

Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

1 This Directive lays down the rules and procedures under which the Member States shall cooperate with each other with a view to exchanging information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Member States concerning the taxes referred to in Article 2.

2 This Directive also lays down provisions for the exchange of information referred to in paragraph 1 by electronic means, as well as rules and procedures under which the Member States and the Commission are to cooperate on matters concerning coordination and evaluation.

3 This Directive shall not affect the application in the Member States of the rules on mutual assistance in criminal matters. It shall also be without prejudice to the fulfilment of any obligations of the Member States in relation to wider administrative cooperation ensuing from other legal instruments, including bilateral or multilateral agreements.

Article 2

Scope

1 This Directive shall apply to all taxes of any kind levied by, or on behalf of, a Member State or the Member State's territorial or administrative subdivisions, including the local authorities.

2 Notwithstanding paragraph 1, this Directive shall not apply to value added tax and customs duties, or to excise duties covered by other Union legislation on administrative cooperation between Member States. This Directive shall also not apply to compulsory social security contributions payable to the Member State or a subdivision of the Member State or to social security institutions established under public law.

3 In no case shall the taxes referred to in paragraph 1 be construed as including:

- a fees, such as for certificates and other documents issued by public authorities; or
- b dues of a contractual nature, such as consideration for public utilities.

4 This Directive shall apply to the taxes referred to in paragraph 1 levied within the territory to which the Treaties apply by virtue of Article 52 of the Treaty on the European Union.

Article 3

Definitions

For the purposes of this Directive the following definitions shall apply:

1. ‘competent authority’ of a Member State means the authority which has been designated as such by that Member State. When acting pursuant to this Directive, the central liaison office, a liaison department or a competent official shall also be deemed to be competent authorities by delegation according to Article 4;
2. ‘central liaison office’ means the office which has been designated as such with principal responsibility for contacts with other Member States in the field of administrative cooperation;
3. ‘liaison department’ means any office other than the central liaison office which has been designated as such to directly exchange information pursuant to this Directive;
4. ‘competent official’ means any official who is authorised to directly exchange information pursuant to this Directive;
5. ‘requesting authority’ means the central liaison office, a liaison department or any competent official of a Member State who makes a request for assistance on behalf of the competent authority;
6. ‘requested authority’ means the central liaison office, a liaison department or any competent official of a Member State who receives a request for assistance on behalf of the competent authority;
7. ‘administrative enquiry’ means all controls, checks and other action taken by Member States in the performance of their duties with a view to ensuring the proper application of tax legislation;
8. ‘exchange of information on request’ means the exchange of information based on a request made by the requesting Member State to the requested Member State in a specific case;
9. ^[F1]‘automatic exchange’ means,
 - (a) ^[F2]for the purposes of Article 8(1) and Articles 8a, 8aa and 8ab, the systematic communication of predefined information to another Member State, without prior request, at pre-established regular intervals. For the purposes of Article 8(1), reference to available information relates to information in the tax files of the Member State communicating the information, which is retrievable in accordance with the procedures for gathering and processing information in that Member State.];
 - (b) for the purposes of Article 8(3a), the systematic communication of predefined information on residents in other Member States to the relevant Member State of residence, without prior request, at pre-established regular intervals;
 - (c) ^[F2]for the purposes of provisions of this Directive other than Article 8(1) and (3a) and Articles 8a, 8aa and 8ab, the systematic communication of predefined information provided in points (a) and (b) of this point.]

[^{F2}In the context of Articles 8(3a), 8(7a) and 21(2), Article 25(2) and (3) and Annex IV, any capitalised term shall have the meaning that it has under the corresponding definitions set out in Annex I.] In the context of Article 8aa and Annex III, any capitalised term shall have the meaning that it has under the corresponding definitions set out in Annex III;]

10. 'spontaneous exchange' means the non-systematic communication, at any moment and without prior request, of information to another Member State;
11. 'person' means:
 - (a) a natural person;
 - (b) a legal person;
 - (c) where the legislation in force so provides, an association of persons recognised as having the capacity to perform legal acts but lacking the status of a legal person; or
 - (d) any other legal arrangement of whatever nature and form, regardless of whether it has legal personality, owning or managing assets, which, including income derived therefrom, are subject to any of the taxes covered by this Directive;
12. 'by electronic means' means using electronic equipment for the processing, including digital compression, and storage of data, and employing wires, radio transmission, optical technologies or other electromagnetic means;
13. 'CCN network' means the common platform based on the common communication network (CCN), developed by the Union for all transmissions by electronic means between competent authorities in the area of customs and taxation[^{F3};]
14. [^{F4}'advance cross-border ruling' means any agreement, communication, or any other instrument or action with similar effects, including one issued, amended or renewed in the context of a tax audit, and which meets the following conditions:
 - (a) is issued, amended or renewed by, or on behalf of, the government or the tax authority of a Member State, or the Member State's territorial or administrative subdivisions, including local authorities, irrespective of whether it is effectively used;
 - (b) is issued, amended or renewed, to a particular person or a group of persons, and upon which that person or a group of persons is entitled to rely;
 - (c) concerns the interpretation or application of a legal or administrative provision concerning the administration or enforcement of national laws relating to taxes of the Member State, or the Member State's territorial or administrative subdivisions, including local authorities;
 - (d) relates to a cross-border transaction or to the question of whether or not activities carried on by a person in another jurisdiction create a permanent establishment; and
 - (e) is made in advance of the transactions or of the activities in another jurisdiction potentially creating a permanent establishment or in advance of the filing of a tax return covering the period in which the transaction or series of transactions or activities took place.

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

The cross-border transaction may involve, but is not restricted to, the making of investments, the provision of goods, services, finance or the use of tangible or intangible assets and does not have to directly involve the person receiving the advance cross-border ruling;

15. ‘advance pricing arrangement’ means any agreement, communication or any other instrument or action with similar effects, including one issued, amended or renewed in the context of a tax audit, and which meets the following conditions:

- (a) is issued, amended or renewed by, or on behalf of, the government or the tax authority of one or more Member States, including any territorial or administrative subdivision thereof, including local authorities, irrespective of whether it is effectively used;
- (b) is issued, amended or renewed, to a particular person or a group of persons and upon which that person or a group of persons is entitled to rely; and
- (c) determines in advance of cross-border transactions between associated enterprises, an appropriate set of criteria for the determination of the transfer pricing for those transactions or determines the attribution of profits to a permanent establishment.

Enterprises are associated enterprises where one enterprise participates directly or indirectly in the management, control or capital of another enterprise or the same persons participate directly or indirectly in the management, control or capital of the enterprises.

Transfer prices are the prices at which an enterprise transfers physical goods and intangible property or provides services to associated enterprises, and ‘transfer pricing’ is to be construed accordingly;

16. For the purpose of point 14 ‘cross-border transaction’ means a transaction or series of transactions where:

- (a) not all of the parties to the transaction or series of transactions are resident for tax purposes in the Member State issuing, amending or renewing the advance cross-border ruling;
- (b) any of the parties to the transaction or series of transactions is simultaneously resident for tax purposes in more than one jurisdiction;
- (c) one of the parties to the transaction or series of transactions carries on business in another jurisdiction through a permanent establishment and the transaction or series of transactions forms part or the whole of the business of the permanent establishment. A cross-border transaction or series of transactions shall also include arrangements made by a person in respect of business activities in another jurisdiction which that person carries on through a permanent establishment; or
- (d) such transactions or series of transactions have a cross border impact.

For the purpose of point 15, ‘cross-border transaction’ means a transaction or series of transactions involving associated enterprises which are not all resident for tax purposes in the territory of a single jurisdiction or a transaction or series of transactions which have a cross border impact;

17. For the purpose of point 15 and 16, ‘enterprise’ means any form of conducting business^[F2;]
18. ^[F5]‘cross-border arrangement’ means an arrangement concerning either more than one Member State or a Member State and a third country where at least one of the following conditions is met:
- (a) not all of the participants in the arrangement are resident for tax purposes in the same jurisdiction;
 - (b) one or more of the participants in the arrangement is simultaneously resident for tax purposes in more than one jurisdiction;
 - (c) one or more of the participants in the arrangement carries on a business in another jurisdiction through a permanent establishment situated in that jurisdiction and the arrangement forms part or the whole of the business of that permanent establishment;
 - (d) one or more of the participants in the arrangement carries on an activity in another jurisdiction without being resident for tax purposes or creating a permanent establishment situated in that jurisdiction;
 - (e) such arrangement has a possible impact on the automatic exchange of information or the identification of beneficial ownership.

For the purposes of points 18 to 25 of this Article, Article 8ab and Annex IV, an arrangement shall also include a series of arrangements. An arrangement may comprise more than one step or part;

19. ‘reportable cross-border arrangement’ means any cross-border arrangement that contains at least one of the hallmarks set out in Annex IV;
20. ‘hallmark’ means a characteristic or feature of a cross-border arrangement that presents an indication of a potential risk of tax avoidance, as listed in Annex IV;
21. ‘intermediary’ means any person that designs, markets, organises or makes available for implementation or manages the implementation of a reportable cross-border arrangement.

It also means any person that, having regard to the relevant facts and circumstances and based on available information and the relevant expertise and understanding required to provide such services, knows or could be reasonably expected to know that they have undertaken to provide, directly or by means of other persons, aid, assistance or advice with respect to designing, marketing, organising, making available for implementation or managing the implementation of a reportable cross-border arrangement. Any person shall have the right to provide evidence that such person did not know and could not reasonably be expected to know that that person was involved in a reportable cross-border arrangement. For this purpose, that person may refer to all relevant facts and circumstances as well as available information and their relevant expertise and understanding.

In order to be an intermediary, a person shall meet at least one of the following additional conditions:

- (a) be resident for tax purposes in a Member State;

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

- (b) have a permanent establishment in a Member State through which the services with respect to the arrangement are provided;
 - (c) be incorporated in, or governed by the laws of, a Member State;
 - (d) be registered with a professional association related to legal, taxation or consultancy services in a Member State;
22. 'relevant taxpayer' means any person to whom a reportable cross-border arrangement is made available for implementation, or who is ready to implement a reportable cross-border arrangement or has implemented the first step of such an arrangement;
23. for the purposes of Article 8ab, 'associated enterprise' means a person who is related to another person in at least one of the following ways:
- (a) a person participates in the management of another person by being in a position to exercise a significant influence over the other person;
 - (b) a person participates in the control of another person through a holding that exceeds 25 % of the voting rights;
 - (c) a person participates in the capital of another person through a right of ownership that, directly or indirectly, exceeds 25 % of the capital;
 - (d) a person is entitled to 25 % or more of the profits of another person.
- If more than one person participates, as referred to in points (a) to (d), in the management, control, capital or profits of the same person, all persons concerned shall be regarded as associated enterprises.
- If the same persons participate, as referred to in points (a) to (d), in the management, control, capital or profits of more than one person, all persons concerned shall be regarded as associated enterprises.
- For the purposes of this point, a person who acts together with another person in respect of the voting rights or capital ownership of an entity shall be treated as holding a participation in all of the voting rights or capital ownership of that entity that are held by the other person.
- In indirect participations, the fulfilment of requirements under point (c) shall be determined by multiplying the rates of holding through the successive tiers. A person holding more than 50 % of the voting rights shall be deemed to hold 100 %.
- An individual, his or her spouse and his or her lineal ascendants or descendants shall be treated as a single person;
24. 'marketable arrangement' means a cross-border arrangement that is designed, marketed, ready for implementation or made available for implementation without a need to be substantially customised;
25. 'bespoke arrangement' means any cross-border arrangement that is not a marketable arrangement.]

Textual Amendments

- F1** Substituted by [Council Directive \(EU\) 2016/881 of 25 May 2016 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation.](#)

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

- F2** Substituted by 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.
- F3** Substituted by Council Directive (EU) 2015/2376 of 8 December 2015 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation.
- F4** Inserted by Council Directive (EU) 2015/2376 of 8 December 2015 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation.
- F5** Inserted by 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.

Article 4

Organisation

1 Each Member State shall inform the Commission, within one month from 11 March 2011, of its competent authority for the purposes of this Directive and shall inform the Commission without delay of any change thereto.

The Commission shall make the information available to the other Member States and publish a list of the authorities of the Member States in the *Official Journal of the European Union*.

2 The competent authority shall designate a single central liaison office. The competent authority shall be responsible for informing the Commission and the other Member States thereof.

The central liaison office may also be designated as responsible for contacts with the Commission. The competent authority shall be responsible for informing the Commission thereof.

3 The competent authority of each Member State may designate liaison departments with the competence assigned according to its national legislation or policy. The central liaison office shall be responsible for keeping the list of liaison departments up to date and making it available to the central liaison offices of the other Member States concerned and to the Commission.

4 The competent authority of each Member State may designate competent officials. The central liaison office shall be responsible for keeping the list of competent officials up to date and making it available to the central liaison offices of the other Member States concerned and to the Commission.

5 The officials engaged in administrative cooperation pursuant to this Directive shall in any case be deemed to be competent officials for that purpose, in accordance with arrangements laid down by the competent authorities.

6 Where a liaison department or a competent official sends or receives a request or a reply to a request for cooperation, it shall inform the central liaison office of its Member State under the procedures laid down by that Member State.

7 Where a liaison department or a competent official receives a request for cooperation requiring action which falls outside the competence it is assigned according to the national legislation or policy of its Member State, it shall forward such request without delay to the central liaison office of its Member State and inform the requesting authority thereof. In such

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

a case, the period laid down in Article 7 shall start the day after the request for cooperation is forwarded to the central liaison office.

CHAPTER II

EXCHANGE OF INFORMATION

SECTION I

Exchange of information on request

Article 5

Procedure for the exchange of information on request

At the request of the requesting authority, the requested authority shall communicate to the requesting authority any information referred to in Article 1(1) that it has in its possession or that it obtains as a result of administrative enquiries.

Article 6

Administrative enquiries

1 The requested authority shall arrange for the carrying out of any administrative enquiries necessary to obtain the information referred to in Article 5.

2 The request referred to in Article 5 may contain a reasoned request for a specific administrative enquiry. If the requested authority takes the view that no administrative enquiry is necessary, it shall immediately inform the requesting authority of the reasons thereof.

3 In order to obtain the requested information or to conduct the administrative enquiry requested, the requested authority shall follow the same procedures as it would when acting on its own initiative or at the request of another authority in its own Member State.

4 When specifically requested by the requesting authority, the requested authority shall communicate original documents provided that this is not contrary to the provisions in force in the Member State of the requested authority.

Article 7

Time limits

1 The requested authority shall provide the information referred to in Article 5 as quickly as possible, and no later than six months from the date of receipt of the request.

However, where the requested authority is already in possession of that information, the information shall be transmitted within two months of that date.

2 In certain special cases, time limits other than those provided for in paragraph 1 may be agreed upon between the requested and the requesting authorities.

3 The requested authority shall confirm immediately and in any event no later than seven working days from receipt, if possible by electronic means, receipt of a request to the requesting authority.

4 Within one month of receipt of the request, the requested authority shall notify the requesting authority of any deficiencies in the request and of the need for any additional background information. In such a case, the time limits provided for in paragraph 1 shall start the day after the requested authority has received the additional information needed.

5 Where the requested authority is unable to respond to the request by the relevant time limit, it shall inform the requesting authority immediately and in any event within three months of the receipt of the request, of the reasons for its failure to do so, and the date by which it considers it might be able to respond.

6 Where the requested authority is not in possession of the requested information and is unable to respond to the request for information or refuses to do so on the grounds provided for in Article 17, it shall inform the requesting authority of the reasons thereof immediately and in any event within one month of receipt of the request.

SECTION II

Mandatory automatic exchange of information

Article 8

Scope and conditions of mandatory automatic exchange of information

1 The competent authority of each Member State shall, by automatic exchange, communicate to the competent authority of any other Member State, information regarding taxable periods as from 1 January 2014 that is available concerning residents in that other Member State, on the following specific categories of income and capital as they are to be understood under the national legislation of the Member State which communicates the information:

- a income from employment;
- b director's fees;
- c life insurance products not covered by other Union legal instruments on exchange of information and other similar measures;
- d pensions;
- e ownership of and income from immovable property.

2 Before 1 January 2014, Member States shall inform the Commission of the categories listed in paragraph 1 in respect of which they have information available. They shall inform the Commission of any subsequent changes thereto.

[^{F63} The competent authority of a Member State may indicate to the competent authority of any other Member State that it does not wish to receive information on one or several of the categories of income and capital referred to in paragraph 1. It shall also inform the Commission thereof.

A Member State may be considered as not wishing to receive information in accordance with paragraph 1, if it does not inform the Commission of any single category in respect of which it has information available.]

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

[^{F73a} Each Member State shall take the necessary measures to require its Reporting Financial Institutions to perform the reporting and due diligence rules included in Annexes I and II and to ensure effective implementation of, and compliance with, such rules in accordance with Section IX of Annex I.

Pursuant to the applicable reporting and due diligence rules contained in Annexes I and II, the competent authority of each Member State shall, by automatic exchange, communicate within the deadline laid down in point (b) of paragraph 6 to the competent authority of any other Member State, the following information regarding taxable periods as from 1 January 2016 concerning a Reportable Account:

- a the name, address, TIN(s) and date and place of birth (in the case of an individual) of each Reportable Person that is an Account Holder of the account and, in the case of any Entity that is an Account Holder and that, after application of due diligence rules consistent with the Annexes, is identified as having one or more Controlling Persons that is a Reportable Person, the name, address, and TIN(s) of the Entity and the name, address, TIN(s) and date and place of birth of each Reportable Person;
- b the account number (or functional equivalent in the absence of an account number);
- c the name and identifying number (if any) of the Reporting Financial Institution;
- d the account balance or value (including, in the case of a Cash Value Insurance Contract or Annuity Contract, the Cash Value or surrender value) as of the end of the relevant calendar year or other appropriate reporting period or, if the account was closed during such year or period, the closure of the account;
- e in the case of any Custodial Account:
 - (i) the total gross amount of interest, the total gross amount of dividends, and the total gross amount of other income generated with respect to the assets held in the account, in each case paid or credited to the account (or with respect to the account) during the calendar year or other appropriate reporting period; and
 - (ii) the total gross proceeds from the sale or redemption of Financial Assets paid or credited to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Financial Institution acted as a custodian, broker, nominee, or otherwise as an agent for the Account Holder;
- f in the case of any Depository Account, the total gross amount of interest paid or credited to the account during the calendar year or other appropriate reporting period; and
- g in the case of any account not described in point (e) or point (f), the total gross amount paid or credited to the Account Holder with respect to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Financial Institution is the obligor or debtor, including the aggregate amount of any redemption payments made to the Account Holder during the calendar year or other appropriate reporting period.

For the purposes of the exchange of information under this paragraph, unless otherwise foreseen in this paragraph or in the Annexes, the amount and characterisation of payments made with respect to a Reportable Account shall be determined in accordance with national legislation of the Member State which communicates the information.

The first and second subparagraphs of this paragraph shall prevail over point (c) of paragraph 1 or any other Union legal instrument, including Council Directive 2003/48/EC⁽¹⁾, to the extent that the exchange of information at issue would fall within the scope of point (c) of paragraph 1 or of any other Union legal instrument, including Directive 2003/48/EC.]

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

F85

[^{F6} The communication of information shall take place as follows:

- a for the categories laid down in paragraph 1: at least once a year, within six months following the end of the tax year of the Member State during which the information became available;
- b for the information laid down in paragraph 3a: annually, within nine months following the end of the calendar year or other appropriate reporting period to which the information relates.]

7 The Commission shall adopt the practical arrangements for the automatic exchange of information, in accordance with the procedure referred to in Article 26(2), before the dates referred to in Article 29(1).

[^{F7a} For the purposes of subparagraphs B.1(c) and C.17(g) of Section VIII of Annex I, each Member State shall, by 31 July 2015, provide to the Commission the list of entities and accounts that are to be treated, respectively, as Non-Reporting Financial Institutions and Excluded Accounts. Each Member State shall also inform the Commission if any changes in this respect occur. The Commission shall publish in the *Official Journal of the European Union* a compiled list of the information received and shall update the list as necessary.

Member States shall ensure that those types of Non-Reporting Financial Institutions and Excluded Accounts satisfy all the requirements listed in subparagraphs B.1(c) and C.17(g) of Section VIII of Annex I, and in particular that the status of a Financial Institution as a Non-Reporting Financial Institution or the status of an account as an Excluded Account does not frustrate the purposes of this Directive.]

8 Where Member States agree on the automatic exchange of information for additional categories of income and capital in bilateral or multilateral agreements which they conclude with other Member States, they shall communicate those agreements to the Commission which shall make those agreements available to all the other Member States

Textual Amendments

- F6** Substituted by [Council Directive 2014/107/EU of 9 December 2014 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation.](#)
- F7** Inserted by [Council Directive 2014/107/EU of 9 December 2014 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation.](#)
- F8** Deleted by [Council Directive \(EU\) 2015/2376 of 8 December 2015 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation.](#)

[^{F4} *Article 8a*

**Scope and conditions of mandatory automatic exchange of information
on advance cross-border rulings and advance pricing arrangements**

1 The competent authority of a Member State, where an advance cross-border ruling or an advance pricing arrangement was issued, amended or renewed after 31 December 2016 shall, by automatic exchange, communicate information thereon to the competent authorities of all other Member States as well as to the European Commission, with the limitation of cases set out in paragraph 8 of this Article, in accordance with applicable practical arrangements adopted pursuant to Article 21.

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

2 The competent authority of a Member State shall, in accordance with applicable practical arrangements adopted pursuant to Article 21, also communicate information to the competent authorities of all other Member States as well as to the European Commission, with the limitation of cases set out in paragraph 8 of this Article, on advance cross-border rulings and advance pricing arrangements issued, amended or renewed within a period beginning five years before 1 January 2017.

If advance cross-border rulings and advance pricing arrangements are issued, amended or renewed between 1 January 2012 and 31 December 2013, such communication shall take place under the condition that they were still valid on 1 January 2014.

If advance cross-border rulings and advance pricing arrangements are issued, amended or renewed between 1 January 2014 and 31 December 2016, such communication shall take place irrespective of whether they are still valid.

Member States may exclude from the communication referred to in this paragraph, information on advance cross-border rulings and advance pricing arrangements issued, amended or renewed before 1 April 2016 to a particular person or a group of persons, excluding those conducting mainly financial or investment activities, with a group-wide annual net turnover, as defined in point (5) of Article 2 of Directive 2013/34/EU of the European Parliament and of the Council⁽²⁾, of less than EUR 40 000 000 (or the equivalent amount in any other currency) in the fiscal year preceding the date of issuance, amendment or renewal of those cross-border rulings and advance pricing arrangements.

3 Bilateral or multilateral advance pricing arrangements with third countries shall be excluded from the scope of automatic exchange of information under this Article where the international tax agreement under which the advance pricing arrangement was negotiated does not permit its disclosure to third parties. Such bilateral or multilateral advance pricing arrangements will be exchanged under Article 9, where the international tax agreement under which the advance pricing arrangement was negotiated permits its disclosure, and the competent authority of the third country gives permission for the information to be disclosed.

However, where the bilateral or multilateral advance pricing arrangements would be excluded from the automatic exchange of information under the first sentence of the first subparagraph of this paragraph, the information identified in paragraph 6 of this Article referred to in the request that lead to issuance of such a bilateral or multilateral advance pricing arrangement shall instead be exchanged under paragraphs 1 and 2 of this Article.

4 Paragraphs 1 and 2 shall not apply in a case where an advance cross-border ruling exclusively concerns and involves the tax affairs of one or more natural persons.

5 The exchange of information shall take place as follows:

- a in respect of the information exchanged pursuant to paragraph 1 — within three months following the end of the half of the calendar year during which the advance cross-border rulings or advance pricing arrangements have been issued, amended or renewed;
- b in respect of the information exchanged pursuant to paragraph 2 — before 1 January 2018.

6 The information to be communicated by a Member State pursuant to paragraphs 1 and 2 of this Article shall include the following:

- a the identification of the person, other than a natural person, and where appropriate the group of persons to which it belongs;
- b a summary of the content of the advance cross-border ruling or advance pricing arrangement, including a description of the relevant business activities or transactions

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

- or series of transactions provided in abstract terms, without leading to the disclosure of a commercial, industrial or professional secret or of a commercial process, or of information whose disclosure would be contrary to public policy;
- c the dates of issuance, amendment or renewal of the advance cross-border ruling or advance pricing arrangement;
 - d the start date of the period of validity of the advance cross-border ruling or advance pricing arrangement, if specified;
 - e the end date of the period of validity of the advance cross-border ruling or advance pricing arrangement, if specified;
 - f the type of the advance cross-border ruling or advance pricing arrangement;
 - g the amount of the transaction or series of transactions of the advance cross-border ruling or advance pricing arrangement if such amount is referred to in the advance cross-border ruling or advance pricing arrangement;
 - h the description of the set of criteria used for the determination of the transfer pricing or the transfer price itself in the case of an advance pricing arrangement;
 - i the identification of the method used for determination of the transfer pricing or the transfer price itself in the case of an advance pricing arrangement;
 - j the identification of the other Member States, if any, likely to be concerned by the advance cross-border ruling or advance pricing arrangement;
 - k the identification of any person, other than a natural person, in the other Member States, if any, likely to be affected by the advance cross-border ruling or advance pricing arrangement (indicating to which Member States the affected persons are linked); and
 - l the indication whether the information communicated is based upon the advance cross-border ruling or advance pricing arrangement itself or upon the request referred to in the second subparagraph of paragraph 3 of this Article.

7 To facilitate the exchange of information referred to in paragraph 6 of this Article, the Commission shall adopt the practical arrangements necessary for the implementation of this Article, including measures to standardise the communication of the information set out in paragraph 6 of this Article, as part of the procedure for establishing the standard form provided for in Article 20(5).

8 Information as defined under points (a), (b), (h) and (k) of paragraph 6 of this Article shall not be communicated to the European Commission.

9 The competent authority of the Member States concerned, identified under paragraph 6(j), shall confirm, if possible by electronic means, the receipt of the information to the competent authority which provided the information without delay and in any event no later than seven working days. This measure shall be applicable until the directory referred to in Article 21(5) becomes operational.

10 Member States may, in accordance with Article 5, and having regard to Article 21(4), request additional information, including the full text of an advance cross-border ruling or an advance pricing arrangement.

Textual Amendments

- F4** Inserted by [Council Directive \(EU\) 2015/2376 of 8 December 2015 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation.](#)

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

F⁹ Article 8aa

Scope and conditions of mandatory automatic exchange of information on the country-by-country report

1 Each Member State shall take the necessary measures to require the Ultimate Parent Entity of an MNE Group that is resident for tax purposes in its territory, or any other Reporting Entity in accordance with Section II of Annex III, to file a country-by-country report with respect to its Reporting Fiscal Year within 12 months of the last day of the Reporting Fiscal Year of the MNE Group in accordance with Section II of Annex III.

2 The competent authority of a Member State where the country-by-country report was received pursuant to paragraph 1 shall, by means of automatic exchange and within the deadline laid down in paragraph 4, communicate the country-by-country report to any other Member State in which, on the basis of the information in the country-by-country report, one or more Constituent Entities of the MNE Group of the Reporting Entity are either resident for tax purposes or subject to tax with respect to the business carried out through a permanent establishment.

3 The country-by-country report shall contain the following information with respect to the MNE Group:

- a aggregate information relating to the amount of revenue, profit (loss) before income tax, income tax paid, income tax accrued, stated capital, accumulated earnings, number of employees, and tangible assets other than cash or cash equivalents with regard to each jurisdiction in which the MNE Group operates;
- b an identification of each Constituent Entity of the MNE Group setting out the jurisdiction of tax residence of that Constituent Entity and, where different from that jurisdiction of tax residence, the jurisdiction under the laws of which that Constituent Entity is organised, and the nature of the main business activity or activities of that Constituent Entity.

4 The communication shall take place within 15 months of the last day of the Fiscal Year of the MNE Group to which the country-by-country report relates. The first country-by-country report shall be communicated for the Fiscal Year of the MNE Group commencing on or after 1 January 2016, which shall take place within 18 months of the last day of that Fiscal Year.]

Textual Amendments

- F4** Inserted by [Council Directive \(EU\) 2015/2376 of 8 December 2015 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation.](#)
- F9** Inserted by [Council Directive \(EU\) 2016/881 of 25 May 2016 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation.](#)

F⁵ Article 8ab

Scope and conditions of mandatory automatic exchange of information on reportable cross-border arrangements

1 Each Member State shall take the necessary measures to require intermediaries to file information that is within their knowledge, possession or control on reportable cross-border arrangements with the competent authorities within 30 days beginning:

- a on the day after the reportable cross-border arrangement is made available for implementation; or
- b on the day after the reportable cross-border arrangement is ready for implementation; or
- c when the first step in the implementation of the reportable cross-border arrangement has been made,

whichever occurs first.

Notwithstanding the first subparagraph, intermediaries referred to in the second paragraph of point 21 of Article 3 shall also be required to file information within 30 days beginning on the day after they provided, directly or by means of other persons, aid, assistance or advice.

2 In the case of marketable arrangements, Member States shall take the necessary measures to require that a periodic report be made by the intermediary every 3 months providing an update which contains new reportable information as referred to in points (a), (d), (g) and (h) of paragraph 14 that has become available since the last report was filed.

3 Where the intermediary is liable to file information on reportable cross-border arrangements with the competent authorities of more than one Member State, such information shall be filed only in the Member State that features first in the list below:

- a the Member State where the intermediary is resident for tax purposes;
- b the Member State where the intermediary has a permanent establishment through which the services with respect to the arrangement are provided;
- c the Member State which the intermediary is incorporated in or governed by the laws of;
- d the Member State where the intermediary is registered with a professional association related to legal, taxation or consultancy services.

4 Where, pursuant to paragraph 3, there is a multiple reporting obligation, the intermediary shall be exempt from filing the information if it has proof, in accordance with national law, that the same information has been filed in another Member State.

5 Each Member State may take the necessary measures to give intermediaries the right to a waiver from filing information on a reportable cross-border arrangement where the reporting obligation would breach the legal professional privilege under the national law of that Member State. In such circumstances, each Member State shall take the necessary measures to require intermediaries to notify, without delay, any other intermediary or, if there is no such intermediary, the relevant taxpayer of their reporting obligations under paragraph 6.

Intermediaries may only be entitled to a waiver under the first subparagraph to the extent that they operate within the limits of the relevant national laws that define their professions.

6 Each Member State shall take the necessary measures to require that, where there is no intermediary or the intermediary notifies the relevant taxpayer or another intermediary of the application of a waiver under paragraph 5, the obligation to file information on a reportable cross-border arrangement lie with the other notified intermediary, or, if there is no such intermediary, with the relevant taxpayer.

7 The relevant taxpayer with whom the reporting obligation lies shall file the information within 30 days, beginning on the day after the reportable cross-border arrangement is made available for implementation to that relevant taxpayer, or is ready for implementation by the relevant taxpayer, or when the first step in its implementation has been made in relation to the relevant taxpayer, whichever occurs first.

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

Where the relevant taxpayer has an obligation to file information on the reportable cross-border arrangement with the competent authorities of more than one Member State, such information shall be filed only with the competent authorities of the Member State that features first in the list below:

- a the Member State where the relevant taxpayer is resident for tax purposes;
- b the Member State where the relevant taxpayer has a permanent establishment benefiting from the arrangement;
- c the Member State where the relevant taxpayer receives income or generates profits, although the relevant taxpayer is not resident for tax purposes and has no permanent establishment in any Member State;
- d the Member State where the relevant taxpayer carries on an activity, although the relevant taxpayer is not resident for tax purposes and has no permanent establishment in any Member State.

8 Where, pursuant to paragraph 7, there is a multiple reporting obligation, the relevant taxpayer shall be exempt from filing the information if it has proof, in accordance with national law, that the same information has been filed in another Member State.

9 Each Member State shall take the necessary measures to require that, where there is more than one intermediary, the obligation to file information on the reportable cross-border arrangement lie with all intermediaries involved in the same reportable cross-border arrangement.

An intermediary shall be exempt from filing the information only to the extent that it has proof, in accordance with national law, that the same information referred to in paragraph 14 has already been filed by another intermediary.

10 Each Member State shall take the necessary measures to require that, where the reporting obligation lies with the relevant taxpayer and where there is more than one relevant taxpayer, the relevant taxpayer that is to file information in accordance with paragraph 6 be the one that features first in the list below:

- a the relevant taxpayer that agreed the reportable cross-border arrangement with the intermediary;
- b the relevant taxpayer that manages the implementation of the arrangement.

Any relevant taxpayer shall only be exempt from filing the information to the extent that it has proof, in accordance with national law, that the same information referred to in paragraph 14 has already been filed by another relevant taxpayer.

11 Each Member State may take the necessary measures to require that each relevant taxpayer file information about their use of the arrangement to the tax administration in each of the years for which they use it.

[^{X1}12 Each Member State shall take the necessary measures to require intermediaries and relevant taxpayers to file information on reportable cross-border arrangements the first step of which was implemented between 25 June 2018 and 30 June 2020. Intermediaries and relevant taxpayers, as appropriate, shall file information on those reportable cross-border arrangements by 31 August 2020.]

13 The competent authority of a Member State where the information was filed pursuant to paragraphs 1 to 12 of this Article shall, by means of an automatic exchange, communicate the information specified in paragraph 14 of this Article to the competent authorities of all other Member States, in accordance with the practical arrangements adopted pursuant to Article 21.

14 The information to be communicated by the competent authority of a Member State under paragraph 13 shall contain the following, as applicable:

- a the identification of intermediaries and relevant taxpayers, including their name, date and place of birth (in the case of an individual), residence for tax purposes, TIN and, where appropriate, the persons that are associated enterprises to the relevant taxpayer;
- b details of the hallmarks set out in Annex IV that make the cross-border arrangement reportable;
- c a summary of the content of the reportable cross-border arrangement, including a reference to the name by which it is commonly known, if any, and a description in abstract terms of the relevant business activities or arrangements, without leading to the disclosure of a commercial, industrial or professional secret or of a commercial process, or of information the disclosure of which would be contrary to public policy;
- d the date on which the first step in implementing the reportable cross-border arrangement has been made or will be made;
- e details of the national provisions that form the basis of the reportable cross-border arrangement;
- f the value of the reportable cross-border arrangement;
- g the identification of the Member State of the relevant taxpayer(s) and any other Member States which are likely to be concerned by the reportable cross-border arrangement;
- h the identification of any other person in a Member State likely to be affected by the reportable cross-border arrangement, indicating to which Member States such person is linked.

15 The fact that a tax administration does not react to a reportable cross-border arrangement shall not imply any acceptance of the validity or tax treatment of that arrangement.

16 To facilitate the exchange of information referred to in paragraph 13 of this Article, the Commission shall adopt the practical arrangements necessary for the implementation of this Article, including measures to standardise the communication of the information set out in paragraph 14 of this Article, as part of the procedure for establishing the standard form provided for in Article 20(5).

17 The Commission shall not have access to information referred to in points (a), (c) and (h) of paragraph 14.

18 The automatic exchange of information shall take place within one month of the end of the quarter in which the information was filed. The first information shall be communicated by 31 October 2020.]

Editorial Information

- X1** Substituted by [Corrigendum to 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 \(Official Journal of the European Union L 139 of 5 June 2018\)](#).
-

Textual Amendments

- F4** Inserted by [Council Directive \(EU\) 2015/2376 of 8 December 2015 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation](#).
- F5** Inserted by [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](#).

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

Article 8b

Statistics on automatic exchanges

1 Before 1 January 2018, Member States shall provide the Commission on an annual basis with statistics on the volume of automatic exchanges under Articles 8 and 8a and, to the extent possible, with information on the administrative and other relevant costs and benefits relating to exchanges that have taken place and any potential changes, for both tax administrations and third parties.

2 Before 1 January 2019, the Commission shall submit a report that provides an overview and an assessment of the statistics and information received under paragraph 1 of this Article, on issues such as the administrative and other relevant costs and benefits of the automatic exchange of information, as well as practical aspects linked thereto. If appropriate, the Commission shall present a proposal to the Council regarding the categories and the conditions laid down in Article 8(1), including the condition that information concerning residents in other Member States has to be available, or the items referred to in Article 8(3a), or both.

When examining a proposal presented by the Commission, the Council shall assess further strengthening of the efficiency and functioning of the automatic exchange of information and raising the standard thereof, with the aim of providing that:

- a the competent authority of each Member State shall, by automatic exchange, communicate to the competent authority of any other Member State, information regarding taxable periods as from 1 January 2019 concerning residents in that other Member State, on all categories of income and capital listed in Article 8(1), as they are to be understood under the national legislation of the Member State communicating the information; and
- b the lists of categories and items laid down in Articles 8(1) and 8(3a) be extended to include other categories and items, including royalties.]

Textual Amendments

- F4** Inserted by [Council Directive \(EU\) 2015/2376 of 8 December 2015 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation.](#)

SECTION III

Spontaneous exchange of information

Article 9

Scope and conditions of spontaneous exchange of information

1 The competent authority of each Member State shall communicate the information referred to in Article 1(1) to the competent authority of any other Member State concerned, in any of the following circumstances:

- a the competent authority of one Member State has grounds for supposing that there may be a loss of tax in the other Member State;

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

- b a person liable to tax obtains a reduction in, or an exemption from, tax in one Member State which would give rise to an increase in tax or to liability to tax in the other Member State;
 - c business dealings between a person liable to tax in one Member State and a person liable to tax in the other Member State are conducted through one or more countries in such a way that a saving in tax may result in one or the other Member State or in both;
 - d the competent authority of a Member State has grounds for supposing that a saving of tax may result from artificial transfers of profits within groups of enterprises;
 - e information forwarded to one Member State by the competent authority of the other Member State has enabled information to be obtained which may be relevant in assessing liability to tax in the latter Member State.
- 2 The competent authorities of each Member State may communicate, by spontaneous exchange, to the competent authorities of the other Member States any information of which they are aware and which may be useful to the competent authorities of the other Member States.

Article 10

Time limits

- 1 The competent authority to which information referred to in Article 9(1) becomes available, shall forward that information to the competent authority of any other Member State concerned as quickly as possible, and no later than one month after it becomes available.
- 2 The competent authority to which information is communicated pursuant to Article 9 shall confirm, if possible by electronic means, the receipt of the information to the competent authority which provided the information immediately and in any event no later than seven working days.

CHAPTER III

OTHER FORMS OF ADMINISTRATIVE COOPERATION

SECTION I

Presence in administrative offices and participation in administrative enquiries

Article 11

Scope and conditions

- 1 By agreement between the requesting authority and the requested authority and in accordance with the arrangements laid down by the latter, officials authorised by the requesting authority may, with a view to exchanging the information referred to in Article 1(1):
- a be present in the offices where the administrative authorities of the requested Member State carry out their duties;
 - b be present during administrative enquiries carried out in the territory of the requested Member State.

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

Where the requested information is contained in documentation to which the officials of the requested authority have access, the officials of the requesting authority shall be given copies thereof.

2 In so far as this is permitted under the legislation of the requested Member State, the agreement referred to in paragraph 1 may provide that, where officials of the requesting authority are present during administrative enquiries, they may interview individuals and examine records.

Any refusal by the person under investigation to respect the inspection measures of the officials of the requesting authority shall be treated by the requested authority as if that refusal was committed against officials of the latter authority.

3 Officials authorised by the requesting Member State present in another Member State in accordance with paragraph 1 shall at all times be able to produce written authority stating their identity and their official capacity.

SECTION II

Simultaneous controls

Article 12

Simultaneous controls

1 Where two or more Member States agree to conduct simultaneous controls, in their own territory, of one or more persons of common or complementary interest to them, with a view to exchanging the information thus obtained, paragraphs 2, 3 and 4 shall apply.

2 The competent authority in each Member State shall identify independently the persons for whom it intends to propose a simultaneous control. It shall notify the competent authority of the other Member States concerned of any cases for which it proposes a simultaneous control, giving reasons for its choice.

It shall specify the period of time during which those controls are to be conducted.

3 The competent authority of each Member State concerned shall decide whether it wishes to take part in simultaneous controls. It shall confirm its agreement or communicate its reasoned refusal to the authority that proposed a simultaneous control.

4 The competent authority of each Member State concerned shall appoint a representative with responsibility for supervising and coordinating the control operation.

SECTION III

Administrative notification

Article 13

Request for notification

1 At the request of the competent authority of a Member State, the competent authority of another Member State shall, in accordance with the rules governing the notification of similar instruments in the requested Member State, notify the addressee of any instruments and decisions which emanate from the administrative authorities of the requesting Member State and concern the application in its territory of legislation on taxes covered by this Directive.

2 Requests for notification shall indicate the subject of the instrument or decision to be notified and shall specify the name and address of the addressee, together with any other information which may facilitate identification of the addressee.

3 The requested authority shall inform the requesting authority immediately of its response and, in particular, of the date of notification of the instrument or decision to the addressee.

4 The requesting authority shall only make a request for notification pursuant to this Article when it is unable to notify in accordance with the rules governing the notification of the instruments concerned in the requesting Member State, or where such notification would give rise to disproportionate difficulties. The competent authority of a Member State may notify any document by registered mail or electronically directly to a person within the territory of another Member State.

SECTION IV

Feedback

Article 14

Conditions

1 Where a competent authority provides information pursuant to Articles 5 or 9, it may request the competent authority which receives the information to send feedback thereon. If feedback is requested, the competent authority which received the information shall, without prejudice to the rules on tax secrecy and data protection applicable in its Member State, send feedback to the competent authority which provided the information as soon as possible and no later than three months after the outcome of the use of the requested information is known. The Commission shall determine the practical arrangements in accordance with the procedure referred to in Article 26(2).

2 Member States' competent authorities shall send feedback on the automatic exchange of information to the other Member States concerned once a year, in accordance with practical arrangements agreed upon bilaterally.

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

SECTION V

Sharing of best practices and experience

Article 15

Scope and conditions

1 Member States shall, together with the Commission, examine and evaluate administrative cooperation pursuant to this Directive and shall share their experience, with a view to improving such cooperation and, where appropriate, drawing up rules in the fields concerned.

2 Member States may, together with the Commission, produce guidelines on any aspect deemed necessary for sharing best practices and sharing experience.

CHAPTER IV

CONDITIONS GOVERNING ADMINISTRATIVE COOPERATION

Article 16

Disclosure of information and documents

1 Information communicated between Member States in any form pursuant to this Directive shall be covered by the obligation of official secrecy and enjoy the protection extended to similar information under the national law of the Member State which received it. Such information may be used for the administration and enforcement of the domestic laws of the Member States concerning the taxes referred to in Article 2.

Such information may also be used for the assessment and enforcement of other taxes and duties covered by Article 2 of Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures⁽³⁾, or for the assessment and enforcement of compulsory social security contributions.

In addition, it may be used in connection with judicial and administrative proceedings that may involve penalties, initiated as a result of infringements of tax law, without prejudice to the general rules and provisions governing the rights of defendants and witnesses in such proceedings.

2 With the permission of the competent authority of the Member State communicating information pursuant to this Directive, and only in so far as this is allowed under the legislation of the Member State of the competent authority receiving the information, information and documents received pursuant to this Directive may be used for other purposes than those referred to in paragraph 1. Such permission shall be granted if the information can be used for similar purposes in the Member State of the competent authority communicating the information.

3 Where a competent authority of a Member State considers that information which it has received from the competent authority of another Member State is likely to be useful for the purposes referred to in paragraph 1 to the competent authority of a third Member State, it may transmit that information to the latter competent authority, provided that transmission

is in accordance with the rules and procedures laid down in this Directive. It shall inform the competent authority of the Member State from which the information originates about its intention to share that information with a third Member State. The Member State of origin of the information may oppose such a sharing of information within 10 working days of receipt of the communication from the Member State wishing to share the information.

4 Permission to use information pursuant to paragraph 2, which has been transmitted pursuant to paragraph 3, may be granted only by the competent authority of the Member State from which the information originates.

5 Information, reports, statements and any other documents, or certified true copies or extracts thereof, obtained by the requested authority and communicated to the requesting authority in accordance with this Directive may be invoked as evidence by the competent bodies of the requesting Member State on the same basis as similar information, reports, statements and any other documents provided by an authority of that Member State.

[^{F9}6 Notwithstanding paragraphs 1 to 4 of this Article, information communicated between Member States pursuant to Article 8aa shall be used for the purposes of assessing high-level transfer-pricing risks and other risks related to base erosion and profit shifting, including assessing the risk of non-compliance by members of the MNE Group with applicable transfer-pricing rules, and where appropriate for economic and statistical analysis. Transfer-pricing adjustments by the tax authorities of the receiving Member State shall not be based on the information exchanged pursuant to Article 8aa. Notwithstanding the above, there is no prohibition on using the information communicated between Member States pursuant to Article 8aa as a basis for making further enquiries into the MNE Group's transfer-pricing arrangements or into other tax matters in the course of a tax audit, and, as a result, appropriate adjustments to the taxable income of a Constituent Entity may be made.]

Textual Amendments

- F9** Inserted by [Council Directive \(EU\) 2016/881 of 25 May 2016 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation.](#)

Article 17

Limits

1 A requested authority in one Member State shall provide a requesting authority in another Member State with the information referred to in Article 5 provided that the requesting authority has exhausted the usual sources of information which it could have used in the circumstances for obtaining the information requested, without running the risk of jeopardising the achievement of its objectives.

2 This Directive shall impose no obligation upon a requested Member State to carry out enquiries or to communicate information, if it would be contrary to its legislation to conduct such inquiries or to collect the information requested for its own purposes.

3 The competent authority of a requested Member State may decline to provide information where the requesting Member State is unable, for legal reasons, to provide similar information.

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

4 The provision of information may be refused where it would lead to the disclosure of a commercial, industrial or professional secret or of a commercial process, or of information whose disclosure would be contrary to public policy.

5 The requested authority shall inform the requesting authority of the grounds for refusing a request for information.

Article 18

Obligations

1 If information is requested by a Member State in accordance with this Directive, the requested Member State shall use its measures aimed at gathering information to obtain the requested information, even though that Member State may not need such information for its own tax purposes. That obligation is without prejudice to paragraphs 2, 3 and 4 of Article 17, the invocation of which shall in no case be construed as permitting a requested Member State to decline to supply information solely because it has no domestic interest in such information.

2 In no case shall Article 17(2) and (4) be construed as permitting a requested authority of a Member State to decline to supply information solely because this information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

3 Notwithstanding paragraph 2, a Member State may refuse the transmission of requested information where such information concerns taxable periods prior to 1 January 2011 and where the transmission of such information could have been refused on the basis of Article 8(1) of Directive 77/799/EEC if it had been requested before 11 March 2011.

Article 19

Extension of wider cooperation provided to a third country

Where a Member State provides a wider cooperation to a third country than that provided for under this Directive, that Member State may not refuse to provide such wider cooperation to any other Member State wishing to enter into such mutual wider cooperation with that Member State.

Article 20

Standard forms and computerised formats

1 Requests for information and for administrative enquiries pursuant to Article 5 and their replies, acknowledgements, requests for additional background information, inability or refusal pursuant to Article 7 shall, as far as possible, be sent using a standard form adopted by the Commission in accordance with the procedure referred to in Article 26(2).

The standard forms may be accompanied by reports, statements and any other documents, or certified true copies or extracts thereof.

2 The standard form referred to in paragraph 1 shall include at least the following information to be provided by the requesting authority:

- a the identity of the person under examination or investigation;
- b the tax purpose for which the information is sought.

The requesting authority may, to the extent known and in line with international developments, provide the name and address of any person believed to be in possession of the requested information as well as any element that may facilitate the collection of information by the requested authority.

3 Spontaneous information and its acknowledgement pursuant to Articles 9 and 10 respectively, requests for administrative notifications pursuant to Article 13 and feedback information pursuant to Article 14 shall be sent using the standard form adopted by the Commission in accordance with the procedure referred to in Article 26(2).

[^{F64} The automatic exchange of information pursuant to Article 8 shall be sent using a standard computerised format aimed at facilitating such automatic exchange and based on the existing computerised format pursuant to Article 9 of Directive 2003/48/EC, to be used for all types of automatic exchange of information, adopted by the Commission in accordance with the procedure referred to in Article 26(2).]

[^{F25} The Commission shall adopt standard forms, including the linguistic arrangements, in accordance with the procedure referred to in Article 26(2), in the following cases:

- a for the automatic exchange of information on advance cross-border rulings and advance pricing arrangements pursuant to Article 8a before 1 January 2017;
- b for the automatic exchange of information on reportable cross-border arrangements pursuant to Article 8ab before 30 June 2019.

Those standard forms shall not exceed the components for the exchange of information listed in Articles 8a(6) and 8ab(14), and such other related fields which are linked to these components which are necessary to achieve the objectives of Articles 8a and 8ab, respectively.

The linguistic arrangements referred to in the first subparagraph shall not preclude Member States from communicating the information referred to in Articles 8a and 8ab in any of the official languages of the Union. However, those linguistic arrangements may provide that the key elements of such information shall also be sent in another official language of the Union.]

[^{F96} The automatic exchange of information on the country-by-country report pursuant to Article 8aa shall be carried out using the standard form provided in Tables 1, 2 and 3 of Section III of Annex III. The Commission shall, by means of implementing acts, adopt the linguistic arrangements for that exchange by 31 December 2016. They shall not preclude Member States from communicating information referred to in Article 8aa in any of the official and working languages of the Union. However, those linguistic arrangements may provide that the key elements of such information also be sent in another official language of the Union. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 26(2).]

Textual Amendments

- F2** Substituted by [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.](#)
- F6** Substituted by [Council Directive 2014/107/EU of 9 December 2014 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation.](#)
- F9** Inserted by [Council Directive \(EU\) 2016/881 of 25 May 2016 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation.](#)

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

Article 21

Practical arrangements

1 Information communicated pursuant to this Directive shall, as far as possible, be provided by electronic means using the CCN network.

Where necessary, the Commission shall adopt practical arrangements necessary for the implementation of the first subparagraph in accordance with the procedure referred to in Article 26(2).

[^{F62} The Commission shall be responsible for whatever development of the CCN network is necessary to permit the exchange of that information between Member States and for ensuring the security of the CCN network.

Member States shall be responsible for whatever development of their systems is necessary to enable that information to be exchanged using the CCN network and for ensuring the security of their systems.

Member States shall ensure that each individual Reportable Person is notified of a breach of security with regard to his data when that breach is likely to adversely affect the protection of his personal data or privacy.

Member States shall waive all claims for the reimbursement of expenses incurred in applying this Directive except, where appropriate, in respect of fees paid to experts.]

[^{F33} Persons duly accredited by the Security Accreditation Authority of the Commission may have access to that information only in so far as it is necessary for the care, maintenance and development of the directory referred to in paragraph 5 and of the CCN network.]

4 Requests for cooperation, including requests for notification, and attached documents may be made in any language agreed between the requested and requesting authority.

Those requests shall be accompanied by a translation into the official language or one of the official languages of the Member State of the requested authority only in special cases when the requested authority states its reason for requesting a translation.

[^{F25} The Commission shall by 31 December 2017 develop and provide with technical and logistical support a secure Member State central directory on administrative cooperation in the field of taxation where information to be communicated in the framework of Article 8a(1) and (2) shall be recorded in order to satisfy the automatic exchange provided for in those paragraphs.

The Commission shall by 31 December 2019 develop and provide with technical and logistical support a secure Member State central directory on administrative cooperation in the field of taxation where information to be communicated in the framework of Article 8ab(13), (14) and (16) shall be recorded in order to satisfy the automatic exchange provided for in those paragraphs.

The competent authorities of all Member States shall have access to the information recorded in that directory. The Commission shall also have access to the information recorded in that directory, however within the limitations set out in Articles 8a(8) and 8ab(17). The necessary practical arrangements shall be adopted by the Commission in accordance with the procedure referred to in Article 26(2).

Until that secure central directory is operational, the automatic exchange provided for in Article 8a(1) and (2) and Article 8ab(13), (14) and (16) shall be carried out in accordance with paragraph 1 of this Article and the applicable practical arrangements.]

[^{F9}6 Information communicated pursuant to Article 8aa(2) shall be provided by electronic means using the CCN network. The Commission shall, by means of implementing acts, adopt the necessary practical arrangements for the upgrading of the CCN network. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 26(2).]

Textual Amendments

- F2** Substituted by [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.](#)
- F3** Substituted by [Council Directive \(EU\) 2015/2376 of 8 December 2015 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation.](#)
- F6** Substituted by [Council Directive 2014/107/EU of 9 December 2014 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation.](#)
- F9** Inserted by [Council Directive \(EU\) 2016/881 of 25 May 2016 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation.](#)

Article 22

Specific obligations

- 1 Member States shall take all necessary measures to:
 - a ensure effective internal coordination within the organisation referred to in Article 4;
 - b establish direct cooperation with the authorities of the other Member States referred to in Article 4;
 - c ensure the smooth operation of the administrative cooperation arrangements provided for in this Directive.

[^{F10}1a For the purpose of the implementation and enforcement of the laws of the Member States giving effect to this Directive and to ensure the functioning of the administrative cooperation it establishes, Member States shall provide by law for access by tax authorities to the mechanisms, procedures, documents and information referred to in Articles 13, 30, 31 and 40 of Directive (EU) 2015/849 of the European Parliament and of the Council⁽⁴⁾.]

- 2 The Commission shall communicate to each Member State any general information concerning the implementation and application of this Directive which it receives and which it is able to provide.

Textual Amendments

- F10** Inserted by [Council Directive \(EU\) 2016/2258 of 6 December 2016 amending Directive 2011/16/EU as regards access to anti-money-laundering information by tax authorities.](#)

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

CHAPTER V

RELATIONS WITH THE COMMISSION

Article 23

Evaluation

1 Member States and the Commission shall examine and evaluate the functioning of the administrative cooperation provided for in this Directive.

2 Member States shall communicate to the Commission any relevant information necessary for the evaluation of the effectiveness of administrative cooperation in accordance with this Directive in combating tax evasion and tax avoidance.

[^{F23} Member States shall communicate to the Commission a yearly assessment of the effectiveness of the automatic exchange of information referred to in Articles 8, 8a, 8aa and 8ab as well as the practical results achieved. The Commission shall, by means of implementing acts, adopt the form and the conditions of communication for that yearly assessment. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 26(2).]

4 The Commission shall, in accordance with the procedure referred to in Article 26(2), determine a list of statistical data which shall be provided by the Member States for the purposes of evaluation of this Directive.

^{F85}

^{F86}

Textual Amendments

F2 Substituted by [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](#).

F8 Deleted by [Council Directive \(EU\) 2015/2376 of 8 December 2015 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation](#).

[^{F4}Article 23a

Confidentiality of information

1 Information communicated to the Commission pursuant to this Directive shall be kept confidential by the Commission in accordance with the provisions applicable to Union authorities and may not be used for any purposes other than those required to determine whether and to what extent Member States comply with this Directive.

2 Information communicated to the Commission by a Member State under Article 23, as well as any report or document produced by the Commission using such information, may be transmitted to other Member States. Such transmitted information shall be covered by the obligation of official secrecy and enjoy the protection extended to similar information under the national law of the Member State which received it.

Reports and documents produced by the Commission, referred to in the first subparagraph, may be used by the Member States only for analytical purposes, and shall not be published or made available to any other person or body without the express agreement of the Commission.]

Textual Amendments

- F4** Inserted by [Council Directive \(EU\) 2015/2376 of 8 December 2015 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation.](#)

CHAPTER VI

RELATIONS WITH THIRD COUNTRIES

Article 24

Exchange of information with third countries

1 Where the competent authority of a Member State receives from a third country information that is foreseeably relevant to the administration and enforcement of the domestic laws of that Member State concerning the taxes referred to in Article 2, that authority may, in so far as this is allowed pursuant to an agreement with that third country, provide that information to the competent authorities of Member States for which that information might be useful and to any requesting authorities.

2 Competent authorities may communicate, in accordance with their domestic provisions on the communication of personal data to third countries, information obtained in accordance with this Directive to a third country, provided that all of the following conditions are met:

- a the competent authority of the Member State from which the information originates have consented to that communication;
- b the third country concerned has given an undertaking to provide the cooperation required to gather evidence of the irregular or illegal nature of transactions which appear to contravene or constitute an abuse of tax legislation.

CHAPTER VII

GENERAL AND FINAL PROVISIONS

Article 25

Data protection

[^{F61} All exchange of information pursuant to this Directive shall be subject to the provisions implementing Directive 95/46/EC. However, Member States shall, for the purpose of the correct application of this Directive, restrict the scope of the obligations and rights provided for in Article 10, Article 11(1), Articles 12 and 21 of Directive 95/46/EC to the extent required in order to safeguard the interests referred to in Article 13(1)(e) of that Directive.]

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

[^{F4}1a Regulation (EC) No 45/2001 applies to any processing of personal data under this Directive by the Union institutions and bodies. However, for the purpose of the correct application of this Directive, the scope of the obligations and rights provided for in Article 11, Article 12(1), Articles 13 to 17 of Regulation (EC) No 45/2001 is restricted to the extent required in order to safeguard the interests referred to in point (b) of Article 20(1) of that Regulation.]

[^{F7}2 Reporting Financial Institutions and the competent authorities of each Member State shall be considered to be data controllers for the purposes of Directive 95/46/EC.

3 Notwithstanding paragraph 1, each Member State shall ensure that each Reporting Financial Institution under its jurisdiction informs each individual Reportable Person concerned that the information relating to him referred to in Article 8(3a) will be collected and transferred in accordance with this Directive and shall ensure that the Reporting Financial Institution provides to that individual all information that he is entitled to under its domestic legislation implementing Directive 95/46/EC in sufficient time for the individual to exercise his data protection rights and, in any case, before the Reporting Financial Institution concerned reports the information referred to in Article 8(3a) to the competent authority of its Member State of residence.

4 Information processed in accordance with this Directive shall be retained for no longer than necessary to achieve the purposes of this Directive, and in any case in accordance with each data controller's domestic rules on statute of limitations.]

Textual Amendments

- F4** Inserted by [Council Directive \(EU\) 2015/2376 of 8 December 2015 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation.](#)
- F6** Substituted by [Council Directive 2014/107/EU of 9 December 2014 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation.](#)
- F7** Inserted by [Council Directive 2014/107/EU of 9 December 2014 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation.](#)

[^{F2}Article 25a

Penalties

Member States shall lay down the rules on penalties applicable to infringements of national provisions adopted pursuant to this Directive and concerning Articles 8aa and 8ab, and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.]

Textual Amendments

- F2** Substituted by [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.](#)

[^{F1}Article 26

Committee procedure

1 The Commission shall be assisted by the Committee on administrative cooperation for taxation. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council⁽⁵⁾.

2 Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.]

Textual Amendments

- F1** Substituted by [Council Directive \(EU\) 2016/881 of 25 May 2016 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation.](#)

[^{F2}Article 27

Reporting

1 Every five years after 1 January 2013, the Commission shall submit a report on the application of this Directive to the European Parliament and to the Council.

2 Every two years after 1 July 2020, the Member States and the Commission shall evaluate the relevance of Annex IV and the Commission shall present a report to the Council. That report shall, where appropriate, be accompanied by a legislative proposal.]

Textual Amendments

- F2** Substituted by [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.](#)

[^{F11}Article 27a

Optional deferral of time limits because of the COVID-19 pandemic

1 Notwithstanding the time limits for filing information on reportable cross-border arrangements as specified in Article 8ab(12), Member States may take the measures necessary 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 take measures as referred to in paragraph 1, they shall also take the measures necessary to allow:

- a notwithstanding Article 8ab(18), the first information to be communicated by 30 April 2021;
- b the period of 30 days for filing information referred to in Article 8ab(1) and (7) to begin by 1 January 2021 where:

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

- (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 within the meaning of the second paragraph of point 21 of Article 3 provide, 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) to 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 measures necessary to allow the communication of information referred to in Article 8(3a) that relates to the calendar year 2019 or another appropriate reporting period to take place within 12 months following the end of the calendar year 2019 or the other appropriate reporting period.

Textual Amendments

- F11** Inserted by [Council Directive \(EU\) 2020/876 of 24 June 2020 amending Directive 2011/16/EU to address the urgent need to defer certain time limits for the filing and exchange of information in the field of taxation because of the COVID-19 pandemic.](#)

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 three months, provided that severe risks to public health, hindrances and economic disturbance caused by the COVID-19 pandemic continue to exist and Member States apply 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 deadline.]

Textual Amendments

- F11** Inserted by [Council Directive \(EU\) 2020/876 of 24 June 2020 amending Directive 2011/16/EU to address the urgent need to defer certain time limits for the filing and exchange of information in the field of taxation because of the COVID-19 pandemic.](#)

Article 28

Repeal of Directive 77/799/EEC

Directive 77/799/EEC is repealed with effect from 1 January 2013.

References made to the repealed Directive shall be construed as references to this Directive.

Article 29

Transposition

1 Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive with effect from 1 January 2013.

However, they shall bring into force the laws, regulations and administrative provisions necessary to comply with Article 8 of this Directive with effect from 1 January 2015.

They shall forthwith inform the Commission thereof.

When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

2 Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 30

Entry into force

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Union*.

Article 31

Addressees

This Directive is addressed to the Member States.

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

- (1) [^{F7}Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments (OJ L 157, 26.6.2003, p. 38).]
- (2) [^{F4}Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).]
- (3) OJ L 84, 31.3.2010, p. 1.
- (4) [^{F10}Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).]
- (5) [^{F1}Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).]

Textual Amendments

- F1** Substituted by Council Directive (EU) 2016/881 of 25 May 2016 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation.
- F4** Inserted by Council Directive (EU) 2015/2376 of 8 December 2015 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation.
- F7** Inserted by Council Directive 2014/107/EU of 9 December 2014 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation.
- F10** Inserted by Council Directive (EU) 2016/2258 of 6 December 2016 amending Directive 2011/16/EU as regards access to anti-money-laundering information by tax authorities.