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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Delegations will find attached document COM(2020) 314 final - Annex.

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EUROPEAN
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ANNEX

ANNEX

to the

Proposal for a Council Directive

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

{SEC(2020) 271 final} - {SWD(2020) 129 final} - {SWD(2020) 130 final} -
{SWD(2020) 131 final}

ANNEX

‘ANNEX V

REPORTING RULES FOR PLATFORM OPERATORS

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

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

SECTION I

DEFINED TERMS

The following terms shall have the meaning set forth below:

A. Reporting Platform Operators

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

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

- (a) processing of payments in relation to Relevant Activity;
 - (b) users to list or advertise a Relevant Activity;
 - (c) redirecting or transferring of users to a Platform.
2. “Platform Operator” means an Entity that contracts with Sellers to make available all or part of a Platform to such Sellers.
3. “Reporting Platform Operator” means a Platform Operator who is in any of the following situations:
 - (a) it is resident for tax purposes in a Member State or, where a Platform Operator does not have a residence for tax purposes in a Member State, it fulfils any of the following conditions:
 - (i) it is incorporated under the laws of a Member State;
 - (ii) it has its place of management (including effective management) in a Member State;
 - (iii) it has a permanent establishment in a Member State;
 - (b) it is neither resident for tax purposes, nor incorporated or managed in a Member State, nor has a permanent establishment in a Member State, but

facilitates the carrying out of a Relevant Activity by Reportable Sellers or the rental of immovable property located in a Member State.

4. “Relevant Activity” means an activity carried out for Consideration and being any of the following:
- (a) the rental of immovable property;
 - (b) a Personal Service;
 - (c) the sale of goods;
 - (d) the rental of any mode of transport.
 - (e) investing and lending in the context of crowdfunding, as defined in Union financial markets legal framework.

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

5. “Consideration” means compensation in any form, net of any fees, commissions or taxes withheld or charged by the Reporting Platform Operator, that is paid or credited to a Seller in connection with the Relevant Activity, the amount of which is known or reasonably knowable by the Platform Operator.
6. “Personal Service” means a service involving time- or task-based work performed by one or more individuals, acting either independently or on behalf of an Entity, and which is carried out at the request of a user, either online or physically offline after having been facilitated via a platform.

B. Reportable Sellers

1. “Seller” means a Platform user, either an individual or an Entity, that is registered at any moment during the Reportable Period on the Platform and carries out the Relevant Activity.
2. “Active Seller” means any Seller that either provides a Relevant Activity during the Reportable Period or is paid or credited Consideration in connection with a Relevant Activity during the Reportable Period.
3. “Reportable Seller” means any Active Seller, other than an Excluded Seller, that is resident in a Member State or that rented out immovable property located in a Member State.

A Reportable Seller shall be considered as a resident in a Member State within the meaning of the first subparagraph if it fulfils any of the following conditions during the Reportable Period:

- (a) it had its Primary Address in a Member State;
 - (b) it had a TIN or VAT identification number issued in a Member State;
 - (c) for a Seller that is an Entity, it had a permanent establishment in a Member State.
4. “Excluded Seller” means any Seller that is a Governmental Entity.

C. Other definitions

1. “Entity” means a legal person or a legal arrangement, such as a corporation, partnership, trust or foundation.
2. “Governmental Entity” means the government of a Member State or other jurisdiction, any political subdivision of a Member State or other jurisdiction (which includes a state, province, county, or municipality), or any wholly owned agency or instrumentality of a Member State or other jurisdiction or of any one or more of the foregoing (each, a “Governmental Entity”).
3. “TIN” means a Taxpayer Identification Number or functional equivalent in the absence of a Taxpayer Identification Number.
4. “VAT identification number” means the unique number that identifies a taxable person or a non-taxable legal entity that is registered for value added tax purposes.
5. “Primary Address” means the address that is the primary residence of a Seller that is an individual, as well as the address that is the registered office of a Seller that is an Entity.
6. “Reportable Period” means the calendar year in respect of which reporting is being completed pursuant to Section III.
7. “Property Listing” means all immovable property units located at the same street address and offered for rent on a Platform by the same Seller.
8. “Financial Account Identifier” means the unique identifying number or reference available to the Platform Operator of the bank account or other similar payment services account to which the Consideration is paid or credited.

SECTION II

DUE DILIGENCE PROCEDURES

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

A. Sellers not Subject to review

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

B. Collection of Seller information

1. The Reporting Platform Operator shall collect the following information for each Seller that is an individual:
 - (a) the first and last name;
 - (b) the Primary Address;
 - (c) any TIN issued to the Seller, including each Member State of issuance;
 - (d) the VAT identification number of the Seller, where available;
 - (e) the date of birth.

2. The Reporting Platform Operator shall collect the following information for each Seller that is an Entity and not an Excluded Seller:
 - (a) the legal name;
 - (b) the Primary Address;
 - (c) any TIN issued to the Seller, including each Member State of issuance;
 - (d) the VAT identification number of the Seller, where available;
 - (e) the business registration number;
 - (f) the existence of a permanent establishment in the Union, where available, indicating each respective Member State, where such a permanent establishment is located.
3. Notwithstanding subparagraphs B(1) and (2), the Reporting Platform Operator is not required to collect information referred to in points (b) to (e) of subparagraph B(1) and points (b) to (f) of subparagraph B(2) in case it relies on direct confirmation of the identity and residence of the Seller through an identification service made available by a Member State or the Union to ascertain the identity and tax residence of the Seller.
4. Notwithstanding point (c) of subparagraph B(1) and points (c) and (e) of subparagraph B(2), the TIN or the business registration number, as the case may be, are not required to be collected in any of the following situations:
 - (a) the Member State of residence of the Seller does not issue a TIN or business registration number to the Seller;
 - (b) the Member State of residence of the Seller does not require the collection of the TIN issued to such Seller.

C. Verification of Seller information

1. The Reporting Platform Operator shall determine whether the information collected pursuant to paragraph A, subparagraph B(1), points (a) to (e) of subparagraph B(2) and paragraph E is reliable, using all information and documents available to the Reporting Platform Operator in its records, as well as any electronic interface made available by a Member State or the Union free of charge to ascertain the validity of the TIN and/or VAT identification number.
2. Notwithstanding subparagraph C(1), for the completion of the due diligence procedures pursuant to subparagraph F(2), the Reporting Platform Operator may determine whether the information collected pursuant to paragraph A, subparagraph B(1), points (a) to (e) of subparagraph B(2) and paragraph E is reliable, using information and documents available to the Reporting Platform Operator in its electronically searchable records.
3. In application of subparagraph F(3)(b) and notwithstanding subparagraphs C(1) and C(2), in instances where the Reporting Platform Operator has reason to know that any of the information items described in paragraph B or E may be inaccurate by virtue of information provided by the competent authority of a Member State in a request concerning a specific Seller, it shall request the Seller to correct information items that were found to be incorrect and to provide supporting documents, data or information, which is reliable and of independent source, such as:

- (a) valid government-issued identification document,
- (b) recent tax residency certificate.

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

1. A Reporting Platform Operator shall consider a Seller resident in the Member State of the Seller's Primary Address. Where different from the Member State of the Seller's Primary Address, a Reporting Platform Operator shall consider Seller resident also in the Member State of issuance of TIN or VAT identification number. Where the Seller has provided information with respect to the existence of a permanent establishment pursuant to point (f) of subparagraph B(2), a Reporting Platform Operator shall consider a Seller resident also in the respective Member State as specified by the Seller.
2. Notwithstanding subparagraph D(1), a Reporting Platform Operator shall consider a Seller resident in each Member State confirmed by an electronic identification service made available by a Member State or the Union pursuant to subparagraph B(3).

E. Collection of information on rented immovable property

Where a Seller is engaged in Relevant Activity involving the rental of immovable property, the Reporting Platform Operator shall collect the address of each Property Listing and, where issued, respective land registration number.

F. Timing and validity of due diligence procedures

1. A Reporting Platform Operator shall complete the due diligence procedures set out in paragraphs A to E by 31 December of the Reportable Period.
2. Notwithstanding subparagraph F(1), for Sellers that were already registered on the Platform as of 1 January 2022 or as of the date on which an Entity becomes a Reporting Platform Operator, the due diligence procedures set out in paragraphs A to E are required to be completed by 31 December of the second Reportable Period for the Reporting Platform Operator.
3. Notwithstanding subparagraph F(1), a Reporting Platform Operator may rely on the due diligence procedures conducted in respect of previous Reportable Periods, provided that:
 - (a) the Seller information required in subparagraphs B(1) and B(2) has been either collected and verified or confirmed within the last 36 months; and
 - (b) the Reporting Platform Operator does not have reason to know that information collected pursuant to paragraphs A, B and E is or has become unreliable or incorrect.

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

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

H. Completion of the due diligence procedures by third parties

1. A Reporting Platform Operator may rely on a third party service provider to fulfil the due diligence obligations laid down in this Section, but such obligations shall remain the responsibility of the Reporting Platform Operator.
2. Where a Platform Operator fulfils the due diligence obligations for a Reporting Platform Operator with respect to the same Platform pursuant to subparagraph H(1), such Platform Operator shall carry out the due diligence procedures pursuant to the rules laid down in this Section.

SECTION III

REPORTING REQUIREMENTS

A. Time and manner of reporting

1. A Reporting Platform Operator within the meaning of point (a) of subparagraph A(3) of Section I shall report to the competent authority of the Member State determined in accordance with point (a) of subparagraph A(3) of Section I the information set out in paragraph B of this Section with respect to the Reportable Period no later than 31 January of the year following the calendar year in which the Seller is identified as a Reportable Seller.
2. If a Reporting Platform Operator within the meaning of point (a) of subparagraph A(3) of Section I fulfils any of the conditions listed therein in more than one Member State, it shall elect one of these Member States, to carry out the reporting requirements set out in this Section. Such a Reporting Platform Operator shall report the information listed in paragraph B of this Section with respect to the Reportable Period to the competent authority of the Member State of election, as this is determined in accordance with subparagraph E(1) of Section IV, no later than 31 January of the year following the calendar year in which Consideration is paid or credited to a Reportable Seller for the Relevant Activity.
3. A Reporting Platform Operator within the meaning of point (b) of subparagraph A(3) of Section I shall report the information set out in paragraph B of this Section with respect to the Reportable Period to the competent authority of the Member State of registration, as this is determined in accordance with subparagraph F(1) of Section IV, no later than 31 January of the year following the calendar year in which Consideration is paid or credited to a Reportable Seller for the Relevant Activity.
4. A Reporting Platform Operator shall also provide the information set out in subparagraphs B(2) and B(3) to the Reportable Seller to which it relates, no later than 31 January of the year following calendar year in which Consideration is paid or credited to a Reportable Seller for a Relevant Activity.
5. The information with respect to the Consideration paid or credited in a fiat currency shall be reported in the currency in which it was paid or credited. In case the Consideration was paid or credited in a form other than fiat currency, it shall be reported in the local currency, converted or valued in a manner that is consistently determined by the Reporting Platform Operator.
6. The information about the Consideration and other amounts shall be reported in respect of the quarter of the Reportable Period in which the Consideration was paid or credited.

B. Information to be reported

Each Reporting Platform Operator shall report the following information:

1. The name, registered office address and TIN of the Reporting Platform Operator, as well as the business name(s) of the Platform(s) in respect of which the Reporting Platform Operator is reporting.
2. With respect to each Reportable Seller that carried out Relevant Activity, other than immovable property rental:
 - (a) the information items required to be collected pursuant to paragraph B of Section II;
 - (b) the Financial Account Identifier, insofar as it is available to the Reporting Platform Operator and the competent authority of the Member State where the Reportable Seller is resident has not notified the competent authorities of all other Member States that it does not intend to use the Financial Account Identifier for this purpose;
 - (c) where different from the name of the Reportable Seller, the name of the holder of the financial account to which the Consideration is paid or credited, to the extent available to the Reporting Platform Operator, as well as any other identifying information available to the Reporting Platform Operator with respect to that account holder;
 - (d) each Member State in which the Reportable Seller is resident for the purposes of this Directive pursuant to paragraph B(3) of Section I;
 - (e) the total Consideration paid or credited during each quarter of the Reportable Period;
 - (f) any fees, commissions or taxes withheld or charged by the Reporting Platform during each quarter of the Reportable Period.
3. With respect to each Reportable Seller that provided immovable property rental services:
 - (a) the information items required to be collected pursuant to paragraph B of Section II;
 - (b) the Financial Account Identifier, insofar as it is available to the Reporting Platform Operator and the competent authority of the Member State where the Reportable Seller is resident has not notified the competent authorities of all other Member States that it does not intend to use the Financial Account Identifier for this purpose;
 - (c) where different from the name of the Reportable Seller, the name of the holder of the financial account to which the Consideration is paid or credited, to the extent available to the Reporting Platform Operator, as well as any other financial identification information available to the Reporting Platform Operator with respect to the account holder;
 - (d) each Member State in which the Reportable Seller is resident for the purposes of this Directive pursuant to subparagraph B(3) of Section I;

- (e) the address of each Property Listing, determined on the basis of the procedures set out in paragraph E of Section II and respective land registration number, where available;
- (f) the total Consideration paid or credited during each quarter of the Reportable Period;
- (g) any fees, commissions or taxes withheld or charged by the Reporting Platform Operator during each quarter of the Reportable Period;
- (h) where available, the number of days each Property Listing was rented during the Reportable Period and the type of each Property Listing.

SECTION IV

EFFECTIVE IMPLEMENTATION

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

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

1. Member States shall take the necessary measures to require Reporting Platform Operators to enforce the collection and verification requirements under Section II in relation to their Reportable Sellers.
2. Where a Reportable Seller does not provide the information required under Section II after two reminders following the initial request by the Reporting Platform Operator, the latter shall close the account of the Seller and prevent the Seller from re-registering on the Platform for the period of six months or withhold the payment of the Consideration to the Seller.

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

1. Member States shall take the necessary measures to require Reporting Platform Operators to keep records of the undertaken steps and any information relied upon for the performance of the due diligence procedures and reporting requirements set out in Sections II and III. Such records shall remain available for a sufficiently long period of time and in any event for a period of not less than 5 years but not more than 7 years following the end of the Reportable Period to which they relate.
2. Member States shall take the necessary measures, including the possibility of addressing an order for reporting to Reporting Platform Operators, in order to ensure that all necessary information is reported to the competent authority so that the latter can comply with the obligation to communicate information in accordance with Article 8ac(2).

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

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

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

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

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

If a Reporting Platform Operator within the meaning of point (a) of subparagraph A(3) of Section I fulfils any of the conditions listed therein in more than one Member State, it shall elect one of these Member States, to carry out its reporting requirements pursuant to Section III. The Reporting Platform Operator shall notify all the competent authorities of these Member States of its election.

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

1. A Reporting Platform Operator within the meaning of point (b) of subparagraph A(3) of Section I shall register with the competent authority of any Member State pursuant to Article 8ac(4) when it commences its activity as a Platform Operator. Where such a Reporting Platform Operator is already identified for VAT purposes within the Union under the special scheme provided in Article 358a et seq. of Council Directive 2006/112/EC¹ or under the special scheme provided for in Article 369a et seq. of that Directive, it shall not register in any other Member State.
2. The Reporting Platform Operator shall communicate to the Member State of its single registration the following information about itself:
 - (a) name;
 - (b) postal address;
 - (c) electronic addresses, including websites;
 - (d) any TIN issued to the Reporting Platform Operator;
 - (e) a statement that the Platform is not already identified for VAT purposes within the Union.
3. The Reporting Platform Operator shall notify the Member State of single registration of any changes in the information provided under subparagraph F(2).
4. The Member State of single registration shall allocate an individual identification number to the Reporting Platform Operator and shall notify it by electronic means.
5. The Member State of single registration shall delete a Reporting Platform Operator from the register in the following cases:

¹ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1).

- (a) the Platform Operator notifies that Member State that it no longer carries out any activity as a Platform Operator;
- (b) in the absence of a notification pursuant to point a), there are grounds to assume that the activity of a Platform Operator has ceased;
- (c) the Platform Operator no longer meets the conditions laid down in point (b) of subparagraph A(3) of Section I.’