



Council of the  
European Union

Brussels, 29 June 2015  
(OR. en)

10187/15

LIMITE

FISC 84

---

---

Interinstitutional File:  
2015/0068 (CNS)

---

---

**NOTE**

From:	Presidency
To:	Working Party on Tax Questions - Direct Taxation
No. Cion doc.:	7374/15 FISC 25 - COM(2015) 135 final
Subject:	Proposal for a Council Directive amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation

Delegations will find attached the updated Presidency compromise on the abovementioned Commission proposal. New text (compared to the first Presidency compromise set out in doc. 9487/15) is marked **bold and underlined**, deletions are marked with strikethrough.

Proposal for a

**COUNCIL DIRECTIVE**

**amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 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<sup>1</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>2</sup>,

Having regard to the opinion of the Committee of the Regions<sup>3</sup>,

Acting in accordance with a special legislative procedure,

Whereas:

---

<sup>1</sup> OJ C , , p. .  
<sup>2</sup> OJ C , , p. .  
<sup>3</sup> OJ C , , p. .

- (1) The challenge posed by cross-border tax avoidance, aggressive tax planning and harmful tax competition has increased considerably and has become a major focus of concern within the Union and at global level. Tax base erosion is considerably reducing national tax revenues, which hinders Member States in applying growth-friendly tax policies. In particular, rulings concerning tax-driven structures lead to a low level of taxation of artificially high amounts of income in the country ~~giving or issuing~~, **amending or renewing** the advance ruling and may leave artificially low amounts of income to be taxed in any other countries involved. An increase in transparency is therefore urgently required. The tools and mechanisms established by Council Directive 2011/16/EU<sup>4</sup> need to be enhanced in order to achieve this.
- (2) The European Council, in its conclusions of 18 December 2014, underlined the urgent need to advance efforts in the fight against tax avoidance and aggressive tax planning, both at the global and Union levels. Stressing the importance of transparency, the European Council welcomed the Commission's intention to submit a proposal on the automatic exchange of information on tax rulings in the Union.
- (3) Directive 2011/16/EU provides for mandatory spontaneous exchange of information between Member States in five specific cases and within certain deadlines. The spontaneous exchange of information in cases where the competent authority of one Member State has grounds for supposing that there may be a loss of tax in another Member State already applies to tax rulings that a Member State ~~gives or issues~~, **amends or renews** to a specific taxpayer regarding the interpretation or application of tax provisions in the future and that have a cross-border dimension.

---

<sup>4</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 of 11.3.2011, p. 1).

(4) However, the efficient spontaneous exchange of information in respect of advance cross-border rulings and advance pricing arrangements is hindered by several important practical difficulties such as the discretion permitted to the issuing Member State to decide which other Member States should be informed. Therefore the information exchanged should, where appropriate, be accessible to all other Member States.

(4a) For the purposes of legal certainty, the Directive 2011/16/EU should be amended by including an appropriate definition of an advance cross-border ruling and advance pricing arrangement, ~~which should also be supplemented with a non-exhaustive list of examples which fall under the.~~ **The scope of these definitions: should be sufficiently broad to cover a wide range of situations, including but not limited to unilateral advance pricing arrangements and/or decisions; bilateral or multilateral advance pricing arrangements and decisions, including those where the Member State, identified as concerned in accordance with paragraph 5(d) of article 8a is not a party thereto; arrangements or decisions determining existence or absence of a permanent establishment; arrangements or decisions determining existence or absence of facts with a potential impact on the tax base of a permanent establishment; arrangements or decisions determining tax status of a hybrid entity in one Member State which relates to a resident of another jurisdiction; as well as arrangements or decisions on assessment basis for depreciation of an asset in one Member State that is acquired from a group company in another jurisdiction.**

- (4b) ~~The Publically available documents or communication communications, intended to provide with a general interpretation of national tax law to all-taxpayers, should not fall under the definitions of~~ **without specifically addressing any of them**, should not fall under the definitions of advance cross-border rulings and advance pricing arrangements to be exchanged under the rules of Directive 2011/16/EU. **However, where upon request for an advance tax ruling or an advance pricing arrangement the authorities concerned choose to issue documents or communications intended to provide a general interpretation of national tax law instead, such documents or communications should nevertheless fall within the scope of information to be exchanged under the rules of Directive 2011/16/EU.**
- (5) The possibility that the provision of information may be ~~refused~~ **reduced in scope** 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 should ~~not~~ **only under strict conditions** apply to provisions of mandatory automatic exchange of information on advance cross-border rulings and advance pricing arrangements in order not to reduce the effectiveness of these exchanges. The limited nature of the information that is required to be shared with all Member States should ensure sufficient protection of those commercial interests. ~~[RECITAL TO BE MODIFIED DEPENDING ON THE WORDING RELATED TO APPLICATION OF DAC Art 17(4)]~~
- (6) 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 ~~or~~, amended **or renewed** and therefore regular intervals for the communication of the information should be established. For the same reasons, it is also appropriate to foresee mandatory automatic exchange of advance cross-border rulings and advance pricing arrangements that were issued ~~or~~, amended **or renewed** within a period beginning five years before the date of application of ~~those new rules~~, ~~but in cases when advance pricing arrangements~~ **this directive and which** are still valid, ~~it is appropriate to foresee mandatory automatic exchange of them even when they were issued or amended within a period beginning ten years before the~~ **on that** date of application of those new rules.

- (6a)<sup>5</sup> For reasons of legal certainty, it is appropriate, under a set of very strict conditions, to exclude from mandatory automatic exchange certain information relating to bilateral or multilateral advance pricing arrangements with third countries, which have been agreed before the entry into force of this Directive, following the framework of existing international treaties with those third countries, where 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 8a relating to the requests that lead to issuance of such bilateral or multilateral advance pricing arrangements should be exchanged instead.**
- (7) The mandatory automatic exchange of advance cross-border rulings and advance pricing arrangements should in each case include communication of a defined set of basic information that would be accessible to all Member States. The Commission should be empowered to adopt practical arrangements necessary to standardise the communication of such information under the procedure laid down in Directive 2011/16/EC (which involves the Committee on Administrative Cooperation for Taxation) for establishing a standard form to be used for the exchange of information. That procedure should also be used in the adoption of further practical arrangements for the implementation of the information exchange, such as specification of linguistic requirements that would be applicable to exchange of information using that standard form.
- (7a) In development of such standard form for mandatory automatic exchange of information, it would be appropriate to take account of work performed at the OECD's Forum on Harmful Tax Practices, where a standard form for information exchange [is being] [has been] developed, in the context of the Action Plan on Base Erosion and Profit Shifting. **It would be appropriate to work closely with the OECD, in a coordinated manner and this not only in the area of the development of such standard form for mandatory automatic exchange of information. The ultimate aim should be a global level playing field, where the EU should take a leading role by promoting that the scope of information on ATRs and APAs to be exchanged automatically should be rather broad.**

---

<sup>5</sup> ALTERNATIVE WORDING: (6a) It is essential to undertake mandatory automatic exchange information relating to bilateral or multilateral advance pricing arrangements with third countries in accordance with the legal framework of international tax treaties.

- ~~(7b) It is appropriate to recall that Article 21(4) of Directive 2011/16/EC provides a rule regulating the language and translation requirements applicable to requests for cooperation, including requests for notification, and attached documents. This rule should also be applicable in cases when Member States request additional information, following the stage of mandatory automatic exchange of basic information on advance cross-border rulings and advance pricing arrangements.~~
- (8) Member States should exchange ~~the~~ **a limited part of** basic information to be communicated also with the Commission. This ~~would~~ **should** enable the Commission at any point in time to monitor and evaluate the effective application of the automatic exchange of information on advance cross-border rulings and advance pricing arrangements. **The information received by the Commission should however not be used for any other purposes.** Such communication will not discharge a Member State from its obligations to notify any state aid to the Commission.
- (9) 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 provide for measures enabling the provision of feedback in cases where the information has been used and where no feedback can be provided under other provisions of Directive 2011/16/EU.
- (10) Where necessary, **following the stage of mandatory automatic exchange of information under the rules provided by this Directive,** a Member State should be able to rely on Article 5 of Directive 2011/16/EU 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.

**(10a) It is appropriate to recall that Article 21(4) of Directive 2011/16/EC provides a rule regulating the language and translation requirements applicable to requests for cooperation, including requests for notification, and attached documents. This rule should also be applicable in cases when Member States request additional information, following the stage of mandatory automatic exchange of basic information on advance cross-border rulings and advance pricing arrangements.**

- (11) 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.
- (12) 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 the establishment of a central directory accessible to all Member States and the Commission where Member States would upload and store information instead of exchanging it by **secured** email. The practical arrangements necessary for the establishment of such a directory should be adopted by the Commission in accordance with the procedure referred to in Article 26(2) of Directive 2011/16/EU.
- (13) Having regard to the nature and extent of the changes introduced by Directive 2014/107/EU and this Directive, the timeframe for the submission of information, statistics and reports provided for under Directive 2011/16/EU should be extended. Such an extension should ensure the information to be provided can take into account the experience resulting from those changes. The extension should apply both to the statistics and other information to be submitted by Member States before 1 July 2016 and to the report and, if appropriate, the proposal to be submitted by the Commission before 1 July 2017.

- (14) In the spirit of the incremental approach advocated in Directive 2011/16/EU, it is appropriate to adapt the time limits for the existing mandatory automatic exchange of information provided for in Article 8(1) of Directive 2011/16/EU in order to ensure that the available information on the categories is communicated ~~within three~~ **no later than eighteen** months following the end of the tax year ~~of the Member State during to~~ which the information ~~became available~~ **relates to**.
- (15) The existing provisions regarding confidentiality should be amended to reflect the extension of mandatory automatic exchange of information to advance cross-border rulings and advance pricing arrangements.
- (16) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, this Directive seeks to ensure full respect for the right to the protection of personal data and the freedom to conduct a business.
- (17) 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.
- (18) In accordance with the Joint Political Declaration of Member States and the Commission of 28 September 2011 on explanatory documents<sup>6</sup>, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a Directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.

---

<sup>6</sup> OJ C 369, 17.12.2011, p. 14.

(19) Directive 2011/16/EU should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

*Article 1*

Directive 2011/16/EU is amended as follows:

(1) Article 3 is amended as follows:

(a) Point 9 is replaced by the following:

"9. 'automatic exchange' means,

- (a) for the purposes of Article 8(1) and Article 8a, the systematic communication of predefined information to another Member State, without prior request, at pre-established regular intervals. For the purposes of Article 8(1), reference to available information relates to information in the tax files of the Member State communicating the information, which is retrievable in accordance with the procedures for gathering and processing information in that Member State.
- (b) for the purposes of Article 8(3a), the systematic communication of predefined information on residents in other Member States to the relevant Member State of residence, without prior request, at pre-established regular intervals. In the context of Article 8(3a), Article 8(7a), Article 21(2) and Article 25(2) and (3) any capitalised term shall have the meaning that it has under the corresponding definitions set out in Annex I;
- (c) for the purposes of all provisions other than Article 8(1), 8(3a) and 8a, the systematic communication of predefined information provided in accordance with points (a) and (b) of this point."

(b) The following points 14 to 17 are added:

"14. 'advance cross-border ruling' means any agreement, communication, or any other instrument or action with similar effects, including one ~~given or issued~~, **amended or renewed** in the context of a tax audit, and which meets the following conditions:

- (a) is ~~given or 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; ~~-, either~~ **in an oral or written form and irrespectively of whether they are effectively used or not;**
- (aa) is ~~given or issued~~, **amended or renewed**, to a particular person or a group of persons, and ~~on which that person or a group of persons is entitled to rely on, on the basis~~, **irrespectively** of applicable law, ~~in case of whether it has a tax audit by the authorities~~ **binding or non-binding character;**
- (b) 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;
- (c) relates to a cross-border transaction or to the question of whether or not activities carried on by a person in ~~the other Member State~~ **another jurisdiction** create a permanent establishment, and;
- (d) is made in advance of the transactions or of the activities in ~~the other Member State~~ **another jurisdiction** potentially creating a permanent establishment or 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, finance or the use of tangible or intangible assets and does not have to directly involve the person receiving the advance cross-border ruling;

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

- (a) is ~~given or 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, **either in an oral or written form and irrespectively of whether they are effectively used or not;**
- (b) is ~~given or issued~~, **amended or renewed**, to a particular person or a group of persons and on which that person or a group of persons is entitled to rely on, ~~on the basis~~, **irrespectively** of applicable law, ~~in case of~~ **whether it has a tax audit by the authorities binding or non-binding character;** and
- (c) determines in advance of cross-border transactions between associated enterprises, an appropriate set of criteria for the determination of the transfer pricing for those transactions or determines the attribution of profits to a permanent establishment.

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

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

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

- (a) not all the parties to the transaction or series of transactions are resident for tax purposes in the Member State ~~giving or issuing~~, **amending or renewing** the advance cross-border ruling, or;
- (b) any of the parties to the transaction or series of transactions is simultaneously resident for tax purposes in more than one jurisdiction, or;
- (c) one of the parties to the transaction or series of transactions carries on business in another ~~Member State~~ **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 ~~Member State~~ **jurisdiction** which that person carries on through a permanent establishment, **or**
- (d) transactions or series of transactions which have a potential cross border impact.**

For the purpose of point 15 'cross-border transaction' means a transaction or series of transactions involving associated enterprises which are not all resident for tax purposes in the territory of a single ~~Member State~~ **jurisdiction or where transactions or series thereof have a potential cross border impact.**"

17. For the purpose of point 15 and 16, 'enterprise' shall mean any form of conducting business.

(2) Article 8 is amended as follows:

- (a) Paragraphs 4 and 5 are deleted.

(b) Paragraph 6, point (a) is replaced by the following:

- (a) for the categories laid down in paragraph 1: at least once a year, within ~~nine months following the end of the tax year of the Member State to which the information relates . Where the regular deadline for submission of tax returns for the tax year in question is later than [nine] months following that tax year, the communication of the information shall take place within three~~ six months following the end of the tax year of the Member State during which the information became available;" **and in any case no later than eighteen months following the end of the tax year of the Member State to which the information relates.**

(3) The following Articles 8a and 8b are inserted:

"Article 8a

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

1. The competent authority of a Member State , where an advance cross-border ruling or an advance pricing arrangement ~~was given, issued or~~ **was issued,** amended **or renewed** after [OJ: insert the date - 12 months after the date of entry into force of this Directive ] shall, by automatic exchange, communicate information thereon to the competent authorities of all other Member States as well as to the European Commission, **with the limitation of cases set out in points (b1) and (b2) of paragraph 5 of this Article,** in accordance with applicable practical arrangements adopted pursuant Article 21.
2. The competent authority of a Member State shall, in accordance with applicable practical arrangements adopted pursuant Article 21, also communicate information to the competent authorities of all other Member States as well as to the European Commission, **with the limitation of cases set out in points (b1) and (b2) of paragraph 5 of this Article,** on ÷

~~(a) advance cross-border rulings that were given,~~ **and advance pricing arrangements**  
issued ~~or~~ amended **or renewed** within a period beginning five years before [OJ:  
insert the date - 12 months after the date of entry into force of this Directive + one  
day], and **in cases when these advance cross-border rulings and advance  
pricing arrangements are still valid on that date;**

~~(b) advance pricing arrangements that were issued or amended within a period  
beginning ten years before [OJ: insert the date - 12 months after the date of entry  
into force of this Directive + one day] in cases when these rulings are still valid.~~<sup>78</sup>

~~2a. The advance cross-border rulings or advance pricing arrangements to be exchanged  
under paragraph 1 and 2 shall include but not be limited to the following cases where  
there is a potential cross-border impact on the tax assessment(s) made in the other  
Member State:~~

~~(a) unilateral advance pricing arrangements and/or decisions;~~

~~(b) bilateral or multilateral advance pricing arrangements and decisions, including  
those where the Member State, identified as concerned in accordance with  
paragraph 5(d) is not a party thereto;~~

~~(c) arrangements or decisions determining existence or absence of a permanent  
establishment;~~

~~(d) existence or absence of facts with a potential impact on the tax base of a  
permanent establishment;~~

~~(e) tax status of a hybrid entity in one Member State which relates to a resident of the  
other Member State;~~

<sup>7</sup> **NOTE 1:** This proposal aims at facing issues rose at the WPTQ on 21 May, that the rulings which are older than 5 years may be still valid and therefore it would be beneficial to exchange with them. Presidency believes that for sake of reducing of burden for the MS the advance pricing arrangements should be separated out of other kind of rulings in this case. According to the statistics which is available on the Internet ([http://ec.europa.eu/taxation\\_customs/resources/documents/taxation/company\\_tax/transfer\\_pricing/forum/final\\_apa\\_statistics\\_2013\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/taxation/company_tax/transfer_pricing/forum/final_apa_statistics_2013_en.pdf)) there were only 367 APAs issued by Member States which were valid at the end of 2013. And as the APAs which are valid are yet known to the MS and as APAs are usually granted for a fixed period of time and the amount of the APAs in force is not high, it would not be too burdensome for MS to send information also on these rulings.

<sup>8</sup> **NOTE 2:** an alternative solution would be to align with the timing that is being discussed at the OECD FHTP: ATRs and APAs that were issued after 1 January 2010 and were still valid on 1 January 2015.

~~(f) — assessment basis for depreciation of an asset in one Member State that is acquired from a group company in the other Member State;~~

~~(g) —~~

2b.<sup>9</sup> Information, referred to in paragraph 5, the disclosure of which under this Directive would result in a breach of a confidentiality requirements referred to in point 2b(e), shall be excluded from the scope of mandatory automatic exchange of information under this Article, where advance pricing arrangements meet all of the following conditions:

- (a) they are bilateral or multilateral, ~~given that~~ **as** besides a Member State, one or more third country is a party thereto;
- (b) they concern tax treatment in a Member State and also determine how the issues covered under such advance pricing arrangement are to be resolved in the third country that is a party thereto;
- (c) they are ~~given or issued~~, **amended or renewed** before [OJ: insert the date - the date of entry into force of this Directive];
- (d) they are ~~given or issued~~, **amended or renewed** in the framework of an international agreement covering matters of avoidance of double taxation and (or) administrative co-operation in tax matters, where a Member State is a party thereto; **and**
- (e) the relevant provisions of an international agreement, referred in point (d), were in force before [OJ: insert the date - the date of entry into force of this Directive] and do not permit disclosure of the information received under that treaty to a third party country.

---

<sup>9</sup> ALTERNATIVE WORDING: "2b. Bilateral or multilateral advance pricing arrangements with third countries shall be excluded from the scope of mandatory automatic exchange of information under this Directive. Such arrangements will be exchanged under Article 9 with Member States with whom the information is foreseeably relevant, and the international tax agreement under which the advance pricing agreement was negotiated permits its disclosure, and the competent authority of the third country gives permission for the information to be disclosed."

The remaining information concerning such advance pricing arrangements shall not be subject to the exemption set out in this paragraph.

**Moreover, in such cases, the information identified in paragraph 5 relating to the request that lead to issuance of such a bilateral or multilateral advance pricing arrangement should be exchanged under paragraphs 1 and 2 of this Article, instead.**

3. Paragraphs 1 and 2 shall not apply in a case where an advance cross-border ruling exclusively concerns and involves the tax affairs of one or more natural persons.
4. The exchange of information shall take place as follows:
  - (a) in respect of the information exchanged pursuant to paragraph 1: within three months following the end of the half of the calendar year during which the advance cross-border rulings or advance pricing arrangements have been ~~given~~, issued ~~or~~, amended **or renewed**.
  - (b) in respect of the information exchanged pursuant to paragraph 2: before [OJ: insert the date - 24 months after the date of entry into force of this Directive + one day];
5. The information to be communicated by a Member State pursuant to paragraph 1 and 2 of this Article shall include ~~at least~~ 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) 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;

**(b1) where information is identified as not appropriate for being exchanged with the Commission, but appropriate for exchange with all other Member States - a further 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 concerning such information;**

**(b2) where, on the grounds of paragraph 9, information is identified as not appropriate for being exchanged neither with the Commission nor with Member States other than those identified under point (d) - a further 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 concerning such information;**

- (c) the description of the set of criteria used for the determination of the transfer pricing or transfer price itself in the case of an advance pricing arrangement;
  - (d) the identification of the other Member States, **if any**, likely to be concerned by the advance cross-border ruling or advance pricing arrangement, ~~if such information is available;~~ **and**
  - (e) 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 ~~), if such information is available.~~ **.**
6. To facilitate the exchange of information referred to in paragraph 5 of this Article the Commission shall adopt 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 in Article 20(5).
7. The competent authority of the Member States concerned, identified under paragraph 5(d), 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.
8. Member States may, in accordance with Article 5, and having regard to Article 21(4), request additional information, including the full text of an advance cross-border ruling or an advance pricing arrangement .

9. Article 17 (4) shall not apply to information exchanged in accordance with paragraphs 1 and 2 of this Article . However, where exchanging information referred to in paragraph 5(b) of this Article would lead to the disclosure of a commercial, industrial or professional secret, that information shall be ~~disclosed~~ **exchanged by using paragraph 5(b2) of this Article and should be accessible** only to the competent authorities of the Member States concerned, identified under paragraph 5(d) of this Article. ~~In such case, the transmitted information shall be disclosed in accordance with Article 16.~~

## Article 8b

### Statistics on automatic exchanges

1. Before [OJ: insert the date - 24 months after the date of entry into force of this Directive + one day], Member States shall provide the Commission on an annual basis with statistics on the volume of automatic exchanges under Articles 8 and 8a and, to the extent possible, with information on the administrative and other relevant costs and benefits relating to exchanges that have taken place and any potential changes, for both tax administrations and third parties.
2. Before [OJ: insert the date - 36 months after the date of entry into force of this Directive + one day], the Commission shall submit a report that provides an overview and an assessment of the statistics and information received under paragraph 1 of this Article, on issues such as the administrative and other relevant costs and benefits of the automatic exchange of information, as well as practical aspects linked thereto. If appropriate, the Commission shall present a proposal to the Council regarding the categories and the conditions laid down in Article 8(1), including the condition that information concerning residents in other Member States has to be available , or the items referred to in Article 8(3a), or both.

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

- (a) the competent authority of each Member State shall, by automatic exchange, communicate to the competent authority of any other Member State, information regarding taxable periods as from [OJ: insert the date - 36 months after the date of entry into force of this Directive + one day] concerning residents in that other Member State, on all categories of income and capital listed in Article 8(1), as they are to be understood under the national legislation of the Member State communicating the information; and
  - (b) the lists of categories and items laid down in Articles 8(1) and 8(3a) be extended to include other categories and items, including royalties."
- (4) In Article 14 the following paragraph 3 is added:
- "3. Where a Member State makes use of any information communicated by another Member State in accordance with Article 8a, it shall, without prejudice to the rules on tax secrecy and data protection applicable in its Member State, send feedback thereon 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, except if feedback has already been provided pursuant to paragraph 1 of this Article. The Commission shall determine the practical arrangements in accordance with the procedure referred to in Article 26(2)."
- (5) In Article 20, the following paragraphs are added:
- "5. ~~Once a~~**A** standard form has ~~been to be~~ adopted by the Commission in accordance with the procedure referred to in Article 26(2), **before [OJ: insert the date - 12 months after the date of entry into force of this Directive + one day].** The automatic exchange of information on advance cross-border rulings and advance pricing arrangements pursuant to Article 8a shall be carried out using that standard form .

6. The standard form for automatic exchange of information under Article 8a shall contain the necessary ~~to~~ **components for** exchange **of** the information listed in Article 8a(5), including the linguistic arrangements that shall be applicable to mandatory automatic information exchange of information listed in Article 8a(5).

(6) In Article 21, the following paragraph 5 is added:

"5. The Commission shall by [24 months after the date of entry into force of this Directive] develop a secure central directory where information to be communicated in the framework of **paragraphs 1 and 2 of** Article 8a of this Directive may be recorded in order to satisfy the automatic exchange provided for in paragraphs 1 and 2 of Article 8a. The Commission and competent authorities of all Member States shall have access to the information recorded in this directory , with the exception of cases referred to in Article 8a(9). The necessary practical arrangements shall be adopted by the Commission in accordance with the procedure referred to in Article 26(2 ).

Until such secure central directory is ~~developed~~ **operational**, the automatic exchange provided for in paragraphs 1 and 2 of Article 8a shall be carried out in accordance with paragraph 1 and applicable practical arrangements. "

(7) Article 23 is amended as follows:

(a) Paragraph 3 is replaced by:

"3. Member States shall communicate to the Commission a yearly assessment of the effectiveness of the automatic exchange of information referred to in Article 8 and Article 8a as well as the practical results achieved. The form and the conditions of communication of that yearly assessment shall be adopted by the Commission in accordance with the procedure referred to in Article 26(2)."

(b) Paragraphs 5 and 6 are deleted.

(8) The following Article 23a is inserted:

"Article 23a

Confidentiality of information

1. Information communicated to the Commission pursuant to this Directive shall be kept confidential by the Commission in accordance with the provisions applicable to Union authorities and may not be used for any purposes other than those required to determine whether and to what extent Member States comply with this Directive.
2. Information communicated to the Commission by a Member State under Article 23, as well as any report or document produced by the Commission using such information, may be transmitted to other Member States. Such transmitted information shall be covered by the obligation of official secrecy and enjoy the protection extended to similar information under the national law of the Member State which received it.

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

(9) In Article 25, the following paragraph 1a is inserted:

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

#### *Article 2*

1. Member States shall adopt and publish, by [OJ: insert the date - 12 months after the date of entry into force of this Directive] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from [OJ: insert the date - 12 months after the date of entry into force of this Directive + one day].

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

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

### *Article 3*

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

### *Article 4*

This Directive is addressed to the Member States.

Done at Brussels,

*For the Council*

*The President*

---