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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject:	COUNCIL DIRECTIVE on Faster and Safer Relief of Excess Withholding Taxes

COUNCIL DIRECTIVE (EU) 2024/…

of …

on faster and safer relief of excess withholding taxes

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinions of the European Parliament[1+],

Having regard to the opinions of the European Economic and Social Committee[2],

Acting in accordance with a special legislative procedure,

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1 Opinion of 28 February 2024 and opinion of … (not yet published in the Official Journal).

\+ OJ: Please insert in the footnote the date of the second opinion of the European Parliament.

2 OJ C, C/2024/1580, 5.3.2024, ELI: http://data.europa.eu/eli/C/2024/1580/oj.

Whereas:

(1) Ensuring fair taxation in the internal market and the good functioning of the capital markets union (CMU) are among the key political priorities for the Union. In that context, removing obstacles to cross-border investment, while combating tax fraud and tax abuse is critical. Such obstacles exist, for example, in cases where inefficient and disproportionately burdensome procedures exist to relieve excess taxes withheld at source on dividend or interest income paid on shares or bonds traded publicly to non-resident investors.
In addition, in some cases, the current situation has proven to be inadequate in preventing recurrent risks of tax fraud, tax evasion and tax avoidance, as shown by numerous cases of multiple tax reclaim schemes and fraud involving the use of dividend arbitrage or dividend stripping (*Cum/Ex* and *Cum/Cum*). Therefore, this Directive seeks to make withholding tax procedures more efficient, while strengthening them against the risk of tax fraud and tax abuse.

(2) In order to strengthen Member States' ability to prevent and fight tax fraud and tax abuse, which is currently hampered by a general lack of reliable and timely information on investors, it is necessary to provide the possibility of a common framework for the relief of excess withholding taxes on cross-border investments in securities that is resilient to the risk of tax fraud and tax abuse. That framework would lead to convergence among the various relief procedures applied in the Member States while ensuring transparency and certainty with regard to the identity of investors for securities issuers, withholding tax agents, financial intermediaries and Member States, as the case may be. To that effect, the framework should rely on automated procedures, such as the digitalisation of the tax residence certificate in terms of both procedure and form. The framework should also be flexible enough to duly take into account the various systems applicable in different Member States while providing appropriate anti-abuse tools to mitigate the risk of tax fraud, tax evasion and tax avoidance. In that regard, it is necessary to take into consideration the different approaches of tax authorities, depending on the relief system in place. Under the relief-at-source system, tax authorities are only able to obtain relevant information on the investors and the payment chain after relief is applied. By contrast, where a refund system is applied, it is crucial for the tax authorities to obtain adequate information before relief is applied in order to assess whether relief should be granted. In both relief systems, rules on the liability of the financial intermediary are established in case of undue relief. This Directive does not restrict a Member State's ability to regulate the means by which certified financial intermediaries recoup any outlay incurred while adapting to, or complying with, the obligations laid down by this Directive.

(3) Considering those differences and also the principle of proportionality, the provisions of this Directive regarding national registers of certified financial intermediaries and obligations to report information should not be binding on Member States that have a comprehensive relief-at-source system in place and a market capitalisation ratio below a certain threshold, as defined in this Directive. The objective of promoting efficient and robust systems for the relief of excess withholding tax across the internal market should be considered to have been achieved where Member States that continue to apply their national relief-at-source system fulfil both those criteria as set out in this Directive. First, the market capitalisation criterion correlates with the size of the economy and the possible scale of dividend payments. Low market capitalisation implies low volumes of dividend distributions and therefore a lower risk of tax abuse. When a Member State reaches or exceeds the market capitalisation ratio threshold for a certain period of time, the common rules of this Directive should apply and should remain applicable, irrespective of whether at any time thereafter, its market capitalisation ratio falls below that threshold. Second, comprehensive relief-at-source systems that allow for the application of the appropriate tax rate at the time of payment in a straightforward and efficient manner should be considered to be equivalent to the relief-at-source system set out in this Directive. Those two criteria together can ensure that investors across the internal market have effective access to efficient withholding tax relief procedures in all Member States. For Member States which have a relatively small stock market and whose national relief-at-source system is sufficiently efficient, a requirement to change those systems would not be considered proportionate. Furthermore, as the common rules of this Directive would cover nearly the whole of the internal market, an appropriate level of convergence would be achieved.

(4) This Directive harmonises access to systems of relief for investors in all Member States by providing for a common relief-at-source system and a common quick refund system, while still leaving the possibility for Member States to maintain their national relief-at-source systems, under certain conditions and taking into account the differences in development of Member States' economies, and while ensuring access to systems of relief in Member States. In any case, depending on risk assessment criteria, the Member States concerned that consider it appropriate, for example, to strengthen their instruments to combat tax fraud and tax abuse, could apply the tools provided for in this Directive.

(5) In order to be considered as comprehensive, a national relief-at-source system should contain a number of specific key features as set out in this Directive. It should provide natural persons or entities that are entitled to such relief broad access and should provide relief if the taxpayer is entitled to it, except in the case of failure to report the information that is required by the Member State. In principle, the required information should not go beyond the data referred to in Articles 12, 13 or 15. The national relief-at-source system should provide access both for direct and indirect investments and should not have additional entry barriers other than those provided in Article 11(2). Thus, the national relief-at-source system should not only provide the legal possibility of relief, but relief should also be de facto granted, in cases where the taxpayer is entitled to it. The national relief-at-source system should not impose an additional obligation such as a parallel system of reporting. The Member State should lay down rules on liability for the loss of withholding tax revenue and penalties applicable to infringements of national provisions on that relief-at-source system. With regard to the condition of the market capitalisation ratio, the European Securities and Markets Authority ('ESMA') should provide the data that are required under regulatory technical standards. Where a Member State does not fulfil or no longer fulfils at least one of the two conditions concerning the comprehensive relief-at-source system and the market capitalisation ratio threshold, it should transpose into national legislation all provisions of this Directive.

(6) To ensure a proportionate approach, this Directive should cover procedures to relieve excess withholding taxes only in those Member States that levy withholding tax on cash or stock dividends at different rates depending on the specific investor's tax residence. In such cases, Member States need to provide relief where a higher rate of tax has been applied in a situation for which a lower rate is applicable. Member States should also have the opportunity to implement similar procedures in relation to interest payments to non-residents on publicly traded bonds, to improve the efficiency of the relevant relief procedure and to ensure a higher level of taxpayers' compliance. Member States that do not need relief procedures in relation to excess withholding taxes on dividends and interest, as the case may be, are not concerned by the procedures referred to in this Directive. Where relief of excess withholding taxes is needed and to ensure a common access to relief of excess withholding taxes, this Directive should provide for a common relief-at-source system and a quick refund system to be implemented by Member States.

(7) Given that investors could be located in any Member State, rules for a common and digital tax residence certificate (eTRC) should apply in all Member States. To ensure that all Union taxpayers have access to a common, appropriate and effective proof of their tax residence, Member States should use automated procedures for the issuance of tax residence certificates for the purposes of applying a relief-at-source system, a comprehensive relief-at-source system, a quick refund system or a standard refund system in order to obtain relief of excess withholding tax on dividends paid for publicly traded shares or on interest paid for publicly traded bonds, if applicable. Moreover, eTRCs should be issued in the same recognisable and acceptable digital form and with the same content.

(8) To allow greater efficiency, the eTRC should cover a maximum period of the calendar year or of the fiscal year, such as a straddle fiscal year or a fiscal year longer than one calendar year, for which it is issued and should remain valid for certifying residence for the period covered. The issuing Member States should be able to completely or partially invalidate an eTRC if the tax authorities have evidence that the taxpayer is not a resident of the issuing Member State for all or part of the period covered. In order to allow for the efficient identification of Union entities, the eTRC should include the tax identification number or, in its absence, i.e. where the Member State concerned does not issue such numbers for its taxpayers, a functional equivalent for tax purposes. In addition, where the issuing authority of the eTRC possesses such data, the eTRC should include the European unique identifier (EUID) or the legal entity identifier (LEI) or any legal entity registration number which is valid for the entire period covered. Moreover, in the case where no tax identification number exists for a natural person, because the Member State of residence does not issue such numbers for its taxpayers, the use of a functional equivalent for tax purposes should also be possible. The identifiers used should be valid for the entire period covered.

(9) The eTRC should contain a reference to the double tax treaty in relation to which a taxpayer requests to be considered resident for tax purposes, where applicable. In order for the eTRC to be recognised by the source Member State as a valid proof of tax residence, where relief of excess withholding tax is claimed under the provisions of a double tax treaty, it is essential that the eTRC include a reference to the applicable double tax treaty. It should be possible for the issuing authority to refer to more than one applicable double tax treaty on a given eTRC. While primarily intended for the implementation of the withholding tax procedures, the eTRC could also have a wider scope of application and serve for proving the residence for tax purposes beyond withholding tax procedures. For the purposes of relief of withholding tax procedures, the eTRC should not include any additional information. The eTRC is intended to be issued only once during the calendar year or once during the fiscal year, even when the same taxpayer invests on multiple occasions in the same source Member States, as long as the taxpayer's residence for tax purposes remains the same.

(10) To fulfil the objective of more efficient relief of excess withholding tax, common procedures should be implemented across the Union which allow clear and secure information on the identity of the investor to be obtained quickly, especially in the case of large investor bases, that is, in relation to investment in publicly traded securities, where identifying individual investors is challenging. Such procedures should also allow for the application of the appropriate tax rate at the time of payment (relief at source) or for a quick refund of any excess amount of tax paid. Given that cross-border investments usually involve a payment chain of financial intermediaries, relevant procedures should also allow for the tracing and identification of the chain of intermediaries and, consequently, of the income flow from the issuer of the security to the registered owner and information about the underlying investor. The most common types of investment arrangements usually involve a custodian bank or another investment entity, such as a broker, which holds the securities in its name on behalf of the underlying investor. In such arrangements, it is the underlying investor that would be considered to be the registered owner of the securities. Member States that apply withholding tax on income from securities and provide relief for excess withholding tax and do not have a comprehensive relief-at-source system in place, or that have a market capitalisation ratio equal to or above the threshold set out in this Directive, should therefore establish and maintain a national register of those financial intermediaries that have a significant role in the payment chain. Once registered, such financial intermediaries should be required to report information available to them about the dividend or interest payments, if applicable, that they handle. The information required should be limited to information that is crucial to reconstruct the payment chain and therefore useful to prevent the risk of tax fraud or tax abuse, to the extent that such information is available to the reporting intermediary. Member States that apply withholding tax on interest at varying rates and need to engage in similar relief procedures, or that have in place a comprehensive relief-at-source system for dividend payments and have a market capitalisation ratio below the threshold set out in this Directive, could also consider using the established national register, as the case may be.

(11) As the financial intermediaries most often engaged in the securities' payment chains are large institutions as defined in Regulation (EU) No 575/2013 of the European Parliament and of the Council[3] as well as central securities depositories providing withholding tax agent services, those entities should be obliged to request to be registered with the national registers of Member States. Where such entities operate through a branch or branches or through one or more subsidiaries in any Member State, they should be permitted to fulfil the registration obligation in each source Member State either as one certified financial intermediary at group level or at individual branch or subsidiary level or a combination thereof. Other financial intermediaries should also be allowed to request to be registered with the national registers of Member States at their discretion. In both situations, either under mandatory or voluntary registration, financial intermediaries should have the flexibility to make the request themselves or to be represented by another financial intermediary that is part of the same group and that acts on their behalf in order to minimise the administrative burden and impact on how they wish to be organised. Financial intermediaries should request to be registered by submitting a request through the European Certified Financial Intermediary Portal (the 'Portal'), that should serve as a single entry point. Such requests should be forwarded through the Portal to the relevant Member States. Subsequently, the Member States should decide on the request for registration. Therefore the Portal should serve as a tool that reflects the decisions of the Member States with regard to the registration of financial intermediaries.

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3 Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

(12) This Directive should also provide for rules on the requirements for registration with national registers as well as rules on refusal thereof. Where a request to register is rejected, financial intermediaries should still be permitted to submit another request for registration at a later stage, if the grounds for rejection have been remedied. Once registered, financial intermediaries should be considered to be 'certified financial intermediaries' in the respective Member State and should be subject to the obligations for certified financial intermediaries under this Directive. Member States should update the Portal regarding the registration of a certified financial intermediary. This Directive should also provide for rules on removing certified financial intermediaries from the national register or on denying them the possibility to request relief. Where a Member State decides to remove a certified financial intermediary from the register, denies a certified financial intermediary the possibility to request relief or rejects a registration request, that Member State should update the Portal accordingly. The purpose of such updates is to allow Member States to evaluate the measures taken, such as the removal or the rejection, and to take those measures into consideration in the context of any future registration request by the same financial intermediary in their own national register. The national rules of the Member State concerned apply to the rights and obligations of parties concerned, including the right to appeal, in relation to any decision taken by a Member State in connection with registration and removal from its national register.

(13) To ensure more transparency regarding the identity and the circumstances of the investor receiving a dividend or interest payment and regarding the flow of payments from the issuer, certified financial intermediaries should report relevant information within specific timelines. Two reporting options should be provided for in this Directive: direct and indirect reporting. Where the reporting is direct, a certified financial intermediary should report directly to the competent authority of the source Member State. Where the reporting is indirect, the certified financial intermediaries should provide the information along the securities payment chain in sequential order and in respect of the position of those certified financial intermediaries in the securities payment chain of which they are part. The outcome should be that that information reaches the withholding tax agent or a designated certified financial intermediary, that reports the information to the competent authority of the source Member State. The reported data should include information on the eligibility of the investor concerned, but should be limited to the information that is available to the reporting certified financial intermediary. Financial intermediaries that are not under an obligation to register as certified financial intermediaries and have not opted to register as such, should not have reporting obligations under this Directive. Nevertheless, information on the payments handled by such intermediaries that are not certified financial intermediaries remains relevant for the proper reconstruction of the payment chain before applying the relief systems set out in this Directive.

(14) To ensure there are no information gaps in the payment chain and to enable investors to access the relief procedures, this Directive should allow a certified financial intermediary, whether or not that certified financial intermediary is directly involved in a specific payment chain, to step into the role of a financial intermediary within that chain. This implies that the certified financial intermediary bears the responsibilities and liabilities related to information reporting and to the relief system that the financial intermediary would have borne, had it been a certified financial intermediary. Through that arrangement between financial intermediaries, tax authorities would be able to obtain all relevant information and reconcile information across the entire payment chain in an effective manner, and investors would be able to access the relief system, even in cases involving a financial intermediary that is neither registered in a Member State nor bound by the obligations under this Directive.

(15) This Directive should not prevent certified financial intermediaries from outsourcing tasks related to the fulfilment of their obligations under this Directive. Therefore, a certified financial intermediary should be permitted to rely on a third party to fulfil the relevant obligations regarding withholding tax procedures. In any case, those obligations should remain the responsibility of the certified financial intermediary that has outsourced its responsibilities.

(16) In order to render the CMU more effective and competitive, procedures for the relief of excess withholding taxes on income from securities should be facilitated and accelerated where adequate information has been provided by relevant certified financial intermediaries, including on the identity of the investor. The relevant certified financial intermediaries are all those certified financial intermediaries in the securities payment chain that are situated between the investor and the issuer of the securities and that might be required to provide information on payments effected by non-certified financial intermediaries in the chain. Taking into account the different approaches across Member States, two types of procedures should be provided for: first, a relief-at-source system where the appropriate tax rate is applied directly at the time of withholding and second, a quick refund system where a request for a refund is submitted by the certified financial intermediary and is processed by the tax authority of the source Member State by a set deadline provided for in this Directive. If such refunds are not processed by that deadline, late payment interest should be applied where national rules so provide. Member States that apply chapter III of this Directive should be able to introduce a relief-at-source system or a quick refund system or a combination thereof, ensuring that at least one system is available to all investors, in accordance with the requirements of this Directive. A Member State which has opted for such a combination should be able to limit the use of one system to specific cases, such as low-risk scenarios, provided that the other system remains available for all other cases covered by this Directive. Those receiving payments outside the scope of this Directive, such as dividends from listed companies paid to registered owners that are resident for tax purposes in the source Member State, dividends from non-listed companies or interest in cases where a Member State has not opted to apply this Directive to interest payments, could still be entitled to request relief of excess withholding tax under a national relief-at-source or refund system applicable to the procedures corresponding to such payments.

(17) Where the relevant requirements of this Directive are not met for payments within the scope of this Directive or where the investor concerned so desires, Member States should apply withholding tax relief procedures based on a national standard refund system as a fallback to the fast-track procedures laid down in this Directive. Investors that are entitled to relief or their authorised representatives should be able to reclaim the excess withholding tax paid in a Member State only where the certified financial intermediary has not made use of the relief-at-source system or the quick refund system.

(18) Where there is a risk of tax fraud or tax abuse, Member States should be able to enforce anti-fraud measures and to conduct thorough investigations before processing a request for a quick refund. In order to do so, Member States should have the right to reject a refund request under certain conditions. Those conditions should include cases where the requirements for such a request are not met or where the payment chain cannot be reconstructed. It should also be possible to reject a refund request where a Member State decides to initiate a verification procedure or tax audit based on risk assessment criteria. It should be possible to carry out those verification procedures or tax audits in any case that is identified as posing a risk of tax fraud or tax abuse.

(19) In order to safeguard the systems for the relief of excess withholding taxes, Member States that maintain a national register should also require certified financial intermediaries to verify the eligibility of investors that wish to claim relief. In particular, certified financial intermediaries should collect the tax residence certificate of the relevant investor and a declaration that that investor is entitled to relief of withholding tax under the national rules of the source Member State or a double tax treaty and, if required by the source Member State, a declaration that the investor is the beneficial owner of the dividend or interest in accordance with the national rules of the source Member State or a double tax treaty, as described in the Commentary on Article 10 or Article 11 of the OECD Model Tax Convention on Income and on Capital. Thus, source Member States should have the option to require a declaration on beneficial ownership.

(20) Certified financial intermediaries should be required to verify the applicable withholding tax rate based on the investor's specific circumstances and to indicate whether they are aware of any financial arrangement involving the underlying securities that has not been settled, expired or otherwise terminated before the ex-dividend date. In that context, the obligation should be understood in the sense that the closest certified financial intermediary to the investor, its client, should take reasonable measures to perform such checks in good faith. For example, certified financial intermediaries should check whether the information in the eTRC or its equivalent, or the information in the investor's declaration, does not contradict the information collected by those certified financial intermediaries on their clients in their normal course of business. Such information includes the investor's account information and other information that they might have collected as a result of complying with applicable 'know-your-customer' rules. Therefore, certified financial intermediaries should not be required to perform further checks or to request and collect further information from their customer. Additionally, the investor should be required to inform the financial intermediary of any changes in its relevant circumstances. Member States should be permitted to allow due diligence requirements to be carried out on an annual basis unless the certified financial intermediary knows or ought to know that there has been a change of circumstances or that the information is incorrect or unreliable.

(21) The application of the withholding tax relief procedures under this Directive is subject to the condition that the registered owner, which is either a natural person or an entity and is eligible to receive the dividend or interest as the holder of the securities, is also the person that is entitled to relief of withholding tax in accordance with the national rules of the source Member State or a double tax treaty, as applicable. Where the registered owner is also entitled to the relief, only the provisions for direct investments should apply. However, in situations where the registered owner and the person entitled to relief are not the same, the provisions for indirect investments should apply. The provisions for indirect investment provide relief in cases where certain collective investment undertakings (CIU), or the investors therein, could be entitled to relief but are not the registered owner because the securities are held by a different legal person or by a fiscally transparent CIU. The provisions for indirect investments ensure that legitimate investors have access to the procedures under this Directive. Therefore, in the interpretation of the concept of CIU, Member States should include CIUs which are entitled to relief of excess withholding tax on their own behalf as well as CIUs where the investors holding equity in a CIU are entitled to relief, based on the national rules of the source Member State or on a double tax treaty. When involved in indirect investments, the certified financial intermediary should still be under an obligation to fulfil the due diligence requirements. Furthermore, it should be possible for the certified financial intermediary to be held liable if there is any loss of tax revenue.

(22) It is acknowledged that financial arrangements can be used to shift the ownership, in whole or in part, of a security or relevant investment risks. It is also the case that such arrangements have been used in dividend arbitrage and dividend stripping schemes, such as the *Cum/Ex* and *Cum/Cum* schemes, with the sole purpose to obtain refunds in cases where there was no entitlement thereto or to increase the amount of refund to which an investor was entitled. It should be possible to consider arrangements such as futures contracts, repurchase transactions, securities lending and securities borrowing, buy-sell back transactions or sell-buy back transactions, derivatives, margin lending transactions and contracts for difference as financial arrangements in cases where they imply a temporary or permanent split between the natural person or entity bearing the economic risks of the investment and the legal owner of the share or underlying rights. Those examples are not exhaustive.

(23) Furthermore, in the case of financial arrangements, it is understood that the ownership of the securities is not transferred to the buyer or borrower if the economic risk remains with the seller or lender of the securities through any legal transactions such as securities lending, options or futures contracts. It should be possible for any arrangement under which dividends are compensated between the parties concerned to be considered as a financial arrangement. The parties concerned are not always compensated in cash, but can also be compensated in more indirect ways, such as through differences in price of securities or derivatives. Information on financial arrangements is necessary for tax authorities to fight tax fraud and tax abuse. When such information is reported directly, it should only be required from certified financial intermediaries that, due to their position within the chain, might have been directly engaged in the relevant financial arrangement, which will be the case for the certified financial intermediaries that request relief. When such information is reported indirectly, the information on financial arrangements should be reported by the certified financial intermediary of the registered owner. In such cases, the information should be reported along the security payment chain in sequential order with the effect that it ultimately reaches the withholding tax agent or a designated certified financial intermediary. That means that other reporting certified financial intermediaries need to transmit the information on those financial arrangements to the withholding tax agent or a designated certified financial intermediary, even if those reporting certified financial intermediaries are not directly engaged in the relevant financial arrangement. Reporting on financial arrangements should not be required in the case of bonds and interest payments.

(24) Member States should be able to restrict the use of the relief-at-source system or the quick refund system in cases that present an elevated risk of tax fraud or tax abuse. Therefore it is appropriate to establish a list of such cases, where Member States have the possibility to exclude requests for relief and conduct further checks. In order to take into account the differences in national legal systems and, in particular, tax risk assessments, the establishment of such a list should not be mandatory and Member States should have discretion to determine which of such cases should be covered by the standard refund system. Member States should ensure that national rules transposing this Directive do not allow cases that Member States consider to present an elevated risk to benefit from relief at source or a quick refund. Such measures would ensure that tax authorities are better placed to combat abusive schemes, as they would have the possibility of conducting further checks to determine whether requests for relief are justified and are to be granted. One such measure consists of a threshold that is related to a gross dividend amount. That threshold should be calculated per registered owner or per investor entitled to relief of excess withholding tax if the registered owner is a collective investment undertaking or a designated legal person of such an undertaking. That threshold should not apply in cases where a collective investment undertaking established and regulated, or having a manager established and regulated, in the Union, a statutory pension scheme of a Member State or an institution for occupational retirement provision registered or authorised in a Member State in accordance with Article 9(1) of Directive (EU) 2016/2341 of the European Parliament and of the Council[4] is entitled to relief. Those undertakings, schemes and institutions are highly regulated and subject to supervision by the national competent authorities and to robust internal controls. Such regulation and supervision enforce compliance with the relevant regulations and minimise the risk of tax fraud and tax abuse.

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[4] Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs) (OJ L 354, 23.12.2016, p. 37).

(25) Nevertheless, there are cases where taxpayers could claim the reduced withholding tax rate based on Union legal acts implemented by national rules. This would typically be the case where national rules ensure that freedom of establishment or free movement of capital is equally granted in domestic and non-domestic comparable situations, or in the case where a directive is transposed. Such cases can require verifications to be carried out, especially to assess the comparability of situations and the applicability of national law to cross-border cases. Where such verifications are required, it should be possible for Member States to deal with those cases under their existing national relief-at-source systems, thus leading to relief of excess withholding tax in the fastest and safest manner.

(26) Considering the important role of certified financial intermediaries in reporting complete and correct information, which serves as the basis for withholding tax relief or a refund, it is appropriate that the national rules of Member States contain at least rules under which certified financial intermediaries can be held liable for the full or partial loss of withholding tax revenue incurred due to their full or partial non-compliance with the key obligations of this Directive. It should be possible for Member States to establish in their national rules strict and joint and several liability for certified financial intermediaries requesting relief. Additionally, other aspects of liability should continue to be fully regulated by the national rules of Member States. Those other aspects include withholding tax agents that act jointly or severally and that are not acting as certified financial intermediaries, and instances related to either direct or indirect liability of registered owners and investors that submit incomplete or incorrect information to certified financial intermediaries. This Directive does not determine the rules on liability regarding the standard refund system.

(27) In order to ensure the effectiveness of the applicable rules, Member States should lay down rules on penalties applicable to infringements of national provisions adopted pursuant to this Directive. Such penalties should be effective, proportionate and dissuasive.

(28) The proper transposition of this Directive in each Member State concerned is critical for the promotion of the CMU as a whole, as well as for the protection of the tax revenue of the Member States. Member States should therefore communicate to the Commission, on a regular basis, statistical information on the implementation and enforcement in their territory of national measures adopted pursuant to this Directive. The Commission should prepare an evaluation on the basis of the information provided by Member States and other available data to evaluate the effectiveness of the applicable rules. In that context, the Commission should consider the need to update the rules introduced by this Directive.

(29) In order to ensure uniform conditions for the implementation of this Directive, in particular for the digital tax residence certificate, the Portal, the reporting of financial intermediaries, the declaration of the registered owner and the request for relief under this Directive, implementing powers should be conferred on the Commission to adopt standard forms with a limited number of components, including the linguistic arrangements. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[5].

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

(30) Any processing of personal data carried out within the framework of this Directive should comply with Regulation (EU) 2016/679 of the European Parliament and of the Council[6]. The data processing operations provided for under this Directive have the objective of serving a general public interest, namely the matter of taxation, and the additional objectives of combating tax fraud, tax evasion and tax avoidance, safeguarding tax revenue and promoting fair taxation, which strengthen opportunities for social, political and economic inclusion in Member States. Therefore, for the purposes of the correct application of this Directive and in order to safeguard those objectives of general public interest, Member States should have the possibility to restrict the scope of certain data subjects' rights set out in Regulation (EU) 2016/679. Nevertheless, such restrictions should not go beyond what is strictly necessary for the achievement of those objectives. In relation to the additional information that could be required pursuant to this Directive for proving the taxpayer's residence for tax purposes, collection of such information related to a natural person should be understood as being restricted to the identification of the natural person.

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6 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

(31) Since the objective of this Directive cannot be sufficiently achieved by the Member States but can rather, by reason of the cross-border nature of the transactions concerned and the need to reduce compliance costs in the internal market as a whole, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

(32) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council[7] and delivered an opinion on 8 August 2023,

HAS ADOPTED THIS DIRECTIVE:

[7] Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

Chapter I
General provisions

Article 1

Subject matter

This Directive lays down rules on:

(a) the issuance of a digital tax residence certificate by Member States; and

(b) the procedure to relieve any excess withholding tax that can be levied by a Member State on dividends from publicly traded shares and, where applicable, on interest from publicly traded bonds paid to registered owners that are resident for tax purposes outside that Member State.

Article 2

Scope

1. Chapters I and IV shall apply to all Member States. Chapter II shall apply to all Member States with regard to all natural persons and entities that are resident for tax purposes in their jurisdiction.

2. Chapter III shall become applicable to all Member States that provide relief of excess withholding tax on dividends paid for publicly traded shares issued by an entity that is resident for tax purposes in their jurisdiction if:

(a) they do not have a comprehensive relief-at-source system applicable to such excess withholding tax; or

(b) their market capitalisation ratio, as set out in the four latest publications by the European Securities and Markets Authority ('ESMA') available on 31 December 2028, is equal to or more than 1,5 % for each of the four consecutive years.

3. A Member State that has a comprehensive relief-at-source system applicable to the excess withholding tax on dividends paid for publicly traded shares issued by a resident in its jurisdiction may opt to apply Chapter III if its market capitalisation ratio, as set out in the four latest publications by ESMA available on 31 December 2028, is less than 1,5 % for at least one of the four consecutive years.

4. A Member State shall apply Chapter III within five years from the fourth consecutive publication of data by ESMA that indicates that the market capitalisation ratio of that Member State reached or exceeded 1,5 % during each of the four consecutive years.

5. A Member State that provides relief of excess withholding tax on interest paid for publicly traded bonds issued by a resident in its jurisdiction may apply Chapter III.

6. Once Chapter III becomes applicable to any Member State pursuant to paragraph 2 or 4 of this Article, it shall remain applicable to that Member State, irrespective of whether the conditions that triggered its application continue to be met or not.

Where a Member State opts to apply Chapter III pursuant to paragraph 3 of this Article, the exercise of that option shall be irrevocable.

Article 3

Definitions

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

(1) 'excess withholding tax' means the difference between the amount of withholding tax levied by a Member State on payments to non-resident owners of dividends or interest from securities by applying the general domestic rate and the lower amount of withholding tax applicable by that Member State on the same dividends or interest in accordance with a double tax treaty or specific national rules, as the case may be;

(2) 'publicly traded share' means a share admitted to trading on a regulated market or traded on a multilateral trading facility;

(3) 'publicly traded bond' means a bond admitted to trading on a regulated market, or traded on a multilateral trading facility or on an organised trading facility;

(4) ‘financial intermediary’ means any of the following which is part of the securities payment chain between the entity issuing securities and the registered owner receiving payments on such securities:

(a) a central securities depository as defined in Article 2(1) of Regulation (EU) No 909/2014 of the European Parliament and of the Council[8];

(b) a credit institution as defined in Article 4(1), point (1), of Regulation (EU) No 575/2013;

(c) an investment firm;

(d) a branch of any of the entities under points (a), (b) or (c); or

(e) a third-country legal person that has been authorised under comparable legislation of a third country of residence to provide services comparable to those provided by any of the entities under points (a), (b) or (c), or a branch of such a third-country legal person;

(5) ‘certified financial intermediary’ means a financial intermediary that is registered with a national register as referred to in Article 5;

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

(6) ‘entity’ means a legal person or a legal arrangement, including but not limited to a corporation, partnership, trust or foundation;

(7) ‘collective investment undertaking’ means a UCITS, an EU AIF or an alternative investment fund managed by an EU AIFM, or any other collective investment vehicle that, based on the national rules of the source Member State or on a double tax treaty, is entitled to relief of excess withholding tax, or a collective investment vehicle of which the underlying investors are entitled to such relief that can be requested on their behalf, except such collective investment vehicles that are, or whose manager or depositary is, established in a third country listed in Annex I to the Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes or in Table I of the Annex to Commission Delegated Regulation (EU) 2016/1675[9];

(8) ‘institution for occupational retirement provision’ means an institution for occupational retirement provision as defined in Article 6(1) of Directive (EU) 2016/2341;

(9) ‘EUID’ means the European unique identifier as referred to in Article 16 of Directive (EU) 2017/1132 of the European Parliament and of the Council[10];

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9 Commission Delegated Regulation (EU) 2016/1675 of 14 July 2016 supplementing Directive (EU) 2015/849 of the European Parliament and of the Council by identifying high-risk third countries with strategic deficiencies (OJ L 254, 20.9.2016, p. 1).

10 Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (OJ L 169, 30.6.2017, p. 46).

(10) ‘tax identification number’ or ‘TIN’ means the unique identifier for tax purposes of a registered owner in a Member State;

(11) ‘withholding tax relief procedure’ means a procedure whereby a registered owner receiving dividends or interest from securities that can be subject to excess withholding tax is relieved of, or receives a refund for, such excess withholding tax;

(12) ‘competent authority’ means the authority which has been designated by a Member State in accordance with Article 5 and includes any person authorised in accordance with national rules by such an authority to act on its behalf for the purposes of this Directive;

(13) ‘security’ means a publicly traded share or a publicly traded bond;

(14) ‘depositary receipts’ means financial instruments which are negotiable on the capital market of a Member State or a third country and which represent ownership of the securities of an issuer within the Union while being traded on a trading venue in a Member State or a third country and traded independently of the securities of the issuer;

(15) ‘large institution’ means a large institution as defined in Article 4(1), point (146), of Regulation (EU) No 575/2013;

(16) ‘group’ means a group as defined in Article 2(12) of Directive (EU) 2002/87/EC of the European Parliament and of the Council[11];

(17) ‘withholding tax agent’ means an entity that has the responsibility under or has been authorised in accordance with the national rules of the source Member State to deduct the withholding tax from the payment of dividends or interest from securities and to transfer such withholding tax to the tax authority of the source Member State;

(18) ‘record date’ means the date set by the issuer of a security on which the identity of the holder of that security and the rights derived therefrom shall be determined, based on the settled positions struck in the books of the financial intermediary by book-entry at the close of business;

(19) ‘settlement’ means the completion of a securities transaction where it is concluded with the aim of discharging the obligation of the parties to that transaction through the transfer of cash or securities or both, as defined in Article 2(1), point (7), of Regulation (EU) No 909/2014;

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11 Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council (OJ L 35, 11.2.2003, p. 1).

(20) ‘registered owner’ means any natural person or entity that is entitled to receive dividends or interest from securities subject to tax withheld at source in a Member State as the holder of the securities on the record date, without prejudice to the adjustments to transactions pending settlement that could be made in accordance with the national rules of the source Member State, and that is not a financial intermediary acting for the account of others with respect to those dividends or interest;

(21) ‘investment account’ means the account or accounts provided by financial intermediaries to registered owners via which their securities are held or registered;

(22) ‘cash account’ means the account or accounts to which the payments related to the securities held or registered in the investment account are made;

(23) ‘ex-dividend date’ means the date from which the shares are traded without the rights derived from the shares, including the right to participate and vote in a general meeting, where relevant;

(24) ‘payment date’ means the date on which the payment of the dividend of a publicly traded share or the interest of a publicly traded bond is due to the registered owner;

(25) ‘financial arrangement’ means any arrangement or series of arrangements, or any contractual obligation, whereby:

(a) any part of the ownership of the publicly traded share on which a dividend is paid is, or could be, either permanently or temporarily transferred to a related or independent party; or

(b) the dividend is fully or partly compensated between related or independent parties, in cash or in any other form;

(26) ‘securities payment chain’ means the sequence of financial intermediaries that handle the payment of dividends or interest on securities between the securities’ issuer and a registered owner to which dividends or interest from such securities are paid, and includes brokers that are investment firms authorised under Directive 2014/65/EU of the European Parliament and of the Council[12] or that are credit institutions authorised under Directive 2013/36/EU of the European Parliament and of the Council[13], when providing one or more investment services or performing investment activities, as well as third-country legal persons authorised under comparable rules of a third country of residence when providing investment services or performing investment activities;

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

[13] Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

(27) ‘double tax treaty’ means an agreement or convention that applies between two or more jurisdictions and provides for the elimination of double taxation of income and where applicable, of capital;

(28) ‘source Member State’ means the Member State of residence of the issuer of the security paying dividends or interest;

(29) ‘quick refund system’ means a system whereby a payment of dividends or interest is made by taking into account the general domestic withholding tax rate followed by a request for a refund of the excess withholding tax within the timeframe set in Article 14;

(30) ‘relief-at-source system’ means a system whereby the appropriate withholding tax rate, in accordance with the applicable national rules or international agreements, such as the relevant double tax treaty, is applied at the moment of payment of dividends or interest;

(31) ‘comprehensive relief-at-source system’ means a relief-at-source system that is applied by a Member State and meets all of the following conditions:

(a) it provides access to relief to any natural person or entity that is entitled to relief in accordance with the national rules of the source Member State or a double tax treaty, as applicable;

(b) it provides relief to any natural person or entity under point (a) on the payment date, except in the case of a failure to report the information required by the Member State that applies such relief;

(c) except in the circumstances as set out in Article 11(2), the Member State does not exclude requests for relief;

(d) except in the circumstances as set out in Article 11(2), the Member State neither requires additional information from, nor imposes additional obligations on the natural person or entity entitled to relief, or on the financial intermediary other than the withholding tax agent, other than requiring the information and obligations provided for in Articles 12, 13, and 15, as applicable;

(e) the Member State has laid down rules on liability for all or part of the loss of withholding tax revenue incurred by that Member State as a result of applying that relief-at-source system; and

(f) the Member State has laid down rules on effective, proportionate and dissuasive penalties applicable to infringements of national provisions on that relief-at-source system;

(32) 'market capitalisation' means the total value of the publicly traded shares of companies whose shares are admitted to trading on a regulated market or on a multilateral trading facility, represented in a Member State as published on an annual basis by ESMA;

(33) ‘market capitalisation ratio’ means the ratio expressed as a percentage of the market capitalisation of a Member State on 31 December to the overall market capitalisation of the Union on 31 December, in a given year;

(34) ‘standard refund system’ means a system whereby a payment of dividends or interest is made taking into account the general domestic withholding tax rate followed by a request for a refund of the excess withholding tax not falling under the procedure set out in Article 14;

(35) ‘investment firm’ means an investment firm as defined in Article 4(1), point (1), of Directive 2014/65/EU;

(36) ‘UCITS’ means a UCITS as defined in Article 1(2) of Directive 2009/65/EC of the European Parliament and of the Council[14];

(37) ‘EU AIF’ means an EU AIF as defined in Article 4(1), point (k), of Directive 2011/61/EU of the European Parliament and of the Council[15];

(38) ‘EU AIFM’ means an EU AIFM as defined in Article 4(1), point (l), of Directive 2011/61/EU.

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

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

2. For the purposes of paragraph 1, points (2) and (3), of this Article, ‘regulated market’, ‘multilateral trading facility’ and ‘organised trading facility’ mean a regulated market, a multilateral trading facility and an organised trading facility as defined in Article 4(1), points (21), (22) and (23), of Directive 2014/65/EU, respectively.

3. For the purposes of paragraph 1, point (20), source Member States may consider, in accordance with their national rules, the holder of depositary receipts as the registered owner, instead of the holder of the underlying securities, as if the holder of depositary receipts had directly invested in those securities.

Chapter II

Digital tax residence certificate

Article 4

Digital tax residence certificate (eTRC)

1. Member States shall provide for an automated process to issue digital tax residence certificates (eTRC) to natural persons or entities deemed resident for tax purposes in their jurisdiction.

2. Subject to paragraph 4, Member States shall issue the eTRC, based on the information of which the issuing authority has knowledge on the date of issuance, within 14 calendar days of the submission of a request. The eTRC shall comply with the technical requirements of Annex I and shall include the following information:

   (a) if the taxpayer is a natural person, the first and last name, the date of birth and the tax identification number or, in its absence, any functional equivalent used for tax purposes;

   (b) if the taxpayer is an entity, the name, the tax identification number or, in its absence, any functional equivalent used for tax purposes, and where available, the European unique identifier (EUID) or the legal entity identifier (LEI) or any legal entity registration number which is valid for the entire period covered by the eTRC;

(c) the address of the taxpayer;

(d) the date of issuance of the eTRC;

(e) the period covered;

(f) the tax authority issuing the eTRC;

(g) one or more double tax treaties pursuant to which the taxpayer requests to be deemed resident for tax purposes in the Member State of issuance, where applicable;

(h) any additional information that is necessary for proving the taxpayer's residence for tax purposes insofar as the eTRC is not to be used for relief of excess withholding tax within the Union.

3. The eTRC shall:

(a) cover a period that does not exceed the calendar year or the fiscal year for which it is issued, as applicable in the issuing Member State; and

(b) be valid for certifying the tax residence for the period covered unless the Member State issuing the eTRC has evidence that the person to which the eTRC refers is not resident for tax purposes in its jurisdiction for all or part of that period and that Member State completely or partially invalidates the eTRC.

4. If more than 14 calendar days are required to verify the tax residence of a specific taxpayer, the Member State shall inform the natural person or entity requesting the eTRC of the additional time needed and the reasons for the delay.

5. Member States shall recognise an eTRC issued by another Member State as proof of tax residence of a taxpayer in that other Member State in accordance with paragraph 3, without prejudice to the possibility for Member States to prove that that taxpayer is resident for tax purposes in their jurisdiction.

6. A Member State shall take the appropriate measures to require a natural person or entity deemed resident for tax purposes in its jurisdiction to inform the tax authority that issues the eTRC about any change that could affect the validity or content of the eTRC.

7. Member States shall take the necessary measures to require that an eTRC be provided, where proof of tax residence is required for a natural person or entity deemed resident for tax purposes in a Member State to apply for relief at source or a quick refund in order to obtain relief of excess withholding tax on dividends paid for publicly traded shares or interest paid for publicly traded bonds, if applicable, issued by a resident in their jurisdiction.

8. The Commission shall adopt implementing acts laying down standard computerised forms for the issuance of an eTRC, including linguistic arrangements and technical protocols, including security standards. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 21.

Chapter III

Withholding tax relief procedure

SECTION 1

CERTIFIED FINANCIAL INTERMEDIARIES

Article 5

National register of certified financial intermediaries

1. Member States referred to in Article 2(2) and (4) shall establish a national register of certified financial intermediaries.

2. Member States referred to in Article 2(3) and (5) that opt to apply Chapter III shall establish a national register of certified financial intermediaries.

3. Member States establishing a national register pursuant to paragraph 1 or 2 shall designate a competent authority responsible for maintaining and updating that national register.

4. The national registers shall include the following information on certified financial intermediaries:

   (a) the name of the certified financial intermediary;

   (b) the date of registration of the certified financial intermediary;

(c) the contact details and any existing website of the certified financial intermediary;

(d) the EUID or, where the certified financial intermediary has no EUID, the legal entity identifier (LEI) or any legal entity registration number issued by its country of residence.

5. For the purposes of this Article and of Articles 10 to 15, Member States shall permit a certified financial intermediary to assume the obligations and responsibilities set out in Articles 10 to 15 in respect of the position of a financial intermediary that is part of the securities payment chain and is not a certified financial intermediary if the financial intermediary and the certified financial intermediary have so agreed.

6. The national registers shall be made publicly accessible on the European Certified Financial Intermediary Portal referred to in Article 6 (the 'Portal'), via a website of the Commission, and updated at least once a month.

7. Member States shall remain responsible for any decisions regarding the registration or rejection of a financial intermediary or regarding the removal of a financial intermediary from their national registers, and for measures imposed on financial intermediaries.

8. Any rights and obligations stemming from decisions as referred to in paragraph 7 shall be applicable from the notification by the corresponding Member State to the financial intermediary concerned.

9. The Commission shall not be held liable under any circumstances for the content on the Portal or for the failure to exchange information between Member States regarding the registration or rejection of a financial intermediary or regarding the removal of a financial intermediary from their national registers or for any measures imposed by Member States on financial intermediaries.

Article 6

Development and operation of the European Certified Financial Intermediary Portal

1. The Commission shall develop and operate the European Certified Financial Intermediary Portal (the 'Portal') either by its own means or through a third party.

2. If the Commission decides to develop or operate the Portal through a third party, the Commission shall choose the third party and enforce the agreement concluded with that third party in accordance with Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council[16].

[16] Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

3. The Portal shall serve as the electronic access point for financial intermediaries to request to register with the national registers of the Member States. The Portal shall accommodate information exchange between Member States regarding the registration or rejection of a financial intermediary, and the removal of a financial intermediary from a national register and the measures imposed on financial intermediaries.

4. Member States shall ensure that the information required pursuant to Articles 7, 8 and 9 of this Directive is provided to the Portal and that their national registers are interoperable within the Portal.

5. The Commission shall adopt implementing acts laying down the technical specifications for the operation of the Portal. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 21.

Article 7

Requirement to register as a certified financial intermediary

1. Member States maintaining a national register in accordance with Article 5 shall require all large institutions that handle payments of dividends and, where relevant, interest on securities issued by a resident in their jurisdiction, and central securities depositories as referred to in Article 3(1), point (4), that are the withholding tax agent for those payments, to register with their national register.

2. Member States maintaining a national register in accordance with Article 5 shall enable, upon request, the registration in that national register of any financial intermediary that meets the requirements of Article 8.

Article 8

Registration procedure

1. Member States shall ensure that where a financial intermediary submits a request to register with their national register, that request shall be approved within three months of the date of submission, provided the financial intermediary provides evidence that it fulfils all of the following requirements:

   (a) it is resident for tax purposes in a Member State or a third-country jurisdiction not included in Annex I to the Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes or in Table I of the Annex to Delegated Regulation (EU) 2016/1675;

(b) if the requesting financial intermediary is a credit institution, an investment firm or a central securities depository, an authorisation from the relevant competent authority in the jurisdiction of residence for tax purposes to perform custodial activities; or if the requesting financial intermediary is a central securities depository, an authorisation from the relevant competent authority in the jurisdiction of residence for tax purposes to perform such activities; where the requesting financial intermediary is resident for tax purposes in a third-country jurisdiction and has obtained such authorisation under national rules that are not deemed comparable with Directive 2013/36/EU or Directive 2014/65/EU, as applicable, by a Member State, that Member State may deem this requirement to be unfulfilled;

(c) a declaration of compliance with the provisions of Directive (EU) 2015/849 of the European Parliament and of the Council[17] or with comparable rules of a third-country jurisdiction not included in Annex I to the Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes or in Table I of the Annex to Delegated Regulation (EU) 2016/1675.

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

2. A Member State shall permit a certified financial intermediary to act on behalf of another financial intermediary that is part of the same group and to assume the obligation set out in Article 7 and the obligations and responsibilities set out in Articles 10 to 15.

3. If the requesting financial intermediary is resident for tax purposes in a third-country jurisdiction where neither Directive 2010/24/EU nor a convention that provides assistance in the collection of taxes applies to the recovery of all or part of the loss of withholding tax revenue pursuant to Article 18, the Member State to which the request has been submitted may require sufficient and proportionate guarantees to ensure the recovery of such loss in relation to the request for relief.

4. A Member State may reject the request for registration if:

(a) the financial intermediary concerned has committed one or more offences or infringements under the national rules of a Member State or of another jurisdiction and such offences or infringements have led to a loss of withholding tax revenue; or

(b) an inquiry into potential tax fraud or tax abuse is opened by a Member State or another jurisdiction in relation to the financial intermediary concerned which could lead to a loss of withholding tax revenue.

For the purposes of point (a), the source Member State shall only take such offences or infringements into account to the extent that they came to the attention of that Member State not more than 10 years prior to the submission of the request for registration.

5. Financial intermediaries shall, without undue delay, notify the competent authority of the Member State of any change in the information provided under paragraph 1, points (a) to (c).

6. Where the request for registration is rejected pursuant to paragraph 4, the Member State shall ensure that the financial intermediary is allowed to submit another request for registration, if the Member State has determined that the circumstances that caused the rejection have been remedied.

Article 9

Removal from the national register

1. A Member State shall remove from its national register any certified financial intermediary registered pursuant to Article 7(2), where the certified financial intermediary:

   (a) requests such removal; or

   (b) no longer meets the requirements of Article 8.

2. A Member State may remove from its national register any certified financial intermediary registered pursuant to Article 7(2):

   (a) where the certified financial intermediary has been found not to have complied with its obligations under this Directive or Directive (EU) 2015/849 or under comparable rules of a third country of residence for tax purposes; or

(b) where the certified financial intermediary has been found to have committed one or more offences or infringements under the national rules of a Member State or another jurisdiction and such offences or infringements have led to a loss of withholding tax revenue; or

(c) where an inquiry is opened by a Member State or another jurisdiction in relation to the certified financial intermediary concerning potential tax fraud or tax abuse which could lead to a loss of withholding tax revenue.

For the purposes of point (b), the source Member State shall only take such offences or infringements into account to the extent that they became known to that Member State not more than 10 years prior to the removal of the financial intermediary.

3. A Member State may prohibit any certified financial intermediary registered pursuant to Article 7(1) from requesting relief under this Directive:

(a) where the certified financial intermediary has been found not to have complied with its obligations under this Directive or Directive (EU) 2015/849 or with the comparable rules of a third country of residence for tax purposes; or

(b) where the certified financial intermediary has been found to have committed one or more offences or infringements under the national rules of a Member State or another jurisdiction and such offences or infringements have led to a loss of withholding tax revenue; or

(c) where an inquiry is opened by a Member State or another jurisdiction in relation to the certified financial intermediary concerning potential tax fraud or tax abuse which could lead to a loss of withholding tax revenue.

For the purposes of point (b), the source Member State shall only take such offences or infringements into account to the extent that they became known to that Member State not more than 10 years prior to the prohibition to request relief.

Where a Member State prohibits a certified financial intermediary pursuant to this paragraph, it shall without delay update the information contained in the national register accordingly.

4. Where a Member State removes a financial intermediary from the national register pursuant to paragraph 1 or 2, or prohibits a certified financial intermediary from requesting relief pursuant to paragraph 3, the Member State shall ensure that the financial intermediary is re-registered or is allowed to submit another request for relief, if the Member State determines that the circumstances that caused the removal or prohibition have been remedied.

SECTION 2

REPORTING

Article 10

Obligation to report

1. Member States shall take the necessary measures to require certified financial intermediaries registered with their national register to report to their competent authority the information referred to under headings A to E of Annex II within the second month following the month of the payment date. If a settlement instruction in respect of any part of a transaction is pending, certified financial intermediaries shall indicate the part for which settlement is pending.

2. In addition to the information referred to in paragraph 1 of this Article, Member States may require certified financial intermediaries in their national register to report to their competent authority the information referred to under heading F and, where applicable, heading G of Annex II, within the second month following the month of the payment date.

3. Member States shall take the necessary measures to require that certified financial intermediaries as referred to in Article 5(5) report to their competent authority the information referred to in paragraph 1 of this Article and, where applicable, paragraph 2 of this Article with respect to any part of the securities payment chain for which the financial intermediary that handles the payment is not a certified financial intermediary.

4. Notwithstanding paragraphs 1, 2 and 3, Member States may take the necessary measures to require that only the withholding tax agent or a certified financial intermediary in the relevant security payment chain, appointed by their competent authority or designated under national rules, reports the information referred to in those paragraphs to the competent authority. The certified financial intermediaries shall provide that information along the securities payment chain in sequential order and in respect of the position of those certified financial intermediaries in the securities payment chain of which they are part, with the effect that it ultimately reaches the withholding tax agent or the concerned certified financial intermediary.

5. Member States referred to in Article 2(5) that opt to apply Chapter III and that maintain a national register established in accordance with Article 5 shall not require information under heading E of Annex II to be reported.

6. The Commission shall adopt implementing acts laying down standard computerised forms, including the linguistic arrangements, and requirements for the communication channels, for the reporting of information referred to in Annex II. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 21.

7. Member States shall require certified financial intermediaries in their national register to keep the documentation supporting the information reported for 10 years and to provide access to any other information necessary for the correct application of rules on withholding taxes and shall require certified financial intermediaries to delete or anonymise any personal data included in such documentation as soon as the audit has been completed and at the latest 10 years after reporting.

SECTION 3

SYSTEMS OF RELIEF

Article 11

Request for relief at source or quick refund

1. Source Member States shall require a certified financial intermediary that maintains the investment account of a registered owner receiving dividends distributed or interest paid by a resident in the source Member State to request relief pursuant to Article 13 or Article 14, as applicable, on behalf of that registered owner, if the following conditions are met:

   (a) the registered owner has authorised the certified financial intermediary to request relief on its behalf; and

   (b) the certified financial intermediary has verified and established the registered owner's eligibility for relief in accordance with Article 12 or Article 15, as applicable.

2. Notwithstanding paragraph 1 of this Article, Member States may exclude, completely or partially, requests for relief under the systems as provided for under Articles 13 and 14, where any of the following circumstances occur:

(a) the dividend has been paid on a publicly traded share that the registered owner acquired in a transaction carried out within a period of five days before the ex-dividend date;

(b) the dividend payment on the underlying security for which relief is requested is linked to a financial arrangement that has not been settled, expired or otherwise terminated before the ex-dividend date;

(c) at least one of the financial intermediaries in the securities payment chain is not a certified financial intermediary and no certified financial intermediary has assumed the position of that financial intermediary for the purposes of Article 10 in accordance with Article 5(5).

(d) an exemption of the withholding tax is claimed;

(e) a reduced withholding tax rate not deriving from double tax treaties is claimed;

(f) the dividend payment exceeds a gross amount of at least 100 000 EUR, per registered owner and per payment date.

For the purposes of the first subparagraph, point (f), of this paragraph, the amount of the dividend payment shall be determined by the gross dividend amount per investor holding equity in a collective investment undertaking where that underlying investor is entitled to relief pursuant to Article 15(2), points (a) or (b), as applicable.

3. Paragraph 2, point (f), shall not apply where either of the following is entitled to relief of excess withholding tax:

(a) a statutory pension scheme of a Member State or an institution for occupational retirement provision registered or authorised in a Member State in accordance with Article 9(1) of Directive (EU) 2016/2341; or

(b) a collective investment undertaking that is a UCITS established in accordance with Article 1(1) of Directive 2009/65/EC, an EU AIF or an EU AIFM.

4. Paragraph 2 shall apply to any arrangement whereby the dividend payment is split or to any collective investment undertaking other than those referred to in paragraph 3, point (b), that has been established with the sole purpose of keeping the dividend payment below the amount referred to in paragraph 2, point (f).

5. Notwithstanding paragraph 1, where the financial intermediary that maintains the investment account of a registered owner is not a certified financial intermediary, Member States shall allow a certified financial intermediary to request relief pursuant to Article 13 or Article 14, as applicable, subject to Article 5(5) and Article 10.

6. The systems of relief pursuant to Article 13 and Article 14, as applicable, shall not reduce the control powers of Member States under their national rules in relation to the taxable income to which such relief was applied and do not affect the taxing rights of Member States.

7. Where, prior to the entry into force of this Directive, a Member State has a relief-at-source system or quick refund system or a combination thereof, and that Member State applies Chapter III pursuant to Article 2, that Member State shall ensure the compliance of that system with Chapter III for any request for relief covered by this Directive, i.e. relief relating to dividends arising from publicly traded shares and, where the Member State decides to include interest from publicly traded bonds paid to non-residents, also to such interest. Member States may also maintain and apply an existing national relief-at-source system to the cases referred to in paragraph 2, point (e), of this Article in which verifications are performed in order to:

   (a) ensure equal treatment between domestic and cross-border situations to comply with Chapters 2 and 4 of Title IV of the Treaty on the Functioning of the European Union; or

(b) apply reduced withholding tax rates in accordance with Council Directives 2003/49/EC[18] or 2011/96/EU[19].

Article 12

Due diligence of the registered owner's eligibility

1. Member States shall take the necessary measures to require that a certified financial intermediary requesting relief on behalf of a registered owner under Article 13 or Article 14, as applicable, obtain a declaration from the registered owner that the registered owner:

(a) is entitled to relief of withholding tax with respect to the dividend or interest in accordance with the national rules of the source Member State or a double tax treaty, where applicable, including the legal basis and the applicable withholding tax rate; and

(b) if required by the source Member State, is the beneficial owner of the dividend or interest in accordance with the national rules of the source Member State or a double tax treaty, where applicable; and

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[18] Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States (OJ L 157, 26.6.2003, p. 49).

[19] Council Directive 2011/96/EU of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (OJ L 345, 29.12.2011, p. 8).

(c) has or has not engaged in a financial arrangement linked to the underlying publicly traded share that has not been settled, expired or otherwise terminated before the ex-dividend date; and

(d) undertakes to inform the certified financial intermediary of any change in its circumstances without undue delay.

2. Member States shall take the necessary measures to require that certified financial intermediaries requesting relief on behalf of a registered owner under Articles 13 and 14, as applicable, verify, on the basis of the information available to those certified financial intermediaries:

(a) the eTRC of the registered owner or a proof of tax residence in a third country deemed appropriate by the source Member State;

(b) notwithstanding point (a), the documentation deemed appropriate by the source Member State, in cases where a registered owner is an entity for which an eTRC cannot be issued or that cannot obtain a proof of tax residence in a third country because the entity is disregarded for tax purposes and its income, or part thereof, is taxed at the level of the persons who have an interest in that entity, but that entity is entitled to the relief of withholding tax with respect to the dividend or interest in accordance with the national rules of the source Member State or a double tax treaty, where applicable;

(c) the registered owner's declaration under paragraph 1 of this Article and the registered owner's tax residence against the information that the certified financial intermediary has obtained or has an obligation to obtain, including the information collected for other tax purposes or on the basis of anti-money laundering requirements, which the certified financial intermediary is subject to under Directive (EU) 2015/849, or comparable information required in third countries;

(d) the registered owner's entitlement to a specific reduced withholding tax rate in accordance with the national rules of the source Member State or with a double tax treaty between the source Member State and the jurisdiction where the registered owner is resident for tax purposes;

(e) in the case of a dividend payment, the possible existence of any financial arrangement that has not been settled, expired or otherwise terminated on the ex-dividend date;

(f) in the case of a dividend payment, whether the underlying share has been acquired by the registered owner in a transaction carried out within a period of five days before the ex-dividend date.

For the purposes of the first subparagraph, point (a), of this paragraph, the source Member State may deem a tax residence certificate as appropriate proof of tax residence in a third country if the content of the certificate is equivalent to that provided for in Article 4(2) and the certificate meets the technical requirements in point 1 of Annex I.

3. Member States may allow a certified financial intermediary to obtain the declaration referred to in paragraph 1 and to carry out the verifications provided for in paragraph 2, points (a) to (d), on an annual basis unless the certified financial intermediary knows or ought to know that there is a change of circumstances or that the declaration or the information to be verified is incorrect or unreliable.

4. In the case provided for in Article 5(5), Member States shall allow the certified financial intermediary to rely on documentation collected and information verified by the financial intermediary that maintains the investment account of a registered owner according to this Article, without prejudice to the fact that those obligations remain the responsibility of the certified financial intermediary.

5. Member States shall require certified financial intermediaries requesting relief pursuant to Article 13 or Article 14, as applicable, to keep all supporting documentation and provide access thereto in accordance with Article 10(7).

6. The Commission shall adopt implementing acts laying down standard templates of computerised forms for the declaration referred to in this Article, including the linguistic arrangements. Such templates shall include the information set out in paragraph 1, points (a), (c), and (d), of this Article and enable Member States to request specific additional information. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 21.

Article 13

Relief-at-source system

Member States may establish a system to allow certified financial intermediaries that maintain the investment account of a registered owner to request relief at source on behalf of a registered owner in accordance with Article 11 by providing the following information to the withholding tax agent:

(a) the tax residence of the registered owner or the information contained in the documentation referred to in Article 12(2), point (b), where applicable; and

(b) the applicable withholding tax rate on the payment in accordance with national rules or a double tax treaty, as applicable.

Article 14

Quick refund system

1. Member States may establish a system to allow certified financial intermediaries that maintain the investment account of a registered owner to request a quick refund of the excess withholding tax on behalf of the registered owner in accordance with Article 11 if the information referred to in paragraph 3 of this Article is provided within the second month following the month of the payment date of the dividend or interest.

2. Without prejudice to paragraph 4 of this Article, Member States shall process a refund request made in accordance with paragraph 1 of this Article within 60 calendar days after the end of the period to request the quick refund. Member States shall apply interest in accordance with Article 16 on the amount of such a refund for each day of delay after the 60th day.

3. A certified financial intermediary requesting a quick refund shall provide the following information to the relevant Member State:

(a) the identification of the registered owner as referred to in heading B of Annex II;

(b) the identification of the dividend or interest payment as referred to in headings D and G of Annex II, where applicable;

(c) the basis of the applicable withholding tax rate and the total amount of excess withholding tax to be refunded;

(d) the tax residence of the registered owner, including the eTRC verification code, where applicable, or the information contained in the documentation referred to in Article 12(2), point (b), where applicable;

(e) the registered owner’s declaration in accordance with Article 12.

4. Member States may reject a refund request made under this Article in any of the following cases:

(a) the requirements provided for in paragraph 1 or 3 of this Article or in Article 11 or 12 are not met;

(b) the information necessary to reconstruct the relevant securities payment chain and referred to in Annex II has not been completely and correctly provided at the end of the period set out in paragraph 1 of this Article;

(c) the Member State, based on risk assessment criteria, initiates any verification procedure or tax audit according to its national rules with respect to the refund request.

5. A rejection of a refund request pursuant to paragraph 4 shall not preclude the application of late payment interest in accordance with paragraph 2 in the event that the refund is ultimately granted and the circumstances set out in paragraph 4, points (a) or (b), do not exist.

6. A rejection as referred to in paragraph 4, points (a) and (b), shall be communicated to the requesting certified financial intermediary and shall not preclude a request for a refund under the standard refund system established under national rules.

7. The Commission shall adopt implementing acts laying down standard computerised forms, including the linguistic arrangements, and requirements for the communication channels for the submission of requests under this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 21.

Article 15

Special provisions for indirect investments

1. Member States shall allow a certified financial intermediary that maintains the investment account of a registered owner that receives dividends or interest to request relief pursuant to Article 13 or Article 14, as applicable, on behalf of that registered owner, provided that the requirements set out in paragraphs 2 to 5 of this Article are met.

2. For the purposes of paragraph 1, the registered owner shall be:

   (a) a collective investment undertaking which holds securities for the account of investors entitled to relief of withholding tax with respect to the dividends or interest in accordance with the national rules of the source Member State or a double tax treaty, where applicable; or

   (b) a designated legal person under the fund rules, instruments of incorporation or prospectus of a collective investment undertaking that holds the securities in the investment account that give rise to the dividends or interest, and that maintains internal records enabling the individual allocation of those securities to that collective investment undertaking or to the investors in that collective investment undertaking, as applicable, where the collective investment undertaking or the investors in the collective investment undertaking are entitled to relief of withholding tax with respect to that dividend or interest in accordance with the national rules of the source Member State or a double tax treaty, where applicable.

3. For the purposes of paragraph 1, the certified financial intermediary requesting relief shall obtain a declaration from:

(a) each collective investment undertaking entitled to relief of withholding tax or each investor in the collective investment undertaking entitled to such relief, as applicable, whose securities are held by the registered owner, indicating that:

(i) they are entitled to relief of withholding tax with respect to the dividend or interest in accordance with the national rules of the source Member State or a double tax treaty, where applicable, including the legal basis and the applicable withholding tax rate; and

(ii) if required by the source Member State, they are the beneficial owner of the dividend or interest in accordance with the national rules of the source Member State or a double tax treaty, where applicable; and

(iii) they have authorised relief to be requested on their behalf under this Article; and

(iv) if relief is granted, they waive their right to independently request relief from the source Member State under this Directive or under the systems pursuant to the national rules of Member States;

(b) the registered owner referred to in paragraph 2, point (a), indicating the applicable withholding tax rates with respect to the dividend or interest paid;

(c) the registered owner referred to in paragraph 2, point (b), identifying the collective investment undertaking for which the securities giving rise to the dividend or interest are held, in accordance with its internal records, and indicating the applicable withholding tax rates with respect to the dividend or interest paid;

(d) the registered owner with the information referred to in Article 12(1), points (c) and (d).

4. For the purposes of paragraph 1 of this Article, the certified financial intermediary requesting relief at source pursuant to Article 13 shall provide the withholding tax agent with:

(a) the information referred to in paragraph 3, point (b) or (c), of this Article as applicable; and, as regards the collective investment undertaking or the investors in a collective investment undertaking, information on their tax residence or the information contained in the documentation referred to in Article 12(2), point (b), as applicable, instead of the information referred to in Article 13; and

(b) if the investors in a collective investment undertaking are entitled to relief, the amount of dividends or interest attributable to each investor entitled to relief pursuant to Article 15(2).

5. For the purposes of paragraph 1 of this Article, where the certified financial intermediary requests relief pursuant to Article 14, it shall provide the source Member State with, instead of the information referred to in Article 14(3), points (d) and (e), the information referred to in paragraph 3 of this Article and the tax residence of the collective investment undertaking or of the investors in a collective investment undertaking, including the eTRC verification code or the information referred to in Article 12(2), point (b), as applicable. If the investors in a collective investment undertaking are entitled to relief, the certified financial intermediary shall also provide the source Member State with the amount of dividends or interest attributable to each investor entitled to relief pursuant to Article 15(2), as applicable.

6. Member States shall take the necessary measures to require that certified financial intermediaries requesting relief under this Article verify, on the basis of the information available to them:

(a) the documentation referred to in Article 12(2), point (a) or (b), with respect to each collective investment undertaking or each investor in a collective investment undertaking, as applicable, entitled to relief;

(b) the entitlement of the collective investment undertaking or of the investors in a collective investment undertaking, as applicable, to a specific exemption or reduced withholding tax rate in accordance with the national rules of the source Member State or a double tax treaty between the source Member State and the jurisdiction of residence for tax purposes, as applicable;

(c) in the case of a dividend payment, the possible existence of any financial arrangement that has not been settled, expired or otherwise terminated before the ex-dividend date.

7. Article 12(1), (2) and (3) shall not apply where relief is requested pursuant to this Article.

8. The Commission shall adopt implementing acts laying down standard computerised forms, including the linguistic arrangements, and requirements for the communication channels for the submission of requests under paragraph 5 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 21.

Article 16

Late payment interest

Pursuant to Article 14(2), Member States shall, where provided for under national rules, apply interest at a rate equal to the interest, or equivalent charge, applied by the Member State to late payments of withholding tax refunds related to the taxation of dividends or interest, as applicable.

Article 17

Standard refund system

1. Member States shall ensure that a standard refund system is in place and applicable where requests for relief within the scope of this Directive are excluded from the relief-at-source system under Article 13 and from the quick refund system under Article 14, as applicable.

2. Member States shall adopt the necessary measures to require that, where Article 13 or Article 14 as relevant, does not apply to dividends due to the conditions set out in this Directive not being met, those entitled to the refund or their authorised representative requesting refund of the excess withholding tax on such dividends provide at least the information required under heading E of Annex II, unless that information has already been provided pursuant to Article 10.

Article 18

Liability

Member States shall take appropriate measures under their national rules to ensure that a certified financial intermediary that does not comply, whether completely or partially, with its obligations under Article 10, 11, 12, 13, 14 or 15 can be held liable for all or part of the loss of withholding tax revenue.

Chapter IV
Penalties and final provisions

Article 19

Penalties

Member States shall lay down the rules on penalties applicable to infringements of national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. Those penalties shall be effective, proportionate and dissuasive.

Article 20

Publications by ESMA

1. From 2026 at the latest, ESMA shall publish, on an annual basis and within 120 working days of the beginning of each year, the market capitalisation and the market capitalisation ratio of each Member State for at least the preceding year. ESMA shall develop draft regulatory technical standards on the methodology for the calculation of market capitalisation and the market capitalisation ratio as defined in Article 3(1), points (32) and (33), respectively. ESMA shall submit those draft regulatory technical standards to the Commission by … [nine months from the entry into force of this Directive].

2. Power is delegated to the Commission to adopt the regulatory technical standards referred to in paragraph 1 of this Article in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 21

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

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

Article 22

Evaluation

1. The Commission shall, by 31 December 2032, evaluate the impact of the following on the achievement of the objectives of this Directive:

   (a) the mechanisms of reporting in Article 10; and

   (b) the option not to apply Chapter III by Member States which meet the conditions of Article 2(3).

The Commission shall, within the same timeframe, submit a report to the European Parliament and the Council.

2. The Commission shall, by 31 December 2034 and every five years thereafter, examine and evaluate the functioning of this Directive, including the potential need to amend specific provisions, and submit a report to the European Parliament and the Council.

3. Member States shall communicate to the Commission relevant yearly statistical data, as referred to in paragraph 4, for the evaluation of this Directive, for the purpose of improving withholding tax relief procedures to reduce double taxation as well as combat tax abuse.

4. The Commission shall, in accordance with the procedure referred to in Article 21(2), establish a list of yearly statistical data to be provided by the Member States for the purposes of the evaluation of this Directive, as well as the format and the conditions of communication of that information.

5. The Commission shall keep the information communicated to it pursuant to this Directive confidential in accordance with the provisions applicable to Union institutions.

6. Information communicated to the Commission by a Member State under paragraph 3, as well as any report or document produced by the Commission using such information, may be transmitted to other Member States. Any such information transmitted shall be covered by the obligation of official secrecy and enjoy the protection extended to similar information under the national rules of the Member State which received it.

Article 23

Personal data protection

1. Member States shall, for the purposes of the correct application of this Directive, restrict the scope of the obligations and rights provided for in Articles 13 to 19 of Regulation (EU) 2016/679 to the extent required in order to safeguard the interests referred to in Article 23(1), point (e), of that Regulation in so far as such obligations or the exercise of such rights may jeopardise those interests.

2. When processing personal data, certified financial intermediaries and the competent authorities of Member States shall be considered as controllers, within the meaning of Article 4(7) of Regulation (EU) 2016/679, within the scope of their respective activities under this Directive.

3. Information, including personal data, processed in accordance with this Directive shall not be retained longer than is necessary to achieve the purposes of this Directive, and in any case in accordance with each data controller's domestic rules on the statute of limitations.

Article 24

Notification

A Member State that establishes and maintains a national register pursuant to Article 5, shall inform the Commission of any subsequent changes to the rules governing that national register. The Commission shall publish that information in the *Official Journal of the European Union* and update it as necessary.

Article 25

Transposition

1. Member States shall adopt and publish, by 31 December 2028, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall immediately inform the Commission thereof.

   They shall apply those provisions from 1 January 2030.

   When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

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

3. Member States which meet the conditions of Article 2(3) at the time of the transposition of this Directive and do not opt to apply Chapter III shall notify the Commission by 31 December 2028. They shall communicate to the Commission, without delay, any subsequent change to their national relief-at-source system concerning the conditions listed in Article 3(1), point (31).

The Member States referred to in the first subparagraph of this paragraph shall adopt and publish the laws, regulations and administrative provisions necessary to comply with Chapter III as set out in Article 2(3) or within five years from the fourth consecutive publication of the data by ESMA, as set out in Article 2(4), indicating that the market capitalisation ratio of that Member State has reached or exceeded the threshold set out in Article 2.

Article 26

Entry into force

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

Article 27

Addressees

This Directive is addressed to the Member States.

Done at …,

For the Council

The President

ANNEX I

DIGITAL TAX RESIDENCE CERTIFICATE AS REFERRED TO IN ARTICLE 4

Technical requirements

1. The digital tax residence certificate (eTRC) shall:

   – be issued with an electronic seal in accordance with Regulation (EU) No 910/2014 of the European Parliament and of the Council[1];

   – offer the possibility of presenting the eTRC in both human- and machine-readable formats with PDF documents or similar other formats which can be used in automated systems;

   – be printable;

   – contain an open text box for inclusion of information under Article 4(2), point (h).

[1] Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73).

2. If the legal and technical requirements in the Union are met, Member States may introduce a verification process based on the European Digital Identity Wallet, as referred to in Section 1 of Regulation (EU) No 910/2014, as amended by Regulation (EU) 2024/1183 of the European Parliament and of the Council[2].

A Committee shall support the Commission with the implementation of the eTRC by Member States. In addition, the Committee may provide technical support regarding any possible changes of the technical basis of the eTRC or new technical developments.

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[2] Regulation (EU) 2024/1183 of the European Parliament and of the Council of 11 April 2024 amending regulation (EU) No 910/2014 as regards establishing the European Digital Identity Framework (OJ L, 2024/1183, 30.4.2024, ELI: http://data.europa.eu/eli/reg/2024/1183/oj).

ANNEX II

REPORTING AS REFERRED TO IN ARTICLES 10 AND 17

Certified financial intermediaries shall provide the following information in the corresponding xml format:

Type of information	Specification
A. Information regarding the person that is providing the information	
Name of the certified financial intermediary or, where applicable, the withholding tax agent	
European unique identifier (EUID), legal entity identifier (LEI) or alternative	
Official address	
Other relevant data	Tax identification number (TIN) assigned by the source Member State, if available, and the TIN(s) assigned by the jurisdiction(s) of residence for tax purposes, TIN-issuing jurisdiction(s) E-mail address and telephone number
Indication if the information is provided pursuant to Article 10(3)	Identification of the financial intermediary that is not a certified financial intermediary (name and EUID, LEI or alternative)

B. Information regarding the recipient of the dividend or interest payment	
Identification of the financial intermediary or final investor receiving the dividend or interest payment When the reporting option of Article 10(4) is applicable: the withholding tax agent or the designated certified financial intermediary is required to report on the information about the final investor receiving the dividend or interest payment	
Natural person	Name, TIN assigned by the source Member State, if available, and the TIN(s) assigned by the jurisdiction(s) of residence for tax purposes, TIN-issuing jurisdiction(s), date of birth, address
Entity	Name, TIN assigned by the source Member State, if available, and the TIN(s) assigned by the jurisdiction(s) of residence for tax purposes, TIN-issuing jurisdiction(s), address, LEI, where applicable, EUID, where applicable In the absence of an identification number, legal form and date of incorporation
Information about the tax residence (to be completed when the person in section A is the certified financial intermediary of the registered owner)	eTRC verification code or the information contained in Article 12(2), point (b), where applicable
	Name of country of tax residence
Investment account number	Number of the account where the securities are held by the financial intermediary/investor receiving the payment

Type of account	The type of account according to Article 38 of Regulation (EU) No 909/2014 and other accounts: A – Own account (maintained by a participant in the central securities depositary (CSD) of the original register of the securities) B – Third-party general account (maintained by a participant in the CSD of the original register of the securities for the account of clients) C – Third-party individual account (maintained by a participant in the CSD of the original register of the securities on behalf of a client) D – Detail register account of a third-party general account (securities of a client included in a third-party general account maintained by a participant in the CSD of the original register of the securities) E – Third-party global account other than B F – Individual account of a securities holder other than D or C G – Other type of account

C. Information regarding the payor of the dividend or interest payment	
Identification of the financial intermediary from which the reporter receives the dividend or interest payment When the reporting option of Article 10(4) is applicable: section C contains information about each certified financial intermediary that is part of the security payment chain. This information relates to the sequential payment chain of financial intermediaries.	
Legal person	Name, LEI, TIN assigned by the source Member State, if available, and the TIN(s) assigned by the jurisdiction(s) of residence for tax purposes, TIN-issuing jurisdiction(s), address, EUID, where applicable
Investment account number	Number of the account where the securities were held by the financial intermediary sending the payment

Type of account	The type of account according to Article 38 of Regulation (EU) No 909/2014 and other accounts: A – Own account (maintained by a participant in the central securities depositary (CSD) of the original register of the securities) B – Third-party general account (maintained by a participant in the CSD of the original register of the securities for the account of clients) C – Third-party individual account (maintained by a participant in the CSD of the original register of the securities on behalf of a client) D – Detail register account of a third-party general account (securities of a client included in a third-party general account maintained by a participant in the CSD of the original register of the securities) E – Third-party global account other than B F – Individual account of a securities holder other than D or C G – Other type of account

D. Information regarding the dividend or interest payment	
Issuer	Name, TIN or, in its absence, LEI or EUID, official address
CSD	Identification of the central securities depository of the original register of the securities
ISIN (International Securities Identifier Number)	Identification of the security
Security type	Type of share, underlying of a depository receipt, bond
Number of securities that give right to receive the payment	Number of securities settled
	Number of securities pending settlement
Payment type	Cash Shares (indication whether they derive from script dividend and the ISIN number)
COAF (Official Corporate Action Event Identifier) or, if not available, detailed information on the distribution	Identification of the event (dividend/interest distribution)
Relevant dates	Ex-dividend date, record date, payment date
Amount of dividend or interest received/to be received and currency	Gross amount, net amount
Information about the withholding tax	Withholding tax rate applied or to be applied, amount withheld, the amount and the rate of a surcharge if applicable
	The legal basis of the applicable withholding tax rate (to be completed when the person in section A is the certified financial intermediary of the registered owner)
Cash account IBAN	IBAN of the account to which the payment has been transferred

E. Information regarding application of anti-abuse measures to be fulfilled by the certified financial intermediary requesting relief	
Information about the holding period of underlying publicly traded shares	Two boxes: 1) for underlying shares acquired more than five days before the ex-dividend date – number of shares 2) for underlying shares acquired within a period of five days before the ex-dividend date – number of shares ('First in, first out' (FIFO) to be used in case of regular trading positions)
Information about financial arrangement	Indicate evidence of any financial arrangement involving underlying publicly traded shares that has not been settled, expired or otherwise terminated at the ex-dividend date
	For underlying shares linked to a financial arrangement – number of shares
	For underlying shares not linked to a financial arrangement – number of shares
F. Information regarding transactions that can be requested by the source Member State according to Article 10(2)	
Information about the transactions of the underlying securities from 1 year before the record date up to and including 45 days after the record date	Trade dates
	Contractual or agreed settlement dates
	Actual settlement dates
	The respective number of securities that are subject to the trade
	Transaction type: purchase, sale, loan, transfer, other

G. Information regarding depositary receipts that can be requested by the source Member State according to Article 10(2)	
When it concerns a dividend payment arising from a depositary receipt	The name, the international securities identification number (e.g. ISIN) of the depositary receipts and of the underlying shares
	The name of the bank in which the underlying shares are deposited
	The ratio of the depositary receipts to the underlying shares
	The number of depositary receipts held by the registered owner that give right to receive the dividend payment
	The payment date of the dividend arising from a depositary receipt
	The total number of issued depositary receipts at the record date
	The total number of underlying shares for all issued depositary receipts at the record date