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Anti-Tax Avoidance Package: Next steps towards delivering effective taxation and greater tax transparency in the EU

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1. FAIR AND EFFICIENT CORPORATE TAXATION: A CORNERSTONE OF THE SINGLE MARKET

The Single Market is one of Europe's greatest achievements, designed to allow people, goods, services and capital to move freely. It reduces red tape for professionals and businesses operating cross border. It provides greater choice and lower prices for consumers. It enables people to travel, live, work and study wherever they wish. The Commission has therefore made it a priority to develop a deeper and fairer Internal Market, which is fundamental to delivering a thriving economy that benefits all.

As set out in the June 2015 Action Plan for a Fair and Efficient Corporate Tax System in the EU[1], a healthy Single Market needs a fair, efficient and growth-friendly corporate tax system, based on the principle that companies should pay taxes in the country where profits are generated. Aggressive Tax Planning undermines this principle. The majority of businesses do not engage in aggressive tax planning and suffer a competitive disadvantage to those that do. The aggressive behaviour of these companies distorts price signals and allows them to enjoy lower capital costs, disrupting the level playing field in the Single Market. Small and medium sized businesses are particularly affected by this phenomenon.

Meanwhile, Member States suffer significant revenue losses due to this aggressive tax planning by certain companies. Other less aggressive, less mobile taxpayers then have to carry a heavier burden. As Europe emerges from a difficult economic crisis, citizens understandably resent having to carry a heavier tax burden while certain corporations avoid paying their fair share, with sometimes the voluntary or involuntary complicity of national governments. This uneven burden-sharing erodes fairness in taxation, reduces general tax-payer morale and threatens the social contract between citizens and their governments. The European Parliament, voicing the concerns of European citizens, has demanded that these practices should stop.

Member States agree and understand that if they want a stronger Single Market then taxation cannot be left aside. A coordinated approach to implementing growth-friendly tax systems and tackling cross-border problems is essential for a well-functioning Single Market, a successful Capital Markets Union and to attract inward investment to the EU. Member States, now, acknowledge this and have called for an end to aggressive tax planning[2]. This requires a common approach at EU level or the introduction of general and specific anti-tax avoidance provisions in the Union, covering both internal measures and common actions against external base erosion threats.

2. AGGRESSIVE TAX PLANNING: A GLOBAL PROBLEM REQUIRING EU AND GLOBAL SOLUTIONS

Unilateral action by Member States would not adequately tackle the problem of Aggressive Tax Planning and would create problems. In a Single Market founded on free movement of goods, persons, services and capital, uncoordinated measures against profit shifting can do more harm than good. Divergent national approaches to tackling this cross-border problem can create loopholes for aggressive tax planners. Rules in one Member State can undermine the effectiveness of the rules of others.

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1 http://ec.europa.eu/taxation_customs/resources/documents/taxation/company_tax/fairer_corporate_taxation/com_2015_302_en.pdf

2 http://www.consilium.europa.eu/en/press/press-releases/2015/12/08-ecofin-conclusions-corporate-taxation/

Moreover, an uncoordinated approach can bring uncertainty and administrative burdens for businesses.

An uncoordinated approach can further encourage suboptimal responses by Member States. In some instances Member States are reluctant to act, being fearful of the competitive disadvantage this might bring. Some Member States instead respond to the problem by intensifying their efforts to attract or maintain multinationals' profits in their own territories – sometimes through preferential tax regimes or individual tax rulings granting a selective advantage, which are in conflict with EU State aid rules. However, harmful tax competition tends to create greater incentives for companies to shift profits, while further reducing Member States' overall tax revenues and distracting them from growth-friendly tax policies. While preferential regimes and individual tax rulings are currently being subject to targeted enforcement action under State aid rules, this needs to be complemented by legislative measures.

Aggressive Tax Planning is a global problem, which requires European and international solutions. Many Member States now recognise that unilateral action is insufficient. There is a large degree of consensus that a coordinated response is needed to the problem of aggressive tax planning to ensure competition on a level playing field on tax matters.

3. No time for business as usual: Need for political ambition and legal certainty

The Commission Communication of 17 June 2015 on "a Fair and Efficient Corporate Tax System in the European Union: 5 Key Areas for Action" laid the groundwork for action on aggressive tax planning. The Common Consolidated Corporate Tax Base (CCCTB) is central to the Action Plan, as it would fundamentally reform corporate taxation and provide a holistic solution to the problem of profit shifting in Europe. It would also create a better tax environment for business, reducing tax burdens.

Pending the adoption of the forthcoming revised CCCTB proposal, in the immediate term, other actions were set out in the June Action Plan, and were aimed at ensuring effective taxation where profits are generated, creating a better tax environment for business, making further progress on tax transparency and strengthening EU tools for coordination. These actions link strongly to the G20/OECD project on Base Erosion and Profit Shifting (BEPS), which was still ongoing when the Action Plan was published. Since then, good progress has been made on many of these actions. However, in some areas of the Action Plan, EU level action depended on the completion of the G20/OECD exercise.

The G20/OECD reports[3] were published in October 2015 and Member States are now expected to implement many of these recommendations in an EU law compliant manner. Many Member States have stated that they intend to implement these solutions as soon as possible, but there is a risk that they will do so in divergent ways or have varying interpretations of the OECD BEPS measures.

This is not sufficient. In the EU, action in the form of anti avoidance measures must be taken in a clear and coherent way, to strengthen Member States' collective stance against tax avoidance, while upholding the Treaty freedoms and EU competitiveness.

The EU can and should go further to ensure that Member States develop a common standard. The EU has tools at its disposal which can be used to ensure that anti avoidance measures are implemented in a coordinated manner in all Member States,

[3] http://www.oecd.org/ctp/beps.htm

reinforcing each other's defences against abuse, and providing more legal certainty to businesses. In particular, the EU can secure a common approach through the adoption of legal instruments. This is appropriate in some circumstances, for example where defensive measures relate to national legislation. Legislation can include some flexibility, to allow Member States to take their different circumstances into account, but could at least ensure that a minimum standard is in place across the Union. EU legislation would help level the playing field on tax for Member States and limit the distortions which undermine the Single Market.

In other cases, legislation may not be appropriate, for instance if it relates to tax treaties. In these cases, a Commission Recommendation may be a better way to provide guidance on an EU law compatible approach. In other areas, it may be appropriate to employ other tools at our disposal in the EU, such as the Joint Transfer Pricing Forum, the Code of Conduct for Business Taxation, or the Platform for Tax Good Governance Group.

Action is needed now to develop a corporate tax environment in the EU that promotes a competitive and growth friendly economy. The longer the wait, the higher the risk that diverging approaches will emerge, creating administrative burdens and uncertainty for business and damaging the Single Market. There is no case for delay. Member States have explored these issues in depth and at length, both in the EU and the OECD. During this process, businesses, NGOs and professional groups have been extensively consulted, and have made their views known. The European Parliament has delivered its reports on aggressive tax planning. All the elements are now on the table. It is time to act.

4. Effective taxation: Ensuring tax is paid where the value is generated

As was set out in the June 2015 Action Plan, companies that benefit from the Single Market and generate profits there should pay tax on those profits within the EU, where the activity takes place. However, it is clear that this link has been broken by some companies which shift profits from where they are generated to Member States offering low tax rates and preferential regimes, and out to third countries, with no link to the place of actual economic activity. Some of the incentives offered to selected undertakings, may breach EU State aid rules and can be tackled via State aid control. The Commission has been active in pursuing cases where these rules have been breached. At the same time, though, aggressive tax planning strategies often take advantage of wider systemic issues, such as mismatches between national tax legislation, as well as existing EU corporate tax legislation[4], to pay a low effective level of tax (or no tax at all) at the place where the profits were generated. The European Parliament, many Member States and stakeholders have demanded change, which is why a commitment to ensure effective taxation of profits in the EU was central to the June Action Plan.

The EU has various means at its disposal to advance this agenda and progress has already been made, on a number of initiatives to ensure the effective taxation of profits in the Single Market.

The new G20/OECD guidelines on **Transfer Pricing** should help link profits to the economic activities which generate them. The Commission reviewed the mandate of the

[4] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0049:en:HTML

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0123:en:HTML

Joint Transfer Pricing Forum (JTPF)[5], which is already deeply involved in examining how best to build on the G20/OECD BEPS work in order to develop a more effective and consistent application of the rules within the EU, reflecting the Single Market. The JTPF has repeatedly proved itself to be capable of delivering comprehensive pragmatic solutions to the problems posed by EU transfer pricing practices, and should continue to deliver results. The Commission will monitor Member States' implementation of the new rules and will consider whether stronger rules are required to prevent manipulation.

The **Code of Conduct Group on Business Taxation[6]** has established a monitoring process which will ensure that Member States implement the revised approach to patent boxes. If Member States are not applying the new approach appropriately, then the Commission will consider introducing legislation to ensure its proper implementation.

EU Ministers of Finance have discussed effective taxation and agreed to focus efforts in the short term on a new anti-abuse clause in the **Interest and Royalties Directive[7]**. This work will continue, and the Commission is confident that agreement can be reached.

Europe now has the opportunity to go further in some areas, and take action in respect of other aggressive tax planning structures that have been discussed at the OECD and in the inter-institutional debate. These structures are discussed further both in the Staff Working Document accompanying this package and in the Commission's Aggressive Tax Planning Study. The OECD and other EU institutions have flagged the following potential additional measures which could help address aggressive tax planning:

- limiting interest deductions, one of the principal instruments for profit shifting;
- eliminating negative impacts of hybrid mismatches, so they do not result in double non taxation;
- strengthening controlled foreign company rules, which ensure that profits parked in low or no tax countries are effectively taxed;
- reinforcing rules relating to how assets are taxed when they are transferred to another state (exit taxation);
- denying the exemption of certain cross border corporate receipts in the absence of effective taxation in the other state (switchover rules);
- introducing an EU wide General Anti Abuse Rule; and
- amending the rules to make it more difficult for companies to artificially avoid having a taxable presence in a Member States or to abuse tax treaty agreements (permanent establishment and treaty abuse).

An EU wide approach to these measures would strengthen the link between profit generation and taxation in the EU. As a result, since the publication of the Action Plan, Council discussions have focussed on finding a common solution to these issues, and Member States have made good progress. These discussions have been enhanced by the publication of the BEPS reports, which are linked to several of these actions.

The Commission is convinced that the common solutions being discussed in Council

[5] http://ec.europa.eu/taxation_customs/taxation/company_tax/transfer_pricing/forum/index_en.htm

[6] http://ec.europa.eu/taxation_customs/taxation/company_tax/harmful_tax_practices/index_en.htm

[7] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0049:en:HTML

would considerably enhance Member States' abilities to tackle aggressive tax planning pending the outcome of the CCCTB. The June Action Plan stated that the Commission would ensure that consensus on these items could be made legally binding. **This package therefore includes an Anti-Tax Avoidance Directive, which makes good on this promise by delivering a legislative proposal for those elements which can be implemented in national legislation** prior to agreement and introduction of the CCCTB**.** It also responds to the European Parliament's Resolutions that the Commission bring forward legislative proposals on these anti avoidance measures.

Some issues, however, would not be suited to a standalone directive. In particular, issues relating more to tax treaties have not been included in the Directive. Nonetheless, a coordinated approach is needed now to prevent negative spill-overs. **The Commission is therefore presenting a Recommendation on the implementation of measures relating to Permanent Establishments, as well as to the G20/OECD report on Tax Treaty abuse**. In this context, the Commission is concerned that the G20/OECD report includes Limitation of Benefits clauses as an option, although it is acknowledged that this may not be appropriate in all regions. These clauses limit the benefits of tax treaties to entities owned by residents of only one Member State, and therefore can be seen as detrimental to the Single Market by discouraging cross border investment. These rules can be problematic for the Capital Markets Union. Where Member States include rules based on the G20/OECD option of a Principal Purpose Test in their Tax Treaties, they should do so in an EU law compliant manner. For this purpose Member States are encouraged to use the additional wording included in the Recommendation.

The Anti-Tax Avoidance Package also includes a Communication that sets out steps for a more coordinated EU approach to third countries on tax matters. This will complement the anti-avoidance measures already foreseen**.** It examines how the EU can better promote international tax good governance standards globally and further support third countries in meeting these standards.

This Communication presents updated EU good governance criteria, in line with the latest international developments, which should underlie all EU external policies on tax matters. It seeks to improve the use of the EU's international agreements to promote tax good governance and advocates more support to developing countries in the area of corporate taxation.

In line with the commitment made in the June 2015 Action Plan, **the Communication also details a new EU process for assessing and listing third countries for tax purposes**. This reflects many of the measures which the European Parliament's TAXE and ECON Committees identified as essential for combatting aggressive tax planning involving third countries.

5. TRANSPARENCY: ENSURING EFFECTIVE ACCESS TO TAX INFORMATION

Transparency is an essential ingredient in ensuring fairer taxation, both in the EU and internationally. Member States need to have access to information on tax paid in other jurisdictions if they are to tackle aggressive tax planning. In March 2015, the Commission put forward a proposal to achieve further transparency towards tax administrations through the automatic exchange of information on cross border tax rulings. The proposal, which has been adopted by the Council in December 2015, will help ensure more effective cooperation between tax authorities and help governments to better protect their tax bases.

However, more needs to be done to ensure the fairness of taxation in the Single Market. Despite the recent adoption of the proposal for the automatic exchange on cross-border tax rulings**, tax administrations may still often lack information necessary to**

identify whether companies have engaged in artificially shifting substantial amounts of income into tax-advantaged environments through transfer pricing or similar practices. The G20/OECD have recommended that countries share more information between tax authorities, including information on how much tax a company pays and on what profits on a country by country basis. This information is essential for the assessment and audit of practices in which large multi-national companies sometimes engage.

These rules should be implemented uniformly throughout the EU, in order to ensure a level playing field between Member States, and avoid the administrative burdens which might arise if businesses have to provide different information in every Member State. **The Commission is therefore putting forward a proposal to implement G20/OECD CbCR EU level**, building on the existing legislative framework for information exchange, through amendments to the Directive on Administrative Cooperation (DAC). By including CbCR within DAC, Member States would also benefit from the Directive's existing provisions on administrative cooperation, which would ease exchange of information between tax administrations.

In parallel, the Commission is currently analysing how certain accounting and tax information could in addition be made public by multinational firms on a country by country basis. Such increased corporate tax transparency could place multinational firms under closer public scrutiny, helping to ensure that profits are effectively taxed where they are generated and reinforcing public trust. Moreover, it could add to a fairer tax system in the Single Market by further contributing to reducing tax avoidance practices and related Member States' tax strategies as well as reducing unfair differences in treatment between multinational and other companies. At the same time, an initiative will need to take into account the need to protect legitimate business secrets and promote a level playing field for globally active businesses. The Commission is assessing options as part of the ongoing Impact Assessment work and, following its completion, intends to present a legislative initiative in spring of this year.

6. ADDRESSING THE RISK OF DOUBLE TAXATION

In recognition of business concerns that measures tackling aggressive tax planning may inadvertently lead to more double taxation or disputes between tax administrations over the tax base, **the measures included in the Anti-Tax Avoidance Package have been designed so as to minimise the risk of double taxation as much as possible**. For example, the Anti-Tax Avoidance Directive explains that if double taxation arises as a result of the application of the rules, taxpayers should receive relief for the tax paid in the other state. This general principle is accompanied by more specific rules where possible, such as in the CFC provisions. Furthermore, as set out in the June Action Plan, the Commission also intends to put forward a proposal on enhancing dispute resolution procedures. Work on the impact assessment on dispute resolution is progressing, with a view to presenting the proposal in the summer.

7. WAY FORWARD

Once adopted, the CCCTB would prevent aggressive tax planning in the EU. Putting CCCTB in place therefore remains the Commission's objective. The public consultation on a revised CCCTB proposal has recently closed, and the Commission is on track to adopt the new legislative proposals in autumn 2016. The Commission will encourage Member States to adopt the proposal quickly. In the meantime, Europe cannot wait. The Anti- Tax Avoidance Package presents a pragmatic approach, bringing together key initiatives needed to enhance effective taxation and transparency in the Single Market. It will add momentum to the current reform process, keep up the pressure on Member States to act, and will help convert high level commitments into legislative action where possible.

This Package is composed of the following initiatives[8]:

- Proposal for an Anti-Tax Avoidance Directive
- Recommendation on Tax Treaty issues
- Proposal for a Directive implementing the G20/OECD Country by Country Reporting (CbCR)
- Communication on an External Strategy
- Staff Working Document, which provides further analysis and supports these initiatives.

These initiatives reflect extensive and constructive discussions in the Council, as well as in the Code of Conduct on Business Taxation and Platform for Tax Good Governance groups, as well as in the recently released G20/OECD BEPS reports. The Commission is also indebted to the valuable tax reports of the European Parliament, and addresses many of the recommendations included in the Resolutions.

As these measures are in line with Member States' commitments, it should be possible to secure early agreement to this package. The measures provide the framework necessary to deliver real benefits to help protect the Single Market, and create a coherent and coordinated EU approach to corporate taxation – amongst ourselves and in relation to the rest of the world. It is up to Member States to take advantage of this opportunity to overcome their differences and help build a fairer and more efficient tax system in the EU.

[8] All the actions proposed to be taken up by the Commission in this document are consistent and compatible with the current Multiannual Financial Framework 2014-2020

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Proposal for a

COUNCIL DIRECTIVE

amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The European Council Conclusions of 18 December 2014 cite "an urgent need to advance efforts in the fight against tax avoidance and aggressive tax planning, both at the global and EU levels". Since December 2014, the Commission has quickly launched the first steps towards an EU approach. In the meanwhile the OECD has finalized its work in defining the global rules and standards to these ends.

This Directive amending Council Directive 2011/16/EU as part of the Commission's Anti-Tax Avoidance Package, addresses the political priority of fighting against tax avoidance and aggressive tax planning. It also responds to the demands from the European Parliament. It is also in line with the initiatives announced in the Commission's Action Plan on a Fairer Corporate Tax System (COM (2015) 302) to tackle tax avoidance.

Businesses have traditionally viewed tax planning as legitimate on the grounds that they use legal arrangements to reduce their tax liabilities. However, tax planning has become more elaborate in recent years, developing across jurisdictions and shifting taxable profits towards states with beneficial tax regimes. This "aggressive" form of tax planning can take a multitude of forms, such as taking advantage of the technicalities of a tax system or of mismatches between two or more tax systems for the purpose of reducing or avoiding tax liabilities. Its consequences include double deductions (e.g. the same expense is deducted in both the state of source and the state of residence) and double non-taxation (e.g. income is not taxed in either its state of source or in the recipient’s state of residence).

Unlike Small and medium companies or individual taxpayers, Multinational Enterprise (MNE) Groups are in a position that renders them capable of exploiting loopholes in domestic and international tax laws to shift profits from one country to the next in order to reduce their tax bill.

The global economic and financial crisis of the last years had made the public aware of the need to ensure that all contributors pay their fair share of tax payments. This should result in higher tax revenues that would contribute to the reduction of public sector deficits for the benefit of all.

In this context, tax authorities need comprehensive and relevant information on structure, transfer pricing policy and internal transactions with related parties of MNE Groups. With the aim to combat tax avoidance and aggressive tax planning, this Directive imposes transparency requirements on MNE Groups. It requires MNE Groups to provide annually and for each tax jurisdiction in which they do business certain information including the amount of revenue, the profit before income tax, the income tax paid and accrued, the number of employees, the stated capital, the retained earnings and the tangible assets. This information will enable the tax authorities to react to harmful tax practices through changes in the legislation or adequate risk assessments and tax audits. Increased transparency should also incentivize MNE Groups to pay their fair share of tax in the country where profits are made.

The new transparency requirements should ensure that the administrative burden imposed on businesses is minimized. EU MNE Groups should in principle not be obliged to submit the information to of all the EU Member States where they operates, but only to the tax authorities of their of residence. The Directive requires Member States, once they have received the country-by-country report, to share the information with the Member

States in which, on the basis of the information in the report, companies of the MNE Group are either resident for tax purposes, or are subject to tax with respect to the business carried out through a permanent establishment.

To ensure an appropriate balancing of reporting burden and benefit to tax administrations, only MNE Groups with total consolidated group revenue equal or higher than
EUR 750 000 000, will be obliged to file the country-by-country report. According to the Organisation for Economic Development and Cooperation (OECD) estimations, approximately 85 to 90 percent of MNE groups will be excluded from the requirement, but the country-by-country report will nevertheless be filed by MNE groups controlling approximately 90 percent of corporate revenues.

Now more than ever, cooperation between Member States' tax authorities is crucial in order to tackle tax avoidance and aggressive tax planning. EU legislation provides for administrative cooperation between Member States' tax authorities, and sets out a series of instruments to help them to cooperate in collecting their due revenues, including exchange of information. However, the EU needs to continue reinforcing cooperation to ensure the proper functioning of the Internal Market in respect with fundamental rights as enshrined in the EU Charter of Fundamental Rights.

Council Directive 77/799/EEC[9] was the first response to Member States' need for enhanced mutual assistance in the field of taxation. It was replaced by Council Directive 2011/16/EU[10] (DAC) that was intended to increase the effectiveness of the previous Directive. In recent years, the Directive has been amended by Directive 2014/107/EU (DAC2) and by Directive EU 2015/2376 (DAC3) providing tax authorities with further instruments to tackle tax fraud and evasion and aggressive tax planning, in the field of financial accounts, tax rulings and advance pricing arrangements.

The purpose of the present proposal is to ensure that Directive 2011/16/EU continues providing for comprehensive and effective administrative co-operation between tax administrations by providing for the mandatory automatic exchange of information regarding country-by-country reports.

This Directive is in line with the international developments. On 5 October 2015 the OECD presented its final reports on the Action Plan on Base Erosion and Profit Shifting (BEPS) which is a major initiative for modifying existing international tax rules. On 15-16 November 2015 the OECD package was also endorsed by the G20 leaders. The work on Action 13 of the OECD's Action Plan on BEPS resulted in a set of standards for providing information on MNE Groups' transfer pricing positions, including the masterfile, the local file and the country-by-country report. The Directive contributes to the implementation in the Union of the country-by-country report.

Most Member States, in their capacity as OECD members, have committed to implementing the outputs contained in the Final Reports on the 15 Actions against BEPS. It is therefore essential for the good functioning of the Internal Market that Member States transpose political commitments under BEPS into their national systems in a coherent and sufficiently coordinated fashion. This should be the way ahead in order to maximise the positive effects for the Internal Market as a whole. If not, unilateral implementation of BEPS would risk national policy clashes and new obstacles in the Internal Market, which would continue to be fragmented in 28 constituent parts and

9 OJ L 336, 27.12.1977, p. 15

10 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).

suffer from mismatches and other distortions.

This initiative aims at achieving a certain degree of uniformity in implementing the BEPS Action 13 across the EU. The Directive also intends to foster fair competition between the different business operators and ultimately to protect the tax base of EU Member States.

The proposal has been specifically designed to allow the automatic information exchange on country-by-country reporting to build on the existing rules in Directive 2011/16/EU relating to the practical arrangements for exchanging information including the use of standard forms.

The Commission's commitment to making such a proposal for the AEOI on country-by-country reporting is reflected in the Commission's 2016 Work Programme.[11]

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

Tax Transparency Package (COM (2015) 136)

The Package contained two main elements: (i) a proposal to introduce the AEOI between Member States on their tax rulings and (ii) an announcement that the Commission was assessing whether additional disclosure obligations of certain corporate tax information should be introduced.

This proposal does not preclude that the Commission decides in the future to propose imposing public disclosure obligations on companies.

Commission's Action Plan on a Fairer Corporate Tax System (COM (2015) 302)

This proposal is in line with the initiatives announced in the Action Plan to tackle tax avoidance.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The proposal modifies Directive 2011/16/EU as amended by Directive 2014/107/EU[12] and by Council Directive EU 2015/2376[13] by introducing a specific requirement for the AEOI on country-by-country report.

The modifications are contained in Article 1 of the proposal. In particular:

Article 3 (definitions) is amended.

Article 8aa requires Member States to oblige MNE Groups to submit the relevant information (the country by country report) and to automatically exchange that information received with the other Member States concerned.

Article 20 (6) refers to the standard form that will be used for the exchange and Article 21 (7) provides for the practical arrangements.

A new Article 25a on penalties is added.

A new Annex, including the definitions applicable to the proposal, the obligations for MNE Groups and the templates for the exchange of information, is added.

[11] http://ec.europa.eu/priorities/work-programme/index_en.htm

[12] OJ L 359 of 16 December 2014.

[13] OJ L 332 of 18 December 2015.

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

The subject-matter of these modifications falls within the same legal basis as Directive 2011/16/EU, i.e. Article 115 of the Treaty on the Functioning of the European Union (TFEU), which aims to ensure the proper functioning of the Internal Market. Article 115 TFEU provides for the approximation of such laws, regulations or administrative provisions of the Member States which directly affect the establishment or functioning of the internal market and make the approximation of laws necessary.

To ensure the proper functioning of the internal market, the EU needs to ensure fair competition and a level playing field between SME, non-EU and EU MNE Groups. MNE Groups have the possibility to engage in aggressive tax planning practices due to their cross border activities. For this reason, all MNEs, both EU Groups and non-EU Groups, should be subject to the reporting obligation. Without this element this initiative would be less effective in achieving the ultimate objective of ensuring the proper functioning of the Internal Market.

This proposal complies with the principles of Subsidiarity as set out in Article 5 paragraph 3 of the Treaty on the European Union.

Access by Member States to country-by-country reporting can therefore only be achieved effectively through action at Union level. The objective of ensuring that all Member States receive country-by-country reporting cannot be sufficiently achieved through non-coordinated action taken by each Member State individually. Moreover, the exchange of information that potentially affects the tax bases of more than one Member State requires a common and compulsory approach. It should be taken into account that as MNE Groups normally operate in different Member States, the cross-border element is inherent in the proposed action.

- **Proportionality**

The specific problem identified as the object of a policy response is the lack of transparency on corporate structures with cross-border relevance and important level of activity, which has negative effects, notably on the proper functioning of the Internal Market. The policy response is limited to addressing MNE Groups operating in several States, either within the European Union or with non-EU jurisdictions. Thus, the proposal represents the most proportionate answer to the identified problem. It is also based on the automatic exchange of basic information allowing each Member State where the company operates to receive information. The proposed amendments consequently do not go beyond what is necessary to address the issues at stake and, in that way, to achieve the Treaty's objectives of a proper and effective functioning of the Internal Market.

This proposal complies with the principles of proportionality as set out in Article 5, paragraph 4 of the Treaty on the European Union.

- **Choice of the instrument**

The present proposal will expand further the scope of Automatic Exchange of Information (AEOI) in the EU. An EU initiative is needed both from an internal market perspective and in terms of efficiency and effectiveness:

– An EU initiative ensures a coherent, consistent and comprehensive EU-wide approach to AEOI in the internal market. It would mean a single reporting approach across Member States which would lead to costs savings both for tax administrations and companies.

– An EU legal instrument would also ensure certainty for tax administrations and companies within the EU.

- An EU legal instrument would contribute to the development of the international standard of AEOI on country-by-country reports as discussed and agreed at the OECD.
- An EU legal instrument based on the DAC would involve the use of the IT arrangements already in place or under development to facilitate information reporting under the DAC. Under this Directive, EU Member States share information in specific formats using a specific communication channel. These formats could easily be extended so as to be usable also for the additional items now proposed for inclusion. As Member States have invested considerable time and money in developing these formats, there would be economies of scale if Member States also exchanged information on the new items using these formats.

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

- **Stakeholder consultations**

Consultations in the context of the Action Plan on tax fraud and tax evasion of the Recommendations (COM (2012) 722) and other fora

In its resolution on 21 May 2013,[14] the European Parliament welcomed the Commission's Action Plan and its Recommendations, urged Member States to follow up their commitments and embrace the Action Plan, and emphasised that the EU should take a leading role in global discussions on the fight against tax fraud, tax avoidance and tax havens, in particular in relation to promoting the exchange of information.

The European Economic and Social Committee adopted an opinion on 17 April 2013.[15] The Committee endorsed the Commission's Action Plan and supported its efforts to find practical solutions aimed at reducing tax fraud and tax evasion.

Over recent years, Member States have worked in the Code of Conduct Group to improve the exchange of information regarding cross-border rulings and in the area of transfer pricing. Conclusions of this Code of Conduct Group have been communicated to the Council on a regular basis in the form of reports.[16]

Most Member States are members of the OECD and have participated in lengthy and detailed discussions on the anti-BEPS Actions, including on the elaboration of technicalities, between 2013 and 2015. The OECD organised extensive public consultations with stakeholders on each of the anti-BEPS Actions. Furthermore, the Commission has debated internally and with OECD experts several BEPS topics, in particular where the Commission has had doubts about the compatibility of certain ideas and/or proposed solutions with EU law.

In the second half of 2014, the Italian Presidency of the Council launched the idea of an 'EU - BEPS Roadmap' and the Presidency encouraged consistency with parallel OECD initiatives, while respecting EU law. This approach was endorsed by the High Level Working Party on Taxation and pursued by the subsequent Presidencies. Discussions on

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[14] European Parliament Resolution of 21 May 2013 on fight against tax fraud, tax evasion and tax havens (Kleva Report) – 2013/2060 (INI).

[15] European Economic and Social Committee Opinion of 17 April 2013 on the Communication from the Commission to the European Parliament and the Council – An action plan to strengthen the fight against tax fraud and tax evasion COM(2012) 722 final (Dandea Report) – CESE 101/2013.

[16] Public Reports by the Code of Conduct Group (Business Taxation) are accessible [here.]

the EU - BEPS Roadmap continued into 2015. The aim was to contribute to the OECD debate and pave the way towards a smooth implementation of the future OECD Recommendations, whilst taking account of EU specificities.

The Commission's public consultation on tax transparency provided stakeholders with the possibility to comment on different aspects of corporate transparency in particular on the basis of country-by-country reporting. The possible options presented were mainly focused on public reporting by enterprises but included the exchange of information between tax administrations as required by BEPS Action 13. The Commission received in total 422 responses, of which most provided useful feedback regarding either public or non-public tax transparency measures. As regards BEPS Action 13, although business were not keen on tax authorities exchanging such information the majority of other respondents were in favour.

Member States

This Directive is in line with international developments at the level of the OECD and its work on BEPS where most EU Member States participate. The European Commission has also been heavily involved and other jurisdictions and stakeholders were consulted widely.

- **Impact assessment**

After its report on Addressing Base Erosion and Profit Shifting was published in early 2013 and the so-called Action Plan on BEPS was endorsed by the G20 Leaders in September 2013, the OECD embarked on a 2-year period of intensive work which led to the delivery of 13 reports, in November 2015. These reports lay down new or reinforced international standards as well as concrete measures to help countries tackle BEPS. In this framework, OECD/G20 members are committed to this comprehensive package and to its consistent implementation.

Many Member States, in their capacity as OECD Members, have, in some areas very urgently, embarked on the transposition of the output of the BEPS project into their national laws. Considering this, it is critical to make fast progress on agreeing rules for coordinating the implementation of the conclusions on BEPS in the EU. In the light of a great risk of fragmentation of the internal market, which would possibly result from uncoordinated unilateral actions by Member States, the Commission is putting forward, in this proposal, solutions for achieving coherence a certain degree of uniformity in implementing the BEPS Action 13 across the EU.

The Commission has made every effort to respond simultaneously to both the urgency to act, and the imperative need to avoid that the functioning of the internal market is compromised either by unilateral measures adopted by Member States (whether OECD members or not) acting on their own, or lack of action by other Member States altogether. The possibility of proposing soft law was also considered as an option but was discarded as inappropriate for securing a coordinated approach.

To provide up-to-date analysis and evidence, a separate Staff Working Document (SWD) accompanying the proposal provides an extensive overview of existing academic work and economic evidence in the field of base erosion and profit shifting. This is based on recent studies, amongst others, by the OECD, the European Commission and European Parliament. The SWD highlights the drivers and most common identified mechanisms which, according to the OECD reports, are linked to aggressive tax planning. It summarises the conclusions of an in-depth review of key mechanisms for aggressive tax planning on a basis of analysis per Member State, as carried out on behalf of the Commission in 2015. The SWD outlines how implementation of BEPS Action 13 through this proposal complements other initiatives to implement the OECD BEPS reports in the EU and contribute towards a common minimum level of protection against tax avoidance.

Against this background, no impact assessment was carried out for this proposal on the following grounds: there is a strong link to the OECD BEPS work in particular with BEPS Action 13; the SWD supplies a significant body of evidence and analysis; stakeholders were extensively involved in consultations on the technical elements of the proposed rules at a previous stage; and, in particular, there is an urgent current demand for coordinated action in the EU on this matter of international political priority.

4. BUDGETARY IMPLICATIONS

The impact of the proposal on the EU Budget is presented in the financial statement accompanying the proposal, and will be met within available resources. The costs of the additional IT tools to facilitate the communication of information between Member States would be funded out of the FISCALIS 2020 programme provided for in Regulation (EU) 1286/2013 which provides financial support for activities to improve administrative cooperation between tax authorities in the EU.

2016/0010 (CNS)

Proposal for a

COUNCIL DIRECTIVE

amending Directive 2011/16/EU as regards mandatory automatic exchange of information 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 Article 113 and 115 thereof,

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Parliament[17],

Having regard to the opinion of the European Economic and Social Committee[18],

Acting in accordance with a special legislative procedure,

Whereas:

(1) In recent years, the challenge posed by tax fraud and tax evasion has increased considerably and has become a major focus of concern within the Union and at global level. The automatic exchange of information constitutes an important tool in this regard and the Commission in its Communication of 6 December 2012 containing an Action plan to strengthen the fight against tax fraud and tax evasion highlighted the need to promote vigorously the automatic exchange of information as the future European and international standard for transparency and exchange of information in tax matters. The European Council in its conclusions of 22 May 2013 requested the extension of automatic information exchange at Union and global levels with a view to combatting tax fraud, tax evasion and aggressive tax planning.

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

(3) Union tax authorities need comprehensive and relevant information on MNE Groups regarding their structure, transfer pricing policy and internal transactions in and outside the EU. That information will enable the tax authorities to react to harmful tax practices through changes in the legislation or adequate risk assessments and tax audits, and to

[17] OJ C , , p. .

[18] OJ C , , p. .

identify whether companies have engaged in practices that have the effect of artificially shifting substantial amounts of income into tax-advantaged environments.

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

(5) Resolution of the Council and of the representatives of the governments of the Member States on a code of conduct on transfer pricing documentation for associated enterprises in the European Union (EU TPD) already provides EU MNE Groups in the Union with a method to provide tax authorities with information on global business operations and transfer pricing policies (masterfile) and information on the concrete transactions of the local entity (local file). However, the EU TPD dos not provide at present any mechanism for the provision of a country-by-country report.

(6) In the country-by-country report, MNEs Groups should provide annually and for each tax jurisdiction in which they do business the amount of revenue, profit before income tax and income tax paid and accrued. MNE Groups should also report number of their employees, stated capital, retained earnings and tangible assets in each tax jurisdiction. Finally, MNE Groups should identify each entity within the group doing business in a particular tax jurisdiction and should provide an indication of the business activities each entity engages in.

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

(8) To ensure the proper functioning of the Internal Market, the EU has to provide for fair competition between EU MNE Groups and non-EU MNE Groups for which one or several of their entities are located in the EU. Both of them should therefore be subject to the reporting obligation.

(9) Member States should lay down rules on penalties applicable to infringements of national provisions adopted pursuant to this Directive and should ensure that those penalties are effective, proportionate and dissuasive and that they are implemented

(10) To ensure the proper functioning of the internal Market, it is necessary to ensure that Member States adopt coordinated rules on transparency obligations of MNE Groups.

(11) As regards exchange of information between Member States, Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC already provides for the mandatory automatic exchange of information in a number of fields. Its scope should be enlarged to provide for the mandatory automatic exchange of country-by-country reports between Member States.

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

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

(14) The work on Action 13 of the BEPS Action Plan resulted in a set of standards for providing information for MNE Groups, including the masterfile, the local file and the country-by-country report. It is therefore appropriate to take into account the OECD standards when establishing the rules on the country-by-country report.

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

(16) It is necessary to specify linguistic requirements for the exchange of information between Member States on country-by-country report. It is also necessary to adopt the practical arrangements necessary for the upgrading of CCN network. In order to ensure uniform conditions for the implementation of Articles 20(6) and 21(7), 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.

(17) In order to enhance the efficient use of resources, facilitate the exchange of information and avoid the need for each Member State to make similar adjustments to their systems the exchange of information should be made through the common communication network (CCN) developed by the Union. The practical arrangements necessary for the upgrading of the system should be adopted by the Commission in accordance with the procedure referred to in Article 26(2) of Directive 2011/16/EU.

(18) The scope of mandatory exchange of information should therefore be extended to include the automatic exchange of information of the country-by-country report.

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

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

(21) 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 is amended as follows:

(a) point 9 is replaced by the following

9. 'automatic exchange' means,

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

(b) for the purposes of Article 8(3a), the systematic communication of predefined information on residents in other Member States to the relevant Member State of residence, without prior request, at pre-established regular intervals.

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

(b) the following second subparagraph is added:

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

(2) in Section II of Chapter II, the following Article 8aa is inserted:

"Article 8aa

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

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

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

3. The country-by-country report shall contain the following information with respect

to the MNE Group:

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

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

4. The communication shall take place within 15 months after the last day of the fiscal year of the MNE Group to which the country-by-country report relates. The first country-by-country report shall be communicated for the fiscal year of the MNE Group commencing on or after 1 January 2016.

5. Article 17(4) shall not apply to information exchanged in accordance with paragraphs 1 to 4 of this Article.";

(3) In Article 20, the following paragraph 6 is added:

6. The automatic exchange of information on country-by-country report pursuant to Article 8aa shall be carried out using the standard form provided in Tables 1, 2 and 3 of Section III of Annex III. The Commission shall, by means of implementing acts, adopt the linguistic arrangements for that exchange by 31 December 2016. They shall not preclude Member States from communicating information referred to in Article 8aa in any of the official and working language of the Union. However, those linguistic arrangements may provide that the key elements of such information are sent also in another official language of the Union. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 26(2).";

(4) In Article 21, the following paragraph 6 is added:

"6. Information communicated pursuant to Article 8aa (2) shall be provided by electronic means using the CCN network. The Commission shall, by means of implementing acts, adopt the necessary practical arrangements for the upgrading of the CCN network. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 26(2).";

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

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

(6) the following Article 25a is inserted:

"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 Article 8aa, and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive. Member States shall by 31 December 2016 notify the Commission of those rules and of those measures and shall notify it without delay of any subsequent amendment affecting them.";

(7) Article 26 is replaced by the following:

"Article 26

Committee procedure

1. The Commission shall be assisted by the Committee on administrative cooperation for taxation. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council(*).

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

(*) 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.)";

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

Article 2

1. Member States shall adopt and publish, by 31 December 2016 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 2017.

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

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

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Brussels,

For the Council
The President

LEGISLATIVE FINANCIAL STATEMENT

LEGISLATIVE FINANCIAL STATEMENT

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

Proposal for a Council Directive amending Directive 2011/16/EU as regards the exchange of information in the field of taxation

1.2. Policy area(s) concerned in the ABM/ABB structure[19]

14 14.03

1.3. Nature of the proposal/initiative

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

☐ The proposal/initiative relates to **a new action following a pilot project/preparatory action[20]**

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

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

1.4. Objective(s)

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

The Commission work programme for 2015 lists among its priorities that of A Fairer Approach to Taxation. Following up on this, one key area for action in the Commission work programme for 2016 is to enhance transparency of the corporate tax system

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

<u>Specific objective</u> Specific objective of the FISCALIS programme is to support the fight against tax fraud, tax evasion and aggressive tax planning and the implementation of Union law in the field of taxation by ensuring exchange of information, by supporting administrative cooperation and, where necessary and appropriate, by enhancing the administrative capacity of participating countries with a view to assisting in reducing the administrative burden on tax authorities and the compliance costs for taxpayers <u>ABM/ABB activity(ies) concerned</u> ABB 3

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

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

1.4.3. *Expected result(s) and impact*

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

First, automatic exchange of information between Member States on country by country reporting will mean that all Member States will be able to properly assess whether multinationals groups engage in aggressive tax planning and will be able to react accordingly.

Second, the fact that there is more transparency should create a greater incentive for ensuring that tax competition becomes fairer. Automatic exchange of information on country by country reports may also deter companies from aggressive tax planning, since Member States will now have the information needed to detect and react to artificial arrangements and profit shifting.

1.4.4. *Indicators of results and impact*

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

The proposal will be governed by the requirements in the Directive that it is amending (i.e. Directive 2011/16) for the provision by Member States on an annual basis of an evaluation of the effectiveness of the automatic exchange of information.

1.5. Grounds for the proposal/initiative

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

This proposal would require Member States, once they have received the country-by-country report, to share the information with the Member States in which, on the basis of the information in the report, companies of the MNE Group are either resident for tax purposes, or are subject to tax with respect to the business carried out through a permanent establishment

1.5.2. *Added value of EU involvement*

An EU initiative ensures a coherent, consistent and comprehensive EU-wide approach to AEOI in the internal market. It would mean a single reporting approach across Member States which would lead to costs savings both for tax administrations and companies.

An EU legal instrument would also ensure certainty for tax administrations and companies within the EU, contribute to the development of the international standard of AEOI on country-by-country reports as discussed and agreed at the OECD and would involve the use of the IT arrangements already in place or under development to facilitate information reporting under the DAC. Under this Directive, EU Member States share information in specific formats using a specific communication channel. These formats could easily be extended so as to be usable also for the additional items now proposed for inclusion. As Member States have invested considerable time and money in developing these formats, there would be economies of scale if Member States also exchanged information on the new items using these formats.

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

The automatic exchange of information between tax administrations which applies in other tax fields, such as for savings income, has led to good results. Automatic exchange is now accepted at global level as the best tool available to tax administrations to tackle tax avoidance and evasion and aggressive tax planning.

1.5.4. Compatibility and possible synergy with other appropriate instruments

As the proposal is designed to amend the Directive on Administrative Cooperation (2011/16), the procedures, arrangements and IT tools already established or under development under that Directive will be available for use for the purposes of this proposal.

1.6. Duration and financial impact

☐ Proposal/initiative of **limited duration**

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

– ☐ Financial impact from YYYY to YYYY

☒ Proposal/initiative of **unlimited duration**

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

– The proposal will take effect from 1 January 2017

– followed by full-scale operation.

1.7. Management mode(s) planned[21]

☒ **Direct management** by the Commission

– ☒ by its departments, including by its staff in the Union delegations; the Fiscalis 2020 programme is managed in direct mode.

– ☐ by the executive agencies

☐ **Shared management** with the Member States

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

– ☐ third countries or the bodies they have designated;

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

– ☐the EIB and the European Investment Fund;

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

– ☐ public law bodies;

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

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

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

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

Comments

Nothing as regards management would change under this proposal. Under Article 21 of Directive 2011/16, the Commission, in comitology in conjunction with Member States, develops the formats for information exchange. As regards the CCN network necessary to permit the exchange of information between Member States, the Commission is responsible for whatever development of the CCN network is necessary to permit the exchange of that information while Member States are responsible for whatever development of their systems is necessary to enable information in question to be exchanged using the CCN network.

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

2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

Specify frequency and conditions.

Under the FISCALIS programme, the monitoring and reporting is dealt with as follows:

Preparatory activities required for this initiative and other joint actions and common training activities are monitored regularly through input collected from the participants and action managers. The input is collected via standardised forms and feeds in indicators established in the Fiscalis 2020 programme performance measurement framework (PMF). Other expenditure related to the exchange of information is monitored according to the mechanism described under section 1.4.4 and also consolidated under PMF.

2.2. Management and control system

2.2.1. Risk(s) identified

The potential risks for the implementation of the initiative with the Fiscalis 2020 support relate to:

Implementation of the grant agreement signed with the consortium of the Member States and Candidate Countries

Implementation of the procurement contracts concluded under the programme

2.2.2. Information concerning the internal control system set up

The set-up of internal control system is identical to the Fiscalis 2020 programme, which will be covering all operational expenditures of the initiative.

The main elements of the control strategy applied are:

For procurement contracts:

The control procedures for procurement defined in the Financial Regulation are applied. Any procurement contract is established following the established procedure of verification by the services of the Commission for payment, taking into account contractual obligations and sound financial and general management. Anti-fraud measures (controls, reports, etc.) are foreseen in all contracts concluded between the Commission and the beneficiaries. Detailed terms of reference are drafted and form the basis of each specific contract. The acceptance process follows strictly the TAXUD TEMPO methodology: deliverables are reviewed, amended if necessary and finally explicitly accepted (or rejected). No invoice can be paid without an "acceptance letter".

Technical verification for procurement

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

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

Ex-ante verification of commitments:

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

Ex-ante verification of payments:

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

Declarations of the AOSD:

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

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

The controls established enable DG TAXUD to have sufficient assurance of the quality and regularity of the expenditure and reduce the risk of non-compliance. The above control strategy measures reduce the potential risks bellow the target of 2% and it reaches all beneficiaries Any additional measures for further risk reduction would result in disproportionate high costs and are therefore not envisaged.

The overall costs entailed to implement the above control strategy – for all expenditures under Fiscalis 2020 programme – are limited to 1.6 % of the total payments made. It is expected to remain at the same ratio for this initiative.

The programme control strategy is deemed efficient to limit the risk of non-compliance to virtually zero and to be proportionate with the risks entailed.

2.3. Measures to prevent fraud and irregularities

Specify existing or envisaged prevention and protection measures.

The European Anti-fraud Office (OLAF) may carry out investigations, including on-the-spot checks and inspections, in accordance with the provisions and procedures laid down in Regulation (EC) No 1073/1999 of the European Parliament and of the Council (1) and Council Regulation (Euratom, EC) No 2185/96 (2) with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union in connection with a grant agreement or grant decision or a contract funded under this Regulation

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

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

- Existing budget lines

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number 1A Competitiveness for growth and jobs	Diff./Non-diff.[22]	from EFTA countries[23]	from candidate countries[24]	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
	14.0301 (Improving the proper functioning of the taxation systems)	Diff.	NO	NO	NO	NO

- New budget lines requested

In order of multiannual financial framework headings and budget lines.

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

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

[23] EFTA: European Free Trade Association.

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

3.2. Estimated impact on expenditure

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

3.2.1. Summary of estimated impact on expenditure

EUR million (to three decimal places)

Heading of multiannual financial framework	Numbe r	1 A for competitiveness for growth and jobs

DG: TAXUD			Year 2016 [25]	Year **2017**	Year **2018**	Year **2019**	**2020**			**TOTAL**
• Operational appropriations										
Number of budget line 14.0301	Commitments	(1)	0.300	0.300	0.300	0.050	0.050			1000
	Payments	(2)	0	0.300	0.300	0.300	0.050	0.050		1000
Number of budget line	Commitments	(1a)	p.m.	p.m.	p.m.	p.m.	p.m.	p.m.	p.m.	
	Payments	(2a)	p.m.	p.m.	p.m.	p.m.	p.m.	p.m.	p.m.	
Appropriations of an administrative nature financed from the envelope of specific programmes[26]			p.m.	p.m.	p.m.	p.m.	p.m.	p.m.	p.m.	
Number of budget line		(3)	p.m.	p.m.	p.m.	p.m.	p.m.	p.m.	p.m.	

[25] 2016 is the year in which implementation of the proposal/initiative starts.

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

TOTAL appropriations for DG TAXUD	Commitments	=1+1a +3	0.300	0.300	0.300	0.050	0.050			1000
	Payments	=2+2a +3	0	0.300	0.300	0.300	0.050	0.050		1000

• TOTAL operational appropriations	Commitments	(4)	0.300	0.300	0.300	0.050	0.050			1000
	Payments	(5)	0	0.300	0.300	0.300	0.050	0.050		1000
• TOTAL appropriations of an administrative nature financed from the envelope for specific programmes		(6)	p.m.	p.m.	p.m.	p.m.	p.m.	p.m.	p.m.	
TOTAL appropriations under HEADING 1A of the multiannual financial framework	Commitments	=4+6	0.300	0.300	0.300	0.050	0.050			1000
	Payments	=5+6	0	0.300	0.300	0.300	0.050	0.050		1000

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

• TOTAL operational appropriations	Commitments	(4)	p.m.	p.m.	p.m.	p.m.	p.m.	p.m.	p.m.	
	Payments	(5)	p.m.	p.m.	p.m.	p.m.	p.m.	p.m.	p.m.	
• TOTAL appropriations of an administrative nature financed from the envelope for specific programmes		(6)	p.m.	p.m.	p.m.	p.m.	p.m.	p.m.	p.m.	
TOTAL appropriations under HEADINGS 1 to 4	Commitments	=4+6	p.m.	p.m.	p.m.	p.m.	p.m.	p.m.	p.m.	

of the multiannual financial framework (Reference amount)	Payments	=5+6	p.m.	p.m.	p.m.	p.m.	p.m.	p.m.	p.m.	

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Heading of multiannual financial framework	**5**	'Administrative expenditure'

EUR million (to three decimal places)

		Year **2016**	Year **2017**	Year **2018**	Year **2019**	Year **2020**			**TOTAL**
DG: TAXUD									
• Human resources		0.528	0.528	0.528	0.528	0.528			2.640
• Other administrative expenditure		0.030	0.030	0.030	0.030	0.030			0.150
TOTAL DG TAXUD	Appropriations	0.558	0.558	0.558	0.558	0.558			

TOTAL appropriations under HEADING 5 of the multiannual financial framework	(Total commitments = Total payments)	0.558	0.558	0.558	0.558	0.558			**2.790**

EUR million (to three decimal places)

		Year **2016** [27]	Year **2017**	Year **2018**	Year **2019**	Year 2020			**TOTAL**
TOTAL appropriations under HEADINGS 1 to 5 of the multiannual financial	Commitments	0.858	0.858	0.858	0.608	0.608			3.790
	Payments	0.558	0.858	0.858	0.858	0.608	0.50		3.790

[27] 2016 is the year in which implementation of the proposal/initiative starts.

framework									

3.2.2. *Estimated impact on operational appropriations*

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

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

Commitment appropriations in EUR million (to three decimal places)

Indicate objectives and outputs ⇩			Year **2016**		Year **2017**		Year **2018**		Year **2019**		2020						**TOTAL**	
	OUTPUTS																	
	Type[28]	Average cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	Total No	Total cost
SPECIFIC OBJECTIVE No 1[29]…																		
- Output																		
- Output																		
- Output																		
Subtotal for specific objective No 1																		
SPECIFIC OBJECTIVE No 2 …																		
- Output																		
Subtotal for specific																		

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

29 As described in point 1.4.2. 'Specific objective(s)…'

objective No 2																
TOTAL COST																

NOTE

The anticipated positive output of this proposal is that i) Member States will receive tax-related information on entities which will put them in an informed position to target tax audits; ii) the general public may view the measure as an active step to ensure that all taxpayers pay their fair share of taxes; iii) companies might limit their aggressive tax planning structures. While Member States will have an increased administrative burden directly related to providing information on country-by-country reports, these costs are expected to be limited given the fact that the reports are prepared by the entities..

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

3.2.3.1. Summary

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

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

EUR million (to three decimal places)

	Year **N** [30]	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)			**TOTAL**
HEADING 5 of the multiannual financial framework								
Human resources	0.528	0.528	0.528	0.528	0.528			
Other administrative expenditure	0.030	0.030	0.030	0.030	0.030			
Subtotal HEADING 5 of the multiannual financial framework	0.558	0.558	0.558	0.558	0.558			
Outside HEADING 5[31] of the multiannual financial framework								
Human resources								
Other expenditure of an administrative nature								

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

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

Subtotal outside HEADING 5 of the multiannual financial framework								

TOTAL	0.558	0.558	0.558	0.558	0.558			

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

3.2.3.2. Estimated requirements of human resources

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

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

Estimate to be expressed in full time equivalent units

		Year **2016**	Year **2017**	Year **2018**	Year **2019**	2020		
• Establishment plan posts (officials and temporary staff)								
XX 01 01 01 (Headquarters and Commission's Representation Offices)		4	4	4	4	4		
XX 01 01 02 (Delegations)		p.m.	p.m.	p.m.	p.m.	p.m.	.	.
XX 01 05 01 (Indirect research)		p.m.	p.m.	p.m.	p.m.	p.m.	.	.
10 01 05 01 (Direct research)		p.m.	p.m.	p.m.	p.m.	p.m.	.	
• External staff (in Full Time Equivalent unit: FTE)[32]								
XX 01 02 01 (AC, END, INT from the 'global envelope')		p.m.	p.m.	p.m.	p.m.	p.m.		
XX 01 02 02 (AC, AL, END, INT and JED in the delegations)		p.m.	p.m.	p.m.	p.m.	p.m.	.	
XX 01 04 **yy** [33]	- at Headquarters	p.m.	p.m.	p.m.	p.m.	p.m.	p.m.	p.m.
	- in Delegations	p.m.	p.m.	p.m.	p.m.	p.m.	.	
XX 01 05 02 (AC, END, INT - Indirect research)		p.m.	p.m.	p.m.	p.m	p.		m.

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

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

				.	m .		
10 01 05 02 (AC, END, INT - Direct research)	p.m.	p.m.	p.m.	p.m.	p.m.		
Other budget lines (specify)	p.m.	p.m.	p.m.	p.m.	p.m.		
TOTAL	4	4	4	4	4		

XX is the policy area or budget title concerned.

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

Description of tasks to be carried out:

Officials and temporary staff	Preparation of meetings and correspondence with MS; (depending on discussions with Member States) work on forms, IT formats and central directory; commissioning of outside contractors to do work on the IT system
External staff	N/A

3.2.4. *Compatibility with the current multiannual financial framework*

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

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

Explain what reprogramming is required, specifying the budget lines concerned and the corresponding amounts.

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

Explain what is required, specifying the headings and budget lines concerned and the corresponding amounts.

3.2.5. *Third-party contributions*

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

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

Appropriations in EUR million (to three decimal places)

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

3.3. Estimated impact on revenue

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

– ☐ The proposal/initiative has the following financial impact:

 – ☐ on own resources

 – ☐ on miscellaneous revenue

EUR million (to three decimal places)

Budget revenue line:	Appropriations available for the current financial year	Impact of the proposal/initiative[34]						
		Year **N**	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)		
Article ………….								

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

Specify the method for calculating the impact on revenue.

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

EUROPEAN
COMMISSION

Brussels, 28.1.2016
COM(2016) 26 final

2016/0011 (CNS)

Proposal for a

COUNCIL DIRECTIVE

laying down rules against tax avoidance practices that directly affect the functioning of the internal market

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TABLE OF CONTENTS

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The European Council Conclusions of 18 December 2014 cite "an urgent need to advance efforts in the fight against tax avoidance and aggressive tax planning, both at the global and European Union (EU) levels". Since December 2014, the Commission has quickly launched the first steps towards an EU approach. Meanwhile, the Organisation for Economic Cooperation and Development (OECD) finalised its work on defining the global rules and standards to these ends.

This Directive, which is often referred to as the Anti- Tax Avoidance Directive, lays down rules against tax avoidance practices that directly affect the functioning of the internal market. It is one of the constituent parts of the Commission's Anti- Tax Avoidance Package, which addresses a number of important new developments and political priorities in corporate taxation that require quick reaction at the level of the EU. In particular, it responds to the finalisation of the project against Base Erosion and Profit Shifting (BEPS) by the G20 and the OECD as well as to demands from the European Parliament, several Member States, businesses and civil society, and certain international partners for a stronger and more coherent EU approach against corporate tax abuse.

The schemes targeted by this Directive involve situations where taxpayers act against the actual purpose of the law, taking advantage of disparities between national tax systems, to reduce their tax bill. Taxpayers may benefit from low tax rates or double deductions or ensure that their income remains untaxed by making it deductible in one jurisdiction whilst this is not included in the tax base across the border either. The outcome of such situations distorts business decisions in the internal market and unless it is effectively tackled, could create an environment of unfair tax competition. Having the aim of combating tax avoidance practices which directly affect the functioning of the internal market, this Directive lays down anti- tax avoidance rules in six specific fields: deductibility of interest; exit taxation; a switch-over clause; a general anti-abuse rule (GAAR); controlled foreign company (CFC) rules; and a framework to tackle hybrid mismatches.

• Consistency with existing policy provisions in the policy area

This Directive builds on the Action Plan for Fair and Efficient Corporate Taxation, presented by the Commission on 17 June 2015. It sets out legally binding rules to enable Member States to effectively tackle corporate tax avoidance in a way which preserves their collective competitiveness and respects the Single Market, Treaty Freedoms, the EU Charter of Fundamental Rights and EU law in general. In this respect, it draws on two major areas of work at EU and international level.

First, in the context of the OECD BEPS, most Member States have committed to implement the measures contained in the BEPS Final Reports, which were published on 5 October 2015 and endorsed by G20 leaders in November 2015. However, the unilateral and divergent implementation of BEPS by each Member State could fragment the Single Market by creating national policy clashes, distortions and tax obstacles for businesses in the EU. It could also create new loopholes and mismatches that could be exploited by companies seeking to avoid taxation, thereby undermining Member States' efforts to prevent such practices. It is therefore essential for the good functioning of the Single Market that Member States – as a minimum - transpose the OECD BEPS measures into their national systems in a coherent and coordinated fashion.

Second, the Commission announced in the June 2015 Action Plan that it will re-launch its Proposal for a Common Consolidated Corporate Tax Base (CCCTB), as a holistic solution to creating fairer and more efficient taxation. It also called on Member States to continue work on some international aspects of the common base, linked to the OECD BEPS project, while the revised CCCTB proposal was being prepared. This Directive takes account of the outcome of Member States' discussions on these issues in Council.

This Directive aims to achieve a balance between the need for a certain degree of uniformity in implementing the BEPS outputs across the EU and Member States' needs to accommodate the special features of their tax systems within these new rules. The text thus lays down principle-based rules and leaves the details of their implementation to Member States, on the understanding that they are better placed to shape the precise elements of the rules in a way that best fits their corporate tax systems. As such, the Directive should create a level-playing field of minimum protection for all Member States' corporate tax systems.

The Directive is broadly inclusive and aims to capture all taxpayers which are subject to corporate tax in a Member State. Its scope also embraces permanent establishments, situated in the Union, of corporate taxpayers which are not themselves subject to the Directive.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

Direct tax legislation falls within the ambit of Article 115 of the Treaty on the Functioning of the EU (TFEU). The clause stipulates that legal measures of approximation under that article shall be vested the legal form of a Directive.

• Subsidiarity (for non-exclusive competence)

This proposal complies with the principle of subsidiarity. The nature of the subject requires a common initiative across the internal market.

The rules of this Directive aim to tackle cross-border tax avoidance practices and provide a common framework for implementing the outputs of BEPS into Member States' national laws in a coordinated manner. Such aims cannot be sufficiently achieved through action undertaken by each Member State while acting on its own. Such an approach would in fact only replicate and possibly worsen the existing fragmentation in the internal market and perpetuate the present inefficiencies and distortions in the interaction of a patchwork of distinct measures. If the objective is to adopt solutions that function for the internal market as whole (e.g. elimination of mismatches as a result of disparities in national tax systems) and improve its (internal and external) resilience against aggressive tax planning, the appropriate way forward involves coordinated initiatives at the level of the EU.

Furthermore, an EU initiative would add value, as compared to what a multitude of national implementation methods can attain. Given that the envisaged anti-abuse rules have a cross-border dimension, it is imperative that any proposals balance divergent interests within the internal market and consider the full picture, to identify common objectives and solutions. This can only be achieved if legislation is designed centrally. Finally, if the measures to implement BEPS are enacted according to the acquis, taxpayers can have the legal certainty that they comply with EU law.

Such an approach is therefore in accordance with the principle of subsidiarity, as set out in Article 5 of the Treaty on the European Union.

- **Proportionality**

The envisaged measures do not go beyond ensuring the minimum necessary level of protection for the internal market. The Directive does not therefore prescribe full harmonisation but only a minimum protection for Member States' corporate tax systems. Thus, the Directive ensures the essential degree of coordination within the Union for the purpose of materialising its aims. In this light, the proposal does not go beyond what is necessary to achieve its objectives and is therefore compliant with the principle of proportionality.

- **Choice of the instrument**

The proposal is for a Directive, which is the only available instrument under the legal base of Article 115 TFEU.

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

- **Stakeholder consultations**

The topics dealt with in this Directive have been discussed with stakeholders in the framework of the proposed Directive for a CCCTB over a number of years. Member States' delegates have regularly contributed their observations at the technical Working Party on Tax Questions in Council. Since March 2011 that the College adopted the CCCTB Proposal, the Working Party has met several times during each Presidency, to go through technical and policy questions in detail. In addition, the Commission Services have liaised with all major business stakeholders and heard their views on various topics of the Proposal. Similarly, many - primarily technical – themes of the Directive were debated in academic conferences where the Commission Services have participated.

Most Member States are members of the OECD and have participated in lengthy and detailed discussions on the anti-BEPS Actions, including on the elaboration of technicalities, between 2013 and 2015. The OECD organised extensive public consultations with stakeholders on each of the anti-BEPS Actions. Furthermore, the Commission has debated internally and with OECD experts several BEPS topics (e.g. CFC legislation), in particular where the Commission has had doubts about the compatibility of certain ideas and/or proposed solutions with EU law.

In the second half of 2014, the Italian Presidency of the Council launched the idea of an 'EU - BEPS Roadmap'. The Council discussed the CCCTB proposal and specifically focused on its international and BEPS-related elements. In this context, the Presidency encouraged consistency with parallel OECD initiatives, while respecting EU law. This approach was endorsed by the High Level Working Party on Taxation and pursued by the subsequent Presidencies. Discussions on the EU - BEPS Roadmap continued into 2015. The aim was to contribute to the OECD debate and pave the way towards a smooth implementation of the future OECD Recommendations, whilst taking account of EU specificities.

The elements of this proposal for a Directive were presented in broad terms and discussed with Member States' delegations, business and non-governmental organisations' representatives at a meeting of the Platform for Tax Good Governance on 30 November 2015.

- **Impact assessment**

After its report on *Addressing Base Erosion and Profit Shifting* was published in early 2013 and the so-called *Action Plan on BEPS* was endorsed by the G20 Leaders in September 2013, the OECD embarked on a 2-year period of intensive work which led to the delivery of 13 reports, in November 2015. These reports lay down new or reinforced international standards as well as concrete measures to help countries tackle BEPS. In this framework, OECD/G20 members are committed to this comprehensive package and to its consistent implementation.

Many Member States, in their capacity as OECD Members, have undertaken to transpose the output of the BEPS project into their national laws, and to do so urgently. Considering this, it is critical to make fast progress on agreeing rules for coordinating the implementation of the conclusions on BEPS in the EU. In the light of a great risk of fragmentation of the internal market, which would possibly result from uncoordinated unilateral actions by Member States, the Commission is putting forward, in this proposal, common minimum solutions for implementation. The Commission has made every effort to respond simultaneously to both the urgency to act, and the imperative need to avoid that the functioning of the internal market is compromised either by unilateral measures adopted by Member States (whether OECD members or not) acting on their own, or lack of action by other Member States altogether. The possibility of proposing soft law was also considered as an option but was discarded as inappropriate for securing a coordinated approach.

To provide up-to-date analysis and evidence, a separate Staff Working Document (SWD) accompanying the draft Directive gives an extensive overview of existing academic work and economic evidence in the field of base erosion and profit shifting. This is based on recent studies, amongst others, by the OECD, the European Commission and European Parliament. The SWD highlights the drivers and most common identified mechanisms which, according to the OECD reports, are linked to aggressive tax planning. It summarises the conclusions of an in-depth review of key mechanisms for aggressive tax planning on a basis of analysis per Member State, as carried out on behalf of the Commission in 2015. The SWD outlines how the Directive is complementary to other initiatives aimed to implement the output of the OECD BEPS reports in the EU and contribute towards a common minimum level of protection against tax avoidance.

Against this background, no impact assessment was carried out for this proposal on the following grounds: there is a strong link to the OECD BEPS work; the SWD supplies a significant body of evidence and analysis; stakeholders were extensively involved in consultations on the technical elements of the proposed rules at a previous stage; and, in particular, there is an urgent current demand for coordinated action in the EU on this matter of international political priority.

4. BUDGETARY IMPLICATIONS

This proposal for a Directive does not have any budgetary implications for the EU.

5. OTHER ELEMENTS

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

The Directive is broadly inclusive and aims to capture all taxpayers which are subject to corporate tax in a Member State. Its scope also embraces permanent establishments, situated in the Union, of corporate taxpayers which are not themselves subject to the Directive.

The schemes targeted by this Directive involve situations where taxpayers act against the actual purpose of the law, taking advantage of disparities between national tax systems, to reduce their tax bill. Taxpayers may benefit from low tax rates or double deductions or ensure that their income remains untaxed by making it deductible in one jurisdiction whilst this is not included in the tax base across the border either. The outcome of such situations distorts business decisions in the internal market and unless it is effectively tackled, could create an environment of unfair tax competition. Having the aim of combating tax avoidance practices which directly affect the functioning of the internal market, this Directive lays down anti- tax avoidance rules in six specific fields: deductibility of interest; exit taxation; a switch-over clause; a general anti-abuse rule (GAAR); controlled foreign company (CFC) rules; and a framework to tackle hybrid mismatches.

- The deductibility of interest

Multinational groups often finance group entities in high-tax jurisdictions through debt and arrange that these companies pay back 'inflated' interest to subsidiaries resident in low-tax jurisdictions. In this way, the tax base of the group (or more precisely, of the entities paying out 'inflated' interest) decreases in the high-tax jurisdictions whilst it increases in the low-tax State where the interest payment is received. Overall, the outcome is a reduced tax base for the multinational group as a whole.

The aim of the proposed rule is to discourage the above practice by limiting the amount of interest that the taxpayer is entitled to deduct in a tax year. In this way, it is also expected to mitigate the bias against equity financing. For this purpose, net interest expenses will only be deductible up to a fixed ratio based on the taxpayer's gross operating profit. Given that this Directive fixes a minimum level of protection for the internal market, it is envisaged setting the rate for deductibility at the top of the scale (10 to 30%) recommended by the OECD. Member States may then introduce stricter rules.

Although it is generally accepted that financial undertakings, i.e. financial institutions and insurance undertakings, should also be subject to limitations to the deductibility of interest, it is equally acknowledged that these two sectors present special features which call for a more customised approach. This is chiefly because, contrary to other sectors of the economy, financial costs and revenues are incurred by, or accrue to, financial undertakings as part of their core trade. Given that the discussions in this field are not yet sufficiently conclusive in the international and Union context, it has not yet been possible to provide for specific rules in the financial and insurance sectors. It is however necessary to clarify that despite the temporary exclusion of these financial undertakings, the intention is to ultimately conclude an interest limitation rule of broad scope which is not subject to exceptions.

- Exit taxation

Taxpayers may try to reduce their tax bill by moving their tax residence and/or assets to a low-tax jurisdiction. Such practices distort the market because they erode the tax base of the State of departure and shift future profits to be subject to tax in the low-tax jurisdiction of destination. If taxpayers move their tax residence out of a certain Member State, this State will be deprived of its future right to tax revenues of these taxpayers, which may have already been created but not yet realised. The same complication arises where taxpayers transfer assets (without disposing of them) out of a Member State and those assets incorporate unrealised profits.

Exit taxation serves the purpose of preventing tax base erosion in the State of origin when assets which incorporate unrealised underlying gains are transferred, without a change of ownership, out of the taxing jurisdiction of that State. As the application of exit taxation within the Union shall be in line with the fundamental freedoms and in line with the case law of the Court of Justice of the European Union (CJEU), this Directive also addresses the EU law angle of exit taxation by giving taxpayers the option for deferring the payment of the amount of tax over a certain number of years and settling through staggered payments.

- A switch-over clause

Given the inherent difficulties in giving credit relief for taxes paid abroad, States tend to increasingly exempt foreign income from taxation. The unintended negative effect of this approach is that it may encourage untaxed or low-taxed income to enter the internal market and then, circulate – in many cases, untaxed - within the Union, making use of available instruments within the Union law.

Switch-over clauses are commonly used against such practices. Namely, the taxpayer is subjected to taxation (instead of being exempt) and given a credit for tax paid abroad. In this way, companies are discouraged from shifting profits out of high-tax jurisdictions towards low-tax territories, unless there is sufficient business justification for these transfers.

The threshold of low taxation

In its proposal for a Directive on a CCCTB, the Commission introduced a switch-over clause to capture situations where the income flowing into the internal market from a third country had been subject to a tax on profits in the third country at a statutory corporate tax rate lower than 40 percent of the average of statutory corporate tax rates in the Union. This rule would ensure that income of a third-country origin enters the Union after having been taxed at a level which at least equals the lowest level of taxation that this payment would have been subject to had it originated in a Member State. For this purpose, the proposal for a CCCTB refers, as a comparator, to the average of statutory corporate tax rates in the Union.

Considering that this Directive does not establish a standalone corporate tax system, neither does it include a mechanism for consolidating the tax bases of group companies across the Union in such a way as under the proposal for a CCCTB, it would be logical to use, as a reference, the statutory corporate tax rate in the Member State of the taxpayer receiving the foreign income – at least, until the plans to re-launch the CCCTB materialise, as announced by the Commission.

The proposed scheme takes into account the fact that there is no harmonisation of corporate tax rates in the Union. In order to target tax avoidance practices, the threshold should, in any event, be set to capture situations where taxation is at a level below 50 percent as compared to the State of the recipient taxpayer. Yet, neither should the threshold be fixed so low as to deprive the measure of any meaning by capturing only the most aggressive tax jurisdictions. In this light, a test whereby the statutory corporate tax rate in the entity's country of residence or the country in which the permanent establishment is situated is lower than 40 percent of the statutory corporate tax rate in the Member State of the taxpayer would strike a balance between recognising the scope for fair tax competition and the need to prevent tax avoidance practices.

Furthermore, by applying the switch-over clause, income of a third-country origin that flows into the Union would be taxed by the Member State of the taxpayer at the same level as income of a domestic origin, which would ensure equal treatment between Union and third-country origin payments. In this way, Member States would remain compliant with their undertaken obligations under both European and international law.

- A general anti-abuse rule (GAAR)

Tax planning schemes are very elaborate and tax legislation does not usually evolve fast enough in order to include all necessary specific defences to tackle such schemes. This is why a GAAR is useful in a tax system; it thus allows abusive tax practices to be captured despite the absence of a specific anti- tax avoidance rule.

The GAAR is designed to cover gaps that may exist in a country's specific anti-abuse rules against tax avoidance. It would allow authorities the power to deny taxpayers the benefit of abusive tax arrangements. In compliance with the *acquis*, the proposed GAAR is designed to reflect the artificiality tests of the CJEU where this is applied within the Union.

- Controlled foreign company (CFC) rules

Taxpayers with controlled subsidiaries in low-tax jurisdictions may engage in tax planning practices whereby they shift large amounts of profits out of the (highly-taxed) parent company towards subsidiaries which are subject to low taxation. The effect is to reduce the overall tax liability of the group. The analysis above about the threshold of low taxation is also valid for CFC rules.

The income shifted to the subsidiary is usually mobile passive income. For example, a common scheme would consist of first transferring, within a group, the ownership of intangible assets (e.g. IP) to the CFC and as a second step, shifting large amounts of income in the form of royalty payments in consideration for the right to use the assets owned and managed by the CFC. The functioning of the internal market is clearly affected by such practices of profit shifting, primarily where the income is shifted out of the EU towards low-tax third countries.

CFC rules re-attribute the income of a low-taxed controlled foreign subsidiary to its parent company. As a result of this, the parent company is charged to tax on this income in its State of residence – usually, this is a high-tax State. CFC legislation, therefore, aims to eradicate the incentive of shifting income, so that this is taxed at a low rate in another jurisdiction.

- A framework to tackle hybrid mismatches

Hybrid mismatches are the consequence of differences in the legal characterisation of payments (financial instruments) or entities when two legal systems interact. Such mismatches may often lead to double deductions (i.e. deduction on both sides of the border) or a deduction of the income on one side of the border without its inclusion on the other side. Taxpayers, especially those engaged in cross-border structures, often take advantage of such disparities amongst national tax systems and reduce their overall tax liability in the Union.

This problem has been explored by both the Group of the Code of Conduct on Business Taxation and the OECD. In order to ensure that Member States introduce rules to effectively combat against these mismatches, this Directive prescribes that the legal characterisation given to a hybrid instrument or entity by the Member State where a payment, expense or loss, as the case may be, originates shall be followed by the other Member State which is involved in the mismatch..

2016/0011 (CNS)

Proposal for a

COUNCIL DIRECTIVE

laying down rules against tax avoidance practices that directly affect the functioning of the internal market

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 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[35],

Having regard to the opinion of the European Economic and Social Committee[36],

Acting in accordance with a special legislative procedure,

Whereas:

(1) The current political priorities in international taxation highlight the need for ensuring that tax is paid where profits and value are generated. It is thus imperative to restore trust in the fairness of tax systems and allow governments to effectively exercise their tax sovereignty. These new political objectives have been translated into concrete action recommendations in the context of the initiative against Base Erosion and Profit Shifting (BEPS) by the Organisation for Economic Cooperation and Development (OECD). In response to the need for fairer taxation, the Commission, in its Communication of 17 June 2015 sets out an Action Plan for Fair and Efficient Corporate Taxation in the European Union[37] (the Action Plan).

(2) Most Member States, in their capacity as OECD members, have committed to implement the output of the 15 Action Items against base erosion and profit shifting, released to the public on 5 October 2015. It is therefore essential for the good functioning of the internal market that, as a minimum, Member States implement their commitments under BEPS and more broadly, take action to discourage tax avoidance practices and ensure fair and effective taxation in the Union in a sufficiently coherent and coordinated fashion. In a market of highly integrated economies, there is a need for common strategic approaches and coordinated action, to improve the functioning of the internal market and maximise the positive effects of the initiative against BEPS. Furthermore, only a common framework could prevent a fragmentation of the market and put an end to currently existing mismatches and market distortions. Finally, national implementing measures which follow a common line across the Union would provide

35 OJ C , , p. .

36 OJ C , , p. .

37 Communication from the Commission to the European Parliament and the Council on a Fair and Efficient Corporate Tax System in the European Union: 5 Key Areas for Action COM(2015) 302 final of 17 June 2015.

taxpayers with legal certainty in that those measures would be compatible with Union law.

(3) It is necessary to lay down rules in order to strengthen the average level of protection against aggressive tax planning in the internal market. As these rules would have to fit in 28 separate corporate tax systems, they should be limited to general provisions and leave the implementation to Member States as they are better placed to shape the specific elements of those rules in a way that fits best their corporate tax systems. This objective could be achieved by creating a minimum level of protection for national corporate tax systems across the Union. It is therefore necessary to coordinate the responses of Member States in implementing the outputs of the 15 Action Items against base erosion and profit shifting with the aim to improve the effectiveness of the internal market as a whole in tackling tax avoidance practices. It is therefore necessary to set a common minimum level of protection for the internal market in specific fields.

(4) It is necessary to establish rules applicable to all taxpayers that are subject to corporate tax in a Member State. Those rules should also apply to permanent establishments of those corporate taxpayers which may be situated in other Member State(s). Corporate taxpayers may be resident for tax purposes in a Member State or be established under the laws of a Member State. Permanent establishments of entities resident for tax purposes in a third country should also be covered by those rules if they are situated in one or more Member State.

(5) It is necessary to lay down rules against the erosion of tax bases in the internal market and the shifting of profits out of the internal market. Rules in the following areas are necessary in order to contribute to achieving that objective: limitations to the deductibility of interest, exit taxation, a switch-over clause, a general anti-abuse rule, controlled foreign company rules and a framework to tackle hybrid mismatches. Where the application of those rules gives rise to double taxation, taxpayers should receive relief through a deduction for the tax paid in another Member State or third country, as the case may be. Thus, the rules should not only aim to counter tax avoidance practices but also avoid creating other obstacles to the market, such as double taxation.

(6) In an effort to reduce their global tax liability, cross-border groups of companies have increasingly engaged in shifting profits, often through inflated interest payments, out of high tax jurisdictions into countries with lower tax regimes. The interest limitation rule is necessary to discourage such practices by limiting the deductibility of taxpayers' net financial costs (i.e. the amount by which financial expenses exceed financial revenues). It is therefore necessary to fix a ratio for deductibility which refers to a taxpayer's earnings before interest, tax, depreciation and amortisation (EBITDA). Tax exempt financial revenues should not be set off against financial expenses. This is because only taxable income should be taken into account in determining up to how much of interest may be deducted. To facilitate taxpayers which run reduced risks related to base erosion and profit shifting, net interest should always be deductible up to a fixed maximum amount, which is triggered where it leads to a higher deduction than the EBITDA-based ratio. Where the taxpayer is part of a group which files statutory consolidated accounts, the indebtedness of the overall group should be considered for the purpose of granting taxpayers entitlement to deduct higher amounts of net financial costs. The interest limitation rule should apply in relation to a taxpayer's net financial costs without distinction of whether the costs originate in debt taken out nationally, cross-border within the Union or with a third country. Although it is generally accepted that financial undertakings, i.e. financial institutions and insurance undertakings, should also be subject to limitations to the deductibility of interest, it is equally acknowledged that these two sectors present special features which call for a more customised approach.

As the discussions in this field are not yet sufficiently conclusive in the international and Union context, it is not yet possible to provide specific rules in the financial and insurance sectors.

(7) Exit taxes have the function of ensuring that where a taxpayer moves assets or its tax residence out of the tax jurisdiction of a State, that State taxes the economic value of any capital gain created in its territory even if this gain has not yet been realised at the time of the exit. It is therefore necessary to specify cases in which taxpayers are subject to exit tax rules and taxed on unrealised capital gains which have been built in their transferred assets. In order to compute the amounts, it is critical to fix a market value for the transferred assets based on the arm's length principle. Within the Union, it is necessary to address the application of exit taxation and illustrate the conditions for being compliant with Union law. In those situations, taxpayers should have the right to either immediately pay the amount of exit tax assessed or defer payment of the amount of tax, possibly together with interest and a guarantee, over a certain number of years and to settle their tax liability through staggered payments. Exit tax should not be charged where the transfer of assets is of a temporary nature and as long as the assets are intended to revert to the Member State of the transferor, where the transfer takes place in order to meet prudential requirements or for the purpose of liquidity management or when it comes to securities' financing transactions or assets posted as collateral.

(8) Given the inherent difficulties in giving credit relief for taxes paid abroad, States tend to increasingly exempt from taxation foreign income in the State of residence. The unintended negative effect of this approach is however that it encourages situations whereby untaxed or low-taxed income enters the internal market and then, circulates – in many cases, untaxed - within the Union, making use of available instruments within the Union law. Switch-over clauses are commonly used against such practices. It is therefore necessary to provide for a switch-over clause which is targeted against some types of foreign income, for example, profit distributions, proceeds from the disposal of shares and permanent establishment profits which are tax exempt in the Union and originate in third countries. This income should be taxable in the Union, if it has been taxed below a certain level in the third country. Considering that the switch-over clause does not require control over the low-taxed entity and therefore access to statutory accounts of the entity may be unavailable, the computation of the effective tax rate can be a very complicated exercise. Member States should therefore use the statutory tax rate when applying the switch-over clause. Member States that apply the switch-over clause should give a credit for the tax paid abroad, in order to prevent double taxation.

(9) General anti-abuse rules (GAARs) feature in tax systems to tackle abusive tax practices that have not yet been dealt with through specifically targeted provisions. GAARs have therefore a function aimed to fill in gaps, which should not affect the applicability of specific anti-abuse rules. Within the Union, the application of GAARs should be limited to arrangements that are ‘wholly artificial’ (non-genuine); otherwise, the taxpayer should have the right to choose the most tax efficient structure for its commercial affairs. It is furthermore important to ensure that the GAARs apply in domestic situations, within the Union and vis-à-vis third countries in a uniform manner, so that their scope and results of application in domestic and cross-border situations do not differ.

(10) Controlled Foreign Company (CFC) rules have the effect of re-attributing the income of a low-taxed controlled subsidiary to its parent company. Then, the parent company becomes taxable to this attributed income in the State where it is resident for tax purposes. Depending on the policy priorities of that State, CFC rules may target an entire low-taxed subsidiary or be limited to income which has artificially been diverted to the

subsidiary. It is desirable to address situations both in third-countries and in the Union. To comply with the fundamental freedoms, the impact of the rules within the Union should be limited to arrangements which result in the artificial shifting of profits out of the Member State of the parent company towards the CFC. In this case, the amounts of income attributed to the parent company should be adjusted by reference to the arm's length principle, so that the State of the parent company only taxes amounts of CFC income to the extent that they do not comply with this principle. CFC rules should exclude financial undertakings from their scope where those are tax resident in the Union, including permanent establishments of such undertakings situated in the Union. This is because the scope for a legitimate application of CFC rules within the Union should be limited to artificial situations without economic substance, which would imply that the heavily regulated financial and insurance sectors would be unlikely to be captured by those rules.

(11) Hybrid mismatches are the consequence of differences in the legal characterisation of payments (financial instruments) or entities and those differences surface in the interaction between the legal systems of two jurisdictions. The effect of such mismatches is often a double deduction (i.e. deduction in both states) or a deduction of the income in one state without inclusion in the tax base of the other. To prevent such an outcome, it is necessary to lay down rules whereby one of the two jurisdictions in a mismatch should give a legal characterisation to the hybrid instrument or entity and the other jurisdiction should accept it. Although Member States have agreed guidance, in the framework of the Group of the Code of Conduct on Business Taxation, on the tax treatment of hybrid entities[38] and hybrid permanent establishments[39] within the Union as well as on the tax treatment of hybrid entities in relations with third countries, it is still necessary to enact binding rules. Finally, it is necessary to limit the scope of these rules to hybrid mismatches between Member States. Hybrid mismatches between Member States and third countries still need to be further examined.

(12) It is necessary to clarify that the implementation of the rules against tax avoidance provided in this Directive should not affect the taxpayers' obligation to comply with the arm's length principle or the Member State's right to adjust a tax liability upwards in accordance with the arm's length principle, where applicable.

(13) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council[40]. The right to protection of personal data according to Article 8 of the EU Charter of fundamental rights as well as Directive 95/46/EC of the European Parliament and of the Council[41] applies to the processing of personal data carried out within the framework of this Directive.

(14) Considering that a key objective of this Directive is to improve the resilience of the internal market as a whole against cross-border tax avoidance practices, this cannot be

[38] Code of Conduct (Business Taxation) – Report to Council, 16553/14, FISC 225, 11.12.2014.

[39] Code of Conduct (Business Taxation) – Report to Council, 9620/15, FISC 60, 11.6.2015.

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

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

sufficiently achieved by the Member States acting individually. National corporate tax systems are disparate and independent action by Member States would only replicate the existing fragmentation of the internal market in direct taxation. It would thus allow inefficiencies and distortions to persist in the interaction of distinct national measures. The result would be lack of coordination. Rather, by reason of the fact that much inefficiency in the internal market primarily gives rise to problems of a cross-border nature, remedial measures should be adopted at Union level. It is therefore critical to adopt solutions that function for the internal market as a whole and this can be better achieved at Union level. Thus, 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. By setting a minimum level of protection for the internal market, this Directive only aims to achieve the essential minimum degree of coordination within the Union for the purpose of materialising its objectives.

(15) The Commission should evaluate the implementation of this Directive three years after its entry into force and report to the Council thereon. Member States should communicate to the Commission all information necessary for this evaluation,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1
Scope

This Directive applies to all taxpayers that are subject to corporate tax in one or more Member State, including permanent establishments in one or more Member State of entities resident for tax purposes in a third country.

Article 2
Definitions

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

(2) 'borrowing costs' means interest expenses and other equivalent costs that a taxpayer incurs in connection with the borrowing of funds, including any difference between the borrowed funds and the maturity amount, the interest element in a leasing contract where the economic owner is entitled to deduct such interest and expenses incurred in connection with the raising of finance;

(3) 'exceeding borrowing costs' means the amount by which the borrowing costs of a taxpayer exceed interest revenues and other equivalent taxable revenues from financial assets that the taxpayer receives;

(4) 'financial asset' means a financial instrument as defined in point (15) of Article 4(1) of Directive 2014/65/EU of the European Parliament and of the Council[42] and deposit and structural deposits, loan claims and insurance-based investment products;

(5) 'financial undertaking' means any of the following entities:

(a) a credit institution or an investment firm as defined in point (1) of Article 4(1) of Directive 2004/39/EC of the European Parliament and of the Council[43];

(b) an insurance undertaking as defined in point (1) of Article 13 of Directive 2009/138/EC of the European Parliament and of the Council[44];

(c) a reinsurance undertaking as defined in point (4) of Article 13 of Directive 2009/138/EC;

(d) an institution for occupational retirement provision falling within the scope of Directive 2003/41/EC of the European Parliament and of the Council [45], unless a Member State has chosen not to apply that Directive in whole or in part to that institution in accordance with Article 5 of that Directive or the delegate of an institution for occupational retirement provision as referred to in Article 19(1) of Directive 2003/41/EC;

(e) an alternative investment fund managed by an alternative investment fund manager as defined in point (b) of Article 4(1) of Directive 2011/61/EU of the European Parliament and of the Council[46];

(f) undertakings for collective investment in transferable securities (UCITS) in the meaning of Article 1(2) of Directive 2009/65/EC of the European Parliament and of the Council[47];

(g) a central counterparty as defined in point (1) of Article 2 of Regulation (EU) No 648/2012[48];

42 Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

43 Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ L 145, 30.4.2004, p. 1).

44 Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1).

45 Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision (OJ L 235, 23.9.2003, p. 10).

46 Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

47 Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).

48 Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).

(h) a central securities depository as defined in point (1) of Article 2(1) of Regulation (EU) No 909/2014 of the European Parliament and of the Council[49].

(6) 'transfer of assets' means an operation whereby the right to tax the transferred assets passes to another Member State or third country, whilst the assets remain under the beneficial ownership of the same taxpayer, excluding transfers of assets of a temporary nature as long as the assets are intended to revert to the Member State of the transferor;

(7) 'transfer of tax residence' means an operation whereby a taxpayer ceases to be resident for tax purposes in a Member State, whilst acquiring tax residence in another Member State or third country;

(8) 'transfer of permanent establishment' means an operation whereby a taxpayer ceases to have taxable presence in a Member State whilst acquiring such presence in another Member State or third country without becoming resident for tax purposes in that Member State or third country.

Article 3
Minimum level of protection

This Directive shall not preclude the application of domestic or agreement-based provisions aimed at safeguarding a higher level of protection for domestic corporate tax bases.

CHAPTER II

MEASURES AGAINST TAX AVOIDANCE

Article 4
Interest limitation rule

1. Borrowing costs shall always be deducted to the extent that the taxpayer receives interest or other taxable revenues from financial assets.

2. Exceeding borrowing costs shall be deductible in the tax year in which they are incurred only up to 30 percent of the taxpayer's earnings before interest, tax, depreciation and amortisation (EBITDA) or up to an amount of EUR 1 000 000, whichever is higher. The EBITDA shall be calculated by adding back to taxable income the tax-adjusted amounts for net interest expenses and other costs equivalent to interest as well as the tax-adjusted amounts for depreciation and amortisation.

3. By derogation from paragraph 2, the taxpayer may be given the right to fully deduct exceeding borrowing costs if the taxpayer can demonstrate that the ratio of its equity over its total assets is equal to or higher than the equivalent ratio of the group.

The first subparagraph shall apply subject to the following conditions:

[49] Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257, 28.8.2014, p. 1).

(a) the ratio of the taxpayer's equity over its total assets is considered to be equal to the equivalent ratio of the group if the ratio of the taxpayer's equity over its total assets is lower by up to 2 percentage points;

(b) the group consists of all entities which are included in audited consolidated financial statements drawn up in accordance with the International Financial Reporting Standards or the national financial reporting system of a Member State or the Generally Accepted Accounting Principles of the United States (GAAP);

(c) all assets and liabilities are valued using the same method as in the consolidated financial statements;

(d) the taxpayer's equity and total assets are reduced by contributions made in the six months preceding the relevant balance sheet date insofar as these contributions are matched by withdrawals or distributions during the six months that follow the relevant balance sheet date;

(e) payments to associated enterprises do not exceed 10 percent of the group's total net interest expense.

4. The EBITDA of a tax year which is not fully absorbed by the borrowing costs incurred by the taxpayer in that or previous tax years may be carried forward for future tax years.

5. Borrowing costs which cannot be deducted in the current tax year under paragraph 2 shall be deductible up to the 30 percent of the EBITDA in subsequent tax years in the same way as the borrowing costs for those years.

6. Paragraphs 2 to 5 shall not apply to financial undertakings.

Article 5
Exit taxation

1. A taxpayer shall be subject to tax at an amount equal to the market value of the transferred assets, at the time of exit, less their value for tax purposes, in any of the following circumstances:

(f) a taxpayer transfers assets from its head office to its permanent establishment in another Member State or in a third country;

(g) a taxpayer transfers assets from its permanent establishment in a Member State to its head office or another permanent establishment in another Member State or in a third country;

(h) a taxpayer transfers its tax residence to another Member State or to a third country, except for those assets which remain effectively connected with a permanent establishment in the first Member State;

(i) a taxpayer transfers its permanent establishment out of a Member State.

For the purposes of point (c) of the first subparagraph, any subsequent transfer to a third country of assets out of the permanent establishment which is situated in the first Member State and which the assets are effectively connected with shall be deemed to be a disposal at market value.

2. A taxpayer may defer the payment of an exit tax referred to in paragraph 1, by paying it in instalments over at least 5 years, in any of the following circumstances:

(j) a taxpayer transfers assets from its head office to its permanent establishment in another Member State or in a third country that is party to the European Economic Area Agreement (EEA Agreement);

(k) a taxpayer transfers assets from its permanent establishment in a Member State to its head office or another permanent establishment in another Member State or a third country that is party to the EEA Agreement;

(l) a taxpayer transfers its tax residence to another Member State or to a third country that is party to the EEA Agreement;

(m) a taxpayer transfers its permanent establishment to another Member State or a third country that is party to the EEA Agreement.

3. If a taxpayer defers the payment in accordance with paragraph 2, interest may be charged in accordance with the legislation of the Member State of the taxpayer or of the permanent establishment, as the case may be, to the extent necessary to preserve the value of the assessed tax liability.

If there is a demonstrable and actual risk of non-recovery, taxpayers may also be required to provide a guarantee as a condition for deferring the payment in accordance with paragraph 2.

The second subparagraph shall not apply where the legislation in the Member State of the taxpayer or of the permanent establishment provides for the possibility of recovery of the tax debt through another taxpayer which is member of the same group and is resident for tax purposes in that Member State.

4. The deferral of payment in accordance with paragraph 2 shall be immediately discontinued and the tax debt becomes recoverable in the following cases:

(n) the transferred assets are disposed of;

(o) the transferred assets are subsequently transferred to a third country;

(p) the taxpayer's tax residence or its permanent establishment is subsequently transferred to a third country;

(q) the taxpayer goes bankrupt or is wound up.

5. Where the transfer of assets, tax residence or permanent establishment is to another Member State, that Member State shall accept the market value established by the Member State of the taxpayer or of the permanent establishment as the starting value of the assets for tax purposes.

6. For the purposes of paragraphs 1 to 5, 'market value' is the amount for which an asset can be exchanged or mutual obligations can be settled between willing unrelated buyers and sellers in a direct transaction.

7. This article shall not apply to asset transfers of a temporary nature where the assets are intended to revert to the Member State of the transferor.

Article 6
Switch-over clause

1. Member States shall not exempt a taxpayer from tax on foreign income which the taxpayer received as a profit distribution from an entity in a third country or as proceeds from the disposal of shares held in an entity in a third country or as income from a permanent establishment situated in a third country where the entity or the permanent establishment is subject, in the entity’s country of residence or the country in which the permanent establishment is situated, to a tax on profits at a statutory corporate tax rate lower than 40 percent of the statutory tax rate that would have been charged under the applicable corporate tax system in the Member State of the taxpayer.

In those circumstances, the taxpayer shall be subject to tax on the foreign income with a deduction of the tax paid in the third country from its tax liability in its state of residence for tax purposes. The deduction shall not exceed the amount of tax, as computed before the deduction, which is attributable to the income that may be taxed.

2. Paragraph 1 shall not apply to the following types of losses:

(r) losses incurred by the permanent establishment of a resident taxpayer situated in a third country;

(s) losses from the disposal of shares in an entity which is tax resident in a third country.

Article 7
General anti-abuse rule

1. Non-genuine arrangements or a series thereof carried out for the essential purpose of obtaining a tax advantage that defeats the object or purpose of the otherwise applicable tax provisions shall be ignored for the purposes of calculating the corporate tax liability. An arrangement may comprise more than one step or part.

2. For the purposes of paragraph 1, an arrangement or a series thereof shall be regarded as non-genuine to the extent that they are not put into place for valid commercial reasons which reflect economic reality.

3. Where arrangements or a series thereof are ignored in accordance with paragraph 1, the tax liability shall be calculated by reference to economic substance in accordance with national law.

Article 8
Controlled foreign company legislation

1. The tax base of a taxpayer shall include the non-distributed income of an entity where the following conditions are met:

(t) the taxpayer by itself, or together with its associated enterprises, as defined under the applicable corporate tax system, holds a direct or indirect participation of more than 50 percent of the voting rights, or owns more than 50 percent of capital or is entitled to receive more than 50 percent of the profits of that entity;

(u) under the general regime in the country of the entity, profits are subject to an effective corporate tax rate lower than 40 percent of the effective tax rate that would have been charged under the applicable corporate tax system in the Member State of the taxpayer;

(v) more than 50 percent of the income accruing to the entity falls within any of the following categories:

(i) interest or any other income generated by financial assets;

(ii) royalties or any other income generated from intellectual property or tradable permits;

(iii) dividends and income from the disposal of shares;

(iv) income from financial leasing;

(v) income from immovable property, unless the Member State of the taxpayer would not have been entitled to tax the income under an agreement concluded with a third country;

(vi) income from insurance, banking and other financial activities;

(vii) income from services rendered to the taxpayer or its associated enterprises;

(w) the entity is not a company whose principal class of shares is regularly traded on one or more recognised stock exchanges.

Point (c) of the first subparagraph shall apply to financial undertakings only if more than 50 percent of the entity's income in these categories comes from transactions with the taxpayer or its associated enterprises.

2. Member States shall not apply paragraph 1 where an entity is tax resident in a Member State or in a third country that is party to the EEA Agreement or in respect of a permanent establishment of a third country entity which is situated in a Member State, unless the establishment of the entity is wholly artificial or to the extent that the entity engages, in the course of its activity, in non-genuine arrangements which have been put in place for the essential purpose of obtaining a tax advantage.

Paragraph 1 shall not apply to financial undertakings which are tax resident in a Member State or in a third country that is party to the EEA Agreement or in respect of their permanent establishments in one or more Member State.

For the purposes of the first subparagraph, an arrangement or a series thereof shall be regarded as non-genuine to the extent that the entity would not own the assets or would not have undertaken the risks which generate all, or part of, its income if it were not controlled by a company where the significant people's functions, which are relevant to those assets and risks, are carried out and are instrumental in generating the controlled company's income.

Where the entity engages in non-genuine arrangements, the income to be included in the tax base of the controlling company shall be limited to amounts generated through assets and risks which are linked to significant people's functions carried out by the controlling company. The attribution of controlled foreign company income shall be calculated in accordance with the arm's length principle.

Article 9
Computation of controlled foreign company income

1. The income to be included in the tax base shall be calculated in accordance with the rules of the corporate tax law of the Member State where the taxpayer is resident for tax purposes. Losses of the entity shall not be included in the tax base but shall be carried forward and taken into account when applying Article 8 in subsequent tax years.

2. The income to be included in the tax base shall be calculated in proportion to the entitlement of the taxpayer to receive profits of the entity.

3. The income shall be included in the tax year in which the tax year of the entity ends.

4. Where the entity distributes profits to the taxpayer, the amounts of income previously included in the tax base pursuant to Article 8 shall be deducted from the tax base when calculating the amount of tax due on the distributed profits, in order to ensure there is no double taxation.

5. Where the taxpayer disposes of its participation in the entity, the part of the proceeds from the disposal previously included in the tax base pursuant to Article 8 which has not yet been distributed shall be deducted from the tax base when calculating the amount of tax due on those proceeds, in order to ensure there is no double taxation.

Article 10
Hybrid mismatches

Where two Member States give a different legal characterisation to the same taxpayer (hybrid entity), including its permanent establishments in one or more Member State, and this leads to either a situation where a deduction of the same payment, expenses or losses occurs both in the Member State in which the payment has its source, the expenses are incurred or the losses are suffered and in another Member State or a situation where there is a deduction of a payment in the Member State in which the payment has its source without a corresponding inclusion of the same payment in the other Member State, the legal characterisation given to the hybrid entity by the Member State in which the payment has its source, the expenses are incurred or the losses are suffered shall be followed by the other Member State.

Where two Member States give a different legal characterisation to the same payment (hybrid instrument) and this leads to a situation where there is a deduction in the Member State in which the payment has its source without a corresponding inclusion of the same payment in the other Member State, the legal characterisation given to the hybrid instrument by the Member State in which the payment has its source shall be followed by the other Member State.

CHAPTER III

FINAL PROVISIONS

Article 11
Review

1. The Commission shall evaluate the implementation of this Directive three years after its entry into force and report to the Council thereon.

2. Member States shall communicate to the Commission all information necessary for evaluating the implementation of this Directive.

Article 12
Transposition

1. Member States shall adopt and publish, by […] 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 […].

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

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

Article 13
Entry into force

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

Article 14
Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the Council
The President

LEGISLATIVE FINANCIAL STATEMENT

LEGISLATIVE FINANCIAL STATEMENT

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

Proposal for a Council Directive laying down rules against tax aviodance practices that directly affect the functioning of the internal market

1.2. Policy area(s) concerned in the ABM/ABB structure[50]

14 14.03

1.3. Nature of the proposal/initiative

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

☐ The proposal/initiative relates to **a new action following a pilot project/preparatory action**[51]

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

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

1.4. Objective(s)

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

The Commission work programme for 2015 lists among its priorities that of A Fairer Approach to Taxation. Following up on this, one key area for action in the Commission work programme for 2016 is to improve the legal framework for the taxation of company profits by proposing measures against unacceptable tax planning, profit shifting and base erosion.

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

<u>Specific objective</u> To establish, through coordinated measures, a minimum level of protection for the internal market against the most relevant tax planning strategies which directly affect the functioning of the market. <u>ABM/ABB activity(ies) concerned</u> ABB 3

50 ABM: activity-based management; ABB: activity-based budgeting.

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

1.4.3. *Expected result(s) and impact*

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

Taxation will take place in the jurisdiction where profits are generated and value is created. This will enhance fairness in attributing the tax burden between companies in the EU. Thus, internationally active groups of companies will no longer benefit from tax planning opportunities which are not available to taxpayers (in particular, SMEs) who are only domestically active. The tax bases of the Member States will be better protected against practices of base erosion and profit shifting. The trust of the public, citizens and taxpayers in general to the fairness of the tax systerms will be strenghtened.

1.4.4. *Indicators of results and impact*

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

The proposal will be governed by the requirements in the articles 11 (review) and article 12 (transposition).

1.5. Grounds for the proposal/initiative

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

To better protect the internal market against the most relevant tax planning strategies which directly affect the functioning of the market. To agree to a common EU approach to implementing the output of BEPS.

1.5.2. *Added value of EU involvement*

To ensure consistency and avoid mismatches through common rules and procedures in all Member States. Inconsistencies and gaps in the implementation by Member States would endanger the success of the whole project.

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

Already in 1990, the Council had adopted two of the so-called 'Corporate Tax Directives' to tackle obstancles to the functioning of the internal market. More legislation in the area of company taxation, and precisely in respect of cross-border activities in the EU, was adopted at the end of the 1990s.

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

The proposal is part of a package that comprises several initiatives. Positive synergy effects may be derived from the interaction between measures within the package and with proposals which feature in the Transparency Package of March 2015 and the Action Plan of June 2015.

1.6. Duration and financial impact

☐ Proposal/initiative of **limited duration**

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

– ☐ Financial impact from YYYY to YYYY

☒ Proposal/initiative of **unlimited duration**

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

followed by full-scale operation.

1.7. Management mode(s) planned[52]

☐ **Direct management** by the Commission

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

– ☐ by the executive agencies

☐ **Shared management** with the Member States

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

– ☐ third countries or the bodies they have designated;

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

– ☐the EIB and the European Investment Fund;

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

– ☐ public law bodies;

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

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

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

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

Comments

As the proposal is of legislative nature, there is no management mode or budget implementation tasks for the Commission.

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

2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

Specify frequency and conditions.

None

2.2. Management and control system

2.2.1. Risk(s) identified

None

2.2.2. Information concerning the internal control system set up

None

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

N/A

2.3. Measures to prevent fraud and irregularities

Specify existing or envisaged prevention and protection measures.

N/A

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

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

- Existing budget lines

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number None [Heading………………………...…………….]	Diff./Non-diff.[53]	from EFTA countries[54]	from candidate countries[55]	from third countries	within t meanin Article 21 of the Fin Regulat
	None	Diff./Non-diff.	YES/NO	YES/NO	YES/NO	YES/N

- New budget lines requested

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number None	Diff./Non-diff.	from EFTA countries	from candidate countries	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
	None		YES/NO	YES/NO	YES/NO	YES/NO

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

[54] EFTA: European Free Trade Association.

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

3.2. Estimated impact on expenditure

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

3.2.1. Summary of estimated impact on expenditure

EUR million (to three decimal places)

Heading of multiannual financial framework	Number	Not relevant……………...]

DG: TAXUD			Year **N**[56]	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)			**TOTAL**
• Operational appropriations										
Number of budget line	Commitments	(1)								
	Payments	(2)								
Number of budget line	Commitments	(1a)								
	Payments	(2a)								
Appropriations of an administrative nature financed from the envelope of specific programmes[57]										
Number of budget line		(3)								

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

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

TOTAL appropriations for DG TAXUD	Commitments	=1+1a +3								
	Payments	=2+2a +3								

• TOTAL operational appropriations	Commitments	(4)								
	Payments	(5)								
• TOTAL appropriations of an administrative nature financed from the envelope for specific programmes		(6)								
TOTAL appropriations under HEADING Not relevant of the multiannual financial framework	Commitments	=4+ 6								
	Payments	=5+ 6								

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

• TOTAL operational appropriations	Commitments	(4)								
	Payments	(5)								
• TOTAL appropriations of an administrative nature financed from the envelope for specific programmes		(6)								
TOTAL appropriations under HEADINGS 1 to 4	Commitments	=4+ 6								

of the multiannual financial framework (Reference amount)	Payments	=5+6								

Heading of multiannual financial framework	5	'Administrative expenditure'

EUR million (to three decimal places)

		Year **N**	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)			**TOTAL**
DG: TAXUD									
• Human resources									
• Other administrative expenditure									
TOTAL DG TAXUD	Appropriations								

TOTAL appropriations under HEADING 5 of the multiannual financial framework	(Total commitments = Total payments)								

EUR million (to three decimal places)

	Year **N**[58]	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)	**TOTAL**

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

TOTAL appropriations under HEADINGS 1 to 5 of the multiannual financial framework	Commitments									
	Payments									

3.2.2. Estimated impact on operational appropriations

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

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

Commitment appropriations in EUR million (to three decimal places)

Indicate objectives and outputs ⇩			Year **N**		Year **N+1**		Year **N+2**		Year **N+3**		Enter as many years as necessary to show the duration of the impact (see point 1.6)						**TOTAL**	
	OUTPUTS																	
	Type[59]	Average cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	Total No	Total cost
SPECIFIC OBJECTIVE No 1[60]…																		
- Output																		
- Output																		
- Output																		
Subtotal for specific objective No 1																		
SPECIFIC OBJECTIVE No 2 ...																		
- Output																		
Subtotal for specific objective																		

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

60 As described in point 1.4.2. 'Specific objective(s)…'

No 2																
TOTAL COST																

3.2.3. Estimated impact on appropriations of an administrative nature

3.2.3.1. Summary

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

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

EUR million (to three decimal places)

	Year **N** [61]	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)			**TOTAL**
HEADING 5 of the multiannual financial framework								
Human resources								
Other administrative expenditure								
Subtotal HEADING 5 of the multiannual financial framework								
Outside HEADING 5[62] of the multiannual financial framework								
Human resources								
Other expenditure of an administrative nature								
Subtotal outside HEADING 5 of the multiannual financial framework								
TOTAL								

The appropriations required for human resources and other expenditure of an administrative nature

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

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

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

3.2.3.2. Estimated requirements of human resources

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

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

Estimate to be expressed in full time equivalent units

		Year **N**	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)		
• Establishment plan posts (officials and temporary staff)								
XX 01 01 01 (Headquarters and Commission's Representation Offices)								
XX 01 01 02 (Delegations)								
XX 01 05 01 (Indirect research)								
10 01 05 01 (Direct research)								
• External staff (in Full Time Equivalent unit: FTE)[63]								
XX 01 02 01 (AC, END, INT from the 'global envelope')								
XX 01 02 02 (AC, AL, END, INT and JED in the delegations)								
XX 01 04 **yy** [64]	- at Headquarters							
	- in Delegations							
XX 01 05 02 (AC, END, INT - Indirect research)								
10 01 05 02 (AC, END, INT - Direct research)								
Other budget lines (specify)								
TOTAL								

XX is the policy area or budget title concerned.

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG,

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

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

together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Description of tasks to be carried out:

Officials and temporary staff	
External staff	

3.2.4. *Compatibility with the current multiannual financial framework*

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

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

Explain what reprogramming is required, specifying the budget lines concerned and the corresponding amounts. […]

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

Explain what is required, specifying the headings and budget lines concerned and the corresponding amounts. […]

3.2.5. *Third-party contributions*

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

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

Appropriations in EUR million (to three decimal places)

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

3.3. Estimated impact on revenue

- ☒ The proposal/initiative has no financial impact on revenue.
- ☐ The proposal/initiative has the following financial impact:
  - ☐ on own resources
  - ☐ on miscellaneous revenue

EUR million (to three decimal places)

Budget revenue line:	Appropriations available for the current financial year	Impact of the proposal/initiative[65]						
		Year **N**	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)		
Article ………….								

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

N/A

Specify the method for calculating the impact on revenue.

N/A

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

COM (2016) 23
COM(2016) 25
COM(2016) 26
Information Note

1. **Proposal**
   COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL Anti-Tax Avoidance Package: Next steps towards delivering effective taxation and greater tax transparency in the EU

   Proposal for a COUNCIL DIRECTIVE amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation.

   Proposal for a COUNCIL DIRECTIVE laying down rules against tax avoidance practices that directly affect the functioning of the internal market

2. **Date of Commission document**
   28.1.2016

3. **Number of Commission document**
   COM (2016) 23
   COM(2016) 25
   COM(2016) 26

4. **Number of Council document:**
   N/A

5. **Dealt with in Brussels by**
   Council Working Party on Tax Questions

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

7. **Other Departments involved**
   Revenue Commissioners

8. **Background to, Short summary and aim of the proposal**
   The Communication and two proposed Directives were published as part of the Commission's Anti-Tax Avoidance Package on 28th January 2016. The Communication sets out the Commission's view that action is needed at EU level to ensure that Member States implement the OECD BEPS reports in a consistent manner. The Communication also stresses the need to ensure effective taxation within the EU. The first proposed Directive (25) seeks to implement the OECD BEPS recommendations on Country by Country Reporting in the EU. The second proposed Directive (26) seeks to implement some of the other OECD BEPS recommendations in the EU.

9. **Legal basis of the proposal**
   Article 115 TFEU.

10. Voting Method
Unanimity

11. Role of the EP
Consultation

12. Category of proposal
Communication and two proposed Directives.

13. Implications for Ireland & Ireland's Initial View
Ireland will actively engage in the debate on these important issues. As set out in the Update on Ireland's International Tax Strategy document published with Budget 2016, the priority for Ireland is to ensure that the EU approach to implementing BEPS and tackling aggressive tax planning is consistent with the consensus reached at the OECD**.**

14. Impact on the public
As a means to combat aggressive tax planning by multinational companies, the communication and proposed Directives will have an indirect impact on the public.

15. Have any consultations with Stakeholders taken place or are there any plans to do so?
There is continuous engagement with stakeholders on these issues.

16. Are there any subsidiarity issues for Ireland?
It is not expected that there are subsidiarity issues for Ireland.

17. Anticipated negotiating period
12 months (approx.)

18. Proposed implementation date
Not known at this point.

19. Consequences for national legislation
The Taxes Acts may need to be amended in order to transpose the Directives if agreed.

20. Method of Transposition into Irish law
If agreed at Council, Finance Bill amendments to the Taxes Acts would be required to transpose the directives.

21. Anticipated Transposition date
Not known at this point.

22. Consequences for the EU budget in Euros annually
None

23. Contact name, telephone number and e-mail address of official in Department with primary responsibility
Brendan Crowley
International Business Tax
D/Finance
Brendan.crowley@finance.gov.ie **Contact:** 076 100 7603 **Date** 9 March 2016