



Brussels, 21.10.2015  
COM(2015) 518 final

2015/0244 (NLE)

Proposal for a

**COUNCIL DECISION**

**on the conclusion, on behalf of the European Union, of the Amending Protocol to the Agreement between the European Community and the Republic of San Marino providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments**

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

Following the adoption of Council Directive 2003/48/EC, the Savings Directive, and in order to preserve the level playing field of economic operators, the EU signed Agreements with Switzerland, Andorra, Liechtenstein, Monaco and San Marino providing for measures equivalent to those laid down in the Directive. Member States also signed agreements with the dependent territories of the United Kingdom and the Netherlands.

More recently, the importance of automatic exchange of information as a means to combat cross-border tax fraud and tax evasion by ensuring full tax transparency and cooperation between tax administrations worldwide has also been recognised at the international level. The Organisation for Economic Cooperation and Development (OECD) was mandated by the G20 to develop a single global standard for automatic exchange of financial account information (Global Standard). The Global Standard was released by the OECD Council in July 2014.

Following the adoption of a proposal to update the Savings Directive, the Commission adopted on 17 June 2011 a recommendation for a mandate to initiate negotiations with Switzerland, Liechtenstein, Andorra, Monaco and San Marino, in order to upgrade the EU's Agreements with those countries in line with international developments and to ensure that those countries continue to apply measures equivalent to those in the EU. On 14 May 2013, the Council reached an agreement on the Negotiating Mandate by concluding that negotiations should be aligned with the recent developments at global level where it was agreed to promote automatic exchange of information as an international standard.

In its communication of 6 December 2012 containing an Action Plan to strengthen the fight against tax fraud and tax evasion, the Commission 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.

On the basis of a proposal presented by the Commission in June 2013, the Council on 9 December 2014 adopted Directive 2014/107/EU amending Directive 2011/16/EU and extending the mandatory automatic exchange of information between EU tax authorities to a full range of financial items in accordance with the Global Standard. The amendment ensures a coherent, consistent and comprehensive Union-wide approach to the automatic exchange of financial account information in the Internal Market.

As Directive 2014/107/EU is generally broader in scope than Directive 2003/48/EC and provides that in cases of overlap of scope, Directive 2014/107/EU prevails, on 18 March 2015 the Commission adopted a proposal to repeal Directive 2003/48/EC.

In order to minimise costs and administrative burdens both for tax administrations and for economic operators, it is crucial to ensure that the amendment of the existing Savings Agreement with San Marino is in line with EU and international developments. This will increase tax transparency in Europe and will be the legal basis for implementing the OCDE Global Standard on automatic exchange of information between San Marino and the EU.

## 2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

The legal basis for this proposal is provided by Article 115 of the Treaty on the Functioning of the European Union, in conjunction with Article 218(5) and (8) second subparagraph. The substantive legal basis is provided by Article 115 TFEU.

Article 1(1) of the Amending Protocol annexed to this Proposal for Council Decision changes the title of the existing Agreement in order to better reflect the contents of the Agreement, as amended by that Amending Protocol.

Article 1(2) of the Amending Protocol replaces the existing articles and Annexes of the existing Agreement with a new set of provisions comprising 10 Articles, an Annex I that reflects the OECD Common Reporting Standard which is part of the Global Standard, an Annex II that reflects important parts of the OECD Commentaries to the Global Standard, an Annex III that reflects the additional data protection safeguards to be put in place as regards data collection and exchanges under the Agreement, and an Annex IV that lists the Competent Authorities of San Marino and of each Member State. The new Articles reflect the articles of the OECD Model Competent Authority agreement for the implementation of the Global Standard, with minor adaptations to reflect the particular legal context of an EU Agreement. In Article 1 there is no definition of Tax Identification Number (TIN), since there is already a definition of TIN in Section VIII(E)(5) of Annex I. Article 5 includes a full set of provisions on exchange of information upon request that follows the latest text of the OECD Model Tax Convention. Article 6 includes a more detailed set of provisions on data protection, taking also into account the absence of an Adequacy Decision concerning the level of data protection in San Marino when compared to the EU requirements. Article 7 provides for an additional stage of consultation before any Member State or San Marino undertakes to suspend the Agreement. Article 8 features provisions on amendments to the Agreement, including a quick mechanism for provisional application by one of the Contracting Parties of amendments to the Global Standard, on the condition of consent by the other Party. Article 10 defines the territorial scope.

Annex I follows both the OECD Common Reporting Standard (CRS) and Annex I to the Directive on Administrative Cooperation. Annex II implements key parts of the OECD Commentaries to the CRS and corresponds to Annex II to the Directive on Administrative Cooperation. The minor deviations from Annex I or II to the Directive on Administrative Cooperation are justified by the re-alignment of the text to the CRS requested by the San Marino negotiators. Those include the following:

1. In Section I(D) the reference to the reporting of place of birth is realigned to the CRS.
2. Some relevant options provided for in the CRS Commentaries and in the Directive on Administrative Cooperation have been left at the discretion of each Member State and San Marino and are not exercised directly in the Agreement. There is instead an obligation on Member States and San Marino to notify each other and the Commission whether they have exercised any particular option.
3. The definitions of “International Organisation” and “Central Bank” in Section VIII(B)(3) and (4) have been realigned to the CRS in order to enable them to apply also in the context of the exemption from the look-through for Passive non-financial entities (NFEs) in Section VIII(D)(9)(c).

4. In Annex II the definition of “Residence of a Financial Institution” is aligned to the CRS Commentaries in order to cover cases where the residence of another Financial Institution should be determined, e.g. for the look-through for Passive NFEs.

Annex III was included to complement with additional data protection safeguards the provisions of Article 6, in the absence of an Adequacy Decision concerning the level of data protection in San Marino when compared to the EU requirements.

Article 2 of the Amending Protocol includes provisions on the entry into force and application. The Parties have agreed to comply with their international commitments as regards the timing of automatic exchange of information under the Global Standard, as these commitments were conveyed to the Global Forum, that is first exchanges in 2017 for information collected in 2016 (with the exception of Austria, which will undertake such exchanges one year later). Given the difficulty of ensuring that the procedure for formal entry into force set forth in Article 2(1) of the Amending Protocol is put in place in a timely manner for ensuring the respect of these commitments, the Parties have agreed in Article 2(2) on a provisional application of the Amending Protocol as of 1 January 2016 subject to notification by each Party of the completion of their respective internal procedures necessary for such provisional application, which within the EU are provided by Article 218(5) TFEU. The following paragraphs of Article 2 of the Amending Protocol deal with issues on the transition from the existing Agreement to the amended Agreement, with regard to requests for information, credits available to beneficial owners for withholding tax, final payments of withholding tax by San Marino to Member States and final exchanges of information under the voluntary disclosure mechanism.

Article 3 lists the languages in which the Amending Protocol is signed.

The revised Agreement is supplemented by six Joint Declarations of the Contracting Parties.

The first and second Joint Declarations make a link respectively to the Commentaries to the Global Standard and Article 26 of the OECD Model Tax Convention on Income and on Capital. The third Declaration regards the interpretation of the term "TIN", in order to take account of the domestic legislation of San Marino in this field. The fourth Declaration consists in an acknowledgement by the EU of the progress made by San Marino as regards the international process for transparency and tax cooperation, as well on its efforts on the implementation of the EU acquis. The fifth Declaration clarifies that the definition of "Central Bank" set forth in Annex I, Section VIII.B encompasses the Central Bank of San Marino. The final Declaration addresses the practical aspects of the provisional application provided for in Article 2(2) of the Amending Protocol.

The proposal does not go beyond what is necessary or appropriate to achieve the expected objectives.

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

The Amending Protocol implements the Global Standard between EU Member States and San Marino. The different stakeholders were already consulted on various occasions during the development of the OECD Global Standard.

EU Member States have also been consulted and informed during the negotiations between the Commission and San Marino, including on the request from San Marino for a Joint Declaration (the fourth one described above) on its relations with the EU. The Commission reported to the European Council at its meetings in March and December 2014 on the state of play of the negotiations with San Marino.

The European Data Protection Supervisor has been consulted during the negotiations with San Marino and has provided useful advice notably on the detailed content of Article 6 and Annex III of the Agreement as amended by the Amending Protocol.

The Commission has also consulted the new Expert Group on automatic exchange of financial account information that provides advice to ensure that EU legislation on automatic exchange of information in direct taxation is effectively aligned and fully compatible with the OECD Global Standard. The Expert Group includes representatives from organisations representing the financial sector and organisations campaigning against tax evasion and tax avoidance.

#### **4. BUDGETARY IMPLICATIONS**

The proposal does not have any budgetary implications

#### **5. OTHER ELEMENTS**

None

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 115 in conjunction with Article 218(6)(b) and the second subparagraph of Article 218(8),

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Parliament<sup>1</sup>,

After consultation of the European Data Protection Supervisor,

Whereas:

- (1) In accordance with Decision 2015/XXX/EC<sup>2</sup>, the Amending Protocol to the Agreement between the European Community and the Republic of San Marino providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments (the "Amending Protocol") was signed on XX XXXX 2015, subject to its conclusion at a later date.
- (2) The text of the Amending Protocol, which is the result of negotiations, duly reflects the negotiating directive issued by the Council as it aligns the Agreement between the European Community and the Republic of San Marino providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments<sup>3</sup> (the "Agreement") with the latest developments at international level concerning automatic exchange of information, namely, with the Global Standard for automatic exchange of financial account information in tax matters developed by the Organisation for Economic Cooperation and Development (OECD). The Union, its Member States and the Republic of San Marino have actively participated in the work of the Global Forum of the OECD for supporting the development and implementation of that Standard. The text of the Agreement, as amended by this Amending Protocol, is the legal basis for implementing the Global Standard in the relations between the European Union and the Republic of San Marino.
- (3) The Amending Protocol should be approved,

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<sup>1</sup> Consent of [date], OJ C , , p. .

<sup>2</sup> OJ...

<sup>3</sup> OJ L 381, 28.12.2004, p.33.

HAS ADOPTED THIS DECISION:

*Article 1*

The Amending Protocol to the Agreement between the European Community and the Republic of San Marino providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments is hereby approved on behalf of the European Union.

The text of the Amending Protocol is attached to this Decision.

*Article 2*

- (1) The President of the Council shall, on behalf of the Union, give the notification provided for in Article 2 (1) of the Amending Protocol.
- (2) The Commission shall notify the Republic of San Marino and the Member States of the notifications received in accordance with Article 1 (1) (d) of the Agreement as resulting from the Amending Protocol.

*Article 3*

This Decision shall enter into force on the date of its adoption.

Done at Brussels,

*For the Council  
The President*



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ANNEX 1

**ANNEX**

**to the**

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## ANNEX

to the

### Proposal for a COUNCIL DECISION

**on the conclusion, on behalf of the European Union, of the Amending Protocol to the Agreement between the European Community and the Republic of San Marino providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments**

Amending Protocol to the

“Agreement between the European Community and the Republic of San Marino providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments”

THE EUROPEAN UNION, hereinafter referred to as ‘the Union’,

and

THE REPUBLIC OF SAN MARINO, hereinafter referred to as ‘San Marino’,

both hereinafter referred to as ‘Contracting Party’ or, jointly, as ‘Contracting Parties’,

With a view to implementing the OECD Standard for Automatic Exchange of Financial Account Information, hereinafter referred to as ‘Global Standard’, within a framework of cooperation which takes account of the legitimate interests of both Contracting Parties,

Whereas, the Contracting Parties share a common interest in improving their relationship and enhancing cooperation between them, as shown by the recent opening of negotiations on an Association Agreement providing for the possibility of San Marino joining the European Union internal market and its four fundamental freedoms, and cooperation in other areas,

Whereas, the Contracting Parties have a longstanding and close relationship with respect to mutual assistance in tax matters, in particular on the application of measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments<sup>1</sup>, and desire to improve international tax compliance by further building on that relationship,

Whereas, the Contracting Parties desire to come to an agreement to improve international tax compliance based on reciprocal automatic exchange of information subject to certain confidentiality and other protections, including provisions limiting the use of the information exchanged,

Whereas Article 13 of the Agreement between the European Community and the Republic of San Marino providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments<sup>2</sup> in the form prior to its amendment by this Amending Protocol, which currently provides for exchange of

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<sup>1</sup> OJ EU L157, 26.6.2003, p.38.

<sup>2</sup> OJ EU L381, 28.12.2004, p.33.

information upon request limited to conduct constituting tax fraud and the like should be aligned to the OECD standard on transparency and exchange of information in tax matters,

Whereas Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data<sup>3</sup> lays down specific data protection rules in the European Union which also apply to the exchanges of information covered by the Agreement as amended by this Amending Protocol,

Whereas Law no. 70 of 23 May 1995<sup>4</sup>, devoted to the "Reform of Law no. 27 of 1 March 1983" on Collection, Elaboration and Use of Computerized Personal Data, regulates the protection of personal data in San Marino,

Whereas, the European Commission has, so far, not adopted a decision pursuant to Article 25(6) of Directive 95/46/EC finding that San Marino is a country that ensures an adequate level of protection of personal data,

Whereas both parties commit to implementing and observing specific data protection safeguards as included in the Agreement as amended by this Protocol, including Annex III,

Whereas Reporting Financial Institutions, sending Competent Authorities and receiving Competent Authorities, as data controllers, should retain information processed in accordance with the Agreement as amended by this Amending Protocol for no longer than necessary to achieve the purposes thereof. Given the differences in Member States' and San Marino's legislation, the maximum retention period should be set by reference to the statute of limitations provided by each data controller's domestic tax legislation,

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

HAVE AGREED AS FOLLOWS:

## Article 1

The Agreement between the European Community and the Republic of San Marino providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of

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<sup>3</sup> OJ EU L281, 23.11.1995, p.31.

<sup>4</sup> Bollettino Ufficiale della Repubblica di San Marino, 1.6.1995.

savings income in the form of interest payments (hereinafter referred to as the "Agreement") shall be amended as follows:

(1) The title shall be replaced by:

“Agreement between the European Union and the Republic of San Marino on the automatic exchange of financial account information to improve international tax compliance”

(2) Articles 1 to 21 shall be replaced by:

## “Article 1

### Definitions

1. For the purposes of this Agreement:

(a) “European Union” means the Union as established by the Treaty on European Union and includes the territories in which the Treaty on the Functioning of the European Union is applied under the conditions laid down in that latter Treaty.

(b) “Member State” means a Member State of the European Union.

(c) “San Marino” means the Republic of San Marino

(d) “Competent Authorities of San Marino” and “Competent Authorities of the Member States” means the authorities listed in Annex IV, under (a) and under (b) to (ac) respectively. Annex IV shall form an integral part of this Agreement. The list of Competent Authorities in Annex IV may be amended by simple notification of the other Contracting Party by San Marino for the authority referred to in (a) therein and by the European Union for the authorities referred to in (b) to (ac) therein.

(e) “Member State Financial Institution” means (i) any Financial Institution that is resident in a Member State, excluding any branch of that Financial Institution that is located outside that Member State, and (ii) any branch of a Financial Institution that is not resident in that Member State, if that branch is located in that Member State.

(f) “San Marino Financial Institution” means (i) any Financial Institution that is resident in San Marino, excluding any branch of that Financial Institution that is located outside San Marino, and (ii) any branch of a Financial Institution that is not resident in San Marino, if that branch is located in San Marino.

(g) “Reporting Financial Institution” means any Member State Financial Institution or San Marino Financial Institution, as the context requires, that is not a Non-Reporting Financial Institution.

(h) “Reportable Account” means a Member State Reportable Account or a San Marino Reportable Account, as the context requires, provided it has been identified as such pursuant to due diligence procedures, consistent with Annexes I and II, in place in that Member State or San Marino.

(i) “Member State Reportable Account” means a Financial Account that is maintained by a San Marino Reporting Financial Institution and held by one or more Member State Persons that are Reportable Persons or by a Passive NFE with one or more Controlling Persons that is a Member State Reportable Person.

(j) “San Marino Reportable Account” means a Financial Account that is maintained by a Member State Reporting Financial Institution and held by one or more San Marino Persons

that are Reportable Persons or by a Passive NFE with one or more Controlling Persons that is a San Marino Reportable Person.

(k) “Member State Person” means an individual or Entity that is identified by a San Marino Reporting Financial Institution as resident in a Member State pursuant to due diligence procedures consistent with Annex I and II, or an estate of a decedent that was a resident of a Member State.

(l) “San Marino Person” means an individual or Entity that is identified by a Member State Reporting Financial Institution as resident in San Marino pursuant to due diligence procedures consistent with Annexes I and II, or an estate of a decedent that was a resident of San Marino.

2. Any capitalised term not otherwise defined in this Agreement will have the meaning that it has at that time, (i) for Member States, under Council Directive 2011/16/EU on administrative cooperation in the field of taxation<sup>5</sup> or, where applicable, the domestic law of the Member State applying this Agreement, and (ii) for San Marino, under its domestic law, such meaning being consistent with the meaning set forth in Annexes I and II.

Any term not otherwise defined in this Agreement or in Annexes I, II or III will unless the context otherwise requires or the Competent Authority of a Member State and the Competent Authority of San Marino agree to a common meaning as provided for in Article 7 (as permitted by domestic law), have the meaning that it has at that time under the law of the jurisdiction concerned applying this Agreement, (i) for Member States, under Council Directive 2011/16/EU on administrative cooperation in the field of taxation or, where applicable, the domestic law of the Member State concerned, and (ii) for San Marino, under its domestic law, any meaning under the applicable tax laws of the jurisdiction concerned (being a Member State or San Marino) prevailing over a meaning given to the term under other laws of that jurisdiction.

## Article 2

### Automatic Exchange of Information with Respect to Reportable Accounts

1. Pursuant to the provisions of this Article and subject to the applicable reporting and due diligence rules consistent with Annexes I and II, which shall form an integral part of this Agreement, the Competent Authority of San Marino will annually exchange with each of the Member States’ Competent Authorities and each of the Member States’ Competent Authorities will annually exchange with the Competent Authority of San Marino on an automatic basis the information obtained pursuant to such rules and specified in paragraph 2.

2. The information to be exchanged is, in the case of a Member State with respect to each San Marino Reportable Account, and in the case of San Marino with respect to each Member State Reportable Account:

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

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

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<sup>5</sup> OJ EU L64, 11.3.2011, p.1.

- (c) the name and identifying number (if any) of the Reporting Financial Institution;
- (d) the account balance or value (including, in the case of a Cash Value Insurance Contract or Annuity Contract, the Cash Value or surrender value) as of the end of the relevant calendar year or other appropriate reporting period or, if the account was closed during such year or period, the closure of the account;
- (e) in the case of any Custodial Account:
  - (i) the total gross amount of interest, the total gross amount of dividends, and the total gross amount of other income generated with respect to the assets held in the account, in each case paid or credited to the account (or with respect to the account) during the calendar year or other appropriate reporting period; and
  - (ii) the total gross proceeds from the sale or redemption of Financial Assets paid or credited to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Financial Institution acted as a custodian, broker, nominee, or otherwise as an agent for the Account Holder;
- (f) in the case of any Depository Account, the total gross amount of interest paid or credited to the account during the calendar year or other appropriate reporting period; and
- (g) in the case of any account not described in subparagraph 2(e) or (f), the total gross amount paid or credited to the Account Holder with respect to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Financial Institution is the obligor or debtor, including the aggregate amount of any redemption payments made to the Account Holder during the calendar year or other appropriate reporting period.

### Article 3

#### Time and Manner of Automatic Exchange of Information

1. For the purposes of the exchange of information in Article 2, the amount and characterisation of payments made with respect to a Reportable Account may be determined in accordance with the principles of the tax laws of the jurisdiction (being a Member State or San Marino) exchanging the information.
2. For the purposes of the exchange of information in Article 2, the information exchanged shall identify the currency in which each relevant amount is denominated.
3. With respect to paragraph 2 of Article 2, information is to be exchanged between San Marino on the one hand and all Member States, except Austria, on the other, with respect to 2016 and all subsequent years and will be exchanged within nine months of the end of the calendar year to which the information relates. Information is to be exchanged between San Marino on the one hand and Austria, on the other, with respect to 2017 and all subsequent years and will be exchanged within nine months of the end of the calendar year to which the information relates.

Notwithstanding the first sub-paragraph, San Marino Financial Institutions shall apply the reporting and due diligence rules consistent with Annexes I and II with regard to Reportable Persons from all Member States, including Austria, in accordance with the timelines provided for therein.

4. The Competent Authorities will automatically exchange the information described in Article 2 in a common reporting standard schema in Extensible Markup Language.

5. The Competent Authorities will agree on one or more methods for data transmission including encryption standards.

#### Article 4

##### Cooperation on Compliance and Enforcement

The Competent Authority of a Member State will notify the Competent Authority of San Marino and the Competent Authority of San Marino will notify the Competent Authority of a Member State when the first-mentioned (notifying) Competent Authority has reason to believe that an error may have led to incorrect or incomplete information reporting under Article 2 or there is non-compliance by a Reporting Financial Institution with the applicable reporting requirements and due diligence procedures consistent with Annexes I and II. The notified Competent Authority will take all appropriate measures available under its domestic law to address the errors or non-compliance described in the notice.

#### Article 5

##### Exchange of Information upon Request

1. Notwithstanding the provisions of Article 2 and of any other agreement providing for information exchange upon request between San Marino and any Member State, the Competent Authority of San Marino and the Competent Authority of any Member State shall exchange upon request such information as is foreseeably relevant for carrying out this Agreement or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of San Marino and the Member States, or of their political subdivisions or local authorities, in so far as the taxation under such domestic laws is not contrary to an applicable double taxation agreement between San Marino and the Member State concerned.

2. In no case shall the provisions of paragraph 1 of this Article and of Article 6 be construed so as to impose on San Marino or on a Member State the obligation:

- a) to carry out administrative measures at variance with the laws and administrative practice of San Marino or that Member State, respectively;
- b) to supply information which is not obtainable under the laws or in the normal course of the administration of San Marino or that Member State, respectively;
- c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).

3. If information is requested by a Member State or by San Marino acting as the requesting jurisdiction in accordance with this Article, San Marino or the Member State acting as the requested jurisdiction shall use its information gathering measures to obtain the requested information, even though that requested jurisdiction may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 2 but in no case shall such limitations be construed to permit the requested jurisdiction to decline to supply information solely because it has no domestic interest in such information.

4. In no case shall the provisions of paragraph 2 be construed to permit San Marino or a Member State to decline to supply information solely because the information is held by a

bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

5. The Competent Authorities will agree on the standard forms to be used as well as on one or more methods for data transmission including encryption standards.

## Article 6

### Confidentiality and Personal Data Protection Safeguards

1. In addition to the confidentiality rules and other safeguards outlined in this Agreement, including those outlined in Annex III, the collection and exchange of information pursuant to this Agreement shall be subject, (i) for Member States, to the laws and regulations of Member States implementing Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data and, (ii) for San Marino, to the provisions of Law no. 70 of 23 May 1995<sup>6</sup>, devoted to the "Reform of Law no. 27 of 1 March 1983" on Collection, Elaboration and Use of Computerized Personal Data.

Member States shall, for the purpose of the correct application of Article 5, restrict the scope of the obligations and rights provided for in Article 10, Article 11(1), Articles 12 and 21 of Directive 95/46/EC to the extent required in order to safeguard the interests referred to in Article 13(1)(e) of that Directive. San Marino shall take equivalent measures under its law.

Each Member State and San Marino shall ensure that each Reporting Financial Institution under their jurisdiction informs each individual Reportable Person concerned that the information relating to him referred to in Article 2 will be collected and transferred in accordance with this Agreement and shall ensure that the Reporting Financial Institution provides to that individual all information that he is entitled to under its domestic data protection legislation, and at least the following:

- a) the purpose of the processing of his personal data;
- b) the legal basis of the processing operation;
- c) the recipients of his personal data;
- d) the identity of the data controllers;
- e) the time-limits for storing the data,
- f) the existence of the right to request access to, rectification and erasure of his personal data from the controller;
- g) the right to seek administrative and/or judicial redress and the procedure to do so;
- h) the right to have recourse to the competent data protection supervisory authority or authorities and the relevant contact details.

This information shall be provided in sufficient time for the individual to exercise his data protection rights and, in any case, before the Reporting Financial Institution concerned reports the information referred to in Article 2 to the competent authority of its jurisdiction of residence (being a Member State or San Marino).

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

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<sup>6</sup> Bollettino Ufficiale della Repubblica di San Marino, 1.6.1995.

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

Reporting Financial Institutions and the competent authorities of each Member State and San Marino shall be considered to be data controllers, each with respect to the personal data it processes under this Agreement. The data controllers shall be responsible for ensuring compliance with the personal data protection safeguards set out in this Agreement and for the respect of the rights of the data subjects.

3. Any information obtained by a jurisdiction (being a Member State or San Marino) under this Agreement shall be treated as confidential and protected in the same manner as information obtained under the domestic laws and regulations of that jurisdiction and, to the extent necessary for the protection of personal data, in accordance with the safeguards which may be specified by the jurisdiction supplying the information as required under its domestic laws and regulations.

4. Such information shall in any case be disclosed only to persons or authorities (including courts and administrative or supervisory bodies) concerned with the assessment, collection or recovery of, the enforcement or prosecution in respect of, or the determination of appeals in relation to taxes of that jurisdiction (being a Member State or San Marino), or the oversight of these. Only the persons or authorities mentioned above may use the information only for purposes set out in this paragraph. They may, notwithstanding other provisions of this Article, disclose it in public court proceedings or in judicial decisions relating to such taxes.

5. Notwithstanding the provisions of the preceding paragraphs, information received by a jurisdiction (being a Member State or San Marino) may be used for other purposes when such information may be used for such other purposes under the laws, including those on the protection of personal data, of the supplying jurisdiction (being, respectively, San Marino or a Member State) and when the Competent Authority of that jurisdiction authorises such use. Information provided by a jurisdiction (being a Member State or San Marino) to another jurisdiction (being, respectively, San Marino or a Member State) may be transmitted by the latter to a third jurisdiction (being another Member State), subject to the safeguards provided for under this Article and to prior authorisation by the Competent Authority of the first-mentioned jurisdiction from which the information originated.

Information provided by one Member State to another Member State under its applicable law implementing Council Directive [2011/16/EU](#) on administrative cooperation in the field of taxation may be transmitted to San Marino subject to prior authorisation by the Competent Authority of the Member State from which the information originated.

6. Each Competent Authority of a Member State or San Marino will immediately notify the other Competent Authority, i.e. that of San Marino or of the Member State concerned, regarding any breach of confidentiality or failure of data protection safeguards or any other breaches of data protection rules and any sanctions and remedial actions consequently imposed.

## Article 7

### Consultations and suspension of this Agreement

1. If any difficulties in the implementation or interpretation of this Agreement arise, any of the Competent Authorities of San Marino or a Member State may request consultations between the Competent Authority of San Marino and one or more of the Competent Authorities of

Member States to develop appropriate measures to ensure that this Agreement is fulfilled. Those Competent Authorities shall immediately notify the European Commission and the Competent Authorities of the other Member States of the results of their consultations. In relation to issues of interpretation, the European Commission may take part in consultations at the request of any of the Competent Authorities.

2. If the consultation relates to significant non-compliance with the provisions of this Agreement, and the procedure described in paragraph 1 does not provide for an adequate settlement, the Competent Authority of a Member State or San Marino may suspend the exchange of information under this Agreement towards, respectively, San Marino or a specific Member State, by giving notice in writing to the other Competent Authority concerned. Such suspension will have immediate effect. For the purposes of this paragraph, significant non-compliance includes, but is not limited to, non-compliance with the confidentiality and data safeguard provisions of this agreement, including Annex III, of Directive 95/46/EC and of Law no. 70 of 23 May 1995, devoted to the "Reform of Law no. 27 of 1 March 1983" on Collection, Elaboration and Use of Computerized Personal Data, as applicable, a failure by the Competent Authority of a Member State or San Marino to provide timely or adequate information as required under this Agreement, defining the status of Entities or accounts as Non-Reporting Financial Institutions and Excluded Accounts in a manner that frustrates the purposes of this Agreement.

## Article 8

### Amendments

1. The Contracting Parties shall consult each other on each occasion when an important change is adopted at OECD level to any of the elements of the Global Standard or – if deemed necessary by the Contracting Parties – in order to improve the technical functioning of this Agreement or to assess and reflect other international developments. The consultations shall be held within one month of a request by either Contracting Party or as soon as possible in urgent cases.

2. On the basis of such a contact, the Contracting Parties may consult each other in order to examine whether changes to this Agreement are necessary.

3. For the purposes of the consultations referred to in paragraphs 1 and 2, each Contracting Party shall inform the other Contracting Party of possible developments which could affect the proper functioning of this Agreement. This shall also include any relevant agreement between one of the Contracting Parties and a third State.

4. Following the consultations, this Agreement may be amended by means of a protocol or a new agreement between the Contracting Parties.

5. Where a Contracting Party has implemented a change, adopted by the OECD, to the Global Standard, and wishes to make a corresponding change to Annexes I and/or II to this Agreement, it shall notify the other Contracting Party thereof. A consultation procedure between the Contracting Parties shall take place within one month from the notification. Notwithstanding paragraph 4, where the Contracting Parties reach a consensus within this consultation procedure on the change that should be made to Annexes I and/or II to this Agreement, and for the period of time necessary for implementation of the change by a formal amendment of this Agreement, the Contracting Party that requested the change may provisionally apply the revised version of Annexes I and/or II to this Agreement, as endorsed by the consultation procedure, as of the first day of January of the year following the conclusion of the aforementioned procedure.

A Contracting Party is considered as having implemented a change, adopted by the OECD, to the Global Standard:

(a) for Member States: when the change has been incorporated in Council Directive 2011/16/EU on administrative cooperation in the field of taxation

(b) for San Marino: when the change has been incorporated into domestic legislation.

## Article 9

### Termination

Either Contracting Party may terminate this Agreement by giving notice of termination in writing to the other Contracting Party. Such termination will become effective on the first day of the month following the expiration of a period of 12 months after the date of the notice of termination. In the event of termination, all information previously received under this Agreement will remain confidential and subject, (i) for Member States, to the provisions of Member States' laws and regulations implementing Directive 95/46/EC and (ii) for San Marino, to the provisions of Law no. 70 of 23 May 1995, devoted to the "Reform of Law no. 27 of 1 March 1983" on Collection, Elaboration and Use of Computerized Personal Data, and, in both cases, to the specific data protection safeguards set out in this Agreement, including those contained in Annex III.

## Article 10

### Territorial Scope

This Agreement shall apply, on the one hand, to the territories of the Member States in which the Treaty on European Union and the Treaty on the Functioning of the European Union are applied and under the conditions laid down in those Treaties and, on the other hand, to the territory of San Marino.”

(3) the Annexes shall be replaced by:

“ANNEX I

COMMON STANDARD ON REPORTING AND DUE DILIGENCE FOR FINANCIAL  
ACCOUNT INFORMATION (“COMMON REPORTING STANDARD”)

Section I: General Reporting Requirements

A. Subject to paragraphs C to E, each Reporting Financial Institution must report to the Competent Authority of its jurisdiction (being a Member State or San Marino) the following information with respect to each Reportable Account of such Reporting Financial Institution:

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

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

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

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

5. in the case of any Custodial Account:

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

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

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

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

the obligor or debtor, including the aggregate amount of any redemption payments made to the Account Holder during the calendar year or other appropriate reporting period.

B. The information reported must identify the currency in which each amount is denominated.

C. Notwithstanding subparagraph A(1), with respect to each Reportable Account that is a Preexisting Account, the TIN(s) or date of birth is not required to be reported if such TIN(s) or date of birth is not in the records of the Reporting Financial Institution and is not otherwise required to be collected by such Reporting Financial Institution under domestic law or any European Union legal instrument (if applicable). However, a Reporting Financial Institution is required to use reasonable efforts to obtain the TIN(s) and date of birth with respect to Preexisting Accounts by the end of the second calendar year following the year in which Preexisting Accounts were identified as Reportable Accounts.

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

E. Notwithstanding subparagraph A(1), the place of birth is not required to be reported unless the Reporting Financial Institution is otherwise required to obtain and report it under domestic law and it is available in the electronically searchable data maintained by the Reporting Financial Institution.

## Section II: General Due Diligence Requirements

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

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

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

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

E. Each Member State or San Marino may allow Reporting Financial Institutions to apply the due diligence procedures for New Accounts to Preexisting Accounts, and the due diligence procedures for High Value Accounts to Lower Value Accounts. Where a Member State or San Marino allows New Account due diligence procedures to be used for Preexisting Accounts, the rules otherwise applicable to Preexisting Accounts continue to apply.

## Section III: Due Diligence for Preexisting Individual Accounts

A. Introduction. The following procedures apply for purposes of identifying Reportable Accounts among Preexisting Individual Accounts.

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

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

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

(a) identification of the Account Holder as a resident of a Reportable Jurisdiction;

(b) current mailing or residence address (including a post office box) in a Reportable Jurisdiction;

(c) one or more telephone numbers in a Reportable Jurisdiction and no telephone number in the Republic of San Marino or the Member State of the Reporting Financial Institution, as the context requires;

(d) standing instructions (other than with respect to a Depository Account) to transfer funds to an account maintained in a Reportable Jurisdiction;

(e) currently effective power of attorney or signatory authority granted to a person with an address in a Reportable Jurisdiction; or

(f) a “hold mail” instruction or “in-care-of” address in a Reportable Jurisdiction if the Reporting Financial Institution does not have any other address on file for the Account Holder.

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

4. If any of the indicia listed in subparagraphs B(2)(a) to (e) are discovered in the electronic search, or if there is a change in circumstances that results in one or more indicia being associated with the account, then the Reporting Financial Institution must treat the Account Holder as a resident for tax purposes of each Reportable Jurisdiction for which an indicium is identified, unless it elects to apply subparagraph B(6) and one of the exceptions in that subparagraph applies with respect to that account.

5. If a “hold mail” instruction or “in-care-of” address is discovered in the electronic search and no other address and none of the other indicia listed in subparagraphs B(2)(a) to (e) are identified for the Account Holder, the Reporting Financial Institution must, in the order most appropriate to the circumstances, apply the paper record search described in subparagraph C(2), or seek to obtain from the Account Holder a self-certification or Documentary Evidence to establish the residence(s) for tax purposes of such Account Holder. If the paper search fails to establish an indicium and the attempt to obtain the self-certification or Documentary Evidence is not successful, the Reporting Financial Institution must report the account to the Competent Authority of its Member State or San Marino, as the context requires, as an undocumented account.

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

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

(i) a self-certification from the Account Holder of the jurisdiction(s) of residence (being a Member State, San Marino or other jurisdictions) of such Account Holder that does not include such Reportable Jurisdiction; and

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

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

(i) a self-certification from the Account Holder of the jurisdiction(s) of residence (being a Member State, San Marino or other jurisdictions) of such Account Holder that does not include such Reportable Jurisdiction; or

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

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

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

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

(a) the most recent Documentary Evidence collected with respect to the account;

(b) the most recent account opening contract or documentation;

(c) the most recent documentation obtained by the Reporting Financial Institution pursuant to AML/KYC Procedures or for other regulatory purposes;

(d) any power of attorney or signature authority forms currently in effect; and

(e) any standing instructions (other than with respect to a Depository Account) to transfer funds currently in effect.

3. Exception To The Extent Databases Contain Sufficient Information. A Reporting Financial Institution is not required to perform the paper record search described in subparagraph C(2)

to the extent the Reporting Financial Institution's electronically searchable information includes the following:

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

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

#### 5. Effect of Finding Indicia.

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

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

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

6. If a Preexisting Individual Account is not a High Value Account as of 31 December 2015, but becomes a High Value Account as of the last day of a subsequent calendar year, the Reporting Financial Institution must complete the enhanced review procedures described in paragraph C with respect to such account within the calendar year following the year in which the account becomes a High Value Account. If based on that review, such account is identified as a Reportable Account, the Reporting Financial Institution must report the

required information about such account with respect to the year in which it is identified as a Reportable Account and subsequent years on an annual basis, unless the Account Holder ceases to be a Reportable Person.

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

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

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

D. Review of Preexisting High Value Individual Accounts must be completed by 31 December 2016. Review of Preexisting Lower Value Individual Accounts must be completed by 31 December 2017.

E. Any Preexisting Individual Account that has been identified as a Reportable Account under this Section must be treated as a Reportable Account in all subsequent years, unless the Account Holder ceases to be a Reportable Person.

#### Section IV: Due Diligence for New Individual Accounts

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

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

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

C. If there is a change of circumstances with respect to a New Individual Account that causes the Reporting Financial Institution to know, or have reason to know, that the original self-certification is incorrect or unreliable, the Reporting Financial Institution cannot rely on the

original self-certification and must obtain a valid self-certification that establishes the residence(s) for tax purposes of the Account Holder.

#### Section V: Due Diligence for Preexisting Entity Accounts

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

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

B. Entity Accounts Subject to Review. A Preexisting Entity Account that has an aggregate account balance or value that exceeds, as of 31 December 2015, an amount denominated in the domestic currency of each Member State or San Marino and corresponding to USD 250 000, and a Preexisting Entity Account that does not exceed, as of 31 December 2015, that amount but the aggregate account balance or value of which exceeds such amount as of the last day of any subsequent calendar year, must be reviewed in accordance with the procedures set forth in paragraph D.

C. Entity Accounts With Respect to Which Reporting Is Required. With respect to Preexisting Entity Accounts described in paragraph B, only accounts that are held by one or more Entities that are Reportable Persons, or by Passive NFEs with one or more Controlling Persons who are Reportable Persons, shall be treated as Reportable Accounts.

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

1. Determine Whether the Entity Is a Reportable Person.

(a) Review information maintained for regulatory or customer relationship purposes (including information collected pursuant to AML/KYC Procedures) to determine whether the information indicates that the Account Holder is resident in a Reportable Jurisdiction. For this purpose, information indicating that the Account Holder is resident in a Reportable Jurisdiction includes a place of incorporation or organisation, or an address in a Reportable Jurisdiction.

(b) If the information indicates that the Account Holder is resident in a Reportable Jurisdiction, the Reporting Financial Institution must treat the account as a Reportable Account unless it obtains a self-certification from the Account Holder, or reasonably determines based on information in its possession or that is publicly available, that the Account Holder is not a Reportable Person.

2. Determine Whether the Entity is a Passive NFE with One or More Controlling Persons Who Are Reportable Persons. With respect to an Account Holder of a Preexisting Entity Account (including an Entity that is a Reportable Person), the Reporting Financial Institution must determine whether the Account Holder is a Passive NFE with one or more Controlling

Persons who are Reportable Persons. If any of the Controlling Persons of a Passive NFE is a Reportable Person, then the account must be treated as a Reportable Account. In making these determinations the Reporting Financial Institution must follow the guidance in subparagraphs D(2)(a) to (c) in the order most appropriate under the circumstances.

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

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

(c) Determining whether a Controlling Person of a Passive NFE is a Reportable Person. For the purposes of determining whether a Controlling Person of a Passive NFE is a Reportable Person, a Reporting Financial Institution may rely on:

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

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

#### E. Timing of Review and Additional Procedures Applicable to Preexisting Entity Accounts.

1. Review of Preexisting Entity Accounts with an aggregate account balance or value that exceeds, as of 31 December 2015, an amount denominated in the domestic currency of each Member State or San Marino and corresponding to USD 250 000, must be completed by 31 December 2017.

2. Review of Preexisting Entity Accounts with an aggregate account balance or value that does not exceed, as of 31 December 2015, an amount denominated in the domestic currency of each Member State or San Marino and corresponding to USD 250 000, but exceeds that amount as of 31 December of a subsequent year, must be completed within the calendar year following the year in which the aggregate account balance or value exceeds such amount.

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

#### Section VI: Due Diligence for New Entity Accounts

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

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

1. Determine Whether the Entity Is a Reportable Person.

(a) Obtain a self-certification, which may be part of the account opening documentation, that allows the Reporting Financial Institution to determine the Account Holder's residence(s) for tax purposes and confirm the reasonableness of such self-certification based on the information obtained by the Reporting Financial Institution in connection with the opening of the account, including any documentation collected pursuant to AML/KYC Procedures. If the Entity certifies that it has no residence for tax purposes, the Reporting Financial Institution may rely on the address of the principal office of the Entity to determine the residence of the Account Holder.

(b) If the self-certification indicates that the Account Holder is resident in a Reportable Jurisdiction, the Reporting Financial Institution must treat the account as a Reportable Account unless it reasonably determines based on information in its possession or that is publicly available, that the Account Holder is not a Reportable Person with respect to such Reportable Jurisdiction.

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

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

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

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

## Section VII: Special Due Diligence Rules

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

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

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

A Member State or San Marino shall have the option to allow Reporting Financial Institutions to treat a Financial Account that is a member's interest in a Group Cash Value Insurance Contract or Group Annuity Contract as a Financial Account that is not a Reportable Account until the date on which an amount is payable to the employee/certificate holder or beneficiary, if the Financial Account that is a member's interest in a Group Cash Value Insurance Contract or Group Annuity Contract meets the following requirements:

- (a) the Group Cash Value Insurance Contract or Group Annuity Contract is issued to an employer and covers 25 or more employees/certificate holders;
- (b) the employee/certificate holders are entitled to receive any contract value related to their interests and to name beneficiaries for the benefit payable upon the employee's death; and
- (c) the aggregate amount payable to any employee/certificate holder or beneficiary does not exceed an amount denominated in the domestic currency of each Member State or San Marino and corresponding to USD 1 000 000.

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

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

Before the entry into force of the Amending Protocol signed on ...\*, Member States shall communicate to San Marino and San Marino shall communicate to the European Commission whether they have exercised the option provided for in this paragraph. The European Commission may coordinate the transmission of the communication from Member States to San Marino and the European Commission shall transmit the communication from San

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\* OJ: please insert the date of signature of this Amending Protocol.

Marino to all Member States. All further changes to the exercise of that option by a Member State or San Marino shall be communicated in the same manner.

### C. Account Balance Aggregation and Currency Rules.

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

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

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

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

### Section VIII: Defined Terms

The following terms have the meanings set forth below:

#### A. Reporting Financial Institution

1. The term "Reporting Financial Institution" means any Member State Financial Institution or San Marino Financial Institution, as the context requires, that is not a Non-Reporting Financial Institution.

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

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

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

5. The term “Depository Institution” means any Entity that accepts deposits in the ordinary course of a banking or similar business.

6. The term “Investment Entity” means any Entity:

(a) which primarily conducts as a business one or more of the following activities or operations for or on behalf of a customer:

(i) trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.); foreign exchange; exchange, interest rate and index instruments; transferable securities; or commodity futures trading;

(ii) individual and collective portfolio management; or

(iii) otherwise investing, administering, or managing Financial Assets or money on behalf of other persons; or

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

An Entity is treated as primarily conducting as a business one or more of the activities described in subparagraph A(6)(a), or an Entity’s gross income is primarily attributable to investing, reinvesting, or trading in Financial Assets for the purposes of subparagraph A(6)(b), if the Entity’s gross income attributable to the relevant activities equals or exceeds 50 % of the Entity’s gross income during the shorter of: (i) the three-year period ending on 31 December of the year preceding the year in which the determination is made; or (ii) the period during which the Entity has been in existence. The term “Investment Entity” does not include an Entity that is an Active NFE because that Entity meets any of the criteria in subparagraphs D(9)(d) to (g).

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

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

8. The term “Specified Insurance Company” means any Entity that is an insurance company (or the holding company of an insurance company) which issues, or is obligated to make payments with respect to, a Cash Value Insurance Contract or an Annuity Contract.

## B. Non-Reporting Financial Institution

1. The term “Non-Reporting Financial Institution” means any Financial Institution which is:

(a) a Governmental Entity, International Organisation or Central Bank, other than with respect to a payment that is derived from an obligation held in connection with a commercial financial activity of a type engaged in by a Specified Insurance Company, Custodial Institution, or Depository Institution;

(b) a Broad Participation Retirement Fund; a Narrow Participation Retirement Fund; a Pension Fund of a Governmental Entity, International Organisation or Central Bank; or a Qualified Credit Card Issuer;

(c) any other Entity that presents a low risk of being used to evade tax, has substantially similar characteristics to any of the Entities described in subparagraphs B(1)(a) and (b), and is defined in domestic law as a Non-Reporting Financial Institution, and, for Member States, is provided for in paragraph 7a of Article 8 of Council Directive 2011/16/EU on administrative cooperation in the field of taxation and communicated to San Marino and for San Marino, is communicated to the European Commission, provided that the status of such Entity as a Non-Reporting Financial Institution does not frustrate the purposes of this Agreement;

(d) an Exempt Collective Investment Vehicle; or

(e) a trust to the extent that the trustee of the trust is a Reporting Financial Institution and reports all information required to be reported pursuant to Section I with respect to all Reportable Accounts of the trust.

2. The term “Governmental Entity” means the government of a Member State, San Marino or other jurisdiction, any political subdivision of a Member State, San Marino or other jurisdiction (which, for the avoidance of doubt, includes a state, province, county, or municipality), or any wholly owned agency or instrumentality of a Member State, San Marino or other jurisdiction or of any one or more of the foregoing (each, a “Governmental Entity”). This category is comprised of the integral parts, controlled entities, and political subdivisions of a Member State, San Marino or other jurisdiction.

(a) An “integral part” of a Member State, San Marino or other jurisdiction means any person, organisation, agency, bureau, fund, instrumentality, or other body, however designated, that constitutes a governing authority of a Member State, San Marino or other jurisdiction. The net earnings of the governing authority must be credited to its own account or to other accounts of the Member State, San Marino or other jurisdiction, with no portion inuring to the benefit of any private person. An integral part does not include any individual who is a sovereign, official, or administrator acting in a private or personal capacity.

(b) A controlled entity means an Entity which is separate in form from the Member State, San Marino or other jurisdiction or which otherwise constitutes a separate juridical entity, provided that:

(i) the Entity is wholly owned and controlled by one or more Governmental Entities directly or through one or more controlled entities;

(ii) the Entity’s net earnings are credited to its own account or to the accounts of one or more Governmental Entities, with no portion of its income inuring to the benefit of any private person; and

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

(c) Income does not inure to the benefit of private persons if such persons are the intended beneficiaries of a governmental programme, and the programme activities are performed for

the general public with respect to the common welfare or relate to the administration of some phase of government. Notwithstanding the foregoing, however, income is considered to inure to the benefit of private persons if the income is derived from the use of a Governmental Entity to conduct a commercial business, such as a commercial banking business, that provides financial services to private persons.

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

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

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

- (a) does not have a single beneficiary with a right to more than 5% of the fund’s assets;
- (b) is subject to government regulation and provides information reporting to the tax authorities; and
- (c) satisfies at least one of the following requirements:
  - (i) the fund is generally exempt from tax on investment income, or taxation of such income is deferred or taxed at a reduced rate, due to its status as a retirement or pension plan;
  - (ii) the fund receives at least 50 % of its total contributions (other than transfers of assets from other plans described in subparagraphs B(5) to (7) or from retirement and pension accounts described in subparagraph C(17)(a)) from the sponsoring employers;
  - (iii) distributions or withdrawals from the fund are allowed only upon the occurrence of specified events related to retirement, disability, or death (except rollover distributions to other retirement funds described in subparagraphs B(5) to (7) or retirement and pension accounts described in subparagraph C(17)(a)), or penalties apply to distributions or withdrawals made before such specified events; or
  - (iv) contributions (other than certain permitted make-up contributions) by employees to the fund are limited by reference to earned income of the employee or may not exceed annually, an amount denominated in the domestic currency of each Member State or San Marino and corresponding to USD 50 000, applying the rules set forth in paragraph C of Section VII for account aggregation and currency translation.

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

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

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

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

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

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

An Investment Entity that is regulated as a collective investment vehicle does not fail to qualify under subparagraph B(9) as an Exempt Collective Investment Vehicle, solely because the collective investment vehicle has issued physical shares in bearer form, provided that:

- (a) the collective investment vehicle has not issued, and does not issue, any physical shares in bearer form after 31 December 2015;
- (b) the collective investment vehicle retires all such shares upon surrender;
- (c) the collective investment vehicle performs the due diligence procedures set forth in Sections II to VII and reports any information required to be reported with respect to any such shares when such shares are presented for redemption or other payment; and

(d) the collective investment vehicle has in place policies and procedures to ensure that such shares are redeemed or immobilised as soon as possible and in any event prior to 1 January 2018.

### C. Financial Account

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

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

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

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

The term “Financial Account” does not include any account that is an Excluded Account.

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

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

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

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

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

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

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

- (a) solely by reason of the death of an individual insured under a life insurance contract ;
- (b) as a personal injury or sickness benefit or other benefit providing indemnification of an economic loss incurred upon the occurrence of the event insured against;
- (c) as a refund of a previously paid premium (less cost of insurance charges whether or not actually imposed) under an Insurance Contract (other than an investment-linked life insurance or annuity contract) due to cancellation or termination of the contract, decrease in risk exposure during the effective period of the contract, or arising from the correction of a posting or similar error with regard to the premium for the contract;
- (d) as a policyholder dividend (other than a termination dividend) provided that the dividend relates to an Insurance Contract under which the only benefits payable are described in subparagraph C(8)(b); or
- (e) as a return of an advance premium or premium deposit for an Insurance Contract for which the premium is payable at least annually if the amount of the advance premium or premium deposit does not exceed the next annual premium that will be payable under the contract.

9. The term “Preexisting Account” means:

(a) a Financial Account maintained by a Reporting Financial Institution as of 31 December 2015.

(b) A Member State or San Marino shall have the option of extending the term “Preexisting Account” to mean also any Financial Account of an Account Holder, regardless of the date such Financial Account was opened, if:

- (i) the Account Holder also holds with the Reporting Financial Institution, or with a Related Entity within the same jurisdiction (being a Member State or San Marino) as the Reporting Financial Institution, a Financial Account that is a Preexisting Account under subparagraph C(9)(a);
- (ii) the Reporting Financial Institution, and, as applicable, the Related Entity within the same jurisdiction (being a Member State or San Marino) as the Reporting Financial Institution, treats both of the aforementioned Financial Accounts, and any other Financial Accounts of the Account Holder that are treated as Preexisting Accounts under point (b), as a single Financial Account for purposes of satisfying the standards of knowledge requirements set forth in paragraph A of Section VII, and for purposes of determining the balance or value of any of the Financial Accounts when applying any of the account thresholds;
- (iii) with respect to a Financial Account that is subject to AML/KYC Procedures, the Reporting Financial Institution is permitted to satisfy such AML/KYC Procedures for the Financial Account by relying upon the AML/KYC Procedures performed for the Preexisting Account described in subparagraph C(9)(a); and

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

Before the entry into force of the Amending Protocol signed on ...\*, Member States shall communicate to San Marino and San Marino shall communicate to the European Commission whether they have exercised the option provided for in this point. The European Commission may coordinate the transmission of the communication from Member States to San Marino and the European Commission shall transmit the communication from San Marino to all Member States. All further changes to the exercise of that option by a Member State or San Marino shall be communicated in the same manner.

10. The term “New Account” means a Financial Account maintained by a Reporting Financial Institution opened on or after 1 January 2016, unless it is treated as a Preexisting Account under the extended definition of Preexisting Account in subparagraph C(9).

11. The term “Preexisting Individual Account” means a Preexisting Account held by one or more individuals.

12. The term “New Individual Account” means a New Account held by one or more individuals.

13. The term “Preexisting Entity Account” means a Preexisting Account held by one or more Entities.

14. The term “Lower Value Account” means a Preexisting Individual Account with an aggregate balance or value, as of 31 December 2015, that does not exceed an amount denominated in the domestic currency of each Member State or San Marino and corresponding to USD 1 000 000.

15. The term “High Value Account” means a Preexisting Individual Account with an aggregate balance or value that exceeds, as of 31 December 2015 or 31 December of any subsequent year, an amount denominated in the domestic currency of each Member State or San Marino and corresponding to USD 1 000 000.

16. The term “New Entity Account” means a New Account held by one or more Entities.

17. The term “Excluded Account” means any of the following accounts:

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

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

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

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

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

(v) either (i) annual contributions are limited to an amount denominated in the domestic currency of each Member State or San Marino and corresponding to

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USD 50 000 or less, or (ii) there is a maximum lifetime contribution limit to the account of an amount denominated in the domestic currency of each Member State or San Marino and corresponding to USD 1 000 000 or less, in each case applying the rules set forth in paragraph C of Section VII for account aggregation and currency translation.

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

(b) an account that satisfies the following requirements:

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

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

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

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

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

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

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

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

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

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

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

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

(i) a court order or judgment.

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

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

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

- the assets of the account, including the income earned thereon, will be paid or otherwise distributed for the benefit of the purchaser, seller, lessor, or lessee (including to satisfy such person's obligation) when the property is sold, exchanged, or surrendered, or the lease terminates;

- the account is not a margin or similar account established in connection with a sale or exchange of a Financial Asset; and

- the account is not associated with an account described in subparagraph C(17)(f).

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

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

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

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

(ii) beginning on or before 1 January 2016, the Financial Institution implements policies and procedures either to prevent a customer from making an overpayment in excess of an amount denominated in the domestic currency of each Member State or San Marino and corresponding to USD 50 000, or to ensure that any customer overpayment in excess of that amount is refunded to the customer within 60 days, in each case applying the rules set forth in paragraph C of Section VII for currency translation. For this purpose, a customer overpayment does not refer to credit balances to the extent of disputed charges but does include credit balances resulting from merchandise returns.

(g) any other account that presents a low risk of being used to evade tax, has substantially similar characteristics to any of the accounts described in subparagraphs C(17)(a) to (f), and is defined in domestic law as an Excluded Account and, for Member States, is provided for in paragraph 7a of Article 8 of Council Directive 2011/16/EU on administrative cooperation in the field of taxation and communicated to San Marino and for San Marino, is communicated

to the European Commission, provided that the status of such account as an Excluded Account does not frustrate the purposes of this Agreement.

#### D. Reportable Account

1. The term “Reportable Account” means an account held by one or more Reportable Persons or by a Passive NFE with one or more Controlling Persons that is a Reportable Person, provided it has been identified as such pursuant to the due diligence procedures described in Sections II to VII.

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

3. The term “Reportable Jurisdiction Person” means an individual or Entity that is resident in a Reportable Jurisdiction under the tax laws of such jurisdiction, or an estate of a decedent that was a resident of a Reportable Jurisdiction. For this purpose, an Entity such as a partnership, limited liability partnership or similar legal arrangement, which has no residence for tax purposes shall be treated as resident in the jurisdiction in which its place of effective management is situated.

4. The term “Reportable Jurisdiction” means San Marino with regard to a Member State or a Member State with regard to San Marino in the context of the obligation to provide the information specified in Section I.

5. The term “Participating Jurisdiction” with regard to a Member State or San Marino means:

(a) any Member State with regard to reporting to San Marino, or

(b) San Marino with regard to reporting to a Member State, or

(c) any other jurisdiction (i) with which the relevant Member State or San Marino, as the context requires, has an agreement in place pursuant to which that other jurisdiction will provide the information specified in Section I, and (ii) which is identified in a list published by that Member State or San Marino and notified to San Marino, respectively to the European Commission

(d) with regard to Member States, any other jurisdiction (i) with which the European Union has an agreement in place pursuant to which that other jurisdiction will provide the information specified in Section I, and (ii) which is identified in a list published by the European Commission.

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

7. The term “NFE” means any Entity that is not a Financial Institution.

8. The term “Passive NFE” means any: (i) NFE that is not an Active NFE; or (ii) an Investment Entity described in subparagraph A(6)(b) that is not a Participating Jurisdiction Financial Institution.

9. The term “Active NFE” means any NFE that meets any of the following criteria:

(a) less than 50 % of the NFE’s gross income for the preceding calendar year or other appropriate reporting period is passive income and less than 50 % of the assets held by the NFE during the preceding calendar year or other appropriate reporting period are assets that produce or are held for the production of passive income;

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

(c) the NFE is a Governmental Entity, an International Organisation, a Central Bank , or an Entity wholly owned by one or more of the foregoing;

(d) substantially all of the activities of the NFE consist of holding (in whole or in part) the outstanding stock of, or providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a Financial Institution, except that an Entity does not qualify for this status if the Entity functions (or holds itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle whose purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes;

(e) the NFE is not yet operating a business and has no prior operating history, but is investing capital into assets with the intent to operate a business other than that of a Financial Institution, provided that the NFE does not qualify for this exception after the date that is 24 months after the date of the initial organisation of the NFE;

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

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

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

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

(ii) it is exempt from income tax in its jurisdiction of residence (being a Member State, San Marino or other jurisdiction);

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

(iv) the applicable laws of the NFE’s jurisdiction of residence (being a Member State, San Marino or other jurisdiction) or the NFE’s formation documents do not permit any

income or assets of the NFE to be distributed to, or applied for the benefit of, a private person or non-charitable Entity other than pursuant to the conduct of the NFE's charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the NFE has purchased; and

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

#### E. Miscellaneous

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

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

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

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

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

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

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

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

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

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

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

Before the entry into force of the Amending Protocol signed on ...\*, Member States shall communicate to San Marino and San Marino shall communicate to the European Commission whether they have exercised the option provided for in this subparagraph. The European Commission may coordinate the transmission of the communication from Member States to San Marino and the European Commission shall transmit the communication from San Marino to all Member States. All further changes to the exercise of that option by a Member State or San Marino shall be communicated in the same manner.

## Section IX: Effective Implementation

Each Member State and San Marino must have rules and administrative procedures in place to ensure effective implementation of, and compliance with, the reporting and due diligence procedures set out above including:

1. rules to prevent any Financial Institutions, persons or intermediaries from adopting practices intended to circumvent the reporting and due diligence procedures;
2. rules requiring Reporting Financial Institutions to keep records of the steps undertaken and any evidence relied upon for the performance of the reporting and due diligence procedures and adequate measures to obtain those records;
3. administrative procedures to verify Reporting Financial Institutions' compliance with the reporting and due diligence procedures; administrative procedures to follow up with a Reporting Financial Institution when undocumented accounts are reported;
4. administrative procedures to ensure that the Entities and accounts defined in domestic law as Non-Reporting Financial Institutions and Excluded Accounts continue to have a low risk of being used to evade tax; and

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\* OJ: please insert the date of signature of this Amending Protocol.

5. effective enforcement provisions to address non-compliance.

#### SECTION X: Implementation Dates as Regards Reporting Financial Institutions Located in Austria

In the case of Reporting Financial Institutions located in Austria, all references to “2016” and “2017” in this Annex should be read as references to “2017” and “2018” respectively. In the case of Preexisting Accounts held by Reporting Financial Institutions located in Austria, all references to “31 December 2015” in this Annex should be read as references to “31 December 2016”.

## ANNEX II

### **Complementary Reporting and Due Diligence rules for financial account information**

#### **1. Change in circumstances**

A ‘change in circumstances’ includes any change that results in the addition of information relevant to a person's status or otherwise conflicts with such person's status. In addition, a change in circumstances includes any change or addition of information to the Account Holder's account (including the addition, substitution, or other change of an Account Holder) or any change or addition of information to any account associated with such account (applying the account aggregation rules described in subparagraphs C(1) to (3) of Section VII of Annex I) if such change or addition of information affects the status of the Account Holder. If a Reporting Financial Institution has relied on the residence address test described in subparagraph B(1) of Section III of Annex I and there is a change in circumstances that causes the Reporting Financial Institution to know or have reason to know that the original Documentary Evidence (or other equivalent documentation) is incorrect or unreliable, the Reporting Financial Institution must, by the later of the last day of the relevant calendar year or other appropriate reporting period, or 90 calendar days following the notice or discovery of such change in circumstances, obtain a self-certification and new Documentary Evidence to establish the residence(s) for tax purposes of the Account Holder. If the Reporting Financial Institution cannot obtain the self-certification and new Documentary Evidence by such date, the Reporting Financial Institution must apply the electronic record search procedure described in subparagraphs B(2) to (6) of Section III of Annex I.

#### **2. Self-certification for New Entity Accounts**

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

#### **3. Residence of a Financial Institution**

A Financial Institution is ‘resident’ in a Member State, San Marino or another Participating Jurisdiction if it is subject to the jurisdiction of such Member State, San Marino or another Participating Jurisdiction (i.e., the Participating Jurisdiction is able to enforce reporting by the Financial Institution). In general, where a Financial Institution is resident for tax purposes in a Member State, San Marino or another Participating Jurisdiction, it is subject to the jurisdiction of such Member State, San Marino or another Participating Jurisdiction and it is, thus, a Member State Financial Institution, San Marino Financial Institution or another Participating Jurisdiction Financial Institution. In the case of a trust that is a Financial Institution (irrespective of whether it is resident for tax purposes in a Member State, San Marino or another Participating Jurisdiction), the trust is considered to be subject to the jurisdiction of a Member State, San Marino or another Participating Jurisdiction if one or more of its trustees are resident in such Member State, San Marino or another Participating Jurisdiction except if the trust reports all the information required to be reported pursuant to this Agreement or another agreement implementing the Global Standard with respect to Reportable Accounts maintained by the trust to another Participating Jurisdiction (being a Member State, San Marino or another Participating Jurisdiction), because it is resident for tax purposes in such other Participating Jurisdiction. However, where a Financial Institution (other than a trust)

does not have a residence for tax purposes (e.g., because it is treated as fiscally transparent, or it is located in a jurisdiction that does not have an income tax), it is considered to be subject to the jurisdiction of a Member State, San Marino or another Participating Jurisdiction and it is, thus, a Member State, San Marino or another Participating Jurisdiction Financial Institution if:

- it is incorporated under the laws of the Member State, San Marino or another Participating Jurisdiction ;
- it has its place of management (including effective management) in the Member State, San Marino or another Participating Jurisdiction ; or
- it is subject to financial supervision in the Member State, San Marino or another Participating Jurisdiction.

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

#### **4. Account maintained**

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

- in the case of a Custodial Account, by the Financial Institution that holds custody over the assets in the account (including a Financial Institution that holds assets in street name for an Account Holder in such institution).
- in the case of a Depository Account, by the Financial Institution that is obligated to make payments with respect to the account (excluding an agent of a Financial Institution regardless of whether such agent is a Financial Institution).
- in the case of any equity or debt interest in a Financial Institution that constitutes a Financial Account, by such Financial Institution.
- in the case of a Cash Value Insurance Contract or an Annuity Contract, by the Financial Institution that is obligated to make payments with respect to the contract.

#### **5. Trusts that are Passive NFEs**

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

#### **6. Address of Entity’s principal office**

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

## **ANNEX III**

### **ADDITIONAL DATA PROTECTION SAFEGUARDS REGARDING THE TREATMENT OF THE DATA COLLECTED AND EXCHANGED UNDER THIS AGREEMENT**

#### **1. Definitions**

For the purposes of this Agreement the following terms have the following meanings:

- (a) “personal data” means any information relating to an identified or identifiable natural person (a “data subject”); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity;
- (b) “processing” means any operation or set of operations which is performed upon personal data, whether or not by automatic means, such as collection, recording, organisation, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission or transfer, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction.

#### **2. Non-discrimination**

The Contracting Parties shall ensure that the safeguards applicable to the processing of personal data under this Agreement and relevant national laws apply to all individuals without discrimination, in particular on the basis of nationality or country of residence or physical presence.

#### **3. Data**

The data processed by the Contracting Parties under this Agreement shall be relevant, necessary and proportionate to the purposes set out in this Agreement.

The Contracting Parties shall not exchange personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, or data concerning the health or sex life of the individual.

#### **4. Transparency, right of access, rectification and erasure of data**

Where information received from another jurisdiction under this Agreement is, in accordance with the conditions set out in Article 6(5) of this Agreement, used for other purposes within the receiving jurisdiction, or is transmitted by the receiving jurisdiction to a third jurisdiction (being another Member State or San Marino), the Competent Authority of the receiving jurisdiction using the information for other purposes or transmitting it to a third jurisdiction shall inform the individual Reportable Person concerned. This information shall be provided in sufficient time for the individual to exercise his data protection rights and, in any case, before the receiving jurisdiction has used the information for the other purposes or transmitted it to the third jurisdiction.

With respect to any personal data which is processed under this Agreement, any individual shall have the right to request access to his personal data that is processed by the Reporting Financial Institutions and/or the Competent Authorities and to rectification where the data is inaccurate. Where the data is unlawfully processed the individual may request its erasure.

To facilitate the exercise of this right, each individual shall be enabled to make requests for access to, rectification and/or erasure of his data which are addressed to the other Competent Authority via his own Competent Authority.

The requested Competent Authority shall provide access to the relevant data and, where appropriate, update and/or correct any inaccurate or incomplete data.

## **5. Right of redress**

With respect to any personal data which is processed under this Agreement, any individual shall have the right to effective administrative and judicial redress regardless of his nationality and country of residence in either or all of the jurisdictions involved.

## **6. Automated processing**

The Competent Authorities shall not take any decision which produces adverse legal effects concerning an individual or significantly affects him and which is based solely on automated processing of data intended to evaluate certain personal aspects relating to him.

## **7. Transfers to authorities of third countries**

A Competent Authority may occasionally transfer personal data received pursuant to this Agreement to public authorities in third countries, other than the Member States and San Marino, if all of the following circumstances apply:

- (a) the transfer is necessary for the purposes specified in Article 6(4) in the receiving third country and the data will be used by the receiving third country only for such purposes;
- (b) the data is relevant and proportionate to the purposes for which it is transferred;
- (c) the competences of the third country authority are directly related to the purposes referred to in Article 6(4);
- (d) the receiving third country ensures a level of protection of the personal data equivalent to the one established by this Agreement, as well as undertakes not to transfer the received data to any third parties;
- (e) the Competent Authority from which the information was received has provided prior agreement; and
- (f) the data subject has been informed of the transfer.

Any other transfers of information received pursuant to this Agreement to third parties shall be prohibited.

## **8. Data integrity and security**

With respect to the information processed under this Agreement, the Contracting Parties and the Reporting Financial Institutions shall have in place:

- (a) appropriate safeguards to ensure that such information remains confidential and is used solely for the purposes and by the persons or authorities referred to in Article 6;
- (b) the infrastructure for an effective exchange relationship (including established processes for ensuring timely, accurate, secure and confidential information exchanges, effective and reliable communications, and capabilities to promptly

resolve questions and concerns about exchanges or requests for exchanges and to administer the provisions of Article 4 of this Agreement); and

1. technical and organisational measures to prevent any unauthorised disclosure or access, accidental or unlawful destruction or accidental loss, or alteration, or any other unlawful form of processing;
- (c) technical and organisational measures for the rectification of any inaccurate information and the deletion of information for which there is no legal grounds to be retained.

The Contracting Parties shall ensure that the Reporting Financial Institutions shall without delay notify the Competent Authority in their jurisdiction when they have reasons to believe that they have reported any incorrect or incomplete information to such Competent Authority. The notified Competent Authority will take all appropriate measures available under its domestic law to address the errors described in the notice.

## **9. Sanctions**

The Contracting Parties shall ensure that any infringement of the provisions on the protection of personal data set out in this Agreement shall be subject to effective and dissuasive sanctions.

## **10. Oversight**

The processing of personal data by Reporting Financial Institutions and Competent Authorities under this Agreement shall be subject to the supervision of (i) the national data protection supervisory authorities established under their domestic laws implementing Directive 95/46/EC, in the Member States, and (ii) the Guarantor for the Confidentiality of Personal Data, established by Law no. 70 of 23 May 1995, devoted to the "Reform of Law no. 27 of 1 March 1983" on Collection, Elaboration and Use of Computerized Personal Data, in San Marino.

These authorities in the Member States and San Marino shall have effective powers of oversight, investigation, intervention and review, and shall have power to refer violations of law for legal action, where appropriate. They shall in particular ensure that complaints relating to non-compliance are received, investigated, responded to, and appropriately redressed.

## ANNEX IV

### LIST OF COMPETENT AUTHORITIES OF THE CONTRACTING PARTIES

The competent authorities for the purposes of this Agreement are:

- (a) in the Republic of San Marino: Il Segretario di Stato per le Finanze e il Bilancio or an authorised representative,
- (b) in the Kingdom of Belgium: De Minister van Financiën/Le Ministre des Finances or an authorised representative,
- (c) in the Republic of Bulgaria: Изпълнителният директор на Националната агенция за приходите or an authorised representative,
- (d) in the Czech Republic: Ministr financí or an authorised representative,
- (e) in the Kingdom of Denmark: Skatteministeren, or an authorised representative,
- (f) in the Federal Republic of Germany: Der Bundesminister der Finanzen or an authorised representative,
- (g) in the Republic of Estonia: Rahandusminister or an authorised representative,
- (h) in the Hellenic Republic: Ο Υπουργός Οικονομίας και Οικονομικών or an authorised representative,
- (i) in the Kingdom of Spain: El Ministro de Economía y Hacienda or an authorised representative,
- (j) in the French Republic: Le Ministre chargé du budget or an authorised representative,
- (k) in the Republic of Croatia: Ministar financija or an authorised representative
- (l) in Ireland: The Revenue Commissioners, or their authorised representative,
- (m) in the Italian Republic: Il Direttore Generale delle Finanze or an authorised representative,
- (n) in the Republic of Cyprus: Υπουργός Οικονομικών, or an authorised representative,
- (o) in the Republic of Latvia: Finanšu ministrs or an authorised representative,
- (p) in the Republic of Lithuania: Finansų ministras or an authorised representative,
- (q) in the Grand Duchy of Luxembourg: Le Ministre des Finances or an authorised representative,
- (r) in Hungary: A pénzügyminiszter or an authorised representative,
- (s) in the Republic of Malta: Il-Ministru responsabbli għall-Finanzi or an authorised representative,
- (t) in the Kingdom of the Netherlands: De Minister van Financiën or an authorised representative,
- (u) in the Republic of Austria: Der Bundesminister für Finanzen or an authorised representative,
- (v) in the Republic of Poland: Minister Finansów or an authorised representative,
- (w) in the Portuguese Republic: O Ministro das Finanças or an authorised representative,
- (x) in Romania: Președintele Agenției Naționale de Administrare Fiscală or an authorised representative,

(y) in the Republic of Slovenia: Minister za finance or an authorised representative,

(z) in the Slovak Republic: Minister financií or an authorised representative,

(aa) in the Republic of Finland: Valtiovarainministeriö/Finansministeriet or an authorised representative,

(ab) in the Kingdom of Sweden: Chefen för Finansdepartementet or an authorised representative,

(ac) in the United Kingdom of Great Britain and Northern Ireland and in the European territories for whose external relations the United Kingdom is responsible: the Commissioners of Inland Revenue or their authorised representative and the competent authority in Gibraltar, which the United Kingdom will designate in accordance with the Agreed Arrangements relating to Gibraltar authorities in the context of EU and EC instruments and related treaties notified to the Member States and institutions of the European Union of 19 April 2000, a copy of which shall be notified to San Marino by the Secretary General of the Council of the European Union, and which shall apply to this Agreement."

## Article 2

### Entry into force and application

1. This Amending Protocol requires ratification or approval by the Contracting Parties in accordance with their own procedures. The Contracting Parties shall notify each other of the completion of these procedures. The Amending Protocol shall enter into force on the first day of the second month following the last notification.

2. Notwithstanding paragraph 1, the Contracting Parties shall provisionally apply this Amending Protocol pending its entry into force. Such provisional application shall commence on 1 January 2016 subject to notification by each of the Contracting Parties to the other by 31 December 2015 of the completion of their respective internal procedures necessary for such provisional application.

3. In respect of information exchange upon request, the exchange of information provided for in this Amending Protocol shall be applicable to requests made on or after the date of its entry into force for information that relates to fiscal years beginning on or after the first day of January of the year of the entry into force of this Amending Protocol. Article 13 of the Agreement in the form prior to its amendment by this Amending Protocol shall continue to apply unless Article 5 of the Agreement as amended by this Amending Protocol applies.

4. Notwithstanding the paragraphs 1 to 3, the following obligations under the Agreement in the form prior to its amendment by this Amending Protocol shall continue to apply, as follows:

(i) the obligations of San Marino and the underlying obligations of paying agents established therein under Article 8 of the Agreement in the form prior to its amendment by this Amending Protocol and the obligations of San Marino and the underlying obligations of paying agents established therein under Article 9 of the Agreement in the form prior to its amendment by this Amending Protocol shall continue to apply until 30 June 2016 or until those obligations have been fulfilled;

(ii) the obligations of Member States under Article 10 of the Agreement in the form prior to its amendment by this Amending Protocol, with regard to withholding tax levied during 2015 and previous years, shall continue to apply until those obligations have been fulfilled.

## Article 3

### Languages

This Amending Protocol shall be drawn up in duplicate in the Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages, each text being equally authentic.

To be updated in all languages

IN WITNESS WHEREOF, the undersigned Plenipotentiaries have hereunto set their hands.

To be updated in all languages

Done at [XXXX], this [XXXX] day of [XXXX] in the year [XXXX].

To be updated in all languages

For the European Union

For the Republic of San Marino

Joint declarations of the Contracting Parties:

*Joint declaration of the Contracting Parties on the Agreement and the Annexes*

The Parties agree, regarding the implementation of the Agreement and the Annexes I, that the Commentaries to the OECD Model Competent Authority Agreement and Common Reporting Standard should be a source of illustration or interpretation and in order to ensure consistency in application.

*Joint declaration of the Contracting Parties on Article 5*

The Contracting Parties agree, regarding the implementation of Article 5 on Exchange of Information upon Request, that the Commentary to Article 26 of the OECD Model Tax Convention on Income and on Capital in the version current at the time of signature of the Amending Protocol should be a source of interpretation.

Where the OECD adopts new versions of the Commentary to Article 26 of the OECD Model Tax Convention on Income and on Capital in subsequent years, when acting as the requested jurisdiction, any Member State or the Republic of San Marino may apply those versions as a source of interpretation replacing the previous ones. That Member State shall communicate to the Republic of San Marino and the Republic of San Marino shall communicate to the European Commission when they apply the previous sentence. The European Commission may coordinate the transmission of the communication from Member States to the Republic of San Marino and the European Commission shall transmit the communication from the Republic of San Marino to all Member States. The application shall have an effect as of the date of the communication.

*Joint declaration of the Contracting Parties on the term “TIN”*

The parties agree that the term “TIN”, in the context of a Member State Reportable Person or a Member State Account Holder, should refer to the tax identification numbers or equivalent, whose structure and format have been notified to the European Commission and have been published in the Official Journal of the European Union as a compiled list.

The parties agree that the term “TIN”, in the context of a San Marino Reportable Person or a San Marino Account Holder, should refer to the following tax identification numbers:

- i – “Codice ISS” used to identify individuals;
- ii – “Codice Operatore Economico – (COE)” used to identify companies or other entities.

*Joint Declaration of the Contracting Parties on the relations between San Marino and the European Union*

The European Union recognises the active role played by the Republic of San Marino in the international process for transparency and tax cooperation among countries. San Marino is constantly working towards a full convergence with international and EU standards on anti-money laundering, tax and finance, as it has been recognized by Moneyval, the OECD and the International Monetary Fund.

In particular, the alignment process with the relevant provisions of the European Union on banking matters, anti-money laundering, payment system, statistics, euro banknotes and coins, provisions which are also important with regard to the above-mentioned transparency standards, is regulated by the Monetary Agreement signed in 2012 with the European Union. In that agreement San Marino committed to transposing into its national legal system a set of rules pertaining to the EU acquis.

This process of convergence is meant to be assisted by the Agreement with the European Union on the automatic exchange of financial account information to improve international tax compliance, in respect of which San Marino highlighted the need to ensure financial, technical and operational sustainability.

The European Union acknowledges San Marino's willingness to achieve, taking account of the start of the exchange of information under the Agreement between the European Union and San Marino on the automatic exchange of financial account information to improve international tax compliance, an effective integration of its financial and banking system within the EU market, in compliance with the obligations deriving from the 2012 Monetary Agreement.

Integration-related issues will be further addressed in the context of the Association Agreement with the European Union, the negotiation of which was officially opened on 18 March 2015.

*Joint declaration of the Contracting Parties on the definition of Central Bank*

The Contracting Parties agree, with reference to the criteria to identify Non-Reporting Financial Institution, (Annex I – section B), that the term “Central Bank” (paragraph 4) is to be interpreted for San Marino to refer to the Central Bank of the Republic of San Marino (Banca Centrale della Repubblica di San Marino).

*Joint declaration of the Contracting Parties on Article 2 of the Amending Protocol*

With reference to Article 2 of the Amending Protocol, both Parties agree that the provisional application of the Amending Protocol implies:

- That San Marino and the Member States, except Austria, and their Financial Institutions shall apply the reporting and due diligence rules consistent with Annexes I and II as of 1 January 2016, and that Austria and its Financial Institutions shall apply the reporting and due diligence rules consistent with Annexes I and II as of 1 January 2017, in view of meeting their obligations under Article 3(3) of the Agreement as amended by this Amending Protocol;
- That San Marino and its Financial Institutions, taking also into account the foreseen adoption and entry into force by end 2015 of a Council Directive repealing Council Directive 2003/48/EC, may suspend the application of their obligations under the Agreement between the European Community and the Republic of San Marino providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments, in the form prior to its amendment by this Amending Protocol, as of 1 January 2016, unless otherwise provided for in paragraphs 3 and 4 of Article 2 of the Amending Protocol.