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'I' ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee (Part 2)
No. Cion doc.:	9753/20 COM(2020) 314 final
Subject:	Draft Council Directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation (DAC7) - Endorsement

1. The Council on 29 May 2020 approved Conclusions on the future evolution of administrative cooperation in the field of taxation in the EU.[1] At this occasion the Council requested that the Commission, taking into account these Council Conclusions, as well as the objectives set out in Directive 2011/16/EU (DAC), undertake all relevant studies and, after carrying out relevant technical analyses, public consultations and impact assessments, submit to the Council a legislative proposal as soon as possible. The Council also invited the Commission to address the most urgent issues as a priority, such as challenges arising from the digital platform economy, and, for that purpose consider phasing in legislative proposals in order to facilitate legislative progress.

[1] Doc. 8482/20.

2. A proposal for a Council Directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation (doc. ST 9753/20) was presented by the European Commission on 15 July 2020, as part of the "Package for fair and simple taxation".[2]

3. The key objectives of this legislative proposal are twofold:

- to extend the scope of the automatic exchange of information under DAC to the information reported by digital platform operators. Expanding administrative cooperation to this new area is aimed at helping Member States to address the challenges posed by the digitalisation of the economy, given that the characteristics of the digital platform economy make the traceability and detection of taxable events by tax authorities very difficult and lead to a shortfall of tax revenues;
- to amend a number of existing provisions of DAC on exchange of information. In particular, the proposal seeks to improve the notion of foreseeable relevance of information, provisions on requests for information for a group of taxpayers, as well as the rules for using simultaneous controls and allowing the presence of officials of a Member State during an enquiry in another Member State. Moreover, the proposal seeks to insert provisions setting out the framework for the competent authorities of two or more Member States to conduct joint audits.

4. The opinions of the European Economic and Social Committee and of the European Parliament on this legislative proposal are pending.

5. Following the preparatory work, at the videoconference of the Members of the High Level Working Party on Taxation on 20 November, no further remarks were raised on the Presidency compromise text that is set out in the Annex to this note.

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[2] The other two documents of that package are Communication on an 'Action Plan for fair and simple taxation supporting the Recovery Strategy' (doc. ST 9844/20) and Communication on 'Tax good governance in the EU and beyond' (doc. ST 9845/20).

6. In view of the forthcoming informal videoconference of the Ministers of the Economy and Finance, which will take place on 1 December, it is to be noted that the adoption of the Directive by the Council will take place only at a later stage, once the opinions of the European Parliament and of the European Economic and Social Committee have been received and the legal-linguistic revision has taken place.

7. Against this background, the Permanent Representatives Committee is invited to:

   - endorse the compromise text of the draft Council Directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation, as set out in the Annex to this note.

ANNEX

DRAFT

COUNCIL DIRECTIVE

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

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Parliament[3],

Having regard to the opinion of the European Economic and Social Committee[4],

Acting in accordance with a special legislative procedure,

Whereas:

[3] OJ C […], […], p. […].
[4] OJ C […], […], p. […].

(1) In order to accommodate new initiatives of the Union in the field of tax transparency, Council Directive 2011/16/EU[5] has been the subject of a series of amendments over the last years. These changes mainly introduced reporting obligations, followed by communication to other Member States, related to financial accounts, advance cross-border rulings and advance pricing arrangements, country-by-country reports and reportable cross-border arrangements. In such a way, these amendments extended the scope of the automatic exchange of information. The tax authorities now have a broader set of cooperation tools at their disposal, to detect and tackle forms of tax fraud, tax evasion and tax avoidance.

(2) In the past years, the Commission has been monitoring the application and, in 2019, completed an evaluation of Directive 2011/16/EU[6]. While significant improvements have been made in the field of automatic exchange of information, there is still a need to improve provisions that relate to all forms of exchanges of information and administrative cooperation.

(3) Pursuant to Article 5 of Directive 2011/16/EU, the requested authority is to communicate to the requesting authority any information it has in its possession, or that it obtains as a result of administrative enquiries, which is foreseeably relevant to the administration and enforcement of the domestic laws of the Member States concerning the taxes falling within the scope of that Directive. To ensure effectiveness of the exchanges of information and prevent unjustified refusals of requests, as well as to provide legal clarity and certainty for both tax administrations and taxpayers, the internationally agreed standard of foreseeable relevance should be clearly delineated and codified.

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

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

(4) There is sometimes a need for addressing requests for information that concern groups of taxpayers who cannot be identified individually and the foreseeable relevance of the requested information rather can only be described on the basis of a common set of characteristics. Considering this, tax administrations should continue using group requests for information under a clear legal framework.

(5) It is important that information related to income derived from intellectual property be exchanged between Member States, as this area of economy is prone to profit shifting arrangements due to its highly mobile underlying assets. Therefore, royalties as defined in Article 2(b) of Directive 2003/49/EC of 3 June 2003 should be included in the categories of income subject to mandatory automatic exchange of information in order to improve the fight against tax fraud, tax evasion and tax avoidance.

Member States should make every possible and reasonable effort to include the TIN in the communication of the categories of income subject to mandatory automatic exchange of information.

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

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

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

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

(9a) The reporting obligation should cover both cross-border and non-cross-border activities, in order to ensure the efficiency of the reporting rules, the proper functioning of the internal market, the level playing field and the principle of non-discrimination. In addition, such an application of the reporting rules should reduce the administrative burden on the platforms.

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

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

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

(13) Given the nature and flexibility of digital platforms, the reporting obligation should also extend to those platform operators that perform commercial activity in the Union but are neither resident for tax purposes, nor incorporated or managed nor have a permanent establishment in a Member State. This would ensure a level playing field among all platforms and prevent unfair competition. In order to facilitate achieving this objective, foreign platform operators should be required to register and report in one single Member State for the purpose of operating in the internal market. After revoking a registration of a foreign platform operator, Member States should ensure that platform operators are required to provide to the Member State concerned appropriate assurances, such as affidavits or security deposits, while re-registering in the Union.

(13a) Nevertheless, it is appropriate to lay down measures that would reduce administrative burden on such foreign platform operators and tax authorities of Member States, in cases where adequate arrangements exist, ensuring that equivalent information is exchanged between a non-Union jurisdiction and a Member State. In these cases, it would be appropriate to relieve platform operators that reported in a non-Union jurisdiction from an obligation to report in a Member State, to the extent that the information received by the Member State relates to the activities in the scope of this Directive and the information is equivalent to the required information under the reporting rules under this Directive. In order to foster administrative cooperation in this field with non-Union jurisdictions and recognizing the need for flexibility in the negotiations of agreements between Member States and non-Union jurisdictions, the Directive should allow a qualified platform operator of a non-Union jurisdiction to solely report equivalent information on reportable sellers to a non-Union jurisdiction's tax administration, which, in turn, would send such information to the tax administrations of the Member States. Wherever appropriate, this mechanism should be enabled in order to prevent equivalent information from being reported and transmitted more than once.

(13b) In view of the fact that tax authorities worldwide are confronted with the challenges linked to the ever growing platform economy, the OECD has developed Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy. Given the prevalence of cross-border activities that are carried out by digital platforms as well as the sellers active on them, it can reasonably be expected that non-Union jurisdictions will have sufficient incentives to follow the leading example of the Union and implement the collection and mutual automatic exchange of such information on reportable sellers according to the Model Rules. Although not identical with the scope of this Directive in terms of the sellers on which information must be reported and the platforms by which information must be reported the Model Rules are expected to provide for the reporting of equivalent information in relation to relevant activities that are in scope of both this Directive and the Model Rules, which may be expanded further to cover additional relevant activities.

(13c) In order to ensure uniform conditions for the implementation of this Directive, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[7]. More specifically, the Commission should, by means of implementing acts, determine whether information required to be exchanged pursuant to an agreement between the competent authorities of a Member State and a non-Union jurisdiction is equivalent to that specified in this Directive. Given that the conclusion of agreements with non-Union jurisdictions on administrative co-operation in the area of taxation remains within the competence of Member States, the Commission's action could also be triggered by a request from a Member State. This administrative procedure should, without altering the scope and conditions of this Directive, provide for legal certainty as regards correlation of the obligations stemming from this Directive and any exchange of information agreements Member States may have with non-Union jurisdictions. For this purpose, it is necessary that the determination of equivalence could also be made, following the request of a Member State in advance of an envisaged conclusion of such an agreement. Where the exchange of such information is based on a multilateral instrument, the decision should be taken in relation to the whole of the relevant framework covered by such an instrument. Nevertheless, it should still remain possible to take decision on equivalence, where appropriate, concerning a bilateral instrument or the exchange relationship with an individual non-Union jurisdiction.

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

(14) For the reasons of preventing tax fraud, tax evasion and tax avoidance, it is appropriate that the reporting of commercial activity includes rental of immovable property, personal services, sales of goods and rental of any mode of transport. Activities carried out by a seller acting as an employee of the platform operator should not fall within the scope of reporting.

(14a) For reasons of reducing unnecessary compliance costs for businesses that engage in real estate renting, such as hotel chains or tour operators, there should be a threshold of a number of rentals per property listing, from which Platform Operators should be excluded from the reporting obligation. Nevertheless, in order to avoid the risk of circumventing reporting obligations by intermediaries appearing on the platforms as a single seller while managing a large number of property units, appropriate safeguards should be designed.

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

(16) Where foreign platform operators report equivalent information on reportable sellers to the respective tax authorities of non-Union jurisdictions , the effective implementation of reporting and due diligence obligations is expected to be assured by the tax authorities of these jurisdictions. However, in instances where this is not the case, foreign platform operators should be obliged to register and report in the Union, and Member States should enforce the registration and reporting obligations of such platform operators. Therefore, Member States should lay down rules on penalties applicable to infringements of national provisions adopted pursuant to this Directive and ensure that those penalties are implemented. While the choice of penalties remains within the discretion of the Member States, the penalties provided for should be effective, proportionate and dissuasive. Given that digital platforms often have a wide geographical reach, it is appropriate that Member States endeavour acting in a coordinated manner when aiming at enforcement of compliance with the registration and reporting requirements applicable to platforms operating from non-Union jurisdictions, including the prevention of the platform from being able to operate within the Union as a last resort. Within the limits of its competence, the Commission should facilitate the coordination of such Member States' actions, thereby taking into account any future common measures towards digital platforms as well as differences in the potential measures available to the Member States.

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

(19) A Member State that intends to carry out a simultaneous control should be required to communicate its intention to the other Member States concerned. For reasons of efficiency and legal certainty, it is appropriate to foresee that the competent authority of each Member State concerned is obliged to respond within a reasonable time limit.

(20) Multilateral controls carried out with the support of the Fiscalis 2020 programme established by Regulation (EU) No 1286/2013 of the European Parliament and of the Council[8] have demonstrated the benefit of co-ordinated controls of one or more taxpayers that are of common or complementary interest to the tax authorities of two or more Member States. Such joint actions are currently conducted only on the basis of the combined application of the existing provisions regarding the presence of foreign officials in the territory of other Member States and on simultaneous controls. However, in many cases this practice has shown that further improvements are needed to insure more legal clarity and certainty.

(21) It is therefore appropriate that Directive 2011/16/EU is supplemented with a number of provisions that further clarify the framework and the main principles that should apply when the competent authorities of Member States choose to resort to the means of a joint audit. Joint audits should be an additional tool available for administrative cooperation among Member States in the area of taxation, which would supplement the existing framework that foresees the possibilities for presence in administrative offices, participation in administrative enquiries as well as simultaneous controls. Joint audits would take the form of administrative enquiries conducted jointly by the competent authorities of two or more Member States, and be linked to one or more persons of common or complementary interest to the competent authorities of these Member States. Joint audits can play an important role in contributing to the better functioning of the internal market. Joint audits should be structured to offer legal certainty to taxpayers through clear procedural rules, including measures to mitigate the risk of double taxation.

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

(22) For the purposes of ensuring clarity and legal certainty, the provisions of Directive 2011/16/EU as regards joint audits should also contain the main aspects of further details of this tool, such as on the timeframe for response to a request for a joint audit, scope of rights and obligations of the officials participating in a joint audit and the process leading to establishment of a final report of a joint audit. These provisions on joint audits should not be interpreted as prejudging any processes that would take place in a Member State in accordance with its national law as a consequence or a follow-up to the joint audit, such as charging or assessing tax by a decision of tax authorities, process of appeal or settlement relating thereto or remedies available to taxpayers arising from those processes. In order to ensure legal certainty and legal clarity, the final report should reflect the findings on which the competent authorities agreed and, moreover, the competent authorities concerned could also agree that the report includes any issues where an agreement could not be reached. The mutually agreed findings of the final report should be taken into account in the relevant instruments issued by the competent authorities of the participating Member States following that joint audit.

(22a) In order to ensure legal certainty, it is appropriate to foresee that joint audits should be conducted in a pre-agreed and co-ordinated manner, and in accordance with the laws and procedural requirements of the Member State where the activities of a joint audit take place. Such requirements may also include an obligation to ensure that officials of a Member State who took part in the joint audit in another Member State, also take part, if required, in any process of complaint, review or appeal in that Member.

(22b) The rights and obligations of the officials who participate in the joint audit, when they are present in activities performed in a different Member State, should be determined in accordance with the laws of the Member State where the activities of a joint audit take place. At the same time, while complying with the law of the Member State where the activities of a joint audit take place, officials of another Member State should not exercise any powers that would exceed the scope of the powers granted to them under the laws of their Member State.

(22c) While the objective of the provisions on joint audits is to provide a useful tool for administrative co-operation in the field of taxation, nothing in this Directive should be construed as being contrary to the established rules on co-operation of Member States in judicial matters.

(25) It is important that, as a matter of principle, the information communicated under Directive 2011/16/EU is used for the assessment, administration and enforcement of taxes which are covered by the material scope of that Directive. While this was not precluded so far, uncertainties regarding the use of information arose due to unclear framework. On this premise and considering the significance that VAT has for the functioning of the internal market, it is appropriate to clarify that communicated information between Member States may indeed also be used for the assessment, administration and enforcement of VAT and other indirect taxes.

(25a) A Member State communicating information to another Member State for tax purposes should permit the use of this information for other purposes in so far as it is allowed under the legislation of both Member States. The Member State can do this either by permitting the different use after a mandatory request of the other Member State or by communicating to all Member States a list of allowed other purposes.

(26) In order to assist tax administrations participating in exchange of information under this Directive, practical arrangements, including where appropriate a joint data controller agreement, a data processor – data controller agreement or models thereof, should be drafted by the Member States, assisted by the Commission. Only persons duly accredited by the Security Accreditation Authority of the Commission may have access to the information communicated pursuant to Directive 2011/16/EU and provided by electronic means using the CCN , and only so far as it is necessary for the care, maintenance and development of the central directory on administrative cooperation in the field of taxation and of the CCN The Commission is also responsible for ensuring the security of the central directory on administrative cooperation in the field of taxation and of CCN-.

(27) In order to prevent data breach incidents and limit potential damage, it is of utmost importance to improve the security of all data, exchanged between the competent authorities of the Member States in the framework of Directive 2011/16/EU. Therefore, it is appropriate to supplement that Directive with rules on the procedure to be followed by Member States and the Commission in the event of data breach in a Member State as well as in the cases when the breach occurs to the CCN. Given the sensitive nature of the data that may be subject to a data breach, it would be appropriate to provide for such measures as requesting and suspending the exchange of information with the Member State(s) where the data breach occurred, or suspending access to CCN to one or more Member States until the data breach is remedied. Given the technical nature of the processes related to data exchange, Member States, assisted by the Commission, should agree on the practical arrangements necessary for the implementation of the procedures to be followed in case of a data breach and measures to be taken to prevent future data breaches.

(27a) In order to ensure uniform conditions for the implementation of Directive 2011/16/EU and in particular, for the automatic exchange of information between tax authorities, implementing powers should be conferred on the Commission to adopt a standard form, with a limited number of components, including the linguistic arrangements. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[9].

(28) The European Data Protection Supervisor was consulted in accordance with Article 42 of Regulation (EU) 2018/1725 of the European Parliament and of the Council[10].

(29) Any processing of personal data carried out within the framework of Directive 2011/16/EU must continue to comply with Regulations (EU) 2016/679 and (EU) 2018/1725. Data processing is set out in Directive 2011/16/EU solely with the objective of serving a general public interest, namely the matters of taxation and the purposes of combating tax fraud, tax avoidance and tax evasion, safeguarding tax revenues and promoting fair taxation, which strengthens opportunities for social, political and economic inclusion in the Member States. Therefore, in Directive 2011/16/EU, the references to the relevant EU legislation on data protection should be updated and extend to the rules being included by this Directive. This is in particular important for the purpose of ensuring legal certainty for data controllers and data processors within the meaning of Regulations (EU) 2016/679 and (EU) 2018/1725 while ensuring the protection of data subjects' rights.

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9 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).

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

(30) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, this Directive seeks to ensure full respect for the right to the protection of personal data and the freedom to conduct a business.

(31) The objective of this Directive, namely efficient administrative cooperation between Member States under conditions compatible with the proper functioning of the internal market, cannot sufficiently be achieved by the Member States. Its aim to improve the cooperation between tax administrations requires uniform rules that can be effective in cross-border situations, and therefore be better achieved at Union level. The Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

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

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 2011/16/EU is amended as follows:

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

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

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

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

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

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

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

(2) The following Articles are inserted:

'Article 5a

Foreseeable relevance

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

2. With the aim to demonstrate the foreseeable relevance of the requested information, the requesting competent authority shall provide at least the following information to the requested authority:

   a) the tax purpose for which the information is sought, and

   b) a specification of the information required for the administration or enforcement of its domestic law.

3. Where a request, as referred to in paragraph 1 relates to a group of taxpayers who cannot be identified individually the requesting competent authority shall provide at least the following information to the requested authority:

(a) a detailed description of the group,

(b) an explanation of the applicable law and of the facts based on which there is reason to believe that the taxpayers in the group have not complied with the applicable law,

(c) an explanation how the requested information would assist in determining compliance by the taxpayers in the group, and

(d) where relevant facts and circumstances related to the involvement of a third party that actively contributed to the potential non-compliance of the taxpayers in the group with the law.'.

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

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

(4) In Article 7, paragraph 1 is replaced by the following:

"1. The requested authority shall provide the information referred to in Article 5 as quickly as possible, and no later than three months from the date of receipt of the request. However, where the requested authority is unable to respond to the request by the relevant time limit, it shall inform the requesting authority immediately and in any event within three months of the receipt of the request, of the reasons for its failure to do so, and the date by which it considers it might be able to respond. The time limit shall not be longer than six months from the date of receipt of the request.

However, where the requested authority is already in possession of that information, the information shall be transmitted within two month of that date."

(4a) In Article 7, paragraph 5 is deleted.

(5) Article 8 is amended as follows:

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

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

(a) income from employment;

(b) director's fees;

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

(d) pensions;

(e) ownership of and income from immovable property;

(f) royalties.

For taxable periods starting on or after 1 January 2024, the Member States shall endeavour to include the Tax Identification Number (TIN) of the Member State of residence in the communication of the information mentioned in the first subparagraph.

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

2. Before 1 January 2024 , Member States shall inform the Commission of at least four categories listed in paragraph 1 in respect of which the competent authority of each Member State shall, by automatic exchange, communicate to the competent authority of any other Member State, information concerning residents in that other Member State. The information shall concern taxable periods starting on or after 1 January 2025.'.

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

(6) Article 8a is amended as follows:

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

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

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

‘(b) a summary of the advance cross-border ruling or advance pricing arrangement, including a description of the relevant business activities or transactions or series of transactions and any other information that could assist the competent authority in assessing a potential tax risk, without leading to the disclosure of a commercial, industrial or professional secret or of a commercial process, or of information whose disclosure would be contrary to public policy.’.

(7) The following Article is inserted:

‘Article 8ac

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

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

2. Pursuant to the applicable due diligence and reporting requirements contained in Sections II and III of Annex V, the competent authority of each Member State shall, by automatic exchange, communicate within the time limit laid down in paragraph 3 to the competent authority of the Member State in which the Reportable Seller is resident as determined pursuant to paragraph D of Section II of Annex V and, where the Reportable seller provides immovable rental services, in any case to the competent authority of the Member State in which the immovable property is located, the following information regarding each Reportable Seller :

(a) the name, registered office address, TIN and, where relevant, individual identification number, allocated pursuant to subparagraph 1 of paragraph 4, of the Reporting Platform Operator, as well as the business name(s) of the Platform(s) in respect of which the Reporting Platform Operator is reporting;

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

(c) the Primary Address;

(d) any TIN, including each Member State of issuance, or, in the absence of a TIN, the place of birth of the Seller that is an individual;

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

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

(g) the date of birth for the Seller that is an individual;

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

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

(j) each Member State in which the Reportable Seller is resident determined pursuant to paragraph D of Section II of Annex V;

(k) the total Consideration paid or credited during each quarter of the Reportable Period and the number of Relevant Activities in respect of which it was paid or credited;

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

Where the Reportable Seller provides immovable property rental services, the following additional information shall be communicated:

(a) the address of each Property Listing, determined on the basis of the procedures set out in paragraph E of Section II of Annex V and respective land registration number or its equivalent under the national law of the Member State where it is located, where available;

(b) the total Consideration paid or credited during each quarter of the Reportable Period and number of Relevant Activities provided with respect to each Property Listing;

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

3. The communication pursuant to paragraph 2 shall take place using the standard form referred to in Article 20(4) within 2 months following the end of the Reportable Period to which the reporting obligations of the Reporting Platform Operator relate. The first information shall be communicated for Reportable Periods as from 1 January 2023.

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

Member States shall lay down rules pursuant to which a Reporting Platform Operator may choose to register with the competent authority of a single Member State in accordance with the rules laid down in paragraph F of Section IV of Annex V. Member States shall take the necessary measures to require that a Reporting Platform Operator within the meaning of point (b) of subparagraph A(4) of Section I of Annex V, whose registration has been revoked in accordance with subparagraph 7 of paragraph F of Section IV of Annex V, can only be permitted to re-register under the condition that it provides to the authorities of a Member State concerned appropriate assurances for its commitment to comply with the reporting requirements within the Union, including any outstanding unfulfilled reporting obligations.

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

5. Where a Platform Operator is deemed to be an Excluded Platform Operator, the competent authority of the Member State where the demonstration in accordance with subparagraph A(3) of Section I of Annex V was provided to, shall notify the competent authorities of all other Member States accordingly, including any subsequent changes.

6. The Commission shall by 31 December 2022 establish a central register where information to be communicated according to paragraph 5 and subparagraph F of Section IV of Annex V shall be recorded. That register shall be available to the competent authorities of all Member States.

7. The Commission, shall, by means of implementing acts, following a reasoned request by a Member State or on its own initiative, determine whether the information that are required to be automatically exchanged pursuant to an agreement between competent authorities of that Member State and a non-Union jurisdiction is, in the meaning of subparagraph 4c of paragraph A of Section I of Annex V, equivalent to that specified in paragraph B of Section III of Annex V. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 26(2).

A Member State requesting the measure referred to in subparagraph 1 shall send a reasoned request to the Commission.

If the Commission considers that it does not have all the necessary information, it shall contact the Member State concerned within two months of receipt of the request and specify what additional information is required. Once the Commission has all the information it considers necessary for appraisal of the request it shall within one month notify the requesting Member State accordingly and it shall submit the relevant information to the Committee referred to in Article 26(2).

When acting on its own initiative, the Commission shall adopt an implementing act as referred to in the first subparagraph only after a Member State concluded a competent authority agreement with a non-Union jurisdiction that requires the automatic exchange of information on sellers deriving income from activities facilitated by Platforms.

When determining whether information is equivalent within the meaning of the first subparagraph in relation to a Relevant Activity, the Commission shall take into due account the extent to which the regime, on which such information is based, corresponds to that set out in Annex V, in particular with regard to:

(i) the definitions of Reporting Platform Operator, Reportable Seller, Relevant Activity;

(ii) the procedures applicable for the purpose of identifying Reportable Sellers;

(iii) the reporting requirements; and

(iv) the rules and administrative procedures that non-Union jurisdictions shall have in place to ensure effective implementation of, and compliance with, the reporting and due diligence procedures set out in that regime.

The same procedure shall apply for determining that the information is no longer equivalent."

(8) Article 8b is amended as follows:

(a) Paragraph 1 is replaced by the following:

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

(b) Paragraph 2 is deleted.

(9) Article 11 is amended as follows:

(a) Paragraph 1 is replaced by the following:

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

(a) be present in the offices where the administrative authorities of the requested Member State carry out their duties;

(b) be present during administrative enquiries carried out in the territory of the requested Member State;

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

A competent authority shall respond to a request in accordance with the first subparagraph within 60 days, to confirm its agreement or communicate its reasoned refusal to the requesting authority.

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

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

‘Where officials of the requesting authority are present during administrative enquiries, or participate through the use of electronic means of communication, they may interview individuals and examine records subject to the procedural arrangements laid down by the requested Member State.’

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

‘3. The competent authority of each Member State concerned shall decide whether it wishes to take part in simultaneous controls. It shall confirm its agreement or communicate its reasoned refusal to the authority that proposed a simultaneous control within 60 days of receiving the proposal.’.

(11) The following Section is inserted:

‘SECTION IIa

Joint Audits

Article 12a

Joint audits

1. For the purposes of this Directive, “joint audit” means an administrative enquiry jointly conducted by the competent authorities of two or more Member States , and linked to one or more persons of common or complementary interest to the competent authorities of these Member States.

2. A competent authority of one or more Member States may request a competent authority of another Member State (or other Member States) to conduct a joint audit. The requested competent authorities shall respond to the request within 60 days from the receipt of the request. A request for a joint audit by a competent authority of a Member State may be rejected on justified grounds.

3. Joint audits shall be conducted in a pre-agreed and co-ordinated manner, including linguistic arrangements, by the competent authorities of the requesting and the requested Member States, and in accordance with the laws of the Member State where the activities of a joint audit take place. In each Member State where the activities of a joint audit take place, the competent authority of that Member State shall appoint a representative with responsibility for supervising and coordinating the joint audit in that Member State.

The rights and obligations of the officials of Member States who participate in the joint audit, when they are present in activities performed in a different Member State, shall be determined in accordance with the laws of the Member State where these activities of the joint audit take place. While complying with the law of the Member State where the activities of the joint audit take place, officials of another Member State shall not exercise any powers that would exceed the scope of the powers granted to them under the laws of their Member State.

4 . Without prejudice to paragraph 3, a Member State where the activities of the joint audit take place shall take the necessary measures to:

a) permit that officials of other Member States who participate in the activities of the joint audit interview individuals and examine records together with the officials of the Member State where the activities of the joint audit take place, subject to the procedural arrangements laid down by the Member State where those activities take place;

b) ensure that evidence collected during these activities of the joint audit can be assessed, including on its admissibility, under the same legal conditions as in the case of an audit carried out in that Member State where only the officials of that Member State take part, including in the course of any process of complaint, review or appeal.

c) ensure that the persons subject to a joint audit or affected by it enjoy the same rights and have the same obligations as in the case of an audit where only the officers of that Member State take part, including in the course of any process of complaint, review or appeal.

5. Where competent authorities of two or more Member States conduct a joint audit, they shall endeavour to agree on the facts and circumstances relevant to the joint audit and endeavour to reach an agreement on the tax position of the audited person(s) based on the results of the joint audit. The findings of the joint audit shall be incorporated in a final report. Issues on which the competent authorities agree shall be reflected in the final report and be taken into account in the relevant instruments issued by the competent authorities of the participating Member States following that joint audit.

Subject to the first subparagraph, the acts taken by the competent authorities of a Member State or any of its officers following a joint audit and any further processes taking place in that Member State, such as a decision of tax authorities, process of appeal or settlement relating thereto, shall take place in accordance with the national law of that Member State.

6. The audited persons shall be informed about the outcome of the joint audit, including a copy of the final report within 60 days of the issuance of the final report.

(13) Article 16 is amended as follows:

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

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

(b) Paragraph 2 is replaced by the following:

‘2. With the permission of the competent authority of the Member State communicating information pursuant to this Directive, and only in so far as this is allowed under the legislation of the Member State of the competent authority receiving the information, information and documents received pursuant to this Directive may be used for other purposes than those referred to in paragraph 1. Such permission shall be granted if the information can be used for similar purposes in the Member State of the competent authority communicating the information.

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

(14) Article 20 is amended as follows:

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

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

(a) the identity of the person under examination or investigation and, in the case of group requests as referred to in Article 5a paragraph 3, detailed description of the group;

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

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

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

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

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

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

The Commission shall, by means of implementing acts, lay down the necessary practical arrangements. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 26(2).’.

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

‘1a. For the purpose of the implementation and enforcement of the laws of the Member States giving effect to this Directive and to ensure the functioning of the administrative cooperation it establishes, Member States shall provide by law for access by tax authorities to the mechanisms, procedures, documents and information referred to in Articles 13, 30, 31, 32a and 40 of Directive (EU) 2015/849 of the European Parliament and of the Council*.

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

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

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

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

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

(19) Article 25 is replaced by the following :

(a) Paragraph 1 is replaced by the following:

1. All exchange of information pursuant to this Directive shall be subject to Regulation (EU) 2016/679 of the European Parliament and of the Council*.

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

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

2. Reporting Financial Institutions, intermediaries, Reporting Platform Operators and the competent authorities of the Member States shall be considered to be data controllers when, acting alone or jointly, they determine the purposes and means of the processing of personal data within the meaning of Regulation (EU) 2016/679 of the European Parliament and of the Council.

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

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

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

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

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

5. A Member State where a data breach occurred, shall report the data breach and any subsequent remedial action to the Commission without delay. The Commission shall inform all Member States without delay about the data breach that has been reported to it or of which it is aware and any remedial action.

Every Member State may suspend the exchange of information to the Member State(s) where the data breach occurred by giving notice in writing to the Commission and the Member State(s) concerned. Such suspension shall have immediate effect.

The Member State(s) where the breach occurred shall investigate, contain and remediate the data breach. The Member State(s) concerned shall request the suspension of the exchange of information, if the data breach cannot be contain immediately and appropriately. Upon request by the Member State(s) where the data breach occurred , the Commission shall suspend the CCN access of such Member State(s) for the purposes of this Directive.

Upon notification of remedying the data breach, the Commission shall resume the CCN access of the Member State(s) concerned for the purposes of this directive. In case one or more Member State(s) request the Commission to jointly verify whether the remediation of the data was successful, the Commission shall resume the CCN access of such Member State(s) upon such verification for the purposes of this directive.

Where a data breach occurs to the central directory or the CCN for the purposes of this Directive and where the Member States' exchanges through CCN can potentially be affected, the Commission shall inform the Member States about the data breach and any remedial actions taken without undue delay. Such actions may include suspending access to the central directory or the CCN for the purposes of this Directive until the data breach is remedied.

6. "Data breach" shall mean a breach of security leading to destruction, loss, alteration or any incident of inappropriate or unauthorised access, disclosure or use of information, including but not limited to personal data transmitted, stored or otherwise processed, as the result of deliberate unlawful acts, negligence or accidents. A data breach may concern the confidentiality, availability and integrity of data.

7. The Member States assisted by the Commission shall agree on the practical arrangements necessary for the implementation of this Article; including data breach management processes aligned with internationally recognized good practices and where appropriate a joint data controller agreement, a data processor - data controller agreement, or models thereof.

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

'Article 25a

Penalties

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

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

Article 2

1. Member States shall adopt and publish, by 31 December 2022 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 2023.

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. By way of derogation from paragraph 1, Member States, shall, by 31 December 2023, adopt and publish, the laws, regulations and administrative provisions necessary to comply with Article 1(11) of this Directive (Article 12a of Directive 2011/16/EU).

Member States shall apply those provisions not later than 1 January 2024.

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.

3. 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

ANNEX

‘ANNEX V

REPORTING RULES FOR PLATFORM OPERATORS

This Annex lays down the reporting and due diligence rules that shall be applied by the Reporting Platform Operators in order to enable the Member States to communicate, by automatic exchange, the information referred to in Article 8ac of this Directive.

This Annex also describes the rules and administrative procedures that Member States shall have in place to ensure effective implementation of, and compliance with, the reporting and due diligence procedures set out in it.

SECTION I

DEFINED TERMS

The following terms shall have the meaning set forth below:

A. Reporting Platform Operators

1. “Platform” means any software, including a website or a part thereof and applications, including mobile applications, accessible by users and allowing Sellers to be connected to other users for the purpose of carrying out a Relevant Activity, directly or indirectly, to such users. It also includes any arrangement for the collection and payment of a Consideration in respect of Relevant Activity.

The term “Platform” shall not include software that without any further intervention in carrying out a Relevant Activity exclusively allows any of the following,:

(a) processing of payments in relation to Relevant Activity;

(b) users to list or advertise a Relevant Activity;

(c) redirecting or transferring of users to a Platform.

2. “Platform Operator” means an Entity that contracts with Sellers to make available all or part of a Platform to such Sellers.

3. “Excluded Platform Operator” means a Platform Operator who has demonstrated upfront and on an annual basis to the satisfaction of the competent authority of the Member State , to which in accordance with the rules laid down in paragraph A(1) to (3) of Section III of Annex V the Platform Operator otherwise would have had to report that Platform’s entire business model is such, that it does not have Reportable Sellers.

4. “Reporting Platform Operator” means any Platform Operator, other than an Excluded Platform Operator, who is in any of the following situations:

(a) it is resident for tax purposes in a Member State or, where a Platform Operator does not have a residence for tax purposes in a Member State, it fulfils any of the following conditions:

(i) it is incorporated under the laws of a Member State;

(ii) it has its place of management (including effective management) in a Member State;

(iii) it has a permanent establishment in a Member State and is not a Qualified Non-Union Platform Operator;

(b) it is neither resident for tax purposes, nor incorporated or managed in a Member State, nor has a permanent establishment in a Member State, but facilitates the carrying out of a Relevant Activity by Reportable Sellers or the rental of immovable property located in a Member State and is not a Qualified Non-Union Platform Operator.

4a. "Qualified Non-Union Platform Operator" means a Platform Operator for which all Relevant Activities that it facilitates are also Qualified Relevant Activities and that is resident for tax purposes in a Qualified Non-Union Jurisdiction or, where a Platform Operator does not have a residence for tax purposes in a Qualified Non-Union Jurisdiction, it fulfils any of the following conditions:

(a) it is incorporated under the laws of a Qualified Non-Union Jurisdiction; or

(b) it has its place of management (including effective management) in a Qualified Non-Union Jurisdiction.

4b. "Qualified Non-Union Jurisdiction" means a non-Union jurisdiction that has in effect an Effective Qualifying Competent Authority Agreement with the competent authorities of all Member States, which are identified as reportable jurisdictions in a list published by the non-Union jurisdiction.

4c. "Effective Qualifying Competent Authority Agreement" means an agreement between competent authorities of a Member State and a non -Union Jurisdiction that requires the automatic exchange of equivalent information to that specified in paragraph B of Section III as confirmed by an implementing act in accordance with Article 8ac(7).

5. "Relevant Activity" means an activity carried out for Consideration and being any of the following:

(a) the rental of immovable property, including both residential and commercial property, as well as any other immovable property and parking spaces;

(b) a Personal Service;

(c) the sale of Goods ;

(d) the rental of any mode of transport.

The term "Relevant Activity" shall not include an activity carried out by a Seller acting as an employee of the Reporting Platform Operator or a related Entity of the Platform Operator.

5a. "Qualified Relevant Activities" means any Relevant Activity covered by the automatic exchange pursuant to an Effective Qualifying Competent Authority Agreement.

6. "Consideration" means compensation in any form, net of any fees, commissions or taxes withheld or charged by the Reporting Platform Operator, that is paid or credited to a Seller in connection with the Relevant Activity, the amount of which is known or reasonably knowable by the Platform Operator.

7. "Personal Service" means a service involving time- or task-based work performed by one or more individuals, acting either independently or on behalf of an Entity, and which is carried out at the request of a user, either online or physically offline after having been facilitated via a Platform.

B. Reportable Sellers

1. "Seller" means a Platform user, either an individual or an Entity, that is registered at any moment during the Reportable Period on the Platform and carries out the Relevant Activity.

2. "Active Seller" means any Seller that either provides a Relevant Activity during the Reportable Period or is paid or credited Consideration in connection with a Relevant Activity during the Reportable Period.

3. "Reportable Seller" means any Active Seller, other than an Excluded Seller, that is resident in a Member State or that rented out immovable property located in a Member State.

4. "Excluded Seller" means any Seller

   (a) that is a Governmental Entity;

   (b) that is an Entity the stock of which is regularly traded on an established securities market or a related Entity of an Entity the stock of which is regularly traded on an established securities market;

   (c) that is an Entity for which the Platform Operator facilitated more than 2,000 Relevant Activities by means of the rental of immovable property in respect of a Property Listing during the Reporting Period; or

   (d) for which the Platform Operator facilitated less than 30 Relevant Activities by means of the sale of Goods and for which the total amount of Consideration paid or credited did not exceed 2,000 EUR during the Reporting Period.

C. Other definitions

1. "Entity" means a legal person or a legal arrangement, such as a corporation, partnership, trust or foundation. An Entity is a related Entity of another Entity if either Entity controls the other Entity, or the two Entities are under common control. For this purpose control includes direct or indirect ownership of more than 50% of the vote and value in an Entity. In indirect participation, the fulfilment of the requirement for the holding of more than 50 % of the right of ownership in the capital of the other Entity shall be determined by multiplying the rates of holding through the successive tiers. A person holding more than 50 % of the voting rights shall be deemed to hold 100 %.

2. "Governmental Entity" means the government of a Member State or other jurisdiction, any political subdivision of a Member State or other jurisdiction (which includes a state, province, county, or municipality), or any wholly owned agency or instrumentality of a Member State or other jurisdiction or of any one or more of the foregoing (each, a "Governmental Entity").

3. "TIN" means a Taxpayer Identification Number, issued by a Member State, or functional equivalent in the absence of a Taxpayer Identification Number.

4. "VAT identification number" means the unique number that identifies a taxable person or a non-taxable legal entity that is registered for value added tax purposes.

5. "Primary Address" means the address that is the primary residence of a Seller that is an individual, as well as the address that is the registered office of a Seller that is an Entity.

6. "Reportable Period" means the calendar year in respect of which reporting is being completed pursuant to Section III.

7. "Property Listing" means all immovable property units located at the same street address, owned by the same owner and offered for rent on a Platform by the same Seller.

8. "Financial Account Identifier" means the unique identifying number or reference available to the Platform Operator of the bank account or other similar payment services account to which the Consideration is paid or credited.

9. "Goods" means any tangible property.

SECTION II

DUE DILIGENCE PROCEDURES

The following procedures shall apply for the purpose of identifying Reportable Sellers.

A. Sellers not Subject to review

For the purpose of determining whether a Seller that is an Entity qualifies as an Excluded Seller described in points (a) and (b) of subparagraph B(4), a Reporting Platform Operator may rely on publicly available information or a confirmation from the Entity Seller.

For the purpose of determining whether a Seller qualifies as an Excluded Seller described in points (c) and (d) of subparagraph B(4), a Reporting Platform Operator may rely on its available records.

B. Collection of Seller information

1. The Reporting Platform Operator shall collect the following information for each Seller that is an individual and not an Excluded Seller:

   (a) the first and last name;

   (b) the Primary Address;

   (c) any TIN issued to the Seller, including each Member State of issuance, and in the absence of a TIN, the place of birth of the Seller that is an individual;

   (d) the VAT identification number of the Seller, where available;

   (e) the date of birth.

2. The Reporting Platform Operator shall collect the following information for each Seller that is an Entity and not an Excluded Seller:

   (a) the legal name;

   (b) the Primary Address;

   (c) any TIN issued to the Seller, including each Member State of issuance;

   (d) the VAT identification number of the Seller, where available;

   (e) the business registration number;

   (f) the existence of any permanent establishment through which Relevant Activities are carried out in the Union, where available, indicating each respective Member State, where such a permanent establishment is located.

3. Notwithstanding subparagraphs B(1) and (2), the Reporting Platform Operator is not required to collect information referred to in points (b) to (e) of subparagraph B(1) and points (b) to (f) of subparagraph B(2) in case it relies on direct confirmation of the identity and residence of the Seller through an identification service made available by a Member State or the Union to ascertain the identity and tax residence of the Seller.

4. Notwithstanding point (c) of subparagraph B(1) and points (c) and (e) of subparagraph B(2), the TIN or the business registration number, as the case may be, are not required to be collected in any of the following situations:

   (a) the Member State of residence of the Seller does not issue a TIN or business registration number to the Seller;

   (b) the Member State of residence of the Seller does not require the collection of the TIN issued to such Seller.

C. Verification of Seller information

1. The Reporting Platform Operator shall determine whether the information collected pursuant to paragraph A, subparagraph B(1), points (a) to (e) of subparagraph B(2) and paragraph E is reliable, using all information and documents available to the Reporting Platform Operator in its records, as well as any electronic interface made available by a Member State or the Union free of charge to ascertain the validity of the TIN and/or VAT identification number.

2. Notwithstanding subparagraph C(1), for the completion of the due diligence procedures pursuant to subparagraph F(2), the Reporting Platform Operator may determine whether the information collected pursuant to paragraph A, subparagraph B(1), points (a) to (e) of subparagraph B(2) and paragraph E is reliable, using information and documents available to the Reporting Platform Operator in its electronically searchable records.

3. In application of subparagraph F(3)(b) and notwithstanding subparagraphs C(1) and C(2), in instances where the Reporting Platform Operator has reason to know that any of the information items described in paragraph B or E may be inaccurate by virtue of information provided by the competent authority of a Member State in a request concerning a specific Seller, it shall request the Seller to correct information items that were found to be incorrect and to provide supporting documents, data or information, which is reliable and of independent source, such as:

   (a) valid government-issued identification document,

   (b) recent tax residency certificate.

D. Determination of Member State(s) of residence of Seller for the purposes of this Directive

1. A Reporting Platform Operator shall consider a Seller resident in the Member State of the Seller's Primary Address. Where different from the Member State of the Seller's Primary Address, a Reporting Platform Operator shall consider Seller resident also in the Member State of issuance of TIN. Where the Seller has provided information with respect to the existence of a permanent establishment pursuant to point (f) of subparagraph B(2), a Reporting Platform Operator shall consider a Seller resident also in the respective Member State as specified by the Seller.

2. Notwithstanding subparagraph D(1), a Reporting Platform Operator shall consider a Seller resident in each Member State confirmed by an electronic identification service made available by a Member State or the Union pursuant to subparagraph B(3).

E. Collection of information on rented immovable property

Where a Seller is engaged in Relevant Activity involving the rental of immovable property, the Reporting Platform Operator shall collect the address of each Property Listing and, where issued, respective land registration number or its equivalent under the national law of the Member State where it is located. Where a Reporting Platform Operator facilitated more than 2,000 Relevant Activities by means of the rental of immovable property units located at the same street address for the same Seller who is an Entity, the Reporting Platform Operator shall collect supporting documents, data or information that the immovable property units are owned by the same owner.

F. Timing and validity of due diligence procedures

1. A Reporting Platform Operator shall complete the due diligence procedures set out in paragraphs A to E by 31 December of the Reportable Period.

2. Notwithstanding subparagraph F(1), for Sellers that were already registered on the Platform as of 1 January 2023 or as of the date on which an Entity becomes a Reporting Platform Operator, the due diligence procedures set out in paragraphs A to E are required to be completed by 31 December of the second Reportable Period for the Reporting Platform Operator.

3. Notwithstanding subparagraph F(1), a Reporting Platform Operator may rely on the due diligence procedures conducted in respect of previous Reportable Periods, provided that:

   (a) the Seller information required in subparagraphs B(1) and B(2) has been either collected and verified or confirmed within the last 36 months; and

   (b) the Reporting Platform Operator does not have reason to know that information collected pursuant to paragraphs A, B and E is or has become unreliable or incorrect.

G. Application of the due diligence procedures to Active Sellers only

A Reporting Platform Operator may elect to complete the due diligence procedures pursuant to paragraphs A to F in respect of Active Sellers only.

H. Completion of the due diligence procedures by third parties

1. A Reporting Platform Operator may rely on a third party service provider to fulfil the due diligence obligations laid down in this Section, but such obligations shall remain the responsibility of the Reporting Platform Operator.

2. Where a Platform Operator fulfils the due diligence obligations for a Reporting Platform Operator with respect to the same Platform pursuant to subparagraph H(1), such Platform Operator shall carry out the due diligence procedures pursuant to the rules laid down in this Section. The due diligence obligations shall remain the responsibility of the Reporting Platform Operator.

SECTION III

REPORTING REQUIREMENTS

A. Time and manner of reporting

1. A Reporting Platform Operator within the meaning of point (a) of subparagraph A(4) of Section I shall report to the competent authority of the Member State determined in accordance with point (a) of subparagraph A(4) of Section I the information set out in paragraph B of this Section with respect to the Reportable Period no later than 31 January of the year following the calendar year in which the Seller is identified as a Reportable Seller. Where there is more than one Reporting Platform Operator, any of these Reporting Platform Operators shall be exempt from reporting the information if it has proof, in accordance with national law, that the same information has been reported by another Reporting Platform Operator.

2. If a Reporting Platform Operator within the meaning of point (a) of subparagraph A(4) of Section I fulfils any of the conditions listed therein in more than one Member State, it shall elect one of these Member States, to carry out the reporting requirements set out in this Section. Such a Reporting Platform Operator shall report the information listed in paragraph B of this Section with respect to the Reportable Period to the competent authority of the Member State of election, as this is determined in accordance with subparagraph E of Section IV, no later than 31 January of the year following the calendar year in which the Seller is identified as a Reportable Seller. Where there is more than one Reporting Platform Operator, any of these Reporting Platform Operators shall be exempt from reporting the information if it has proof, in accordance with national law, that the same information has been reported by another Reporting Platform Operator in another member State.

3. A Reporting Platform Operator within the meaning of point (b) of subparagraph A(4) of Section I shall report the information set out in paragraph B of this Section with respect to the Reportable Period to the competent authority of the Member State of registration, as this is determined in accordance with subparagraph F(1) of Section IV, no later than 31 January of the year following the calendar year in which the Seller is identified as a Reportable Seller.

3a. Notwithstanding subparagraph A(3), a Reporting Platform Operator within the meaning of point (b) of subparagraph A(4) of Section I shall not be required to provide the information set out in paragraph B with respect to Qualified Relevant Activities, covered by an Effective Qualifying Competent Authority Agreement, which already provides for the automatic exchange of equivalent information with a Member State on Reportable Sellers resident in that Member State.

4. A Reporting Platform Operator shall also provide the information set out in subparagraphs B(2) and B(3) to the Reportable Seller to which it relates, no later than 31 January of the year following calendar year in which the Seller is identified as a Reportable Seller.

5. The information with respect to the Consideration paid or credited in a fiat currency shall be reported in the currency in which it was paid or credited. In case the Consideration was paid or credited in a form other than fiat currency, it shall be reported in the local currency, converted or valued in a manner that is consistently determined by the Reporting Platform Operator.

6. The information about the Consideration and other amounts shall be reported in respect of the quarter of the Reportable Period in which the Consideration was paid or credited.

B. Information to be reported

Each Reporting Platform Operator shall report the following information:

1. The name, registered office address, TIN and, where relevant, individual identification number, allocated pursuant to subparagraph F(4) of Section IV of the Reporting Platform Operator, as well as the business name(s) of the Platform(s) in respect of which the Reporting Platform Operator is reporting.

2. With respect to each Reportable Seller that carried out Relevant Activity, other than immovable property rental:

   (a) the information items required to be collected pursuant to paragraph B of Section II;

   (b) the Financial Account Identifier, insofar as it is available to the Reporting Platform Operator and the competent authority of the Member State where the Reportable Seller is resident in the meaning of paragraph D of Section II has not published that it does not intend to use the Financial Account Identifier for this purpose;

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

   (d) each Member State in which the Reportable Seller is resident for the purposes of this Directive as determined pursuant to paragraph D of Section II;

   (e) the total Consideration paid or credited during each quarter of the Reportable Period and the number of relevant Activities in respect of which it was paid or credited;

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

3. With respect to each Reportable Seller that provided immovable property rental services:

(a) the information items required to be collected pursuant to paragraph B of Section II;

(b) the Financial Account Identifier, insofar as it is available to the Reporting Platform Operator and the competent authority of the Member State where the Reportable Seller is resident in the meaning of paragraph D of Section II has not published that it does not intend to use the Financial Account Identifier for this purpose;

(c) where different from the name of the Reportable Seller, in addition to the Financial Account Identifier, the name of the holder of the financial account to which the Consideration is paid or credited, to the extent available to the Reporting Platform Operator, as well as any other financial identification information available to the Reporting Platform Operator with respect to the account holder;

(d) each Member State in which the Reportable Seller is resident for the purposes of this Directive as determined pursuant to subparagraph D of Section II;

(e) the address of each Property Listing, determined on the basis of the procedures set out in paragraph E of Section II and respective land registration number or its equivalent under the national law of the Member State where it is located, where available;

(f) the total Consideration paid or credited during each quarter of the Reportable Period and number of Relevant Activities provided with respect to each Property Listing;

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

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

SECTION IV

EFFECTIVE IMPLEMENTATION

Pursuant to Article 8ac, Member States shall have rules and administrative procedures in place to ensure effective implementation of, and compliance with, the due diligence and reporting obligations set out in Section II and III of this Annex.

A. Rules to enforce the collection and verification requirements laid down in Section II

1. Member States shall take the necessary measures to require Reporting Platform Operators to enforce the collection and verification requirements under Section II in relation to their Reportable Sellers.

2. Where a Seller does not provide the information required under Section II after two reminders following the initial request by the Reporting Platform Operator, but not prior to the expiration of 60 days, the latter shall close the account of the Seller and prevent the Seller from re-registering on the Platform or withhold the payment of the Consideration to the Seller as long as the Reportable Seller did not provide the information requested.

B. Rules requiring Reporting Platform Operators to keep records of the steps undertaken and any information relied upon for the performance of the due diligence procedures and reporting requirements and adequate measures to obtain those records

1. Member States shall take the necessary measures to require Reporting Platform Operators to keep records of the undertaken steps and any information relied upon for the performance of the due diligence procedures and reporting requirements set out in Sections II and III. Such records shall remain available for a sufficiently long period of time and in any event for a period of not less than 5 years but not more than 10 years following the end of the Reportable Period to which they relate.

2. Member States shall take the necessary measures, including the possibility of addressing an order for reporting to Reporting Platform Operators, in order to ensure that all necessary information is reported to the competent authority so that the latter can comply with the obligation to communicate information in accordance with Article 8ac(2).

C. Administrative procedures to verify Reporting Platform Operators' compliance with the due diligence procedures and reporting requirements

Member States shall lay down administrative procedures to verify the compliance of Reporting Platform Operators with the due diligence procedures and reporting requirements set out in Sections II and III.

D. Administrative procedures to follow up with a Reporting Platform Operator where incomplete or inaccurate information is reported

Member States shall lay down procedures for following up with Reporting Platform Operators where the reported information is incomplete or inaccurate.

E. Administrative procedure for election of a single Member State in which to report

If a Reporting Platform Operator within the meaning of point (a) of subparagraph A(4) of Section I fulfils any of the conditions listed therein in more than one Member State, it shall elect one of these Member States, to carry out its reporting requirements pursuant to Section III. The Reporting Platform Operator shall notify all the competent authorities of these Member States of its election.

F. Administrative procedure for single registration of a Reporting Platform Operator

1. A Reporting Platform Operator within the meaning of point (b) of subparagraph A(4) of Section I shall register with the competent authority of any Member State pursuant to Article 8ac(4) when it commences its activity as a Platform Operator.

2. The Reporting Platform Operator shall communicate to the Member State of its single registration the following information:

   (a) name;

   (b) postal address;

   (c) electronic addresses, including websites;

(d) any TIN issued to the Reporting Platform Operator;

(e) a statement with information about identification of that Platform operator for VAT purposes within the Union, pursuant to Title XII, Chapter 6, Section 2 and Title XII, Chapter 6, Section 3 of Council Directive 2006/112/EC;

(f) the Member States in which Reportable Sellers are residents within the meaning of paragraph D of Section II.

3. The Reporting Platform Operator shall notify the Member State of single registration of any changes in the information provided under subparagraph F(2).

4. The Member State of single registration shall allocate an individual identification number to the Reporting Platform Operator and shall notify it to the competent authorities of all Member States by electronic means.

5. The Member State of single registration shall request the Commission to delete a Reporting Platform Operator from the central register in the following cases:

(a) the Platform Operator notifies that Member State that it no longer carries out any activity as a Platform Operator;

(b) in the absence of a notification pursuant to point a), there are grounds to assume that the activity of a Platform Operator has ceased;

(c) the Platform Operator no longer meets the conditions laid down in point (b) of subparagraph A(3) of Section I.'

(d) the Member States revoked the registration with its competent authority pursuant to subparagraph 7.

6. Each Member State shall forthwith notify the Commission about any Platform Operator within the meaning of point (b) of subparagraph A(4) of Section I that commences its activity as a Platform Operator while failing to register itself pursuant to this paragraph.

Where a Reporting Platform Operator does not comply with the obligation to register or where its registration has been revoked in accordance with paragraph 7, Member States shall, without prejudice to Article 25a, take efective, proportinate and dissuasive measures to enforce compliance within their jurisdiction. The choice of such measures shall remain within the discretion of the Member States . Member States shall also endeavour to coordinate their actions aimed at enforcing compliance, including the prevention of the Reporting Platform Operator from being able to operate within the Union as a last resort.

7. Where a Reporting Platform Operator does not comply with the obligation to report in accordance with subparagraph A(3) of Section III after two reminders by the Member State of single registration, the Member State shall, without prejudice to Article 25a, take the necessary measures to revoke the registration of the Reporting Platform Operator made pursuant to Article 8ac(4). The registration shall be revoked not later than after the expiration of 90 days but not prior to the expiration of 30 days after the second reminder.