

Brussels, 8 March 2018
EBF_031284

Mr Vladislav GORANOV
Minister for Finance
102 "G. S. Rakovski" Str.
1040 Sofia
Bulgaria
E-Mail: feedback@minfin.bg
tz.mihaylova@minfin.bg

Dear Minister,

SUBJECT: COMMENTS ON THE PROPOSED DIRECTIVE ON MANDATORY DISCLOSURES (DAC6)

The European Banking Federation (EBF), which is the voice of European banks, fully supports the fight against tax evasion. European banks are actively engaged in the implementation of the OECD Common Reporting Standard (hereinafter "CRS").

The EBF has serious concerns about the Commission's proposals of 21 June 2017 for a Directive amending Directive 2011/16/EU on mandatory disclosures in relation to some cross-border arrangements (revision of the Directive on Administrative Cooperation hereinafter "DAC6") and the OECD model for Mandatory Disclosure Rules for CRS avoidance arrangements and offshore structures (hereinafter "MDR") which DAC6 is expected to incorporate.

A major concern is that the contemplated scheme would be very challenging to implement in practice if financial institutions have to carry out granular investigations, potentially with retroactive effects.

The broad scope of application of DAC6 and the absence of a clear actual knowledge test will result in a great deal of legal uncertainty for financial institutions, which in their vast majority are not designers/promoters of tax schemes for their clients and in some Member States are even legally prevented from providing any tax advice. In the absence of clear guidelines, many financial institutions may choose to interpret the rules in a broad way, resulting in reporting of all cross-border transactions. This would lead to massive reporting. If this is not the intention, the rules should be made more specific.

The EBF is very concerned about the high speed at which this draft Directive has been tabled and may be adopted. The CRS implementation is still in its initial phase with only early adopters having exchanged information for the first time in September 2017. It sounds premature to already draw lessons from this initial exercise.

European Banking Federation aisbl

Brussels / Avenue des Arts 56, 1000 Brussels, Belgium / +32 2 508 3711 / info@ebf.eu
Frankfurt / Weißfrauenstraße 12-16, 60311 Frankfurt, Germany
EU Transparency Register / ID number: 4722660838-23

In addition, the network of CRS exchange relationships is still in the process of being expanded. In this context, we find it paradoxical that in order to close the gaps in the CRS implementation, Governments are putting the pressure on those who are CRS-compliant, hence weakening the incentives for a global implementation.

Another fundamental concern is that potential loopholes and inefficiencies of the CRS will not be treated in the CRS itself but in another framework, adding a new layer of reporting, with a different scope of application and using a different language, resulting in duplicative or multiple reporting.

We note that many stakeholders have commented the OECD MDR and share our concerns (see <https://www.oecd.org/tax/beps/public-comments-mandatory-disclosure-rules-for-CRS-avoidance-arrangements-offshore-structures.pdf>).

Against this background, the EBF calls on the Council to reconsider the scope of application of the proposed Directive. It would be very helpful for the Council to clarify that providing routine banking services (e.g. maintaining a financial account for a customer) without any additional involvement in structuring, does not make the bank an “intermediary” under DAC6.

We attach herewith detailed comments.

Yours sincerely,



Wim MIJS
Chief Executive Officer