIRECTIVE

**amending Directive 2011/16/EU to address the urgent need for deferring certain time limits
for the filing and exchange of information in the field of taxation due to 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 Parliament³,

Having regard to the opinion of the European Economic and Social Committee⁴,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) The severe risks for public health and other hindrances caused by the COVID-19 pandemic as well as lockdown measures imposed by Member States to help contain the COVID-19 pandemic have an important disruptive effect on the capacity of businesses and tax administrations to carry out some of their obligations pursuant to Council Directive 2011/16/EU⁵.

³ OJ C , , p. .

⁴ OJ C , , p. .

⁵ 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).

- (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 for automatic exchanges of information on financial accounts of which the beneficiaries are tax resident in another Member State, as well as on reportable cross-border arrangements included in the Hallmarks listed in Annex IV to that Directive⁶.
- (3) The severe disruption caused by the COVID-19 pandemic in the activity of many financial institutions and persons who are liable to report cross-border arrangements hampers the timely compliance with their reporting obligations pursuant to Directive 2011/16/EU. Financial institutions are currently faced with urgent tasks related to COVID-19.
- (4) Furthermore, financial institutions and the persons liable to report are faced with serious work-related disruptions, primarily due to the remote working conditions because of the lockdown in most Member States. Similarly, the capacity of Member States' tax administrations to collect and process the data is negatively affected.
- (5) This situation requires an urgent and, to the extent possible, coordinated response within the Union. For this purpose, it is necessary to allow Member States an option to defer the time limit for the exchange of information on financial accounts of which the 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 the Reporting Financial Institutions. Moreover, Member States should also be allowed to opt for deferring the time limits for filing and exchanging information on cross-border arrangements included in the Hallmarks listed in Annex IV to Directive 2011/16/EU .

⁶ Council Directive (EU) 2018/822 of 25 May 2018 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements (OJ L 139, 5.6.2018, p. 1).

- (6) Deferral aims to address an exceptional situation and should not disrupt the established structure and functioning of Directive 2011/16/EU. Consequently, it would be appropriate that the deferral is limited and remains proportionate to the practical difficulties caused by the COVID-19 pandemic for filing and exchanging information.
- (7) Considering the current uncertainty about the evolution of the COVID-19 pandemic and that the circumstances that justify the adoption of this Directive might continue to exist, it would also be useful to provide for the possibility of one optional further extension of the deferral. Such extension should take place only provided that 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 outbreak on the budgets, human resources and the functioning of Member States' tax administrations, the Council should be empowered to decide unanimously, on a proposal from the Commission, to further extend the period of the deferral.
- (9) Any deferral of the time limits should not affect the essential elements of the obligation to report and exchange information under this Directive and should ensure that no such information which becomes reportable during the period of deferral remains unreported or unexchanged.
- (10) In view of the urgency entailed by the exceptional circumstances caused by the outbreak of COVID-19, 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 TEU, 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) Considering that Member States need to act within a very short period of time, for deferring time limits that otherwise would 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

Directive 2011/16/EU is amended as follows:

- (1) The following Articles are inserted:

'Article 27a

Optional deferral of time limits due to hindrances caused by the COVID-19 pandemic

1. Notwithstanding the time limits for filing information laid down in Article 8ab(12), Member States may take the necessary measures 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 exercise the option set out in paragraph 1 of this Article, they shall also take the necessary measures to allow that:
- a) notwithstanding the provisions of Article 8ab(18), the first information shall be communicated by 30 April 2021;
 - b) the period of 30 days for filing information laid down in paragraphs 1 and 7 of Article 8ab shall 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 referred to in the second paragraph of point 21 of Article 3 provided, 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) shall 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 necessary measures to allow that the communication of information laid down in Article 8(3a) that relates to calendar year 2019 or other appropriate reporting period to which the information relates, shall take place within 12 months following the end of calendar year 2019 or 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 another 3 months, provided that severe hindrances, economic disturbance and risks for public health caused by the COVID-19 pandemic continue to exist and Member States implement 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 deadlines."

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 Brussels,

For the Council

The President