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Proposal for a

# COUNCIL DIRECTIVE

## amending Directive 2011/16/EU on administrative cooperation in the field of taxation

{SEC(2020) 271 final} - {SWD(2020) 129 final} - {SWD(2020) 130 final} -
{SWD(2020) 131 final}

# EXPLANATORY MEMORANDUM

## 1. CONTEXT OF THE PROPOSAL

### • Reasons for and objectives of the proposal

Fair taxation is one of the main foundations of the European social market economy and amongst the key pillars of the Commission's commitment for "*an economy that works for people*"[1]. Fair taxation promotes social justice and a level playing field in the EU. A fair tax system should be based on tax rules that ensure everybody pays their fair share, while making it easy for taxpayers, whether businesses or citizens, to comply with the rules. Fair and efficient taxation is crucial to safeguard sufficient revenues for public investment in people and infrastructure, while creating a business environment within the single market in which innovative firms can prosper.

The COVID-19 pandemic adds urgency to the need to protect public finances and limit its socio-economic consequences. Member States will require adequate tax revenues to finance their considerable efforts to contain the negative economic impact of the measures against the COVID-19 pandemic, while ensuring that the most vulnerable groups do not bear the burden in raising these revenues. Ensuring tax fairness by preventing tax fraud, tax evasion and tax avoidance has become more important than ever. In this context, strengthening the administrative cooperation and exchange of information is crucial in the fight against tax avoidance and tax evasion in the Union. As stressed in the Commission Communication 'Europe's moment: Repair and Prepare for the Next Generation'[2], to ensure that solidarity and fairness is at the heart of the recovery, the Commission will step up the fight against tax fraud and other unfair practices. This will help Member States generate the tax revenue needed to respond to the major challenges of the current crisis.

The present legislative proposal is part of a package for fair and simple taxation supporting the recovery of the EU, which includes a Communication for an Action Plan presenting a number of upcoming initiatives for fair and simple taxation supporting the recovery strategy[3], and a Commission Communication on Tax good governance in the EU and beyond[4], which will review the progress made in enhancing tax good governance in the EU but also externally and suggest areas for improvement.

In the past years, the EU has focused its efforts on tackling tax fraud, tax evasion and tax avoidance and boosting transparency. While major improvements have been made in particular in the field of exchange of information, the evaluation[5] of the application of Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation[6] showed that there is still a need to improve existing provisions that relate to all forms of exchanges of information and administrative cooperation. In particular, the notions

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1 European Commission, Political Guidelines for the next European Commission 2019-2024, A Union that strives for more, https://ec.europa.eu/commission/sites/beta-political/files/political-guidelines-next-commission_en.pdf.

2 COM(2020) 456 final.

3 COM(2020) 312 final.

4 COM(2020) 313 final.

5 European Commission, Commission Staff Working Document, Evaluation of the Council Directive 2011/16/EU on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC, SWD(2019) 328 final.

6 Council Directive 2011/16/EU on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC (OJ L 64, 11.3.2011, p.1).

of foreseeable relevance and requests for information for a group of taxpayers emerged among the most problematic elements of the framework due to their lack of clarity.

The evaluation also demonstrated that the rules for using simultaneous controls and allowing the presence of officials of a Member State during an enquiry in another Member State lacked a legal base in some of the national systems, which currently has the outcome of preventing the efficient use of those provisions. The 2018 report of the Joint Transfer Pricing Forum on transfer pricing controls within the EU[7] discusses this point in more detail. The report drew on the existing practice of Member States to highlight current flaws and suggest possible improvements for the use of transfer pricing controls in two or more Member States. The report recommended to *adopt "a coordinated approach to transfer pricing controls [that] would contribute to a better functioning of the internal market on two fronts: it would offer tax administrations a transparent and efficient tool to facilitate the allocation of taxing rights and also prevent the occurrence of double taxation and double non taxation"*.

There is therefore a clear need to improve the existing framework for exchange of information and administrative cooperation in the EU. Indeed, at the start of her mandate, the president of the Commission emphasised the need to examine how cooperation between national authorities can be improved[8]. Improving the exchange of information and administrative cooperation in the EU plays a central role.

In addition to reinforcing existing rules, the expansion of administrative cooperation to new areas is required in the EU, in order to address the challenges posed by the digitalisation of the economy and help tax administrations better and more efficiently collect taxes and keep pace with new developments. The characteristics of the digital platform economy make the traceability and detection of taxable events by tax authorities very difficult. The problem is intensified in particular when such transactions are engaged via digital platform operators established in another jurisdiction. The lack of reporting of income earned by sellers for providing services or selling goods through the digital platforms leads to a shortfall of Member States' tax revenues. It also provides sellers with an advantage compared to those who are not active on digital platforms. If this regulatory gap is not addressed, the objective of fair taxation cannot be ensured.

- **Consistency with existing policy provisions in the policy area**

The proposed legislation addresses the broad political priority for transparency in taxation, which is a pre-requisite for effectively fighting against tax fraud, tax evasion and tax avoidance. In recent years, EU Member States agreed a series of legislative instruments in the field of transparency as part of which national tax authorities have to cooperate closely in exchanging information. Council Directive 2011/16/EU replaced Council Directive 77/799/EEC11 and marked the beginning of enhanced administrative cooperation amongst tax authorities in the EU. It established useful tools for better cooperation in the following fields:

(1) exchanges of information on request;

(2) spontaneous exchanges;

[7] EU Joint Transfer Pricing Forum, *A Coordinated Approach to Transfer Pricing Controls within the EU*, JTPF/013/2018/EN, October 2018.

[8] Mission letter to Paolo Gentiloni, Commissioner for Economy, from Ursula von der Leyen, Present of the European Commission, 10 September 2019.

(3) automatic exchanges on an exhaustive list of fields (i.e. income from employment; director's fees; life insurance products not covered by other Directives; pensions; and ownership of and income from immovable property);

(4) the participation of foreign officials in administrative enquiries;

(5) simultaneous controls; and

(6) notifications of tax decisions to other tax authorities.

The Council Directive 2011/16/EU was amended several times with the following initiatives:

- Council Directive 2014/107/EU of 9 December 2014[9] (DAC2) as regards the automatic exchange of financial account information between Member States based on the OECD Common Reporting Standard (CRS) which prescribes the automatic exchange of information on financial accounts held by non-residents;
- Council Directive (EU) 2015/2376 of 8 December 2015[10] (DAC3) as regards the mandatory automatic exchange of information on advance cross-border tax rulings;
- Council Directive (EU) 2016/881 of 25 May 2016[11] (DAC4) as regards the mandatory automatic exchange of information on country-by-country reporting (CbCR) amongst tax authorities;
- Council Directive (EU) 2016/2258 of 6 December 2016[12] (DAC5) as regards access to anti-money-laundering information by tax authorities;
- Council Directive (EU) 2018/822 of 25 May 2018[13] (DAC6) as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements.

- **Consistency with other Union policies**

The existing provisions of the Directive interact with the General Data Protection Regulation[14] (GDPR) in several instances where personal data becomes relevant and at the same time include specific provisions and safeguards on data protection. The proposed amendments will continue to follow and respect these safeguards. Any possible negative impact on personal data will be minimised by IT and procedural measures. The exchange of data will pass through a secured electronic system that encrypts and decrypts the data and, in every tax administration, only authorised officials should have access to this information. As joint data controllers, they will have to ensure secure and specific data storage.

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9 Council Directive (EU) 2014/107 of 9 December 2014 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation (OJ L 359, 16.12.2014, p. 1).

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

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

12 Council Directive (EU) 2016/2258 of 6 December 2016 amending Directive 2011/16/EU as regards access to anti-money-laundering information by tax authorities (OJ L 342, 16.12.2016, p. 1–3).

13 Council Directive (EU) 2018/822 of 25 May 2018 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements (OJ L 139, 5.6.2018, p. 1–13).

14 Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39–98).

The Commission is active in several policy areas relevant to the digital economy, including digital platform operators covered by the proposed initiative. The proposed initiative does not impinge on other simultaneously ongoing Commission projects, as it is specifically aimed at addressing certain tax related issues. It is without prejudice to any information requirements that may be considered for digital service providers as part of the Digital Services Act package in the context of the upcoming revision of the existing E-commerce Directive[15], or under an initiative aimed at improving the labour conditions of people working through digital platforms.

The scope of the proposed rules includes crowdfunding services that consist of both investment- and lending-based crowdfunding. Considering this and in order to ensure consistency with the Union policies in the field of financial market regulation, the definition of crowdfunding services and service providers refers to the relevant legislation in that area.

## .2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Article 115 of the Treaty on the Functioning of the European Union (TFEU) is the legal base for legislative initiatives in the field of direct taxation. Although no explicit reference to direct taxation is made, Article 115 refers to directives for the approximation of national laws as those directly affect the establishment or functioning of the internal market. For this condition to be met, it is necessary that proposed EU legislation in the field of direct taxation aims to rectify existing inconsistencies in the functioning of the internal market. Furthermore, given that the information exchanged under the Directive can be also used in the field of VAT and other indirect taxes, Article 113 of the TFEU is also quoted as a legal base.

As the proposed initiative amends the Directive, it is inherent in it that the legal base remains the same. Indeed, the proposed rules that aim to improving the existing framework with respect to the exchange of information and administrative cooperation do not deviate from the subject matter of the Directive. Most notably, the envisaged modifications will provide a clear definition of foreseeable relevance and an explicit legal framework for the conduct of joint audits. The consistent application of these provisions can only be achieved through the approximation of national laws.

In addition to the existing framework, the proposal introduces rules on reporting by digital platform operators as a response to problems arising out of the use of digital platforms in various activities. The digital nature of platforms allows sellers of goods and services to make use of such digital platforms for carrying out their activity, while potentially not reporting income earned in the Member State of their residence. As a consequence, the Member States suffer from unreported income and loss of tax revenue. Such a situation also gives rise to conditions of unfair tax competition against individuals or businesses that do not carry out their activities via digital platforms, which distorts the operation of the internal market. It follows that such a situation can only be tackled through a uniform approach, as prescribed in Article 115 TFEU.

[15] Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') (OJ L 178, 17.7.2000, p. 1).

- **Subsidiarity (for non-exclusive competence)**

The proposal fully observes the principle of subsidiarity as set out in Article 5 TFEU. It addresses administrative cooperation in the field of taxation. This includes certain modifications in the rules to improve the functioning of the existing provisions that deal with cross-border cooperation between tax administrations from different Member States. The proposal also involves extending the scope of automatic exchange of information to digital platform operators by placing an obligation on them to report on the income earned by sellers of goods and services who make use of the relevant platforms.

The application of existing provisions of the Directive has shown significant discrepancies among Member States. While some Member States are willing to fully cooperate and exchange information, other Member States take a restrictive approach or even reject exchanges of information. Further, certain provisions have proved insufficient for addressing the needs of tax administrations in cooperating with other Member State(s) over time.

In addition, the increased use of digital platforms for providing services and selling goods has led to inconsistent declarations of income by sellers, which poses a high risk of tax evasion. While a few Member States have imposed a reporting obligation in their national law, experience shows that national provisions against tax evasion cannot be fully effective, especially when the targeted activities are carried out cross-border.

Legal certainty and clarity can only be ensured by addressing these inefficiencies through a single set of rules to apply to all Member States. The internal market needs a robust mechanism to address these loopholes in a uniform fashion and rectify existing distortions by ensuring that tax authorities receive appropriate information on a timely basis. A harmonised framework across the EU for reporting seems indispensable in particular in light of the prevalent cross-border dimension of the services provided by platform operators. Considering that the reporting obligation with respect to the income earned via the use of digital platforms aims to primarily inform tax authorities about activities with a dimension beyond a single jurisdiction, it is necessary to embark on any such initiative through action at the level of the EU, in order to ensure a uniform approach to the identified problem.

Therefore, the EU is better placed than individual Member States to address the problems identified and ensure the effectiveness and completeness of the system for the exchange of information and administrative cooperation. First, it will ensure a consistent application of the rules across the EU. Second, all digital platforms in scope will be subject to the same reporting requirements. Third, the reporting will be accompanied with exchange of information and, as such, enable the tax administrations to obtain a comprehensive set of information regarding the income earned through a digital platform.

- **Proportionality**

The proposal consists of improving existent provisions of the Directive and extends the scope of automatic exchanges to certain specific information reported by the digital platform operators. The improvements do not go beyond what is necessary to achieve the objective of exchanges of information and more broadly, administrative cooperation. Considering that the identified distortions in the functioning of the internal market usually expand beyond the borders of a single Member State, EU common rules represent the minimum necessary for tackling the problems in an effective manner.

Thus, the proposed rules contribute to a more clear, consistent and effective application of the Directive leading to better ways of achieving its objectives. The envisaged obligation of digital platform operators to report on the income earned by their users, i.e. the sellers, also offers a workable solution against tax evasion through the use of mechanisms for the exchange of information that have previously already been tried for DAC2 and DAC4. In this vain, one can claim that the proposed initiative represents a proportionate answer to the identified inconsistencies in the Directive and also aims to tackle the problem of tax evasion.

- **Choice of the instrument**

The legal base for this proposal is dual: Articles 113 and 115 TFEU, which lay down explicitly that legislation in this field may only be enacted in the legal form of a Directive. It is therefore not permissible to use any other type of EU legal act when it comes to passing binding rules in taxation. In addition, the proposed Directive constitutes the sixth amendment to the DAC; it thus follows Council Directives 2014/107/EU, (EU) 2015/2376, (EU) 2016/881, (EU) 2016/2258 and (EU) 2018/822

## 3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Evaluations of existing legislation**

In 2019, the Commission evaluated[16] the effectiveness, efficiency, relevance, coherence and EU added value of existing rules concerning administrative cooperation in the field of direct taxation. The evaluation concluded that cooperation brings about important benefits, yet there is still scope for improvement. It demonstrated that differences persist in the way Member States exploit the available tools of administrative cooperation. The information exchanged could be used more efficiently and the benefits of cooperation could be analysed in a more comprehensive manner. Building upon the evaluation, this legislative proposal presents a set of specific interventions to improve the functioning of administrative cooperation.

- **Stakeholder consultations**

On 10 February 2020, the Commission launched a Public Consultation to gather feedback on the way forward for EU action on strengthening the exchange of information framework in the field of taxation. A number of possible options were presented and stakeholders gave their feedback in a total of 37 responses. In addition, the Commission carried out targeted consultations by holding a meeting on 27 February 2020 with various representatives of digital platform operators. There was a consensus among representatives of digital platform operators on the benefits of having a standardised EU legal framework for gathering information from platforms, as compared to several disparate national reporting rules. In addition, the representatives of digital platform operators have advocated for a solution similar to a one-stop-shop that can be found in VAT which would enable to report the information only to the tax administration in a Member State where the platform is resident.

Concerning joint audits, the public consultation results stressed the need to enhance their role in the administrative cooperation framework at the EU level.

- **Member States' consultations**

The European Commission carried out targeted consultations via a questionnaire for the Member States. In addition, on 26 February 2020, DG TAXUD organized a meeting of

[16] Commission Staff Working Document (n 2).

Working Party IV and Member States had the opportunity to debate a possible proposal for an amendment to the DAC. The meeting focused on the reporting and exchange of information on income earned through digital platforms.

Overall, broad support was recorded for a possible EU initiative for the exchange of information on income earned by sellers via digital platforms. A majority of Member States favoured a broad scope for the new legal framework that in addition to income from renting immovable property and the provision of personal services, would also include the sale of goods, rentals of any mode of transport and crowdfunding services.

- **Outcome of consultations**

Both public and targeted consultations seem to converge on the challenges that the new rules addressed to digital platform operators should aim to tackle: underreporting in the digital platform economy and inefficiencies; and the need to improve the current EU administrative cooperation framework, such as in the field of joint audits.

- **Impact assessment**

The Commission conducted an impact assessment of relevant policy alternatives which received a positive opinion from the Regulatory Scrutiny Board on 5 May 2020 (SEC(2020)271).[17] The Regulatory Scrutiny Board made a number of recommendations for improvements that have been taken into account in the final impact assessment report (SWD(2020)131).[18] Different policy options have been assessed against the criteria of effectiveness, efficiency and coherence in comparison to the baseline scenario. At the highest level of analysis, a choice is due between the *status quo* or baseline scenario and a scenario where the Commission would act by way of either a non-regulatory or a regulatory fashion. Non-regulatory action would consist in issuing a Recommendation. The regulatory option involved a legislative initiative to amend certain specific elements of the existing administrative cooperation framework.

A legislative amendment was identified as a preferred option when it comes to amending existing rules, in order to ensure consistency and effectiveness.

Regarding digital platform operators, the Impact Assessment indicates that the regulatory option at the EU level is the most appropriate for meeting the identified policy. The *status quo* or baseline scenario was shown to be the least effective, efficient or coherent option. Differently from the baseline scenario, an EU mandatory common standard would ensure that all EU tax administrations have access to the same type of data. In other words, an EU regulatory action would put all tax authorities on an equal footing when it comes to the access to information collected for an identified tax purpose. This also allows for the automatic exchange of information at the EU level on the basis of common standards and specifications. Once implemented, it is the only scenario in which the tax authorities in the Member State of a seller's residence can verify that the seller has accurately reported its income earned via digital platforms, without the need for ad hoc, time consuming requests and inquiries. In addition, an EU mandatory common reporting standard would ensure that digital platform operators do not face fragmented national solutions when it comes to the tax related reporting obligations.

*Economic impacts*

[17] (insert ref to RSB Opinion).

[18] (insert ref to final IA).

*Benefits*

The obligation to report income earned through digital platforms and the exchange of such information will help Member States receive a full set of information in order to collect tax revenues due. Common reporting rules will also help create a level playing field between sellers that use digital platforms and those that do not, and between digital platform operators, who currently may face very different reporting obligations. Transparency on income earned by the sellers with the use of digital platforms would increase the level playing field with more traditional businesses.

Having a single EU mandatory instrument could also have positive social impacts and contribute to a positive perception of tax fairness and to a fair-burden sharing across taxpayers. It is assumed that the broader the scope of the rules, the stronger the perception of tax fairness, given that there are issues of underreporting across all types of activities. The same reasoning applies to benefits in terms of fair-burden sharing: the wider the scope of the intervention, the better Member States can ensure that taxes due are effectively collected. The fiscal benefits of EU action are much larger where the reporting obligation has a broad scope, i.e. it applies to all services and sale of goods. Limiting the scope solely to EU-based digital platforms could significantly decrease the tax revenues of each option.

*Costs*

Irrespective of the scope, the one-off costs derived from implementing automatic EU-wide reporting are estimated in the order hundreds of millions of euros for the totality of the digital platform operators and tax administrations, the recurrent costs in the order of tens of millions of euros. One-off and recurrent costs are mainly due to IT systems' development and operations. Tax administrations will also incur enforcements costs. For the sake of cost efficency, the Member States are encouraged to enable digital reporting and ensure interoperability of systems and at data level between the digital platforms and tax administrations to the extent possible.

- **Regulatory fitness and simplification**

The proposal is designed to reduce regulatory burdens for digital platform operators, taxpayers and tax administrations. The preferred policy response represents a proportionate answer to the identified problem since it does not exceed what is necessary for achieving the objective of the Treaties for a better functioning of the internal market without distortions. Indeed, the common rules will be limited to creating the minimum necessary common framework for reporting income earned through a digital platform. For example: (i) The rules ensure that there is no double reporting (i.e. single point of registration and reporting); (ii) the automatic exchange is limited to the relevant Member States; and (iii) the imposition of penalties for non-compliance will remain under the sovereign control of Member States. In addition, harmonisation does not go further than ensuring that the competent authorities be informed about the income earned. Thereafter, it is for Member States to decide on the tax due.

- **Fundamental rights**

This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, the set of data elements to be transmitted to tax administrations are defined in a way to capture only

the minimum data necessary to detect non-compliant underreporting or non-reporting, in line with the with the GDPR obligations.

## 4. BUDGETARY IMPLICATIONS

See Legislative Financial Statement.

## 5. DETAILED EXPLANATION OF THE SPECIFIC PROVISIONS OF THE PROPOSAL

The amendment proposes changes to the existing provisions on exchanges of information and administrative cooperation as well as extends the scope to the automatic exchange of information with respect to the information reported by digital platform operators. The rules on reporting for digital platform operators are inspired by the work done at the OECD.

**(i) Exchange of information on request**

- **Foreseeable relevance**

Article 5a provides for a definition of the standard of foreseeable relevance that applies in case of a request for information. The definition lays down the elements of the standard and procedural requirements that the requesting authority has to observe. The request for information can relate to one or more taxpayers, as long as they are individually identified.

As laid down in paragraph 10 of Article 8a, the standard of foreseeable relevance should not apply where request for information is sent as a follow up to the exchanged cross-border ruling or an advance pricing agreement pursuant to Council Directive (EU) 2015/2376 of 8 December 2015.

Article 17(1) is amended in order to clarify the meaning of exhaustiveness of the usual sources of information. Before requesting information, the requesting authority is obliged to exhaust all of the usual sources of information that it could have used in the circumstances for obtaining the information requested and pursued all available means. However, if by doing so the requesting authority faces disproportionate difficulties and runs the risk of jeopardising the achievement of its objectives, the obligation does not apply. In case the requesting authority did not respect this obligation, the requested authority may refuse to provide the information.

Amendment to Article 20(2) will ensure the forms for the exchange of information on request are adapted accordingly.

- **Group requests**

Article 5b addresses group requests in the context of a request for information. Group requests relate to a group of taxpayers that cannot be individually identified, but are instead described by a common set of characteristics. Due to the nature of the request, the required information varies if a request is related to an individual taxpayer. Thus, the standard of foreseeable relevance as defined in Article 5a does not apply. Instead, the requesting authority has to provide to the requested authority a set of information including (i) a comprehensive description of the characteristics of the group; and (ii) an explanation of the applicable law and of the facts and circumstances that led to the request.

**(ii) Automatic exchange of information**

- **Categories of income**

Article 8(1) lays down the categories of income subject to mandatory automatic exchange between the Member States. Royalties are added to the categories of income which are subject to the exchange of information. The amendment will oblige the Member States to exchange all information that is available, but on at least two for taxable periods until 2024 and on at least four categories of income with other Member States with respect to taxable periods as of 2024 in accordance with Article 8(3).

- **Reporting rules for platform operators will be subject to mandatory automatic exchange of information**

Article 8ac lays down the scope and conditions for the mandatory automatic exchange of information which will be reported by platform operators to competent authority. Detailed rules are laid down in Annex V. As a first step, the rules provides for an obligation on the reporting platform operators to collect and verify the information in line with due diligence procedures. As a second step, the reporting platform operators have to report information on the reportable sellers, which use their platform on which they operate, to sell their goods, provide their services or invest and lend in the context of crowdfunding. The third step is about communicating the reported information to the competent authority of the Member State where the reportable seller is a resident or to the competent authority of the Member State where the immovable property is located.

*Scope*

Annex V, Section I provides for definitions which determine the scope of the rules for reporting.

– Who bears the burden of reporting

The rules include definitions of what is a Platform, Platform Operator and Reporting Platform Operator.

The concept of a Platform does not include software exclusively allowing the (i) processing of payments, (ii) users to list or advertise a Relevant Actvity, or (iii) redirecting or transferring of users to a Platform.

A Reporting Platform Operator is any platform operator that is either a tax resident in a Member State or is incorporated under the laws of a Member State or has its place of management or a permanent establishment in a Member State (commonly referred as ‘EU platforms’).

In addition, the scope of the rules also includes platform operators which do not meet any of these conditions but facilitate the performance of a relevant activity by reportable sellers that are residents for the purposes of this Directive in a Member State or with respect to the rental of immovable property located in a Member State (commonly referred as ‘foreign platforms’). In order to be active within the Union, such platforms have to register in a Member State (i.e. single registration) in accordance with Article 8ac(4). Annex V, Section IV, paragraph F lays down the details of the registration. In order to ensure uniform conditions for the implementation of the proposed rules and more precisely, the registration and identification of Reporting Platform Operators, subparagraph 3 of Article 8ac(4) confers the implementing powers to adopt a standard form to the Commission. These powers shall be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.

Platform operators already identified for VAT purposes within the Union shall not register in any Member State other than that of VAT identification.

– Which activities are reportable

A Relevant Activity includes the rental of immovable property, the provision of personal services, the sale of goods, the rental of any mode of transport, and investment and lending in the context of crowdfunding.

A Relevant Activity shall not include an activity carried out by a Seller acting as an employee of the Reporting Platform Operator.

A Personal Service is a service involving time- or task-based work performed by one or more individuals that act either independently or on behalf of an Entity. This service is carried out at the request of a user, either online or physically offline after having been facilitated via a platform.

– Whose activities are reportable

A Seller is a platform user that is registered on the platform and carries out any of the Relevant Activities. A governmental entity is not considered as a Seller.

An Active Seller is any seller that provided Relevant Activity during the reportable period.

A Reportable Seller is any Active Seller that during the reportable period (i) had its primary address in a Member State, or (ii) had a TIN or VAT identification number issued in a Member State, or (iii) for a Seller that is an entity, had a permanent establishment in a Member State. A Reportable Seller fulfilling any of the listed conditions shall be considered as a resident in a Member State for the purposes of this Directive.

In addition, any Active Seller that rented out immovable property located in a Member State during the reportable period is also a Reportable Seller.

Only the activities of a Reportable Seller are reportable.

*Due diligence procedures*

A Reporting Platform Operators shall carry out due diligence procedures laid down in Annex, Section II in order to identify Reportable Sellers.

Paragraph B, Section II lays down the specific information that a Reporting Platform Operator needs to collect on a Reportable Seller. A Reporting Platform Operator must verify the collected information using all information and documents available to the Reporting Platform Operator in its records, as well as any electronic interface made available by a Member State or the Union free of charge to ascertain the validity of the TIN or VAT identification number. Alternatively, the Reporting Platform Operator can directly confirm the identity and residence of a Seller through an electronic identification service made available by a Member State or the Union.

A Reporting Platform Operator shall consider a Seller resident in the Member State of the Seller's Primary Address. Where different from the Member State of the Seller's Primary Address, a Reporting Platform Operator shall consider Seller resident also in the Member State of issuance of TIN or VAT identification number or the Member State where the Seller has a permanent establishment. In case the Reporting Platform Operator uses the electronic

identification service made available by a Member State or the Union, then the Seller is considered a resident in each Member State confirmed by such electronic identification service.

A Reporting Platform Operator shall collect the required information, verify it and have it available by 31 December of the Reportable Period.

A Reporting Platform Operator may rely on the due diligence procedures conducted in previous Reportable Periods, provided that (i) the required information has been collected or verified within the last 36 months, and (ii) it does not have reason to know that the information collected has become unreliable or incorrect.

A Reporting Platform Operator may designate another Platform Operator or a third party to assume the obligations with respect to due diligence procedures.

*Reporting to the competent authority*

The information, as collected and verified, shall be reported within one month following the end of the Reportable Period in which the Seller is identified as a Reportable Seller. Reporting shall only take place in one Member State (i.e. single reporting). A Reporting Platform Operator that is an 'EU platform' shall report in the Member State in which it fulfils any of the conditions listed in Section I, paragraph A(3) point (a). In the event that it fulfils any of these conditions in more than one Member State, the Reporting Platform Operator shall elect one Member State in which to report. A Reporting Platform Operator that is a 'foreign platform' shall report in the Member State in which it has registered in accordance with Article 8ac(4).

Information about the Consideration and other amounts shall be reported in respect of the quarter of the Reportable Period in which the Consideration was paid or credited. The definition of the Consideration excludes any fees, commissions or taxes withheld or charged by the Reporting Platform.

In accordance with amended Article 25(3), the Reporting Platform Operators have to inform each individual concerned that information relating to this individual will be collected and reported to the authorities pursuant to this Directive and provide all information the data controllers are required to provide under the GDPR. The Platform Operators have to supply each individual all information and in any case, before the information is reported. This is without prejudice to data subject's right under the GDPR.

*Automatic exchange of information reported by the Platform Operators*

The information reported by Platform Operators has to be communicated by the competent authorities of the Member States where the reporting took place to the Member States where the Reportable Seller is a resident within the meaning of Annex V, Section I, paragraph B(3)and/or the immovable property is located. Paragraph 2 of Article 8ac lays down which information shall be reported to those Member States.

The exchange will take place within 2 months following the end of the reportable period.

Such timely exchanges will provide the tax authorities with a complete set of information, to allow for preparing pre-populated yearly tax assessments.

The automatic exchange of information will take place electronically via the EU common communication network (CCN) by using an XML schema developed by the Commission.

*Effective implementation and the closure of accounts of the Sellers*

If a Reportable Seller does not provide the required information after two reminders, the Reporting Platform Operator has to close the account of such Seller and prevent the Seller from re-registering on the Platform for the period of six months or withhold the payment of the Consideration to the Seller (Section IV, paragraph A).

*Effective penalties for non-compliance at national level*

Article 25a on penalties is amended to include information reported by Platform Operators in accordance with Article 8ac. This is to ensure that Member States provide for penalties to apply to cases where the obligations laid down in this Directive are not respected. The penalties provided for shall be effective, proportionate and dissuasive.

**(iii) Administrative cooperation**

- **Presence of officials of a Member State during an enquiry in another Member State**

The amendment to Article 11(1) introduces an obligation on the requested competent authority to respond to a request for the presence of an official of another Member State during an enquiry. The deadline for response is 30 days to confirm its agreement or a reasoned refusal to the requesting authority.

Article 11(2), as amended, enables interviewing individuals and examining records without the limitation of national law of the requested Member State. The option to participate in administrative enquiries through the use of electronic means of communication was also added, to address the new modes of communication.

- **Simultaneous controls**

Article 12(3) was amended in order to provide for a deadline of 30 days within which the requested authorities have to respond to the proposal for a simultaneous control.

- **Joint audits**

Section IIa is added to the Directive to lay down an explicit and clear legal framework for the conduct of joint audits between two or more Member States.

Article 12a(1) includes a definition of what is a joint audit: an administrative enquiry jointly conducted by the competent authorities of two or more Member States. The competent authorities of the Member States involved proceed, in a pre-agreed and co-ordinated manner, to examine a case linked to one or more persons of common or complementary interest to them.

*Request for a joint audit*

– By a competent authority of a Member State

Article 12a(2) addresses the situation where a competent authority of a Member State requests a competent authority of another Member State to jointly conduct an audit. The requested authority shall respond to the request within 30 days from the receipt of the request.

A request may be rejected on justified grounds. Paragraph 3 of Article 12a gives a non-exhaustive list of reasons for rejection.

– By a person

Article 12a(4) addresses a situation where a person requests a competent authority of two or more Member States to jointly conduct an audit. The requested authorities have to respond to the request within 30 days from the receipt of the request.

A request may be rejected and the reasons for the rejection have to be notified to the requesting person.

The meaning of a person is defined in Article 3 of the Directive 2011/16/EU.

*The procedure*

Article 12a(5) clarifies that the exchange of information related to commercial, industrial or professional secrets or to a commercial process, or information the disclosure of which would be contrary to public policy, should not be refused in the context of a joint audit. Such exchanged information should however remain confidential among the engaged competent authorities and not be disclosed to third parties.

Article 12a(6) determines that the joint audit shall be carried out in accordance with the procedural agreements applicable in the Member State where the actions of an audit take place. The evidence collected during the joint audit should be mutually recognised by all competent authorities of the participating Member State(s).

Article 12a(10) deals with the linguistic arrangements for joint audits and details that these shall be agreed by the Member States involved.

*Final report*

Article 12a(7) lays down an obligation on the competent authorities of participating Member States to agree on the facts and circumstances of the case and calls upon competent authorities of Member States to endeavour to reach an agreement on how to interpret the tax position of the audited person(s). The conclusions of the joint audit need to be presented in a final report. The final report of the joint audit should have equivalent legal value to the relevant national instruments that are issued as a result of an audit in the participating Member States.

In accordance with Article 12a(9), the outcome of the joint audit and the final report should be notified to the audited person(s) within 30 days of the issuance of the final report.

*Corresponding adjustment*

Article 12a(8) establishes an obligation for Member States pursuant to which in transposing the Directive, Member States have to provide for the legal framework that allows them to perform corresponding adjustments.

**(iv) Other provisions**

- **Use of exchanged information**

Article 16(1) is amended in order to clarify that the information exchanged under this Directive can be used for the administration, assessment and enforcement of VAT and other indirect taxes.

- **Mandatory communication of evaluation results**

Article 23(2) is amended to create an obligation for Member States to examine and evaluate, in their jurisdiction, the effectiveness of administrative cooperation under the Directive and communicate the results of their evaluation to the Commission on an annual basis.

- **Suspension of exchanges**

Article 25(5) enables Member States to mitigate the risks of data breaches in the context of the exchange of information. In the event of a personal data breach, competent authorities of Member States, as joint data controllers, may decide to ask the Commission to suspend exchanges of information with the Member State(s) where the breach occurred.

The Commission shall restore the process for the exchanges of information after the competent authorities ask the Commission to enable again the exchanges of information under this Directive with the Member State where the breach occurred.

Such suspension comes in addition to the measures required under GDPR to address the data breach.

2020/0148 (CNS)

Proposal for a

# COUNCIL DIRECTIVE

## amending Directive 2011/16/EU on administrative cooperation in the field of taxation

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular 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[1],

Having regard to the opinion of the European Economic and Social Committee[2],

Acting in accordance with a special legislative procedure,

Whereas:

(1) In order to accommodate new initiatives of the Union in the field of tax transparency, Council Directive 2011/16/EU[3] has been the subject of a series of amendments over the last years. These changes mainly introduced reporting obligations, followed by communication to other Member States, related to financial accounts, advance cross-border rulings and advance pricing arrangements, country-by-country reports and reportable cross-border arrangements. In such a way, these amendments extended the scope of the automatic exchange of information. The tax authorities now have a broader set of cooperation tools at their disposal, to detect and tackle forms of tax fraud, tax evasion and tax avoidance.

(2) In the past years, the Commission has been monitoring the application and, in 2019, completed an evaluation of Directive 2011/16/EU[4]. While significant improvements have been made in the field of automatic exchange of information, there is still a need to improve existing provisions that relate to all forms of exchanges of information and administrative cooperation.

(3) Pursuant to Article 5 of Directive 2011/16/EU, following a request of a requesting authority, the requested authority is to communicate to the requesting authority any information it has in its possession, or that it obtains as a result of administrative enquiries, which is foreseeably relevant to the administration and enforcement of the domestic laws of the Member States concerning the taxes falling within the scope of that Directive. To ensure effectiveness of the exchanges of information and prevent

[1] OJ C […], […], p. […].

[2] OJ C […], […], p. […].

[3] Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC (OJ L 64, 11.3.2011, p. 1).

[4] European Commission, Commission Staff Working Document, Evaluation of the Council Directive 2011/16/EU on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC, SWD(2019) 328 final.

unjustified refusals of requests, as well as to provide legal clarity and certainty for both tax administrations and taxpayers, the standard of foreseeable relevance should be clearly delineated. In this context, it should also be clarified that the standard of foreseeable relevance should not apply to requests for additional information following an exchange of information in accordance with Article 8a of Directive 2011/16/EU concerning an advance cross-border ruling or an advance pricing arrangement.

(4) In the practical experience of tax administrations, there is sometimes a need for addressing requests for information that concern groups of taxpayers who cannot be identified individually, but rather can only be described on the basis of a common set of characteristics. Considering this, it is necessary to grant tax administrations the possibility to make group requests for information.

(5) It is important that information related to income derived from intellectual property be exchanged between Member States, as this is prone to profit shifting arrangements due to its highly mobile underlying assets. Therefore, royalties should be included in the categories of income subject to mandatory automatic exchange of information in order to improve the fight against tax fraud, tax evasion and tax avoidance.

(6) The digitalisation of the economy has been growing rapidly over the last years. This has given rise to an increasing number of complex situations linked to tax evasion. The cross-border dimension of the services offered through the use of digital platform operators has created a complex environment where it can be challenging to enforce tax rules and ensure tax compliance. Tax compliance is suboptimal and the value of unreported income is significant. Member States' tax administrations have insufficient information to correctly assess and control gross income earned in their country from commercial activities performed with the intermediation of digital platforms. This is particularly problematic where the income or taxable amount flows via platforms established in another jurisdiction.

(7) Tax administrations frequently request information from digital platform operators. This causes platform operators significant administrative and compliance costs. At the same time, some Member States have imposed a unilateral reporting obligation, which creates an additional administrative burden for platform operators, as they have to comply with multitude of national standards of reporting. It would therefore be essential that a standardised reporting obligation apply across the internal market.

(8) Considering that most of the income or taxable amounts of the sellers on digital platforms flow cross-border, the reporting of information related to the relevant activity would bring additional positive results if this were also communicated to the Member States that would be eligible for taxing the earned income. In particular, the automatic exchange of information between tax authorities is crucial in order to provide those authorities with the necessary information to enable them to assess income taxes and VAT due in an appropriate manner.

(9) To ensure the proper functioning of the internal market, the design of reporting rules should be efficient yet simple. Recognising the difficulties in detecting taxable events that occur while performing a commercial activity which is facilitated through digital platforms and also taking account of the additional administrative burden that tax administrations would have to face in such a case, it is necessary to impose a reporting obligation on platform operators. The platform operators are better placed to collect and verify the necessary information on all sellers operating on and making use of a specific platform.

(10) Given the wide use of digital platforms in performing commercial activities, both by individuals and entities, it is crucial to ensure that the information is reportable regardless of the legal nature of the seller. Nevertheless, an exception should be provided for governmental entities, which should not be captured by the reporting obligation.

(11) The reporting of income earned through such activities should provide tax administrations with a comprehensive set of information necessary for correctly assessing the income tax due.

(12) For the sake of simplification and mitigation of compliance costs, it would be reasonable to require platform operators to report income earned by the sellers through the use of the platform in one single Member State.

(13) Given the digital nature and flexibility of digital platforms, the reporting obligation should extend to those platform operators that perform commercial activity in the Union but are neither residents for tax purposes, nor incorporated or managed nor have a permanent establishment in a Member State. This would ensure a level playing field among the platforms and prevent unfair competition. In order to facilitate this, foreign platforms should be required to register and report in one single Member State for the purpose of operating in the internal market.

(14) Considering the developments in the digitalised economy, the reporting of commercial activity should include the rental of immovable property, personal services, sales of goods, the rental of any mode of transport and investing and lending in the context of crowdfunding. Activities carried out by a seller acting as an employee of the platform operator should not fall within the scope of reporting.

(15) The objective of preventing tax evasion and avoidance could be ensured by requiring digital platform operators to report income earned through platforms at an early stage, before the national tax authorities carry out their yearly tax assessments. To facilitate the work of Member States' tax authorities, the reported information should be exchanged within one month following the reporting. In order to facilitate the automatic exchange of information and enhance the efficient use of resources, exchanges should be carried out electronically through the existing common communication network ('CCN') developed by the Union.

(16) The evaluation of Directive 2011/16/EU carried out by the Commission demonstrated the need for consistent monitoring of the effectiveness in the application of that Directive and of the national transposing provisions enabling this application. In order for the Commission to continue to properly monitor and evaluate the effectiveness of the automatic exchanges of information under Directive 2011/16/EU, Member States should be obliged to communicate the statistics on such exchanges to the Commission on an annual basis.

(17) It is necessary to strengthen the mechanisms of Directive 2011/16/EU regarding the presence of officials of the tax administration of one Member State in the territory of another Member State and the carrying out of simultaneous controls by two or more Member States in order to ensure their effective application. It follows that responses to requests for the presence of officials of another Member State and for simultaneous controls should be provided within a specified timeframe. Where foreign officials are present in the territory of another Member State during an administrative enquiry, or participate through the use of electronic means of communication, they should be allowed to directly interview individuals and examine records.

(18) A Member State that intends to carry out a simultaneous control is required to communicate its intention to the other Member States concerned. While the competent authority of each Member State concerned is obliged to respond to the proposal, it is important to ensure that the response is given within a reasonable time limit. Therefore, the competent authority of each Member State concerned should respond to the proposal within 30 days from receipt.

(19) Multilateral controls carried out with the support of the Fiscalis 2020 programme established by Regulation (EU) No 1286/2013 of the European Parliament and of the Council[5] have demonstrated the benefit of co-ordinated controls of one or more taxpayers that are of common or complementary interest to two or more tax administrations in the Union. As there is no explicit legal base for conducting joint audits, such joint actions are currently conducted based on the combined provisions of Directive 2011/16/EU regarding the presence of foreign officials in the territory of other Member States and on simultaneous controls. However, in many cases this practice has proven to be insufficient and lacking legal clarity and certainty.

(20) Member States should adopt a clear and efficient legal framework to allow their tax authorities to perform joint audits of persons with cross-border activity. Joint audits are administrative enquiries conducted jointly by the competent authorities of two or more Member States, to examine a case linked to one or more persons of common or complementary interest to these Member States. Joint audits can play an important role in contributing to the better functioning of the internal market. Joint audits should be structured to offer legal certainty to taxpayers through clear procedural rules, including for mitigating the risk of double taxation.

(21) In order to ensure the effectiveness of the process, responses to requests for joint audits should be provided within a given timeframe. Rejections of requests should be duly justified. The procedural arrangements applicable to a joint audit should be those of the Member State where the relevant audit action takes place. Accordingly, evidence collected during a joint audit should be mutually recognised by the participating Member State(s). It is equally important that the competent authorities agree on the facts and circumstances of the case and endeavour to reach an agreement on how to interpret the tax position of the audited person(s). In order to ensure that the outcome of a joint audit can be implemented in the participating Member States, the final report should have equivalent legal value to the relevant national instruments that are issued as a result of an audit in the participating Member States. Where necessary, Member States should provide the legal framework for the performance of a corresponding adjustment.

(22) Recognising that joint audits are founded on mutual trust between the competent authorities of the participating Member States, the exchange of information related to commercial, industrial or professional secrets or to a commercial process, or information the disclosure of which would be contrary to public policy, should not be refused in the context of a joint audit. Such exchanged information should however remain confidential and not be disclosed to third parties.

(23) It is also important to ensure the effective exchange of information on request and cooperation among competent authorities. Therefore, competent authorities that

[5] Regulation (EU) No 1286/2013 of the European Parliament and of the Council of 11 December 2013 establishing an action programme to improve the operation of taxation systems in the European Union for the period 2014-2020 (Fiscalis 2020) and repealing Decision No 1482/2007/EC (OJ L 347, 20.12.2013, p. 25).

receive information in accordance with Article 5 or 9 of Directive 2011/16/EU should be obliged to provide feedback to the competent authority that provided such information with respect to all exchanges on request within 30 days after the outcome of the use of the requested information is known.

(24) It is important that, as a matter of principle, the information communicated under Directive 2011/16/EU is used for the assessment, administration and enforcement of taxes which are covered by the material scope of that Directive. On this premise and considering the significance that VAT has for the functioning of the internal market, it is appropriate to clarify that communicated information between Member States may also be used for the assessment, administration and enforcement of VAT and other indirect taxes.

(25) It is essential to effectively protect the personal data that is exchanged between Member States under Directive 2011/16/EU. If there is a personal data breach within the meaning of point 12 of Article 4 of Regulation (EU) 2016/679 of the European Parliament and of the Council[6] in one or more Member State, Member States, as joint controllers of the data, should decide whether the breach requires that exchanges of information be suspended with the Member State(s) where the breach occurred and whether the Commission, as processor, should be asked to suspend such exchanges. The suspension should last until the Member States ask the Commission to enable again the exchanges of information under Directive 2011/16/EU with the Member State where the breach occurred.

(26) In order to ensure uniform conditions for the implementation of Directive 2011/16/EU and in particular, for the automatic exchange of information between tax authorities, implementing powers should be conferred on the Commission to adopt a standard form, with a limited number of components, including the linguistic arrangements. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[7].

(27) The European Data Protection Supervisor was consulted in accordance with Article 42 of Regulation (EU) 2018/1725 of the European Parliament and of the Council[8].

(28) Any processing of personal data carried out within the framework of this Directive must comply with Regulations (EU) 2016/679 and (EU) 2018/1725.

(29) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.

(30) The objective of this Directive, namely efficient administrative cooperation between Member States under conditions compatible with the proper functioning of the internal market, cannot sufficiently be achieved by the Member States. Its aim to improve the cooperation between tax administrations requires uniform rules that can be effective

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6 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

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

8 Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC.

in cross-border situations, and therefore 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.

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

HAS ADOPTED THIS DIRECTIVE:

*Article 1*

Directive 2011/16/EU is amended as follows:

(1) In Article 3, point 9 is amended as follows:

(a) Point (a) of the first subparagraph is replaced by the following:

'(a) for the purposes of Article 8(1) and Articles 8a, 8aa, 8ab and 8ac, the systematic communication of predefined information to another Member State, without prior request, at pre-established regular intervals.'

(b) Point (c) of the first subparagraph is replaced by the following:

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

(c) The second subparagraph is replaced by the following:

'In the context of Articles 8(3a), 8(7a) and 21(2) and Article 25(2) and (3), any capitalised term shall have the meaning that it has under the corresponding definitions set out in Annex I. In the context of Article 8aa and Annex III, any capitalised term shall have the meaning that it has under the corresponding definitions set out in Annex III. In the context of Article 8ac and Annex V, any capitalised term shall have the meaning that it has under the corresponding definitions set out in Annex V.'.

(2) The following Articles are inserted:

*'Article 5a*

**Foreseeable relevance**

1. For the purposes of a request as referred to in Article 5, the requested information shall be deemed to be foreseeably relevant where at the time the request is made the requesting authority considers that, in accordance with its national law, there is a reasonable possibility that the requested information be relevant to the tax affairs of one or several taxpayers, whether identified by name or otherwise, and be justified for the purposes of the investigation.

2. With the aim to demonstrate the foreseeable relevance of the requested information, the requesting competent authority shall provide the requested authority with supporting information, in particular on the tax purpose for which the information is requested and the grounds that point to the requested information as being held by the requested authority or as being in the possession or control of a person within the jurisdiction of the requested authority.

*Article 5b*

**Group requests**

A request, as referred to in Article 5, may relate to a group of taxpayers who cannot be identified individually by name or otherwise but can only be described on the basis of a common set of characteristics.

In such cases, the requesting competent authority shall provide the following information to the requested authority:

(a) a comprehensive description of the common characteristics of the group; and

(b) an explanation of the applicable law and of the facts based on which there is reason to believe that the taxpayers in the group have not complied with the applicable law, including facts and circumstances related to the involvement of a third party that actively contributed to the potential non-compliance of the taxpayers in the group with the law.'.

(3) In Article 6, paragraph 2 is replaced by the following:

'2. The request referred to in Article 5 may contain a reasoned request for an 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.'.

(4) Article 8 is amended as follows:

(a) Paragraphs 1 and 2 are replaced by the following:

'1. The competent authority of each Member State shall, by automatic exchange, communicate to the competent authority of any other Member State all information 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;

(f) royalties.

For taxable periods starting on or after 1 January 2023, the communication of the information mentioned in the first subparagraph shall include the Tax Identification Number (TIN) of the Member State of residence.

Member States shall inform the Commission annually of at least two categories of income and capital mentioned in the first subparagraph with regard to which they communicate information concerning residents of another Member State.

2. Before 1 January 2023, Member States shall inform the Commission of at least four categories listed in paragraph 1 in respect of which the

competent authority of each Member State shall, by automatic exchange, communicate to the competent authority of any other Member State, information concerning residents in that other Member State. The information shall concern taxable periods starting on or after 1 January 2024.'.

(b) In paragraph 3, the second subparagraph is deleted.

(c) Paragraph 6 is replaced by the following:

'6. The communication of information pursuant to paragraphs 1 and 3a shall take place annually, within nine months following the end of the calendar year or other appropriate reporting period to which the information relates.'.

(5) Article 8a is amended as follows:

(a) In paragraph 5, point (a) is replaced by the following:

'(a) in respect of information exchanged pursuant to paragraph 1 – without delay after the advance cross-border rulings or advance pricing arrangements have been issued, amended or renewed and at the latest three months following the end of half of the calendar year during which the advance cross-border rulings or advance pricing arrangements were issued, amended or renewed;'.

(b) In paragraph 6, point (b) is replaced by the following:

'(b) a summary of the advance cross-border ruling or advance pricing arrangement, including a description of the relevant business activities or transactions or series of transactions and any other information that could assist the competent authority in assessing a potential tax risk, 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) Paragraph 10 is replaced by the following:

'10. Notwithstanding the reference to foreseeable relevance in paragraph 1 of Article 1 and the conditions of foreseeable relevance laid down in Article 5a, Member States may, in accordance with Article 5, and having regard to Article 21(4), request additional information, including the full text of an advance cross-border ruling or an advance pricing arrangement.'.

(6) The following Article is inserted:

*'Article 8ac*

**Scope and conditions of mandatory automatic exchange of information reported by Platform Operators**

1. Each Member State shall take the necessary measures to require Reporting Platform Operators to carry out the due diligence and reporting requirements laid down in Sections II and III of Annex V. Each Member State shall also ensure the effective implementation of, and compliance with, such rules in accordance with Section IV of Annex V.

2. Pursuant to the applicable due diligence and reporting requirements contained in Sections II and III of Annex V, the competent authority of each Member State shall, by automatic exchange, communicate within the time limit laid down in paragraph 3 to the competent authority of the Member State in which the Reportable Seller is resident within the meaning of the second subparagraph of paragraph B(3) of Section I of Annex V and/or the immovable property is located, the following information regarding each Reportable Seller for Reportable Periods as from 1 January 2022:

   (a) the name, registered office address and TIN of the Reporting Platform Operator, as well as the business name(s) of the Platform(s) in respect of which the Reporting Platform Operator is reporting;

   (b) the first and last name of the Seller that is an Individual and legal name of the Seller that is an Entity;

   (c) the Primary Address;

   (d) any TIN or, in the absence of a TIN, a functional equivalent issued to the Seller, including each Member State of issuance;

   (e) the business registration number of the Seller that is an Entity;

   (f) the value added tax (VAT) identification number of the Seller, where available;

   (g) the date of birth for Sellers that are Individuals;

   (h) the Financial Account Identifier to which the Consideration is paid or credited, insofar as it is available to the Reporting Platform Operator and the competent authority of the Member State where the Seller is resident has not notified the competent authorities of all other Member States that it does not intend to use the Financial Account Identifier for this purpose;

   (i) where different from the name of the Reportable Seller, the name of the holder and number of the financial account to which the Consideration is paid or credited, to the extent available to the Reporting Platform Operator, as well as any other financial identification information available to the Reporting Platform Operator with respect to that account holder;

   (j) each Member State in which the Reportable Seller is resident within the meaning of the second subparagraph of paragraph B(3) of Section I of Annex V;

   (k) the total Consideration paid or credited during each quarter of the Reportable Period;

   (l) any fees, commissions or taxes withheld or charged by the Reporting Platform during each quarter of the Reportable Period.

   Where the Reportable Seller provides immovable property rental services, the following additional information shall be communicated to the competent authority of the Member State in which the Reportable Seller is resident for tax purposes:

(a) the address of each Property Listing, determined on the basis of the procedures set out in paragraph E of Section II of Annex V and respective land registration number, where available;

(b) where available, the number of days each Property Listing was rented during the Reportable Period and the type of each Property Listing.

3. The communication pursuant to paragraph 2 shall take place using the standard form referred to in Article 20(7) within 2 months following the end of the Reportable Period to which the reporting obligations of the Reporting Platform Operator relate.

4. For the purpose of complying with the reporting obligations pursuant to paragraph 1, each Member State shall lay down the necessary rules to require a Reporting Platform Operator within the meaning of subparagraph A(3)(b) of Section I of Annex V to register within the Union. The competent authority of the Member State of registration shall allocate an individual identification number to such Reporting Platform Operator.

Member States shall lay down rules pursuant to which a Reporting Platform Operator may choose to register with the competent authorities of a single Member State in accordance with the rules laid down in paragraph F of Section IV of Annex V.

The Commission shall, by means of implementing acts, lay down the practical arrangements necessary for the registration and identification of Reporting Platform Operators. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 26(2).".

(7) Article 8b is amended as follows:

(a) Paragraph 1 is replaced by the following:

'1. Member States shall provide the Commission on an annual basis with statistics on the volume of automatic exchanges under Articles 8(1), 8(3a), 8aa and 8ac and with information on the administrative and other relevant costs and benefits relating to exchanges that have taken place and any potential changes, for both tax administrations and third parties.'.

(b) Paragraph 2 is deleted.

(8) Article 11 is amended as follows:

(a) Paragraph 1 is replaced by the following:

'1. With a view to exchanging the information referred to in Article1(1), the competent authority of a Member State may request the competent authority of another Member State that officials authorised by the former and in accordance with the procedural arrangements laid down by the latter:

(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;

(c) participate in the administrative enquiries carried out by the requested Member State through the use of electronic means of communication, where appropriate.

A competent authority shall respond to a request in accordance with the first subparagraph within 30 days, to confirm its agreement or communicate its reasoned refusal to the requesting authority.

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.'.

(b) In paragraph 2, the first subparagraph is replaced by the following:

'Where officials of the requesting authority are present during administrative enquiries, or participate through the use of electronic means of communication, they may interview individuals and examine records.'.

(9) In Article 12, paragraph 3 is replaced by the following:

'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 within 30 days of receiving the proposal.'.

(10) The following Section is inserted:

*'SECTION* IIa

***Joint Audits***

*Article 12a*

**Joint audits**

1. For the purposes of this Directive, "joint audit" shall mean an administrative enquiry which is jointly conducted by the competent authorities of two or more Member States that proceed, in a pre-agreed and co-ordinated manner, to examine a case linked to one or more persons of common or complementary interest to their respective Member States.

2. Where a competent authority of one Member State requests a competent authority of another Member State (or other Member States) to conduct a joint audit of one or more persons of common or complementary interest to all their respective Member States, the requested authorities shall respond to the request within 30 days from the receipt of the request.

3. A request for a joint audit by a competent authority of a Member State may be rejected on justified grounds and, in particular, for any of the following reasons:

(a) the requested joint audit would involve carrying out enquiries or communicating information in breach of the legislation of the requested Member State;

(b) the requesting authority is unable, for legal reasons, to communicate information similar to what the requested Member State would be expected to provide during the joint audit.

4. Where one or more persons requests a competent authority of two or more Member States to jointly audit the person(s), the requested authorities shall respond to the request within 30 days.

Where a requested authority rejects the request, it shall inform the requesting person(s) of the grounds for doing so.

5. Notwithstanding the limits laid down in Article 17(4), the provision of information to the competent authority of a Member State in the context of a joint audit pursuant to this Article may not be refused on the grounds that 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. This shall be without prejudice to the obligation of the receiving competent authority not to pass on or, in any way, disclose this information to third parties.

6. Joint audits shall be carried out in accordance with the procedural arrangements that apply in the Member State where the conduct of actions related to the audit takes place. Evidence collected in the context of a joint audit in one Member State pursuant to its law shall be mutually recognised by all other competent authorities of the Member States which participate in the joint audit.

7. Where competent authorities of two or more Member States conduct a joint audit, they shall agree on the facts and circumstances of the case and endeavour to reach an agreement on the tax position of the audited person(s) based on the results of the joint audit. The conclusions of the audit shall be incorporated in a final report which shall have equivalent legal value to the relevant national instruments issued following an audit.

8. For the purpose of implementing the final report, Member States shall provide by law for the possibility to perform a corresponding adjustment.

9. The competent authorities of the Member States that conducted a joint audit shall notify the outcome of the audit, including the final report, to the audited person(s) within 30 days of the issuance of the final report.

10. The linguistic arrangements of a joint audit shall be agreed by the competent authorities involved in it.'.

(11) In Article 14, paragraph 1 is replaced by the following:

'1. Where a competent authority provides information pursuant to Articles 5 or 9, the competent authority which receives 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 30 days after the outcome of the use of the requested information is known.

The Commission shall, by means of implementing acts, lay down the practical arrangements for the provision of feedback in such cases. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 26(2).'.

(12) Article 16 is amended as follows:

(a) In paragraph 1, the first subparagraph is replaced by the following:

'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 assessment, administration and enforcement of the domestic laws of the Member States concerning the taxes referred to in Article 2 as well as VAT and other indirect taxes.'.

(b) Paragraph 2 is replaced by the following:

'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.

The competent authority of each Member State shall communicate to the competent authorities of all other Member States a list of purposes for which, in accordance with its domestic law, information and documents may be used. other than those referred to in paragraph 1. The competent authority that receives information may use the received information and documents without the permission referred to in the first subparagraph for any of the purposes listed by the communicating Member State.'.

(13) In Article 17, paragraph 1 is replaced by the following:

'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 and pursued all available means except for those that would give rise to disproportionate difficulties, without running the risk of jeopardising the achievement of its objectives.'.

(14) Article 20 is amended as follows:

(a) In paragraph 2, the first subparagraph is replaced by the following:

'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 and, in the case of group requests as referred to in Article 5b, a comprehensive description of the common characteristics of the group;

(b) the tax purpose for which the information is sought.'.

(b) Paragraphs 3 and 4 are replaced by the following:

'3. Spontaneous information and its acknowledgement pursuant to Articles 9 and 10 respectively, requests for administrative notifications pursuant to Article 13, feedback information pursuant to Article 14 and communications pursuant to Articles 16(2) and (3) and 24(2) shall be sent using the standard forms adopted by the Commission in accordance with the procedure referred to in Article 26(2).

4. The automatic exchange of information pursuant to Article 8 and 8ac shall be carried out using a standard computerised format aimed at facilitating such automatic exchange, adopted by the Commission in accordance with the procedure referred to in Article 26(2).'.

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

'7. The Commission shall develop and provide technical and logistical support for a secure central interface on administrative cooperation in the field of taxation where Member States communicate with the use of standard forms pursuant to Article 20(1) and (3). The competent authorities of all Member States shall have access to that interface. For the purpose of collecting statistics, the Commission shall have access to information about the exchanges recorded to the interface and which can be extracted automatically. The access by the Commission shall be without prejudice to the obligation of Member States to provide statistics on exchanges of information in accordance with Article 23(4).

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 26(2).'.

(16) In Article 22, paragraph 1a is replaced by the following:

'1a. 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, 32a and 40 of Directive (EU) 2015/849 of the European Parliament and of the Council*.

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

(17) In Article 23, paragraph 2 is replaced by the following::

'2. Member States shall examine and evaluate, in their jurisdiction, the effectiveness of administrative cooperation in accordance with this Directive in combating tax evasion and tax avoidance and shall communicate annually the results of their evaluation to the Commission.'.

(18) In Article 23a, paragraph 2 is replaced by the following:

'2. Information communicated to the Commission by a Member State under Article 23, as well as any report or document produced by the Commission using such information, may be transmitted to other Member States. Such transmitted information shall be covered by the obligation of official secrecy and enjoy the protection extended to similar information under the national law of the Member State which received it.

Reports and documents produced by the Commission, referred to in the first subparagraph, may 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.

Notwithstanding the first and second subparagraphs, the Commission may publish annually anonymised summaries of the statistical data that Member States communicate to it in accordance with Article 23(4).'.

(19) Article 25 is amended as follows:

(a) Paragraphs 2 and 3 are replaced by the following:

'2. Reporting Financial Institutions, intermediaries, Reporting Platform Operators and the competent authorities of each Member State shall be considered to be joint data controllers and the Commission shall be considered to be data processor within the meaning of Regulation (EU) 2016/679 of the European Parliament and of the Council*.

3. Notwithstanding paragraph 1, each Member State shall ensure that its competent authority or each Reporting Financial Institution or intermediary or Reporting Platform Operator, as the case may be, which is under its jurisdiction:

(a) informs each individual concerned that information relating to this individual will be collected and transferred in accordance with this Directive;

(b) provides to each individual all information that the individual is entitled to from the data controller in sufficient time for the individual to exercise his data protection rights and, in any case, before the information is reported.

Notwithstanding point (b) of the first subparagraph, each Member State shall lay down rules obliging Reporting Platform Operators to inform Reportable Sellers of the reported Consideration.

* Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).'.

(b) The following paragraph is added:

'5. Member States shall ensure that, in the event of a personal data breach in the meaning of point 12 of Article 4 of Regulation (EU) 2016/679, the competent authorities may ask the Commission, as processor, to suspend, as a mitigating measure, the exchanges of information under this Directive with the Member State where the breach occurred.

The suspension shall last until the competent authorities ask the Commission to enable again the exchanges of information under this Directive with the Member State where the breach occurred.'.

(20) Article 25a is replaced by the following:

*'Article 25a*

***Penalties***

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

(21) A new Annex V, the text of which is set out in the Annex to this Directive, is added.

*Article 2*

1. Member States shall adopt and publish, by 31 December 2021 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

   They shall apply those provisions from 1 January 2022.

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

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

*Article 3*

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

*Article 4*

This Directive is addressed to the Member States.

Done at Brussels,

*For the Council*
*The President*

# LEGISLATIVE FINANCIAL STATEMENT

## 1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

1.2. Policy area(s) concerned in the ABM/ABB structure

1.3. Nature of the proposal/initiative

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*3.2.5. Third-party contributions*

3.3. Estimated impact on revenue

# LEGISLATIVE FINANCIAL STATEMENT

## 1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

### 1.1. Title of the proposal/initiative

Proposal for a Council Directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation

### 1.2. Policy area(s) concerned in the ABM/ABB structure[27]

14

14.03

### 1.3. Nature of the proposal/initiative

☒ The proposal/initiative relates to **a new action**

☐ The proposal/initiative relates to **a new action following a pilot project/preparatory action**[28]

☐ The proposal/initiative relates to **the extension of an existing action**

☐ The proposal/initiative relates to **an action redirected towards a new action**

### 1.4. Objective(s)

*1.4.1. The Commission's multiannual strategic objective(s) targeted by the proposal/initiative*

The Commission work programme for 2020 lists among its priorities fight against tax evasion. Following up on this, the key area for action is to further strengthen the fight against tax evasion and increase transaparency and exchange of information.

*1.4.2. Specific objective(s) and ABM/ABB activity(ies) concerned*

Specific objective

The aim of the proposed legislation is to improve the functioning of the existing policy provisions of Directive 2011/16/EU on administrative cooperation. The proposed improvements relate to all forms of exchange of information and administrative cooperation. They also aim at broadening the scope of automatic exchanges of information as regards information reported by the platform operators.

ABM/ABB activity(ies) concerned

ABB 3

[27] ABM: activity-based management; ABB: activity-based budgeting.

[28] As referred to in Article 54(2)(a) or (b) of the Financial Regulation.

*1.4.3. Expected result(s) and impact*

*Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.*

Improving the existing provision should have positive impact on the efficient application of Directive 2011/16/EU on administrative cooperation. Addressing the current inefficiencies in a uniform fashion will ensure legal certainty and clarity.

The reporting obligation with respect to the income earned via the use of digital platforms aims to primarily inform tax authorities about activities with a dimension beyond a single jurisdiction. The information reported and exchanged with the relevant jurisdictions will enable the competent authorities to assess tax due based on correct and complete information. In addition, by imposing a reporting requirement on the digital platforms, the income of sellers will be reported and in such a way that a level playing field will be created between the sellers, regardless of whether they operate via digital platforms. In addition, all platform operators that will be subject to the same requirements.

*1.4.4. Indicators of results and impact*

*Specify the indicators for monitoring implementation of the proposal/initiative.*

The proposal will be governed by the requirements of Directive 2011/16/EU on administrative cooperation (which it amends) in relation to the following: (i) the annual provision by Member States of statistics on information exchanges; and (ii) the submission of a report by the Commission on the basis of those statistics, including on the effectiveness of the automatic exchange of information.

**1.5. Grounds for the proposal/initiative**

*1.5.1. Requirement(s) to be met in the short or long term*

Directive 2011/16/EU on administrative cooperation will be amended to improve the functioning of existing provisions immediately as of taking effect and to introduce obligations on digital platform operators, in order to collect and report information on income generated by taxpayers through digital platforms.

*1.5.2. Added value of EU involvement*

An action at the level of the EU will bring an added value, as compared to individual Member State initiatives in the field. First, it will ensure a consistent application of the rules across the EU. Second, all platforms in scope will be subject to the same reporting requirements. Third, the reporting will be accompanied with exchange of information and, as such, enable the tax administrations to obtain a comprehensive set of information regarding the income earned through a digital platform. Thus, coordinated action at the level of the EU can ensure the effectiveness and completeness of the system for the exchange of information and administrative cooperation better than individual initiatives by Member States.

*1.5.3. Lessons learned from similar experiences in the past*

With respect to the digital platform operators, 12 Member States have legislation and/or administrative guidance in place on the basis of which platform operators would have to report information to tax administrations on sellers active on their platform. Another four Member States are planning to introduce such legislation or administrative guidance. In addition, most Member States have conducted

compliance checks targeting transactions facilitated by platforms, such as audits, letters or information campaigns.

*1.5.4. Compatibility and possible synergy with other appropriate instruments*

As the proposal is designed to amend the Directive 2011/16/EU on administrative cooperation, the procedures, arrangements and IT tools already established or under development in the context of that Directive will be available for use for the purposes of this proposal.

## 1.6. Duration and financial impact

☐ Proposal/initiative of **limited duration**

– ☐ Proposal/initiative in effect from [DD/MM]YYYY to [DD/MM]YYYY

– ☐ Financial impact from YYYY to YYYY

☒ Proposal/initiative of **unlimited duration**

– Implementation with a start-up period from YYYY to YYYY,

– followed by full-scale operation.

## 1.7. Management mode(s) planned[29]

☒ **Direct management** by the Commission

– ☐ by its departments, including by its staff in the Union delegations;

– ☐ by the executive agencies

☐ **Shared management** with the Member States

☐ **Indirect management** by entrusting budget implementation tasks to:

– ☐ third countries or the bodies they have designated;

– ☐ international organisations and their agencies (to be specified);

– ☐the EIB and the European Investment Fund;

– ☐ bodies referred to in Articles 208 and 209 of the Financial Regulation;

– ☐ public law bodies;

– ☐ bodies governed by private law with a public service mission to the extent that they provide adequate financial guarantees;

– ☐ bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that provide adequate financial guarantees;

– ☐ persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.

– *If more than one management mode is indicated, please provide details in the 'Comments' section.*

Comments

This proposal builds on the existing framework and systems for the automatic exchange of information which was developed pursuant to Article 21 of Directive 2011/16/EU in the context of a previous amendment. The Commission, in conjunction with Member States, shall develop standardised forms and formats for information exchange through implementing measures. As regards the CCN network which will permit the exchange of information between Member States, the Commission is responsible for the development of such a network and Member States will undertake to create the appropriate domestic infrastructure that will enable the exchange of information via the CCN network.

[29] Details of management modes and references to the Financial Regulation may be found on the BudgWeb site: http://www.cc.cec/budg/man/budgmanag/budgmanag_en.html

## 2. MANAGEMENT MEASURES

### 2.1. Monitoring and reporting rules

*Specify frequency and conditions.*

Member States undertake to:

- Communicate to the Commission a yearly assessment of the effectiveness of the automatic exchange of information in Directive referred to in Articles 8, 8a, 8aa, 8ab and the proposed 8ac as well as the practical results achieved;

- Provide a list of statistical data which is determined by the Commission in accordance with the procedure of Article 26(2) (implementing measures) for the evaluation of this Directive.

In Article 27, the Commission has undertaken to submit a report on the application of the Directive every five years, which started counting following 1 January 2013. The results of this proposal (which amends the DAC) will be included in the report to the European Parliament and to the Council that will be issued by 1 January 2028.

### 2.2. Management and control system

*2.2.1. Risk(s) identified*

The following potential risks have been identified:

- Member States undertake to provide the Commission with statistical data which will then inform the evaluation of the Directive. The Commission undertakes to submit a report based on this data every 5 years. Specifically on the automatic exchange of information, Member States undertake to communicate to the Commission a yearly assessment of the effectiveness of such exchange. The potential risk associated to this is that the data received by the Commission is not of the quality expected.

*2.2.2. Information concerning the internal control system set up*

Fiscalis will support the internal control system, in accordance with Regulation (EU) No 1286/2013 of 11 December 2013[30], by providing funds for the following:

- Joint Actions (e.g. in the form of project groups);

- The development of the technical specifications, including the XML Schema.

The main elements of the control strategy are:

Procurement contracts

The control procedures for procurement defined in the Financial Regulation: any procurement contract is established following the established procedure of verification by the services of the Commission for payment, taking into account contractual obligations and sound financial and general management. Anti-fraud measures (controls, reports, etc.) are foreseen in all contracts concluded between the Commission and the beneficiaries. Detailed terms of reference are drafted and form the basis of each specific contract. The acceptance process follows strictly the

[30] Regulation (EU) No 1286/2013 of the European Parliament and of the Council of 11 December 2013 establishing an action programme to improve the operation of taxation systems in the European Union for the period 2014-2020 (Fiscalis 2020) and repealing Decision No 1482/2007/EC, OJ L 347 p. 25–32, 20.12.2013.

TAXUD TEMPO methodology: deliverables are reviewed, amended if necessary and finally explicitly accepted (or rejected). No invoice can be paid without an "acceptance letter".

Technical verification of procurement

DG TAXUD performs controls of deliverables and supervises operations and services carried out by contractors. It also conducts quality and security audits of their contractors on a regular basis. Quality audits verify the compliance of the contractors' actual processes against the rules and procedures defined in their quality plans. Security audits focus on the specific processes, procedures and set-up.

In addition to the above controls, DG TAXUD performs the traditional financial controls:

Ex-ante verification of commitments

All commitments in DG TAXUD are verified by the Head of the Finances and the HR business correspondent Unit. Consequently, 100% of the committed amounts are covered by the ex-ante verification. This procedure gives a high level of assurance as to the legality and regularity of transactions.

Ex-ante verification of payments

100% of payments are verified ex-ante. Moreover, at least one payment (from all categories of expenditures) per week is randomly selected for additional ex-ante verification performed by the head of the Finances and HR business correspondent Unit. There is no target concerning the coverage, as the purpose of this verification is to check payments "randomly" in order to verify that all payments were prepared in line with the requirements. The remaining payments are processed according to the rules in force on a daily basis.

Declarations of the Authorising Officers by Sub-Delegations (AOSD)

All the AOSD sign declarations supporting the Annual Activity Report for the year concerned. These declarations cover the operations under the programme. The AOSD declare that the operations connected with the implementation of the budget have been executed in accordance with the principles of the sound financial management, that the management and control systems in place provided satisfactory assurance concerning the legality and regularity of the transactions and that the risks associated to these operations have been properly identified, reported and that mitigating actions have been implemented.

*2.2.3. Estimate of the costs and benefits of the controls and assessment of the expected level of risk of error*

The controls established enable DG TAXUD to have sufficient assurance of the quality and regularity of the expenditure and to reduce the risk of non-compliance. The above control strategy measures reduce the potential risks below the target of 2% and reach all beneficiaries. Any additional measures for further risk reduction would result in disproportionately high costs and are therefore not envisaged. The overall costs linked to implementing the above control strategy – for all expenditures under Fiscalis 2020 programme – are limited to 1.6% of the total payments made. It is expected to remain at the same ratio for this initiative. The programme control strategy limits the risk of non-compliance to virtually zero and remains proportionate to the risks entailed.

## 2.3. Measures to prevent fraud and irregularities

*Specify existing or envisaged prevention and protection measures.*

The European Anti-fraud Office (OLAF) may carry out investigations, including on-the-spot checks and inspections, in accordance with the provisions and procedures laid down in Regulation (EC) No 1073/1999 of the European Parliament and of the Council[31] and Council Regulation (Euratom, EC) No 2185/96[32] with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union in connection with a grant agreement or grant decision or a contract funded under this Regulation.

# 3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

## 3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

Existing budget lines

In order of multiannual financial framework headings and budget lines.

| Heading of multiannual financial framework | Budget line | Type of expenditure | Contribution | | | |
|---|---|---|---|---|---|---|
| | 14.03.01 | Diff./Non-diff.[33] | from EFTA countries[34] | from candidate countries[35] | from third countries | within the meaning of Article 21(2)(b) of the Financial Regulation |
| 1A – Competitiveness for growth and jobs | Improving the proper functioning of the taxation systems | Diff. | NO | NO | NO | NO |

New budget lines requested

*In order of multiannual financial framework headings and budget lines.*

| Heading of multiannual financial framework | Budget line | Type of expenditure | Contribution | | | |
|---|---|---|---|---|---|---|
| | Number […][Heading……] | Diff./Non-diff. | from EFTA countries | from candidate countries | from third countries | within the meaning of Article 21(2)(b) of the Financial Regulation |
| | […][XX.YY.YY.YY] | | YES/NO | YES/NO | YES/NO | YES/NO |

31 Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF), OJ L 136 p. 1, 31.5.1999.

32 Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities, OJ L 292 p. 2, 15.11.96.

33 Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.

34 EFTA: European Free Trade Association.

35 Candidate countries and, where applicable, potential candidate countries from the Western Balkans.

## 3.2. Estimated impact on expenditure

### *3.2.1. Summary of estimated impact on expenditure*

EUR million (to three decimal places)

| **Heading of multiannual financial framework** | 1A | Competitiveness for growth and jobs |
|---|---|---|

| DG: TAXUD | | | Year **N**[36] | Year **N+1** | Year **N+2** | Year **N+3** | Year **N+4** | Year **N+5** | | **TOTAL** |
|---|---|---|---|---|---|---|---|---|---|---|
| • Operational appropriations | | | | | | | | | | |
| Number of budget line 14.03.01 | Commitments | (1) | 0.4 | 0.4 | 0.1 | 0.1 | 0.1 | | | **1.1** |
| | Payments | (2) | 0.0 | 0.4 | 0.4 | 0.1 | 0.1 | 0.1 | | **1.1** |
| Number of budget line | Commitments | (1a) | | | | | | | | |
| | Payments | (2a) | | | | | | | | |
| Appropriations of an administrative nature financed from the envelope of specific programmes[37] | | | | | | | | | | |
| Number of budget line | | (3) | | | | | | | | |
| **TOTAL appropriations for DG TAXUD** | Commitments | =1+1a +3 | 0.4 | 0.4 | 0.1 | 0.1 | 0.1 | | | **1.1** |
| | Payments | =2+2a +3 | 0.0 | 0.4 | 0.4 | 0.1 | 0.1 | 0.1 | | **1.1** |

[36] Year N is the year in which implementation of the proposal/initiative starts.

[37] Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| • TOTAL operational appropriations | Commitments | (4) | 0.4 | 0.4 | 0.1 | 0.1 | 0.1 | | | **1.1** |
| | Payments | (5) | 0.0 | 0.4 | 0.4 | 0.1 | 0.1 | 0.1 | | **1.1** |
| • TOTAL appropriations of an administrative nature financed from the envelope for specific programmes | | (6) | | | | | | | | |
| **TOTAL appropriations under HEADING 1A** of the multiannual financial framework | Commitments | =4+ 6 | 0.4 | 0.4 | 0.1 | 0.1 | 0.1 | | | **1.1** |
| | Payments | =5+ 6 | 0.0 | 0.4 | 0.4 | 0.1 | 0.1 | 0.1 | | **1.1** |

**If more than one heading is affected by the proposal / initiative:**

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| • TOTAL operational appropriations | Commitments | (4) | 0.4 | 0.4 | 0.1 | 0.1 | 0.1 | | | **1.1** |
| | Payments | (5) | 0.000 | 0.4 | 0.4 | 0.1 | 0.1 | 0.1 | | **1.1** |
| • TOTAL appropriations of an administrative nature financed from the envelope for specific programmes | | (6) | | | | | | | | |
| **TOTAL appropriations under HEADINGS 1 to 4** of the multiannual financial framework (Reference amount) | Commitments | =4+ 6 | 0.4 | 0.4 | 0.1 | 0.1 | 0.1 | | | **1.1** |
| | Payments | =5+ 6 | 0.0 | 0.4 | 0.4 | 0.1 | 0.1 | 0.1 | | **1.1** |

| **Heading of multiannual financial framework** | **5** | 'Total Administrative expenditure' |
|---|---|---|

EUR million (to three decimal places)

| | | Year **N** | Year **N+1** | Year **N+2** | Year **N+3** | Year **N+4** | **TOTAL** |
|---|---|---|---|---|---|---|---|
| DG: TAXUD | | | | | | | |
| • Human resources | | 0.069 | 0.069 | 0.028 | 0.014 | 0.014 | **0.194** |
| • Other administrative expenditure | | 0.004 | 0.004 | 0.002 | 0.001 | 0.001 | **0.012** |
| **TOTAL DG TAXUD** | Appropriations | 0.073 | 0.073 | 0.030 | 0.015 | 0.015 | **0.206** |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| **TOTAL appropriations under HEADING 5** of the multiannual financial framework | (Total commitments = Total payments) | 0.073 | 0.073 | 0.030 | 0.015 | 0.015 | **0.206** |

EUR million (to three decimal places)

| | | Year **N**[38] | Year **N+1** | Year **N+2** | Year **N+3** | Year **N+4** | Year **N+5** | **TOTAL** |
|---|---|---|---|---|---|---|---|---|
| **TOTAL appropriations under HEADINGS 1 to 5** of the multiannual financial framework | Commitments | 0.473 | 0.473 | 0.130 | 0.115 | 0.115 | | **1.306** |
| | Payments | 0.073 | 0.473 | 0.430 | 0.115 | 0.115 | 0.100 | **1.306** |

[38] Year N is the year in which implementation of the proposal/initiative starts.

*3.2.2. Estimated impact on operational appropriations*

☐ The proposal/initiative does not require the use of operational appropriations

☒ The proposal/initiative requires the use of operational appropriations, as explained below:

Commitment appropriations in EUR million (to three decimal places)

| **Indicate objectives and outputs** ⇩ | | | Year **N** | | Year **N+1** | | Year **N+2** | | Year **N+3** | | Year **N+4** | | **TOTAL** | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | **OUTPUTS** | | | | | | | | | | | | | |
| | Type [39] | Average cost | No | Cost | No | Cost | No | Cost | No | Cost | No | Cost | Total No | Total cost |
| SPECIFIC OBJECTIVE No 1 [40] … | | | | | | | | | | | | | | |
| Specifications | | | | 0.400 | | 0.100 | | | | | | | | **0.500** |
| Development | | | | | | 0.280 | | | | | | | | **0.280** |
| Maintenance | | | | | | | | 0.050 | | 0.050 | | 0.050 | | **0.150** |
| Support | | | | | | 0.010 | | 0.030 | | 0.030 | | 0.030 | | **0.100** |
| Training | | | | | | | | | | | | | | |
| ITSM (Infrastructure, hosting, licences, etc.), | | | | | | 0.010 | | 0.020 | | 0.020 | | 0.020 | | **0.070** |
| Subtotal for specific objective No 1 | | | | **0.400** | | **0.400** | | **0.100** | | **0.100** | | **0.100** | | **1.100** |
| SPECIFIC OBJECTIVE No 2 ... | | | | | | | | | | | | | | |
| - Output | | | | | | | | | | | | | | |

[39] Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.).

[40] As described in point 1.4.2. 'Specific objective(s)…'

| | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Subtotal for specific objective No 2 | | | | | | | | | | | | |
| **TOTAL COST** | | **0.400** | | **0.400** | | **0.100** | | **0.100** | | **0.100** | | **1.100** |

### *3.2.3. Estimated impact on appropriations of an administrative nature*

3.2.3.1. Summary

☐ The proposal/initiative does not require the use of appropriations of an administrative nature

☒ The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:

EUR million (to three decimal places)

| | Year N[41] | Year N+1 | Year N+2 | Year N+3 | Year N+4 | TOTAL |
|---|---|---|---|---|---|---|
| **HEADING 5 of the multiannual financial framework** | | | | | | |
| Human resources | 0.069 | 0.069 | 0.028 | 0.014 | 0.014 | **0.194** |
| Other expenditure of an administrative nature | 0.004 | 0.004 | 0.002 | 0.001 | 0.001 | **0.012** |
| **Subtotal HEADING 5 of the multiannual financial framework** | 0.073 | 0.073 | 0.030 | 0.015 | 0.015 | **0.206** |

| | | | | | | |
|---|---|---|---|---|---|---|
| **Outside HEADING 5[42] of the multiannual financial framework** | | | | | | |
| Human resources | | | | | | |
| Other expenditure of an administrative nature | | | | | | |
| **Subtotal outside HEADING 5 of the multiannual financial framework** | | | | | | |

| | | | | | | |
|---|---|---|---|---|---|---|
| **TOTAL** | 0.073 | 0.073 | 0.030 | 0.015 | 0.015 | **0.206** |

The appropriations required for human resources and other expenditure of an administrative nature will be met by appropriations from the DG that are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

41 Year N is the year in which implementation of the proposal/initiative starts.

42 Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

3.2.3.2. Estimated requirements of human resources

☐ The proposal/initiative does not require the use of human resources.

☒ The proposal/initiative requires the use of human resources, as explained below:

*Estimate to be expressed in full time equivalent units*

| | | Year **N** | Year **N+1** | Year **N+2** | Year **N+3** | Year **N+4** |
|---|---|---|---|---|---|---|
| **• Establishment plan posts (officials and temporary staff)** | | | | | | |
| XX 01 01 01 (Headquarters and Commission's Representation Offices) | | 0.5 | 0.5 | 0.2 | 0.1 | 0.1 |
| XX 01 01 02 (Delegations) | | | | | | |
| XX 01 05 01 (Indirect research) | | | | | | |
| 10 01 05 01 (Direct research) | | | | | | |
| **• External staff (in Full Time Equivalent unit: FTE)**[43] | | | | | | |
| XX 01 02 01 (AC, END, INT from the 'global envelope') | | | | | | |
| XX 01 02 02 (AC, AL, END, INT and JED in the delegations) | | | | | | |
| **XX** 01 04 **yy** [44] | - at Headquarters | | | | | |
| | - in Delegations | | | | | |
| **XX** 01 05 02 (AC, END, INT - Indirect research) | | | | | | |
| 10 01 05 02 (AC, END, INT - Direct research) | | | | | | |
| Other budget lines (specify) | | | | | | |
| **TOTAL** | | **0.5** | **0.5** | **0.2** | **0.1** | **0.1** |

**XX** is the policy area or budget title concerned.

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Description of tasks to be carried out:

| | |
|---|---|
| Officials and temporary staff | Preparation of meetings and correspondence with Member States; work on forms, IT formats and the Central Directory;<br>Commission of external contractors to do work on the IT system. |
| External staff | N/A |

[43] AC= Contract Staff; AL = Local Staff; END= Seconded National Expert; INT = agency staff; JED= Junior Experts in Delegations.

[44] Sub-ceiling for external staff covered by operational appropriations (former 'BA' lines).

*3.2.4. Compatibility with the current multiannual financial framework*

☒ The proposal/initiative is compatible the current multiannual financial framework.

☐ The proposal/initiative will entail reprogramming of the relevant heading in the multiannual financial framework.

| Explain what reprogramming is required, specifying the budget lines concerned and the corresponding amounts.<br>[…] |
|---|

☐ The proposal/initiative requires application of the flexibility instrument or revision of the multiannual financial framework.

| Explain what is required, specifying the headings and budget lines concerned and the corresponding amounts.<br>[…] |
|---|

*3.2.5. Third-party contributions*

The proposal/initiative does not provide for co-financing by third parties.

~~The proposal/initiative provides for the co-financing estimated below:~~

Appropriations in EUR million (to three decimal places)

| | Year **N** | Year **N+1** | Year **N+2** | Year **N+3** | Enter as many years as necessary to show the duration of the impact (see point 1.6) | | | Total |
|---|---|---|---|---|---|---|---|---|
| Specify the co-financing body | | | | | | | | |
| TOTAL appropriations co-financed | | | | | | | | |

### 3.3. Estimated impact on revenue

☒ The proposal/initiative has no financial impact on revenue.

☐ The proposal/initiative has the following financial impact:

☐ on own resources

☐ on miscellaneous revenue

EUR million (to three decimal places)

| Budget revenue line: | Appropriations available for the current financial year | Impact of the proposal/initiative[45] | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | | Year **N** | Year **N+1** | Year **N+2** | Year **N+3** | Enter as many years as necessary to show the duration of the impact (see point 1.6) | | |
| Article ……. | | | | | | | | |

For miscellaneous 'assigned' revenue, specify the budget expenditure line(s) affected.

[…]

Specify the method for calculating the impact on revenue.

[…]

[45] As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 25 % for collection costs.