

15 December 2016

Reasoned opinion from the Riksdag (2016/17:SkU19)

The Riksdag has examined the application of the principle of subsidiarity in the Proposal for a COUNCIL DIRECTIVE amending Directive (EU) 2016/1164 as regards hybrid mismatches with third countries COM (2016) 687.

In the opinion of the Riksdag, it is important to combat tax evasion and tax avoidance, and the Riksdag is therefore positive to the purpose of the amending Directive. At the same time, it is vital that the member states' competence in the area of direct taxation is not weakened. An excessively extensive application of the rules providing the EU with legislative competence will eventually lead to an erosion of member states' sovereignty as regards levying and maintaining sufficient tax revenue in order to finance welfare.

Since the Commission presented its proposal for an amending Directive, the Slovakian Presidency has presented a number of compromise proposals during Council negotiations, with the intention of achieving a general approach to the Directive at the meeting of the Ecofin Council on 6 December 2016. The Presidency has proposed amendments to the Commission's draft Directive in order to bring the formulation closer to the OECD's recommendations. The basis for the Committee's subsidiarity check has therefore become less relevant.

The Riksdag is highly critical of the fact that the timeframe for the national parliaments' subsidiarity check is not respected. Under the Lisbon Protocol on the Role of National Parliaments in the European Union, a draft legislative act is to rest during the eight-week period that the national parliaments have to examine the matter of subsidiarity, and shall only be taken up for further consideration after this period.

The proposed Directive from the Commission is highly complex and difficult to assess. The proposal is unclear on several points, owing to the fact that it does not contain the necessary impact assessment. The shortcomings in the proposal make it difficult to assess the relevance of the

Commission's justification that the purpose of the Directive can be better achieved at Union level than at the national level. In light of the fact that issues falling within the area of direct taxation are, in principle, restricted to the national competence of the member states, high demands are placed on ensuring that the EU's legislative proposals are formulated in such a way that the member states can determine whether the objective of the proposed measures cannot to a sufficient extent be achieved by the member states and therefore, as a result of the scope and effects of the measures, can better be achieved at EU level. In the light of this, the Riksdag does not share the Commission's assessment regarding the matter of subsidiarity. Therefore, the Commission's justification that the proposal does not go beyond what is necessary to achieve the purpose cannot be approved either.

In the opinion of the Riksdag, the proposal is not compliant with the principle of subsidiarity.