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Proposal for a

COUNCIL DIRECTIVE

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

{SWD(2017) 236 final}
{SWD(2017) 237 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Tackling tax avoidance and evasion is amongst the political priorities in the European Union (EU), with a view to creating a deeper and fairer single market. In this context, the Commission has presented in recent years a number of initiatives in order to promote a fairer tax system. Enhancing transparency is one of the key pillars in the Commission's strategy to combat tax avoidance and evasion. In particular the exchange of information between tax administrations is crucial in order to provide them with the necessary information to exercise their duties efficiently.

Member States find it increasingly difficult to protect their national tax bases from erosion as tax planning structures become ever-more sophisticated and take advantage of the increased mobility of capital and persons within the internal market. The proper functioning of the market is thus undermined through distortions and a lack of fairness. These harmful structures commonly consist of arrangements which develop across various jurisdictions and shift taxable profits towards beneficial tax regimes or have the effect of reducing the taxpayer´s overall tax bill. As a result, Member States often experience considerable reductions in their tax revenues which hinder them from applying growth-friendly tax policies.

Recent leaks, including the Panama Papers, have highlighted how certain intermediaries appear to have actively helped their clients to make use of aggressive tax planning arrangements in order to reduce the tax burden and to conceal money offshore. Whilst some complex transactions and corporate structures may have entirely legitimate purposes, it is also clear that some activities, including offshore structures, may not be legitimate and in some cases, may even be illegal. Different and complex structures, often involving a company located in a jurisdiction which is low tax or non-transparent, are used to create distance between the beneficial owners and their wealth with a view to ensuring low or no taxation and/or to laundering the proceeds of criminal activity. Certain taxpayers use shell companies registered in tax/secrecy havens and appoint nominee directors to conceal their wealth and income, often coming from illegal activity, by hiding the identity of the real owners of the companies (beneficial owners).

In addition, the Common Reporting Standard (CRS) on foreign account information is in force in the EU through the rules laid down in Council Directive (EU) 2014/107 of 9 December 2014[1] and applies to information relating to taxable periods as of 1 January 2016. It is thus crucial that information which may escape from the scope of this Directive be captured through placing an obligation on intermediaries to report on potentially aggressive tax planning arrangements.

The proposed legislation complements other rules and initiatives, such as the Fourth Anti-Money Laundering Directive[2] and its current revision, which stand against the current lack of

[1] 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 (OJ L 359, 16.12.2014, p. 1–29).

[2] 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).

transparency or uncertainty over beneficial ownership. The aim is to increase transparency and access to the right information at an early stage, as this should allow the authorities to improve the speed and accuracy of their risk assessment and make timely and informed decisions on how to protect their tax revenues. Namely, if tax authorities receive information about potentially aggressive tax planning arrangements before these are implemented, they should be able to track the arrangements and respond to the tax risks that they pose by taking appropriate measures to curb them. For this purpose, information should ideally be obtained in advance, i.e. before an arrangement is implemented and/or used. This would enable the authorities to timely assess the risk of these arrangements and if necessary, react to close down loopholes and prevent a loss of tax revenue. The ultimate objective is to design a mechanism that will have a deterrent effect; that is, a mechanism that will dissuade intermediaries from designing and marketing such arrangements.

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

Several calls have been made to the EU to take the lead in the field and further investigate the role of intermediaries. In particular, the European Parliament has called for tougher measures against intermediaries who assist in tax evasion schemes.[3] Member States at the informal ECOFIN Council of April 2016[4] invited the Commission to consider initiatives on mandatory disclosure rules inspired by the OECD/G20 Base Erosion and Profit Shifting (BEPS) Action 12[5], with regard to introducing more effective disincentives for intermediaries who assist in tax evasion schemes. In May 2016, the Council presented conclusions on an external strategy and measures against tax treaty abuse[6]. In this context, the ECOFIN invited *"the Commission to consider legislative initiatives on Mandatory Disclosure Rules inspired by BEPS Action 12 of the OECD project in order to introduce more effective disincentives for intermediaries who assist in tax evasion or avoidance schemes".*[7]

With the aim to enhance transparency, the OECD/G20 Action 12 recommends that countries introduce a regime for the mandatory disclosure of aggressive tax planning arrangements but does not define any minimum standard to comply with. The final report on Action 12 was published as part of the set of BEPS actions in October 2015. Anti-BEPS measures, as recommended by the OECD, were endorsed by the G20 and most EU Member States have committed, in their capacity as OECD members, to implement them. Furthermore, the current G20 President, Germany, identified tax certainty as one of the main themes of its priorities.[8] Thus, providing tax administrations with timely information on the design and use of potentially aggressive tax planning arrangements would supply them with an additional tool to take appropriate measures against certain tax planning arrangements, which ultimately increases tax certainty and is fully compatible with the G20 priorities.

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3 European Parliament resolution of 6 July 2016 on tax rulings and other measures similar in nature or effect (2016/2038(INI)) http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2016-0310+0+DOC+XML+V0//EN

4 Informal ECOFIN Council of 22 April 2016.

5 OECD Base erosion and profit shifting – BEPS (2015): "*Public Discussion Draft BEPS Action 12: Mandatory Disclosure Rules*". See also for further clarification the entry in the glossary.

6 Council of the European Union (2016), Conclusions on the "*Commission Communication on an External Strategy and Recommendation on the implementation of measures against tax treaty abuse – Council conclusions*", 25.5.2016 (May 2016 ECOFIN Conclusions).

7 May 2016 ECOFIN Conclusions, point 12.

8 G20 priorities: https://www.g20.org/Webs/G20/EN/G20/Agenda/agenda_node.html

The July 2016 Communication on further measures to enhance transparency and the fight against tax evasion and avoidance[9] outlined the Commission's assessment of the priority areas for action in the coming months at EU and international level. Increased transparency by intermediaries was identified as one of the areas for future action.

The proposed legislation addresses the broad political priority for transparency in taxation, which is a pre-requisite for effectively fighting against tax avoidance, evasion and aggressive tax planning. Since a couple of years ago, EU Member States have 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[10] replaced Council Directive 77/799/EEC[11] 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: exchanges of information on request; spontaneous exchanges; automatic exchanges on an exhaustive list of items; the participation in administrative enquiries; simultaneous controls; and notifications of tax decisions to other tax authorities.

The automatic exchange of information is a key element of the proposed legislation, as it is envisaged that information disclosed by intermediaries to the tax authorities will then be exchanged automatically with other tax authorities in the EU. This is the latest in a series of EU initiatives that lay down a requirement for mandatory automatic exchange of information in tax matters:

- Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation (DAC): the Directive provides for the mandatory automatic exchange of information, where the information is available, in respect of five non-financial categories of income and capital, with effect from 1 January 2015: 1) income from employment, 2) director's fees, 3) life insurance products not covered by other Directives, 4) pensions, and 5) ownership of and income from immovable property;
- Council Directive 2014/107/EU of 16 December 2014[12] 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[13] as regards the mandatory automatic exchange of information on advance cross-border tax rulings;
- Council Directive (EU) 2016/881 of 25 May 2016[14] as regards the mandatory automatic exchange of information on country-by-country reporting (CbCR) amongst tax authorities.

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9 European Commission, Communication on further measures to enhance transparency and the fight against tax evasion and avoidance, COM(2016) 451 final, 5.7.2016 (*Panama Communication*).

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

11 Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation and taxation of insurance premiums (OJ L 336, 27.12.1977, pp. 15-20).

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

13 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).

14 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).

- Commission proposal for a Directive 2016/0107 of the European Parliament and of the Council of 12 April 2016[15] on the disclosure of income tax information of certain undertakings and branches. The proposed rules provide for the publication of income tax information which would give the wider public access to tax-relevant data of multinational enterprises on a country-by-country basis. This is still a proposal under discussion before the Parliament and Council in accordance with the ordinary procedure.
- Agreements between Member States and third countries[16] regarding the automatic exchange of financial account information based on the OECD Common Reporting Standard (CRS).

It should be clarified that the existing tax instruments at EU level do not contain explicit provisions requiring Member States to exchange information in the case of tax avoidance and/or evasion schemes that come to their attention. The DAC contains a general obligation for the national tax authorities to spontaneously communicate information to the other tax authorities within the EU in certain circumstances. This includes the loss of tax in a Member State or tax savings resulting from artificial transfers of profits within groups of companies. The present initiative aims to capture, via the disclosure by intermediaries, potentially aggressive tax planning arrangements and subject them to a mandatory automatic exchange of information.

- **Consistency with other Union policies (Possible future initiatives of relevance to the policy area)**

The deterrent effect of the proposed *ex ante* disclosure of potentially aggressive tax planning arrangements could be enhanced if the obligation to disclose information to the tax authorities were extended to auditors that are engaged to sign off on a taxpayer's financial statements. These auditors come across considerable amounts of data in the course of pursuing their professional tasks. As part of this, they may discover arrangements which could qualify as aggressive tax planning practices. The potential benefits from disclosing these arrangements to the authorities would indeed constitute a complement to the mandatory disclosure of similar schemes by intermediaries, i.e. designers, promoters, advisers, etc. It could therefore be envisaged to pursue such an initiative through legislation in the future.

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. In many cases, this would imply that EU measures exclusively address cross-border situations.

The lack of transparency facilitates the activities of certain intermediaries that are involved in promoting and selling aggressive tax planning arrangements with cross-border implications. As a consequence of this, Member States suffer from the shifting of profits, which would

[15] Commission proposal for a Directive 2016/0107 (COD) of the European Parliament and of the Council of 12 April 2016 amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches.

[16] Some of these agreements which concern certain European third countries are concluded by the Union.

otherwise be generated and become taxable in their territory, towards low-tax jurisdictions and often experience an erosion of their tax bases. In addition, such a situation gives rise to conditions of unfair tax competition against businesses that refuse to engage in these illegitimate activities. The ultimate outcome is to distort the operation of the internal market. It follows that such a situation can only be tackled through a uniform approach aimed to improve the functioning of the internal market, as prescribed in Article 115 TFEU.

- **Subsidiarity**

Experience shows that national provisions against aggressive tax planning cannot be fully effective. This is because a significant number of the structures devised to avoid taxes have a cross-border dimension while also capital and persons are increasingly mobile, especially within an integrated market, such as the EU internal market. The need for collective action at the level of the EU to improve the current state of play has become apparent and can usefully complement existing initiatives in this area, in particular within the context of the DAC. This is all the more so, as existing instruments at national level have shown to be only partly effective in increasing transparency.

In this light, 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, about potentially aggressive tax planning arrangements with cross-border implications.

Considering that the mandatory disclosure aims to inform tax authorities about arrangements 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. Uncoordinated action undertaken by Member States based on own initiative would create a patchwork of rules on the disclosure of arrangements by intermediaries. As a result, the chances would be that unfair tax competition amongst Member States persists.

Even where a single Member State is involved in a potentially aggressive tax planning arrangement or series of arrangements with a third country, there is a cross-border element that could create a risk of distorting the functioning of the internal market. Namely, the structure of the internal market is premised on the principle of free circulation of people, goods, services and capital and it is coupled with the benefits arising from the corporate tax directives. It follows that the actual level of protection of the internal market is overall defined by reference to the weakest Member State. This is why a cross-border potentially aggressive tax planning arrangement that engages one Member State in reality impacts on all States.

Leaving the decision on this element to individual national initiatives would mean that some could decide to act, while others not. This is notably so, given that BEPS Action 12 is not a minimum standard and implementation in the EU could therefore diverge substantially. Indeed, 39 out of 131 stakeholders replied in the public consultation that, in case there was no EU action, no transparency requirements would be introduced and 107 stakeholders stated that it is likely or very likely that differing transparency requirements would be introduced. For all these reasons, introducing a reporting requirement through EU legislation linked with exchange of information would resolve the identified problems and contribute to improving the functioning of the internal market.

What is more, action on disclosure at the level of the EU will bring an added value, as compared to individual Member State initiatives in the field. This is because, especially if it is accompanied with exchange of information, the disclosure of potentially aggressive tax

planning arrangements will allow tax administrations to obtain the full picture of the impact of cross-border transactions on the overall tax base. The EU is thus in a better position than any Member State individually to ensure the effectiveness and completeness of the system for the exchange of information.

- **Proportionality**

The proposed policy response is limited to addressing potentially aggressive tax planning arrangements with a cross-border element. Considering that the identified distortions in the functioning of the internal market usually expand beyond the borders of a single Member State, confining the common rules to cross-border situations within the EU represents the minimum necessary for tackling the problems in an effective manner. Thus, the proposed rules represent a proportionate answer to the identified problem since they do not exceed what is necessary to achieve the objective of the Treaties for a better functioning internal market without distortions.

- **Choice of the instrument**

The legal base for this proposal is Article 115 TFEU, which lays 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 different type of EU legal act when it comes to passing binding rules in direct taxation.

In addition, the proposed Directive constitutes the fifth amendment to the DAC since 2014; it thus follows Council Directives 2014/107/EU, (EU) 2015/2376, (EU) 2016/881 and (EU) 2016/2258.

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

- **Evaluations**

The proposed legislation amends the DAC to provide for the mandatory disclosure of potentially aggressive tax planning arrangements and to extend the scope of the automatic exchange of information between tax authorities to include such arrangements. So, the rationale behind the proposed amendments is linked to addressing a new topic, in order to reinforce Member States' efforts to clamp down on tax avoidance and evasion. The proposed amendments do not deal with rectifying identified deficiencies of the underlying instrument (i.e. the DAC) but instead extend its scope to an additional topic where the need for action is justified based on the findings of the OECD work on Action 12 and the Commission's consultations with stakeholders.

The DAC has so far not been evaluated. The first report in this regard is due by 1 January 2018. Thereafter, the Commission will have to submit a report on the application of the DAC to the European Parliament and to the Council every 5 years. For this purpose, Member States have undertaken to communicate to the Commission the necessary information for the evaluation of the effectiveness of administrative cooperation as well as statistical data.

The proposed legislation has been designed in the most cost efficient way. The envisaged framework will thus make use, following the necessary adjustments, of an existing IT tool for the exchange of information which was initially set up to accommodate exchanges on cross-border advance rulings (DAC 3).

- **Stakeholder consultations**

On 10 November 2016 the European Commission launched a Public Consultation to gather feedback on the way forward for EU action on creating disincentives for advisors and intermediaries who facilitate potentially aggressive tax planning schemes.

A number of possible options were presented and stakeholders gave their feedback in a total of 131 responses. The largest share of replies came from trade/business associations/professional associations with 27% of the replies and private citizens with 20% of the replies. Geographically speaking, the largest share of responses came from Germany with 24% of the total responses.

Out of all respondents, 46 replied that they had received professional tax advice and in more than half of the cases, this input was received from tax advisors - the largest professional group (52%). In addition, 30 respondents responded that they provided tax advice, and half of them stated that they maintained contact with the tax authorities.

- **Member States**

The principle underlying the proposed legislation is in line with the trends in international taxation, as those featured in the context of the OECD/G20 project against BEPS. Most Member States are members of the OECD, which organised extensive public consultations with stakeholders on each of the anti-BEPS action items between 2013 and 2015. Consequently, the Member States who are OECD members participated in lengthy and detailed discussions on the anti-BEPS actions at the OECD and it should be taken that they were sufficiently consulted on this initiative.

On 2nd March 2017, DG TAXUD organised a meeting of the Working Party IV and Member States had the opportunity to debate the disclosure of potentially aggressive tax arrangements by intermediaries followed by an automatic exchange of information amongst tax authorities.

In addition the Commission organised targeted discussions with representatives of Member States who already have practical experience with mandatory disclosure rules at national level.

- **Impact assessment**

The Commission conducted an impact assessment of relevant policy alternatives which received a positive opinion from the Regulatory Scrutiny Board on 24 May 2017 (SEC(2017) 307)[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(2017) 236)[18].

Different policy options have been assessed against the criteria of effectiveness, efficiency and coherence in comparison to the baseline scenario. The challenge has been how to design a proportionate system to target the most aggressive forms of tax planning. The OECD report on BEPS Action 12 gives examples of the approaches taken by tax authorities in a number of jurisdictions around the world, including the three national mandatory disclosure regimes that exist in the EU, namely in Ireland, Portugal and the UK.

[17] http://ec.europa.eu/transparency/regdoc/?fuseaction=ia

[18] http://ec.europa.eu/transparency/regdoc/?fuseaction=ia

The public consultation set out a list of policy options for stakeholders. Some of these options concerned the type of appropriate legal instrument for the proposed initiative. That is, whether legislation or soft law in the form of a Recommendation or Code of Conduct presents the optimal solution. Amongst the options that built on binding rules, the stakeholders were invited to mainly consider the possibility of agreeing a common framework for disclosing information to tax authorities or alternatively, of coupling the disclosure with an automatic exchange of the disclosed data across tax authorities in the EU.

Following the consultations with stakeholders, it became clear that all of the available policy choices which involved binding rules would lead to a similar outcome. Thus, if there is a (mandatory) disclosure of data to the tax authorities, it always enables some form of exchange of information. This is because spontaneous exchanges form part of the general framework of the Directive on Administrative Cooperation. Therefore the exchange of information is present in distinct forms under all policy options that involve a disclosure of data.

It was further considered that the only real comparison between policy choices could in practice be drawn between a context where there is an obligation to disclose information on potentially aggressive tax planning arrangements (coupled with exchange of information) and a context where there is no such obligation, i.e. the so-called status quo. In addition, the prospect for limiting the exchange of information to spontaneous exchanges would not appear consistent with the series of initiatives that the Commission has lately undertaken in the field of Transparency. Thus, the framework for information exchange, both in the rules that implement the common reporting standard (CRS) in the EU and in advance cross-border rulings, involves automatic exchanges.

Preferred option

The preferred option is a requirement for Member States (i) to lay down an explicit obligation of their national tax authorities for a mandatory disclosure of potentially aggressive tax planning schemes with a cross-border element; and (ii) to ensure that their national tax authorities automatically exchange this information with the tax authorities of other Member States by using the mechanism provided for in the DAC.

Benefits of the preferred option

The requirement to report under a mandatory disclosure regime will increase the pressure on intermediaries to refrain from designing, marketing and implementing aggressive tax planning arrangements. Similarly, taxpayers will be less inclined to create or use such schemes if they know the schemes would have to be reported under a mandatory disclosure regime. Currently tax authorities have limited knowledge on non-domestic tax planning arrangements and such disclosure could provide them with timely information to be able to quickly respond with operational measures, legislative and/or regulatory changes. In addition, the data could be used for risk assessment and audit purposes. These benefits will help Member States protect their direct tax bases and raise/collect tax revenues. A mandatory disclosure regime will also help create a level playing field for corporations as the larger companies are more likely to use such schemes for tax avoidance purposes in a cross-border context than SMEs. From a societal perspective, a mandatory disclosure regime will provide a fairer tax environment given the aforementioned benefits.

Costs of the preferred option

The costs of the proposal in terms of national tax revenue depend on the way Member States adjust their legislation and allocate resources to comply with their disclosure obligations. However, it is envisaged that existing reporting and exchange of information systems, such as the central directory for advance tax rulings, will provide a framework that can accommodate the automatic exchange of information on reportable tax planning arrangements between national authorities.

The costs for intermediaries should be very limited because the reportable information is likely to be available in the summary sheets that promote a scheme to taxpayers. Only under a limited set of circumstances would taxpayers be required to report themselves such schemes and incur costs related to the reporting obligations.

Regulatory fitness

The proposal has been designed in a way to reduce regulatory burdens for intermediaries, taxpayers and public administrations to the minimum. The preferred policy response represents a proportionate answer to the identified problem since it does not exceed what is necessary to achieve 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 the disclosure of potentially harmful arrangements. For example:

(i) The rules set out clear reporting responsibilities to avoid double reporting.

(ii) The common rules are limited to addressing potentially aggressive tax planning schemes with a cross-border element within the EU.

(iii) No publication requirement of the reported tax schemes, only automatic exchange between EU Member States.

(iv) The imposition of penalties for non-compliance with the national provisions that implement the Directive into national law will remain under the sovereign control of Member States.

In addition, the harmonised approach reaches up to the point that the competent national authorities come to know about the potentially aggressive arrangements. Thereafter, it is for Member States to decide how they pursue cases of illegitimate arrangements.

Legal instrument

In terms of legislative options, three possibilities have been considered:

i. A Commission Recommendation (non-binding instrument) to encourage Member States to introduce a mandatory disclosure regime and referral to the group of the Code of Conduct on business taxation;

ii. An EU Code of Conduct for intermediaries (non-binding instrument) for certain regulated professions;

iii. An EU Directive (binding instrument) to require Member States to introduce a mandatory disclosure regime combined with exchange of information.

Valuing the different options has led to a preferred option in the form of a Directive. The analysis shows that this option has clear advantages in terms of effectiveness, efficiency and

coherence as it would address the problems identified at the least of cost. In addition, the option of a Directive remains advantageous compared to the alternative of not taking any action.

4. BUDGETARY IMPLICATIONS

See Legislative Financial Statement.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

Member States shall communicate to the Commission a yearly assessment of the effectiveness of the automatic exchange of information as well as of the practical results achieved. Member States shall also provide relevant information and 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. The Commission shall submit a report on the application of this Directive to the European Parliament and to the Council every five years, which should start counting after 1 January 2013. The results of this proposal (which amends the DAC) will be included in the evaluation report to the European Parliament and to the Council that will be issued by 1 January 2023.

- **Explanatory documents (for directives)**

N/A

- **Detailed explanation of the specific provisions of the proposal**

The proposed legislation mainly consists of the following elements:

- **Disclosure to the tax authorities coupled with automatic exchange of information (AEoI)**

  The proposed Directive places an obligation on to intermediaries to disclose potentially aggressive tax planning arrangements to the tax authorities if they are involved in such arrangements, as part of their profession, by way of designing and promoting them. The obligation is limited to cross-border situations, i.e. situations in either more than one Member State or a Member State and a third country. Thus, it is only in such circumstances that due to the potential impact on the functioning of the internal market, one can justify the need for enacting a common set of rules, rather than leaving the matter to be dealt with at the national level. To ensure the maximum effectiveness of the proposed measures given the cross-border dimension of the reportable arrangements, the disclosed information shall be exchanged automatically amongst national tax authorities. In practice, the rules propose that the exchange is carried out through submitting the disclosed arrangements to a central directory where all Member States have access to.

  The Commission will also have limited access to the exchanged information (i.e. at the level it is entitled to for advance cross-border rulings) in order to monitor the proper functioning of the Directive.

- **Who bears the burden of disclosure**

  The obligation of disclosure concerns those “persons” (i.e. natural or legal persons or entities without legal personality) who are identified as intermediaries.

Absence of an intermediary in the meaning of the Directive

The obligation to disclose may not be enforceable upon an intermediary due to Legal Professional Privilege or simply because the intermediary does not have a presence within the Union. It can also be the case that there is no intermediary because a taxpayer designs and implements a scheme in-house. In such circumstances, tax authorities will not lose the opportunity to receive information about tax-related arrangements that are potentially linked to aggressive structures. Instead, the disclosure obligation is then shifted to the taxpayers who use the arrangement.

- **More than one person qualifies as an intermediary or taxpayer**

  It is common place that an intermediary maintain a presence in several States by way of offices, firms, etc. and that it also engage other local independent actors in providing tax advice on certain arrangements. In such circumstances, the only the intermediary who carries the responsibility vis-à-vis the taxpayer(s) for designing and implementing the arrangement(s) shall file the requisite information with the tax authorities.

  If the obligation to file information has shifted to the taxpayer and more than one related parties are meant to use the same reportable cross-border tax arrangement, only the taxpayer that was in charge of agreeing the arrangement(s) with the intermediary shall bear the onus of filing information.

- **Timing for the disclosure and AEoI**

  As the disclosure runs better chances of achieving its envisaged deterrent effect where the relevant information reaches the tax authorities early on, the proposed legislation prescribes that the reportable cross-border arrangements be disclosed before the scheme(s) is actually implemented. On this premise, intermediaries shall disclose the reportable arrangements within 5 days beginning on the day after such arrangements become available to a taxpayer for implementation.

  Where the disclosure is shifted to taxpayers in the absence of a liable intermediary, the timing for disclosure is placed slightly later; that is, within 5 days beginning on the day after the reportable cross-border arrangement or the first step in a series of such arrangements has been implemented.

  The subsequent automatic exchange of information on these arrangements shall happen every quarter of a year. Due to the earlier disclosure of this information, the tax authorities most strongly connected with the arrangement will obtain sufficient input to undertake action against tax avoidance early on.

- **List of hallmarks instead of defining aggressive tax planning**

  An endeavour to define the concept of aggressive tax planning would risk being an exercise in vain. This is because aggressive tax planning structures have evolved over the years to become particularly complex and are always subject to constant modifications and adjustments to react to defensive counter-measures by the tax authorities. In this light, the proposed legislation includes a compilation of the features and elements of transactions that present a strong indication of tax avoidance or abuse. These features and elements are referred to as 'hallmarks' and it suffices that an arrangement fall within the scope of one of those to be treated as reportable to the tax authorities.

- **AEoI via the EU common communication network (CCN)**

Regarding the operational aspects of the mandatory automatic exchange of information, the proposed Directive refers to the mechanism introduced by Council Directive (EU) 2015/2376, i.e. common communication network (CCN). This will serve as a common framework for the exchanges and for this purpose its scope will be enlarged.

The information will be recorded on a secure central directory on administrative cooperation in the field of taxation. Member States will also implement a series of practical arrangements, including measures to standardise the communication of all requisite information through creating a standard form. This will involve specifying the linguistic requirements for the envisaged exchange of information and accordingly upgrading the CCN.

- **Effective penalties for non-compliance at national level**

The proposed legislation leaves it to Member States to lay down penalties applicable against the violation of the national rules that transpose this Directive into the national legal order. Member States shall take all measures necessary to ensure that the common framework be implemented. The penalties shall be effective, proportionate and dissuasive.

- **Implementing measures**

In order to ensure uniform conditions for the implementation of the proposed Directive and more precisely, the mandatory automatic exchange of information amongst tax authorities, the Commission is conferred upon implementing powers on the following topics:

i. To adopt a standard form with a limited number of components, including the linguistic arrangements;

ii. To adopt the necessary practical arrangements for upgrading the central directory on administrative cooperation in the field of taxation.

These powers shall be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.

- **Delegated acts**

In order to address the potential need for updating the hallmarks based on information derived from disclosed arrangements, the Commission is conferred upon the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union.

2017/0138 (CNS)

Proposal for a

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

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European 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 in the field of tax transparency at the level of the Union, Council Directive 2011/16/EU[3] has been the subject of a series of amendments over the last years. In this context, Council Directive (EU) 2014/107[4] introduced a common reporting standard (CRS) for financial account information within the Union. The standard that was developed within the OECD Global Forum prescribes for the automatic exchange of information on financial accounts held by non-tax residents and establishes a framework for this exchange worldwide. Directive 2011/16/EU was amended by Council Directive (EU) 2015/2376[5] which provided for the automatic exchange of information on advance cross-border tax rulings and by Council Directive (EU) 2016/881[6] which provided for the disclosure and the mandatory automatic exchange of information on country-by-country reporting (CbCR) of multinational enterprises between tax authorities. Being aware of the use that anti-money laundering information can have for tax authorities, Council Directive (EU) 2016/2258[7] placed an obligation on to Member States to give tax authorities access to customer due diligence procedures applied by financial institutions under

1 OJ C , , p. .

2 OJ C , , p. .

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

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

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

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

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

Directive (EU) 2015/849 of the European Parliament and of the Council[8]. Although Directive 2011/16/EU has been amended several times in order to enhance the means tax authorities can use to fight against tax avoidance and evasion, there is still a need for reinforcing certain specific transparency aspects of the existing taxation framework.

(2) Member States find it increasingly difficult to protect their national tax bases from erosion as tax planning structures have evolved to be particularly sophisticated and often take advantage of the increased mobility of both capital and persons within the internal market. These structures commonly consist of arrangements which are developed across various jurisdictions and move taxable profits towards more beneficial tax regimes or have the effect of reducing the taxpayer´s overall tax bill. As a result, Member States often experience considerable reductions in their tax revenues which hinder them from applying growth-friendly tax policies. It is therefore critical that Member States' tax authorities obtain comprehensive and relevant information about potentially aggressive tax arrangements. This information would enable those authorities to be able to promptly react against harmful tax practices and to close loopholes through enacting legislation or by undertaking adequate risk assessments and carrying out tax audits.

(3) Considering that most of the potentially aggressive tax planning arrangements span across more than one jurisdiction, the disclosure of information about those arrangements would bring additional positive results where that information was also exchanged amongst Member States. In particular, the automatic exchange of information between tax administrations is crucial in order to provide these authorities with the necessary information to enable them to take action where they observe aggressive tax practices.

(4) Recognising how a transparent framework for developing business activity could contribute to clamping down on tax avoidance and evasion in the internal market, the Commission has been called on to embark on initiatives on the mandatory disclosure of potentially aggressive tax planning arrangements along the lines of Action 12 of the OECD Base Erosion and Profit Shifting (BEPS). In this context, the European Parliament has called for tougher measures against intermediaries who assist in arrangements that may lead to tax avoidance and evasion.

(5) It is necessary to recall how certain financial intermediaries and other providers of tax advice seem to have actively assisted their clients to conceal money offshore. Furthermore, although the CRS introduced by Council Directive (EU) 2014/107[9] is a significant step forward in establishing a tax transparent framework within the Union, at least in terms of financial account information, it can still be improved.

(6) The disclosure of potentially aggressive tax planning arrangements of a cross-border dimension can contribute effectively to the efforts for creating an environment of fair taxation in the internal market. In this light, an obligation on intermediaries to inform tax authorities on certain cross-border arrangements that could potentially be used for tax avoidance purposes would constitute a step in the right direction. In order to

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

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

develop a more comprehensive policy, it would also be significant that as a second step, following disclosure, the tax authorities share information with their peers in other Member States. Such arrangements should also enhance the effectiveness of the CRS. In addition, it would be crucial to grant the Commission access to a sufficient amount of information so that it can monitor the proper functioning of this Directive. Such access to information by the Commission does not discharge a Member State from its obligations to notify any state aid to the Commission.

(7) It is acknowledged that the disclosure of potentially aggressive cross-border tax planning arrangements would stand a better chance of achieving its envisaged deterrent effect where the relevant information reached the tax authorities at an early stage, in other words before the disclosed arrangements are actually implemented. Where the disclosure obligation is shifted to taxpayers, it would be practical to place the obligation to disclose those potentially aggressive cross-border tax planning arrangements at a slightly later stage, as taxpayers may not be aware of the nature of the arrangements at the time of the inception. To facilitate Member States' administrations, the subsequent automatic exchange of information on these arrangements could take place every quarter.

(8) To ensure the proper functioning of the internal market and to prevent loopholes in the proposed framework of rules, the obligation for disclosure should be placed upon all actors that are usually involved in designing, marketing, organising or managing the implementation of a reportable cross-border transaction or a series thereof as well as those who provide assistance or advice. It should not be ignored either that in certain cases, the obligation to disclose would not be enforceable upon an intermediary due to a legal professional privilege or where there is no intermediary because, for instance, the taxpayer designs and implements a scheme in-house. It would thus be crucial that, in such circumstances, tax authorities do not lose the opportunity to receive information about tax-related arrangements that are potentially linked to aggressive tax planning. It would therefore be necessary to shift the disclosure obligation to the taxpayer who benefits from the arrangement in these cases.

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

(10) Given that the primary objective of such legislation should focus on ensuring the proper functioning of the internal market, it would be critical not to regulate at the level of the Union beyond what is necessary to achieve the envisaged aims. This is why it would be necessary to limit any common rules on disclosure to cross-border situations, namely situations in either more than one Member State or a Member State and a third country. In such circumstances, due to the potential impact on the functioning of the internal market, one can justify the need for enacting a common set of rules, rather than leaving the matter to be dealt with at the national level.

(11) Considering that the disclosed arrangements should have a cross-border dimension, it would be important to share the relevant information with the tax authorities in other Member States in order to ensure the maximum effectiveness of this Directive in

deterring aggressive tax planning practices. The mechanism for the exchange of information in the context of advance cross-border rulings and advance pricing arrangements should also be used to accommodate the mandatory and automatic exchange of disclosed information on potentially aggressive cross-border tax planning arrangements amongst tax authorities in the Union.

(12) In order to facilitate the automatic exchange of information and enhance the efficient use of resources, exchanges should be carried out through the common communication network (CCN) developed by the Union. In this context, information would be recorded on a secure central directory on administrative cooperation in the field of taxation. Member States should have to implement a series of practical arrangements, including measures to standardise the communication of all requisite information through creating a standard form. This should also involve specifying the linguistic requirements for the envisaged exchange of information and accordingly upgrading the CCN.

(13) In order to improve the prospects for effectiveness of this Directive, Member States should lay down penalties against the violation of national rules that implement this Directive and ensure that these penalties actually apply in practice, that they are proportionate and have a dissuasive effect.

(14) In order to supplement or amend certain non-essential elements of this Directive, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in connection with updating the hallmarks in order to include in the list of hallmarks potentially aggressive tax planning arrangements or series of arrangements in response to updated information on those arrangements or series of arrangements which is derived from the mandatory disclosure of such arrangements.

(15) In order to ensure uniform conditions for the implementation of this Directive and in particular for the automatic exchange of information between tax authorities, implementing powers should be conferred on the Commission to adopt a standard form with a limited number of components, including the linguistic arrangements. For the same reason, implementing powers should also be conferred on the Commission to adopt the necessary practical arrangements for upgrading the central directory on administrative cooperation in the field of taxation. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[10].

(16) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council[11]. Any processing of personal data carried out within the framework of this Directive must comply with Directive 95/46/EC of the European Parliament and of the Council[12] and Regulation (EC) No 45/2001.

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

11 Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

12 Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

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

(18) Since the objective of this Directive, namely to improve the functioning of the internal market through discouraging the use of cross-border aggressive tax planning arrangements, cannot sufficiently be achieved by the Member States acting individually in an uncoordinated fashion but can rather be better achieved at Union level by reason of the fact that it targets schemes which are developed to potentially take advantage of market inefficiencies that originate in the interaction amongst disparate national tax rules, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on the European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective, especially considering that it is limited to arrangements of a cross-border dimension of either more than one Member State or a Member State and a third country.

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

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 2011/16/EU is amended as follows:

(1) Article 3 is amended as follows:

(a) point 9 is amended as follows:

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

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

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

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

(b) the following points are added:

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

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

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

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

(d) one or more of the parties to the arrangement or series of arrangements carries on a business in another jurisdiction through a permanent establishment which is not situated in that jurisdiction and the arrangement or series of arrangements forms part or the whole of the business of that permanent establishment;

(e) such arrangement or series of arrangements has a tax-related impact on at least two jurisdictions.

19. "reportable cross-border arrangement" means any cross-border arrangement or series of arrangements that satisfy at least one of the hallmarks set out in Annex IV.

20. "hallmark" means a typical characteristic or feature of an arrangement or series of arrangements which is listed in Annex IV.

21. "intermediaries" means any person that carries the responsibility vis-à-vis the taxpayer for designing, marketing, organising or managing the implementation of the tax aspects of a reportable cross-border arrangement, or series of such arrangements, in the course of providing services relating to taxation. "Intermediaries" also means any such person that undertakes to provide, directly or by means of other persons to which it is related, material aid, assistance or advice with respect to designing, marketing, organising or managing the tax aspects of a reportable cross-border arrangement.

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

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

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

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

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

22. "taxpayer" means any person that uses a reportable cross-border arrangement or series of such arrangements in order to potentially optimise their tax position.

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

(a) a taxpayer participates in the management of another taxpayer by being in a position to exercise a significant influence over the other taxpayer;

(b) a taxpayer participates in the control of another taxpayer through a holding that exceeds 20% of the voting rights;

(c) a taxpayer participates in the capital of another taxpayer through a right of ownership that, directly or indirectly, exceeds 20% of the capital.

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

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

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

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

"Article 8aaa

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

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

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

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

   Each Member State shall take the necessary measures to ensure that, where there is no intermediary within the meaning of point 21 of Article 3, the obligation to file information on a reportable cross-border arrangement or series of such arrangements shall be the responsibility of the taxpayer. The taxpayer shall file information within five working days, beginning on the day after the reportable cross-border arrangement or series of arrangements or the first step in a series of such arrangements has been implemented.

3. Each Member State shall take the necessary measures to ensure that, where more than one intermediary is involved in a reportable cross-border arrangement or series of such arrangements, only the intermediary that carries the responsibility vis-à-vis

the taxpayer for designing and implementing the arrangement or series of arrangements shall file information in accordance with paragraph 1.

Each Member State shall take the necessary measures to ensure that, where the obligation to file information on a reportable cross-border arrangement or series of such arrangements is the responsibility of the taxpayer and a single such arrangement or series of such arrangements is used by more than one taxpayers who are associated enterprises, only the taxpayer that was in charge of agreeing the arrangement or series of arrangements with the intermediary shall file information in accordance with paragraph 1.

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

5. The competent authority of a Member State where the information was filed pursuant to paragraph 1 of this Article shall, by means of an automatic exchange, communicate the information specified in paragraph 6 of this Article to the competent authorities of all other Member States, in accordance with the practical arrangements adopted pursuant to Article 21(1).

6. The information to be communicated by a Member State under paragraph 5 shall contain the following:

(a) the identification of intermediaries and taxpayers, including their name, residence for tax purposes, and taxpayer identification number (TIN) and, where appropriate, the persons who are associated enterprises to the intermediary or taxpayer;

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

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

(d) the date that the implementation of the reportable cross-border arrangement or of the first step in a series of such arrangements is to start or started;

(e) details of the national tax provisions the application of which creates a tax advantage, if applicable;

(f) the value of the transaction or series of transactions included in a reportable cross-border arrangement or series of such arrangements;

(g) the identification of the other Member States which are involved in, or likely to be concerned by, the reportable cross-border arrangement or series of such arrangements;

(h) the identification of any person in the other Member States, if any, likely to be affected by the reportable cross-border arrangement or series of such

arrangements indicating to which Member States the affected intermediaries or taxpayers are linked.

7. To facilitate the exchange of information referred to in paragraph 5 of this Article, the Commission shall adopt the practical arrangements necessary for the implementation of this Article, including measures to standardise the communication of the information set out in paragraph 6 of this Article, as part of the procedure for establishing the standard form provided for in Article 20(5*)*.

8. The Commission shall not have access to information referred to in points (a), (c) and (h) of paragraph 6.

9. The automatic exchange of information shall take place within one month from the end of the quarter in which the information was filed. The first information shall be communicated by the end of the first quarter of 2019.".

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

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

(a) for the automatic exchange of information on advance cross-border rulings and advance pricing arrangements pursuant to Article 8a before 1 January 2017;

(b) for the automatic exchange of information on reportable cross-border arrangements pursuant to Article 8aaa before 1 January 2019.

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

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

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

"5. The Commission shall by 31 December 2017 develop and provide with technical and logistical support a secure Member State central directory on administrative cooperation in the field of taxation where information to be communicated in the framework of paragraphs 1 and 2 of Article 8a shall be recorded in order to satisfy the automatic exchange provided for in those paragraphs.

The Commission shall by 31 December 2018 develop and provide with technical and logistical support a secure Member State central directory on administrative cooperation in the field of taxation where information to be communicated in the framework of paragraphs 5, 6 and 7 of Article 8aaa shall

be recorded in order to satisfy the automatic exchange provided for in those paragraphs.

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

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

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

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

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

"Article 23aa

Amendments to Annex IV

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

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

"Article 25a

Penalties

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

(8) in Chapter VII, the following Articles are added:

"Article 26a

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 23aa shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Directive.

3. The delegation of power referred to in Article 23aa may be revoked at any time by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it to the Council.

5. A delegated act adopted pursuant to Article 23aa shall enter into force only if no objection has been expressed by the Council within a period of two months of the notification of that act to the Council or if, before the expiry of that period, the Council has informed the Commission that it will not object. That period shall be extended by two months at the initiative of the Council.

Article 26aa

Informing the European Parliament

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

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

Article 2

1. Member States shall adopt and publish, by 31 December 2018 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

   They shall apply those provisions from 1 January 2019.

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

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

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Brussels,

For the Council
The President

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

1.4. Objective(s)

1.5. Grounds for the proposal/initiative

1.6. Duration and financial impact

1.7. Management mode(s) planned

2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

2.2. Management and control system

2.3. Measures to prevent fraud and irregularities

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

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

3.2. Estimated impact on expenditure

3.2.1. Summary of estimated impact on expenditure

3.2.2. Estimated impact on operational appropriations

3.2.3. Estimated impact on appropriations of an administrative nature

3.2.4. Compatibility with the current multiannual financial framework

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 as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements

1.2. Policy area(s) concerned in the ABM/ABB structure[31]

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**[32]

☐ 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 2017 lists "Fairer Taxation of Companies" among its priorities. One of the items that fall within the scope of this theme is the "implementation in EU legislation of the international agreement on Base Erosion and Profit Shifting (BEPS) (legislative/ non-legislative, incl. impact assessment". The present proposal for the mandatory disclosure of information on potentially aggressive tax planning arrangements largely relies on the findings and data of OECD BEPS Action 12 on Mandatory Disclosure.

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

Specific objective

The aim of the proposed legislation is to increase transparency and access to information at an early stage, as this should allow the authorities to improve the speed and accuracy of their risk assessment and make timely and informed decisions on how to protect their tax revenues. Namely, if tax authorities receive information about potentially aggressive tax planning arrangements before these are implemented, they should be able to track the arrangements and respond to the tax risks that these pose by taking appropriate measures to curb them. For this purpose, information should ideally be obtained in advance, i.e. before an arrangement is implemented and/or used. This would enable the authorities to timely assess the risk of these arrangements and if necessary, react to close down loopholes and prevent a loss of tax revenue. The ultimate objective is to design a mechanism that will have a

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

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

deterrent effect; that is, a mechanism that will dissuade intermediaries from designing and marketing such arrangements.

ABM/ABB activity(ies) concerned

ABB 3

1.4.3. Expected result(s) and impact

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

First, automatic exchange of information between Member States on disclosed information about potentially aggressive tax planning arrangements will mean that all Member States will be able to properly assess whether a certain arrangement or series of arrangements have an impact on them (even unintentionally) and decide whether to react accordingly.

Second, the fact that there is more transparency on potentially aggressive arrangements should create a greater incentive for ensuring that tax competition becomes fairer. In addition, the mandatory disclosure and automatic exchange of information on potentially aggressive tax planning arrangements should deter intermediaries and taxpayers from promoting and engaging respectively in aggressive tax planning, since the tax authorities of more than one Member State will now have the information to detect and react to such tax planning practices.

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 that it is amending in relation to the following: i) the annual provision by Member States of statistics on information exchange; 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 place a primary obligation on intermediaries and as a fall-back, on taxpayers to disclose potentially aggressive cross-border tax planning arrangements to their tax authorities. These authorities will then share this information with other Member States through a system of mandatory and automatic exchange of information. In this context, the authorities will be required to submit the disclosed information to a central directory where all Member States will have full access to. The Commission will be given limited access to the Directory in order to ensure that it can be sufficiently informed to monitor the functioning of the Directive.

1.5.2. Added value of EU involvement

The EU involvement in the disclosure will bring an added value, as compared to individual Member State initiatives in the field. This is because, especially if it is accompanied with exchange of information, the disclosure of potentially aggressive cross-border tax planning arrangements will allow tax administrations to obtain the full picture of the impact of cross-border transactions on the overall tax base. The EU is thus in a better position than any Member State individually to ensure the effectiveness and completeness of the system for the exchange of information.

1.5.3. Lessons learned from similar experiences in the past

Schemes for the mandatory disclosure of potentially aggressive tax planning schemes operate in Ireland, Portugal and the United Kingdom (UK). From the data published by the UK, it emerges that the Government used information that it obtained to

introduce a range of anti-tax avoidance measures every year. Since 2004, a total of 49 measures have been enacted, closing off over GBR 12 billion in avoidance opportunities. Her Majesty's Revenue and Customs (HMRC) noted that there is considerable anecdotal evidence that DOTAS has changed the economics of avoidance.

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 2017 to 2021,

– followed by full-scale operation.

1.7. Management mode(s) planned[33]

☒ **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 on advance cross-border rulings 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.

[33] 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 referred to in Articles 8, 8a, 8aa (and the proposed 8aaa) 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 of the Directive on administrative cooperation (DAC), the Commission has undertaken to submit a report on the application of the DAC every five years, which start counting after 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 2023.

2.2. Management and control system

2.2.1. Risk(s) identified

The following potential risks have been identified:

- As the structure and features of tax planning schemes evolve constantly, which may result in a situation whereby some of the hallmarks be out of date in the coming years, the Directive empowers the Commission to update the list of hallmarks in order to include potentially aggressive cross-border tax planning arrangements based on fresh information derived from the mandatory disclosure of such arrangements. For this purpose, the Commission shall adopt delegated acts in accordance with Article 26a and amend the Annex.

- 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.

2.2.2. Information concerning the internal control system set up

To monitor the proper application of the Directive, the Commission will have limited access to the Central Directory where Member States will submit information on potentially aggressive cross-border tax planning schemes.

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

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

- the building of European Information Systems.

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 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 HR and Finances 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 HR and Finances 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 disproportionate 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[34] and Council Regulation (Euratom, EC) No 2185/96[35] 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.

[34] 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.

[35] 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.

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.[36]	from EFTA countries [37]	from candidate countries [38]	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

[36] Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.

[37] EFTA: European Free Trade Association.

[38] Candidate countries and, where applicable, potential candidate countries from the Western Balkans.

3.2. Estimated impact on expenditure

[This section should be filled in using the **spreadsheet on budget data of an administrative nature** (second document in annex to this financial statement) and uploaded to CISNET for interservice consultation purposes.]

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**[39]	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)	0.060	0.260	0.060	0.050	0.050			**0.480**
	Payments	(2)		0.060	0.260	0.060	0.050	0.050		**0.480**
Number of budget line	Commitments	(1a)								
	Payments	(2a)								
Appropriations of an administrative nature financed from the envelope of specific programmes[40]										
Number of budget line		(3)								
TOTAL appropriations for DG TAXUD	Commitments	=1+1a +3	0.060	0.260	0.060	0.050	0.050			**0.480**
	Payments	=2+2a +3		0.060	0.260	0.060	0.050	0.050		**0.480**

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

40 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)	0.060	0.260	0.060	0.050	0.050			**0.480**
	Payments	(5)	0.000	0.060	0.260	0.060	0.050	0.050		**0.480**
• 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	0.060	0.260	0.060	0.050	0.050			**0.480**
	Payments	=5+ 6	0.000	0.060	0.260	0.060	0.050	0.050		**0.480**

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

• TOTAL operational appropriations	Commitments	(4)	0.060	0.260	0.060	0.050	0.050			**0.480**
	Payments	(5)	0.000	0.060	0.260	0.060	0.050	0.050		**0.480**
• 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	0.060	0.260	0.060	0.050	0.050			**0.480**
	Payments	=5+ 6	0.000	0.060	0.260	0.060	0.050	0.050		**0.480**

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[41]	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	0.133	0.333	0.090	0.065	0.065		**0.686**
	Payments	0.073	0.133	0.290	0.075	0.065	0.050	**0.686**

[41] 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[42]	Average cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	Total No	Total cost
SPECIFIC OBJECTIVE No 1[43]…														
Specifications				0.060		0.060								**0.120**
Development						0.140								**0.140**
Maintenance								0.020		0.010		0.010		**0.040**
Support						0.020		0.020		0.020		0.020		**0.080**
Training														-
ITSM (Infrastructure, hosting, licences, etc.),						0.040		0.020		0.020		0.020		**0.100**
Subtotal for specific objective No 1				**0.060**		**0.260**		**0.060**		**0.050**		**0.050**		**0.480**
SPECIFIC OBJECTIVE No 2 ...														
- Output														

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

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

Subtotal for specific objective No 2												
TOTAL COST		**0.060**		**0.260**		**0.060**		**0.050**		**0.050**		**0.480**

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** [44]	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[45] **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.

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

[45] 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)[46]						
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** [47]	- 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; Commission of external contractors to do work on the IT system.
External staff	N/A

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

[47] 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.

– ☐ 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.

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[48]						
		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.

[48] 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.