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MEETING DOCUMENT

From:	Presidency
To:	Working Party on Tax Questions (Direct Taxation – DAC)
Subject:	Proposal for a Council Directive amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements - Presidency compromise

Delegations will find attached a document from the Presidency in view of the Working Party on Tax Questions (Direct Taxation - DAC) on 25 October 2017.

Proposal for a

COUNCIL DIRECTIVE

amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Parliament¹,

Having regard to the opinion of the European Economic and Social Committee²,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) In order to accommodate new initiatives in the field of tax transparency at the level of the Union, Council Directive 2011/16/EU³ has been the subject of a series of amendments over the last years. In this context, Council Directive (EU) 2014/107⁴ introduced a common reporting standard (CRS) for financial account information within the Union. The standard that was developed within the OECD Global Forum prescribes for the automatic exchange of information on financial accounts held by non-tax residents and establishes a framework for this exchange worldwide. Directive 2011/16/EU was amended by Council Directive (EU) 2015/2376⁵ which provided for the automatic exchange of information on advance cross-border tax rulings and by Council Directive (EU) 2016/881⁶ which provided for the disclosure and the mandatory automatic exchange of information on

¹ OJ C , , p. .

² OJ C , , p. .

³ Council Directive (EU) 2011/16 of 15 February 2011 on administrative cooperation in the field of taxation (OJ L 64, 11.3.2011, p. 1).

⁴ Council Directive (EU) 2014/107 of 9 December 2014 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation (OJ L 359, 16.2.2014, p. 1).

⁵ Council Directive (EU) 2015/2376 of 8 December 2015 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation (OJ L 332, 18.12.2015, p. 1).

⁶ Council Directive (EU) 2016/881 of 25 May 2016 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation (OJ L 146, 3.6.2016, p. 8).

country-by-country reporting (CbCR) of multinational enterprises between tax authorities. Being aware of the use that anti-money laundering information can have for tax authorities, Council Directive (EU) 2016/2258⁷ placed an obligation on to Member States to give tax authorities access to customer due diligence procedures applied by financial institutions under Directive (EU) 2015/849 of the European Parliament and of the Council⁸. Although Directive 2011/16/EU has been amended several times in order to enhance the means tax authorities can use to **react to aggressive tax planning** ~~fight against tax avoidance and evasion~~, there is still a need for reinforcing certain specific transparency aspects of the existing taxation framework.

Presidency comments:

- *Deleting reference to avoidance and evasion throughout the text to overcome the issue of self incrimination.*

- (2) Member States find it increasingly difficult to protect their national tax bases from erosion as tax planning structures have evolved to be particularly sophisticated and often take advantage of the increased mobility of both capital and persons within the internal market. These structures commonly consist of arrangements which are developed across various jurisdictions and move taxable profits towards more beneficial tax regimes or have the effect of reducing the taxpayer's overall tax bill. As a result, Member States often experience considerable reductions in their tax revenues which hinder them from applying growth-friendly tax policies. It is therefore critical that Member States' tax authorities obtain comprehensive and relevant information about potentially aggressive tax arrangements. This information would enable those authorities to be able to promptly react against harmful tax practices and to close loopholes through enacting legislation or by undertaking adequate risk assessments and carrying out tax audits.
- (3) Considering that most of the potentially aggressive tax planning arrangements span across more than one jurisdiction, the disclosure of information about those arrangements would bring additional positive results where that information was also exchanged amongst Member States. In particular, the automatic exchange of information between tax administrations is crucial in order to provide these authorities with the necessary information to enable them to take action where they observe aggressive tax practices.
- (4) Recognising how a transparent framework for developing business activity could contribute to clamping down on tax avoidance and evasion in the internal market, the Commission has been called on to embark on initiatives on the mandatory disclosure of potentially aggressive tax planning arrangements along the lines of Action 12 of the

⁷ Council Directive (EU) 2016/2258 of 6 December 2016 amending Directive 2011/16/EU as regards access to anti-money-laundering information by tax authorities (OJ L 342, 16.12.2016, p. 1).

⁸ Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

OECD Base Erosion and Profit Shifting (BEPS). In this context, the European Parliament has called for tougher measures against intermediaries who assist in arrangements that may lead to ~~tax avoidance and evasion~~ **aggressive tax planning**.

- (5) It is necessary to recall how certain financial intermediaries and other providers of tax advice seem to have actively assisted their clients to conceal money offshore. Furthermore, although the CRS introduced by Council Directive (EU) 2014/107⁹ is a significant step forward in establishing a tax transparent framework within the Union, at least in terms of financial account information, it can still be improved.
- (6) The disclosure of potentially aggressive tax planning arrangements of a cross-border dimension can contribute effectively to the efforts for creating an environment of fair taxation in the internal market. In this light, an obligation on intermediaries to inform tax authorities on certain cross-border arrangements that could potentially be used for **aggressive tax planning** ~~tax avoidance purposes~~ would constitute a step in the right direction. In order to develop a more comprehensive policy, it would also be significant that as a second step, following disclosure, the tax authorities share information with their peers in other Member States. Such arrangements should also enhance the effectiveness of the CRS. In addition, it would be crucial to grant the Commission access to a sufficient amount of information so that it can monitor the proper functioning of this Directive. Such access to information by the Commission does not discharge a Member State from its obligations to notify any state aid to the Commission.
- (7) It is acknowledged that the disclosure of potentially aggressive cross-border tax planning arrangements would stand a better chance of achieving its envisaged deterrent effect where the relevant information reached the tax authorities at an early stage, in other words before the disclosed arrangements are actually implemented. Where the disclosure obligation is shifted to taxpayers, it would be practical to place the obligation to disclose those potentially aggressive cross-border tax planning arrangements at a slightly later stage, as taxpayers may not be aware of the nature of the arrangements at the time of the inception. To facilitate Member States' administrations, the subsequent automatic exchange of information on these arrangements could take place every quarter.
- (8) To ensure the proper functioning of the internal market and to prevent loopholes in the proposed framework of rules, the obligation for disclosure should be placed upon all actors that are usually involved in designing, marketing, organising or managing the implementation of a reportable cross-border transaction or a series thereof as well as those who provide assistance or advice. It should not be ignored either that in certain cases, the obligation to disclose would not be enforceable upon an intermediary due to a legal professional privilege or where there is no intermediary because, for instance, the taxpayer designs and implements a scheme in-house. It would thus be crucial that, in such circumstances, tax authorities do not lose the opportunity to receive information about tax-related arrangements that are potentially linked to aggressive tax planning. It would therefore be necessary to shift the disclosure obligation to the taxpayer who benefits from the arrangement in these cases.

⁹ Council Directive (EU) 2014/107 of 9 December 2014 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation (OJ L 359, 16.2.2014, p. 1).

- (9) Aggressive tax planning arrangements have evolved over the years to become increasingly more complex and are always subject to constant modifications and adjustments as a reaction to defensive counter-measures by the tax authorities. Taking this into consideration, it would be more effective to endeavour to capture potentially aggressive tax arrangements through the compiling of a list of the features and elements of transactions that present a strong indication of tax avoidance or abuse rather than to define the concept of aggressive tax planning. These indications are referred to as 'hallmarks'.
- (10) Given that the primary objective of such legislation should focus on ensuring the proper functioning of the internal market, it would be critical not to regulate at the level of the Union beyond what is necessary to achieve the envisaged aims. This is why it would be necessary to limit any common rules on disclosure to cross-border situations, namely situations in either more than one Member State or a Member State and a third country. In such circumstances, due to the potential impact on the functioning of the internal market, one can justify the need for enacting a common set of rules, rather than leaving the matter to be dealt with at the national level. **If a Member State has chosen to take further national reporting measures of a similar nature, this extra information collected should not be communicated to the competent authorities of another Member State.**

Presidency comments:

- *Additional wording addressing the MSs who wants to keep or take further measures.*

- (11) Considering that the disclosed arrangements should have a cross-border dimension, it would be important to share the relevant information with the tax authorities in other Member States in order to ensure the maximum effectiveness of this Directive in deterring aggressive tax planning practices. The mechanism for the exchange of information in the context of advance cross-border rulings and advance pricing arrangements should also be used to accommodate the mandatory and automatic exchange of disclosed information on potentially aggressive cross-border tax planning arrangements amongst tax authorities in the Union.
- (12) In order to facilitate the automatic exchange of information and enhance the efficient use of resources, exchanges should be carried out through the common communication network (CCN) developed by the Union. In this context, information would be recorded on a secure central directory on administrative cooperation in the field of taxation. Member States should have to implement a series of practical arrangements, including measures to standardise the communication of all requisite information through creating a standard form. This should also involve specifying the linguistic requirements for the envisaged exchange of information and accordingly upgrading the CCN.
- (13) In order to improve the prospects for effectiveness of this Directive, Member States should lay down penalties against the violation of national rules that implement this Directive and ensure that these penalties actually apply in practice, that they are proportionate and have a dissuasive effect.

- (14) In order to supplement or amend certain non-essential elements of this Directive, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in connection with updating the hallmarks in order to include in the list of hallmarks potentially aggressive tax planning arrangements or series of arrangements in response to updated information on those arrangements or series of arrangements which is derived from the mandatory disclosure of such arrangements.
- (15) In order to ensure uniform conditions for the implementation of this Directive and in particular for the automatic exchange of information between tax authorities, implementing powers should be conferred on the Commission to adopt a standard form with a limited number of components, including the linguistic arrangements. For the same reason, implementing powers should also be conferred on the Commission to adopt the necessary practical arrangements for upgrading the central directory on administrative cooperation in the field of taxation. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council¹⁰.
- (16) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council¹¹. Any processing of personal data carried out within the framework of this Directive must comply with Directive 95/46/EC of the European Parliament and of the Council¹² and Regulation (EC) No 45/2001.
- (17) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.
- (18) Since the objective of this Directive, namely to improve the functioning of the internal market through discouraging the use of cross-border aggressive tax planning arrangements, cannot sufficiently be achieved by the Member States acting individually in an uncoordinated fashion but can rather be better achieved at Union level by reason of the fact that it targets schemes which are developed to potentially take advantage of market inefficiencies that originate in the interaction amongst disparate national tax rules, 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, especially considering that it is limited to arrangements of a cross-border dimension of either more than one Member State or a Member State and a third country.
- (19) Directive 2011/16/EU should therefore be amended accordingly,

¹⁰ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

¹¹ 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 (OJ L 8, 12.1.2001, p. 1).

¹² 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 (OJ L 281, 23.11.1995, p. 31).

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 amended as follows:

(i) point (a) is replaced by the following:

"(a) for the purposes of Article 8(1) and Articles 8a, 8aa and 8aaa, 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;"

(ii) point (c) is replaced by the following:

"(c) for the purposes of provisions of this Directive other than Article 8(1) and (3a) and Articles 8a, 8aa and 8aaa, the systematic communication of predefined information provided in points (a) and (b) of this point."

(b) the following points are added:

"18. "cross-border arrangement" means an arrangement ~~or series of arrangements in~~ **concerning** either more than one Member State or a Member State and a third country where at least one of the following conditions are met:

(a) not all of the **participants** ~~parties~~ to the arrangement ~~or series of arrangements~~ are resident for tax purposes in the same jurisdiction;

(b) one or more of the **participants** ~~parties~~ to the arrangement ~~or series of arrangements~~ is simultaneously resident for tax purposes in more than one jurisdiction;

(c) one or more of the **participants** ~~parties~~ to the arrangement ~~or series of arrangements~~ carries on a business in another jurisdiction through a permanent establishment situated in that jurisdiction and the arrangement ~~or series of arrangements~~ forms part or the whole of the business of that permanent establishment;

(d) one or more of the **participants** ~~parties~~ to the arrangement ~~or series of arrangements~~ carries on a business **in another jurisdiction without creating a taxable presence in that jurisdiction**; ~~through a permanent~~

~~establishment which is not situated in that jurisdiction and the arrangement or series of arrangements forms part or the whole of the business of that permanent establishment;~~

- (e) ~~such arrangement or series of arrangements~~ has a **possible** tax-related impact **or a possible impact on automatic exchange of information** ~~in~~ at least two jurisdictions.

For the purpose of Article 8aaa and Annex 4, an arrangement shall also include a series of arrangements.

Presidency comments:

- *The concept of 'participants' is wider than 'parties' since the latter presumes that there is an agreement between them.*
- *The definition of 'cross-border arrangement' also covers a 'series of arrangements'*
- *Paragraph e: structural change, as requested by some delegations, to cover the reporting of tax avoidance that can be argued not to have an impact on tax liability.*

19. "reportable cross-border arrangement" means any cross-border arrangement ~~or series of arrangements~~ that satisfy **contains** at least one of the hallmarks set out in Annex IV.
20. "hallmark" means a typical characteristic or feature of an arrangement which is listed in Annex IV.
21. "intermediaries" means any person that carries the responsibility vis-à-vis the **relevant** taxpayer for designing, marketing, organising, or managing the implementation of, ~~the tax aspects of a reportable cross-border arrangement, or series of such arrangements, in the course of providing services relating to taxation.~~ "Intermediaries" also means any ~~such~~ person that undertakes **vis-à-vis the relevant taxpayer** to provide, directly or by means of other persons ~~to which it is related,~~ material aid, assistance or advice with respect to designing, marketing, organising, or managing **the implementation of,** ~~the tax aspects of a reportable cross-border arrangement.~~

In order to be an intermediary, a person shall meet at least one of the following additional conditions:

- (a) be incorporated in, and/or governed by the laws of, a Member State;
- (b) be **recognised** ~~resident~~ for tax purposes in a Member State;
- (c) be registered with a professional association related to legal, taxation or consultancy services in ~~at least one~~ Member State;

- ~~(d) be based in at least one Member State from where the person exercises their profession or provides legal, taxation or consultancy services.~~

Presidency comments:

- *Drafting improvements at the request of several delegations*
- *Point d is included in point b.*

22. **"relevant taxpayer"** means any person **to whom a reportable cross-border arrangement is made available for implementation, or who is ready to implement a reportable cross-border arrangement or has implemented the first step of such an arrangement**~~that uses a reportable cross-border arrangement or series of such arrangements in order to potentially optimise their tax position.~~

Presidency comment:

Clarification of the definition: the text is based on Article 8aaa, paragraphs 1 and 2

23. ~~"associated enterprise" means a taxpayer who is related to another taxpayer in at least one of the following ways:~~

- ~~(a) a taxpayer participates in the management of another taxpayer by being in a position to exercise a significant influence over the other taxpayer;~~
- ~~(b) a taxpayer participates in the control of another taxpayer through a holding that exceeds 20% of the voting rights;~~
- ~~(c) a taxpayer participates in the capital of another taxpayer through a right of ownership that, directly or indirectly, exceeds 20% of the capital.~~

~~If the same taxpayers participate in the management, control or capital of more than one taxpayer, all taxpayers concerned shall be regarded as associated enterprises.~~

~~In indirect participations, the fulfilment of requirements under points (b) and (c) shall be determined by multiplying the rates of holding through the successive tiers. A taxpayer holding more than 50% of the voting rights shall be deemed to hold 100%.~~

~~An individual, his or her spouse and his or her lineal ascendants or descendants shall be treated as a single taxpayer."~~

Presidency comments:

- *Associated enterprise is already defined in point 15 of Article 3.*

- (2) in Section II of Chapter II the following Article is added:

Scope and conditions of mandatory automatic exchange of information on reportable cross-border arrangements

1. Each Member State shall take the necessary measures to require its intermediaries to file information with their respective the competent tax authorities on a reportable cross-border arrangement ~~or series of such arrangements~~ within ~~five~~ **fifteen** working days, beginning on the day after the reportable cross-border arrangement ~~or series of arrangements~~ is made available for implementation by the intermediary to one or more **relevant** taxpayers ~~following contact with that taxpayer or those taxpayers~~, or where the first step in **implementing such** a series of arrangements has already been implemented **made, whichever occurs first**.

Presidency comments:

- *Amendment to overcome the problems of penalties and other shortcomings in case where the intermediary and the taxpayer are in different jurisdictions.*
- *15 working days: Compromise to equate dates between intermediary and taxpayer.*

2. Each Member State shall take the necessary measures to give intermediaries the right to a waiver from filing information on a reportable cross-border arrangement ~~or series of such arrangements~~ where **the reporting obligation would breach the** they are entitled to a legal professional privilege under the national law of that Member State. In such circumstances, **each Member State shall take the necessary measures to require intermediaries to notify the relevant taxpayer of the application of this waiver. In such case,** the obligation to file information on ~~the~~ such an arrangement ~~or series of arrangements~~ shall be the responsibility of **shifted to** the **relevant** taxpayer and intermediaries shall inform taxpayers of this responsibility ~~due to the privilege~~.

Intermediaries may only be entitled to a waiver under the first subparagraph to the extent that they operate within the limits of the relevant national laws that define their professions.

Each Member State shall take the necessary measures to ensure that, where there is no intermediary within the meaning of point 21 of Article 3, the obligation to file information on a reportable cross-border arrangement ~~or series of such arrangements~~ shall be the responsibility of the **relevant** taxpayer.

The **relevant** taxpayer **on whom lies the reporting obligation,** shall file information within ~~five~~ **fifteen** working days, beginning on the day after the reportable cross-border arrangement ~~or series of arrangements~~ **is made available for implementation, or is ready for implementation, or when** the first step in a series of such arrangements ~~its implementation~~ has been implemented **made, whichever occurs first**.

Presidency comments:

- *Narrower legal drafting on the professional legal privilege*
- *Clarification of the intention of the text.*

- *Separation in several subparagraphs for clarity purposes.*
- *Alignment of dates.*

3. Each Member State shall take the necessary measures to ensure that, where more than one intermediary is involved in a reportable cross-border arrangement ~~or series of such arrangements~~, only the intermediary that carries the responsibility vis-à-vis the **relevant** taxpayer for ~~designing and implementing~~ **managing the implementation of** the **reportable cross-border** arrangement ~~or series of arrangements~~ shall file information in accordance with paragraph 1. **In the absence of an intermediary managing the implementation of such arrangement, the intermediary that designed the arrangement shall file information in accordance with paragraph 1.**

Each Member State shall take the necessary measures to ensure that, where the ~~obligation to file information on a reportable cross-border arrangement or series of such arrangements is the responsibility of the taxpayer and a single such arrangement or series of such arrangements is used by more than one~~ **participant** taxpayers who ~~are associated enterprises~~, only the **participant** taxpayer that was in charge of agreeing the **reportable cross-border** arrangement ~~or series of arrangements~~ with the intermediary **or that was in charge of managing the implementation of such arrangement in the absence of an intermediary,** shall file information in accordance with paragraph ~~2~~.

Presidency comment:

Clarification amendments.

4. Each Member State shall take the necessary measures to require intermediaries and **relevant** taxpayers to file information on reportable cross-border arrangements **the first step of which was** ~~that were~~ implemented between [date of political agreement] and 31 December [2018]. Intermediaries and **relevant** taxpayers, as appropriate, shall file information on those reportable cross-border arrangements by 31 March [2019].

Presidency comments:

- *Text added to overcome the question of when an arrangement is implemented.*
- *Dates are put between square brackets: this issue will be discussed at a later stage.*

5. The competent authority of a Member State where the information was filed pursuant to paragraphs **1, 2 and 4** of this Article shall, by means of an automatic exchange, communicate the information specified in paragraph 6 of this Article to the competent authorities of all other Member States, in accordance with the practical arrangements adopted pursuant to Article 21(1).
6. The information to be communicated by a Member State under paragraph 5 shall contain the following:
- (a) the identification of intermediaries and **participants to the reportable cross border arrangement** taxpayers, including their name, **date and place of birth (in case of an individual)**, residence for tax purposes, and **Taxpayer**

Identification Number (TIN) and, where appropriate, the persons who are associated enterprises to the ~~intermediary or~~ **relevant** taxpayer;

Presidency comment:

Text addition at the request of one delegation.

- (b) details of the hallmarks set out in Annex IV that make the cross-border arrangement ~~or series of arrangements~~ reportable;
- (c) a summary of the content of the reportable cross-border arrangement ~~or series of arrangements~~, including a reference to the name by which they are commonly known, if any, and a description in abstract terms of the relevant business activities or arrangements, without leading to the disclosure of a commercial, industrial or professional secret or of a commercial process, or of information whose disclosure would be contrary to public policy;
- (d) the date that the implementation of the reportable cross-border arrangement is **to start** ~~or of the first step in implementing a series of such arrangement~~ **started** ~~s is to start or started~~;
- (e) details of the national ~~tax~~ provisions the application of which **result in a possible tax-related impact or a possible impact on automatic exchange of information** ~~creates a tax advantage, if applicable~~;

Presidency comment:

Alignment with point 18(e).

- (f) the value of the ~~transaction or series of transactions included in a~~ reportable cross-border arrangement, **where applicable** ~~or series of such arrangements~~;
 - (g) the identification of the other Member States which are ~~involved in, or likely to be concerned by the reportable cross-border arrangement or series of such arrangements~~;
 - (h) the identification of any **other** person in ~~the other~~ Member States, if any, likely to be affected by the reportable cross-border arrangement ~~or series of such arrangements~~ indicating to which Member States **such person is** ~~s the affected intermediaries or taxpayers are linked~~.
7. To facilitate the exchange of information referred to in paragraph 5 of this Article, the Commission shall adopt the practical arrangements necessary for the implementation of this Article, including measures to standardise the communication of the information set out in paragraph 6 of this Article, as part of the procedure for establishing the standard form provided for in Article 20(5).
8. The Commission shall not have access to information referred to in points (a), (c) and (h) of paragraph 6.
9. The automatic exchange of information shall take place within one month from the end of the quarter in which the information was filed. The first information shall be communicated by the end of the first quarter of **[2019]**."

(3) in Article 20, paragraph 5 is replaced by the following:

"5. The Commission shall adopt standard forms, including the linguistic arrangements, in accordance with the procedure referred to in Article 26(2), in the following cases:

- (a) for the automatic exchange of information on advance cross-border rulings and advance pricing arrangements pursuant to Article 8a before 1 January 2017;
- (b) for the automatic exchange of information on reportable cross-border arrangements pursuant to Article 8aaa before 1 January [2019].

Those standard forms shall not exceed the components for the exchange of information listed in Articles 8a(6) and 8aaa(6), and such other related fields which are linked to these components which are necessary to achieve the objectives of Articles 8a and 8aaa respectively.

The linguistic arrangements referred to in the first subparagraph shall not preclude Member States from communicating the information referred to in Articles 8a and 8aaa in any of the official languages of the Union. However, those linguistic arrangements may provide that the key elements of such information shall also be sent in another official language of the Union."

(4) in Article 21, paragraph 5 is replaced by the following:

"5. The Commission shall by 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 shall be recorded in order to satisfy the automatic exchange provided for in those paragraphs.

The Commission shall by 31 December [2018] 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 5, 6 and 7 of Article 8aaa shall be recorded in order to satisfy the automatic exchange provided for in those paragraphs.

The competent authorities of all Member States shall have access to the information recorded in that directory. The Commission shall also have access to the information recorded in that directory, however within the limitations set out in Articles 8a(8) and 8aaa(8). The necessary practical arrangements shall be adopted by the Commission in accordance with the procedure referred to in Article 26(2).

Until that secure central directory is operational, the automatic exchange provided for in paragraphs 1 and 2 of Article 8a and paragraphs 5, 6 and 7 of Article 8aaa shall be carried out in accordance with paragraph 1 of this Article and the applicable practical arrangements."

(5) in Article 23, paragraph 3 is replaced by the following:

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

~~(6) — in Chapter V, the following Article is added:~~

~~*"Article 23aa*~~

~~**Amendments to Annex IV**~~

~~The Commission shall be empowered to adopt delegated acts in accordance with Article 26a to amend Annex IV, in order to include in the list of hallmarks potentially aggressive tax planning arrangements or series of arrangements in response to updated information on those arrangements or series of arrangements which is derived from the mandatory disclosure of such arrangements."~~

Article 25a is replaced by the following:

"Article 25a

Penalties

Member States shall lay down the rules on penalties applicable to infringements of national provisions adopted pursuant to this Directive and concerning Articles 8aa and 8aaa, and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive."

~~(7) — in Chapter VII, the following Articles are added:~~

~~"Article 26a~~

~~**Exercise of the delegation**~~

- ~~1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.~~
- ~~2. The power to adopt delegated acts referred to in Article 23aa shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Directive.~~
- ~~3. The delegation of power referred to in Article 23aa may be revoked at any time by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.~~
- ~~4. As soon as it adopts a delegated act, the Commission shall notify it to the Council.~~
- ~~5. A delegated act adopted pursuant to Article 23aa shall enter into force only if no objection has been expressed by the Council within a period of two months of the notification of that act to the Council or if, before the expiry of that period, the Council has informed the Commission that it will not object. That period shall be extended by two months at the initiative of the Council.~~

~~Article 26aa~~

~~**Informing the European Parliament**~~

~~The European Parliament shall be informed of the adoption of delegated acts by the Commission, of any objective formulated to them and of the revocation of a delegation of powers by the Council."~~

- (8) Annex IV, the text of which is set out in the Annex to this Directive, is added.

Article 2

1. Member States shall adopt and publish, by 31 December [2018] 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 1 January [2019].

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 twentieth day following that 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