

DRAFT

## COUNCIL DIRECTIVE

### 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 opinion of the European Parliament<sup>1</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>2</sup>,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) Ensuring fair taxation in the internal market and the good functioning of the Capital Markets Union (CMU) are political priorities for the European Union (EU). In this context, removing obstacles to cross-border investment, while combating tax fraud and abuse is critical. Such obstacles exist, for example, through inefficient and disproportionately burdensome procedures 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, current situation has proven inadequate in preventing recurring risks of tax fraud, evasion and avoidance, as shown by the recent Cum/Ex and Cum/Cum scandals. This Directive seeks to make withholding tax procedures more efficient, while strengthening them against the risk of tax fraud and abuse. It draws on relevant previous actions at EU and international level, such as the 2009 Commission Recommendation on the simplification of withholding tax procedures and the OECD's Treaty Relief and Compliance Enhancement (TRACE) initiative<sup>3</sup>.
- (2) In order to strengthen Member States' ability to prevent and fight against potential fraud or abuse, which is currently hampered by ~~fragmentation and~~ a general lack of reliable and timely information on investors, it is therefore necessary to **provide for the possibility of put-in-place** a common framework for the relief of excess withholding taxes on cross-border investments in securities that is resilient to a risk of tax fraud or abuse. This framework should lead to convergence among the various relief procedures applied in the EU while ensuring transparency and certainty on investors' identity for securities' issuers, withholding tax agents, financial intermediaries and Member States, as the case may be. To this effect, the framework should rely on automated procedures, such as the digitalisation of the certificate of tax residence (in terms of procedure and form). Such a framework should also be flexible enough to duly take into account the various systems applicable in different Member States while ~~ensuring greater~~

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

<sup>2</sup> OJ C , , p.

<sup>3</sup> Commission Recommendation of 19 October 2009 on withholding tax relief procedures (Text with EEA relevance) (OJ L 279, 24.10.2009, p. 8–11)

~~convergence and~~ providing appropriate anti-abuse tools to mitigate risks of tax fraud, evasion and avoidance. In this regard, it is necessary to take into consideration the different position of tax administrations depending on the relief system in place. Under the relief at source system, tax administrations are able to obtain, after the relief is applied, relevant information of the investors and the payment chain from the withholding tax agent that has applied the relief, and which is usually liable according to national legislation for possible tax losses. On the contrary, where a refund system is applied, it is the tax administrations that have to apply the relief, and it is crucial for them to obtain, before the relief is applied, adequate information in order to assess whether the relief should be granted, and also establish rules on the liability of the financial intermediary requesting the relief in case of undue refunds. Considering these differences and also the principle of proportionality, the provisions of this Directive regarding national registers, obligations to report information and liability are not binding for those Member States that have in place a comprehensive relief at source system, as defined in this Directive. Nevertheless, depending on risk assessment criteria, if these Member States consider appropriate to strengthen the instruments to combat tax fraud, they may apply the tools provided for in the Directive.

- (3) To ensure a proportionate approach, ~~rules regarding the~~ procedures to relieve excess withholding taxes should be in place binding only on those Member States that apply withholding tax on cash or stock dividends at different rates depending on the specific investor's tax residence. In this case, Member States need to provide relief where a higher rate has been applied in a situation for which a lower rate is applicable. In addition, Member States should 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 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 set out in this Directive and therefore not bound by these rules.~~ Where a relief of excess withholding taxes is needed, and to ensure a common access to the relief of excess withholding taxes, this Directive should regulate a common quick refund system to be implemented by Member States. Nevertheless, taking into account that relief at source systems allow for the application of the appropriate tax rate at the time of payment in a straightforward way, those Member States that have in place a comprehensive relief at source system do not have to implement a quick refund system. Moreover, those Member States that have in place a relief at source system that is not comprehensive, in the particular cases of excess withholding taxes already covered by such relief at source system, a quick refund could not be provided if the relief at source is applicable. Therefore, this Directive harmonizes the access to systems of relief for investors in all Member States, without fully regulating all systems of relief, but providing a complete regulation of a quick refund system, leaving the possibility for Member States to maintain their national regulation of relief at source systems, under certain conditions, while ensuring the access to systems of relief across Member States. Given that investors may be located in any Member State, rules for a common and digital tax residence certificate (eTRC) should apply in all Member States and the same is the case for general and final provisions.

- (4) To ensure that all EU taxpayers have access to a common, appropriate and effective proof of their residence for tax purposes, Member States should use automated procedures for the issuance of tax residence certificates. Moreover, eTRCs should be issued in the same recognisable and acceptable digital form and with the same content. To allow for greater efficiency, the certificate should cover a maximum period of the calendar year for which it is issued and remain valid for certifying residence for that covered period. The issuing Member States should be able to completely or partially invalidate an eTRC if the tax administration has evidence that the taxpayer is not a resident of the issuing Member State for all or part of the covered period. In order to allow for an efficient identification of EU companies, the certificate should include information on the European Unique Identifier (EUID), where applicable. While primarily intended for the implementation of the withholding tax procedures, the eTRC can 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 withholding tax procedures, the eTRC cannot include any additional information and it is intended to be issued once during the calendar year for multiple events that regard the same taxpayer investing in the same source Member State as long as the taxpayer's residence for tax purposes remains the same.
- (5) To fulfil the objective of more efficient relief of excess withholding tax, common procedures should be implemented that allow to quickly obtain clear and secure information on the identity of the investor especially in the case of large investor bases, that is, in relation to investment to publicly traded securities, where identifying the identity of the individual investors is challenging. Such procedures should also, as a second step, allow ~~for the application of the appropriate tax rate at the time of payment (relief at source)~~ or for the quick reimbursement of any excess amount of tax paid. Given that cross-border investments usually involve a payment chain of financial intermediaries, relevant procedures should equally allow for the tracing and identification of the chain of intermediaries and hence of the income flow from the issuer of the security until the final recipient, (the sole investor or registered owner). Relevant Member States, i.e., those applying withholding tax on income from securities and providing relief for excess tax and that do not have in place a comprehensive relief at source system, should therefore establish and maintain a national register of those financial intermediaries that have a significant role in the payment chain, and once registered require them to report information available to them about the dividend or interest payments, if applicable, they handle. The information required should be limited to information that is crucial to reconstruct the payment chain and therefore useful to prevent risk of fraud or 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 may also consider using the established national register, as the case may be.
- (6) As the financial intermediaries most often engaged in the securities' payment chains are large institutions as defined in the Capital Requirements Regulation (CRR)<sup>4</sup> as well as central securities depositories providing withholding tax agent services, these entities should be obliged to request registration on the national registers of Member States. Other financial intermediaries should be allowed to request registration at their discretion. Registration should be requested by the financial intermediary itself by

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<sup>4</sup> Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 Text with EEA relevance (OJ L 176, 27.6.2013, p. 1–337)

submitting an application to the competent authority designated by the Member State, including evidence that the financial intermediary meets certain requirements. Once registered, financial intermediaries should be considered “certified financial intermediaries” in the respective Member State and be subject to the relevant reporting and notification obligations under this Directive while granted the right to request application of the relief procedures set out in this Directive. The Member States that maintain a national register should also take action to remove therefrom any certified financial intermediary that so requests or no longer meets the respective requirements. Furthermore, these Member States can decide to provide for the removal from their national register of certified financial intermediaries found to have violated their obligations provided they are not a financial intermediary obligated to be registered. In order to also ensure compliance by certified financial intermediaries with an obligation to register, Member States have the authority to deny them access to relief systems if they are found to be in violation of their obligations under this Directive or under anti-money laundering regulations. Where a Member State decides to remove, denies access to relief systems or rejects a registration request, it should inform other Member States that maintain their national registers. The purpose of such notification is to allow them to evaluate the measures taken, the removal or the rejection and consider it in the context of any future registration request by the same financial intermediary in their own national register. National legislation of the Member States concerned applies to the rights and obligations of parties concerned, including for appeal, in relation to any decision taken by a Member State in connection with registration and removal from their national register.

- (7) To ensure greater transparency on the identity and the circumstances of the investor receiving a dividend or interest payment as well as on the flow of the payment from the issuer, certified financial intermediaries should report to the authority designated to maintain the national register, within specific timelines, a relevant set of information. This 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 also opted not to register as such, do not have reporting obligations under this Directive. Nevertheless, information on the payments handled by such intermediaries that are not certified financial intermediaries remains relevant ~~and may be considered necessary by a Member State, at its discretion, to ensure transparency and to allow~~ for the proper reconstruction of the payment chain before applying the ~~quick refund system relief procedures~~ set out in this Directive ~~(relief at source or quick refund). Member States that have in place a relief at source system applicable in all cases of excess withholding tax on dividends from publicly traded shares originating in their jurisdictions have already in place specific reporting requirements that could differ from the reporting requirements for certified financial intermediaries under this Directive. In order to alleviate the cost of implementing the systems necessary to collect the information that must be reported by certified financial intermediaries, it should be possible for those Member States to opt not to require the reporting of certified financial intermediaries for a limited period of time.~~
- (7a) To ensure there are no information gaps in the payment chain and to enable investors to access the relief procedures, the Directive should allow for the possibility of a certified financial intermediary, that may not be directly involved in a specific payment chain, to step into the role of a financial intermediary within that chain that is not a certified financial intermediary. This implies that the certified financial intermediary takes on the responsibilities related to information reporting and the relief systems that a financial intermediary would have if it were a certified financial intermediary. Through this

arrangement between financial intermediaries, tax administrations should be able to **obtain all relevant information and** effectively reconcile information across the entire payment chain, and investors should be able to access the relief systems, even in cases involving a financial intermediary that is neither registered in a Member State nor bound by the obligations pursuant to this Directive. ~~To ensure that tax authorities have clear records of which financial intermediary is responsible for reporting the information, this arrangement must be registered in the national register.~~

- (7b) Apart from the possibility abovementioned, this Directive does not prevent certified financial intermediaries from outsourcing the tasks related to the fulfilment of their obligations under this Directive. Thus, a certified financial intermediary may rely on a third party to fulfil the obligations set out in Chapter III. However, these obligations remain the responsibility of the certified financial intermediary.
- (8) In order to render the Capital Markets Union more effective and competitive, procedures for relief of excess withholding taxes on securities' income 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 consist of all the certified financial intermediaries in the payment chain between the investor and the issuer of the securities, which might be required to also provide information on payments effected by non-certified financial intermediaries in the chain, ~~as per the policy choice of each Member State~~. Taking into account the different approaches in Member States, two types of procedures should be foreseen: (i) relief at source by direct application of the appropriate tax rate at the time of withholding **regulated by national legislation of Member States** and (ii) quick refund within a set deadline **regulated by this Directive**. Member States should **implement a quick refund system insofar as they do not have in place a comprehensive relief at source system** ~~be free to introduce any of the two or a combination of both procedures, as they deem appropriate while~~ **and should** ensuring that at least one is available for all investors, where the **relevant** requirements ~~of this Directive~~ have been met. ~~Therefore,~~ Member States **that have in place a relief at source system that is not a comprehensive relief at source system, under certain conditions,** should be able to **maintain their relief at source system or to** limit the use of ~~it one procedure~~ only for specific cases, such as low-risk scenarios, provided that the **quick refund system** ~~other procedure~~ remains available for all other cases **not covered by the relief at source system**. Assuming that the Member State responsible for issuing refunds already includes provisions for paying interest on **similar** late refunds in their domestic legislation, it is appropriate to enforce the payment of interest on late refunds of excess withholding taxes falling under this Directive and meeting the necessary criteria. This ensures the proper and timely implementation of these procedures by the Member States concerned. Where relevant requirements are not met, or the investor concerned so desires, Member States should apply their existing standard refund procedures to relieve excess withholding taxes. **Considering that the relief system of this Directive is intended to be requested by certified financial intermediaries,** ~~In any case, registered owners, in particular retail~~ investors, and their authorized representatives, should preserve **in any case** the right to reclaim excess withholding tax paid in a Member State where they provide proof of meeting the conditions set out in national law.

- (8a) To ensure that Member States can enforce their anti-fraud measures and conduct thorough investigations in cases where there is a risk of fraud before processing a refund, Member States should have the right to reject a refund request under certain conditions. These conditions should include cases where the request requirements are not met, where the payment chain cannot be reconstructed or where the Member State decides to initiate any verification procedure or tax audit.
- (9) In order to safeguard the systems for relief of excess withholding taxes, Member States maintaining a national register should also require certified financial intermediaries to verify the eligibility of investors that wish to claim a relief. In particular, certified financial intermediaries should collect the tax residence certificate of the relevant investor, and a declaration that such investor is the one eligible to receive the withholding tax relief for the payment according to the legislation of the source Member State. For those fiscally transparent entities that cannot obtain an eTRC or a proof of tax residence in a third country but that are entitled to relief according to conventional or internal law of the source Member State, the registered owner is allowed to provide the documentation deemed appropriate by the source Member State to grant them access to the systems of relief. They should also verify the applicable withholding tax rate based on the investor's specific circumstances and indicate if 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. Additionally, the investor should commit to informing the financial intermediary of any changes in their relevant circumstances. The due diligence requirements could be carried out on an annual basis unless the certified financial intermediary knows or has reasons to know that there is a change of circumstances or the information is incorrect or unreliable. ~~Certified financial intermediaries should be held liable for tax revenue losses resulting from either partial or complete non-compliance with these obligations.~~ Special provisions are foreseen to provide relief in cases where ~~the investors of~~ certain collective investment vehicles or the investors therein are entitled to the relief but they are not the registered owners because the securities are held by a different legal person or by a fiscally transparent collective investment vehicle ~~or by a management company. In such cases, the liability of the certified financial intermediary is reinforced.~~
- (10) It is acknowledged that financial arrangements can be used to shift the economic ownership, in whole or in part, of a security and/or relevant investment risks. It has also been evidenced 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 when there was no entitlement thereto or to increase the amount of refund to which an investor was actually entitled. Information on such financial arrangements, which encompass ordinarily legitimate securities transactions such as repurchase agreements or securities lending, and also derivative products such as single stock futures, is therefore necessary for tax administrations to fight tax abuse. To ensure a proportionate approach, reporting on this information should only be required by those certified financial intermediaries that, due to their position within the chain, may have been directly involved in the relevant financial arrangement, which will be the case for the certified financial intermediaries that request the relief. Such reporting is not required in the case of bonds and interest payments.

- (10a) Member States should be able to restrict the access to ~~the relief at source and/or~~ quick refund procedures in cases that present high risk to be abusive. Such risk exists in particular in case of shares purchased within five days before the ex-dividend date or in case of financial arrangements. Taking into account the differences in the existing legal systems of Member States, they should have discretion to determine which of the above cases to be covered by the laws implementing this Directive. However, Member States should ensure that following the transposition of this Directive, national legislation does not allow cases that **Member States consider to** present ~~any~~ high-risk features to benefit from ~~the relief at source or~~ quick refund procedures and thereby ensuring that tax administrations are better placed to fight against abusive schemes than they were before the transposition of this Directive.
- (10b) Considering their key role, ~~of~~ certified financial intermediaries, ~~for the purposes of the systems of relief foreseen in this Directive,~~ **obliged to report information should be held liable for tax revenue losses that have been incurred due to the inadequate fulfilment of this obligation and certified financial intermediaries requesting the relief should be held liable for any tax losses resulting from the undue application of the relief** ~~they could be held liable in case of non-compliance with their specific obligations under this Directive in the event there is a loss of the withholding tax deriving from their non-compliance. This liability is compatible with penalties, where applicable. Usually, the certified financial intermediary that could be held liable will be the one requesting the relief since it is required to verify the investor's eligibility.~~ Liability of withholding tax agents, when not acting as certified financial intermediaries, is not regulated by this Directive. Therefore, their liability should be subject to the national legislation of Member States.
- (11) In order to ensure effectiveness of the new rules, Member States should lay down the rules on penalties applicable to infringements of national provisions adopted pursuant to this Directive. Such penalties should be effective, proportionate and dissuasive.
- (12) 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 base of 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 proposed new rules. In this context the Commission should consider the need to update the rules introduced by virtue of this Directive.
- (13) In order to ensure uniform conditions for the implementation of this Directive, in particular for (i) the digital tax residence certificate, (ii) the reporting of financial intermediaries and (iii) 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<sup>5</sup>.

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<sup>5</sup> 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)

- (14) 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<sup>6</sup>. Data processing is set out in this Directive also with the objective of serving a general public interest, namely the matters of taxation and the purposes of combating tax fraud, tax evasion and tax avoidance, safeguarding tax revenues and promoting fair taxation, which strengthen opportunities for social, political and economic inclusion in Member States. Therefore, for the purposes of correct application of this Directive, and in order to safeguard these objectives of general public interest, Member States should have the possibility to restrict the scope of certain data subject's rights set out in Regulation (EU) 2016/679. Nevertheless, such restrictions should not go beyond what is strictly necessary for achievement of the aforesaid objectives. In relation to the additional information that may 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.
- (15) Since the objective of this Directive cannot sufficiently be 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.
- (16) The European Data Protection Supervisor was consulted in accordance with Article 42 of Regulation (EU) 2018/1725 of the European Parliament and of the Council<sup>7</sup>.

*Recitals have been amended according to the changes throughout the text.*

HAS ADOPTED THIS DIRECTIVE:

## **CHAPTER I**

### **GENERAL PROVISIONS**

#### *Article 1*

#### **Subject matter**

This Directive lays down rules on the issuance of a digital tax residence certificate by Member States and the procedure to relieve any excess withholding tax that can be withheld by a Member State on dividends from publicly traded shares and, where applicable, interest from publicly traded bonds paid to registered owners who are resident for tax purposes outside that Member State.

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<sup>6</sup> 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)

<sup>7</sup> 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)



## Article 2

### Scope

1. Chapters I and IV shall apply to all Member States. Chapter II shall apply to all Member States with regards to all persons that are resident for tax purposes in their jurisdiction.
2. ~~The procedures laid down in~~ Chapter III shall apply to all Member States that provide relief of excess withholding tax on dividends paid for publicly traded shares **issued by a resident in their jurisdiction and do not have in place a comprehensive relief at source system applicable in such cases.**
3. Member States that provide relief of excess withholding tax on interest paid for publicly traded bonds **issued by a resident in their jurisdiction** may apply Chapter III.
4. **Member States that have in place a comprehensive relief at source system applicable to the excess withholding tax on dividends paid for publicly traded shares issued by a resident in their jurisdiction may apply Chapter III, under the terms of Article 9a.**

*Some changes have been introduced in the scope of application of the Directive. See explanations included in the steering note.*

*See also new Article 9a in order to have the whole picture of the application of Chapter III.*

### Article 2a

#### **Comprehensive relief at source system assessment**

1. **The Commission shall, by means of implementing act, acting on a reasoned request by the concerned Member State, determine whether a national relief at source system is a comprehensive relief at source system within the meaning of article 3 (22a). This implementing act shall be adopted in accordance with the procedure referred to in Article 18.**
2. **A Member State providing for a comprehensive relief at source shall send a reasoned request to the Commission including the text of the provisions of national law which regulate such system and which comply with the conditions referred to in subparagraphs (a) to (e) of Article 3 (22a), and shall provide statistical data on the amount of the reliefs granted and rejected in the previous two years, and the reasons for the relief rejections. If the Commission considers that it does not have all the information necessary for the appraisal of the request, it shall contact the Member State concerned within two months of receipt of the request and specify what additional information is required. Once the Commission has all the information it considers necessary, it shall, within one month, notify the requesting Member State and it shall submit the relevant information to the Committee referred to in Article 18(2).**

- 3. Member States covered by an implementing act determining whether a national relief at source system is a comprehensive relief at source system within the meaning of Article 3 (22a) shall inform the Commission of any significant subsequent change to the rules governing the national relief at source system that may affect the Commission’s assessment under this article. The Commission may review the assessment of the Member States considered as providing for a comprehensive relief at source system.**
- 4. The Commission shall publish in the Official Journal of the European Union the implementing act about the Member States that provide for a comprehensive relief at source.**

*The amendment of Article 2 regarding the changes in the scope of application of the Directive requires an objective assessment to determine if a national RAS meets the conditions to be considered as a comprehensive RAS.*

*For these purposes, it is proposed to introduce new Article 2a.*

### *Article 3*

#### **Definitions**

For the purposes of this Directive the following definitions shall 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 line with a double tax treaty or specific national legislation, as the case may be.
- (2) ‘publicly traded share’ means share admitted to trading on a regulated market or multilateral trading facility as defined under points 21 and 22 of Article 4(1) of Directive 2014/65/EU of 15 May 2014<sup>8</sup>.
- (3) ‘publicly traded bond’ means a bond admitted to trading on a regulated market or multilateral trading facility or organised trading facility as defined under points 21, 22 and 23 of Article 4(1) of Directive 2014/65/EU of 15 May 2014 respectively.

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<sup>8</sup> 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 (recast) (OJ L 173, 2.6.2014, p. 349)

- (4) ‘financial intermediary’ means a central securities depository as defined in Article 2 (1) of Regulation (EU) 909/2014 of 23 July 2014<sup>9</sup>, a credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013<sup>10</sup> or an investment firm, as defined in point (1) of Article 4(1) in Directive 2014/65/EU or a third country legal person that has been authorised to provide services comparable to those provided by a central securities depository, a credit institution or an investment firm, or a branch of those entities, under comparable legislation of a third country of residence, which is part of the securities payment chain between the entity issuing securities and the registered owner receiving payments on such securities.
- (4a) ‘Entity’ means a legal person or a legal arrangement, such as a corporation, partnership, trust, or foundation.
- (4b) ‘Collective investment undertaking’ means an undertaking for collective investment in transferable securities as defined in Article 1(2) of Directive 2009/65/EC<sup>11</sup>, an alternative investment fund as defined in Article 4(1)(a) of Directive 2011/61/EU<sup>12</sup> or a third country collective investment vehicle under comparable legislation.
- (5) ‘EUID’ means the European Unique Identifier for companies as referred to in Article 16 of Directive (EU) 2017/1132 of the European Parliament and of the Council<sup>13</sup>.
- (6) ‘tax identification number or TIN’ means the unique identifier for tax purposes of a registered owner as such in a Member State.
- (7) ‘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 or reimbursed for such excess tax.
- (8) ‘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 authority to act on its behalf for the purposes of this Directive.
- (9) ‘security’ means a publicly traded share or a publicly traded bond.
- (10) ‘large institution’ means a large institution as defined in point (146) of Article 4(1) of Regulation (EU) No 575/2013.

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<sup>9</sup> 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. 1–72)

<sup>10</sup> Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 Text with EEA relevance (OJ L 176, 27.6.2013, p. 1–337)

<sup>11</sup> 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)

<sup>12</sup> 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

<sup>13</sup> Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (codification) (OJ L 169, 30.6.2017, p. 46–127)

- (11) 'withholding tax agent' means an entity authorised by the source Member State to assume responsibility for the deduction of withholding tax from payment of dividends or interest from securities and the transfer of such withholding tax to the tax authority of the source Member State.
- (12) 'record date' means the date set by the issuer of a security, on which the identity of the holder of such security and the rights flowing therefrom shall be determined, based on the settled positions struck in the books of the financial intermediary by book-entry at the close of its business.
- (13) '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 point (7) of Article 2(1) of the Regulation (EU) 909/2014 of 23 July 2014.
- (14) 'registered owner' means any natural person or entity that is entitled to receive dividend or interest income 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 law of the source Member State, and that is not a financial intermediary acting for the account of others with respect to that dividend or interest income.
- (15) 'investment account' means the account or accounts provided by financial intermediaries to registered owners via which their securities are held or registered.
- (15a) 'cash account' means the account or accounts to which the payments related to the securities held or registered in the investment account are made.
- (16) 'ex-dividend date' means the date as from which the shares are traded without the rights flowing from the shares, including the right to participate and vote in a general meeting, where relevant.
- (16a) 'payment date' means the date on which the payment regarding the dividend of a publicly traded share or the interest of a publicly traded bond is due to the registered owner.
- (17) 'financial arrangement' means any arrangement or contractual obligation whereby 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 another party.
- (18) 'securities payment chain' means the sequence of financial intermediaries handling the payment of dividends or interest on securities between the securities' issuer and a registered owner to whom dividends or interest from such securities are paid.
- (19) 'double tax treaty' means an agreement or convention that provides for the elimination of double taxation of income, and where applicable, capital, in force between two (or more) jurisdictions.
- (20) 'source Member State' means the Member State of residence of the issuer of the security paying dividend or interest.
- (21) 'quick refund system' means a system where a payment of dividend or interest is made taking into account the general domestic withholding tax rate followed by a request for refund of the excess withholding tax within the timeframe set in Article 13.

(22) ‘relief at source system’ means a system where the appropriate withholding tax rate, in accordance with the applicable domestic rules and/or international agreements, such as the relevant double tax treaty, is applied at the moment of payment of dividends or interest.

**(22a) ‘comprehensive relief at source system’ means a relief at source system that meets all of following conditions:**

**(a) it effectively provides withholding tax relief at least in cases where an individual or entity entitled to such relief is able to access the quick refund system pursuant to Directive;**

**(b) it does not apply any exclusions from withholding tax relief other than those set out in Article 10(2) and in case of failure to report the required information determined by the Member State to apply such relief at source;**

**(c) it neither requires any additional information from, nor imposes any additional obligation on the individual or entity entitled to the relief, other than those provided for in Article 11 and Article 13a, as applicable;**

**(d) it has a liability regime 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**

**(e) it has rules on effective, proportionate and dissuasive penalties applicable to infringements of national provisions on that relief at source system.**

**(22b) ‘partial relief at source system’ means a relief at source system that does not meet all the conditions provided for in paragraph (22a) of this Article.**

(23) ‘standard refund system’ means a system where a payment of dividends or interest is made taking into account the general domestic withholding tax rate followed by a request for refund of the excess withholding tax outside the procedure set out in Article 13.

*Two new definitions (22a) and (22b) have been added in consistency with the changes in the scope. See explanations included in the steering note.*

**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 an individual or entity deemed resident in their jurisdiction for tax purposes.
2. Member States shall issue the eTRC based on the information of which they have knowledge on the date of issuance within 14 calendar days from submission of a request, subject to paragraph 4. The eTRC shall comply with the technical requirements of Annex I and shall include the following information:
  - (a) the first and last name of the taxpayer and the date ~~and place~~ of birth, if the taxpayer is an individual, or ~~its name and its European Unique Identifier number (EUID)~~, if the taxpayer is an entity, its name and its European Unique Identifier number, or if there is no such number, the legal entity identifier (LEI), where applicable;
  - (b) tax identification number;
  - (c) address of the taxpayer;
  - (d) date of issuance;
  - (e) the covered period;
  - (f) identification of the tax authority issuing the certificate;
  - (fa) the double tax treaty pursuant to which the taxpayer is considered resident for tax purposes in the Member State of issuance, where applicable.
  - (g) any additional information that is necessary for proving the taxpayer's residence for tax purposes insofar as the certificate is not to be used for relief of withholding tax within the EU.
3. An eTRC shall:
  - (a) cover a period not exceeding the calendar year for which it is issued; and
  - (b) be valid for certifying the residence of such covered period 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 during 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 residency of a specific taxpayer, the Member State shall inform the individual or entity~~person~~ requesting the certificate of the additional time needed and the reasons for the delay.
5. Member States shall recognise an eTRC issued by another Member State as adequate proof of residence of a taxpayer in that other Member State in accordance with paragraph 3, without prejudice to the possibility for Member States to prove the residence for tax purposes in their jurisdiction.

**5a. Member States shall take the appropriate measures to require an individual or entity deemed resident in their jurisdiction for tax purposes to inform tax authorities issuing the eTRC about any change that could affect the validity or the content of the eTRC.**

**5b. Member States shall take the necessary measures to require that an eTRC is provided, where a proof of tax residence is required for an individual or entity deemed resident for tax purposes in a Member State, for the purposes of the application of a relief at source system or a quick refund system for the purposes of relief of excess withholding tax on dividends paid for publicly traded shares, or interests paid for publicly traded bonds, if applicable, issued by a resident in their jurisdiction.**

6. The Commission shall adopt implementing acts laying down standard computerised forms, including the linguistic arrangements, and technical protocols, including security standards, for the issuance of an eTRC. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 18.

*As suggested by some Member States, the place of birth has been deleted in Article 4.2(a) and the LEI is included, where applicable, if the EUID is not applicable.*

*In Article 4.4, a minor change has been made according to the wording of Article 4.1.*

*As suggested by a Member State, a new paragraph 5a is included to require the persons requesting the eTRC to inform about any change in their circumstances.*

*A new paragraph 5b has been included after the changes in the scope of the Directive to ensure that eTRCs are used in all RAS and QRS.*

### 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, paragraph 2, that levy a withholding tax on dividends from publicly traded shares paid to registered owners resident for tax purposes outside that Member State and that provide relief of excess withholding tax shall establish a national register of certified financial intermediaries. Member States may opt to use this national register also in relation to relief of excess withholding tax on interest from publicly traded bonds, if applicable.~~

**1a. Member States referred to Article 2, paragraphs 3 and 4, that opt to apply Chapter III shall establish a national register of certified financial intermediaries.**

2. ~~Member States that levy a withholding tax on interest from publicly traded bonds while they do not levy withholding tax on dividends from publicly traded shares may opt to establish a national register.~~

3. Member States establishing a national register according to paragraph 1 and 1a2 shall designate a competent authority responsible for maintaining and updating that register.
4. The national register shall include the following information on the certified financial intermediaries:
  - (a) name of the certified financial intermediary;
  - (b) date of registration;
  - (c) contact details and any existing website of the certified financial intermediary;
  - (d) the EUID, or, where the certified financial intermediary has no such number, the legal entity identifier (LEI) or any legal entity registration number issued by its country of residence.
- 4a. For the purposes of this Article and Articles 9 to 13a, Member States shall permit a certified financial intermediary to assume the **obligations and responsibilities set out in Articles 9 to 13a 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 both financial intermediaries have agreed on it. The certified financial intermediary ~~shall incur liabilities and obligations deriving from these Articles and~~ shall be subject to the provisions of Articles 16 and 17.
 

~~In such a case, the national register shall also include the existence of the agreement and the information referred to in paragraph 4 concerning the financial intermediary that is part of the securities payment chain and is not a certified financial intermediary.~~
5. The national register shall be made publicly accessible on a dedicated website of the Member State and updated at least once a month.

*The wording of Article 5.1 has been simplified. Article 5.1a has been added and Article 5.2 has been deleted since it seems to be unnecessary.*

*Some linguistic changes has been made in Article 5.4a to clarify the wording, as suggested by a Member State. There is no change in substance.*

*According to the opinion of several Member States, the information of the non-CFI is no longer required to be in the register, since it will be provided under Annex II.*

#### *Article 6*

##### **Requirement to register as certified financial intermediary**

1. Member States that maintain a national register according to Article 5 shall require all large institutions that handle payments of dividends and, where relevant, interest on securities **issued by a resident**~~originating~~ in their jurisdictions, and central securities depositories **as referred to in Article 3(4)** that provide withholding tax agent services for the same 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 register of any financial intermediary meeting the requirements of Article 7.



*The language “originating in their jurisdictions” has been replaced for a more accurate wording.*

*The reference to the Article 3(4) is reinserted, since there is no specific definition for central securities depositories, as suggested by a Member State.*

## *Article 7*

### **Registration procedure**

1. Member States shall ensure that a financial intermediary is registered in their national register of certified financial intermediaries within three months from submission of a request of the financial intermediary that provides evidence of all of the following requirements:
  - (a) a residence for tax purposes in a Member State or third country jurisdiction not included on Annex I of the EU list of non-cooperative jurisdictions for tax purposes<sup>14</sup> nor on the table I of the Annex to Delegated Regulation (EU) 2016/1675<sup>15</sup>;
  - (b) if the requesting financial intermediary is a credit institution or an investment firm, 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 the activities as such. Where the requesting financial intermediary, resident for tax purposes in a third country jurisdiction, has obtained such authorisation under a legislation that is 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 unfulfilled;
  - (c) a declaration of compliance with the provisions of Directive 2015/849/EU of the European Parliament and of the Council<sup>16</sup> as applicable or with a comparable legislation of a third country jurisdiction not included on Annex I of the EU list of non-cooperative jurisdictions for tax purposes or on the table I of the Annex to Delegated Regulation (EU) 2016/1675.
- 1a. If the financial intermediary submitting the registration request is resident for tax purposes in a third country jurisdiction where the Directive 2010/24/EU<sup>17</sup> or a convention that provides assistance in the collection of taxes does not apply to recover all or part of the loss of withholding tax revenues according to Articles 13a(4) and 16, Member States may require sufficient and proportionate guarantees to ensure the payment of such loss in relation to the relief requests.

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<sup>14</sup> Council of the European Union, Economic and Financial Affairs Council, 14094/16, Brussels 8 November 2016

<sup>15</sup> 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. 1–4)

<sup>16</sup> Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU (OJ L 156, 19.6.2018, p. 43–74), as amended by Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018

<sup>17</sup> Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures

2. Financial intermediaries shall notify without delay the competent authority of the Member State of any change in the information provided under points (a) to (c).
3. Member States shall, pursuant to Article 9 of the Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC, communicate all other Member States the entry rejections in their national registers without delay.

#### *Article 8*

#### **Removal from the national register**

1. Member States shall remove from their national register any certified financial intermediary that is not a certified financial intermediary on the basis of Article 6, paragraph 1, where such intermediary:
  - (a) requests such removal; or
  - (b) no longer meets the requirements of Article 7.
2. Member States may remove from their national register any certified financial intermediary that is not a certified financial intermediary on the basis of Article 6, paragraph 1, and that has been found to have not complied with its obligations under this Directive or the Directive 2015/849/EU or comparable legislation of a third country of residence for tax purposes.
  - 2a. Where a certified financial intermediary on the basis of Article 6, paragraph 1, has been found to have not complied with the obligations under this Directive or the Directive 2015/849/EU or comparable legislation of a third country of residence for tax purposes, Member States may prohibit such certified financial intermediary to request relief under ~~this Directive Articles 12 and 13~~. Where such measure is applied to the certified financial intermediary, upon application thereof, it shall be made part of the information related to that certified financial intermediary in the national register maintained by the Member State that has adopted such measure.
3. The Member State shall, pursuant to Article 9 of the Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC, communicate without delay all other Member States that maintain a national register according to Article 5 of the measures it has applied to a specific financial intermediary pursuant to paragraph 1, 2 or 2a of this Article.
4. Member States shall ensure that the financial intermediary that has been removed from the national register pursuant to paragraph 1 or 2, or that has been prevented from requesting relief pursuant to paragraph 2a, is re-registered, or allowed to request relief again, where Member States have determined that the circumstance that caused it has been remedied.

*A minor change has been made in Article 8.2a in consistency with the deletion of Article 12.*

## **SECTION 2**

### **REPORTING**

#### *Article 9*

#### **Obligation to report**

1. Member States shall take the necessary measures to require certified financial intermediaries in their national register to report to their competent authority the information referred to in Annex II within the first 25 calendar days of the month following the month of the payment date of the dividend or interest. If a settlement instruction in respect of any part of a transaction is pending at the end of the aforementioned period, certified financial intermediaries shall indicate the part for which settlement is pending.
  - 1a. Member States shall take the necessary measures to require that the certified financial intermediary referred to in Article 5(4a) reports to their competent authority the information referred to in paragraph 1 with respect to a part of the securities payment chain for which ~~that the~~ handling financial intermediary ~~that is not part of the securities payment chain should report if it were~~ a certified financial intermediary.
  - 1b. Notwithstanding paragraphs 1 and 1a, Member States may take the necessary measures to require certified financial intermediaries in their national register to report the information according to those paragraphs to the withholding tax agent appointed by their competent authority.
2. [deleted]
3. Member States referred to in Article 2, paragraph 3, that opt to apply Chapter III and maintain a national register established in accordance with Article 5 ~~in relation to payments of interest, shall require certified financial intermediaries to report the information included in Annex II but~~ shall not require reporting of information under heading E of Annex II.
4. 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 18.
5. Member States shall require certified financial intermediaries in their national register to keep the documentation supporting the information reported for ten 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 ten years after reporting.
- ~~6. By way of derogation from paragraph 1, 1a and 1b of this Article, Member States that have in place a relief at source system applicable in all cases of excess withholding tax on dividends from publicly traded shares originating in their jurisdictions before the date of the entry into force of this Directive, may not require certified financial intermediaries in their national register to report the information referred to in Annex II for the following three calendar years from [1 January 2027]. Member States that make use of this option shall inform the Commission by [31 January 2026].~~

*Minor linguistic changes have been made to clarify (Article 9.1a) and simplify (Article 9.3) the wording.*

*Article 9.6 has been deleted in consistency with the changes in the scope.*

*On the other hand, a Member State has proposed an alternative reporting system with the following features:*

*- Within every chain of custody, a withholding agent should be designated to report all chain-related data to the tax authorities bearing responsibility, so it can be held liable for such data.*

*- The designated agent should be the last domestic institution in the chain of custody, or at least the last EU-based institution involved in the chain.*

*- The chain-specific information that an intermediary receives from its immediate upstream contractual partner, together with the intermediary's own chain-specific information is forwarded to its immediate downstream contractual partner. Finally, all the information of the chain would be reported to the tax authorities.*

### **SECTION 3**

#### **SYSTEMS OF RELIEF**

##### **Article 9a**

##### **Comprehensive and partial relief at source system**

- 1. Member States that have in place a comprehensive relief at source system and opt to apply Chapter III shall not apply Articles 10 to 14 with respect to the relief at source system applicable according to their national legislation, without prejudice to this national legislation regulating the request of relief at source and due diligence requirements.**
- 2. Member States that have in place a partial relief at source system shall not apply Articles 11 to 14 with respect to the relief at source system applicable according to their national legislation, without prejudice to this national legislation regulating the request of relief at source and due diligence requirements.**

**These Member States shall have no obligation to apply paragraph 1 of Article 10 in cases concerning dividends or interests referred to in that paragraph, where a relief at source is applicable and such Member States neither require any additional information from, nor imposes any additional obligation on the individual or entity entitled to the relief, other than those provided for in Article 11 and Article 13a, as applicable.**
- 3. Notwithstanding paragraph 1 and 2 of this Article, the abovementioned Member States shall require a certified financial intermediary maintaining a registered owner's investment account to request relief at source if the registered owner has authorized the certified financial intermediary to do so on its behalf.**

*A new Article 9a has been introduced to clarify that Member States with a comprehensive or partial relief at source system that apply Chapter III on a voluntary or mandatory basis have not to apply Articles 10 to 14 or 11 to 14, respectively. These Articles refer to requests under Article 13, and taking into account the specificities of each national relief at source systems, these Articles could be*

*incompatible with the regulation of the national relief at source system. However, this does not prevent Member States to have a similar regulation for requesting relief and due diligence requirements.*

*In order to ensure that CFIs has an incentive to register in national register, they have to be able to request relief.*

#### Article 10

##### **Request for relief ~~at source or quick refund~~**

1. Member States shall **take the necessary measures to** require **that** a certified financial intermediary maintaining the investment account of a registered owner receiving dividends or interests on publicly traded shares or publicly traded bonds **issued by a resident originating** in their jurisdictions ~~to request~~ relief **of excess withholding tax on such dividends or interests** pursuant to ~~Article 12 and/or~~ Article 13, on behalf of such registered owner, **in cases where** if the following conditions are met, **unless a relief at source is applicable to provide relief of excess withholding tax on such dividends or interests**:
  - (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 the relief** in accordance with Article 11 or ~~the investors' eligibility in accordance with~~ Article 13a, **as applicable**.
2. Notwithstanding paragraph 1, Member States may exclude **requests for** relief ~~under the systems as provided for under Articles 12 and 13 for a request,~~ 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 purpose of Article 9 according to Article 5(4a).~~
  - (d) an exemption of the withholding tax is claimed;
  - (e) a reduced withholding tax rate not deriving from double tax treaties is claimed.
4. Notwithstanding paragraph 1, where a financial intermediary maintaining 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 12 and~~ Article 13, ~~as applicable~~, subject to the provisions of Article 5(4a) ~~and Article 9~~.
5. The systems of relief pursuant to ~~Article 12 and~~ Article 13, ~~as applicable~~, shall not reduce the control powers of Member States, according to their national legislation, in relation to the taxable income to which such relief was applied.

*Minor changes have been made throughout Article 10 in consistency with the deletion of Article 12.*

*In Article 10.1, minor linguistic changes have been made and the language “originating in their jurisdictions” has been replaced for a more accurate wording. Some language is added to clarify that a quick refund would not be applicable where a relief at source is applicable to provide relief in particular cases covered by relief at source.*

*In Article 10.1(b), the wording is simplified taking into account the introduction of Article 13a.*

*In Article 10.2 the wording has been amended to clarify that no exclusions, one, some or all exclusions could be introduced by Member States.*

*The exclusion of Article 10.2(c) has been deleted, since it is unnecessary considering the possibility of rejecting a refund if the information of the payment chain is incomplete according to Article 13.3a(b).*

*In article 10.4, the reference to Article 9 has been deleted, since it is unnecessary (it is subsumed in Article 5.4a).*

## *Article 11*

### **Due diligence of registered owner’s eligibility**

1. Member States shall take the necessary measures to **require ensure** that the certified financial intermediary requesting relief under Article ~~12 and/or~~ 13 on behalf of a registered owner obtains from such registered owner a declaration that the registered owner:
  - (a) is entitled to the relief of the withholding tax with respect to the dividend or interest in accordance with the national legislation of the source Member State or a double tax treaty, where applicable, **including the legal basis**; and
  - (b) has engaged or not 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.
  - (c) undertakes to inform the certified financial intermediary of any change in their circumstances without undue delay.
2. Member States shall take the necessary measures to require that certified financial intermediaries requesting relief under Article ~~12 and/or~~ 13 on behalf of a registered owner verify the following:
  - (a) the eTRC of the registered owner or a proof of tax residence in a third country deemed appropriate by the source Member State. For these purposes, a tax residence certificate with equivalent content to that provided for in Article 4(2) and that meets the technical requirements in Annex I, paragraph 1, may be deemed as an appropriate proof of tax residence in a third country by the source member State;
  - (aa) notwithstanding point (a) of this paragraph, 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 it is entitled to the relief of the withholding tax with respect to the dividend or interest in accordance with the national legislation of the source Member State or a double tax treaty, where applicable;

- (b) the registered owner's declaration and tax residence, against the information that the certified financial intermediary has obtained or has an obligation to obtain, including but not limited to the information collected for other tax purposes or on the basis of anti-money laundering or similar regulatory requirements, which the certified financial intermediary is subject to under Directive (EU) 2015/849<sup>18</sup>, or comparable information required in third countries;
  - (c) the registered owner's entitlement to a specific reduced withholding tax rate in accordance with a double tax treaty between the source Member State and the jurisdictions where the registered owner is resident for tax purposes or specific national legislation of the source Member State;
  - (d) in case of a dividend payment and based on the information available to the certified financial intermediary, the possible existence of any financial arrangement that has not been settled, expired or otherwise terminated at the ex-dividend date.
- 2a. Member States may allow a certified financial intermediary to obtain the declaration referred to in paragraph 1 of this Article and to carry out the verifications provided for in paragraph 2, points (a) to (c), of this Article on an annual basis unless the certified financial intermediary knows or has reasons to know that there is a change of circumstances or that the declaration or the information to be verified is incorrect or unreliable.
3. [deleted]
4. In the case provided for in Article 5(4a), Member States shall allow the certified financial intermediary to rely on documentation collected and information verified by the financial intermediary maintaining the investment account of a registered owner according to this Article, without prejudice to the provisions of Article 5(4a), first subparagraph, second last sentence.
5. Member States shall require certified financial intermediaries requesting relief under Article ~~12 and/or~~ 13 keep all supporting documentation and provide access thereto in accordance with Article 9, paragraph 5.

*Minor changes have been made in consistency with the deletion of Article 12.*

*In Article 11.1(a), it is clarified that the registered owner has to include the legal basis applicable to the withholding tax rate.*

*The verification of financial arrangements has been excluded from the possibility of annual due diligence, since it requires to be checked for each operation, as suggested by a Member State.*

<sup>18</sup> 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. 73–117)

## *Article 12*

### **Relief at source system**

~~Member States may allow certified financial intermediaries maintaining a registered owner's investment account to request relief at source on behalf of a registered owner in accordance with Article 10 by providing to the withholding tax agent the following information:~~

- ~~(a) the tax residence of the registered owner or the information contained in the documentation referred to in point (aa) of Article 11, paragraph 2, where applicable; and~~
- ~~(b) the applicable withholding tax rate on the payment in accordance with a double tax treaty or specific national legislation.~~

<p><i>Article 12 has been deleted. This Article becomes obsolete because the Presidency brings in the concept of "comprehensive" RAS. See explanations included in the steering note.</i></p>
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## *Article 13*

### **Quick refund system**

1. Member States **shall** allow certified financial intermediaries maintaining a registered owner's investment account to request a quick refund of the excess withholding tax, on behalf of such registered owner in accordance with Article 10 if the information referred to in paragraph 3 of this Article is provided within the first 25 calendar days of the month following the month of the payment date of the dividend or interest.
2. Without prejudice to paragraph 3a of this Article, Member States shall process a refund request made in accordance with paragraph 1 within 60 calendar days after the end of the period to request the quick refund. Member States shall apply interest in accordance with Article 14 on the amount of such refund for each day of delay after the 60<sup>th</sup> day.
3. A certified financial intermediary requesting quick refund shall provide the following information to the relevant Member State:
  - (a) identification of the dividend or interest payment as referred to in Annex II, heading B;
  - (b) the legal basis of the applicable withholding tax rate and total amount of excess tax to be refunded;
  - (c) the tax residence of the registered owner, including the eTRC verification code, where applicable, or the information contained in the documentation referred to in point (aa) of Article 11, paragraph 2, where applicable;
  - (d) the registered owner's declaration in accordance with Article 11.
- 3a. 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 10 or 11 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 legislation with respect to the refund request. Such rejection shall not preclude the application of late payment interest in accordance with paragraph 2 in the event that the refund is finally granted and the circumstances provided for in subparagraphs (a) or (b) do not exist.
- 3b. The rejection referred to in points (a) and (b) of paragraph 3a of this Article shall be communicated to the requesting certified financial intermediary and shall not preclude the request for a refund under the standard refund system established in the national legislation.
- 4. 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 18.

*In consistency with the changes in the scope, Article 13 will be compulsory for those Member States in the scope.*

#### *Article 13a*

#### **Special provisions for indirect investments**

- 1. Member States shall allow a certified financial intermediary maintaining the investment account of a registered owner that meets the conditions specified in (a) and receives dividends or interests, to request relief pursuant to ~~Article 12 and/or~~ Article 13 on behalf of the registered owner provided that the requirements set out in subparagraphs (b) and ~~(c) or (d), as applicable,~~ are met.
  - (a) The registered owner is:
    - (i) a collective investment undertaking which holds securities for the account of investors entitled to the relief of the withholding tax with respect to the dividend or interest in accordance with the national legislation of the source Member State or a double tax treaty, where applicable; or
    - (ii) a ~~management company~~ **designated legal person within the prospectus of a collective investment undertaking** that holds the securities in the investment account that give rise to the dividend or interest and maintains internal records enabling the individual allocation of these securities to ~~that specific~~ collective investment undertaking or to the investors ~~in of that specific~~ collective investment undertaking, **as applicable, where the collective investment undertaking or the investors in a collective investment undertaking are entitled to the relief of the excess withholding tax with respect to that dividend or interest in accordance with the national legislation of the source Member State or a double tax treaty, where applicable.**
  - (b) The certified financial intermediary requesting relief obtains **a declaration from:**
    - (i) ~~a declaration from~~ each collective investment undertaking **entitled to the relief** or each investor ~~in of~~ the collective investment undertaking **entitled to the relief, as applicable,** whose securities are held by the registered

owner that they are entitled to the relief of the withholding tax with respect to the dividend or interest in accordance with the national legislation of the source Member State or a double tax treaty, where applicable, **including the legal basis**; that they have been informed that the relief is requested under this Article; and that they waive their right to independently request relief from the source Member State under ~~the systems of relief of this~~ Directive or under the ~~standard~~-systems pursuant to the national legislation of Member States if the relief is granted;

- (ii) ~~a declaration from~~ the registered owner referred to in point (a)(i) **indicating the applicable whether all investors whose securities it holds are entitled to the same** withholding tax rates with respect to the dividend or interest paid ~~and the legal basis of the applicable tax rate. Where all investors whose securities it holds were not entitled to the same withholding tax rate, the part corresponding to each relief shall be identified;~~
- (iii) ~~a declaration from~~ the registered owner referred to in point (a)(ii) 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 whether all investors of such collective investment undertaking with respect to the dividend or interest paid are entitled to the same** withholding tax rates **with respect to the dividend or interest paid** ~~and the legal basis of the applicable tax rate. Where all investors whose securities it holds were not entitled to the same withholding tax rate, the part corresponding to each relief shall be identified;~~
- (iv) ~~a declaration from~~ the registered owner with the information referred to in Article 11.1 (b) and (c).

~~(c) The certified financial intermediary requesting the relief at source pursuant to Article 12 provides the withholding tax agent with the information referred to in paragraph 1(b)(ii) or 1(b)(iii), as applicable, of this Article, in place of the information referred to in Article 12(a).~~

(d) The certified financial intermediary requesting **relief** ~~the quick refund~~ pursuant to Article 13 provides the relevant Member State with the information referred to in paragraph 1(b) of this Article and with the tax residence of the **collective investment undertaking or the investors in a collective investment undertaking, as applicable, as applicable,** including the eTRC verification code, where applicable, or the information contained in the documentation referred to in Article 11(2)(aa), where applicable, in place of the information referred to in Article 13(3)(b), (c) and (d).

2. Member States shall take the necessary measures to ensure certified financial intermediaries requesting relief under this Article to verify:

- (a) the documentation referred to in Article 11(2)(a) or (aa) with respect to **each collective investment undertaking or each investor in a collective investment undertaking, as applicable,** ~~all investors~~ entitled to the relief;
- (b) ~~the investors'~~ entitlement **of the collective investment undertaking or the investors in a collective investment undertaking, as applicable,** to a specific exemption or reduced withholding tax rate in accordance with a double tax treaty between the source Member State and the jurisdictions ~~where the investor is~~

resident of residence for tax purposes or specific national legislation of the source Member State; and

- (c) in case of a dividend payment and based on the information available to the certified financial intermediary, the possible existence of any financial arrangement that has not been settled, expired or otherwise terminated before the ex-dividend date.

- ~~3. Member States may allow a certified financial intermediary to obtain the declarations and the documentation referred to in paragraph 1(b) of this Article and to carry out the verifications provided for in paragraph 2 of this Article on an annual basis unless the certified financial intermediary knows or has reasons to know that there is a change of circumstances or that the declarations or the information to be verified is incorrect or unreliable.~~
- ~~4. Member States shall take appropriate measures to ensure that certified financial intermediaries requesting relief can be held liable for all or part of the loss of withholding tax revenue incurred by the Member State in relation to a request relief pursuant to Article 12 or 13 made under this Article.~~
5. The provisions of paragraphs 1, 2 and 2a of Article 11 shall not apply where the relief is requested ~~under~~ pursuant to this Article.

*Some changes have been introduced to clarify this article. There is no change in substance. See explanations included in the steering note.*

#### Article 14

##### Late payment interest

Pursuant to Article 13(2), Member States shall, where national legislation includes such provisions, apply interest at a rate equal to the interest or equivalent charge applied by the Member State to late payments of tax refunds related to the taxation of dividends or interests, as applicable.

*As suggested by a Member State, late payment interests will apply if, according to the national legislation of Member States, it is foreseen for similar tax refunds.*

#### Article 15

##### Standard refund system

Member States shall adopt ~~the necessary~~ appropriate measures to ~~require~~ ensure that where ~~Article 12 and Article 13 does~~ not apply to dividends ~~due to, because~~ the conditions set out in ~~of this Directive are not~~ being met, those entitled to the relief ~~a registered owner or their~~ its authorised representative requesting ~~for~~ refund of the excess withholding tax on such dividends provides at least the information required under Annex II, heading E, unless this information has already been provided in accordance with the obligations ~~pursuant to~~ of Article 9.

*Minor linguistic changes have been made and the reference to Article 12 has been deleted. The term “registered owner” has been replaced because it will be the persons entitled to the relief, who may not be the registered owner, that will request the refund.*

## *Article 16*

### **Liability**

**1.** Member States shall take appropriate measures to ensure that if a certified financial intermediary does not comply, **intentionally or negligently**~~completely or partially~~, with its obligations under Articles 9, ~~10, 11, 12 and 13~~, the certified financial intermediary can be held liable for all or part of the loss of withholding tax revenue incurred by the Member State in relation to a request under **this Directive**~~Article 12 or 13~~.

**The terms ‘intentionally’ or ‘negligently’ shall be interpreted and applied in accordance with the applicable national law of Member States.**

**2. Member States shall take appropriate measures to ensure that certified financial intermediaries requesting relief can be held liable for all or part of the loss of withholding tax revenue incurred by the Member State in relation to a request under this Directive.**

*As suggested by some Member States, the liability of CFI requesting the relief is reinforced. In consequence, the liability of the rest of CFIs is more delimited.*

*According with the proposed wording certified financial intermediaries obliged to report information should be held liable for tax revenue losses that have been incurred due to the inadequate fulfilment of this obligation and certified financial intermediaries requesting the relief should be held liable for any tax losses resulting from the undue application of the relief.*

## *Article 17*

### **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. These penalties shall be effective, proportionate and dissuasive.

## CHAPTER IV

### FINAL PROVISIONS

#### *Article 18*

#### **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 of the European Parliament and of the Council<sup>19</sup>.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

#### *Article 19*

#### **Evaluation**

1. The Commission shall, every five years after the [transposition deadline of this Directive], examine and evaluate the functioning of this Directive. A report on the evaluation of the Directive, including on a potential need to amend specific provisions thereof, will be submitted to the European Parliament and the Council by December 2031 and every 5 years.
2. Member States shall, in accordance with paragraph 3, communicate to the Commission relevant yearly statistical information for the evaluation of the Directive, for the purpose of improving withholding tax relief procedures to reduce double taxation as well as combat tax abuse, in accordance with paragraph 3.
3. The Commission shall, in accordance with the procedure referred to in Article 18(2), determine a list of statistical data which shall be provided by the Member States for the purposes of evaluation of this Directive, as well as the format and the conditions of communication of that information.
4. Information communicated to the Commission pursuant to this Directive shall be kept confidential by the Commission in accordance with the provisions applicable to Union institutions.
5. Information communicated to the Commission by a Member State under paragraph 2, as well as any report or document produced by the Commission using such information, may be transmitted to other Member States. The transmitted information shall be covered by the obligation of official secrecy and enjoy the protection extended to similar information under the national law of the Member State which received it.

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<sup>19</sup> 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. 13–18)

## Article 20

### 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 of the European Parliament and of the Council<sup>20</sup> to the extent required in order to safeguard the interests referred to in point (e) of Article 23(1) of that Regulation in so far as such obligations or the exercise of such rights may jeopardise the safeguard of those interests.
2. When processing personal data, certified financial intermediaries and the competent authorities of Member States shall be considered as controllers, in the meaning of Article 4, paragraph 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 be retained for no 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 statute of limitations.

## Article 21

### 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 such register. The Commission shall publish in the *Official Journal of the European Union* this information and shall update the information as necessary.

## Article 22

### Transposition

1. Member States shall adopt and publish, by 31 December ~~{20286}~~, 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 ~~{20297}~~.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. 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 provisions of national law which they adopt in the field covered by this Directive.

*According to the opinion of a vast majority of Member States, the transposition deadline has been fixed.*

<sup>20</sup> 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 (OJ L 119, 4.5.2016, p. 1).

*Article 23*  
**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 24*  
**Addressees**

This Directive is addressed to the Member States.

Done at Brussels,

*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 shall:
  - be issued with an electronic seal in conformity with Regulation (EU) No 910/2014 of the European Parliament and of the Council<sup>21</sup>;
  - offer the possibility of both human- and machine-readable format presentations of the digital tax resident certificate with PDF documents or similar other formats which can be used in the automated systems;
  - be printable;
  - contain an open text box for inclusion of information under Article 4(g).
  
2. Member States may introduce a verification process through verifiable credentials if the technical requirements in the Union are met.

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

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<sup>21</sup> 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)



**ANNEX II**

**REPORTING AS REFERRED TO IN ARTICLE 9 and 15**

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

Type of information	Specification
<b>A. Information regarding the person that is providing the information</b>	
Name of the certified financial intermediary	
EUID, Legal Entity Identifier (LEI) or alternative	
Official address	
Other relevant data	Tax identification number assigned by the source Member State, if available, and the tax identification number assigned by the jurisdiction of residence for tax purposes. TIN issuing jurisdiction/s  E mail address and telephone number
Indication if the information is provided pursuant to Article 9.1a	Identification of the financial intermediary that is not a certified financial intermediary (name and EUID, Legal Entity Identifier (LEI) or alternative)
<b>B. Information regarding the recipient of the dividend or interest payment</b>	
Identification of the financial intermediary or final investor receiving the dividend or interest payment	
i. Individual	Name, TIN (tax identification number assigned by the source Member State, if available, and the tax identification number assigned by the jurisdiction of residence for tax purposes), TIN issuing jurisdiction/s, date of birth, address
ii. Entity	Name, TIN (tax identification number assigned by the source Member State, if available, and the tax identification number assigned by the jurisdiction 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.
Investment account IBAN	IBAN of the safekeeping account where the securities are held by the financial intermediary/ <del>investor</del> <del>taxpayer</del> receiving the payment
Type of account	<p>The type of account according to Article 38 of Regulation (EU) 909/2014 and other accounts:</p> <p>A - Own account (maintained by a participant in the CSD of the securities original register)</p> <p>B- Third party general account (maintained by a participant in the CSD of the securities original register for the account of clients)</p> <p>C- Third party individual account (maintained by a participant in the CSD of the securities original register on behalf of a client)</p> <p>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 securities original register)</p> <p>E- Third party global account other than B</p> <p>F- Individual account of a securities holder other than D or C</p> <p>G- Other type of account</p>
<b>C. Information regarding the payor of the dividend or interest payment</b>	
Identification of the financial intermediary from whom the reporter receives the dividend or interest payment	
ii. Legal person	Name, LEI, TIN (tax identification number assigned by the source Member State, if available, and the tax identification number assigned by the jurisdiction of residence for tax purposes), TIN issuing jurisdiction/s, address, EUID, where applicable.

Investment account IBAN	<b>IBAN</b> Number of the safekeeping account where the securities were hold by the financial intermediary sending the payment
Type of account	The type of account according to Article 38 of Regulation (EU) 909/2014 and other accounts:  A - Own account (maintained by a participant in the CSD of the securities original register)  B- Third party general account (maintained by a participant in the CSD of the securities original register for the account of clients)  C- Third party individual account (maintained by a participant in the CSD of the securities original register 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 securities original register)  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
<b>D. Information regarding the dividend or interest payment</b>	
Issuer	Name, TIN or, in its absence, LEI or EUID, official address
CSD	Identification of the central securities depository that maintains the original register of the securities
ISIN 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 <b>and the ISIN number</b> )

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, Withholding Tax rate applied or to be applied, amount withheld
Cash account IBAN	IBAN of the account to which the payment has been transferred
<b>E. Information regarding application of anti-abuse measures to be fulfilled by the certified financial intermediary requesting the relief</b>	
Information about 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

*Minor changes have been introduced.*