

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

CHAPTER VII

**GENERAL AND FINAL PROVISIONS**

*Article 25*

**Data protection**

[<sup>F1</sup> 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.]

[<sup>F2</sup>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.]

[<sup>F3</sup>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**

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

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### *[<sup>F4</sup>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**

- F4** 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.](#)

### *[<sup>F5</sup>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<sup>(1)</sup>.

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

#### **Textual Amendments**

- F5** 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.](#)

### *[<sup>F4</sup>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**

- F4** 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.](#)

### *F<sup>6</sup>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:
  - (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**

- F6** 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.]

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#### *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.

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- (1) [<sup>F5</sup>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).]

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**Textual Amendments**

- F5** 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.