



Brussels, 7.4.2015  
COM(2015) 151 final

2015/0076 (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 Swiss Confederation 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. 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 Switzerland 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 Switzerland and the EU.

Given the Swiss constitutional requirements for ratification, for Switzerland to be able to commence due diligence procedures in January 2017, with first exchanges under the Global Standard by September 2018, the Amending Protocol would need to be signed by May 2015. This would grant to all Member States the earliest possible cooperation to which Switzerland is committed at international level.

## **2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS**

The Amending Protocol implements the Global Standard between EU Member States and Switzerland. 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 negotiation between the Commission and Switzerland. The Commission reported to the European Council at its meeting in March 2014 and in December 2014 on the state of play of savings negotiations with Switzerland.

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 on automatic exchange of financial account information. The Expert Group includes representatives from organisations representing the financial sector and organisations campaigning against tax evasion and tax avoidance.

## **3. LEGAL ELEMENTS OF THE PROPOSAL**

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 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 2 replaces the existing articles and Annexes with a new set of provisions comprising 11 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 and an Annex III that lists the Competent Authorities of Switzerland 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. Article 7 provides for an additional stage of consultation before any Member State or Switzerland undertake 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 9 takes over the full set of provisions of Article 15 of the Agreement before its amendment by the Amending Protocol, because the negotiators of the Contracting Parties agreed not to make any change to these provisions which relate to business taxation and are not influenced by the Global Standard. Article 11 defines the territorial scope.

Annex I follows both the OECD Common Reporting Standard and Annex I to the Directive on Administrative Cooperation. Annex II implements key parts of the CRS Commentaries 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 OECD Common Reporting Standard (CRS) requested by the Swiss 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. Section I(A) on insurances that are effectively prevented by law from being sold to residents of a Reportable Jurisdiction is reintroduced. In order to avoid risks of abuse of that exemption, a corresponding Joint Declaration is included at the end of the Amending Protocol.
3. All the relevant options provided for in the OECD CRS Commentaries and in the Directive on Administrative Cooperation have been left at the discretion of each Member State and Switzerland and are not exercised directly in the Agreement. There is instead an obligation on Member States and Switzerland to notify each other and the Commission whether they have exercised any particular option. This is meant as a safeguard for the correct application of the alternative definition of “Related Entity” in connection with the option on new accounts of current customers.
4. 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).
5. 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.

Article 3 of the Amending Protocol includes provisions on the entry into force and application. It deals 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 Switzerland to Member States and final exchange of information under the voluntary disclosure mechanism.

Article 4 includes a Protocol on additional safeguards related to the exchange of information on request, which Switzerland includes in its tax treaties. The text specifies that exchanges on the basis of a group request are not prevented. The Protocol on additional safeguards is in line with the Global Forum’s Terms of Reference for exchange of information on request.

Article 5 lists the languages in which the Amending Protocol is signed.

The revised Agreement is supplemented by four Joint Declarations of the contracting parties and one Unilateral Declaration by Switzerland.

The first Joint Declaration concerns the expected date of entry into force of the revised Agreement. The second and third 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 fourth Declaration aims at preventing misinterpretation of Section III(A) of Annex I and establishes a mechanism of mutual notification of the cases where that exemption would have grounds to apply. The fifth Declaration is a unilateral one from the Swiss side.

**4. BUDGETARY IMPLICATION**

The proposal does not entail have any budgetary implications.

**5. OPTIONAL ELEMENTS**

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 Swiss Confederation 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 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) thereof,

Having regard to the proposal from the European Commission,

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

Whereas:

- (1) In accordance with Council Decision 2015/XXX/EU, the Amending Protocol to the Agreement between the European Community and the Swiss Confederation 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 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 the negotiations, duly reflects the negotiating directive issued by the Council as it aligns the Agreement with the latest developments at international level concerning automatic exchange of information, namely 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 Swiss Confederation have actively participated in the work of the OECD. The text of the Agreement, as amended by the Amending Protocol, is the legal basis for implementing the Global Standard in the relations between the Union and the Swiss Confederation.
- (3) The Amending Protocol should be approved on behalf of the Union,

HAS ADOPTED THIS DECISION:

### *Article 1*

The Amending Protocol to the Agreement between the European Community and the Swiss Confederation 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 Union.

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

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<sup>1</sup> OJ C , , p . .

*Article 2*

The President of the Council shall designate the person empowered to give, on behalf of the Union, the notification provided for in Article 3(1) of the Amending Protocol, in order to express the consent of the Union to be bound by it.

*Article 3*

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

Done at Brussels,

*For the Council  
The President*



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ANNEX 1

**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 Swiss Confederation 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 Swiss Confederation 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

Amending the

“Agreement between the European Community and the Swiss Confederation 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”, hereinafter referred to as ‘Agreement’

THE EUROPEAN UNION,

and

THE SWISS CONFEDERATION, hereinafter referred to as ‘Switzerland’,

both hereinafter referred to as ‘Contracting Party’ or ‘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 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, and desire to improve international tax compliance by further building on that relationship,

Whereas, the Contracting Parties desire to conclude 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 10 of the Agreement in the form prior to its amendment with this Amending Protocol, which currently provides for exchange of 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, the Contracting Parties will apply their respective data protection laws and practices to the processing of personal data exchanged in accordance with the Agreement as amended by this Amending Protocol and undertake to notify each other without undue delay in the event of any change in the substance of these laws and practices,

Whereas, the Member States and Switzerland have in place (i) appropriate safeguards to ensure that the information received pursuant to the Agreement as amended by this Amending Protocol remains confidential and is used solely for the purposes of and by the persons or authorities concerned with the assessment or collection or recovery of, the enforcement or prosecution in respect of, or the determination of appeals in relation to taxes, or the oversight of these, as well as for other authorised purposes, and (ii) 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 the Agreement as amended by this Amending Protocol),

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 and proportionate for the purpose of enabling Member States' and Switzerland'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 title of the Agreement shall be replaced by the following title:

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

#### Article 2

Articles 1 through 22 as well as the Annexes shall be replaced by the following:

#### “Article 1

#### Definitions

1. For the purposes of this agreement (“Agreement”), the following terms have the following meanings:
  - a) The term “European Union” means the Union as established by the Treaty on the European Union and includes the territories in which the Treaty on the Functioning of the European Union is applied and under the conditions laid down in that Treaty.
  - b) The term “Member State” means a Member State of the European Union.
  - c) The term “Switzerland” means the territory of the Swiss Confederation as defined by its law in accordance with international law.
  - d) For the purposes of this Agreement the Competent Authorities of Switzerland and Member States shall mean those authorities listed in Annex III. Annex III shall form an integral part of this Agreement. The list of Competent Authorities in Annex III may be amended by simple notification of the other Contracting Party by Switzerland for the authority referred to in (a) therein and by the European Union for the other authorities referred to in (b) to (ac) therein.
  - e) The term “Member State Financial Institution” means (i) any Financial Institution that is resident in a Member State, but excludes 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) The term “Swiss Financial Institution” means (i) any Financial Institution that is resident in Switzerland, but excludes any branch of that Financial Institution that is located outside Switzerland, and (ii) any branch of a Financial Institution that is not resident in Switzerland, if that branch is located in Switzerland.
  - g) The term “Reporting Financial Institution” means any Member State Financial Institution or Swiss Financial Institution, as the context requires, that is not a Non-Reporting Financial Institution.
  - h) The term “Reportable Account” means a Member State Reportable Account or a Swiss 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 Switzerland.
  - i) The term “Member State Reportable Account” means a Financial Account that is maintained by a Swiss 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) The term “Swiss Reportable Account” means a Financial Account that is maintained by a Member State Reporting Financial Institution and held by one or more Swiss persons that are Reportable Persons or by a Passive NFE with one or more Controlling Persons that is a Swiss Reportable Person.
  - k) The term “Member State Person” means an individual or Entity that is identified by a Swiss Reporting Financial Institution as resident in a Member State pursuant to due diligence procedures consistent with Annexes I and II, or an estate of a decedent that was a resident of a Member State.
  - l) The term “Swiss Person” means an individual or Entity that is identified by a Member State Reporting Financial Institution as resident in Switzerland pursuant to due diligence procedures consistent with Annexes I and II, or an estate of a decedent that was a resident of Switzerland.
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 or, where applicable, the domestic law of the Member State applying the Agreement, and (ii) for Switzerland, 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 or II will, unless the context otherwise requires or the Competent Authority of a Member State and Switzerland 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 Switzerland, under its domestic law, any meaning under the applicable tax laws of the jurisdiction concerned (being a Member State or Switzerland) 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 Switzerland 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 Switzerland 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 Swiss Reportable Account, and in the case of Switzerland 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);
  - 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 Switzerland) exchanging the information.
2. For the purposes of the exchange of information in Article 2, the information exchanged will identify the currency in which each relevant amount is denominated.
3. With respect to paragraph 2 of Article 2, information is to be exchanged with respect to the first year starting at the entry into force of the Amending Protocol signed on [XXXX] and all subsequent years and will be exchanged within nine months after the end of the calendar year to which the information relates.
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

### Collaboration on Compliance and Enforcement

The Competent Authority of a Member State will notify the Competent Authority of Switzerland and the Competent Authority of Switzerland 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 Switzerland and any Member State, the Competent Authorities of Switzerland and any Member State shall exchange upon request such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of Switzerland and the Member States, or of their political subdivisions or local authorities, insofar as the taxation under such domestic laws is not contrary to an applicable double tax agreement between Switzerland 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 Switzerland or on a Member State the obligation:
  - a) to carry out administrative measures at variance with the laws and administrative practice of Switzerland or that Member State;
  - b) to supply information which is not obtainable under the laws or in the normal course of the administration of Switzerland or that Member State;

- 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 Switzerland acting as the requesting jurisdiction in accordance with this Article, Switzerland 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 Switzerland 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 protection of personal data

1. Any information obtained by a jurisdiction (being a Member State or Switzerland) under this Agreement shall be treated as confidential and protected in the same manner as information obtained under the domestic law of that jurisdiction and, to the extent necessary for the protection of personal data, in accordance with the applicable domestic law, and safeguards which may be specified by the jurisdiction supplying the information as required under its domestic law.
2. 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 Switzerland), or the oversight of the above. Only the persons or authorities mentioned above may use the information and then only for purposes spelled out in the preceding sentence. They may, notwithstanding the provisions of paragraph 1, disclose it in public court proceedings or in judicial decisions relating to such taxes.
3. Notwithstanding the provisions of the preceding paragraphs, information received by a jurisdiction (being a Member State or Switzerland) may be used for other purposes when such information may be used for such other purposes under the laws of the supplying jurisdiction (being, respectively, Switzerland or a Member State) and the Competent Authority of that jurisdiction authorises such use. Information provided by a jurisdiction (being a Member State or Switzerland) to another jurisdiction (being, respectively, Switzerland or a Member State) may be transmitted by the latter to a third jurisdiction (being another Member State), subject 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 Switzerland subject to prior authorisation by the Competent Authority of the Member State from which the information originated.

4. Each Competent Authority of a Member State or Switzerland will notify the other Competent Authority, i.e. that of Switzerland or the specific Member State, immediately regarding any breach of confidentiality, failure of safeguards and any sanctions and remedial actions consequently imposed.

## Article 7

### Consultations and suspension of the Agreement

1. If any difficulties in the implementation or interpretation of this Agreement arise, any of the Competent Authorities of Switzerland or a Member State may request consultations between the Competent Authority of Switzerland 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 question 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 Switzerland may suspend the exchange of information under this Agreement towards, respectively, Switzerland 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, a failure by the Competent Authority of a Member State or Switzerland to provide timely or adequate information as required under this Agreement or defining the status of Entities or accounts as Non-Reporting Financial Institutions and Excluded Accounts in a manner that frustrates the purposes of the Agreement.

## Article 8

### Amendments

1. The Contracting Parties shall consult each other at each occasion where 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 the 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 Switzerland: when the change has been incorporated in an agreement with a third State or into domestic legislation.

## Article 9

### Dividends, interest and royalty payments between companies

1. Without prejudice to the application of domestic or agreement-based provisions for the prevention of fraud or abuse in Switzerland and in Member States, dividends paid by subsidiary companies to parent companies shall not be subject to taxation in the source State where:

- the parent company has a direct minimum holding of 25 % of the capital of such a subsidiary for at least two years, and,
- one company is resident for tax purposes in a Member State and the other company is resident for tax purposes in Switzerland, and,
- under any double tax agreements with any third States neither company is resident for tax purposes in that third State, and,
- both companies are subject to corporation tax without being exempted and both adopt the form of a limited company [1].

2. Without prejudice to the application of domestic or agreement-based provisions for the prevention of fraud or abuse in Switzerland and in Member States, interest and royalty payments made between associated companies or their permanent establishments shall not be subject to taxation in the source State, where:

- such companies are affiliated by a direct minimum holding of 25 % for at least two years or are both held by a third company which has directly a minimum holding of 25 % both in the capital of the first company and in the capital of the second company for at least two years, and;
- where a company is resident for tax purposes or a permanent establishment is located in a Member State and the other company is resident for tax purposes or other permanent establishment situated in Switzerland, and;



- under any double tax agreements with any third States none of the companies is resident for tax purposes in that third State and none of the permanent establishments is situated in that third State, and;
  - all companies are subject to corporation tax without being exempted in particular on interest and royalty payments and each adopts the form of a limited company [1].
3. Existing double taxation agreements between Switzerland and the Member States which provide for a more favourable taxation treatment of dividends, interest and royalty payments shall remain unaffected.

## Article 10

### Termination of Agreement

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 to Article 6 of this Agreement.

## Article 11

### Territorial Scope

This Agreement shall apply, on the one hand, to the territories of the Member States in which the Treaty establishing the European Union is applied and under the conditions laid down in that Treaty and, on the other hand, to Switzerland.

## 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 through E, each Reporting Financial Institution must report to the Competent Authority of its jurisdiction (being a Member State or Switzerland) 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 Switzerland), 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, Switzerland or other jurisdiction) of residence and TIN(s) of the Entity and the name, address, jurisdiction(s) (being a Member State or Switzerland) 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, Switzerland 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 through 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 Switzerland 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 these obligations shall remain the responsibility of the Reporting Financial Institutions.
- E.** Each Member State or Switzerland 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 Switzerland allow 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**

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

- A.** Accounts Not Required to be Reviewed, Identified, or Reported. A Preexisting Individual Account that is a Cash Value Insurance Contract or an Annuity Contract is not required to be reviewed, identified or reported, provided the Reporting Financial Institution is effectively prevented by law from selling such Contract to residents of a Reportable Jurisdiction.
- 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 Switzerland 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 Switzerland 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 subparagraph B(2)(a) through (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 subparagraph B(2)(a) through (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 Switzerland, 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 Switzerland 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, Switzerland 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, Switzerland 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 this 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) through (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) through (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 Switzerland, as the context requires, as an undocumented account.
6. If a Preexisting Individual Account is not a High Value Account as of 31 December preceding the entry into force of the Amending Protocol signed on [XXXX], 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 this 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 within one year of the entry into force of the Amending Protocol signed on [XXXX]. Review of Preexisting Lower Value Individual Accounts must be completed within two years of the entry into force of the Amending Protocol signed on [XXXX].

**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 USD 250 000 or an equivalent amount denominated in the domestic currency of each Member State or Switzerland as of 31 December preceding the entry into force of the Amending Protocol signed on [XXXX], 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 USD 250 000 or an equivalent amount denominated in the domestic currency of each Member State or Switzerland, as of 31 December preceding the entry into force of the Amending Protocol signed on [XXXX], and a Preexisting Entity Account that does not exceed as of 31 December preceding the entry into force of the Amending Protocol signed on [XXXX], 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) through (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 USD 1 000 000 or an equivalent amount denominated in the domestic currency of each Member State or Switzerland; or
    - ii. a self-certification from the Account Holder or such Controlling Person of the jurisdiction(s) (being a Member State, Switzerland 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 USD 250 000 or an equivalent amount denominated in the domestic currency of each Member State or Switzerland, as of 31 December preceding the entry

into force of the Amending Protocol signed on [XXXX], must be completed within two years of the entry into force.

2. Review of Preexisting Entity Accounts with an aggregate account balance or value that does not exceed USD 250 000 or an equivalent amount denominated in the domestic currency of each Member State or Switzerland, as of 31 December preceding the entry into force of the Amending Protocol signed on [XXXX], 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) through (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 Switzerland 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 USD 1 000 000 or an equivalent amount denominated in the domestic currency of each Member State or Switzerland .

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 [XXXX], Member States shall communicate to Switzerland and Switzerland shall communicate to the European Commission whether they have exercised the option foreseen in this paragraph. The European Commission may coordinate the transmission of the communication from Member States to Switzerland and the European Commission shall transmit the communication from Switzerland to all Member States. All further changes to the exercise of that option by a Member State or Switzerland 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 dollar amounts or amounts denominated in the domestic currency of each Member State or Switzerland 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 Swiss 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(8)(d) through (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 Switzerland and for Switzerland, 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, Switzerland or other jurisdiction, any political subdivision of a Member State, Switzerland 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, Switzerland 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, Switzerland or other jurisdiction.
- a) An “integral part” of a Member State, Switzerland 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, Switzerland 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, Switzerland 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, Switzerland 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) (1) that is comprised primarily of governments; (2) that has in effect a headquarters or

substantially similar agreement with the Member State, Switzerland or the other jurisdiction; and (3) 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, Switzerland 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, Switzerland or the other jurisdiction, whether or not owned in whole or in part by the Member State, Switzerland 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) through (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) through (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 USD 50 000 or an equivalent amount denominated in the domestic currency of each Member State or Switzerland, 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 Switzerland) 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 the entry into force of the Amending Protocol signed on [XXXX], the Financial Institution implements policies and procedures either to prevent a customer from making an overpayment in excess of USD 50 000 or an equivalent amount denominated in the domestic currency of each Member State or Switzerland , 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 preceding the entry into force of the Amending Protocol signed on [XXXX];
- 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 through 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 within two years of the entry into force of the Amending Protocol signed on [XXXX].

### 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, Switzerland 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 preceding the entry into force of the Amending Protocol signed on [XXXX].
- b) A Member State or Switzerland 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 Switzerland) 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 Switzerland) 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 [XXXX], Member States shall communicate to Switzerland and Switzerland shall communicate to the European Commission whether they have exercised the option foreseen in this point. The European Commission may coordinate the transmission of the communication from Member States to Switzerland and the European Commission shall transmit the communication from Switzerland to all Member States. All further changes to the exercise of that option by a Member State or Switzerland 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 the entry into force of the Amending Protocol signed on [XXXX], 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 preceding the entry into force of the Amending Protocol signed on [XXXX] that does not exceed USD 1 000 000 or an equivalent amount denominated in the domestic currency of each Member State or Switzerland .
- 15. The term “High Value Account” means a Preexisting Individual Account with an aggregate balance or value that exceeds USD 1 000 000 or an equivalent amount denominated in the domestic currency of each Member State or Switzerland as of 31 December preceding the entry into force of the Amending Protocol signed on [XXXX] or 31 December of any subsequent year.
- 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 USD 50 000 or an equivalent amount denominated in the domestic currency of each Member State or Switzerland or less, or (ii) there is a maximum lifetime contribution limit to the account of USD 1 000 000 or an equivalent amount denominated in the domestic currency of each Member State or Switzerland 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) through (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 USD 50 000 or an equivalent amount denominated in the domestic currency of each Member State or Switzerland 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) through (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 the entry into force of the Amending Protocol signed on [XXXX], the Financial Institution implements policies and procedures either to prevent a customer from making an overpayment in excess of USD 50 000 or an equivalent amount denominated in the domestic currency of each Member State or Switzerland , 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) through (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 Switzerland and for Switzerland, 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 through 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 Switzerland with regard to a Member State or a Member State with regard to Switzerland 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 Switzerland means:
  - a) any Member State with regard to reporting to Switzerland, or
  - b) Switzerland with regard to reporting to a Member State, or
  - c) any other jurisdiction (i) with which the relevant Member State or Switzerland, 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 Switzerland and notified to Switzerland, 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, Switzerland 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, Switzerland 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, Switzerland 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, Switzerland 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, Switzerland 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, Switzerland 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 either Entity controls the other Entity, or the two Entities are under common control. For this purpose control includes direct or indirect ownership of more than 50 per cent of the vote and value in an Entity. A Member State or Switzerland shall have the option of defining an Entity as 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.

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

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, Switzerland 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, Switzerland or other jurisdiction) in which it claims to be a resident or the jurisdiction (being a Member State, Switzerland 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 Switzerland 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 [XXXX], Member States shall communicate to Switzerland and Switzerland shall communicate to the European Commission whether they have exercised the option foreseen in this subparagraph. The European Commission may coordinate the transmission of the communication from Member States to Switzerland and the European Commission shall transmit the communication from Switzerland to all Member States. All further changes to the exercise of that option by a Member State or Switzerland shall be communicated in the same manner.

## **Section IX: Effective Implementation**

Each Member State and Switzerland 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 above 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
5. effective enforcement provisions to address non-compliance.



## 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) through (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) through (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, Switzerland or another Participating Jurisdiction if it is subject to the jurisdiction of such Member State, Switzerland 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, Switzerland or another Participating Jurisdiction, it is subject to the jurisdiction of such Member State, Switzerland or another Participating Jurisdiction and it is, thus, a Member State Financial Institution, Swiss 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, Switzerland or another Participating Jurisdiction), the trust is considered to be subject to the jurisdiction of a Member State, Switzerland or another Participating Jurisdiction if one or more of its trustees are resident in such Member State, Switzerland 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, Switzerland 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, Switzerland or another Participating Jurisdiction and it is, thus, a Member State, Switzerland or another Participating Jurisdiction Financial Institution if:

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

Where a Financial Institution (other than a trust) is resident in two or more Participating Jurisdictions (being a Member State, Switzerland 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:

- a) 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).
- b) in 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).
- c) in the case of any equity or debt interest in a Financial Institution that constitutes a Financial Account, by such Financial Institution.
- d) 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, Switzerland or other jurisdiction in which it claims to be a resident or the Member State, Switzerland 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

### LIST OF COMPETENT AUTHORITIES OF THE CONTRACTING PARTIES

The Competent Authorities for the purposes of this Agreement are:

(a) in Switzerland, Le chef du Département fédéral des finances ou son représentant autorisé / Der Vorsteher oder die Vorsteherin des Eidgenössischen Finanzdepartements oder die zu seiner oder ihrer Vertretung bevollmächtigte Person / Il capo del Dipartimento federale delle finanze o la persona autorizzata a rappresentarlo,

(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 Capo del Dipartimento per le Politiche Fiscali 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 the Republic of 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 finančii or an authorised representative,

(z) in the Slovak Republic: Minister finančii 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 Switzerland by the Secretary General of the Council of the European Union, and which shall apply to this Agreement.

[1] With regard to Switzerland, the term "limited company" covers:

- société anonyme/Aktiengesellschaft/società anonima;
- société à responsabilité limitée/Gesellschaft mit beschränkter Haftung/società a responsabilità limitata;
- société en commandite par actions/Kommanditaktiengesellschaft/società in accomandita per azioni.”

### Article 3

#### 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 January following the last notification.
  
2. 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 10 of the Agreement in the form prior to its amendment with this Amending Protocol shall continue to apply unless Article 5 of the Agreement as amended by this Amending Protocol applies.
  
3. The claims of individuals in accordance with Article 9 of the Agreement in the form prior to its amendment with this Amending Protocol shall remain unaffected after the entry into force of this Amending Protocol.
  
4. Switzerland shall establish a final account by the end of the period of applicability of the Agreement in the form prior to its amendment with this Amending Protocol, make a final payment to the Member States and report the information, that it received from paying agents established in Switzerland, in accordance with Article 2 of the Agreement in the form prior to its amendment with this Amending Protocol with respect to the last year of applicability of the Agreement in the form prior to its amendment with this Amending Protocol, or to any preceding year, if applicable.

## Article 4

The Agreement is supplemented by a Protocol with the following content:

“Protocol to the Agreement between the European Union and the Swiss Confederation on the automatic exchange of financial account information to improve international tax compliance.

On the occasion of the signature of this Amending Protocol between the European Union and the Swiss Confederation the duly authorized undersigned have agreed the following provisions which shall form an integral part of the Agreement as amended by this Amending Protocol:

1. It is understood that an exchange of information under Article 5 of this Agreement will only be requested once the requesting State (being a Member State or Switzerland) has exhausted all regular sources of information available under the internal taxation procedure.
2. It is understood that the Competent Authority of the requesting State (being a Member State or Switzerland) shall provide the following information to the Competent Authority of the requested State (being, respectively, Switzerland or a Member State) when making a request for information under Article 5 of this Agreement:
  - (i) the identity of the person under examination or investigation;
  - (ii) the period of time for which the information is requested;
  - (iii) a statement of the information sought including its nature and the form in which the requesting State wishes to receive the information from the requested State;
  - (iv) the tax purpose for which the information is sought;
  - (v) to the extent known, the name and address of any person believed to be in possession of the requested information.
3. It is understood that the reference to “foreseeable relevance” is intended to provide for exchange of information under Article 5 of this Agreement to the widest possible extent and, at the same time, to clarify that Member States and Switzerland are not at liberty to engage in “fishing expeditions” or to request information that is unlikely to be relevant to the tax affairs of a given taxpayer. While paragraph 2 contains important procedural requirements that are intended to ensure that fishing expeditions do not occur, clauses (i) through (v) of paragraph 2 nevertheless are not to be interpreted in order to frustrate effective exchange of information. The standard of “foreseeable relevance” can be met both in cases dealing with one taxpayer (whether identified by name or otherwise) or several taxpayers (whether identified by name or otherwise).
4. It is understood that this Agreement does not include exchange of information on a spontaneous basis.
5. It is understood that in case of an exchange of information under Article 5 of this Agreement, the administrative procedural rules regarding taxpayers’ rights provided for in the requested State (being a Member State or Switzerland) remain applicable. It is further understood that these provisions aim at guaranteeing the taxpayer a fair procedure and not at preventing or unduly delaying the exchange of information process.”

## Article 5

Languages



This Amending Protocol is 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 of these language versions 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] on [XX] day of [XXXX] in the year [XXXX].

To be updated in all languages

For the European Union

Für die Schweizerische Eidgenossenschaft

Pour la Confédération suisse

Per la Confederazione svizzera

## Declarations of the Contracting Parties:

### *Joint declaration of the Contracting Parties on the entry into force of the Amending Protocol*

The Contracting Parties declare that they expect that the constitutional requirements of Switzerland and the requirements of European Union law concerning entering into international agreements will be fulfilled in time to enable the Amending Protocol to enter into force on the first day of January 2017. They will take all the measures in their power to achieve this goal.

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

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

### *Joint declaration of the Contracting Parties on Article 5 of the Agreement*

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 should be a source of interpretation.

### *Joint declaration of the Contracting Parties on Section III (A) of Annex I of the Agreement*

The Contracting Parties agree that they will examine the practical relevance of Section III (A) of Annex I which provides that preexisting Cash Value Insurance Contracts and Annuity Contracts are not required to be reviewed, identified or reported, provided the Reporting Financial Institution is effectively prevented by law from selling such Contracts to residents of a Reportable Jurisdiction.

The Contracting Parties have a common interpretation that under Section III (A) of Annex I the Reporting Financial Institution is effectively prevented by law from selling Cash Value Insurance Contracts and Annuity Contracts to residents of a Reportable Jurisdiction only where the EU and domestic law of Member States or Swiss law applicable to a Reporting Financial Institution resident in a Participating Jurisdiction (being a Member State or Switzerland) does not only effectively prevent that Reporting Financial Institution by law from selling Cash Value Insurance Contracts or Annuity Contracts in a Reportable Jurisdiction (being, respectively, Switzerland or a Member State), but those laws also effectively prevent the Reporting Financial Institution by law from selling Cash Value

Insurance Contracts or Annuity Contracts to residents of that Reportable Jurisdiction in any other circumstances.

In this context, each Member State will inform the European Commission, which will in turn notify Switzerland, in case Reporting Financial Institutions in Switzerland are prevented by law from selling such Contracts to its residents based on applicable EU and domestic law of that Member State. Accordingly, Switzerland will notify the European Commission, which will in turn inform Member States, in case Reporting Financial Institutions of one or more Member States are prevented by law from selling such Contracts to Swiss residents based on Swiss law. These notifications will be made prior to the entry into force of the Amending Protocol regarding the foreseen legal situation as of the entry into force. In the absence of such notification it will be considered that Reporting Financial Institutions are not effectively prevented by the law of the Reportable Jurisdiction in one or more circumstances from selling Cash Value Insurance Contracts or Annuity Contracts to residents of that Reportable Jurisdiction. Provided the law of the jurisdiction of the Reporting Financial Institution also does not effectively prevent Reporting Financial Institutions from selling Cash Value Insurance Contracts or Annuity Contracts to residents of the Reportable Jurisdiction, Section III (A) of Annex I shall not apply to the relevant Reporting Financial Institutions and Contracts.

*Declaration of Switzerland on Article 5 of the Agreement*

The Swiss delegation has informed the European Commission that Switzerland will not exchange information in relation to a request based on data obtained illegally. The European Commission took note of the Swiss position