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COVER NOTE

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	SWD(2017) 237 final
Subject:	COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT Accompanying the document Proposal for a COUNCIL DIRECTIVE amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements

Delegations will find attached document SWD(2017) 237 final.

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Brussels, 21.6.2017
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COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT

Accompanying the document

**Proposal for a
COUNCIL DIRECTIVE**

**amending Directive 2011/16/EU as regards mandatory automatic exchange of
information in the field of taxation in relation to reportable cross-border arrangements**

{ COM(2017) 335 final }
{ SWD(2017) 236 final }

Executive Summary Sheet	
Impact assessment on Mandatory Disclosure Rules for Intermediaries	
A. Need for action	
Why? What is the problem being addressed?	
<p>Recent leaks have highlighted how certain intermediaries appear to have actively helped their clients to make use of aggressive tax planning schemes in order to reduce the tax burden and to conceal money offshore. The lack of transparency facilitates activities of certain intermediaries involved in promoting and selling aggressive tax planning schemes. As a consequence of this, Member States suffer from the shifting of profits, which would otherwise be generated and become taxable in their territory, towards low-tax jurisdictions and often experience an erosion of their tax bases. The underlying problem detected is that certain tax planning schemes are being designed and promoted by intermediaries and used by taxpayers for the purpose of avoiding or evading taxes.</p>	
What is this initiative expected to achieve?	
<p>The initiative, once implemented, is expected to provide national tax administrations with timely information on the design and use of potentially aggressive tax planning schemes with a cross-border element. The authorities are expected to benefit from this early disclosure, to take measures promptly and deter the implementation of arrangements that would qualify as tax avoidance, e.g. amend tax legislation at the national level or focus a specific tax audit, early in the process.</p>	
What is the value added of action at the EU level?	
<p>Experience shows that national provisions against aggressive tax planning cannot be fully effective since they focus on the domestic dimension of potentially illegitimate arrangements. Thus, many of the structures devised to avoid taxes have a cross-border dimension and involve shifting taxable income to low-tax jurisdictions. Indeed, capital and persons are increasingly mobile, especially within an integrated market, such as the EU. The EU is in a better position than any Member State individually to ensure the effectiveness and completeness of the system for this exchange of information.</p>	
B. Solutions	
What legislative and non-legislative policy options have been considered? Is there a preferred choice or not? Why?	
<p>Different policy options have been assessed against the criteria of effectiveness, efficiency and coherence in comparison to the baseline scenario. The preferred option is a requirement for Member States (i) to lay down an explicit obligation for the mandatory disclosure of potentially aggressive tax planning schemes with a cross-border element to their national tax authorities; and (ii) to ensure that their national tax authorities automatically exchange this information with the tax authorities of the other Member States by using a purpose-built mechanism.</p>	
Who supports which option?	
<p>The initiative has received general support from Member States, NGOs, and private individuals. Business stakeholder groups and intermediaries raised concerns about the lack of clarity of a future initiative and the possible administrative burden.</p>	
C. Impacts of the preferred option	
What are the benefits of the preferred option (if any, otherwise main ones)?	
<p>The requirement to report under a mandatory disclosure regime could be expected to discourage intermediaries from engaging in aggressive tax schemes. Similarly, taxpayers will be less inclined to create or use such schemes if they know that these schemes would have to be reported under a mandatory disclosure regime. Currently tax authorities have limited knowledge of non-domestic tax planning arrangements and such data could provide them with timely information to be able to quickly respond with operational measures, legislative and/or regulatory changes. In addition, this information could be used for risk assessment and audit purposes.</p>	
What are the costs of the preferred option (if any, otherwise main ones)?	
<p>It is envisaged that the exchange of information between Member States could be accommodated relatively easily with existing reporting and exchange of information schemes, like advanced tax rulings, which already exist under DAC. The costs for intermediaries should be limited because the information to be reported to</p>	

national authorities under the regime should already be available in the summary information sheets that they give to taxpayers for explaining the scheme.
How will businesses, SMEs and micro-enterprises be affected?
The initiative will affect all companies and create a level playing field within the EU. There should be less of direct impact on SMEs since they are less involved in aggressive cross-border tax planning arrangements. Instead, larger companies that operate cross-border are much more likely to be affected by the envisaged rules.
Will there be significant impacts on national budgets and administrations?
Overall in the medium term, the initiative should raise/collect tax revenue through the introduction of measures by Member States to combat tax avoidance and tax evasion by their residents and by deterring the use of aggressive tax planning schemes.
Will there be other significant impacts?
Since the measure is also addressed by international recommendations that have been endorsed by the G20, the implementation of this initiative ensures EU compliance.
D. Follow up
When will the policy be reviewed?
According to Article 27 of DAC the Commission shall submit a report on the functioning of the Directive every five years. The first report is expected by 1 January 2018. The currently proposed amendment to DAC for mandatory disclosure rules for intermediaries will be evaluated in the review which will be completed by 1 January 2023.