

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

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⁽¹⁾, 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

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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.

[^{F16} 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

F1 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.

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).

[^{F24} 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).]

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[^{F35} A standard form, including the linguistic arrangements, shall be adopted by the Commission in accordance with the procedure referred to in Article 26(2) before 1 January 2017. The automatic exchange of information on advance cross-border rulings and advance pricing arrangements pursuant to Article 8a shall be carried out using that standard form. This standard form shall not exceed the components for exchange of the information listed in Article 8a(6) and other relating fields linked to these components necessary to achieve the objectives of Article 8a.

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

[^{F16} 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

- F1** 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.](#)
- F2** 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.](#)
- F3** 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.](#)

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).

[^{F22} 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.]

[^{F43} 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.

[^{F35} 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 paragraphs 1 and 2 of Article 8a 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 to that directory, however within the limitations set out in Article 8a(8). 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 paragraphs 1 and 2 of Article 8a shall be carried out in accordance with paragraph 1 of this Article and the applicable practical arrangements.]

[^{F16} 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

- F1** 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.](#)
- F2** 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.](#)
- F3** 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.](#)
- F4** 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.](#)

Article 22

Specific obligations

1 Member States shall take all necessary measures to:

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- 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.

[^{F5}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⁽²⁾.]

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

- F5** 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.](#)

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- (1) [OJ L 84, 31.3.2010, p. 1.](#)
- (2) [^{F5}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](#)).]

Textual Amendments

- F5** 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.](#)