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**ADMINISTRATIVE COOPERATION IN THE FIELD OF
TAXATION (CODIFICATION) – PROPOSAL FOR A
DIRECTIVE – COM(2020) 49 FINAL (CODIFICATION)**

FEEDBACK STATEMENT

The European Confederation of Independent Trade Unions (CESI) is a confederation of more than 40 national and European trade union organisations from 20 European countries, with a total of more than 5 million individual members. Founded in 1990, CESI advocates improved employment conditions for workers in Europe and a strong social dimension in the EU. CESI's particular strength lies in the public sector but CESI also represents private-sector workers. Most of CESI's affiliates are employed in the different fields of the public services and in the local, regional, national and European administrations and authorities. As such, CESI also represents unions of tax administration personnel across Europe. At the EU level, CESI has been a member in the European Commission's advisory Platform for Tax Good Governance since 2014.

The proposal for a Council Directive on administrative cooperation in the field of taxation is undertaken by the European Commission to create a new compiled and more transparent document containing all the amendments of the directive 2011/16/EU. In this sense the proposal for the new directive begins with the compilation of all the recitals of the six DAC directives having modified or completed the directive 2011/16/EU since 2014. As introduction to the codification Directive these 75 recitals show all the developments of the administrative cooperation in the field of taxation in the European Union.

In the private and the public sectors the text of the new directive (once implemented) will be a great challenge for all employees and civil servants. They have to change from the well-known traditional text of the six DAC directives to the new codified text of the new Directive. Therefore it is a very useful advantage that the proposal does not change the global structure of the initial directive 2011/16/EU. The seven chapters as well as the five sections of the important chapter III are maintained in the codified version. As unfortunately the number of articles increases from 31 up to 37 the European Commission has joined a correlation table named Annex VI showing the old and the new number of all the articles.

The proposal for a new Directive on administrative cooperation in the tax area is a technical work on the administrative level, containing no new measure to strengthen the cooperation rules. Therefore CESI hopes that the proposal is not the final act of DAC directives, but a new efficient base for further tax cooperation actions in a more transparent way.

In most of the Member States the implementation of the DAC 6 on the mandatory reporting of potentially aggressive cross-border tax-planning arrangements by intermediaries were implemented in a manner that in the end the relevant taxpayer has the obligation to notify the tax authority, because the intermediary, due to his legal professional privilege, waiver in all cases from filing information. CESI recalls the very clear recital 41 of the proposal (recital 6 of the directive EU/2018/822) saying that this reporting *can contribute effectively to the efforts for creating an environment of fair taxation in the internal market. The obligation for*

intermediaries to inform tax authorities (...) would constitute a step in the right direction. When the relevant taxpayers are obliged to make the mandatory reporting of aggressive cross-border tax-planning schemes the article 11 of the proposal (article 8ab of the directive EU/2018/822), this will surely need assessment and further strengthening to improve the administrative cooperation in the Member States. Not every relevant taxpayer using a tax avoidance arrangement is ready to notify it to the tax authority instead of an intermediary hiding behind his professional secrecy.

In the Directive (EU) 2019/1937 on the protection of persons who report breaches of Union law, the recitals 18, 66 and 72 make reference to the exchange of information in the field of taxation and the administrative cooperation through the Directive 2011/16/EU. In this sense the present codification proposal should also mention the whistle-blower protection in the taxation field.

CESI highlights further more general problems in relation with tax avoidance and tax fraud that have a link to the proposal for the new Directive on administrative cooperation:

- By the Anti-Tax Avoidance Directive (ATAD 1 – (UE)/2016/1164) the Member States had only to implement *a minimum level of protection of the internal market and aimed to achieve the essential minimum degree of coordination within the Union* (recital 16). So, further, stronger actions are necessary;
- By the Anti-Tax Avoidance Directive (ATAD 2 – (UE)/2017/952) the Directive ATAD 1 was amended as regards hybrid mismatches with third countries. In order to assemble a complete directive concerning entities in the Member States and permanent establishments of entities resident in third countries it would be useful in the future to propose also a codification version of the directives ATAD;
- The OECD common reporting standard (CRS) based on the US FATCA law was implemented through the directive 2014/107/EU (DAC 2). Concerning the FATCA “one-way reporting” of financial information by the Member States to the US Internal Revenue Service (IRS) has not been performed since 2017. The European Union should make sure that the USA provides the promised reciprocity to the Member States and also sign up to the Common Reporting Standard (CRS);
- Non-cooperative countries are cancelled from the (black) list already when they give “meaningful commitments at high political level” without any concrete legislative action. This early reward is questionable;
- The practice of efficient administrative cooperation the tax authorities in the Member States need adequate and skilled civil servants and tax authority personnel in particular;
- In the EU there is no initiative to harmonise the action of some Member States in order to create an EU-wide agreement against “sales-suppression-software” on cash registers in commercial sectors;
- In the EU there is no initiative to harmonise the limitation of cash payments existing in some Member States in order to fight against cash fraud in commercial sectors.