

## I

(Legislative acts)

## DIRECTIVES

## COUNCIL DIRECTIVE 2011/16/EU

of 15 February 2011

**on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC**

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,

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>,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) The Member States' need for mutual assistance in the field of taxation is growing rapidly in a globalised era. There is a tremendous development of the mobility of taxpayers, of the number of cross-border transactions and of the internationalisation of financial instruments, which makes it difficult for Member States to assess taxes due properly. This increasing difficulty affects the functioning of taxation systems and entails double taxation, which itself incites tax fraud and tax evasion, while the powers of controls remain at national level. It thus jeopardises the functioning of the internal market.
- (2) Therefore, a single Member State cannot manage its internal taxation system, especially as regards direct taxation, without receiving information from other Member States. In order to overcome the negative effects of this phenomenon, it is indispensable to develop new administrative cooperation between the

Member States' tax administrations. There is a need for instruments likely to create confidence between Member States, by setting up the same rules, obligations and rights for all Member States.

- (3) Therefore, a completely new approach should be taken by creating a new text to 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.
- (4) In such a context, the existing Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation and taxation of insurance premiums <sup>(3)</sup> no longer provides for appropriate measures. Its deep weaknesses have been looked into by the Ad hoc Council Working Party on Tax Fraud in its report of 22 May 2000 and more recently by the Commission Communication on Preventing and Combating Corporate and Financial Malpractice of 27 September 2004 and the Commission Communication concerning the need to develop a coordinated strategy to improve the fight against fiscal fraud of 31 May 2006.
- (5) Directive 77/799/EEC, even with its later amendments, was designed in a different context to current internal market requirements and is no longer able to meet the new requirements of administrative cooperation.
- (6) Due to the number and the importance of adaptations to be made to Directive 77/799/EEC, a mere amendment thereof would not be sufficient to fulfil the objectives described above. Directive 77/799/EEC should therefore be repealed and replaced by a new legal instrument. That instrument should apply to direct taxes and indirect taxes that are not yet covered by other Union legislation. To this end, this new Directive is considered to be the proper instrument in terms of effective administrative cooperation.

<sup>(1)</sup> Opinion of 10 February 2010 (not yet published in the Official Journal).

<sup>(2)</sup> Opinion of 16 July 2009 (not yet published in the Official Journal).

<sup>(3)</sup> OJ L 336, 27.12.1977, p. 15.

- (7) This Directive builds on the achievements of Directive 77/799/EEC but provides for clearer and more precise rules governing administrative cooperation between Member States where necessary, in order to establish, especially as regards the exchange of information, a wider scope of administrative cooperation between Member States. Clearer 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.
- (8) There should be more 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. Provision should therefore be made to bring about more direct contacts between services with a view to making cooperation more efficient and faster. The assignment of competences to the liaison departments should be deferred to the national provisions of each Member State.
- (9) 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 20 of this Directive contains procedural requirements, those provisions need to be interpreted liberally in order not to frustrate the effective exchange of information.
- (10) It is recognised that the mandatory automatic exchange of information without preconditions is the most effective means of enhancing the correct assessment of taxes in cross-border situations and of fighting fraud. To that end, a step-by-step approach should therefore be followed starting with the automatic exchange of available information on five categories and reviewing the relevant provisions after a report by the Commission.
- (11) The spontaneous exchange of information between Member States should also be strengthened and encouraged.
- (12) 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.
- (13) 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.
- (14) 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.
- (15) 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 should be able to call upon the cooperation of the competent authorities of the Member State to which the taxpayer has relocated.
- (16) Feedback on information sent will encourage administrative cooperation between Member States.
- (17) 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.
- (18) It is important for the efficiency of administrative cooperation that information and documents obtained under this Directive could, 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 could transmit that information to a third country, under certain conditions.
- (19) 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.
- (20) 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.
- (21) 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.

- (22) 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.
- (23) The exchange of information should be made through standardised forms, formats and channels of communication.
- (24) An evaluation of the effectiveness of administrative cooperation should be made, especially on the basis of statistics.
- (25) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission <sup>(1)</sup>.
- (26) In accordance with point 34 of the Interinstitutional Agreement on better law-making, Member States are encouraged to draw up, for themselves and in the interests of the Union, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.
- (27) All exchange of information referred to in this Directive is subject to the provisions implementing Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data <sup>(2)</sup> and to Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data <sup>(3)</sup>. However, it is appropriate to consider limitations of certain rights and obligations laid down by Directive 95/46/EC in order to safeguard the interests referred to in Article 13(1)(e) of that Directive. 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.
- (28) This Directive respects the fundamental rights and observes the principles which are recognised in particular by the Charter of Fundamental Rights of the European Union.
- (29) Since the objective of this Directive, namely the efficient administrative cooperation between Member States to

overcome the negative effects of the increasing globalisation on the internal market, cannot be sufficiently achieved by the Member States and can therefore, by reason of the uniformity and effectiveness required, be better achieved at the level of the Union, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on the 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,

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 are to cooperate on matters concerning coordination and evaluation.

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

#### Article 2

##### Scope

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

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

<sup>(1)</sup> OJ L 184, 17.7.1999, p. 23.

<sup>(2)</sup> OJ L 281, 23.11.1995, p. 31.

<sup>(3)</sup> OJ L 8, 12.1.2001, p. 1.

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

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

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

### Article 3

#### Definitions

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

1. 'competent authority' of a Member State means the authority which has been designated as such by that Member State. When acting pursuant to this Directive, the central liaison office, a liaison department or a competent official shall also be deemed to be competent authorities by delegation according to Article 4;
2. 'central liaison office' means the office which has been designated as such with principal responsibility for contacts with other Member States in the field of administrative cooperation;
3. 'liaison department' means any office other than the central liaison office which has been designated as such to directly exchange information pursuant to this Directive;
4. 'competent official' means any official who is authorised to directly exchange information pursuant to this Directive;
5. 'requesting authority' means the central liaison office, a liaison department or any competent official of a Member State who makes a request for assistance on behalf of the competent authority;
6. 'requested authority' means the central liaison office, a liaison department or any competent official of a Member State who receives a request for assistance on behalf of the competent authority;
7. 'administrative enquiry' means all controls, checks and other action taken by Member States in the performance of their duties with a view to ensuring the proper application of tax legislation;
8. 'exchange of information on request' means the exchange of information based on a request made by the requesting Member State to the requested Member State in a specific case;
9. 'automatic exchange' means the systematic communication of predefined information to another Member State, without prior request, at pre-established regular intervals. In the context of Article 8, available information refers 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;
10. 'spontaneous exchange' means the non-systematic communication, at any moment and without prior request, of information to another Member State;
11. 'person' means:
  - (a) a natural person;
  - (b) a legal person;
  - (c) where the legislation in force so provides, an association of persons recognised as having the capacity to perform legal acts but lacking the status of a legal person; or
  - (d) any other legal arrangement of whatever nature and form, regardless of whether it has legal personality, owning or managing assets, which, including income derived therefrom, are subject to any of the taxes covered by this Directive;
12. 'by electronic means' means using electronic equipment for the processing, including digital compression, and storage of data, and employing wires, radio transmission, optical technologies or other electromagnetic means;
13. 'CCN network' means the common platform based on the common communication network (CCN), developed by the Union for all transmissions by electronic means between competent authorities in the area of customs and taxation.

### Article 4

#### Organisation

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

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

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

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

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

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

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

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

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

## CHAPTER II

### EXCHANGE OF INFORMATION

#### SECTION I

#### *Exchange of information on request*

##### *Article 5*

#### **Procedure for the exchange of information on request**

At the request of the requesting authority, the requested authority shall communicate to the requesting authority any

information referred to in Article 1(1) that it has in its possession or that it obtains as a result of administrative enquiries.

##### *Article 6*

#### **Administrative enquiries**

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

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

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

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

##### *Article 7*

#### **Time limits**

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

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

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

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

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

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

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

## SECTION II

### **Mandatory automatic exchange of information**

#### *Article 8*

#### **Scope and conditions of mandatory automatic exchange of information**

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

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

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

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 the categories of income and capital referred to in paragraph 1, or that it does not wish to receive information on income or capital not exceeding a threshold amount. 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.

4. Before 1 July 2016, Member States shall provide the Commission on an annual basis with statistics on the volume of automatic exchanges 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.

5. Before 1 July 2017, the Commission shall submit a report that provides an overview and an assessment of the statistics and information received, 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 of income and capital and/or the conditions laid down in paragraph 1, including the condition that information concerning residents in other Member States has to be available.

When examining a proposal put forward 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 2017 concerning residents in that other Member State, on at least three of the specific categories of income and capital listed in paragraph 1, as they are to be understood under the national legislation of the Member State communicating the information; and
- (b) the list of categories in paragraph 1 be extended to include dividends, capital gains and royalties.

6. The communication of information shall take place 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.

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

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

### SECTION III

#### *Spontaneous exchange of information*

##### Article 9

#### **Scope and conditions of spontaneous exchange of information**

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

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

2. The competent authorities of each Member State may communicate, by spontaneous exchange, to the competent authorities of the other Member States any information of which they are aware and which may be useful to the competent authorities of the other Member States.

##### Article 10

#### **Time limits**

1. The competent authority to which information referred to in Article 9(1) becomes available, shall forward that information to the competent authority of any other Member State concerned as quickly as possible, and no later than one month after it becomes available.

2. The competent authority to which information is communicated pursuant to Article 9 shall confirm, if possible by electronic means, the receipt of the information to the competent authority which provided the information immediately and in any event no later than seven working days.

### CHAPTER III

#### **OTHER FORMS OF ADMINISTRATIVE COOPERATION**

##### SECTION I

#### *Presence in administrative offices and participation in administrative enquiries*

##### Article 11

#### **Scope and conditions**

1. By agreement between the requesting authority and the requested authority and in accordance with the arrangements laid down by the latter, officials authorised by the requesting authority may, with a view to exchanging the information referred to in Article 1(1):

- (a) be present in the offices where the administrative authorities of the requested Member State carry out their duties;
- (b) be present during administrative enquiries carried out in the territory of the requested Member State.

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

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

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

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

## SECTION II

### **Simultaneous controls**

#### *Article 12*

### **Simultaneous controls**

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

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

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

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

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

## SECTION III

### **Administrative notification**

#### *Article 13*

### **Request for notification**

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

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

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

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

## SECTION IV

### **Feedback**

#### *Article 14*

### **Conditions**

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

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

## SECTION V

### **Sharing of best practices and experience**

#### *Article 15*

### **Scope and conditions**

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

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



## CHAPTER IV

## CONDITIONS GOVERNING ADMINISTRATIVE COOPERATION

## Article 16

**Disclosure of information and documents**

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

Such information may also be used for the assessment and enforcement of other taxes and duties covered by Article 2 of Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures<sup>(1)</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, 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.

## Article 17

**Limits**

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

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

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

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

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

## Article 18

**Obligations**

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

<sup>(1)</sup> OJ L 84, 31.3.2010, p. 1.

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

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

#### Article 19

#### Extension of wider cooperation provided to a third country

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

#### Article 20

#### Standard forms and computerised formats

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

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

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

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

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

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

4. The automatic exchange of information pursuant to Article 8 shall be sent using a standard computerised format aimed at facilitating such automatic exchange and based on the existing computerised format pursuant to Article 9 of Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments<sup>(1)</sup>, to be used for all types of automatic exchange of information, adopted by the Commission in accordance with the procedure referred to in Article 26(2).

#### Article 21

#### Practical arrangements

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

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

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.

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

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.

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 CCN network.

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

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

<sup>(1)</sup> OJ L 157, 26.6.2003, p. 38.

*Article 22***Specific obligations**

1. Member States shall take all necessary measures to:
  - (a) ensure effective internal coordination within the organisation referred to in Article 4;
  - (b) establish direct cooperation with the authorities of the other Member States referred to in Article 4;
  - (c) ensure the smooth operation of the administrative cooperation arrangements provided for in this Directive.
2. The Commission shall communicate to each Member State any general information concerning the implementation and application of this Directive which it receives and which it is able to provide.

## CHAPTER V

**RELATIONS WITH THE COMMISSION***Article 23***Evaluation**

1. Member States and the Commission shall examine and evaluate the functioning of the administrative cooperation provided for in this Directive.
2. Member States shall communicate to the Commission any relevant information necessary for the evaluation of the effectiveness of administrative cooperation in accordance with this Directive in combating tax evasion and tax avoidance.
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 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).
4. The Commission shall, in accordance with the procedure referred to in Article 26(2), determine a list of statistical data which shall be provided by the Member States for the purposes of evaluation of this Directive.
5. Information communicated to the Commission under paragraphs 2, 3 and 4 shall be kept confidential by the Commission in accordance with the provisions applicable to Union authorities.
6. Information communicated to the Commission by a Member State under paragraphs 2, 3 and 4, 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 this paragraph 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.

## CHAPTER VI

**RELATIONS WITH THIRD COUNTRIES***Article 24***Exchange of information with third countries**

1. Where the competent authority of a Member State receives from a third country information that is foreseeably relevant to the administration and enforcement of the domestic laws of that Member State concerning the taxes referred to in Article 2, that authority may, in so far as this is allowed pursuant to an agreement with that third country, provide that information to the competent authorities of Member States for which that information might be useful and to any requesting authorities.
2. Competent authorities may communicate, in accordance with their domestic provisions on the communication of personal data to third countries, information obtained in accordance with this Directive to a third country, provided that all of the following conditions are met:
  - (a) the competent authority of the Member State from which the information originates have consented to that communication;
  - (b) the third country concerned has given an undertaking to provide the cooperation required to gather evidence of the irregular or illegal nature of transactions which appear to contravene or constitute an abuse of tax legislation.

## CHAPTER VII

**GENERAL AND FINAL PROVISIONS***Article 25***Data protection**

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

*Article 26***Committee**

1. The Commission shall be assisted by a committee referred to as the 'Committee on Administrative Cooperation for Taxation'.
2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

*Article 27***Reporting**

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

*Article 28***Repeal of Directive 77/799/EEC**

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

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

*Article 29***Transposition**

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

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

They shall forthwith inform the Commission thereof.

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

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

*Article 30***Entry into force**

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

*Article 31***Addressees**

This Directive is addressed to the Member States.

Done at Brussels, 15 February 2011.

*For the Council*

*The President*

MATOLCSY Gy.

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