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**NOTE**

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From: Presidency

To: Working Party on Tax Questions - Direct Taxation

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Subject: Proposal for a Council Directive amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation

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Delegations will find attached the updated Presidency compromise on the abovementioned Commission proposal. New text (compared to the last Presidency compromise set out in doc. 11207/15) 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:

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<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. The issuance of advance tax rulings, which facilitate the consistent and transparent application of the law, is common practice also in the EU. By providing certainty for business, clarification of tax law for taxpayers can encourage investment and compliance with the law and can therefore be conducive to the objective of further developing the EU Single Market on the basis of the principles underlying the Freedoms. However, rulings concerning tax-driven structures have, in certain cases, led to a low level of taxation of artificially high amounts of income in the country issuing, amending or renewing the advance ruling and left artificially low amounts of income to be taxed in any other countries involved. 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 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.

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<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.
- (4aa) The scope of the automatic exchange of advance cross-border rulings and advance pricing arrangements, issued, amended or renewed to a particular person or group of persons which that person or group of persons are entitled to rely on, should cover any **material** form (irrespective of its binding or non-binding character and the way it is issued).
- (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. The scope of these definitions should be sufficiently broad to cover a wide range of situations, including but not limited to the following types of advance cross-border rulings and advance pricing arrangements:
- unilateral advance pricing arrangements and/or decisions;
  - bilateral or multilateral advance pricing arrangements and decisions;
  - 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) Publically available documents or communications without a prior taxpayer request for an advance cross-border ruling or advance pricing arrangement, intended to provide a general interpretation of national tax law to taxpayers 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.~~
- (4c) Taxpayers are entitled to rely on advance cross-border ruling or advance pricing arrangement during, for example, taxation processes or tax audits under the condition that the facts on which the advance cross-border ruling or advance pricing arrangement are based have been accurately presented and that the taxpayers abide by the terms of the advance cross-border ruling or advance pricing arrangement.

**Member States will exchange information irrespectively of whether or not the taxpayer abides by the terms of the advance cross-border ruling or advance pricing arrangement.**

- (5) The provision of information should not lead to the disclosure of a commercial, industrial or professional secret or of a commercial process, or disclosure of information which would be contrary to public policy.
- (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, 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, amended or renewed within a period beginning five years before the date of application of this directive and which are still valid on that date, however, particular persons or group of persons with a group wide ~~revenue~~ **annual turnover** of less than 40 million euros could be excluded from such mandatory automatic exchange.

- (6a) For reasons of legal certainty, it is appropriate, under a set of very strict conditions, to exclude from mandatory automatic exchange bilateral or multilateral advance pricing arrangements with third countries 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. **Therefore, in such cases, the information to be communicated should include a mention that it is provided on the basis of such a request.**
- (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.

- (8) Member States should exchange basic information and a limited set of basic information should be communicated also with the Commission. This should enable the Commission at any point in time to monitor and evaluate the effective application of the mandatory 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 underline that Member States' competent authorities should send, once a year, feedback on the automatic exchange of information to the other Member States concerned. In practice, this mandatory feedback should be done by arrangements agreed upon bilaterally.
- (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 ~~[OJ: insert the date – 24 months after the date of entry into force of this Directive + one day]~~ **[1 January 2018]** and to the report and, if appropriate, the proposal to be submitted by the Commission before ~~[OJ: insert the date – 36 months after the date of entry into force of this Directive + one day]~~ **[1 January 2019]**.
- (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.

(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 issued, amended or renewed in the context of a tax audit, and which meets the following conditions:

- (a) is issued, amended or renewed by, or on behalf of, the government or the tax authority of a Member State, or the Member State's territorial or administrative subdivisions, including local authorities, irrespectively of whether they are effectively used or not;
- (aa) is issued, amended or renewed, to a particular person or a group of persons, and which that person or a group of persons is entitled to rely on;
- (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 another jurisdiction create a permanent establishment, and;
- (d) is made in advance of the transactions or of the activities in 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 issued, amended or renewed in the context of a tax audit, and which meets the following conditions:
- (a) is issued, amended or renewed by, or on behalf of, the government or the tax authority of one or more Member States, including any territorial or administrative subdivision thereof, including local authorities, irrespectively of whether they are effectively used or not;
  - (b) is issued, amended or renewed, to a particular person or a group of persons and which that person or a group of persons is entitled to rely on; 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 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 jurisdiction through a permanent establishment and the transaction or series of transactions forms part or the whole of the business of the permanent establishment. A cross-border transaction or series of transactions shall also include arrangements made by a person in respect of business activities in another jurisdiction which that person carries on through a permanent establishment, or
- (d) transactions or series of transactions which have a 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 jurisdiction or where transactions or series thereof have a 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.

(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 issued, amended or renewed after ~~{OJ: insert the date –12 months after the date of entry into force of this Directive }~~**[31 December 2016]** 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 point (6b) 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 point (6b) of paragraph 5 of this Article, on advance cross-border rulings and advance pricing arrangements issued, 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 }~~ **[1 January 2017]** in cases when these advance cross-border rulings and advance pricing arrangements are still valid on that date. Member States may exclude from communication referred to in this paragraph, information on advance cross-border rulings and advance pricing arrangements issued, amended or renewed to a particular person or a group of persons with a group wide annual net turnover of less than 40 million EUR (or equivalent amount in any other currency) in the fiscal year preceding the date of issuance, amendment or renewal of those cross-border rulings and advance pricing arrangements. **For the purpose of the last sentence of this paragraph, if necessary, further clarifications concerning the definition of group wide annual net turnover will be adopted by the Commission in accordance with the procedure referred to in Article 26(2) before [1 January 2017].**
- 2b. Bilateral or multilateral advance pricing arrangements with third countries shall be excluded from the scope of automatic exchange of information under this Article in case the international tax agreement under which the advance pricing agreement was negotiated does not permit its disclosure to third parties. Such bilateral or multilateral advance pricing arrangements will be exchanged under Article 9 ~~with Member States to whom the information might be useful, and~~ where 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.

However, where the bilateral or multilateral advance pricing arrangements would be excluded from automatic exchange of information under the first sentence of this paragraph, the information identified in paragraph 5 of this Article referred to in the request that lead to issuance of such a bilateral or multilateral advance pricing arrangement shall 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 issued, amended or renewed.
  - (b) in respect of the information exchanged pursuant to paragraph 2: before ~~{O}:~~ ~~insert the date 24 months after the date of entry into force of this Directive + one day~~ **[1 January 2018]**.
5. The information to be communicated by a Member State pursuant to paragraph 1 and 2 of this Article shall include the following:
  - (a) the identification of the person, other than a natural person, and where appropriate the group of persons to which it belongs;
  - (b) anonymous summary of the content of the advance cross-border ruling or advance pricing arrangement, including a description of the relevant business activities or transactions or series of transactions provided in abstract terms, not leading to disclosure of a commercial, industrial or professional secret or of a commercial process, or of information whose disclosure would be contrary to public policy;
  - (b3) dates of issuance, amendment or renewal of the advance cross-border ruling or advance pricing arrangement;

- (b4) start date of the period of validity of the advance cross-border ruling or advance pricing arrangement, **if specified**;
  - (b4a) end date of the period of validity of the advance cross-border ruling or advance pricing arrangement, if specified;
  - (b5) type of the advance cross-border ruling or advance pricing arrangement;
  - (b6) amount of the transaction or series of transactions of the advance cross-border ruling or advance pricing arrangement if referred to in the advance cross-border ruling or advance pricing arrangement;
  - (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; ~~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); **and**
  - (f) the indication whether the information communicated is based upon the advance cross-border ruling or advance pricing arrangement itself or upon the request referred to in the second sub paragraph of paragraph 2b of this Article.**
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).
- 6b. Information as defined under paragraphs 5(a), **5(b)** and 5(e) of this Article shall not be communicated to the European Commission.

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. **This measure shall be applicable until the directory referred to in article 21(5) becomes operational.**
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.

## 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~~]**1 January 2018**, 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~~]**1 January 2019**, 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]~~ **[1 January 2019]** concerning residents in that other Member State, on all categories of income and capital listed in Article 8(1), as they are to be understood under the national legislation of the Member State communicating the information; 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."

(5) In Article 20, the following paragraph is added:

"5. A standard form, including the linguistic arrangements, has 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]~~ **[1 January 2017]**. The automatic exchange of information on advance cross-border rulings and advance pricing arrangements pursuant to Article 8a shall be carried out using that standard form. This standard form shall not exceed the components for exchange of the information listed in Article 8a(5) and other relating fields linked to these components necessary to achieve the objectives of Article 8a. **The linguistic arrangements referred to in this paragraph shall not preclude Member States from communicating information referred to in Article 8a in any of the official and working language of the EU. However, these linguistic arrangements may foresee that the key elements of such information are sent also in another official and working language of the EU.**

(5a) Article 21 is amended as follows:

Paragraph 3 is replaced by:

"3. Persons duly accredited by the Security Accreditation Authority of the Commission may have access to that information only in so far as it is necessary for the care, maintenance and development of the directory referred to in paragraph 5 and of the CCN network."

(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]~~**[31 December 2017]** develop and provide with technical and logistical support a secure Member State central directory on administrative cooperation in the field of taxation where information to be communicated in the framework of paragraphs 1 and 2 of Article 8a of this Directive shall be recorded in order to satisfy the automatic exchange provided for in paragraphs 1 and 2 of Article 8a. The competent authorities of all Member States shall have access to the information recorded in this directory. The Commission shall also have access to the information recorded in this directory, however within the limitations set out in Article 8a(6b). 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 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~~]**[31 December 2016]**, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those measures.

They shall apply those measures from [~~OJ: insert the date—12 months after the date of entry into force of this Directive + one day~~]**[1 January 2017]**.

When Member States adopt those measures, 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*

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