Brussels, 12.2.2020
COM(2020) 49 final
2020/0022 (CNS)

Proposal for a

COUNCIL DIRECTIVE

on administrative cooperation in the field of taxation (codification)
EXPLANATORY MEMORANDUM

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

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

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

2. On 1 April 1987 the Commission decided\(^1\) to instruct its staff that all acts should be codified after no more than ten amendments, stressing that this is a minimum requirement and that departments should endeavour to codify at even shorter intervals the texts for which they are responsible, to ensure that their provisions are clear and readily understandable.

3. The Conclusions of the Presidency of the Edinburgh European Council (December 1992) confirmed this\(^2\), stressing the importance of codification as it offers certainty as to the law applicable to a given matter at a given time.

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

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

4. The purpose of this proposal is to undertake a codification of Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC\(^3\). The new Directive will supersede the various acts incorporated in it\(^4\); this proposal fully preserves the content of the acts being codified and hence does no more than bring them together with only such formal amendments as are required by the codification exercise itself.

5. The codification proposal was drawn up on the basis of a preliminary consolidation, in 23 official languages, of Directive 2011/16/EU and the instruments amending it, carried out by the Publications Office of the European Union, by means of a data-processing system. Where the Articles have been given new numbers, the correlation between the old and the new numbers is shown in a table set out in Annex VI to the codified Directive.

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\(^1\) COM(87) 868 PV.
\(^2\) See Annex 3 to Part A of the Conclusions.
\(^3\) Entered in the legislative programme for 2019.
\(^4\) See Annex V to this proposal.
Proposal for a

COUNCIL DIRECTIVE

don administrative cooperation in the field of taxation (codification)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the European Economic and Social Committee\(^5\),

Acting in accordance with a special legislative procedure,

Whereas:

(1) Council Directive 2011/16/EU\(^6\) has been substantially amended several times. In the interests of clarity and rationality, that Directive should be codified.

(2) This Directive should give Member States the power to efficiently cooperate at international level to overcome the negative effects of an ever-increasing globalisation on the internal market.

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

(4) This Directive provides for clear and precise rules governing administrative cooperation between Member States, in order to ensure, especially as regards the exchange

\(^5\) OJ C […], […], p. […].

of information, a wide scope of administrative cooperation between Member States. Clear rules should also make it possible in particular to cover all legal and natural persons in the Union, taking into account the ever-increasing range of legal arrangements, including not only traditional arrangements such as trusts, foundations and investment funds, but any new instrument which may be set up by taxpayers in the Member States.

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

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

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

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

2014/107/EU recital 4 (adapted)

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

2014/107/EU recital 5 (adapted)

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

2014/107/EU recital 9 (adapted)

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

2014/107/EU recital 10

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

\[\text{(13)}\] Reporting Financial Institutions could meet their information obligations towards individual Reportable Persons by following the detailed arrangements on communication, including its frequency, provided for by their internal procedures in accordance with their domestic law.

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

\[\text{(15)}\] Taxpayers are entitled to rely on advance cross-border rulings or advance pricing arrangements during, for example, taxation processes or tax audits under the condition that the facts on which the advance cross-border rulings or advance pricing arrangements are based have been accurately presented and that the taxpayers abide by the terms of the advance cross-border rulings or advance pricing arrangements.

\[\text{(16)}\] Member States should exchange information irrespective of whether the taxpayer abides by the terms of the advance cross-border ruling or advance pricing arrangement.

\[\text{(17)}\] In order to reap the benefits of the mandatory automatic exchange of advance cross-border rulings and advance pricing arrangements, the information should be communicated promptly after they are issued, amended or renewed, and regular intervals for the communication of the information should therefore be set out.
(18) For reasons of legal certainty, it is appropriate, under a set of very strict conditions, to exclude from the mandatory automatic exchange bilateral or multilateral advance pricing arrangements with third countries following the framework of existing international treaties with those countries, where the provisions of those treaties do not permit disclosure of the information received under that treaty to a third party country. In these cases, however, the information identified in paragraph 5 of Article 9 relating to the requests that lead to issuance of such bilateral or multilateral advance pricing arrangements should be exchanged instead. Therefore, in such cases, the information to be communicated should include the indicator that it is provided on the basis of such a request.

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

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

(21) Where necessary, following the stage of mandatory automatic exchange of information on advance cross-border rulings and advance pricing arrangements, a Member State should be able to rely on Article 5 as regards the exchange of information on request to obtain additional information, including the full text of advance cross-border rulings or advance pricing arrangements, from the Member State having issued such rulings or arrangements.
(22) Member States should take all reasonable measures necessary to remove any obstacle that might hinder the effective and widest possible mandatory automatic exchange of information on advance cross-border rulings and advance pricing arrangements.

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

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

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

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

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

\(\downarrow\) (EU) 2016/881 recital 7

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

\(\downarrow\) (EU) 2016/881 recital 8

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

\(\downarrow\) (EU) 2016/881 recital 12

(30) The mandatory automatic exchange of country-by-country reports between Member States should in each case include the communication of a defined set of basic information that would be accessible to those Member States in which, on the basis of the information in the country-by-country report, one or more entities of the MNE Group are either resident for tax purposes or subject to tax with respect to the business carried out through a permanent establishment of an MNE Group.

\(\downarrow\) (EU) 2016/881 recital 13 (adapted)

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

\(^7\) Resolution of the Council and of the representatives of the governments of the Member States, meeting within the Council, of 27 June 2006 on a code of conduct on transfer pricing documentation for associated enterprises in the European Union (EU TPD) (OJ C 176, 28.7.2006, p. 1).
(32) The work on Action 13 of the BEPS Action Plan resulted in a set of standards for providing information for MNE Groups, including the masterfile, the local file and the country-by-country report. It is therefore appropriate to take into account the OECD standards in relation to the rules on the country-by-country report.

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

(34) Where a Member State determines that another Member State has persistently failed to automatically provide country-by-country reports, it should endeavour to consult that Member State.

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

(36) The scope of the mandatory exchange of information should therefore include the automatic exchange of information on the country-by-country report.

(37) Member States' yearly report to the Commission under Article 27 of this Directive should detail the extent of local filing under Article 10 and Point 1 of Section II of Annex III and a list of any jurisdictions where Ultimate Parent Entities of Union-based Constituent Entities are resident, but full reports have not been filed or exchanged.
(38) Considering that most of the potentially aggressive tax-planning arrangements span across more than one jurisdiction, the automatic exchange of information between tax authorities of different Member States is crucial in order to provide those authorities with the necessary information to enable them to take action where they observe aggressive tax practices.

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

(40) It is necessary to recall how certain financial intermediaries and other providers of tax advice seem to have actively assisted their clients in concealing money offshore.

(41) The reporting of potentially aggressive cross-border tax-planning arrangements can contribute effectively to the efforts for creating an environment of fair taxation in the internal market. In this light, an obligation should be laid down for intermediaries to inform tax authorities of certain cross-border arrangements that could potentially be used for aggressive tax planning. Following the reporting, the tax authorities should share information with their peers in other Member States. Such arrangements should also enhance the effectiveness of the CRS. In addition, it would be crucial to grant the Commission access to a sufficient amount of information so that it can monitor the proper functioning of this Directive. Such access to information by the Commission does not discharge a Member State from its obligations to notify any State aid to the Commission.

(42) It is acknowledged that the reporting of potentially aggressive cross-border tax-planning arrangements would stand a better chance of achieving its envisaged deterrent effect where the relevant information reached the tax authorities at an early stage, in other words before such arrangements are actually implemented. To facilitate the work of Member States' administrations, the subsequent automatic exchange of information on such arrangements should take place every quarter.
To ensure the proper functioning of the internal market and to prevent loopholes in the proposed framework of rules, the reporting obligation should be placed upon all actors that are usually involved in designing, marketing, organising or managing the implementation of a reportable cross-border transaction or a series of such transactions, as well as those who provide assistance or advice. It should not be ignored either that, in certain cases, the reporting obligation would not be enforceable upon an intermediary due to a legal professional privilege or where there is no intermediary because, for instance, the taxpayer designs and implements a scheme in-house. It would thus be crucial that, in such circumstances, tax authorities do not lose the opportunity to receive information about tax-related arrangements that are potentially linked to aggressive tax planning. It would therefore be necessary to shift the reporting obligation to the taxpayer who benefits from the arrangement in such cases.

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

Given that the primary objective of this Directive concerning the reporting of potentially aggressive cross-border tax-planning arrangements should focus on ensuring the proper functioning of the internal market, it is critical not to regulate at the level of the Union beyond what is necessary to achieve the envisaged aims. This is why common rules on reporting should be limited to cross-border situations, namely those involving either more than one Member State or a Member State and a third country. In such circumstances, due to the potential impact on the functioning of the internal market, one can justify the need for enacting a common set of rules, rather than leaving the matter to be dealt with at the national level. A Member State could take further national reporting measures of a similar nature, but any information collected in addition to what is reportable in accordance with this Directive should not be communicated automatically to the competent authorities of the other Member States. That information could be exchanged on request or spontaneously according to applicable rules.

Considering that the reportable arrangements should have a cross-border dimension, it would be important to share the relevant information with the tax authorities in other
Member States in order to ensure the maximum effectiveness of this Directive in deterring aggressive tax-planning practices.

(EU) 2018/822 recital 13 (adapted)

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

(EU) 2018/822 recital 14 (adapted)

(48) While direct taxation remains within the competence of Member States, it is appropriate to refer to a corporate tax rate of zero or almost zero, solely for the purpose of clearly defining the scope of the hallmark that covers arrangements involving cross-border transactions, which should be reportable under this Directive by intermediaries or, as appropriate, taxpayers, and about which the competent authorities should exchange information automatically. Moreover, it is appropriate to recall that aggressive cross-border tax-planning arrangements, the main purpose or one of the main purposes of which is to obtain a tax advantage that defeats the object or purpose of the applicable tax law, are subject to the general anti-abuse rule as set out in Article 6 of Council Directive (EU) 2016/1164.

2011/16/EU recital 11 (adapted)

(49) The spontaneous exchange of information between Member States should also be encouraged.

2011/16/EU recital 12

(50) Time limits for the provision of information under this Directive should be laid down in order to ensure that the information exchange is timely and thus effective.

(51) It is important that officials of the tax administration of one Member State are allowed to be present in the territory of another Member State.

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

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

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

(55) Collaboration between the Member States and the Commission is necessary for the permanent study of cooperation procedures and the sharing of experience and best practices in the fields considered.

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

(57) The situations in which a requested Member State may refuse to provide information should be clearly defined and limited, taking into account certain private interests which should be protected as well as the public interest.
(58) However, a Member State should not refuse to transmit information because it has no domestic interest or because the information is held by a bank, other financial institution, nominee or person acting in an agency or fiduciary capacity or because it relates to ownership interests in a person.

(59) This Directive contains minimum rules and should therefore not affect Member States’ right to enter into wider cooperation with other Member States under their national legislation or in the framework of bilateral or multilateral agreements concluded with other Member States.

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

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

(62) Where the Account Holder is an intermediary structure, Financial Institutions should look through that structure, and identify and report on its beneficial owners. That important element in the application of this Directive relies on anti-money-laundering (‘AML’) information obtained pursuant to Directive (EU) 2015/849 of the European Parliament and of the Council for the identification of the beneficial owners.


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Directive properly by correctly identifying and reporting on the beneficial owners of intermediary structures.

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

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

(66) An evaluation of the effectiveness of administrative cooperation should be made, especially on the basis of statistics.

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

(68) Reporting Financial Institutions, sending Member States and receiving Member States, in their capacity as data controllers, should retain information processed in accordance with this Directive for no longer than necessary to achieve the purposes thereof. Given the differences in Member States' legislation, the maximum retention period should be

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set by reference to the statute of limitations provided by each data controller's domestic tax legislation.

(EU) 2016/881 recital 22 (adapted)

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

(EU) 2016/881 recital 9

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

2014/107/EU recital 13

(71) In implementing this Directive, Member States should use the Commentaries on the Model Competent Authority Agreement and CRS Common Reporting Standard, developed by the OECD, as a source of illustration or interpretation and in order to ensure consistency in application across Member States. Union action in this area should continue to take particular account of future developments at OECD level.

(EU) 2018/822 recital 16 (adapted)

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

(EU) 2016/2258 recital 6

(73) This Directive respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union. Where this Directive requires that access to personal data by tax authorities be provided by law, this does not necessarily require an act of parliament, without prejudice to the constitutional order of the Member State concerned. However, such a law should be clear and precise, and its

APPLICATION SHOULD BE CLEAR AND FORESEEABLE TO PERSONS SUBJECT TO IT, IN ACCORDANCE WITH THE CASE-LAW OF THE COURT OF JUSTICE OF THE EUROPEAN UNION AND THE EUROPEAN COURT OF HUMAN RIGHTS.

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

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

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

1. This Directive lays down the rules and procedures under which the Member States shall cooperate with each other with a view to exchanging information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Member States concerning the taxes referred to in Article 2.

2. This Directive also lays down provisions for the exchange of information referred to in paragraph 1 by electronic means, as well as rules and procedures under which the Member States and the Commission shall cooperate on matters concerning coordination and evaluation.

3. This Directive shall not affect the application in the Member States of the rules on mutual assistance in criminal matters. It shall also be without prejudice to the fulfilment of any obligations of the Member States in relation to wider administrative cooperation ensuing from other legal instruments, including bilateral or multilateral agreements.
**Article 2**

**Scope**

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

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

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

   (a) fees, such as for certificates and other documents issued by public authorities;

   (b) dues of a contractual nature, such as consideration for public utilities.

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

**Article 3**

**Definitions**

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

(1) ‘competent authority’ of a Member State means the authority which has been designated as such by that Member State. When acting pursuant to this Directive, the central liaison office, a liaison department or a competent official shall also be deemed to be competent authorities by delegation according to Article 4;

(2) ‘central liaison office’ means the office which has been designated as such with principal responsibility for contacts with other Member States in the field of administrative cooperation;

(3) ‘liaison department’ means any office other than the central liaison office which has been designated as such to directly exchange information pursuant to this Directive;

(4) ‘competent official’ means any official who is authorised to directly exchange information pursuant to this Directive;

(5) ‘requesting authority’ means the central liaison office, a liaison department or any competent official of a Member State who makes a request for assistance on behalf of the competent authority;

(6) ‘requested authority’ means the central liaison office, a liaison department or any competent official of a Member State who receives a request for assistance on behalf of the competent authority;

(7) ‘administrative enquiry’ means all controls, checks and other action taken by Member States in the performance of their duties with a view to ensuring the proper application of tax legislation;

(8) ‘exchange of information on request’ means the exchange of information based on a request made by the requesting Member State to the requested Member State in a specific case;
‘automatic exchange’ means:

(a) for the purposes of Article 8(1) and Articles 9, 10 and 11, the systematic communication of predefined information to another Member State, without prior request, at pre-established regular intervals. For the purposes of Article 8(1), reference to available information relates to information in the tax files of the Member State communicating the information, which is retrievable in accordance with the procedures for gathering and processing information in that Member State;

(b) for the purposes of Article 8(4), the systematic communication of predefined information on residents in other Member States to the relevant Member State of residence, without prior request, at pre-established regular intervals;

(c) for the purposes of provisions of this Directive other than Article 8(1) and (4) and Articles 9, 10 and 11, the systematic communication of predefined information referred to in points (a) and (b).

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

‘spontaneous exchange’ means the non-systematic communication, at any moment and without prior request, of information to another Member State;

‘person’ means:

(a) a natural person;

(b) a legal person;

(c) where the legislation in force so provides, an association of persons recognised as having the capacity to perform legal acts but lacking the status of a legal person;
(d) any other legal arrangement of whatever nature and form, regardless of whether it has legal personality, owning or managing assets, which, including income derived therefrom, are subject to any of the taxes covered by this Directive;

(12) ‘by electronic means’ means using electronic equipment for the processing, including digital compression, and storage of data, and employing wires, radio transmission, optical technologies or other electromagnetic means;

(13) ‘CCN network’ means the common platform based on the common communication network (CCN), developed by the Union for all transmissions by electronic means between competent authorities in the area of customs and taxation;

(14) ‘advance cross-border ruling’ means any agreement, communication, or other instrument or action with similar effects, including one issued, amended or renewed in the context of a tax audit, and which meets the following conditions:

(a) is issued, amended or renewed by, or on behalf of, the government or the tax authority of a Member State, or the Member State's territorial or administrative subdivisions, including local authorities, irrespective of whether it is effectively used;

(b) is issued, amended or renewed, to a particular person or a group of persons, and upon which that person or a group of persons is entitled to rely;

(c) concerns the interpretation or application of a legal or administrative provision concerning the administration or enforcement of national laws relating to taxes of the Member State, or the Member State's territorial or administrative subdivisions, including local authorities;

(d) relates to a cross-border transaction or to the question of whether or not activities carried on by a person in another jurisdiction create a permanent establishment;

(e) is made in advance of the transactions or of the activities in another jurisdiction potentially creating a permanent establishment or in advance of the filing of a tax return covering the period in which the transaction or series of transactions or activities took place.

The cross-border transaction may involve, but is not restricted to, the making of investments, the provision of goods, services or finance or the use of tangible or intangible assets and does not have to directly involve the person receiving the advance cross-border ruling;

(15) ‘advance pricing arrangement’ means any agreement, communication or other instrument or action with similar effects, including one issued, amended or renewed in the context of a tax audit, and which meets the following conditions:

(a) is issued, amended or renewed by, or on behalf of, the government or the tax authority of one or more Member States, including any territorial or administrative subdivision thereof, including local authorities, irrespective of whether it is effectively used;

(b) is issued, amended or renewed, to a particular person or a group of persons and upon which that person or a group of persons is entitled to rely;
(c) determines in advance of cross-border transactions between associated enterprises an appropriate set of criteria for the determination of the transfer pricing for those transactions or determines the attribution of profits to a permanent establishment.

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

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

(16) for the purposes of point 14, ‘cross-border transaction’ means a transaction or series of transactions where one or more of the following applies:

(a) not all of the parties to the transaction or series of transactions are resident for tax purposes in the Member State issuing, amending or renewing the advance cross-border ruling;

(b) any of the parties to the transaction or series of transactions is simultaneously resident for tax purposes in more than one jurisdiction;

(c) one of the parties to the transaction or series of transactions carries on business in another jurisdiction through a permanent establishment and the transaction or series of transactions forms part or the whole of the business of the permanent establishment. A cross-border transaction or series of transactions shall also include arrangements made by a person in respect of business activities in another jurisdiction which that person carries on through a permanent establishment;

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

For the purposes of point 15, ‘cross-border transaction’ means a transaction or series of transactions involving associated enterprises which are not all resident for tax purposes in the territory of a single jurisdiction or a transaction or series of transactions which have a cross border impact;

(17) for the purposes of points 15 and 16, ‘enterprise’ means any form of conducting business;

(18) ‘cross-border arrangement’ means an arrangement concerning either more than one Member State or a Member State and a third country where at least one of the following conditions is met:

(a) not all of the participants in the arrangement are resident for tax purposes in the same jurisdiction;

(b) one or more of the participants in the arrangement is simultaneously resident for tax purposes in more than one jurisdiction;

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

(d) one or more of the participants in the arrangement carries on an activity in another jurisdiction without being resident for tax purposes or creating a permanent establishment situated in that jurisdiction;

(e) such arrangement has a possible impact on the automatic exchange of information or the identification of beneficial ownership.

For the purposes of points 18 to 25 of this Article, Article 11 and Annex IV, an arrangement shall also include a series of arrangements. An arrangement may comprise more than one step or part;

(19) ‘reportable cross-border arrangement’ means any cross-border arrangement that contains at least one of the hallmarks set out in Annex IV;

(20) ‘hallmark’ means a characteristic or feature of a cross-border arrangement that presents an indication of a potential risk of tax avoidance, as listed in Annex IV;

(21) ‘intermediary’ means any person that designs, markets, organises or makes available for implementation or manages the implementation of a reportable cross-border arrangement.

It also means any person that, having regard to the relevant facts and circumstances and based on available information and the relevant expertise and understanding required to provide such services, knows or could be reasonably expected to know that they have undertaken to provide, directly or by means of other persons, aid, assistance or advice with respect to designing, marketing, organising, making available for implementation or managing the implementation of a reportable cross-border arrangement. Any person shall have the right to provide evidence that such person did not know and could not reasonably be expected to know that that person was involved in a reportable cross-border arrangement. For this purpose, that person may refer to all relevant facts and circumstances as well as available information and their relevant expertise and understanding.

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

(a) be resident for tax purposes in a Member State;

(b) have a permanent establishment in a Member State through which the services with respect to the arrangement are provided;

(c) be incorporated in, or governed by the laws of, a Member State;

(d) be registered with a professional association related to legal, taxation or consultancy services in a Member State;

(22) ‘relevant taxpayer’ means any person to whom a reportable cross-border arrangement is made available for implementation, or who is ready to implement a reportable cross-border arrangement or has implemented the first step of such an arrangement;

(23) for the purposes of Article 11, ‘associated enterprise’ means a person who is related to another person in at least one of the following ways:

(a) a person participates in the management of another person by being in a position to exercise a significant influence over the other person;
(b) a person participates in the control of another person through a holding that exceeds 25% of the voting rights;

(c) a person participates in the capital of another person through a right of ownership that, directly or indirectly, exceeds 25% of the capital;

(d) a person is entitled to 25% or more of the profits of another person.

If more than one person participates, as referred to in points (a) to (d), in the management, control, capital or profits of the same person, all persons concerned shall be regarded as associated enterprises.

If the same persons participate, as referred to in points (a) to (d), in the management, control, capital or profits of more than one person, all persons concerned shall be regarded as associated enterprises.

For the purposes of this point, a person who acts together with another person in respect of the voting rights or capital ownership of an entity shall be treated as holding a participation in all of the voting rights or capital ownership of that entity that are held by the other person.

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

An individual, his or her spouse and his or her lineal ascendants or descendants shall be treated as a single person;

(24) ‘marketable arrangement’ means a cross-border arrangement that is designed, marketed, ready for implementation or made available for implementation without a need to be substantially customised;

(25) ‘bespoke arrangement’ means any cross-border arrangement that is not a marketable arrangement.

Article 4

Organisation

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

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

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

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

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

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

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

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

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

CHAPTER II

EXCHANGE OF INFORMATION

SECTION I

EXCHANGE OF INFORMATION ON REQUEST

Article 5

Procedure for the exchange of information on request

At the request of the requesting authority, the requested authority shall communicate to the requesting authority any information referred to in Article 1(1) that it has in its possession or that it obtains as a result of administrative enquiries.

Article 6

Administrative enquiries

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

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

3. In order to obtain the requested information or to conduct the administrative enquiry requested, the requested authority shall follow the same procedures as it would when acting on its own initiative or at the request of another authority in its own Member State.
4. When specifically requested by the requesting authority, the requested authority shall communicate original documents provided that this is not contrary to the provisions in force in the Member State of the requested authority.

**Article 7**

**Time limits**

1. The requested authority shall provide the information referred to in Article 5 as quickly as possible, and no later than six months from the date of receipt of the request. However, where the requested authority is already in possession of that information, the information shall be transmitted within two months of that date.

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

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

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

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

6. Where the requested authority is not in possession of the requested information and is unable to respond to the request for information or refuses to do so on the grounds provided for in Article 21, it shall inform the requesting authority of the reasons thereof immediately and in any event within one month of receipt of the request.

**SECTION II**

**MANDATORY AUTOMATIC EXCHANGE OF INFORMATION**

**Article 8**

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

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

(a) income from employment;

(b) director’s fees;

(c) life insurance products not covered by other Union legal instruments on exchange of information and other similar measures;

(d) pensions;
(e) ownership of and income from immovable property.

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

3. The competent authority of a Member State may indicate to the competent authority of any other Member State that it does not wish to receive information on one or several of the categories of income and capital referred to in paragraph 1. It shall also inform the Commission thereof.

A Member State may be considered as not wishing to receive information in accordance with paragraph 1, if it does not inform the Commission of any single category in respect of which it has information available.

4. Each Member State shall take the necessary measures to require its Reporting Financial Institutions to perform the reporting and due diligence rules included in Annexes I and II and to ensure effective implementation of, and compliance with, such rules in accordance with Section IX of Annex I.

Pursuant to the applicable reporting and due diligence rules contained in Annexes I and II, the competent authority of each Member State shall, by automatic exchange, communicate within the deadline laid down in point (b) of paragraph 5 to the competent authority of any other Member State the following information regarding taxable periods as from 1 January 2016 concerning a Reportable Account:

(a) the name, address, TIN(s) and date and place of birth (in the case of an individual) of each Reportable Person that is an Account Holder of the account and, in the case of any Entity that is an Account Holder and that, after application of due diligence rules consistent with the Annexes, is identified as having one or more Controlling Persons that are Reportable Persons, the name, address, and TIN(s) of the Entity and the name, address, TIN(s) and date and place of birth of each Reportable Person;

(b) the account number (or functional equivalent in the absence of an account number);

(c) the name and identifying number (if any) of the Reporting Financial Institution;

(d) the account balance or value (including, in the case of a Cash Value Insurance Contract or Annuity Contract, the Cash Value or surrender value) as of the end of the relevant calendar year or other appropriate reporting period or, if the account was closed during such year or period, the closure of the account;

(e) in the case of any Custodial Account:

(i) the total gross amount of interest, the total gross amount of dividends, and the total gross amount of other income generated with respect to the assets held in the account, in each case paid or credited to the account (or with respect to the account) during the calendar year or other appropriate reporting period; and

(ii) the total gross proceeds from the sale or redemption of Financial Assets paid or credited to the account during the calendar year or other appropriate reporting period.
period with respect to which the Reporting Financial Institution acted as a
custodian, broker, nominee, or otherwise as an agent for the Account Holder;

(f) in the case of any Depository Account, the total gross amount of interest paid or
credited to the account during the calendar year or other appropriate reporting period;

(g) in the case of any account not described in point (e) or point (f), the total gross amount
paid or credited to the Account Holder with respect to the account during the calendar
year or other appropriate reporting period with respect to which the Reporting
Financial Institution is the obligor or debtor, including the aggregate amount of any
redemption payments made to the Account Holder during the calendar year or other
appropriate reporting period.

For the purposes of the exchange of information under this paragraph, unless otherwise
provided for in this paragraph or in Annexes I and II, the amount and
caracterisation of payments made with respect to a Reportable Account shall be determined in
accordance with national legislation of the Member State which communicates the information.

The first and second subparagraphs of this paragraph shall prevail over point (c) of paragraph 1
or any other Union legal instrument, to the extent that the exchange of information at issue
would fall within the scope of point (c) of paragraph 1 or of any other Union legal instrument.

5. The communication of information shall take place as follows:

(a) for the categories laid down in paragraph 1: at least once a year, within six months
following the end of the tax year of the Member State during which the information
became available;

(b) for the information laid down in paragraph 4: annually, within nine months following
the end of the calendar year or other appropriate reporting period to which the
information relates.

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

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

Member States shall ensure that those types of Non-Reporting Financial Institutions and
Excluded Accounts satisfy all the requirements listed in points B.1(c) and C.17(g) of
Section VIII of Annex I, and in particular that the status of a Financial Institution as a Non-
Reporting Financial Institution or the status of an account as an Excluded Account does not frustrate the purposes of this Directive.

8. Where Member States agree on the automatic exchange of information for additional categories of income and capital in bilateral or multilateral agreements which they conclude with other Member States, they shall communicate those agreements to the Commission which shall make those agreements available to all the other Member States.

Article 9
Scope and conditions of mandatory automatic exchange of information on advance cross-border rulings and advance pricing arrangements

1. The competent authority of a Member State where an advance cross-border ruling or an advance pricing arrangement was issued, amended or renewed after 31 December 2016 shall, by automatic exchange, communicate information thereon to the competent authorities of all other Member States as well as to the Commission, with the limitation of cases set out in paragraph 7 of this Article, in accordance with applicable practical arrangements adopted pursuant to Article 25.

2. Bilateral or multilateral advance pricing arrangements with third countries shall be excluded from the scope of automatic exchange of information under this Article where the international tax agreement under which the advance pricing arrangement was negotiated does not permit its disclosure to third parties. Such bilateral or multilateral advance pricing arrangements shall be exchanged under Article 13, where the international tax agreement under which the advance pricing arrangement was negotiated permits its disclosure, and the competent authority of the third country gives permission for the information to be disclosed.

However, where the bilateral or multilateral advance pricing arrangements would be excluded from the automatic exchange of information under the first sentence of the first subparagraph of this paragraph, the information identified in paragraph 5 referred to in the request that led to issuance of such a bilateral or multilateral advance pricing arrangement shall instead be exchanged under paragraph 1.

3. Paragraph 1 shall not apply in a case where an advance cross-border ruling exclusively concerns and involves the tax affairs of one or more natural persons.

4. The exchange of information shall take place within three months following the end of the half of the calendar year during which the advance cross-border rulings or advance pricing arrangements have been issued, amended or renewed.

5. The information to be communicated by a Member State pursuant to paragraph 1 shall include the following:

   (a) the identification of the person, other than a natural person, and where appropriate the group of persons to which it belongs;

   (b) a summary of the content of the advance cross-border ruling or advance pricing arrangement, including a description of the relevant business activities or transactions...
or series of transactions provided in abstract terms, without leading to the disclosure of a commercial, industrial or professional secret or of a commercial process, or of information whose disclosure would be contrary to public policy;

(c) the dates of issuance, amendment or renewal of the advance cross-border ruling or advance pricing arrangement;

(d) the start date of the period of validity of the advance cross-border ruling or advance pricing arrangement, if specified;

(e) the end date of the period of validity of the advance cross-border ruling or advance pricing arrangement, if specified;

(f) the type of the advance cross-border ruling or advance pricing arrangement;

(g) the amount of the transaction or series of transactions of the advance cross-border ruling or advance pricing arrangement if such amount is referred to in the advance cross-border ruling or advance pricing arrangement;

(h) the description of the set of criteria used for the determination of the transfer pricing or the transfer price itself in the case of an advance pricing arrangement;

(i) the identification of the method used for determination of the transfer pricing or the transfer price itself in the case of an advance pricing arrangement;

(j) the identification of the other Member States, if any, likely to be concerned by the advance cross-border ruling or advance pricing arrangement;

(k) the identification of any person, other than a natural person, in the other Member States, if any, likely to be affected by the advance cross-border ruling or advance pricing arrangement (indicating to which Member States the affected persons are linked);

(l) the indication whether the information communicated is based upon the advance cross-border ruling or advance pricing arrangement itself or upon the request referred to in the second subparagraph of paragraph 2.

6. To facilitate the exchange of information referred to in paragraph 5 of this Article, the Commission shall adopt the practical arrangements necessary for the implementation of this Article, including measures to standardise the communication of the information set out in paragraph 5 of this Article, as part of the procedure for establishing the standard form provided for in Article 24(5).

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

8. Member States may, in accordance with Article 5, and having regard to Article 25(4), request additional information, including the full text of an advance cross-border ruling or an advance pricing arrangement.
Article 10

Scope and conditions of mandatory automatic exchange of information on the country-by-country report

1. Each Member State shall take the necessary measures to require the Ultimate Parent Entity of an MNE Group that is resident for tax purposes in its territory, or any other Reporting Entity in accordance with Section II of Annex III, to file a country-by-country report with respect to its Reporting Fiscal Year within 12 months of the last day of the Reporting Fiscal Year of the MNE Group in accordance with Section II of Annex III.

2. The competent authority of a Member State where the country-by-country report was received pursuant to paragraph 1 shall, by means of automatic exchange and within the deadline laid down in paragraph 4, communicate the country-by-country report to any other Member State in which, on the basis of the information in the country-by-country report, one or more Constituent Entities of the MNE Group of the Reporting Entity are either resident for tax purposes or subject to tax with respect to the business carried out through a permanent establishment.

3. The country-by-country report shall contain the following information with respect to the MNE Group:

   (a) aggregate information relating to the amount of revenue, profit (loss) before income tax, income tax paid, income tax accrued, stated capital, accumulated earnings, number of employees, and tangible assets other than cash or cash equivalents with regard to each jurisdiction in which the MNE Group operates;

   (b) an identification of each Constituent Entity of the MNE Group setting out the jurisdiction of tax residence of that Constituent Entity and, where different from that jurisdiction of tax residence, the jurisdiction under the laws of which that Constituent Entity is organised, and the nature of the main business activity or activities of that Constituent Entity.

4. The communication shall take place within 15 months of the last day of the Fiscal Year of the MNE Group to which the country-by-country report relates.
Article 11

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

1. Each Member State shall take the necessary measures to require intermediaries to file information that is within their knowledge, possession or control on reportable cross-border arrangements with the competent authorities within 30 days beginning:

(a) on the day after the reportable cross-border arrangement is made available for implementation;
(b) on the day after the reportable cross-border arrangement is ready for implementation;
(c) on the day the first step in the implementation of the reportable cross-border arrangement has been made,

whichever occurs first.

Notwithstanding the first subparagraph, intermediaries referred to in the second paragraph of point 21 of Article 3 shall also be required to file information within 30 days beginning on the day after they provided, directly or by means of other persons, aid, assistance or advice.

2. In the case of marketable arrangements, Member States shall take the necessary measures to require that a periodic report be made by the intermediary every 3 months providing an update which contains new reportable information as referred to in points (a), (d), (g) and (h) of paragraph 14 that has become available since the last report was filed.

3. Where the intermediary is liable to file information on reportable cross-border arrangements with the competent authorities of more than one Member State, such information shall be filed only in the Member State that features first in the following list:

(a) the Member State where the intermediary is resident for tax purposes;
(b) the Member State where the intermediary has a permanent establishment through which the services with respect to the arrangement are provided;
(c) the Member State which the intermediary is incorporated in or governed by the laws of;
(d) the Member State where the intermediary is registered with a professional association related to legal, taxation or consultancy services.

4. Where, pursuant to paragraph 3, there is a multiple reporting obligation, the intermediary shall be exempt from filing the information if it has proof, in accordance with national law, that the same information has been filed in another Member State.

5. Each Member State may take the necessary measures to give intermediaries the right to a waiver from filing information on a reportable cross-border arrangement where the reporting obligation would breach the legal professional privilege under the national law of that Member State. In such circumstances, each Member State shall take the necessary measures to require
intermediaries to notify, without delay, any other intermediary or, if there is no such intermediary, the relevant taxpayer of their reporting obligations under paragraph 6.

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

6. Each Member State shall take the necessary measures to require that, where there is no intermediary or the intermediary notifies the relevant taxpayer or another intermediary of the application of a waiver under paragraph 5, the obligation to file information on a reportable cross-border arrangement lie with the other notified intermediary, or, if there is no such intermediary, with the relevant taxpayer.

7. The relevant taxpayer with whom the reporting obligation lies shall file the information within 30 days, beginning on the day after the reportable cross-border arrangement is made available for implementation to that relevant taxpayer, or is ready for implementation by the relevant taxpayer, or when the first step in its implementation has been made in relation to the relevant taxpayer, whichever occurs first.

Where the relevant taxpayer has an obligation to file information on the reportable cross-border arrangement with the competent authorities of more than one Member State, such information shall be filed only with the competent authorities of the Member State that features first in the following list:

(a) the Member State where the relevant taxpayer is resident for tax purposes;
(b) the Member State where the relevant taxpayer has a permanent establishment benefiting from the arrangement;
(c) the Member State where the relevant taxpayer receives income or generates profits, although the relevant taxpayer is not resident for tax purposes and has no permanent establishment in any Member State;
(d) the Member State where the relevant taxpayer carries on an activity, although the relevant taxpayer is not resident for tax purposes and has no permanent establishment in any Member State.

8. Where, pursuant to paragraph 7, there is a multiple reporting obligation, the relevant taxpayer shall be exempt from filing the information if it has proof, in accordance with national law, that the same information has been filed in another Member State.

9. Each Member State shall take the necessary measures to require that, where there is more than one intermediary, the obligation to file information on the reportable cross-border arrangement lie with all intermediaries involved in the same reportable cross-border arrangement.

An intermediary shall be exempt from filing the information only to the extent that it has proof, in accordance with national law, that the same information referred to in paragraph 14 has already been filed by another intermediary.

10. Each Member State shall take the necessary measures to require that, where the reporting obligation lies with the relevant taxpayer and where there is more than one relevant taxpayer, the relevant taxpayer that is to file information in accordance with paragraph 6 be the one that features first in the following list:

(a) the relevant taxpayer that agreed the reportable cross-border arrangement with the intermediary;
(b) the relevant taxpayer that manages the implementation of the arrangement.
Any relevant taxpayer shall only be exempt from filing the information to the extent that it has proof, in accordance with national law, that the same information referred to in paragraph 14 has already been filed by another relevant taxpayer.

11. Each Member State may take the necessary measures to require that each relevant taxpayer file information about their use of the arrangement to the tax administration in each of the years for which they use it.

12. Each Member State shall take the necessary measures to require intermediaries and relevant taxpayers to file information on reportable cross-border arrangements the first step of which was implemented between 25 June 2018 and 30 June 2020. Intermediaries and relevant taxpayers, as appropriate, shall file information on those reportable cross-border arrangements by 31 August 2020.

13. The competent authority of a Member State where the information was filed pursuant to paragraphs 1 to 12 of this Article shall, by means of an automatic exchange, communicate the information specified in paragraph 14 of this Article to the competent authorities of all other Member States, in accordance with the practical arrangements adopted pursuant to Article 25.

14. The information to be communicated by the competent authority of a Member State under paragraph 13 shall contain the following, as applicable:

(a) the identification of intermediaries and relevant taxpayers, including their name, date and place of birth (in the case of an individual), residence for tax purposes, TIN and, where appropriate, the persons that are associated enterprises to the relevant taxpayer;

(b) details of the hallmarks set out in Annex IV that make the cross-border arrangement reportable;

(c) a summary of the content of the reportable cross-border arrangement, including a reference to the name by which it is commonly known, if any, and a description in abstract terms of the relevant business activities or arrangements, without leading to the disclosure of a commercial, industrial or professional secret or of a commercial process, or of information the disclosure of which would be contrary to public policy;

(d) the date on which the first step in implementing the reportable cross-border arrangement has been made or will be made;

(e) details of the national provisions that form the basis of the reportable cross-border arrangement;

(f) the value of the reportable cross-border arrangement;

(g) the identification of the Member State of the relevant taxpayer(s) and any other Member States which are likely to be concerned by the reportable cross-border arrangement;

(h) the identification of any other person in a Member State likely to be affected by the reportable cross-border arrangement, indicating to which Member States such person is linked.

15. The fact that a tax administration does not react to a reportable cross-border arrangement shall not imply any acceptance of the validity or tax treatment of that arrangement.

16. To facilitate the exchange of information referred to in paragraph 13 of this Article, the Commission shall adopt the practical arrangements necessary for the implementation of this Article, including measures to standardise the communication of the information set out in
paragraph 14 of this Article, as part of the procedure for establishing the standard form provided for in Article 24(5).

17. The Commission shall not have access to information referred to in points (a), (c) and (h) of paragraph 14.

18. The automatic exchange of information shall take place within one month of the end of the quarter in which the information was filed. The first information shall be communicated by 31 October 2020.

Article 12

**Extension of scope of automatic exchanges**

If appropriate, the Commission shall present a proposal to the Council regarding the categories and the conditions laid down in Article 8(1), including the condition that information concerning residents in other Member States has to be available, or the items referred to in Article 8(4), or both.

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

(a) the competent authority of each Member State shall, by automatic exchange, communicate to the competent authority of any other Member State information regarding taxable periods as from 1 January 2019 concerning residents in that other Member State on all categories of income and capital listed in Article 8(1), as they are to be understood under the national legislation of the Member State communicating the information;

(b) the lists of categories and items laid down in Article 8(1) and 4 be extended to include other categories and items, including royalties.

SECTION III

**Spontaneous exchange of information**

Article 13

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

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

(a) the competent authority of one Member State has grounds for supposing that there may be a loss of tax in the other Member State;
(b) a person liable to tax obtains a reduction in, or an exemption from, tax in one Member State which would give rise to an increase in tax or to liability to tax in the other Member State;

(c) business dealings between a person liable to tax in one Member State and a person liable to tax in the other Member State are conducted through one or more countries in such a way that a saving in tax may result in one or the other Member State or in both;

(d) the competent authority of a Member State has grounds for supposing that a saving of tax may result from artificial transfers of profits within groups of enterprises;

(e) information forwarded to one Member State by the competent authority of the other Member State has enabled information to be obtained which may be relevant in assessing liability to tax in the latter Member State.

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

**Article 14**

**Time limits**

1. The competent authority to which information referred to in Article 13(1) becomes available, shall forward that information to the competent authority of any other Member State concerned as quickly as possible, and no later than one month after it becomes available.

2. The competent authority to which information is communicated pursuant to Article 13 shall confirm, if possible by electronic means, the receipt of the information to the competent authority which provided the information immediately and in any event no later than seven working days.

**CHAPTER III**

**OTHER FORMS OF ADMINISTRATIVE COOPERATION**

**SECTION I**

**PRESENCE IN ADMINISTRATIVE OFFICES AND PARTICIPATION IN ADMINISTRATIVE ENQUIRIES**

**Article 15**

**Scope and conditions**

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

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

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

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

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

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

SECTION II

SIMULTANEOUS CONTROLS

Article 16

Simultaneous controls

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

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

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

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

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

SECTION III

ADMINISTRATIVE NOTIFICATION

Article 17

Request for notification

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

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

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

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

SECTION IV

FEEDBACK

Article 18

Conditions

1. Where a competent authority provides information pursuant to Articles 5 or 13, it may request the competent authority which receives the information to send feedback thereon. If feedback is requested, the competent authority which received the information shall, without prejudice to the rules on tax secrecy and data protection applicable in its Member State, send feedback to the competent authority which provided the information as soon as possible and no later than three months after the outcome of the use of the requested information is known. The Commission shall determine the practical arrangements. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 32(2).

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

SECTION V

SHARING OF BEST PRACTICES AND EXPERIENCE

Article 19

Scope and conditions

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

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

CONDITIONS GOVERNING ADMINISTRATIVE COOPERATION

Article 20

Disclosure of information and documents

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

Such information may also be used for the assessment and enforcement of other taxes and duties covered by Article 2 of Council Directive 2010/24/EU\(^\text{13}\), 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.

6. Notwithstanding paragraphs 1 to 4 of this Article, information communicated between
Member States pursuant to Article 10 shall be used for the purposes of assessing high-level
transfer-pricing risks and other risks related to base erosion and profit shifting, including
assessing the risk of non-compliance by members of the MNE Group with applicable transfer-
pricing rules, and where appropriate for economic and statistical analysis. Transfer-pricing
adjustments by the tax authorities of the receiving Member State shall not be based on the
information exchanged pursuant to Article 10. Notwithstanding the above, there is no
prohibition on using the information communicated between Member States pursuant to
Article 10 as a basis for making further enquiries into the MNE Group's transfer-pricing
arrangements or into other tax matters in the course of a tax audit, and, as a result, appropriate
adjustments to the taxable income of a Constituent Entity may be made.

Article 21

Limits

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

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

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

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

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

Article 22

Obligations

1. If information is requested by a Member State in accordance with this Directive, the
requested Member State shall use its measures aimed at gathering information to obtain the
requested information, even though that Member State may not need such information for its
own tax purposes. That obligation is without prejudice to Article 21(2), (3) and (4), the
invocation of which shall in no case be construed as permitting a requested Member State to
decline to supply information solely because it has no domestic interest in such information.
2. In no case shall Article 21(2) and (4) be construed as permitting a requested authority of a Member State to decline to supply information solely because this information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

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

**Article 23**

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

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

**Article 24**

**Standard forms and computerised formats**

1. Requests for information and for administrative enquiries pursuant to Article 5 and their replies, acknowledgements, requests for additional background information, inability or refusal pursuant to Article 7 shall, as far as possible, be sent using a standard form established by the Commission by means of implementing acts. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 32(2).

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

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

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

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

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

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

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

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

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

The linguistic arrangements referred to in the first subparagraph shall not preclude Member States from communicating the information referred to in Articles 9 and 11 in any of the official languages of the Union. However, those linguistic arrangements may provide that the key elements of such information shall also be sent in another official language of the Union.

6. The automatic exchange of information on the country-by-country report pursuant to Article 10 shall be carried out using the standard form provided in Tables 1, 2 and 3 of Section III of Annex III. The Commission shall, by means of implementing acts, ☐ lay down ☒ the linguistic arrangements for that exchange. They shall not preclude Member States from communicating information referred to in Article 10 in any of the official and working languages of the Union. However, those linguistic arrangements may provide that the key elements of such information ☛ shall ☐ also be sent in another official language of the Union. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 32(2).

Article 25

Practical arrangements

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

Where necessary, the Commission shall ☞ , by means of implementing acts, ☒ adopt practical arrangements necessary for the implementation of the first subparagraph ☞ . Those implementing acts shall be adopted ☒ in accordance with the procedure referred to in Article 32(2).
2. The Commission shall be responsible for whatever development of the CCN network is necessary to permit the exchange of that information between Member States and for ensuring the security of the CCN network.

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

Member States shall ensure that each individual Reportable Person is notified of a breach of security with regard to his data when that breach is likely to adversely affect the protection of his personal data or privacy.

Member States shall waive all claims for the reimbursement of expenses incurred in applying this Directive except, where appropriate, in respect of fees paid to experts.

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.

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.

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

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

Until that directory is operational, the automatic exchange provided for in Article 9(1) and Article 11(13), (14) and (16) shall be carried out in accordance with paragraph 1 of this Article and the applicable practical arrangements.
6. Information communicated pursuant to Article 10(2) shall be provided by electronic means using the CCN network. The Commission shall, by means of implementing acts, adopt the necessary practical arrangements for the upgrading of the CCN network. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 32(2).

**Article 26**

**Specific obligations**

1. Member States shall take all necessary measures to:

   (a) ensure effective internal coordination within the organisation referred to in Article 4;
   (b) establish direct cooperation with the authorities of the other Member States referred to in Article 4;
   (c) ensure the smooth operation of the administrative cooperation arrangements provided for in this Directive.

2. For the purpose of the implementation and enforcement of the laws of the Member States giving effect to this Directive and to ensure the functioning of the administrative cooperation it establishes, Member States shall provide by law for access by tax authorities to the mechanisms, procedures, documents and information referred to in Articles 13, 30, 31 and 40 of Directive (EU) 2015/849.

3. The Commission shall communicate to each Member State any general information concerning the implementation and application of this Directive which it receives and which it is able to provide.

**CHAPTER V**

**RELATIONS WITH THE COMMISSION**

**Article 27**

**Evaluation**

1. Member States and the Commission shall examine and evaluate the functioning of the administrative cooperation provided for in this Directive.

2. Member States shall communicate to the Commission any relevant information necessary for the evaluation of the effectiveness of administrative cooperation in accordance with this Directive in combating tax evasion and tax avoidance.
3. Member States shall communicate to the Commission a yearly assessment of the effectiveness of the automatic exchange of information referred to in Articles 8 to 11 as well as the practical results achieved. The Commission shall, by means of implementing acts, adopt the form and the conditions of communication for that yearly assessment. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 32(2).

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

Article 28

Confidentiality of information

1. Information communicated to the Commission pursuant to this Directive shall be kept confidential by the Commission in accordance with the provisions applicable to Union authorities and may not be used for any purposes other than those required to determine whether and to what extent Member States comply with this Directive.

2. Information communicated to the Commission by a Member State under Article 27, as well as any report or document produced by the Commission using such information, may be transmitted to other Member States. Such transmitted information shall be covered by the obligation of official secrecy and enjoy the protection extended to similar information under the national law of the Member State which received it.

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

CHAPTER VI

RELATIONS WITH THIRD COUNTRIES

Article 29

Exchange of information with third countries

1. Where the competent authority of a Member State receives from a third country information that is foreseeably relevant to the administration and enforcement of the domestic laws of that Member State concerning the taxes referred to in Article 2, that authority may, in so far as this is allowed pursuant to an agreement with that third country, provide that information to the
competent authorities of Member States for which that information might be useful and to any requesting authorities.

2. Competent authorities may communicate, in accordance with their domestic provisions on the communication of personal data to third countries, information obtained in accordance with this Directive to a third country, provided that all of the following conditions are met:

(a) the competent authority of the Member State from which the information originates have consented to that communication;

(b) the third country concerned has given an undertaking to provide the cooperation required to gather evidence of the irregular or illegal nature of transactions which appear to contravene or constitute an abuse of tax legislation.

CHAPTER VII

GENERAL AND FINAL PROVISIONS

Article 30

Data protection

1. All exchange of information pursuant to this Directive shall be subject to Regulation (EU) 2016/679. However, Member States shall, for the purpose of the correct application of this Directive, restrict the scope of the obligations and rights provided for in Article 13, Article 14(1) and Article 15 of Regulation (EU) 2016/679 to the extent required in order to safeguard the interests referred to in Article 23(1)(e) of that Regulation.

2. Regulation (EU) 2018/1725 applies to any processing of personal data under this Directive by the Union institutions and bodies. However, for the purpose of the correct application of this Directive, the scope of the obligations and rights provided for in Article 15, Article 16(1), and Articles 17 to 21 of Regulation (EU) 2018/1725 shall be restricted to the extent required in order to safeguard the interests referred to in Article 25(1)(c) of that Regulation.

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

4. Notwithstanding paragraph 1, each Member State shall ensure that each Reporting Financial Institution under its jurisdiction informs each individual Reportable Person concerned that the information relating to him referred to in Article 8(4) will be collected and transferred in accordance with this Directive and shall ensure that the Reporting Financial Institution provides to that individual all information that he is entitled to under Regulation (EU) 2016/679 in...
sufficient time for the individual to exercise his data protection rights and, in any case, before
the Reporting Financial Institution concerned reports the information referred to in Article 8(4)
to the competent authority of its Member State of residence.

5. Information processed in accordance with this Directive shall be retained for no longer than
necessary to achieve the purposes of this Directive, and in any case in accordance with each
data controller's domestic rules on statute of limitations.

Article 31
Penalties
Member States shall lay down the rules on penalties applicable to infringements of national
provisions adopted pursuant to this Directive and concerning Articles 10 and 11, and shall take
all measures necessary to ensure that they are implemented. The penalties provided for shall be
effective, proportionate and dissuasive.

Article 32
Committee procedure
1. The Commission shall be assisted by the Committee on administrative cooperation for
taxation. That committee shall be a committee within the meaning of Regulation (EU)
No 182/2011.

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

Article 33
Reporting
1. Every five years after 1 January 2018, the Commission shall submit a report on the
application of this Directive to the European Parliament and to the Council.

2. Every two years after 1 July 2020, the Member States and the Commission shall evaluate the
relevance of Annex IV and the Commission shall present a report to the Council. That report
shall, where appropriate, be accompanied by a legislative proposal.
Article 34
Communication

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

Article 35
Repeal

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

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

Article 36
Entry into force

This Directive shall enter into force on 2 July 2020.

Article 37
Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the Council
The President

ANNEX I
REPORTING AND DUE DILIGENCE RULES FOR FINANCIAL ACCOUNT INFORMATION

This Annex lays down the reporting and due diligence rules that have to be applied by Reporting Financial Institutions in order to enable the Member States to communicate, by automatic exchange, the information referred to in Article 8(4) of this Directive. This Annex also describes the rules and administrative procedures that Member States shall have in place to ensure effective implementation of, and compliance with, the reporting and due diligence procedures set out below.
SECTION I

GENERAL REPORTING REQUIREMENTS

A. Subject to points C, D and E, each Reporting Financial Institution must report to the competent authority of its Member State the following information with respect to each Reportable Account of such Reporting Financial Institution:

1. the name, address, Member State(s) of residence, TIN(s) and date and place of birth (in the case of an individual) of each Reportable Person that is an Account Holder of the account and, in the case of any Entity that is an Account Holder and that, after application of the due diligence procedures consistent with Sections V, VI and VII, is identified as having one or more Controlling Persons that are Reportable Persons, the name, address, Member State(s) and (if any) other jurisdiction(s) of residence and TIN(s) of the Entity and the name, address, Member State(s) of residence, TIN(s) and date and place of birth of each Reportable Person;

2. the account number (or functional equivalent in the absence of an account number);

3. the name and identifying number (if any) of the Reporting Financial Institution;

4. the account balance or value (including, in the case of a Cash Value Insurance Contract or Annuity Contract, the Cash Value or surrender value) as of the end of the relevant calendar year or other appropriate reporting period or, if the account was closed during such year or period, the closure of the account;

5. in the case of any Custodial Account:
   (a) the total gross amount of interest, the total gross amount of dividends, and the total gross amount of other income generated with respect to the assets held in the account, in each case paid or credited to the account (or with respect to the account) during the calendar year or other appropriate reporting period; and
   (b) the total gross proceeds from the sale or redemption of Financial Assets paid or credited to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Financial Institution acted as a custodian, broker, nominee, or otherwise as an agent for the Account Holder;

6. in the case of any Depository Account, the total gross amount of interest paid or credited to the account during the calendar year or other appropriate reporting period; and

7. in the case of any account not described in point A(5) or (6), the total gross amount paid or credited to the Account Holder with respect to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Financial Institution is the obligor or debtor, including the aggregate amount of any redemption payments made to the Account Holder during the calendar year or other appropriate reporting period.

B. The information reported must identify the currency in which each amount is denominated.
C. Notwithstanding point A(1), with respect to each Reportable Account that is a Pre-existing Account, the TIN(s) or date of birth is not required to be reported if such TIN(s) or date of birth is not in the records of the Reporting Financial Institution and is not otherwise required to be collected by such Reporting Financial Institution under domestic law or any Union legal instrument. However, a Reporting Financial Institution is required to use reasonable efforts to obtain the TIN(s) and date of birth with respect to Pre-existing Accounts by the end of the second calendar year following the year in which Pre-existing Accounts were identified as Reportable Accounts.

D. Notwithstanding point A(1), the TIN is not required to be reported if a TIN is not issued by the relevant Member State or other jurisdiction of residence.

E. Notwithstanding point A(1), the place of birth is not required to be reported unless:

(1) the Reporting Financial Institution is otherwise required to obtain and report it under domestic law or the Reporting Financial Institution is or has been otherwise required to obtain and report it under any Union legal instrument that was in effect on 5 January 2015; and

(2) it is available in the electronically searchable data maintained by the Reporting Financial Institution.

SECTION II

GENERAL DUE DILIGENCE REQUIREMENTS

A. An account is treated as a Reportable Account beginning as of the date it is identified as such pursuant to the due diligence procedures in Sections II through VII and, unless otherwise provided, information with respect to a Reportable Account must be reported annually in the calendar year following the year to which the information relates.

B. The balance or value of an account is determined as of the last day of the calendar year or other appropriate reporting period.

C. Where a balance or value threshold is to be determined as of the last day of a calendar year, the relevant balance or value must be determined as of the last day of the reporting period that ends with or within that calendar year.

D. Each Member State may allow Reporting Financial Institutions to use service providers to fulfil the reporting and due diligence obligations imposed on such Reporting Financial Institutions, as contemplated in domestic law, but these obligations shall remain the responsibility of the Reporting Financial Institutions.

E. Each Member State may allow Reporting Financial Institutions to apply the due diligence procedures for New Accounts to Pre-existing Accounts, and the due diligence procedures for High Value Accounts to Lower Value Accounts. Where a Member State allows New Account due diligence procedures to be used for Pre-existing Accounts, the rules otherwise applicable to Pre-existing Accounts continue to apply.
SECTION III

DUE DILIGENCE FOR PRE-EXISTING INDIVIDUAL ACCOUNTS

A. Introduction. The following procedures apply for purposes of identifying Reportable Accounts among Pre-existing Individual Accounts.

B. Lower Value Accounts. The following procedures apply with respect to Lower Value Accounts:

1. Residence Address. If the Reporting Financial Institution has in its records a current residence address for the individual Account Holder based on Documentary Evidence, the Reporting Financial Institution may treat the individual Account Holder as being a resident for tax purposes of the Member State or other jurisdiction in which the address is located for purposes of determining whether such individual Account Holder is a Reportable Person.

2. Electronic Record Search. If the Reporting Financial Institution does not rely on a current residence address for the individual Account Holder based on Documentary Evidence as set forth in point B(1), the Reporting Financial Institution must review electronically searchable data maintained by the Reporting Financial Institution for any of the following indicia and apply points B(3) to (6):

   (a) identification of the Account Holder as a resident of a Member State;
   (b) current mailing or residence address (including a post office box) in a Member State;
   (c) one or more telephone numbers in a Member State and no telephone number in the Member State of the Reporting Financial Institution;
   (d) standing instructions (other than with respect to a Depository Account) to transfer funds to an account maintained in a Member State;
   (e) currently effective power of attorney or signatory authority granted to a person with an address in a Member State; or
   (f) a ‘hold mail’ instruction or ‘in-care-of’ address in a Member State if the Reporting Financial Institution does not have any other address on file for the Account Holder.

3. If none of the indicia listed in point B(2) are discovered in the electronic search, then no further action is required until there is a change in circumstances that results in one or more indicia being associated with the account, or the account becomes a High Value Account.

4. If any of the indicia listed in point B(2)(a) through (e) are discovered in the electronic search, or if there is a change in circumstances that results in one or more indicia being associated with the account, then the Reporting Financial Institution must treat the Account Holder as a resident for tax purposes of each Member State for which an indicium is identified, unless it elects to apply point B(6) and one of the exceptions in that point applies with respect to that account.
5. If a ‘hold mail’ instruction or ‘in-care-of’ address is discovered in the electronic search and no other address and none of the other indicia listed in point B(2)(a) through (e) are identified for the Account Holder, the Reporting Financial Institution must, in the order most appropriate to the circumstances, apply the paper record search described in point C(2), or seek to obtain from the Account Holder a self-certification or Documentary Evidence to establish the residence(s) for tax purposes of such Account Holder. If the paper search fails to establish an indicium and the attempt to obtain the self-certification or Documentary Evidence is not successful, the Reporting Financial Institution must report the account to the competent authority of its Member State as an undocumented account.

6. Notwithstanding a finding of indicia under point B(2), a Reporting Financial Institution is not required to treat an Account Holder as a resident of a Member State if:

(a) the Account Holder information contains a current mailing or residence address in that Member State, one or more telephone numbers in that Member State (and no telephone number in the Member State of the Reporting Financial Institution) or standing instructions (with respect to Financial Accounts other than Depository Accounts) to transfer funds to an account maintained in a Member State, and the Reporting Financial Institution obtains, or has previously reviewed and maintains, a record of:

(i) a self-certification from the Account Holder of the Member State(s) or other jurisdiction(s) of residence of such Account Holder that does not include that Member State; and

(ii) Documentary Evidence establishing the Account Holder’s non-reportable status;

(b) the Account Holder information contains a currently effective power of attorney or signatory authority granted to a person with an address in that Member State, and the Reporting Financial Institution obtains, or has previously reviewed and maintains, a record of:

(i) a self-certification from the Account Holder of the Member State(s) or other jurisdiction(s) of residence of such Account Holder that does not include that Member State; or

(ii) Documentary Evidence establishing the Account Holder’s non-reportable status.

C. Enhanced Review Procedures for High Value Accounts. The following enhanced review procedures apply with respect to High Value Accounts.

1. Electronic Record search. With respect to High Value Accounts, the Reporting Financial Institution must review electronically searchable data maintained by the Reporting Financial Institution for any of the indicia described in point B(2).

2. Paper Record Search. If the Reporting Financial Institution's electronically searchable databases include fields for, and capture all of the information described in point C(3), then a further paper record search is not required. If the electronic databases do not capture all of this information, then with respect to a High Value Account the Reporting Financial Institution must also review the current customer master file and, to the extent not contained in the current
customer master file, the following documents associated with the account and obtained by the Reporting Financial Institution within the last five years for any of the indicia described in point B(2):

(a) the most recent Documentary Evidence collected with respect to the account;
(b) the most recent account opening contract or documentation;
(c) the most recent documentation obtained by the Reporting Financial Institution pursuant to AML/KYC Procedures or for other regulatory purposes;
(d) any power of attorney or signature authority forms currently in effect; and
(e) any standing instructions (other than with respect to a Depository Account) to transfer funds currently in effect.

3. Exception To The Extent Databases Contain Sufficient Information. A Reporting Financial Institution is not required to perform the paper record search described in point C(2) to the extent the Reporting Financial Institution's electronically searchable information includes the following:

(a) the Account Holder's residence status;
(b) the Account Holder's residence address and mailing address currently on file with the Reporting Financial Institution;
(c) the Account Holder's telephone number(s) currently on file, if any, with the Reporting Financial Institution;
(d) in the case of Financial Accounts other than Depository Accounts, whether there are standing instructions to transfer funds in the account to another account (including an account at another branch of the Reporting Financial Institution or another Financial Institution);
(e) whether there is a current ‘in-care-of’ address or ‘hold mail’ instruction for the Account Holder; and
(f) whether there is any power of attorney or signatory authority for the account.

4. Relationship Manager Inquiry for Actual Knowledge. In addition to the electronic and paper record searches described in points C(1) and (2), the Reporting Financial Institution must treat as a Reportable Account any High Value Account assigned to a relationship manager (including any Financial Accounts aggregated with that High Value Account) if the relationship manager has actual knowledge that the Account Holder is a Reportable Person.

5. Effect of Finding Indicia.

(a) If none of the indicia listed in point B(2) are discovered in the enhanced review of High Value Accounts described in point C, and the account is not identified as held by a Reportable Person in point C(4), then further action is not required until there is a change in circumstances that results in one or more indicia being associated with the account.

(b) If any of the indicia listed in point B(2)(a) through (e) are discovered in the enhanced review of High Value Accounts described in point C, or if there is a subsequent change in circumstances that results in one or more
indicia being associated with the account, then the Reporting Financial Institution must treat the account as a Reportable Account with respect to each Member State for which an indicium is identified unless it elects to apply point B(6) and one of the exceptions in that point applies with respect to that account.

(c) If a ‘hold mail’ instruction or ‘in-care-of’ address is discovered in the enhanced review of High Value Accounts described in point C, and no other address and none of the other indicia listed in points B(2)(a) through (e) are identified for the Account Holder, the Reporting Financial Institution must obtain from such Account Holder a self-certification or Documentary Evidence to establish the residence(s) for tax purposes of the Account Holder. If the Reporting Financial Institution cannot obtain such self-certification or Documentary Evidence, it must report the account to the competent authority of its Member State as an undocumented account.

6. If a Pre-existing Individual Account was not a High Value Account as of 31 December 2015, but becomes a High Value Account as of the last day of a subsequent calendar year, the Reporting Financial Institution must complete the enhanced review procedures described in point C with respect to such account within the calendar year following the year in which the account becomes a High Value Account. If based on this review such account is identified as a Reportable Account, the Reporting Financial Institution must report the required information about such account with respect to the year in which it is identified as a Reportable Account and subsequent years on an annual basis, unless the Account Holder ceases to be a Reportable Person.

7. Once a Reporting Financial Institution applies the enhanced review procedures described in point C to a High Value Account, the Reporting Financial Institution is not required to reapply such procedures, other than the relationship manager inquiry described in point C(4), to the same High Value Account in any subsequent year unless the account is undocumented where the Reporting Financial Institution should reapply them annually until such account ceases to be undocumented.

8. If there is a change of circumstances with respect to a High Value Account that results in one or more indicia described in point B(2) being associated with the account, then the Reporting Financial Institution must treat the account as a Reportable Account with respect to each Member State for which an indicium is identified unless it elects to apply point B(6) and one of the exceptions in that point applies with respect to that account.

9. A Reporting Financial Institution must implement procedures to ensure that a relationship manager identifies any change in circumstances of an account. For example, if a relationship manager is notified that the Account Holder has a new mailing address in a Member State, the Reporting Financial Institution is required to treat the new address as a change in circumstances and, if it elects to apply point B(6), is required to obtain the appropriate documentation from the Account Holder.

D. Any Pre-existing Individual Account that has been identified as a Reportable Account under this Section must be treated as a Reportable Account in all subsequent years, unless the Account Holder ceases to be a Reportable Person.
SECTION IV

DUE DILIGENCE FOR NEW INDIVIDUAL ACCOUNTS

The following procedures apply for purposes of identifying Reportable Accounts among New Individual Accounts.

A. With respect to New Individual Accounts, upon account opening, the Reporting Financial Institution must obtain a self-certification, which may be part of the account opening documentation, that allows the Reporting Financial Institution to determine the Account Holder's residence(s) for tax purposes and confirm the reasonableness of such self-certification based on the information obtained by the Reporting Financial Institution in connection with the opening of the account, including any documentation collected pursuant to AML/KYC Procedures.

B. If the self-certification establishes that the Account Holder is resident for tax purposes in a Member State, the Reporting Financial Institution must treat the account as a Reportable Account and the self-certification must also include the Account Holder's TIN with respect to such Member State (subject to point D of Section I) and date of birth.

C. If there is a change of circumstances with respect to a New Individual Account that causes the Reporting Financial Institution to know, or have reason to know, that the original self-certification is incorrect or unreliable, the Reporting Financial Institution cannot rely on the original self-certification and must obtain a valid self-certification that establishes the residence(s) for tax purposes of the Account Holder.

SECTION V

DUE DILIGENCE FOR PRE-EXISTING ENTITY ACCOUNTS

The following procedures apply for purposes of identifying Reportable Accounts among Pre-existing Entity Accounts.

A. Entity Accounts Not Required to Be Reviewed, Identified or Reported. Unless the Reporting Financial Institution elects otherwise, either with respect to all Pre-existing Entity Accounts or, separately, with respect to any clearly identified group of such accounts, a Pre-existing Entity Account with an aggregate account balance or value that did not exceed, as of 31 December 2015, an amount denominated in the domestic currency of each Member State that corresponds to USD 250,000 is not required to be reviewed, identified, or reported as a Reportable Account until the aggregate account balance or value exceeds that amount as of the last day of any subsequent calendar year.

B. Entity Accounts Subject to Review. A Pre-existing Entity Account that has an aggregate account balance or value that exceeded, as of 31 December 2015, an amount denominated in the domestic currency of each Member State that corresponds to USD 250,000 and a Pre-existing Entity Account that did not exceed, as of 31 December 2015, that amount but the aggregate account balance or value of which exceeds such amount as of the last day of any subsequent calendar year must be reviewed in accordance with the procedures set forth in point D.
C. Entity Accounts With Respect to Which Reporting Is Required. With respect to Pre-existing Entity Accounts described in point B, only accounts that are held by one or more Entities that are Reportable Persons, or by Passive NFEs with one or more Controlling Persons who are Reportable Persons, shall be treated as Reportable Accounts.

D. Review Procedures for Identifying Entity Accounts With Respect to Which Reporting Is Required. For Pre-existing Entity Accounts described in point B, a Reporting Financial Institution must apply the following review procedures to determine whether the account is held by one or more Reportable Persons, or by Passive NFEs with one or more Controlling Persons who are Reportable Persons:

1. Determine Whether the Entity Is a Reportable Person.
   (a) Review information maintained for regulatory or customer relationship purposes (including information collected pursuant to AML/KYC Procedures) to determine whether the information indicates that the Account Holder is resident in a Member State. For this purpose, information indicating that the Account Holder is resident in a Member State includes a place of incorporation or organisation, or an address in a Member State.
   (b) If the information indicates that the Account Holder is resident in a Member State, the Reporting Financial Institution must treat the account as a Reportable Account unless it obtains a self-certification from the Account Holder, or reasonably determines based on information in its possession or that is publicly available, that the Account Holder is not a Reportable Person.

2. Determine Whether the Entity is a Passive NFE with One or More Controlling Persons who are Reportable Persons. With respect to an Account Holder of a Pre-existing Entity Account (including an Entity that is a Reportable Person), the Reporting Financial Institution must determine whether the Account Holder is a Passive NFE with one or more Controlling Persons who are Reportable Persons. If any of the Controlling Persons of a Passive NFE is a Reportable Person, then the account must be treated as a Reportable Account. In making these determinations the Reporting Financial Institution must follow the guidance in points (a), (b) and (c) in the order most appropriate under the circumstances.
   (a) Determining whether the Account Holder is a Passive NFE. For purposes of determining whether the Account Holder is a Passive NFE, the Reporting Financial Institution must obtain a self-certification from the Account Holder to establish its status, unless it has information in its possession or that is publicly available, based on which it can reasonably determine that the Account Holder is an Active NFE or a Financial Institution other than an Investment Entity described in point A(6)(b) of Section VIII that is not a Participating Jurisdiction Financial Institution.
   (b) Determining the Controlling Persons of an Account Holder. For the purposes of determining the Controlling Persons of an Account Holder, a Reporting Financial Institution may rely on information collected and maintained pursuant to AML/KYC Procedures.
(c) Determining whether a Controlling Person of a Passive NFE is a Reportable Person. For the purposes of determining whether a Controlling Person of a Passive NFE is a Reportable Person, a Reporting Financial Institution may rely on:

(i) information collected and maintained pursuant to AML/KYC Procedures in the case of a Pre-existing Entity Account held by one or more NFEs with an aggregate account balance or value that does not exceed an amount denominated in the domestic currency of each Member State that corresponds to USD 1 000 000; or

(ii) a self-certification from the Account Holder or such Controlling Person of the Member State(s) or other jurisdiction(s) in which the controlling person is resident for tax purposes.

E. Timing of Review and Additional Procedures Applicable to Pre-existing Entity Accounts

1. Review of Pre-existing Entity Accounts with an aggregate account balance or value that did not exceed, as of 31 December 2015, an amount denominated in the domestic currency of each Member State that corresponds to USD 250 000 but exceeds that amount as of 31 December of a subsequent year must be completed within the calendar year following the year in which the aggregate account balance or value exceeds such amount.

2. If there is a change of circumstances with respect to a Pre-existing Entity Account that causes the Reporting Financial Institution to know, or have reason to know, that the self-certification or other documentation associated with an account is incorrect or unreliable, the Reporting Financial Institution must re-determine the status of the account in accordance with the procedures set forth in point D.

SECTION VI

DUE DILIGENCE FOR NEW ENTITY ACCOUNTS

The following procedures apply for purposes of identifying Reportable Accounts among New Entity Accounts.

Review Procedures for Identifying Entity Accounts With Respect to Which Reporting Is Required. For New Entity Accounts, a Reporting Financial Institution must apply the following review procedures to determine whether the account is held by one or more Reportable Persons, or by Passive NFEs with one or more Controlling Persons who are Reportable Persons:

1. Determine Whether the Entity Is a Reportable Person.

   (a) Obtain a self-certification, which may be part of the account opening documentation, that allows the Reporting Financial Institution to determine the Account Holder's residence(s) for tax purposes and confirm the reasonableness of such self-certification based on the information obtained by the Reporting Financial Institution in connection with the opening of the account, including any documentation collected pursuant to AML/KYC Procedures. If the Entity certifies that it has no residence for tax purposes, the Reporting Financial Institution may rely on the address of the principal office of the Entity to determine the residence of the Account Holder.
(b) If the self-certification indicates that the Account Holder is resident in a Member State, the Reporting Financial Institution must treat the account as a Reportable Account, unless it reasonably determines based on information in its possession or that is publicly available that the Account Holder is not a Reportable Person with respect to such Member State.

2. Determine Whether the Entity is a Passive NFE with One or More Controlling Persons Who Are Reportable Persons. With respect to an Account Holder of a New Entity Account (including an Entity that is a Reportable Person), the Reporting Financial Institution must determine whether the Account Holder is a Passive NFE with one or more Controlling Persons who are Reportable Persons. If any of the Controlling Persons of a Passive NFE is a Reportable Person, then the account must be treated as a Reportable Account. In making these determinations the Reporting Financial Institution must follow the guidance in points (a), (b) and (c) in the order most appropriate under the circumstances.

(a) Determining whether the Account Holder is a Passive NFE. For purposes of determining whether the Account Holder is a Passive NFE, the Reporting Financial Institution must rely on a self-certification from the Account Holder to establish its status, unless it has information in its possession or that is publicly available, based on which it can reasonably determine that the Account Holder is an Active NFE or a Financial Institution other than an Investment Entity described in point A(6)(b) of Section VIII that is not a Participating Jurisdiction Financial Institution.

(b) Determining the Controlling Persons of an Account Holder. For purposes of determining the Controlling Persons of an Account Holder, a Reporting Financial Institution may rely on information collected and maintained pursuant to AML/KYC Procedures.

(c) Determining whether a Controlling Person of a Passive NFE is a Reportable Person. For purposes of determining whether a controlling person of a Passive NFE is a Reportable Person, a Reporting Financial Institution may rely on a self-certification from the Account Holder or such Controlling Person.

SECTION VII

SPECIAL DUE DILIGENCE RULES

The following additional rules apply in implementing the due diligence procedures described above:

A. Reliance on Self-Certifications and Documentary Evidence. A Reporting Financial Institution may not rely on a self-certification or Documentary Evidence if the Reporting Financial Institution knows or has reason to know that the self-certification or Documentary Evidence is incorrect or unreliable.

B. Alternative Procedures for Financial Accounts held by Individual Beneficiaries of a Cash Value Insurance Contract or an Annuity Contract and for a Group Cash Value Insurance Contract or Group Annuity Contract. A Reporting Financial Institution may presume that an individual beneficiary (other than the owner) of a Cash Value Insurance Contract or an Annuity Contract receiving a death benefit is not a Reportable Person and may treat such Financial Account as other than a Reportable Account unless the Reporting Financial Institution has actual knowledge, or reason to know,
that the beneficiary is a Reportable Person. A Reporting Financial Institution has reason to know that a beneficiary of a Cash Value Insurance Contract or an Annuity Contract is a Reportable Person if the information collected by the Reporting Financial Institution and associated with the beneficiary contains indicia as described in point B of Section III. If a Reporting Financial Institution has actual knowledge, or reason to know, that the beneficiary is a Reportable Person, the Reporting Financial Institution must follow the procedures in point B of Section III.

A Reporting Financial Institution may treat a Financial Account that is a member's interest in a Group Cash Value Insurance Contract or Group Annuity Contract as a Financial Account that is not a Reportable Account until the date on which an amount is payable to the employee/certificate holder or beneficiary, if the Financial Account that is a member's interest in a Group Cash Value Insurance Contract or Group Annuity Contract meets the following requirements:

(i) the Group Cash Value Insurance Contract or Group Annuity Contract is issued to an employer and covers 25 or more employees/certificate holders;

(ii) the employee/certificate holders are entitled to receive any contract value related to their interests and to name beneficiaries for the benefit payable upon the employee's death; and

(iii) the aggregate amount payable to any employee/certificate holder or beneficiary does not exceed an amount denominated in the domestic currency of each Member State that corresponds to USD 1 000 000.

The term ‘Group Cash Value Insurance Contract’ means a Cash Value Insurance Contract that (i) provides coverage on individuals who are affiliated through an employer, trade association, labour union, or other association or group; and (ii) charges a premium for each member of the group (or member of a class within the group) that is determined without regard to the individual health characteristics other than age, gender, and smoking habits of the member (or class of members) of the group.

The term ‘Group Annuity Contract’ means an Annuity Contract under which the obligees are individuals who are affiliated through an employer, trade association, labour union, or other association or group.

C. Account Balance Aggregation and Currency Rules

1. Aggregation of Individual Accounts. For purposes of determining the aggregate balance or value of Financial Accounts held by an individual, a Reporting Financial Institution is required to aggregate all Financial Accounts maintained by the Reporting Financial Institution, or by a Related Entity, but only to the extent that the Reporting Financial Institution's computerised systems link the Financial Accounts by reference to a data element such as client number or TIN, and allow account balances or values to be aggregated. Each holder of a jointly held Financial Account shall be attributed the entire balance or value of the jointly held Financial Account for purposes of applying the aggregation requirements described in this point.

2. Aggregation of Entity Accounts. For purposes of determining the aggregate balance or value of Financial Accounts held by an Entity, a Reporting Financial Institution is required to take into account all Financial Accounts that are maintained by the Reporting Financial Institution, or by a Related Entity, but only to the extent that the Reporting Financial Institution's computerised systems
link the Financial Accounts by reference to a data element such as client number or TIN, and allow account balances or values to be aggregated. Each holder of a jointly held Financial Account shall be attributed the entire balance or value of the jointly held Financial Account for purposes of applying the aggregation requirements described in this point.

3. Special Aggregation Rule Applicable to Relationship Managers. For purposes of determining the aggregate balance or value of Financial Accounts held by a person to determine whether a financial account is a High Value Account, a Reporting Financial Institution is also required, in the case of any Financial Accounts that a relationship manager knows, or has reason to know, are directly or indirectly owned, controlled, or established (other than in a fiduciary capacity) by the same person, to aggregate all such accounts.

4. Amounts Read to Include Equivalent in Other Currencies. All amounts denominated in the domestic currency of each Member State shall be read to include equivalent amounts in other currencies, as determined by domestic law.

SECTION VIII

DEFINED TERMS

The following terms have the meanings set forth below:

A. Reporting Financial Institution

1. The term ‘Reporting Financial Institution’ means any Member State Financial Institution that is not a Non-Reporting Financial Institution. The term ‘Member State Financial Institution’ means: (i) any Financial Institution that is resident in a Member State, but excludes any branch of that Financial Institution that is located outside that Member State; and (ii) any branch of a Financial Institution that is not resident in a Member State, if that branch is located in that Member State.

2. The term ‘Participating Jurisdiction Financial Institution’ means (i) any Financial Institution that is resident in a Participating Jurisdiction, but excludes any branch of that Financial Institution that is located outside such Participating Jurisdiction; and (ii) any branch of a Financial Institution that is not resident in a Participating Jurisdiction, if that branch is located in such Participating Jurisdiction.

3. The term ‘Financial Institution’ means a Custodial Institution, a Depository Institution, an Investment Entity, or a Specified Insurance Company.

4. The term ‘Custodial Institution’ means any Entity that holds, as a substantial portion of its business, Financial Assets for the account of others. An Entity holds Financial Assets for the account of others as a substantial portion of its business if the Entity's gross income attributable to the holding of Financial Assets and related financial services equals or exceeds 20% of the Entity's gross income during the shorter of: (i) the three-year period that ends on 31 December (or the final day of a non-calendar year accounting period) prior to the year in which the determination is being made; or (ii) the period during which the Entity has been in existence.
5. The term ‘Depository Institution’ means any Entity that accepts deposits in the ordinary course of a banking or similar business.

6. The term ‘Investment Entity’ means any Entity:
   
   (a) which primarily conducts as a business one or more of the following activities or operations for or on behalf of a customer:
       
       (i) trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.); foreign exchange; exchange, interest rate and index instruments; transferable securities; or commodity futures trading;
       
       (ii) individual and collective portfolio management; or
       
       (iii) otherwise investing, administering, or managing Financial Assets or money on behalf of other persons;
   
   or

   (b) the gross income of which is primarily attributable to investing, reinvesting, or trading in Financial Assets, if the Entity is managed by another Entity that is a Depository Institution, a Custodial Institution, a Specified Insurance Company, or an Investment Entity described in point A(6)(a).

An Entity is treated as primarily conducting as a business one or more of the activities described in point A(6)(a), or an Entity's gross income is primarily attributable to investing, reinvesting, or trading in Financial Assets for the purposes of point A(6)(b), if the Entity's gross income attributable to the relevant activities equals or exceeds 50% of the Entity's gross income during the shorter of: (i) the three-year period ending on 31 December of the year preceding the year in which the determination is made; or (ii) the period during which the Entity has been in existence. The term ‘Investment Entity’ does not include an Entity that is an Active NFE because that Entity meets any of the criteria in points D(8)(d) through (g).

This point shall be interpreted in a manner consistent with similar language set forth in the definition of ‘financial institution’ in the Financial Action Task Force Recommendations.

7. The term ‘Financial Asset’ includes a security (for example, a share of stock in a corporation; partnership or beneficial ownership interest in a widely held or publicly traded partnership or trust; note, bond, debenture, or other evidence of indebtedness), partnership interest, commodity, swap (for example, interest rate swaps, currency swaps, basis swaps, interest rate caps, interest rate floors, commodity swaps, equity swaps, equity index swaps, and similar agreements), Insurance Contract or Annuity Contract, or any interest (including a futures or forward contract or option) in a security, partnership interest, commodity, swap, Insurance Contract, or Annuity Contract. The term ‘Financial Asset’ does not include a non-debt, direct interest in real property.

8. The term ‘Specified Insurance Company’ means any Entity that is an insurance company (or the holding company of an insurance company) which issues, or is obligated to make payments with respect to, a Cash Value Insurance Contract or an Annuity Contract.
B. Non-Reporting Financial Institution

1. The term ‘Non-Reporting Financial Institution’ means any Financial Institution which is:
   (a) a Governmental Entity, International Organisation or Central Bank, other than with respect to a payment that is derived from an obligation held in connection with a commercial financial activity of a type engaged in by a Specified Insurance Company, Custodial Institution, or Depository Institution;
   (b) a Broad Participation Retirement Fund; a Narrow Participation Retirement Fund; a Pension Fund of a Governmental Entity, International Organisation or Central Bank; or a Qualified Credit Card Issuer;
   (c) any other Entity that presents a low risk of being used to evade tax, has substantially similar characteristics to any of the Entities described in points B(1)(a) and (b), and is included in the list of Non-Reporting Financial Institutions referred to in Article 8(7) of this Directive, provided that the status of such Entity as a Non-Reporting Financial Institution does not frustrate the purposes of this Directive;
   (d) an Exempt Collective Investment Vehicle; or
   (e) a trust to the extent that the trustee of the trust is a Reporting Financial Institution and reports all information required to be reported pursuant to Section I with respect to all Reportable Accounts of the trust.

2. The term ‘Governmental Entity’ means the government of a Member State or other jurisdiction, any political subdivision of a Member State or other jurisdiction (which, for the avoidance of doubt, includes a state, province, county, or municipality), or any wholly owned agency or instrumentality of a Member State or other jurisdiction or of any one or more of the foregoing (each, a ‘Governmental Entity’). This category is comprised of the integral parts, controlled entities, and political subdivisions of a Member State or other jurisdiction.
   (a) An ‘integral part’ of a Member State or other jurisdiction means any person, organisation, agency, bureau, fund, instrumentality, or other body, however designated, that constitutes a governing authority of a Member State or other jurisdiction. The net earnings of the governing authority must be credited to its own account or to other accounts of the Member State or other jurisdiction, with no portion inuring to the benefit of any private person. An integral part does not include any individual who is a sovereign, official, or administrator acting in a private or personal capacity.
   (b) A ‘controlled entity’ means an Entity which is separate in form from the Member State or other jurisdiction or which otherwise constitutes a separate juridical entity, provided that:
      (i) the Entity is wholly owned and controlled by one or more Governmental Entities directly or through one or more controlled entities;
(ii) the Entity's net earnings are credited to its own account or to the accounts of one or more Governmental Entities, with no portion of its income inuring to the benefit of any private person; and

(iii) the Entity's assets vest in one or more Governmental Entities upon dissolution.

(c) Income does not inure to the benefit of private persons if such persons are the intended beneficiaries of a governmental programme, and the programme activities are performed for the general public with respect to the common welfare or relate to the administration of some phase of government. Notwithstanding the foregoing, however, income is considered to inure to the benefit of private persons if the income is derived from the use of a Governmental Entity to conduct a commercial business, such as a commercial banking business, that provides financial services to private persons.

3. The term ‘International Organisation’ means any international organisation or wholly owned agency or instrumentality thereof. This category includes any intergovernmental organisation (including a supranational organisation) (i) that is comprised primarily of governments; (ii) that has in effect a headquarters or substantially similar agreement with the Member State; and (iii) the income of which does not inure to the benefit of private persons.

4. The term ‘Central Bank’ means an institution that is by law or government sanction the principal authority, other than the government of the Member State itself, issuing instruments intended to circulate as currency. Such an institution may include an instrumentality that is separate from the government of the Member State, whether or not owned in whole or in part by the Member State.

5. The term ‘Broad Participation Retirement Fund’ means a fund established to provide retirement, disability, or death benefits, or any combination thereof, to beneficiaries who are current or former employees (or persons designated by such employees) of one or more employers in consideration for services rendered, provided that the fund:

(a) does not have a single beneficiary with a right to more than 5% of the fund's assets;

(b) is subject to government regulation and provides information reporting to the tax authorities; and

(c) satisfies at least one of the following requirements:

   (i) the fund is generally exempt from tax on investment income, or taxation of such income is deferred or taxed at a reduced rate, due to its status as a retirement or pension plan;

   (ii) the fund receives at least 50% of its total contributions (other than transfers of assets from other plans described in points B(5), (6) and (7) or from retirement and pension accounts described in point C(17)(a)) from the sponsoring employers;

   (iii) distributions or withdrawals from the fund are allowed only upon the occurrence of specified events related to retirement, disability, or death (except rollover distributions to other retirement funds described in points B(5), (6) and (7) or retirement and pension
accounts described in point C(17)(a)), or penalties apply to distributions or withdrawals made before such specified events; or

(iv) contributions (other than certain permitted make-up contributions) by employees to the fund are limited by reference to earned income of the employee or may not exceed, annually, an amount denominated in the domestic currency of each Member State that corresponds to USD 50 000, applying the rules set forth in point C of Section VII for account aggregation and currency translation.

6. The term ‘Narrow Participation Retirement Fund’ means a fund established to provide retirement, disability, or death benefits to beneficiaries who are current or former employees (or persons designated by such employees) of one or more employers in consideration for services rendered, provided that:

(a) the fund has fewer than 50 participants;
(b) the fund is sponsored by one or more employers that are not Investment Entities or Passive NFEs;
(c) the employee and employer contributions to the fund (other than transfers of assets from retirement and pension accounts described in point C(17)(a)) are limited by reference to earned income and compensation of the employee, respectively;
(d) participants that are not residents of the Member State in which the fund is established are not entitled to more than 20% of the fund's assets; and
(e) the fund is subject to government regulation and provides information reporting to the tax authorities.

7. The term ‘Pension Fund of a Governmental Entity, International Organisation or Central Bank’ means a fund established by a Governmental Entity, International Organisation or Central Bank to provide retirement, disability, or death benefits to beneficiaries or participants who are current or former employees (or persons designated by such employees), or who are not current or former employees, if the benefits provided to such beneficiaries or participants are in consideration of personal services performed for the Governmental Entity, International Organisation or Central Bank.

8. The term ‘Qualified Credit Card Issuer’ means a Financial Institution satisfying the following requirements:

(a) the Financial Institution is a Financial Institution solely because it is an issuer of credit cards that accepts deposits only when a customer makes a payment in excess of a balance due with respect to the card and the overpayment is not immediately returned to the customer; and
(b) beginning on or before 1 January 2016, the Financial Institution implements policies and procedures either to prevent a customer from making an overpayment in excess of an amount denominated in the domestic currency of each Member State that corresponds to USD 50 000, or to ensure that any customer overpayment in excess of that amount is refunded to the customer within 60 days, in each case applying the rules set forth in point C of Section VII for account aggregation and currency translation. For this purpose, a customer overpayment does not refer to
credit balances to the extent of disputed charges but does include credit balances resulting from merchandise returns.

9. The term ‘Exempt Collective Investment Vehicle’ means an Investment Entity that is regulated as a collective investment vehicle, provided that all of the interests in the collective investment vehicle are held by or through individuals or Entities that are not Reportable Persons, except a Passive NFE with Controlling Persons who are Reportable Persons.

C. Financial Account

1. The term ‘Financial Account’ means an account maintained by a Financial Institution, and includes a Depository Account, a Custodial Account and:

   (a) in the case of an Investment Entity, any equity or debt interest in the Financial Institution. Notwithstanding the foregoing, the term ‘Financial Account’ does not include any equity or debt interest in an Entity that is an Investment Entity solely because it (i) renders investment advice to, and acts on behalf of; or (ii) manages portfolios for, and acts on behalf of, a customer for the purpose of investing, managing, or administering Financial Assets deposited in the name of the customer with a Financial Institution other than such Entity;

   (b) in the case of a Financial Institution not described in point C(1)(a), any equity or debt interest in the Financial Institution, if the class of interests was established with the purpose of avoiding reporting in accordance with Section I; and

   (c) any Cash Value Insurance Contract and any Annuity Contract issued or maintained by a Financial Institution, other than a non-investment-linked, non-transferable immediate life annuity that is issued to an individual and monetises a pension or disability benefit provided under an account that is an Excluded Account.

The term ‘Financial Account’ does not include any account that is an Excluded Account.

2. The term ‘Depository Account’ includes any commercial, checking, savings, time, or thrift account, or an account that is evidenced by a certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness, or other similar instrument maintained by a Financial Institution in the ordinary course of a banking or similar business. A Depository Account also includes an amount held by an insurance company pursuant to a guaranteed investment contract or similar agreement to pay or credit interest thereon.

3. The term ‘Custodial Account’ means an account (other than an Insurance Contract or Annuity Contract) which holds one or more Financial Assets for the benefit of another person.

4. The term ‘Equity Interest’ means, in the case of a partnership that is a Financial Institution, either a capital or profits interest in the partnership. In the case of a trust that is a Financial Institution, an Equity Interest is considered to be held by any person treated as a settlor or beneficiary of all or a portion of the trust, or any other natural person exercising ultimate effective control over the trust. A Reportable Person will be treated as being a beneficiary of a trust if such Reportable Person has the right to receive directly or indirectly (for example,
through a nominee) a mandatory distribution or may receive, directly or indirectly, a discretionary distribution from the trust.

5. The term ‘Insurance Contract’ means a contract (other than an Annuity Contract) under which the issuer agrees to pay an amount upon the occurrence of a specified contingency involving mortality, morbidity, accident, liability, or property risk.

6. The term ‘Annuity Contract’ means a contract under which the issuer agrees to make payments for a period of time determined in whole or in part by reference to the life expectancy of one or more individuals. The term also includes a contract that is considered to be an Annuity Contract in accordance with the law, regulation, or practice of the Member State or other jurisdiction in which the contract was issued, and under which the issuer agrees to make payments for a term of years.

7. The term ‘Cash Value Insurance Contract’ means an Insurance Contract (other than an indemnity reinsurance contract between two insurance companies) that has a Cash Value.

8. The term ‘Cash Value’ means the greater of (i) the amount that the policyholder is entitled to receive upon surrender or termination of the contract (determined without reduction for any surrender charge or policy loan); and (ii) the amount the policyholder can borrow under or with regard to the contract. Notwithstanding the foregoing, the term ‘Cash Value’ does not include an amount payable under an Insurance Contract:

(a) solely by reason of the death of an individual insured under a life insurance contract;

(b) as a personal injury or sickness benefit or other benefit providing indemnification of an economic loss incurred upon the occurrence of the event insured against;

(c) as a refund of a previously paid premium (less cost of insurance charges whether or not actually imposed) under an Insurance Contract (other than an investment-linked life insurance or annuity contract) due to cancellation or termination of the contract, decrease in risk exposure during the effective period of the contract, or arising from the correction of a posting or similar error with regard to the premium for the contract;

(d) as a policyholder dividend (other than a termination dividend) provided that the dividend relates to an Insurance Contract under which the only benefits payable are described in point C(8)(b); or

(e) as a return of an advance premium or premium deposit for an Insurance Contract for which the premium is payable at least annually if the amount of the advance premium or premium deposit does not exceed the next annual premium that will be payable under the contract.

9. The term ‘Pre-existing Account’ means:

(a) a Financial Account maintained by a Reporting Financial Institution as of 31 December 2015;
(b) any Financial Account of an Account Holder, regardless of the date such Financial Account was opened, if:

(i) the Account Holder also holds with the Reporting Financial Institution (or with a Related Entity within the same Member State as the Reporting Financial Institution) a Financial Account that is a Pre-existing Account under point C(9)(a);

(ii) the Reporting Financial Institution (and, as applicable, the Related Entity within the same Member State as the Reporting Financial Institution) treats both of the aforementioned Financial Accounts, and any other Financial Accounts of the Account Holder that are treated as Pre-existing Accounts under point (b), as a single Financial Account for purposes of satisfying the standards of knowledge requirements set forth in point A of Section VII, and for purposes of determining the balance or value of any of the Financial Accounts when applying any of the account thresholds;

(iii) with respect to a Financial Account that is subject to AML/KYC Procedures, the Reporting Financial Institution is permitted to satisfy such AML/KYC Procedures for the Financial Account by relying upon the AML/KYC Procedures performed for the Pre-existing Account described in point C(9)(a); and

(iv) the opening of the Financial Account does not require the provision of new, additional or amended customer information by the Account Holder other than for the purposes of this Directive.

10. The term ‘New Account’ means a Financial Account maintained by a Reporting Financial Institution opened on or after 1 January 2016 unless it is treated as a Pre-existing Account under point C(9)(b).

11. The term ‘Pre-existing Individual Account’ means a Pre-existing Account held by one or more individuals.

12. The term ‘New Individual Account’ means a New Account held by one or more individuals.

13. The term ‘Pre-existing Entity Account’ means a Pre-existing Account held by one or more Entities.

14. The term ‘Lower Value Account’ means a Pre-existing Individual Account with an aggregate balance or value as of 31 December 2015 that did not exceed an amount denominated in the domestic currency of each Member State that corresponds to USD 1 000 000.

15. The term ‘High Value Account’ means a Pre-existing Individual Account with an aggregate balance or value that exceeds, as of 31 December 2015, or 31 December of any subsequent year, an amount denominated in the domestic currency of each Member State that corresponds to USD 1 000 000.

16. The term ‘New Entity Account’ means a New Account held by one or more Entities.
17. The term ‘Excluded Account’ means any of the following accounts:

(a) a retirement or pension account that satisfies the following requirements:

(i) the account is subject to regulation as a personal retirement account or is part of a registered or regulated retirement or pension plan for the provision of retirement or pension benefits (including disability or death benefits);

(ii) the account is tax-favoured (i.e., contributions to the account that would otherwise be subject to tax are deductible or excluded from the gross income of the Account Holder or taxed at a reduced rate, or taxation of investment income from the account is deferred or taxed at a reduced rate);

(iii) information reporting is required to the tax authorities with respect to the account;

(iv) withdrawals are conditioned on reaching a specified retirement age, disability, or death, or penalties apply to withdrawals made before such specified events; and

(v) either (i) annual contributions are limited to an amount denominated in the domestic currency of each Member State that corresponds to USD 50,000 or less; or (ii) there is a maximum lifetime contribution limit to the account of an amount denominated in the domestic currency of each Member State that corresponds to USD 1,000,000 or less, in each case applying the rules set forth in point C of Section VII for account aggregation and currency translation.

A Financial Account that otherwise satisfies the requirement of point C(17)(a)(v) will not fail to satisfy such requirement solely because such Financial Account may receive assets or funds transferred from one or more Financial Accounts that meet the requirements of point C(17)(a) or (b) or from one or more retirement or pension funds that meet the requirements of any of points B(5), (6) and (7);

(b) an account that satisfies the following requirements:

(i) the account is subject to regulation as an investment vehicle for purposes other than for retirement and is regularly traded on an established securities market, or the account is subject to regulation as a savings vehicle for purposes other than for retirement;

(ii) the account is tax-favoured (i.e., contributions to the account that would otherwise be subject to tax are deductible or excluded from the gross income of the Account Holder or taxed at a reduced rate, or taxation of investment income from the account is deferred or taxed at a reduced rate);

(iii) withdrawals are conditioned on meeting specific criteria related to the purpose of the investment or savings account (for example, the provision of educational or medical benefits), or penalties apply to withdrawals made before such criteria are met; and

(iv) annual contributions are limited to an amount denominated in the domestic currency of each Member State that corresponds to
USD 50,000 or less, applying the rules set forth in point C of Section VII for account aggregation and currency translation.

A Financial Account that otherwise satisfies the requirement of point C(17)(b)(iv) will not fail to satisfy such requirement solely because such Financial Account may receive assets or funds transferred from one or more Financial Accounts that meet the requirements of point C(17)(a) or (b) or from one or more retirement or pension funds that meet the requirements of any of points B(5), (6) and (7):

(c) a life insurance contract with a coverage period that will end before the insured individual attains age 90, provided that the contract satisfies the following requirements:

(i) periodic premiums, which do not decrease over time, are payable at least annually during the period the contract is in existence or until the insured attains age 90, whichever is shorter;

(ii) the contract has no contract value that any person can access (by withdrawal, loan, or otherwise) without terminating the contract;

(iii) the amount (other than a death benefit) payable upon cancellation or termination of the contract cannot exceed the aggregate premiums paid for the contract, less the sum of mortality, morbidity, and expense charges (whether or not actually imposed) for the period or periods of the contract's existence and any amounts paid prior to the cancellation or termination of the contract; and

(iv) the contract is not held by a transferee for value;

(d) an account that is held solely by an estate if the documentation for such account includes a copy of the deceased's will or death certificate;

(e) an account established in connection with any of the following:

(i) a court order or judgment.

(ii) a sale, exchange, or lease of real or personal property, provided that the account satisfies the following requirements:

– the account is funded solely with a down payment, earnest money, deposit in an amount appropriate to secure an obligation directly related to the transaction, or a similar payment, or is funded with a Financial Asset that is deposited in the account in connection with the sale, exchange, or lease of the property,

the account is established and used solely to secure the obligation of the purchaser to pay the purchase price for the property, the seller to pay any contingent liability, or the lessor or lessee to pay for any damages relating to the leased property as agreed under the lease,

the assets of the account, including the income earned thereon, will be paid or otherwise distributed for the benefit of the purchaser, seller, lessor, or lessee (including to satisfy such person's obligation) when the property is sold, exchanged, or surrendered, or the lease terminates,
the account is not a margin or similar account established in connection with a sale or exchange of a Financial Asset, and the account is not associated with an account described in point C(17)(f);

(iii) an obligation of a Financial Institution servicing a loan secured by real property to set aside a portion of a payment solely to facilitate the payment of taxes or insurance related to the real property at a later time;

(iv) an obligation of a Financial Institution solely to facilitate the payment of taxes at a later time;

(f) a Depository Account that satisfies the following requirements:

(i) the account exists solely because a customer makes a payment in excess of a balance due with respect to a credit card or other revolving credit facility and the overpayment is not immediately returned to the customer; and

(ii) the Financial Institution implements policies and procedures either to prevent a customer from making an overpayment in excess of an amount denominated in the domestic currency of each Member State that corresponds to USD 50 000, or to ensure that any customer overpayment in excess of that amount is refunded to the customer within 60 days, in each case applying the rules set forth in point C of Section VII for currency translation. For this purpose, a customer overpayment does not refer to credit balances to the extent of disputed charges but does include credit balances resulting from merchandise returns;

(g) any other account that presents a low risk of being used to evade tax, has substantially similar characteristics to any of the accounts described in points C(17)(a) through (f), and is included in the list of Excluded Accounts referred to in Article 8(7), provided that the status of such account as an Excluded Account does not frustrate the purposes of this Directive.

D. Reportable Account

1. The term ‘Reportable Account’ means a Financial Account that is maintained by a Member State Reporting Financial Institution and is held by one or more Reportable Persons or by a Passive NFE with one or more Controlling Persons that is a Reportable Person, provided it has been identified as such pursuant to the due diligence procedures described in Sections II through VII.

2. The term ‘Reportable Person’ means a Member State Person other than: (i) a corporation the stock of which is regularly traded on one or more established securities markets; (ii) any corporation that is a Related Entity of a corporation described in point (i); (iii) a Governmental Entity; (iv) an International Organisation; (v) a Central Bank; or (vi) a Financial Institution.

3. The term ‘Member State Person’ with regard to each Member State means an individual or Entity that is resident in any other Member State under the tax laws of that other Member State, or an estate of a decedent that was a resident of any other Member State. For this purpose, an Entity such as a partnership, limited
liability partnership or similar legal arrangement, which has no residence for tax purposes shall be treated as resident in the jurisdiction in which its place of effective management is situated.

4. The term ‘Participating Jurisdiction’ with regard to each Member State means:
   (a) any other Member State;
   (b) any other jurisdiction (i) with which the Member State concerned has an agreement in place pursuant to which that jurisdiction will provide the information specified in Section I; and (ii) which is identified in a list published by that Member State and notified to the European Commission;
   (c) any other jurisdiction (i) with which the Union has an agreement in place pursuant to which that jurisdiction will provide the information specified in Section I; and (ii) which is identified in a list published by the European Commission.

5. The term ‘Controlling Persons’ means the natural persons who exercise control over an Entity. In the case of a trust, that term means the settlor(s), the trustee(s), the protector(s) (if any), the beneficiary(ies) or class(es) of beneficiaries, and any other natural person(s) exercising ultimate effective control over the trust, and in the case of a legal arrangement other than a trust, such term means persons in equivalent or similar positions. The term ‘Controlling Persons’ must be interpreted in a manner consistent with the Financial Action Task Force Recommendations.

6. The term ‘NFE’ means any Entity that is not a Financial Institution.

7. The term ‘Passive NFE’ means any: (i) NFE that is not an Active NFE; or (ii) an Investment Entity described in point A(6)(b) that is not a Participating Jurisdiction Financial Institution.

8. The term ‘Active NFE’ means any NFE that meets any of the following criteria:
   (a) less than 50% of the NFE’s gross income for the preceding calendar year or other appropriate reporting period is passive income and less than 50% of the assets held by the NFE during the preceding calendar year or other appropriate reporting period are assets that produce or are held for the production of passive income;
   (b) the stock of the NFE is regularly traded on an established securities market or the NFE is a Related Entity of an Entity the stock of which is regularly traded on an established securities market;
   (c) the NFE is a Governmental Entity, an International Organisation, a Central Bank, or an Entity wholly owned by one or more of the foregoing;
   (d) substantially all of the activities of the NFE consist of holding (in whole or in part) the outstanding stock of, or providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a Financial Institution, except that an Entity does not qualify for this status if the Entity functions (or holds itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle whose purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes;
(e) the NFE is not yet operating a business and has no prior operating history, but is investing capital into assets with the intent to operate a business other than that of a Financial Institution, provided that the NFE does not qualify for this exception after the date that is 24 months after the date of the initial organisation of the NFE;

(f) the NFE was not a Financial Institution in the past five years, and is in the process of liquidating its assets or is reorganising with the intent to continue or recommence operations in a business other than that of a Financial Institution;

(g) the NFE primarily engages in financing and hedging transactions with, or for, Related Entities that are not Financial Institutions, and does not provide financing or hedging services to any Entity that is not a Related Entity, provided that the group of any such Related Entities is primarily engaged in a business other than that of a Financial Institution; or

(h) the NFE meets all of the following requirements:

(i) it is established and operated in its Member State or other jurisdiction of residence exclusively for religious, charitable, scientific, artistic, cultural, athletic, or educational purposes; or it is established and operated in its Member State or other jurisdiction of residence and it is a professional organisation, business league, chamber of commerce, labour organisation, agricultural or horticultural organisation, civic league or an organisation operated exclusively for the promotion of social welfare;

(ii) it is exempt from income tax in its Member State or other jurisdiction of residence;

(iii) it has no shareholders or members who have a proprietary or beneficial interest in its income or assets;

(iv) the applicable laws of the NFE's Member State or other jurisdiction of residence or the NFE's formation documents do not permit any income or assets of the NFE to be distributed to, or applied for the benefit of, a private person or non-charitable Entity other than pursuant to the conduct of the NFE's charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the NFE has purchased; and

(v) the applicable laws of the NFE's Member State or other jurisdiction of residence or the NFE's formation documents require that, upon the NFE's liquidation or dissolution, all of its assets be distributed to a Governmental Entity or other non-profit organisation, or escheat to the government of the NFE's Member State or other jurisdiction of residence or any political subdivision thereof.

E. Miscellaneous

1. The term ‘Account Holder’ means the person listed or identified as the holder of a Financial Account by the Financial Institution that maintains the account. A person, other than a Financial Institution, holding a Financial Account for the benefit or account of another person as agent, custodian, nominee, signatory,
investment advisor, or intermediary, is not treated as holding the account for purposes of this Directive, and such other person is treated as holding the account. In the case of a Cash Value Insurance Contract or an Annuity Contract, the Account Holder is any person entitled to access the Cash Value or change the beneficiary of the contract. If no person can access the Cash Value or change the beneficiary, the Account Holder is any person named as the owner in the contract and any person with a vested entitlement to payment under the terms of the contract. Upon the maturity of a Cash Value Insurance Contract or an Annuity Contract, each person entitled to receive a payment under the contract is treated as an Account Holder.

2. The term ‘AML/KYC Procedures’ means the customer due diligence procedures of a Reporting Financial Institution pursuant to the anti-money laundering or similar requirements to which such Reporting Financial Institution is subject.

3. The term ‘Entity’ means a legal person or a legal arrangement, such as a corporation, partnership, trust, or foundation.

4. An Entity is a ‘Related Entity’ of another Entity if (i) either Entity controls the other Entity; (ii) the two Entities are under common control; or (iii) the two Entities are Investment Entities described in point A(6)(b), are under common management, and such management fulfils the due diligence obligations of such Investment Entities. For this purpose control includes direct or indirect ownership of more than 50% of the vote and value in an Entity.

5. The term ‘TIN’ means Taxpayer Identification Number (or functional equivalent in the absence of a Taxpayer Identification Number).

6. The term ‘Documentary Evidence’ includes any of the following:

   (a) a certificate of residence issued by an authorised government body (for example, a government or agency thereof, or a municipality) of the Member State or other jurisdiction in which the payee claims to be a resident;

   (b) with respect to an individual, any valid identification issued by an authorised government body (for example, a government or agency thereof, or a municipality), that includes the individual's name and is typically used for identification purposes;

   (c) with respect to an Entity, any official documentation issued by an authorised government body (for example, a government or agency thereof, or a municipality) that includes the name of the Entity and either the address of its principal office in the Member State or other jurisdiction in which it claims to be a resident or the Member State or other jurisdiction in which the Entity was incorporated or organised;

   (d) any audited financial statement, third-party credit report, bankruptcy filing, or securities regulator's report.

With respect to a Pre-existing Entity Account, Reporting Financial Institutions may use as Documentary Evidence any classification in the Reporting Financial Institution’s records with respect to the Account Holder that was determined based on a standardised industry coding system, that was recorded by the Reporting Financial Institution consistent with its normal business practices for purposes of AML/KYC Procedures or another regulatory purposes (other than
for tax purposes) and that was implemented by the Reporting Financial Institution prior to the date used to classify the Financial Account as a Pre-existing Account, provided that the Reporting Financial Institution does not know or does not have reason to know that such classification is incorrect or unreliable. The term ‘standardised industry coding system’ means a coding system used to classify establishments by business type for purposes other than tax purposes.

SECTION IX

EFFECTIVE IMPLEMENTATION

Pursuant to Article 8(4) of this Directive, Member States must have rules and administrative procedures in place to ensure effective implementation of, and compliance with, the reporting and due diligence procedures set out above including:

(1) rules to prevent any Financial Institutions, persons or intermediaries from adopting practices intended to circumvent the reporting and due diligence procedures;

(2) rules requiring Reporting Financial Institutions to keep records of the steps undertaken and any evidence relied upon for the performance of the above procedures and adequate measures to obtain those records;

(3) administrative procedures to verify Reporting Financial Institutions’ compliance with the reporting and due diligence procedures; administrative procedures to follow up with a Reporting Financial Institution when undocumented accounts are reported;

(4) administrative procedures to ensure that the Entities and accounts defined in domestic law as Non-Reporting Financial Institutions and Excluded Accounts continue to have a low risk of being used to evade tax; and

(5) effective enforcement provisions to address non-compliance.
(1) ANNEX II
COMPLEMENTARY REPORTING AND DUE DILIGENCE RULES FOR
FINANCIAL ACCOUNT INFORMATION

1. CHANGE IN CIRCUMSTANCES
A ‘change in circumstances’ includes any change that results in the addition of information
relevant to a person's status or otherwise conflicts with such person's status. In addition, a
change in circumstances includes any change or addition of information to the Account Holder's
account (including the addition, substitution, or other change of an Account Holder) or any
change or addition of information to any account associated with such account (applying the
account aggregation rules described in points C(1), (2) and (3) of Section VII of Annex I) if
such change or addition of information affects the status of the Account Holder.

If a Reporting Financial Institution has relied on the residence address test described in
point B(1) of Section III of Annex I and there is a change in circumstances that causes the
Reporting Financial Institution to know or have reason to know that the original Documentary
Evidence (or other equivalent documentation) is incorrect or unreliable, the Reporting Financial
Institution must, by the later of the last day of the relevant calendar year or other appropriate
reporting period, or 90 calendar days following the notice or discovery of such change in
circumstances, obtain a self-certification and new Documentary Evidence to establish the
residence(s) for tax purposes of the Account Holder. If the Reporting Financial Institution
cannot obtain the self-certification and new Documentary Evidence by such date, the Reporting
Financial Institution must apply the electronic record search procedure described in points B(2)
through (6) of Section III of Annex I.

2. SELF-CERTIFICATION FOR NEW ENTITY ACCOUNTS
With respect to New Entity Accounts, for the purposes of determining whether a Controlling
Person of a Passive NFE is a Reportable Person, a Reporting Financial Institution may only
rely on a self-certification from either the Account Holder or the Controlling Person.

3. RESIDENCE OF A FINANCIAL INSTITUTION
A Financial Institution is ‘resident’ in a Member State if it is subject to the jurisdiction of such
Member State (i.e., the Member State is able to enforce reporting by the Financial Institution).
In general, where a Financial Institution is resident for tax purposes in a Member State, it is
subject to the jurisdiction of such Member State and it is, thus, a Member State Financial
Institution. In the case of a trust that is a Financial Institution (irrespective of whether it is
resident for tax purposes in a Member State), the trust is considered to be subject to the
jurisdiction of a Member State if one or more of its trustees are resident in such Member State
except if the trust reports all the information required to be reported pursuant to this Directive
with respect to Reportable Accounts maintained by the trust to another Member State because
it is resident for tax purposes in such other Member State. However, where a Financial
Institution (other than a trust) does not have a residence for tax purposes (e.g., because it is
treated as fiscally transparent, or it is located in a jurisdiction that does not have an income tax),
it is considered to be subject to the jurisdiction of a Member State and it is, thus, a Member
State Financial Institution if:

(a) it is incorporated under the laws of the Member State;
(b) it has its place of management (including effective management) in the Member State; or

(c) it is subject to financial supervision in the Member State.

Where a Financial Institution (other than a trust) is resident in two or more Member States, such Financial Institution will be subject to the reporting and due diligence obligations of the Member State in which it maintains the Financial Account(s).

4. **ACCOUNT MAINTAINED**

In general, an account would be considered to be maintained by a Financial Institution as follows:

(a) in the case of a Custodial Account, by the Financial Institution that holds custody over the assets in the account (including a Financial Institution that holds assets in street name for an Account Holder in such institution);

(b) in the case of a Depository Account, by the Financial Institution that is obligated to make payments with respect to the account (excluding an agent of a Financial Institution regardless of whether such agent is a Financial Institution);

(c) in the case of any equity or debt interest in a Financial Institution that constitutes a Financial Account, by such Financial Institution;

(d) in the case of a Cash Value Insurance Contract or an Annuity Contract, by the Financial Institution that is obligated to make payments with respect to the contract.

5. **TRUSTS THAT ARE PASSIVE NFES**

An Entity such as a partnership, limited liability partnership or similar legal arrangement that has no residence for tax purposes, according to point D(3) of Section VIII of Annex I, shall be treated as resident in the jurisdiction in which its place of effective management is situated. For these purposes, a legal person or a legal arrangement is considered ‘similar’ to a partnership and a limited liability partnership where it is not treated as a taxable unit in a Member State under the tax laws of such Member State. However, in order to avoid duplicate reporting (given the wide scope of the term ‘Controlling Persons’ in the case of trusts), a trust that is a Passive NFE may not be considered a similar legal arrangement.

6. **ADDRESS OF ENTITY'S PRINCIPAL OFFICE**

One of the requirements described in point E(6)(c) of Section VIII of Annex I is that, with respect to an Entity, the official documentation includes either the address of the Entity's principal office in the Member State or other jurisdiction in which it claims to be a resident or the Member State or other jurisdiction in which the Entity was incorporated or organised. The address of the Entity's principal office is generally the place in which its place of effective management is situated. The address of a Financial Institution with which the Entity maintains an account, a post office box, or an address used solely for mailing purposes is not the address of the Entity's principal office unless such address is the only address used by the Entity and appears as the Entity's registered address in the Entity's organisational documents. Further, an address that is provided subject to instructions to hold all mail to that address is not the address of the Entity's principal office.
(2) ANNEX III

FILING RULES FOR GROUPS OF MULTINATIONAL ENTERPRISES

SECTION I

DEFINED TERMS

1. The term ‘Group’ means a collection of enterprises related through ownership or control such that it is either required to prepare Consolidated Financial Statements for financial reporting purposes under applicable accounting principles or would be so required if equity interests in any of the enterprises were traded on a public securities exchange.

2. The term ‘Enterprise’ means any form of conducting business by any person referred to in Article 3, point 11(b), (c) and (d).

3. The term ‘MNE Group’ means any Group that includes two or more enterprises the tax residence for which is in different jurisdictions, or includes an enterprise that is resident for tax purposes in one jurisdiction and is subject to tax with respect to the business carried out through a permanent establishment in another jurisdiction, and is not an Excluded MNE Group.

4. The term ‘Excluded MNE Group’ means, with respect to any Fiscal Year of the Group, a Group having total consolidated group revenue of less than EUR 750,000,000 or an amount in local currency approximately equivalent to EUR 750,000,000 as of January 2015 during the Fiscal Year immediately preceding the Reporting Fiscal Year as reflected in its Consolidated Financial Statements for such preceding Fiscal Year.

5. The term ‘Constituent Entity’ means any of the following:
   (a) any separate business unit of an MNE Group that is included in the Consolidated Financial Statements of the MNE Group for financial reporting purposes, or would be so included if equity interests in such business unit of an MNE Group were traded on a public securities exchange;
   (b) any such business unit that is excluded from the MNE Group’s Consolidated Financial Statements solely on size or materiality grounds;
   (c) any permanent establishment of any separate business unit of the MNE Group included in points (a) or (b) provided that the business unit prepares a separate financial statement for such permanent establishment for financial reporting, regulatory, tax reporting, or internal management control purposes.

6. The term ‘Reporting Entity’ means the Constituent Entity that is required to file a country-by-country report conforming to the requirements in Article 10(3) in its jurisdiction of tax residence on behalf of the MNE Group. The Reporting Entity may be the Ultimate Parent Entity, the Surrogate Parent Entity, or any entity described in point 1 of Section II.
7. The term ‘Ultimate Parent Entity’ means a Constituent Entity of an MNE Group that meets the following criteria:

(a) it owns directly or indirectly a sufficient interest in one or more other Constituent Entities of such MNE Group such that it is required to prepare Consolidated Financial Statements under accounting principles generally applied in its jurisdiction of tax residence, or would be so required if its equity interests were traded on a public securities exchange in its jurisdiction of tax residence;

(b) there is no other Constituent Entity of such MNE Group that owns directly or indirectly an interest described in point (a) in the first mentioned Constituent Entity.

8. The term ‘Surrogate Parent Entity’ means one Constituent Entity of the MNE Group that has been appointed by such MNE Group, as a sole substitute for the Ultimate Parent Entity, to file the country-by-country report in that Constituent Entity's jurisdiction of tax residence, on behalf of such MNE Group, when one or more of the conditions set out in point 1(b) of Section II apply.

9. The term ‘Fiscal Year’ means an annual accounting period with respect to which the Ultimate Parent Entity of the MNE Group prepares its financial statements.

10. The term ‘Reporting Fiscal Year’ means that Fiscal Year the financial and operational results of which are reflected in the country-by-country report referred to in Article 10(3).

11. The term ‘Qualifying Competent Authority Agreement’ means an agreement that is between authorised representatives of an EU Member State and a non-Union jurisdiction that are parties to an International Agreement and that requires the automatic exchange of country-by-country reports between the party jurisdictions.

12. The term ‘International Agreement’ means the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, any bilateral or multilateral tax convention, or any tax information exchange agreement to which the Member State is a party, and that by its terms provides legal authority for the exchange of tax information between jurisdictions, including automatic exchange of such information.

13. The term ‘Consolidated Financial Statements’ means the financial statements of an MNE Group in which the assets, liabilities, income, expenses and cash flows of the Ultimate Parent Entity and the Constituent Entities are presented as those of a single economic entity.

14. The term ‘Systemic Failure’ with respect to a jurisdiction means either that a jurisdiction has a Qualifying Competent Authority Agreement in effect with a Member State but has suspended automatic exchange (for reasons other than those that are in accordance with the terms of that Agreement), or that a jurisdiction otherwise persistently failed to automatically provide to a Member State country-by-country reports in its possession of MNE Groups that have Constituent Entities in that Member State.

SECTION II

GENERAL REPORTING REQUIREMENTS

1. A Constituent Entity resident in a Member State which is not the Ultimate Parent Entity of an MNE Group shall file a country-by-country report with respect to the
Reporting Fiscal Year of an MNE Group of which it is a Constituent Entity, if the following criteria are satisfied:

(a) the entity is resident for tax purposes in a Member State;

(b) one of the following conditions applies:

(i) the Ultimate Parent Entity of the MNE Group is not obligated to file a country-by-country report in its jurisdiction of tax residence;

(ii) the jurisdiction in which the Ultimate Parent Entity is resident for tax purposes has a current International Agreement to which the Member State is a party but does not have a Qualifying Competent Authority Agreement in effect to which the Member State is a party by the time specified in Article 10(1) for filing the country-by-country report for the Reporting Fiscal Year;

(iii) there has been a Systemic Failure of the jurisdiction of tax residence of the Ultimate Parent Entity that has been notified by the Member State to the Constituent Entity resident for tax purposes in the Member State.

Without prejudice to the obligation of the Ultimate Parent Entity referred to in Article 10(1) or its Surrogate Parent Entity to file the first country-by-country report for the Fiscal Year of the MNE Group commencing on or after 1 January 2016, Member States may decide that the obligation for Constituent Entities set out in point 1 of this Section shall apply for country-by-country reports with respect to the Reporting Fiscal Years commencing on or after 1 January 2017 onwards.

A Constituent Entity resident in a Member State as defined in the first paragraph of this point shall request its Ultimate Parent Entity to provide it with all information required to enable it to meet its obligations to file a country-by-country report, in accordance with Article 10(3). If despite that, that Constituent Entity has not obtained or acquired all the required information to report for the MNE Group, this Constituent Entity shall file a country-by-country report containing all information in its possession, obtained or acquired, and notify the Member State of its residence that the Ultimate Parent Entity has refused to make the necessary information available. This shall be without prejudice to the right of the Member State concerned to apply penalties provided for in its national legislation and this Member State shall inform all Member States of this refusal.

Where there are more than one Constituent Entities of the same MNE Group that are resident for tax purposes in the Union and one or more of the conditions set out in point (b) apply, the MNE Group may designate one of such Constituent Entities to file the country-by-country report conforming to the requirements of Article 10(3) with respect to any Reporting Fiscal Year within the deadline specified in Article 10(1) and to notify the Member State that the filing is intended to satisfy the filing requirement of all the Constituent Entities of such MNE Group that are resident for tax purposes in the Union. That Member State shall, pursuant to Article 10(2), communicate the country-by-country report received to any other Member State in which, on the basis of the information in the country-by-country report, one or more Constituent Entities of the MNE Group of the Reporting Entity are either resident for tax purposes or are subject to tax with respect to the business carried out through a permanent establishment.

Where a Constituent Entity cannot obtain or acquire all the information required to file a country-by-country report, in line with Article 10(3), then such Constituent Entity
shall not be eligible to be designated to be the Reporting Entity for the MNE Group in accordance with the fourth paragraph of this point. This rule shall be without prejudice to the obligation of the Constituent Entity to notify the Member State of its residence that the Ultimate Parent Entity has refused to make the necessary information available.

2. By derogation from point 1, when one or more of the conditions set out in point 1(b) apply, an entity described in point 1 shall not be required to file a country-by-country report with respect to any Reporting Fiscal Year if the MNE Group of which it is a Constituent Entity has made available a country-by-country report in accordance with Article 10(3) with respect to such Fiscal Year through a Surrogate Parent Entity that files that country-by-country report with the tax authority of its jurisdiction of tax residence on or before the date specified in Article 10(1) and that, in case the Surrogate Parent Entity is tax resident in a jurisdiction outside the Union, satisfies the following conditions:

(a) the jurisdiction of tax residence of the Surrogate Parent Entity requires filing of country-by-country reports conforming to the requirements of Article 10(3);

(b) the jurisdiction of tax residence of the Surrogate Parent Entity has a Qualifying Competent Authority Agreement in effect to which the Member State is a party by the time specified in Article 10(1) for filing the country-by-country report for the Reporting Fiscal Year;

(c) the jurisdiction of tax residence of the Surrogate Parent Entity has not notified the Member State of a Systemic Failure;

(d) the jurisdiction of tax residence of the Surrogate Parent Entity has been notified no later than the last day of the Reporting Fiscal Year of such MNE Group by the Constituent Entity resident for tax purposes in its jurisdiction that it is the Surrogate Parent Entity;

(e) a notification has been provided to the Member State in accordance with point 4.

3. Member States shall request that any Constituent Entity of an MNE Group that is resident for tax purposes in that Member State notifies the Member State whether it is the Ultimate Parent Entity or the Surrogate Parent Entity or the Constituent Entity designated under point 1, no later than the last day of the Reporting Fiscal Year of such MNE Group. Member States may extend that deadline to the last day for filing of a tax return of that Constituent Entity for the preceding fiscal year.

4. Member States shall request that where a Constituent Entity of an MNE Group, that is resident for tax purposes in that Member State, is not the Ultimate Parent Entity nor the Surrogate Parent Entity nor the Constituent Entity designated under point 1, it shall notify the Member State of the identity and tax residence of the Reporting Entity, no later than the last day of the Reporting Fiscal Year of such MNE Group. Member States may extend that deadline to the last day for filing of a tax return of that Constituent Entity for the preceding fiscal year.

5. The country-by-country report shall specify the currency of the amounts referred to in that report.
SECTION III

COUNTRY-BY-COUNTRY REPORT

A. Template for the country-by-country report

Table 1. Overview of allocation of income, taxes and business activities by tax jurisdiction

<table>
<thead>
<tr>
<th>Tax jurisdiction</th>
<th>Revenues</th>
<th>Profit (loss) before income tax</th>
<th>Income tax paid (on cash basis)</th>
<th>Income tax accrued — current year</th>
<th>Stated capital</th>
<th>Accumulated earnings</th>
<th>Number of employees</th>
<th>Tangible assets other than cash and cash equivalents</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Unrelated party</td>
<td>Related party</td>
<td>Total</td>
<td></td>
<td></td>
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</table>

Name of the MNE Group:
Fiscal Year concerned:
Currency used:
Table 2  List of all the Constituent Entities of the MNE Group included in each aggregation per tax jurisdiction

<table>
<thead>
<tr>
<th>Tax Jurisdiction</th>
<th>Constituent Entities Resident in the Tax Jurisdiction</th>
<th>Tax Jurisdiction of Organisation or Incorporation if Different from Tax Jurisdiction of Residence</th>
<th>Main Business Activity(ies)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Research and Development</td>
<td>Holding or Managing Intellectual Property</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Purchasing or Procurement</td>
<td>Manufacturing or Production</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Sales, Marketing or Distribution</td>
<td>Administrative, Management or Support Services</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Provision of Services to Unrelated Parties</td>
<td>Internal Group Finance</td>
<td></td>
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<tr>
<td></td>
<td>Regulated Financial Services</td>
<td>Insurance</td>
<td>Holding Shares or Other Equity Instruments</td>
</tr>
<tr>
<td></td>
<td>Dormant</td>
<td>Other(^{14})</td>
<td></td>
</tr>
</tbody>
</table>

\(^{14}\) Please specify the nature of the activity of the Constituent Entity in the ‘Additional information’. 
Table 3: Additional information

Name of the MNE Group:
Fiscal Year concerned:

Please include any further brief information or explanation you consider necessary or that would facilitate the understanding of the compulsory information provided in the country-by-country report

B. General instructions for filling in the country-by-country report

1. Purpose
The template shall be used for reporting a multinational enterprise's (MNE) Group allocation of income, taxes and business activities on a tax jurisdiction-by-tax jurisdiction basis.

2. Treatment of branches and permanent establishments
The permanent establishment data shall be reported by reference to the tax jurisdiction in which it is situated and not by reference to the tax jurisdiction of residence of the business unit of which the permanent establishment is a part. Residence tax jurisdiction reporting for the business unit of which the permanent establishment is a part shall exclude financial data related to the permanent establishment.

3. Period covered by the annual template
The template shall cover the Fiscal Year of the reporting MNE. For Constituent Entities, at the discretion of the reporting MNE, the template shall reflect on a consistent basis either of the following information:
   (a) information for the Fiscal Year of the relevant Constituent Entities ending on the same date as the Fiscal Year of the reporting MNE, or ending within the 12 month period preceding such date;
   (b) information for all the relevant Constituent Entities reported for the Fiscal Year of the reporting MNE.

4. Source of data
The reporting MNE shall consistently use the same sources of data from year to year in completing the template. The reporting MNE may choose to use data from its consolidation reporting packages, from separate entity statutory financial statements, regulatory financial statements, or internal management accounts. It is not necessary to reconcile the revenue, profit and tax reporting in the template to the Consolidated Financial Statements. If statutory financial statements are used as the basis for reporting, all amounts shall be translated to the stated functional currency of the reporting MNE at the average exchange rate for the year stated in the ‘Additional information’ section of the template. Adjustments need not be made, however, for differences in accounting principles applied from tax jurisdiction to tax jurisdiction.

The reporting MNE shall provide a brief description of the sources of data used in preparing the template in the ‘Additional information’ section of the template. If a change is made in the source of data used from year to year, the reporting MNE shall explain the reasons for the change and its consequences in the ‘Additional information’ section of the template.
C. Specific instructions for filling in the country-by-country report

1. Overview of allocation of income, taxes and business activities by tax jurisdiction (Table 1)

1.1. Tax jurisdiction

In the first column of the template, the reporting MNE shall list all of the tax jurisdictions in which Constituent Entities of the MNE Group are resident for tax purposes. A tax jurisdiction is defined as a State as well as a non-State jurisdiction which has fiscal autonomy. A separate line shall be included for all Constituent Entities in the MNE Group deemed by the reporting MNE not to be resident in any tax jurisdiction for tax purposes. Where a Constituent Entity is resident in more than one tax jurisdiction, the applicable tax treaty tie breaker shall be applied to determine the tax jurisdiction of residence. Where no applicable tax treaty exists, the Constituent Entity shall be reported in the tax jurisdiction of the Constituent Entity's place of effective management. The place of effective management shall be determined with internationally agreed standards.

1.2. Revenues

In the three columns of the template under the heading ‘Revenues’, the reporting MNE shall report the following information:

(a) the sum of revenues of all the Constituent Entities of the MNE Group in the relevant tax jurisdiction generated from transactions with associated enterprises;

(b) the sum of revenues of all the Constituent Entities of the MNE Group in the relevant tax jurisdiction generated from transactions with independent parties;

(c) the total of the sums referred to in points (a) and (b).

Revenues shall include revenues from sales of inventory and properties, services, royalties, interest, premiums and any other amounts. Revenues shall exclude payments received from other Constituent Entities that are treated as dividends in the payer's tax jurisdiction.

1.3. Profit (loss) before income tax

In the fifth column of the template, the reporting MNE shall report the sum of the profit (loss) before income tax for all the Constituent Entities resident for tax purposes in the relevant tax jurisdiction. The profit (loss) before income tax shall include all extraordinary income and expense items.

1.4. Income tax paid (on cash basis)

In the sixth column of the template, the reporting MNE shall report the total amount of income tax actually paid during the relevant Fiscal Year by all the Constituent Entities resident for tax purposes in the relevant tax jurisdiction. Taxes paid shall include cash taxes paid by the Constituent Entity to the residence tax jurisdiction and to all other tax jurisdictions. Taxes paid shall include withholding taxes paid by other entities (associated enterprises and independent enterprises) with respect to payments to the Constituent Entity. Thus, if company A resident in tax jurisdiction A earns interest in tax jurisdiction B, the tax withheld in tax jurisdiction B shall be reported by company A.

1.5. Income tax accrued (current year)

In the seventh column of the template, the reporting MNE shall report the sum of the accrued current tax expense recorded on taxable profits or losses of the year of reporting of all the Constituent Entities resident for tax purposes in the relevant tax jurisdiction. The current tax
expense shall reflect only operations in the current year and shall not include deferred taxes or provisions for uncertain tax liabilities.

1.6. Stated capital

In the eighth column of the template, the reporting MNE shall report the sum of the stated capital of all the Constituent Entities resident for tax purposes in the relevant tax jurisdiction. With regard to permanent establishments, the stated capital shall be reported by the legal entity of which it is a permanent establishment unless there is a defined capital requirement in the permanent establishment tax jurisdiction for regulatory purposes.

1.7. Accumulated earnings

In the ninth column of the template, the reporting MNE shall report the sum of the total accumulated earnings of all the Constituent Entities resident for tax purposes in the relevant tax jurisdiction as of the end of the year. With regard to permanent establishments, accumulated earnings shall be reported by the legal entity of which it is a permanent establishment.

1.8. Number of employees

In the tenth column of the template, the reporting MNE shall report the total number of employees on a full-time equivalent (FTE) basis of all the Constituent Entities resident for tax purposes in the relevant tax jurisdiction. The number of employees may be reported as of the year-end, on the basis of average employment levels for the year, or on any other basis consistently applied across tax jurisdictions and from year to year. For this purpose, independent contractors participating in the ordinary operating activities of the Constituent Entity may be reported as employees. Reasonable rounding or approximation of the number of employees is permissible, providing that such rounding or approximation does not materially distort the relative distribution of employees across the various tax jurisdictions. Consistent approaches shall be applied from year to year and across entities.

1.9. Tangible assets other than cash and cash equivalents

In the eleventh column of the template, the reporting MNE shall report the sum of the net book values of tangible assets of all the Constituent Entities resident for tax purposes in the relevant tax jurisdiction. With regard to permanent establishments, assets shall be reported by reference to the tax jurisdiction in which the permanent establishment is situated. Tangible assets for this purpose do not include cash or cash equivalents, intangibles, or financial assets.

2. List of all the Constituent Entities of the MNE Group included in each aggregation per tax jurisdiction (Table 2)

2.1. Constituent Entities resident in the tax jurisdiction

The reporting MNE shall list, on a tax jurisdiction-by-tax jurisdiction basis and by legal entity name, all the Constituent Entities of the MNE Group which are resident for tax purposes in the relevant tax jurisdiction. As stated in point 2 of the general instructions with regard to permanent establishments, however, the permanent establishment shall be listed by reference to the tax jurisdiction in which it is situated. The legal entity of which it is a permanent establishment shall be noted.

2.2. Tax jurisdiction of organisation or incorporation if different from tax jurisdiction of residence

The reporting MNE shall report the name of the tax jurisdiction under whose laws the Constituent Entity of the MNE Group is organised or incorporated if it is different from the tax jurisdiction of residence.
2.3. **Main business activity(ies)**

The reporting MNE shall determine the nature of the main business activity(ies) carried out by the Constituent Entity in the relevant tax jurisdiction, by ticking one or more of the appropriate boxes.

__________
(3) **ANNEX IV**

**HALLMARKS**

**Part I. Main benefit test**

Generic hallmarks under category A and specific hallmarks under category B and under points C1(b)(i), (c) and (d) may only be taken into account where they fulfil the ‘main benefit test’.

That test will be satisfied if it can be established that the main benefit or one of the main benefits which, having regard to all relevant facts and circumstances, a person may reasonably expect to derive from an arrangement is the obtaining of a tax advantage.

In the context of hallmark under point 1 of category C, the presence of conditions set out in points C1(b)(i), (c) or (d) can not alone be a reason for concluding that an arrangement satisfies the main benefit test.

**Part II. Categories of hallmarks**

**A. Generic hallmarks linked to the main benefit test**

1. An arrangement where the relevant taxpayer or a participant in the arrangement undertakes to comply with a condition of confidentiality which may require them not to disclose how the arrangement could secure a tax advantage vis-à-vis other intermediaries or the tax authorities.

2. An arrangement where the intermediary is entitled to receive a fee (or interest, remuneration for finance costs and other charges) for the arrangement and that fee is fixed by reference to:
   (a) the amount of the tax advantage derived from the arrangement; or
   (b) whether or not a tax advantage is actually derived from the arrangement. This would include an obligation on the intermediary to partially or fully refund the fees where the intended tax advantage derived from the arrangement was not partially or fully achieved.

3. An arrangement that has substantially standardised documentation and/or structure and is available to more than one relevant taxpayer without a need to be substantially customised for implementation.

**B. Specific hallmarks linked to the main benefit test**

1. An arrangement whereby a participant in the arrangement takes contrived steps which consist in acquiring a loss-making company, discontinuing the main activity of such company and using its losses in order to reduce its tax liability, including through a transfer of those losses to another jurisdiction or by the acceleration of the use of those losses.

2. An arrangement that has the effect of converting income into capital, gifts or other categories of revenue which are taxed at a lower level or exempt from tax.

3. An arrangement which includes circular transactions resulting in the round-tripping of funds, namely through involving interposed entities without other
primary commercial function or transactions that offset or cancel each other or that have other similar features.

C. **Specific hallmarks related to cross-border transactions**

1. An arrangement that involves deductible cross-border payments made between two or more associated enterprises where at least one of the following conditions occurs:
   (a) the recipient is not resident for tax purposes in any tax jurisdiction;
   (b) although the recipient is resident for tax purposes in a jurisdiction, that jurisdiction either:
      (i) does not impose any corporate tax or imposes corporate tax at the rate of zero or almost zero; or
      (ii) is included in a list of third-country jurisdictions which have been assessed by Member States collectively or within the framework of the OECD as being non-cooperative;
   (c) the payment benefits from a full exemption from tax in the jurisdiction where the recipient is resident for tax purposes;
   (d) the payment benefits from a preferential tax regime in the jurisdiction where the recipient is resident for tax purposes.

2. Deductions for the same depreciation on the asset are claimed in more than one jurisdiction.

3. Relief from double taxation in respect of the same item of income or capital is claimed in more than one jurisdiction.

4. There is an arrangement that includes transfers of assets and where there is a material difference in the amount being treated as payable in consideration for the assets in those jurisdictions involved.

D. **Specific hallmarks concerning automatic exchange of information and beneficial ownership**

1. An arrangement which may have the effect of undermining the reporting obligation under the laws implementing Union legislation or any equivalent agreements on the automatic exchange of Financial Account information, including agreements with third countries, or which takes advantage of the absence of such legislation or agreements. Such arrangements include at least the following:
   (a) the use of an account, product or investment that is not, or purports not to be, a Financial Account, but has features that are substantially similar to those of a Financial Account;
   (b) the transfer of Financial Accounts or assets to, or the use of jurisdictions that are not bound by the automatic exchange of Financial Account information with the State of residence of the relevant taxpayer;
   (c) the reclassification of income and capital into products or payments that are not subject to the automatic exchange of Financial Account information;
(d) the transfer or conversion of a Financial Institution or a Financial Account or the assets therein into a Financial Institution or a Financial Account or assets not subject to reporting under the automatic exchange of Financial Account information;

(e) the use of legal entities, arrangements or structures that eliminate or purport to eliminate reporting of one or more Account Holders or Controlling Persons under the automatic exchange of Financial Account information;

(f) arrangements that undermine, or exploit weaknesses in, the due diligence procedures used by Financial Institutions to comply with their obligations to report Financial Account information, including the use of jurisdictions with inadequate or weak regimes of enforcement of anti-money-laundering legislation or with weak transparency requirements for legal persons or legal arrangements.

2. An arrangement involving a non-transparent legal or beneficial ownership chain with the use of persons, legal arrangements or structures:

(a) that do not carry on a substantive economic activity supported by adequate staff, equipment, assets and premises; and

(b) that are incorporated, managed, resident, controlled or established in any jurisdiction other than the jurisdiction of residence of one or more of the beneficial owners of the assets held by such persons, legal arrangements or structures; and

(c) where the beneficial owners of such persons, legal arrangements or structures, as defined in Directive (EU) 2015/849, are made unidentifiable.

E. Specific hallmarks concerning transfer pricing

1. An arrangement which involves the use of unilateral safe harbour rules.

2. An arrangement involving the transfer of hard-to-value intangibles. The term ‘hard-to-value intangibles’ covers intangibles or rights in intangibles for which, at the time of their transfer between associated enterprises:

(a) no reliable comparables exist; and

(b) at the time the transaction was entered into, the projections of future cash flows or income expected to be derived from the transferred intangible, or the assumptions used in valuing the intangible are highly uncertain, making it difficult to predict the level of ultimate success of the intangible at the time of the transfer.

3. An arrangement involving an intragroup cross-border transfer of functions and/or risks and/or assets, if the projected annual earnings before interest and taxes (EBIT), during the three-year period after the transfer, of the transferor or transferors, are less than 50% of the projected annual EBIT of such transferor or transferors if the transfer had not been made.
Part A
Repealed Directive with list of the successive amendments thereto
(referred to in Article 35)


Part B
Time-limits for transposition into national law and dates of application
(referred to in Article 35)

<table>
<thead>
<tr>
<th>Directive</th>
<th>Time-limit for transposition</th>
<th>Date of application</th>
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<td>Directive 2011/16/EU</td>
<td>1 January 2013</td>
<td></td>
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<td>(1 January 2015 as regards Article 8)</td>
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<td>(1 January 2017 as far as Austria is concerned)</td>
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<td>Directive (EU) 2016/881</td>
<td>4 June 2017</td>
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<td>Directive (EU) 2016/2258</td>
<td>31 December 2017</td>
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<td>Directive (EU) 2018/822</td>
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<td>1 July 2020</td>
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**ANNEX VI**

**CORRELATION TABLE**

<table>
<thead>
<tr>
<th>Directive 2011/16/EU</th>
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<tbody>
<tr>
<td>Articles 1 to 7</td>
<td>Articles 1 to 7</td>
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<tr>
<td>Article 8(1), (2) and (3)</td>
<td>Article 8(1), (2) and (3)</td>
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### COM (2020) 49

**Information Note**

1. **Proposal**
   Proposal for a COUNCIL DIRECTIVE on administrative cooperation in the field of taxation (codification)

2. **Date of Commission document**
   12/02/2020

3. **Number of Commission document**
   COM (2020) 49

4. **Number of Council document:**
   n/a

5. **Dealt with in Brussels by**
   Codification Working Party

6. **Department with primary responsibility**
   Department of Finance

7. **Other Departments involved**
   Revenue Commissioners
8. **Background to, Short summary and aim of the proposal**


The proposal aims to supersede the various act incorporated in it, this proposal fully preserves the content of the acts being codified and hence does no more than bring them together with only such formal amendments as are required by the codification exercise itself.

A strict condition of the codification process is that it does not amend the text of the Directive(s)

9. **Legal basis of the proposal**

Articles 113 and 115 of the TFEU.

10. **Voting Method**

   Unanimity

11. **Role of the EP**

   Consultation

12. **Category of proposal**


13. **Implications for Ireland & Ireland's Initial View**

   This is purely a codification measure as a result it will have no impact on Ireland. A strict condition of the codification process is that it does not amend the text of the Directive(s).

14. **Impact on the public**

   As this is purely a codification measure it will have no impact on the public.

15. **Have any consultations with Stakeholders taken place or are there any plans to do so?**

   N/a

16. **Are there any subsidiarity issues for Ireland?**

   As this is purely a codification measure it will have no subsidiarity issues.

17. **Anticipated negotiating period**

   2020

18. **Proposed implementation date**

   2 July 2020

19. **Consequences for national legislation**
To be determined.

20. Method of Transposition into Irish law
   Primary legislation will be required to amend the Taxes Consolidation Act 1997.

21. Anticipated Transposition date
   This is purely a codification measure as a result no transposition is required. A strict condition of the codification process is that it does not amend the text of the Directive(s).

22. Consequences for the EU budget in Euros annually
   None

23. Contact name, telephone number and e-mail address of official in Department with primary responsibility

   John Murphy
   Deputy Head of International Tax
   D/Finance
   John.murphy@finance.gov.ie
   01-6045594

   Date
   5 March 2020