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**2020/0022 (CNS)**

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## PROPOSAL

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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	12 February 2020
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2020) 49 final
Subject:	Proposal for a COUNCIL DIRECTIVE on administrative cooperation in the field of taxation (codification)

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Delegations will find herewith attached the Commission codification proposal referred to in the subject (COM(2020) 49 final - 2020/0022 (CNS) and Annexes 1 to 6).

Delegations are invited to send their comments on the codification proposal by Friday 20 March 2020 to the following addresses:

[Codification@consilium.europa.eu](mailto:Codification@consilium.europa.eu) **AND** [sj-codification@ec.europa.eu](mailto:sj-codification@ec.europa.eu)

Delegation's attention is drawn to the Practical Guide on Codification (doc. 14722/14 + COR1).

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Encl.: COM(2020) 49 final

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6023/20

**EN**



EUROPEAN  
COMMISSION

Brussels, 12.2.2020  
COM(2020) 49 final

2020/0022 (CNS)

Proposal for a

**COUNCIL DIRECTIVE**

**on administrative cooperation in the field of taxation (codification)**

## EXPLANATORY MEMORANDUM

1. In the context of a people's Europe, the Commission attaches great importance to simplifying and clarifying the law of the Union so as to make it clearer and more accessible to citizens, thus giving them new opportunities and the chance to make use of the specific rights it gives them.

This aim cannot be achieved so long as numerous provisions that have been amended several times, often quite substantially, remain scattered, so that they must be sought partly in the original instrument and partly in later amending ones. Considerable research work, comparing many different instruments, is thus needed to identify the current rules.

For this reason a codification of rules that have frequently been amended is also essential if the law is to be clear and transparent.

2. On 1 April 1987 the Commission decided<sup>1</sup> to instruct its staff that all acts should be codified after no more than ten amendments, stressing that this is a minimum requirement and that departments should endeavour to codify at even shorter intervals the texts for which they are responsible, to ensure that their provisions are clear and readily understandable.
3. The Conclusions of the Presidency of the Edinburgh European Council (December 1992) confirmed this<sup>2</sup>, stressing the importance of codification as it offers certainty as to the law applicable to a given matter at a given time.

Codification must be undertaken in full compliance with the normal procedure for the adoption of acts of the Union.

Given that no changes of substance may be made to the instruments affected by codification, the European Parliament, the Council and the Commission have agreed, by an interinstitutional agreement dated 20 December 1994, that an accelerated procedure may be used for the fast-track adoption of codification instruments.

4. The purpose of this proposal is to undertake a codification of Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC<sup>3</sup>. The new Directive will supersede the various acts incorporated in it<sup>4</sup>; this proposal fully preserves the content of the acts being codified and hence does no more than bring them together with only such formal amendments as are required by the codification exercise itself.
5. The codification proposal was drawn up on the basis of a preliminary consolidation, in 23 official languages, of Directive 2011/16/EU and the instruments amending it, carried out by the Publications Office of the European Union, by means of a data-processing system. Where the Articles have been given new numbers, the correlation between the old and the new numbers is shown in a table set out in Annex VI to the codified Directive.

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<sup>1</sup> COM(87) 868 PV.

<sup>2</sup> See Annex 3 to Part A of the Conclusions.

<sup>3</sup> Entered in the legislative programme for 2019.

<sup>4</sup> See Annex V to this proposal.

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↓ 2011/16/EU (adapted)

2020/0022 (CNS)

Proposal for a

## COUNCIL DIRECTIVE

### on administrative cooperation in the field of taxation (codification)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 113 and 115 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the European Economic and Social Committee<sup>5</sup>,

Acting in accordance with a special legislative procedure,

Whereas:

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- (1) Council Directive 2011/16/EU<sup>6</sup> has been substantially amended several times. In the interests of clarity and rationality, that Directive should be codified.
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↓ 2011/16/EU recital 3 (adapted)

- (2) ☒ This Directive ☒ should give Member States the power to efficiently cooperate at international level to overcome the negative effects of an ever-increasing globalisation on the internal market.
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↓ 2011/16/EU recital 6 (adapted)

- (3) ☒ This Directive ☒ should apply to direct taxes and indirect taxes that are not yet covered by other Union legislation. To this end, this Directive is considered to be the proper instrument in terms of effective administrative cooperation.

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<sup>5</sup> OJ C [...], [...], p. [...].

<sup>6</sup> Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC (OJ L 64, 11.3.2011, p. 1).

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↓ 2011/16/EU recital 7 (adapted)

- (4) This Directive provides for clear and precise rules governing administrative cooperation between Member States, in order to ☒ ensure ☒, especially as regards the exchange of information, a wide scope of administrative cooperation between Member States. Clear rules should also make it possible in particular to cover all legal and natural persons in the Union, taking into account the ever-increasing range of legal arrangements, including not only traditional arrangements such as trusts, foundations and investment funds, but any new instrument which may be set up by taxpayers in the Member States.
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↓ 2011/16/EU recital 8 (adapted)

- (5) There should be direct contact between Member States' local or national offices in charge of administrative cooperation, with communication between central liaison offices being the rule. The lack of direct contacts leads to inefficiency, under-use of the arrangements for administrative cooperation and delays in communication. Direct contacts ☒ should take place ☒ between services with a view to making cooperation efficient and fast. The assignment of competences to the liaison departments should be deferred to the national provisions of each Member State.
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↓ 2011/16/EU recital 9

- (6) Member States should exchange information concerning particular cases where requested by another Member State and should make the necessary enquiries to obtain such information. The standard of 'foreseeable relevance' is intended to provide for exchange of information in tax matters to the widest possible extent and, at the same time, to clarify that Member States are not at liberty to engage in 'fishing expeditions' or to request information that is unlikely to be relevant to the tax affairs of a given taxpayer. While Article 24 of this Directive contains procedural requirements, those provisions need to be interpreted liberally in order not to frustrate the effective exchange of information.
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↓ 2014/107/EU recital 1 (adapted)

- (7) The challenge posed by cross-border tax fraud and tax evasion has increased considerably and has become a major focus of concern within the Union and at global level. Unreported and untaxed income is considerably reducing national tax revenues. Efficiency and effectiveness of tax collection ☒ are ☒ therefore needed. ☒ Moreover, the challenge posed by cross-border tax avoidance, aggressive tax planning and harmful tax competition has also increased considerably. Overall, this hinders Member States in applying growth-friendly tax policies ☒. The automatic exchange of information constitutes an important tool in this regard and ☒ should be promoted ☒ vigorously as the future European and international standard for transparency and exchange of information in tax matters.

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↓ 2014/107/EU recital 2 (adapted)

- (8) The importance of automatic exchange of information as a means to combat cross-border tax fraud and tax evasion has been recognised also at the international level (G20 and G8). Following the negotiations between the United States of America and several other countries, including all Member States, on bilateral automatic exchange agreements to implement the United States' Foreign Account Tax Compliance Act (commonly known as 'FATCA'), the Organisation for Economic Cooperation and Development (OECD) was mandated by the G20 to build on these agreements to develop a single global standard for automatic exchange of tax information.
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↓ 2014/107/EU recital 4 (adapted)

- (9) In 2014, the OECD released the various elements of a global standard for automatic exchange of financial account information in tax matters, which included a Model Competent Authority Agreement, a Common Reporting Standard ('CRS'), Commentaries on the Model Competent Authority Agreement and Common Reporting Standard, and Information Technology Modalities for implementing the global standard. The entire global standard package was endorsed by G20 Finance Ministers and Central Bank Governors in September 2014.
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↓ 2014/107/EU recital 5 (adapted)

- (10) This Directive should also provide for the mandatory automatic exchange of information between Member States on certain categories of income and capital that taxpayers hold in Member States other than their State of residence. It should establish a step-by-step approach to reinforcing automatic exchange of information by its progressive extension to new categories of income and capital.
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↓ 2014/107/EU recital 9 (adapted)

- (11) In order to minimise costs and administrative burdens both for tax administrations and for economic operators, it is also crucial to ensure that the scope of automatic exchange of financial information within the Union is in line with international developments. To achieve this objective, Member States should require their Financial Institutions to implement reporting and due diligence rules which are fully consistent with those set out in the CRS developed by the OECD. Moreover, the scope of mandatory automatic exchange of information should include the same information covered by the OECD Model Competent Authority Agreement and CRS. Each Member State should have only one single list of domestically-defined Non-Reporting Financial Institutions and Excluded Accounts that it should use both when implementing this Directive and for the application of other agreements implementing the global standard.
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↓ 2014/107/EU recital 10

- (12) The categories of Reporting Financial Institutions and Reportable Accounts covered by this Directive are designed to limit the opportunities for taxpayers to avoid being reported by shifting assets to Financial Institutions or investing in financial products

that are outside the scope of this Directive. However, certain Financial Institutions and accounts that present a low risk of being used to evade tax should be excluded from the scope of this Directive. Thresholds should not be generally included in this Directive as they could be easily circumvented by splitting accounts into different Financial Institutions. The financial information which is required to be reported and exchanged should concern not only all relevant income (interests, dividends and similar types of income) but also account balances and sale proceeds from Financial Assets, in order to address situations where a taxpayer seeks to hide capital that in itself represents income or assets with regard to which tax has been evaded. Therefore, the processing of information under this Directive is necessary and proportionate for the purpose of enabling Member States' tax administrations to correctly and unequivocally identify the taxpayers concerned, to administer and enforce their tax laws in cross-border situations, to assess the likelihood of tax evasion being perpetrated, and to avoid unnecessary further investigations.

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↓ 2014/107/EU recital 11

- (13) Reporting Financial Institutions could meet their information obligations towards individual Reportable Persons by following the detailed arrangements on communication, including its frequency, provided for by their internal procedures in accordance with their domestic law.
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↓ (EU) 2015/2376 recital 1  
(adapted)

- (14) The issuance of advance tax rulings, which facilitate the consistent and transparent application of the law, is common practice, including in the Union. By providing certainty for business, clarification of tax law for taxpayers can encourage investment and compliance with the law and can therefore be conducive to the objective of further developing the single market in the Union on the basis of the principles and freedoms underlying the Treaties. However, rulings concerning tax-driven structures have, in certain cases, led to a low level of taxation of artificially high amounts of income in the country issuing, amending or renewing the advance ruling and left artificially low amounts of income to be taxed in any other countries involved. ☒ A high level of ☒ transparency is therefore required.
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↓ (EU) 2015/2376 recital 7

- (15) Taxpayers are entitled to rely on advance cross-border rulings or advance pricing arrangements during, for example, taxation processes or tax audits under the condition that the facts on which the advance cross-border rulings or advance pricing arrangements are based have been accurately presented and that the taxpayers abide by the terms of the advance cross-border rulings or advance pricing arrangements.
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↓ (EU) 2015/2376 recital 8  
(adapted)

- (16) Member States ☒ should ☒ exchange information irrespective of whether the taxpayer abides by the terms of the advance cross-border ruling or advance pricing arrangement.

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↓ (EU) 2015/2376 recital 10  
(adapted)

- (17) In order to reap the benefits of the mandatory automatic exchange of advance cross-border rulings and advance pricing arrangements, the information should be communicated promptly after they are issued, amended or renewed, and regular intervals for the communication of the information should therefore be ☒ set out ☒.
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↓ (EU) 2015/2376 recital 11

- (18) For reasons of legal certainty, it is appropriate, under a set of very strict conditions, to exclude from the mandatory automatic exchange bilateral or multilateral advance pricing arrangements with third countries following the framework of existing international treaties with those countries, where the provisions of those treaties do not permit disclosure of the information received under that treaty to a third party country. In these cases, however, the information identified in paragraph 5 of Article 9 relating to the requests that lead to issuance of such bilateral or multilateral advance pricing arrangements should be exchanged instead. Therefore, in such cases, the information to be communicated should include the indicator that it is provided on the basis of such a request.
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↓ (EU) 2015/2376 recital 13  
(adapted)

- (19) ☒ the ☒ standard form for the mandatory automatic exchange of information ☒ on advance cross-border rulings and advance pricing arrangements ☒, account ☒ should be taken ☒ of work performed at the OECD's Forum on Harmful Tax Practices, in the context of the Action Plan on Base Erosion and Profit Shifting ☒ ('BEPS Action Plan') ☒. It is also appropriate to work closely with the OECD, in a coordinated manner and not only in the area of the development of such a standard form for mandatory automatic exchange of information. The ultimate aim should be a global level playing field, where the Union should take a leading role by promoting that the scope of information on advance cross-border rulings and advance pricing arrangements to be exchanged automatically should be rather broad.
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↓ (EU) 2015/2376 recital 14

- (20) Member States should exchange basic information, and a limited set of basic information should also be communicated to the Commission. This should enable the Commission to monitor and evaluate the effective application of the mandatory automatic exchange of information on advance cross-border rulings and advance pricing arrangements at any time. The information received by the Commission should not, however, be used for any other purposes. Such communication would moreover not discharge a Member State from its obligations to notify any State aid to the Commission.



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↓ (EU) 2015/2376 recital 16  
(adapted)

- (21) Where necessary, following the stage of mandatory automatic exchange of information  on advance cross-border rulings and advance pricing arrangements , a Member State should be able to rely on Article 5 as regards the exchange of information on request to obtain additional information, including the full text of advance cross-border rulings or advance pricing arrangements, from the Member State having issued such rulings or arrangements.

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↓ (EU) 2015/2376 recital 18

- (22) Member States should take all reasonable measures necessary to remove any obstacle that might hinder the effective and widest possible mandatory automatic exchange of information on advance cross-border rulings and advance pricing arrangements.

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↓ (EU) 2015/2376 recital 19  
(adapted)

- (23) In order to enhance the efficient use of resources, facilitate the exchange of information and avoid the need for Member States each to make similar developments to their systems to store information, specific provision should be made for a central directory  to be  accessible to all Member States and the Commission  where  Member States  should  upload and store information, instead of exchanging that information by secured email.

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↓ (EU) 2016/881 recital 2

- (24) As multinational enterprise groups (MNE Groups) are active in different countries, they have the possibility of engaging in aggressive tax-planning practices that are not available for domestic companies. When MNE Groups do so, purely domestic companies, normally small and medium-sized enterprises (SMEs), may be particularly affected, as their tax burden is higher than that of MNE Groups. On the other hand, all Member States may suffer revenue losses and there is the risk of competition to attract MNE Groups by offering them further tax benefits.

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↓ (EU) 2016/881 recital 3

- (25) Member States' tax authorities need comprehensive and relevant information on MNE Groups regarding their structure, transfer-pricing policy and internal transactions in and outside the Union. That information will enable the tax authorities to react to harmful tax practices by making changes in legislation or by undertaking adequate risk assessments and tax audits, and to identify whether companies have engaged in practices that have the effect of artificially shifting substantial amounts of income into tax-advantaged environments.

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↓ (EU) 2016/881 recital 4  
(adapted)

- (26) ☒ A high level of ☒ transparency towards tax authorities could have the effect of giving MNE Groups an incentive to abandon certain practices and pay their fair share of tax in the country where profits are made. ☒ Ensuring ☒ transparency for MNE Groups is therefore an essential part of tackling base erosion and profit shifting.
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↓ (EU) 2016/881 recital 5  
(adapted)

- (27) The Resolution of the Council and of the representatives of the governments of the Member States on a code of conduct on transfer pricing documentation for associated enterprises in the European Union (EU TPD)<sup>7</sup> sets out a way for MNE Groups in the Union to provide tax authorities with information on global business operations and transfer-pricing policies ('the masterfile') and information on the concrete transactions of the local entity ('the local file'). However, the EU TPD does not provide for any mechanism for the provision of a country-by-country report.
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↓ (EU) 2016/881 recital 7

- (28) In order to enhance the efficient use of public resources and reduce the administrative burden for MNE Groups, the reporting obligation should only apply to MNE Groups with annual consolidated group revenue exceeding a certain amount. This Directive should ensure that the same information is collected and made available to tax administrations in a timely manner throughout the Union.
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↓ (EU) 2016/881 recital 8

- (29) To ensure the proper functioning of the internal market, the Union has to provide for fair competition between Union MNE Groups and non-Union MNE Groups for which one or several of their entities are located in the Union. Both of them should therefore be subject to the reporting obligation. However, in order to ensure a smooth transition, Member States should be able to defer by one year the reporting obligation for Constituent Entities resident in a Member State which are not the Ultimate Parent Entities of MNE Groups or their Surrogate Parent Entities.
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↓ (EU) 2016/881 recital 12

- (30) The mandatory automatic exchange of country-by-country reports between Member States should in each case include the communication of a defined set of basic information that would be accessible to those Member States in which, on the basis of the information in the country-by-country report, one or more entities of the MNE

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<sup>7</sup> Resolution of the Council and of the representatives of the governments of the Member States, meeting within the Council, of 27 June 2006 on a code of conduct on transfer pricing documentation for associated enterprises in the European Union (EU TPD) (OJ C 176, 28.7.2006, p. 1).

Group are either resident for tax purposes or subject to tax with respect to the business carried out through a permanent establishment of an MNE Group.

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↓ (EU) 2016/881 recital 13  
(adapted)

- (31) In order to minimise costs and administrative burdens both for tax administrations and for MNE Groups, it is necessary to provide rules that are in line with the international developments and contribute positively to their implementation. On 19 July 2013 the OECD published its BEPS Action Plan, which is a major initiative to modify existing international tax rules. On 5 October 2015 the OECD presented its final reports, which were endorsed by the G20 Finance Ministers. During the meeting of 15 and 16 November 2015, the OECD package was also endorsed by the G20 leaders.
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↓ (EU) 2016/881 recital 14  
(adapted)

- (32) The work on Action 13 of the BEPS Action Plan resulted in a set of standards for providing information for MNE Groups, including the masterfile, the local file and the country-by-country report. It is therefore appropriate to take into account the OECD standards  in relation to  the rules on the country-by-country report.
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↓ (EU) 2016/881 recital 15

- (33) In a situation where a Constituent Entity cannot obtain or acquire all the information required in order to fulfil the reporting requirement under this Directive, Member States could consider this as an indication of the need to assess high-level transfer-pricing risks and other base-erosion and profit-shifting risks related to that MNE Group.
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↓ (EU) 2016/881 recital 16

- (34) Where a Member State determines that another Member State has persistently failed to automatically provide country-by-country reports, it should endeavour to consult that Member State.
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↓ (EU) 2016/881 recital 17

- (35) Union action in the area of country-by-country reporting should continue to take particular account of future developments at OECD level. In implementing this Directive, Member States should use the 2015 Final Report on Action 13 of the OECD/G20 Base Erosion and Profit Shifting Project, developed by the OECD, as a source of illustration or interpretation for this Directive and in order to ensure consistency of application across Member States.

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↓ (EU) 2016/881 recital 20  
(adapted)

- (36) The scope of the mandatory exchange of information should therefore include the automatic exchange of information on the country-by-country report.
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↓ (EU) 2016/881 recital 21  
(adapted)

- (37) Member States' yearly report to the Commission under Article 27 of  this  Directive should detail the extent of local filing under Article 10 and Point 1 of Section II of Annex III and a list of any jurisdictions where Ultimate Parent Entities of Union-based Constituent Entities are resident, but full reports have not been filed or exchanged.
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↓ (EU) 2018/822 recital 3  
(adapted)

- (38) Considering that most of the potentially aggressive tax-planning arrangements span across more than one jurisdiction, the automatic exchange of information between tax authorities  of different Member States  is crucial in order to provide those authorities with the necessary information to enable them to take action where they observe aggressive tax practices.
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↓ (EU) 2018/822 recital 4  
(adapted)

- (39) In the G7 Bari Declaration of 13 May 2017 on fighting tax crimes and other illicit financial flows, the OECD was asked to start discussing possible ways to address arrangements designed to circumvent reporting under the CRS or aimed at providing beneficial owners with the shelter of non-transparent structures, considering also model mandatory disclosure rules inspired by the approach taken for avoidance arrangements outlined within the BEPS Action 12 Report.
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↓ (EU) 2018/822 recital 5  
(adapted)

- (40) It is necessary to recall how certain financial intermediaries and other providers of tax advice seem to have actively assisted their clients in concealing money offshore.
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↓ (EU) 2018/822 recital 6  
(adapted)

- (41) The reporting of potentially aggressive cross-border tax-planning arrangements can contribute effectively to the efforts for creating an environment of fair taxation in the internal market. In this light, an obligation  should be laid down  for intermediaries to inform tax authorities of certain cross-border arrangements that could potentially be used for aggressive tax planning. Following the reporting, the tax authorities  should  share information with their peers in other Member

States. Such arrangements should also enhance the effectiveness of the CRS. In addition, it would be crucial to grant the Commission access to a sufficient amount of information so that it can monitor the proper functioning of this Directive. Such access to information by the Commission does not discharge a Member State from its obligations to notify any State aid to the Commission.

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↓ (EU) 2018/822 recital 7  
(adapted)

- (42) It is acknowledged that the reporting of potentially aggressive cross-border tax-planning arrangements would stand a better chance of achieving its envisaged deterrent effect where the relevant information reached the tax authorities at an early stage, in other words before such arrangements are actually implemented. To facilitate the work of Member States' administrations, the subsequent automatic exchange of information on such arrangements ☒ should ☒ take place every quarter.
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↓ (EU) 2018/822 recital 8

- (43) To ensure the proper functioning of the internal market and to prevent loopholes in the proposed framework of rules, the reporting obligation should be placed upon all actors that are usually involved in designing, marketing, organising or managing the implementation of a reportable cross-border transaction or a series of such transactions, as well as those who provide assistance or advice. It should not be ignored either that, in certain cases, the reporting obligation would not be enforceable upon an intermediary due to a legal professional privilege or where there is no intermediary because, for instance, the taxpayer designs and implements a scheme in-house. It would thus be crucial that, in such circumstances, tax authorities do not lose the opportunity to receive information about tax-related arrangements that are potentially linked to aggressive tax planning. It would therefore be necessary to shift the reporting obligation to the taxpayer who benefits from the arrangement in such cases.
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↓ (EU) 2018/822 recital 9

- (44) Aggressive tax-planning arrangements have evolved over the years to become increasingly more complex and are always subject to constant modifications and adjustments as a reaction to defensive countermeasures by the tax authorities. Taking this into consideration, it would be more effective to endeavour to capture potentially aggressive tax-planning arrangements through the compiling of a list of the features and elements of transactions that present a strong indication of tax avoidance or abuse rather than to define the concept of aggressive tax planning. Those indications are referred to as 'hallmarks'.
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↓ (EU) 2018/822 recital 10  
(adapted)

- (45) Given that the primary objective of this Directive concerning the reporting of potentially aggressive cross-border tax-planning arrangements should focus on ensuring the proper functioning of the internal market, it is critical not to regulate at the level of the Union beyond what is necessary to achieve the envisaged aims. This is

why common rules on reporting  should be limited  to cross-border situations, namely those involving either more than one Member State or a Member State and a third country. In such circumstances, due to the potential impact on the functioning of the internal market, one can justify the need for enacting a common set of rules, rather than leaving the matter to be dealt with at the national level. A Member State could take further national reporting measures of a similar nature, but any information collected in addition to what is reportable in accordance with this Directive should not be communicated automatically to the competent authorities of the other Member States. That information could be exchanged on request or spontaneously according to applicable rules.

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↓(EU) 2018/822 recital 11  
(adapted)

- (46) Considering that the reportable arrangements should have a cross-border dimension, it would be important to share the relevant information with the tax authorities in other Member States in order to ensure the maximum effectiveness of this Directive in deterring aggressive tax-planning practices.
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↓ (EU) 2018/822 recital 13  
(adapted)

- (47) In order to minimise costs and administrative burdens both for tax administrations and intermediaries and to ensure the effectiveness of this Directive in deterring aggressive tax-planning practices, the scope of automatic exchange of information in relation to reportable cross-border arrangements within the Union should be consistent with international developments. A specific hallmark should be  laid down  to address arrangements designed to circumvent reporting obligations involving automatic exchanges of information. For the purposes of that hallmark, agreements on the automatic exchange of financial account information under the CRS should be treated as equivalent to the reporting obligations laid down in Article 8(4) and in Annex I. In implementing the parts of this Directive addressing CRS avoidance arrangements and arrangements involving legal persons or legal arrangements or any other similar structures, Member States could use the work of the OECD, and more specifically its Model Mandatory Disclosure Rules for Addressing CRS Avoidance Arrangements and Opaque Offshore Structures and its Commentary, as a source of illustration or interpretation, in order to ensure consistency of application across Member States, insofar those texts are aligned with the provisions of Union law.
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↓(EU) 2018/822 recital 14  
(adapted)

- (48) While direct taxation remains within the competence of Member States, it is appropriate to refer to a corporate tax rate of zero or almost zero, solely for the purpose of clearly defining the scope of the hallmark that covers arrangements involving cross-border transactions, which should be reportable under  this  Directive by intermediaries or, as appropriate, taxpayers, and about which the competent authorities should exchange information automatically. Moreover, it is appropriate to recall that aggressive cross-border tax-planning arrangements, the main purpose or one of the main purposes of which is to obtain a tax advantage that defeats

the object or purpose of the applicable tax law, are subject to the general anti-abuse rule as set out in Article 6 of Council Directive (EU) 2016/1164<sup>8</sup>.

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↓ 2011/16/EU recital 11 (adapted)

- (49) The spontaneous exchange of information between Member States should also be encouraged.
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↓ 2011/16/EU recital 12

- (50) Time limits for the provision of information under this Directive should be laid down in order to ensure that the information exchange is timely and thus effective.
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↓ 2011/16/EU recital 13

- (51) It is important that officials of the tax administration of one Member State are allowed to be present in the territory of another Member State.
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↓ 2011/16/EU recital 14

- (52) Since the tax situation of one or more persons liable to tax established in several Member States is often of common or complementary interest, it should be made possible for simultaneous controls to be carried out on such persons by two or more Member States, by mutual agreement and on a voluntary basis.
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↓ 2011/16/EU recital 15 (adapted)

- (53) In view of the legal requirement in certain Member States that a taxpayer be notified of decisions and instruments concerning his tax liability and of the ensuing difficulties for the tax authorities, including cases where the taxpayer has relocated to another Member State, it is desirable that, in such circumstances, the tax authorities be able to call upon the cooperation of the competent authorities of the Member State to which the taxpayer has relocated.
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↓ (EU) 2015/2376 recital 15

- (54) Feedback by the receiving Member State to the Member State sending the information is a necessary element of the operation of an effective system of automatic information exchange. It is therefore appropriate to underline that Member States' competent authorities should send, once a year, feedback on the automatic exchange of information to the other Member States concerned. In practice, this mandatory feedback should be done by arrangements agreed upon bilaterally.

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<sup>8</sup> Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market (OJ L 193, 19.7.2016, p. 1).

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↓ 2011/16/EU recital 17

- (55) Collaboration between the Member States and the Commission is necessary for the permanent study of cooperation procedures and the sharing of experience and best practices in the fields considered.
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↓ 2011/16/EU recital 18 (adapted)

- (56) It is important for the efficiency of administrative cooperation that information and documents obtained under this Directive  can , subject to the restrictions laid down in this Directive, be used by the Member State that received them also for other purposes. It is also important that Member States  be able to  transmit that information to a third country, under certain conditions.
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↓ 2011/16/EU recital 19

- (57) The situations in which a requested Member State may refuse to provide information should be clearly defined and limited, taking into account certain private interests which should be protected as well as the public interest.
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↓ 2011/16/EU recital 20

- (58) However, a Member State should not refuse to transmit information because it has no domestic interest or because the information is held by a bank, other financial institution, nominee or person acting in an agency or fiduciary capacity or because it relates to ownership interests in a person.
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↓ 2011/16/EU recital 21

- (59) This Directive contains minimum rules and should therefore not affect Member States' right to enter into wider cooperation with other Member States under their national legislation or in the framework of bilateral or multilateral agreements concluded with other Member States.
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↓ 2011/16/EU recital 22

- (60) It should also be made clear that where a Member State provides a wider cooperation to a third country than is provided for under this Directive, it should not refuse to provide such wider cooperation to other Member States wishing to enter into such mutual wider cooperation.
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↓ 2011/16/EU recital 23

- (61) The exchange of information should be made through standardised forms, formats and channels of communication.



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↓ (EU) 2016/2258 recital 2  
(adapted)

- (62) Where the Account Holder is an intermediary structure, Financial Institutions ☒ should ☒ look through that structure, and identify and report on its beneficial owners. That important element in the application of ☒ this ☒ Directive relies on anti-money-laundering ('AML') information obtained pursuant to Directive (EU) 2015/849 of the European Parliament and of the Council<sup>9</sup> for the identification of the beneficial owners.
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↓ (EU) 2016/2258 recital 3  
(adapted)

- (63) To ensure effective monitoring of the application by Financial Institutions of the due diligence procedures set out in ☒ this ☒ Directive, the tax authorities need access to AML information. In the absence of such access, those authorities would not be able to monitor, confirm and audit that the Financial Institutions are applying ☒ this ☒ Directive properly by correctly identifying and reporting on the beneficial owners of intermediary structures.
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↓ (EU) 2016/2258 recital 4  
(adapted)

- (64) ☒ This ☒ Directive encompasses other exchanges of information and forms of administrative cooperation between Member States. Access to AML information held by entities pursuant to Directive (EU) 2015/849 within the framework of administrative cooperation in the field of taxation ☒ should ☒ ensure that tax authorities are better equipped to fulfil their obligations under ☒ this ☒ Directive and to combat tax evasion and fraud more effectively.
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↓ (EU) 2016/2258 recital 5  
(adapted)

- (65) Tax authorities ☒ should therefore be ☒ able to access the AML information, procedures, documents and mechanisms for the performance of their duties in monitoring the proper application of ☒ this ☒ Directive and for the functioning of all forms of administrative cooperation provided for ☒ therein ☒.
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↓ 2011/16/EU recital 24

- (66) An evaluation of the effectiveness of administrative cooperation should be made, especially on the basis of statistics.
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<sup>9</sup> 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).

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↓ 2011/16/EU recital 27 (adapted)

- (67) All exchange of information referred to in this Directive is subject to Regulations (EU) 2016/679<sup>10</sup> and (EU) 2018/1725<sup>11</sup> of the European Parliament and of the Council. However, it is appropriate to consider limitations of certain rights and obligations laid down by Regulation (EU) 2016/679 in order to safeguard the interests referred to in Article 23(1)(e) of that Regulation. Such limitations are necessary and proportionate in view of the potential loss of revenue for Member States and the crucial importance of information covered by this Directive for the effectiveness of the fight against fraud.

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↓ 2014/107/EU recital 12

- (68) Reporting Financial Institutions, sending Member States and receiving Member States, in their capacity as data controllers, should retain information processed in accordance with this Directive for no longer than necessary to achieve the purposes thereof. Given the differences in Member States' legislation, the maximum retention period should be set by reference to the statute of limitations provided by each data controller's domestic tax legislation.

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↓ (EU) 2016/881 recital 22  
(adapted)

- (69) The information exchanged under this Directive  should  not lead to the disclosure of a commercial, industrial or professional secret, a commercial process or information the disclosure of which would be contrary to public policy.

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↓ (EU) 2016/881 recital 9

- (70) Member States should lay down rules on penalties applicable to infringements of national provisions adopted pursuant to this Directive and ensure that those penalties are implemented. While the choice of penalties remains within the discretion of the Member States, the penalties provided for should be effective, proportionate and dissuasive.

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↓ 2014/107/EU recital 13

- (71) In implementing this Directive, Member States should use the Commentaries on the Model Competent Authority Agreement and CRS Common Reporting Standard, developed by the OECD, as a source of illustration or interpretation and in order to

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<sup>10</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

<sup>11</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

ensure consistency in application across Member States. Union action in this area should continue to take particular account of future developments at OECD level.

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↓ (EU) 2018/822 recital 16  
(adapted)

- (72) In order to ensure uniform conditions for the implementation of this Directive and in particular for the automatic exchange of information between tax authorities, implementing powers should be conferred on the Commission to adopt standard  forms  with a limited number of components, including the linguistic arrangements. For the same reason, implementing powers should also be conferred on the Commission to adopt the necessary practical arrangements for upgrading  the common communication network and  the central directory on administrative cooperation in the field of taxation. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>12</sup>.
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↓ (EU) 2016/2258 recital 6

- (73) This Directive respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union. Where this Directive requires that access to personal data by tax authorities be provided by law, this does not necessarily require an act of parliament, without prejudice to the constitutional order of the Member State concerned. However, such a law should be clear and precise, and its application should be clear and foreseeable to persons subject to it, in accordance with the case-law of the Court of Justice of the European Union and the European Court of Human Rights.
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↓ (EU) 2015/2376 recital 23

- (74) Since the objective of this Directive, namely the efficient administrative cooperation between Member States under conditions compatible with the proper functioning of the internal market, cannot be sufficiently achieved by the Member States but can rather, by reason of the uniformity and effectiveness required, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
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↓

- (75) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for the transposition into national law and the dates of application of the Directives set out in Annex V, Part B,

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<sup>12</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 Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

HAS ADOPTED THIS DIRECTIVE:

## 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  shall  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;
  - (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;

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↓ (EU) 2016/881 Art. 1.1

- (9) ‘automatic exchange’ means:

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↓ (EU) 2018/822 Art. 1.1(a)(i)

- (a) for the purposes of Article 8(1) and Articles 9, 10 and 11, 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;

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↓ (EU) 2016/881 Art. 1.1

- (b) for the purposes of Article 8(4), 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;

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↓ (EU) 2018/822 Art. 1.1(a)(ii)  
(adapted)

- (c) for the purposes of provisions of this Directive other than Article 8(1) and (4) and Articles 9, 10 and 11, the systematic communication of predefined information ☒ referred to ☒ in points (a) and (b) .
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↓ (EU) 2016/881 Art. 1.1  
→<sub>1</sub> (EU) 2018/822 Art. 1.1(a)(iii)

→<sub>1</sub> In the context of Articles 8(4), 8(7) and 25(2), Article 30(3) and (4) 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 10 and Annex III, any capitalised term shall have the meaning that it has under the corresponding definitions set out in Annex III;

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↓ 2011/16/EU (adapted)

- (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;
  - (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;
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↓ (EU) 2015/2376 Art. 1.1(b)  
(adapted)

- (14) ‘advance cross-border ruling’ means any agreement, communication, or 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;
- (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.

The cross-border transaction may involve, but is not restricted to, the making of investments, the provision of goods, services  or  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 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;
- (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  purposes  of point 14, ‘cross-border transaction’ means a transaction or series of transactions where one or more of the following applies:

- (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;
- (d) such transactions or series of transactions have a cross border impact.

For the  purposes  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  purposes  of points 15 and 16, ‘enterprise’ means any form of conducting business;

↓ (EU) 2018/822 Art. 1.1(b)

- (18) ‘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 11 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;
  - (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 11, '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.

↓ 2011/16/EU (adapted)

#### Article 4

##### Organisation

1. Each Member State shall inform the Commission,  without delay , of  any change with regard to  its competent authority for the purposes of this Directive , as previously notified under Article 4(1) of Directive 2011/16/EU .

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  of each Member State  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 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 21, 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. Member States shall inform the Commission of  any changes to the information communicated under Article 8(2) of Directive 2011/16/EU as to  the categories listed in paragraph 1 in respect of which they have information available.

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↓ 2014/107/EU Art. 1.2(a)
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3. 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.

↓ 2014/107/EU Art. 1.2(b)  
(adapted)

4. 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 5 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  are  Reportable  Persons , 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;
- (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  provided for  in this paragraph or in Annexes  I and II , 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, 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.

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↓ 2014/107/EU Art. 1.2(d)

5. 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 4: annually, within nine months following the end of the calendar year or other appropriate reporting period to which the information relates.
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↓ 2011/16/EU (adapted)

6. The Commission shall , by means of implementing acts, lay down  the practical arrangements for the automatic exchange of information.  Those implementing acts shall be adopted  in accordance with the procedure referred to in Article 32(2).

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↓ 2014/107/EU Art. 1.2(e)  
(adapted)

7. For the purposes of points B.1(c) and C.17(g) of Section VIII of Annex I, each Member State shall  inform  the Commission  if any changes occur in respect of  the list of entities and accounts that are to be treated, respectively, as Non-Reporting Financial Institutions and Excluded Accounts , provided to the Commission under Article 8(7a) of Directive 2011/16/EU . 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 points 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.

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↓ 2011/16/EU

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.

*Article 9*

**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 Commission, with the limitation of cases set out in paragraph 7 of this Article, in accordance with applicable practical arrangements adopted pursuant to Article 25.

2. 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  shall  be exchanged under Article 13, 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 5 referred to in the request that  led  to issuance of such a bilateral or multilateral advance pricing arrangement shall instead be exchanged under paragraph 1.

3. Paragraph 1 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.

4. The exchange of information shall take place 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.

5. The information to be communicated by a Member State pursuant to paragraph 1 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 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);
- (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 2.

6. To facilitate the exchange of information referred to in paragraph 5 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 5 of this Article, as part of the procedure for establishing the standard form provided for in Article 24(5).

7. Information as  referred to in  points (a), (b), (h) and (k) of paragraph 5 shall not be communicated to the Commission.

8. Member States may, in accordance with Article 5, and having regard to Article 25(4), request additional information, including the full text of an advance cross-border ruling or an advance pricing arrangement.

<p>↓ (EU) 2016/881 Art. 1.2 (adapted)</p>
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### *Article 10*

#### **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.

↓ (EU) 2018/822 Art. 1.2  
(adapted)  
→<sub>1</sub> Corrigendum, OJ L 31,  
1.2.2019, p. 108

#### *Article 11*

##### **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;
- (b) on the day after the reportable cross-border arrangement is ready for implementation;
- (c) ☒ on the day ☒ 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 following list:

- (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.

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  following  list:

- (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  following  list:

- (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.

→<sub>1</sub> 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 25.

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 24(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.

↓ (EU) 2015/2376 Art. 1.3  
(adapted)

## *Article 12*

### **⊗ Extension of scope of ⊗ automatic exchanges**

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(4), 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;

- (b) the lists of categories and items laid down in Article 8(1) and 4 be extended to include other categories and items, including royalties.
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↓ 2011/16/EU (adapted)

## SECTION III

### SPONTANEOUS EXCHANGE OF INFORMATION

#### *Article 13*

##### **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;
- (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 14*

##### **Time limits**

1. The competent authority to which information referred to in Article 13(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 13 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 15*

##### **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.

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 16*

##### **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 17*

#### **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 18*

#### **Conditions**

1. Where a competent authority provides information pursuant to Articles 5 or 13, 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  , by means of implementing acts,  determine the practical arrangements  . Those implementing acts shall be adopted  in accordance with the procedure referred to in Article 32(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.

## SECTION V

### SHARING OF BEST PRACTICES AND EXPERIENCE

#### *Article 19*

##### **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 20*

##### **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<sup>13</sup>, 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,

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<sup>13</sup> Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures (OJ L 84, 31.3.2010, p. 1).



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.

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↓ (EU) 2016/881 Art. 1.3

6. Notwithstanding paragraphs 1 to 4 of this Article, information communicated between Member States pursuant to Article 10 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 10. Notwithstanding the above, there is no prohibition on using the information communicated between Member States pursuant to Article 10 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.

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↓ 2011/16/EU (adapted)

## *Article 21*

### **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 22*

##### **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 Article 21(2), (3) and (4), 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 21(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 23*

##### **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 24*

##### **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  established  by the Commission  by means of implementing acts. Those implementing acts shall be adopted  in accordance with the procedure referred to in Article 32(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 13 and 14 respectively, requests for administrative notifications pursuant to Article 17 and feedback information pursuant to Article 18 shall be sent using  a  standard form  established  by the Commission  by means of implementing acts. Those implementing acts shall be adopted  in accordance with the procedure referred to in Article 32(2).

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2014/107/EU Art. 1.3 (adapted)

4. The automatic exchange of information pursuant to Article 8 shall be sent using a standard computerised format aimed at facilitating such automatic exchange, to be used for all types of automatic exchange of information,  established  by the Commission  by means of implementing acts. Those implementing acts shall be adopted  in accordance with the procedure referred to in Article 32(2).

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(EU) 2018/822 Art. 1.3  
(adapted)

5. The Commission  may, by means of implementing acts, revise the  standard forms, including the linguistic arrangements,  adopted  in accordance with  Article 20(5) of Directive 2011/16/EU  for the automatic exchange of information on advance cross-border rulings and advance pricing arrangements pursuant to Article 9  and  on reportable cross-border arrangements pursuant to Article 11.

Those implementing acts shall be adopted in accordance with the procedure referred to in Article 32(2).

Those standard forms shall not exceed the components for the exchange of information listed in Articles 9(5) and 11(14), and such other related fields which are linked to these components which are necessary to achieve the objectives of Articles 9 and 11, respectively.

The linguistic arrangements referred to in the first subparagraph shall not preclude Member States from communicating the information referred to in Articles 9 and 11 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.

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↓ (EU) 2016/881 Art. 1.4  
(adapted)

6. The automatic exchange of information on the country-by-country report pursuant to Article 10 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, ☒ lay down ☒ the linguistic arrangements for that exchange. They shall not preclude Member States from communicating information referred to in Article 10 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 language of the Union. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 32(2).

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↓ 2011/16/EU (adapted)

#### *Article 25*

#### **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 ☒ , by means of implementing acts, ☒ adopt practical arrangements necessary for the implementation of the first subparagraph ☒ . Those implementing acts shall be adopted ☒ in accordance with the procedure referred to in Article 32(2).

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↓ 2014/107/EU Art. 1.4

2. 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.

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↓ (EU) 2015/2376 Art. 1.5(a)

3. 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.

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↓ 2011/16/EU

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.

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↓ (EU) 2018/822 Art. 1.4  
(adapted)

5.  The competent authorities of all Member States shall have access to the information recorded in the  secure Member State central directory on administrative cooperation in the field of taxation  , developed and provided with technical and logistical support by the Commission in accordance with Article 21(5) of Directive 2011/16/EU,  where information to be communicated in the framework of Article 9(1)  and  of Article 11(13), (14) and (16) shall be recorded in order to satisfy the automatic exchange provided for in those paragraphs.

The Commission shall also have access to the information recorded in that directory, however within the limitations set out in Articles 9(7) and 11(17).  The Commission shall, by means of implementing acts, lay down  the necessary practical arrangements  . Those implementing acts  shall be adopted in accordance with the procedure referred to in Article 32(2).

Until that directory is operational, the automatic exchange provided for in Article 9(1) and Article 11(13), (14) and (16) shall be carried out in accordance with paragraph 1 of this Article and the applicable practical arrangements.

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↓ (EU) 2016/881 Art. 1.5

6. Information communicated pursuant to Article 10(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 32(2).

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↓ 2011/16/EU

#### *Article 26*

#### **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.

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↓ (EU) 2016/2258 Art. 1

2. 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.

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↓ 2011/16/EU

3. 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.

## CHAPTER V

### RELATIONS WITH THE COMMISSION

#### *Article 27*

#### **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.
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↓ (EU) 2018/822 Art. 1.5

3. Member States shall communicate to the Commission a yearly assessment of the effectiveness of the automatic exchange of information referred to in Articles 8 to 11 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 32(2).

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↓ 2011/16/EU (adapted)

4. The Commission shall,  by means of implementing acts , determine a list of statistical data which shall be provided by the Member States for the purposes of evaluation of this Directive.  Those implementing acts shall be adopted in accordance with the procedure referred to in Article 32(2).

*Article 28*

**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 27, 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.

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**CHAPTER VI**

**RELATIONS WITH THIRD COUNTRIES**

*Article 29*

**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 30*

#### **Data protection**

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↓ 2014/107/EU Art. 1.5(a)  
(adapted)

1. All exchange of information pursuant to this Directive shall be subject to Regulation (EU) 2016/679. 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 13, Article 14(1) ~~⊗~~ and ~~⊗~~ Article 15 of Regulation (EU) 2016/679 to the extent required in order to safeguard the interests referred to in Article 23(1)(e) of that Regulation .

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↓ (EU) 2015/2376 Art. 1.8  
(adapted)

2. Regulation (EU) 2018/1725 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 15, Article 16(1), ~~⊗~~ and ~~⊗~~ Articles 17 to 21 of Regulation (EU) 2018/1725 ~~⊗~~ shall be ~~⊗~~ restricted to the extent required in order to safeguard the interests referred to in Article 25(1)(c) of that Regulation.

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↓ 2014/107/EU Art. 1.5(b)  
(adapted)

3. Reporting Financial Institutions and the competent authorities of each Member State shall be considered to be data controllers for the purposes of Regulation (EU) 2016/679.

4. 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(4) 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 Regulation (EU) 2016/679 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(4) to the competent authority of its Member State of residence.

5. 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.



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↓ (EU) 2018/822 Art. 1.6

*Article 31*

**Penalties**

Member States shall lay down the rules on penalties applicable to infringements of national provisions adopted pursuant to this Directive and concerning Articles 10 and 11, and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.

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↓ (EU) 2016/881 Art. 1.8

*Article 32*

**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 .

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

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↓ (EU) 2018/822 Art. 1.7  
(adapted)

*Article 33*

**Reporting**

1. Every five years after 1 January ☒ 2018 ☒, 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.

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↓ 2011/16/EU (adapted)

*Article 34*

☒ **Communication** ☒

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 35*

**Repeal**

Directive [2011/16/EU](#), as amended by the Directives listed in Annex V, Part A, [is repealed](#) , without prejudice to the obligations of the Member States relating to the time-limits for the transposition into national law and the dates of application of the Directives set out in Annex V, Part B .

References to the repealed Directive shall be construed as references to this Directive  and shall be read in accordance with the correlation table in Annex VI .

*Article 36*

**Entry into force**

This Directive shall enter into force on [2 July 2020](#) .

*Article 37*

**Addressees**

This Directive is addressed to the Member States.

Done at Brussels,

*For the Council  
The President*